

Commentary on

***Tobacco Products Labelling
Regulations (Cigarettes
and Little Cigars)***

2 May 2011



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SUMMARY RESPONSE

This paper is the response of Physicians for a Smoke-Free Canada to the proposed Tobacco Products Labelling Regulations (Cigarettes and Little Cigars) (TPLR-CLC) which were gazetted on February 19, 2011.

- We strongly support the proposed regulations, and congratulate Health Canada for the thoughtful research behind this proposal.
- We agree with Health Canada that the proposed new labelling regulations will build on past achievements and ‘embark on a new chapter in health-related tobacco labelling.
- We agree with the department’s assessment that the new labels are more memorable, noticeable and engaging.
- We agree that the current warnings have reached their maximum potential (we suggest their maximum potential was reached about a decade ago).
- We believe that the use of testimonials and motivational true stories will enhance the impact of the labels.
- We agree with the benefit of providing a portfolio of diverse messages, themes and tones.
- We applaud the coordinated approach between federal and provincial governments in the provision of and promotion of a pan-Canadian toll-free quitline number and cessation web portal.
- We agree with the decision to stagger the development of warning messages and to continue to develop new warnings as the proposed ones are being implemented.
- We do not support the exclusion of cigarette-type tobacco products from these regulations (i.e. kreteks, tobacco sticks, cigarette tobacco, etc).

We recommend:

- **That priority be given to implementing these labelling requirements as quickly as possible**
- **That the proposed regulation apply to all smoked tobacco products and that alternatives to the word ‘cigarette’ be allowed on other forms of smoked tobacco. If additional time is required under WTO/TBT requirements, the implementation date for those products could be extended. We suggest that the proposal be revised into the Tobacco Products Labelling Regulations (Smoked tobacco products).**
- **That priority be given to developing appropriate and effective new labelling for non-smoked tobacco products**
- **That sufficient resources are provided to allow Health Canada to strengthen the impact of the labelling requirements with complementary packaging reforms, including development of new exterior and interior messages, standardized packaging, plain packaging, warnings on tobacco products, etc.**
- **That a timetable be established and progress towards this timeline reported for the development of new packaging regulations, so as to ensure transparency around any future delays, should they occur.**
- **That a minimum size for warning labels be established.**

DELAYS IN IMPLEMENTATION COST LIVES.

The economic evaluation conducted as part of the regulatory RIAS estimated that the labelling reforms would result in 1,720 to 5,240 new quitters in the first year of implementation. The economic benefit, in terms of disease-related costs were estimated in year 1 at \$15 million to \$45 million, and the benefit of prolonged life for those who quit in that year was estimated at \$730 million to \$2.2 billion. Impact of subsequent years is marginally less than the first year.¹

Our understanding is that these labelling reforms were first scheduled for 2008, and subsequently rescheduled for implementation in 2011. The delay of implementation based on the economic analysis provided in the RIAS has already resulted in a loss of health and life valued by Canadians between \$200 million to \$6 billion that could have been avoided if these regulations had been introduced at the originally scheduled date..

THE REGULATIONS ARE NECESSARY BUT NOT SUFFICIENT TO MEET THE FCTS GOALS.

We do not agree with the department's view that: *The proposed option is proportional to the degree and type of risk posed by tobacco.*²

Although the proposed labelling reforms will result in fewer smokers, the reduction will not, by itself, be enough to achieve a reduction to 12% in the near future. (Health Canada's goal for 2011 was 12%, a new timeframe for that goal has not yet been set). The predicted impact on demand is less than 1% over a 10 year period.

Nor are the proposed labelling requirements sufficient to meet the standards expressed by the Minister of Health on March 25th for the renewed federal tobacco control strategy.

On March 25, 2011, the Minister of Health told the House of Commons that:

*The Government of Canada is committed to developing innovative approaches that effectively reduce smoking uptake among youth and help Canadian smokers to quit smoking. Health Canada will continue to seek innovative approaches to tobacco control and implement the necessary measures to reduce smoking rates and protect the health of Canadians.*³

On the same day, the Minister as quoted in a press release:

"Health Canada is currently examining ways to ensure Canada remains a world leader in tobacco control and that past gains are maintained."

The proposed labelling requirements are a marked improvement, and will include innovative elements (quitline information, powerful inner messages, revised toxic information). They do not, however, include other researched innovations which are currently available, such as plain and standardized packaging (mentioned above), or controls on product markings. They do not maintain Canada's leadership in tobacco control.

1 Industrial Economics Limited. Economic Evaluation of Health Canada's Proposal to Amend the Tobacco Product Information Regulations. Final Report | December 2009

2 Canada Gazette Part I, February 19, 2011, p. 540.

3 Hansard. March 25, 2011.

CANADA WILL STILL NOT BE IN COMPLIANCE WITH THE FCTC.

The TPLR(CLC) are not sufficiently broad in application to bring Canada into compliance with minimum FCTC requirements, nor are they sufficiently strong to bring Canada up to the benchmark's established by implementation guidelines (agreed to by Canada in treaty negotiations).

