Compliance and Enforcement Policy

Program Policy Integration Division
Policy and Programs Branch
Canadian Food Inspection Agency

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Contents

1.0 Background

The mandate of the Canadian Food Inspection Agency (CFIA) is to safeguard food, animals and plants that enhance the health and well-being of Canada's people. CFIA achieves this mandate by setting requirements in legislation. It is the legal responsibility of regulated parties to comply with all the legislative requirements that apply to them.

This Compliance and Enforcement Policy outlines CFIA's approach to compliance with, and enforcement of, its legislation. Canadians and Canadian industry want a reliable and credible system that protects plant and animal health and food safety. There is an expectation that contraventions of the law will be met with meaningful and appropriate compliance and enforcement actions, which contributes to maintaining public trust. Compliance and enforcement actions taken by the Agency are part of a continuum – CFIA's Compliance and Enforcement Continuum (for more information, please consult Appendix A), which includes:

- **Compliance promotion** - consultation, communication, information, tools and processes to help regulated parties understand and comply with regulatory requirements;
- **Compliance verification** - CFIA assessment of regulated party compliance by conducting inspections, taking samples, testing, etc., to verify that requirements are being met;
- **Regulatory response** - CFIA response when regulated parties do not comply and/or a risk needs to be controlled; and
- **Recourse and feedback mechanisms** - regulated party recourse and feedback mechanisms.

CFIA supports compliance by providing regulated parties with the tools, resources, guidance, and services they may need to become familiar with and follow regulatory requirements. Using a risk-informed approach, the Agency conducts inspections to verify that regulatory requirements are being met. When they are not, CFIA may use control actions to address any immediate risk, as well as enforcement actions once non-compliance has been determined.

CFIA strives to be transparent and accountable in how it does business. In addition to providing regulated parties with recourse options, CFIA encourages continuous feedback and dialogue.

2.0 Policy statement

CFIA takes a strategic, consistent, fair, and transparent approach to verify that its compliance and enforcement actions and decisions support the effective delivery of its mandate.

3.0 Policy objectives

The objectives of this policy are to promote:

- increased awareness of the compliance and enforcement continuum applied by CFIA;
- a consistent application of regulatory control and enforcement procedures across CFIA; and
- increased compliance by regulated parties to legislation administered by CFIA.

4.0 Definitions

Definitions are included in Appendix B and a list of acronyms is provided in Appendix C.

5.0 Scope

This policy applies to the design, delivery and reporting of compliance and enforcement actions across CFIA's plant, animal and food business lines.

6.0 Authorities

CFIA is responsible for administering or enforcing the following Acts and their respective regulations:

- *Agriculture and Agri-Food Administrative Monetary Penalties Act*
- *Canadian Food Inspection Agency Act*
- *Feeds Act*
- *Fertilizers Act*
- *Food and Drugs Act (as it relates to food)*
- *Health of Animals Act*
- *Plant Protection Act*
- *Safe Food for Canadians Act*
- *Seeds Act*

7.0 Guiding principles

The following guiding principles support CFIA in achieving its compliance objectives:

7.1 Clarity

CFIA provides clear, concise and user-friendly information to regulated parties through its website and other communication activities.

7.2 Fairness, predictability and consistency

Compliance verification and enforcement program direction, guidance and procedures are applied nationally in order to achieve fairness, predictability and consistency.

Compliance verification and enforcement activities are carried out by trained, designated personnel in a manner consistent with the Agency's corporate values and ethics.

CFIA adheres to a compliance continuum (see Annex A) and this process contributes to fairness, predictability and consistency of compliance and enforcement activities.

7.3 Transparency

CFIA takes an open and transparent approach to its enforcement activities by providing Canadians with relevant, accurate and timely information on enforcement actions in a fair and consistent manner that respects legal requirements governing the public release of such information to maintain public trust.

Non-compliant regulated parties are made aware of the facts associated with violations or offences and are informed of available recourse and feedback mechanisms.

CFIA also encourages continuous feedback and dialogue through various mechanisms, including holding open consultations on its programs and services; and encouraging regulated parties to submit comments, compliments or complaints about quality of service, administrative errors or regulatory decisions to CFIA's Complaints and Appeals Office.

7.4 Risk-informed

CFIA selects the appropriate control and enforcement actions based on risk and the gravity of the non-compliance. As specific facts relating to cases of non-compliance may vary considerably, the enforcement actions applied may not be the same in each instance.

7.5 Results-oriented

Control and enforcement actions are selected to have the most positive impact on human, plant and animal health and safety outcomes based on the efficient and effective use of the Agency's resources whenever appropriate and possible.

Control and enforcement actions are carried out in a timely manner.

Control and enforcement actions are undertaken, managed and documented in a manner that facilitates efficacy reviews, performance assessments and continuous improvement.

CFIA uses performance measurement information to determine whether compliance and enforcement actions are working to improve compliance whenever appropriate and possible.

