

CHANGES ON THE MENU: CANADIAN FOOD INSPECTION AGENCY PUBLISHES CONSULTATION REPORT ON PROPOSED GUIDELINES FOR SIMULATED MEAT AND POULTRY PRODUCTS

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On July 9, 2021, the Canadian Food Inspection Agency (“**CFIA**”) published a [What We Heard Report](#) (the “**Report**”) summarizing input from the CFIA’s [public consultation](#) about amending the existing CFIA guidelines regarding simulated meat and poultry products (“**Current Guidelines**”).^[1] Prior to collecting feedback, the CFIA published revised guidelines (the “**Proposed Guidelines**”) ^[2] for consideration. 2,522 online surveys were completed from consumers, farmers, medical professionals and others, along with 22 letters, submitted mainly from industry and stakeholder groups, including those in the meat, poultry and plant-based food industries. The Report’s respondents often drew from first-hand knowledge, with 72% and 84% indicating they purchase simulated meat and poultry products and “other products”, respectively. This Bulletin discusses the Report’s high-level points noted by the CFIA and feedback received on each element of the Proposed Guidelines, as well as stipulated and anticipated next steps.

What is simulated meat and poultry?

The Proposed Guidelines split meat and poultry products into two existing categories and one new one, as follows:

1. meat and poultry products;
2. simulated meat and poultry products; and
3. other products which do not substitute for meat or poultry

Simulated meat products^[3] and simulated poultry products^[4] refer to items like plant-based burgers, which use ingredients to recreate the colour and marbling effects of a regular beef burger.

The new “other products” category refers to products consisting of plant-based proteins that are distinct alternatives to meat or simulated meat products, such as tofu burgers or soy patties. These products are not intended to substitute for meat or poultry products.

What are the objectives of the Proposed Guidelines?

As the CFIA explained:

[t]hese categories and [P]roposed [G]uidelines are intended to help consumers and industry differentiate between these categories, as well as to support compliance with requirements. For example, category 2 foods [simulated meat and poultry] have specific compositional and labelling requirements, whereas there are fewer such requirements associated with category 3 foods [“other products”].

It is important for consumers to understand the differences between the categories so they can make informed dietary choices. For industry, it is important for them to be able to position their products in one of the categories in order to adhere to rules for that category.

What were the CFIA’s key takeaways from consultation?

Terminology continues to be contentious. 66% of respondents favoured allowing plant-based foods to use meat terminology like “burger” or “sausage”, while others raised the spectre of animal-based meat terms as being misleading when used in the plant-based context. Conversely, 79% of respondents were comfortable identifying authentic meat or poultry products versus non-meat and poultry products.

Contrary to previous positions from the federal government, regulation of simulated meat and poultry may change after all. Some stakeholders pushed for reflecting the “understanding and expectations of plant-based foods” by revising the existing regulatory framework under the *Food and Drug Regulations* for simulated meat and poultry. This is noteworthy since the CFIA indicated pre-consultation that they had no intention of amending the Regulations, so it was anticipated that statutory requirements for simulated meat and poultry products would remain the same.

Distinct divisions between meat/poultry and plant-based foods has significant support. Both meat/poultry and plant-based industry groups indicated their desire for plant products to be considered separately, i.e. without comparison to meat and poultry products.

Suggested Changes in the Proposed Guidelines

For the simulated meat and poultry and other products categories, the Proposed Guidelines^[5] offer alterations regarding a product’s:

1. common name;
2. appearance;
3. composition;
4. “contains no meat”/“contains no poultry” declaration;
5. fortification;

6. nutrition labelling; and
7. advertising and representations

Each topic will be briefly explained below, before delving into feedback from the Report.

Common Name

When naming a simulated meat and poultry product such as “bacon bits”, the Current Guidelines require use of the term “simulated”^[6] (i.e. nutritionally equivalent and compositionally comparable^[7] to the regular product) and allow use of the term “flavoured” (i.e. recreating merely the flavour).

However, the Proposed Guidelines limit the term “flavoured” to common names^[8] for the “other products” category, so long as the common name is accurate and truthful. For example, “chicken flavoured veggie burger” is permissible. Naming methods may relate to either species of animal (e.g. beef, chicken) or cut of meat (e.g. sirloin, striploin) for simulated meat and poultry labels.

Strong debate developed over the framework for describing simulated meat and poultry. The meat and poultry industries firmly opposed allowing simulated meat and poultry products to be described by the cut of “meat”. Others felt that existing descriptions are insufficient for these products. The Report also noted that confusion arose between simulated and “other products” because of references to chicken or beef flavouring, but this might be mitigated when considered together with other information on the product label and packaging.

The Report emphasized expanding usage of the term “plant-based”, with respondents noting that the term is now used in (i) some meat products with additional vegetable material; (ii) products made entirely from plants; and (iii) non-meat products containing dairy or eggs. While “plant-based” is mentioned three times in the *Food and Drug Regulations*, it is not specifically defined, offering another opportunity for future clarifying amendments.

