



Draft Guide to the Application of the Child Health Protection Act - Health Canada Consultation

Submission by the Convenience Industry Council of Canada

About the Convenience Industry Council of Canada

The Convenience Industry Council of Canada is a new association that brings together retailers, distributors and manufacturers that sell products in our channel. Our mission is to advance the interests of the convenience industry through effective advocacy and education. We are proud to represent an industry that contributes over \$22 billion in taxes, employs over a quarter of a million Canadians and brings convenience to communities from coast to coast. We reflect the communities we serve and offer opportunity to new Canadians.

Marketing to Children Guidance

CCIC supports recommendations made by other consumer groups to establish an independent review panel to support departmental officials in evidence evaluation. We support the idea of a forum for stakeholders – which should always include retailers - to make formal appeals to central agencies when they believe departments are not accurate in their analysis or are otherwise not fulfilling their regulatory obligations. We also support the recommendation to develop a more comprehensive cost benefit analysis for the entire Healthy Eating Strategy – including Front of Package labelling, Canada's Food Guide, Marketing to Kids and sodium reduction - that is balanced and evidence based.

Our association will await the publication of draft regulations and provide comment when they become available, but in the interim we have provided the following feedback on the guidance document.

Above all, our concern is that while manufacturers have had ample opportunity to provide input into the development of this guidance document, the extent to which front-end retailers will be impacted was unclear until the publication of this guidance. The guidance introduces what could be dramatic changes for convenience and corner stores, and the retail sector has only been provided with a very limited window to provide comment. Overall, there is a lack of clarity within industry and retailers on key issues including: the parameters of the in-store display components of the guidance, how the proposed guidance intersects with forthcoming front of pack labelling, and most importantly, how any forthcoming regulations would be enforced.

Challenges Regarding In-Store Display Restrictions

The most substantial change for retailers will be the introduction of regulations which govern point-of-sale/in-store advertising, and there is a lack of clarity over this section of the guidance. The in-store display section of the guidance is vague, and it is not clear to our Association that the small business lens (which regulations like these should be subject to) has been applied in this case. It would appear to us that this section was drafted with minimal input business operators and retailers, even though they will be significantly impacted by these changes.

The guidance refers to point of sale advertising as being near the checkout but also anywhere within the retail space. This is unclear. Do point of sale advertising restrictions apply to the entirety of the retail space? Further illumination on this point would be helpful for retailers. According to the guidance, our retailers qualify as mixed-settings, and many products sold in convenience and corner stores contain imagery on the packaging that could be deemed to be targeted at children.

One of the key challenges for retailers is how these provisions intersect with the forthcoming front of pack labelling restrictions, and how they govern the use of in-store displays/retail flyers/graphics etc, for products which may contain child-related imagery on the packaging and also meet the nutritional requirements for restriction. If a retailer creates a promotional display, and the cardboard display itself contains no imagery, yet the product on display contains imagery on its packaging that might be deemed to target children (and the product meets the nutritional standard for restriction), is this display in violation of the regulations? It is also unclear what constitutes a “display”, for example would shelving a product at the front end of an aisle in-store constitute a display? Do promotional store flyers which display images of products with child-related imagery and meet the nutritional standard for restriction also violate the regulations?

These are all questions which are left unanswered by the guidance document.

Enforcement of Regulations Remains Unclear

Additionally it is critically important for retailers to understand how these regulations will be enforced, and who owns the liability if they are found in violation of the rules. If a manufacturer ships an all-in-one product display to a retailer which would be in violation of the rules, if the retailer assembles the display and places it in store, who bears the responsibility? What about in circumstances, as detailed above where product packaging would be in violation but not the cut-out or display itself? It is also unclear how the regulations will be enforced. Will inspectors perform spot visits in retail locations, and if so, how will that be reconciled with the liability questions raised above? Or, will the point of enforcement come earlier in the supply chain at the manufacture/distribution point? In which case what recourse do front-end retailers have who have been shipped product and/or product displays which are in violation of the regulations?

Our members are the quintessential representation of small business: often operated by family units, many are owned by newcomers to Canada. At a minimum, we are hoping that the government will make the final regulations - and any subsequent guidance documents - available in a number of languages, in order to ensure that ESL business operators are able to fully understand and manage their compliance requirements.

Phasing In of Regulations

In order to allow sufficient time for retailers to clear product and have the time to make the necessary adjustments for compliance, we are also requesting that Health Canada implement a two-tiered phase-in period for these regulations, as was the case for plain pack regulations introduced for tobacco products. Manufacturers and retailers need ample time to comply with these regulations and an appropriate phase-in date should be negotiated directly with industry.

Recommendations

- 1) That Health Canada officials rebuild stakeholder confidence in the Cost-Benefit Analysis (CBA) process that informs regulatory proposals (specifically with respect to the CBA for the Healthy Eating Strategy) by introducing a regulatory advisory council that solicits industry feedback on proposals like Front of Pack labelling and Marketing to Kids regulations.**
- 2) That Health Canada update the guidance document to clearly answer the following questions:**
 - a. Where in the retail location do the in-store advertising rules apply?**
 - b. How does the regulation account for displays/flyers/advertising that contains products which contain child-related imagery on the packaging and meet the nutritional standards for restriction?**
 - c. What constitutes an “in-store display” according to the regulations?**
 - d. Who is liable for violations/sanctions of the regulations?**
 - e. How and at what point in the supply chain will the regulations be enforced?**
- 3) That Health Canada publish the final regulations in multiple languages in order to ensure that ESL retailers are able to meet their compliance obligations.**
- 4) That Health Canada officials introduce a two-tiered phase-in approach for regulations, which will allow retailers an additional window to clear out stock and product displays from manufacturers which may be in violation of the forthcoming regulations.**