7.6 Right to recourse

Various recourse and feedback mechanisms are available to regulated parties who disagree or are not satisfied with a decision made by CFIA as set out under the law, including legislation that is administered and enforced by the Agency. Possible options available include:

- re-inspection (where authorized);
- opportunity to be heard (actions on permissions);
- appeal to the Assessor (animal or plant compensation);
- request a Ministerial Review (as it applies to the *Agriculture and Agri-Food Administrative Monetary Penalties (AAAMPs) Act*);
- appeal to the Canada Agricultural Review Tribunal (CART) (as it applies to the *AAAMPs Act* and Board of Arbitration Appeals);
- request a judicial review of a decision on an Administrative Monetary Penalty (AMP) from the Federal Court; and
- request a judicial review on decisions related to control and enforcement actions from the Federal Court.

8.0 Roles and responsibilities

8.1 Differentiating between inspection and investigation

One of the most important distinctions in compliance and enforcement is the difference between "inspection" and "investigation", which must be treated as different and independent activities.

a) Inspection

Inspections are conducted by inspectors and veterinary inspectors with the predominant purpose of verifying compliance with legislation enforced by CFIA. When conducting inspections, inspectors and veterinary inspectors, who are designated under the *Canadian Food Inspection Agency Act*, exercise the authorities conferred on them by the relevant legislation to determine whether regulated parties and their products are in compliance with that legislation. If the information obtained indicates that there is non-compliance, enforcement action may be undertaken or the matter may be referred for further evaluation and/or investigation.

b) Investigation

For the purpose of this policy, an investigation is where the main purpose of an inquiry by a CFIA official is for the determination of penal liability. Investigations are carried out by Investigation Specialists whose predominant purpose is to gather and secure evidence.

8.2 Regulated parties

Regulated parties are responsible for ensuring safety and compliance of their activities, processes and products. Therefore, regulated parties need to become familiar and comply with legislative requirements. Regulated parties are also responsible for their actions and are required by legislation to provide reasonable assistance to CFIA inspection personnel to enable them to carry out their duties and functions. Failure to do so may result in enforcement action due to obstruction of an inspector acting in the course of their duties, or due to the provision of false or misleading information to them.

8.3 CFIA enforcement officials

CFIA enforcement officials include inspectors and veterinary inspectors, investigators and investigation specialists, as well as officials of other agencies or departments who are designated to enforce CFIA legislation.

a) Inspectors and veterinary inspectors

Inspectors and veterinary inspectors are individuals who have been designated to enforce legislation for which CFIA is responsible. Examples of duties undertaken by inspectors and veterinary inspectors include:

- communicating with regulated parties regarding the legislative requirements, how compliance will be assessed and what is considered non-compliance;
- carrying out inspections to verify, assess and monitor compliance; and to prevent non-compliance as per the authorities granted to them under the legislation enforced by CFIA (e.g., to compel a regulated party to provide information; enter and inspect places, premises and conveyances; open containers and packages; conduct tests; restrict the movement of a thing or order it be moved or not moved; seize and detain products.)
- documenting inspection findings (e.g., taking photographs and/or videos);
- informing regulated parties of identified non-compliance, and following up to verify that appropriate corrective actions have been implemented;
- preparing non-compliance reports;
- responding to consumer complaints;
- preparing administrative monetary penalty files and issuing Notices of Violation (NOVs) (where designated); and
- giving evidence in court and at reviews before the CART.

b) Investigators and investigation specialists

CFIA investigators and investigation specialists generally conduct investigations for the purpose of gathering evidence that may lead to more serious enforcement actions, up to and including prosecution. They have expertise in investigation procedures and techniques, including:

- obtaining and executing search warrants and production orders;
- gathering and protecting the continuity of evidence;
- interviewing and obtaining statements from persons who may have relevant information such as potential witnesses or accused persons;
- conducting surveillance; and
- following the rules for admissibility of evidence.

CFIA investigators and investigation specialists respect requirements outlined in the *Canadian Charter of Rights and Freedoms*, the *Canada Evidence Act*, the *Criminal Code of Canada* and other relevant federal legislation when conducting their duties. Moreover, they generally:

- provide enforcement-related advice, guidance and assistance to inspection staff and management;
- conduct investigations;
- review and prepare briefs of evidence recommending prosecution;
- prepare court documents in the form of information or court orders, draft agreed statements of fact, and oversee court ordered disposals;
- prepare Administrative Monetary Penalty (AMP) files and issue NOVs, where required;
- give evidence in court;
- liaise with Agriculture and Food Inspection Legal Services and the Public Prosecution Service of Canada (PPSC) with respect to investigations and prosecutions;

- deliver enforcement training to CFIA staff; and
- assist legal counsel representing CFIA before the CART in relation to AMPs reviews and before the Courts during prosecution-related matters.

c) CFIA management executives

Classes of CFIA management executives have been delegated ministerial and presidential authorities to:

- undertake actions on permissions (e.g. licences and registrations), such as suspension, cancellation or revocation; and
- approve recommendations that non-compliances be referred to PPSC for possible prosecution.

