

Food Law + E-Commerce: Safety, Price and Other Top Issues for Online Food Retailers

In our [previous look](#) at the top concerns of online food retailers, we discussed the importance of identifying your role in the industry and key labeling issues. Applying the brick-and mortar food 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 a few more issues that Internet food retailers should ask themselves:

1. How do you ensure food safety?

Food safety is an important issue for all aspects of your operation. It affects how you produce, receive, and store food products. As an online business, you won't have customers taking custody at your premises. How do you ensure that food remains fresh, safe, and healthful throughout the delivery process? What are the best ways to work with delivery providers? And who regulates those operations?

2. What are your responsibilities in the event of a food recall?

Voluntary and mandatory food recalls are a fact of life. A food can be recalled for a number of reasons, including failure to identify an allergenic ingredient on the label or because the product is infected with dangerous organisms. The roles and responsibilities of different market players – manufacturers, distributors and retail stores – are well developed. Online retailers present additional challenges and opportunities in the event of a product recall. They generally possess more information about customers and the products they have purchased than a typical brick-and-mortar store. What are your responsibilities in the event of a product recall? What sort of information should you retain about customers and their purchases so you can be more helpful in the event of a recall? How does this relate to your privacy policy and other terms of use, and how does it affect your risk and potential liability?

3. How do you price your products?

States and cities typically have detailed laws governing how food prices must be displayed and how food products must be priced for sale. Information typically must be provided on a per-unit basis (e.g., per item, per ounce, or per pound) so that customers are able to compare prices across products and perhaps also across stores. In addition, certain products must be sold by weight, not by unit (e.g., fresh produce, fish and meat). How do these requirements apply to your Internet storefront? How can you deal with price discrepancies in the fulfillment process – what price do you charge for a bunch of bananas when no two bunches weight the same? Online food seller beware. 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) or a failure to act properly in the event of a product recall. Be informed about these requirements up front so your online food business operates smoothly and safely.

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