



JOINT FAO/WHO FOOD STANDARDS PROGRAMME CODEX COMMITTEE ON FOOD LABELLING

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PROPOSED DRAFT GUIDELINES ON INTERNET SALES / E-COMMERCE

(Prepared by the Electronic Working Group chaired by the UK and co-chaired by Japan, Chile, India and Ghana)

Codex members and Observers wishing to submit comments at Step 3 on this draft should do so as instructed in CL 2021/20/OCS-FL available on the Codex webpage/Circular Letters 2021: <http://www.fao.org/fao-who-codexalimentarius/circular-letters/en/>

I. Introduction

1. 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 (project document is available in REP19/FL, Appendix II). The new work was approved by CAC42¹).
2. 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 Appendix III.

II. Participation

3. Between September 2019 and May 2021, the co-chairs of the EWG ran three consultations with the EWG. In addition, to make best use of the time at the disposal of the Committee due to the postponement of CCFL46 from 2020 to 2021, the draft guidelines were shared with Codex members for comment via CL 2020/58/OCS-FL². A full summary and analysis of comments can be found in Appendix I).

III. Outcomes

4. Following the consultations, core issues within the guidelines were agreed upon including
 - a. **The scope of the guidelines:** It was agreed the scope would only cover sale of pre-packaged foods, not loose foods. It was also agreed the scope would cover provision of food-information. Whilst allergen and nutrition are mentioned these are not in scope of the guidelines.
 - b. **The definitions:** it was agreed the definitions would be as condensed as possible, only appearing if clarifying a point that appears in the guidelines. It was also agreed the definitions would be written to define terms in an e-commerce context.

¹ REP19/CAC, para.96 and 98, Appendix V

² To which 26 Member Nations (Argentina, Australia, Brazil, Canada, Chile, Colombia, Costa Rica, Cuba, Dominican Republic, Egypt, Guatemala, Honduras, Iran, Iraq, Morocco, New Zealand, Panama, Peru, Philippines, Switzerland, Thailand, Tonga, Uganda, United Kingdom, Uruguay, USA) and 9 observer organisations (Consumer Goods Forum, EFLA, FIVS, Food Industry Asia, FoodDrinkEurope, ICBA, IFU, International Confectionery Association, International Special Dietary Food Industries) responded.

- c. **The guiding principle of e-commerce food labelling requirements:** a guiding principle was agreed which shaped these requirements. It was agreed that all food information requirements within the GSLPF and any other Codex texts would be met at the point of delivery through the information provided on the product label, unless specified otherwise.
- d. **Cross-border commerce:** it was agreed that issues relating to cross-border e-commerce sales, despite having implications for food labelling, was primarily a question of import and export regulations not e-commerce. The chairs still view this as an important issue and suggest the that cross border e-commerce sales be a matter referred to Codex Committee on Food Import and Export Inspection and Certification Systems for consideration.
5. Whilst core issues have been agreed some issues remain outstanding. These issues include:
- e. **Minimum Durability:** Following diverse opinions in the consultations, the guidelines state that FBO's are "encouraged" to present a period of minimum durability. However, a small minority of EWG members still express a strong preference that minimum durability should not be referenced in the guidelines.
- The chairs suggest the current wording provides sufficient flexibility and is not burdensome on industry.
- f. **Proposed alternative wording:** Two members proposed an alternative wording for sections 4 & 5 of the draft text which seeks to future proof the text against changes to pre-packaged food standards. The alternative wording is captured in bracketed text in the draft guidelines (Draft Guidance section 4 & 5).
- The chairs suggest that future proofing should be considered, but the changes proposed would alter the guidelines too significantly at this stage and omit references to minimum durability.

IV. Conclusions and Recommendations

6. Conclusion:

- a. The EWG has prepared a proposed draft guidance on the food information requirements for pre-packaged foods to be offered via e-commerce (Appendix II), which provides a good representation of the consensus in the EWG and the chairs believe that the proposed draft guidance is ready to be advanced to Step 5 and that further inputs should be provided on the draft guidance which can help further work in the EWG.