8.4 Other CFIA officials

a) CFIA analysts

- conduct chemical, microbiological, pathological, and physical analytical services, including research, related to foods, animals, feeds, fertilizers and plants/seeds; and
- perform diagnostic tests, technology development and transfer, laboratory accreditation, scientific advice and analytical capability for animal diseases and plant pests.

b) CFIA graders

- assess the quality attributes and standards of products regulated by the Agency.

c) Other CFIA officials

- develop compliance promotion strategies to increase understanding of regulatory requirements, address recurring non-compliance issues, and provide timely notification to the public;
- identify areas of frequent non-compliance that require more oversight or a review of policy and programs;
- collect data on industry compliance and non-compliance rates;
- develop interpretative guidance for industry and stakeholders, and operational guidance for CFIA staff;
- serve as subject matter experts and witnesses in court or tribunal proceedings; and
- report on whether compliance-related efforts are improving industry compliance.

More information about roles and responsibilities can be found on the CFIA website.

8.5 Other agencies

Under certain circumstances the CFIA collaborates with other departments and agencies to enforce its legislation. One example is the Canada Border Services Agency (CBSA), which is responsible under the *Canada Border Services Agency Act* for the enforcement of the CFIA's food, animal and plant-related legislation at airports and other Canadian border points, other than import service centres.

8.6 Public Prosecution Service of Canada

The Public Prosecution Service of Canada (PPSC) is responsible for all prosecutions arising out of violations of the Acts administered and enforced by CFIA.

PPSC provides advice to law enforcement agencies such as CFIA, as well as advice and assistance to investigators at the investigative stage. They work closely with various law enforcement agencies and take their input into account when considering if prosecution is warranted.

9.0 Reference documents

For more information about compliance and enforcement, please visit CFIA's website. Examples of reference documents include:

- CFIA Compliance Continuum;
- CFIA's Statement of Values;

- Statement of Rights and Service for Producers, Consumers and Other Stakeholders;
- CFIA Acts and regulations; and
- Open and Transparent Agency Policy

Guidance documents on compliance and enforcement are also available on the Agency's website, including:

- Standard Permissions Procedure (SPP);
- Standard Inspection Procedure (SIP); and
- Standard Regulatory Response Process (SRRP).

10.0 Monitoring and reporting

The Compliance and Enforcement Policy will be reviewed to evaluate its implementation and success in achieving its stated objectives (refer to section 3) to confirm its continued applicability. The review will occur at least once every five years. Results of reviews will be reported to the Business, Innovation, Policy and Planning Committee (BIPPC) and Senior Management Committee (SMC).

Updates and revisions will be made to reflect significant changes to CFIA's legislation or organizational structure or as deemed necessary due to the review outcomes.

11.0 Inquiries

For questions related to Compliance Promotion, please contact:

Executive Director
Engagement, Corporate & e-Communications Directorate
Communications and Public Affairs Branch
cfia.sfcroutreach-sensibilisationrsac.acia@canada.ca

For questions related to Compliance Verification and Regulatory Response, please use the "Contact Us" form found on the CFIA website.

For guidance and clarification on specific enforcement matters, please contact your local CFIA office.

For questions regarding the Compliance and Enforcement Policy, please contact:

Director
Program Policy Integration Division
Policy and Regulatory Affairs Directorate
Policy and Programs Branch
cfia.programpolicy-politiqueprogramme.acia@canada.ca

12.0 Effective date

This policy comes into effect on November 1st, 2020.

Approval

The Compliance and Enforcement Policy has been approved by the President.

Siddika Mithani — Signature

September 18, 2020 — Date

Appendix A – CFIA's compliance and enforcement continuum

1.0 CFIA's compliance and enforcement continuum

CFIA's Compliance and Enforcement Policy is based on the concept of a continuum, which includes: compliance promotion, monitoring and assessment (compliance verification), response to risk and non-compliance (regulatory response), and provision to regulated parties of information with respect to recourse and feedback mechanisms as illustrated in Figure 1.

