Safe Food for Canadians Act Review: External Stakeholder Scoping Questionnaire

Respondent(s) Name(s)	Rom Lemaire Jane Proctor Shannon Sommerauer Josué Kashama Jennifer Ong Ton Jeff Hall
Organization Name	Canadian Produce Marketing Association (CPMA)
Organization Group	Industry Association (Fresh Produce)
Questionnaire submission date to CFIA	**Please submit your complete questionnaires by December 15, 2023.**

Background

The Canadian Food Inspection Agency (CFIA) is conducting a Review of the *Safe Food for Canadians Act*.

The Review is required by Section 68 of the *Act*, which states that five years after the coming into force of this section, and every five years after that, the Minister must undertake a review of the provisions and operations of the SFCA, including an assessment of the resources allocated to its administration and enforcement. The *Safe Food for Canadians Regulations* (SFCR) will not be reviewed in this process and any mention of the regulations will only be considered in so far as they relate to gaps or issues associated with the *Act* (incl., any specific provisions/sections of the *Act*) or any of its authorities (i.e., powers, duties and functions).

The SFCA came fully into force on January 15, 2019. The *Act* consolidates the food provisions that had previously been administered and enforced under a suite of different statutes including the *Canada Agricultural Products Act*, the *Meat Inspection Act*, the *Fish Inspection Act* and the *Consumer Packaging and Labelling Act*.

Key features of the powers in the SFCA include:

- Simplified and consistent regulatory framework for all food;
- Outcome-based regulations;
- Licensing;

- Development of preventative control plans - by most food businesses, and;
- Traceability requirements

Key intended benefits of the SFCA include:

- Consistent, prevention-focused food safety and consumer protection requirements across all food commodities;
- Consistency in inspection powers and procedures;
- Outcome-based requirements allow for flexibility and industry innovation;
- More efficient and effective recalls and investigations for food safety;
- Improved market access*, and;
- Level playing field for imported and domestic food.

***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.

SFCA ultimate objectives include:

- Modernizing and streamlining federal legislation related to food to improve food oversight and food safety;
- Better protect consumers;
- Strengthen legislative authorities across food commodities, and;
- Enhance international market opportunities for Canadian Industry.

The CFIA is consulting with key stakeholders during this initial phase of the Review to help identify key challenges and/or risk areas related to the implementation and successes of the SFCA. Information collected through this questionnaire will help inform the development of broader, public consultation that will be used as the basis to the review. This consultation is anticipated to take place in spring 2024.

If you have any questions related to the questionnaire or would like to discuss further, please contact cfia.evaluation.acia@inspection.gc.ca. For questions related to the Review of the SFCA itself, please contact Jay.Holmes@inspection.gc.ca.

Instructions

Please read through the questions below and provide written responses in the subsequent text boxes.

Please be mindful of the difference between the *Safe Food for Canadians Act* and the *Safe Food for Canadians Regulations* while writing your responses. This is a reminder that the review will be assessing the *Act* and will only consider any mention of the Regulations in so far as they relate to the *Act* (incl., provisions/sections of the *Act*) or its authorities (incl., powers, duties and functions).

If there are questions which you cannot answer, please insert N/A. Additionally, if there are topics you would like to discuss that we have not asked, please include them in the "Additional Information" section.

Once the questionnaire is complete, please submit it as a Microsoft Word document to cfia.evaluation.acia@inspection.gc.ca.

General Questions

For the purposes of this review, "operations of the Act" means implementing programs, policies and tools that fulfill the objectives of the Act as stated below. Examples of this include:

- administration and enforcement of the SFCR
- food safety, consumer protection, import, export services
- environmental scanning and surveillance programs
- risk assessment tools, like the Establishment-based Risk Assessment model for food
- tactical work planning
- lab sampling plans including third party accredited labs sampling
- Guidance – development, updating
- Training for inspectors and others in the food program
- Inspection, enforcement, audit, recall, third party oversight (e.g., organic) services, export certificates
- Compliance promotion
- Financial, human and capital resourcing
- International standard development (Codex), regulatory development, policy interpretation, response to inquiries and letter

1. Please provide a brief overview of: **a. Your organization/group** **b. Your role within your group** **c. How your group and/or role is connected to the *Safe Food for Canadians Act* / What activities you perform that are enabled by the SFCA**
a) Based in Ottawa, Ontario, CPMA is a not-for-profit organization that represents a diverse membership made up of every segment of the produce industry supply chain who are responsible for 90% of the fresh fruit and vegetable sales in Canada. CPMA is fortunate to represent a sector that is both a significant economic driver for communities and that also improves the health and productivity of Canadians. To learn more about CPMA, visit www.cpma.ca. b) Employees involved in SFC activities include: • President • Vice President, Policy & Issue Management • Director, Government Relations • Manager, Government Relations • Dietitian • Food Safety Specialist c) As an industry association, CPMA's employees work on behalf of its members to ensure the government is aware of the challenges faced by industry and actively lobbies on the industry's behalf. On a more granular level, CPMA's employees assist members in understanding and implementing the various regulations which are enabled by the act.

Areas of work include food safety, labelling, grades, pesticides / MRL's, licensing, PCP's, traceability and any other sections of the act / regulations which affects our membership.

Question: Resources for the Administration & Enforcement of the SFCA

2. From your perspective and based on your experience, are there any improvements to the administration and enforcement of the Act required? If so, please elaborate.
*Resources includes human, financial or capital/physical assets.

As an outcome-based legislative model, the Act should allow flexibility for government to pursue "regulatory experimentation" which would promote branching-out from the established norms. The experimental strategy must ensure food safety requirements are met; consumer protections are maintained; and that the outcomes would remain true to the spirit of the legislation. A regulatory framework which can "flex" would create an environment of innovation within the Canadian food industry. The Canadian government's *What is regulatory experimentation?* document aligns well with the industries desire to explore opportunities which allow for a "trial or test of a new product, service, approach or process".
CPMA would like to see an emphasis placed on existing legislative tools such as Temporary Market Access and Ministerial Exemptions. Although not directly related to the Act, both these devices allow innovation and flexibility to take place which is in keeping with the spirit and goals of the SFCA.

