

Direction de
la vérification,
de l'évaluation
et du contrôle

Audit,
Evaluation and
Control Branch

**Evaluation of
Radio and T.V. Food Advertising
Pre-clearance**



Consommation
et Corporations
Canada

Consumer and
Corporate Affairs
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Program Evaluation Division
Bureau of Policy Coordination
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EXECUTIVE SUMMARY

This study examines the feasibility and consequences of repealing the food advertising pre-clearance regulations under the Radio and Television Broadcasting regulations of the Broadcasting Act. It also examines the effectiveness and efficiency of the current CRTC/CCAC pre-clearance process to reduce costs to government and industry and to address the concerns raised by participants in the process.

The current CRTC/CCAC pre-clearance process is one way to ensure broadcast food ads comply with the Food and Drugs, the Consumer Packaging and Labelling and other relevant legislation, but it is not the only way. This study has found that it is feasible to revoke the food advertising pre-clearance regulations, and that alternative enforcement approaches are available to ensure compliance with the relevant legislation. This legislation would not be affected by revocation of the pre-clearance regulations.

Three alternative enforcement approaches, all of which can yield savings over the current process are discussed in this report:

1. It is feasible to revoke the pre-clearance regulations and continue government enforcement of the relevant legislation through post-broadcast activity. Broadcast

food ads would be treated in the same manner and under the same rules as all other advertisements. Actual cost savings would depend on the level of prosecution activity that results.

2. Upon revocation of the pre-clearance regulations, a mandatory, industry-based pre-clearance system could be instituted by adding a condition in broadcasters' operating licences. Compliance with the relevant regulations would be the prime concern, and some ads, now subject to pre-clearance could be exempted. The department would retain some level of post-broadcast enforcement of the relevant legislation, as it does with advertising of all non-food products.

3. The current Radio and T.V. Food Advertising pre-clearance process could be modified by reducing the scope, re-emphasising the focus on health matters, and improving the effectiveness and efficiency of the process through greater selectivity and consistency of pre-clearance. Advertisements from retailers, restaurants, some manufacturers/processors (specifically beer, wine and cider ads and other selected types of ads) and most of the radio ads would be exempted from the process. Exemption provisions already in place

would be extended to national as well as local levels of coverage and all types of ads. This would yield savings to industry and government by reducing the scope and coverage from the current regulatory system.

Legislation for non-precleared ads would be enforced through post-broadcast detection and prosecution activity in response to complaints.

These three options represent different levels of government intervention. While all three options can be made to work, on balance, options 2 and 3 would appear to have a higher level of acceptance by more affected parties. Sets of recommendations have been prepared within these options and the consequences of each option have been outlined. As all three options are feasible, the selection of an option is a political decision left to Ministers.

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1 Introduction

1.1 Purpose of the Report

This report assesses the feasibility and consequences of repealing the food advertising pre-clearance regulations under the Radio and Television Broadcasting regulations of the Broadcasting Act. In addition, it examines the effectiveness and efficiency of the current process to address the concerns raised by participants in the process.

Two options which would result in savings to both government and industry are presented as workable alternatives to simply revoking the regulations. Within the context of each policy option, a set of specific recommendations for implementation are made.

1.2 Background

In the course of interviews with representatives of approximately 70 food associations regarding the Consumer Products Branch's regulations affecting food products, questions regarding the efficiency and effectiveness of the CRTC/CCAC radio and T.V. food advertising pre-clearance process were raised. This process was first introduced in the 1930's for radio advertisements regarding food, drugs and cosmetics. The formal pre-clearance by CCAC of both

radio and T.V. food advertisements was introduced in 1967 through the revisions of the broadcasting regulations. Early in 1985, the Executive Committee of the CRTC expressed concerns regarding both the validity and the need for the continuation of the pre-approval requirement. A hearing being held in May, 1986 will consider a CRTC proposal to modify the Radio Broadcasting Regulations which would transfer the CRTC's responsibilities with respect to the pre-clearance of radio food ads to CCAC. A proposal for the withdrawal of the CRTC from the Beer, Wine and Cider Review Committee is also part of that public hearing.

As a result of the Ministerial Task Force on Program Review, Cabinet directed that the Minister of CCAC in close collaboration with the Minister of Communications and the CRTC report back on the feasibility and consequences of repealing food advertising pre-clearance regulations established under sections 11(2), 13(2) and 19(2) of the three Broadcasting Regulations (AM and FM Radio and Television).

Given the interdepartmental aspects of the process, officials from both the Department of Communications and the CRTC participated in the evaluation process as members of the Advisory Committee.

1.3 Program Description

As part of its mandate, the Consumer Products Branch of CCAC is responsible for approval of commercials for food prior to their broadcast on radio and television. CCAC reviewers pre-clear the text and storyboards of radio and TV advertisements for food, drink (soft drinks, beer, wine and cider) and restaurants.

The program therefore treats food ads to be broadcast as being different from all other ads, except for drugs and cosmetics which are pre-cleared by the Department of National Health and Welfare prior to broadcast. Non-food ads to be broadcast and all print ads (including food ads) are monitored for compliance with the relevant legislation and regulations, after they have been broadcast or published.

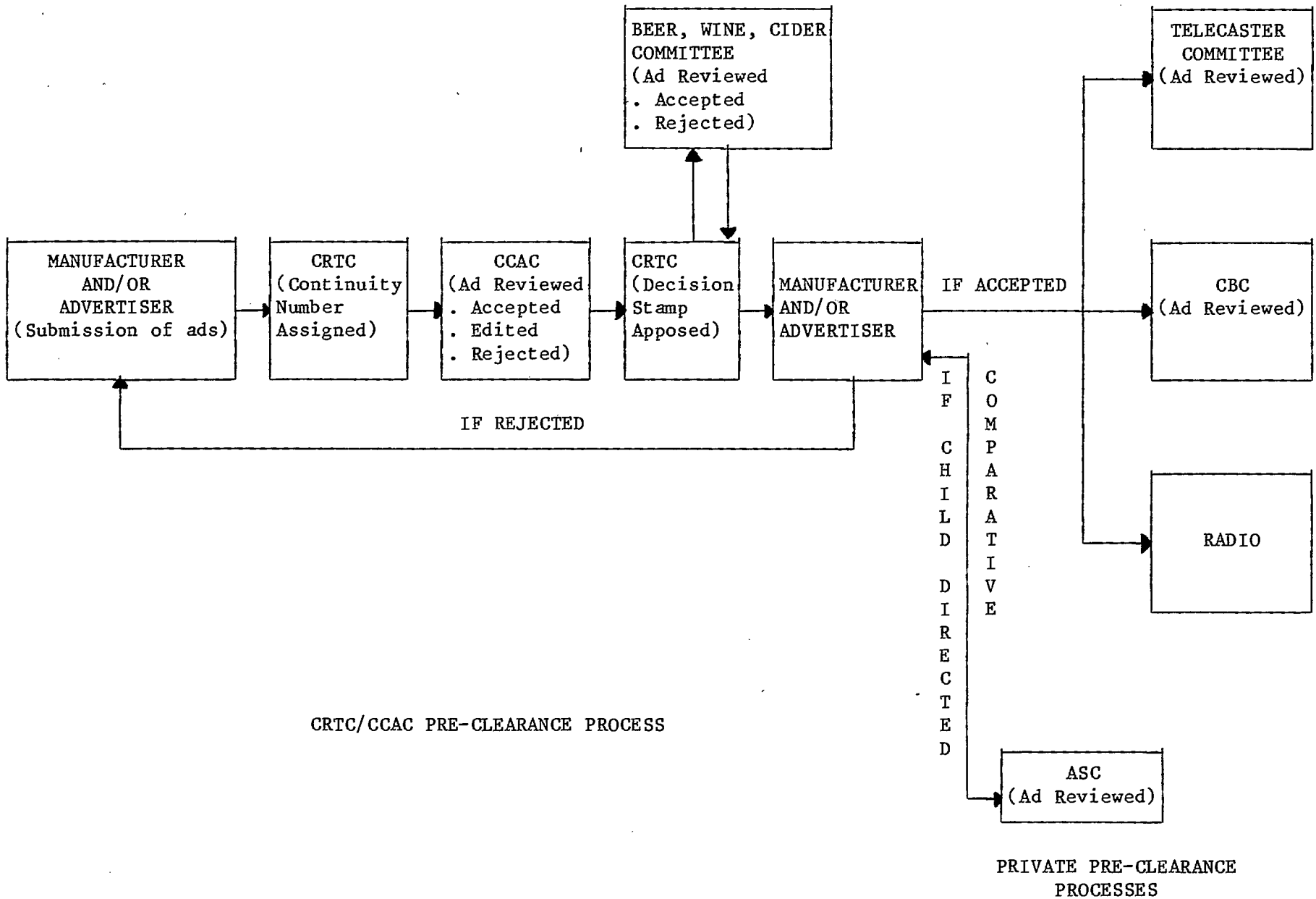
The pre-clearance requirements for food ads, established in the Broadcasting Regulations (AM and FM Radio and Television) specify that no station or network operator can broadcast any food advertisement unless it has been approved by CCAC and bears a CRTC registration number. Advertisements are examined by CCAC in relation to the false, misleading or deceptive provisions as found in section 5(1) of the Food and Drugs Act and also sections 5 and 7(1) of the Consumer Packaging and Labelling Act.

Under the Broadcasting Regulations, broadcasters are potentially liable if they air a food advertisement that has not been approved by CCAC and does not bear a CRTC approval number. Manufacturers and advertisers (or other "persons", including Broadcasters) are potentially liable under the Food and Drugs Act, the Consumer Packaging and Labelling Act, and the other relevant legislation for advertising in a manner that is false, misleading or deceptive.

Exhibit 1 outlines the steps followed by a commercial submitted for approval. The first step is submission of the proposed commercial to the CRTC which assigns to it a continuity number and delivers it to CCAC for the actual review process. CCAC reviewers then proceed to examine the advertisement and a decision of approval or rejection is rendered. Subsequently, the script is returned to the CRTC, where a decision stamp is applied. The CRTC then returns the commercial to the advertiser/manufacturer. In the case of ads for beer, wine, and cider, following the CCAC pre-clearance, CRTC requires a subsequent pre-clearance by the Beer, Wine and Cider Review Committee. Following these stages of pre-clearance by government, and prior to broadcast on television, there is one final private stage of pre-clearance for all ads -- a pre-clearance of the produced ads by the broadcasters.

Exhibit 1

Current CRTC/CCAC Radio and T.V. Food Advertisement and Other Pre-clearance Processes



The CBC has an in-house unit of some 20 reviewers which pre-clear ads prior to their airing while independent television uses the services of the Telecaster Committee to perform this function. The purpose of the broadcasters' review process is to ensure that advertisements are presented with integrity and good taste and are fair to competitors. For all ads which are child-directed and those comparative ads viewed as contentious, there is an additional level of pre-clearance -- in this case, an industry-based pre-clearance through the Advertising Standards Council (ASC). The ASC pre-clearance process in the case of child-directed ads is required as a condition of licence imposed on broadcasters. A detailed description of the CRTC/CCAC step-by-step process is provided in **Annex A**.

The appeals procedure established in the CRTC Circular letter #176 specifies that, in the case of formal disputes, appeals should be addressed to the Chairman of the CRTC. However, to date, such a procedure has not been used. Instead, disagreements are elevated through the bureaucracy for decision-making at the higher levels within CCAC. This circular letter also specifies particular conditions under which commercials do not have to be pre-cleared. A draft of this circular letter, presently being revised by the CRTC, is appended in **Annex B**.

1.4 Program Objectives

The current CCAC pre-clearance process addresses two concerns: protection of industry and consumers against economic fraud, and protection against health hazards.

In the 1961 Guide for Manufacturers and Advertisers, issued by the Food and Drug Directorate of the Department of Health and Welfare, the health issue was put first and the fraud issue was secondary.

The most recent Guide for Manufacturers and Advertisers, published by CCAC, expands considerably upon the 1961 Guide, and although the concern of economic fraud is placed foremost, the bulk of the Guide deals in considerable detail with health and related dietary issues along the lines of the 1961 Guide.

In summary, for the purpose of this study, the CRTC/CCAC pre-clearance program objectives can be summarized as follows:

- i) to protect consumers from false, misleading or deceptive advertisements for food;
- ii) to protect against erroneous impressions regarding the character, value, quantity, composition, merit or safety of advertised food products; and
- iii) to ensure compliance with relevant federal acts and regulations.

The pre-clearance process serves as an enforcement activity to ensure compliance with the Food and Drug Regulations and other relevant legislation. Protection of consumers against fraud, deception and health and safety matters is achieved by the regulations of the Food and Drugs and Consumer Packaging and Labelling legislation, not the pre-clearance process itself.

1.5 Program Scope¹

In 1985, 14,030 submissions for commercials were reviewed. Of these, 1,329 or 9.5% were rejected because they contained statements which were regarded as major infractions and required major adjustments, while 1,674 submissions or 11.9% were conditionally approved and required minor adjustments. The direct labour cost of the process for the Consumer Products Branch for that period was about 3.85 person-years or \$125,000.

It is worth noting that the total number of submissions overstate the total number of different advertisements. In effect, in some cases, advertisers are sending for pre-clearance slightly different versions of the same advertisement each of which is considered as one submission.

1. Source: Consumer Products Branch, CCAC

2. Methodologies

To evaluate the current CRTC/CCAC pre-clearance process, various study modules were undertaken. The nature of the process and the number of different parties affected by the process required the use of multiple lines of evidence.

The various study modules included an examination of the experience of the actual process over the past five years; a review of the consumer research literature dealing with the impact on consumers of radio and T.V. advertising; a nationally representative consumer survey to elicit consumers' perceptions of claims made on food products; a review of the American and British food advertising enforcement procedures; in-depth consultations with affected parties through personal industry interviews and a focus group session; and consultations with relevant government departments (CRTC, Communications, N.H.W.). Outside experts were also used to assist in the identification and assessment of potential alternatives/improvements to the current process.

The combination of evaluation modules allowed for a validation and cross-checking of evaluation findings. The Evaluation Advisory Committee which reviewed the module

reports along with program management was an additional review mechanism. The study modules are described in more detail in **Annex C**; the study module reports are bound together under separate cover.

3. Summary of Evaluation Findings

3.1 Rationale

The basis for pre-clearing food advertisements, rather than post-broadcast monitoring as in the case of advertising of non-food products ads, lies with health and safety considerations. It is apparent however that the review process has gone beyond this basic rationale.

Few rejections, about 1.1% of the submissions examined in the case study analysis, are based on health and safety reasons only. The existence of other review processes covering non-health and safety matters would suggest a need to realign the scope of the current process to focus primarily on health and safety considerations. However, in some instances, it may be difficult to clearly define "health and safety" considerations and distinguish them from the false, misleading and deceptive ones which are also part of the current pre-clearance process. Furthermore, it can be argued that most claims for food products are at least indirectly related to health and safety.

Another factor making it hard to pre-clear only for health and safety is that any mandatory pre-clearance system would effectively undercut all post-facto enforcement. Indeed, it is unlikely that a court would convict an advertiser for an offence that could or should have been detected through the pre-clearance process.

In effect then, from a practical and legal point of view, it would be very difficult to use two different enforcement approaches to ensure compliance with different aspects of the regulations.

The evaluation found that in many instances the review process has also gone beyond the objectives of the pre-clearance regulations -- that is, to protect against false, misleading and deceptive advertisements and erroneous impressions as regards the quality, composition, merit or safety of a food product -- by reviewing ads in an "affirmative action" fashion. In these cases, reviewers sometimes suggest new wording to modify the message of the advertisement. This practice has been criticized by many industry representatives surveyed and has been interpreted by some as costly over-regulation.

These findings suggest that the efficiency of the review process could be improved by focussing on compliance with the relevant regulations and by removing elements of subjectivity in rendering decisions. From a legal point of view, it has been argued that the extent of arbitrariness in decisions rendered would be grounds to invalidate the process if it was ever challenged in the courts.

3.2 Objectives Achievement

In broad terms, the process has met its objectives given the breadth of the coverage, but its efficiency in achieving these objectives is mitigated since reviewers have gone beyond their mandate for pre-clearing food ads. In addition, nearly two-thirds of Canadians are subject to U.S. commercials for food products sold in Canada which have not been pre-cleared to ensure compliance with the Canadian regulations.

3.3 Impact

The impact of potentially misleading broadcast food advertisements on consumers is partially mitigated by the availability of technology to avoid commercials and the high degree of miscomprehension associated with the details of any given broadcast communication. Also given that food is an "experience good", consumers will not buy on a repetitive basis unless satisfied after first trial.

Basic health and safety protection for consumers stems from the Food and Drugs and the Consumer Packaging and Labelling legislation and the inspection activities at all levels of trade.

The justification for different government enforcement approaches between broadcast food advertisements and printed ones -- the view that it would be difficult to effectively correct for a harmful effect from a broadcast advertisement -- is somewhat lessened nowadays due to the increasing availability of technology to avoid commercials.

3.4 Industry Support

Most food industry representatives and broadcasters support the concept of a mandatory pre-clearance process for food advertisements; the rationale stems from the industry's recognition of the value of a program to protect consumers, manufacturers and suppliers from false, misleading and deceptive ads. A wide diversity of views have been expressed, frequently and strongly by people in the industry, regarding the need for a pre-clearance process and, if there is a need, whether pre-clearance should be the government's or the industry's responsibility.

3.5 Industry Complaints

Complaints about the current CRTC/CCAC pre-clearance process focus upon the inconsistency of interpretation and application of the regulations, length of approval period,

appeals procedure, speed of service, organization and content of the Guide, and communication between companies and CCAC officials.

3.6 CRTC Involvement

CRTC's involvement in the process is strictly a bureaucratic exercise which adds about one and a half days to the turnaround time of the actual CCAC review process. The withdrawal of CRTC from the process and transfer of the CRTC's responsibilities to CCAC would improve the efficiency of the process and reduce the overall cost to government. A hearing is to be held in May, 1986 to consider a CRTC proposal to withdraw from the pre-clearance of radio ads and transfer the CRTC's responsibilities to CCAC. It is also expected that a similar proposal will be considered at a later date for Television advertisements.

3.7 Reduction in Scope Warranted

The general nature and content of retailer and restaurant commercials, the low incidence of health claims in these ads, the exemption provisions currently available which particularly apply to these ads, (which could readily be extended to some manufacturer/processor ads based on the

same principles), and the existence of the ASC's and broadcasters' prescreening processes, suggest that all retailer, all restaurant and some manufacturer processor ads should not be subject to the CRTC/CCAC pre-clearance process. Since retailers and restaurants advertise mainly on radio, the exemptions would also cover most radio ads.

Pre-clearance by CCAC of Beer, Wine and Cider advertisements is questionable given their nature and the low incidence of health claims and since these ads are also reviewed by the Beer, Wine and Cider Review Committee and each provincial liquor control board (except Newfoundland and Manitoba). In addition these advertisements are subject to the broadcasters' review process. It is reasonable to consider therefore that advertisements for beer, wine and cider could be exempted from the CCAC pre-clearance process.

The reduction in coverage would therefore reduce the costs to both government and industry.

3.8 Cost

CCAC pre-clearance direct labour cost per advertisement (\$8.90 en 1985) compares favourably with the costs of other pre-clearance processes, that is \$20.14 for the Drug

pre-clearance process, \$7.17 for the Telecaster Committee and \$12.00 for the British review process. The overall cost of \$64.00 for the process, including submission and processing costs, also compares favourably with the cost of the ASC child-directed ad review process of \$80.00 for a member and \$160.00 for a non-member.

Costs could then be reduced through a reduction in the scope and coverage of the process.

A more complete discussion of the study findings is presented in Annex G.

4. Options

4.1 Feasibility of Revoking Food Advertising Pre-clearance Regulations

The current CRTC/CCAC pre-clearance process is one way to ensure compliance with the consumer protection legislation now in place. It is not the only way. This study has found that it is feasible to revoke the food advertising pre-clearance regulations, and that alternative enforcement approaches are available to ensure compliance. In addition, it was found that it is also feasible to correct the weaknesses of the current system if revocation is not desired, and at the same time reduce costs to government and industry. In the event that government pre-clearance is retained, several problems should be addressed in order to improve its effectiveness and efficiency. These improvements will result in cost savings as well as addressing the concerns that have been raised.

4.2 Consequences of Revoking Food Advertising Pre-clearance Regulations

Revocation of the advertising pre-clearance regulations is feasible but could have some adverse effects. Simply revoking the regulations would mean that broadcast food ads would be treated the same way as all other broadcast, print and point-of-sale advertising. That is to say that

government would enforce the relevant legislation through deterrence and through investigations and prosecutions after the ads are broadcast or published. To the extent that decision-makers feel that the health and safety of Canadians could be affected by a portion of broadcast ads that may not be in full compliance with the law, they will want to retain some form of mandatory pre-clearance of all ads -- either by government or, as an alternative, by industry.

The extent to which the absence of mandatory pre-clearance of food ads would impact on the health and safety of Canadians is open to wide interpretation, particularly in view of the fact that the underlying legislation would still be in place. Taking a broad approach, it could be argued that exposure to a non-complying ad can affect health and safety by creating a misleading impression about the qualities of a given food product. However, looking at the question more narrowly, no one can be hurt or injured simply by being exposed to a non-complying ad. Even in those cases where exposure to the ad leads to actual purchase of the product, impacts are likely to be economic rather than health-related; for the vast majority of cases there would be no chance of actual harm or injury. In such circumstances, a key question is whether broadcast food ads have a greater impact on health and safety than all other ads.

