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July 24, 2023

Dockets Management Staff (HFA-305)
Food and Drug Administration
5630 Fishers Lane, Room 1061
Rockville, MD 20852

**Re: FDA Food Labeling in Online Grocery Shopping; Request for Information;
Docket No. FDA-2023-N-0624-0002**

Dear Sir or Madam:

The undersigned organizations appreciate the opportunity to provide feedback on the Food and Drug Administration's ("FDA") request for information, "Food Labeling in Online Grocery Shopping; Request for Information". Our trade associations represent various segments of the supply chain, from farmers and agricultural processors, to packaged goods, and retail.

The undersigned associations and our members are committed to a safe, secure, and transparent food system for all foods. We recognize the importance of ensuring the accuracy of label information of food delivered using new business models, such as Business to Consumer ("B2C") and Business to Business to Consumer ("B2B2C") e-commerce. We are writing to provide general comments about labeling of foods and the scope of FDA's request.

General Comments on Online Labeling of Foods

Our organizations are committed to ensuring all food products sold online comply with FDA labeling requirements. However, we want to note that given the wide variety of platforms utilized to sell numerous food and beverage products, industry practices in providing information on foods sold via online grocery/e-commerce platforms differ to some extent. While FDA guidance aimed to facilitate consistency in the minimum information provided would be helpful, it is important that FDA continue to promote a flexible approach in how to meet this minimum to reflect the differing abilities of manufacturers, retailers, and third-party retailers of different sizes, regions, business models, product categories, etc. to provide the information that consumers want and need. We urge FDA to prioritize flexibility as the agency develops potential guidance or takes other steps related to online labeling, and that the agency recognizes that a one-size-fits-all approach is unlikely to be workable here.

Initial Comments on the RFI

E-commerce is a relatively "new" idea covering a broad range of business models, with an increase in online shopping occurring between 2019 and 2020. In 2020, online grocery sales

grew 54 percent, reaching \$95.8 billion, and accounted for 7.4 percent of all grocery sales.¹ Online grocery shopping is anticipated to account for over 20 percent of all food purchases in the US in 2023.² It is important that as this market grows, FDA does not create restrictive regulations that hinder innovation for meeting market, customer, and consumer demands.

The concept of “online stores” is different than the traditional brick and mortar model. Online stores should not be subject to additional requirements that do not apply to the same products when sold in physical stores. This means that if an item would not be subject to a mandatory labeling requirement if purchased at a traditional brick-and-mortar retail store, it should not be subject to that same requirement when offered for sale online. For example, food products sold in small and very small packaging are exempt from certain FDA labeling requirements due to their small size. When these products are sold online, they should not require additional labeling information that is not present on the physical food package. Requiring additional labeling elements to appear online would cause consumer confusion and impose burdens in terms of developing and communicating this information. Flexibility in placement, appearance, use of tabs, use of separate links where clearly labeled, use of photos or imagery versus text, and so on, are critical. For example, online platforms could voluntarily use other means to communicate product information to the consumer, such as by providing a phone number for a consumer to call or providing a link to a manufacturer’s website or a product’s SmartLabel information page.

Responses to Request for Information

1. Food Labeling Information Provided Through Online Grocery Shopping

1.1 The mandatory label requirements on most packaged foods include, in part, nutrition information (e.g., Nutrition Facts label), ingredient information, and major food allergens information (when applicable). What mandatory label information is currently available through online grocery shopping platforms? How consistently is mandatory label information presented across online grocery shopping platforms? Please provide any data and evidence to support your response.

Information provided through online grocery shopping platforms can differ across the food industry, commodities, and food product categories. However, many online grocery shopping platforms display or provide access to product names/statements of identity, nutrition information, ingredient information, and major food allergen information, as well as other information (e.g., voluntary claims or product warning statements) and handling statements.

¹ eMarketer Editors. “In 2021, Online Grocery Sales Will Surpass \$100 Billion” Insider Intelligence, February 24, 2021, available at: <https://www.emarketer.com/content/2021-online-grocery-sales-will-surpass-100-billion>. Accessed on June 22, 2023.