Questions: Intended Benefits of the SFCA

Key intended benefit #1 of the SFCA – Consistent, prevention-focused **food safety** requirements that apply across all food commodities

3. Please explain how food safety requirements apply to your organization/group.

Our members are involved at every stage along the fresh produce supply chain. Each stage, from primary production (i.e., farms, greenhouse, etc.) to consumer sales (i.e. food service, grocery) to inputs (i.e. packaging, chemicals, etc.) to service (i.e. pest control, transportation, etc.), has specific food safety challenges. Most of the commodities our members deal in have no kill step; have no option for incorporation of anti-microbials; require product specific temperature ranges (for both food safety and quality) and often travel long distances to market.
Many of our members are involved in the import and export of fresh fruits and vegetables and the expanded codification of importer responsibilities will require ongoing dialogue between government and industry associations. As a global industry, with unique supply chain challenges and commodities which are still, primarily grown outdoors, it is important to

balance the food safety hazards associated with fresh produce against the overall health benefits to Canadian consumers through the lens of the current science and industry best practices.

3.a. Have there been any challenges in complying with the food safety requirements established by the SFCA? Please provide concrete examples.

As noted above, many of our members are involved in the import of fresh produce. There have been situations where members have been audited by CFIA and the CFIA Inspector has asked for corrective actions, specifically related to imported product testing and verification of MRL's. These types of situations are problematic for the following reasons:

- Product testing, in the context of fresh produce, is an expensive and unreliable way of monitoring food safety. The industry can't test 100% of the product for food safety but must rely on a systems approach to minimize the risks at each stage along the chain.
- Environmental testing, however, is a valuable tool as it provides long-term trend data which can be used to identify problem spots in a process which informs the corrective actions required. This approach is important in the early stages of the chain at harvest, packing, and along minimal processing lines. Once the product has passed these stages, the risk of significant contamination is greatly reduced.
- MRL verification has historically relied on the certificates of analysis which accompany products as they cross the border. Under the SFCA, Inspectors have been asking members how they know the certificates are correct and have they done any verification testing. Certificates of analysis are traceable documents which provide assurance in both the analytical method and the competency of the laboratory which performed the analysis. By posing open-ended questions regarding the validity of MRL certifications, the Inspector opens a Pandora's box of unnecessary, time consuming and expensive reactions which have no impact on the industry. MRL certification must rely on the historical, applicable, and validated processes and not a "what if" inquiry from an Inspector.
- Traceability as a tool for validating the safety of a product (or potentially food safety issue sources) is an important component of food safety and industry writ large has spent years working on verifiable and efficacious standards to ensure traceability across the supply chain both domestically and internationally. It is important that requirements align with these standards and unfortunately the first set of requirements triggered by the SFCA were unique to Canada and showed a lack of knowledge of how traceability is implemented effectively to ensure maximum capacity to trace in the event of an incident. Significant resources were required to arrive at a solution which, while addressing the very problematic issue with the regulations, in effect undermined traceability. CFIA is encouraged to seek greater understanding of this important tool as the SFCA and eventually SFCR are reviewed. Doing so will ensure Canada is a leader in pragmatic implementation of traceability thereby safeguarding the food supply in Canada.

3.b. Using the challenges identified in the previous question, please explain how these challenges relate to gaps or issues with the *Act* or any of its authorities.

The issues highlighted above illustrate how the carte blanche power given to the inspection staff can create an uneven application of the Act across the industry.

- Production of documents, information, or samples - Clause 27
  The open-ended nature of this clause creates potential situations where an Inspector can ask for "any document, information or sample" regardless of the appropriateness to the immediate situation or the historical norm for a particular commodity, establishment, or industry. Inspectors must base their requests on the reality of a situation and not the "what if" mindset as this is untenable and creates inequalities across an industry.
- Due diligence defence - Clause 39 (2)
  Inspectors must respect that "A person is not to be found guilty of an offence under subsection (1) if they establish that they exercised due diligence to prevent the commission of the offence." Due diligence should be interpreted as a person who is following the applicable regulatory requirements and industry best practices. If that person can demonstrate they are conforming to those metrics, to their best possible knowledge, the Inspectors should not be asking for any extraordinary measures in the context of a routine inspection.
- Governor in Council - Clause 51(q)(s)(t)(v)
  (q) – If the Minister has issued a certificate indicating an establishment "meets the requirements of the regulations" then Inspectors should approach the establishment as compliant as per regulatory compliance and industry norms. It should not be part of an Inspectors prerogative to introduce requirements which are outside of these norms. For example, an establishment should not be required to do any analytical testing of commodities if the relevant science and commodity history indicate minimal risk of contamination.
  (s) - If the Minister, or other authorized government authority, has issued "accreditation of persons, bodies, facilities or laboratories in Canada and elsewhere and the recognition of their activities or findings" then Inspectors must respect these accreditations. During routine inspections, Inspectors should not be questioning the validity of accreditations and should not be requesting additional testing to verify unless they have credible evidence that an accreditation or certification is falsified. Individual inspectors asking for additional verification creates uneven enforcement across the country and adds unwarranted costs and analytical burdens to individual organizations.
  (t) – Similar to above, individual Inspectors must respect "the recognition of systems of inspection, certification, manufacturing, preparation, storage, packaging, labelling or testing" which have been authorized by the Minister. Failure to do so introduces unwarranted costs and additional burdens to individual organizations.
  (v) – The fresh produce industry has, for years, implemented traceability via the Produce Traceability Initiative (PTI). This program allows for traceability for both the food safety and business data requirements of the industry. One of the key tenets of PTI is that a retail business is all encompassing, so information obtained at the distribution level, via purchase orders, or other business documentation is valid for the entire organization. Therefore, the section of the SFA regulations Part 5 90(2), which is enabled by SFCA Clause 51(v), is

unnecessarily burdensome to the industry. The retail community currently has efficient procedures to find, hold and remove products. Documentation housed at a head or regional office is the preferred course of action. The corporate decision makers within retail will be found in these locations. Requiring individual retail locations to maintain these records is redundant and prone to error.

