

ORGANIC INDUSTRY COMMENTS

SAFE FOOD FOR CANADIANS REGULATIONS

APRIL 21, 2017

SUBMITTED TO: THE CANADIAN FOOD INSPECTION AGENCY

SUBMITTED BY: THE CANADA ORGANIC TRADE ASSOCIATION



Executive Summary

There is demonstrated, year over year growth in consumer demand for organics and in the number of certified organic producers in Canada. Organics are uniquely positioned to foster public trust, particularly due to the rigorous standards organic products must meet to become certified as well as due to increased consumer demand for sustainable agricultural commodities. The continued viability of a successful domestic and international organic industry is dependent on a responsive and effective regulatory regime.

Currently, organic certification is regulated under the Organic Product Regulations (OPR). This is soon to be replaced by the proposed Safe Food for Canadians Regulations (SFCR). In some cases, the modifications proposed within the SFCR are a significant departure from the language contained in the OPR.

The Canada Organic Trade Association (COTA) has led a nationwide effort to gather comments and concerns relating to the SFCR. The following paper summarizes the key recommendations resulting from consultation efforts. It concludes by requesting that the Government of Canada reconsider placing the organic regulatory regime within the SFCR, and instead commit to developing standalone legislation related to organics.

The Importance of the Canadian Organic Industry

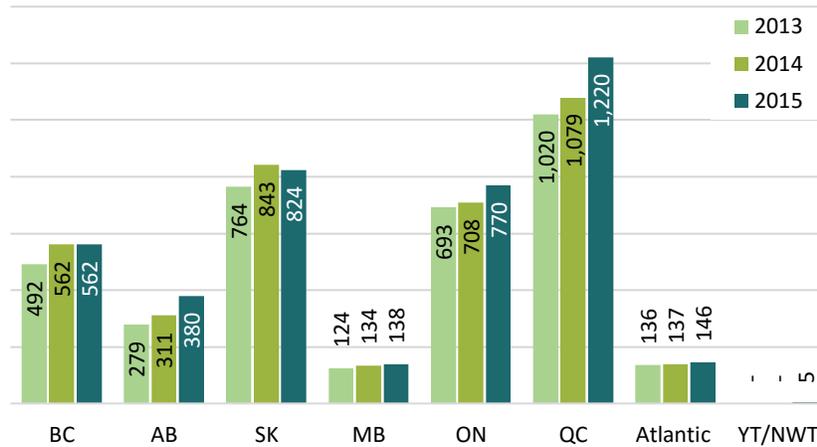
There is a growing, and largely untapped, demand for organic commodities by consumers and the broader agricultural and food industry. Organic agricultural practices mitigate climate change, reduce energy use, and build public trust while providing farmers with the economic opportunity to command a higher premium for their commodities. The following statistics demonstrate the current status of the Canadian organic industry.

Current status of the Canadian Organic Sector:

- In 2015, there were an estimated **5,053 operators with organic certification in Canada** – this includes producers, handlers and manufacturers.
- The latest Canada Organic Trade Association consumer IPSOS poll shows that **56% of Canadians buy organics weekly**, and that 86% of these consumers have maintained or increased their organic purchases in the last year.
- **Canada has the 5th largest organic market in the world valued at \$4.7B** a year, this is up from \$3.7B in 2013.
- In 2015, Canada **imported \$652 million** CAD worth of the 65 tracked organic products, representing a **37% increase** from 2012.
- **Canada has negotiated organic equivalency agreements with 90% of our major trading partners.** This includes: the US, the European Union, Switzerland, Costa Rica, and Japan. Agreements with Mexico and South Korea are currently being negotiated.
- **Organics in Canada** is a burgeoning sector representing about than 2.7% of Canadian agriculture but **employing 3.75% of the agricultural workforce.**
- The **demand for organics in Canada is increasing at a rate of 16% per year** and domestic supply is not keeping pace.
- Canadian **value-added organic food processors** are relying on imports and **have difficulty finding reliable and consistent source of ingredients.**

There is demonstrated, year over year, growth in the number of certified organic producers in Canada. As the chart below shows, in 2015 there were 4,045 certified producers concentrated in Quebec, Saskatchewan and Ontario.

