



# HHS extends COVID-19 public health emergency determination

15 April 2022

**The Secretary of Health and Human Services (HHS) has renewed its determination that a public health emergency exists in light of the continued consequences of the COVID-19 pandemic. The determination has been in place since January 31, 2020 and was set to expire on April 16, 2022. Temporary flexibilities and enforcement discretion put in place by the Food and Drug Administration (FDA) in response to this determination are expected to remain in effect for the duration of the public health emergency.**

On April 12, 2022, the Secretary of Health and Human Services (HHS), Xavier Becerra, issued a renewal of the determination that a public health emergency exists in light of the continued consequences of the COVID-19 pandemic.<sup>1</sup> The renewed declaration will last for the duration of the emergency or 90 days, and may be further extended by the Secretary. The determination has been in place since January 31, 2020.

In response to the COVID-19 pandemic, the FDA established temporary policies providing flexibility for compliance with some of its regulations. These policies are intended to remain in effect for the duration of the public health emergency, and FDA has stated that it intends to publicly communicate whether extensions to these policies are warranted after the public health emergency has been terminated.

As a reminder, these policies include –

- **Temporary Policy Regarding Certain Labeling Requirements: Minor Formulation Changes.** In light of supply chain shortages, this temporary guidance grants flexibility for manufacturers to make minor formulation changes that may cause the finished food label to be incorrect, but do not pose a health or safety issue or cause significant changes in the finished food. The guidance also grants some labeling flexibilities for vending machine operators.<sup>2</sup>
- **Temporary Policy Regarding Nutrition Labeling of Certain Packaged Food.** FDA issued a temporary guidance allowing for restaurants or food manufacturers to sell packaged food labeled for foodservice use (i.e., without nutrition labelling) directly to consumers, under certain circumstances.<sup>3</sup>
- **Temporary Policy Regarding Labeling of Shell Eggs Sold by Retail Establishments.** This temporary policy provides flexibility for some retail food establishments to sell unlabeled cartons or flats of shell eggs during the public health emergency, if the retailer meets certain requirements.<sup>4</sup>
- **Temporary Policy for Menu Label Labeling Requirements.** FDA issued a temporary policy to provide flexibility to chain restaurants and similar retail food establishments that are required to provide nutrition information on menus and menu boards. The agency does not intend to object if covered establishments do not meet these menu labeling requirements during the duration of the public health emergency.<sup>5</sup>

We will continue to monitor FDA's response to COVID-19. Should you have questions on this or any other matter, please do not

hesitate to contact us.

Authored by Elizabeth Fawell, Veronica Colas, and Rachel Buff.

## References

1 *Renewal of Determination That A Public Health Emergency Exists*, U.S. Department of Health & Human Services, [Office of the Assistant Secretary for Preparedness & Response](#) (Apr. 12, 2022)

2 See *FDA Issues Guidance on Temporary Flexibility Policy Regarding Certain Labeling Requirements During COVID-19 Pandemic*, Hogan Lovells (May 26, 2020)

3 See *FDA Announces Temporary Flexibility Regarding Nutrition Labeling Due to COVID-19 Pandemic*, Hogan Lovells (Mar. 27, 2020)

4 See *FDA Issues Temporary Policy Regarding Labeling of Shell Eggs Sold by Retail Establishments*, Hogan Lovells (Apr. 3, 2020)

5 See *COVID-19 Update: FDA Issues Temporary Policy for Menu Labeling Requirements and Updates COVID-19 Guidance*, Hogan Lovells (Apr. 2, 2020)

## Contacts



**Elizabeth Fawell**

Partner

Washington, D.C.

[elizabeth.fawell@hoganlovells.com](mailto:elizabeth.fawell@hoganlovells.com)



**Veronica Colas**

Counsel

Washington, D.C.

[veronica.colas@hoganlovells.com](mailto:veronica.colas@hoganlovells.com)



**Rachel Buff**

Associate

Washington, D.C.

[rachel.buff@hoganlovells.com](mailto:rachel.buff@hoganlovells.com)

© 2022 Hogan Lovells. All rights reserved. "Hogan Lovells" or the "firm" refers to the international legal practice that comprises Hogan Lovells International LLP, Hogan Lovells US LLP and their affiliated businesses, each of which is a separate legal entity. Attorney advertising. Prior results do not guarantee a similar outcome. Hogan Lovells (Luxembourg) LLP is a limited liability partnership registered in England and Wales with registered number OC350977 and registered also with the Luxembourg bar. Registered office: Atlantic House, Holborn Viaduct, Holborn Viaduct, London EC1A 2FG.