

CODEX ALIMENTARIUS COMMISSION



Food and Agriculture
Organization of the
United Nations



World Health
Organization

Viale delle Terme di Caracalla, 00153 Rome, Italy - Tel: (+39) 06 57051 - E-mail: codex@fao.org - www.codexalimentarius.org

CL 2020/58/OCS-FL
November 2020

TO: Codex Contact Points
Contact Points of international organizations having observer status with Codex

FROM: Secretariat, Codex Alimentarius Commission,
Joint FAO/WHO Food Standards Programme

SUBJECT: Request for comments / information on the guidance on internet sales / e-commerce

DEADLINE: 8 January 2021

BACKGROUND

1. The 45th Session of the Committee on Food Labelling (CCFL45) agreed to start new work on guidance on internet sales / e-commerce.¹ This work was approved by the CAC42².
2. CCFL45 further agreed that an EWG chaired by the United Kingdom, and co-chaired by Chile, Ghana, India and Japan would prepare a proposed draft guidance for consideration by CCFL46.³
3. In view of the postponement of CCFL46 to 2021 due to the COVID19 pandemic, and taking advantage of the additional time at our disposal, the EWG has prepared a report of their work to update members and observers. A set of questions on key issues (i.e. inclusion of a minimum durability period; inclusion of exemptions for small units; and whether the text should be a standalone document, a standard or a guideline) have been prepared for inputs by all interested members and observers.
4. Comments in reply to this Circular Letter will assist the EWG to further develop the guidance, as necessary.

REQUEST FOR COMMENTS

5. Codex members and observers are kindly invited to respond to the questions in Appendix IV, taking into account the report of the EWG (Appendix I), the proposed draft Guidance (Appendix II) and the options analysis (Appendix III).
6. The aforementioned questions are uploaded to the Codex Online Commenting System (OCS): <https://ocs.codexalimentarius.org/>, as per the guidance below.

¹ REP19/FL, para. 91(a)

² REP19/CAC, paras 96 and 98, Appendix V

³ REP19/FL para. 91(b)

GUIDANCE ON THE PROVISION OF COMMENTS

7. Comments should be submitted through the Codex Contact Points of Codex members and observers using the OCS.
8. Contact Points of Codex members and observers may login to the OCS and access the document open for comments by selecting "Enter" in the "My reviews" page, available after login to the system.
9. Other OCS resources, including the user manual and short guide, can be found at the following link: <http://www.fao.org/fao-who-codexalimentarius/resources/circular-letters/en/>.
10. For questions on the OCS, please contact Codex-OCS@fao.org.

APPENDIX I

REPORT OF THE EWG ON GUIDANCE ON INTERNET SALES/E-COMMERCE**(chaired by UK, and co-chaired by Chile, Ghana, India and Japan)****1. INTRODUCTION**

At the 45th Session of the Codex Committee on Food Labelling (CCFL), the Committee agreed to start new work on internet sales/e-commerce through reviewing and then revising Codex Food Labelling texts. The final project document can be read on page 41 of the [CCFL45 report](#) (REP19/FL, Appendix III). The project document notes the work's relevance to the new Strategic Plan Goals (2020-2025), particularly Strategic Goal 1: *Address current, emerging and critical issues*.

It was agreed to establish an electronic working group (eWG) chaired by the United Kingdom, and co-chaired by Chile, Ghana, India and Japan, working in English and Spanish to prepare a proposed draft text for circulation at Step 3 and consideration by CCFL46. An invitation to join the eWG was issued in July 2019 with 32 Codex Members, 1 Codex Member Organization and 15 Codex Observers participating. A full list of members is included in Annex I.

There is also the possibility of a physical working group (PWG), chaired by the UK, and co-chaired by Chile, Ghana, India and Japan, to meet immediately prior to the next session of CCFL, to consider written comments submitted and prepare a revised proposal for consideration by CCFL46.

It is expected that this work can be completed within three CCFL sessions.

The agreement to commence new work was secured on the basis of the [discussion paper](#) on internet sales/e-commerce. This paper sets the direction for the new work based upon a thorough review of Codex food labelling texts which has been undertaken by the eWG co-chairs since CCFL45. It proposes the latest draft new text on e-commerce and seeks views on this including some specific questions.

