

It's the Law! Nutritional Labeling Made Simple with Digital Menu Boards

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Wireless Ronin Technologies

This white paper provides an update on menu labeling legislation as outlined in the Patient Protection and Affordable Care Act of 2010, and explores the solutions available through digital menu boards and digital signage.



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IT'S THE LAW! NUTRITIONAL LABELING MADE SIMPLE WITH DIGITAL MENU BOARDS

The Law

Nutrition labeling on menus and menu boards for food sold at restaurants and "similar retail food establishments" is now the law of the land. Requirements were outlined in section 4205 of the Patient Protection and Affordable Care Act of 2010 (PPACA) signed on March 23, 2010. The act requires covered establishments with 20 or more locations to list calorie content information for standard menu items on menus and menu boards, including drive-through menu boards. Other nutrient information total calories, fat, saturated fat, cholesterol, sodium, total carbohydrates, sugars, fiber, and total protein will have to be made available in writing upon request. The act also requires vending machine operators who own or operate 20 or more vending machines to disclose calorie content for certain items.

This section of the law is far-reaching, covering a wide range of food service establishments, including table service restaurants, quick service restaurants, coffee shops, delicatessens, take out and delivery establishments, convenience stores, movie theaters, cafeterias, bakeries, retail confectioners, grocery store food counters, lunch wagons, airlines, trains, and more. It applies to any of these establishments that is part of a chain with 20 or more locations doing business under the same name and offering substantially the same menu items.

The range of covered foods is also quite broad. It includes items on a menu or menu board; items on a salad bar, buffet line, or cafeteria line; self-serve beverages; and items "packaged at the customer's request" such as a pizza slice or prepared sandwich. There are a variety of items that are not covered, such as daily specials and custom orders, but the range of foods and facilities that will be affected is vast.

PPACA

The act requires covered establishments with 20 or more locations to list calorie content information for standard menu items on menus and menu boards, including drive-through menu boards.

The Process

Some provisions of the act will only be implemented after the U.S. Food and Drug Administration (FDA) has developed and issued rules. Other provisions are "self-implementing", taking effect immediately upon enactment of the law. As of the end of 2010, the FDA has issued draft guidance regarding these self-implementing provisions. The draft guidance document does several things. It addresses the rationale for the requirements under the act. It identifies the self-implementing provisions specifically directed by congress in the legislation. And it answers a variety of basic questions including definitions of terms and timing of compliance.

Provisions that became effective immediately upon enactment include disclosure by covered establishments of calories in standard food items on menus and menu boards and in self-serve items. Covered establishments must also make available upon request additional nutrition information including:

1. Calories
2. Calories from Fat
3. Total Fat
4. Saturated Fat
5. Cholesterol
6. Sodium
7. Carbohydrates
8. Sugars
9. Dietary Fiber
10. Protein

In the case of vending machines that do not allow examination of nutrition information printed on products, calorie content must be conspicuously displayed where it can be seen before making a purchase.

The draft guidance, when finalized, will represent the agency's current thinking on the provisions that became requirements immediately upon enactment of the law and how FDA plans to enforce those requirements. The preamble to the final guidance will have to

explain, based on science or research, why the proposed regulations should be given the force of law. For example, the proposed regulations will probably address trans fats even though the law itself does not specifically mention them. The final guidance document will then detail the agency's proposed regulations. These rules are expected to address specifics such as nutritional disclosure for self-serve foods like salad bars and variable foods such as pizza for which customers choose from a variety of toppings. The rules will also define what types of food and establishments will and will not be covered.

These proposed regulations will be available for public comment before the agency releases its final regulations. Anyone who objects to any of the proposed regulations may submit comments to the FDA and suggest changes. The FDA must then review the comments and respond in the preamble to the document listing final rules; however, the agency will have final say as long as their decisions cannot be shown to be capricious. At that time, full enforcement of the agency's rules will begin, and the FDA's rules will supersede any state or local food labeling regulations.

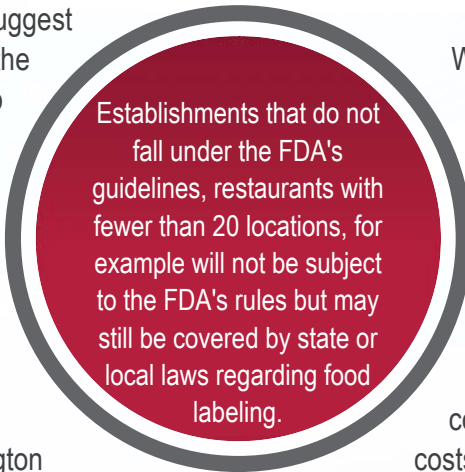
Peggy Binzer, an attorney with the Washington DC law firm Edwards, Angell, Palmer & Dodge, LLP, specializes in food labeling. According to Binzer, the rules on how to determine the nutrient levels of the menu item are flexible. "The agency allows nutrient levels to be determined by nutrient data bases, cookbooks, or analysis, or by other reasonable means that provide assurance that the food or meal meets the nutrient requirements for the claim," she says. "This is important for smaller operations that may not have the budget for laboratory testing and a full nutritional analysis of its menu."

