

FDA's Menu-Labeling Update

10.13.15 01.07.26

Since their official unveiling in December 2014, the FDA's final menu-labeling rules have given rise to a multitude of questions from hospitality businesses who wonder how to comply or whether they must comply at all. The FDA, in turn, appears to be trying its level best to provide enough time and guidance to ease these businesses' transition to the new rules. First, the FDA extended the deadline for compliance by a full year from December 1, 2015 to December 1, 2016, citing the agency's extensive dialogue with chain restaurants, grocery stores, and other members of the hospitality industry.

This extension of the compliance deadline gave many businesses much-needed time to decipher and implement the new rules. In support of *that* effort, in September, the FDA released a set of draft "Guidance for Industry" consisting of question-and-answer discussions of the application of the rules to various hypothetical scenarios. The FDA is careful to stress that this guidance is "non-binding," and that the "recommendations" therein reflect only the agency's "current thinking" about the rules. In other words, take the guidance for what it's worth, because it "does not operate to bind FDA or the public."

With that rather hefty caveat in mind, hoteliers nevertheless may find that the guidance is worth quite a bit more than a grain of salt. That is because, nestled within a discussion about executive dining rooms, the FDA offers this nugget: "[E]stablishments that do not offer for sale standard menu items . . . **for example, hotels that offer complimentary breakfast** and hospitals that provide food at no cost to the consumer, would not be considered covered attachments." That's because the breakfast isn't "sold" to customers - it's given away. So for now, it looks like those croissants and morning coffees your guests enjoy *gratis* are free and clear of both cost to the customer and the ambit of the FDA's labeling rules . . . unless the FDA changes its (non-bound) mind, of course.

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