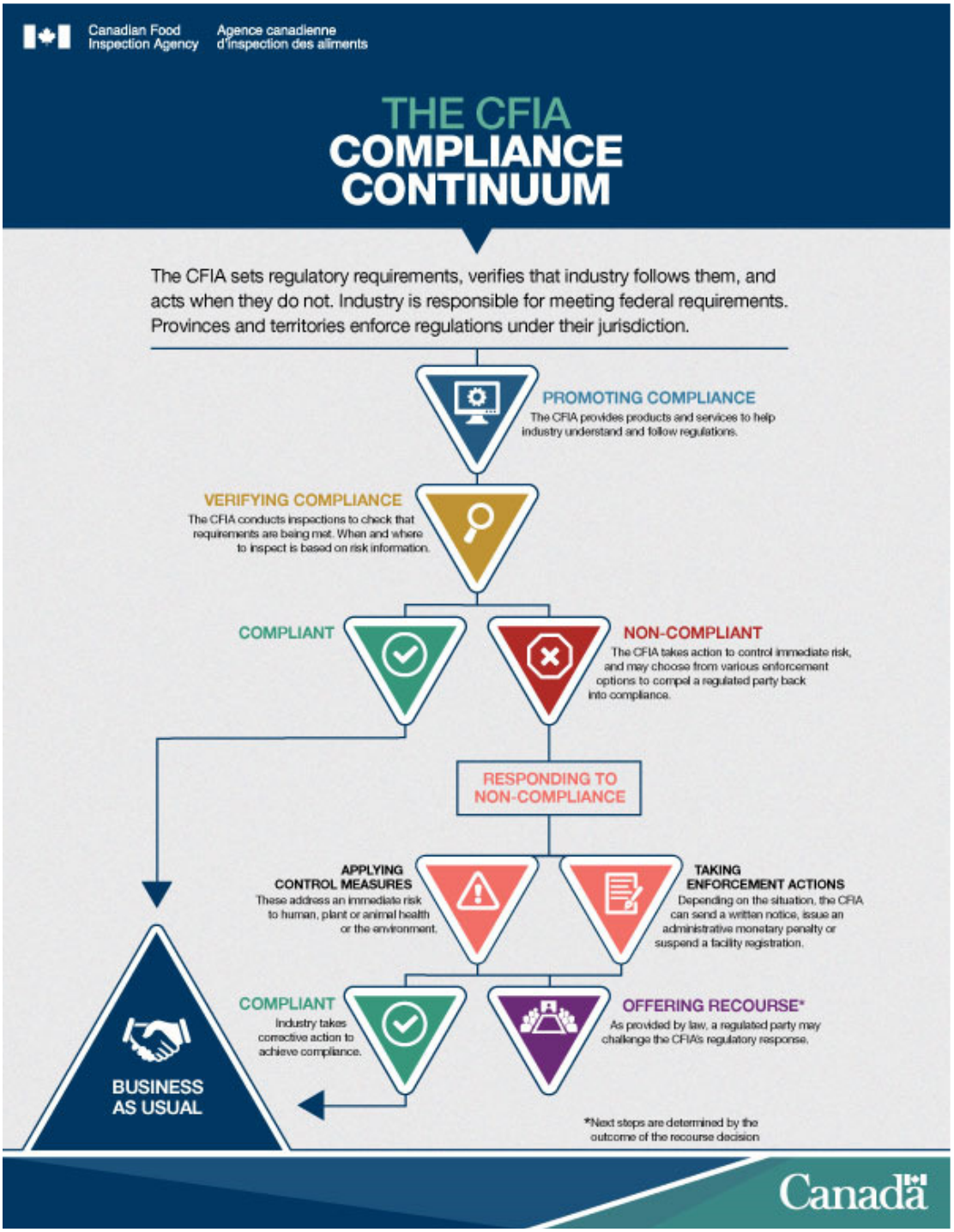

Figure 1: CFIA compliance continuum

Examples of actions and tools for each continuum category are listed in table 1 below.

Table 1: Compliance promotion, compliance verification, regulatory response, and recourse activities of the compliance and enforcement continuum

Continuum category	Actions and tools		
Compliance promotion	**Technical support:** • Clearly outlined compliance requirements • Well-established, effective practices or procedures that the regulated party may use to meet a required outcome • Guidance documents for stakeholders • On-line tools (e.g., Industry Labelling Tool, Automated Import Reference System (AIRS)) • AskCFIA (for food-related regulatory questions) **Communication:** • Information material (e.g., videos, infographics, fact sheets, industry notices, etc.) • Information sessions, webinars, etc. • Consultations with regulated parties • CFIA website and social media (Facebook, Twitter, LinkedIn) **Other incentives:** • MyCFIA - electronic access to request and receive services (permits, certificates, licences) • Statement of rights		
Compliance verification	• Inspections • Verifications • Monitoring • Grading	• Analyses • Sampling • Feedback	
Regulatory response	Control actions	• Seize and detain • Start or stop an activity • Forfeiture • Confiscation • Quarantine • Refuse entry • Order removal from Canada • Injunction	• Restrict or prohibit movement • Recall • Dispose or destroy • Refuse to issue certificate • Add conditions to a permission* • Treatment
	Administrative actions	• Letter/Notice of Non-Compliance	• Meeting with the regulated party
	Enforcement actions	• Administrative Monetary Penalties (AMPS)	• Actions taken against permissions • Recommend prosecution
Recourse and feedback mechanisms	• Re-inspection • Complaints • Appeals • Judicial review		

*Permission includes licence, registration, permit, and certification.

Note: This table represents some of the responses available to CFIA. The Agency will select the most appropriate response to address risk and/or non-compliance.

