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**Overview and summary of responses received
during the consultation on Health Canada's
Regulatory Proposal to Include
Warnings in Tobacco Advertisements**

**Tobacco Control Programme
Health Canada**

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Canada

Executive Summary

Between November 17 and December 20, 2004, Health Canada solicited comments on a consultation paper, "A Regulatory Proposal to Include Warnings in Tobacco Advertisements." During the consultation period, Health Canada received 18 responses from a variety of stakeholders representing Non-Governmental Organisations (NGOs), the tobacco industry, a business association, a media and an advertising company.

Health Canada's proposal outlined its intention to develop new regulations under section 33 of the *Tobacco Act*. The proposed regulations would require a health warning, or other appropriate message, to be displayed on advertisements for tobacco products or accessories that carry tobacco-related brand elements.

More than half of the respondents (61%) indicated either full or conditional support for developing health warning messages to be placed on tobacco advertisements. Almost all respondents included comments on ways the proposal could be improved. These comments fit into five categories: the definition of "advertising" including whether any advertising of tobacco products should be allowed; the wording of the health warning messages; the attributes of the messages (size, colour, images); the rotation of the messages, and further research and consultation required.

The first category of comments dealt with the definition of "advertising." Three respondents (17%) were unclear whether "advertising" included signage at point of sale. Five (28%) recommended expanding the definition to include advertising and promotions in a variety of media. Two respondents (11%) recommended banning all forms of tobacco advertising and promotion.

Most of the comments regarding the wording of the proposed health messages came from NGOs and the media and advertising companies. The most popular recommendation was to combine each health message with the address of the gosmokefree.ca website and/or a 1-800 number directing people to help for quitting smoking.

Comments on the proposed attributes of the health warnings were made exclusively by NGOs. These respondents felt the warnings should be made more prominent by increasing their size, making them picture-based, placing them at the top of the advertisement, and possibly using coloured text and backgrounds.

On the subject of message rotation, one NGO recommended that the regulations should specify which four messages are to be used and that their rotation be made mandatory. One industry representative recommended following the implementation and monitoring strategy used for the messages on tobacco product packaging.

Finally, respondents from each of the four sectors encouraged Health Canada to expand its consultations on this issue. In addition, two NGOs suggested more research be done before proceeding.

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1. Introduction

On November 17, 2004, Health Canada released a short consultation paper, "A Regulatory Proposal to Include Warnings in Tobacco Advertisements." This proposal outlined Health Canada's intention to develop new regulations under section 33 of the *Tobacco Act*. The proposed regulations would require a health warning, or other appropriate message, to be displayed on advertisements for tobacco products or accessories that carry tobacco-related brand elements.

In the consultation paper, Health Canada stated that its intention with the proposed regulations is to make sure Canadians, especially youth and adult non-smokers, are "provided with appropriate information when they see or read tobacco advertisements." If passed, the proposed regulations would also bring Canada into compliance with Article 13 of the WHO Framework Convention on Tobacco Control.

The following document provides an overview and summary of the comments received during the consultation period, November 17 to December 20, 2004.

2. Who wrote to us?

During the consultation period, 18 responses were received by Health Canada. Tables 1 and 2 provide a breakdown of the responses by stakeholder group and by geographic origin.

Table 1. Breakdown of the 18 respondents according to stakeholder group

Stakeholder group	
Non-Governmental Organisations (NGOs)	9
Industry	6
Business Associations	1
Media and Advertising Agencies	2

Table 2. Breakdown of the 18 respondents according to geographic origin

Geographic origin	
British Columbia	2
Ontario	8
Quebec	6
Newfoundland	1
Unidentified	1

3. What did they say?

In general, most of the respondents either agreed fully or conditionally with the proposal to include warnings in tobacco advertisements (11 out of 18, or 61%). Only two respondents indicated they were opposed to the proposal. A significant number of the respondents (5 out of 18, or 28%) did not clearly indicate support or opposition. Table 3 shows the breakdown of support or opposition by stakeholder group.

