

FDA Grants Nutrition Labeling Flexibility in Response to COVID-19 Pandemic

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Food, Drugs, and Devices

As numerous restaurants have shut down or limited their service in response to state and local public health orders, many food manufacturers and foodservice distributors have excess inventory on hand that is labeled for use in restaurants, but not for retail sale. Yesterday, in response to industry requests for labeling flexibility in order to shift such products to grocery store shelves, FDA issued [guidance](#) temporarily allowing the sale of such products to consumers even without Nutrition Facts labels, as long as other conditions are met. FDA also [announced](#) that it will exercise enforcement discretion regarding the use of the updated Nutrition Facts label format through the end of the year.

Under the guidance, manufacturers can sell packaged food that lacks a Nutrition Facts label, provided that the food does not have any nutrition claims and contains other required information on the label, including the following, as applicable:

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

The same requirements apply to restaurants seeking to sell perishable and non-perishable packaged food that lacks a Nutrition Facts label. The restaurant may reuse original labels or provide the above information on labels it creates or that are provided by the manufacturer. The guidance applies only to packaged food, and not to food prepared by restaurants.

The guidance applies not only to inventory manufacturers have on hand, but also to future food production. FDA recognizes that many manufacturers may possess the necessary ingredients to produce additional retail product but not the packaging material to label the product for retail sale. The guidance states that “FDA does not intend to object to the further production of food labeled for use in restaurants that is intended to be sold other than to restaurants until retail packaging is available.”

Notably, the guidance only permits the omission of the Nutrition Facts label. While this flexibility may be adequate for many products intended for restaurants, others may not already bear the label elements FDA continues to require. We note further that FDA did not expressly address food destined for foodservice, including schools (many of which are now closed), but the principles articulated in the guidance would appear to apply to foodservice products and their

manufacture and distribution as well, so long as the label of such products includes the information above.

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To best advise our clients on the rapidly evolving public health situation in the United States, our COVID-19 task force is staying abreast of daily developments and tracking the latest federal, state and local policies related to COVID-19. Please feel free to reach out to our team members listed below with any questions, and to visit Covington's website for our [COVID-19: Legal and Business Toolkit](#).

If you have any questions concerning the material discussed in this client alert, please contact the following members of our Food, Drugs, and Devices practice:

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**District of Columbia bar application pending; supervised by principals of the firm*

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