



Hogan Lovells US LLP
Columbia Square
555 Thirteenth Street, NW
Washington, DC 20004
T +1 202 637 5600
F +1 202 637 5910
www.hoganlovells.com

MEMORANDUM

From: Gary Jay Kushner
Steven B. Steinborn
Leigh G. Barcham

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Re: COVID-19 Update: FDA Issues Temporary Policy for Menu Labeling Requirements and Updates COVID-19 Guidance

This memorandum summarizes recent actions the U.S. Food and Drug Administration (FDA) has taken in response to the COVID-19 outbreak. First, FDA has issued a temporary policy to provide flexibility to chain restaurants and similar retail food establishments currently required to provide nutrition information on menus and menu boards. ^{1/} In light of the need for many of these entities to change their business practices quickly (e.g., switching from dine-in to takeout only or making menu substitutions), FDA will not object to establishments that do not meet applicable menu labeling requirements. This temporary policy will remain in effect only for the duration of the COVID-19 public health emergency. Second, FDA has again updated its questions and answers guidance on COVID-19 with information on glove use by workers in food retail and processing during a pandemic. ^{2/}

FDA's Temporary Policy for Menu Labeling

FDA has issued guidance establishing a temporary policy for chain restaurants and similar retail food establishments that sell standard menu items under the menu labeling provisions of the Federal Food, Drug, and Cosmetic Act (FFDCA) to provide flexibility regarding the menu labeling requirements during the COVID-19 pandemic. ^{3/} FDA recognizes that in response to the COVID-19 pandemic, some covered establishments temporarily are changing their business practices to address the pandemic's effects on operations. For instance, some dine-in operations temporarily are switching to a takeout or "to-go" only format in response to COVID-19 restrictions, which involves creating new or modified online ordering portals or printed takeout or to-go menus for their stores.

^{1/} Guidance for Industry: Temporary Policy Regarding Nutrition Labeling of Standard Menu Items in Chain Restaurants and Similar Retail Food Establishments During the COVID-19 Public Health Emergency (Apr. 2020), available at <https://www.fda.gov/media/136597/download>.

^{2/} Food Safety and the Coronavirus Disease 2019 (COVID-19) (Apr. 1, 2020), available at <https://www.fda.gov/food/food-safety-during-emergencies/food-safety-and-coronavirus-disease-2019-covid-19>.

^{3/} The menu labeling requirements are in FFDCA Section 403(q)(5)(H) and 21 C.F.R. § 101.11. They include, for example, the requirement to post calorie information on menus and menu boards and adjacent to foods on display and self-service foods, including succinct statements concerning suggested daily caloric intake and the availability for written nutrition information on menus and menu boards, and the availability of written nutrition information on premises.

Some covered establishments also are experiencing temporary disruptions in their food supply chain, which may affect the availability of their standard menu items.

FDA states that although the agency encourages covered establishments to continue to comply with the menu labeling requirements, it does not intend to object if covered establishments do not meet the menu labeling requirements during the duration of the public health emergency related to COVID-19. Covered establishments will be required to comply with the menu labeling requirements upon conclusion of the public health emergency.

FDA's Updated COVID-19 Questions & Answers

FDA has updated its COVID-19 questions and answers guidance to address the question of how and when workers in food retail and processing should wear gloves during a pandemic. FDA states that its Food Code recommendations for handwashing and glove use in food service and retail food stores have not changed as a result of the pandemic. According to Section 3-301.11 of Food Code 2017, with limited exceptions, employees may not contact exposed, ready-to-eat foods with their bare hands and must use suitable utensils such as deli tissue, tongs, single use gloves, or dispensing equipment. 4/

FDA also notes gloves are not a substitute for hand washing or hand hygiene. Workers whose tasks require direct contact with ready-to-eat food should wash their hands and the exposed portions of their arms for 20 seconds prior to donning gloves and before touching food or food-contact surfaces. They also should wash their hands immediately after removing gloves.

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We will continue to monitor FDA's response to COVID-19. Should you have any questions or if we can be of assistance with your COVID-19 response strategy, please contact us.

4/ FDA Food Code 2017 is available at <https://www.fda.gov/media/110822/download>.