



Food & Beverage Canada
Aliments et boissons Canada

July 17, 2018

Office of Legislative and Regulatory Modernization Policy
Planning and International Affairs Directorate
Health Products and Food Branch, Health Canada
Holland Cross, Suite 14, Ground Floor
11 Holland Avenue
Ottawa, ON K1A 0K9

Re: *Proposed Regulations Restricting Marketing of Unhealthy Food and Beverages to Children in Canada*

Food and Beverage Canada-Aliments et boissons Canada (FBC-ABC) thanks you for this opportunity to provide comments on the proposed approach to *Regulations Restricting Marketing of Unhealthy Food and Beverages to Children in Canada*.

FBC-ABC was formed earlier this year as a new, national voice for over 1,500 food and beverage processing businesses across the country. Our goal is to be a true partner with governments in realizing the potential of our sector to contribute to Canada's future growth and prosperity, while also demonstrating leadership in the areas of healthy eating and sustainability.

We support the principle of restricting marketing of certain foods and beverages to children. This principle is consistent with a number of mandatory and voluntary initiatives that many of our members are now complying with, including:

- Quebec's Consumer Protection Act, which bans advertising directed at children under 13 years of age;
- The Children's Food and Beverage Advertising Initiative, administered by the Advertising Standards Council, which focuses on advertising to children under 12 years of age;
- The Canadian Beverage Association Guidelines on Marketing to Children, focused on children under 12 years of age; and
- The International Food and Beverage Alliance's Global Policy on Marketing Communications to Children, focused on advertising directed to children under 12 years of age.

While draft regulations are not yet available, we have reviewed Health Canada's proposed approach for the regulations, published on its website, and offer these preliminary comments.

Defining “Children”

FBC-ABC supports the definition of children as set out in Bill S-228 as any person under the age of 13 years. This definition will ensure federal requirements are consistent with the regulatory regime that has been in place in Quebec since 1980, and will expand the advertising prohibition beyond the reach of existing voluntary initiatives.

Defining Food as “Healthy” and “Unhealthy”

FBC-ABC does not support measures that distinguish foods as “healthy” or “unhealthy” – either in the proposed regulations or in any other regulatory or policy initiatives.

Canadians should be assured that all foods produced in Canada are safe for sale and consumption. The categorization of foods as essentially “good” or “bad” has the potential to undermine the confidence of Canadians and foreign customers in the Canadian food system, the compliance of all foods sold in Canada with regulatory requirements for food safety, nutritional value and, in the case of standardized foods, composition. It also potentially calls into question the integrity of Health Canada's policies on making nutrient content and dietary health claims for foods sold in Canada.

FBC-ABC also believes that distinguishing foods as “healthy” and “unhealthy” overlooks the complexity of factors impacting food choices, including physiological, biological, economic, physical, social and psychological determinants, together with attitudes, beliefs and knowledge about food. ABC-FBC's member's products encompass a broad spectrum of food and beverages; sweetened beverages and juices, breads, baked goods, cereal, dairy, confectionary, desserts, meats, as well as a broad variety of minimally processed and further processed pre-packaged foods. We recognize that not all foods or beverages are nutrient dense or remain under the threshold that will permit them to be advertised to children, however all of these products have a part to play in a varied and healthy diet, if only in moderation. Consuming a variety of foods, including those with lower nutritional value but high psychological reward (pleasure) in moderation is part of a balanced, culturally and socially appropriate diet.

FBC-ABC understands and shares government's concern regarding the impact of diet-related diseases such as obesity, cardiovascular disease, diabetes, cancer etc. on individuals, the health system and our economy. However, these issues will not be addressed by demonizing individual foods. In addition to ensuring food is safe, we believe education is critical to consumers making choices that support balanced, healthy diets that reflect their social and cultural roots. We also recognize our need to work with you to promote educational initiatives, and we certainly support measures to ensure that no food is marketed with a false or misleading nutrient content or health claim.

Distinguishing foods as being “healthy” or “unhealthy” is also inconsistent with other elements of the government's Healthy Eating Strategy where the government has focused on foods that are “high in sodium, sugars or saturated fat”. To avoid the potential for confusing consumers, food manufacturers, retailers and advertisers, the

federal government should adopt a consistent approach to identifying foods to be “flagged” for consumers and should approach these foods using terminology and methodology that is consistent.

We also stress that the government’s Healthy Eating Strategy, and the initiatives deriving from it, must be based on science. The federal government must equally be open to continually evaluating the scientific evidence to ensure measures are effective in achieving their health objectives. While there is a well-established body of evidence linking the overconsumption of sugar to an increased risk of chronic disease, we have serious concerns with regards to the lack of clear scientific evidence regarding sodium and fat and urge Health Canada to reconsider recent scientific evidence on sodium and saturated fat intake, as related to CVD. By encouraging the general populace to significantly restrict their intake of these macronutrients, Canadians’ health could be placed at risk. We raised these concerns in our submission on Front of Package Labelling and reiterate them in the context of the proposed ban on advertising products deemed “high” in these nutrients to children.