Similarly, Part 5 92(1) is an unrealistic ask of retail employees and should be the purview of the "office" staff, as per above.

SFCA Clause 51(v) includes (i) identify the food commodity and (ii) determine its places of departure and destination and its location as it moves between those places. These are both foundational to traceability; however, the level of identification is internationally recognized at the case (or trade) item level while the SFCR interpreted these two sub-clauses to mean traceability at the consumer item level. Since traceability always occur through the supply chain at a case level, this should be corrected in SFCR version 2 which will still adhere to the basic principles established in the Act and will avoid the unnecessary (and ineffective) addition of significant financial burden to the food supply chain.

Key intended benefit #2 of the SFCA – Consistent, prevention-focused **consumer protection** requirements that apply across all food commodities

4. Please explain how consumer protection requirements apply to your organization/group.

*Consumer protection requirements includes food labelling and grading.

CPMA understands the importance for labels of consumer prepackaged products to be accurate and not misleading for Canadians. However, it's crucial that the labelling clauses and regulations not be overly prescriptive and become a regulatory burden to industry. In the following section, you will find examples of the negative impacts of overly prescriptive labelling regulations on the fresh fruit and vegetable industry.

4.a. Have there been any challenges in complying with the consumer protection requirements established by the SFCA? Please provide concrete examples.

Yes, there have been challenges in complying with the consumer protection requirements established by the SFCA, more specifically with the impact of the definition of "package" on labelling regulations. CPMA recommends that the definition for "package" be revisited, which is defined in the *Safe Food for Canadians Act (SFCA),* as:

> ***package*** *means an inner or outer receptacle or covering used or to be used in connection with a food commodity and includes a wrapper or confining band. (emballage)*

The term package is also defined in the Food and Drugs Act as:

> ***package*** includes anything in which any food, drug, cosmetic or device is wholly or partly contained, placed or packed; (*emballage*)

Labelling requirements for fresh fruits or vegetables are required for consumer prepackaged and prepackaged foods (e.g., cases/shipping containers), as per the *Safe Food for Canadians Regulations (SFCR)*, when fresh fruits or vegetable are imported or sold inter-provincially. With the current definition for "package," it inadvertently considers fresh fruits and vegetables that are traditionally sold as bulk items, as packaged. This includes bulk fruits and vegetables that are wrapped in a package (e.g., overwrapped cucumber, overwrapped cauliflower, overwrapped pomelo), and bulk fruits and vegetables that are held together by a confining band (e.g. bunches of herbs, carrots, and leafy greens that are held together by a confining band).
Even though there is an exemption from SFCR labelling for prepackaged fresh fruits and vegetables, notably, section 213 b and c of the SFCR,

> ***213*** *Sections 214 and 217 do not apply in respect of any prepackaged foods that are*
>
> ***(a)*** *confections that are sold individually, commonly known as one-bite confections;*
>
> ***(b)*** *fresh fruits or vegetables that are packaged in a wrapper, or a confining band, that is less than 13 mm in width; or*
>
> ***(c)*** *fresh fruits or vegetables that are packaged in a protective wrapper, or a protective bag, that is transparent and on which no information is shown other than a price, bar code, number code, environmental statement, or product treatment symbol.*

this section of the SFCR along with the definition for "package" in the SFCA needs to be revisited, so that fresh fruits and vegetables that are traditionally sold as bulk items are not considered prepackaged. Protective wrappers and/or protective bags are often used in the produce industry to preserve the quality and shelf life of produce through the supply chain. There is often very limited space on the label for all SFCR labelling requirements, especially when on a small PLU sticker that is applied to a protective wrapper (e.g. overwrapped single cucumbers). CPMA recognizes that an extension was provided for the low-priority approach for labelling inspections for greenhouse-grown cucumbers, however we ask that these definition be more closely looked at in the next iteration of the SFCA and SFCR. The definition for "package" and section 213 b and c needs to be reviewed so that it has minimal impact on the labelling for fresh fruits and vegetables and does not inadvertently require labelling regulations for fresh fruits and vegetables that have been sold as bulk for many years.

The following are other concrete examples that are challenges for the fresh fruit and vegetable industry in complying with labelling requirements established by the SFCA and SFCR. Given the unique packaging of fresh fruits and vegetables, a regulatory experiment could be warranted to help overcome these unique set of labelling challenges for the fresh fruit and vegetable industry:

Safe Food for Canadians Regulations Regulation	**CPMA Issue and recommendations**

SFCR 230: The declaration of net quantity that is shown on the label of a consumer prepackaged food must **(a)** be in distinct contrast to any other information or pictorial representation on the label; and **(b)** show the numerical quantity in boldface type. SFCR 213: Sections 214 and 217 do not apply in respect of any prepackaged foods that are • **(a)** confections that are sold individually, commonly known as one-bite confections; • **(b)** fresh fruits or vegetables that are packaged in a wrapper, or a confining band, that is less than 13 mm in width; or • **(c)** fresh fruits or vegetables that are packaged in a protective wrapper, or a protective bag, that is transparent and on which no information is shown other than a price, bar code, number code, environmental statement, or product treatment symbol.	**Net quantity labelling on consumer prepackaged products:** Fresh fruits or vegetable that are packaged in a confining band that is greater than 13 mm (1/2inch) in width or that have an additional tag attached or in a transparent protective wrapper or bag that shows information beyond a price, bar code, number code, environmental statement or product treatment symbol (SFCR 213 b, c), are considered consumer prepackaged products (e.g., bunch of bananas with label that is > 13 mm (1/2inch), bunch of herbs with a tag, wrapped cauliflower with a brand). This means, a net quantity is required on the label. This is problematic as these items vary greatly by weight, given the nature of produce. Not only would it be difficult to put a weight on each item but using a term like "1 bunch" and its French equivalent, does not add much value for consumers and takes up valuable labelling space on an already small label. CPMA asks that CFIA provide an exemption for net quantity labelling on consumer fresh fruit or vegetable products that are packaged in a confining that is greater than 13 mm (1/2 inch) in width or with a tag attached or in a transparent protective wrapper or bag that shows information beyond a price, bar code, number code, environmental statement or product treatment symbol (SFCR 213 b, c), in the next iteration of the SFCR. CPMA proposes that net quantity is not required if the quantity is visible and identifiable by consumers.
Declaration of net quantity	**Net quantity labelling on cases (prepackaged, other than consumer prepackaged products):**

