

# Torys on Food and Drug Regulatory

F&DR 2011-9  
October 18, 2011

## Changes in the Regulation of Energy Drinks in Canada

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### Energy Drinks Reclassified as Foods

On October 6, 2011, Health Canada announced its decision to begin regulating most energy drinks as foods. This decision, which followed a comprehensive review of the classification of these products, means that most energy drinks will cease to be regulated as natural health products (NHPs) under the *Natural Health Products Regulations*, and will be subject to the *Food and Drug Regulations*, as they apply to foods.<sup>1</sup> One significant consequence of this regulatory change is that energy drinks will be subject to the nutrition, ingredient and allergen labelling requirements applicable to all foods.

### Proposed Requirements for Energy Drinks

In addition, Health Canada proposes to implement the following requirements specifically for energy drinks.

**Labelling requirements.** Labels will be required to

- indicate the total amount of caffeine from all sources in mg per container or serving size;
- include a statement identifying the product as a “high source of caffeine,” as well as the statement “do not mix with alcohol”;
- state that the product is “not recommended for children, pregnant/breastfeeding women, individuals sensitive to caffeine.”

**Composition requirements.** Caffeine content will be subject to a maximum limit of 100 mg of caffeine per 250 ml, with an absolute maximum of 180 mg for any single serve product.<sup>2</sup> The types and levels of vitamins and minerals that can be added to the products will also be limited.

**Consumption incident reporting.** Manufacturers will be required to collect data on any consumption incidents associated with their products that are received through

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<sup>1</sup> Since many Canadian consumers tend to think of energy drinks as beverages, and not as health products, the proposed changes attempt to align consumer perceptions with actual regulatory protections. For energy shots, however, which are manufactured in dosage forms allowing them to be distinguished from foods, Health Canada has stated that the NHP classification will continue to apply.

<sup>2</sup> Single serve containers are any containers that cannot be resealed such as a can or any resealable container that is 591 ml or less.

consumer complaints. These data will need to be reported to Health Canada every six months.

**Prohibition of premixed alcoholic beverages with caffeinated energy drinks.** The use of caffeinated energy drink beverages as an ingredient in premixed alcoholic beverages will be prohibited.

### **No Point-of-Sale or Age Restrictions**

Health Canada does not currently propose to impose any point-of-sale restrictions on energy drinks that would require these products to be sold in pharmacies and under the supervision of pharmacists.<sup>3</sup> According to Health Canada, point-of-sale decisions reside with the provinces and will therefore not be affected by the federal government's proposed changes. Nor is Health Canada proposing to prohibit sales of energy drinks to children or adolescents under the age of 18 years.

### **Transitional Arrangements**

Because the reclassification of energy drinks from NHPs to foods may result in products not complying with the *Food and Drug Regulations*, Health Canada has indicated that Temporary Marketing Authorizations (TMA) may be available to manufacturers and retailers of energy drinks. A TMA authorizes the sale of a food for a limited time, within a designated geographical area,<sup>4</sup> if a food that is not compliant with the *Food and Drug Regulations* can be proved not to be detrimental to the health of the consumer. A TMA might be required, for example, for an energy drink containing an ingredient that is permissible in an NHP, but not authorized as an additive in a food.

### **Timing**

Health Canada is seeking comments on the proposed changes up to November 15, 2011. Further information can be found [here](#). In the meantime, Health Canada will begin reviewing energy drinks and their eligibility to meet the new food requirements as of November 1, 2011. Health Canada plans to give industry 18 to 24 months to transition to any new requirements. **TI**

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<sup>3</sup> An expert advisory committee to Health Canada had recommended that the sale of energy drinks be limited to pharmacies. For further information, please see [here](#).

<sup>4</sup> Since energy drinks are sold nationally, it is presumed that the geographical area will include the entire country.