Kathy Twardek, Director, Consumer Protection and Market Fairness Division
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September 3, 2019

Re: Comments on proposal to amend ingredient and place-of-origin labelling regulations in Canada Gazette Vol. 153, No. 25, published June 22, 2019

Dear Director Twardek:

The Centre for Health Science and Law is a non-profit health advocacy organization specializing in food and nutrition that safeguards its independence by not accepting funding from industry or government. CHSL and I, personally, have been studying and advocating public-health-focused improvements to Canadian and international nutrition labelling rules since 2015 and 1997, respectively.

A. Avoidable death, illness, and deception by reporting the amounts of ingredients in processed foods

CHSL's consumer magazine, the chief source of our revenue, features nutrition-based product comparisons and other articles to help readers choose nutritious foods using an algorithm that is based on the best available evidence and all relevant ingredient and nutrient information. We often need to obtain information about the amounts of ingredients of public health concern in products (especially, whole grains, fruits, vegetables, nuts, seeds, and legume) and, occasionally, undeclared nutrients (especially, polyunsaturated fat) about which there is broad agreement of the health effects. Efforts to quantify their health impact in recent years have established that they are more important than many of the nutrients about which quantitative information is now required to be disclosed on food labels. If Canadians consumed the optimum amounts of each, there would be 11,735 (whole grains), 9,711 (nuts and seeds), 6,265 (vegetables), 6,094 (fruit), and 4,484 (polyunsaturated fat) fewer deaths annually, respectively due to these food components—two-thirds of *all* fatal nutrition-related disease.

B. Uselessness of food labels to reveal quantitative ingredient information without clear binding rules

Product labels that do not reveal amounts of these ingredients and nutrients give an incomplete picture of the health impact of the products inside and, in so doing, can mislead consumers and cause them to unwittingly worsen their own health. For instance, consumers choosing a vegetable pasta sauce that is quantifiably low in sugar and sodium may choose one that is nearly half water (and low in vegetables). Likewise, someone choosing a multi-grain bread or breakfast cereal would usually not be informed of how many grams of whole grains are in a serving. Sub-optimal whole grain consumption is estimated to be a leading cause of nutrition-related death in Canada, surpassed only by excess sodium.

Health Canada provides no guidance more precise than counselling that one-quarter of every plate should be whole grains, the Global Burden of Disease quantifies the range of optimal intake of whole grains to be 100-150 grams per day. In a recent survey of 197 breads available at an outlet of chain grocery stores in Saskatoon, we found that only 27 were made from 100 % whole grains, and of those, only seven contained a meal's worth of the mean optimal intake of whole grains (one-third of 125 grams per day).

Health Canada's much higher emphasis on whole grains since the publication of the 2019 *Canada's Food Guide Snapshot* calls for a new approach to labelling foods. Food manufacturers should not be permitted to avoid disclosing amounts of whole grains merely by stipulating that whole grains are "added" or "made with"), or used for flavouring, using words or images Consumer Protection and Market Fairness Division that were not intended to emphasize the ingredients. Consumers cannot become aware of these nutritional shortcomings of most breads, cereals and other grain-containing products, and companies cannot be motivated to redress them, if the amounts of whole grains are not disclosed on the labels. Of the 27 100%-whole-grain breads we surveyed in a grocery store in Saskatoon, only five disclosed on labels the number of grams of whole grains per severing. Only nine more disclosed this information when the customer-support was contacted repeatedly. The rest ignored the request or declined to provide this information. Though 11 of these breads contained 1-3 grams of seeds or legumes per serving (possibly more), no manufacturer was willing to share this information despite repeated requests. According to the Global Burden of Disease data for Canada, even small amounts of nuts and seed can make bread more nutritious.

Persistence of perceived gap in Health Canada-CFIA administrative responsibilities need not further impede important regulatory reforms. It has long seemed that a interdepartmental arrangement for division of responsibility over food labelling has created a vacuum of regulatory over health-relevant ingredient information on labels, which is reveled in the Regulatory Impact Assessment at page 2,974 of the proposal.[1] While this remains a continuing problem, we note that the regulations are promulgated by a government-wide Cabinet Committee pursuant to a government-wide Act of Parliament. Even if they were required to be confined to the stove-piped scope of ministerial authorities, either agency has sufficient mandate to implement the reforms we advocate because the solutions involve protecting health of consumers and preventing consumers from being deceived. Either mandate, alone, is ample and sufficient (concurrent not exclusive) to authorize the federal government to mandate disclosure of the amounts of whole grains, nuts, seeds, fruits, vegetables, and polyunsaturated fat. To date, it seems that both ministries embrace a broad interpretation of the other's mandate and a narrow interpretation of their own in an overcautious effort that puts over-cautious intergovernmental relations ahead of providing important health information to consumers. The demonstrated reluctance of industry to provide this information has also operated to deprive consumers of this information.