1.1 Compliance promotion

CFIA believes that compliance promotion is an effective tool for generating compliance. Compliance promotion is facilitated when CFIA is transparent in its approach to compliance and has clearly articulated legislative requirements as well as accessible information tools and services for regulated parties. Although not a formal compliance promotion activity, CFIA also encourages compliance by responding effectively and efficiently to non-compliance.

a) Transparency

Compliance promotion begins with open, two-way dialogue and exchange with all stakeholders. CFIA strives for a coordinated, transparent approach to compliance that is accountable to Canadians, and recognizes that an effective way to obtain compliance is to involve regulated parties during the early stages of legislative change and policy development. When CFIA is developing program-specific policies and programs, consultations with all stakeholders, including the public, are undertaken.

b) Clear and enforceable requirements

CFIA strives to develop regulatory requirements that are clear and enforceable. Clearly worded legislation supports compliance by making it easier for regulated parties to understand the requirements they must meet.

c) Information tools and services

Regulated parties have an obligation to be familiar with the requirements of the law. In order to facilitate this, regulated parties are provided with information on new or existing initiatives, legislation, policies or procedures. A vital delivery vehicle for compliance promotion products at CFIA is its website. Plain language information tools, products, services and guidance are distributed as part of the overall communications package to assist regulated parties in understanding legislative requirements. CFIA uses a number of different tools, including consultations, publication of information, outreach and awareness campaigns and other initiatives to inform regulated parties of the legislative requirements that must be met. Examples of information that CFIA may provide include links to current legislation, information and tools regarding established practices or procedures, fact sheets, videos and infographics. Regulated parties can also ask questions to CFIA using established channels (e.g., contact My CFIA online) to help them understand and comply with legislative requirements.

1.2 Compliance verification

CFIA conducts a range of inspection activities to assess whether a regulated party is meeting its regulatory requirements. These may include:

- visually inspecting food commodities, feeds, plants, animals, or other regulated things;
- reviewing company records and preventive control plans;
- interviewing company personnel;
- observing facility/establishment processes;
- sampling and testing products and food contact surfaces; and
- assessing the quality attributes and standards of products.

CFIA determines areas of highest risk based on a number of factors, including:

- scientific analysis of potential hazards that can occur at particular points in production;
- previously identified risks associated with specific products;
- a company's compliance history;
- random sampling and testing; and
- risk assessment models (e.g., Establishment-Based Risk Assessment (ERA)).

a) CFIA-led compliance activities

Inspection personnel perform compliance verification activities on a variety of things or places for which legislative requirements exist, including:

- regulated products;
- establishments/facilities/premises/vehicles/ships;
- operations within establishments;
- operators;
- containers and packages;
- labels and markings; and
- systems, records, and documents.

Established program-specific policies and procedural documents based on legislative requirements guide inspection personnel on how to conduct inspection activities and the frequency of such activities. They describe detailed actions respecting the thing or place to be assessed, the assessment criteria and what constitutes compliance. The thing or place may be assessed according to legislation, standards, guidelines, policies, codes of practice, etc.

Inspection results are recorded and communicated to the regulated party with an inspection report and/or Corrective Action Request (CAR), and become part of the regulated party's inspection compliance history.

b) Regulated party-led compliance activities

Regulated parties may undertake a number of initiatives to assist in achieving compliance with applicable legislative requirements. This may include operating a voluntary compliance system - such as the On-Farm and Post-Farm Food Safety Programs or a voluntary certification program like the Chronic Wasting Disease (CWD) Voluntary Herd Certification Program. These compliance systems permit industry to self-assess and correct deficiencies as they arise.

1.3 Regulatory response

Designated CFIA inspectors and veterinary inspectors routinely take actions to respond to risk (control action) and/or non-compliance (enforcement action). The objectives of these actions are to:

- safeguard food, animals and plants that enhance the health and well-being of Canada's people;
- change the behaviour of the non-compliant regulated party;
- eliminate financial benefit to the regulated party from non-compliance;
- be responsive and consider what is appropriate for the particular non-compliant regulated party; and
- deter future non-compliance in general.

There is a broad range of control and enforcement tools available to CFIA that can be undertaken by designated inspectors, veterinary inspectors, or CFIA's employees who have been delegated by the Minister any power, duty or function conferred upon them under the different Acts enforced or administered by CFIA.

CFIA Standard Regulatory Response Process (SRRP) provides guidance for CFIA staff and is used to determine the appropriate control measures and enforcement responses to use when responding to risk and/or non-compliance. One or more of the control or enforcement actions outlined in this section may be taken in response to risk or non-compliance. *It should be noted that the actions listed below may not apply to all CFIA inspection programs.*

a) Control actions

Where a risk is or may be posed to human, plant or animal health, the economy, the environment, or trade, the inspector takes action to control or mitigate the risk by implementing a control response plan. The purpose of a control response plan is to determine the nature and extent of a hazard and inform risk assessment and risk mitigation. The Standard Regulatory Response Process (SRRP) defines the control process.

Hazards may originate from a process, commodity, thing or action by a regulated party that may or may not involve non-compliance with legislative requirements. Risk may also be the result of other triggers including but not limited to a natural disaster or disease outbreak.