2. TERMS OF REFERENCE

The terms of reference that this eWG has worked to is to prepare a proposed draft text for circulation at Step 3 and consideration by CCFL46.

3. PARTICIPATION AND METHODOLOGY

Following the deadline to register to participate in the eWG on 15 September 2019, the co-chairs reviewed existing Codex food labelling texts determining their suitability in an e-commerce context. A first draft of proposed new text on e-commerce, and the related review of existing food labelling texts, were submitted to eWG members for response on 4 November 2019. 21 responses were received before the deadline on 9 December 2019.

Following the review and subsequent analysis of responses by the eWG co-chairs, a second draft of the proposed text on e-commerce was presented to eWG members for further review on 12 March 2020. A finalised version of the review of existing Codex food labelling texts was published alongside the consultation on the second draft proposed text on e-commerce. 20 responses (13 member countries, 1 member organization and 6 observer organizations) were received on the second consultation paper.

The proposed text on e-commerce presented to members (alongside the review of existing food labelling texts) was further updated to what is in Appendix II of this paper to reflect the outcomes of the second round of review.

4. SUMMARY OF DISCUSSION

1) Scope

A small majority of respondents indicated that they felt that food sold online is currently in scope of the *General Standard for the Labelling of Pre-packaged Food (CXS 1-1969)* (GSLPF) a key reason being the ambiguity in application of the terms 'label' and 'labelling' as referenced below. However, several respondents highlighted that the GSLPF does not oblige online retailers to provide the information at or before the point of purchase due to the consumer not having 'sight' of the food. A slight majority of respondents said that they did not think that food sold online is currently in the scope of all other Codex texts however. Where respondents felt that e-commerce is in scope of other Codex texts, this was true at the point of delivery but not for the information given online/at the point of purchase. The majority of respondents agreed that loose foods should be in scope for the new text and that it should contain provisions for nutrition labelling.

2) Definitions

A majority of eWG members agreed that the current definitions of 'label' and 'labelling' do not include online food information at the point of sale. Where respondents said current definitions do include online food information, they acknowledged that some ambiguity exists using these terms in an e-commerce context, such as the application of the phrase 'near the food' referring to where labelling is intended to be displayed. Again, no clear majority emerged in support of the proposed text on e-commerce negating or amending existing definitions of 'label' and 'labelling' in the GSLPF.

Some member countries highlighted the need for a definition of "food information" respective to pre-packaged foods offered for sale via e-commerce and there were divergent views on whether it should be replaced with an updated definition of 'labelling'. Some others also expressed views against changing the existing definitions of 'label' and 'labelling'. A definition of "food information" is thus added in the proposed new text (Appendix II).

3) Accountability and responsibility of online food businesses

Most respondents disagreed that the text should cover accountability and responsibility of online food businesses and indicated that this should instead be referred to the Codex Committee on Food Import and Export Certification (CCFICS).

4) Direction of the text

There was no clear majority indication of whether the text should be a standalone document, a standard or a guideline. However a large minority indicated this should be a standalone document. See Appendix III for further discussion.

5) Mandatory requirements

The majority of respondents supported the inclusion of the additional mandatory requirements outlined in sections 5.1 (quantitative ingredients declaration) and 5.2 (irradiated food) of the GSLPF.

5. NEXT STEPS

The draft proposed text included in Appendix II has been through two rounds of re-drafting following the consultation with eWG members. We are now keen to hear feedback from wider Codex stakeholders on a number of questions which remain outstanding following these two rounds of consultation, in addition to any other feedback not already discussed above that might inform the continued development of the proposed text.

Key topics on which feedback is requested, is as follows:

- 1) **The inclusion of a minimum durability period** applicable for any pre-packaged foods delivered to consumers by an e-commerce Food Business Operator (FBO). A similar number of respondents were in support of the inclusion of a minimum period of durability within the text to those who were not.

Those in support of the minimum durability period highlighted that this measure would help ensure that products would be delivered to consumers with a reasonable shelf life remaining.

