

Agri-Food Sector Changes are Coming

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Get Ready for the Safe Food for Canadians Act

On June 7, 2012, the Canadian Government tabled the *Safe Food for Canadians Act*. The *SFCA* was adopted by the Senate on October 17, 2012, passed by the House of Commons on November 20, 2012 and received Royal Assent on November 22, 2012.[1]

Almost three years later, the legislation remains inoperative. The *SFCA* will not come into force until the finalization of its accompanying regulations.[2] After lengthy public consultation periods, the Canadian Food Inspection Agency (“the CFIA”) has published its progress on the regulations and has planned a formal public comment period to follow the pre-publication of the regulations in the *Canada Gazette*, Part I. At this time, no date for pre-publication has been set.[3]

Currently, food production and trade in Canada is regulated by five pieces of legislation: *Canada Agricultural Products Act*,[4] *Consumer Packaging and Labelling Act*,[5] *Fish Inspection Act*,[6] *Meat Inspection Act*[7] and the *Food and Drugs Act*. [8] The *SFCA* consolidates the *CAPA*, *FIA*, *MIA* and the food related provisions of the *CPLA* as well as the numerous regulations accompanying these statutes. Once the *SFCA* is in force, all food in Canada will be regulated by only two federal legislative regimes -- the *SFCA* and the *FDA*. [9] While the current draft of the proposed consolidated regulations under the *SFCA* makes reference to the *FDA* and its companion *Food and Drug Regulations*, [10] the *SFCA* will not alter the scope of the *FDA* or its regulations. [11]

The synthesis of numerous Acts and regulations under the *SFCA* is intended to modernize and simplify the regulation of international and inter-provincial food production and trade, while strengthening inspection and enforcement powers. [12] Introduced as the cornerstone of the Federal Government’s Safe Food for Canadians Action Plan, [13] the *SFCA* is primarily aimed at four objectives:

Stronger food safety rules;

More effective inspection;

Renewed commitment to service;

More information for consumers.**[14]**

To attain these ends, the *SFCA* and its accompanying regulations will contain outcome-based constraints, providing for industry flexibility and the opportunity for innovation.**[15]** The new regime is also expected to use incorporation by reference, utilizing numerous documents that can be updated and altered more efficiently than the *SFCA* or its regulations.

The implementation of the *SFCA* will also promote international trade. By updating food commodities regulation, the Government of Canada intends to align Canadian standards with its foreign counterparts. In particular, the *SFCA* is expected to work in synchronicity with the United States' *Food Safety Modernization Act*.**[16]**

Alongside the *SFCA* itself, the CFIA has released two documents explaining many of the intended outcomes of the regime as well as drafts of the proposed regulations.**[17]** While the *SFCA* sets out the general prohibitions, penalties and necessities for operation within the industry, the proposed regulations provide extensive regulatory standards for importers, exporters and individuals sending or conveying food from one province to another. In the most recently released draft, the proposed regulations contained fourteen substantive parts:

- Trade;
- Licences;
- Preventive Controls;
- Traceability;
- Commodity Specific Requirements;
- Recognition of Foreign Systems;
- Ministerial Exemptions;
- Inspection Legends;
- Packaging;
- Labelling;
- Standards of Identity;
- Grades and Grade Names;
- Seizure and Detention;
- Organic Products.**[18]**

To comprehend the effect of the proposed regulations, as well as the relationship between the *SFCA* and its anticipated regulatory scheme, a brief overview of each of these categories is necessary.

Trade

Under the *SFCA*, individuals are prohibited from sending, conveying, importing and exporting prescribed food commodities except in accordance with the regulations. Such individuals are

also required to hold a licence, a registration, or both.[19] The *SFCA* generally prohibits anyone from conducting any prescribed activity in respect of prescribed food commodities that have been imported or will be exported or sent or conveyed from one province to another, except in accordance with the regulations and unless they hold a licence, registration or both.[20]

The proposed regulations clarify these generalized prohibitions. For the purposes of prohibiting the sending, conveying, importing and exporting of food, the prescribed food commodity is simply food.[21] Meanwhile, for the purposes of conducting any prescribed activity, the prescribed food commodities include both food and food animals, being animals from which an edible meat product may be derived.[22] The prescribed activities for food are generally manufacturing, preparing, storing, packaging and labelling,[23] while the only prescribed activity for food animals is slaughtering.[24] The regulations set out exemptions from the licensing requirement related to food additives, alcoholic beverages and specific items that are labelled “for further preparation only.”[25]

