



## Consumer Federation of America

July 6, 2011

Division of Dockets Management  
U.S. Food and Drug Administration  
5630 Fishers Lane  
Room 1061  
Rockville, MD 20852

**Re: Docket No. FDA-2011-N-0366**

To Whom It May Concern:

The Consumer Federation of America (CFA) appreciates the opportunity to respond to the Food and Drug Administration's request for comments following the agency's June 6 public meeting on Inspections and Compliance (Docket No. FDA-2011-N-0366). CFA will submit separate comments in conjunction with the Make Our Food Safe Coalition and the Safe Food Coalition on the inspection and enforcement provisions of the FDA Food Safety Modernization Act (FSMA). The following comments will focus on questions posed by the FDA on ways to improve the reportable food registry. CFA is an association of nearly 300 nonprofit consumer organizations that was established in 1968 to advance the consumer interest through research, education and advocacy. Member organizations include local, state, and national consumer advocacy groups, senior citizen associations, consumer cooperatives, trade unions and food safety organizations. CFA's Food Policy Institute was created in 1999 and engages in research, education and advocacy on food and agricultural policy, agricultural biotechnology, food safety and nutrition.

### **Reportable food provision of the FSMA**

Section 211 of the FSMA permits the FDA to require certain consumer-oriented information be submitted to the Secretary regarding a reportable food. Once this information has been submitted to the Secretary by the responsible party, the Secretary will then prepare a one page summary of the reportable food to be posted on the FDA website. Within 24 hours of the one page summary being published on FDA's website, a grocery store which sold the reportable food must prominently display this summary or relevant information from the summary. Grocery stores are defined in the FSMA as those establishments which are part of a chain of establishments with 15 or more physical locations.

The FSMA also directs the Secretary to publish a list of acceptable conspicuous locations and manners for grocery stores to notify its customers of reportable foods. The list shall include posting the notifications at or near the register, providing the location of the reportable food, providing targeted recall information given to customers upon purchase of a food, and other

prominent and conspicuous locations and manners utilized by grocery stores to provide notice of recalls to consumers, as the Secretary considers appropriate.

### **Grocery store notifications should include specific information**

Responsible parties are required to provide the Secretary with “consumer-oriented information” sufficient for the consumers to identify the reportable food. This information must include a detailed description of the particular food, identification codes such as UPC, SKU or lot or batch number, and relevant contact information for the responsible party. In addition, the Secretary may request any other information deemed necessary to enable a consumer to accurately identify whether a consumer is in possession of a reportable food. Additional information the FDA should request and provide to consumers in the grocery store notification includes the name of the product, the name of the company, a picture of the product and product label, when the product was sold, the reason the product is being reported (bacterial contamination, allergens, chemical hazards, physical hazards, etc.) and what consumers should do with the product.

### **Grocery store definition should encompass other stores that sell food**

FDA should require that other entities besides traditional grocery stores be covered under this provision. Establishments such as stand-alone convenience stores that are part of a larger parent company such as 7-11, gas station convenience stores that are part of a chain, and retail chains such as Walmart and Target, which sell both food products and other consumer goods should all be covered under this provision and required to post notices if they carried a reportable food. In addition, consumers are now able to buy their groceries online from websites linked to grocery store chains as well as other online retailers such as Amazon which sell food online. These types of online chains should also be required to comply with the grocery store notification. Because of their online nature, such entities may even be able to more accurately target consumers who may have purchased a reportable food via their website.

### **Options for notifying consumers about a reportable food**

Providing consumers with information about whether they may have purchased a reportable food is important to help reduce the risk that consumers may consume contaminated food. Displaying signs prominently in the grocery store or at the register can be useful to consumers seeking out such information. Providing more targeted information to consumers may increase the effectiveness of the message and we encourage the use of a targeted approach as well.

Many retailers use customer loyalty cards to track retail purchases and provide consumers with special discounts on food products. The Food Marketing Institute estimates that about 45 percent of food retailers offer loyalty programs and approximately 35 percent of shoppers use their loyalty cards every time they shop<sup>1</sup>. Linking loyalty card use to targeted notifications based on the consumer’s purchasing history that are automatically printed at the register could help improve consumers’ attention to those warning messages about a reportable food, particularly if they know that the messages pertain to their previous purchases. CFA encourages the use of these types of targeted approaches that can provide consumers important information about a reportable food at the point of purchase.

