

Understanding the CFIA Consultation on FFV Grade Standards

Identify a new approach for developing and maintaining Canada's FFV grade standards

Presented by the
FRESH PRODUCE ALLIANCE

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Fresh Produce Alliance (FPA)

The FPA is comprised of:

- Canadian Produce Marketing Association (CPMA)
 - Dispute Resolution Corporation (DRC)
 - Fruit and Vegetable Growers of Canada (FVGC)
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- Established in 2004 to identify and consolidate cross-sectoral, multi-stakeholder issues, validate potential solutions and facilitate the necessary actions to generate change.
 - Collaborative advocacy initiative to ensure an improved business climate for the fresh produce industry.
 - Validate and press for the implementation of innovative legal, regulatory and service delivery solutions that encourage fair and ethical business practices in the FFV trade.
 - Examples: Fall Harvest, Bill C-280 research and advocacy, government consultations.

Dispute Resolution Corporation (DRC)

1990's

1. North American initiative to address Canada's broken dispute resolution system.
2. Strengthen destination inspections.
3. Work toward single "body" *licensing* in Canada to integrate the *CFIA Licensing and Arbitration Regulations* requirement for a Produce Licence with the requirement for a DRC membership.
4. Develop and implement an insolvency tool.

2024

- ✓ DRC opened for business (2000)
- ✓ Destination Inspection Service (2006) revitalized
- ✓ DRC named in the *Safe Food for Canadians Regulations* (January 2019) as the single entity for FFV
- ✗ Outstanding (Bill C-280 *Financial Protection for Fresh Fruit and Vegetable Farmers Act in Canada*)

DRC: Who and What

- DRC
 - member-based body whose core work is business-to-business commercial dispute resolution for produce
 - members in 17 countries are representative of the entire supply chain
 - referee between parties when a purchase and sale do not go according to plan
 - offers harmonized trading standards and a suite of produce-specific dispute resolution tools and services
- arbitration awards are enforceable in signatory countries to an internationally-recognized mediation and/or arbitration convention
- FFV grade standards are critical to DRC's work; DRC has led a FFV grade standards modernization initiative on behalf of industry with AAFC financial support and in collaboration with CFIA since 2016

Canada Agricultural Products Act (CAP Act)

History and Transition of Canada's FFV Grades

- One of the first known references to FFV grades in Canada is a 1938 Department of Agriculture document: "Buy by Grade".
- In 1955 the *Canada Agricultural Products Standards Act* passed. It was amended in 1970 and replaced by the CAP Act in 1988.
- Standards were, and are, intended to regulate the marketing of agricultural products in import, export and interprovincial trade and to provide for national standards and grades of agricultural products, for their inspection and grading.
- On January 15, 2019 regulations made under the CAP Act were repealed in favour of the *Safe Food for Canadians Regulations* (SFCR), which includes the provision of Incorporation by Reference (IbR). SFCR recognizes DRC.

The importance of FFV grade standards

- are the common lexicon, or recognized language necessary for federal inspectors, private inspection firms, buyers, sellers and others to communicate in a common language, especially when separated by large geographic distances
- establish expectations for arrival condition given that fresh fruit and vegetables are generally purchased unseen
- are the basis for determining a breach of contract and are an essential business-to-business tool
- foundational to the DRC's Good Arrival Guidelines and Trading Standards, which serve to establish evidence in the mediation, arbitration and resolution of trade disputes
- establish minimum import requirements

CFIA consultation: A new approach to FFV grades

- Objective: To identify a new approach for developing and maintaining Canadian FFV grade standards
 - Consultation closes on October 20, 2024
- CFIA consultation questions for consideration:
 - Which of the options presented best serves the public interest and industry needs to the greatest degree?
 - What is an appropriate role for CFIA in relation to developing and maintaining fresh fruit and vegetable grade standards (within its mandate and resources)?
 - Considerations the CFIA should be aware of as it reviews options for transferring development and maintenance of fresh fruit and vegetable grades, in whole or in part, to a third party?
 - Are there any other options or considerations (e.g. other Government of Canada priorities such as sustainability, food waste/food loss, food availability, climate change) that the CFIA should take into account in modernizing the approach for developing and maintaining Canadian fresh fruit and vegetable grade standards?
- CFIA discussion paper presents three (3) options

OPTION 1 Retain the FFV grades in the SFCR and give ownership of the IbR document for FFV grade standards to an industry body.

- Under MOU, a third party would lead the development and maintenance of the grade standards.
- Grades would continue to be IbR within the SFCR, but indirectly through an external document held by the third party.
- The IbR model has been successfully established and is in use by the Canadian Beef Grading Agency.