SFCR 244 Any declaration of net quantity that is required by this Division must be shown by volume, weight, or numerical count in accordance with the document entitled *Units of Measurement for the Net Quantity Declaration of Certain Foods*, prepared by the Agency and published on its website, as amended from time to time. **Declaration of net quantity — prepackaged foods** **244.1** The label of the following prepackaged foods must bear a declaration of net quantity: • **(a)** dairy products; • **(b)** eggs graded in accordance with these Regulations; • **(c)** fish; • **(d)** fresh fruits or vegetables; • **(e)** processed fruit or vegetable products; • **(f)** honey graded in accordance with these Regulations; • **(g)** maple products, except maple syrup that is not graded in accordance with these Regulations; and • **(h)** edible meat products.	CPMA, in partnership with The Fresh Produce Alliance (FPA), composed of the Canadian Produce Marketing Association (CPMA), the Fruit and Vegetables Growers of Canada (FVGC) and the Fruit and Vegetable Dispute Resolution Corporation (DRC), would like to propose a modification to the *Units of Measurement for the Net Quantity Declaration of Certain Foods*. As per the *Units of Measurement for the Net Quantity Declaration of Certain Foods* which has been incorporated by reference (IBR) in the *Safe Food for Canadians Regulations* (SFCR), only certain commodities can use numerical count as the net quantity declaration on shipping containers or cases (SFCR, 244). These include ears of sweet corn, heads of cauliflower or lettuce, celery, greenhouse cucumbers, closed containers of tiered apples, peaches, and pears. All other fresh fruits and vegetables must use weight or volume as their net quantity declaration. The FPA would like to request a change to this IBR document to allow net quantity for all fresh fruits and vegetables to be declared either by weight, volume, or numerical count on shipping containers or cases. The proposed IBR change would ensure that net quantity declarations on shipping containers/cases for fresh fruit and vegetable products can be made in the manner that is most practical and accurate for the specific commodity in question. Under the current requirements, only certain commodities—ears of sweet corn, heads of cauliflower or lettuce, celery, greenhouse cucumbers, closed containers of tiered apples, peaches, or pears—can use numerical quantity as the net quantity declaration on the shipping container. However, the broad variability among different fruit and vegetable commodities means that, while weight may be the most accurate and practical measure for declaring net quantity for some commodities, numerical count is the more accurate and practical measure for others. For example, bunches of herbs, bunched carrots, or heads of broccoli are commodities that currently require a net quantity declaration using

	weight/volume on the shipping container, but for which a wide variability in weight makes accurate net quantity labelling challenging. For example, broccoli heads, like nearly all produce, can vary greatly in size and weight. This applies to a variety of similar produce, such as collard greens (*Brassica oleracea*), which can have leaves ranging from 6 inches to over one foot in size. In addition, the inventory for these commodities is often managed and sold by numerical count (i.e., by bunch or by head), making numerical count not only the more accurate and practical measure for grower/packers, but also for wholesale/retail. The proposed IBR change would allow for weight/volume to continue to be used as desired/required but would also provide the necessary flexibility to allow for numerical count to be used where it makes sense to do so. In either case, the broader regulatory requirement for net quantity to be declared on shipping containers/cases would be met.
• **229 (1)** In the case of the label of a consumer prepackaged food, the following must be shown in characters of at least the minimum character height that is set out in column 2 of Schedule 6 for the area of a principal display surface that is set out in column 1: ○ **(a)** the numerical quantity in the declaration of net quantity; and ○ **(b)** the statement referred to in section 224 that indicates that a flavouring ingredient is	**Minimum type height requirements on consumer prepackaged products:** When calculating the minimum type height requirements for country of origin, grade, size designation, and net quantity on consumer prepackaged fresh fruits and vegetables, the principal display surface (PDS) calculation **does not** remove areas where a label cannot be physically applied. In the produce industry, packaging with vent holes is commonly used to improve the quality and food safety of produce during transport. However, packaging with vent holes limits the size of labels that can be used. This could result in larger type heights being required on labels that have minimal labelling space, posing a challenge for companies, who may be forced to decrease the space allocated for company branding, and hence, create a competitive disadvantage. Top-seal packaging is also often used in the produce industry to increase shelf life. During retail inspections,

imitation, artificial or simulated. • **270 (1)** The information that is required by section 269 must be shown in boldface type in characters of at least the minimum character height that is set out in column 2 of Schedule 6 for the area of a principal display surface that is set out in column 1. **Labelling of grade name — consumer prepackaged food** **312** In the case of a consumer prepackaged food, the grade name must be shown • **(a)** on the principal display panel or in the manner set out in the Compendium; and • **(b)** in characters of the height that is required by another provision in this Division or, if there is no such provision, in characters of at least the minimum character height that is set out in column 2 of Schedule 6 for the area of a principal display surface that is set out in column 1. **Size designation** **321** Fresh fruits or vegetables that are sent or conveyed from one province to another or imported must be labelled with the applicable size designation that is set out in the Compendium, if any. The size designation must	allowing for more visual space to count product (e.g. strawberries) by the retailer is important, and having font sizes that are too large on the label can make it difficult to count during an inspection, and lead to opening the package and discarding the product. CPMA is requesting that when the principal display surface contains areas where a physical label cannot be physically applied (e.g., vent holes, raised bumps) or if a top seal packaging is used, flexibility should be provided for minimum type heights that depend on the principal display surface. CFIA may want to consider that the information be "clear, prominently shown, and readily discernible", to allow for innovation in packaging, without compromising on food safety and competitiveness in the marketplace.

