



Via regulations.gov

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

July 24, 2023

Re: Food Labeling in Online Grocery Shopping; Request for Information

Dear Sir or Madam,

Thank you for the opportunity to comment on the Food and Drug Administration's (FDA's) request for information (RFI) on food labeling in online grocery shopping.¹ As the food industry association, FMI works with and on behalf of the entire industry to advance a safer, healthier, and more efficient consumer food supply chain. FMI brings together a wide range of members across the value chain — from retailers that sell to consumers, to producers that supply food and other products, as well as the wide variety of companies providing critical services — to amplify the collective work of the industry. More information about our organization is available at www.FMI.org.

Because FMI represents both retailers and manufacturers, we are in a unique position to offer insights into how food labeling is provided for foods sold online. We use the FDA's terminology "online grocery platforms" throughout our comments to refer generally to foods sold online. In the comments that follow, we provide responses to each of the questions in the RFI. We also provide comments on the scope of FDA's request, including the manner in which FDA defines online grocery, and the three labeling elements on which the RFI is focused (i.e., nutrition, ingredient, and allergen information).

General Comments on Online Labeling of Foods

At the outset, we want to note that given the wide variety of platforms and foods sold on those platforms, industry practices in providing information on foods sold via online grocery platforms differ to some extent. There are many varieties of models for online grocery sales, including

¹ 88 Fed. Reg. 24808 (Apr. 24, 2023), available at <https://www.federalregister.gov/documents/2023/04/24/2023-08543/food-labeling-in-online-grocery-shopping-request-for-information>.



instances where the retailer sells a third-party product, the manufacturer sells its own product, the retailer makes available a platform where third parties can sell product, the platform provides delivery services for a retailer, and many others. While there is certainly a role for guidance from FDA that aims to facilitate consistency in the minimum information provided, it is important that FDA continue to take a flexible approach to reflect the differing abilities of companies of different sizes, regions, business models, product categories, etc. to provide the information that consumers want and need. From that perspective it would be helpful for FDA to prioritize providing guidance on *what information* should be provided rather than *how* it should be provided. We ask that FDA prioritize flexibility as the agency develops potential guidance or takes other steps related to online labeling, and that the agency recognize that a one-size-fits-all approach is unlikely to be workable here. 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.

Initial Comments on Scope of RFI

FDA Definition of Online Grocery

The RFI includes definitions of the terms “e-commerce” and “online grocery”, providing that for the purposes of the RFI:

- “‘e-commerce’ refers to commercial transactions conducted on the internet.”
- “‘online grocery’ refers to foods ordered through grocery retailer (e.g., supermarket) websites, directly from the manufacturer’s websites, and third-party online grocery providers (e.g., a grocery fulfillment service that offers food products from various grocery retailers). It does not include ready-to-eat meals (e.g., salad or hot food bar) that are ordered online from grocery providers for pick-up or delivery.”

FMI has a few comments on these threshold definitions.

- **Mobile applications:** When referring to e-commerce, we recommend that FDA clarify whether mobile applications are included, since the considerations for apps compared to websites are different and complex. We understand that for the purposes of the RFI, FDA is interested in understanding all different types of online platforms (e.g., website, mobile application, etc.), so we are responding to the RFI in a way that addresses both mobile app and website platforms.
- **Different devices:** FDA should also keep in mind that considerations for displaying information can differ depending on the type of device on which an online ordering platform is accessed (e.g., phone, tablet, computer, and other smart devices).
- **Ready-to-eat meals:** We ask that FDA clearly define what is meant by ready-to-eat meals, and clearly articulate the scope of any exemptions or exclusions, in any guidance or other regulatory efforts that emerge from the RFI. For example, it would be important to understand whether FDA is basing the “carve-out” for ready-to-eat meals on the types of foods that fall within the nutrition labeling exemption for restaurant-type foods (21 CFR 101.9(j)(2) and (3)), or whether FDA is using some other definition for what is considered a ready-to-eat meal. We urge FDA to seek to drive consistency in the various

labeling exemptions related to restaurant-type foods and ready-to-eat meals, and to consider the various definitions of these terms in the context of nutrition labeling, menu labeling, and USDA's bioengineered food disclosure standard.

