Franchise Law Alert: FDA Delays Enforcement of Menu Labeling Rules

May 2, 2017

Late yesterday, the U.S. Food and Drug Administration (FDA) announced that it is delaying the enforcement of rules requiring establishments selling food to disclose calories on their menus. Enforcement was slated to begin on May 5, 2017, but is now delayed until May 7, 2018.

This delay was a result of a strong last-minute lobbying effort largely by grocery stores, convenience stores, and pizza chains. The FDA has requested public comment over the next 60 days about how to reduce regulatory burden, specifically asking for approaches to increase flexibility for business and reduce regulatory burden related to:

1. Calorie disclosure for signage for self-service foods, including buffets and grab-and-go foods

2. Methods for providing calorie disclosure information other than on the menu itself, including how different kinds of retainers might use different methods

3. Criteria for distinguishing between menus and other information presented to the consumer

Additionally, a bill churning through Congress, called the Common Sense Nutrition Disclosure Act, might change some of the disclosure requirements imposed by the FDA's rules. This bill would loosen calorie disclosures for foods with variable serving sizes and would also allow companies that do most of their business online to disclose calories on their online menus only. The House passed the bill, but it has not yet gone to a vote in the Senate.

This is impactful for franchisors who had been working with franchisees to comply with the rules and for franchisors planning to comply. The rules and laws governing menu labeling largely require both franchisors

and franchisees to be responsible for compliance.

We will continue to monitor the situation, particularly as state and local governments weigh their options in enforcing their own laws regarding menu labeling, which would have been preempted by the FDA rules. We will also track the Common Sense Nutrition Disclosure Act closely, which might negate the rules altogether.

Click here to view the full text of the rule.