Control actions may be triggered by information from a variety of sources, including:

- consumers/members of the public;
- regulated parties;
- CFIA inspection findings;
- laboratory results;
- private veterinarians; and
- domestic or foreign governments.

A control response plan may include one or more of the following control actions:

Note: As each of the following actions may not apply to every inspection program, it is important to refer to the legislation governing the applicable product, process or thing to confirm that the required regulatory authorities are in place.

i) Seizure and detention

Seizure and detention allow CFIA to maintain control of a regulated product or thing. Seizure and detention can be maintained until:

- the product is brought into compliance;
- the court or administrative monetary penalty proceedings have been concluded; or
- the statutory time limitation expires.

The legislation provides authority to seize and detain product or other things by means of or in relation to which the inspector believes on reasonable grounds that a contravention was committed (such as a carcass, an object being used to harm an animal, tampered ear tags, fake certificates or stamps, etc.).

ii) Start or stop an activity

This allows for the start or stop of an activity when an inspector is verifying compliance or preventing non-compliance in a place where an activity regulated under the *Safe Food for Canadians Act* is taking place or a regulated commodity is believed to be present.

iii) Forfeiture

Forfeiture refers to regulated products or things that become the property of Her Majesty in Right of Canada. They can be:

- ordered forfeited by the CART when an AMP is upheld or by the Courts as part of a judgment;
- voluntarily forfeited by a regulated party; or
- forfeited as provided for in legislation in specific situations.

For forfeiture ordered by the CART or the Courts, forfeited products or things are disposed of as directed. In these cases, the role of the inspector is to execute this order. Disposal of forfeited products or things is generally at the expense of the person from whom the product was seized and is legislation dependent.

iv) Confiscation

Under the *Plant Protection Act*, an inspector has the authority to confiscate, or take possession of, a plant or thing when the inspector has reasonable grounds to believe the thing is a pest, is or could be infested with a pest or constitutes or could constitute a biological obstacle to the control of a pest.

v) Quarantine

Quarantine is an action taken to prevent the introduction or spread of a disease or pest in Canada by isolating an infected animal, plant or thing. This authority is found under the *Health of Animals Act* and the *Plant Protection Act*. In such circumstances, an inspector will issue a quarantine notice in order to prevent the spread of the disease or pest. The quarantine notice sets out the length of time and conditions during the quarantine period.

vi) Refuse entry

Under the *Plant Protection Regulations*, plants or things that pose a risk to the health and safety of Canada's plant resource base may be refused entry into Canada. This may be appropriate when a plant or thing:

- originates from a country known to be infected with transmittable plant pests;
- poses a risk of transmitting or spreading the pest to susceptible plant species in Canada; or
- has not been imported in compliance with appropriate legislative requirements.

vii) Order removal from Canada

Where an inspector has reasonable grounds to believe an imported product does not meet Canadian requirements or is imported illegally, the inspector may order the product removed from Canada.

viii) Restrict or prohibit movement

The movement of regulated products and things may be restricted or prohibited into and out of an infested/infected area for a period of time for the purpose of controlling the regulated animal or thing and verifying that it meets legislative requirements.

ix) Recall

Recalling a product is appropriate when there are reasonable grounds to believe the regulated product poses a risk to public, animal or plant health. Where the regulated party is unwilling or unable or refuses to initiate a voluntary recall of the product, a recall order may be issued pursuant to section 19 of the Canadian Food Inspection Agency Act. In these cases, the Minister may issue a notice to the regulated party selling, marketing or distributing the product requiring the regulated party to recall the product.

x) Dispose or destroy

The disposal or destruction of a regulated animal, product or thing that has been seized, forfeited or confiscated may be ordered where the regulated product:

- poses a risk to human, plant or animal health or the environment;
- is affected or suspected of being affected by a disease or toxic substance;
- constitutes or could constitute a biological obstacle to the control of a pest or disease;
- has been in contact or close proximity with an animal affected or suspected of being affected by a disease or toxic substance; or
- is, or is suspected of being, a vector, a causative agent of a disease or a toxic substance.

Some Acts administered by CFIA (e.g., *Plant Protection Act*) permit the Agency to order the disposal or destruction of regulated products or things. Under other legislation these actions may only

occur with the consent of the regulated party or person in possession, care or control of the product at the time of its seizure.

xi) Refuse to issue inspection certificate

Refusal to certify regulated products may be appropriate when the regulated product fails to meet the requirements of the importing country, or when an inspector is unable to assess whether or not the regulated product meets the required legislative requirements. An inspector may refuse to issue inspection certificates where it has been determined that the regulated product does not meet the applicable legislative requirements.

xii) Add conditions to permissions

CFIA grants permissions authorizing regulated parties to conduct specific activities to meet regulatory requirements, including registration and licence. The Minister may make any registration or licence subject to certain conditions that the Minister feels are appropriate as described in the related Acts and regulations. The holder of the registration or licence must comply with all the conditions. Failure to do so may result in the non-issuance, suspension or cancellation of permissions.

