



Carb Crazy

Complications with overlapping regulations

The carb craze has been around for many years, but as of late it's hitting its zenith. The debate on the subject and its regulatory issues is still sizzling. For example, can a label or an advertisement claim a food is low in carbs, talk about glycemic index or identify "effective" or "net" carbohydrates?" The answer to many of these questions is no. The explanation is complicated by the fact that on December 12, 2002 new nutrient content claims regulations were introduced. Businesses have until Dec. 12, 2005, the end of the transition period (or, if they qualify, until Dec. 12 2007), when both the new and former regulations apply.

Under the new *Food and Drug Regulations* (FDR), it is clear that the claim "low carb" is not accommodated. Furthermore, the new FDR have repealed provisions that still exist in the former FDR for foods for special dietary use related to "carbohydrate-reduced." B.01.502 of the new FDR states that "No person shall, on the label of or in any advertisement for a food, make a representation, express or implied, that characterizes the energy value of the food or the amount of a nutrient contained in the food." The statement "representation, express or implied" has very broad applications. The regulations then go further on to accommodate specific nutrient content claims in that section or as elsewhere provided for in the regulations. Guess what? No where else in the regulations does it accommodate the claim "low in carbs." As per B.01.301 of the new FDR there are provisions that permit the quantification of nutrients if expressed, as in this case, in grams, or as a percentage of the daily value per serving of stated size. In B.24.003 the FDR states, "No person shall label, package, sell or advertise a food in a manner likely to create an impression that it is a food for special dietary use unless the food is." The regulations then go on to define what characteristics of the food would make it suitable to be so represented. Guess what? No where else does it accommodate a "low carb" criterion as a food for special dietary use. A food that is labelled as per the new FDR, indicative of the new Canadian Nutrition Facts table, may not on its label or in any ad there-

fore include any "representation, express or implied" that it is low in carbohydrates, nor may it give the "impression" that it is a food for special dietary use because of its carbohydrate content. The label or the ad may include the amount in grams or the percent daily value expressed per serving of stated size. That's about it.

Under the former FDR, nutrient content claims and foods for special dietary use have evolved from the mid-70s into a hodgepodge of affairs. Many of these were expressed in the FDR for example, "carbohydrate-reduced." But a "low-carbohydrate" claim claim was governed in the *Guide to Food Labelling and Advertising* (a publication by the Canadian Food Inspection Agency). A food so represented should have no more than 10 per cent available carbohydrate and no more than two grams available carbohydrate per serving. Foods labelled under the former FDR may continue to use the low-carb claim, if they qualify, until the end of the respective transition period.

Whether under the former or the new FDR, talk about the glycemic index or "net" or "effective" carbohydrates would not be accommodated. It is stated in the *Regulatory Impact Analysis Statement* of the January 1, 2003 *Canada Gazette II*, (SOR 2003-11) "In

the absence of an authoritative recommendation regarding the use of the glycemic index in choosing carbohydrate sources, it would be inappropriate to include the glycemic index in the Nutrition Facts table."

There is pressure in both the U.S. and Canada to make provisions for low-carbohydrate claims. In Canada we have had precedence for regulated foods represented as carbohydrate reduced, as well as foods claimed as low in carbohydrates. Although the rationale for such representations may be a bit antiquated, there is likely enough current solid scientific evidence to reinvent the carb claims in today's context.

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