

FDA'S DELAY IN IMPLEMENTING CALORIE LABELING LAW LEAVES FATE UNCERTAIN

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The latest delay by the Food and Drug Administration (FDA) in implementing new calorie labeling rules gives restaurants and food retailers a little breathing room. Originally set for May 5, the agency pushed back the deadline a second time, now requiring compliance by May 2018.

Seven years ago, the menu labeling law was passed as Section 4205 of the Affordable Care Act (ACA), and the FDA has been working on the details ever since. Its [final rule](#) requiring calorie labeling requires restaurants and “similar retail food establishments” (such as convenience stores, grocery stores, concession stands, and food takeout or delivery establishments) that are part of a chain of 20 or more locations and that sell substantially the same menu items to, among other things, post the following on menus and menu boards:

- calorie information;
- a succinct statement on suggested daily caloric intake; and
- a statement that written nutrition information is available upon request (and provide such information, upon request).

The FDA has also issued an industry [compliance guide](#) on what types of foods and businesses are covered, what information must be provided, and the format.

Although a bill to repeal and replace the ACA has passed the House, it does not address Section 4205. And since Section 4205 is not related to taxes or revenue, it cannot be repealed through budget reconciliation.

The FDA's delay in implementing the rule, however, indicates that its fate may be uncertain, particularly under a new FDA commissioner. Some think the law may never go into effect, and food advocacy groups have now proposed alternative menu labeling laws. This may only increase the burden on restaurants and retailers, who already face different calorie labeling laws from state to state. A national regulation would at least make the requirements consistent.

And, since delayed implementation came only 10 days before the rule was to take effect, many restaurants and food retailers that were ready to comply have gone forward as planned. Others are considering phasing in implementation over the next year to avoid the cost of complying all at once, and still others have decided to wait and see what the labeling rules will be when compliance is required.

For questions or more information, contact the author or any member of our [Retail](#) team.

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