The regulations also require all foods that are imported, exported or sent or conveyed from one province to another to be edible, manufactured, prepared, stored, packaged and labelled under sanitary conditions, uncontaminated, and devoid of any filthy, putrid, disgusting, rotten, decomposed or diseased animal or vegetable substance.[26] However, exemption provisions permit the trade of food not in accordance with the *SFCA* or its regulations where any number of circumstances are met, including, but not limited to, products for personal use, products labelled “for further preparation only,” products carried on a conveyance for use by crew or passengers and products intended and used for research.[27]

Thus, while the *SFCA* mandates licensing and regulatory conformity when importing, exporting or sending or conveying from one province to another, the regulations clearly set out the specific food commodities to which each provision applies and the prescribed actions that fall within the general prohibitions.

Licences

Under the *SFCA*, the Minister may issue a licence to permit an individual to import, export or send or convey a prescribed food commodity from one province to another, and to conduct a prescribed activity in respect of a prescribed food commodity that has been imported or is to be exported or sent or conveyed between provinces.[28] The Minister also has the authority to amend, suspend, cancel or renew a licence.[29]

The proposed regulations state that the Minister may issue, renew or amend a licence if all enumerated requirements are met, including, but not limited to, the applicable fee being paid, the applicant’s carrying on a fixed place of business in Canada or a foreign state that has a food safety system with at least the same level of protection as the *SFCA* and the

Minister being of the opinion that no risk to human health will result.**[30]** Each licence expires two years from the issue date.**[31]** The regulations also set out the circumstances in which a licence becomes invalid, may be suspended or cancelled.**[32]**

Preventive Controls

The *SFCA* provides the Governor in Council with the authority to make regulations respecting quality management programs, quality control programs, safety programs and preventive control plans.**[33]**

The regulations resulting from this broad authority contain numerous safety provisions relating to:

- Biological, Chemical and Physical Hazards;
- Treatments and Processes;
- Maintenance and Operation of Establishment, including:
 - Sanitation, Pest Control and Non-food Agents;
 - Conveyances and Equipment;
 - Conditions Respecting Establishments;
 - Unloading, Loading and Storing;
 - Competency;
 - Hygiene;
- Communicable Diseases and Lesions.**[34]**

The regulations also require every operator and any holder of an importing licence to prepare and maintain written recall procedures as well as written procedures that are to be taken when a food complaint is lodged.**[35]**

Finally, the regulations require every licence holder, (with limited exemptions), to prepare, keep and maintain a written preventive control plan for any activity conducted in relation to food or food animals identified in their licence.**[36]** The requirements of such a plan are stipulated in the regulations and include, amongst others, such details as the hazards determined to present a risk to food contamination, the measures used to control those hazards and the proof used to validate the control measures as well as critical control points, the critical limits for each control point and the procedures for monitoring control points in relation to their limits. **[37]** The requirements of the preventive control plans are expected to be consistent with international Hazard Analysis Critical Control Point principles.**[38]**

Traceability

The Governor in Council has the authority to implement regulations regarding the traceability

of any food commodity under the *SFCA*.^[39]

The proposed traceability regulations apply international standards of traceability established by *Codex Alimentarius*. These standards are commonly known as providing “one step forward, one step back” traceability.^[40] To attain this standard, the regulations require all individuals who import, export or send or convey food from one province to another, hold a licence to slaughter a food animal or to manufacture, process, treat, preserve, grade, store, package or label food, or to store and handle a meat product in its imported condition or any person who grows or harvests fruits or vegetables that are to be exported or sent or conveyed province to province, to prepare and keep documents that include, amongst other requirements, numerous details used to identify the food, the name and addresses of the person to whom the food was provided and from whom it was received.^[41]

At the request of the Minister, an individual required to retain such information must provide the Minister with the aforementioned documents within 24 hours. If provided electronically, the documents must be sent in a single plain text file.^[42]

Commodity Specific Requirements

Alongside the extensive universal licensing and regulatory requirements, the proposed regulations contain a number of commodity specific regulations which apply to meat products and food animals, fresh fruits and vegetables, fish, eggs and processed egg products.^[43]

