

FDA Relaxes Nutrition Facts and Menu Labeling Requirements for Restaurants and Food Manufacturers During Covid-19 Emergency



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The U.S. Food and Drug Administration (FDA) has issued two temporary food labeling guidance documents that attempt to balance industry supply and demand during the novel coronavirus pandemic. As reported every day in the news, kitchens across the country are shuttering often with inventory on hand and retailers cannot stock their shelves fast enough to meet consumer demand as panic-buying abounds. As provided in the FDA guidance documents, to facilitate the sale of food that would go unused by restaurants or food manufacturers due to dine-in service restrictions, and to aid in the distribution of food during the COVID-19 pandemic, FDA is exercising enforcement discretion and will not challenge the sale of packaged foods directly to consumers as long as a label with some basic information is included or take action against chain restaurants that are not able to comply with the menu labeling requirements.

Labeling on Packaged Food sold by Restaurants and Food Manufacturing Facilities

On March 27, the FDA published a “Guidance for Industry: Temporary Policy Regarding Nutrition Labeling of Certain Packaged Food During the COVID-19 Public Health Emergency.”¹ Packaged food sold directly to or intended for sale directly to consumers normally requires a Nutrition Facts label in accordance with the FDA regulations.² The FDA Temporary Policy addresses labeling of food that is typically intended for further preparation at a restaurant but can be diverted to consumers during the pandemic period.

The relaxed requirements do not apply to food served by restaurants in the regular course of business. The requirements apply to products, including ingredients, that are typically purchased by restaurants to further prepare for sale to consumers. These products are generally sold and purchased in bulk and do not contain required consumer labeling. FDA’s Temporary Policy allows restaurants and food manufacturers to repurpose these food products and sell them directly to consumers with limited consumer labeling. This provides food service businesses an additional

¹ FDA’s *Guidance for Industry: Temporary Policy Regarding Nutrition Labeling of Certain Packaged Food During the COVID-19 Public Health Emergency* is available at: <https://www.fda.gov/media/136469/download> (last visited April 16, 2020).

² See generally, 21 CFR 101.9.

revenue stream and allows food that may otherwise be wasted to find its way to consumers, most of whom are under quarantine and face long queues at supermarkets.

In accordance with the FDA guidance document, restaurants and food manufacturers do not need to include a Nutrition's Facts panel as long as the labels contain no nutrition claims, and include (as applicable):

- a statement of identity,
- an ingredient statement,
- the name and place of business where the food was packaged,
- net quantity of contents, and
- allergen information required by the Food Allergen Labeling and Consumer Protection Act.

Restaurants labeling food ingredients for sale to consumers can (i) reuse manufacturer labels, (ii) create their own labels, or (iii) utilize labels provided by the manufacturer. Additionally, the FDA does not intend to challenge the continued production of food intended for sale to restaurants but diverted directly to consumers despite the potential unavailability of retail packaging.

Menu Labeling Requirements

Additionally, on April 1, 2020, the FDA published a "Guidance for Industry: Temporary Policy Regarding Nutrition Labeling of Standard Menu Items in Chain Restaurants and Similar Retail Food Establishments During the COVID-19 Public Health Emergency."³ Chain restaurants and retail food establishments with more than 20 locations are typically required to provide nutritional information and calorie declarations for standard menu items.⁴ Recognizing that during the pandemic, many food service establishments must quickly adopt new business models focused on take-out and delivery of food, the FDA's Temporary Policy provides that the agency does not intend to object if establishments subject to the menu labeling rule are not able to comply with the menu labeling requirements during the public health crisis. This is great news for food establishments who have found it significantly more difficult to comply with nutrition labeling requirements after having shifted from normal dine-in service to delivery and take-out service.

With these two guidance documents FDA is recognizing and attempting to help the restaurant industry which is suffering dramatically during the current public health crisis due to mandated social distancing requirements. However, it is important to note that these FDA policies are temporary and will remain in effect only for the duration of the COVID-19 public health

³ FDA's Guidance for Industry: Temporary Policy Regarding Nutrition Labeling of Standard Menu Items in Chain Restaurants and Similar Retail Food Establishments During the COVID-19 Public Health Emergency is available at: <https://www.fda.gov/media/136597/download> (last visited April 16, 2020).

⁴ See generally, 21 U.S.C. 343(q)(5)(H) and 21 CFR 101.11.

emergency declaration issued by the U.S. Department of Health and Human Services. Furthermore, agency guidance documents are not binding law; the guidance simply represents the agency's current interpretation of, or recommendations regarding, a certain topic.

Members of GrayRobinson's [Nationwide Food Law Practice](#) are available to assist with questions related to the FDA guidance documents as well as any other regulatory issues facing the food industry.

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