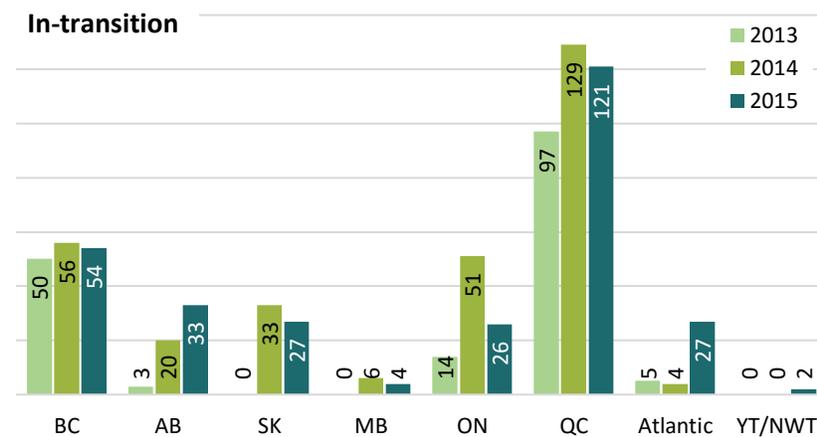
Estimated Number of Certified Organic Primary Producers in Canada, 2013-2015



Source: Canada Organic Trade Association

The number of organic producers in the process of certifying reveals strong support and steady demand for organic. As the chart below shows, Quebec and BC are home to the largest number of in-transition producers. The Atlantic provinces had the greatest increase in transitional producers, with 23 added in 2015.

Estimated Number of Certified Organic Primary Producers in Canada, 2013-2015



Source: Canada Organic Trade Association

Investing in organic agriculture provides Canadian organic growers, processors, handlers, and manufacturers access to new domestic and international market opportunities. The organic market is the fastest growing agricultural market in the world. The global organic market has a double-digit annual growth-rate and is now valued at \$80 billion dollars

(USD). Although Canada has the 10th largest area of organic land, we remain a significant net importer of value-added organic products, commodities and produce. Our trade deficit is estimated at \$1.5 billion CAD annually in a market valued at \$4.7 billion. There are significant opportunities for domestic organic producers, processors, handlers, and manufacturers to fill this growing domestic gap and continue supplying exports to the international market.

Key to the growth of the Canadian organic sector is public trust in the Canadian organic brand. Positively, the government has worked with the organic sector in a successful partnership to develop assurance systems so that Canadians can feel confident in products that make organic claims and bear the Canada organic logo.

The Organic Products Regulations (OPR) came into effect on June 30, 2009 and is the governing legislation for the Canadian organic sector. The OPR defines the scope of what can be certified to the Canadian organic standards. The OPR is not without flaws but it has nevertheless increased domestic and international confidence in Canadian certified organic food products, and has allowed for the establishment of international organic equivalency agreements so that Canadian organic commodities can be exported to international markets.

Maintaining international trade levels and the growth of the domestic industry depends on the integrity of the organic standards. It is also dependent on the government's capacity to develop and maintain regulations and standards that benefit the entire Canadian organic sector and which are consistent with the regulations of major trading partners.

Review Methodology

The proposed SFCR was published in the *Canada Gazette Part I* on January 21, 2017. The SFCR presents a change in the organic regulatory regime; in some places the proposed modifications are a significant departure from the language contained in the OPR. Given the potential impacts, the invitation for industry feedback is being taken seriously by the organic sector.

In the fall of 2016, COTA established a roundtable of industry representatives (the "SFCR Task Force" or "Task Force"). The Task Force's mandate is to identify areas of concern and sections where clarity is required in the SFCR. Task Force members also assisted in mobilizing organic stakeholders across Canada to provide comments on SFCR's impacts to the organic industry.

