

>> COVID-19 ALERT

FDA Provides Temporary Flexibility on Nutrition Labeling in Response to the COVID-19 Pandemic

THE BOTTOM LINE

>> In order to maximize food distribution and offset losses caused by disruptions to the food industry, the FDA issued guidance to provide restaurants and food manufacturers with flexibility regarding nutrition labeling so that they can sell certain packaged foods during the COVID-19 pandemic.

To facilitate the distribution of food and mitigate the losses accruing in the restaurant and food manufacturing industries resulting from the current COVID-19 pandemic, the Food and Drug Administration (FDA) issued guidance to provide restaurants and food manufacturers with flexibility regarding nutrition labeling so that they can sell certain packaged foods directly to consumers during the COVID-19 pandemic.

FDA GUIDANCE

The FDA guidance does not apply to foods prepared by restaurants, which is still subject to food safety requirements under food safety laws. The FDA is instead acknowledging that, in the current pandemic, many restaurants had purchased food and raw ingredients that they can no longer prepare for service as usual, and may want to sell directly to consumers or to other businesses.

Under normal circumstances, if restaurants sell packaged food directly to consumers or to other businesses for sale to consumers, nutrition information may be required. Under the new guidance, the FDA made clear that it does not intend to object to the sale of packaged food (perishable and non-perishable) that lacks a nutrition facts label, provided that the food does not have any nutrition claims and that the packaging contains other required information on the label.

Similarly, food manufacturers may also have an excess of inventory, intended and labeled for distribution to restaurants that is no longer marketable given the widespread closure of restaurants and other food establishments. Moreover, certain manufacturers may have sufficient ingredients to produce additional product, but insufficient packaging materials to label the product for retail sale.

Both packaged food being sold by restaurants, and inventory being sold by food manufacturers, may be sold without a nutrition facts label, provided there are no nutrition claims and the labels include, as applicable:

- 1) A statement of identity;
- 2) An ingredient statement;
- 3) The name and place of business of the food manufacturer, packer, or distributor;
- 4) Net quantity of contents; and

- 5) Allergen information required by the Food Allergen Labeling and Consumer Protection Act.

Finally, to further facilitate the distribution of food, if retail packaging for certain food products during the COVID-19 pandemic is unavailable, the FDA has stated that it does not intend to object to the further production of food labeled for use in restaurants that will, for the time being, not be sold to restaurants until retail packaging is available.

GUIDANCE IMPLEMENTATION

The FDA guidance is being implemented immediately, without prior public comment, as the FDA has determined that prior public participation for this guidance is not feasible or appropriate. The outlined policies will remain in effect for the duration of the public health emergency related to COVID-19 declared by the United States Department of Health and Human Services (HHS), including any renewals made by the Secretary.

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