This in turn permits a decision on whether they are so vital as to require approval **before** they are broadcast as opposed to the enforcement approach used for all other advertisements (detering violations, detecting and prosecuting violations **after** they have occurred).

Under simple revocation, the government could be criticized generally for no longer guaranteeing the complete compliance with important health- and safety-oriented legislation for each and every ad broadcast in Canada.

A decision to revoke the food advertising pre-clearance regulations could be interpreted by **consumer groups** as a reduction of the protection of consumers in an area perceived as health- and safety-related, even though the Food and Drugs and the Consumer Packaging and Labelling legislation would still be in place and industry compliance required.

While some food **manufacturers** and **advertisers** would welcome and support repeal of food advertising pre-clearance regulations, others would not favour it. The latter could interpret the government decision as a loss of protection against less honest competitors and immunity against lawsuits and prosecution. They may also view this alternative as potentially more costly than the current system, since

they may have to incur additional costs to ensure that their ads comply with the relevant legislation, and thus avoid potential litigation costs in the case of lawsuits and prosecutions. Indeed, based on the U.S. experience, it appears that the U.S. Federal Trade Commission's recent reduction of intervention with respect to the advertising in the food and drug industry has resulted in a substantial increase in the number of private suits for misleading and deceptive advertising and the related expenses incurred by the industry.

A majority of industry representatives interviewed during this study expressed support for some form of pre-clearance with 40% indicating their preference for the current government pre-clearance process. In the absence of the current government pre-clearance process, or a mandatory process of industry pre-clearance, there could still be some pressure on government to participate or assist in the establishment of a voluntary industry-based review process. Such a voluntary industry-based review process would be expected to come into being as a result of market forces in the absence of a mandatory pre-clearance requirement. However, such a voluntary system (or internal company controls) that could come into being would not likely be as effective in terms of coverage as a mandatory system, such as set out in the alternatives presented in this report.

Broadcasters would view the removal of the current government pre-clearance process as increasing their liability under the Food and Drugs and other relevant legislation and, therefore would not likely favour it.

The reduction of direct government cost due to the removal of the existing process would be limited and would depend on the legal costs of prosecuting violators. The transfer of enforcement responsibility from a pre-clearance to a post-broadcast monitoring could reduce resource requirements by about two person-years, since the post-facto enforcement would allow for selectivity in investigating suspicious ads only and would be undertaken mainly in reaction to complaints. If there is a high degree of compliance with the law, the prosecution costs would be low, but the opposite is also possible. Some limited resources would also continue to be devoted to the provision of advice on a "request" basis, even in the absence of the existing process.

In assessing alternative options, the study found that this option (revocation of the food advertising pre-clearance regulations) could be selected if decision-makers found these consequences tolerable; in addition, the study found that more cost-effective and efficient options than the current process merit consideration. The best two of

these options are discussed below. It would be expected that there would be less adverse reaction from industry and consumers if decision-makers were to select either of these two options rather than simply revoking the food advertising pre-clearance regulations.

4.3 Alternative, Workable Options

This study has identified two practical options which would result in some savings to both government and industry. These options are open to decision-makers as an alternative to simply revoking the food advertising pre-clearance regulations.

Option A - Revocation and Privatization: revocation of the food advertising pre-clearance regulations and transfer of responsibility for mandatory pre-clearance of certain food ads to an industry-based review body, with government retaining its post-broadcast role of detecting violations and prosecuting for non-compliance with the Food and Drugs, and the Consumer Packaging and Labelling legislation.

Option B - Improve the Current System: revision of the food advertising pre-clearance regulations to eliminate the CRTC's involvement and transfer CRTC's responsibilities to CCAC; and implementation of modifications to reduce the

scope and coverage of the process, improve the administration of the current process, and communications with industry.

A description of the main characteristics of these two options and a summary of their assessment are presented in Tables 1 and 2 respectively. **Annex H** presents a more detailed description and analysis of each option.

TABLE 1

MAIN CHARACTERISTICS OF OPTIONS

Under both options, the Food and Drugs and the Consumer Packaging and Labelling legislation remain unchanged; only the enforcement approach is being modified. Savings are expected to result to government and to industry under both options.

OPTION A
REVOCATION AND PRIVATIZATION

- o Industry-based review body is responsible for pre-clearance.
- o Pre-clearance by industry-based review body is mandatory by **condition of broadcast licence.**
- o Pre-clearance is on cost-recovery.
- o Review standards developed jointly by government and industry to focus on compliance with the relevant legislation and to take into account exemption provisions.
- o Approval period beyond one year.
- o **Conditions would be developed to exclude from the industry-based pre-clearance process, at both national and local levels of coverage, food ads with non-controversial and non health-related claims in addition to the current "No Claim Copy" ads; in effect excluding retailers, restaurants, beer, wine and cider, some manufacturers/producers, and most of radio ads.**

OPTION B
IMPROVE THE CURRENT SYSTEM

- o **CCAC** is responsible for pre-clearance.
- o Pre-clearance by CCAC is mandatory by **revision** of the Radio and T.V. Broadcasting regulations (removal of CRTC's involvement and transfer of CRTC's responsibilities to CCAC).
- o Both government and industry are supporting the pre-clearance costs.
- o Current review standards revised to re-emphasize compliance with the relevant legislation, and to take into account exemption provisions.
- o Extension of the approval period beyond one year.
- o **Extension of the conditions to exclude from the CCAC pre-clearance process, at both national and local levels of coverage, food ads with non-controversial and non health-related claims in addition to the current "No Claim Copy" ads; in effect excluding retailers, restaurants, beer, wine and cider, some manufacturers/producers, and most of radio ads.**

TABLE 1 (cont 'd)

MAIN CHARACTERISTICS OF OPTIONS

- | | |
|---|--|
| o Development of a Guide and wide distribution. | o Improvements to the Guide, integration of the proposed modifications to the process and wide distribution. |
| o Establishment of a precedence system for contentious words/sentences, rejected ads referenced to a specific standard. | o Establishment of a precedence system for contentious words/sentences; rejected ads referenced to a specific regulation; improved accessibility of reviewers. |
| o Formal appeals procedure would be developed. | o Formal appeals procedure is introduced. |
| o Government post-broadcast monitors food ads in response to complaints. | o Government post-broadcast monitors food ads that have not been pre-cleared in response to complaints. |
| o Broadcaster's review process would still exist, but ASC review process might be integrated into the new review body. | o Other private pre-clearance procedures, ASC and Broadcasters would still be in place. |

TABLE 2

ASSESSMENT OF OPTIONS

OPTION A
REVOCATION AND PRIVATIZATION

- o Preventative ability of the system is high due to the mandatory nature of the industry review process, the use of review standards covering the Food and Drugs, and the Consumer Packaging and Labelling legislation, and government post-broadcast monitoring.
- o Efficiency of the system would be similar to **Option B** and may even be higher if standards for the other private review processes (ASC, Broadcasters) are covered by the system. Level of objectivity and consistency of the decisions is expected to be high.
- o Industry cost per ad is expected to be greater than under **Option B** based on the current ASC fee structure for the pre-clearance of child-directed ads. Overall industry costs would likely be reduced due to the reduction in the volume of ads required to be pre-cleared.
- o Limited government savings, given that some resources would be required for the post-broadcast monitoring of food ads and that judicial costs would be incurred in the case of prosecutions.

OPTION B
IMPROVE THE CURRENT SYSTEM

- o Preventative ability of the system is high, given that it is mandatory, and that non-pre-cleared food ads would be post-broadcast monitored by government.
- o Modifications to the scope, coverage and administration of the current process would improve its efficiency, enhance the objectivity and consistency of the decisions and reduce the turnaround time.
- o Total costs to the industry would decrease (compared to current process) due to the reduced volume of ads required to be pre-cleared.
- o Cost would be reduced for CCAC as regards pre-clearance since fewer ads would be pre-cleared; direct CRTC cost would be reduced, given the withdrawal of the CRTC involvement.

TABLE 2 (cont 'd)

ASSESSMENT OF OPTIONS

- o Consumers may express some reservations, food manufacturers/producers would favour this option, and broadcasters would see it as increasing their liability.
- o Positive reaction from all affected parties (consumers, industry, broadcasters) is expected.
- o Formal appeals procedure and recourse to courts to judge non-compliance and impose penalties in the case of potentially fraudulent, misleading and deceptive ads will enhance the perceived fairness of the process.
- o Formal appeals procedure and recourse to courts to judge non-compliance and impose penalties in the case of potentially fraudulent, misleading and deceptive ads will enhance the perceived fairness of the process.

As the tables show, these options are conceptually very similar. The main difference between the two options is with the level of government involvement. In **Option A**, the pre-broadcast review activity is privatized with the pre-clearance process transferred to an industry-based body. In **Option B**, the government maintains its role in pre-clearing food advertisements, but is more selective, and concentrates on compliance with the relevant regulations to avoid overlap with other private review processes. Both options involve some form of a mandatory pre-clearance process but costs are reduced from current levels. In the opinion of all parties contacted for this study, it is believed that the benefits to be derived from such an enforcement approach outweigh the costs of the process.

Another difference between these two options is the instrument that makes the process mandatory. In **Option B**, regulations would still be in place but revisions to the current Radio and T.V. Broadcasting regulations dealing with food advertisements would be required to remove the CRTC from the process. **Option A**, on the other hand would entail mandatory pre-clearance by an industry-based review body as a condition of licence for broadcasters. **Option A** also includes revoking the current broadcasting regulations as regards the requirement to pre-clear food advertisements.

In effect, liability increases for industry under **Option A**. In particular, the liability issue under **Option A** has generated some negative reaction from the broadcasting industry. As regards the feasibility of adding a condition of licence, some implementation questions would have to be resolved. Adding a condition of licence at any given time between the initial granting of a licence and the renewal time, is a very long and time-consuming process; therefore, it would be simplest to add the condition as licences routinely come up for renewal. However, until all licences have come up for renewal (5 to 7 years), it would be necessary to have some form of a voluntary "gentlemen's" agreement between broadcasters and government to ensure that the desired process is followed. CBC and Telecaster Committee (which together represent 85% of all T.V. advertisements) have indicated that, in their opinion, such a "gentlemen's" agreement is workable although this would have to be discussed further. These matters have been discussed with the CRTC.

If decision-makers decide to reject "simply revoking the regulations" in deciding which alternative option to adopt, the issues to be considered are the **desired level of government intervention and the associated institutional arrangements and procedures**. Both options will reduce costs to industry and government. Indeed, it is expected that the

extension of the approval period beyond one year could reduce the volume of ads being submitted by at least 25%. The key factors in weighing the options are the extent to which each effectively and efficiently protects consumers against potential health and safety hazards and ensures compliance with the relevant regulations.

5. Implementation Considerations

5.1 Option A: Phase-In Plan to Revoke and Privatize

If government wishes to revoke the food advertising pre-clearance regulations and to privatize the pre-clearance of food advertisement, an implementation plan to put in place **Option A**, that is transfer the responsibility for pre-clearance to the industry, should be established in consultation with the industry and the government intent communicated immediately to affected parties.

To move entirely to a functioning, privatized process, a two year phase-in period is recommended, as well as the establishment of an implementation plan covering the following:

- . Timetable to revoke the Radio and T.V. Broadcasting Regulations as regards the requirements for the government pre-clearance of food advertisements;
- . Timetable to put in place the condition of licence for broadcasters requiring pre-clearance by an industry-based review body; and establishment of a voluntary "gentlemen's" agreement between broadcasters and the government to be in place until all licences include the new condition of licence;
- . Development of a communication plan to inform all affected parties of the government intent and to respond to potential questions raised with respect to how the level of consumer protection is being maintained in this area;

- . Identification of members of a committee to develop the review guidelines/standards;
- . Timetable and terms of reference for the development and approval of the set of review guidelines/standards covering the regulations affecting food advertisements;
- . Development and implementation of formal appeals procedures;
- . Two year phase-in for the independent review process to become effective; and
- . Timetable and working arrangements for the government post-broadcast enforcement activity.

5.2 Option B: Action Plan to Improve the Current System

If government wishes to maintain regulations for the pre-clearance of food advertisements, steps should be taken to immediately implement **Option B**. In particular an action plan considering the following steps should be developed:

- . Establishment of a timetable to revise the Radio and T.V. Broadcasting Regulations to allow for the withdrawal of the CRTC involvement from the food pre-clearance requirements, (a proposal for the withdrawal of the CRTC involvement from the pre-clearance of radio ads and the transfer of CRTC's responsibilities to CCAC is currently being discussed, see **Annex D**);
- . Completion of the development of the criteria to extend the approval period and high priority given to its implementation (see **Annex E** for a draft of the conditions under which approval period would not be extended beyond one year);

- . Completion of the on-going discussions, between government and industry, regarding the establishment of a formal appeals procedure, and communication of the date on which it will become effective (see Annex F for the proposed terms of Reference);
- . Establishment of a timetable for the development and implementation of revised standards/guidelines to reduce the scope and coverage of the pre-clearance process, and exempting retailers, restaurants, and beer, wine and cider, some of the manufacturers/processors and most radio advertisements;
- . Establishment of a schedule to implement the proposed modifications to the Guide and administration and control of the current process (i.e. simplification/clarification of the Guide, development of a precedence system, and improvement of consistency and communications); and
- . Development of a communication plan to inform all affected parties and respond to potential questions concerning how the proposed modifications improve the current process.

ANNEX A

PROGRAM DESCRIPTION

ANNEX A

PROGRAM DESCRIPTION

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ANNEX A

PROGRAM DESCRIPTION

1. Mandate

As part of its mandate, the Consumer Products Branch of CCAC is responsible for approval of commercials for food prior to their broadcast on radio and television. In order to do so, CCAC reviewers pre-clear the text and storyboards of radio and TV advertisements for food, drinks (soft drinks, beer, wine and cider), and restaurants.

The pre-clearance of radio advertisements was introduced in the 1930's to attempt to eliminate false, misleading and exaggerated claims regarding food, drugs, cosmetics and medical devices.

Following various changes in the implementation of this policy, the requirement for Consumer and Corporate Affairs Canada (CCAC) to approve food advertisements prior to their broadcast is now established in Sections 11(2), 13(2) and 19(2) of the three Broadcasting Regulations (AM and FM Radio and Television). Specifically, each of these regulations states:

"No station or network operator shall broadcast any advertisement or testimonial for a food to which the Food and Drugs Act applies unless the continuity of the advertisement or testimonial has been approved by the Minister of Consumer and Corporate Affairs and by a representative of the Commission and bears the registration number assigned by the Commission."

In carrying out this responsibility, advertisements are examined by CCAC in relation to the false, misleading or deceptive provisions as found in Section 5(1) of the Food and Drugs Act. That is,

"No person shall label, package, treat, process, sell or advertise any food in a manner that is false, misleading or deceptive or is likely to create an erroneous impression regarding its character, value, quantity, composition, merit or safety."

The Consumer Packaging and Labelling Act is also taken into consideration in the approval process. It states:

"No dealer shall apply to any prepackaged product or sell, import into Canada or advertise any prepackaged product that has applied to it a label that contains any false or misleading representation relating to or that may reasonably be regarded as relating to that product" (Section 7(1)), and

"No dealer shall, in advertising any prepackaged product, make any representation as to net quantity, except in accordance with this Act and the Regulations" (Section 5).

As pointed out in the Guide for Food Manufacturers and Advertisers, manufacturers and advertisers should also be aware that the Combines Investigation Act and Trade Marks Act also have provisions which have some bearing on advertising but, approval of commercials constitutes approval under the Food and Drugs, and the Consumer Packaging and Labelling legislation only.

The legal onus of the food advertising pre-clearance process can be summarized as follows. Broadcasters are potentially liable under the Broadcasting Regulations if they air a food advertisement that has not been approved by CCA and does not bear a CRTC approval number. Manufacturers and advertisers (or other "persons" including Broadcasters) are potentially liable under the Food and Drugs Act for advertising in a manner that is false, misleading or deceptive.

Other acts such as the Consumer Packaging and Labelling Act and the Combines Investigation Act and Trade Marks Act could also implicate liability for manufacturers and advertisers.

2. Program Objectives

The origins of the present CCAC program help to explain the dual concerns of pre-clearance for food advertisements -- protection of industry and consumers against economic fraud, and protection against health hazards.

In the 1961 Guide for Manufacturers and Advertisers issued by the Food and Drug Directorate of the Department of Health and Welfare the health issue was put first and the fraud issue was secondary.¹ The Introduction, in part, reads as follows:

"Intent of Control. It is universally accepted that procedures under the legislative powers to protect against injury to health will be prompt and definite. It is not always realized that the Food and Drugs Act is not only a health measure but also is designed to afford protection to the consumer of foods, drugs, cosmetics, or therapeutic devices against fraud. The administrative endeavour is made to afford the most exemplary measure of protection in those fields in which the consumer cannot reasonably be expected to acquire expert knowledge. Claims referring to flavour, appearance, texture, culinary advantages and such others where normally the consumer is well able to follow his own judgment or preference are usually not critically reviewed; on the other hand technical, scientific, quasi-scientific, therapeutic, medical, nutritional, and educational expositions must of necessity be considered from the appropriate viewpoint."

1. Food and Drug Directorate, Guide for Manufacturers and Advertisers, NH&W, Canada 1961, p. 2.

"Caveat Emptor". The conception of "let the buyer beware" is discarded, and no longer operates in the food and drug field."²

"Approval by Department". There is no power conferred by the Act for the Food and Drug Directorate or the Department to give approval of a label or an advertisement. The administrator, within the limits of available facilities, is usually able to give an opinion as to whether a label conforms with requirements. In certain circumstances advice will also be given as to how a label may be modified satisfactorily but advice should not be expected upon how to circumvent the intent of the legislation. Opinions may also be sought upon the basic principles of proposed advertising but there are not sufficient facilities to extend this service to continuous pre-reviews.

If labels and advertising material are submitted for review they should first be drawn up by the manufacturers according to requirements before an opinion will be given as to whether the material satisfies the requirements of the Food and Drugs Act and Regulations. All submissions should be in quadruplicate unless otherwise specified."²

At that time, the formal approval of radio advertisements by Health and Welfare was specified under the 1958 Radio Station Broadcasting Regulations but for other types of advertisements only opinions were provided when they were sought out by manufacturers or advertisers.

2. Food and Drug Directorate, Ibid., page 3.

Formal pre-clearance by CCAC of radio and T.V. food advertisements including an approval was introduced in 1967 through the revisions of the Broadcasting Regulations.

In 1968 the Food Section of the Advertising Labelling and Registration Division of the Food and Drug Directorate (of National Health and Welfare) was transferred to CCAC.

The most recent Guide for Manufacturers and Advertisers, published by CCAC, expands considerably upon the 1961 Guide, and although the concern of economic fraud is placed foremost, the bulk of the Guide deals in considerable detail with health and related dietary issues along the lines of the 1961 Guide.

In summary, for the purpose of this study, the CRTC/CCAC pre-clearance program objectives can be summarized as follows:

- i) to protect consumers from false, misleading or deceptive advertisements for food;
- ii) to protect against erroneous impressions regarding the character, value, quantity, composition, merit or safety of advertised food products; and
- iii) to ensure compliance with relevant federal acts and regulations.

The basic protection of consumers is assumed by the existence of the Food and Drugs Act and Regulations, the Consumer Packaging and Labelling Act, and other relevant

legislation, and the necessity for industry to comply with them, while the process itself serves as an enforcement activity to monitor compliance with the Food and Drug Regulations and other relevant legislation.

3. Step-by-Step CRTC/CCAC Pre-clearance Procedure

The following is a step-by-step outline of the clearance procedure for the preapproval of food advertisements.

There are two routes an advertiser or an agency can opt for in submitting food advertisements to CCAC for pre-approval, namely through:

- a) the CRTC, or
- b) the private agency.

A) CRTC route for all but wine, beer and cider advertisements

1. The advertiser or agency sends 3 copies of the proposed commercial by mail to the CRTC not less than two weeks in advance of the intended use.

2. The CRTC assigns a continuity number to the commercial and has it delivered by their messenger (daily) to CCAC. The messenger also picks up the previous day's advertisements and returns them to the CRTC.

3. CCAC reviewers proceed to examine the advertisement to ascertain that it is not false, misleading or deceptive, thus conforming with the provisions of the Food and Drugs Act (5), of the Consumer Packaging and Labelling Act (7) as well as those of other legislation. The commercial is subsequently
 - i) approved,
 - ii) edited, or
 - iii) rejected (further information may be requested to support a claim made, rewording may be required, or the storyboard may be changed).

4. Whether approval is granted or not, the script is returned to the CRTC.

5. At the CRTC,
 - i) if no changes are required, a dated stamp indicating "APPROVED" is placed on the commercial,
 - ii) if any changes are required, the "APPROVED" stamp is still applied but the suffix "C", indicating conditional wording, is placed beside the CRTC continuity number,

iii) if the commercial is rejected, the CRTC continuity number then is suffixed by "R", for refused, and a dated stamp indicating "NOT APPROVED" is applied.

6. The CRTC returns the original copy of the commercial to the advertiser by surface mail, retains one copy for its files and forwards the other to CCAC.
7. Upon receipt of the commercial, the advertiser agrees with the corrections made, if any, or contacts the reviewer by phone to present his arguments and/or explore possible means of overcoming the problem. Advertisers often request personal interviews in order to guarantee a speedy resolution of differences and processing of the revised script.
8. Once agreement has been reached, the commercial is corrected and approval is granted, as per above.