- **Third-party grocery vs. restaurant food providers:** We understand that when referring to third-party grocery providers in the RFI, FDA is interested in entities that primarily facilitate delivery of groceries, as opposed to those that facilitate delivery of restaurant-type meals. We would appreciate FDA clearly articulating the scope of covered entities. Relatedly, we ask FDA to expressly clarify that business-to-business (B2B) online food sales are considered out of scope of any future guidance on labeling for online grocery platforms.

Focus on Nutrition, Ingredient, and Allergen Information

The RFI focuses on nutrition, ingredient, and allergen labeling. FMI supports this focus because it reflects information that is typically mandatory when pre-packaged foods are offered for retail sale. These pieces of information are material to some consumers in terms of their purchasing decision, and in the case of allergens and certain ingredients to which some consumers are sensitive, the information may be material to health or safety. With respect to which pieces of information should be provided via online grocery platforms, FDA should focus on those labeling elements that are material to consumers' purchasing decisions or to health or safety. For these reasons, we support FDA's selection of nutrition, ingredient, and allergen labeling as the key labeling elements to focus on.²

We want to emphasize that 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, raw fruits or vegetables are exempt from nutrition and allergen labeling; and single-ingredient foods and those not in pre-packaged form are also not subject to ingredient labeling. Such foods should not be subject to nutrition, ingredient, or allergen labeling when sold online. Stated differently, FDA should carry over any exemptions from labeling requirements that apply in traditional retail, to the online context. And the converse would also be true: it is important that FDA not require (or recommend) that any information should appear in online grocery platforms when that same information is not required to appear on the product label. For example, items that are exempt from nutrition labeling, such as roast or ground coffee or bottled water with insignificant amounts of all nutrients, should not be required to bear nutrition labeling when offered for sale online.

² Indeed, FMI data indicates that providing ingredient, allergen, and nutrition information rank among the top 5 indicators as to whether a brand or manufacturer is being transparent. These top indicators include: (1) provides a complete list of ingredients, (2) plain language description of ingredients, (3) in-depth nutritional information, (4) certification and claims, and (5) allergen information that is required.

Along similar lines, FDA should consider the experience of traditional shopping in a brick-and-mortar store compared to online shopping as it applies to what the consumer sees first. The principal display panel is not required to bear nutrition, ingredient, and allergen information. A similar principle should apply to online shopping, by providing flexibility on the location of where this information is displayed or provided, including that it may not be the first thing a consumer sees when shopping for an item online. The first image a consumer sees could be an actual product image of the PDP, or it could be a beauty shot image, with the product information available once the product is selected (e.g., this information could be one click away).

FMI also supports FDA *not* including items like country of origin or date labeling that could vary depending on the particular lot. It is not practical to provide this information on the online grocery platform given that it could vary based on production lot, the manufacturer, regionally, or other factors. Further, date labeling information is not required at the federal level for most products. Mandating country of origin or date labeling in online grocery labeling would result in significant unnecessary complexity and potential food waste, both of which would have negative impacts for customers. The date labeling and country of origin information is provided on the label, when required (or in many cases voluntarily), and need not also be provided on the online labeling platform.

Responses to Requests 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.

FMI Response: Our members' experience and observation is that the information provided through online grocery shopping platforms differs to some extent across the food industry. While most online grocery shopping platforms display or provide access to nutrition information, ingredient information, and major food allergen information, as well as other information in some cases (e.g., voluntary claims, product warning statements), it is not always provided across all online 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.

FMI Response: The manner in which information is presented through online grocery shopping platforms differs across the food industry. By way of example, and not as an exhaustive list,

some commonly seen methods of providing labeling information on online grocery platforms include:

- Providing the text of the information on the product description page;
- A digital image of the label (some or all panels of the label may be shown);
- Digital images that show certain pieces of labeling information but are not necessarily label images;
- Tabs that provide specific information (e.g., nutrition, ingredient, allergen information, warnings, and other information);
- A hyperlink to the SmartLabel® page for the product;
- Nutrition information for key macronutrients with a hyperlink to view complete nutrition information;
- 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).