- Even after these regulations come into place, there will be tobacco products marketed in Canada on which no warning labels are applied, or on which the warning labels appear on only one package surface, or on which the warning label is less than 30% of the principal display space.
- Examples of tobacco products sold that are not in compliance with minimum FCTC obligations include single-sale cigars, pipe tobacco, kreteks.

NEW THEMES

We repeat our earlier recommendation that Health Canada adopt measures that would ensure a sufficiently frequent refreshment of health warning, and that a variety of messages be employed.⁴ We believe the diversity of the proposed sets of exterior messages, and the plans for continued warning development, is a significant advance in this direction.

Among the important themes that should be included in future rounds, in our view, is a health warning on breast cancer and active or passive smoking. We acknowledge the constructive approach taken in the RIAS:

Non-governmental organizations recommended that the Department of Health include a health warning on the links between smoking and breast cancer. While this recommendation was strongly

⁴ Physicians for a Smoke-Free Canada. Commentary on Building on Success: A Proposal for New Health-related Information on Tobacco Product Labels – A Consultation Paper of August 2004 from the Tobacco Control Programme of Health Canada.

“We find the proposal to develop a “bank” of 48 warnings particularly creative and a good way to deal with the problem of the long time and great difficulty involved in changing regulations.

This “bank” can be viewed as portfolio of mature public health assets, ready for circulation when needed. Like any investment portfolio, these assets should be developed to manage risks in a integrated and comprehensive way: “blue chip” warnings should be developed that will reliably inform core health concerns (i.e. lung cancer, heart disease, secondhand smoke); “high risk/high yield” warnings could be developed to communicate new information (premature aging, sports performance) and “venture capital” warnings could be developed to communicate in innovative ways or to the specific audiences mentioned above (low-literacy, sub-cultures). Like any manager of a balanced portfolio, Health Canada should not evaluate different types of warnings in identical manners: each would be expected to provide a different public health yield.

It does not make sense to confine the portfolio manager to “equal distribution” or changing “every two years.” Some warnings may be needed only for a short time to provide the expected return: others may be required to be displayed for a much longer period, or in greater proportion. Nor does it make sense to limit the portfolio manager to a finite number of investments: if 48 messages is enough, then it is a good number: but if 78 or 148 or any number between or higher is judged effective, then that should be the number that is chosen.

Proposed revision: Create some messages tailored for varied audiences such as adults with low literacy skills, youth, hard-core smokers and people thinking about quitting smoking by:

Developing a minimum of 48 warnings, displayed a number at a time, distributed appropriately among all packages, and changed no less frequently than every two years through rotation “

*considered, the Department is not recommending such a message at this time. The Department would consider including breast cancer as a topic in the future, based on current science at that time.*⁵

We look forward to more details on what form of scientific review will be put in place to allow for an assessment of the appropriateness of warnings on breast cancer or other health effects of smoking.

PLAIN AND STANDARDIZED PACKAGING

Evidence supports the introduction of plain packaging as a way to increase the impact of health warning labels. A cost benefit analysis conducted for the European Union concluded that the administrative costs of implementing plain packaging were the same as implementing 75% health warnings, but that the benefits were likely greater:

*The evidence presented on plain packaging indicates that plain or generic packaging is less attractive to consumers. It also enables warning labels to be more prominent and, as a result, to have a greater impact on both consumers' awareness of the health risks of tobacco smoking and on their attempts to quit smoking or to reduce their tobacco consumption. Given the evidence presented on the attractiveness of cigarette packs to consumers and the fact that these designs may detract from the health warnings present on packs, it appears that plain packaging would supplement the introduction of pictorial warnings and reinforce their effect.*⁶

In introducing draft legislation on plain packaging, the Australian government noted that

*Plain packaging would increase the salience of health warnings: research subjects show an improved ability to recall health warnings on plain packs*⁷

THE NEED TO INCLUDE ALL TOBACCO PRODUCTS

While it makes sense to have some specificity of warnings on products which are not alike, there is no reason to exclude categories of tobacco products from the proposed regulations.

- If the government permits the marketing of tobacco products which have more relaxed labelling requirements (such as smaller warnings or less memorable warnings, or less engaging warnings), there is a high likelihood that smokers will perceive that these products are less risky.
- If the regulations are implemented, as proposed, without applying to all products, tobacco companies will have an incentive to create products which are not captured under the more stringent regulations (as we saw with the development of Prime Time/Prime Time Plus and other cigars which were and are marketed to young people without any health warnings at all).
- There is no health rationale to provide an exemption for any tobacco product to 75% or larger health warnings. The health risks associated with the use of these products is not less than it is for cigarettes, and smokers of these products do not have a lower entitlement to or need for information, quitline support, etc.

