

By email: Food-Reg-Aliments@inspection.gc.ca

Lyzette Lamondin

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Re: Consultation on proposed amendments to the Agriculture and Agri-Food Administrative Monetary Penalties Regulations (Food)

Dear Ms. Lamondin,

On behalf of the Canadian Meat Council (CMC) and its members, thank you for the opportunity to comment on the proposed amendments to the AAAMP regulations. Although CMC understands the need to create an enforcement tool across all food commodities that the new Safe Food for Canadians Regulations will oversee, the meat industry has several concerns with the proposed changes to the regulations that are outlined below. The proposed changes provide an opportunity to clarify and improve the AMP regulations and correct currently existing issues. The CFIA should also carefully consider the other proposed regulatory and inspection model changes currently underway, such as the outcome based SFCR, the iAim and ERA inspection models that will significantly change how inspection is done, and how these proposed AMP regulatory changes and corresponding policies and guidance will align with the new inspection regimes.

Registering annual sales surpassing \$28 billion, exports exceeding \$6.1 billion and providing direct employment for some 66,000 people in both rural and urban locations from coast to coast, the meat industry is the largest component of Canada's food processing sector.

Founded in 1919, the Canadian Meat Council represents Canada's federally registered meat packers and processors as well as the industry's numerous suppliers of equipment, technology and services. For more than 96 years the mission of the Council has been to advocate on behalf of the needs of its members to secure and improve Canada's global meat competitiveness. The vision of the member companies of the Canadian Meat Council is that "Canada is trusted as a world leader in the provision of safe and wholesome meat".

Summary of CMC Recommendations

Any updated AAAMP regulations must:

1. Include Guidance for Industry and Inspectors that:
 - a. Provides a clear, transparent policy on decision making for issuance of an AMP
 - b. Highlights the CFIA's graduated approach to compliance and enforcement, and;
 - c. Gives clarity to industry on criteria/triggers that lead to an AMP being issued (i.e. harm, history, intent)
2. Be Implemented and Applied Consistently Across the Country so that:
 - a. Levels of severity are decided objectively, with supporting justification that is clear and transparent to industry
 - b. There is consistency across inspection regions in use of AMPs
3. Demonstrate a clear, consistent process for review and industry recourse or appeal of AMPs that are issued, so that:
 - a. Justification exists for each AMP issued that is understandable, and stands up under scrutiny
 - b. Evidence exists that alternatives for compliance and enforcement were attempted first before deciding to issue an AMP (as per the graduated approach).

Comment Submission

The Canadian meat industry is familiar with the current AMP regulations and violations under the Meat Inspection Act and Regulations, but as the proposed changes are currently written, CMC has several concerns and questions for consideration.

CMC would like to point out a few areas that are troubling and that are presently not clear within the current proposal:

Guidance for Industry and Inspectors Including a Clear, Transparent Policy on Graduated Approach to Compliance and Enforcement

1. There must be clear and standard operational guidance for the inspectorate in the application of this enforcement tool, but also appropriate guidance to industry. Inspection consistency across different regions of the country is always a challenge, and it is especially important that enforcement and delivery of monetary penalties is done the same way in all regions.



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- a. Appropriate guidance must be available to industry impacted by these regulations, so that they can understand how inspectors will act in an AMP enforcement situation. A complete industry guidance document needs to be provided, with different scenarios to outline how and when an AMP may be issued and under what circumstances.
- b. CFIA has repeatedly said that AMPs are used as a ‘last resort’, yet the current proposed changes are not clear and indicates that CFIA could issue AMPs for first time offences. In its own social media messaging, the CFIA has said that, *“AMPs are one option in a graduated approach to compliance and enforcement”*. There must be a guidance document that clearly outlines the compliance process and what steps are taken when deciding when and how AMPs are issued, only as a last resort, as part of that graduated approach. Often, there are more effective and productive ways to ensure compliance before jumping to issuing monetary penalties.
 - i. The current escalation process for meat (CAR, area management oversight, appeal process, etc.) is clearly outlined in the MOP Chapter 18. This process is not outlined anywhere for other food commodities that would be impacted by these proposed changes. Will the current MOP process be continued in a new guidance document for all foods, or will it be retained in a document that is incorporated by reference in the SFCR? CFIA must clearly and transparently outline the escalation process, with alternative preferred options highlighted that are more effective (e.g. productive dialogue, CARs etc.) for reaching compliance prior to relying on AMPs as a first step.
 - ii. Section 9 of the ‘Compliance and Enforcement Operational Policy’ as found on the CFIA website states that the CFIA has many enforcement tools to ensure compliance, and that it considers ‘Harm’, ‘History’, and ‘Intent’ among the criteria to decide which enforcement route to take, but this operational guidance document does not clearly outline a decision making tree, or defined process for how it is decided, and who decides when an AMP should be issued. This process needs to be clear and transparent and this policy document must be updated in light of the outcome based nature of the SFCR and the element of subjectivity this will bring in terms of compliance and decisions on enforcement.

