

**BILL C-27: CANADIAN FOOD INSPECTION
AGENCY ENFORCEMENT ACT**

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LEGISLATIVE HISTORY OF BILL C-27

HOUSE OF COMMONS

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N.B. Any substantive changes in this Legislative Summary which have been made since the preceding issue are indicated in **bold print**.

Legislative history by Peter Niemczak

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TABLE OF CONTENTS

	Page
BACKGROUND	1
A. Highlights.....	4
DESCRIPTION AND ANALYSIS	5
A. Short Title and Interpretation (Clauses 1-2)	5
B. Administrative Regime Respecting Regulated Products (Clauses 3-22).....	6
1. Licences (Clauses 3-5)	6
2. Presumption of Federal Jurisdiction (Clause 6)	7
3. Importation (Clause 7).....	7
4. Exchange of Information (Clause 8)	8
5. Foreign Inspection Arrangements (Clauses 9-11).....	8
6. Ministerial Orders (Clauses 12-13).....	9
7. Recognition of Inspection Results (Clause 14).....	10
8. Prohibitions (Clauses 15-22).....	10
C. Administration and Enforcement of Agency-related Acts (Clauses 23-55)	13
1. Injunctions (Clause 23)	13
2. Inspections (Clauses 24-29)	13
3. Requirement to Remove Unlawful Imports (Clause 30).....	15
4. Seizure (Clause 31)	15
5. Searches (Clause 32)	15
6. Disposition of Things Seized (Clauses 33-35)	16
7. Forfeiture (Clauses 36-38).....	18
8. Inspection-related Prohibitions (Clauses 39-43)	19
9. Costs and Liability (Clauses 44-45)	19
10. Samples (Clause 46).....	20
11. Offences (Clauses 47-54)	20
12. Review Tribunal (Clause 55)	22
D. Regulations (Clause 56).....	22

	Page
E. Incorporation by Reference (Clauses 57-59)	23
F. <i>Statutory Instruments Act</i> (Clause 60)	24
G. Transitional Provisions (Clause 61)	24
H. Consequential Amendments (Clauses 62-127)	24
I. Coordinating Amendments (Clause 128)	25
J. Coming Into Force (Clause 129)	25
COMMENTARY	25



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BILL C-27: CANADIAN FOOD INSPECTION
AGENCY ENFORCEMENT ACT*

BACKGROUND

On 26 November 2004, the Hon. Andy Mitchell, Minister of Agriculture and Agri-Food and Minister responsible for the Canadian Food Inspection Agency (CFIA), introduced Bill C-27, the Canadian Food Inspection Agency Enforcement Act, in the House of Commons. The bill is a new legislative initiative intended to consolidate, modernize and enhance the existing inspection and enforcement powers of the CFIA for food, agricultural and aquatic commodities (meat, fish, agricultural products), agricultural inputs (seed, feed and fertilizer), animals and plants.

Bill C-27 is the second step in a three-step process, the first of which was the creation of the CFIA in April 1997, by virtue of the *Canadian Food Inspection Agency Act*, as a result of a federal government decision to combine all federal food inspection and animal and plant health services into a single inspection agency reporting to Parliament through the Minister of Agriculture and Agri-Food.

The second step is the consolidation, modernization and enhancement of the CFIA's *legislative* base, which currently consists of a patchwork of different Acts that were introduced by different departments over a considerable span of years, and that in some cases are becoming outdated. In 1997, the CFIA began a review of its legislative base, including consultations with a number of stakeholders. This process eventually resulted in Bill C-80, the Canada Food Safety and Inspection Act, being introduced in the House of Commons in April 1999. The bill subsequently died on the *Order Paper* when Parliament was prorogued in

* Notice: For clarity of exposition, the legislative proposals set out in the bill described in this Legislative Summary are stated as if they had already been adopted or were in force. It is important to note, however, that bills may be amended during their consideration by the House of Commons and Senate, and have no force or effect unless and until they are passed by both Houses of Parliament, receive Royal Assent, and come into force.

October 1999. CFIA officials point out that there was some opposition to Bill C-80 at that time, which they note was based partly on a mistaken perception that the bill would have diminished the responsibility of the Minister of Health for food safety. It was felt that more time was required to pursue additional consultations, and it was concluded that Bill C-80 in its original form was “too ambitious and complex.” Subsequently, the CFIA continued its work on the development of new legislation. That work eventually resulted in the current bill, C-27, which has also had to address a number of major developments that have occurred since the last bill was introduced in 1999. The CFIA notes that these developments include new threats to the safety of food, animals and plants, including outbreaks of animal diseases (notably mad cow disease [BSE] in North America), new plant pests, and the possibility of bioterrorism; new federal legislative initiatives, especially the Agricultural Policy Framework; and legislative initiatives in the United States dealing with strengthened import and border controls.

The third step, which will follow some time later, involves the consolidation, modernization and enhancement of the Agency’s *regulatory* base.

CFIA inspectors currently derive their inspection and enforcement authority from ten different pieces of legislation. Bill C-27 proposes to consolidate the inspection and enforcement provisions from eight of those ten Acts into a single piece of legislation. The eight Acts are as follows:

- *Canada Agricultural Products Act*
- *Fish Inspection Act*
- *Meat Inspection Act*
- *Seeds Act*
- *Feeds Act*
- *Fertilizers Act*
- *Health of Animals Act*
- *Plant Protection Act*

The problem at present is that the above commodity-specific Acts vary considerably in the specific powers that they assign to CFIA inspectors. The differences have become more cumbersome as individual inspectors are increasingly called upon to inspect more than one commodity group. Bill C-27 would create a uniform set of powers, rights and obligations for all CFIA inspectors. This would allow for consistency of the inspection and enforcement approach among the different commodities that the CFIA inspects, and would permit CFIA inspectors to carry out their duties more effectively and efficiently by allowing them to switch from inspecting one commodity to another and permitting them to work on multiple commodities. For example, fish inspectors would have the same powers as animal health inspectors, and vice versa. A number of new authorities would also be given to CFIA inspectors, as outlined in the description of the bill set out below.