These different methods are important to preserving the ability of companies of different sizes, regions, business models, product categories, etc. to provide the information that consumers want and need. We ask that FDA continue to consider the importance of flexibility as the Agency develops potential guidance or takes other steps related to online labeling, and that the Agency recognize that a one-size-fits-all approach is unlikely to be workable here.

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.

FMI 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 those instances when the information is provided via a label image, the information will generally mirror the same format used on the packaged product.

In many cases, the nutrition information is provided in the same format as on the packaged product (i.e., the Nutrition Facts label format), but this is not done in all platforms given the differing technological requirements of apps, websites, etc. In some cases, a modified Nutrition Facts label format is used that typically provides the same substantive information. Further, the particular Nutrition Facts label format that is used (e.g., dual column label vs. single column) will impact whether it is possible to use the same format as on the package, as the dual column formatted cannot be accommodated on some platforms.

Generally, companies selling groceries online seek to ensure the information is readable and accessible on all devices (e.g., websites, mobile phones, tablets), though there are instances where particular platforms may present unique challenges. For example, customers may have to

scroll through lines of text/images on a mobile phone in a manner that is different and potentially more burdensome than viewing such information on a computer. This underscores the importance of focusing on information that is useful to the customer rather than all information that may be included on product packaging. Some of our members provide information in a format that facilitates accessibility for visually impaired individuals, which enables text-to-voice translation. Further, there is generally consistency in mandatory label information between company websites and mobile apps.

There are challenges in ensuring the information in the image or picture is consistent with the package label, particularly in instances where there are multiple formulations on the market at the same time (for example, where a private label product is made by two manufacturers, or where a product is in the process of being reformulated and the label is updated accordingly, with two versions in the marketplace at the same time). These challenges also arise due to the different ways in which retailers receive and update product images and data, which can impact whether the information and images displayed is reflective of current packaging. We discuss these challenges further below in response to question 2.2.

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.

FMI Response: In general, for retailer websites, the retailer determines what label information to display based on what the particular retailer determines to be most material to consumers (based largely on consumer feedback) and what is practical to provide for the particular platform. Some large retailers use data management systems to obtain product information from manufacturers. Once the information is provided to retailers through these systems, the retailer can select the particular information it wants to display and manufacturers in some cases no longer have control over how it is used. Please recognize that this approach may be used by some large retailers but does not necessarily reflect how all retailers collect and provide information.

For manufacturers selling their products from their own websites, the manufacturer would generally determine what information is provided. Additionally, some of our members provide information on their own websites via a link to the SmartLabel page for the product. In these cases, it would typically be provided in the manner and including the information recommended in the SmartLabel Implementation Guide, which includes nutrition, ingredient, and allergen information (among certain other information). The manufacturer (or brand owner distributing the product) has full control of updating the information on the SmartLabel page and would do so directly itself.

For third-party online grocery providers, such as those that facilitate delivery of groceries to consumers from other retailers, typically the information that is provided is determined by the third-party (i.e., the entity that owns/operates the platform).

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?

FMI Response: Key challenges include: (1) products with multiple formulations available in the marketplace at the same time (e.g., regionally or provided by different contract manufacturers); (2) product reformulations; (3) keeping information and imagery updated and accurate; (4) multi-packs or variety packs. We discuss each of these issues in turn.

- **Products with multiple formulations available in the marketplace at the same time:** There are significant challenges managing situations where there are two or more formulations of a product in the marketplace at the same time. The different formulations could be available in different regions, or there may 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.
 - When there are multiple formulations available in the marketplace at the same time, it is often not possible to correlate the particular formulation that a consumer will receive with the location in which they are shopping online. This is because distribution systems are not always set up to track slightly different formulations of the same product that may differ regionally or for other reasons. This means that there are instances in which there can be inconsistencies in the information shown at the point of purchase on the online grocery platform and the information on the packaged food label that consumers receive. Of course, the two formulations would bear the accurate label on the package itself, but the online retailer may not be able to know which version the consumer will receive.
 - This issue is generally addressed by a disclosure statement on the product information page on the online grocery platform, making clear that consumers should always consult/ refer to 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 on the online grocery platform for the formulation that contains the allergen or that includes the more extensive precautionary statement.

