CANADIAN HEALTH FOOD ASSOCIATION
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February 2, 2024

Bureau of Policy, Intergovernmental and International Affairs
Food Directorate
Health Products and Food Branch
Health Canada
Cc: Canadian Food Inspection Agency (CFIA)

Submitted via email: bpiia-bpaii@hc-sc.gc.ca
Cc: LRM_MLR_consultations@hc-sc.gc.ca
Subject: Part B Proposal_new IBR"

Re: Feedback on Proposed Regulations Amending Certain Regulations Concerning Food Additives and Compositional Standards, Microbiological Criteria and Methods of Analysis for Food

On behalf of the Canadian Health Food Association ("**CHFA**"), we are writing to provide comments on the consultation for the *proposed Regulations Amending Certain Regulations Concerning Food Additives and Compositional Standards, Microbiological Criteria and Methods of Analysis for Food.* CHFA appreciates the opportunity to provide feedback. As Canada's largest trade association dedicated to natural health, organic, and wellness products, CHFA is committed to representing our members and the industry on proposed regulatory changes that will directly influence their business operations. Our membership base consists of hundreds of businesses across Canada, including manufacturers, retailers, wholesalers, distributors and importers of food and natural health products. These businesses produce a variety of pre-packaged foods and would be affected by these proposed amendments.

Regulatory Modernization encourages growth and innovation within the food sector by becoming more agile, transparent, and responsive to new and emerging science, technology, market innovation and risk to health. Applying a modern and flexible approach to the regulatory framework, by utilizing instruments such as Incorporation by Reference (IbR) will both decrease existing regulatory burden, and attract more interest internationally, supporting diversity in the Canadian market and meeting the needs of Canada's consumers and industry. By modernizing the regulatory framework to embrace the practice of Incoporation by Reference(IbR), Canada will be poised to react and adapt more quickly to advancements in science and

technology, adopt cutting-edge innovations, advance Health Canada's public health goals, and Support the growth potential for Canadas food industry.

PROPOSED NEW DOCUMENTS

Overall, CHFA is aligned to removing the following text sections from the regulations and incorporating them by Reference:

- Food Compositional Standards
- Table of microbiological criteria for food
- Table of microbiological reference methods for food
- Canadian requirements for determining the equivalency of food microbiological methods of analysis
- Table of chemical, physical, and nutritional characteristics for food
- Determination of the protein rating using the Protein Digestibility Corrected Amino Acid Score (PDCAAS)
- Table of food additive specifications

While CHFA is aligned to improving the agility of the food regulations by transitioning the proposed information to documents IbR which holds the promise of alleviating administrative burdens associated with Regulatory Impact Analysis Statements (RIAS), Cabinet review, and publication in the Canada Gazette, it's essential to acknowledge and manage the inherent risks of deviating from the established regulatory structure. These risks necessitate the development of a robust process, including an effective consultative process, for the maintenance and updates to the IbRs on an ambulatory basis. Utilizing this mechanism should not negate the imperative to engage in meaningful consultations with affected stakeholders. It will be important to maintain a balance between the flexibility and agility offered by the Incorporation by Reference (IbR) mechanism and the requirement to allocate sufficient time for substantive consultations and transparent communication with impacted stakeholders. An effective consultation should align with the Treasury Boards Guidelines for Effective Regulatory Consultations, specifically:

- The responsible departments must make systematic efforts to ensure that interested and affected parties have the opportunity to take part in open, meaningful, and balanced consultations at all stages the development, implementation, evaluation, and review of the IBR of internal documents.
- There should be a two-way exchange in which stakeholders are given a meaningful opportunity to provide input and affect the outcome of a regulatory proposal such that stakeholders can assist in developing quality documents and mitigate implementation risks.
- A comment period of at least 75 days for documents with a potential impact on international trade is required, consistent with The Cabinet Directive on Streamlining Regulation.
- Special considerations must be involved in consulting with Indigenous groups. Responsible departments should work with First Nations, Inuit, and Métis communities and peoples; national, regional, and local Indigenous organizations; and Indigenous governments and assess how the IBR of internal documents affect Indigenous communities.
- Responsible department officials must recognize and understand the multiplicity of stakeholders, with their different levels of interest, points of view, and expectations concerning the nature and content of a proposed regulatory regime.
- The consultation process must be meaningful, open and balanced, transparent and accountable. Meaning:
    - From a meaningfulness perspective, officials conducting the consultations should be open to stakeholders' views and opinions and should take these into account in preparing the proposed IBR of internal documents. Further, the IBR of internal documents should be clearly communicated so that participants can provide meaningful input. There should be clarity regarding the purpose and objectives of the IBR.
    - From an openness and balance perspective, all stakeholders, whether directly or indirectly affected, should have an opportunity to contribute their views. There should be significant effort made to identify the "most affected stakeholders." Officials should ensure that an appropriate balance of views is represented in the consultation process.
    - From a transparency perspective: relationships between departments and stakeholders should be transparent. Responsible department officials should ensure transparency of the overall

consultation process, pertinent non-sensitive information, the decision-making process, and how stakeholder input will be used.

