

## In-House Counsel

# Canadian Food Inspection Agency updates implementation plan for food labelling rules

By **Julia Loney and Jacob Stucken**



Julia Loney



Jacob Stucken

(October 21, 2021, 8:44 AM EDT) -- On July 16, 2021, the Canadian Food Inspection Agency (CFIA) published a brief implementation plan update outlining the CFIA's guidance regarding the next phase of compliance with food labelling rules originally introduced through the 2016 amendments to the *Food and Drug Regulations*. These 2016 amendments were made through the *Regulations Amending the Food and Drug Regulations (Nutrition Labelling, Other Labelling Provisions and Food Colours)*.

The new labelling rules apply to prepackaged products imported into Canada, manufactured in Canada or packaged at retail. For the technical guide to the Food Labelling Rules, see the CFIA's Industry Labelling Tool.

The guiding principles of the amendments include accuracy and substantiation (e.g. providing product formulations relating to accurate ingredient lists), proper disclosure (e.g. actual amounts of real versus simulated ingredients in the product) and a prohibition on vague or alarmist descriptors (e.g. a claim advising that a certain food is necessary for one's health). These tenets trace back to the stipulation found in the *Safe Food for Canadians Act*, among other statutes, stating at s. 6)(1) that:

[i]t is prohibited for a person to manufacture, prepare, package, label, sell, import or advertise a food commodity in a manner that is false, misleading or deceptive or is likely to create an erroneous impression regarding its character, quality, value, quantity, composition, merit, safety or origin or the method of its manufacture or preparation.

While certain amendments came into effect immediately (i.e., those specifications relating to food and synthetic colours), the new rules imposed a five-year transition period, with the deadline to comply occurring later this year on Dec. 14, 2021. As of this date, food products must be labelled in accordance with the requirements, which include changes regarding text size, font and colour, templates for Nutrition Facts tables, mandatory information in Nutrition Facts tables and the listing of ingredients. Penalties for non-compliance range broadly, from fines and imprisonment to seizure and storage of offending products.

## What did the CFIA provide (or not provide) updates on?

Mandatory compliance is coming, but enforcement details are minimal.

Until the end of the current period, the CFIA will continue to provide guidance on the interpretation of the new rules and its inspection activities will focus on availability and accuracy of mandatory information. From Dec. 15, 2021, to Dec. 14, 2022 (Compliance Phase I), the CFIA stated that the "CFIA's efforts will continue to be directed towards education and promoting compliance with the new requirements at all levels of trade." Tools and training provided by the CFIA will focus on education as opposed to compliance. In fact, the sole guidance offered on compliance is that "the CFIA may take action in cases of inaccurate, false or misleading labelling information." However, the scope and

severity of CFIA enforcement of the new rules remain open questions.

### **Compliance could come through alternate route**

The CFIA revealed that following Compliance Phase I, from Dec. 15, 2022, to Dec. 14, 2023, the CFIA will exercise its "enforcement discretion" where a party presents a "detailed plan" for meeting the new requirements as early as possible, and in any event no later than Dec. 14, 2023. In particular, the CFIA added that:

[a] "detailed plan" could be similar to a corrective action plan that regulated parties provide in response to a report of non-compliance ...

For reference, this example of a corrective action(s) record provides insight into what information and disclosure may be collected by the CFIA as part of an acceptable detailed plan.

Manufacturers, importers and others caught by the new rules should review their plans for implementation to prepare themselves for the upcoming transition period deadline of Dec. 14, 2021. Once the transition period has ended, the former regulations are no longer in effect and parties will be expected to comply unless they have worked with the CFIA to develop a detailed proposal outlining their strategy to be compliant by no later than Dec. 14, 2023. While it appears that the CFIA will not be strictly enforcing the new rules in all circumstances of non-compliance during the remaining periods of implementation, it may take action in cases of inaccurate, false or misleading information. Therefore, impacted parties are encouraged to familiarize themselves with the requirements and address concerns or seek clarity sooner rather than later.

How do these changes fit into CFIA's other ongoing initiatives?

### **Simulated meat and poultry guidelines**

The new requirements are part of an ongoing effort by the CFIA to address regulatory gaps and evolving areas in the food industry. A prominent example is the CFIA's forthcoming publication — expected later this fall — of final revised guidelines for simulated meat and poultry products, addressing a portion of the burgeoning plant-based foods sector.

Pending the revised guidelines, the CFIA has updated its simulated meat and poultry labelling guidance in describing these products as non-meat or poultry products "represented as having the physical and nutritive characteristics of meat or poultry." This is a notable expansion of the existing statutory description of simulated meat and poultry. Currently, non-meat or poultry products are defined only as those that have the appearance of meat or poultry products. In turn, this suggests that the CFIA may address both form and substance when distinguishing between authentic and simulated meat and poultry in the revised guidelines.

Expected changes in the revised guidelines include more clarity regarding the permitted uses of meat terminology such as "burger" or "sausage," differing requirements between simulated meat and poultry products and those which do not simulate meat or poultry (e.g. tofu burgers and soy patties), as well as compositional requirements and permitted uses of the term "flavour." Through their interim *What We Heard Report* published in July 2021, the CFIA indicated that, contrary to its initial stance, changes could be forthcoming to the *Food and Drug Regulations* regarding the statutory framework for simulated meat and poultry.

### **Product-specific labelling updates**

The CFIA continues to roll out related guidance on food labelling for specific products that are growing in popularity. For example, this includes the use of soy protein isolate or hydrolyzed soy protein added to meat products being permitted as a "filler," with compliance necessary as of Feb. 18, 2022.

### **Front of package labelling**

Another fall 2021 deliverable for the CFIA is introducing final regulations for front of package (FOP) labelling, which will generally mandate standard symbols on packaging for food products with certain

minimum levels of sodium, sugars or saturated fat.

## **Conclusion**

The CFIA's new labelling rules, taken together with the CFIA's publication of the final revised guidelines for simulated meat and poultry plus other labelling updates, means this regulatory area continues to be one to watch for interested parties at all stages of the food production and sale process.

*Julia Loney is a partner in the Calgary office of McMillan LLP, practising in the regulatory and environmental groups. She can be reached at [julia.loney@mcmillan.ca](mailto:julia.loney@mcmillan.ca) or 403-531-4717. Jacob Stucken is an associate in the Calgary office of McMillan LLP, practising in the business law and agricultural groups. He can be reached at [jacob.stucken@mcmillan.ca](mailto:jacob.stucken@mcmillan.ca) or 403-531-8731.*

*Photo credit / [monkeybusinessimages](https://www.monkeybusinessimages.com) [ISTOCKPHOTO.COM](https://www.istockphoto.com)*

*Interested in writing for us? To learn more about how you can add your voice to The Lawyer's Daily, contact Analysis Editor Richard Skinulis at [Richard.Skinulis@lexisnexis.ca](mailto:Richard.Skinulis@lexisnexis.ca) or call 437- 828-6772.*

---

© 2021, The Lawyer's Daily. All rights reserved.