7. Recommendations:

The Committee is invited to:

- i) Review the proposed draft guidance on the food information requirements for pre-packaged foods to be offered via e-commerce (Appendix II) and consider whether it can be advanced to Step 5.
- ii) Review the requirements relating to minimum durability within the draft guidance (Appendix II Section 4 paragraph 3) and consider whether the requirements as given balance the needs of consumers and industry.
- iii) Review the proposed alternative wording of sections 4 & 5 (Appendix II, 'Proposed alternative wording of section 4 & 5) drafted by a member of the EWG and consider whether:
 - (1) the proposed alternative wording is too significant of a departure from the current guidance.
 - (2) the proposed alternative wording contains information which could be included to make the current guidance more effective.
- iv) Consider whether the issue of cross-border e-Commerce sales is outside the scope of the draft guidance and should be referred to the Codex Committee on Food Import and Export Inspection and Certification Systems (CCFICS).
- v) Reconvene the EWG, chaired by the United Kingdom and co-chaired by Japan, Chile, India and Ghana to continue development of the Guidance.

Analysis and Consideration of Comments

1. Amendments based on the comments

- a. Definition of e-commerce Food Business Operator (FBO):** A large majority of respondents indicated they did not think a definition of e-commerce FBO was required within the text given that it only appears in its own definition. The small minority who expressed a preference to maintain the definition but gave no strong arguments as to why. A few respondents suggested the definition could be kept if modified, however this still would result in the definition only appearing in its own definition. The guidelines have been updated to reflect this and the definition of e-commerce FBO has been removed.
- b. Definition of intermediary data company:** A large majority of respondents indicated they did not think a definition of intermediary data company was required within the text given that it only appears in its own definition. The small minority who expressed a preference to maintain the definition argued that intermediary data company is an important part of e-commerce and therefore should be defined. One respondent suggested it could be added later after work in this area had been further developed. Given the strong majority and the fact the definition does not appear outside its own definition, the definition of e-commerce FBO has been removed from the draft guidelines.
- c. Exception of requirements regarding “instructions for use”:** A large majority of respondents did not agree that requirements regarding “instructions for use” as outlined in section 4.8 of the GSLPF should be exempt from mandatory information required at the point of e-commerce sale. Instead they argued that instructions for use were required to allow the customer to make an informed decision for example whether certain equipment is needed to use the product. Additionally, it was argued that instructions for use would not impose burdens for industry to provide. The few respondents who wished to make instructions for use exempt argued that were not necessary at the point of e-commerce sale and instead will be provided on the food label. Given the strong numbers and clear arguments, instructions for use as an exemption have been removed from the guidelines.
- d. Amendments to existing definitions:**

 - **Goods and Services:** Several respondents challenged use of the term “goods and services” used within the definition of terms. They suggested it be replaced by “prepacked foods” on all occasions as this keeps the definitions within the scope of this guideline. Given the scope of this text relates to pre-packaged food, the update to the guidelines has been made.
 - **e-page:** Several respondents suggested adding “e” in front of all references to pages to make clear the pages being referred to were web pages not physical information. Given the e-commerce context of the guidelines the update to the guidelines has been made.
 - **e-commerce:** One respondent suggested editing the term for E-commerce to remove the phrase “ultimate delivery” as this step cannot be conducted online. This was viewed as a fair comment and the term has been removed and the update to the guidelines made.
 - **Food Information:** One respondent suggested editing the term “final” from the definition of “food information” as there is no way to know it would be the “final” time the consumer view this food information online. This was viewed as a fair comment and the term has been removed and the update to the guidelines made.
 - **At the point of e-commerce sale:** One respondent suggested editing the term “At the point of e-commerce sale” to remove the word “without” and include “regardless of” to better reflect the current practice on e-commerce. This was viewed as a fair comment and the term has been removed and the update to the guidelines made.

2. Comments that were considered but did not result in amendments

- a. Use of the World Trade Organisation Definition of e-commerce:** Exactly half of the respondents did not agree that the WTO definition of e-commerce should replace the existing definition e-commerce. The reason given was that the WTO definition was not specific enough.

