

FDA DURING THE PANDEMIC: PACKAGING AND LABELING OF SHELL EGGS SOLD BY RETAIL ESTABLISHMENTS

Hodgson Russ Food & Beverage Alert
April 7, 2020

The FDA, as the primary agency regulating the food supply, has released guidance relaxing the packaging and labeling obligations of retail food establishments selling shell eggs. “Retail food establishments” is defined as a business that sells food products directly to consumers as its primary function. The term “consumers” specifically excludes other businesses. Therefore, this guidance is meant for the sale of shell eggs to individuals and families.

This action should come as no surprise, as demand for shell eggs has significantly increased. Prior to the COVID-19 crisis, retail food establishments would receive shell eggs in cartons containing the following information: statement of identity; the name and place of business of the manufacturer, packer, or distributor; nutrition labeling; the net quantity of contents; and safe handling instructions. Now, while shell eggs are available for distribution, appropriately labeled retail packaging is not. So, to facilitate the continued sale of shell eggs, the FDA is providing temporary flexibility for packaging and labeling requirements.

Specifically, the FDA does not intend to object to the sale of shell eggs as long as the following information is provided at the point of purchase: Statement of identity (i. e. shell eggs); and the name and place of business of the manufacturer, packer, or distributor; and safe handling instructions for shell eggs that have not been processed to destroy all viable Salmonella. This obligation may be met by placing a card or tag affixed to the shell eggs.

Be careful about shell eggs from multiple suppliers sold at the same time, as consumers must understand which shell eggs came from which manufacturer. Additionally, shell eggs must be sold by the complete carton or flat (oversized carton consists of either 20 or 30 eggs). Finally, do not make any nutrition claims when packaging or labeling these shell eggs.

In sum, the FDA has issued this guidance to allow retail food establishments to continue meeting the needs of Americans to consume shell eggs. These changes are only in effect for a temporary period so do not rely on these changes for any long-

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term business plan.

Hodgson Russ attorneys are here to help retail food establishments 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 Andrew Freedman (716.848.1332), Reena Dutta (716.848.1626) or Sarah Miller (716.848.1509).

Please check our Coronavirus Resource Center and our CARES Act page to access information related to both of these rapidly evolving topics.

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