As is currently the situation, the CFIA would continue to enforce the food safety provisions of the *Food and Drugs Act*, and to administer and enforce non-health and non-safety food-related provisions of the *Food and Drugs Act* (under section 11(3) of the *Canadian Food Inspection Agency Act*). The CFIA would also continue to administer and enforce the provisions of the *Consumer Packaging and Labelling Act* as they relate to food as defined in section 2 of the *Food and Drugs Act*. (Whereas the CFIA was initially responsible for only the *enforcement* of the *Consumer Packaging and Labelling Act* as it relates to food as defined in section 2 of the *Food and Drugs Act*, responsibility for the *administration* of that Act as it relates to food was legally transferred to Agriculture and Agri-Food Canada from Industry Canada by virtue of a 1999 Order under the *Public Service Rearrangement and Transfer of Duties Act*. The relevant Order, P.C. 1999-534 of 25 March 1999, pursuant to section 2(a) of the above Act, transferred to the Minister of Agriculture and Agri-Food all the powers, duties and functions of the Minister of Industry under the *Consumer Packaging and Labelling Act* in relation to food.) In enforcing the provisions of the *Food and Drugs Act* and the *Consumer Packaging and Labelling Act* as they relate to food, the CFIA would be utilizing the enforcement powers given to the Agency in Bill C-27, because food as defined in section 2 of the *Food and Drugs Act* is a “regulated product” for purposes of the bill. The legislative initiative contained in Bill C-27 would *not*, however, amend, transfer or consolidate any of the food safety provisions or inspection and enforcement powers contained in the *Food and Drugs Act* or the packaging and labelling requirements in the *Consumer Packaging and Labelling Act*. Health Canada would continue to maintain responsibility for establishing policies and standards relating to food safety and nutritional quality (under section 11(4) of the *Canadian Food Inspection Agency Act*).

A. Highlights

The highlights of the bill are that it:

- provides a framework for licensing related to the importation, exportation, interprovincial movement or preparation or sale of specified “regulated products” (defined in the bill to generally mean any thing in respect of which the *Canadian Food Inspection Agency Act*, or any Act or provision whose administration or enforcement is the responsibility of the Agency, applies);
- consolidates the inspection and enforcement authorities of CFIA inspectors in eight existing commodity-specific Acts into one Act;
- authorizes the CFIA to enter into arrangements with government departments, agencies or prescribed organizations, both domestic and foreign, regarding the collection, use and disclosure (exchange) of information for enforcement purposes;
- allows the CFIA to enter into arrangements with foreign governments or organizations respecting the *importation* of regulated products where either: a) the foreign legal requirements, inspection systems and facilities for preparing regulated products for export are comparable to those in Canada, or b) the foreign systems for preparing the regulated products for export are comparable to Canadian systems; it also permits the Agency to enter into arrangements with foreign governments or organizations respecting the *exportation* of regulated products;
- permits the Minister of Agriculture and Agri-Food to make temporary orders to protect the public where the Minister considers that immediate action is required to deal with a significant risk to public health or safety, the environment or animal or plant health;
- authorizes the Minister of Agriculture and Agri-Food to, by order, exempt persons or regulated products from any provisions of any Agency-related Acts or regulations for a specified period of time in the event of a natural disaster or public emergency, if the Minister considers that the exemption does not pose a risk to the environment or to animal or plant health, or, in the case of food, if the Minister of Health considers that the exemption does not pose a risk to human health;
- prohibits a person from tampering with, threatening to tamper with, or selling a regulated product that the person knows or should have known was tampered with, so as to render it injurious to human, animal or plant health or the environment;
- prohibits a person from preparing food with water that is not safe water;
- establishes licensing requirements for certain dangerous activities – the manufacturing, exporting, using, selling, etc., of animal pathogens, disease agents, toxic substances, veterinary biologics and plant pests; and

- authorizes the Governor in Council to make regulations respecting the above and a number of other issues pertinent to the bill, such as licensing, mandatory record-keeping, foreign inspection arrangements, and requirements for quality management or control programs for regulated products and food safety systems.

DESCRIPTION AND ANALYSIS

The bill consolidates the CFIA's inspection and enforcement powers from a number of existing Agency-related Acts in order to provide for increased harmonization and to reduce overlap and duplication of inspection and enforcement authorities. This enables inspectors to be guided by a single piece of enforcement and inspection legislation. As well, a number of current inconsistencies are addressed with new and enhanced enforcement and inspection powers and authorities. The CFIA is also provided with new enforcement and inspection tools similar to border enforcement provisions introduced in the United States.

New provisions in the bill that are not currently found in CFIA-related Acts are generally pointed out in the following clause-by-clause description and analysis.

A. Short Title and Interpretation (Clauses 1-2)

The bill is entitled the Canadian Food Inspection Agency Enforcement Act (clause 1).

Clause 2 sets out a number of definitions for purposes of the bill. Many of the definitions are consolidations of current definitions found in the various Acts for which the CFIA is responsible. There are also a number of new definitions, including those for an "Agency-related Act," an "agricultural or aquatic commodity," and a "regulated product."