Table 3. Support for the proposal by stakeholder group

Stakeholder group	For	For (with conditions)	Against	Unclear
Non-Governmental Organisations (NGOs)	3	4	-	2
Industry	1	1	1	3
Business Associations	-	-	1	-
Media / Advertising agencies	-	2	-	-
<i>Total</i>	<i>4</i>	<i>7</i>	<i>2</i>	<i>5</i>

In addition to indicating their support or opposition to the proposal in general terms, most of the respondents commented on various aspects of the proposal. Their comments related to five main types of issues:

- The definition of “advertising” and whether it is permitted at all under the *Tobacco Act* and/or the Framework Convention on Tobacco Control (FCTC)
- The wording of the warning messages
- Other attributes of the warning messages (size, colour, images)
- The rotation of the warning messages
- The need for further consultation

The following sections provide summaries of the comments received, by category. The respondents have been consolidated into four general stakeholder groups. A complete list of respondents is found in Appendix 1.

Stakeholder groups

Category A: Non-Governmental Organisations (9 respondents)

Category B: Industry: Tobacco product manufacturers, retailers, distributors and other companies associated with the tobacco industry (6 respondents)

Category C: Business associations (1 respondent)

Category D: Media and advertising (2 respondents)

3.1 What constitutes “advertising”? Is it—should it be—permitted at all?

Health Canada, in its proposal, noted that advertising is restricted by the *Tobacco Act*. It provided the example that “information advertising and brand-preference advertising are allowed for tobacco products, but only in publications mailed to an adult who is identified by name, in publications with an adult readership of not less than 85% or in signs in places where young persons are not allowed by law. These rules also apply to advertising for accessories that carry a tobacco-related brand element.” The proposal also noted that tobacco advertising in Canada is minimal, as are tobacco advertising expenditures. The proposal did not give a complete description of what is considered advertising as this can be found in the *Tobacco Act*.

Ten of the 18 respondents (56%) commented on the definition of tobacco “advertising” and the restrictions imposed on it. Three respondents asked for clarification on what was meant by “advertising.” Two respondents indicated uncertainty about distinctions between “advertising” and retail signage. Five respondents indicated that the definition of advertising was too limited and should be expanded to include:

- TV, movies, and the Internet (1 respondent)
- Tobacco companies' annual reports (1 respondent)
- Industry magazines and websites (1 respondent)
- “Brand-stretching” (1 respondent)
- Price/availability and point-of-sale signage (4 respondents)

One of these respondents opined that all advertising should be restricted to print media with adult circulation and that only text-based advertisements should be allowed. Brand elements should either be kept as small as possible or eliminated completely.

Notwithstanding the above, two respondents indicated that they would like to see a complete ban on all forms of tobacco promotion as required, in their view, by the FCTC.

One respondent asked that specific exemptions be granted for information advertisements in tobacco industry trade magazines and at industry trade shows, as he was not aware that these exemptions are already in place. Likewise, clarification was sought from another respondent who was unclear whether product information sheets given to distributors and retailers were considered advertising.

Table 4 shows the distribution of the above recommendations by stakeholder group.

Table 4. Recommendations regarding the definition and permissibility of advertising

Recommendation	A	B	C	D
Clarify definition of advertising	1	2	-	-
Expand definition of advertising	4	-	-	1
Ban all tobacco advertising and promotions	1	-	-	1
Exempt industry trade magazines and trade shows from advertising restrictions	-	1	-	-

Category A: Non-Governmental Organisations (9 respondents)

Category B: Industry: Tobacco product manufacturers, retailers, distributors and other companies associated with the tobacco industry (6 respondents)

Category C: Business Associations (1 respondent)

Category D: Media and advertising (2 respondents)

3.2 Wording of the warning messages

In its proposal, Health Canada suggested wording for six different health messages that could be included in tobacco advertisements. Ten of the 18 respondents (56%) commented on these messages.

The first suggested message was "For help to stop smoking, visit www.gosmokefree.ca." Three respondents indicated that this message should be combined with every warning. Two of these respondents also requested that a 1-800 number be included with the website address. One additional respondent asked for the toll-free phone number, but did not indicate that the message should be combined with the health warnings. A fourth respondent made the more general comment that all the warning messages should combine two elements: "what tobacco does to you" and "how you can get help."

None of the respondents provided specific comments on the wording of the warnings: "Get help to stop smoking: consult your doctor or pharmacist" and "Tobacco smoke causes fatal lung disease."

Only one respondent commented on the warning: "Tobacco smoke hurts children." This respondent suggested strengthening the warning by changing it to: "Tobacco smoke seriously hurts children, causing ear infections and worsening asthma and allergies."

