

Taking stock of progress: Legislative Review of the Safe Food for Canadians Act

Consultation closed

This document was part of the consultation on the review of the Safe Food for Canadians Act (SFCA). This consultation ran from March 27, 2024 to May 27, 2024.

Summary

The Canadian Food Inspection Agency (CFIA) opened this consultation as part of the review of the *Safe Food for Canadians Act* (SFCA), which came fully into force on January 15, 2019. The SFCA created the legal framework for the *Safe Food for Canadians Regulations* (SFCR), which contain requirements that support the SFCA's implementation. The Act and its Regulations allowed Canada to redesign its food safety system.

A review of the *Safe Food for Canadians Act*

The Minister of Agriculture and Agri-Food and the Minister of Health have launched a 5-year review of the SFCA. The period under review is January 2019 to January 2024.

As outlined in Section 68 of the Act, 5 years after the coming into force of this section, and every 5 years after that, the ministers are responsible for conducting a review of the provisions and operations of the SFCA. The

ministers will prepare and submit a final report to Parliament.

The 5-year review will determine if the SFCA meets its objectives. These objectives include:

- improving food safety and consumer protection oversight across all food commodities
- having effective, streamlined, and strengthened legislative authorities across food commodities
- enhancing market access opportunities for Canadian food industry

For the purpose of this consultation, a review of the provisions and operations of the SFCA will assess if improvements or changes are required to the Act.

Overview of the *Safe Food for Canadians Act*

The SFCA is "an Act respecting food commodities, including:

- their inspection
- their safety
- their labelling and advertising
- their import, export, and interprovincial trade
- the establishment of standards for them
- the registration or licensing of persons who perform certain activities related to them
- the establishment of standards governing establishments where those activities are performed and the registration of establishments where those activities are performed"

The provisions of the Act include:

- interpretation (definitions)

- prohibitions (for example, selling a recalled food, deception, tampering, trading without a licence, obstruction of an inspector, falsifying documents)
- registrations and licences (for example, the minister may issue a licence and make the licence subject to conditions, and the licence holder must comply)
- administration and enforcement (for example, inspection powers and offences)
- general (for example, export certificates, inspection marks, regulatory making authorities, incorporation by reference, costs)

The operation of the Act includes implementing the regulations, programs, policies and tools that fulfill the objectives of the Act.

Examples of this include:

- administering and enforcing the SFCA and SFCR (for example, inspection, investigation, audit, recall, third-party oversight (such as organic), issuing export certificates, licensing)
- environmental scanning and surveillance programs
- risk assessment tools
- direction to inspection staff on planned activities, such as inspections or sampling, to conduct them in a given timeframe
- sampling plans and analysis, including analysis done by the CFIA and third-party accredited laboratories
- developing and updating guidance for inspectors and industry
- training for inspectors in the food program
- international standard development (Codex Alimentarius), regulatory development, policy interpretation, responding to inquiries

The Government of Canada engaged extensively with the public and

stakeholders while developing and implementing the legal framework of the SFCA. As part of its ongoing engagement efforts, the CFIA sought input to inform the review of the SFCA. The CFIA will analyze feedback it receives from this consultation as part of the review process. Once data collection is complete, input from all sources will form the basis of a report that the ministers will table in Parliament.

This document asks a series of key questions to solicit feedback from stakeholders, which includes the public, government and trade partners, and industry. An overview of the key features of the legislative framework is included to provide context. The CFIA sought feedback between March 27, 2024, to May 27, 2024.

What this engagement covers and does not cover

This SFCA review applies to the provisions and operations of the Act. For example, it will consider these types of questions:

- are there potential gaps or other issues in its provisions
- does it provide modern or innovative enabling opportunities (for example, technology enhanced activities)
- does it provide adequate regulation making authorities
- is it agile in response to emergencies
- does it have any unexpected interpretation issues or is it up to date (for example, review of fine limits)

This consultation did not seek proposals for specific amendments to the SFCR.

In order to be within the scope of this review, any comments related to

the SFCR will only be considered if they relate to gaps or issues associated with the SFCA (including any specific provisions/sections of the Act) or any of its authorities (that is, powers, duties and functions). We encourage you to be clear in how your responses relate to the provisions and powers established in the Act.

Background and context

Legislative modernization of Canada's food regulatory system

Before the SFCA came fully into force, food in Canada was regulated under a suite of different statutes, including the *Food and Drugs Act*, the *Fish Inspection Act*, the *Meat Inspection Act*, the *Canada Agricultural Products Act* and the *Consumer Packaging and Labelling Act*. These Acts were created at various times over several decades, and had been updated with differing frequencies.