- From the accountability point of view, the departments should demonstrate accountability by documenting how the views of stakeholders were considered during the development of the regulations and informing stakeholders of how those views were used. Where stakeholder input could not be reflected in the proposed regulations, officials must be able to outline the reason(s) why. Accountability also involves ensuring that the consultations take place over a reasonable period of time, so that participants have sufficient time to submit their views. Guidelines suggest involving stakeholders in determining timelines as a way to build and secure a positive relationship as well as keeping participants informed of the schedule and, in particular, of when their input will be solicited. The consultation process should also include options for providing feedback as it is an important component of accountability.
- Consultation material, including contact names and numbers, should be distributed well in advance so that participants have time to familiarize themselves with the issue and the consultation process at hand.
- Officials conducting the consultations should have the skills required to support effective consultations and maintain ongoing, constructive, and professional relationships with stakeholders.

Given that this change proposes the implementation of internal documents that have the force of law without the oversight of the Minister or Treasury Board, there must be appropriate protections with respect to transparency and accountability to ensure that the appropriate time is taken to meaningfully consult with all affected stakeholders when the documents are changed. This means that there should be a clear outline of the term “consult” that aligns with the Guidelines for Effective Regulatory Consultations and leaves no room for interpretation of the various means of consulting. Given the removal of oversight inherent to Regulatory Impact Analysis Statements (RIAS), Cabinet reviews, and publications in the Canada Gazette which are not applicable to this IbR mechanism, the effective consultations should bear more weight and play a significant part in the consideration of the documents to be incorporated by reference.

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It is imperative to maintain government accountability and carefully assess long-term impacts on our Canadian food products, keeping in mind both the government's Healthy Eating Strategy, and potential health implications of rapid changes and additions these IbR documents.

We have no concerns with the specific minor amendments that have been proposed to bring consistency to the terminology use across various policy documents and align French and English text. Ongoing, it is imperative that a process be established to immediately and directly notify all affected stakeholders in the event of approval is granted for a request to change an IbR. To facilitate prompt updates and targeted engagement, CHFA suggests implementing a listserv notification where stakeholders can pre-select each SOI they would like to receive email notifications on. Furthermore, changes with potential impacts on product compliance should be accompanied by a reasonable 5-year transition allowance for affected companies, enabling them to manage inventory, contractual obligations, and relationships effectively.

In addition to direct notifications, maintaining a central database of standards with version history, updates, and application status is essential to facilitate ease of access and enable stakeholders to track changes effortlessly.

While IBR offers advantages, an over-reliance on IbR can lead to a complex web of cross-references, making it difficult for industry to navigate and comply with the regulations. This can increase administrative burdens and compliance costs. To mitigate this challenge, CHFA urges Health Canada and the CFIA to develop a comprehensive and user-friendly guide that maps the existing regulations to the new IBR structure, providing clear guidance on interpreting and complying with the incorporated documents. This guidance should also encourage stakeholders to subscribe to a listserv for notifications and provide information related to the modification request application process and accessing pertinent databases.

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In conclusion, to foster innovation and encourage growth within the food industry, Canada must address outdated standards and testing criteria that are holding back and unnecessarily burdening the food and beverage sector. It will be important to meet the needs and aspirations of Canada's consumers and industry stakeholders. By reducing the regulatory burden faced by Canadian food business and aligning more with international trading partners, the modernization of Canada's regulatory framework for food is contributing to efficient business practices and economic growth in the country.

Thank you for considering our feedback as part of your outreach on *Amending Certain Regulations Concerning Food Additives and Compositional Standards, Microbiological Criteria and Methods of Analysis for Food*. As a dedicated and forward-looking stakeholder, we are hopeful that our comments are given due consideration and stand ready to lend our expertise and support.

Sincerely,

Ashley Cornell
Directory of Regulatory Affairs and Policy
Canadian Health Food Association