

November, 2018

Safe Food for Canadians Regulations

Coming Into Effect on January 15, 2019

New regulations for the food industry come into effect on January 15, 2019. Businesses that may be affected are those that grow, harvest, manufacture, process, treat, preserve, grade, package, label, import, export, or retail a wide variety of foods. Such businesses must confirm which of the *Safe Food for Canadians Regulations* (the "SFCRs") provisions will apply to them and the timing for the new compliance requirements. The time-frames vary depending on food product categories and in some cases, on the types of activities and extent of operations in Canada.

Major Changes in the SFCRs

The *Safe Food for Canadians Act* (the "SFCA") was enacted in 2012 to improve food safety and consolidate food regulations. Its date of coming into effect was delayed to allow time for consultations with food businesses and other interested parties about the SFCRs. The three key elements of the SFCRs relate to:

- **Licensing**, now required for food importers and businesses that prepare food for export or for interprovincial trade;
- **Preventive Controls**, including the requirement for food producers to implement a Preventive Control Plan ("PCP"), based on Hazard Analysis and Critical Control Point principles; and
- **Traceability**, for problem reporting and recalls, based on international Codex principles, to allow food to be traced forward to the person to whom the food was provided, and back to the immediate supplier. These requirements apply to producers and many retailers, but not to restaurants.

Timetables Vary

In general, the SFCRs' requirements come into force on January 15, 2019. However, some obligations will not apply until various later dates.

Timetables, interactive tools and other reference information are posted on the website of the Canadian Food Inspection Agency ("CFIA"), which administers and enforces the SFCA and the SFCRs. The CFIA "Timelines" document¹ provides general information and contains links to specific timetables for these food categories:

- Dairy products, eggs, processed egg products, processed fruit or vegetable products
- Fish
- Meat products and food animals
- Fresh fruit or vegetables
- Honey and maple products
- Unprocessed food used as grain, oil, pulse, sugar or beverages
- Food additives and alcoholic beverages
- All other food, including foods not covered in other timetables, such as confectionary, snack foods, beverages, oils, dried herbs and spices, nuts and seeds, coffee and tea, processed grain-based foods such as baked goods, cereals, and pasta

Depending on the food category, the business' activities and other characteristics, and the regulatory requirements, phase-in dates from 2019 to 2021 will apply. For example:

- Within the dairy products and processed fruit or vegetable categories, the Licensing, PCP, and Traceability requirements all take effect on January 15, 2019.
- Within the fresh fruit or vegetables category, licences are not required for businesses that only grow or harvest fresh fruit or vegetables in the field for interprovincial trade. However, such businesses must have PCPs in place by January 15, 2020. For businesses that engage in other activities, such as packaging or labelling fresh fruits or vegetables in the field for interprovincial trade, or processing or preserving fresh fruits or vegetables for interprovincial trade (and the food will not be subsequently manufactured, processed, treated,

¹ The CFIA's "Timelines" document is posted on the CFIA site at:
<http://www.inspection.gc.ca/food/sfcr/timelines/eng/1528199762125/1528199763186>

preserved or graded by a licence holder in another province), licensing is required as of January 15, 2019. The deadline is January 15, 2020 if a business's gross annual food sales are over \$100,000. The CFIA's methods for calculating these amounts are set out with examples in each timetable document.

- Within the Other Food category, businesses that manufacture, process, treat, preserve, grade, package, or label food for interprovincial trade will have a licensing requirement of July 15, 2020, and will also be required to have PCPs in place on July 15, 2020 if their gross annual food sales are over \$100,000 and they have more than four employees. However, the PCP date is extended to July 16, 2021 for those businesses with four or fewer employees and is not required for those with gross annual food sales of \$100,000 or less.

Compliance will require a detailed review of the business's activities in relation to the SFCR categories and timelines. Non-compliance may result in a notice of violation, which can be issued by the CFIA with a warning or with a financial penalty of up to \$15,000.

Preparing to Comply

To determine if and when the licensing, PCP and traceability requirements apply, businesses and their legal counsel should carefully review these new requirements. The CFIA's "Getting started: Toolkit for businesses"² and related materials, including a "Handbook for Food Businesses" provide a useful starting point for this analysis. Given the complexity of the new requirements, it may also be important to obtain legal advice to confirm the actions to be taken to comply with the SFCRs.

Carol Anne O'Brien can assist businesses that have questions about the SFCRs, food safety, or other regulatory issues. She can be reached at caob@caobrienlaw.com or (416) 640-7270.

Carol Anne O'Brien's law practice is focused on regulatory matters including the regulation of food, drugs, and consumer products, communications law (broadcasting and telecommunications), competition law, advertising and marketing, Internet domain names and privacy.

² CFIA's "Getting started: toolkit for businesses" is posted at: <http://www.inspection.gc.ca/food/sfcr/toolkit-for-businesses/eng/1427299500843/1427299800380>