- **Product reformulations:** 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. Simply, there is no way to know exactly what is being shipped into commerce at each retailer.

- These issues are mitigated in those instances where the reformulation is significant enough to require a new GTIN and/or a new UPC code, because the two products are identified as different products. GS1's Management Standards articulate principles regarding GTIN changes as that apply to formulation, size, and other changes to products. Manufacturers need to consider the standards and principles in totality when considering a change to the GTIN. When a new GTIN/UPC code is *not* required, however, there will be only one product information page and it is nearly impossible to have perfect alignment between the information on that page and the product in commerce.
 - If the information on the online platform is updated too early, the reformulated product may not yet be available; but if it is updated too late, some consumers will receive the reformulated product but see information online for the prior product formulation. 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. It therefore is not possible to ensure a perfect match between the labeling information that consumers see on the online grocery platform and the version they receive. And in some cases, a product may only be reformulated in certain regions rather than on a nationwide basis, further complicating the issue.
- **Keeping information and imagery updated and accurate:** Across the industry, one of the greatest challenges in providing product information via online grocery platforms is simply keeping the information and imagery updated and accurate, identifying and correcting errors, and updating the information in a timely manner.
 - In those instances where information is provided by the manufacturer through a retailer's data management system, there are wide discrepancies in in how long it takes the retailer to get the information (based in part on the size of the information and the particular data management system/service).
 - There can be frustration among all parties involved when the retailer is the party displaying the information on its product pages but in some cases does not have control over the data that informs it; while the manufacturer is responsible for inputting the data, it may not have control over when it is updated or corrected on the online grocery platform. This means that when a retailer identifies an issue, it is not always possible for them to correct it directly. Likewise, when a manufacturer identifies an issue, and corrects it promptly on their end, it may take some time for the information to be updated on the retailer page if the change must be submitted through a data management system. In some cases the retailer has discretion as to when to update the information.
 - Our members have encountered challenges with keeping both imagery and information updated and accurate, particularly given the number of parties the information goes through, and there is not always clarity with respect to which

party bears responsibility in the event of an error. Errors can result when the information is input, when a third party operating the data management system fails to provide an update or fails to provide a timely update, or when the information is uploaded/posted. In some cases, online grocery businesses may not have access to all core labeling information or may rely on third parties (manufacturers or sellers) to provide such information accurately. In such cases, there may be inaccuracies or gaps in information provided (including product imagery).

- **Multi-packs or variety packs:** 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. Additionally, including large amounts of information and text, often within limited amounts of space, may be confusing to customers.
- **Technological limitations:** There can be technological limits to displaying imagery/photos and complex graphics. For example, some online grocery platforms can only display a limited number of pictures. In other cases displaying complex graphics, such as a dual column Nutrition Facts Panel, is not possible within a particular platform.

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.

FMI Response: The practices undertaken to ensure accuracy of information vary by size and complexity; there is no one-size-fits-all solution. Some manufacturers, retailers, and third-party online grocery providers have in place data management systems and other programs and processes to try to ensure accuracy of the information. Some of our members partner with third parties to try to ensure the accuracy of information provided. Some platforms upload updates overnight, as information comes in from a wide variety of sources, in an effort to ensure the information provided is accurate and updated in a timely manner. In all of these cases, best efforts are taken but it is difficult to achieve perfection given the complexities of food labeling and image recognition.

Other steps taken are discussed further above, and include: assigning a new GTIN/UPC code in those instances when one is required (so that the two versions of a product will have different product information pages and there will be an ability to distinguish between them in data management systems); and providing a disclosure on the product information page advising consumers that the product information may differ from what is displayed on the page and to always consult the actual package for the most accurate information. Given the challenges discussed above, however, it is impossible to have perfect alignment at all times.

Some of our members have found that SmartLabel, a voluntary industry program utilized by some food companies, can offer a solution to several of the challenges discussed above because it can be updated in real time by the manufacturer or brand owner distributing the product, rather than needing to go through multiple parties. The SmartLabel page is also aligned with the package that a consumer receives because when the QR code on-pack is scanned it connects to the specific product formulation. As noted elsewhere in these comments, SmartLabel is just one example of possible ways to facilitate providing online information about food. Any guidance issued by FDA should be flexible enough to accommodate a multitude of technological solutions.

