

# Food Alert: FDA Eases Enforcement of Nutrition Labeling Rules for the Restaurant Industry

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The COVID-19 pandemic has changed the restaurant industry virtually overnight. Whether by government mandate via "shelter in place" orders in various cities and states or by general social distancing, people who were once packed into their favorite eateries are now home-bound without any way to go out to eat. Restaurants have been facing challenges about how to serve customers who cannot or will not come in to dine. Many restaurants have had to adapt to a take-out only model. Others have the ability to have pre-packaged food to be ready on demand. But this poses a regulatory challenge for restaurants who had not already been selling these types of food because, under normal circumstances, such food would need to have Nutrition Facts label.

This also poses a problem for food manufacturers and distributors who serve the restaurant industry. Where they once had steady demand to supply to restaurants, this demand has now shifted to pre-packaged foods and grocery stores. And, just as with restaurants, food manufacturers must have a Nutrition Facts label on any pre-packaged food sold to consumers. Food manufacturers who cater to the restaurant industry might not have the ability to provide product with a Nutrition Facts label in the short term. And all the while, food might be going to waste in a time when food security is critical.

In an effort to respond to the many challenges the restaurant and food service industry is facing, the Food and Drug Administration provided recent guidance to restaurants and food manufacturers who service restaurants, aimed at easing the process to get food to consumers. The FDA announced that — for the duration of the COVID-19 national emergency — it "does not intend to object" restaurants' sale of packaged food that lacks a Nutrition Facts label so long as it does not make nutrition claims and provides other information on the label, including the following:

- a statement of identity,
- ingredients,
- the name and place of business of the food manufacturer, packer, or distributor,
- net quantity of contents, and
- allergen information.



The same also applies to food manufacturers who have inventory on hand labeled for use in restaurants.

Also, if retail packaging for certain food products is not available, the FDA said it doesn't intend to object to further production of food labeled for restaurant use that is intended to be sold to places other than restaurants until retail packaging is available.

The FDA's "Guidance for Industry: Temporary Policy Regarding Nutrition Labeling of Certain Packaged Food During the COVID-19 Public Health Emergency" is available at: <https://www.fda.gov/regulatory-information/search-fda-guidance-documents/guidance-industry-temporary-policy-regarding-nutrition-labeling-certain-packaged-food-during-covid>

For additional information, please contact Julia Dayton Klein or your Lathrop GPM attorney.

### **About Lathrop GPM's Agribusiness & Food Group**

Lathrop GPM's Agribusiness & Food Industry Group is made up of attorneys that know (and in some cases, lived) the Industry. That means we know the ground to cover, speak the language, share perspective and understand the ever-changing issues faced in today's complex and interconnected world. Our team represents some of the nation's most recognized food, beverage and agribusiness companies, covering the full spectrum - from farm to fork.