They indicated that the proposed text must include a clear definition of 'minimum durability' and must clearly demonstrate how this is indicated in an e-commerce context.

Those against the inclusion of a minimum durability period highlighted that businesses would face difficulties in implementing this. Others indicated that the inclusion of a minimum durability period might negate existing provision within the GSLPF and other Codex texts regarding date marking and might work counter to efforts to limit food waste production.

One alternative to the inclusion of a minimum period of durability suggested by some respondents was the inclusion of a non-compulsory assurance from retailers that the food will be delivered to customers with reasonable shelf life remaining.

2) The inclusion of exemptions regarding small units in section 6 of the GSLPF which states that: *'With the exception of spices and herbs, small units, where the largest surface area is less than 10cm², may be exempted from the requirements of paragraphs 4.2 and 4.6 to 4.8'*. These requirements as referenced are regarding the mandatory labelling of the list of ingredients, lot identification and special conditions for storage. In the current draft of the text, these exceptions as outlined in the GSLPF are permitted to enable continuity for businesses. In an earlier version of the text however, these exemptions had been disallowed.

3) Whether the text should be a standalone document, a standard or a guideline. eWG members highlighted in their responses to the consultation that a decision on the form of the text should be made further along the drafting process. An explanation of three options for the potential form of the proposed text is included in Appendix III.

CONCLUSIONS and RECOMMENDATIONS:

Members and Observers are invited to:

- Review Appendix II (Proposed draft guidance internet sales/e-commerce)
- Review Appendix III (Options analysis)
- Provide responses to the questions provided in Appendix IV

Annex I**LIST OF EWG PARTICIPANTS****Members**

Australia
 Brazil
 Canada
 Chile
 China
 Cuba
 Ecuador
 Egypt
 European Union.
 Honduras
 Hungary
 India
 Indonesia
 Iran
 Ireland
 Japan
 North Macedonia
 Malaysia
 Mexico
 New Zealand
 Norway
 Peru
 Philippines
 Russia

Singapore
 Spain
 Switzerland
 Uruguay
 USA
 Yemen

Observers

ESSNA (European Specialist Sports Nutrition Alliance)
 FIVS
 Food Industry Asia
 FoodDrinkEurope
 IFU (International Fruit & Vegetable Juice Association)
 Institute of Food Technologists
 International Chewing Gum Organisation
 International Council of Beverages Association
 International Council of Grocery Manufacturers
 International Food Additives Council
 International Special Dietary Foods Industries
 OIV (International Organisation of Vine and Wine)
 SSAFE
 The Consumer Goods Forum
 The International Confectioners Association

APPENDIX II

PROPOSED DRAFT GUIDANCE FOR THE LABELLING OF PREPACKAGED FOODS TO BE OFFERED VIA E-COMMERCE**(for information)****1. Scope**

This text applies to the provision of food information that shall be available on the product information page, or its equivalent, of any consumer-facing transactional digital platform, and certain aspects relating to the presentation thereof, in respect of prepackaged foods to be offered via e-commerce either to the consumer or for catering purposes. It clarifies which food information shall be provided at the point of e-commerce sale and at the point of delivery.

2. Definition of terms

The following terms shall be used in conjunction with, Section 2 of the GSLPF (CXS 1-1985).

“e-commerce” – A transaction via e-commerce is the sale or purchase of prepackaged foods, conducted over computer networks, through web, extranet or electronic data interchange, by methods specifically designed for the purpose of receiving or placing of orders. The prepackaged foods are ordered by those methods, but the payment and the ultimate delivery of the food does not have to be conducted online.

“Labelling” – Labelling in the case of ecommerce may refer to food information included on or associated with the product page or other primary consumer-facing virtual depiction.

“Food information” means information concerning a food made available to the final consumer by means of a label, other accompanying material, or any other means including modern technology tools or verbal communication.

“At the Point of e-commerce sale” - The moment when consumers decide to make the purchasing order without making any payment.

“At the Point of Delivery” - The moment when consumers receive goods and services.