• **(a)** be shown in close proximity to the grade name;
• **(b)** in the case of prepackaged fresh fruits or vegetables, other than consumer prepackaged fresh fruits or vegetables,
  ○ **(i)** if their container is a reusable plastic container, be shown in characters that are at least 1.6 mm in height, or
  ○ **(ii)** if their container is not a reusable plastic container, be shown in characters of at least the minimum character height that is set out in paragraph 320(1)(b) for the grade name; and
• **(c)** in the case of consumer prepackaged fresh fruits or vegetables, be shown in characters of at least the minimum character height that is set out in column 2 of	

Schedule 6 for the area of a principal display surface that is set out in column 1.	
Type size • **270 (1)** The information that is required by section 269 must be shown in boldface type in characters of at least the minimum character height that is set out in column 2 of Schedule 6 for the area of a principal display surface that is set out in column 1. **Grade name — prepackaged fresh fruits or vegetables** • **320 (1)** The grade name of prepackaged fresh fruits or vegetables, other than consumer prepackaged fresh fruits or vegetables, must be shown ○ **(a)** on any surface of the container, except the bottom; and ○ **(b)** in characters of at least the minimum character height that is set out in column 2 of Schedule 6 for the area of a principal display surface	**Minimum type heights on cases/shipping containers:** The minimum type height requirements for country of origin, grade, and size designation, on shipping containers/cases of fresh fruits and vegetables, is based on a calculation in the SFCR (Schedule 6), that is proportional to the principal display surface. This is problematic as much of the industry in both Canada and the United States, have adopted the use of a produce traceability initiative (PTI) label on shipping containers/cases to track and trace product through the supply chain. The PTI label includes set font sizes for country of origin (font size 14) and grade (font size 10), that have been agreed upon for legibility across the supply chain and in distribution centres in both the USA and Canada. With the pending implementation of the USDA FSMA 204 Traceability Rule, the PTI label will be more widely adopted in industry. With the adoption of the PTI label across the produce industry, this makes it challenging to comply with the prescriptive font size requirements for country of origin, grade, and size designation in the SFCR. CPMA is requesting that the minimum type height requirements be more flexible for the labelling of country of origin, grade, and size designation, on shipping containers/cases of fresh fruits and vegetables. CPMA recommends that the type height requirements of country of origin, grade, and size designation for shipping containers/cases of fresh fruits and vegetables, be "clear, prominently shown, and readily discernible", as is the case for other labelling requirements on shipping containers (i.e., common name, variety name (when applicable), net quantity, name, and principal place of business).

that is set out in column 1. **Size designation** **SFCR 321** Fresh fruits or vegetables that are sent or conveyed from one province to another or imported must be labelled with the applicable size designation that is set out in the Compendium, if any. The size designation must • **(a)** be shown in close proximity to the grade name; • **(b)** in the case of prepackaged fresh fruits or vegetables, other than consumer prepackaged fresh fruits or vegetables, ○ **(i)** if their container is a reusable plastic container, be shown in characters that are at least 1.6 mm in height, or ○ **(ii)** if their container is not a reusable plastic container, be shown in characters of at least the minimum character height that is set out in	

paragraph 320(1)(b) for the grade name; and **(c)** in the case of consumer prepackaged fresh fruits or vegetables, be shown in characters of at least the minimum character height that is set out in column 2 of Schedule 6 for the area of a principal display surface that is set out in column 1.	
SFCR 354 If an expression that is referred to in subsection 353(1) or (2) is shown on the label of a food commodity, the label must also bear: **(a)** in the case of a food commodity that is sent or conveyed from one province to another, the name of the certification body that certified the food commodity as organic; **(b)** in the case of a food commodity that is imported, the name of the certification body or the name of the entity accredited by a foreign state referred to in subparagraph 357(1)(a)(ii) or (iii) that certified the food commodity as organic; • **(c)** in the case of a multi-ingredient food commodity that is sent or conveyed from one province to another or that is imported, the organic contents that are identified as organic in its list of ingredients; and	**Organic labelling:** When an organic claim is made on a fresh fruit and vegetable, the requirement is that the name of the certification body who certified the product as organic, also be present (CFIA industry labelling tool: Organic). This is not only the case for prepackaged fresh fruits and vegetables, but also for fresh fruits and vegetables with PLU stickers sold in bulk. This is a problem for PLU stickers, given their small size and the limited space present for labelling information. The name of the certification body is also not a requirement on PLU stickers in the USA and poses a trade barrier, as different PLU stickers need to be made for Canada, increasing their costs. This information is also a repetition of information that may already be available on the master case/shipping container, and where documentation and organic certificates can easily be pulled to prove authenticity. CPMA asks that an exemption be provided on PLU stickers, to not require the name of the certification body when an organic claim is made on a PLU sticker. The exemption should include language to ensure the certifying body is available in sellers' records should CFIA require the information.