Legislative modernization was needed to strengthen the government's oversight of food, protect consumers from unsafe and deceptive practices, and to provide consistency in regulations across food commodities, including consistency in inspection powers and procedures. Further, there was need for improved controls for imported food commodities, a way to identify through licensing food businesses that did not formerly require registration, the addition of food traceability requirements, and the addition of requirements for preventive controls in food establishments.

The SFCA sets out a framework for an outcome-based regulatory regime that allowed 14 sets of food commodity regulations to be consolidated into a single overarching regulation, the *Safe Food for Canadians*

Regulations (SFCR). This consolidation improved consistency and reduced administrative burden.

Outcome-based regulations specify the desired result that a regulation is intended to achieve, rather than prescribing a specific process or action that must be followed to achieve compliance. This enabled the CFIA to generally apply consistent regulatory requirements and inspection approaches across all regulated food commodities (with some exceptions). The operation of the Act was supported by the implementation of a standard inspection process, which is a modernized approach to determine regulatory compliance.

Some provisions of the SFCA came into force when the Act received Royal Assent on November 22, 2012. However, the Act came fully into force on January 15, 2019, along with the SFCR, when the SFCR was published.

Today, the federal legislative foundation for food in Canada is the *Food and Drugs Act* and the SFCA.

Key questions for discussion

Information collected from this consultation will inform the CFIA's examination of the provisions and operation of the Act to determine if they enable the Act's objectives.

With that in mind, these are the key objectives of the SFCA:

1. improving food safety and consumer protection oversight
2. having effective, streamlined, and strengthened legislative authorities across food commodities
3. enhancing market access for Canadian food industry

(Market access is defined as the ability for Canadian industry to sell

goods and services across borders. For the purpose of this review, challenges driven by trade agreements are out of scope.)

1) Improved food safety and consumer protection oversight

Prohibitions against food commodity tampering, threats, and false or misleading practices

The SFCA provides new prohibitions and offences to address immediate food safety risks and builds additional safety into the system, from producer or importer to consumer. For example, the SFCA prohibitions, and the higher penalties for offences associated with these prohibitions, provide a stronger deterrent against food tampering, threats, or communicating false or misleading information about the safety of a food commodity.

Further, under the SFCA it is prohibited for a person to manufacture, prepare, package, label, sell, import or advertise 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, quantity, composition, merit, safety or origin or the method of its manufacture or preparation [6(1), SFCA].

Licensing for prescribed activities

The SFCA enables a licensing regime so that food businesses need a licence based on the food commodity and the activities they conduct. Licensing helps the CFIA to do the following:

- better identify food safety and consumer protection risks in order to target inspections
- communicate important information directly to food businesses
- take regulatory actions when regulatory requirements are not met,

ranging from requiring corrective measures to suspending or cancelling a licence

Strengthened food traceability

The SFCA provides strengthened authorities to implement regulations related to tracing and recalling food, and it also provides the appropriate tools to take action on potentially unsafe food commodities. This includes a prohibition against selling food commodities that have been the subject of a recall order.

Improved import controls to level the playing field

Imports of food commodities are challenging to control because there is less information on or direct control over foreign manufacturing processes and products. The SFCA strengthened import controls by including powers that enable the licensing of importers and prohibiting the importation of unsafe food commodities. Holding importers accountable for the safety of imported products helps level the playing field between importers and domestic producers.

Flexibility to meet regulatory outcomes

The Act provides a flexible regulatory framework by moving towards a more outcome-based approach, enabling businesses to introduce new technologies, processes and procedures, while still maintaining high standards of food safety. This means that the regulations under the Act can keep pace with advances in science and technology without requiring lengthy amendments through the regulatory development process.

Discussion questions

Do you have comments about these requirements:

- food safety requirements established by the SFCA
- consumer protection requirements established by the SFCA

Regarding food safety requirements, please explain:

- how they apply to you
- any challenges with the food safety requirements established by the SFCA (please provide concrete examples)
- how the challenges you've identified relate to gaps or issues with the SFCA or any of its authorities

Regarding consumer protection requirements, which includes food labelling and grading, please explain:

- how they apply to you
- any challenges with the consumer protection requirements established by the SFCA (please provide concrete examples)
- how the challenges you've identified relate to gaps or issues with the SFCA or any of its authorities

From your perspective and based on your experience:

- has the SFCA encouraged a more level playing field for imported and domestic food, and if so or not, please elaborate
- are there any gaps or issues with the SFCA that inhibit its ability to achieve a more level playing field for imported and domestic food