An "Agency-related Act" is defined to mean the *Canadian Food Inspection Agency Act* or any Act (or provision of an Act) whose administration or enforcement is the responsibility of the CFIA by virtue of section 11 of the *Canadian Food Inspection Agency Act*, to the extent that the Agency is so responsible, other than the *Plant Breeders' Rights Act*.

An "agricultural or aquatic commodity" is defined to mean:

- an agricultural product in respect of which the *Canada Agricultural Products Act* applies;
- fish or a marine plant in respect of which the *Fish Inspection Act* applies;

- food, as defined in section 2 of the *Food and Drugs Act*; and
- an animal or a meat product in respect of which the *Meat Inspection Act* applies.

“Minister” is defined to mean the Minister of Agriculture and Agri-Food.

A “regulated product” is defined to mean any thing in respect of which an Agency-related Act applies, including:

- an agricultural product in respect of which the *Canada Agricultural Products Act* applies;
- a feed in respect of which the *Feeds Act* applies;
- a fertilizer or a supplement in respect of which the *Fertilizers Act* applies;
- fish or a marine plant in respect of which the *Fish Inspection Act* applies;
- food as defined in section 2 of the *Food and Drugs Act*;
- an animal, animal product, animal by-product, veterinary biologic or other thing in respect of which the *Health of Animals Act* applies;
- an animal or a meat product in respect of which the *Meat Inspection Act* applies;
- a plant or other thing in respect of which the *Plant Protection Act* applies; and
- seed in respect of which the *Seeds Act* applies.

B. Administrative Regime Respecting Regulated Products (Clauses 3-22)

1. Licences (Clauses 3-5)

Clause 3 provides authority for the Minister to issue a licence (of a prescribed class) that authorizes a person to be engaged in, or to operate an establishment engaged in:

- the importation of a regulated product;
- the preparation of an agricultural or aquatic commodity for export or interprovincial trade;
- the exportation of an agricultural or aquatic commodity;
- the sale of an agricultural or aquatic commodity in interprovincial trade; and

- the preparation or sale of a feed in respect of which the *Feeds Act* applies, a fertilizer or supplement in respect of which the *Fertilizers Act* applies, or seed in respect of which the *Seeds Act* applies.

Clauses 4 and 5 are for the most part new provisions not currently contained in any Agency-related Acts. Clause 4(1) permits the Minister to attach to a licence any conditions that the Minister considers appropriate and that are not inconsistent with the regulations. A condition may be attached to a licence either before or after the licence is issued and may be of general or particular application (clause 4(2)). The Minister may amend or remove any condition (clause 4(3)). It is a condition of every licence that the holder comply with the requirements of the bill or any regulations made thereunder (clause 4(4)). Clause 5 permits the Minister to suspend or revoke a licence if the holder has violated any of its conditions.

2. Presumption of Federal Jurisdiction (Clause 6)

In the absence of evidence to the contrary, any agricultural or aquatic commodity that is found in a “registered establishment” (i.e., an establishment or a station registered under an Agency-related Act), or an establishment in respect of which a licence has been issued under clause 3, is presumed to be for export or interprovincial trade and to be subject to the application of the Agency-related Acts.

3. Importation (Clause 7)

A person who imports a regulated product into Canada must, in the prescribed (i.e., prescribed by regulation) manner, present the product and any related label, container, etc., to a customs officer, an inspector, or an officer (designated under section 13(3) of the *Canadian Food Inspection Agency Act*), at the time of its importation and also provide, in the prescribed manner, any related documents not later than the time of its importation (clause 7(1)). Alternatively, the person may, if authorized by the customs officer, inspector or officer to do so, provide to him or her in the prescribed manner only the prescribed information relating to the regulated product (clause 7(2)). Prior to importing a prescribed regulated product, the importer must give advance written notice to a customs officer, an inspector or an officer in the prescribed manner (clause 7(3)). For the purposes of clause 7, a “customs officer” means a person employed in the administration or enforcement of the *Customs Act* and includes members of the RCMP (clause 7(4)).

4. Exchange of Information (Clause 8)

A new provision not currently included in any of the Agency-related Acts permits the CFIA to enter into an arrangement concerning the collection, use and disclosure of information with any government department or agency or prescribed organization, whether domestic or foreign, for the purpose of administering or enforcing any law or carrying out an investigation.

5. Foreign Inspection Arrangements (Clauses 9-11)

Clauses 9 to 11, concerning foreign inspection arrangements, are new provisions not currently found in any of the existing Agency-related Acts.

Clause 9(1) permits the Agency to enter into arrangements with a foreign government or organization respecting the importation of regulated products into Canada if the Agency is satisfied that:

- the foreign legal requirements, inspection system, and facilities for preparing regulated products for export are similar to those applicable in respect of the preparation of those same products in Canada, and those products meet the requirements under the Agency-related Acts; or
- the foreign systems for preparing the regulated products for export are similar to Canadian systems.

Similarly, the Agency may enter into arrangements with a foreign government or organization respecting the exportation from Canada of regulated products (clause 9(2)).

Clause 10 provides that an arrangement entered into with a foreign government or organization under clause 9 may include the authority for the Agency to:

- inspect systems of preparation and products prepared in the foreign country;
- establish compliance monitoring and inspection requirements for foreign products being exported to Canada;
- recognize foreign inspection certificates as having the same effect as if they had been issued by the Agency; and
- implement any program related to the inspection of products and make funding arrangements for that purpose.

Clause 11 permits the Agency to rely on the inspection results of another agency, a government department, or a foreign government or organization for the purpose of negotiating or implementing a foreign inspection arrangement, or of determining whether regulated products imported under an arrangement meet the requirements established by or under Agency-related Acts.