5 Canada Gazette Part I, February 19, 2011, p. 544

6 Assessing the Impacts of Revising the Tobacco Products Directive Study to support a DG SANCO Impact Assessment Final report. Prepared for the European Commission Directorate-General for Health and Consumer Protection

7 Government of Australia. Consultation Paper. Tobacco Plain Packaging Bill 2011 Exposure Draft. 7 April 2011

- There is every reason to use the same warnings developed for cigarettes and little cigars and kreteks, These products are 'like products' to one another.

OTHER OPTIONS AVAILABLE TO GOVERNMENT

The RIAS identifies 4 options available to the government (Status Quo, public education and social marketing, renewed TPIR, new labelling regulation).

Other feasible options available to government were not identified. These include measures identified by us in previous consultations,⁸ as well as by other jurisdictions or researchers. Some of the options not identified in this proposal are discussed below.

LARGER WARNINGS

The regulation and RIAS do not provide any rationale for choosing 75% warnings over 90% or 100% warnings. To the contrary, the RIAS cites research conducted for Health Canada which found that more youth and adult smokers identified 100% warnings as effective than identified 75% warning size as effective.

We do not understand or agree with the department's view that there is a need to balance product –related information with health-related information, as explained in the RIAS:

While both studies showed that both the 90% and 100% size options had the greatest potential to increase the effectiveness of the health warnings compared to the 50% option, particularly in communicating the health risks of tobacco use, the Department of Health chose to retain 75%; this option was seen as offering a good balance between improving the effectiveness of the health

⁸ Physicians for a Smoke-Free Canada. Commentary on Building on Success: A Proposal for New Health-related Information on Tobacco Product Labels – A Consultation Paper of August 2004 from the Tobacco Control Programme of Health Canada.

Question 2. Additional proposals or considerations...

We are open to ideas that would help smokers and potential smokers understand the health hazards associated with tobacco use and see that quitting is both possible and has health benefits.

As part of a multi-media approach to health communication, we urge you to consider new ideas and new technologies for health warnings. These could include:

- *Warnings that are large, but of varying size, shape and colour. Using bright, attention-getting day-glow colours could also be considered.*

- *Audio warning on packages or cartons in the form of pressure-activated micro-chips are not beyond the realm of possibility and could be considered as supplementary information to some of the warnings printed on the packages.*

- *Including messages on other components of the package (foil wrap, the inside of the outer shell)*

- *Moving to standardized packaging of cigarettes, including a new package format that would help disentangle cigarettes from learned associations between the package and positive images of smoking. The government's authority under the Tobacco Act to prescribe the package size and shape could be clarified, the health impact of exercising that authority could be researched.*

- *Creating feed-back mechanisms for smokers (listing phone numbers where they can participate in electronic surveys, get more information, register for text-messages)*

warnings as a vehicle to communicate with Canadians, and providing users with product-related information relating to tobacco products.⁹

The RIAS reports that, in response to previous consultations, “

Non-governmental organizations recommended increasing the size of the health warnings from 50% to 75% of the display area of tobacco packages.

The RIAS does not report that at least one NGO (our own) recommended 100% health warnings or plain packaging.¹⁰

As we understand it, there is no minimum size mandated for the warnings. A package of small cigarettes would have a smaller warning than a package of large cigarettes. This is in stark contrast to the regulatory approach taken with respect to tax stamps, where an absolute size is required.

PERFORMANCE BASED REGULATIONS

The government should consider requiring tobacco companies to achieve the objectives of the Federal Tobacco Control Strategy, including by use of packaging and labelling reforms. We note that:

The Government of Canada is committed to creating a performance-based regulatory system that will protect and advance the public interest in the areas of health, safety and security, the quality of the environment, and the social and economic well-being of Canadians.¹¹

9 Canada Gazette Part I, February 19, 2011, p. 538

¹⁰ Physicians for a Smoke-Free Canada. Commentary on Building on Success: A Proposal for New Health-related Information on Tobacco Product Labels – A Consultation Paper of August 2004 from the Tobacco Control Programme of Health Canada.

“There is no reason to limit the size of the warnings to 50%. There is strong evidence that larger warnings are more effective, and that plain packaging (or 100% health warnings) may be the most effective.

Health Canada should optimize the size of the health warning to the public health impact within the constraints imposed on it. It should make those constraints publicly known. Given the increased openness and transparency of government (several cabinet documents having been made public in recent weeks, for example), safeguarding legal opinions from outside scrutiny is no longer appropriate or justified, in our view.

There is no justification for different rules for cigars, pipe tobacco, water pipe tobacco and other forms of tobacco products. If it is the opinion of Health Canada (within its strategy of harm reduction) that these products are less harmful, then it should say so openly: communicating that the products are less harmful by providing separate and lesser regulatory standards is not, in our view, intellectually honest or justified by scientific evidence.-

All the scientific evidence on size of warnings points in one direction – size matters – the bigger the better. We would, therefore, encourage Health Canada to increase the size of the warning to 60% to 100% of each of the two largest display panels on all tobacco products.”

11 Treasury Board of Canada. Regulatory Affairs. <http://www.tbs-sct.gc.ca/ri-qr/index-eng.asp>