1. **CHSL-recommended revision to *Gazette* proposal re scope of characterizing ingredients and placement of disclosures on label:**

13 The Regulations are amended by adding the following after section B.01.008.3:

B.01.008.4 (1) *The following definitions apply in this section. …*

characterizing ingredient *means an ingredient, component or class of ingredients, other than a flavouring preparation, that is emphasized by words or a depiction on the label of a prepackaged product, or is an amount of fruits and/or vegetables, whole grains, nuts/seeds, legumes, red meat, processed meat, or other ingredient designated by the Minister of Health for this labelling purpose, when there are more than one ingredient in these respective categories of ingredients, the sum of the amounts of all of them. (ingrédient caractéristique)*

(2) *Subject to subsections (3) and (4), the percentage-by-weight and the actual weight in grams of any characterizing ingredient in a prepackaged product must be shown on the label of a prepackaged product in accordance with subsections (6) and (7). …*

(6) *The percentage of a characterizing ingredient must be shown*

(a) *in the list of ingredients, immediately preceding or following the common name of the ingredient, component or class of ingredients, as the case may be, except in the case referred to in subsection (5); and*

~~***(b)*** *immediately after the list of ingredients, the statement referred to in subsection B.01.010.3(1) or the declaration referred to in subsection B.01.010.4(1), whichever of those items of information comes last…~~

(c) *as part of the common name of the food or in a statement in close proximity to the common name of the food if the common name contributes to the emphasis; and~~or~~*

(d) *if the characterizing ingredient is not shown as part of the common name of the food but is shown in words on the principal display panel, in the most prominent claim, in words, in which it is shown in type of equal prominence.*

(7) *The percentage of a characterizing ingredient must be expressed in numbers as a percentage-by-weight and in grams and, in the circumstances described in subsection B.01.011(2), as the minimum percentage and grams per serving on which the Nutrition Facts information is based immediately preceded or followed by an indication that it is a minimum percentage and weight.*

Rationale: Many consumers would consider the amounts of key ingredients (e.g., vegetables, nuts/seeds, or whole grains) in relation to recommended daily intakes or in relation to the amount of *Food Guide* servings. So, providing information only in percentage-by-weight format would require consumers to conduct additional calculations and would ineffectively redress the market failure of information asymmetry. In addition, consumers should be able to reliably find the amounts of important ingredients in the ingredient list in all cases, ***and*** find written or pictorial marketing emphasis on ingredients also counter-balanced by equally prominent objective information about the amount(s) of ingredient(s) near the place of the claim.

Moreover, the regulatory proposal is a codification of the long-standing CFIA policy to require the amount of any ingredient about which there is any emphasis on the presence:

> *In principle, any emphasis regarding the presence of an ingredient, component or substance should be accompanied by a statement regarding the amount of that ingredient, component or substance present in the food.*[1]

Considering how rarely such information is actually provided, this policy has been largely ineffective, possibly because "emphasis" is not precisely defined and the CFIA has been, and will continue to be, unwilling to enforce an information labelling requirement when the triggering conditions are discretionary.

2. **CHSL recommended revisions to Gazette proposed re place-of-origin labelling:**

*"Packaging, distance travelled, and f~~F~~**oreign state of origin**

220.1 (1) *If a food has a foreign state of origin, the label of the prepackaged food must bear an indication of that foreign state of origin, and the distance travelled in kilometers via each mode of transportation (sea ship, rail, air, or truck) from the manufacturer of origin to the Canadian port of entry;*

(1.1) in every case, the average weighted distance the food travels from the Canadian port of entry or manufacture to the final point of retail sale, the weight and composition, and biodegradability of the top three packaging materials.

Rationale: All food imported to Canada should be inspected and otherwise ensured to be safe. Canadian consumers should not be expected to monitor food control systems in other countries or apply uninformed prejudices about production and export controls to country-of-origin labels. However, the distance and mode of transportation that imported and domestically produced products travel the point of purchase has implications for the environmental impact of such foods that should be taken into consideration in a global food economy that will be under increasing pressure to be environmentally sustainable in the coming years. While creating an food-product-specific index that integrates all relevant information (the food itself, the weight and composition of packaging materials, and recommended storage conditions (e.g., need for refrigeration) would, ultimately, be more useful for consumers, information about transportation is a credence attribute that cannot be determined by examining the product. The environmental impact of food has long been neglected by food manufacturers and labels provide too little information for consumer to make informed choice. The Eat Lancet Commission concluded this year that radical changes to global agri-food systems are needed to minimize the negative impact of food on climate change and other aspects of the environment, especially if the human population rises to 10 billion by 2040 as expected.