Similarly, 66% of respondents supported common descriptors like “burger”, “patty” and “jerky” continuing to be used for non-meat products, whereas other respondents raised concerns about this approach. In any case, the Report suggests that clear and accurate labelling and advertising will be required to avoid consumer confusion between authentic meat and poultry products and alternatives.

Appearance

In perhaps the most ambiguous change, the Proposed Guidelines would distinguish simulated meat and poultry as being those products “purposefully formulated to resemble a meat or poultry product”, e.g. by simulating bleeding. Meanwhile, products in the “other products” category would be those which “may have a colour or texture similar to that of a meat or poultry product...[but] have characteristically identifiable nonmeat

ingredients and are not aiming to be like a meat product”, e.g. a soy burger comprised of corns, seeds, entire lentils and so on.

The current definition of simulated meat and poultry as having the appearance of a meat or poultry product^[9] was flagged by participants as concerning, with most suggesting an expanded definition capturing the “overall representation of the product” would be appropriate. More guidance was also requested for distinguishing simulated meat and poultry from “other products”, given how they could both resemble meat and poultry under the Proposed Guidelines.

It remains to be seen whether the definitions of the Proposed Guidelines will be further refined to more precisely address this distinction.

Composition

Like simulated meat and poultry products currently, products in the “other products” category would be prohibited from containing meat, poultry or fish products,^[10] but could contain permitted food additives.^[11] However, these “other products” would not be required to meet the existing protein and fat content requirements for simulated meat and poultry.^[12]

Issues around flavouring – especially its derivation from animal products – prompted requests for clarification, including deeper analysis on whether plant-based foods flavoured to taste like meat or poultry should be classified as simulated meat and poultry or as “other products”.

Most people surveyed understood that plant-based foods means meat/poultry-free and acknowledged using nutrition information when determining a product’s composition. Nonetheless, many respondents were confused about the compositional requirements as applied in the Proposed Guidelines. A common example is erroneously thinking that such meat/poultry-free products prohibited dairy or eggs in the “other products” category.

Declaration that the product “contains no meat” or “contains no poultry”

The Proposed Guidelines would make it merely voluntary for “other products” to include a “contains no meat” or “contains no poultry” statement in close proximity and sufficient lettering on the label’s principal display panel (“PDP”).^[13] However, simulated meat and poultry would continue to have this requirement going forward.^[14]

Commenters disagreed with the “no meat” or “no poultry” declarations as being optional for products in the “other products” category, with some adding that statements such as “plant-based”, “vegan”, “vegetarian” or “clean meat” should also be addressed by CFIA guidance. Moreover, some commenters also worried about

confusion arising from mentions of meat or poultry flavouring on the PDP or as part of the common name.

Fortification

Products in the “other products” category would be specifically prohibited from being fortified with vitamins or amino acids, subject to limited exceptions where fortification is mandated.^[15] The CFIA notes that this prohibition is because these “other products” are not intended to be nutritionally equivalent to authentic meat or poultry products. In turn, there are no nutritional standards for “other products”. Fortification, however, would continue to be required for simulated meat and poultry products.^[16]

Generally, it appears that respondents would like the CFIA to re-evaluate the fortification guidelines for plant-based foods within the “other products” category. This would mean that the guidelines would allow for fortification of plant-based foods to make up for nutrients that cannot be obtained as easily through a solely plant-based diet. However, despite being within Health Canada’s rulemaking purview, the Report noted a desire for CFIA to permit optional fortification of products within the “other products” category.^[17] Another suggestion of respondents was limiting compulsory fortification to “plant-based foods that claim to be nutritionally comparable to a meat or poultry product”, whereas those not claiming to be comparable would be under no such fortification requirement.

Nutrition Labelling

Subject to certain existing exemptions,^[18] products within the “other products” category would “usually” be required to include a standard Nutrition Facts table showing the total and percentage daily value amounts.^[19]

While relatively few respondents (9%) utilize the Nutrition Facts table when distinguishing between the three categories, the suitability of comparative nutritional claims between authentic meat and poultry products and non-meat and poultry products remains contested. The Report links this issue to the larger societal and scientific debate over the comparative nutritional benefits of meat versus plant-based products.

Advertising and Representations

For simulated meat and poultry, naming the product as a “meat alternative” or “plant-based meat” would be permitted, along with labelling or advertising images relating to meat, animal source or type of poultry. The category of “other products” would be allowed to use terms like “plant-based” or “veggie” so long as the product is not marketed as being equal to (i.e. a substitute for) the authentic meat or poultry product .