For wine, beer and cider advertisements

9. The advertiser submits 6 copies of the advertisement by mail to the CRTC.
10. Same as steps A (2, 3 and 4) above.
11. At the CRTC,

- i) if the commercial has been rejected by CCAC, it is returned to the advertiser immediately.

However,

- ii) if no changes are required, or if conditional wording has been proposed by CCAC, the advertisement is presented at the Beer, Wine and Cider Committee.

This Committee, whose membership consists of CRTC officials and representatives of the provincial liquor control boards (usually Ontario/Quebec) with CCAC representation upon invitation only (very seldom), reviews the advertisements taking into consideration the CRTC and provincial policy requirements.

NOTE: In the past, the CRTC administered a "good taste" provision, but now this requirement is left to the discretion of individual broadcasters such that the CRTC activity, in this area, has become a clerical operation.

12. Once the Committee has completed its work, it may, in certain special circumstances, send the commercial back to CCAC via the regular route. However, since the Committee's rules are more restrictive, no further changes are usually made by CCAC.

13. The CRTC returns the script to the advertiser with the appropriate annotations (see A (5)(i), (ii), (iii) above).

B. Private agency route

The actual clearance process is the same as in A above. However, the private agency, which charges a fee for its services, acts as go-between and courier by bringing the commercial to the various government departments involved in the preapproval system and by relaying the information (CRTC continuity number, approval, corrections or rejection) by telephone to the advertiser - usually the same day.

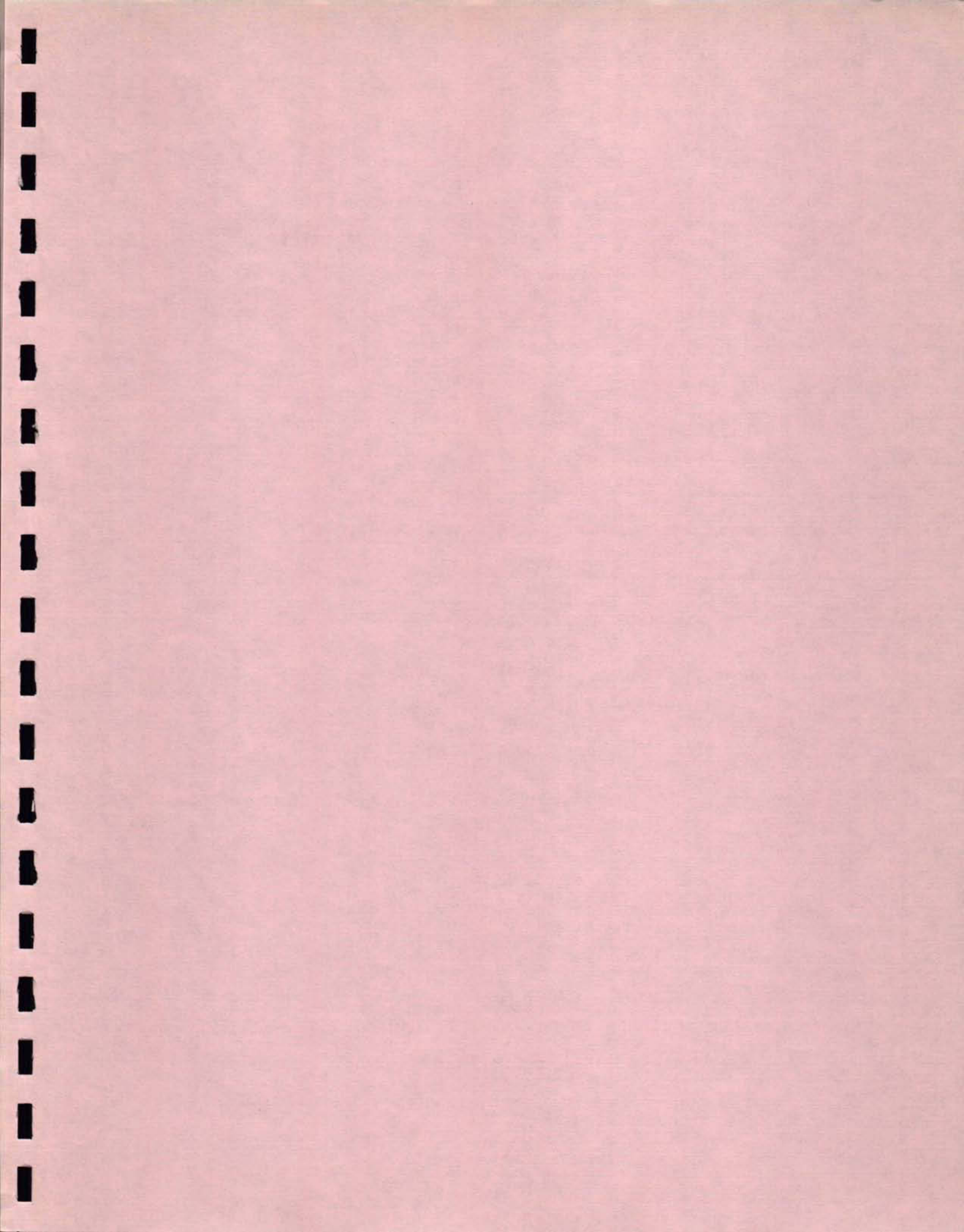
The agency staff, in communicating with the advertiser, may also assist in clarifying problem areas, thus expediting the clearance process for their client.

4. Other Pre-clearance Review Processes

The comprehensive CRTC/CCAC pre-approval process, moreover, is but the first layer of the pre-clearance bureaucracy that a radio or television ad must travel. If the commercial is for beer, wine or cider, it must then be approved by the Beer, Wine and Cider Committee. This Committee meets every second Wednesday. Once the commercial

is approved by the Committee, it must then be approved by the liquor control board in each province, except for Newfoundland and Manitoba. If the commercial is then planned for broadcast on CBC, it must be pre-approved by them and finally, if planned for broadcast on one of the private television stations, which is a member of the Telecaster Committee of Canada, it must be approved by the Telecaster Committee of Canada. The purpose of the broadcasters' review process is to ensure that advertisements are presented in good taste and integrity and are not controversial, misleading, unfair in their competitive claims or exploitative of children. Of particular interest to the Telecaster Committee are comparative advertisements.

Approval of other than beer, wine, and cider food advertisements follows a similar route except for stops at the Beer, Wine and Cider Committee and the provincial liquor control boards. If, however, the food ad is specifically directed to children, it must also be approved by the Advertising Standards Council, a condition of license imposed on broadcasters. Advertisers submitting child-directed commercials to the Advertising Standards Council also receive a Telecaster Committee approval number and hence, avoid that approval stage. In the case of contentious comparative ads, the commercials will be reviewed by the Advertising Standards Council to ensure that they comply with the ASC code.



ANNEX B

DRAFT OF THE REVISED CRTC

CIRCULAR LETTER #176



DRAFT

CIRCULAR NO.

TO ALL RADIO AND TELEVISION STATIONS
AND ADVERTISING AGENCIES:

Attached please find a copy of the clearance procedure for food, drug, cosmetic and medical device radio and television commercials. This supersedes and cancels the procedure attached to Circular No. 176 issued May 24, 1972.

Extra copies of the attached procedure are available upon request to the Information Services, Canadian Radio-television and Telecommunications Commission, Ottawa, Ontario, K1A 0N2.

J.G. Patenaude
Secretary General

Ottawa, (date)



(Date)

PROCEDURE FOR
CLEARANCE OF FOOD, DRUG, COSMETIC AND MEDICAL DEVICE COMMERCIALS

1. Prior Approval - Clearance Number

Section 11 of the Radio (A.M.) Broadcasting Regulations, Section 13 of the Radio (F.M.) Broadcasting Regulations and Section 19 of the Television Broadcasting Regulations provide that any advertisement or testimonial for a food, drug, cosmetic and medical device to which the Food and Drugs Act applies, may not be broadcast until it has been reviewed by either the Department of National Health and Welfare or the Department of Consumer and Corporate Affairs, is approved by the Canadian Radio-television and Telecommunications Commission (CRTC) and bears a clearance number assigned by the CRTC. (See Schedule)

It should be noted that broadcast mention of the fact that food, drug, cosmetic and medical device copy has been submitted to, or examined by, the Department of National Health and Welfare, the Department of Consumer and Corporate Affairs, or the Canadian Radio-television and Telecommunications Commission, is not allowed.

2. The Responsible Agencies

Commercials for food are reviewed by the Department of Consumer and Corporate Affairs. Commercials for cosmetics, drugs and medical devices are reviewed by the Department of National Health and Welfare. These Departments and the CRTC must review all food, drug, cosmetic and medical device commercials in advance of broadcast (See #11 for exception). It should be noted that approval of commercials constitutes approval under the Food and Drugs Act only, and does not imply approval under any other act or regulations, such as, for example, the Combines Investigation Act.

3. Duration of the Clearance Number

Food, drug, cosmetic, medical device and other copy passed for broadcast and granted a clearance number is valid for a period of one year from the stamped date of approval. If circumstances warrant, the copy may be requested for review within that one year period.

4. Clearance Procedure

Three (3) copies of radio and television commercials are to be submitted to: Continuity Clearance Section, Canadian Radio-television and Telecommunications Commission, Ottawa, Ontario, K1A 0N2, not less than two weeks in advance of intended use.

5. Form of Presentation

The most convenient method of presenting television commercials is when the visual material is described opposite the spoken word message. It is most helpful in the review of TV commercials to have storyboards. Both audio and visual material must be submitted in triplicate.

6. Language

Commercials to be broadcast in a language other than French or English must be submitted in that language together with a translation in English or French, the whole in triplicate.

7. Formula of the Product

The Departments concerned require, for examination, the product label along with the formula or statement of composition of each product to be advertised on radio or television for the first time in Canada. If the formula or composition is changed, it must be submitted to the Department concerned in its new form.

8. Secret Formulae

Secret formulae for foods may be submitted directly to the Department of Consumer and Corporate Affairs, Consumer Products Branch, Place du Portage, Phase I, 16th floor, Hull, Quebec K1A 0C9.

9. Drugs - Commercials Not Allowed

It is not permitted to advertise prescription drugs, or therapeutic vitamin or mineral preparations, or drugs for human use which carry a recommended single or daily dosage or a statement of concentration in excess of the limits provided by Section C.01.021 of the Food and Drug Regulations, other than with respect to the name, price and quantity of such drug.

The offer of drugs as samples by radio or television is not allowed.

10. No Claim Copy

Provided that the commercial announcement for a food, drug, cosmetic or medical device,

- (a) does not contain any claims on behalf of the manufacturer, producer or advertiser;
- (b) mentions only the name of the product and the place where the product may be obtained; and
- (c) mentions only the price of the product;

it does not require clearance prior to broadcast.

No descriptive words or phrases should be used in such copy, other than those necessary to distinguish one product from another, or which have a direct influence on price.

For food, terms such as "fresh", "canned", "frozen", may be used to identify products. Where applicable and a price is stated, food grades must also be mentioned since they influence the price of the product. U.S. grades are also permitted, providing they are clearly identified as U.S. grades. No other claim should be used.

11. Perishables

In the case of perishable food products, temporary clearance may be obtained from the local inspector of the Department of Consumer and Corporate Affairs when an emergency arises.

Perishables consist of fresh produce in season, such as fruit, vegetables, fish, meat and bakery products of a variety that cannot be stored without spoilage. It does not include any manufactured or processed products, either preserved or frozen, which may be stored in a refrigerator, nor does it include products which are generally available for a substantial period during the year.

To obtain temporary clearance, a total of five (5) copies of the commercial should be prepared, of which two (2) copies should be submitted to the Local Inspector, and three (3) copies mailed to the CRTC, and marked to indicate that temporary approval has been obtained.

12. Restaurant Copy

A commercial for foods dispensed to consumers by a restaurant need not be submitted for approval if it meets all of the following conditions:

- (a) it is a local advertisement, intended for a particular area or a station's coverage area (commercials for "franchise" or "chain" restaurants are not considered local);
- (b) it contains no direct or implied nutritional claim;
- (c) it makes no negative or derogatory statement;
- (d) it makes no reference to the safety of the food;
- (e) foods should be stated by their proper common names; and
- (f) it does not promote the use of alcoholic beverages.

13. Broadcast as Approved

The clearance number assigned is valid only for the commercial as approved. If revisions are made, a new submission must be made.

14. Animal Medicines

The regulation applies to advertising material for animal medicines which are sold or represented for use as drugs, as defined in the Food and Drugs Act.

Note that this also includes:

- a) vitamins and minerals bearing claims for the treatment and/or prevention of a deficiency or its symptoms;
- b) medicated animal feeds represented for promotion of growth and/or improvement of feed efficiency.

N.B. Commercials for medicated feeds or supplements which are subject to registration requirements under the Feeds Act should be accompanied by a valid registration number issued by Agriculture Canada. Commercials for medicated feeds not yet registered by Agriculture Canada are not acceptable for clearance.

15. Sun Tan Booths

The regulation applies to advertising material for sun tan booths only if therapeutic claims are made.

16. Mattresses & Waterbeds

The regulation applies to advertising material for mattresses and waterbeds only if therapeutic claims are made. However, all posturpedic mattress commercials require clearance prior to broadcast.

17. Inspection of Commercials

Inspectors of the Department of Consumer and Corporate Affairs are authorized to act as representatives of the CRTC for the purpose of these regulations. These inspectors will visit radio and television stations from time to time and will ask to see the following:

- a) station logs for any period within the preceding 4 weeks;
- b) copies of any food, drug, cosmetic and medical device commercials which were broadcast during that period; and

- (c) the record which is maintained in accordance with the Commission's regulations.

18. Broadcasters' Responsibilities

In the past, the regulatory authority (CBC up to 1958, BBG from 1958 to 1968, and CRTC from 1968) has applied a "good taste" policy. Criteria of good taste are no longer considered in the pre-clearance process.

Broadcast licensees are, under the Broadcasting Act, responsible for all matter broadcast, and should take into consideration the sensitivities of their audience when accepting and scheduling commercials. Obviously, the same consideration should be given to all commercials, not only those which are referred to in our regulations.

Even though a commercial may have been approved, the licensee has the final discretion on acceptance and scheduling.

19. Right of Appeal

Advertisers may appeal modifications, deletions or rejections of food, drug, cosmetic and medical device copy. With supporting evidence for claims made, appeals should be addressed to:

Chairman,
Canadian Radio-television and
Telecommunications Commission
Ottawa, Ontario
K1A 0N2

SCHEDULE

SECTION 11 OF THE RADIO (A.M.) BROADCASTING REGULATIONS

SECTION 13 OF THE RADIO (F.M.) BROADCASTING REGULATIONS

Food and Drugs

(1) No station or network operator shall broadcast any advertisement or testimonial for a drug, cosmetic or device to which the Food and Drugs Act applies unless the continuity of the advertisement or testimonial has been approved by the Minister of National Health and Welfare and by a representative of the Commission and bears the registration number assigned by the Commission.

(2) No station or network operator shall broadcast any advertisement or testimonial for a food to which the Food and Drugs Act applies unless the continuity of the advertisement or testimonial has been approved by the Minister of Consumer and Corporate Affairs and by a representative of the Commission and bears the registration number assigned by the Commission.

(3) No station shall broadcast any recommendation for the prevention, treatment or cure of a disease or ailment unless the continuity thereof has been approved by the Minister of National Health and Welfare and by a representative of the Commission and bears the registration number assigned by the Commission.

(4) Continuities submitted for approval pursuant to these Regulations shall be forwarded to the Commission in triplicate at least two weeks in advance of intended use.

(5) Every station shall maintain and produce to a representative of the Commission upon request, a record of all continuity approved under this section which record shall contain

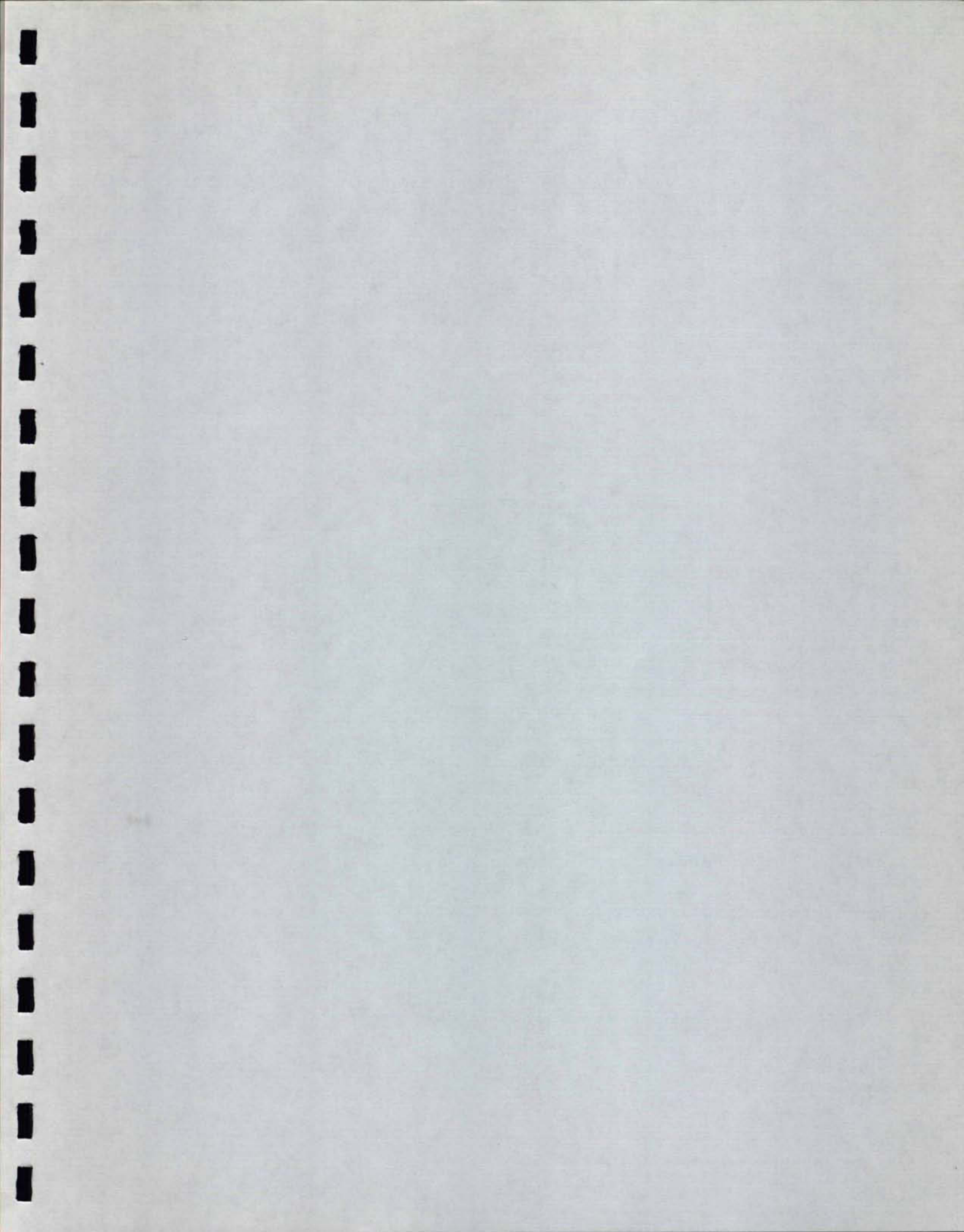
- (a) the name of the product;
- (b) the name of the advertiser or advertising agency submitting the continuity; and
- (c) the registration number assigned to the continuity by the Commission.

(6) Any person who has been designated as an inspector for the purpose of the enforcement of the Food and Drugs Act is a representative of the Commission for the purposes of subsection (5).

SECTION 19 OF THE TELEVISION BROADCASTING REGULATIONS is identical to the above except for subsection 19(5) which reads as follows:

(5) Every station and network operator shall maintain and produce to a representative of the Commission, upon request, a record of each continuity approved under subsection (1), (2) or (3) and broadcast by the station or network operator which record shall contain

- (a) the name of the product;
- (b) the name of the advertiser or advertising agency submitting the continuity; and
- (c) the registration number assigned to the continuity by the Commission.



ANNEX C

EVALUATION STUDY MODULES

ANNEX C - EVALUATION STUDY MODULES

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ANNEX C - EVALUATION STUDY MODULES

The evaluation of Radio and T.V. Food Advertising Pre-clearance Regulations is based on evidence gathered by independent teams in several evaluation modules. These study modules include:

1. Case Study Analysis

An examination of internal documents and files over the 1981 to 1985 period, including a detailed review of some 56 company files (7 Retailers, 42 Manufacturers/Producers, 4 Restaurants and 3 Beer and Wine Producers) to better understand the detail of the process and the nature of the interactions between firms and CCAC officials. The company files reviewed were selected with the assistance of the program personnel to ensure that various product areas, sizes of companies and geographical regions of Canada were represented, including firms who had in the past commented on the process. The data presented in this study module includes for each category of companies the number of submissions, approvals, rejections, renewals, the combined time required to complete the process by CCAC and the CRTC and the time required for CCAC alone to complete its review, and the reasons for rejections. The report presents this information in both tabular and graphical forms.

2. Literature Review

A review of the consumer research literature to examine the impact of broadcast advertising on the consumer's purchase decisions and how this may affect the level of government intervention in the food advertising area.