• **(d)** in the case of a food commodity that is imported and on whose label the product legend that is set out in Schedule 9 is applied, the expression "Product of" or "produit de" immediately preceding the name of the foreign state of origin or the word "Imported" or "importé" in close proximity to that product legend.	
SFCA (6)(1): **Deception, erroneous impression, etc.** **6 (1)** 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. Voluntary labelling and advertising of foods that are and are not products of genetic engineering (Standards Council of Canada).	**Non-GMO labelling:** CFIA does not consider non-GMO logos to be implied non-GMO claims. This means that consumer prepackaged fresh fruits and vegetables for which no genetically engineered strains have been offered for sale and who bear a non-GMO logo on their labels (e.g., non-GMO project verified logo), do not require an explanatory statement. This is different for non-GMO claims, which requires an explanatory statement if a non-GMO claim is made on a single-ingredient food that has never been genetically engineered (National standard of Canada for Voluntary labelling and advertising of foods that are and are not products of genetic engineering. For example, consumer prepackaged oranges that use a non-GMO claim on their label need to include an explanatory statement, such as, like all other oranges, these oranges are not a product of genetic engineering. This is problematic as it has the potential to mislead consumers, has resulted in consumer complaints at retail, and has the potential to lose consumer trust in the Canadian labelling system. Additionally, as per the SFCA (6)(1),it is prohibited for a person to label a food in a manner that is false, misleading or deceptive. Non-GMO logos are misleading, if not accompanied by an explanatory statement on fresh

	fruits and vegetables that have not had any genetically engineered strains for sale. CPMA asks that CFIA treat non-GMO logos as non-GMO claims and require an explanatory statement if present on a fresh fruit or vegetable product that has not had any genetically engineered strains for sale.

4.b. Using the challenges identified in the previous question, please explain how these challenges relate to gaps or issues with the *Act* or any of its authorities.
As noted above, when labelling clauses or regulations are too prescriptive, it makes it difficult for the fresh fruit and vegetable industry to comply with the labelling regulations. It is important that government authorities understand the diversity and uniqueness of fresh fruit and vegetable packaging, along with its purpose in food safety/shelf life, when amendments are made to the Act and/or regulations. Given the complexities related to labelling and the fresh fruit and vegetable industry, a regulatory experiment should be considered for labelling requirements for the fresh fruit and vegetable industry.

Key intended benefit #3 of the SFCA – Consistency in **inspection powers** and **procedures**

5. From your perspective, are there any challenges with having consistency in inspection powers and procedures that apply to all food? Please provide concrete examples.
The SFC legislation's outcome-based philosophy was a step forward with respect to regulating the Canadian domestic and imported food segments. It will allow organizations increased freedom to adapt their businesses to meet the market and technology challenges in the coming years. As noted above, we have begun to see issues with consistency in respect to inspection activities in the fresh produce industry. Produce is a unique segment of the food industry given how it is produced, processed, packaged, and distributed. It is truly a global market which must be managed along the chain to protect the food safety and quality. Fresh fruits and vegetables can't be frozen, cooked, dried, treated, pasteurized, or subjected to other preservation methods available to all the other commodities. Given this, it's important for the inspectorate to approach produce as its own category with very specific physical and environmental restrictions. The legislation must allow the inspectorate the freedom to approach the produce industry from a supply chain perspective as opposed to a specific facility / activity focus. It is crucial that importers are assured that product entering Canada at one port of entry is subject to a standardized inspection – compliance should be a universal equivalency regardless of port of entry. In the absence of this, product can be

unnecessarily delayed in arrival leading to spoilage, food waste, and potentially "port shopping". Consistency is a reasonable expectation regardless of where product enters Canada.

5.a. Using the challenges identified in the previous question, please explain how these challenges relate to gaps or issues with the *Act* or any of its authorities.

With respect to the challenges noted above, the issues are not specific to the Act, but are more functional. The inspectorate must understand that produce is different, and they must adapt their inspection style and approach to accommodate these differences.

Key intended benefit #4 of the SFCA – Outcome-based requirements allow for **flexibility** and **industry innovation**

The coming into force of the SFCA intended to establish powers which would allow for a mix of prescriptive and outcome-based requirements to create more flexibility and industry innovation. For example, to prevent risks due to standing water, rather than stipulating the number of floor drains required, an outcome-based requirement would simply state that there must be no standing water and let businesses decide how best to prevent it. In this case, the outcome-based requirements could possibly prevent industry from making costly renovations that may not be necessary. In both approaches, the result is the same: risks to food safety are reduced (Source).

6. In your opinion, does the SFCA establish the necessary powers required to develop and implement outcome-based requirements? Please provide examples.

In theory, yes. In practice, however, we are seeing issues, many of which have already been presented, which our members must deal with. The outcome-based premise cuts both ways. It provides a degree of freedom to organizations which didn't exist previously, but it also allows the Inspectorate the freedom to ask for things which are not supported by the science and/or industry best practices. Product testing, MRL certification justification and, in some cases, aspects of the preventive control requirements are seen as burdensome and unnecessary extra measures. There is a sense that the inspectorate may never be satisfied with the procedure's organizations have in place, which leads to unrealistic requests being made.

While the SFCA possesses the authority to formulate and establish effective outcome-based requirements, the primary focus of criticism lies in the implementation of these requirements, which has been a source of contention within the industry. Furthermore, to enhance outcome-based requirements for MRLs, the SFCA should consider:

Enhancing the practice of systematic and periodic review mechanisms for MRLs to accommodate evolving scientific knowledge. This would ensure that regulations remain current and reflective of the latest research on the safety of agricultural chemicals. Canada has one of the most robust science-based pesticide regulatory systems in the world, which

effectively protects people and the environment while enabling farmers to access the innovative crop protection products they need to grow safe and abundant food. To ensure that this reputation continues, it is imperative that any amendments to SFCA be based on sound science and an appropriate risk-based approach. The fresh produce industry has, at times, experienced setbacks due to what seems like ideologically driven and unscientific decisions, resulting in punitive measures, i.e., the pause on MRL increases in August 2021. Canada's trading partners risk seeing that our pesticide policy is not based on sound science, but that MRL policies are ideologically driven, which would run counter to the message we're sending to our trading partners. SFCA should also seek to develop adaptive risk management strategies that can respond promptly to new information about the safety of specific residues. This flexibility is essential in a rapidly evolving scientific landscape.

In summary, refining the SFCA to incorporate these elements can contribute to a more robust and adaptable framework for establishing and implementing outcome-based requirements, especially regarding maximum residual limits.