² Pomeranz, Jennifer L., et al., “Opportunities to Address the Failure of Online Food Retailers to Ensure Access to Required Food Labelling Information in the USA”, March 2022. Available at: <https://www.cambridge.org/core/journals/public-health-nutrition/article/opportunities-to-address-the-failure-of-online-food-retailers-to-ensure-access-to-required-food-labelling-information-in-the-usa/9520BF4CB0E2CDDF9760276729F0DBE2>. Accessed June 22, 2023.

The information that is mandatory by regulations on the package label is not always provided or able to be provided across all grocery platforms.

1.2 How is nutrition, ingredient, and major food allergens information presented through online grocery shopping platforms? For example, where is the information available on the web page in relation to the product? Please provide any data and evidence to support your response.

The way information is presented through online grocery shopping platforms differs across the food industry. Some common methods of providing labeling information on online grocery platforms include:

- Providing the information on the product description page
- A digital image of the label (some or all panels of the label may be shown)
- Tabs that provide specific information (e.g., nutrition, ingredient, allergen information, warnings, and other information)
- Ingredients and allergen information presented in the same format as the packaged product with a phone number for nutrition information to be delivered verbally via a phone call
- A combination of the various approaches above, depending on the specific piece of information (e.g., an image or hyperlink for the nutrition information; text for the ingredient and allergen information)

1.3 When provided, is the nutrition, ingredient, and major food allergens information in the same format as on the packaged product (e.g., Nutrition Facts label format)? If pictures of the product are used, how does the manufacturer, retailer, or third-party online grocery provider ensure the information in the picture is consistent with the package label, readable, and accessible on all devices (e.g., laptops, smartphones etc.)? Please provide any data and evidence to support your response.

As discussed above, in some cases the information is provided via images of some or all panels of the label, while in other cases it is provided in text format. In instances when the information is provided via a label image, the information will typically have the same format presented on the packaged product.

In other cases, the nutrition information can be provided in a different format than on the packaged product. For example, the Nutrition Facts label can be presented in a different, FDA compliant format (i.e., small package size products can bear a linear format of the Nutrition Facts label whereas the webpage can present a dual column format).

From a manufacturer's perspective, there are challenges to ensure the information in the image or picture shown on the retailer's platform is consistent with the package label, particularly in cases where there are multiple formulations on the market at the same time. For example, if a

product is reformulated and the label is updated accordingly, there can be two versions of the package in the marketplace until the older formulation sells through. Similarly, any seasonal or special edition packaging (e.g., Halloween or Christmas version of the same product or limited time offers/promotion packages) are subject to retailer inventory logistics. We discuss these challenges further below.

2. Industry Considerations and Logistics of Food Labeling in Online Grocery Shopping

2.1 Grocery foods may be sold in various ways through e-commerce, (e.g., directly from the manufacturer, a retailer, or through a third-party online grocery provider). How do manufacturers, grocery retailers, and third-party online grocery providers decide what label information to display for grocery foods sold through online platforms (websites, mobile applications, etc.)? Please provide any data and evidence to support your response.

For manufacturers selling their products from their own websites, the manufacturer would generally determine what information should be provided on the online platform. In general, manufacturers include all FDA-required product label information on product webpages (i.e., product name, ingredients, major food allergens, nutrition information, and any warning statements).

In general, for retailer websites, the retailer determines what label information to display based on what the retailer determines to be most material to consumers and what is practical to provide for the specific platform. In other cases, retailers utilize third-party online grocery platforms. In these cases, the third-party provider dictates what information is provided to consumers and how it is presented. Retailers can sometimes opt to provide additional product information through these services for an additional fee. Typical product information provided online includes product descriptions, nutrition facts information, ingredient lists, and allergen information.

2.2 What challenges and limitations do online grocery retailers, manufacturers and third-party online grocery providers encounter when seeking to display food labeling information on their respective platforms? Please provide any data and evidence to support your response. Also, what, if any, are the labeling challenges for international websites selling groceries online?