3. Consumer Survey

As part of a survey focussing on Traded Goods regulations conducted over late 1985, a nationally representative sample of 1,100 consumers were questioned about their perception of the validity and accuracy of manufacturers' claims (such as pure, natural, light, high fiber, etc.) made on the labels of food products.

4. Advertising Pre-clearance: Foreign Comparisions

A review of the literature and a series of telephone interviews with officials from the U.S. and Great-Britain to describe and examine the approaches used in these two countries to enforce food advertising regulations. This module also describes the Canadian approach and presents the views of a limited (7) number of participants in the process.

5. Advertising Pre-clearance: Specific Concerns

A series of personal interviews with representatives of affected parties conducted over late 1985. A total of 57 interviews were conducted; 31 food company representatives; 15 advertising agency representatives; 4 radio station representatives; 5 CRTC/CCAC government officials; 1 CBC representative; and 1 Telecaster Committee representative. The objective of these interviews was to elicit the respondents' perception of the rationale, efficiency and effectiveness of the current food advertisement pre-clearance process and ways/alternatives that could be considered to improve the process. Follow-up interviews were also conducted to obtain their comments on possible alternative options.

6. Advertising Pre-clearance: Assessment of Alternatives

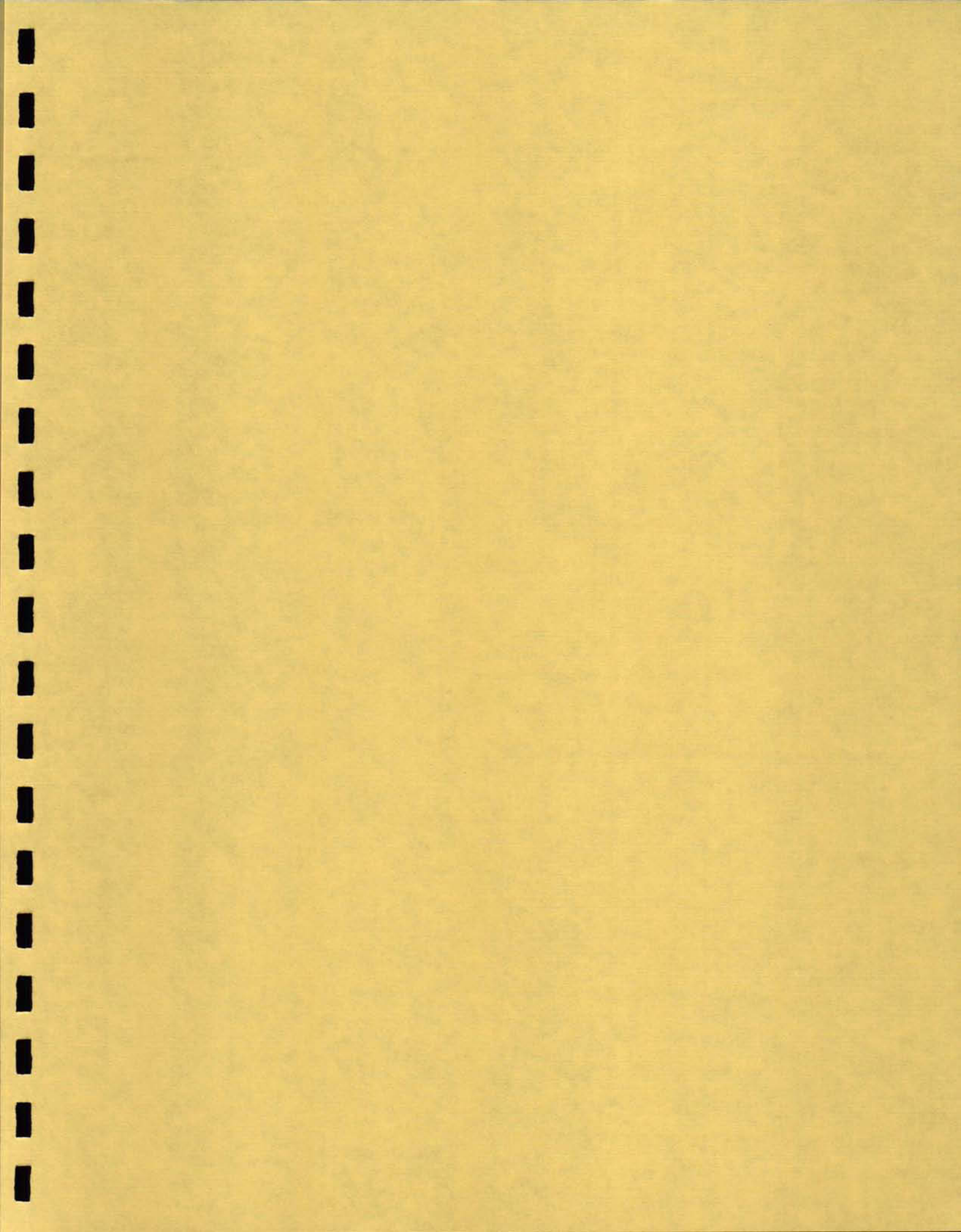
A series of alternatives were identified based on the results of the Foreign Comparisons, and the Specific Concerns study modules, and consultations with officials from relevant government departments and with industry representatives. These alternatives were then assessed based on five basic criteria; preventative ability, coverage, efficiency, objectivity and consistency, and equity. Legal implications were also considered in assessing these different options.

7. Federal Interdepartmental Meeting

A federal interdepartmental meeting with officials from CRTC, Communications, CCAC and CBC and two outside experts to discuss the feasibility and consequences of three alternatives: Repeal of the Food Advertising Pre-clearance Regulations, Revocation and Privatization, and Improve the Current System.

8. Focus Group

A focus group session was conducted in Toronto with 10 industry representatives from the food manufacturing, advertising and broadcasting sectors. The purpose of the focus group was to discuss and comment on three possible alternative options: Repeal of the food Advertising Pre-clearance Regulations, Revocation and Privatization, and Improve the Current System.



ANNEX D

CRTC NEWS RELEASE; MARCH 19, 1986

19 March 1986

IMMEDIATE RELEASE

New Radio AM and FM Regulations

MONTREAL -- The CRTC announced today a whole new series of regulations for AM and FM broadcasting. The Commission is also proposing regulations for beer and wine advertising. (Public Notices CRTC 1986-66 and 1986-68)

"With respect to the proposed regulations for radio, the Commission's objective is to provide Canadian radio broadcasters with a flexible and efficient framework that will encourage the development and support of Canadian musical talent and artistic expression," said CRTC Chairman André Bureau.

"These proposals are part of the Commission's long-standing efforts to lighten the regulatory burden and place a greater emphasis on a supervisory rather than regulatory role. In areas where the Commission removes regulations it expects the radio industry to adopt its own guidelines, to ensure that the public is well served and that the objectives of the Broadcasting Act are met," added Mr. Bureau.

In the interest of administrative efficiency and convenience, the Commission proposes to implement a single set of radio regulations entitled Regulations Respecting Radio Broadcasting to govern both AM and FM radio broadcasting. The proposed new regulations are divided in three sections: regulations applicable to both AM and FM radio, regulations applicable solely to AM radio, and regulations applicable solely to FM radio.

The Commission has eliminated from the proposed regulations those provisions which it considers outdated. Also eliminated are those regulations dealing with issues covered elsewhere or regulations that are not essential to achieving the objectives of the Broadcasting Act. Among the regulations proposed to be eliminated are those on programs dealing with birth control and venereal disease, advertising in a newscast, appeals for donations and subscriptions, lotteries, station contests, offensive promotional programs, CBC affiliation agreements, rebroadcasting and financial returns.

- more -



AM radio

The Commission does not propose to vary the existing requirement that at least 30% of the musical selections broadcast by a station be Canadian. This reflects the Commission's major policy objective of ensuring that Canadian artists have access to Canadian airwaves and maintaining support for the development of Canadian musical talent.

In the case of ethnic programs, however, the Commission proposes to modify the existing Canadian content regulation and allow for a separate Canadian content level of 7%. This is consistent with the findings of the Consultative Committee on Ethnic Broadcasting which submitted its recommendations to the Commission in 1985. The Commission emphasizes that it considers this level to be a minimum and that it expects radio broadcasters to make every effort to gradually increase the Canadian content levels of ethnic programs.

Another major amendment proposed is the elimination of all restrictions on advertising time on AM radio for a two-year trial period. The Commission is concerned that existing regulations restricting the levels of advertising may hamper the financial viability of certain licensees, especially stations that are marginally profitable, and represent an unnecessary regulatory burden on the selling practices of the industry.

"In proposing the removal of time restrictions on advertising for AM radio, the Commission has been mindful of the potential impact of this approach on programming. However, the Commission is confident that audience response to advertising content and the existence of competing radio and other media services as well as industry self-regulation should generally dissuade broadcasters from airing an objectionable number of commercial messages", said Mr. Bureau.

FM radio

Throughout the years, a number of regulations and administrative practices have been developed to ensure that FM programming is significantly different in both form and content from that provided by AM stations. In specific terms, the Commission has established FM regulations requiring the provision of thematic foreground format programs and guidelines for the provision of enriched programming.

In order to maintain the objectives of the FM policy and to encourage the Canadian syndication industry and new Canadian performers, the Commission proposes the following scheme:

- a) the overall guidelines for combined foreground and enriched programming will remain at 50% for joint licensees (holders of both AM and FM licences in the same market) and 33% for independents (a holder of only an FM licence for a particular market);
- b) the hourly limits on commercial content will be eliminated;
- c) the requirement for foreground format will be reduced from 20% to 15% for joint licensees and from 12% to 9% for independents;
- d) the daily limit for commercial content will remain at 150 minutes; joint licensees attaining or exceeding 20% foreground and independents reaching or exceeding 12% will be permitted up to 250 minutes per day; and joint licensees exceeding 22% foreground and independents 14% will have no commercial limits. The programs making up the additional foreground material must feature a Canadian musical performer, be programs of Canadian syndicators, or be enrichment programs produced by a Canadian.

Advertising of Alcoholic Beverages

In a separate notice published today (Public Notice CRTC 1986-68), the CRTC proposes several modifications to the existing regulations that prohibit the broadcast advertising of spirituous liquor and that allow, in certain circumstances, the broadcast advertising of other alcoholic beverages in provinces in which such advertising is permitted.

While continuing to regulate the advertising of alcoholic beverages, the Commission proposes to discontinue its involvement in the clearing of scripts for advertisements prior to their broadcast. The amendments would preserve the general principle that this type of advertising should not promote the general use of beer, wine and cider. In the notice, the Commission requests its licensees along with other concerned parties to address this issue by establishing a Committee responsible for the development of a code.

"The Commission will have to be satisfied that the composition of the Committee developing the code and the code itself take into account the position of all parties involved," said M. Bureau.

The Commission requests comments on all of these proposals from the public and interested parties to be submitted on or before **1 May 1986**.

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Notice

Ottawa, 19 March 1986

Public Notice CRTC 1986-68

Revised Regulatory Approach Regarding
the Broadcast Advertising of Alcohol-
ic Beverages and Food and Drugs

Related Documents: Public Notices
CRTC 1985-209 dated 10 September 1985
and 1986-66 dated 19 March 1986.

Spirituuous Liquor, Beer, Wine and
Cider

In Public Notice CRTC 1985-209 dated 10 September 1985, the Commission invited public comment on whether it should maintain its regulatory role regarding the broadcast advertising on radio and television of alcoholic beverages. The Public Notice also pointed out a number of Commission concerns with respect to administering the regulations governing this type of advertising.

Well over 300 submissions were received in response, the vast majority supporting regulation of the advertising of these products. The Commission is well aware of societal concerns about the widespread use of alcohol, and has determined that, in view of the strong expression of support for CRTC involvement, it will continue to regulate this type of broadcast advertising. At the same time, in line with the Commission's

Avis

Ottawa, le 19 mars 1986

Avis public CRTC 1986-68

Démarche réglementaire révisée tou-
chant la réclame radiodiffusée en fa-
veur de boissons alcooliques, d'alim-
ents et de drogues

Documents connexes: Avis publics CRTC
1985-209 du 10 septembre 1985 et
1986-66 du 19 mars 1986.

Spiritueux, bière, vin et cidre

Dans l'avis public CRTC 1985-209 du 10 septembre 1985, le Conseil a invité les parties intéressées à formuler des observations sur la question de savoir s'il devait ou non continuer à réglementer la réclame radiodiffusée et télédiffusée en faveur de boissons alcooliques. L'avis public soulignait également un certain nombre de préoccupations du Conseil au sujet de l'application des règlements régissant ce genre de publicité.

En réponse à son avis, le Conseil a reçu bien au-delà de 300 mémoires dont la grande majorité favorisait la réglementation de la réclame en faveur de ces biens. Le Conseil est bien conscient des préoccupations de la société au sujet de la consommation généralisée d'alcool et il a décidé qu'il devrait continuer à réglementer ce genre de réclame radiodiffusée étant donné l'appui manifeste envers l'implication du CRTC. Parallèlement,

stated policy of moving toward a more supervisory approach, the Commission has concluded that its licensees must take upon themselves more responsibility and be more accountable for satisfying public concerns with respect to the advertising of alcoholic beverages.

Section 4 of the proposed amendments to the Regulations Respecting Radio Broadcasting (Public Notice CRTC 1986-66 of today's date) would continue to place restrictions on alcoholic beverage advertising. The amendments would preserve the general principle that this type of advertising should not promote the general use of beer, wine and cider. The Commission will propose shortly similar amendments to the Television Broadcasting Regulations.

Pre-clearance by the Commission would be discontinued. In this regard, the Commission notes that most of the provinces have a mechanism for pre-clearance of beer and wine advertising as part of their role in regulating the sale of alcoholic beverages. Furthermore, under the provisions of the Food and Drugs Act, the Department of Consumer and Corporate Affairs requires that beer, wine and cider commercials be subject to its review.

The Canadian Association of Broadcasters (CAB) has also assured the Commission that it is prepared to establish, in collaboration with others, a set of standards in the form of a Code of Ethics that would complement the regulation now proposed. The Code should address the objectives envisaged in the existing guidelines (attached to Public Notice CRTC 1985-209) with

puisque le Conseil a déjà fait part de son intention de mettre davantage l'accent sur son rôle de surveillance, il a conclu que ses titulaires doivent assumer une plus grande part de responsabilité pour ce qui est de satisfaire aux préoccupations du public à l'égard de la réclame en faveur de boissons alcooliques.

L'article 4 des modifications proposées au Règlement concernant la radiodiffusion (avis public CRTC 1986-66 en date d'aujourd'hui) continuerait d'imposer des restrictions à la réclame en faveur de boissons alcooliques. Les modifications préserveraient le principe général selon lequel ce genre de réclame ne doit pas viser à encourager la consommation en général de bière, de vin et de cidre. Le Conseil proposera bientôt des modifications semblables au Règlement sur la télédiffusion.

L'autorisation préalable du Conseil ne serait plus exigée. Le Conseil fait remarquer à cet égard que la plupart des provinces sont dotées d'un mécanisme d'autorisation préalable des réclames de bière et de vin comme partie intégrante de leur rôle de réglementation de la vente de boissons alcooliques. De plus, en vertu des dispositions de la Loi des aliments et drogues, le ministère de la Consommation et des Corporations exige que les réclames de bière, de vin et de cidre soient soumises à son examen.

L'Association canadienne des radiodiffuseurs (ACR) a également assuré le Conseil qu'elle est disposée à établir, en collaboration avec d'autres, un jeu de normes, sous la forme d'un Code d'éthique, qui viendraient compléter les règlements proposés aujourd'hui. Ce Code devrait porter sur les objectifs exposés dans les lignes directrices (jointes à l'avis public CRTC 1985-209) actuellement en vigueur

respect to beer, wine and cider advertising. The Commission draws to the attention of interested parties a number of suggestions contained in the submissions received with a view to assessing whether and how these should be included in the Code. These suggestions would:

- prohibit all advertisements that directly or indirectly associate motor vehicles or sports with alcoholic beverages;
- restrict the content of advertisements to pure information;
- limit the amount of time that any broadcast licensee can devote to the advertising of alcoholic beverages;
- restrict the time of day during which such ads can be broadcast;
- prohibit advertisements for alcoholic beverages during rock music shows and sports broadcasts;
- require that educational (moderation/warning) messages be broadcast; and
- restrict "lifestyle" advertising.

The Commission expects the committee established under the leadership of the CAB to include as members not only broadcast licensees, including the Canadian Broadcasting Corporation, and representatives of the beer, wine, cider and advertising industries, but also appropriate and effective participation from federal and provincial departments or agencies, recognized health and social service organizations, relevant public interest groups and the general public.

concernant la réclame en faveur de la bière, du vin et du cidre. Le Conseil attire l'attention des parties intéressées sur un certain nombre de suggestions formulées dans les mémoires qui lui ont été présentés et il s'attend à recevoir des commentaires relativement à l'à-propos de les inclure dans un tel Code. Ces suggestions visaient notamment à:

- interdire les réclames qui relient directement ou indirectement les véhicules automobiles ou les sports aux boissons alcooliques;
- restreindre le contenu des réclames à de la pure information;
- limiter le temps que chaque radiodiffuseur autorisé peut consacrer à la réclame en faveur de boissons alcooliques;
- restreindre la période de la journée au cours de laquelle il est possible de radiodiffuser de telles réclames;
- interdire les réclames en faveur de boissons alcooliques durant des spectacles de musique rock et des reportages sportifs;
- exiger que des messages éducatifs (modération/mise en garde) soient radiodiffusés; et
- restreindre les réclames axées sur le "mode de vie".

Le Conseil s'attend à ce que le comité constitué sous la direction de l'ACR se compose non seulement de radiodiffuseurs détenteurs de licence autorisés comprenant la Société Radio-Canada et des représentants des brasseries, des industries vinicoles, des cidreries et des agences de publicité, mais aussi d'un nombre suffisamment important de représentants de ministères et organismes fédéraux et provinciaux, d'organismes reconnus oeuvrant dans les secteurs de la santé et des services sociaux, de groupes d'intérêt public appropriés et du public en général.

The Commission also poses the question whether adherence to such a Code should, like the Code for Advertising to Children, be a condition of the licence of each broadcaster, and whether for the proper administration of such a Code there should be a pre-clearance mechanism by an appropriate and representative body.

The Commission will consider comments on the proposals set out in this Notice at a Public Hearing to be held in Hull at Phase IV, Place du Portage, beginning on 21 May 1986, and expects the Code to be submitted to it prior to that date.

The Commission's enactment of the proposed amendments will depend upon the fulfillment of the concerns outlined in this Public Notice, both as to the Code itself and the participation in the organizing committee.

Food, Drugs, Cosmetics and Medical Devices

Section 5 of the proposed amendments to the Regulations Respecting Radio Broadcasting would remove the requirement that the CRTC review commercial continuities for products to which the Food and Drugs Act applies.

The Commission's role in this process has diminished over the past few years to a point where its involvement is currently that of an agent for the Departments of Consumer and Corporate Affairs (Food), and National Health and Welfare (Drugs, Cosmetics and Medical Devices). While simplifying the procedure for broadcasters, there would be no reduction in the protection provided to the public under these measures.

Le Conseil se demande aussi si le respect d'un tel Code devrait, tout comme le Code de la publicité destinée aux enfants, constituer une condition de licence de chaque radiodiffuseur et s'il devrait ou non exister, aux fins de la bonne application d'un tel Code, un mécanisme d'autorisation préalable par un organisme compétent et représentatif.

Le Conseil étudiera les observations reçues à l'égard des propositions énoncées dans le présent avis lors d'une audience publique qui aura lieu à Hull, à la Phase IV de la Place du Portage à compter du 21 mai 1986 et il s'attend à ce que le Code lui soit soumis avant cette date.

Le Conseil adoptera le projet de modification si l'on satisfait aux préoccupations qu'il a exprimées dans le présent avis public pour ce qui est tant du Code lui-même que de la participation au comité organisateur.

Aliments, drogues, cosmétiques et appareils médicaux

L'article 5 des modifications proposées au Règlement concernant la radiodiffusion supprimerait l'exigence selon laquelle le texte des messages commerciaux en faveur de biens auxquels la Loi des aliments et drogues s'applique n'aurait plus à être approuvé par le CRTC.

Le rôle du Conseil dans ce processus a diminué depuis quelques années, au point où il n'agit plus qu'en qualité d'agent des ministères de la Consommation et des Corporations (aliments) et de la Santé nationale et du Bien-être social (drogues, cosmétiques et appareils médicaux). La procédure s'en trouverait simplifiée pour les radiodiffuseurs, mais la protection assurée au public en vertu de ces mesures aucunement réduite en rien.

The proposed regulation would assure the continuance of the requirement that commercial continuities be approved by the appropriate Departments. A similar regulatory approach with respect to the advertising on television of products to which the Food and Drug Act applies will also soon be proposed by the Commission.

It should be noted that beer, wine and cider are considered "food" under the Food and Drugs Act, and continuity for these products must therefore continue to be submitted to the Department of Consumer and Corporate Affairs for approval and registration.

The Commission invites comments from interested parties on the proposals as set out in this Notice and in Sections 4 and 5 of the proposed Regulations Respecting Radio Broadcasting, which are released today in Public Notice CRTC 1986-66. Comments should be submitted on or before 1 May 1986 to Fernand Bélisle, Secretary General, CRTC, Ottawa, Ontario K1A 0N2.

Fernand Bélisle
Secretary General

Le projet de règlement continuerait d'exiger l'approbation des textes des messages commerciaux par les ministères compétents. Le Conseil proposera bientôt une démarche réglementaire semblable à l'égard de la réclame télédiffusée en faveur de biens visés par la Loi des aliments et drogues.