As part of the review process, COTA engaged the services of Jared Epp and Scott Spencer of Robertson Stromberg LLP to conduct a legal review of Part 14 of the SFCR and provide guidance on alternative legislative language. The recommendations contained in this paper are, in part, informed by their legal analysis of the legislation. Attached as Appendix 1 is a letter provided by Robertson Stromberg LLP in this regard.

On April 11th, 2017, COTA was invited to attend a meeting with Minister MacAuley, Minister of Agriculture and Paul Glover, President of the Canadian Food Inspection Agency. COTA extended this invitation to a delegation of representatives from national organic associations. The delegation presented the sector's concerns regarding the transition from the OPR to the SFCR.

COTA has successfully engaged other national organic organizations in order to canvas all perspectives. COTA has received feedback from members of the organic supply chain both large and small, across Canada. The culmination of the above-noted efforts is summarized in this paper.

Recommendations

The evaluation of the SFCR, and specifically Part 14, has identified a number of concerns that may impact the organic industry's ability to remain competitive with our trading partners and maintain healthy domestic

commerce.

1. Section 338 – ‘aquatic plant’ definition:

“aquatic plant means a plant that is cultivated or naturally growing in fresh, brackish or salt water. It does not include fresh fruits or vegetables. (plante aquatique)”

The proposed definition does not align with the standard as it creates a prohibition on aquaponic production systems that combine aquaculture with the cultivation of plants in a symbiotic relationship. CAN/CGSB 32.312 allows aquaponic products. The definition should align with the standard and “...It does not include fresh fruits and vegetables” should be removed.

2. Section 338 – ‘certification body’ definition:

“certification body means a person who is accredited as a certification body under section 358 or 360 and who is responsible for the organic certification of food commodities and for the certification of various activities in respect of organic products. (organisme de certification)”

The definition for certification body should be consistent with the definition of a conformity verification body as found in the OPR and should ensure that certification bodies are compliant with the requirements of ISO/IEC 17065.

The following definition is proposed:

“certification body means a person who, having complied with the requirements set out in ISO/IEC 17065, has entered into an agreement with the Agency under subsection 14(1) of the Canadian Food Inspection Agency Act, to be responsible for the certification of food commodities and for the certification of various activities in respect of organic products. (organisme de certification)”

3. Section 338 – ‘various activities’ definition:

“various activities means manufacturing, processing, treating, handling, slaughtering, producing, storing, packaging, labelling and conveying. (diverses activités)”

The definition of ‘various activities’ under Section 338 results in certification requirements for new actors within the supply chain. This is a large departure from the status quo. Moreover, the terms require greater definition to reduce confusion and the potential for over-interpretation. As presently conceived, Section 338 could significantly disrupt and limit the growth of the domestic organic market, particularly for organic producers.

a) Section 338 – ‘various activities’ definition. Specifically, ‘processing’, ‘treating’, ‘handling’, ‘storing’ and ‘conveying’:

Requiring the certification of ‘processing’, ‘treating’, ‘handling’, ‘storing’ and ‘conveying’ eliminates a producer’s access to the sector’s much needed infrastructure. Many third-party operators captured by these terms service both conventional and organic clients. Organic producers provide a small source of revenue as compared to their conventional counterparts. Third-parties will not have sufficient financial incentive to participate in the onerous and costly process of organic certification required to service a small portion of their revenue stream. The result will be large gaps in the value chain for certified organic producers. With links not merely weakened, but eliminated, the viability of the organic production system will be seriously threatened which will limit further growth opportunities.

