

FDA DURING THE PANDEMIC: RELAXING LABELING REQUIREMENTS FOR RESTAURANTS AND FOOD MANUFACTURERS

Hodgson Russ Food & Beverage Practice Alert
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The Food and Drug Administration (FDA), the primary agency regulating the food supply, has relaxed restrictions on restaurants and food manufacturers in recognition of the extraordinary circumstances facing these industries. The relaxed standards are intended to assist this sector, which has been devastated by the pandemic, and help it remain sustainable during this time.

First, restaurants and food manufacturers that have food or inventory on hand that can no longer be used to prepare restaurant food (or sold to restaurants) may want to sell directly to consumers or other businesses. To facilitate this, the FDA will *not* object to the sale of *packaged food* lacking a “Nutrition Facts” label, as long as there are no nutrition claims and the label contains, as applicable: a statement of identity; an ingredient statement; the name and place of business of the food manufacturer, packer, or distributor; the net quantity of contents; and required allergen information. Moreover, if retail packaging for certain foods is unavailable, the FDA will not object to the further production of food labeled for use in restaurants that is intended to be sold to other entities or persons until retail packaging is available. A restaurant can reuse original labels or provide the required information on labels it creates or that are provided by the manufacturer.

Second, for food establishments that are part of a chain with 20 or more locations and offering substantially the same menu items, the FDA is relaxing menu labeling requirements during the public health emergency. Specifically, for covered entities (which may include restaurants, grocery and convenience stores, coffee shops, entertainment venues, and superstores), the FDA has suspended the requirement to include nutrition information on standard menu items.

By taking advantage of these relaxed standards during this emergency period, you may be able to continue selling food to your customers. Hodgson Russ attorneys are here to help you confront the drastic changes in the industry and regulatory space as a result of COVID-19. If you have any questions about this alert, please contact Reena Dutta (716.848.1626), Sarah Miller (716.848.1509), or Andrew Freedman (716.848.1332).

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