The complexity of the supply chain makes it difficult to ensure that online product information is up to date and reflective of what is on physical product labels. Some key challenges include products with multiple formulations available in the marketplace at the same time (e.g., regional or provided by different contract manufacturers); product reformulations; seasonal offerings; and keeping information and imagery updated.

There are significant challenges managing situations where there are two or more formulations of a product in the marketplace. Different formulations could be available in different regions or there could be slight variations in formulation for products manufactured by different

contract manufacturers. Even if the formulation is the same, if a product is produced in multiple facilities, the precautionary allergen labeling statement could differ. It is not possible to correlate the formulation that a consumer will receive with the location in which they are shopping online. This means there may be instances in which there are inconsistencies in the information shown on an online grocery platform and the information on the packaged food label that consumers receive. This issue is generally addressed by a disclosure statement on the product information page on the online grocery platform or included on a product image, making clear that consumers should always consult the information on the package itself for the most accurate and up-to-date information. Further, in instances where the allergen declaration differs across formulations, most companies would choose to provide the information for the formulation that contains the allergen or that includes the more extensive precautionary statement.

When an existing product is reformulated in a way that requires a label change, there are significant challenges with providing accurate information while existing inventory of the old formulation is exhausted and as the new formulation works its way through distribution channels. Manufacturers providing the information do not have visibility into whether each retailer's inventory has been exhausted or how long it will take until the inventory is exhausted. Further, this will differ across distribution centers and individual retail stores. Therefore, it is not possible to ensure alignment between the labeling information that consumers see on the online grocery platform and the version they receive. And in some cases, a product might only be reformulated in certain regions or for seasonal offerings, further complicating the issue.

Retailers, in turn, are generally reliant on supplier and distributor partners to provide updated product label information and often are limited to the information that is provided on a physical package. When a supplier reformulates a product, it takes months for retailers to switch to the new product and exhaust the stock of the previous version. Stocking and turnover of products is greatly dependent on the individual store and the needs of the specific community. These complexities make it difficult to guarantee that product information online will be identical to what is on a physical package.

Across the industry, one of the greatest challenges in providing product information via online grocery platforms is keeping the information and imagery updated and accurate, identifying and correcting errors, and updating the information in a timely manner. Currently, there is no single system or repository that keeps track of updated product information that is used across the supply chain. When a product is changed or reformulated, requiring a label change, it takes time for this information to be updated through distributor and retailer database management systems and to be displayed on online platforms. To translate product information to an online platform, each item must be photographed and product information recorded and uploaded by the retailer or a third-party provider. As data exchanges hands at several points, errors can result when the information is input, uploaded or posted or when a third party operating the data management system fails to provide a timely update.

Products that come in multiple flavors, or that include multiple products/varieties within the same package, present added complexity. Nutrition, ingredient, and allergen information could differ for each, thereby significantly increasing the amount of information that must be provided and the amount of space needed.

2.3 How do manufacturers, retailers, and third-party online grocery providers ensure that information online is consistent with the actual product package and that the information is accurate and up to date? Please provide any data and evidence to support your response.

Manufacturers, retailers, and third-party online grocery providers have established data management systems and other programs and processes to try to ensure consistency between the information displayed online and the product package. However, despite improvements in data sharing capabilities, data management continues to be a challenge to ensure accurate product information is available online. In general, for manufacturers, as part of the physical label commercialization process, when a new version of a product label generated for commerce is uploaded, the new image and accompanying product information is updated internally and the data is made available for retailers depending on their specific requirements. Retailers or third-party providers that manage online platforms then determine what label information is updated to best align with new product information.

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We thank FDA for the opportunity to submit comments and look forward to continued engagement on online grocery shopping issues as FDA moves forward to address these challenges. Please contact us if you have any questions or if we can be of assistance.

Sincerely,

American Frozen Food Institute
American Spice Trade Association
International Dairy Foods Association
National Grocers Association
National Confectioners Association
National Fisheries Institute
National Pasta Association
The National Seasoning Manufacturers Association
The North American Meat Institute