Features:

- CFIA maintains oversight, enforcement and its current international (WTO) role.
- CFIA retains international trade obligations and responsibility for appropriate notifications and inspection services.
- CFIA retains domestic inspection services.
- Maintains minimum import requirements for all FFV that have a Canada grade established.

→ ***Note: A third party would expect and require ongoing CFIA/AAFC resources to manage.***

Option 1 is the FPA preferred option. DRC has expressed its interest to maintain the grades on behalf of the FFV industry and is supported by CPMA and FVGC.

Actions required for Option 1

CFIA would need to:

- identify a new owner of the FFV grades and establish an MOU that sets appropriate terms for oversight, roles and responsibilities
- adjust the SFCR to change the status of FFV grades from CFIA-owned and administered to externally administered

Third party actions:

- commit resources to maintain, update and create new FFV grade standards

Shared:

- AAFC/CFIA to provide appropriate resources

OPTION 2 Expand the mandate of the DRC to include the development and maintenance of most grades.

- CFIA would give DRC responsibility for developing and maintaining FFV grade standards other than apples, onions and potatoes (due to specific import regulations under SFCR)
 - this could be done under the existing CFIA-DRC MOU or through a new, stand-alone, grade standards-specific MOU
- remaining grades would be removed from the Compendium and housed in DRC's Operating Rules
 - the DRC-maintained grades would no longer be incorporated by reference (IbR) under SCFR and therefore have no direct regulatory standing
- DRC would have to create two membership classes: Canadian members versus members from all other countries
- would involve DRC in compliance actions should grade standards not be followed as required
- DRC would require additional resources to update the 28 grade standards

*Option 2 is not viewed as a viable option for DRC/industry. This would be a challenge for any not-for profit corporation due to the nature of the **Canada Not-for-profit Corporations Act.***

OPTION 2 Outside CFIA scope.

- Per CFIA, DRC-maintained grades would no longer be incorporated by reference under the SFCR and therefore would be outside the scope of the CFIA's IbR Policy.
- The 28 FFV grades would no longer be subject to mandatory grading and mandatory labelling of grade names under the SFCR. However, DRC could update its Good Arrival Guidelines in their By-laws and Operating Rules to include a requirement to adhere to the grades it oversees.
- This would preserve a Canada-wide framework for grades oversight that is integrated in CFIA regulations. To remain in good standing with the DRC, the grades would need to be applied as prescribed and those not adhering to the grades would thus be in violation of the SFCR, as they are today.

Option 2 would also complicate DRC's current role within the CFIA, cause confusion and raise enforcement and compliance issues.

OPTION 3 CFIA maintains FFV grades in the SFCR.

- CFIA maintains the FFV grades in the SFCR and applies a risk-based approach to develop outcome-based grades.
- This option is essentially the status quo, other than perhaps apples, onions, and potatoes to be given priority due to Canada's import requirements.
- CFIA would require additional resources and a dedicated FFV program to move forward effectively.

*Option 3 is not viewed as a viable option by industry given
CFIA's historical and current resourcing of activities
related to maintaining FFV grade standards.*

The CFIA Questionnaire

Questions to address . . .

1. Of the proposed options to modernize the approach for developing and maintaining Canadian fresh fruit and vegetable grades:
 - Option 1 Retain the FFV grades in the SFCR and give ownership of the IbR document for FFV grade standards to an industry body.
 - Option 2 Expand the mandate of the DRC to include the development and maintenance of most grades.
 - Option 3 CFIA maintains the FFV grades in the SFCR and applies a risk-based approach to develop outcome-based grades.
2. Which one serves the public interest to the greatest degree?

The CFIA Questionnaire *(continued)*

3. What is the appropriate role of the CFIA in relation to developing and maintaining fresh fruit and vegetable grade standards?
4. Are there any considerations the CFIA should be aware of as it reviews options for transferring development and maintenance of fresh fruit and vegetable grades, in whole or in part, to a third party?
5. Are there any other options or considerations (e.g. other Government of Canada priorities such as sustainability, food waste/food loss, food availability, climate change) that the CFIA should take into account in modernizing the approach for developing and maintaining Canadian fresh fruit and vegetable grade standards?



Next steps

- Call to action - industry input:

How to comment

- Discussion paper
- <https://inspection.canada.ca/en/about-cfia/transparency/consultations-and-engagement/canadian-fresh-fruit-and-vegetable-grade-standards>
- Complete the [online questionnaire](#) or send feedback through e-mail at cfia.StandardsGradesModernization-Normesclassment.acia@inspection.gc.ca.
- Comment deadline is October 20, 2024

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