6. Ministerial Orders (Clauses 12-13)

Another new provision, clause 12, similar to one contained in the *Public Safety Act, 2002*, allows the Minister to make a temporary order containing any provision that could be contained in a regulation made under an Agency-related Act if the Minister believes that immediate action is required to deal with a significant risk to public health or safety, the environment or animal or plant health (clause 12(1)). A temporary order has effect from the time it is made and ceases to have effect on the earliest of:

- the day on which the Minister repeals it;
- the day that is 14 days after the day on which it is made if the Governor in Council has not, before that day, approved it;
- the day on which a regulation made under an Agency-related Act that has the same effect as the temporary order comes into force; and
- the day that is one year, or any shorter period of time that is specified in the order, after the day on which the temporary order is made (clause 12(2)).

A person cannot be convicted of a contravention of a temporary order unless, at the time of the alleged contravention, the order had been published in the *Canada Gazette*, the person had been notified of the order, or reasonable steps had been taken to bring the substance of the order to the attention of the persons likely to be affected by it (clause 12(3)).

For the purposes of any provision of an Agency-related Act other than this clause, a reference to regulations made under an Agency-related Act is deemed to include temporary orders, and a reference to a regulation made under a specified provision of such an Act is deemed to include a reference to the portion of a temporary order containing any provision that could be contained in a regulation made under that provision (clause 12(4)).

A copy of each temporary order must be tabled in each House of Parliament within 15 days after it is made (clause 12(5)). In the event that the House is not sitting, the copy of the order may be sent to the Clerk of the House (clause 12(6)).

Clause 13, concerning emergency exemptions, is also new. Clause 13(1) provides authorization for the Minister, in natural disaster or public emergency situations, to exempt, by order, any person or regulated product (or class of persons or regulated products) from the application of any provision of any Agency-related Act (or its regulations) if:

- the Minister considers that the exemption does not pose a risk to the environment or to animal or plant health; and
- in the case of food, the Minister of Health considers that the exemption does not pose a risk to human health.

The order may be in effect for up to 180 days and may be renewed as circumstances require, but no single renewal may be for a period of more than 180 days and the total time for which the order may have effect cannot exceed 360 days (clause 13(2)).

7. Recognition of Inspection Results (Clause 14)

Another new provision not currently contained in any of the Agency-related Acts permits the Minister to recognize inspection results and associated documents from prescribed inspection bodies (clause 14(1)). The inspection results and associated documents are admissible in evidence in court and, in the absence of evidence to the contrary, are proof of the matters asserted in them (clause 14(2)). The party intending to produce them must have served reasonable notice of that intention on the party against whom they are intended to be produced, along with a duplicate of the inspection results or associated documents (clause 14(3)).

8. Prohibitions (Clauses 15-22)

Most of the prohibitions set out in clauses 15 to 22 of the bill are currently contained in many of the Agency-related Acts, with the exceptions of the tampering prohibition (clause 20) and the provision regarding dangerous activities (clause 22).

Clause 15(1) prohibits a person from engaging in, or operating an establishment to engage in, an activity referred to in clause 3 without a licence of a prescribed class issued under that provision. Furthermore, clause 15(2) prohibits a person holding a licence under

clause 3 from engaging in an activity referred to in that clause (or operating an establishment to engage in such an activity) unless:

- the person does so in accordance with the requirements of Agency-related Acts; and
- in the case of a person operating an establishment, the establishment meets the requirements of Agency-related Acts.

Clause 16(1) prohibits a person from *importing* a regulated product unless:

- the person does so in accordance with the requirements of Bill C-27; and
- the regulated product meets the requirements of Agency-related Acts.

Clause 16(2) forbids a person from *possessing* a regulated product that the person knows, or ought to have known, has not been imported in accordance with the requirements of the bill. This prohibition does not, however, apply to a regulated product that is an agricultural or aquatic commodity and is for the person's own consumption (clause 16(3)).

Clause 17 prohibits a person from *exporting* a regulated product unless it is exported in accordance with the requirements of this bill.

Clause 18 prohibits a person from *selling* a regulated product that does not meet the requirements of Agency-related Acts.

Clause 19 prohibits a person from *possessing* a regulated product that the person knows, or should know, does not meet the requirements of Agency-related Acts.

A new provision (clause 20) not currently included in any of the Agency-related Acts concerns tampering with regulated products. Clause 20(1) prohibits a person from *tampering with* a regulated product, its label or container, with the intent to:

- render the product injurious to human, animal or plant health or the environment; or
- without believing it to be injurious to human, animal or plant health or the environment, cause any person to believe that it is.

Clause 20(2) prohibits a person from *selling* a regulated product that the person knows, or should have known, has been tampered with so as to render the regulated product injurious to human, animal or plant health or the environment.

Clause 20(3) prohibits a person from *threatening to tamper with* a regulated product so as to render it injurious to human, animal or plant health or the environment.

Clause 20(4) prohibits a person, knowing information to be false or being reckless as to its truth, from *communicating* (or causing to be communicated) that information for the purpose of causing a person to believe that a regulated product has been tampered with so as to render it injurious to human, animal or plant health or the environment.

Clause 21(1) prohibits a person from preparing a food with water that is not safe water. Clause 21(2) defines “safe water” for purposes of clause 21 to mean water that does not affect the safety of any food with which it comes into contact.