“Minimum Durability” is the period (e.g. in hours, days, months etc.) between the Point of Delivery and the Best Before or Use-By Date, as applicable.

“Product information page” – The virtual space on any consumer-facing transactional digital platform, which is intended to make information available to facilitate an informed e-commerce activity.

3. General Principles

As indicated in section 3 of the GSLPF (CXS 1-1985).

4. Information requirements for pre-packaged foods sold through e-commerce

Information specified in section 4 of the GSLPF (CXS 1-1985) (except sub-sections 4.6 and 4.7.1) shall appear on the Product Information Page or other primary consumer-facing virtual depiction of pre-packaged foods presented for sale through e-commerce prior to the point of e-commerce sale, except to the extent otherwise expressly provided in an individual Codex standard and as noted in Section 5 (“Exemptions from Food Information requirements”) of this guidance.

Any pre-packaged foods delivered to consumers by an e-commerce Food Business Operator (FBO) are encouraged to have a minimum durability period, an indication of which should be displayed alongside the virtual depiction of the food. It should be made clear whether this is a guaranteed period or an expected or average period. In the case of caterers or restaurants receiving orders through electronic means, only fresh pre-packaged food items shall be delivered.

The sellers/brand owners/manufacturers dealing in fresh produce will provide an indicative image of the same produce to the e-commerce FBOs for the purpose of displaying this on their platform to enable consumers to recognize the product.

Food marketed online should declare the nutritional information prior to the point of e-commerce sale in alignment with section 3 of the *Guidelines on Nutrition Labelling* (CXG 2-1985).

5. Exemptions from Food Information requirements for pre-packaged foods sold through e-commerce

The following information is exempt from the information requirements for pre-packaged foods when products are presented for sale through e-commerce:

5.1 Date marking

As indicated in section 4.7.1 of the GSLPF (CXS 1-1985). However, an indication of a minimum durability applicable from the point of delivery is encouraged to be displayed.

5.2 Lot identification

As indicated in section 4.6 of the GSLPF (CXS 1-1985).

6. Optional Labelling

As indicated in section 7 of the GSLPF (CXS 1-1985).

7. Presentation of Mandatory Information

7.1 General

7.1.1 Statements required to appear in respect of the pre-packaged foods to be offered via e-commerce to the consumer or for catering purposes, on the virtual depiction of the product and/or in the product information page, as the case may be, by virtue of this text or any other Codex texts shall be clear, prominent and readily legible to the consumer under normal settings and conditions of use of such platforms.

7.1.2 The name and net contents of the food shall appear in a prominent position and in the same field of vision as the virtual depiction of the product.

7.1.3 Allergen information must be emphasized through a typeset that clearly distinguishes it from the rest of the list of ingredients, for example by means of the font, style or background colour.

7.2 Language The language on product information page shall be acceptable to the consumer for whom it is intended.

8. E-commerce FBO

8.1 An e-commerce FBO includes, but is not limited to, the following:

- An entity providing listing services to sellers/brand owners/ /manufacturers/restaurants on their platform, thereby providing a platform for commerce to sellers, manufacturers, restaurants etc;
- Sellers/brand owner/manufacturer, vendors, importers, processors, packagers or manufacturers who display or offer their food products, including food services, catering services, sale of food or food ingredients for sale to the customers, through either the market based model or the inventory based model of e-commerce;
- Operating and providing storage and/or distribution services to the sellers/brand owners, vendors, importers or manufacturers of the food products listed on their marketplace;
- Providing transportation services to the sellers/brand owner, vendors, Importers or manufacturers of the food products and/or providing last mile delivery transportation to the end consumers.

8.2 The term 'seller/brand owners/manufacturers' used here should be read to mean seller /brand owner/restaurant/vendor/importer/processor/packager/manufacturer responsible for the listing of their product/offering on the e-commerce platform, and will be visible to the end consumer as the 'seller' of the said product/offering.

8.3 Intermediary data companies (which do not manufacture, supply, store, or sell food) may view themselves as different entities to 'food businesses' (notwithstanding the fact that their primary

commodity is food information). Whilst such businesses may operate under a wide variety of models, including those, engaging manufacturers for approval of any created digital content prior to publication, some will operate solely in the Business-to-Business sector and others will be consumer-facing.