Consistent Application and Implementation and Understanding of Rationale for Levels of Severity

2. There must be consistency in application of these regulations across all foods, with standard and consistent criteria for triggering this enforcement approach.
 - a. When asked how the level of severity was assessed by CFIA, the agency responded that it follows the criteria below, however, this can have an element of subjectivity, only added to by the outcome based SFCR, and there is currently no transparency with how the CFIA arrived at its severity levels for each violation:



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- i. The purpose of the provisions (e.g. trade, licencing, labelling, etc.);
 - ii. The level of risk and severity of consequences associated with non-compliance;
 - iii. CFIA experience gained from enforcing other legislation included in the administrative monetary penalties regime;
 - iv. The availability of other enforcement tools to address non-compliance and resource prioritization.
- b. This must include clear and transparent rationale for assignment of violation severity – minor, serious, very serious. The decisions must not be seen as arbitrary and subjective, and with respect to meat, should carry over when possible from the current regulations. For new clauses, it has to be objective and justified so establishments understand the differences between serious and very serious.
 - i. For example, in Table 3, item 3 of the proposal documents, described as “Manufacture, prepare, package, label, sell, import or advertise a food commodity in a manner that is false, misleading or deceptive or likely to create an erroneous impression” is classified as a ‘Very serious’ violation. This could be a few packages or boxes of product that were accidentally mislabeled during a changeover and shipped. Alternatively, Item 40, described as “Use a food additive or other substance that is not permitted or that does not comply with the prescribed limits or levels in or on a food that has been imported or that is to be exported or to be sent or conveyed, for which a standard is prescribed” is classified as a “Serious” violation. CMC is concerned that a possible food safety issue could be rated less serious than a possible accidentally mislabeled product.
- c. Consistency across regions is a current concern with regard to issuance of non-conformances in meat establishments, so the CFIA must ensure that consistency in the decision to issue an AMP and the process by which they are issued should be the same across Canada.

Clear, Transparent Process for Recourse and AMP Review by Industry

3. The processes for recourse for food establishments being issued AMPs must also be clear and consistent. If an establishment wishes to request a review, there must be a transparent process that is timely, objective and fair. Justification for each AMP issued must be understandable, and stand up under scrutiny, and evidence must exist that alternative compliance and enforcement options were attempted first, as part of the graduated approach prior to an AMP being issued.
 - a. Applying an AMP enforcement approach to complex situations, such as those that exist in food processing environments, with dynamic and intricate supply chains, requires using a variety of evidence based judgements to make a decision. The AMP regulations



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have to be flexible enough to account for that complexity, due diligence of establishments and their opportunity to appeal an AMP decision.

In any regulatory initiative introduced by the CFIA, the meat industry appreciates the opportunity to comment and suggest options for clarity and consistency to be reinforced. The objectives for the proposed changes to the AMP regulations are understandable, but it is important to consider the points raised above, so implementation of these proposed changes will happen smoothly and will facilitate industry buy-in and ongoing cooperation, especially in those industries, like meat, that is highly regulated. A suite of clear, consistent guidance to inspectors and continuous communication with industry is critical to success. Administrative monetary penalties are one option in a graduated approach to compliance and enforcement, and by no means should be the first option of an inspector for an establishment to reach compliance.

Thank you again for the opportunity to provide comment on this initiative. If you have any questions about these comments, or would like to discuss further, the Canadian Meat Council is available to do so.

Sincerely,

Chris Nash
Director, Regulatory Affairs
Canadian Meat Council

cc: Chris White, President and CEO, CMC
Troy Warren, Chairman, CMC