One respondent felt that the fifth warning, "Smoking during pregnancy harms your baby," should be changed to "Smoking during pregnancy harms your fetus." Another felt that the following text should be added to this warning: "See your nurse or doctor for help in quitting or call 1-800-xxx-xxxx."

Three respondents commented on the final warning, "Where there is smoke, there is hydrogen cyanide." All three indicated that the general public is unlikely to know what "hydrogen cyanide" is or what it does to the human body. Two of the respondents simply recommended eliminating the word "hydrogen" while the third suggested replacing the ingredient with one of: "benzene, a fatal poison," "carbon monoxide, a fatal poison," or "arsenic, a fatal poison."

One respondent commented that the French language translations of the English health warnings were weak. This respondent made a number of suggestions for the translations:

- "Tobacco smoke hurts children" would be better translated as "La fumée de tabac rend les enfants malades."
- "Get help to stop smoking: consult your doctor or pharmacist" would be better translated as "Faites-vous aider pour arrêter de fumer: consultez votre médecin ou votre pharmacien."
- "Where there is smoke, there is hydrogen cyanide" would be better translated as "Où il y a de la fumée de tabac, il y a du cyanure."

Finally, respondents made a number of suggestions for additional or alternative warnings. These included:

- Adding non-health related messages, such as a message about economic incentives for quitting smoking.

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- Creating distinct messages for tobacco products other than cigarettes.
- Developing messages that specifically target teenagers (related to addiction and mouth disease).
- Developing a message that indicates smokeless tobacco products are a “less harmful alternative to smoking.”
- Developing messages that talk about the lasting benefits of remaining a non-smoker, to encourage non-smokers and former smokers to remain non-smokers.
- Adding a message linking second-hand smoke and infant fatalities: “Cigarette smoking by parents is a leading cause of crib death (Sudden Infant Death Syndrome). Do not smoke with children of any age in the home.”
- Adding a message: “Tobacco smoke causes fatal heart disease.”

Table 5 shows the distribution of the above recommendations, by stakeholder group.

Table 5. Recommendations regarding the wording of health warning messages

Recommendation	A	B	C	D
Combine health messages with website address and 1-800 number	3	-	-	1
Strengthen message about cyanide by removing reference to “hydrogen”	2	-	-	1
Add message(s) about the economic incentives for quitting smoking	1	-	-	-
Create distinct messages for tobacco products other than cigarettes	1	1	-	-
Create messages about the lasting benefits of not smoking	-	-	-	1
Create messages that specifically target teenagers	1	-	-	-
Add message linking second-hand smoke in the home to Sudden Infant Death Syndrome	-	-	-	1
Add message that smoking leads to fatal lung disease	-	-	-	1
Strengthen French translation of warnings	1	-	-	-

Category A: Non-Governmental Organisations (9 respondents)

Category B: Industry: Tobacco product manufacturers, retailers, distributors and other companies associated with the tobacco industry (6 respondents)

Category C: Business Associations (1 respondent)

Category D: Media and advertising (2 respondents)

3.3 Attributes of the warning messages

Health Canada proposed that the health warnings included in tobacco advertisements would be required to be printed in black text on a white background, surrounded by a black border. The entire health warning would be required to occupy “no less than 20% of the total surface area of the advertisement.” Each warning would be attributed to Health Canada.

A few respondents (3 of 18, or 17%) wrote that they felt the health warnings should be more prominent than outlined in Health Canada's proposal. One respondent suggested the warnings should occupy at least 30% of the ad space. A second suggested 50% would be more appropriate and a third suggested 60%. These latter two also indicated that they thought the warnings should be required to be placed at the top of the advertisement and should be picture-based. In addition, one of these respondents asked that consideration be given to using colour text and backgrounds for the warnings. This respondent also indicated that the attribution of the message should be optional.

A fourth respondent requested clarification that the 20% coverage of the advertisement as proposed by Health Canada was a maximum size as well as a minimum.

Table 6 shows the distribution of the above recommendations, by stakeholder group.