"There have been some questions as to whether legal challenges to the insurance provisions of the healthcare law will affect menu labeling," says Binzer. "In my opinion, there will be no impact, no matter what the outcome of those challenges. Severability of the law means that even if one

part of the act is successfully challenged, other parts of the act remain in force. And, given the broad support the menu labeling provisions received prior to passage of the PPACA it is also unlikely that this provision will be repealed by Congress."

The Implications

Establishments that do not fall under the FDA's guidelines, restaurants with fewer than 20 locations, for example will not be subject to the FDA's rules but may still be covered by state or local laws regarding food labeling. Such establishments may voluntarily register with the FDA and agree to be subject to the federal labeling law and the corresponding rules. If they do so, they will, like other covered establishments, no longer be subject to state or local labeling laws.



While many larger restaurant chains have been preparing for these changes for some time, some smaller or regional establishments have made fewer preparations. Other establishments, such as amusement parks, casinos, and convenience stores, that do not consider themselves to be restaurants, may just be learning that they are covered and finding out the act's potential costs and impact on their operations. The good news is that, by planning ahead, companies may actually find benefits in the changes by reaching out to health conscious customers and by no longer having to meet different requirements across state and municipal lines.

The Challenge

Director, Marketing Services Bob Stowe of Wendy's International is a member of his company's cross-functional team preparing for implementation of the food labeling law. He is also Board Chairman of the Digital Signage Federation. Stowe sees big changes coming in response to the new requirements. "Most companies' menu boards today use preprinted strips, either back- or front-lit," says Stowe. "It's a simple system and one that hasn't changed much in half a century, but while inserting a strip is simple, the process of making a change can be costly and time-consuming. If

we change a menu item or a price, we have to reprint and replace all those strips, and calorie counts are just one more item that can drive that change. Making a change for 500 stores, you can realize some economies of scale. If, on the other hand, you have different requirements in different states or municipalities, you may be reprinting just a couple of dozen menu strips and your cost per store goes way up."

When asked why an establishment wouldn't simply make a change across all locations, even those with no specific legal requirements, Stowe lists a variety of risks. Requirements can vary from one locale to another. One state or municipality may require mean calorie figures while another requires you to calculate a median. "Medians are really tough," says Stowe. "You need both a dietician and a mathematician to figure them out."

As Stowe points out, New York allows providers to publish a range of calorie per item where optional ingredients vary; others don't allow that flexibility. The state of Massachusetts requires information on allergens, which others do not. Enforcement of laws by state and local governments can vary, and depending on the location, even a small mistake can lead to fines. According to Stowe, publishing nutrition figures where they are not mandated can lead to class action lawsuits. "We're actually looking forward to having the federal law in place," he says. "By superseding state and local laws, it will eliminate the complications of trying to comply with differing requirements among markets."

While federal regulation may reduce the need for localized nutrition labeling, it may complicate the process in other ways. "If we change the brand of mayonnaise we use, it could affect the calorie count in foods we serve," says Stowe. "Changing that information using menu strips could take weeks of time and lots of manpower. Menu changes that affect regions rather than our entire system could be even more complicated."

Wendy's recognized some time ago that digital signage had

the potential to eliminate a lot of problems, especially as food labeling became law. "We want a system that is fluid enough to accomplish overnight, with a keystroke, what now can take months to print and distribute and perhaps hundreds of employee hours to implement," Stowe says. "Instead of running 30 days behind a change, we would be free to act immediately and, if necessary, locally. At Wendy's we're 'ankle deep' in the exploration of digital signage, which actually makes us a leader in the industry. The level of commitment to the technology varies within the industry, but there are companies out there that haven't yet dipped their toes in the water. We are testing systems from several vendors and beginning to make decisions about features. I'd be surprised if we didn't have a rollout of digital signage in 24 to 36 months."

Stowe isn't sure how to measure return on investment (ROI) in digital signage but sees several areas in which it will have impact. "It will certainly lower the cost of keeping up with changes and could also generate a gain in sales," he says. "There's also what I call 'ROO' or return on opportunity to create a new dynamic for the organization. It's hard to put numbers on all of these factors, but together they certainly make this worth pursuing. My advice to organizations thinking about digital signage is to start learning as much as you can. It's important to gain knowledge as early as possible and carry out your due diligence. Once you pull the trigger, it's going to take a significant amount of time to implement the new technology and integrate it into your organization, and, as we say in our business, latecomers are going to spend a long time in the beverage line."