Il y a lieu de noter que la bière, le vin et le cidre sont considérés comme étant des "aliments" au sens où l'entend la Loi des aliments et drogues et que le texte de messages commerciaux en faveur de ces biens doit, par conséquent, continuer d'être présenté au ministère de la Consommation et des Corporations pour fins d'examen et d'immatriculation.

Le Conseil invite les parties intéressées à lui soumettre leurs observations sur les propositions contenues dans le présent avis ainsi que dans les articles 4 et 5 du projet de Règlement sur la radiodiffusion qui fait l'objet aujourd'hui de l'avis public CRTC 1986-66. Ces observations doivent être soumises au plus tard le 1^{er} mai 1986 à M. Fernand Bélisle, Secrétaire général, CRTC, Ottawa (Ontario) K1A 0N2.

Le Secrétaire général
Fernand Bélisle

ANNEX E

**Draft Conditions Not to Extend the
Approval Period
beyond
One Year**

March 14, 1986

DRAFT

Conditions under which radio and television
commercials could not be approved for more than one year

1. Proposed commercial makes a product claim based on research, surveys or data which are subject to possible change.
2. Proposed commercial makes a comparative claim based on the properties or composition of two known products, one of which the advertisers have no control over.
3. The regulation or interpretation of a provision of an act, of a regulation or a precedent which is relevant in approving the proposed commercial is under review and subject to change.
4. Proposed commercial makes a product claim which cannot or is not substantiated and therefore subject to review in the near future.
5. Proposed commercial makes product claims to the effect that the product advertised or some aspect of the product advertised is:
 - new,
 - improved,
 - now fortified, enriched or vitaminized,
 - approved, certified,
 - awarded.
6. Proposed commercial for reasons not identified above is of a nature that, in the opinion of the Department, it would be wise not to approve for more than one year (departmental discretion).

Approval for an indefinite time would bring about the following changes in procedure:

1. All commercials, approved on condition suggested changes are carried out, would only be approved for one year.

Such commercials could be corrected by advertiser and resubmitted for indefinite approval.

2. Some scripts for commercials which do not contain sufficient information to evaluate potential for deception would only be approved on condition the produced commercial is resubmitted for final evaluation (conditional indefinite approval).
3. Any change in the product advertised such as in regard to formulation, format, process, labelling, etc., would in effect produce a new product and necessitate reapproval of commercial concerning this new product.

ANNEX F

**Proposed Terms of Reference
for
Formal Appeals Procedure**

TERMS OF REFERENCE
FOR AN APPEAL PROCEDURE FOR ADVERTISING
DECISIONS RENDERED BY CCAC

An Advisory Review Panel shall be formed to whom advertisers may appeal decisions of government officials when departmental appeal mechanisms have been exhausted without having reconciled differences of opinion.

This Advisory Review Panel will accept for review only those cases where a decision has been made by officials at a level in the hierarchy below that of the Deputy Minister. A decision previously taken by the Deputy Minister will be reevaluated strictly if new information can be submitted which might have a bearing on its outcome.

The appeal procedure will be available only a) to advertisers appealing decisions relating to their own advertising or b) to advertisers who, with regard to their own commercials, feel that an advertiser has been allowed content which was disallowed for them. Other disputes between competitors will remain within the purview of the Advertising Standards Council (ASC).

This document sets forth a detailed set of recommendations for the formation of an Advisory Review Panel and a set of guidelines for its operations.

1. The formation and administration of the Panel will be managed on behalf of all interested parties by the ASC where English advertisements are in contention and by "Le Conseil des normes de la publicité (CNP)" when dealing with French advertisements.
2. The Advisory Review Panel will be five (5) voting members. The ASC* will request the names of candidates designated by the following:
 - a) the Consumers' Association of Canada - 4 persons: 2 to be appointed, 2 to serve as alternates;
 - b) the Association of Canadian Advertisers - 2 persons: 1 to be appointed, 1 to serve as an alternate;
 - c) the ASC - 2 persons: 1 to be appointed, 1 to serve as an alternate;
 - d) the Institute of Canadian Advertising/"Le Conseil des agences de publicité du Québec", as the case may be - 2 persons: 1 to be appointed, 1 to serve as an alternate.

*In the case of French advertisements, the name of the CNP should be substituted for that of the ASC throughout this document.

3. The President of the ASC may, depending on the circumstances, request that a CCAC official be available to provide evidence or advice.
4. The Chairperson of the Panel will insure, so far as is possible, that any member of a specific group is not in conflict of interest with regard to a proposed hearing.
5. A quorum shall be three (3) persons, one of whom must be a consumer representative.
6. The appropriate groups will be notified and the process itself will be ready for operation by July 1, 1986.
7. Appeals will be made in writing to the President of the ASC and shall be accompanied by the required fee. Fees are set as follows:

<u>Appellant's advertising yearly product budget account</u>	<u>Fee</u>
under \$ 500,000	\$ 1,500
\$ 500,000 to \$ 999,999	\$ 2,000
\$ 1,000,000 and over	\$ 2,500

The lowering of the fee below the \$ 1,500 minimum, according to the size of the business, will be at the discretion of the President of the ASC.

8. An appeal shall be heard and reported within twenty (20) working days of being formally lodged.
9. Immediately following the lodging of an appeal, the President of the ASC will notify both parties of the date and time of the hearing. Either party may request a change of date, but unless agreed to by both parties, the originally scheduled date will stand. The President of the ASC or his nominee will act as Chairperson of the hearing, but will have no vote in the proceedings.
10. Each party to a dispute will be required to file a written brief on its position with ASC. This brief will be made available to the Panel five (5) working days prior to the hearing, for review before testimony is called for.

11. Each party to the dispute will be permitted approximately an hour and a half to separately present supporting argument to the Panel. Extensions may be granted at the discretion of the Chairperson.

Each party will remain at a convenient location until the Panel is satisfied that it has heard all arguments before making a decision. The Panel may ask one or both parties to reappear for questioning, rebuttal of, or cross-examination on evidence given.

12. Testimony before the Panel shall be regarded as "confidential and privileged" and is not to be discussed with any person outside the Panel without the permission of all parties to the dispute.
13. The Chairperson of the Panel will report the Panel's findings with a brief statement suggesting its recommendations. Details of the final vote will be given, but the individual votes of members of the Panel will not be identified.
14. The recommendations referred to in item 13 will be passed to the Deputy Minister, CCAC. The Deputy Minister will notify the Chairperson of the Panel of his decision within one week following receipt of the recommendations. The Chairperson will in turn notify the advertiser within the week following.
15. Compensation for expenses only (no per diem fees are contemplated) will be provided to members of the Panel and witnesses, at the discretion of the President of the ASC.
16. The formation, administration, structure and management of the Panel will be the responsibility of both the ASC and the CNP.

ANNEX G
FINDINGS

ANNEX G - FINDINGS

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ANNEX G - FINDINGS

This Annex presents the findings of the evaluation with respect to the rationale for the pre-clearance of broadcasting food advertisements, the extent to which the objectives of the program are achieved and its perceived effectiveness and efficiency according to different affected parties. It also discusses the government priorities and compares the cost of the current process with the cost of other government and private sector pre-clearance processes.

1. Rationale for Pre-clearing Food Ads: Health and Safety Considerations

In the Broadcasting Regulations, only advertisements for food, drugs and cosmetics have been identified for pre-clearance prior to their broadcast on radio and T.V. For all other types of consumer products, government monitors for fraud and misleading or deceptive aspects of their advertisement through post-broadcast enforcement activity. The main reason cited for differentiating between advertisements for food, drugs and cosmetics and those for other consumer products is that these three particular products are health- and safety-related.

One of the main reasons why the pre-clearance process was put in place was to protect consumers against potential health hazards associated with food advertisements. It was

believed that consumers do not have all the expertise and knowledge to adequately protect themselves. In fact, the key government intervention to protect consumers is the Food and Drugs Act and the Consumer Packaging and Labelling Act and associated regulations and other relevant legislation with which food manufacturers and advertisers are required to comply. The role of the pre-clearance process is one of enforcement to ensure one hundred percent compliance with respect to these regulations. As noted above, such a high level of protection is felt to be warranted for reasons of health and safety associated with food products.

However, the findings of the evaluation suggest that, for most types of advertisements, health and safety concerns are not a major factor. Table G-1 shows that, from a sample of around 10,630 submissions (based on a sample of 56 companies submitting ads over the period 1981 to 1985) health and safety was not a major reason for rejecting ads. Ads rejected for health and safety reasons represented only 1.08% of the total ads being submitted. As the data shows, the percentage of ads rejected for health and safety reasons is higher for advertisements from manufacturers/producers where 13.6% of ads rejected had violated regulations which could be construed as "health- and safety-related". (See Annex I for a more complete discussion).

These findings coupled with comments made by industry representatives regarding the subjectivity of some of the decisions strongly suggest that **the process has gone beyond the health and safety rationale for pre-clearing food advertisements.** Moreover, the data from Table G-1 and Table G-2 would suggest a different treatment for advertisements dealing with each of the categories identified: beer/wine/cider, restaurants, retailers and manufacturers/processors.

Table G-1

% Distribution of Rejections for Health and Safety and Other Reasons *

Sample of 56 Companies (1981-85)

	<u>Beer/Wine</u>	<u>Manufacturers/ Processors</u>	<u>Retailers</u>	<u>Restaurants</u>	<u>Total</u>
Health * & Safety	0	13.6%	6.8%	4.5%	11.2%
Other	100.0%	86.4%	93.2%	95.5%	88.8%
Total Rejections	39	748	88	155	1030
Rejections (% of Submissions)	7.2%	11.8%	3.5%	12.7%	9.7%
Health & Safety Rejections as a % of Total Submissions	0	1.6%	0.2%	0.6%	1.08%

* Note: A list of the sections of the Guide that were identified as health- and safety-related is provided in Annex I.

Table G-2

Reasons* For Rejections
1981-85

Reasons*	Beer/Wine Cider (%)	Manufacturers/ Processors (%)	Retailers (%)	Restaurants (%)	Total (%)
Claims (market shares, product attributes, etc.)	35.9	24.7	31.8	18.7	24.9
Labels (new and improved products, further information, etc.)	18.0	33.8	31.8	11.0	29.6
Subjective	2.6	13.1	1.1	8.4	11.0
Violation of Regulations	25.6	15.4	10.2	12.9	15.0
Comparative Advertising	0.0	2.9	0.0	34.8	7.4
Other	18.0	10.0	25.0	14.2	12.2
Total	100.0	100.0	100.0	100.0	100.0
Total Rejections	39	748	88	155	1 030
Rejections (% of Submissions)	7.2	11.8	3.5	12.7	9.7
Total Number of Submissions	541	6 343	2 522	1 223	10 629

* Reasons: A definition of what is comprised under each category of reason is provided in Annex I.

2. Rationale For Pre-clearing Radio and T.V. Food Ads but Not Printed Ads: Difficulty to Effectively Correct Radio and T.V. Food Ads for Harmful Effects

Another particular aspect of the CRTC/CCAC pre-clearance process is that only Radio and T.V. food advertisements are subject to government pre-clearance; printed food advertisements are monitored ex-post by government to ensure compliance with the regulations. Reasons given for not including printed advertisements are that, in the case of radio and T.V., the audience is considered captive and the message universally available. In printed advertisements, it is argued that the message is permanent and evaluation of the claims can be carried out without distractions. These differences in audience and availability of the messages and the notion that it is easier and more effective to correct print advertisements (since the same subscribers would be subject to both the fraudulent and corrected messages), have been raised to justify different government enforcement approaches between radio and T.V. food advertisements and printed ones. It has also been argued that in the context of health and safety, even if the original audience could be identified, it may be very difficult after the event, to either correct for a harmful effect of the advertisement or provide adequate monetary compensation for damages.

The relevance of this distinction between the print and broadcast media is somewhat lessened though in today's era of technology where, increasingly, consumers are acquiring technology (VCR's, cable converters, remote control devices) that allows avoidance of television commercials. Moreover, consumer research indicates that the distinction between the impact of ad types may not be as great as first thought. Research has shown that the average amount of miscomprehension with any communication is high and, with food being an "experience good", consumers are more inclined to be influenced in their buying decisions by their level of satisfaction/dissatisfaction based on a trial experimentation.

As a result of these considerations, the issue is then to determine what would be the most effective and efficient approach to ensure that consumers are protected against health hazards in food advertisements and that advertisements comply with the relevant regulations, and, in effect, to determine what role government should play in this area.

3. Achievement of Objectives of Existing Process

For the purpose of the evaluation, the objectives of the current CRTC/CCAC pre-clearance process have been summarized as follows:

To ensure consumers and industry an effective and reasonable degree of preventative protection against economic fraud and health hazards, related to the radio and T.V. food advertisements, at the minimum ultimate cost to the consumer.

The evaluation found that, given the breadth of the coverage, the current process has been very successful in preventing damages to both consumers and competitors from false, misleading and deceptive advertising practices. At the same time the process is a cumbersome device, for, unlike remedial measures, it does not lend itself to selectivity. Instead, all advertising claims are scrutinized, not simply those which are immediately suspect.

Eighty-eight percent of the food industry firms surveyed perceive that there is a need for some type of a pre-clearance process to protect food suppliers from dishonest and unfair advertisements of competitors and to protect consumers. Of those surveyed, 62% indicate that they believe the current CRTC/CCAC process meets this need.

It would appear therefore that in broad terms, the process has successfully met its objectives. However, the effectiveness of the process is mitigated by the fact that only storyboards and scripts are reviewed, not finished commercials and that reviewers have perhaps gone beyond their mandate for pre-clearing food ads, extending the review process to cover more than is required under the current regulations. This suggests that the pre-clearance process could be limited in terms of scope and coverage. These limitations could require that only certain types of ads be pre-cleared according to health and safety claims, while other aspects of the advertisements could be covered by other private review processes (e.g. CBC, Telecaster Committee, ASC) and post-broadcast monitoring of advertisements. However, it can probably be argued that most claims for food products are at least indirectly related to health. It could then be very difficult to clearly define which claims would be construed as health and safety and this may lead to overuse. It is also argued that any mandatory pre-clearance system would effectively undercut virtually all post-facto enforcement, and that it would be unlikely that a criminal court would convict an advertiser for an offence that could or should have been detected through the pre-clearance process.

In effect then, although there are grounds to use different enforcement approaches for ensuring compliance with various aspects of the regulations, from a practical and legal point of view it might be very difficult, if not impossible, to implement such a strategy.

4. Affected Parties

4.1 Consumers

The present audience for food advertisements on radio and T.V. is essentially the entire Canadian population. About 98 percent of households have one or more television sets and a radio, and on average Canadians watch some 20 hours of T.V. per week.

More discretionary income is available today than in the past to purchase processed, prepackaged or novel foods and drinks. Furthermore, the trend towards eating in restaurants has also been very pronounced during the past 10 years.

Given the size of the audience and the expenditures at stake, competition between firms often occurs in the advertising area where large investments are made in order to influence the consumer's buying habits. It is also noted

that the largest percentage of the advertising dollar is directed toward television which is generally believed to be the most effective communications medium. It would then appear that the incentive exists for firms to intentionally mislead, defraud, and deceive consumers through their television broadcasted advertisements. Consumers would then appear to be facing a situation which would justify government intervention (i.e. pre-broadcast or post-broadcast) in order to overcome the potential informational market failure resulting from the transmission of inaccurate signals between buyers and sellers of food products.

Yet, according to consumer research, there are a number of factors which tend to mitigate at least partially, the impact on consumers of potentially misleading food advertisements. Consumer research has revealed that advertisements for a brand are more effective in influencing consumers to switch to a brand if between purchases, they have been exposed to two or more commercials for that brand; that the only cumulative effects to be attributed to advertising are those leading to first purchase of the product or, stimulating increased brand purchase by the product and brand loyal segments; that the average amount of miscomprehension associated with any given communication is high; and that

food being an "experience good", a consumer will generally not buy a product on a repetitive basis unless satisfied after his/her trial experience.

Trial purchases that are induced by misleading ad claims may also be satisfactory since consumers may then repurchase the brand for other reasons, even after the misleading claim has been refuted. However, if firms were inclined to widely adopt misleading or deceptive tactics, some analysts have argued that to maintain credibility in advertising, competitive market forces would pressure misleaders to abandon these practices.

The increasing availability of technology to avoid TV advertisements is also contributing to reducing the effectiveness of advertisements on the consumers' behavior. In effect, consumers can avoid commercials with a television remote control device or cable converter box and via the fast-forward function of a VCR. Finally, the introduction of cable and satellite dishes has brought more stations into the home, many of which are commercial-free.

It must also be recognized that a large proportion of Canadians (60%) are exposed to U.S. commercials for food

products sold in Canada, and that it is virtually impossible for viewers to discriminate between commercials and recognize the different laws and regulatory processes.

Therefore, in assessing the effectiveness of the current process or any alternative scheme, the factors discussed above should be taken into consideration. In addition, it must be remembered that consumers are protected from buying unsafe foods by the existence of the Food and Drug, the Consumer Packaging and Labelling and other relevant regulations. Compliance by industry with these regulations is ensured through the enforcement activities of government inspectors that are taking place at all levels of trade.

4.2 Food Manufacturers and Advertisers

During the past 20 years sales of manufactured food have increased six-fold to about \$30 billion. Since 1980 industry sales have risen by 24 percent but profit margins have declined steadily, from 2.24 percent of sales to only 1.89 percent. Heavy discounting, often associated with advertising campaigns, has tended to erode profits. This has created a situation in which there is an increased incentive for firms to attempt to differentiate their products. In so doing, they may employ innovative advertisements which sometimes may be considered by some to be misleading to consumers.

The advertising agencies also represent an important part of the overall pre-clearance process since they design the advertisements with the goal of differentiating the products they represent from those of their competitors. In doing so, there is an incentive to challenge the thin line that separates creativity from deception. In 1977, (the last year surveyed by Statistics Canada), total advertising billings was close to \$1 billion. On average, 43.4% (\$434 million) of this was devoted to television, while only 12.7% was for radio. It is estimated that, for television billings, around 25% or \$108 million is for food and

beverage advertisements; that is, around 11% of the total advertising billings. It appears that production charges (including the CRTC/CCAC process cost) for developing commercials comprise only 13.1% for television and 8.4% for radio in contrast to almost 90% attributable to media charges.

The industry generally supports the concept of a pre-clearance process for food advertisements. Furthermore, strong support was expressed for some type of a mandatory pre-clearance process. The rationale stems from the industry's recognition of the value of a program to protect consumers from false, misleading or deceptive advertisements for foods, and to protect food suppliers from dishonest and unfair advertisements of competitors. The industry is evenly split as to whether there is a need to protect firms from prosecution and lawsuits, although they recognize that the current process has this effect. The primary reason cited for not supporting a pre-clearance process for this is that most companies have their own lawyers or easy access to lawyers and that responsibility for compliance should rest with the companies. A key issue from the industry's perspective is whether pre-clearance should be the government's responsibility.

There was a diversity of views regarding whether or not the government should continue to play an active role in pre-clearing ads. It is noteworthy that only 14% of those surveyed indicated that they would prefer no formal pre-clearance while about 40% would prefer to see the maintenance of the current structure with modifications to the system to address complaints that the industry has noted. The most frequently mentioned complaints have been: lack of consistent interpretation and application of the regulations, length of the process, problems of communication between the companies and CCAC officials, need to extend the approval period beyond one year, need to simplify the Guide and introduce a formal appeals procedure.

Regarding the process time, our case study analysis of company files, revealed that both the CCAC only and total CCAC and CRTC turnaround time to process submissions for the period 1981-85 was as follows:

Table G-3

Average Number of Days to Process Advertisements
1981-85

	Beer/Wine Cider	Manufacturers/ Processors	Retailers	Restaurants	Total
CCAC average time	2.4	4.6	2.4	4.7	4.1
CRTC/CCAC average time	9.7	5.9	3.7	6.0	5.7

Source: Case Study Analysis.

The primary reason for the longer CRTC/CCAC pre-clearance turnaround time for beer, wine and cider submissions is that these submissions must be reviewed by the Beer, Wine and Cider Committee, in addition to the routine CRTC/CCAC review. Furthermore, it should be noted that these average turnaround times represent a maximum rather than a minimum since no consideration was given to whether the days were weekends or work days.

Overall, when there is no need for further information to substantiate claims or when the advertisement is not considered contentious, the CCAC average time to process the advertisement appears to be well within the expected two week period. (The department suggests that two weeks be allowed by firms for pre-clearance of ads).

Overall, although much of the original criticism directed at the government's role in pre-clearing ads originated with the food industry, and from the Grocery Products Manufacturers Association of Canada (GPMC) in particular, it would be expected that removal of this process would not be favoured by some sectors of the industry. A wide diversity of views have been expressed, frequently and strongly by people in the industry, as regards the need for a pre-clearance process and, if there is a need, who should

administer it. Thus, while the process may not be favoured, there might be some opposition from certain sectors of the industry to its removal. Whether or not its removal would be actively opposed however is uncertain. It may be difficult to oppose a government action which reduces the regulatory burden on industry and demonstrates confidence that an industry will continue to abide with the law. Moreover, in the absence of the current CRTC/CCAC process, the industry would be supportive of a mandatory, though self-regulatory system.