Regarding outcome-based requirements:

- does the SFCA establish the necessary powers required to develop and implement these requirements (please provide examples)
- has the SFCA's outcome-based approach allowed for industry

innovation and flexibility or has it posed any challenges (please elaborate)

2) Effective, streamlined, and strengthened legislative authorities across food commodities

Modernization and simplification of food safety legislation

Consolidating diverse food commodity provisions into one Act addressed commitments made in the 2007 Food and Consumer Safety Action Plan. It also responded to the 2009 recommendation of the Weatherill Report to "modernize and simplify federal legislation and regulations that significantly affect food safety" in Canada. By adopting the SFCA, the Government of Canada met its commitment to enhance Canada's food safety system.

As indicated above, the Act set out the framework for the SFCR, which consolidated 14 former sets of food regulations into a single set of food safety regulations, and that streamlined food safety requirements across sectors. The intent was to have better consistency of rules across all food commodities, which helps keep food safe along the entire supply chain.

Aligned inspection and enforcement powers

The former food commodity statutes (such as the *Fish Inspection Act*, the *Meat Inspection Act*, the *Canada Agricultural Products Act* and the *Consumer Packaging and Labelling Act*) contained differing inspection and enforcement authorities. Consolidating diverse provisions and authorities into one Act aligned inspection and enforcement powers, making them consistent across all food commodities. This supports more efficient and standardized inspections and investigative powers, and

fosters higher rates of compliance for industry and a safer food supply for consumers.

More effective and efficient recalls and investigations for food safety

A food recall is the removal of a food from further sale or use, or the correction of its label, at any point in the supply chain as a risk mitigation action. When dealing with potentially unsafe food, the CFIA acts as quickly as possible to collect information and make decisions. Food safety investigations continue until complete and sufficient information is gathered to develop a strategy to mitigate the risk.

The traceability requirements enabled by the SFCA help the CFIA carry out effective recalls and investigate potentially unsafe food because the SFCR requires businesses to maintain traceability documentation and label information that allows them to identify where they sourced the food and to whom they distributed it. This helps businesses, and CFIA, accurately identify the scope of a recall and protect consumers from food hazards.

Discussion questions

Do you have comments about the SFCA's powers and procedures related to food inspection and investigation, and whether they apply to all food commodities consistently?

From your perspective and based on your experience, are there any:

- improvements to the administration and enforcement of the SFCA required
- challenges with having consistency in inspection powers and procedures that apply to all food commodities and if so, how do

these challenges relate to gaps or issues with the Act or any of its authorities

Has the SFCA enabled the CFIA to be more effective and efficient with regards to recalls and investigations for food safety? Please elaborate.

3) Enhanced market access for Canadian industry

Strong, flexible regulations that focus on prevention go a long way in supporting the food industry's ability to innovate and compete globally. The coming into force of the Act further enhanced Canada's international reputation as a global leader in food safety, helps maintain access to key food trading markets, as well as potentially opened up new trade opportunities.

Authority to certify food commodities for export

In recent years, more countries have required that the foods they import be certified by the competent authority of the exporting country. This reflects an international effort to ensure food safety. The SFCA provides the authority for the minister to issue certificates or other documents for exporting food commodities, which allows the CFIA to treat exported food commodities consistently.

For example, the CFIA now has broader authority to certify that Canadian food commodities are manufactured safely if necessary to facilitate the export of the food commodity. Previously, there was no authority for the CFIA to issue export certificates for some types of processed and manufactured foods, such as cookies and potato chips. This limited access for exporters of those types of food commodities to certain export markets.

Discussion questions

Do you have comments about the Canadian food industry's ability to access international markets?

For example, from your perspective and based on your experience, has the SFCA:

- improved market access, and if so or not, please elaborate
- are there any persistent or new challenges associated with improving market access since the coming into force of the SFCA and SFCR, and if so, please explain how these challenges relate to gaps or issues with the Act or any of its authorities

Additional questions

Discussion questions

In your opinion, and based on your knowledge and experience, are the provisions in the Act achieving the intended objectives of the SFCA? Please elaborate.

Throughout this consultation, you may have identified several challenges related to the provisions, operations including the administration and enforcement of the SFCA. Please identify the top three challenges and rank them using the following rankings:

1 = low area of concern

2 = moderate area of concern

3 = high area of concern

Please explain how the challenges or risks you ranked above relate to the SFCA and why you ranked them in this order.

Do you have additional comments about the provisions and/or operation of the SFCA?

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