The Solution

"As it relates to the nutritional law requirements, I would submit that the cost of doing nothing will quickly outweigh the investment in technology to comply," says Senior Vice President of Sales and Marketing Terri Saylor of Wireless Ronin Technologies. "Inaction or the incorrect action, no matter how well intended, could result in fines being incurred by an organization. Then there are the costs associated with the ongoing changes in recipes, ingredients, and managing

the nutritional requirements on a state or local basis. Managing compliance will require investing the time and/or resources to fully understand the nuances of the law. For example, digital signage will offer benefits in dealing with items that may not fall under the law such as condiments, daily specials, market tests under 90 days or temporary items appearing for less than 60 days."

"If ever there was a business driver to justify technology, this is it!" says Saylor. "Digital signage will allow covered companies to seamlessly address the significant challenges that will come with full implementation of this law. Consider the example of a new menu item being launched in some states but not in all states, or a meal designed to accommodate local demographics. Think about the complexity of changing an ingredient to proactively reduce calories or trans fats. In all these cases, imagine how much easier it would be with digital signage to make the necessary changes or pilot new offerings in select locations. Also consider the likelihood that the law itself may change and evolve as it matures, and that those modifications will affect every location required to comply."

Digital signage can take complex and laborious undertakings like these and make them relatively simple to implement and easy to manage on an ongoing basis. It both puts control in the hands of the organization and/or franchisee owner and significantly increases flexibility. It enables the company to instantly push data to hundreds or thousands of locations electronically rather than bear the costs of labor, print, design, and logistics with every change. It allows direct and frequent modifications to market testing, temporary promotions or menu design in an effort to determine the best marketing approach to create sales lift, as attested to by those who have installed the technology.

A strategic digital signage implementation allows for virtual grouping, which enables a selective approach to market demands and regional preferences. Day parting intelligently supports the added information on calories and trans fats

as well as promotional images, animated transitions, and video.

The technology goes far beyond nutritional labeling and deep into the customer experience, leveraging the creative potential of the digital software to bring clear, concise, visually appealing messaging to the consumer and allowing for integration with other emerging technology trends such as mobile and social marketing.



To help offset the investment of digital signage is the bill that President Obama signed into law on December 16, 2010 which contains several tax incentives for both businesses and individuals. The provision is referred to as "Bonus Depreciation" and provides 100 percent tax deduction for new capital investments on all purchases made after September 8, 2010 thru January 1, 2012, regardless of the amount. Such investments normally depreciate between 5-7 years. Delaying capital investments beyond 2011 could mean waiting several years before an organization is able to achieve the same 100 percent tax deduction for their investment.

Digital Signage Tips

Whether you are well along in exploring digital signage or just getting started, there are a variety of factors to consider.

1. Technology should be appropriate to your needs. Select a digital signage partner with proven experience and understanding of the unique challenges in the Fast Casual and Quick Serve industry.
2. For long term scalability, select a partner with solid knowledge of data integration. This will allow you to integrate data from a variety of sources as you build your future menu board, advertising, promotion and social media strategies.
3. Digital signage will operate at the heart of your business. Look for vendors that can support mission critical applications, with 24/7 network support to guarantee uptime.
4. It's been said before, but if you can't measure it, you can't manage it. Look for automated system and usage

reporting capability that can be customized to meet your specific needs.

5. Digital signage is all about flexibility. Look for systems that are agile enough to manage menu board and promotional changes down to the item level.
6. Business needs are ever changing. Look for proof that the digital signage company can develop custom applications, preferably "in-house".
7. Your brand is priceless. Choose a vendor with a history of success in partnering with ad and creative agencies and, ideally, the expertise to augment that relationship with their own creative expertise and content engineering team.
8. Managing expense accelerates your ROI. You want to be able to fully utilize the systems



you buy and feel confident taking over control to the degree you choose. Look for dedicated, proven training resources that can provide both initial on-site and ongoing training.

9. Claims are easier than performance. Expect strong values that coincide with yours and solid references to back them up.

The Bottom Line

Implementing digital signage will do more than simply support compliance with the new law. Like most technologies, it will open new avenues and opportunities. Early adopters will find new ways to serve their markets, increase flexibility, bolster efficiency, and improve the customer experience. In short, digital signage will turn a necessary cost into a powerful tool and use it to build a competitive edge. Implementation of this technology is optional, but the time for a close examination of its capabilities and potential impact on business is now.

About Wireless Ronin

Wireless Ronin Technologies (www.wirelessronin.com) has developed RoninCast® software as a complete solution designed to address the evolving digital signage marketplace. RoninCast® software enables clients to manage digital signage networks from a central location and provides turnkey solutions in the digital signage marketplace. The RoninCast® software suite facilitates customized distribution with network management, playlist creation and scheduling, and database integration. Wireless Ronin offers an array of services to support RoninCast® software including consulting, creative development, project management, installation, training, and support and hosting through our network operations center (NOC). The company's common stock trades on the NASDAQ Capital Market under the symbol (RNIN).