

HEALTH CANADA CONSULTATIONS ON THE PROHIBITION OF PARTIALLY HYDROGENATED OILS IN FOODS AND FRONT-OF-PACKAGE NUTRITION LABELLING

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In his November 2015 [mandate letter](#), Prime Minister Justin Trudeau tasked the Honourable Jane Philpott, Minister of Health with, among other things, introducing restrictions on the marketing of unhealthy food and beverages to children, creating tougher regulations toward the elimination of *trans* fats and the reduction of salt in processed foods, and improving food labels to provide more information on added sugars and artificial dyes in processed foods. This mandate forms part of a multi-year [Healthy Eating Strategy](#) outlining Health Canada's plan to achieve the commitments set out in the Minister of Health's mandate letter related to sodium, *trans* fats, sugars, artificial dyes, marketing to children, and the Nutrition North Program. Last week, Health Canada provided an overview of the [partially hydrogenated oils](#) and [front-of-package nutrition labelling](#) proposals as presented in the [Toward the Prohibition of Partially Hydrogenated Oils in the Canadian Food Supply](#) and [Toward Front-of-Package Nutrition Labels for Canadians Consultation Documents](#).

I. Partially Hydrogenated Oils Prohibition

As part of its Healthy Eating Strategy, Health Canada is seeking to amend the *Food and Drug Regulations* to prohibit the use of partially hydrogenated oils (PHOs) in foods. PHOs – fats and oils that have been hydrogenated, but not to complete or near complete saturation, with an iodine value greater than 4 – are the main source of industrially produced *trans* fat in foods sold in Canada. Prohibiting PHOs is an attempt to reduce *trans* fats in the food supply to the lowest level possible, and ideally, to less than 1% of total energy intake for most Canadians.

Health Canada's proposal aligns Canada with similar efforts undertaken around the world directed toward the elimination of PHOs in foods. For example, the U.S. Food and Drug Administration has issued a final determination that PHOs are no longer Generally Recognized as Safe in food and has given manufacturers a 2018 deadline for the reformulation of foods to remove PHOs [1], several European Union member states have specifically regulated the content of *trans* fats in foods, and the European Commission has concluded that setting a legal limit for industrially produced *trans* fat content is the most effective measure for reducing

intakes.^[2]

It is anticipated that a 12-month transition period will follow adoption of the PHO prohibition into regulations. As noted above, Health Canada is currently holding an online consultation on its proposed approach to PHOs, focussing on the following:

1. prohibiting the use of PHOs in foods;
2. the proposed definition for PHOs; and
3. the proposed transition period of 12-months following adoption into regulation of the prohibition.

II. Proposed FOP Nutrition Labels

Also as part of its Healthy Eating Strategy, Health Canada is proposing a front-of-package (FOP) nutrition labelling system that would require placement of a to be determined standardized symbol on the front of food packaging if a food is high in certain nutrients of public health concern, namely, sodium, saturated fat and sugars. While all foods would be subject to the criteria, only foods that exceed the specified levels would be required to display the applicable symbol(s).

(a) Thresholds for FOP Nutrition Labelling Symbols

Foods that contain 15% of the daily value for each nutrient (that is, 345mg of sodium, 15g of sugars and 3g of saturated fat) would be required to display the symbol. These thresholds are for single foods (foods intended solely for young children (1-4 years) would be subject to lower thresholds as specified in the FOP Consultation Document), and are viewed by Health Canada as consistent with the established threshold for food manufacturers to make nutrient content claims (for example, "high in calcium").

(b) Prepackaged Meals

Prepackaged meals and combination dishes^[3] are generally made up of two or more individual foods combined together. Given the larger proportion of nutrients to daily intake typically found in prepackaged meals, Health Canada is proposing that higher thresholds be applied – specifically, 30% of the daily values – for these foods:

1. "High in sodium": contain 690 milligrams or more per reference amount^[4] and per serving of stated size^[5];
2. "High in sugars": contain 30 grams or more per reference amount and per serving of stated size; and
3. "High in saturated fat"^[6]: contain 6 grams 30 grams or more total sugars per reference amount and per serving of stated size.

To help consumers identify products that could contribute to excess intakes, Health Canada proposes that

these foods apply the thresholds based on 50 grams (or 50 millilitres); however, certain types of foods will be exempted from the requirement to display a FOP nutrition symbol. Specifically, (i) foods that are consistent with Canadian dietary guidance (for example, fruits and vegetables, 2% milk, eggs, and healthy vegetable oils); (ii) foods that are currently exempt from displaying a Nutrition Facts table (NFt) (for example, one-bite confections, prepackaged individual portions of food and milk or cream in refillable glass containers); (iii) foods that are conditionally exempted (for example, foods made and sold in retail establishments, foods sold at roadside stands, farmers markets, and craft fairs, and raw, single-ingredient meat, poultry and fish); and (iv) foods for special dietary uses (for example, foods for formulated liquid diets, infant formula, and foods for use in a very low energy diet).

(c) Low in Sugars Claim

To encourage foods lower in sugars, Health has proposed the introduction of a new "low in sugars" claim. Criteria for using the claim would require the food to have no more than 5 grams of sugars:

1. per reference amount and per serving,
2. per 50 grams or 50 millilitres, if the reference amount is 30 grams or 30 millilitres or less, or
3. per 100 grams if the food is a prepackaged meal.

(d) "Lightly Sweetened" Claim

Health Canada is also proposing to introduce a new "lightly sweetened" claim. In order to bear the claim, a food would need to have at least 50% less sugars-based ingredients compared to those added to a similar reference food that is not "low in sugars". Foods required to display the "high in sugars" FOP symbol could also carry "no added sugars" and "unsweetened" claims under current conditions of use for these claims. However, to limit contradictory messages on foods, Health Canada has proposed changes to the conditions of use for the "no added sugars" and "unsweetened" claims by aligning the meaning of "added sugars" with the new definition of "sugars-based ingredients" and not permitting the claim on fruit juices that meet the threshold for "high in sugars".