Using an outcome-based approach for labelling, more specifically on consumer value claims such as local, natural, and sustainable, makes it more challenging for inspectors to verify these claims. With an unstandardized approach, it also broadens the definition for different claims on labels and runs the risk of confusing consumers and losing trust in the Canadian labelling system for various claims. CPMA encourages the Canadian government to set specific definitions for consumer value claims.

6.a. From your perspective, has the SFCA's outcome-based approach allowed for industry innovation and flexibility? Has it posed any challenges? Please elaborate.

As noted above, while an outcome-based approach theoretically allows for industry innovation and flexibility, in practice, there have been challenges in realizing these benefits.

For example, CPMA is generally supportive of Incorporation by Reference (IbR) as a regulatory mechanism which has the potential to support greater regulatory flexibility and to allow the updating of documents in a timely and concise manner, as enabled under the *Act*. In the CFIA Incorporation by Reference Policy, CFIA states it is committed to the principles of accessibility, transparency, consistency, reasonableness, and clarity when using IbR in regulations.

CPMA is supportive of this commitment and emphasizes that meaningful engagement, transparency, and effective information sharing between government departments and industry are necessary to ensure the effective implementation of all IbR provisions. At the same time, we must emphasize that the fresh produce industry's experience with IbR implementation to date has raised serious concerns about whether these benefits will be realized in practice without careful consideration and concerted effort on the part of government departments to enable them.

• The Canadian Grade Compendium: Volume 2 – Fresh Fruit or Vegetables is incorporated by reference under the *Safe Foods for Canadians Regulations* (SFCR). The fresh produce sector was assured by the Canadian Food Inspection Agency (CFIA) that the Incorporation by Reference mechanism would facilitate timely updates and changes to the grade standards, which provide a critical role in supporting fair business practices, avoiding or addressing disputes with respect to potential quality issues, and ensuring that Canadian growers are operating on a level playing field with imported product. However, despite significant efforts on the part of industry working groups to present CFIA with thorough proposals for updated standards, the review of the Canadian grade standards has been ongoing for more than two years. In fact, the updated standards for commodities under the first two phases of the review project have seen delays that have cost the greenhouse industry millions of dollars, and future phases (comprised of more than 20 commodities) are currently paused, still awaiting action on the part of CFIA.

• In another example, the test market provisions under the previous *Fruit and Vegetable Regulations* had allowed industry to test new and innovative products, compositions and packages for consumers. With the advent of the *Safe Food for Canadians Act* and *Safe Foods for Canadians Regulations*, this mechanism was repealed and replaced with new Test Market Authorization and Ministerial Exemption processes that are limited to a very specific set of cases. CFIA has indicated that products that fall outside this narrow scope should best be handled through IbR changes, as enabled under the *Act*. However, industry does not view the IbR change process as a workable mechanism to support innovation in our sector due to the lengthy review processes and WTO notification requirements, which will make it very difficult, if not impossible, for the fresh fruit and vegetable industry to test the market for innovative products. The fresh fruit and vegetable industry is seeking a nimble regulatory mechanism to replace what was repealed in the previous *Fruit and Vegetable Regulations*, which is critical to granting industry the timely flexibility to market their product and test new and innovative compositions and packages for consumers. Without this approach, Canadian industry will struggle to retain or expand market share.

• Finally, the Canadian Organic Standards provide the regulatory foundation for a strong and growing organic sector and are a critical tool in negotiating beneficial equivalency arrangements with our trading partners. They also provide an example of an ambulatory IbR document that is reviewed every five years. However, in relying upon external bodies for the establishment and maintenance of the standards, Canada's current organic regulatory regime differs from most other regulatory models in the world and leaves the sector relatively orphaned from government departments and agencies, including Agriculture and Agri-food Canada and the Canadian Food Inspection Agency. CPMA's experience in participating in the cyclical review of the Standards has raised concern about the consultative process and about the Government of Canada's commitment to the maintenance and review of these standards which play such a critical role in international trade. Greater federal support and ongoing government engagement is required to ensure that the Canadian Organic Standards can continue to fulfill their important roles and that the Canadian organic sector can remain competitive on the world stage. CPMA urges the Government of Canada to allocate ongoing,

dedicated resources to enable the cyclical review of the Canadian Organic Standards and take a more active and strategic role in the establishment and maintenance of the organic production standards and their harmonization with our largest international trade partners. Furthermore, in implementing IbR provisions, as enabled under the *Safe Food for Canadians Act*, the Government of Canada must work closely with stakeholders to ensure that sufficient government support is in place to enable the effective management of documents incorporated by reference into regulation.

Key intended benefit #5 of the SFCA – More **efficient** and **effective** recalls and investigations for food safety

For the purposes of this review "effective" refers to whether the SFCA has enhanced the process for recalls and investigations, whereas, "efficient" refers to whether the SFCA has created success from a financial and resource perspective.

7. In your opinion, has the SFCA enabled the CFIA to be more effective and efficient with regards to recalls and investigations for food safety? Please elaborate.
We don't believe there is any evidence which supports the notion that the SFCA has increased CFIA's efficiency with respect to recalls or food safety investigations.

Key intended benefit #6 of the SFCA – Improved market access

8. In your opinion, and based on your experience and knowledge, has the SFCA improved market access? Please elaborate. *For the purpose of this review, 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 excluded
We do not believe the SFCA has improved market access for the Canadian produce industry. The U.S. is the primary trading partner for Canadian producers and access to this market has been relatively open for decades.

8.a. Are there any persistent or new challenges associated with improving market access since the coming into force of the SFCA and SFCR?
With overly prescriptive labelling regulations, it can create a barrier for the Canadian industry to sell fresh fruits and vegetables across borders. Ideally, the goal is for labelling requirements to be harmonized between Canada and its major trading partners, so that companies do not need to incur additional costs for creating separate labels for different markets.

8.b. Using the challenges identified in the previous question, please explain how these challenges relate to gaps or issues with the *Act* or any of its authorities.