The following solutions are proposed:

- Provide an exclusion or modified requirements for operators handling, storing or conveying products that

are received and remain in a container without being processed, or allow for such certification to be voluntary; or

- Require certification only where unpackaged organic products are received by operations that do not have a valid organic certification. A certificate to process, treat, handle, store or convey unpackaged goods from one certified organic operation to another is unnecessary; or
- Certification for operators processing, treating, handling, storing or conveying products should only be required where the operator obtains legal possession of the product and/or where the product is to be exported; and
- The definitions contained in Section 338 must align with the definitions contained in the organic standards.

b) Section 338 – ‘various activities’ definition. Specifically, ‘slaughtering’:

Under the OPR, abattoirs are not required to be certified in order to process organic products, but instead must abide by an attestation process. The changes proposed under the SFCR will require that abattoirs be certified, as they constitute ‘slaughtering’. This will cause significant obstacles to all but the largest organic meat producers. The requirement for certified ‘slaughterhouses’ is particularly problematic for the Maritime region where the market is unable to support the existence of abattoirs generally, let alone those who are willing to undergo organic certification. Due to the continued lack of slaughterhouse capacity across the country it is premature to require the certification of ‘slaughtering’ for all but the largest organic meat producers.

The following solutions are proposed:

- Certification for slaughtering should only be mandatory where the slaughterhouse obtains legal possession of the product and/or where the product is to be exported; and
- Maintain the organic integrity of slaughter stock and livestock products in accordance with the requirements set out in clauses 6, 8 & 9 of CAN/CGSB 32.310- 2015; and
- The definitions contained in Section 338 must align with the definitions contained in the organic standards.

4. Section 341(3) – 15 versus 12 months:

“(3) In the case of an initial application for the organic certification of a food commodity, the application must be filed within 12 months before the day on which the food commodity is expected to be sold or, in the case of the following food commodities, at least 15 months before that day:

(a) maple products;

(b) field crops or crops that are grown in greenhouses with an in-ground permanent soil system;

(c) uncultivated seaweeds and aquatic plants; and

(d) aquaculture products with a production cycle of more than 12 months.”

Section 341(3) is a replication of Section 12 of the OPR. Section 12 of the OPR led to confusion and should be amended within the SFCR. “Within 12 months” was intended to mean anytime within the 12 months leading up to the date the organic products were expected to be sold, which, in certain cases, placed a significant administrative burden on certification bodies and producers. Fifteen months do not have to pass before certification for an initial application is awarded, if the 12 months of compliance required in 5.2.1 of CAN/CGSB 32.310, and in 4.5.2 of CAN/CGSB 32.312 is demonstrated.

The following solution is proposed:

- Revise Section 341 (3) as follows:
 - *"In the case of an initial application for the organic certification for a food commodity, the application must be filed within 12 months before the day on which the food commodity is expected to be sold.*
- A fifteen-month application filing period is not necessary.

5. 342 (1) – Certification:

"A certification body must certify a food commodity as organic if it determines, after on-site verification, that

(a) the substances and materials that are used by the applicant to conduct the activities, among the various activities, in respect of the food commodity are set out and are used in the manner described

(i) in the case of a food commodity other than a seaweed, aquatic plant or aquaculture animal, in CAN/CGSB 32.310 or CAN/CGSB 32.311, and

(ii) in the case of a seaweed, aquatic plant or aquaculture animal, in CAN/CGSB 32.312;

(b) the methods that are used by the applicant to conduct the activities, among the various activities, in respect of the food commodity and the control mechanisms that are in place meet the requirements, and comply with the general principles respecting organic production, that are set out

(i) in the case of a food commodity other than a seaweed, aquatic plant or aquaculture animal, in CAN/CGSB 32.310, and

(ii) in the case of a seaweed, aquatic plant or aquaculture animal, in CAN/CGSB 32.312;

(c) if a third party conducts an activity, among the various activities, on behalf of the applicant in respect of the food commodity, the third party holds a certification for that activity; and

(d) in the case of a multi-ingredient food commodity, at least 70% of its contents are organic products and its composition meets the requirements that are set out in CAN/CGSB 32.310."

The current language in Section 342 (1) creates a situation which may prohibit mid-year changes to products, crops or the third parties involved in the 'various activities'. Arrangements with third-parties captured by the 'various activities' definition change frequently. Natural constraints may also necessitate a crop change after an inspection has occurred. The proposed wording does not allow for amendments to a certification. This is not responsive to the needs of the organic industry.