A provision related to licences and permits expands authorities currently contained in the *Health of Animals Act* and the *Plant Protection Act*. It forbids a person from engaging in an activity or a class of activity that is prohibited by virtue of a regulation made under clause 56(s) (concerning the power of the Governor in Council to make regulations prohibiting, or requiring a licence or permit for, any activity described in clause 22(2) as explained below), or engaging in any activity for which a licence or permit is required under that clause without the required licence or permit (clause 22(1)).

Clause 22(2) defines “activity” for purposes of clause 22(1) to mean any of the following activities or an activity related to any of them: growing, raising, culturing, multiplying, processing, preparing, producing, manufacturing, developing, testing, distributing, exporting, importing, storing, administering, using, selling, conveying or disposing of:

- an animal pathogen or other disease agent in respect of which the *Health of Animals Act* applies;
- a toxic substance as defined in section 2(1) of the *Health of Animals Act*;
- a veterinary biologic as defined in the above section; or
- a pest as defined in section 3 of the *Plant Protection Act*.

C. Administration and Enforcement of Agency-related Acts (Clauses 23-55)

1. Injunctions (Clause 23)

Clause 23 empowers the CFIA to apply to the Federal Court for an interim or permanent injunction enjoining any person from committing an offence against an Agency-related Act, regardless of whether a prosecution has been instituted in respect of that offence.

2. Inspections (Clauses 24-29)

Clause 24 empowers the President of the CFIA to designate methods and equipment to be used by inspectors, officers, analysts and graders in carrying out their powers, duties and functions under the bill.

Clauses 25 to 43 are for the most part consolidations of existing inspection-related provisions contained in Agency-related Acts.

Clauses 25(1)(a) to (l) set out consistent inspection powers that inspectors or officers have, regardless of the Agency-related Act they are enforcing. Most of the powers are derived from current Agency-related Acts, with inspectors retaining all of their current authorities (for example, the power to enter and inspect a place, including a conveyance; the power to examine, test and take measurements). There are, however, also a few new authorities given to inspectors, such as:

- the power to take photographs of any place or thing (clause 25(1)(g));
- the power to stop operations in relation to the preparation of a regulated product (clause 25(1)(h)); and
- the power to require any person to provide a list of persons to whom a regulated product has been distributed, as well as any other relevant information necessary for the Agency to locate the regulated product (clause 25(1)(k)).

Clause 25(2) permits inspectors or officers to use computer and copying equipment in exercising powers described in clause 25(1).

Clause 26 permits inspectors or officers to exercise the powers set out in clause 25 of the bill in order to detect a pest as defined in section 3 of the *Plant Protection Act*, or a disease or toxic substance as defined in section 2(1) of the *Health of Animals Act*.

Clause 27(1) prohibits an inspector or officer from entering a dwelling-place except with the consent of the occupant or under the authority of a warrant. According to clause 27(2), a justice (as defined in section 2 of the *Criminal Code*) may, on an *ex parte* application, issue a warrant authorizing an inspector, an officer or a peace officer named in the warrant to enter a dwelling-place if the justice is satisfied by information on oath that:

- the conditions for entry described in clause 25(1)(a) (i.e., the inspector or officer believes on reasonable grounds that a regulated product, document or information relevant to the administration or enforcement of an Agency-related Act is present) exist in relation to the dwelling-place;
- entry to the dwelling-place is necessary in order to exercise the inspection powers described in clause 25; and
- entry to the dwelling-place has been refused, or there are reasonable grounds for believing that it will be refused.

The warrant may be in any form that the justice considers appropriate (clause 27(3)).

Clause 27(4) concerning the use of “telewarrants” is a new provision. In the event that an inspector, an officer or a peace officer believes that it would be impracticable to appear personally to make an application for a warrant under clause 27(2), a warrant may be issued by telephone or other means of telecommunication on a request submitted by telephone or other means of telecommunication and, for that purpose, section 487.1 of the *Criminal Code* applies, with any modifications that the circumstances require.

The use of force to execute a warrant by an inspector, an officer or a peace officer is expressly prohibited unless specifically authorized in the warrant and, in the case of an inspector or officer, he or she is accompanied by a peace officer (clause 27(5)).

In exercising inspection powers described in clause 25, an inspector or officer must, if requested, show his or her certificate of designation (clause 28).

Clause 29(1) provides that the owner or person in charge of a place, including a conveyance (defined in clause 2 to mean a vessel, motor vehicle, etc., used to move persons or things), that is entered into by an inspector, analyst or officer, and every person found in the place, must:

- provide reasonable assistance to the inspector, analyst or officer (or any other person acting under the authority of any of them) to enable each of them to carry out their duties and functions; and
- provide any information relevant to the administration or enforcement of an Agency-related Act that the inspector, analyst or officer or other person requires to be provided.

A peace officer must provide any assistance that an inspector, analyst or officer requests for the purpose of enforcing an Agency-related Act (clause 29(2)).

3. Requirement to Remove Unlawful Imports (Clause 30)

An inspector or officer may, by notice, order that an imported regulated product be removed from Canada if he or she believes on reasonable grounds that the product does not meet the requirements of, or was imported into Canada in contravention of a requirement of, an Agency-related Act (clause 30(1)). The notice must be sent to, or served on, the owner, importer or person having the possession, care or control of the product and may specify the period within which the product must be removed from Canada and the manner in which it is to be removed (clause 30(2)). A person to whom a notice is directed must comply with the order (clause 30(3)). A regulated product may be forfeited to the Crown and disposed of at the expense of the owner, the importer or the person having the possession, care or control of the product, if it has not been removed from Canada within the period specified in the notice, or, if no time period is specified, within 90 days (clause 30(4)).

