

Safe Food for Canadians Regulations – published June 13, 2018

Implications for the organic industry

This document is based on feedback and analysis from COTA staff and members. It has yet to be reviewed by COTA's legal counsel. The concerns raised may not be representative of all COTA members, and some members' concerns may not be included in this document.

Summary:

In light of member feedback, COTA greatly appreciates the changes made to the proposed Safe Food for Canadians Regulations (SFCR) in Gazette I (January 2017), which we issued to the CFIA on April 21, 2017. While important changes were adopted based on COTA's concerns, numerous other suggestions did not get incorporated into the final regulations published on June 13, 2018.

We have highlighted the key areas from the final regulations in which COTA members have expressed the strongest interest. Progress has been made on some of these areas with the adoption of COTA's feedback, whereas other areas will require further engagement with CFIA to ensure that our members remain competitive internationally, while increasing our growth domestically.

Activities requiring certification:

COTA was pleased to see that the CFIA acknowledged that requiring certification of storage facilities and conveyance operators would be unduly burdensome and not add to the confidence surrounding products certified to the Canada Organic Regime.

In the Regulatory Impact Analysis Statement (RIAS) that was published along with the final Safe Food for Canadians Regulations (SFCR) in Gazette II on June 13, 2018, this was clarified as follows: "The CFIA removed the requirement for mandatory certification of activities across the supply chain and will retain its current approach of requiring mandatory certification for organic products and packaging and labelling activities only." ¹

Further clarification was received from the CFIA regarding this issue as follows:

There is no requirements for mandatory certification of transporters, warehouses and slaughterhouse under Part 13 of the SFCR.

¹ Regulatory Impact Analysis Statement, pg. 1876 of Gazette II, SFCR, June 13, 2018

*In order to ensure the organic integrity of products is maintained, a person that conducts **any activities** with respect to the food commodity including transporters, warehouses and slaughterhouses must provide a document that confirms that the methods that are used and the control mechanisms that are in place for every organic product must meet the requirements and the general principles of the applicable Canadian Organic Standard (CAN/CGSB-32.310 and CAN/CGSB-32.311).*

Currently and in future these operations will have these options:

- 1. to be included in the organic plan of the applicant and be inspected as part of the organic product certification*
- 2. to apply for an attestation of compliance in accordance with the Canada Organic Regime Operating Manual. Attestations of compliance are issued by Certification bodies after verification that the operation complies with CAN/CGSB-32.310 and CAN/CGSB-32.311.*

So no change with respect to operators and CBs regarding attestations of compliance regarding organic products under SFCR. The attestations of compliance will be issued for any activities with respect to the food commodity that is conducted on behalf of the applicant for organic certificate.

COTA appreciates this clarification and will encourage the CFIA to codify these comments in the Canada Organic Regime Operating Manual and to further clarify the requirements for entities which are not otherwise required to be certified – such as traders, distributors and brand-holders. This will enable the industry to have common language and clear understanding about what is required for each type of operation.

Time of application (Section 344(3)):

Despite requests from industry, no changes were made to the advanced time in which applications must be filed and the 15 month requirement was extended to include aquaculture products and wild crops (“crop collected or harvested in their natural habitat”) under CAN/CGSB-32.312.

“In the case of an 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 an application for the organic certification of any 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) wild crops within the meaning of CAN/CGSB-32.312; and
- (d) aquaculture products with a production cycle of more than 12 months.”

An additional requirement regarding timing of renewal applications was inserted into the period of validity section (346) and is discussed below.

Organic certificates

Representation of organic content - COTA was pleased that CFIA heard our concerns regarding specific organic content on organic certificates therefore the same rules are in place in terms of how the organic composition of products on organic certificates will appear.

The CB must provide a certificate that indicates “whether at least 70% of its contents are organic products or whether at least 95% of its contents are organic products.” (Section 345(2))

Period of validity – the requirement for annual renewal of organic product certificates remains the same. However, an ADDITIONAL requirement was instituted which could cause difficulties for some producers.

Product certificates – The holder of a product certificate must apply for renewal “once every 12-month period beginning on the day on which the certificate is issued and **no later than the day that is six months before the end of that period.**” (Section 346(1))

Packaging & labelling certificates – “The certification of the packaging or labelling of an organic product is valid for 12 months beginning on the day on which it is granted under subsection (1).” (Section 348(3))

This new requirement for an application for an organic product certificate being made at least six months prior to their upcoming renewal date is problematic, particularly for early horticultural operators. It was not proposed in SFCR Gazette I and appears to have been done without industry consultation.

Suspension and cancellation of certificates:

COTA had expressed concern regarding the certification body’s requirement 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. No changes were made in the final SFCR (Section 349(1)(c)) and we hope that this will not prove to be unduly onerous for operators.

There was no change to the steps that a certification body must comply with regarding the cancellation of an organic certificate. (Section 350(1)) COTA hopes that the CFIA will utilize the newly-available Safe Food for Canadians Act Section 39 regarding offences in order to protect consumers from willful violations of Section 350 of SFCR and/or fraudulent organic claims.