6. Section 342(2) – Certificate:

"The certification body must provide the applicant with a certificate that confirms the organic certification of the food commodity and that indicates whether CAN/CGSB 32.310 or CAN/CGSB 32.312 is applicable, the period of validity referred to in subsection (3) and, in the case of a multi-ingredient food commodity, the percentage of its contents that are organic products."

The proposed language of section 342(2) requires that an organic certification state the percentage of organic content in multi-ingredient food commodities. This differs from current practices, which only require that organic content be defined within two categories (<95% or 70-95%). Requiring exact content will create a competitive disadvantage with trading partners who are not always required to specify this degree of detail.

The following solution is proposed:

- Remove "...the percentage of its contents that are organic products".

7. Section 342(3) – Period of Validity:

"The organic certification of a food commodity is valid for 12 months beginning on the day on which it is granted under subsection (1)."

Section 342(3) is inconsistent with current practices in Canada and with our largest trading partner. Currently, certifications do not have an expiry date. If the proposed wording is enacted, administrative delays and inspection scheduling conflicts for certification bodies will inevitably cause compliance issues. Certifications should continue to remain valid, once issued, unless suspended or cancelled by the certification body. It is reasonable to require an annual renewal process, but not to institute a yearly expiry.

The following solution is proposed:

- Revise Section 342(3) as follows:
 - *"The certification, once issued, shall remain valid, unless suspended or cancelled by the certification body. The certificate holder shall submit an application for renewal to the certification body on an annual basis. The certification body may suspend or cancel a certification where a renewal application is not submitted within the specified timeframe."*
- There is also no opportunity for an applicant, who does not obtain a certification, to appeal or challenge this decision. As will be proposed in connection with Section 347, an applicant should have a right to request that the President review a certification decision with a further right of review to a tribunal. This would require an additional subsection:
 - Section 342(4) *"A certification body who refuses to issue a certification shall within 30 days upon request by the applicant, provide written reasons for its decision to refuse to issue a certification. The applicant may then, within 30 days, request a review of the decision to the President who shall, in writing, either affirm the decision or require the certification body to issue a certification to the applicant."*

8. Section 346- Suspension of Organic Certificate

Section 346(1)(c) requires a certification body to suspend a holder's certificate if a food commodity comes into contact with a substance or material other than one that is set out in the standards. This zero standard policy is unduly onerous for producers.

The following solution is proposed:

- Amend section 346(1)(c) as follows:
 - "... the food commodity comes into contact with a substance or material other than one that is set out [in the standards] that materially affects the organic composition and/or make-up of the food commodity such that the food commodity no longer constitutes an organic product within the meaning of section 342 of the Regulations."

9. Section 347 – Cancellation of Organic Certificate:

Section 347 does not provide adequate consumer protection from willful violations of Part 14 of the SFCR and/or fraudulent organic claims. Section 347 must be strengthened. Strict measures are required to ensure the integrity

of the organic certification process. A mechanism to revoke certification of willful violators and exclude same from certification must be introduced.

Strict measures should be balanced with fairness for certificate holders and it is recommended that the appeal process for cancelled certificates be strengthened. Section 347 (2) provides the holder of a cancelled certificate with an opportunity to be heard prior to cancellation, but does not specify by whom. Appeals should be administered by a third party separate from the operator and the certification body being challenged. This would ensure there is no implication of bias in the appeal process. Upon being informed of a pending certificate cancellation decision, the holder of the certification should have a right to appeal the decision, within 30 days, to the President of the Canadian Food Inspection Agency.

A further right of appeal could then lie with an independent tribunal, similar to the administrative regime established and administered in relation to the *Agricultural and Agri-Food Administrative Monetary Penalties Act*. As the organic market continues to grow, both in scope and value, the need for a specialized tribunal will increase. Certification and cancellation decisions can have a significant monetary impact on a producer or certification body. Ensuring disputes can be handled in a procedurally fair and timely manner is important to industry.