Additionally, one respondent noted that the existing definition had been crafted by the EWG in a way that is suited for the draft Guideline. However, the other half of the respondents supported replacing the definition, some only agreeing on the proviso that the TWO be altered to make it context specific to pre-packaged food. One respondent proposed replacing the definition with “e-commerce transaction of pre-packaged food”. The definition in these draft guidelines have not been changed since the last version of the guidelines. Given the direct split the chair and co-chairs agreed the existing definition should be kept given it was purposely developed to be used in an e-commerce context.

b. Amendments to existing definitions:

- **Point of Sale:** A recommendation made by some observer originations was to add more information to the definition of “point of sale” by adding the stages a consumer will go through in order to reach “point of sale”, these being, “View Product”, “Confirm Order” & “Payment for Product”. The argument presented was using these terms would remove ambiguity and allow the guidelines to specifically pinpoint to industry at which point they must provide information. However, given that these terms are then not present later in the text and each term may itself require a definition, this suggestion has not been added to the text.
- **e-commerce:** One respondent suggested replacing term “e-commerce” for “e-commerce transaction of pre-packaged food” which they define as “a sale of pre-packaged foods, conducted over computer networks, through web, extranet or electronic data interchange, by methods specifically designed for the purpose of receiving or placing of order”. The reason for this recommendation was to highlight that the existing definition already defines e-commerce and the suggested definition is more concise. The chair and co-chairs considered not to make this change given the changes was only posed by one member of the EWG and the remaining EWG would not have the opportunity to comment on the changes. However the definition of “e-commerce” was edited slightly to explicitly refer to an electronic context.
- **Food Information:** One respondent suggested editing the term of “food information” be replaced with “food information requirements” as definition should mean the information provided in a digital context which the original definition did not convey. The chair and co-chairs agreed that a new term was not required but altered the definition of “food information” to make specific reference to a digital context.

c. Further comments

- **Information requirements for pre-packaged foods sold through e-commerce & Exemptions from food information requirements at the point of sale for pre-packaged foods sold through e-commerce (Sections 4&5):** Two respondents suggested changes to sections 4 and 5. One respondent raised concerns that the current wording of the text in respect to the substitution of similar ingredients would allow sellers to provide inaccurate information on a digital product information page. They also propose that on the e-page, industry must present a mandatory statement to the customer in order that they check the information of the physical product before consumption. The respondent also suggested more generic language would future proof the text against changes to pre-packaged food standards and improve the flow of the text. They proposed combining sections 4 and 5 as a way of doing this.

The second respondent also challenged the wording of section 4 with respect to the substitution of similar ingredients and questions whether this should be included. They also suggested that the exception to the labelling of date marking as outlined in section 5 should receive additional wording to add clarity to the scope of the exemption.

The chair and co-chairs considered that the recommendations would result in too great a departure from the original text, especially given the changes were only proposed by two members of the EWG and the remaining EWG would not have the opportunity to comment on the changes made.

However, as the alternative wording seeks to future proof the text against changes to pre-packaged food standards it has been captured as alternative wordings to the existing guidelines in square brackets in Appendix II).

3. Issues not yet fully resolved

- a. **Proposed alternative wording:** Following the consultations with the EWG some bracketed text which contains an alternative wording of the current text has been captured in square brackets in Appendix II. The suggested alternative wording seeks to future proof the text against changes to pre-packaged food standards.
- b. **Minimum Durability:** The issue of whether an FBO should present a period of minimum durability to the customer has been broadly agreed with the guidelines reflecting that FBO's are "encouraged" to present a period of minimum durability. However, a small minority of EWG members still express a strong preference that minimum durability should not be referenced in the guidelines.

4. Comments on issues related to e-Commerce outside the scope of these guidelines

- a. **Allergen Labelling:** One respondent requested that although the work on allergens is being updated and can be added to the guidelines once this work is finished, the guidelines should indicate at least the presence of the foods and ingredients known to cause hypersensitivity (listed in the GSLPF) are declare these on e-commerce pages.
- b. **Use of Technology in Food Labelling:** One respondent recommend the Working Group support a comprehensive review of where mandatory labelling information shall appear, considering the comments received on the Draft Discussion Paper on Innovation – Use of Technology in Food Labelling.
- c. **Online Consumer Behaviour Research:** One respondent recommended pursuing further information gathering from consumer science research on the what information is required for consumers to make an informed decision on an online context to better understand consumer behaviour and use of this information to shape e-commerce guidelines.
- d. **Cross-border Issues:** One respondent suggested in light of cross-border issues being out of scope of this work, a note be included alongside the guidelines when presented to CCFL with the recommendation that appropriate controls on cross-border ecommerce is agreed by CCFL to be an important issue and recorded in the report of CCFL46 as a "matter referred" to CCFICS.