While all parties take numerous steps to try to ensure consistency and accuracy of information, there remain significant challenges in this space, as discussed in our response to question 2.2. As noted there, there can be a lag between the time a manufacturer provides or updates information, and when that information is in the retailer's control or flows through the data management system to be updated. A manufacturer may have internal systems to ensure the data and images corresponding with the product is accurate, but then have little or no control over ensuring it is updated in a timely manner on the retailer or third party grocery site.

2.4 How do online retailers and third-party online grocery providers address manufacturer reformulations that may alter a product's nutrition, ingredient, or major food allergens information? If there is a change or error detected, how do online grocery shopping platforms collect the information and update the website (e.g., is there a customer feedback loop or internal quality assurance process to detect and correct online labeling errors)? Please provide any data and evidence to support your response.

FMI Response: GS1's Management Standards articulate principles regarding GTIN changes as that apply to formulation, size, and other changes to products. Manufacturers need to consider the standards and principles in totality when considering a change to the GTIN. As discussed above in our response to question 2.2, in some cases, a product reformulation will trigger a requirement under the GS1 standards for a new GTIN. In these cases, a new GTIN/ UPC code would be assigned and a distinction would be made between the two formulations within all data management systems. However, in many cases, product reformulations (or two different formulations of a product) do not trigger a new GTIN as the functionality and regulatory disclosures remain the same and there is no discernable impact to the supply chain. In these instances, it is nearly impossible to ensure perfect alignment between the product in commerce and the information displayed on an online grocery platform.

There are numerous ways that errors with product information can be identified and corrected. For example, feedback can be submitted via customer feedback loops, customer service, guest survey, consumer questions, etc. When a change is needed or an error is identified, our members have different approaches to updating the information, and it depends on where the change/error is identified and by whom. If the change is identified by the manufacturer/brand owner, and it needs to be submitted through a data management system, this can take some time to go through the various parties that handle the information in order to be updated on

the grocery platform. In some cases, the retailer may receive a question about a product and would relay the question/ request to the manufacturer so that they can update the information if needed. For urgently needed changes, some – but not all – retailers are able to make manual content updates to a product detail page themselves (without needing the manufacturer to change the information). In other cases, the manufacturer would send updated information to the retailer and it is within the retailer's discretion as to when to update that information. As noted above, some of our members have internal quality assurance processes, or partner with third party data providers to try to ensure the accuracy of the information provided.

For some business models, the online grocery store may not have access to all core labeling information or may rely on third parties (e.g., manufacturers or sellers) to provide such information or update such information timely and accurately. In such cases, there may be inaccuracies or gaps in information provided.

2.5 What measures are online grocery shopping platforms taking to ensure that consumers can access accurate nutrition, ingredient, and major food allergens information when purchasing groceries online? Have online grocery shopping platforms identified or capitalized on opportunities to leverage online platforms (e.g., interactive labeling) to improve consumer engagement with and accessibility to food labeling information? Please provide any data and evidence to support your response.

FMI Response: Please see the discussion above on SmartLabel, a voluntary industry program used by some food companies. SmartLabel is one example of a system that allows companies to see what information consumers access/find valuable, enables companies to update information more quickly and without involving third parties. SmartLabel is not utilized across the entire industry; however, and it is critically important to maintain flexibility that encompasses all of the various technologies used throughout the retail chain.

2.6 How are online grocery shopping platforms seeking to ensure online access to labeling information is equitable for consumers? Do current online labeling presentations present barriers to accessing labeling information for certain consumers? Please provide any data and evidence to support your response.

FMI Response: As mentioned above, generally, companies selling groceries online seek to ensure the information is readable and accessible on all devices (e.g., websites, mobile phones, tablets), though there are instances where particular platforms may present unique challenges. Some of our members provide information in a format that facilitates accessibility for visually impaired individuals, which enables text-to-voice translation.