(e) "Free of Sugars" Claim Changes

Under the current *Food and Drugs Regulations*, in order for a food to bear a "free of sugars" or equivalent claim, the food must contain less than 0.5 g of sugars per serving and per reference amount and must meet the prescribed "free of energy" conditions by containing less than 5 Calories per serving and reference amount. However, some foods containing high-intensity sweeteners cannot meet the conditions for use of a "free of sugars" or equivalent claim as the foods contain more than 5 Calories per serving. Health Canada is proposing to change the condition so that the food instead meets the conditions for "low in energy" rather than "free of

energy". A "low in energy" food will contain 40 Calories or less per serving and per reference amount.

(f) "Free of" Claims

Certain "free of" claims require that conditions be met beyond simply the absence of the nutrient that forms the basis of the claim. For example, foods labeled as free of *trans* fat must contain less than 0.2 g of *trans* fat per serving and reference amount, and the food must also meet the prescribed requirements to bear a "low in saturated fats" claim. The *Food and Drugs Regulations* permits quantitative statements on labels such that if the amount of *trans* fat is declared as 0 g in the NfT, this can be reproduced outside the NfT as "0 g *trans* fat per serving" even if the food does not meet the conditions for free of *trans* fats. Health Canada proposes that these types of potentially misleading claims would no longer be permissible.

(g) "Lean" Claims

Currently, many portion-controlled foods for weight maintenance are not eligible to use the term "lean" in English. However, Health Canada is proposing that foods represented for use in a weight maintenance diet now be permitted to carry a "lean" claim without meeting the regulated definition of "prepackaged meal".

(h) Alcohol Content Claims

While restrictions on the representation of the amount of alcohol in beverages containing less than 0.5% alcohol currently exist, Health Canada is proposing that beverages containing 0-0.5% alcohol be permitted to bear representations regarding the amount of alcohol therein. Thus, products such as non-alcoholic beers and wines would be permitted to be represented as "alcohol-free".

(i) Foods Intended Solely for Young Children (Ages 1-4 years) Claims

The *Food and Drug Regulations* contain a number of references to "food intended solely for children under two years of age related to claims."⁷ The nutrition labelling amendments proposed in 2015 changed the age range for young children; therefore, Health Canada is seeking to amend applicable sections of the Regulations to reflect the revised age range: i.e., "food intended solely for children under four years of age".

(j) FOP Labelling for Certain High-Intensity Sweeteners

Foods containing the high-intensity sweeteners aspartame, sucralose, acesulfame-potassium and neotame are currently subject to additional labelling requirements. Namely,

1. a declaration on the principal display panel (PDP);
2. a declaration of the content in mg per serving; and
3. for aspartame only, a statement to the effect that aspartame contains phenylalanine

Certain stakeholders have requested that the PDP declaration and the content in milligrams declaration for high-intensity sweeteners be eliminated for a variety of reasons, including that these sweeteners have an established history of safe use in Canada and to better align Canada's regulatory approach with that of other countries. Specifically, the United States, United Kingdom, European Union, Australia and New Zealand do not require a PDP declaration or content in milligrams declaration for any sweeteners. Therefore, for sucralose, acesulfame-potassium and neotame, Health Canada is proposing eliminating the requirements for the PDP declaration and for the declaration of content in milligrams per serving. For aspartame, Health Canada proposes retaining the requirement for the statement that aspartame contains phenylalanine but eliminating the requirements for the PDP and content in milligram declarations.

III. How to Participate

The online consultations regarding prohibition of partially hydrogenated vegetable oils and front-of-package labelling are accessible online at the following websites:

1. PHO consultation:

<http://healthycanadians.gc.ca/health-system-systeme-sante/consultations/hydrogenated-oils-huiles-hydrogenees/index-eng.php>; and

2. FOP labelling consultation:

<http://healthycanadians.gc.ca/health-system-systeme-sante/consultations/labels-nutrition-etiquetage/index-eng.php>.

Health Canada has requested that comments on the consultations be provided by January 13, 2017, and has indicated that further stakeholder consultations will be held in June 2017:

by Janine MacNeil

[1] Food and Drug Administration. (2015). [Final Determination Regarding Partially Hydrogenated Oils](#).

[2] European Commission. (2015). [Report from the Commission to the European Parliament and the Council regarding trans fats in foods and in the overall diet of the Union population](#).

[3] Prepackaged meals are defined in section B.01.001 of the *Food and Drug Regulations*. These thresholds would also apply to combination dishes, which are products in category N in the proposed Table of Reference Amounts for Food.

[4] Reference amounts represent the amounts of food typically eaten at one sitting per Schedule M of the current *Food and Drug Regulations*. In the revised regulations, this information will be found in the Table of Reference Amounts for Food.

[5] Serving of stated size is defined in the proposed changes to the *Food and Drug Regulations* (Section

B.01.002A): for multi-serving prepackaged products, serving of stated size will be based on the regulated reference amount as found in the Table of Reference Amounts of Food; for single-serving prepackaged products (i.e., the quantity of food in the package that can reasonably be consumed by one person at a single eating occasion, or if the package contains less than 200% of the reference amount of the food), the serving of stated size will be the quantity of food in the package.

[6] The high in saturated fat FOP labelling will not be applied to eggs and to foods meeting the standards prescribed in the *Food and Drug Regulations*: sections B.08.005; B.08.018; B.08.020; B.08.026; B.22.032-37.

[7] See, for example, sections B.01.502(g), B.01.503(2), B.01.601(1)(c).

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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