Recognition of Foreign Systems

The proposed regulations enumerate the standards that must be met by a foreign food safety system to permit the Minister to recognize the foreign state’s system of inspection as well as the state’s system of manufacturing, preparing, storing, packaging or labelling.^[44] The regulations also provide for circumstances in which Ministerial recognition must be suspended or revoked.^[45] At the time the *SFCA* comes into force, systems that are recognized under the *MIA* or *FIA* will continue to be recognized by the Minister.^[46]

Ministerial Exemptions

Currently, ministerial exemptions are available to exempt food commodities from compliance with non-food safety requirements in two circumstances: (1) to alleviate food shortages; and (2) for the purposes of test-marketing. These exemptions will remain under the *SFCA*’s regulations.^[47] The requirements for such exemptions, as well as the circumstances in which the exemptions may be cancelled, are set out in the proposed regulations.^[48]

Inspection Legends

Section 14 of the *SFCA* prohibits the unauthorized use of an inspection mark, as well as the unauthorized sale of anything with such a mark.**[49]** Applying a likeness of an inspection mark or grade, as well as advertising or selling an item with a likeness is similarly prohibited.**[50]** Anyone found in possession of an item with a likeness is considered, in the absence of evidence to the contrary, to be in possession for the purposes of advertising or selling.**[51]**

Schedule 1 of the proposed regulations includes copies of proper inspection marks.**[52]** The regulations set out the circumstances in which a licence holder or an inspector can properly apply the inspection legend.**[53]**

Packaging

Packaging a food commodity in a manner that is false, misleading or deceptive or is likely to create an erroneous impression regarding its character, quality, value, composition, merit, safety or origin or the method of its manufacture or preparation is prohibited under the *SFCA*.**[54]** The regulations specify that a misleading or deceptive package includes those that use a colour, design or mark that enhances the appearance of the food with respect to its quality or composition.**[55]**

The proposed regulations also set out specific requirements applicable to the packaging of all products that are imported, exported or sent or conveyed from one province to another, as well as container size and fill standards.**[56]**

Labelling

Currently, labelling provisions exist under the *FDR*, *MIR*, *FIR*, *CPLA* and *CAPA*. The inclusion of labelling standards under the *SFCA* and its proposed regulations is not intended to modify current standards, only to reduce duplication and increase consistency. The labelling guidelines under the *FDR* will not be modified by the amalgamation of the standards under the remaining four legislative schemes.**[57]**

The prohibition against packaging a food commodity in a false, misleading or deceptive manner similarly applies to the labelling of the commodity.**[58]** The proposed regulations identify incidences of misleading labelling.**[59]**

As required by the regulations, any food that is imported, exported or sent or conveyed from one province to another and whose label bears a common name printed in boldface type must meet the requirements that apply to the common name used.**[60]** Alongside numerous

universal labelling requirements, the regulations also include commodity specific requirements applicable to dairy products, eggs, processed egg products, fish, fresh fruit and vegetables, processed fruit and vegetables, honey, maple products and meat products.**[61]**

Standards of Identity

Similar to labelling regulations, the standards of identity for food will remain unchanged with the enactment of the *SFCA* regulations.**[62]** However, where duplication in standards exists, the proposed regulations will reference the standard of identity contained within the *FDR*. Standards that are currently unique to the *CAPA*, *MIA* and *FIA* will be maintained; however, the wording may be altered.**[63]** Currently, the standards of identity contained in the proposed regulations are divided into eight categories consisting of dairy products, processed egg products, fish, processed fruit and vegetable products, honey, maple products, meat products and ice wine.

Grades and Grade Names

Under the proposed regulations, grades and grade names are to be set out in the Compendium of Canadian Grade Standards, which will consolidate existing Canadian grades in a single document.**[64]**

Seizure and Detention

The *SFCA* permits inspectors to enter premises for the purposes of ensuring compliance and preventing non-compliance.**[65]** In doing so, inspectors may seize anything they believe was used in contravention of the *SFCA*, was used in relation to a contravention or was obtained by contravention.**[66]** Unless authorized by an inspector, individuals are then prohibited from removing, altering or interfering with seized items.**[67]**

The accompanying regulations require an inspector to attach an “under detention” tag to anything detained under the *SFCA* and to provide a notice of detention to the owner or individual in possession of the seized item.**[68]** If the seized item is released, a notice of release must also be issued.**[69]**

Although not contained within either the *SFCA* or its regulations, it is important to note that the enactment of the *SFCA* will result in significant changes to the CFIA inspector model. Currently, CFIA inspector training is commodity-specific. The CFIA intends to utilize a universal inspection approach consistent across various commodities, allowing for standardized training and improved services.**[70]**