3. Consumer Use of Food Label Information in Online Grocery Shopping

3.1 What food label information do consumers expect to see when shopping for groceries online? For example, do consumers expect all the information presented online to be the same as the retail food package label? When there is a picture of a product label online, do consumers

expect the picture of the label to be the same as the label on the retail food package? Please provide any data and evidence to support your response.

FMI Response: Our members have provided the following feedback on this question.

- Generally, customers expect to see nutrition, ingredient, and allergen information. Additionally, consumers expect consistency, to the extent possible, between information displayed online and on the retail package.
- Although it is not required for manufacturers or retailers to display online, customers may expect voluntary claims (e.g., reduced sugar, USDA Organic, or non-GMO certified claims) to be presented.
- In several of our members' experience, individuals with dietary restrictions or specific eating patterns tend to use the information provided online at greater rates.
- Traditionally, many retailers were regionally-based, and different retailers offer different product selections and labeling information. For information that is material to health or safety (including in many cases nutrition, ingredient, and allergen information) there is a greater need for FDA to seek to drive consistency in the information provided in the online marketplace, but for other information, in our members' experience, consumers prefer to choose their retailer based on their own experience and preferences.

FMI data also continues to show increasing consumer interest in learning more about aspects of their purchases that are not necessarily related to safety and nutrition. These include categories of information companies may voluntarily choose to disclose, such as sourcing of ingredients, manufacturing processes, animal welfare practices, usage instructions, the company's social responsibility programs, and more.³ Importantly, while some companies may choose to disclose this information voluntarily online, we recommend that FDA maintain flexibility for those instances where it is not practical or desirable to include these types of more detailed information online.

Allowing companies flexibility in online labeling practices provides the opportunity to provide this information in ways that works for individual products. SmartLabel is one example of how additional information, such as that included in the categories discussed above, can be easily accessed by consumers seeking it. Please recognize, however, that SmartLabel is not utilized by the entire industry. While any FDA guidance should be flexible enough to accommodate this type of program, we do not intend to convey that it is the only or should be the only such method.

3.2 To what extent, and how, do consumers use nutrition, ingredient, and major food allergens information when grocery shopping online? For example, what percentage of consumers use the label to get information to support eating healthier? What percentage of consumers use the label information because of specific dietary concerns? We would be especially interested in

³ FMI, *Transparency in an Evolving Omnichannel World*, 2022.

demographic data on consumers who view label information when grocery shopping online. Please provide any data and evidence to support your response.

In our members' experience, one way in which customers use the listed information is to shop with dietary preferences, allergies, and intolerances in mind.

3.3 What do consumers find most challenging about navigating online shopping platforms for specific label information needs? Please provide any data and evidence to support your response.

Our members have found that consumers find it challenging when information is not available or is inconsistent with the information on-package. FMI data indicates that consumers find it easier or about the same level of difficulty to find certain information online as compared to in-store. In particular, FMI's *Transparency in an Evolving Omnichannel World* report indicates the following comparisons that we think are relevant to FDA's question:

- 47% of respondents found discovering new products easier online, while 30% found it about the same as compared to in-store;
- 45% of respondents found learning more about a product's story easier online, and 31% found it about the same as in-store;
- 40% found shopping for a specific diet or allergy easier online, while 35% found it about the same compared to in-store purchasing;
- 37% found it easier to find ingredient information online, while 35% found it about the same as finding this information in-store;
- 41% of respondents found it easier to know the product's nutritional information online, and 35% found this task about the same as in-store.⁴

These results are highly relevant to FDA's RFI, as they demonstrate that consumers find the methods our members are currently using to communicate allergen, ingredient, and nutritional information to be effective.

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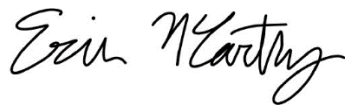
⁴ FMI, *Transparency in an Evolving Omnichannel World*, 2022.

FMI thanks FDA for the opportunity to submit comments on this important initiative. Please do not hesitate to contact me with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Dana Graber". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Dana Mullen Graber
Senior Counsel, Legal and Regulatory Affairs

A handwritten signature in black ink, appearing to read "Erin McCarthy". The signature is cursive and somewhat stylized, with a prominent loop at the end.

Erin McCarthy
Government and Public Affairs Assistant