The following solutions are proposed:

- Revise Section 347 to include the following language after subsection (1):

Discretionary Revocation

- (2) The certification body may cancel a certification if it has reason to believe the holder of the certification has willfully violated the Regulations in this part, in which case the holder of the cancelled certification shall be prohibited from filing an application for certification under section 341 and/or section 344 for a period not to exceed five years.

Offence

- (3) In the event a certification body concludes that there has been a willful violation, it shall report its findings to the Minister.

Necessary steps

- (4) The certification body must not cancel a certification unless it notifies, in writing, the holder of the certification of the grounds for the cancellation and of its right to make a request, within 30 days after the day on which they receive the notice, to appeal the decision of the certification body to the President.

Review by President

- (5) The President must, on request, review the decision referred to in section 347(1) or 347(2) and, if the President affirms the decision, must provide a copy of his or her decision with reasons to the holder of the certification and the certification body. If the President does not affirm the decision, the certification body must immediately reinstate the certification.

Review by Tribunal

- (6) Within 30 days of receiving a decision by the President in connection with sections 342, 347, 361 or 362, the aggrieved party may appeal the decision to the Tribunal who shall, as the case may be:
 - I. Confirm, vary or set aside any decision made by the President in relation to the sections referred to above; and
 - II. Provide written notice of its decision to the President, the person who requested the review, and any person who is a party to the review.

No further right of appeal shall otherwise exist for any party with respect to Part 14 of the Regulations.

Written notice

- (7) The certification body must notify the holder of the certification in writing of the cancellation and the date on which it takes effect.

10. Section 350(1) – Expressions:

“The expressions “organic” or “biologique” or “organique”, “organically grown” or “cultivé biologiquement”, “organically raised” or “élevé biologiquement” and “organically produced” or “produit biologiquement” and any similar expressions, including abbreviations of, symbols for and phonetic rendering those expressions, may only be shown on the label or used in the advertisement of a food commodity that is to be sent or conveyed from one province to another if (a) the food commodity is an organic product; and (b) in the case of a multi-ingredient food commodity, at least 95% of its contents are organic products.”

The proposed Section 350 (1) does not include the expression ‘certified organic’. While the previous regulation, the OPR, did not permit the usage of ‘certified organic’, the use of this term is not prohibited by our largest trading partners, namely the USA and the EU. Further, the expression ‘certified organic’ is borne on a significant number of products entering Canada under existing equivalency arrangements. By not permitting Canadian operators to use this expression, there is an implication, to the consumer at the store shelf, that foreign certified products are ‘certified’ while domestically produced products are not. Labelling a product ‘certified’ organic or ‘certified’ biologique should be expressly permitted.

11. Section 359-361- Certification body requirements

As currently drafted, the SFCR does not specify the review process for a certification body that has its certification revoked. Rather, all that is contemplated is an ‘opportunity to be heard’. The review process should be consistent within the SFCR and a certification body should have access to a tribunal, as contemplated in our discussion under Section 342 and 347.

12. General Recommendations:

a) Further Industry Comment Period Needed:

The recommendations provided in this paper are pivotal in ensuring that the organic industry remain viable under the SFCR. Given that it would be ambitious to translate these recommendations into an effective regulatory regime without further review from industry, we are urging the government to consider a secondary comment period.

b) Publicly Accessible List of Certified Canadian Organizations:

It is recommended that the Government of Canada establish a mechanism to publish and maintain a publically accessible list of Canadian organic certified entities along with their contact information and certification details to ensure transparency and public trust.

c) Direct to Consumer Sales Across Provincial Boundaries

The proposed SFCR requires all producers selling across provincial boundaries to be licensed, a requirement which is not limited to Part 14. This is unfairly prejudicial to producers serving a local or regional market straddling provincial boundaries. These measures impose onerous and unfair costs to some producers as a result of their geographic location. An allowance of some sort is necessary for producers serving localized inter-provincial markets, however an

adequate solution cannot be provided without more consultation.