4.3 Retailers

Retail food companies are also requested to submit their food advertisements to the pre-clearance process prior to broadcast. In general, retailers' advertisements concentrate on the provision of information regarding the availability of certain products, their prices and special of the week, rather than specific food claims. The fact that newspapers and flyers entail the largest proportion of retailers' advertising costs is indicative of the localized nature of the relevant market area of any given supermarket.

Because retailers are faced with critical time constraints for advertising weekly sales, their main concerns regarding the pre-clearance process is related to the time involved in adhering to the process. However, as shown in Table G-3 this is not excessive. Over the period 1981-85, the CCAC turnaround time to review these submissions averaged 2.4 days while the total CRTC/CCAC turnaround time was 3.7 days. In addition, the CRTC circular letter #176 (see Annex B) also provides for certain local advertisements (including retailers' ads) to be exempted from the pre-clearance process. Unfortunately, it would appear that these provisions are not widely known.

4.4 Restaurants

Restaurant advertisements to be aired on radio and T.V. are also subject to the current CRTC/CCAC pre-clearance process. Generally, few claims are made in restaurant advertisements, though with national chains, comparative representations are widely used. In reviewing comparative claims, the focus is primarily on elements of unfair disparagement. CCAC does not directly concern itself with these elements of disparagement unless the message is false, misleading or deceptive. Guidelines regarding comparative advertisements have been issued by the Advertising Standards Council (ASC). The ASC has the ultimate responsibility to monitor adherence to these guidelines and resolve disputes among competitive firms.

Since restaurant meals may be considered "experience goods" and therefore consumers can judge on a trial basis the quality of the food and validity of the claims without risking health injury, **the need for the pre-clearance of restaurant advertisements is questionable.** This is particularly true given that complaints about comparative claims (34% of restaurant ads being rejected, based on the case studies analysis) could be resolved through ASC and the market forces. Furthermore, for advertisements for local restaurants, provisions for exemptions currently exist, though may not be widely known (see **Annex B**).

4.5 Beer, Wine and Cider Producers

Advertisements for beer, wine and cider products are also required to be pre-cleared by CCAC under the Broadcasting regulations. Following the routine CCAC review process, these products are also reviewed by the Beer, Wine & Cider Committee (consisting of two CRTC officials, representatives of the Ontario and Quebec provincial liquor control boards and an official from Health and Welfare, Canada). The major concern expressed by these producers is that the committee meets only every second week. This has the effect of substantially increasing the turnaround time (2.4 days for CCAC pre-clearance versus 9.7 days for the total CRTC/CCAC process).

Currently, a variety of avenues are being considered by the CRTC and the industry to address this issue of time. The industry has also taken the initiative of suggesting that an industry code be developed, and pre-clearance discontinued. Furthermore, the CRTC has issued a notice to discontinue its involvement in the clearing of the Beer, Wine and Cider advertisements. The findings of this study support such a discontinuance. A majority of the advertisements for beer, wine and cider products are more of a "lifestyle" nature. Lifestyle is the subject of other private pre-clearance processes, notably at the broadcast level. It should therefore be possible to develop criteria to exempt some of these ads.

4.6 Broadcasters (Television and Radio)

The Canadian broadcasting industry appears considerably less competitive than that of the U.S. The CBC, a non-profit public corporation, though far larger than the private CTV, the only other major national network, generates far less revenue through dollar sales of air time for advertising. Private radio and television generated approximately \$1.4 billion in revenues in 1984, while CBC had some \$154 million.

a) Television Networks

Once a food advertisement has been cleared by CCAC, prior to airing on television, approval must be obtained from the broadcasting company. For ads being aired on independent TV stations, which are members of the Telecaster Committee, approval is obtained from that Committee. The Committee performs this pre-clearing function. In contrast, the CBC has its own "Advertising Standards" and in-house pre-clearance body of some 20 reviewers. Even though the broadcasting review process for T.V. food advertisements represents an additional layer of pre-clearance, this pre-clearance process serves a different function from the CCAC process. It is worth noting that participants using these review processes do not perceive any significant overlap or duplication in the requirement to pre-clear with both CCAC and the broadcasters except as regards comparative advertisements.

In some ways it appears that the CBC standards are even stricter than those applied by CCAC. The CBC's standards are to ensure that advertisements are presented with integrity and good taste and are not controversial, misleading, unfair in their competitive claims or exploitative of children. Similarly, the Telecaster Committee has also established standards/guidelines for pre-clearing advertisements with special attention devoted to comparative advertisements. This is not surprising for it is in the interest of the network and all advertisers together to ensure that the rules governing advertising are respected, especially if it is comparative or could entail serious consequences for consumers such as ill-health.

As one would expect, broadcasters have expressed strong support for the government pre-clearance process, since according to the Food and Drug and other relevant regulations, they are potentially liable for advertising in a manner that is false, misleading or deceptive. In the absence of a CRTC/CCAC pre-clearance of ads, this liability would likely increase. This has raised concerns among broadcasters regarding their possible policing role to ensure that approved commercials that are aired comply with the regulations as well as the other conditions of good taste, integrity and fairness. For this reason, broad-

casters do not favour the alternative, requiring broadcasters to ensure as a condition of licence that commercials have been approved by an independent industry body. However, they would be unlikely to voice strong opposition to such a condition being added to licences.

On the other hand, most broadcasters do not object to their current policing role because the responsibility for pre-clearance rests with the government. Most broadcasters maintain that a second level of pre-clearance will always be required, even if an industry-based review process was put in place. The claim is that scripts and storyboards are insufficient for establishing good taste; there is a requirement to pre-screen the produced ad in final form.

b) Radio Stations

In the case of radio advertisements, radio stations generally design the commercials for their clients and see that they are submitted to the current CRTC/CCAC process. While it is believed that the process is beneficial to radio stations (the small advertisers), saving them legal fees and protecting them against lawsuits and prosecutions, this may be missing a key point. Given that ads being aired on radio are usually local in scope and more appropriate for

retailers and restaurants and typically price related, it appears that in many instances radio ads could and should fall under the exemptions provisions as discussed in the CRTC circular letter #176. Moreover, there are presently discussions between CCAC officials and broadcasters to develop criteria to extend the current exemptions. It is also worth noting that there is presently a CRTC public notice requesting comments from interested parties about the CRTC removal from the CRTC/CCAC pre-clearance process in the case of radio ads and the transfer of CRTC's current responsibility to CCAC.

4.7 Federal Government

Under the present arrangements, the federal government, through the CRTC and CCAC is directly responsible for pre-clearance of radio and T.V. ads for food. In particular, this provides for ensuring that advertisements comply with the Food and Drug, Consumer Packaging and Labelling regulations and other relevant legislation established to protect consumers against health and safety hazards and false, misleading, and deceptive advertising. Pre-clearance is therefore an enforcement activity. The requirements to comply with the regulations remain, independent of the policing function. If less policing by government is desired, responsibility for pre-clearing food ads with regard to provisions of the Food and Drugs Act and other relevant legislation could be assigned to an industry body -- broadcasters, advertisers, food manufacturers, retailers, or, more likely, some combination of these parties.

The relevant issue then is whether or not an industry review process (combined with government's ongoing program to deter, detect and prosecute violators after they have broadcast or published an ad in violation of the laws) could work to ensure compliance with the regulations and deterring industry from developing false, misleading and deceptive

advertisements and pushing the line between creativity and misleading ads. Based on the findings of this study, such a system would be expected to work well. In any case, **with or without a mandatory industry pre-clearance process, government is not abandoning this area and will continue to protect consumers through its ongoing program of post-broadcast enforcement of the law.**

4.8 Provincial Governments

The provincial governments' interest in the radio and T.V. food advertisement pre-clearance process is mainly in relation to the beer, wine and cider commercials. In effect, two provinces (Ontario and Quebec) are represented on the Beer, Wine and Cider Committee. Furthermore, once a commercial is approved by the Committee, it must then be approved by the liquor control board in each province, except Newfoundland and Manitoba. These two provinces do not require any governmental approval beyond that of the Beer, Wine and Cider Committee. The fact that 8 out of 10 provinces are already reviewing beer, wine and cider commercials raises the question of the need for the current Beer, Wine and Cider Committee review process.

The province of Quebec is also regulating child directed advertising in a very stringent manner.

5. Government Priorities

The examination of the government's role in the pre-clearance of ads is in part in response to the general issue being raised by the government about the continued need for intervention in the marketplace. The desire to reduce this intervention, where unwarranted, is the main thrust behind this assessment of the continued need for the CRTC/CCAC pre-clearance regulations.

At issue also is the government's role in the protection of consumers and the public at large. Broadcast Food Advertising has and continues to be differentiated from broadcast advertisements for other products and from printed food advertisements because of "health and safety factors". In pursuing a general goal of "regulating smarter", the government would not want to be perceived as reducing protection to consumers, especially in an area considered as health- and safety-related. This study has found that regulation in this area can be improved and, the level of intervention reduced without impacting negatively on health and safety.

6. Costs

An assessment of the efficiency of the current CRTC/CCAC pre-clearance process has shown that on average CCAC has reviewed 14,000 submissions for commercials per year during the period 1981-85. On average, 80% of these were approved outright, 10% were conditionally accepted and required some minor adjustments, while the other 10% were rejected because they required substantial adjustments. The review process is highly labour-intensive and government costs are primarily those of the staff requirements in examining and processing the commercials. While CCAC cost per advertisement has steadily increased over the period 1981-85, from \$4.40 in 1981 to \$8.90 in 1985, this still compares favourably with other pre-clearance systems. (See Table G-4).

Table G-4

Average Labour Costs* per Commercial
for Various Pre-clearance Processes

<u>YEAR</u>	<u>CCAC</u> (<u>\$</u>)	<u>Health & Welfare</u> (<u>\$</u>)	<u>Telecaster Committee</u> (<u>\$</u>)	<u>U.K. I.T.A.**</u>
1985	8.90	20.14	7.17	12.0

* Source: M.K. Berkowitz; Radio and T.V. Food Advertising Pre-clearance: Assessment of Alternatives, Study Module, March 1986.

** Independent Television Association, the industry body responsible for pre-clearance in Great-Britain.

The costs which mandatory government pre-clearance impose on firms are primarily the costs of submitting ads which have been calculated at approximately \$55 per ad or close to \$770,000 per annum on the basis of 14,000 ads per year. In relationship to the total expenditures on television and radio advertising this represents approximately .14%. The overall average cost of \$64.00, including submission and processing costs, of the government pre-clearance requirements compares also favourably with the \$80.00 and \$160.00 cost charged by ASC for the pre-clearance of child-directed ads for members, and non-members of the ASC respectively.

Other industry costs to be considered are the ones related to changes necessitated by rejection of a final copy of a commercial by the pre-clearance body. In general, these are considered small, since any changes required are done to scripts or storyboards, prior to production of the actual T.V. commercial. The exception would be the advertising agency submitting a U.S. commercial which did not adhere to the relevant Canadian legislation. In this case, the incremental production costs might be quite large but nevertheless, much smaller than producing the entire commercial from its beginning.

Among the other industry costs to be considered are the costs of meetings held in Ottawa with various firms. It appears that about 60 to 70 such meetings per year are held either at the request of CCAC officials or the firms themselves. These costs although not estimated must also be allocated to the current process cost, since without the process these costs would not be borne by the firms and government.

ANNEX H

ASSESSMENT OF DETAILED OPTIONS

ANNEX H - ASSESSMENT OF DETAILED OPTIONS

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ANNEX H

1. Options Considered

The evaluation examined several options that could be considered for enforcing the Food and Drug, the Consumer Packaging and Labelling and other relevant regulations affecting radio and television food advertisements. In identifying these options, consideration was given to the approaches used in the United States and Great-Britain. The main distinction between the various options is the different levels of government involvement associated with each.

Five options have been identified. In assessing each option, criteria such as the preventative ability, coverage, efficiency, objectivity and consistency and equity were taken into consideration.

The five options studied include:

- Option I: The Current System (Mandatory Pre-clearance by Government)
- Option II: Improve the Current System
- Option III: Revocation and Privatization - Mandatory Pre-clearance by Industry Review Body
- Option IV: Repeal of Food Advertising Pre-clearance Regulations
- Option V: Revocation and Privatization - Voluntary Pre-clearance

These options are discussed in more detail below.

1.1 Option I: The Current System (Mandatory Pre-clearance by Government)

1.1.1 Description

In this option, the government enforcement approach of the relevant regulations affecting radio and T.V. food advertisements would continue to be the current CRTC/CCAC pre-clearance process. All radio and T.V. food advertisements would still have to be pre-cleared prior to broadcast and a CRTC continuity number would still be required. The scope of the review would remain at the same comprehensive level. The appeals procedure would follow the hierarchical ladder complemented by the new appeals procedure now being discussed. The approval period for certain types of ads would eventually be extended as a result of the discussions now underway.

1.1.2 Assessment

The program appears to have been successful in preventing damages to both consumers and competitors from potential health hazards and false, misleading and deceptive advertising practices. However, it was found that the system may be too comprehensive. In effect, the overall costs of such an extensive review may outweigh the benefits to be derived.

In terms of coverage, the process is a cumbersome device because, unlike usual remedial measures, it does not allow for selectivity. In the current process, all advertising claims are scrutinized, not simply those which are immediately suspect. On the other hand, it has been argued that in the context of health and safety, it may be impossible to either effectively correct ex-post or provide sufficient monetary remuneration to equitably compensate for the damages imposed upon society as a result of misleading and false food advertisements broadcast on radio and television.

As regards the efficiency of the process, the cost of the current process to both government and industry compares favourably with the costs of other review processes.

Regarding its objectivity and consistency, the process has sparked a good amount of criticism by enough participants, not to be considered as isolated situations.

In terms of equity, the current CRTC/CCAC process does not appear equitable to many users due to the perceived reliance on personal judgement by reviewers. Furthermore the appeals procedure consisting of appeal in ascending order of the CCAC hierarchy does not appear to be effective

(hence the need for a formal independent appeals procedure now being discussed). From the legal point of view it has been noted that the arbitrariness of the standards applied by reviewers may be grounds for invalidating the current process, if it were ever tested before the courts.

1.1.3 Conclusion

Given the above assessment and the concerns expressed by different affected parties, the evaluation has concluded that this option should not be recommended. In effect, the evaluation identified several modifications to the current process that would improve its effectiveness and efficiency. These modifications are discussed in more detail in Option II "Improve the Current System".

1.2 Option II: Improve the Current System

1.2.1 Description

In this option, the government enforcement approach of the relevant regulations affecting radio and T.V. food advertisements would continue to be through a pre-clearance process. However, modifications designed to increase the efficiency while maintaining or improving the effectiveness of the current process would be implemented. Some of these

modifications would require a change in the pre-clearance advertising regulations. Modifications to the present pre-clearance process would include modifications to:

- (A) the scope and coverage of the process exempting certain types of ads and streamlining the process;
- (B) administrative and control procedures extending approval periods (thereby reducing pre-screening requirements) and improving the effectiveness of the process; and
- (C) communications with industry simplifying and clarifying the Guide documenting the review standards.

A Modifications to Scope and Coverage

- A1) Compliance with the relevant regulations should be re-emphasized as the focus of the review to avoid overlap/duplication with other private review processes and to eliminate potential arbitrariness in making a decision whether to reject or approve an ad. Issues not covered by the Food and Drugs and the Consumer

Packaging and Labelling legislation would be the subject of other private review processes and would be broadcast monitored by the Marketing Practices Branch in response to complaints.

- A2) The "No Claim Copy" exemption provisions specified in the CRTC circular letter #176, should be extended to include commercials with non-controversial and non health-related claims in addition to the three rules specified under the current "No Claim Copy" exemptions. According to the current rules, a commercial which does not contain any claims on behalf of the manufacturer or producer, which mentions only the name and price of the product and the address of the point of sale, is now exempted from the pre-clearance requirement. These exemption provisions could be extended by including the current exemption provisions already in effect for restaurant commercials (see CRTC circular letter #176, annex B). These exemptions would apply to all types of ads not only at the local level of coverage as is currently the case with restaurant commercials but also to the national level of coverage. A copy of these extended rules will be included in the Guide and widely distributed.

A3) Restaurant and retailer advertisements would be exempted from the CCAC pre-clearance process, since in general, these ads do not contain any health and safety claims, are usually local in scope (except for large chain restaurants) and would be subject to other private review processes as regards comparative advertising, good taste and fairness.

A4) Consolidation of the registration numbering and approval stamp in CCAC, thus eliminating the CRTC involvement and reducing time lag between receipt of a submission and communication of a decision. CRTC has recently served public notice to obtain comments on a proposed modification to the radio broadcasting regulations regarding the CRTC withdrawal from the pre-clearance of radio food advertisements and the transfer of their current responsibilities in relation to the food advertising pre-clearance process to CCAC. CRTC is also expected to serve a similar public notice at a later date to withdraw from the pre-clearance of T.V. food ads and transfer the CRTC's responsibilities to CCAC.

- A5) The current process for approving beer, wine and cider commercials would be changed in one of the following ways:
- a. Eliminate the Beer, Wine and Cider Committee and allow CRTC officials alone to approve these ads.
 - b. Eliminate CRTC involvement in the process and delegate total responsibility to the provinces.
 - c. Allow the industry to self-regulate once they have developed (in collaboration with consumers and government) a national industry code of standards.

Discussions between CRTC and the Brewers Association to implement option (c) are now underway and the CRTC public notice on proposed changes to the Radio Broadcasting regulations is concerned with the withdrawal of the CRTC from the Beer, Wine and Cider Review Committee.

- A6) Beer, Wine and Cider advertisements would be exempted from the CCAC pre-clearance process, since in general these ads do not contain any health and safety claims and are more of a "lifestyle" nature. Furthermore, these ads are also subject to the other private review processes for reasons of good taste, integrity and fairness and are also pre-cleared by 8 out of 10 provincial liquor control boards.

B Administration and Control Modifications

- B1) Approvals to be granted for periods exceeding one year unless specific terms of the commercial (e.g. test results relevant for less than a year) suggest otherwise. A draft of the conditions under which the approval period would not be extended beyond one year is provided in **Annex E**.
- B2) New appeals procedure would be introduced. Refer to **Annex F** for a copy of the proposed procedure and composition of the Advisory Review Panel.
- B3) Each rejected ad would be referenced to a specific regulation or section of the Guide.
- B4) A system to catalogue decisions regarding contentious words and phrases used in ads would be adopted so as to allow future decisions to be based upon precedents.
- B5) Same reviewer would follow an advertisement through the entire review process where possible, including resubmission of the ad because of either a required modification or an additional year requested for broadcast.

B6) Improved accessibility of reviewers. In order to avoid a backlog of commercials waiting to be reviewed and telephone messages to be returned, reviewers would, after a reasonable time, transfer a problem to the supervisor whose job would be to resolve disagreements, leaving the reviewers to continue moving ads through the system. It is important that once the supervisor has resolved a problem, the reviewer responsible for that ad is informed of the resolution, thus establishing a precedent for future action.

C Modifications to the Guide

The Guide would be reorganized and simplified with emphasis toward clarifying the review process and would include a copy of the updated CRTC circular letter #176, which would specify the revised exemption provisions.

1.2.2 Assessment

Option II would reduce costs to both government and industry. It would reduce the scope and coverage of the government enforcement activity, would focus pre-clearance on ensuring compliance with the Food and Drugs, and the Consumer Packaging and Labelling Advertising Regulations, would reduce the potential of overlap/duplication with other private review processes and thereby would bring the process more in line with its original intent. In requiring selectivity, modifications (A2) and (A3) would have the effect of reducing the volume of submissions to be pre-cleared since, by their nature, retailers, restaurants, some manufacturers and processors, and most of radio advertisements would not require pre-clearance, a situation which already applies for local restaurant advertisements but would be extended to national advertisements based on the same principles. Furthermore, the extension of the approval period beyond one year would result in a reduction of the cost to government. In effect it is expected that due to this modification, the volume of ads to be submitted would decrease by at least 25%.

Apart from reducing costs, these modifications would also impact on the efficiency of the process. Since fewer commercials would be reviewed and the focus of each review narrowed (eliminating potential subjectivity and overlap with other private review processes), there would be gain in terms of turnaround time and the objectivity and consistency of the decisions. As well, the elimination of CRTC involvement in the process would reduce costs, and improve the turnaround time, since as indicated earlier CRTC involvement typically adds about a day and a half to total turnaround time. The other modifications affecting the administration and control of the process and the "Guide" would contribute to improving the efficiency of the process.

The objectivity and consistency of the process would be enhanced as a result of improving the efficiency of reviewers. This would be done by ensuring that resubmitted ads where possible are being reviewed by the same reviewer, by establishing a precedence system for contentious words and phrases, and by referencing rejected ads to a specific regulation. These improvements in consistency and objectivity of the process would also improve the likelihood that the courts would not invalidate a mandatory government pre-clearance process based upon the arbitrariness of its decisions.

In terms of equity, the proposed formal appeals procedure would improve the perceived fairness of the process, since it would be external to the government and would include both advertisers and consumer representatives. However, some concerns raised regarding the workability of the proposed appeals procedure will have to be addressed to ensure that it is as effective as possible.

1.2.3 Conclusion

The evaluation has found that the overall effectiveness and efficiency of this option would be superior to the current CRTC/CCAC process. Also, costs to government and industry would be reduced. If a decision is made to continue with the current type of government enforcement approach, these modifications should be implemented as soon as possible, and a timeframe established and communicated to the interested parties without delay. These modifications to the current system would be expected to satisfy most of the concerns that industry has raised in the past.