PROPOSED DRAFT GUIDANCE ON THE FOOD INFORMATION REQUIREMENTS FOR PREPACKAGED FOODS TO BE OFFERED VIA E-COMMERCE

(for comments through CL 2021/20/OCS-FL)

1. Scope

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

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 pre-packaged 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 pre-packaged foods are ordered by those methods, but the payment of the food does not have to be conducted online.

“Food information” Information concerning a food made available to the final consumer on the digital product information page.

“At the point of e-commerce sale” The moment when consumers decide to make the purchasing order regardless of making any payment.

“At the point of delivery” The moment when consumers receive pre-packaged food

“Minimum durability” 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 e-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).

All food information requirements within the GSLPF and any other Codex texts shall be met at the point of delivery through the information provided on the product label, unless specified otherwise within this text.

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

Information specified in sections 4 and 5 of the GSLPF (CXS 1-1985) shall, whenever possible, appear on the product information e-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.

In some circumstances it may not be possible to provide accurate information on the product information page at the point of sale regarding the above requirements. This includes cases where ingredients may alter slightly from those provided on the product information page owing to ongoing recipe adjustments. In such cases a warning should be given to consumers to check the label of products once they have been delivered to obtain accurate food information.

[If the composition of the pre-packaged food offered for sale through e-commerce is subject to minor variations by the substitution of an ingredient which performs a similar function, the statement of ingredients on the digital product information sheet may list both ingredients in a way which makes it clear that alternative or substitute ingredients are being declared.]

[A statement shall appear on the digital product information page to the effect that the customer should check the information on the physical label before consumption.]

Any pre-packaged foods offered for sale to consumers are encouraged to have a minimum durability period, an indication of which should be displayed on the product information e-page. It should be made clear whether this is a guaranteed period or an expected or average period.

Food offered for sale through e-commerce 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), except to the extent otherwise expressly provided in the *Guidelines of Nutrition Labelling*.

5. Exemptions from food information requirements at the point of sale 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).

Proposed alternative wording of section 4 & 5

[4.1 Any information required to be provided on the label of a pre-packaged food or in associated labelling, shall be provided on the digital product information page of the pre-packaged food when offered for sale via e-commerce, except to the extent otherwise expressly provided in an individual Codex standard. This includes the following information:

- Information indicated in section 4 and section 5 of the GSLPF (CXS 1-1985) except information required by 4.6 and 4.7.1
- Mandatory information required by any other relevant Codex text

4.2 If the composition of the pre-packaged food offered for sale through e-commerce is subject to minor variations by the substitution of an ingredient which performs a similar function, the statement of ingredients on the digital product information sheet may list both ingredients in a way which makes it clear that alternative or substitute ingredients are being declared.

4.3 A statement shall appear on the digital product information page to the effect that the customer should check the information on the physical label before consumption.]

6. Optional food information requirements at the point of e-commerce sale

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 on the product information e-page at the point of sale in respect of pre-packaged foods to be offered via e-commerce, 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.

7.2 Language

7.2.1 The language on product information e-page shall be acceptable to the consumer for whom it is intended.

LIST OF EWG PARTICIPANTS

Members	Observers
Australia	ESSNA (European Specialist Sports Nutrition Alliance)
Brazil	FIVS
Canada	Food Industry Asia
Chile	Food Drink Europe
China	IFU (International Fruit & Vegetable Juice Association)
Cuba	Institute of Food Technologists
Ecuador	International Chewing Gum Organisation
Egypt	International Council of Beverages Association
European Union.	International Council of Grocery Manufacturers
Honduras	International Food Additives Council
Hungary	International Special Dietary Foods Industries
India	OIV (International Organisation of Vine and Wine)
Indonesia	SSAFE
Iran	The Consumer Goods Forum
Ireland	The International Confectioners Association
Japan	
North Macedonia	
Malaysia	
Mexico	
New Zealand	
Norway	
Peru	
Philippines	
Russia	
Singapore	
Spain	
Switzerland	
Uruguay	
USA	
Yemen	