



# Food & Beverage

## ISSUE ALLIANCE

March [XX], 2020

RE: Request for Label Flexibility During the COVID-19 Crisis

Dear Deputy Commissioner Yiannis and Dr. Mayne:

The undersigned trade associations are writing to request that the Food and Drug Administration (FDA or the agency) provide additional labeling flexibility to the food industry, designated as a critical infrastructure sector, during the COVID-19 crisis. To best direct this critical sector's resources towards ensuring that food products reach consumers at retail, the undersigned make three requests of FDA at this time. First, we ask that FDA allow food products originally intended for foodservice to be sold at retail with alternative methods of conveying critical health and safety information. Second, we ask for additional flexibility for other labeling issues, such as ingredient substitutions due to supply chain disruptions. Finally, we request that FDA extend the cooperative period for the modified nutrition facts label for an additional 6 months to January 1, 2021 for manufacturers with more than \$10 million in annual food sales and extend the compliance date for manufacturers with less than \$10 million in annual food sales to July 1, 2021.

In light of the new challenges the world and our nation face in responding to the COVID-19 pandemic, the food industry and its supply chain, which are classified by DHS-CISA as a Tier 1 Essential Critical Infrastructure Workforce, must remain fully operational to continue to feed the country. The undersigned trade associations represent businesses that span the full scope of the food production and distribution supply chain. We are presently focusing all our efforts on addressing the massive challenges presented by the pandemic and as such request labeling flexibility in three areas so that we can help ensure the continued flow of food to consumers.

First, food manufacturers seek the ability to shift products produced for foodservice to retail shelves. As restaurants have been shut down in many jurisdictions, the foodservice industry is left with excess foodservice products and production capacity while retail shelves are being emptied due to increased consumer demand. Such a shift would be a sensible and efficient way to help meet this escalating demand, but to do this, we will need flexibility from FDA regarding product labeling, as many foodservice products are not labeled for retail (because they are not required to be so labeled), nor are many foodservice manufacturers equipped to do. For example, product shipped in bulk packages used as an ingredient in preparing food or served for immediate consumption that are not required to have nutritional labeling include, e.g., a 5 lb bag of shredded cheese used to make pizzas and entrées in a food service establishment or a gallon container of coffee cream to be served from individual pitchers on restaurant tables restaurants. [Insert other examples here of the types of products that would be sold at retail that do not have retail labeling, what their current packaging looks like, and perhaps how product details such as allergen information is typically conveyed to the foodservice customer.]

We therefore request that FDA allow foodservice products to be sold at retail in existing foodservice packaging and utilize temporary retail labeling options to convey important information to consumers, most critically with respect to allergens and other ingredients.

During the current crisis, it will be most expedient to simply ship and sell the foodservice packages – largely bulk products – to retail stores for placement directly on retail shelves. It would be too resource-intensive, both at the production and distribution sites, as well as in retail stores, to try to sticker or over-label these products with fully-compliant retail labeling, particularly given already stretched grocery staffing resources. To the extent such foodservice packages do not already contain the mandatory label elements for retail packages, or do not bear them in the format required for retail products, we strongly urge FDA to exercise enforcement discretion with respect to the labeling of these products so long as minimum information is presented for health and safety reasons, such as ingredient and allergen information.

Where available and feasible, alternative means to providing information may include:

- Making the shipping container label (which may not include nutrition labeling and may not meet format requirements) visible to the consumer;
- Providing signage on retail shelves such as “shelf talkers” or other posted signs with critical information;
- Providing stickers, shelf talkers, or other signage directing consumers to company websites where information will be presented clearly and conspicuously;

We would be happy to engage in discussions with FDA regarding other potential practical approaches.

Second, we ask FDA to exercise enforcement discretion with respect to other labeling issues that are minor technical deviations, but that do not pose a health or safety issue. These would include, for example, minor ingredient deviations due to shortages in supply and related minor deviations in nutritional content due to those ingredient substitutions. We expect that other issues may arise as manufacturers work to address the changing supply chain in this dynamic time and would ask FDA to grant flexibility in these circumstances as well.

Finally, although we expect that as production is increased to meet consumer demand, food manufacturers will be able to exhaust any existing label inventory that bears the old nutrition facts panel (NFP) format, we would respectfully request FDA extend the cooperative period for the modified nutrition facts label until January 1, 2021, for manufacturers with more than \$10 million in annual food sales and extend the compliance date for manufacturers with less than \$10 million in annual food sales to July 1, 2021. so that manufacturers can focus on keeping stores stocked.

The undersigned ask that FDA grant the foregoing requests to allow food manufacturers, retailers and packaging suppliers to respond to the urgent COVID-19 response efforts and fully direct their critical resources to producing wholesome food and keeping stores stocked with food items for American consumers.

We thank you in advance for your consideration of this urgent request.

Most respectfully,