xiii) Injunction

On application by the Minister, the court may order a person to stop doing an activity that may be in violation of the *Safe Food for Canadians Act,* or start an activity to prevent the commission of an offence under this Act. Under section 18 of the *Canadian Food Inspection Agency Act*, CFIA may apply to a court of competent jurisdiction for an interim injunction enjoining a person from contravening legislation that the Agency enforces or administers.

b) Administrative actions

When they are deemed by CFIA to be the most effective and appropriate responses to non-compliance, the Agency can use administrative responses to non-compliance to assist a regulated party to achieve compliance, such as issuing letters of non-compliance or conducting meetings with regulated parties. These responses are not provided for in legislation enforced by CFIA but are set out in policy developed by the Agency.

i) Letter of non-compliance

A Letter of non-compliance is a procedural administrative action (i.e., not enabled by legislation enforced by CFIA) that may be delivered to a regulated party when:

- the non-compliance has not resulted, or is not likely to result, in serious or very serious harm (such as health or safety risks to humans, plants, or animals; or marketplace deception);
- the non-compliance is unintentional and easily corrected; and
- the inspector believes that a Letter of Non-Compliance will have the appropriate deterrent effect.

ii) Meeting with the regulated party

A meeting with the regulated party is a procedural administrative action, which provides the regulated party with an opportunity to meet face to face with the CFIA to discuss significant or ongoing issues of non-compliance. CFIA management (or delegate) may initiate and convene a meeting with the regulated party when:

- there is a concern that the regulated party is not committed to addressing non-compliance issues or meeting regulatory responsibilities;
- the same type of non-compliance occurs repeatedly; or
- previous actions (e.g., letter of non-compliance) have not been effective.

If the meeting does not improve the commitment or ability of the regulated party to comply with requirements, other response options in the compliance and enforcement continuum will be pursued.

c) Enforcement actions

Once non-compliance has been determined, CFIA responds appropriately:

- as per the Standard Inspection Procedure (SIP), the non-compliance is recorded in an inspection report and communicated to the regulated party. Time frames are established for return to compliance which is confirmed by the inspector during a follow up inspection.
- where the regulated party is unwilling or unable to return to compliance or where the nature of the original non-compliance requires an enforcement response, a variety of enforcement actions can be undertaken.

The inspector has the flexibility to select the appropriate action based on the gravity of the non-compliance which is determined by considering the potential or actual harm, the compliance history of the regulated party and the intent associated with the non-compliance.

As the gravity of a non-compliance event increases, more stringent enforcement responses may be considered and may involve CFIA investigators and investigation specialists.

- **harm** - takes into consideration the seriousness of harm or potential harm of the non-compliance, such as the potential impact on human health, the animal or plant resource base or the environment, marketplace deception or product misrepresentation.
- **history** - the compliance history of the regulated party is considered with respect to the existence of previous instances of non-compliance and the seriousness of past non-compliance.
- **intent** - CFIA considers the intent of the regulated party to commit a contravention or cause harm, such as evidence that demonstrates the regulated party knowingly contravened the legislative requirements.

Once it is determined that an enforcement response is required, one or more of the following actions may be considered.

Note: some of the options listed below are not supported in the legislation governing each business line. Some business lines may also have additional administrative options – refer to the applicable acts, regulations and enforcement guidelines.

i) Administrative Monetary Penalties (AMPs), where applicable

The *Agriculture and Agri-Food Administrative Monetary Penalties Act (AAAMP Act*) and *Regulations* (*AAAMP Regulations*) provide for the issuance of two types of Notices of Violation to regulated parties: a "Notice of Violation with Warning" or a "Notice of Violation with Penalty". Notices of Violation (NOV) may be issued for violations of the relevant Acts or regulations as set out in Schedule 1 of the *AAAMP Regulations*.

Classification levels of AMPs violations (i.e. minor, serious and very serious) are assigned based on the level of risk and severity of consequences and are set out in Schedule 1 of the *AAAMP Regulations*, which informs the base penalty amount for violations.

AMPs may be issued to any regulated party, company or individual that commits a violation as per the Agency's legislation (e.g., regulated parties engaged in commercial activities that do not comply with regulatory requirements, individual travellers who import prohibited goods). To maintain their effectiveness, AMPs are issued on a discretionary and risk-informed basis. When determining whether to issue a NOV with warning or with penalty, consideration is given by CFIA to the proportionality of the warning or penalty amount to the contravention and its likelihood to encourage compliance. AMPs are generally less punitive and costly sanctions compared to

prosecution or licence suspension or cancellation. In addition, if the penalty is $2,000 or more, a regulated party may request to enter into a compliance agreement. In this case, the amount of the penalty will be reduced by one dollar for every two dollars spent by regulated party, with a maximum reduction to nil, in improvements made to bring the regulated party back into compliance.