We believe that Test Market Authorizations must be reinstated under the Safe Food for Canadians Act. Delays in Test Market Authorization in the fresh produce industry have led to delays in introducing new products, hindering innovation, growth, and market responsiveness.

Key intended benefit #7 of the SFCA – Level playing field for imported and domestic food

9. Has the SFCA encouraged a more level playing field for imported and domestic food? Please elaborate why or why not.
To date, we do not believe a more level playing field has been created under the SFCA for either domestic or imported foods. As noted in under section 6(a) above, challenges with the practical implementation of Incorporation by Reference processes and the new Test Market Authorization policy have not enabled the necessary flexibility to support industry innovation, thereby effectively posing a barrier to Canadian competitiveness. In addition, global advancements in agricultural biotechnology, from gene-editing to robotics to data enabling tools to support precision agriculture have the potential to accelerate the reduction of GHG emissions and the transition to more sustainable practices. It is critical that Canadians are able to leverage these tools to be able to compete in the global marketplace. Greater cross-department and agency consideration and collaboration is necessary to ensure that the Canadian agricultural sector can realize the benefits of the many technological innovations becoming available to enable more sustainable practices. CPMA generally supports the implementation of regulatory sandboxes and would suggest that technological innovation in the agriculture and agri-food sector could be a valuable space to consider for this work.

9.a. From your perspective, 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?
The SFCA itself does not impose any barriers with respect to trade, but the application of the Act and associated regulations has caused several issues.

Question: Provisions of the SFCA

Provisions of the Act include all sections of the Act. For ease of reference please see pages 3-6 of the SFCA pdf**.**
In responding to the following questions, consider:

- provisions/powers or regulatory making authorities or other Canadian or foreign legislation that your members must comply with (e.g. U.S. Food Safety Modernization Act)
- if there are any learnings resulting from the COVID-19 pandemic or other issues such as e-commerce that demonstrate the need to examine, include or adjust provisions or regulatory making authorities that could enhance regulatory agility or flexibility in the application of CFIA enforcement and compliance

*Regulatory making authorities refers to the authority to make regulations for carrying the purposes and provisions of the Act into effect.

10. In your opinion, and based on your knowledge and experience, are the provisions in the *Act* achieving the intended objectives of the SFCA (see pp. 1-2 above)? Please elaborate.

Given that the coming-into-force dates associated with SFCA, and SFCR, coincided with the COVID-19 pandemic, it is too early to give a definitive answer to this question. Industry and government are still in the early stages of understanding and implementing the legislation. Some issues, however, are starting to crystallize:

1) Industry would like to see the government push forward on the food safety mutual recognition arrangements with our primary trading partners. We have the "Arrangement" between the U.S. and Canada, but no other similar agreements have been finalized since.
2) Inspection inconsistencies have the potential to create different regulatory requirements across specific industries.
3) Packaging and labelling requirements need to be understood at the functional and regulatory levels. For example, plastic film covering a greenhouse grown cucumber is not a labelling issue but rather a functional requirement to maintain and extend shelf-life.
4) The management issues surrounding produce grades have become a real-life irritant to industry. Grades are critical for both the commercial and consumer protection they impart on a product. Some of the current outstanding grade issues have resulted in a loss of business opportunities while the government vacillates on resolving the problem.
5) Incorporation by record (IBR) was to be an innovative process by-which legislative changes could be "fast-tracked" to help business take advantage of emerging opportunities and to allow government to forego the complicated and time-consuming process of full regulatory revisions. Currently, it appears as though the IBR process has become bogged down within government and is unavailable as a tool for industry.

Question: Key Risk Areas

11. Throughout this questionnaire, 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 *Challenges may also be considered risks that you deem most critical.

Challenge 1 Inspector Consistency & Evidence Acceptance	**Challenge 2** Realizing benefits for innovation and flexibility in practice	**Challenge 3** Industry consultations & timing
3	3	3
Left unresolved, this issue has the potential to create significant variations in enforcement and problem resolution. Inspectors must learn to accept science and risk-based evidence when auditing and this information needs to be shared throughout the inspectorate so "evidential norms" can be established and enforced.	As noted above, the fresh produce industry's experience with SFCA and SFCR implementation to date has raised serious concerns about whether these benefits will be realized in practice without careful consideration and concerted effort on the part of government departments to enable them.	For the SFCA & SFCR to continue evolving into world-class examples of how legislation should be done, the Canadian government must make industry consultation a cornerstone of the process. This includes providing sufficient time for comments and a desire to make legislation which meets both government and industry needs.

Additional Questions

12. Are there any stakeholders you recommend we speak to during the scoping or review of the SFCA? If so, please provide their contact information, organization/group name and a brief description of how their roles, responsibilities and/or activities related to the review of the SFCA.
From the industry perspective there still appears to be a disconnect between agencies and departments within the federal government. This seemingly lack of internal communication leads to delays, confusing messaging and missed opportunities. These issues lead to frustration as industry must spend time and resources "deciphering" and clarifying the information being released.

13. Is there any information (i.e., documentation, data) that can be shared with the CFIA that you consider relevant for the SFCA Review? If yes, please identify the resource,

explain its relevance, and attach via email when submitting your completed questionnaire.
CFIA is encouraged to review and consider traceability standards including those developed by the bilateral effort, the Produce Traceability Initiative. (producetraceability.org)

14. Do you have any additional information that you would like to share with the CFIA in the context of the SFCA Review? If so, please explain how the information relates to the SFCA.
Like several recent government consultations, this SFCA consultation feels rushed. Government needs to respect the fact that industry requires time to ensure consultation responses are timely, accurate, and beneficial. We are concerned the agencies mandate is drifting away from that which was framed in the opening preamble to the SFCA and we urge the Government refocus the Agency keeping all principles identified in the preamble moving forward which enable a commercially viable and safe industry. Additionally, while it is recognized that all Canadians have a role to play in ensuring sound regulations, it is imperative that expertise provided by those who are regulated is given a far greater "weight" in determining legislation and regulation.