3. **Recommended addition to Gazette-proposed quantitative disclosure re polyunsaturated fat:** The Mandate the disclosure of the amount of polyunsaturated fat in Nutrition Facts tables. [insert appropriate amendment language]

Rationale: The Governor-in-Council finalized revisions to the regulations respecting Nutrition Facts labels in 2016 and proposed front-of-pack nutrition warning statements (for foods high in sodium, saturated fat, and

[1] Canadian Food Inspection Agency. Composition and Quality Claims, Highlighted Ingredient Claims Available at: http://www.inspection.gc.ca/food/labelling/food-labelling-for-industry/composition-and-quality-claims/eng/1391025998183/1391026062752?chap=2#s6c2.

total sugar) in 2018 that become binding in 2021. Fugal manufacturers will likely wait until the two sets of regulations are finalized to change labels. Those cost-benefit analyses and the present one employ 10-year forecasts, signaling that changes will not be updated more often. As such, we urge that the current regulations add a requirement for Nutrition Facts labels to declare the amounts of polyunsaturated fat. The Institute for Health Metrics and Evaluation,[2] the World Health Organization,[3] the United Kingdom Scientific Advisory Committee on Nutrition,[4] and the 2015 US Dietary Guidelines Advisory Committee[5] agree that polyunsaturated fat is the most effective replacement for saturated fat, a poorer choice than replacing with sugar, carbohydrates, or monounsaturated fat. And, for instance, one of the reasons why consumers pay significant price premiums for olive oil may be a mistaken belief that it is the most nutritious oil on the market despite being much lower in polyunsaturated fat than grapeseed, sunflower, corn, and some other oils. (This *Canada Gazette* proposal uses the example of olive oil as an "emphasized ingredient" on page 2979, but does not state that this preference, itself, is likely partly based on a misperception.)

While including even more details on Nutrition Facts tables and ingredient lists is, ultimately, not the best way to inform consumer choice, but ensuring that all relevant nutrient and ingredient information is automatically provided on labels is essential for Health Canada to create an overall nutrition scoring system.

4. **Recommended revision to *Gazette*-proposed coming-into-force date:**

"Transition Provisions: 41(2) During the period beginning on the day on which subsection 42(1) of these Regulations comes into force and ending on December 13, 2022~~6~~, a person is not required to comply with the requirements set out in sections 5, 6 and 10, subsection 11(1), sections 13, 20 and 21 of these Regulations."

Rationale: The coming into force date for declaring amounts of key ingredients is set at December 13, 2026, seven years into the future. Especially considering that other finalized and proposed label changes are expected to come into force in December 2021 and December 2022, it seems excessively lenient to permit adherence to these proposed label modifications so long. It may be more cost-effective for manufacturers and more protective of consumers to harmonize all coming-into-force dates to December 2022. Importantly, the longer delay seems contrary to the CFIA's recent emphasis on curbing consumer fraud involving food. It is not justifiable to allow companies to conceal for another 6-7 years the amounts of ingredients about which they make marketing claims or that are widely known to have a major impact on health and the concealment of which has been prohibited by *unenforced* CFIA enforcement policy for many years.

Respectfully submitted,

Bill Jeffery, BA, LLB
Centre for Health Science and Law

References

[1] The proposal, at p. 2974, describes the arrangement at follows:
Health Canada establishes regulations, policies and standards relating to the health, safety, and nutritional quality of food sold in Canada. This includes labelling requirements about the nutrients in food (i.e. the Nutrition Facts table), claims about nutrients, the presence of food allergens, and safety-related expiration dates as set out under the Food and Drugs Act (FDA) and the FDR.
The CFIA administers the non-health and safety food labelling regulations (and their governing acts) and policies, including those related to false or misleading labelling and advertising, and food compositional standards under the FDR. The CFIA is also responsible for food-related matters under the FDR relating to company contact information, ingredient labelling, and quality-related best before dates. [Emphasis added.]

[2] GBD 2017 Diet Collaborators. Health effects of dietary risks in 195 countries, 1990–2017: a systematic analysis for the Global Burden of Disease Study 2017. *The Lancet*. Vol 393 May 11, 2019 at p. 1960.

[3] WHO. Health effects of saturated and trans-fatty acid intake in children and adolescents: systematic review and meta-analysis. 2017; Effects of saturated fatty acids on serum lipids and lipoproteins: a systematic review and regression analysis, 2016; UN Food and Agriculture Organization: Fats and fatty acids in human nutrition — Report of an expert consultation. 2010.

[4] UK SACN, *Saturated Fats and Health*. 2019. London.

[5] US Dietary Guidelines: 2015-2020 state: "Strong and consistent evidence shows that replacing saturated fats with unsaturated fats, especially polyunsaturated fats, is associated with reduced blood levels of total cholesterol and of low-density lipoprotein-cholesterol (LDL-cholesterol). Additionally, strong and consistent evidence shows that replacing saturated fats with polyunsaturated fats is associated with a reduced risk of CVD events (heart attacks) and CVD-related deaths….However, the evidence base for monounsaturated fats is not as strong as the evidence base for replacement with polyunsaturated fats."