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<sup>1</sup> Food Marketing Institute, *U.S. Grocery Shopper Trends 2007*.

Some retailers such as Costco, Wegmans<sup>2</sup> and Giant Eagle<sup>3</sup>, have been using loyalty programs to contact consumers in the event of a recall. The loyalty card databases allow retailers to specifically target consumers who have purchased a recalled product with emails, phone calls and letters alerting them to the recall. Shoppers have generally responded positively to notification from the retailer that they may have purchased a recalled product. Taking this same approach for a reportable food could allow a grocery store to directly target consumers who have purchased the food but have not yet returned to the store.

FDA should provide grocery stores with guidance regarding the design of targeted notification messages and the type of information that should be included. Guidance should include recommendations on specific information regarding the reportable food, such as the name of the product, name of the company, picture of the product, lot numbers, UPC codes or other information sufficient for consumers to identify the food, when the product was sold, how the product is contaminated, and what consumers should do with the product. Guidance should also include suggested language that will alert consumers to the importance of the information, possible font sizes to be used, and suggestions for distinguishing reportable food targeted messages from other targeted messages such as coupons or advertisements. Targeted messages about reportable foods should look different from other targeted messages to reduce the chance that consumers ignore those messages – colors, warning signs, font size can all be used to distinguish reportable food messages. Grocery stores should train their cashiers to recognize targeted messages about reportable foods and verbally identify those messages for consumers when they are purchasing their groceries.

### **Grocery stores should use a variety of notification methods**

It is important to note that not all consumers use loyalty cards and of those that do, not all consumers provide the grocery store with accurate contact information. Grocery stores should consider informing consumers that the loyalty card program could be used to provide consumers with important food safety information about recalls and reportable foods and allow them to opt-in to such services. Section 211 of the FSMA requires grocery stores to use “at least one of the methods identified” by FDA to provide consumers notification of a reported food. We urge grocery stores to consider using a variety of notification tools (i.e., more than one) so as to reach as many consumers as possible who may have purchased a reportable food. As evidenced by the response to retailers who have notified consumers about recalled food, consumers generally appreciate this type of outreach, particularly relating to food safety issues.

### **FDA outreach should employ new technologies**

In its own outreach to consumers on recalls and reportable foods, FDA should make use of new technologies that can allow the agency to target interested consumers. FDA has already provided the public with an opportunity via its website to receive email alerts about recalls, although that requires consumers to proactively go to the FDA website and sign up for the recall alerts. Another option could include applications for cellular phones which can alert a consumer about a recall or reportable food. Currently, [www.recalls.gov](http://www.recalls.gov) has created an application for Android

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<sup>2</sup> Aleccia J, “Dial-a-recall? Stores use cards to warn buyers.” *MSNBC.com*, January 23, 2009, via <http://www.msnbc.msn.com/id/28802536/>.

<sup>3</sup> Lindeman T, “Giant Eagle lauded for recall efforts.” *Pittsburgh Post-Gazette*, January 21, 2010, via <http://www.post-gazette.com/pg/10021/1029898-28.stm>.

cellular phones which includes notifications regarding recalls made by the Consumer Product Safety Commission, the National Highway Traffic Safety Administration, the FDA, and the Department of Agriculture's Food Safety and Inspection Service. The application lists product recalls and provides a search function so that consumers can search for certain products to see if they have been recalled. FDA should consider utilizing the recalls.gov application to provide consumers with information about reportable foods. Currently, however, this application has only been designed for the Android cellular phones, which excludes a large portion of consumers with cellular devices that could otherwise support such technology. The government should assure that applications providing important information such as recalls are supported by a wide range of mobile devices. Reportable food notifications delivered via a cellular device should provide the same information as described above so that consumers can accurately identify the reportable food. This should include a clear depiction of the product and the product's label as well as where and when the food was sold in stores.

Thank you for the opportunity to provide these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Waldrop". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Chris Waldrop  
Director, Food Policy Institute