4. Seizure (Clause 31)

Clause 31 authorizes an inspector or officer to seize a regulated product or other thing if he or she believes on reasonable grounds that it is being used in committing an offence against an Agency-related Act or affords evidence of such an offence.

5. Searches (Clause 32)

An inspector, an officer or a peace officer may, under the authority of a warrant issued under clause 32, enter and search any place or conveyance in which he or she believes on reasonable grounds there is a regulated product or other thing by means of which, or in relation to which, an offence against an Agency-related Act has been committed or that will afford evidence of such an offence (clause 32(1)).

If, on an *ex parte* application, a justice as defined in section 2 of the *Criminal Code* is satisfied by information on oath that there are reasonable grounds to believe that there is in any place, including a conveyance, a regulated product or other thing referred to in clause 32(1), the justice may issue a warrant authorizing the inspector, officer or peace officer named in the warrant to enter and search the place (clause 32(2)). The warrant may be in any form the justice considers appropriate (clause 32(3)), and it must be executed by day unless the justice authorizes otherwise (clause 32(6)).

Clause 32(4) provides for the use of a “telewarrant” in circumstances similar to which one can be issued under clause 27(4)).

An inspector or officer may conduct a search pursuant to clause 32 without a warrant if the conditions for obtaining a warrant exist but by reason of exigent circumstances it would not be practical to obtain one (clause 32(5)).

According to clause 32(7), an inspector or officer may exercise any power described in clause 25 (inspection) or 31 (seizure) in carrying out a search of a place or conveyance under clause 32.

6. Disposition of Things Seized (Clauses 33-35)

An inspector or officer who seizes a regulated product or other thing must, as soon as practicable, notify the owner or the person having possession, care or control of the seized regulated product or thing of the reason for the seizure (clause 33).

An inspector or officer who seizes a regulated product or other thing may:

- store, treat or quarantine it at the expense of its owner or the person having the possession, care or control of it at the time of its seizure;
- by notice, order its owner or the person having the possession, care or control of it at the time of its seizure to store, treat or quarantine it at his or her expense; or
- dispose of it if it is perishable, is susceptible to deterioration, is an animal or a plant, is a pest or is suspected of being a pest, is infested or suspected of being infested with a pest, or if it constitutes a biological obstacle to the control of a pest (clause 34(1)).

Any net proceeds from a disposition under the above authority are to be paid to the Receiver General (clause 34(2)).

For the purposes of the *Plant Protection Act*, an inspector or officer who seizes a thing may, by notice, order its owner or the person having possession, care or control of it at the time of its seizure to dispose of it at his or her expense (clause 34(3)).

A notice under clause 34 must be sent to or served on the owner or the person having the care, possession or control of the seized thing and may specify: the period within which the thing is to be removed or disposed of; the period for which it is to be stored, treated, or quarantined; and the manner in which it is to be removed, disposed of, stored, treated or quarantined (clause 34(4)).

A person to whom a notice is directed under clause 34 must comply with the order (clause 34(5)).

Subject to clauses 35(2) and 36, any thing seized under the bill, or the net proceeds from its disposition, may not be detained after:

- an inspector or officer determines that the thing meets the requirements of Agency-related Acts; or
- with the exception of food seized under the *Food and Drugs Act*, the expiry of 180 days after the date of seizure or such longer period as may be prescribed by regulation (clause 35(1)).

Clause 35(2) stipulates that if proceedings are instituted in relation to any thing seized under the bill, the thing or the net proceeds from its disposition may be detained until the proceedings are concluded.

If the owner of the seized thing or the person having possession, care or control of it at the time of seizure is convicted under an Agency-related Act, and a fine is imposed,

- the thing may be detained until the fine is paid; or
- the thing may be sold under execution and any proceeds from its disposition may be applied in payment of the fine (clause 35(3)).

Generally, if proceedings are instituted and the thing has not been disposed of or forfeited under the bill, the owner or person having possession, care or control of it at the time of seizure may apply to the court for an order that it be returned (clause 35(4)).

After hearing the application, the court may order the seized thing to be returned, subject to any conditions necessary to ensure its preservation for any purpose for which it may subsequently be required, provided that the court is satisfied:

- that sufficient evidence exists or may reasonably be obtained without detaining the thing; and
- if the thing is a regulated product, that the product meets the requirements of the Agency-related Act (clause 35(6)).

7. Forfeiture (Clauses 36-38)

A thing seized under the bill or the proceeds from its disposition are forfeited to the federal Crown if:

- the owner or person entitled to possess the thing cannot be identified within 30 days after its seizure; or
- the owner or person entitled to possess it does not claim the thing or its proceeds within 30 days after the seizure ends, except in the case of a thing seized under the *Food and Drugs Act*, in which case it must be claimed within 30 days after the sending of a notice of termination of seizure (clause 36(1)).

The above does not apply if proceedings are instituted in relation to the offence in respect of which the thing was seized (clause 36(2)).

Upon convicting a person of an offence under an Agency-related Act, the convicting court may, in addition to any punishment imposed, order that any seized thing by means of which the offence was committed, or the net proceeds from its disposition, be forfeited to the federal Crown (clause 37(1)). The bill also authorizes a seized thing that has been forfeited to be disposed of as the Minister directs at the expense of the owner or person having the possession, care or control of it (clause 37(2)).

Clause 38 authorizes the forfeiture to the federal Crown of a seized thing where the owner or the person in possession, care or control of it at the time of its seizure consents to its forfeiture, in which case it may be disposed of as the Minister may direct at the expense of the owner or the person having the possession, care or control of it at the time of its seizure.

