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March 27, 2020

MEMORANDUM

BY ELECTRONIC MAIL

FROM: Olsson Frank Weeda Terman Matz PC

RE: Retail Sale of Foods Labeled for Foodservice and Postponement of Compliance Date for Revised Nutrition/Supplement Facts Panels

Yesterday, the Food and Drug Administration (FDA) announced the issuance of a [Guidance](#) document entitled “Temporary Policy Regarding Nutrition Labeling of Certain Packaged Food During the COVID-19 Public Health Emergency,” which is intended to provide restaurants and food manufacturers with flexibility regarding nutrition labeling so that they can sell certain packaged foods during the COVID-19 pandemic. This guidance does not apply to foods prepared by restaurants. FDA intends to exercise enforcement discretion relative to compliant nutrition labeling in two ways during the ongoing pandemic:

1. Foods labeled for foodservice distribution may be distributed for retail sale; and
2. The compliance date for labeling with revised Nutrition Facts and Supplement Facts panels has been postponed indefinitely.

Distribution of Foodservice-Labeled Foods for Retail Sale

Foods labeled for foodservice distribution (*e.g.*, restaurants and other food service establishments) typically bear the same mandatory label information as retail foods, except the Nutrition Facts panel. The ongoing pandemic has created a situation in which many foodservice establishments are closed, and grocery shelves are sometimes devoid of hoarded food products.



To address this situation, FDA is permitting foodservice establishments and foodservice manufacturers to sell/distribute for retail sale foods (both perishable and non-perishable) that do not bear Nutrition Facts (provided that the food does not have any nutrition claims), but that bear the following mandatory information, as warranted:

- a statement of identity,
- an ingredient listing,
- the name and place of business of the food manufacturer, packer, or distributor (i.e., “signature line”),
- a net quantity of contents declaration, and
- allergen information required by the Food Allergen Labeling and Consumer Protection Act.

Furthermore, if retail packaging for certain food products is unavailable, FDA does not intend to object to the further production of food labeled for use in foodservice establishments that is intended to be sold at retail until retail becomes available.

Postponement of Compliance Date for Revised Nutrition/Supplement Facts Panels

FDA had announced that it would work cooperatively with manufacturers the first six months following the January 1, 2020, compliance date regarding using updated Nutrition and Supplement Facts labels and would not focus on enforcement actions during this time. FDA now intends to do so through the remainder of 2020.

While this guidance document is effective immediately, comments still may be submitted in accordance with FDA’s [good guidance practices](#).

If you have any questions about these matters, please contact Michael O’Flaherty at moflaherty@ofwlaw.com.

OFW:adp