Both meat/poultry and plant-based industry members were united in wanting to strengthen this section of the Proposed Guidelines, to protect against misleading advertising, consumer confusion and a lack of transparency. The Report noted misleading advertising or representations could cause misconceptions. As

examples, the CFIA cited (i) treatment and wellbeing of animals used for food production, (ii) environmental or sustainability considerations with respect to food products, and (iii) the comparative nutritional benefits issue noted above. A similar misleading marketing issue raised in the Report was where images or graphics depicting a certain type of animal or meat are utilized, despite the product being simulated meat or poultry.

What happens next?

The CFIA promises the publication of revised guidelines in Fall, 2021. In the meantime, the CFIA has advised that it will:

- Explain the differing appearance requirements between simulated meat and poultry and “other products”
- Address whether the new and revised product requirements warrant changes to the Food and Drug Regulations
- Clarify the composition requirements for “other products”, as well as when a common name for an “other product” may refer to animal flavouring (i.e. “chicken flavour”)
- Inspect the advertising and representation guidelines for areas of additional clarification

As mentioned above, Health Canada’s input on fortification and food labelling will also be forthcoming, possibly including revisions to the *Food and Drug Regulations*. The CFIA added that submissions were made requesting guidance on plant-based products simulating dairy, egg and fish products, which may result in similar consultation efforts in the future.

Conclusion

As Canada’s meat, poultry and plant-based food industries grow, and as more plant-based, simulated and other products become available, more clarity is needed for both producers and consumers. The CFIA has recognized this need and the above-listed action items will help to ensure that industry has more certainty in terms of labelling, advertising, fortification and composition requirements and that consumers can rely on consistent labelling and marketing practices for such products.

McMillan’s Regulatory Group will continue to monitor any proposed revisions to the Food and Drug Regulations and any other consultation processes. We remain willing and able to assist industry and interested parties with the implications of the Report and the forthcoming revised Guidelines. Please contact us if you have questions and we will be pleased to pro

[1][ps2id id='1' target=''] Canadian Food Inspection Agency, “Labelling requirements for meat and poultry products” Simulated meat and simulated poultry products” (last modified 4 June 2021), online: [here](#).

[2][ps2id id='2' target=''] CFIA, “Proposed guidelines for simulated meat and simulated poultry products” (last

modified 4 December 2020), online: [here](#).

[3][ps2id id='3' target=''] *Food and Drug Regulations*, CRC, c 870, s B.01.001(1) (“any food that does not contain any meat product, poultry product or fish product but that has the appearance of a meat product”) [*FDR*].

[4][ps2id id='4' target=''] *Ibid* (“any food that does not contain any poultry product, meat product or fish product but that has the appearance of a poultry product”).

[5][ps2id id='5' target=''] Labelling for non-prepackaged items was also covered in the Proposed Guidelines, but was not addressed in the Report.

[6][ps2id id='6' target=''] *FDR*, *supra* note 3, s B.01.100(1) (“[t]he common name of a simulated meat product or simulated poultry product shall be the common name of the meat product or poultry product that is simulated, modified by the word ‘simulated’”).

[7][ps2id id='7' target=''] For bacon bits, see *FDR*, *supra* note 3, s B.14.090.

[8][ps2id id='8' target=''] *FDR*, *supra* note 3, s B.01.100(1) (“with reference to a food, (a) the name of the food printed in boldface type, but not in italics, in a provision of these Regulations, (b) the name prescribed by any other regulation, or (c) if the name of the food is not so printed or prescribed, the name by which the food is generally known”).

[9][ps2id id='9' target=''] *FDR*, *supra* note 3, s B.01.001(1).

[10][ps2id id='10' target=''] *FDR*, *supra* note 3, s B.01.100(1) (definitions of “meat product”, “poultry product” and “fish product”).

[11][ps2id id='11' target=''] Health Canada, “List of Permitted Food Additives” (last modified 3 May 2017), online: [here](#).

[12][ps2id id='12' target=''] *FDR*, *supra* note 3, ss B.14.085–090, B.22.029.

[13][ps2id id='13' target=''] *FDR*, *supra* note 3, s B.01.100(4). See also ss B.01.001(1) (definition of “principal display panel”), B.01.006 (when the common name must be shown on the principal display panel).

[14][ps2id id='14' target=''] *FDR*, *supra* note 3, s B.01.100(4).

[15][ps2id id='15' target=''] CFIA, “Nutrient content claims: reference information: Foods to which vitamins, mineral nutrients and amino acids may or must be added [D.03.002, *FDR*]” (last modified 11 May 2018), online: [here](#).

[16][ps2id id='16' target=''] *FDR*, *supra* note 3, ss B.14.085–090, B.22.029, D.03.002(1); CFIA, “Nutrient content claims”, *supra* note 15.

[17][ps2id id='17' target=''] The Report notes that “Health Canada’s regulatory requirements for fortification were not within the scope of the consultation”.

[18][ps2id id='18' target=''] CFIA, “Exemptions” (last modified 28 May 2021), online: [here](#).

[19][ps2id id='19' target=''] *FDR*, *supra* note 3, s B.01.40.

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A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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