

CFIA SEEKS GUIDANCE ON FOOD INFO AND LABELLING FOR FOOD SOLD ONLINE

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The Canadian Food Inspection Agency (“**CFIA**”) recently published a [consultation document](#) and launched a consultation running from May 9 to July 8, 2022 on habits, experiences and areas for improvement regarding shopping for food online, with the goal of developing voluntary guidance for food labelling and information practices in online food sales. In short, Health Canada and the CFIA “propose that food information on an e-commerce platform should mirror the information required on a food or beverage product’s physical label” and any food sold online should include certain food information on the product information page.^[1]

For context, the CFIA considers “food information” to be both voluntary and mandatory labelling and statements regarding a food product. A “product information page” is the online space where potential consumers can read that food information.

Background

As outlined in the CFIA’s consultation document, this initiative stems from the COVID-related rise in ordering food through e-commerce platforms for grocery delivery and meal kits, plus the CFIA’s assessment of food information for online food shoppers being “inconsistent and sometimes inadequate to inform food purchases”.

Proposed Guidance

With the CFIA noting that the European Union already has rules in place regarding e-commerce food sales (“distance selling”),^[2] including for takeaway food items, the CFIA’s proposed approach to guidance would draw from the following principles:

- Prior to purchase, providing the same food information (e.g. common name, the Nutrition Facts table, ingredients list, the “period of minimum durability”, i.e. the equivalent of a “best before” date,^[3] food allergen information, etc.), that would be required for food being sold in a physical store.
- Foods which are exempt from certain food labelling requirements due to the small size of their physical labels should provide that food information on the online product information page (since there are no

longer the same size restrictions).

- Allergen information (including precautionary “may contain...” statements) should be provided before sale and accompany the food when being delivered to the consumer, including for take-out food from a restaurant (and other food packaged and prepared by the seller, e.g. bulk food sales).
- Requiring images of the food or the front of the food’s package, to help consumers recognize the product.
- Indicating any possible differences between the food purchased and the actual food item delivered, including advising the consumer to verify the physical label for these differences.
- Providing food information in English and French, including accented characters (e.g. é, à and ç).
- Providing food information that – as closely as possible – matches the food as it is presented on the physical label.
- Making product information pages for foods consistent across the e-commerce platform, with food information being “clear, prominent and legible” (e.g. black text on a white background).
- Ensuring that the e-commerce platform allows consumers to easily navigate and obtain food information, including by way of screen readers, if necessary.

Monitoring of Online Food Information

With the guiding principles of accessibility and availability, Health Canada and the CFIA will apparently be monitoring e-commerce food sales going forward. Besides watching the quantity and categories of these food products, the regulators plan to inspect areas like the existence (or lack thereof) of food labelling information, as well as the languages, legibility and navigation for food labelling information.

Points to Watch

Subject to further updates once the consultation period ends in July, such as a *What We Heard* Report, the parameters of this consultation already raise some interesting points for online food preparation and delivery companies, and online food shoppers, namely:

- Will the CFIA’s guidance indeed be voluntary, or will it become mandatory, as is currently the case for food labelling regarding physical food products? The consultation document mentions that the guidance will be voluntary, but then details guidance that seems more compulsory in nature.
- How will the cost and responsibility of this regime be allocated in takeaway food situations, which may involve a third-party food delivery service and pick-up and delivery by their delivery driver?
- How will the CFIA’s eventual guidance be enforced, particularly in the made-to-order takeaway food industry?
- How will inevitable variations between the food as displayed or described online versus the actual

delivered food be handled? There may be other adjustments besides the minimum durability time window (versus a “best before” date) that consumers or consumer organizations want to impose for clarity and accuracy.

- Will this initiative overlap with the CFIA’s proposed changes for simulated meat and poultry products (e.g. labelling, common name and advertising rules)?[\[4\]](#)

Stay tuned for more updates on the feedback the CFIA receives from this consultation, and please do not hesitate to contact us if your business is looking for assistance in navigating this initiative or food labelling rules more generally.

[1] CFIA, “Consultation on the development of voluntary guidance for providing food information for foods sold to consumers through e-commerce” (last modified May 9, 2022) at section 1, online: [here](#) [CFIA Consultation Document].

[2] CFIA Consultation Document, *supra* note 1 at section 3; EC, *Commission Regulation (EU) 1169/2011 of the European Parliament and of the Council of 25 October 2011 on the provision of food information to consumers*, [2011] OJ, L 304 at 18, online: [here](#).

[3] The CFIA points out that a traditional best before date may not be possible for that particular food item, but food sellers “should indicate an expected or minimum period of durability of the food (for example ‘ships with a minimum x (days/weeks/months) remaining before the product’s best before date or expiration date’).”

[4] For more insight on the CFIA and simulated meat and poultry, please see our Bulletin [here](#), noting that the CFIA has yet to publish final Guidelines on that topic.

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A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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