1.3 Option III: Revocation and Privatization - Mandatory Pre-clearance

1.3.1 Description

Under this option, pre-clearance of ads prior to broadcast would be transferred from government to an independent industry review body. The Radio and T.V. Broadcasting regulations regarding food ads would be revoked and the industry review process would become mandatory by adding a condition of licence to broadcasters at the time licences are renewed. This condition of licence would specify that an ad could not be aired if it did not bear the independent review body approval stamp. For child-directed ads, a similar condition of licence is already in place with respect to the ASC review process. Because the addition of a condition of licence at any time between the initial granting of a licence and the renewal time, is a very long and time-consuming process, the condition would be put in place at renewal. In the interim period, a voluntary agreement between broadcasters and government would be expected to ensure that the process is effective. This voluntary agreement would ensure a high coverage during the transition period since representatives of CBC and Tele-caster Committee, representing some 85% of all T.V. advertisements, were consulted during this study and were in favour of this approach.

Guidelines to be used by the industry-based review body in prescreening ads would be developed by a joint industry/government committee composed of representatives of food manufacturers, advertising agencies, broadcasters, consumers and government. These guidelines would cover the Food and Drug, Consumer Packaging and Labelling and other relevant regulations and if agreeable to all interested parties, aspects of good taste, integrity and fairness currently taken into consideration during the Broadcasters' review process. If possible, the integration of the review standards currently covered by private pre-clearance processes would eliminate the need for these review processes. Once the set of guidelines are accepted by the government, the actual review process would be put in place by a specific group (perhaps the ASC) and would be operated on a cost-recovery basis. In developing the guidelines and carrying out the review process, the modifications discussed under Option II, "Improve the Current System" could be implemented under this option. A formal appeals procedure with wide representation would also be incorporated into the system.

The government role under this option would be much reduced from the present. Government would scrutinize the operation of the process for a two-year period immediately following implementation of the process. To complement the independent industry-based review process, post-broadcast monitoring activities could be undertaken by CCAC, largely in response to complaints for issues other than those covered by the industry-based review process. In addition, specific industries could be targeted for periodic examination. Government would also continue to provide advice and opinions in response to industry's requests.

It should be pointed out that acceptance of all the key features of this option by the interested parties might eliminate the present broadcasting layer of pre-clearance. However discussions with broadcasters suggest that some would likely continue to pre-clear ads since they view themselves as the final gatekeeper, ultimately responsible for all the material they broadcast. This is a matter of choice for these broadcasters and does not affect the feasibility or implementation of this option. Furthermore, it is believed that the mandatory industry pre-clearance review process would review scripts and storyboards while the broadcasters review process currently examines final products.

1.3.2. Assessment

The ability of this option to prevent false, misleading and deceptive advertisements from being broadcast depends upon the ability and willingness of the industry reviewing body in pre-clearing advertisements for the regulations under the Food and Drugs and the Consumer Packaging and Labelling legislation. There is every reason to expect that the industry body would in fact be willing and able to carry-out this role. Ads would be monitored after broadcast, especially during the implementation period in order to ensure an adequate level of compliance, particularly in areas where consumer interest could be in conflict with those of the industry. Any corrective actions, however, would be taken only at the post-broadcast level via prosecutions.

Under this option, the coverage would be as comprehensive as under Option II, "Improve the Current System". The key distinction is a transfer of pre-clearance responsibility from government to industry.

Representatives of food manufacturers and advertising agencies have responded favourably to the concept of an industry-based review process and, furthermore, believed that, to be effective, the process should be mandatory.

Although the expected costs to firms on a per ad basis could not be accurately determined at this time, based on the current ASC fee structure for pre-clearing child-directed ads and feminine hygiene products, it is reasonable to conclude that this option would impose somewhat greater direct costs per ad for firms than does the current government pre-clearance process. However, overall costs would likely be reduced as fewer ads would have to be pre-cleared due to the reduction in scope of the requirement. From the government point of view, this option would require fewer resources than the current pre-clearance process as only suspect ads would be pursued by CCAC in response to complaints. This might yield a savings of one to two person-years in CCAC. However, these savings could be counterbalanced by an increase in legal expenditures for eventual prosecutions.

As with Option II, an appeals procedure is an important component to ensure objectivity and consistency. With a review process operated by an industry body, the assurance of objectivity is even more critical. Whether justified or not, it is perceived by many in industry that an independent industry reviewing body would be more equitable than government reviewers because people in industry are thought to have a better understanding of the advertising function and of consumers than do government bureaucrats. On the

other hand, some industry representatives believe that industry bodies are subject to pressure and manipulation by large companies. Consumers on the other hand might view this transfer of responsibility to industry as government abandonment of an area considered as health- and safety-related. The appeals procedure would have to be effective in order to assure equity. Under this option, it is suggested that representation on the appeals committee be sufficiently wide to encompass the concerns of all relevant parties.

1.3.3 Conclusion

This option could be considered as a viable alternative to the current CRTC/CCAC pre-clearance process. However, when compared with improving the current system, due to the uncertainties of the number of prosecutions that would take place, this option may or may not be as cost-effective. If the government wishes to transfer authority for pre-clearance to the industry by adopting this option, it would be essential to immediately develop an implementation plan in consultation with industry and to communicate the proposed timeframe to all interested parties. To counter potentially negative reaction from various interest groups, the development of the guidelines, the mandate of the review process and the procedure for appeals should involve all

affected parties. It is felt that the government involvement both in developing the guidelines and in post-broadcast monitoring would contribute to generating strong support for this option. It should be pointed out however that broadcasters would not likely be pleased by the addition of one more condition to their licences and might voice their concerns accordingly.

1.4 Option IV: Repeal of Food Advertising Pre-clearance Regulations

1.4.1 Description

This option is similar to the present system of advertising regulation for most non-food products in Canada and to the United States system for regulating all advertising. Under this option, government pre-clearance would be eliminated and government post-facto enforcement of the relevant legislation as regards food advertising would be undertaken by CCAC using an approach similar to the one used by the Marketing Practices Branch. Enforcement through inspections would remain with the Consumer Products sub-activity. As with the current activities of the Marketing Practices Branch, the post-broadcast monitoring would rely heavily on complaints. In the absence of special monitoring, it is expected that compliance, complaints and prosecutions would be similar to that for relevant advertising of other non-food products and printed food ads.

Under this option, revisions of sections 11, 13 and 19 of the Broadcasting Regulations would be required to eliminate the requirement for pre-clearing food ads. It is believed that, even with the disappearance of the government pre-clearance process however, advertisers or their legal

counsel might still seek advice from the department on issues of compliance with the Food and Drug and the Consumer Packaging and Labelling regulations. It must be pointed out that under this option, it is expected that the existing private pre-clearance processes carried out by the broadcasters and the ASC would continue to exist and perhaps even expand.

1.4.2 Assessment

It appears that this option would retain, through the deterrent effect of post-broadcast monitoring, the ability of preventing fraud, misleading and deceptive food advertisements. Although the availability of sanctions and the threat of bad publicity would act as a deterrent, this may not always be totally effective given the small magnitude and minor or technical nature of some potential deceptions.

Depending on the number of post-broadcast prosecutions, costs to government of this option may or may not be reduced from current levels. The transfer of enforcement responsibility from a pre-clearance process to a post-broadcast monitoring responsibility would likely reduce resource requirements by about two person-years; however, there could be additional costs associated with the prosecution of cases.

As regards the costs to industry, these could increase due to the costs of supplying information to government to either obtain advice or to respond to investigations. Costs to industry could also increase if the reduction in government intervention results in an increase in private suits as is the case in the U.S. Indeed, it appears that the U.S. Federal Trade Commission's recent reduction of intervention with respect to the advertising in the food and drug industry has resulted in a substantial increase in the number of private suits for misleading and deceptive advertising and the related expenses incurred by the industry.

It then appears that this option would be most efficient in cases where damages to individuals and companies are large enough to justify complaints. It may not however be responsive enough in cases where damages to any particular individual are small, but the total damages are large due to the number of affected parties. The latter type of case might be the most frequent situation for consumers.

The reliance on complaints in this option may impact negatively on the consistency of enforcement compared with the status quo. Moreover, the effectiveness of detecting deception, particularly for health- and safety-related matters is substantially reduced in this option. Appeals

through the court system would be widely available, but the costs of appeal and the speed of the process may be such as to be viewed as prohibitive and inequitable.

1.4.3 Conclusion

Post monitoring and the deterrent effect of prosecutions would work as well for food ads as for non-food ads. The key issue is in ensuring compliance with regulations relating to health and safety. In addition, one must consider that whether costs are reduced depends on the level of prosecutions that actually results. In the context of health and safety, while there would be no deaths or injuries from exposure to a non-compliant ad, there may be some less harmful effects. For these, it may be impossible to effectively correct ex-post or provide sufficient monetary remuneration to compensate for the damages that might be imposed upon society. In addition, it is believed that if this option is adopted, it might generate some negative reactions and be perceived by many as a government reduction of consumer protection.

1.5 Option V - Revocation and Privatization
- Voluntary Pre-clearance

1.5.1 Description

Under this option, the current CRTC/CCAC pre-clearance regulations would be revoked and, in its place an industry-based voluntary pre-clearance process would be created. Post-broadcast monitoring of ads would be undertaken by CCAC in the same manner as the Marketing Practices Branch currently do for non-food products. However, under this option, the industry-based review process is voluntary rather than mandatory. Sections 11, 13 and 19 of the Broadcasting Regulations to the Broadcasting Act would be revoked to eliminate the food advertising pre-clearance requirements. In order to achieve maximum impact, the composition of the industry body would have to be acceptable to the advertising industry. The Advertising Standards Council (ASC) might be the best location for such a body since they have wide representation (manufacturers/processors, advertisers, broadcasters, consumers) and already have the infrastructure of a pre-clearance process. A model for such activity is the process for regulating child-directed and feminine hygiene advertisements. However, for the child-directed ads the process is not voluntary in that the broadcasters require such pre-clearance as a precondition for broadcasting.

Given the voluntary nature of the process, its effectiveness would depend on the industry adherence to the system and its ability to prevent abuse. This would depend on the nature of the incentives to seek advice, which in turn is a function of the sanctions to be applied in case of non-compliance and the probability of apprehension. As the process is voluntary, there would be no sanctions against non-participants. Thus, the sanctions which are relevant are those imposed for non-compliance with the Food and Drug and other relevant regulations, either by the government through the post-broadcast monitoring and prosecution activities or by the marketplace.

This points to the critical role of post-advertising government enforcement under this option. The stronger this enforcement is, the greater the likelihood of compliance even without recourse to the industry-based review body. Another important consideration in the level of usage of the system depends on whether pre-clearance through the industry-based review body would confer legal or effective immunity from government prosecution. To the extent that such immunity is conferred, we might expect usage to increase, particularly in borderline cases.

However, it should be pointed out that the effectiveness of this option is enhanced by the industry support for some type of pre-clearance expressed by a majority of industry representatives surveyed in this study. It would then be reasonable to expect that most of the industry representatives would (in spirit at least) be in agreement with such an option.

1.5.2 Assessment

The preventative ability of the mechanism would ultimately depend upon the level of government enforcement through post-broadcast monitoring. Thus, it would be similar to the current situation in the case of advertisements of non-food products and print food ads. Because of the voluntary nature of the industry-based review process, the effectiveness of this option in ensuring compliance with the relevant food advertising regulations would be expected to be somewhat lower than with Option III, where the industry-based review process is mandatory.

Similar to Option III, the industry-based body would pre-clear ads for compliance with respect to the relevant regulations. However, unlike under Option III, there would be **no legal requirement to pre-clear**. The pressure on the industry-based review body might then be to have reasonable standards, since inordinate rigidity in standards would reduce the demand for its services. It would be possible however that the opinions issued by the body might not always be heeded by an advertiser. In this sense, coverage would therefore likely be reduced from the levels achieved in the earlier options.

The costs of an industry-based review process, based on the ASC experience appear to be somewhat higher on a per ad basis relative to government pre-clearance costs. Costs to the ASC for pre-clearance of child-directed ads are \$80.00 and \$160.00 per case for members and non-members respectively compared to an overall cost (submission and processing) of approximately \$64.00 per case under the current CRTC/CCAC pre-clearance system. However, the total costs of the program would be lower since a lower volume of total cases would be expected to be submitted voluntarily to the industry-based review body (than the volume required to be submitted through the current mandatory pre-clearance process).

There is no reason to believe that the system would operate in a biased or inconsistent manner. In particular, as it would be operated by the industry, the staff would likely be very knowledgeable about advertising. However, the key concern would be the compliance with the law rather than with the general consumer interest. Consumers' associations may not favour such a system unless they had a role in setting standards or other aspects of the process.

Because of the voluntary nature of the system, its effect might be limited. To the extent that advertisers who chose to avoid the system got away with breaches of the regulations, the system would be undermined.

1.5.3. Conclusion

Under this option industry would rely on moral suasion to ensure industry-wide compliance with the established standards. Government on the other hand would rely on post-broadcast monitoring enforcement activities to ensure an adequate level of compliance with the relevant legislation. While the food industry is supportive of some level of pre-clearance, they believe that an industry-run review process would be more effective if it were made mandatory. In addition, consumer groups could react negatively if the government adopted this option. There could be a perception fostered by consumer interest groups, that government was reducing consumer protection in an area considered as health- and safety-related.

ANNEX I
CASE STUDIES

ANNEX I - CASE STUDIES

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ANNEX I - CASE STUDIES

1. Introduction

This annex presents a summary of the findings of file reviews of 56 Canadian-based companies which submitted advertisements for approval through the CRTC/CCAC radio and T.V. food advertising pre-clearance process over the 1981 to 1985 period. The 56 companies are broken down into 4 categories as follows: 7 retailers, 42 manufacturers/processors, 4 restaurants and 3 Beer and Wine producers. The findings of the case studies include the number of submissions, approvals, rejections, renewals, the combined CRTC/CCAC process time and the CCAC turnaround time and the reasons for rejections. A more complete discussion of these results is presented in the report "Radio and T.V. Food Advertising Pre-clearance: Case Study Analysis".

2. General Data

The general data presented in the following tables and charts refers to the number of ads submitted for the years 1981 to 1985 inclusive. It should be noted however that complete data for the full five year period, was not available for all companies due to the following reasons:

- 1) the file reviews were carried out in September/October 1985, therefore the data for 1985 is complete only up to this point in time;
- 2) files for some companies were not in existence for the full period;
- 3) not all firms submitted advertisements for each year;
- 4) companies submitting an extremely large number of submissions were reviewed for the last two or three years only; and
- 5) companies having a large number of breakdowns by product were reviewed for two or three products only.

3. Reasons for Rejections

Data on the number of rejections and reasons for rejections, according to type of companies presented in the following tables and charts were collected for the 56 companies reviewed in the case studies analysis. Reasons for rejections were classified in two different ways. Firstly, rejections were classified in two categories: health and safety reasons versus other reasons. In doing so, as the table shows, 48 sections of the Guide were included in the health and safety category. Secondly, rejections were

classified into six more specific rejection categories. These six rejection categories include: claims, labels, subjective, violations of regulations, comparative advertising; and others. A brief description of what each of the six categories means is presented below. Examples of the statement and examiner's comments to determine the rejection category are provided in the full report on the case study analysis.

3.1 Claims

This category represents advertisements which have been rejected due to a claim either because the claim was false or misleading or because the reviewer requested supporting data (research data) to substantiate a claim.

3.2 Labels

This category covers four areas of label violations. Firstly, it includes ads for new or improved products rejected because labels were not provided; secondly, ads rejected because the labels did not meet required regulations; thirdly, ads rejected with a request for a label to substantiate a claim made in the ad; and fourthly, ads rejected with a request for a label to provide additional information.

3.3 Subjective

This category includes all those ads which have been rejected by the reviewing officer because they are perceived to be in violation of the guidelines, i.e. the violation is not blatant but the words could be interpreted in such a way that a violation would occur. For example, an ad cannot imply a stimulant effect, increased athletic ability, or added energy after consumption.

3.4 Violations of Regulations

This category includes those ads which have been rejected because they very clearly violate the regulations and are not included in any of the other five categories.

3.5 Comparative Advertising

For the purpose of the guidelines on comparative food advertising as outlined in Appendix H of the Guide for Food Manufacturers and Advertisers, Comparative Advertising is defined as:

"A comparison between two or more products or services where the competing products or services, or the competing advertisers are known to the consumer or can be readily identified by cues in the advertisement."

Most of the ads in this category are subjective in nature, i.e. they are making suggestions and implications as to the superiority of their products over their competitors' products.

3.6 Others

This category is made up of ads rejected in some cases, for definite violations of regulations, too distinct in nature to be included in the category "Violations of Regulations" yet too small in number to warrant a category of their own. In other cases, submissions were rejected because the reviewing officer required more information in order to make a decision on the submission. The data in this category has been broken down into four sections as follows:

- 1) Ingredient listing required
- 2) Submission incomplete
- 3) Nutritional comparison
- 4) More information required

4. Average Time to Process Ads

The data used in determining the average time taken to process ads involves only those ads processed through Ottawa Clearance. The date stamped on by Ottawa Clearance was used

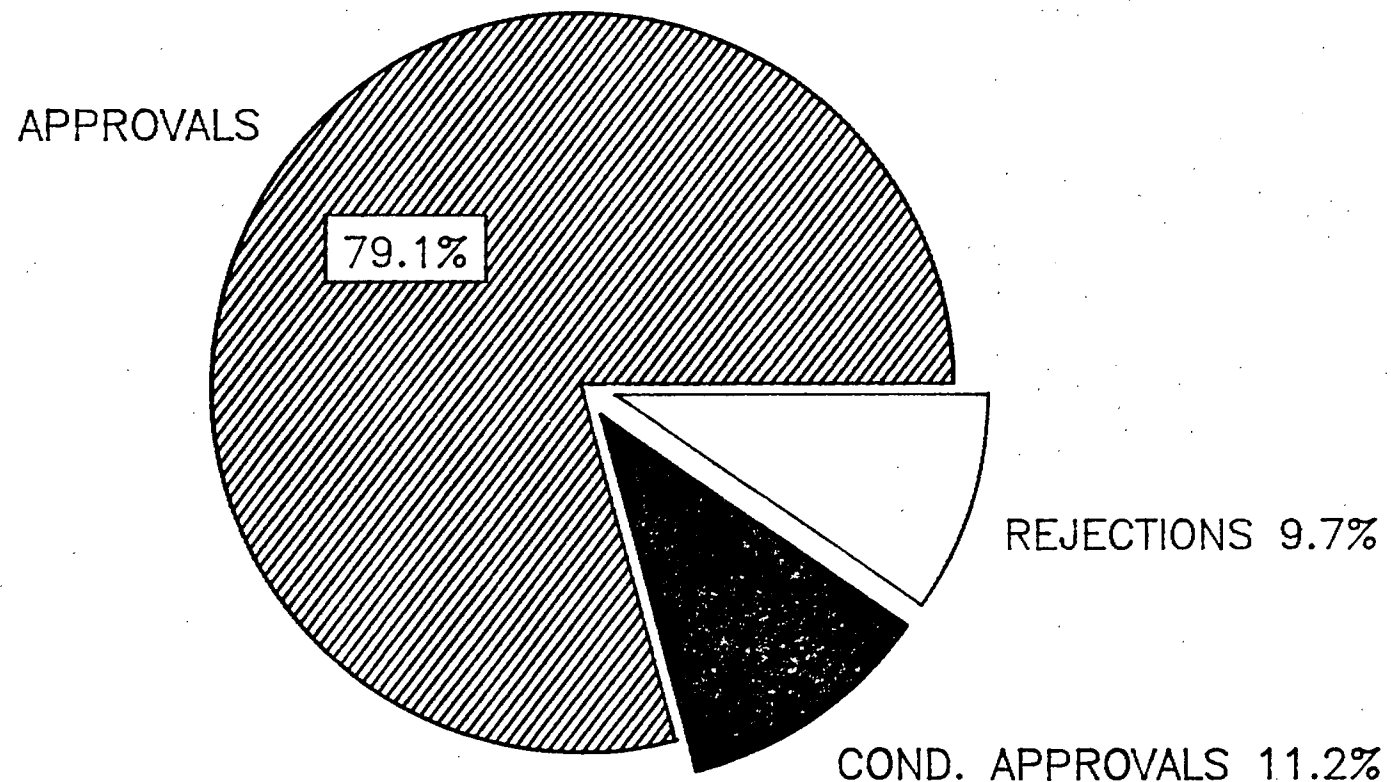
as the beginning date and the date stamped on by the CRTC when the ad was approved or rejected was used as the completion date, with both of these dates included in the figure.

It should be noted when reviewing these charts that calendar days (including weekends) were counted, not just work days.

5. Tables and Charts

The following pages present a summary of the results of the case study analysis in both tabular and graphical forms.

