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Food Law + E-Commerce: Top Issues for Online Food Retailers

Are you selling, or thinking about selling, food products on the Internet? The online sale of groceries alone is an \$11 billion per year business in the U.S. alone. Add to that the online sale of prepared foods, and the number of businesses and revenue skyrockets. Most of the detailed laws and regulations governing the sale of food were developed over the past century based upon traditional brick-and-mortar stores, where food labels can be read in store aisles, products are weighed to order, and the general cleanliness of the operation is apparent to consumers and inspectors alike. Applying these laws and rules to online businesses presents the cutting edge of food law, and often requires the exercise of judgment to effectuate the policies underlying food law and to harmonize those with the law governing Internet sales. Here are some of the top issues that online food retailers should ask themselves:

1. What are my roles and responsibilities in the food business?

The application of many food laws and rules depends upon characterizing a company's role. Food manufacturers and processors are easy to identify. What about others? Are you a food retailer, a delivery operation, or just a facilitator of transactions? A lot can depend on how these questions are answered. Do you need to register as a food facility under federal law, or can you claim an exemption? Do you need a food license under state law? Do you need to collect sales tax? What is your role in the event of a product recall?

2. What about product labeling?

We are all familiar with the detailed information required on food packages. Federal laws require ingredients, allergens, detailed nutrition facts, country of origin and other information to be disclosed on food packages. How do these requirements translate to online sales? Are you required to have some or all of this information on your website? How should it be presented? If you sell other companies' products, what are the manufacturers' responsibilities to provide this information? What is your responsibility if the information changes or is incorrect? And how do general advertising regulations apply to your website? If you don't comply with all requirements that are applicable to your business, then you may have to face enforcement action by federal or state officials that could require you to suspend your operations, pay additional taxes, fees or penalties, and even make customer refunds. You could also face lawsuits by customers or competitors, claiming they were injured by your failure to disclose certain required information (for example, allergens). The laws are evolving in this area and the FDA recently released a [stern warning letter](#) dealing with various label claims made by the manufacturers of Kind bars, including claims made on its website. Depending on your answers the above questions, you may need to take some preventive measures to reduce your liability exposure. We'll look at additional issues for you to consider such as safety and price in our next blog post.

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