AMPs apply to the *Health of Animals Act*, *Plant Protection Act*, *Safe Food for Canadians Act* and their respective regulations.

ii) Actions taken against permissions

The suspension, cancellation, or revocation of permissions (e.g., licence, registration, permit, or certificates) is generally appropriate when the regulated party is unwilling or unable to comply with legislative requirements. It should be noted that the requirements for taking actions against permissions vary according to the various pieces of legislation.

Note: actions can be taken against permissions in conjunction with other enforcement actions, including the issuance of an AMP or the initiation of a prosecution.

iii) Recommendation to prosecute

The PPSC has the responsibility for all prosecutions relating to legislation administered and/or enforced by CFIA. Where prosecution is deemed the most appropriate response by CFIA and having received authorization by the Area Director General, Area EIS will forward briefs of evidence to the appropriate office of the PPSC with the recommendation that charges be laid. It is clearly recognized that the discretion to initiate a prosecution rests with PPSC.

Prosecution is used for instances of non-compliance and involves CFIA investigators and investigation specialists. For example:

- all other enforcement tools have failed to bring the regulated party back into compliance;
- the seriousness of harm or potential harm of the non-compliance event is very high (e.g., death of a person, serious harm or risk to the environment, marketplace deception); or
- the evidence demonstrates the regulated party intended to contravene the legislative requirements.

1.4 Recourse and feedback mechanisms

The CFIA recognizes that regulatory decisions and enforcement actions may have an impact on regulated parties. There are a variety of recourse mechanisms available to regulated parties which are based on legislative provisions, as well as on common and civil law and CFIA policy.

Parties who are regulated by the CFIA may wish to consider recourse avenues should they disagree or be dissatisfied with the action taken by the CFIA. In some cases, legislation that is administered and enforced by the CFIA permits specific avenues of recourse related to the regulatory action(s) taken by the CFIA. Regulated parties should review the applicable legislation and CFIA policies to determine what rights to recourse may be available to them in respect of regulatory actions and service delivery.

For more information on available recourse, please visit Complaints and Appeals Office.

Appendix B - Definitions

Administrative Monetary Penalty (AMP) is served on a regulated party in the form of a Notice of Violation with warning or with penalty. AMPs with financial penalty to individuals can range from $500 to $1,300. Violations committed in the course of business or in order to obtain a financial benefit can result in financial penalties ranging from $1,300 for minor violations to $15,000 for very serious violations.

Compliance is the state of conformity of regulated parties with legislative requirements.

Compliance promotion is any activity that supports, motivates or encourages compliance with legislation that CFIA enforces. This includes accessible plain-language tools, products, services and guidance to increase awareness and understanding of regulations, that help regulated parties implement regulatory requirements.

Contravention refers to non-compliance with the requirements of CFIA's legislation.

Control action is an action that is taken for the purpose of controlling risk when a regulated commodity, process or thing poses or may pose a risk to human, plant or animal health, the environment, economy or trade.

Enforcement action is an action taken by CFIA in response to non-compliance.

Enforcement officials at CFIA include inspectors, veterinary inspectors and officials of other agencies or departments who are designated to enforce CFIA legislation. It also includes EIS investigators and investigation specialists who are designated inspectors with the responsibility for conducting investigations for the purpose of enforcing CFIA's legislation.

Hazard a potential source of harm, and can be biological, chemical or physical.

Information tool is used in reference to any form of industry communication, including, but not limited to: model systems, interpretive guidance, letters, pamphlets, brochures, communiqués, guidelines, presentations and Listserv messages.

Inspector is an individual who has been designated under the *CFIA Act* to enforce CFIA legislation.

Inspection report is the primary mechanism by which CFIA communicates non-compliance to the regulated party.

Legislation can refer to an Act or its regulations.

Non-compliance is a contravention of the applicable Acts and/or Regulations.

Permission is an official consent granting legal authorization to a regulated party to conduct specified activities (permits, certificates, licences, authorizations, and registrations).

Regulated party refers to an individual or business entity undertaking activities that are regulated by CFIA legislation.

Regulated product/thing for which legislation is enforced by CFIA applies.

Regulatory response is an action taken in response to non-compliance or risk.

Risk is the product of the likelihood of the occurrence of a hazard, and the severity of its consequences.

Violation is any contravention of an Agri-Food Act or its regulations that may be proceeded with in accordance with the *Agriculture and Agri-Food Administrative Monetary Penalties Act* and result in the issuance of a Notice of Violation with warning or penalty.

Appendix C - Acronyms

AMP - Administrative Monetary Penalty

AAAMPs Act - *Agriculture and Agri-Food Administrative Monetary Penalties Act*

CART - Canadian Agricultural Review Tribunal

CBSA - Canada Border Services Agency

CFIA - Canadian Food Inspection Agency

EIS - Enforcement and Investigation Services

NOV – Notice of Violation

PPSC - Public Prosecution Service of Canada

SIP - Standard Inspection Procedure

SRRP - Standard Regulatory Response Procedure

SPP - Standard Permissions Procedure