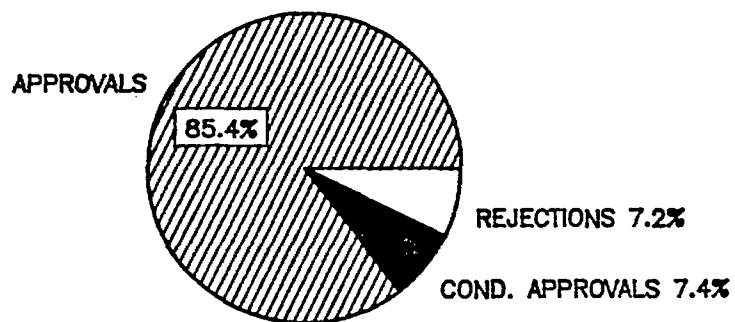
GENERAL DATA ON SUBMISSIONS
DATA FOR ALL TYPES OF COMPANIES
1981-85



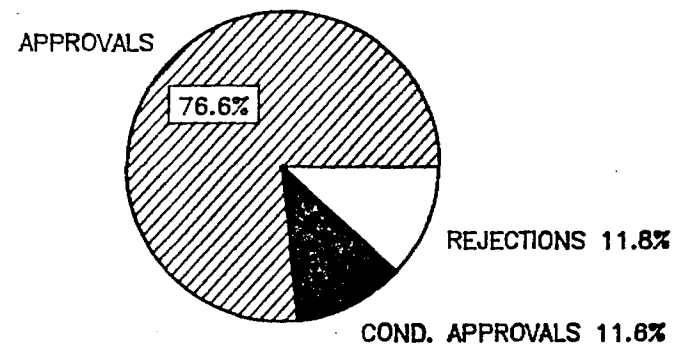
TOTAL SUBMISSIONS -- 10629

GENERAL DATA ON SUBMISSIONS DATA FOR ALL TYPES OF COMPANIES

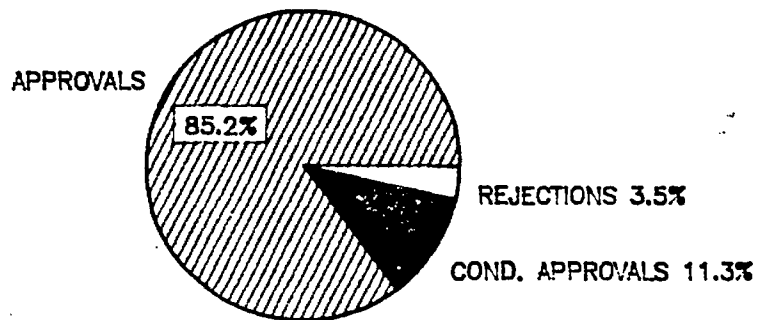
1981 - 1985



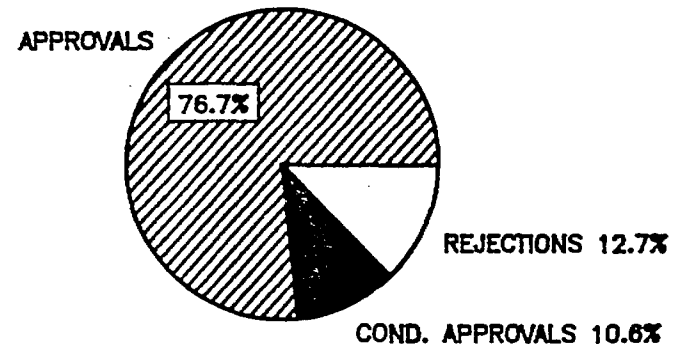
BEER/WINE



MANUFACTURER/PROCESSOR



RETAIL



RESTAURANTS

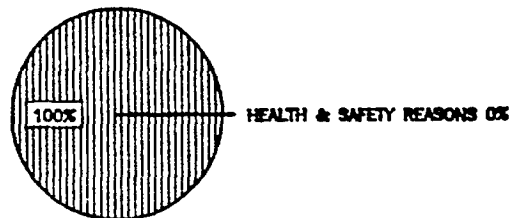
Rejections for Health and Safety Reasons
(Percentage)
1981-85

<u>Reasons</u>	<u>Beer/Wine</u>	<u>Manuf/Processor</u>	<u>Retail</u>	<u>Restaurant</u>
Health & Safety*	0	13.64%	6.82%	4.52%
Other	100.00%	86.36%	93.18%	95.48%
	100.00%	100.00%	100.00%	100.00%
Total Rejections	39	748	88	155

* Listing of sections of the Guide for Food Manufacturers and Advertisers relating to Health and Safety rejections included as Table XX.

REJECTIONS FOR HEALTH AND SAFETY REASONS BY TYPE OF COMPANY, 1981-85

OTHER REASONS



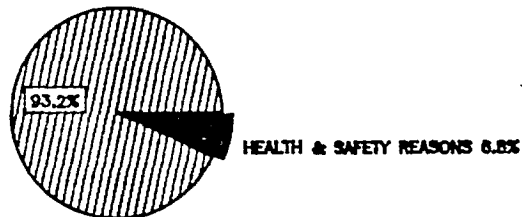
BEER/WINE

OTHER REASONS



MANUFACTURER/PROCESSOR

OTHER REASONS



RETAIL

OTHER REASONS

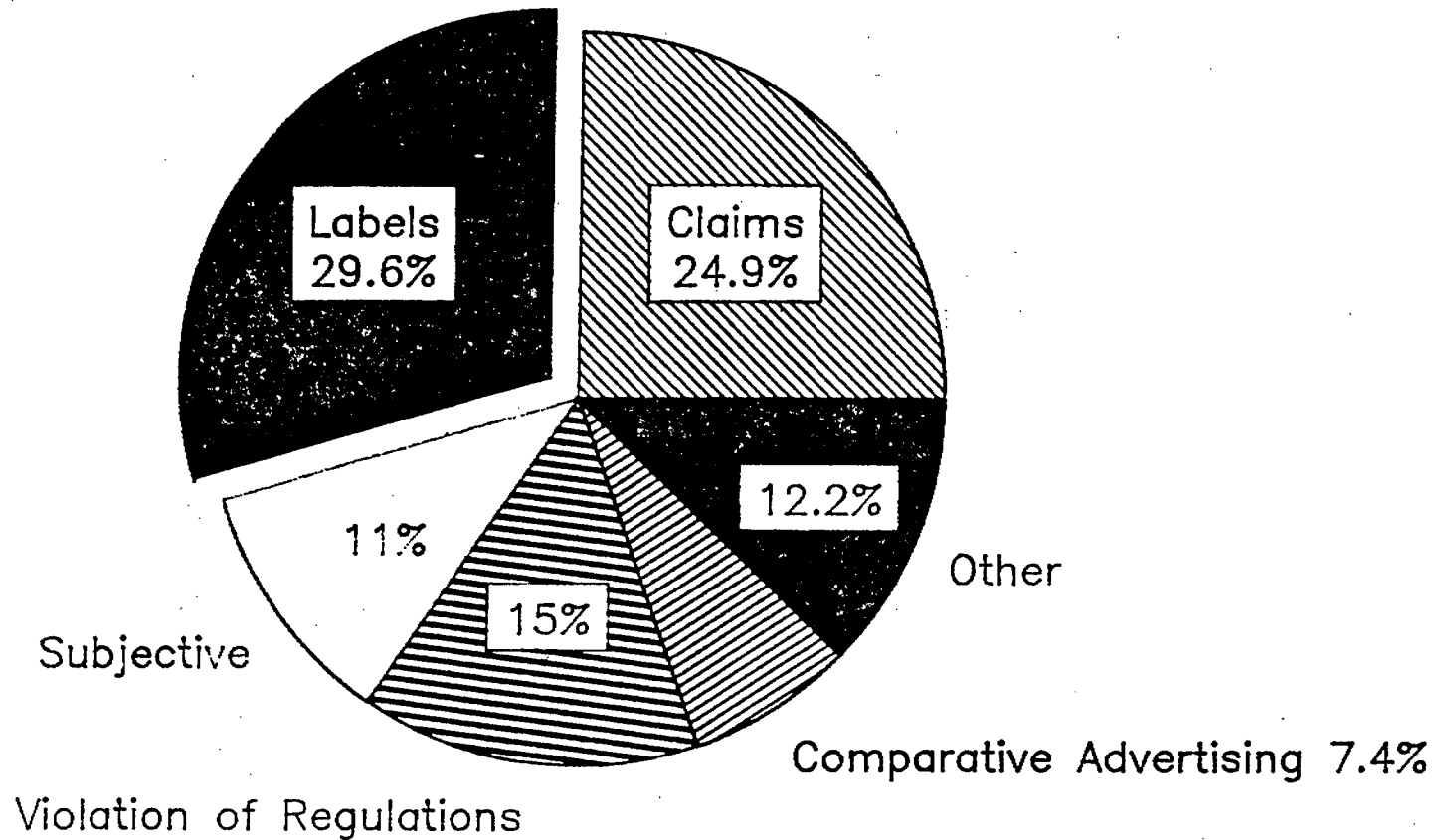


RESTAURANT

Sections of the Guide Concerned with Health and Safety

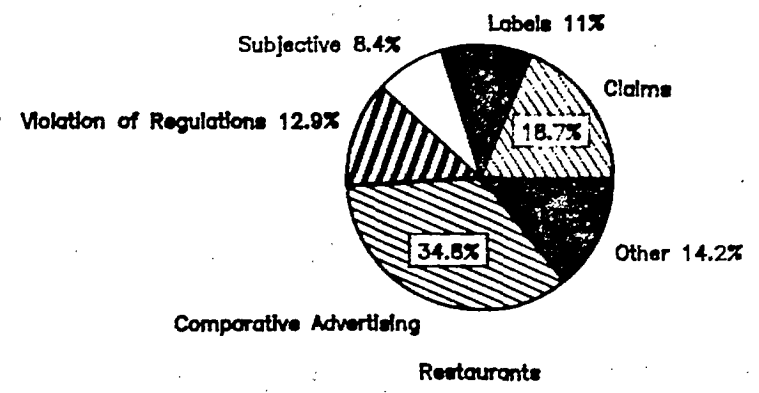
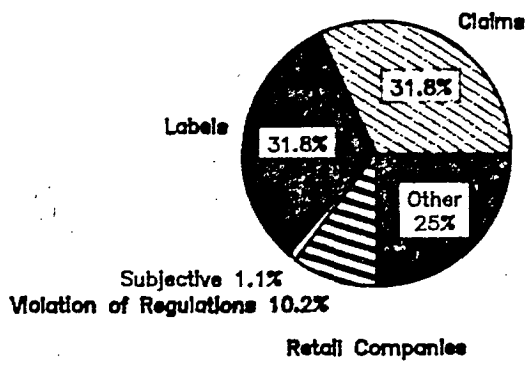
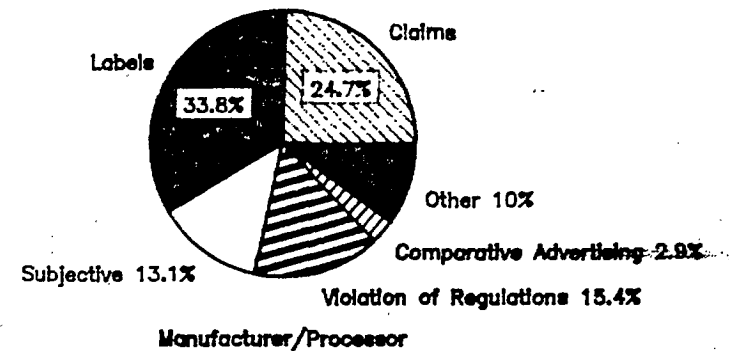
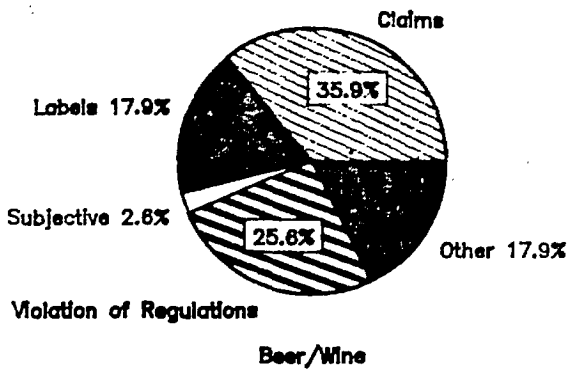
4. Ingredients
9. Treatment for Schedule A Diseases
10. Treatment of Other Diseases
11. Obesity: Diet Plans
12. Dietary Standards
13. Nutrition Rules
14. Vitamin and Mineral Nutrients
15. Fatty Acids
16. Proteins
17. Minimum and Average Requirements
20. Fortified, Enriched and Vitaminized
23. Analyses and Analytical Charts
27. Testimonials (2nd paragraph)
31. Self-Diagnosis by Symptoms
32. Scare Advertising
37. Guarantees
40. Descriptions
42. Health, Healthful
43. Comparisons
50. Nature - Natural
51. Organically Grown
52. Nutritional Claims Regarding Ingredients in Food
53. Negative Statements
59. Milk, Milk Products
60. Mineral Water or Spring Water
63. Digestibility
64. Foods for Special Dietary Use
65. Tonic Foods
66. Medicated
67. Balanced
68. Laxative Claims
69. Alkaline, alkali - forming
70. Non-Fattening Foods
71. Energy
72. Fresh
74. Food Fads
75. Pure, 100% Pure, 100%, All
76. Claims Regarding Grades
77. Instant Breakfast, Instant Lunch
79. Infant Foods and Infant Formulae
80. Light, Lite
81. Bread, Specialty Breads & Flour
82. Milk Modifier
83. Isotonic
84. Kosher
85. Fibre Claims
86. Beef or Veal Carcasses
89. Cyclamate & Saccharin Sweeteners

REASONS FOR REJECTIONS
DATA FOR ALL TYPES OF COMPANIES
1981-85

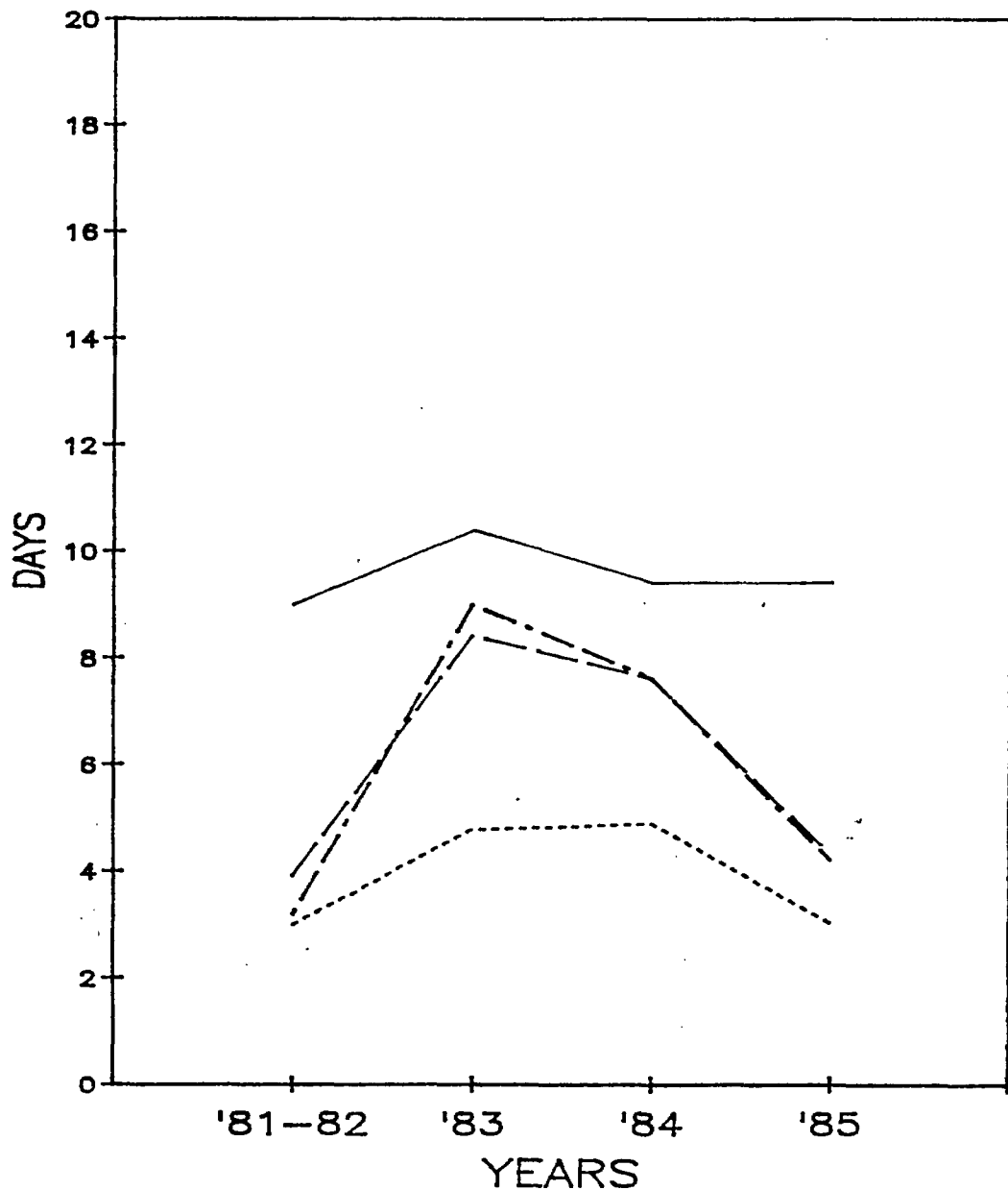


All Companies -- 1030 Rejections

REASONS FOR REJECTIONS DATA FOR THE YEARS 1981-85



AVERAGE TIME IN DAYS FOR CCAC/CRTC* TO PROCESS ADS
DATA FOR THE YEARS 1981-85



LEGEND

— BEER/WINE

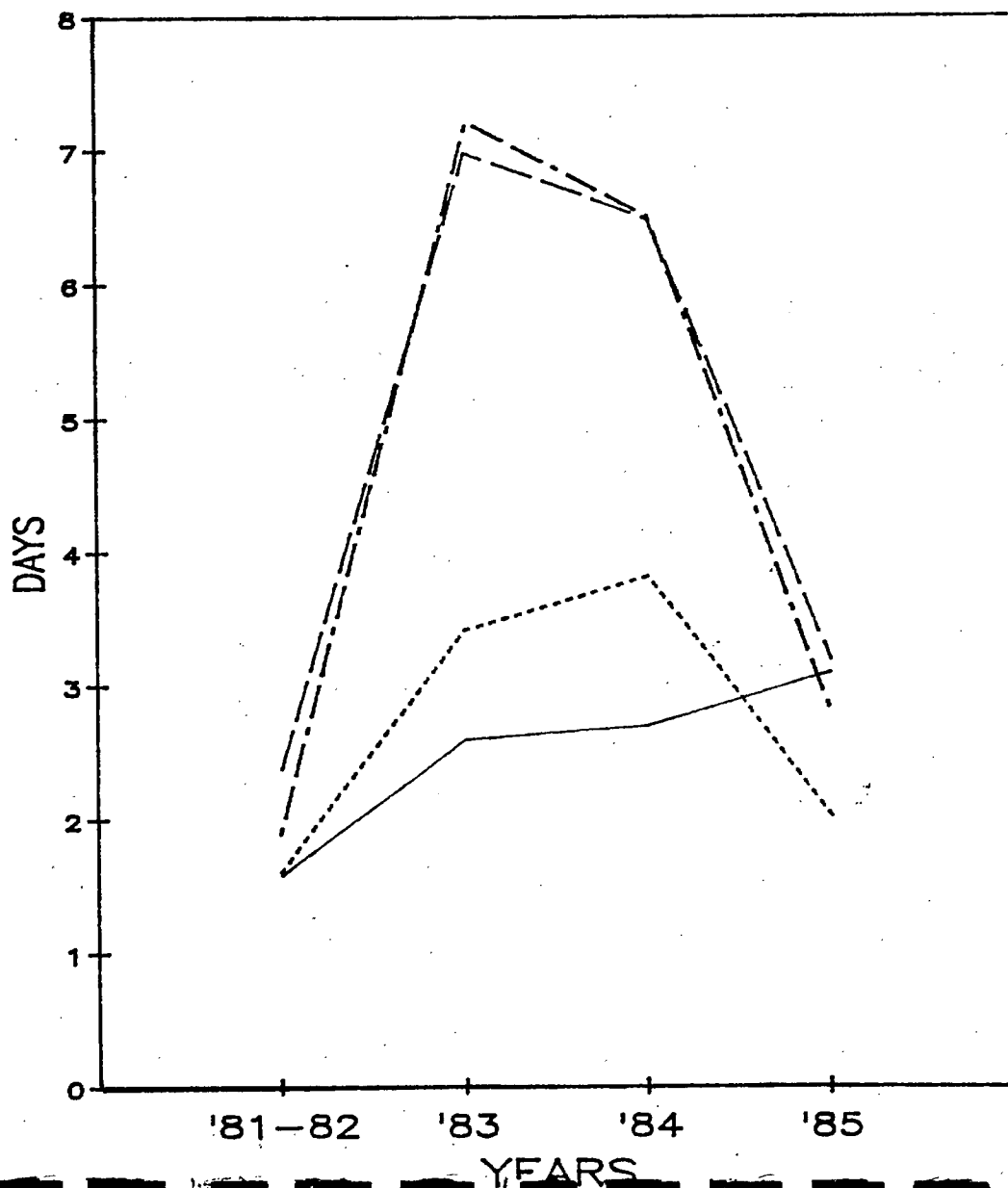
- - - MANUFACTURER/PROCESSOR

..... RETAIL

- . - . RESTAURANT

*These figures represent the total time taken by CCAC and the CRTC to complete the pre-clearance process.

AVERAGE TIME IN DAYS FOR CCAC* TO PROCESS ADS
DATA FOR THE YEARS 1981-85



LEGEND

- BEER/WINE
- - MANUFACTURER/PROCESSOR
- RETAIL
- . - . RESTAURANT

*These figures represent the total time taken by CCAC alone to complete their end of the process.