Changes affecting certification – it is stated that “the holder of a certificate must immediately notify the certification body in writing of any change that could affect the certification and of any complaint that they receive in relation to the organic integrity of the organic product referred to in the certification.” (Section 352) COTA is concerned that “any change” and “any complaint” is too broad and recommends that clearer definitions of what requires reporting is needed. COTA will encourage the CFIA to address this in the Canada Organic Regime Operating Manual.

Product labelling:

Despite requests from COTA and other stakeholders, the regulations have made no explicit allowance for the term “certified organic” on the labels of organic products that are certified as such under these regulations (Section 353(1)). 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 seen on a significant number of products entering Canada under existing equivalency arrangements.² By not permitting Canadian operators to use this expression, there is an implication, to the consumer at the store shelf, that foreign products are ‘certified’ while domestically produced products are not.

It is also unfortunate that other currently permitted claims (“organically raised” and “organically grown”) can encourage more confusion than would “organic” and “certified organic” in the marketplace. The first two imply that the product was raised or grown in some type of organic fashion but not necessarily that they were certified as such. Therefore a consumer looking at a label that says “organically grown” may instead select an imported product that says “certified organic” as that provides more confidence that the entire finished product is organic and is certified as such.

Labelling a product ‘certified’ organic or ‘certified’ biologique should be expressly permitted and it is our hope that this may be rectified by a revision of the interpretation currently published on the CFIA website and within the Canada Organic Regime Operating Manual.

Certification body accreditation:

The requirements for a certification body that has its certification revoked (Sections 362-365) are as originally presented and COTA remains concerned that the review process should be further defined and strengthened.

² While by law imported products are supposed to be compliant with Canada Organic Regime labelling rules, that is not always the case. COTA hopes that the CFIA will be able to increase enforcement of COR labelling rules under this new regulation.

List of certified operators:

No mention of a publicly accessible list of certified Canadian organizations is made in the final SFCR. COTA had recommended that the Government of Canada establish a mechanism to publish and maintain a publicly accessible list of Canadian organic certified entities along with their contact information and certification details to ensure transparency and public trust. COTA continues to work to this end.

Aquaponics:

As aquaponics products (both crops and livestock, by definition) are permitted under 32.312, Canadian consumers may be offered certified organic vegetables (such as lettuce or basil) or fruits (such as strawberries) that have been grown in aquaponics systems (versus soil-based systems -- either in-ground or greenhouse). The CFIA has indicated that operators may voluntarily choose to label the method of production but it is not required.³

Enforcement:

The penalties for contravening the Safe Food for Canadians Act are significantly more stringent than what was available under the Canadian Agricultural Products Act (which was the enabling legislation for the Organic Products Regulations). Section 39 of the Safe Food for Canadians ACT reads as follows:

Offences

- **39 (1)** A person who contravenes a provision of this Act, other than sections 7 and 9, or a provision of the regulations — or fails to do anything the person was ordered to do by, or does anything the person was ordered not to do by, the Minister or an inspector under this Act other than subsection 32(1) — is guilty of an offence and is liable
 - **(a)** on conviction on indictment, to a fine of not more than \$5,000,000 or to imprisonment for a term of not more than two years or to both; or
 - **(b)** on summary conviction, for a first offence, to a fine of not more than \$250,000 or to imprisonment for a term of not more than six months or to both and, for a subsequent offence, to a fine of not more than \$500,000 or to imprisonment for a term of not more than 18 months or to both.

³ <http://www.inspection.gc.ca/food/sfcr/general-food-requirements-and-guidance/organic-products/aquaculture-products/eng/1526564977758/1526565100440>

In the regulatory impact and analysis statement (RIAS) of the final SFCR, the following is stated:

The CFIA uses a range of tools to verify compliance, including inspections, surveillance, sampling, and testing. When non-compliance is determined, the CFIA may take enforcement action commensurate with the seriousness of the non-compliance. Under the Regulations, the Minister may suspend or cancel a licence. For example, a licence may be suspended immediately, upon notice, where there is a risk of injury to human health. This enforcement tool may be taken in addition to other compliance and enforcement tools and measures that are available including food product seizure and detention, an order to remove an imported product from Canada, a recall order, and/or penalties such as the issuance of an administrative monetary penalty under the Agriculture and Agri-Food Administrative Monetary Penalties Act.⁴

While this appears to have more teeth than the prior regulations, it is unclear if CFIA will be contemplating this section of the Act regarding fraudulent claims on organic products. COTA will be continuing to encourage CFIA to use these new penalties available to the organic industry in Canada in order to help strengthen the integrity of the Canada Organic Regime label and increase consumer trust.

Coming into force:

A six-month period has been provided for the industry to read and fully understand the SFCR before it comes into force on January 15, 2019. Additional transition periods are provided for certain segments of the industry including the following specific to the organic industry:

Seaweed that is currently certified to CAN/CGSB-32.310 (the agriculture standard) before SFCR comes into force (planned for January 15, 2019) will remain certified and subject to Part 13 of the SFCR until 24 months after that date at which time they will need to be certified to 32.312 (the aquaculture standard).⁵

E&OE

⁴ Regulatory Impact Analysis Statement, pages 1886 & 7 of Gazette II, SFCR, June 13, 2018

⁵ <http://www.inspection.gc.ca/food/sfcr/general-food-requirements-and-guidance/organic-products/aquaculture-products/eng/1526564977758/1526565100440>