



Dear Food Law Guy

Dear Food Law Guy:

I am adding a probiotic enzyme to a food product that I manufacture. Am I regulated by the food laws enforced by the Canadian Food Inspection Agency (CFIA) or is it considered a natural health product (NHP) under the new National Health Product Regulations?

– *Confused in Calgary.*

Dear Confused:

The law here is very unclear. The government's stated position is that it will have to look at each "hybrid" product on a case by case basis, which is not very helpful considering marketing lead times and how completely different the two regimes are. NHPs can make health claims that are not allowed for foods. NHPs are not subject to the new detailed Nutrition Regulations or to the many other rules such as those contained in the *Processed Product Regulations*. At the same time these products can be sold in stores in the food section and look like ordinary foods or beverages. There is an urgent need for Health Canada and the CFIA to issue some clear directions before the current confusion gets even worse.

Dear Food Law Guy:

Ontario passed the important new *Food Safety and Quality Act* in 2001. Does this mean that it is the law of Ontario?

– *Curious in Cornwall, Ont.*

Dear Curious:

No, but it should be. Don't ask me to explain why it has taken over three years to draft some regulations for a regulatory regime that everyone agrees would enhance food safety in Ontario. This is recommendation number one in the recent *Review of Meat Inspection* by the Honourable Justice Haines.

Dear Food Law Guy:

I would like to import a fruit product that is already in 32 fl. oz. cans and label it here under Canadian labelling laws. Anything in particular I should know?

– *Joe in Mississauga, Ont.*

Dear Joe:

It is illegal to sell canned vegetables in 32 fl. oz. cans but 19, 28 or 48 fl. oz. would be okay so long as the cans meet the exact size specifications outlined in Table 1, Schedule III, *Processed Product Regulations*. Please don't ask me to explain why we have pages of detailed regulations on standard container sizes.

Dear Food Law Guy:

Sales of my low-carbohydrate products have increased consistently with all of this current interest in the Atkins diet. I read in the paper recently that Health Canada is planning to forbid me from continuing to provide this useful nutrition information to consumers. Tell me this can't be so.

– *Perplexed in Penticton, B.C.*

Dear Perplexed:

As of next December it will be illegal for you to provide this information on your label. However, you should know that smaller manufacturers will have a competitive advantage because they will be able to make low-carb claims until December of 2007. Health Canada allows consumers to be told about low fat, low sodium or low cholesterol but it doesn't trust Canadians to know that a product is low in carbohydrates. It justifies its position by saying that the American Institute of Medicine still recommends 100 grams of carbohydrates daily. Useful information such as "net carb," "digestible carb," or "available carbohydrate" will also be illegal. In fact, this information is so dangerous you won't even be able to use it in "brand names or trademarks." Low-carb claims have always been legal in Canada, and will continue to be legal in the rest of the world including the United States and the only effect will be to put Canadian manufacturers at a competitive disadvantage. Is this smart regulation?

Dear Food Law Guy:

I still can't find yellow margarine in my grocery store. Can you explain this?

– *Lost in Longueuil, Que.*

Dear Lost:

Don't get me started on this. It is still illegal to sell yellow margarine in Quebec but the matter is going to the Supreme Court of Canada soon. I have explained all of this in two earlier articles entitled *Margarine Mayhem* (Food in Canada, April 2004) and *The Legalization of Margarine* (Food in Canada, May 2004). These articles may also be found electronically at www.gowlings.com, go to Ronald Doering under Professionals.

Ronald L. Doering, B.A. LL.B., M.A., LL.D., practices food law in the Ottawa offices of Gowlings Lafleur Henderson LLP. He can be reached at Ronald.doering@gowlings.com