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## **Trump's DOJ Picks Food Fight With New York City Over Calorie-Display Law.**

- **Government sided with trade group to block rule's enforcement**
- **FDA pushed deadline for federal compliance back to May 2018**

U.S. President Donald Trump's administration is quietly going to war with his hometown's calorie-counting obsession.

The U.S. threw its weight on Monday behind trade groups suing New York over what the government calls a "unilateral" plan to enforce a local 2015 calorie-labeling law at restaurants and food retailers in the city.

A provision of the 2010 Affordable Care Act that requires calorie labeling nationwide gave the Food and Drug Administration control over when and how to enforce it, the government said in a court filing. That means Bill de Blasio, New York's Democratic mayor, can't implement a city law as planned starting Aug. 21, the U.S. argued.

"The FDA has been tasked with determining when and in what circumstances uniform menu-labeling rules will be enforced across the nation," government lawyers wrote. "The city may not choose to take its path in the face of this clear expression of Congressional purpose."

The FDA in May delayed the federal rule for a third time, until May 2018.

"It's pretty clear from the delay of the national law the day before it was supposed to take effect that the Trump administration has no intention of supporting menu labeling," Colin Schwartz, a senior associate at the nonprofit Center for Science in the Public Interest, said in a phone call. Trump has signaled that he'll "do whatever industry wants him to do," he said.

The U.S. argued federal law preempts the city's effort. There was no indication that the administration was backing away from labeling requirements altogether, though Trump has promised to slash government regulations and criticized rules put in place by his predecessor that he says gum up the economy.

It's unclear how a victory for trade groups and the DOJ in the New York suit may impact other calorie-labeling laws in places such as Vermont and Washington State's King County, home to Seattle.

U.S. District Judge Victor Marrero held a hearing in private Wednesday without explanation and no decision was announced. The city's health commissioner, Mary Travis Bassett, said outside court that she fears the Trump administration is signaling its desire to roll back existing city laws and scuttle the planned federal rules.

"With this administration, a delay may mean never," she said.

## **Calorie Labeling**

Many restaurant chains across the U.S. already include calorie labeling on their menus voluntarily.

De Blasio's office said in a statement in May that the city would focus on its own efforts in the name of public health, regardless of the FDA's delay.

"While the Trump administration may disagree, knowledge is power, and that is particularly true when it comes to nutrition," New York City Council Member Corey Johnson, chairman of the Health Committee, said in the statement. "People have the right to readily-available information regarding the food they consume and the effects it will have on their health."

Bassett said the FDA appears to be taking the position that fast-food restaurants that have been providing calorie information to customers in the city for years should stop doing so.

"Poor nutrition is fueling an epidemic of chronic diseases, and this basic information should be accessible and transparent to all," Bassett said in a statement.

Dawn Dearden, a spokeswoman for the U.S. Attorney's Office in Manhattan, which submitted the court filing, declined to comment. Osvaldo Vazquez, the attorney for the National Association of Convenience Stores, one of the plaintiffs suing the city, declined to comment.

New York in 2008 became the first city in the U.S. to require fast food and other restaurant chains to post calorie counts. In 2015, the city beefed up the law to include calorie information about prepared foods sold in chain convenience stores and grocers, as well as a requirement that the average recommended daily intake of 2,000 calories be displayed to give the labels context.

## **New York Fines**

The New York law, which includes fines of up to \$600 for failure to comply, applies to chain restaurants with 15 locations or more nationwide. It's expected to affect about 3,000 restaurants and about 1,500 food retailer stores, the city has said.

The FDA in May extended the federal compliance date by a year to May 7, 2018, citing the diverse and complex set of stakeholders affected by the rule.

Federal law prohibits any state or municipality from imposing food-labeling regulation that's not identical to requirements established by Congress and the FDA, the trade groups said in their complaint. But New York's regulation is different from the federal law because it takes effect immediately, the groups said in their request for an injunction against the enforcement of the city law.

Former President Barack Obama's FDA in 2015 issued the first delay of the labeling requirement as part of a compromise to keep supermarkets and convenience stores covered by the law. Congress delayed it again in 2016 after lobbying efforts by industry groups and Domino's Pizza Inc., which complained about the cost of signage.

"We plan to fully implement that policy, in a manner that applies consistent, science-based standards to outstanding implementation questions," FDA spokeswoman Jennifer Corbett Dooren said in an emailed statement. "Congress understood the importance of implementing a single, national standard."

She declined to comment on why New York shouldn't be permitted to implement its own policies.

The case is National Association of Convenience Stores v. New York City Department of Health and Mental Hygiene, 17-cv-05324, U.S. District Court Southern District of New York (Manhattan).

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By Erik Larson

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