Organic Products

While there is no distinction between organic and non-organic products under the *SFCA*, the certification, labelling, advertising and packaging of organic products is contained within a segregated section of the proposed regulations.**[71]** To obtain organic certification, individuals must apply annually to a certification body.**[72]** The requirements for certification of a product, as well as the circumstances requiring the suspension or cancellation of certification are enumerated in the proposed regulations.**[73]**

Penal Consequences

Currently, the penal consequences for contravention of the new regime are contained exclusively within the *SFCA* itself. An individual who contravenes the *SFCA* or its regulations is guilty of an offence and is liable:

- (1) on indictable conviction for a fine of no more than \$5,000,000 or to imprisonment for a term of no more than two years or both;
- (2) on summary conviction for a first offence for a fine of no more than \$250,000 or a prison term of no more than six months or both; or
- (3) on summary conviction for a second offence for a fine of no more than \$500,000 or to imprisonment for a term of no more than 18 months or both.**[74]**

More severe penalties apply to anyone who tampers with a food commodity rendering it injurious to human health or causing a reasonable apprehension in others that it is injurious to human health, or knowingly or recklessly communicates information with the intent to cause a reasonable apprehension in others that a food commodity was tampered with in order to render it injurious to human health.**[75]**

Conclusion

The enactment of the *SFCA* and its accompanying regulations will substantially alter the regulation of Canadian inter-provincial and international food trade and production. In some regards, such as labelling, standards of identity and grading, the *SFCA* will simply consolidate existing standards and regulations. However, the *SFCA* will also enact new universal food safety and licensing standards while maintaining additional commodity specific requirements. The weight of this task is evident from the nearly three years it has taken to release the proposed regulations to date. While the formal consultation period following pre-publication may result in alterations and additions, it is clear that regardless of its final form, the *SFCA* regime will play an enormous role in the inspection and regulation of food for Canadians.

For assistance with matters related to the *Safe Food for Canadians Act* or other **agribusiness matters**, contact Paul Brett or a member of the TDS Agribusiness group.

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- [1]** Canadian Food Inspection Agency, “*Safe Food for Canadians Act*” (23 February 2015), online:
<<http://www.inspection.gc.ca/about-the-cfia/acts-and-regulations/regulatory-initiatives/sfca/eng/1338796071420/1338796152395>> [CFIA, “*SFCA*”].
- [2]** Canada, Canadian Food Inspection Agency, *A New Regulatory Framework for Federal Food Inspection: Overview of Proposed Regulations*, (Ottawa: Canadian Food Inspection Agency) at 2, online:
<<http://www.inspection.gc.ca/about-the-cfia/accountability/consultations/federal-food-inspection/overview-of-proposed-regulations/eng/1400451508255/1400451811916>> [CFIA, “Overview of Proposed Regulations”].
- [3]** Canadian Food Inspection Agency, “Safe food for Canadians: Strengthening Canada’s Food Safety System” (8 July 2015), online <
<http://www.inspection.gc.ca/about-the-cfia/acts-and-regulations/regulatory-initiatives/sfca/food-safety-systems/eng/1426531180176/1426531265317>> [CFIA, “Strengthening Canada’s Food Safety System”].
- [4]** RSC 1985, c 20 (4th Supp) [CAPA].
- [5]** RSC 1985, c C-38 [CPLA].
- [6]** RSC 1985, c F-12 [FIA].
- [7]** RSC 1985, c 25 (1st Supp) [MIA].
- [8]** RSC 1985, c F-27 [FDA].
- [9]** Canadian Food Inspection Agency, “*Safe Food for Canadians Act: An Overview*” (22 April 2015), online:
<<http://www.inspection.gc.ca/about-the-cfia/acts-and-regulations/regulatory-initiatives/sfca/eng/1338796071420/1338796152395>> [CFIA, “*SFCA: Overview*”].
- [10]** CRC, c 870 [FDR].
- [11]** Canadian Food Inspection Agency, “*Safe Food for Canadians Act: Questions and Answers*” (22 April 2015), online
<<http://www.inspection.gc.ca/about-the-cfia/acts-and-regulations/regulatory-initiatives/sfca/q>

-and-a/eng/1339036598239/1339036667358> [CFIA, “Questions and Answers”].

