CONSULTATION ON DRAFT PROVISIONS IN THE FOOD SAFETY AND SECURITY BILL – FOOD MARKETING AND HEALTH PROMOTION

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Aim

The Ministry of Sustainability and the Environment (MSE) and the Singapore Food Agency (SFA) will be introducing the Food Safety and Security Bill (FSSB). The FSSB will consolidate food-related legislation from eight existing Acts and introduce new powers to strengthen our food safety and security regime, to:

i. Enhance the food safety regime to better protect the public.
ii. Facilitate joint responsibility between industry, consumers and the Government
iii. Strengthen resilience to food supply disruptions.

2. As unhealthy diets are a major risk factor for chronic diseases and food choices have an impact on health and nutrition, the FSSB will include provisions that regulate food for the purposes of health promotion, to be administered by the Ministry of Health (MOH). In line with the intention to promote health and to protect consumer food safety, the FSSB will also include provisions to ensure that companies (i) provide adequate and accurate information to help consumers make decisions about their food choices and (ii) prevent companies from engaging in misleading or deceptive conduct when supplying food.

3. As part of the series of consultations on the FSSB, the MSE, SFA and MOH are seeking feedback from the food industry, as well as interested parties, on draft provisions in the FSSB that concerns "Health Promotion" and the "Misleading or Deceptive Conduct and Other Marketing Offences". We welcome feedback on how we can work together to ensure a resilient supply of safe food for Singapore that also supports a healthy population.

Background

4. The Sale of Food Act (SOFA) requires food businesses to provide adequate and accurate information on food labels and advertisements for food and food contact articles, as well as prevents them from providing misleading information, to help consumers make informed decisions about their food choices. The labelling and

advertising requirements have also been extended to health promotion measures to help consumers make healthier food choices.

5. The above will be retained in the FSSB, under Part 9 "Health Promotion" and Part 10 "Misleading or Deceptive Conduct and Other Marketing Offences".

Food Marketing

6. Key provisions related to Food Marketing are in Part 10 (Misleading or Deceptive Conduct and Other Marketing Offences). Consumers will need accurate and adequate information from food businesses on the food they are buying to make informed food choices. Such information may be obtained from the labels on food/food packaging and from advertisements. FSSB will enable setting of standards and requirements for labels on food, and for advertisements about food and food contact articles, breach of which will be an offence. The details of those standards and requirements will be in subsidiary legislation, as is the case today. No prior approval is needed for advertisements or labels to be used.

7. The Bill will refine the definitions on what constitutes a label or an "advertisement", who may be considered "advertisers" and what would constitute publishing in Singapore. Individuals or companies will be taken to be advertising, if they publish, (i.e. communicate, distribute, make available or make known) content to the public. The refinements are intended to provide clarity on the scope of the law as the marketing landscape has evolved; there are more innovations in food labelling and digital and electronic advertising (e.g. social media marketing, search engine marketing) are now prevalent.

8. A summary of the refinements are as follows:

a. Advertisements

i. The new definition will expand to cover music and sounds, on top of texts and visuals (still or moving) to promote (a) the sale of food or (b) the brand of a food. Promotion of a company or individual that provides goods or services in the course of business would not be considered advertisement.

b. Advertisers

i. Persons who authorise the public communication of the advertisement will be considered advertisers with the responsibility to ensure that the advertisement conforms to the requirements in FSSB. The FSSB extends the definition of "advertisers" beyond food business proprietors and can apply to any person who pays for, commissions or authorises the advertisement's content or publication or receives consideration for placing or displaying the advertisement.

ii. Persons or parties who communicate the advertisement (other than as a private communication), or who receive consideration for the display, placement or location of the content will also be treated as advertisers, even if they do not have direct control over the content of the advertisements (e.g. ad space owners (including e-commerce platforms), influencers and DJs). However, persons whose business is to publish or arrange for the publication of advertisements, or whose business is delivering, transmitting or broadcasting information or material or making data available without control over content, would be excluded from immediate responsibility for publishing non-compliant advertisement unless they did so despite being told that the content is non-compliant.

iii. Only advertisers that are Singapore-linked will be liable for the advertising offences. These are individuals who publish (e.g. communicate or make available) the advertisement while in Singapore, and entities (like companies, societies and partnerships) who are registered or incorporated under any written law of Singapore, or a corporation established by a private Act.

c. Advertising medium

i. To protect and promote human health, the advertising offences apply to advertising in traditional media as well as new media, in the online and physical space. This includes (i) print and broadcast media such as TV, radio and newspapers, (ii) digital media encompassing social media and telecommunications services, (iii) out of home media such as billboards, bus and train advertisements and (iv) collateral given away to the public in the promotion of goods and services.

ii. Personal communications, such as the expression of personal opinion, personal preference by reacting or interacting with a social media post, and sharing or forwarding of materials without alteration, are excluded.

9. It will be made an offence to publish in Singapore any non-compliant advertisement about food or food contact articles. What would be non-compliant includes content that contravenes requirements of the advertising regulations or contains a false description of the food. The offence does not extend to any person outside Singapore publishing a non-compliant advertisement, even if the content is accessible to people physically present in Singapore.