Factors To Determine If An Advertisement Is Directed At Children

In its proposal, Health Canada suggests the new regulations will consider three factors to determine if an advertisement is directed at children:

- a. Settings;
- b. Media channels; and,
- c. Advertising techniques.

The proposal introduces the concept of “child directed” settings, media channels and advertising techniques. While we agree with this approach, we caution against defining “child directed” too narrowly.

Health Canada’s proposal states that children under the age of 13, the subject of Bill S-228 and the proposed regulations, represent 13% of the general population. The proposal then defines “child directed” as any setting, media channel or advertisement that includes children under age 13 at a rate of 15%. This does not provide a sufficient margin to ensure the regulations do not capture venues or channels not intended for children.

While the inclusion of a reference threshold for child participation could assist in interpreting the proposed regulations, the threshold should be reasonable and meaningful. Other countries such as the U.K, Ireland and New Zealand have used thresholds of 25% or 50%. Recognizing that these countries’ initiatives target a broader range of ages (under 15 to under 18), the threshold for child participation is still much larger than the representation of the respective target age groups in each country’s overall population. We suggest a threshold of at least 25% as an appropriate measure of whether a setting, media channel or advertising technique is “child directed”.

The proposal also introduces the concept of “child appeal”. We recognize that certain advertising and marketing techniques, such as the use of characters, animals and child-recognizable celebrities, as well as toys and movie tie-ins can be designed for the purpose of appealing to children. We are, however, concerned that the proposal could be overly broad in the following respects:

1. **Colour:** The proposal suggests that colours would be a variable in determining whether advertising is “child directed”. Colour is a key component of all advertising and marketing and is almost invariably a distinguishing feature of most brands and branding campaigns, no matter what the audience. This proposal – particularly when viewed along with the suggested 13% threshold for child inclusion – could inadvertently place companies in a position where they are forced to modify their brands and/or branding colours to ensure they are not off-side with the regulations.
2. **Use of animals:** Advertisements depicting animals cannot be interpreted as specifically targeting children. The depiction of food animals in advertising attempts to provide consumer familiarity with the origin of food products for consumers in general, for example, depicting a cow in a dairy commercial.
3. **Packaging and Labels:** We think it is critical that there be more detailed consultation on how packaging and labels will be treated under the regulations. Packaging and labels are important means of communicating information to and educating consumers about the product, its content and its application. The utilization of certain colours or colour combinations on packaging, or the depiction of a food animal from which the product was derived, for example, could, under the proposed regulations, be restricted, thereby limiting a manufacturer’s ability to effectively communicate product information.

Monitoring

We are deeply concerned with the reporting obligations suggested in Health Canada’s proposal. There are already mechanisms in place to ensure food and beverage manufacturers comply with the proposed regulations.

There are significant legislative and regulatory obligations on Canadian food and beverage processors, including requirements that processors incorporate these obligations into their operating procedures. The new *Safe Foods for Canadians Regulations*, for example, require that all food and beverage processors have: a manufacturing license; preventative controls; a written preventative control plan (PCP); and traceability measures. Companies will have to demonstrate to CFIA that their PCP includes food safety controls, as well as measures related to labeling compliance, including all labeling and marketing requirements under the Food and Drugs Act that would arise from Bill S-228. CFIA inspectors regularly conduct compliance verification tasks under the Compliance Verification System (CVS) to ensure compliance is maintained.

Rather than create its own reporting mechanism, Health Canada should be working with the CFIA to ensure any legislative or regulatory measures are adequately integrated into the CFIA's current inspection regime. Adding a specific reporting requirement on companies related to their marketing activities would be unnecessary and contrary to the government's approach to regulatory efficiency and industry growth.

Regulatory Impact Assessment

We would also like to comment on the "Cost-Benefit Survey for Restricting Marketing of Unhealthy Food and Beverages to Children in Canada (Impact on Food Industry)" that was distributed by Health Canada on May 8, 2018.

We believe very strongly in the regulatory process and in working with the federal government to evaluate and understand the impact of regulations. In keeping with this, we have circulated the Cost-Benefit Survey to our members and have encouraged them to complete it. We question, however, whether the Cost-Benefit Survey is consistent with Treasury Board requirements or with the high standards set by the Treasury Board for evaluating the impact of regulations.

We share the federal government's interest in safeguarding the health and safety of Canadians. These principles are integral to our survival as an industry and the success of our individual member companies. The Treasury Board has, however, established procedures for evaluating the cost of regulations and regulatory effectiveness. We must collectively respect these procedures to ensure we have regulations that actually work for Canadians and that support the Canadian economy.

We thank you for considering our preliminary comments and look forward to continuing to work with you on this initiative.

Sincerely,



Michael Burrows, Co-Chair
Food and Beverage Canada
Chief Executive Officer
Maple Lodge Farms



Daniel Vielfaure, Co-Chair
Food and Beverage Canada
Managing Director
Bonduelle Americas

c.c.

Hon. Ginette Petitpas Taylor, Minister of Health
Hon. Scott Brison, President of the Treasury Board
Hon. Lawrence MacAulay, Minister of Agriculture and Agri-Food
Hon. Navdeep Singh Bains, Minister of Innovation, Science and Economic Development