8. Inspection-related Prohibitions (Clauses 39-43)

Clause 39 prohibits a person from obstructing or interfering with any person (or a person acting under the authority of that person) who is exercising any powers or carrying out any duties or functions under an Agency-related Act.

Clause 40 prohibits a person from making a false or misleading statement to a person (or a person acting under the authority of that person) who is exercising any powers or carrying out any duties or functions under an Agency-related Act.

Clause 41 prohibits a person from producing any document that he or she knows, or should know, contains false or misleading information for examination or copying by a person (or a person acting under the authority of that person) who is exercising powers or carrying out duties or functions under an Agency-related Act.

Clause 42 prohibits a person from falsifying or, with intent to deceive, altering, destroying, erasing or obliterating any document or label made or issued under an Agency-related Act.

Except as authorized by an inspector or officer, clause 43 prohibits any person from removing, altering or interfering with any thing seized, detained, held or quarantined under the bill, or the movement of which is restricted or prohibited under the bill.

9. Costs and Liability (Clauses 44-45)

Clause 44(1) permits the federal Crown or the Agency to recover any costs incurred in relation to anything required or authorized to be done under any Agency-related Act. Clause 44(2) specifies that the costs are recoverable jointly and severally or solidarily from the owner or occupier of the place, or owner of the thing, and from the person having the possession, care and control of it immediately before its inspection, treatment, testing, analysis, examination, quarantine, holding, storage, removal, return or disposal or, in the case of a thing seized, forfeited, detained or disposed of under the bill, immediately before its seizure, forfeiture, detention or disposal.

A provision not currently contained in most of the Agency-related Acts provides that neither the federal Crown nor the Agency is liable for any loss, damage or costs, including rent or fees, resulting from actions required in order to comply with the bill or the regulations (clause 45).

10. Samples (Clause 46)

Clause 46 permits a sample taken under the bill to be disposed of in any manner that the Minister considers appropriate and protects the federal Crown and the Agency against liability for any loss, damage or costs resulting from the taking or disposition of the sample.

11. Offences (Clauses 47-54)

Clause 47(1) provides that, subject to clause 48 (concerning tampering with regulated products), every person who contravenes a provision of the bill commits an offence and is liable:

- on conviction on indictment, to a fine not exceeding \$250,000 or to imprisonment for a term of not more than two years, or to both; or
- on summary conviction, to a fine not exceeding \$100,000 or to imprisonment for a term of not more than one year, or to both.

According to clause 47(2), a person cannot be convicted of an offence for failing to comply with an order referred to in clause 30(1) (removal of unlawful imports), clause 34(1) (storing, treating, or quarantining a seized product), or clause 34(3) (disposal order for purposes of the *Plant Protection Act*), unless he or she had been served notice of the order or had otherwise received notice of it.

Clause 48, a new provision not currently contained in any of the Agency-related Acts, outlines the penalties for the offence of tampering with regulated products (clause 20(1)) or selling a regulated product that the person knows or should have known was tampered with (clause 20(2)). They are as follows:

- on conviction on indictment, a fine not exceeding \$500,000 or imprisonment for a term not exceeding five years, or both; or
- on summary conviction, a fine not exceeding \$250,000 or imprisonment for a term not exceeding two years, or both.

Another new provision, clause 49, provides that a person who contravenes the regulations is guilty of an offence and is liable on summary conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding six months, or to both.

Clause 50 provides that if a person other than an individual (for example, a corporation) commits an offence under an Agency-related Act, any officer, director, agent or mandatary of the person who directs, authorize, assents to, acquiesces in or participates in the commission of the offence or who fails to exercise due diligence to prevent its commission is guilty of the offence and liable on conviction to the punishment provided for the offence, regardless of whether the person has been prosecuted.

In any prosecution of an offence under an Agency-related Act, it is sufficient proof of the offence to establish that it was committed by an employee, agent or mandatary of the accused, regardless of whether the employee, agent or mandatary has been identified or prosecuted for the offence, unless the accused establishes that the accused exercised all due diligence to prevent the commission of the offence (clause 51).

A prosecution for an offence under an Agency-related Act may be instituted, heard and determined:

- in the place where the offence was committed or the subject-matter of the prosecution arose;
- where the accused was apprehended; or
- where the accused happens to be or is carrying on business (clause 52).

Clause 53(1) establishes a limitation period of two years (after the time when the subject-matter of the proceedings arose) for instituting proceedings by way of summary conviction in respect of an offence under an Agency-related Act. However, there is an exception in the case of an offence that is a misrepresentation of the variety name or purity or variety of a seed in respect of which the *Seeds Act* applies; in that case, proceedings may be brought not later than three years after the time when the subject-matter of the proceedings arose (clause 53(2)).

Clause 54(1) provides that in proceedings for an offence under an Agency-related Act, a declaration, certificate, report or document of the Minister, President, or other Agency official (for example, an inspector), purporting to have been signed by that person, is admissible in evidence without proof of the signature or official character of the person appearing to have signed it and, in the absence of evidence to the contrary, is proof of the matters asserted in it.

Clause 54(2) allows for copies of, or extracts from, documents that are certified as true copies or extracts to be admissible in evidence and, in the absence of evidence to the contrary, to have the same legal force as the original.

In the absence of evidence to the contrary, a document referred to in clause 54 is presumed to have been issued on the date that it bears (clause 54(3)).

In order for a document referred to in clause 54 to be received in evidence, the party intending to produce it must have served reasonable notice of that intention, along with a duplicate of the document, on the party against whom it is intended to be produced (clause 54(4)).