10. The provisions are intended to ensure compliance with the regulations throughout the advertising process from conceptualisation to publication. A person may not be liable if the person is acting in the course of a business of delivering, transmitting or broadcasting information or material or making data available, and the nature of the business is such that persons undertaking it have no control over the nature or content of the information or material or data; such as an internet service provider. A person may also not be liable if the person is in the business of publishing or arranging for the publication of advertisements and the person has no financial interest in the subject of the advertisement. However, it will be an offence if any of these persons continue to publish the non-compliant advertisement after the person is informed by SFA or MOH of the non-compliant nature of the advertisement, or if the non-compliant nature is a widely known fact and the person ought reasonably to have known that the publishing in Singapore of the advertisement about the food or regulated food contact article was an offence.

Other Misleading or Deceptive Conduct

11. In addition to advertising, the FSSB will hold a food business accountable for engaging in misleading or deceptive conduct in relation to the supply of food, in falsely describing and mislabelling food, and in meat substitution during the slaughter of animals to produce meat or meat products or in meat processing. Engaging in any of these conduct would constitute an offence. This is in line with current requirements under the SOFA.

Falsely Describing Food

12. The FSSB defines more tightly what constitutes to "falsely describe" food. This is a more confined definition, viz. to be (a) inaccurately representing that the composition of a food conforms to applicable standards, (b) creating a false impression or misrepresenting the composition, effect, nature or origin of the food or (c) describing the food to conceal the fact that it is unsafe or unsuitable.

Mislabelling Food for Supply

13. Labels are defined to include any tag, brand, stamp, mark stencil, or written statement, any representation or design, or any descriptive manner that is attached or displayed in connection with the food product that serve as another channel to communicate information to the consumer about food products. Representations displayed in connection with, or accompanying, the food or anything on which the food is mounted for display will be a label. The digital material to which a QR code on a product's label links, is also defined to be a label, and is not an advertisement unless included as such by regulations of the Act.

14. The FSSB will require that food products are properly labelled, i.e. that they (a) do not contain information that is prohibited by relevant regulations, (b) do carry information as required by relevant regulations and (c) do not contain information that are inconsistent with relevant regulations. It will be an offence to mislabel a food product or fail to label a food product when required. The relevant regulations may relate to food safety or health promotion.

Overview of provisions related to Health Promotion

15. Key provisions related to Health Promotion are in Part 9 (Food and Health Promotion), administered by MOH.

16. Part 9 will empower MOH to make regulations to implement measures to promote better health of our population. These provisions will allow MOH to continue with the current requirements including Nutri-Grade labelling requirements, advertising prohibitions aimed at reducing sugar consumption as it is associated with increased risk of obesity and diabetes, and the ban on partially hydrogenated oils as an ingredient in all foods in Singapore which aims to reduce trans-fat consumption as it is associated with increased risk of cardiovascular diseases. There can be future measures under the new framework.

Scope of Regulations for Health Promotion

17. Consumption of certain food can contribute or might contribute (based on the available scientific evidence) to the occurrence of a non-communicable disease. These are target foods which the Bill defines, together with "non-communicable disease of public health interest".

18. The Bill will empower the Minister of Health to make Part 9 Regulations to promote the general public's health through better diet and nutrition, including regulations on the following:

a. on target foods for the purpose of preventing or reducing the occurrence of a non-communicable disease of public health interest in Singapore;
b. to help individuals make informed food choices affecting their health and well-being and that of their families; and
c. on the advertising of food or how it is promoted for sale, for the purpose of promoting public health.

19. To achieve these objectives, it is envisaged that Part 9 Regulations may regulate what food and the manner in which food is made available in Singapore. These may include

a. Prohibiting the import of target food or restricting the import of other foods;
b. Restricting or prohibiting the manner in which target foods are manufactured, prepared, distributed or supplied, or used in the manufacture or preparation of other foods; and
c. Restricting or prohibiting the manner in which the general public, or certain members of the general public, may acquire or obtain access to target food.

20. Part 9 Regulations may also regulate the labelling and advertising of food for health promotion reasons to guide consumers to make an informed choice and/or encourage industry to reformulate recipes to supply healthier choices. These include

a. Restricting or prohibiting the use of certain content;
b. Requiring warnings or dietary and nutritional information to be made available;
c. Prescribing the form of the content or warning required and how it is displayed; and

d. Restricting or prohibiting the medium or manner in which food is advertised, sponsored, or promoted for sale.

Offences and Enforcement Powers

21. The Bill will allow MOH to create offences for a contravention of Part 9 Regulations where these are not covered by Part 10.

22. The Bill will also allow an authorised enforcement officer to give a remedial notice requiring a person to remedy a contravention which can be remedied, if the officer reasonably believes that the person is contravening a provision, is or has committed an offence. It will be an offence if a person fails to comply with the remedial notice without a reasonable excuse.

Request for Comments

23. MSE, SFA and MOH invites feedback and comments on the proposed provisions relating to Food Marketing and Health Promotion. Explanatory notes as well as the draft provisions of Parts 9 and 10 are in **Annex I**.

24. All submissions should be clearly and concisely written. They should provide a reasoned explanation for any proposed revisions. Please submit your feedback at https://go.gov.sg/fssb-part9and10.

25. Submissions should reach MSE, SFA and MOH no later than 6 p.m., 6 September 2024.

26. We will not be able to address or acknowledge every feedback or comment received. However, the feedback or comments will be consolidated, and a summary will be published, together with MSE, SFA and MOH's responses, on the SFA website after the close of the consultation exercise. The summary will not disclose the identity of person(s) or organization(s) providing the feedback and comments.