Table 6. Recommendations regarding the attributes of warning messages

Recommendation	A	B	C	D
Increase size of health warnings	3	-	-	-
Limit the size of health warnings to 20% of the ad space	-	1	-	-
Make warnings picture-based	2	-	-	-
Place warnings at the top of the advertisement	2	-	-	-
Consider using colour text and background on warnings	1	-	-	-

Category A: Non-Governmental Organisations (9 respondents)

Category B: Industry: Tobacco product manufacturers, retailers, distributors and other companies associated with the tobacco industry (6 respondents)

Category C: Business Associations (1 respondent)

Category D: Media and advertising (2 respondents)

3.4 Rotation of the warning messages

Three respondents (or 17%) provided comments related to the rotation of the health warning messages. Health Canada proposed that “four warnings would have to be displayed on a rotating basis, i.e., one in each quarter of the year.” Respondents noted that:

- The regulations should specify which four messages of the six are required; the choice should not be left to advertisers (1 respondent)
- Message rotation should be mandatory (1 respondent)
- Implementation and rotation of the messages should be done in the same way as they are for messages on tobacco packaging (1 respondent)

Two respondents sought clarification on two different aspects of the message rotation. One asked whether four messages would be chosen from the six which would then be rotated over a period of a year or whether the six messages would be rotated over a period of 18 months, with four being used annually.

Table 7 shows the distribution of the above recommendations, by stakeholder group.

Table 7. Recommendations regarding the rotation of messages

Recommendation	A	B	C	D
Specify in the regulations which messages are to be used in the warnings	1	-	-	-
Rotation of the warnings should be mandatory	1	-	-	-
Follow the implementation and monitoring of message rotation used for the warnings on tobacco packages	-	1	-	-

Category A: Non-Governmental Organisations (9 respondents)

Category B: Industry: Tobacco product manufacturers, retailers, distributors and other companies associated with the tobacco industry (6 respondents)

Category C: Business Associations (1 respondent)

Category D: Media and advertising (2 respondents)

3.5 Further research and consultation

Eight of the 18 respondents (or 44%) indicated that the proposal needed to be strengthened and/or that Health Canada should engage in more research and consultations before moving forward. The following comments were put forward:

- The need for the warnings on advertisements needs to be put in the context of a comprehensive strategy.
- Health Canada should commission the development of, and consultation on, effective warnings for advertisements.
- Health Canada should enter into a contribution agreement with health charities to develop an education campaign.
- More research should be done on the effectiveness of similar campaigns in other jurisdictions.
- A workshop on tobacco control issues should be held which is designed to involve the private sector in meaningful consultations.
- The federal government should collaborate with the tobacco industry to identify those areas that deserve attention.
- More fulsome consultations, such as public hearings, should be held on issues related to warnings on tobacco product advertising.

One respondent asked to be invited to participate in departmental working groups and publicly sponsored workshops to develop tobacco control policy, as well as to be considered for membership in the Ministerial Advisory Council on Tobacco Control.

Two respondents raised the issue of a similar consultation process undertaken by Health Canada in 1999. One of the respondents simply said that he was pleased to see some follow-up to those consultations. The other respondent, however, specifically asked what had happened to the ideas presented during those consultations since, in her view, that proposal was stronger and more comprehensive than the current proposal. This respondent included copies of comments provided by her organization at that time.

One respondent indicated that the regulatory proposal was premature given the current litigation regarding the constitutionality of some aspects of the *Tobacco Act*.

Table 8 shows the distribution of the above recommendations, by stakeholder group.

Table 8. Recommendations for further research and consultation

Recommendation	A	B	C	D
Consult more on this issue	1	1	1	1
Conduct more research	2	-	-	-
Strengthen the proposal	2	-	-	-

Category A: Non-Governmental Organisations (9 respondents)

Category B: Industry: Tobacco product manufacturers, retailers, distributors and other companies associated with the tobacco industry (6 respondents)

Category C: Business Associations (1 respondent)

Category D: Media and advertising (2 respondents)

Appendix 1: List of Respondents

Non-Governmental Organisations (NGOs)

British Columbia Centre for Excellence for Women's Health
Canadian Cancer Society
Canadian Medical Association
The Lung Association
Health & Community Services Western Region
Non-Smokers' Rights Association
Physicians for a Smoke-Free Canada
Unité québécoise de recherche sur le tabagisme
University Health Network

Tobacco Industry and Affiliated Companies

Casa Cubana/Spike Marks Inc.
The Eddy Match Company
Imperial Tobacco Canada Limited
JTI-Macdonald Corp.
National Smokeless Tobacco Company, Limited
Rothmans, Benson & Hedges Inc.

Business Associations

Fédération des chambres de commerce du Québec

Media and Advertising Companies

GLOBALink News & Information
Foster Mead Advertising Ltd.