[12] CFIA, “SFCA: An Overview”, *supra* note 9.

[13] Canadian Food Inspection Agency, “Safe food for Canadians” (7 June 2012), online <<http://www.inspection.gc.ca/about-the-cfia/acts-and-regulations/regulatory-initiatives/sfca/brochure/eng/1338950776168/1338950907678>> [CFIA, “Safe food for Canadians”].

[14] CFIA, “Overview of Proposed Regulations”, *supra* note 2 at 2-3.

[15] *Ibid* at 6.

[16] 21 USC § 301 (2011).

[17] CFIA, “Overview of Proposed Regulations”, *supra* note 2; Canadian Food Inspection Agency, “Consolidation of food regulations -- Progress to date” online: <http://www.inspection.gc.ca/DAM/DAM-aboutcfia-sujetacia/STAGING/text-texte/regs_safe_food_regulations_cnsldtn_foodregs_1427726282343_eng.pdf> [CFIA, “Consolidation of food regulations”].

[18] CFIA, “Consolidation of food regulations”, *supra* note 17.

[19] SFCA, *supra* note 1, ss 10(1), 10(2).

[20] *Ibid*, ss 13(1), 13(2).

[21] CFIA, “Consolidation of food regulations”, *supra* note 17, s 5.

[22] *Ibid*, s 6.

[23] Additional industry specific activities may be prescribed, see *Ibid*.

[24] *Ibid*, ss 6(2)(b), 6(4)(b).

[25] *Ibid*, s 12.

[26] *Ibid*, s 10.

[27] *Ibid*, see ss 14-20.

[28] SFCA, *supra* note 1, s 20.

[29] *Ibid*, s 22.

[30] CFIA, “Consolidation of food regulations”, *supra* note 17, s 26.

[31] *Ibid*, s 31.

[32] *Ibid*, ss 32-38.

[33] *SFCA*, *supra* note 1, s 51(1)(g).

[34] CFIA, “Consolidation of food regulations”, *supra* note 17, ss 39-76.

[35] *Ibid*, ss 77-79.

[36] *Ibid*, s 80.

[37] *Ibid*, s 83.

[38] CFIA, “Overview of Proposed Regulations”, *supra* note 2 at 15.

[39] *SFCA*, *supra* note 1, s 51.

[40] CFIA, “Overview of Proposed Regulations”, *supra* note 2 at 12.

[41] CFIA, “Consolidation of food regulations”, *supra* note 17, s 84.

[42] *Ibid*, s 85.

[43] *Ibid*, ss 87-169.

[44] *Ibid*, ss 170-172.

[45] *Ibid*, ss 173-174.

[46] *Ibid*, ss 175.

[47] *Ibid*, ss 176.

[48] *Ibid*, ss 177-178.

[49] *SFCA*, *supra* note 1, s 14(1).

[50] *Ibid*, s 14(2).

[51] *Ibid*, s 14(3).

[52] CFIA, “Consideration of food regulations”, *supra* note 17, s 179.

[53] *Ibid*, ss 180-185.

[54] *SFCA*, *supra* note 1, s 6(1).

[55] CFIA, “Consolidation of food regulations”, *supra* note 17, s 187.

[56] *Ibid*, ss 186, 188-198.

[57] CFIA, “Overview of Proposed Regulations”, *supra* note 2 at 19.

[58] SFCA, *supra* note 1, s 6(1).

[59] CFIA, “Consolidation of food regulations”, *supra* note 17, s 200.

[60] *Ibid*, s 202.

[61] *Ibid*, ss 240-287.

[62] CFIA, “Overview of Proposed Regulations”, *supra* note 2 at 20.

[63] *Ibid*.

[64] *Ibid* at 17; CFIA, “Consolidation of food regulations”, *supra* note 17, ss 496-497.

[65] SFCA, *supra* note 1, s 24.

[66] *Ibid*, s 25.

[67] *Ibid*, s 28.

[68] CFIA, “Consolidation of food regulations”, *supra* note 17, ss 533, 535.

[69] *Ibid*, s 537.

[70] CFIA, “Overview of Proposed Regulations”, *supra* note 2 at 28.

[71] CFIA, “Consolidation of food regulations”, *supra* note 17, s 541.

[72] *Ibid*, s 543.

[73] *Ibid*, ss 544-549.

[74] SFCA, *supra* note 1, s 39(1).

[75] *Ibid*, s 39(3).

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