Conclusion

Regardless of whether the aforementioned issues are considered and corrected, it is becoming increasingly clear that standalone legislation is required to meet the needs of the organic industry. While regulation via the SFCR is inevitable, given that the SFCR is in its final stages, the organic industry requests that the Government of Canada consider the limitations that are imposed on the organics sector as a result of the confinement within the SFCR.

Organics are a cross-cutting issue; it is not singularly a question of agriculture, health, environment or food safety. By encapsulating organics in a food safety regulatory regime, the operational nuances of the industry are lost, as are the business opportunities.

As compared to other agricultural products, organic agricultural products are heavily regulated. It is concerning that the complex regulatory regime, unique to organics, is being placed into one part of a large and comprehensive food safety act. The organic industry is fearful that amendments required to reflect changing industry practices will be slow or non-existent, as the priority of organics within the SFCR is minimized. If the organic industry is not regulated effectively, business and sector growth opportunities will be curtailed.

The integration limits market access by restricting the scope of organic certification to food, aquaculture, livestock feed, and seed. There is enormous market opportunity for organic certification of other agricultural products such as: textiles, natural health products, pet food, personal care products, and marijuana; but these markets cannot be developed as long as the regulatory regime is contained in the SFCR. As long as market access is limited, other international organic programs such as the USDA National Organic Program and the EU organic program will continue to benefit from our limitations by certifying and selling these additional types of organic commodities, bearing their organic logo, to Canadian consumers.

As the Government of Canada is well aware, Canadian's trust in our agricultural and agri-food system is at an all-time low. Canadians are voicing their concerns about food safety and have high expectations of producers to be environmental stewards of the land and use best practices that align with the principles of sustainable agriculture. The organic sector is uniquely positioned to foster and public trust in the agri-food system, due to the rigorous certification standards in place to ensure food quality, accountability and transparency, and with sustainability inherent to the organic concept. It is imperative that we do not compromise the organic sector's ability to enhance public trust by implementing regulations that stunt the sector's growth.

On behalf of the Canadian organic industry, COTA wishes to thank the Government of Canada for reviewing our comments regarding the SFCR. The SFCR has enormous impacts for the vitality of the sector, and we urge the Government to seriously consider the recommendations contained herein.

Appendix 1

From: Jared D. Epp
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File #: 59623.1

**ROBERTSON
STROMBERG**

April 20, 2017

Canada Organic Trade Association
Suite 210-4 Florence Street
Ottawa, ON K2P 0W7

VIA EMAIL

Attention: Tia Loftsgard

Dear Madam:

RE: Analysis of Organic Regulations in Safe Food for Canadians Act

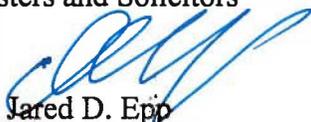
Our firm was retained to assist with your review of Part 14 of the Regulations which are to be enacted, at some point in the future, pursuant to the *Safe Food for Canadians Act* (the "Act"). In terms of our methodology we reviewed, at the outset, the Act and the Regulations, including its accompanying commentary, in its entirety. We then focused our analysis on Part 14 of the Regulations and compared how, if at all, the new regulations replaced, modified, or amended the existing organic regulatory regime. Of particular concern to us were:

- (a) New provisions which increased the administrative burden on certification bodies (ex. section 342(3) which causes certifications to expire every 12 months);
- (b) The lack of a meaningful or reasonable exemption clause, in terms of who is subject to certification requirements, for small or purely local producers;
- (c) Definitional provisions which were not defined consistently with the industry standards (ex. the definition of aquatic plants);
- (d) Material terms, such as the terms listed in the definition for "various activities", which were not defined in the Regulations and which do not have legally accepted or judicially considered meanings; and
- (e) The lack of an effective or, at times any, dispute resolution mechanism capable of responding to issues that may arise during the administration and regulation of the certification process (ex. an administrative tribunal).

In our view, the recommendations proposed by the Canada Organic Trade Association, in its position paper, respond to these, and related concerns.

Sincerely,
Robertson Stromberg LLP
Barristers and Solicitors

Per:



Jared D. Epp