8.4 Recognising the existence of such companies within the digital food information supply chain. Such intermediaries, who create, manage & distribute the information to digital retailers, shall consistently provide the information outlined in this text for use by retailers and other users when the food is to be presented on the product information page of any consumer-facing transactional digital platform.

APPENDIX III**OPTIONS ANALYSIS****Option 1 - A standalone 'Standard'**

Codex standards usually relate to product characteristics and may deal with all government-regulated characteristics appropriate to the commodity, or only one characteristic. Because standards relate to product characteristics, they can be applied wherever the products are traded.

Due to this text establishing consumer information requirements that will be practically the same as the GSLPF, but adapted to the reality of online sales it could be argued that a Standard would be most appropriate as it would provide the benefit of guaranteeing a similar approach to the GSLPF.

Option 2 – A standalone 'Guidance' Document

Codex guidelines fall into two major categories:

- Principles that set out policy in certain key areas; and
- Guidelines for the interpretation of principles or for the interpretation and extension of provisions of Codex general standards.

The application of some of the elements of the document, will rely upon principles that set out policy in certain key areas and also provide an extension to existing provisions outlined in the GSLPF, therefore the text may be appropriately take the form of a 'Guideline'.

Option 3 – Supplementary text to the GSLPF

This document could also be a supplementary text as the requirements for information on food sold online are the same as those for food sold in stores. This approach would reduce unnecessary repetition within Codex standards and guidelines.

Conclusion

In principle, consumers should obtain basic key information about the food, on which to base their purchasing decision, regardless of whether that purchase is made in a traditional retail environment or through a website. As the same prepackaged product may be offered for sale in a variety of ways (retail, online, catalogue), it would follow that the same fundamental labelling requirements, outlined in the GSLPF, would apply in all cases.

Taking into consideration current technologies used in the online sale of food, the pace of innovation, new technologies and future modes of ecommerce, a standalone standard or guideline dealing with the specifics of current / known ecommerce practices could become obsolete.

To ensure continuity with the current standard and avoid confusion between a separate ecommerce labelling standard/guideline and the GSLPF, the drafting team propose that any gaps arising from the technological means by which foods are sold should be integrated into the existing GSLPF (Option 3).

APPENDIX IV:**CONSULTATION QUESTIONS**

(replies should be submitted through the online commenting system (OCS))

Question 1 Members are invited to review the inclusion of an optional reasonable minimum durability date marking (Appendix 2 Section 4). Do you agree with the inclusion of a minimum period of durability for pre-packaged food?

Question 2 If included, should the minimum period of durability be optional or mandatory for FBOs?

Question 3 Should the text contain a prescribed period of minimum durability and if so, what should this be? For example, one respondent proposed that the minimum durability period be '30% or 45 days, whichever is less, before expiry at the time of delivery to the consumer' do you agree with this proposal?

Question 4 Do you foresee any potential issues which may prevent FBOs from implementing a reasonable period of minimum durability as outlined in Appendix 2, Section 4? If 'yes' please provide a reason for your answer.

Question 5 Exemptions referenced in section 6 of the GSLPF (CXS 1-1985) regarding small units will be permitted in an e-commerce environment to maintain consistency for businesses and consumers. Do you agree that this exemption should stand in an e-commerce environment? If 'no' please provide an explanation.

Question 6 Members are invited to review the definition of 'E-Commerce FBO' as outlined in Appendix 2 section 8.1 and 'Intermediary Data Company' as outlined in section 8.2 and 8.3. Do you agree with these definitions? If 'no' please provide a reason for your answer.

Question 7 Members are invited to review the options analysis (Appendix III). Do you agree with the proposal of option 3, amending & including supplementary text to the GSLPF? If 'no' please provide your preferred alternative and justify your answer.

Question 8 Members are invited to provide comments on how can "loose foods" be included in the scope of these proposed draft guidance and how could labelling of these be addressed through these guidelines.

Question 9 Do you have any additional general comments about the proposed new text?