12. Review Tribunal (Clause 55)

Clause 55 is another new provision not currently contained in any of the Agency-related Acts. It authorizes the Review Tribunal continued by section 4.1(1) of the *Canada Agricultural Products Act* to exercise the powers conferred on a court under clauses 35 or 37 (for example, order the return of the seized thing, or the forfeiture of the seized thing) for the contravention of an “agri-food Act” (clause 55(1)).

Clause 55(2) provides the Review Tribunal with powers equivalent to those available to the courts in respect of offences before them.

For the purposes of clause 55, an “agri-food Act” is defined (clause 55(3)) to mean:

- the *Canada Agricultural Products Act*;
- the *Feeds Act*;
- the *Fertilizers Act*;
- the *Health of Animals Act*;
- the *Meat Inspection Act*;
- the *Plant Protection Act*; or
- the *Seeds Act*.

D. Regulations (Clause 56)

Clause 56 empowers the Governor in Council to make regulations for carrying out the purposes and provisions of the bill. CFIA officials point out that approximately half of these authorities are consolidations of existing authorities currently found in Agency-related Acts (for

example, the inspection of places, conducting of tests and making of analyses), while the other half are new to support the new authorities contained in the bill. Of the 13 new regulation-making authorities contained in the bill:

- five support the licensing provisions (clauses 56 (p),(q),(r),(s),(t));
- three support information and document requirements (clauses 56(b),(c),(d));
- one establishes pre-clearance and in-transit requirements (clause 56(i));
- one supports foreign inspection arrangements (clause 56(n));
- one establishes quality management programs and systems (clause 56(o));
- one establishes tracking and tracing systems to ascertain places of origin or destination of regulated products (clause 56(u)); and
- one establishes a formal mechanism to deal with human health and safety complaints with respect to regulated products (clause 56(w)).

E. Incorporation by Reference (Clauses 57-59)

A new provision, clause 57, not currently included in any of the Agency-related Acts, authorizes a regulation to incorporate by reference externally produced materials, reproduced or translated materials, materials jointly produced with a government or another government agency, and internally produced technical or explanatory materials. Agency officials point out that this includes standards, guidelines, methods and procedures developed by other federal agencies, provincial or foreign governments or by world-recognized organizations such as the World Trade Organization or the World Organization for Animal Health (OIE). A regulation may also incorporate by reference materials as amended from time to time.

Another new provision, clause 58, provides that no person can be convicted of an offence for contravening a provision of a regulation that incorporates material by reference unless it is proven that at the time of the alleged contravention:

- the material was reasonably accessible to the person;
- reasonable steps were taken to ensure that the material was accessible to persons likely to be affected by the regulation; or
- the material was published in the *Canada Gazette*.

Clause 59 defines a “regulation” for purposes of clause 57 and 58 to mean a regulation made under an Agency-related Act.

F. *Statutory Instruments Act* (Clause 60)

Clause 60 is another new provision not currently included in any of the Agency-related Acts. According to clause 60(1), an order made under clause 12(1) (i.e., temporary order) or 13 (i.e., order to provide relief from the effects of a natural disaster or public emergency) is exempt from the application of sections 3, 5 and 11 (i.e., examination, registration and publication requirements) of the *Statutory Instruments Act* and must be published in the *Canada Gazette* within 23 days after the day on which it was made.

As well, a written order made under clause 30(1) (order requiring the removal of unlawful imports) or 34 (order concerning the disposition of things seized) is not a statutory instrument for purposes of the *Statutory Instruments Act* (clause 60(2)).

G. Transitional Provisions (Clause 61)

Clause 61 is another new provision. Clause 61(1) stipulates that the limitation period provided for in clause 53, referred to above, applies only in respect of offences committed after the coming into force of that provision.

As well, regulations made under specified provisions of certain Agency-related Acts that are being repealed by consequential amendments in this bill are to remain in force and are deemed to be made under the bill until such time as they have been repealed or replaced (clause 61(2)).

H. Consequential Amendments (Clauses 62-127)

Clauses 62 to 127 result in a number of consequential amendments to other Agency-related Acts.

Among the consequential amendments are those that repeal existing provisions from eight commodity-specific Agency-related Acts (earlier referred to) that deal with the powers of inspectors, evidence and enforcement, because those powers are now being consolidated and modernized and dealt with in Bill C-27.

Among other consequential amendments are certain ones made to the *Consumer Packaging and Labelling Act*, the *Competition Act* and the *Canadian Food Inspection Agency Act* to reflect the previous legal transfer of the administration of the *Consumer Packaging and Labelling Act* as it relates to food, as defined in section 2 of the *Food and Drugs Act*, from Industry Canada to Agriculture and Agri-Food Canada. As previously noted, that transfer was accomplished by a 1999 Order pursuant to the *Public Service Rearrangement and Transfer of Duties Act*. As a result of that transfer of responsibilities, the CFIA became responsible for both the administration and enforcement of the *Consumer Packaging and Labelling Act* as it relates to food. (The CFIA was already previously responsible for the enforcement of the Act as it relates to food.)

I. Coordinating Amendments (Clause 128)

Clause 128 provides for a number of coordinating amendments to Bill C-27 and certain other Agency-related Acts, depending on whether and when Bill C-26, the Canada Border Services Agency Act (1st Session, 38th Parliament), and Bill C-27 are enacted into law and the provisions come into force. The general effect is to allow Canada Border Services Agency officers to enforce CFIA Acts at airports and other Canadian border points. The amendments ensure that the Canada Border Services Agency has the appropriate enforcement and inspection authorities at the border, regardless of which bill comes into force first.

J. Coming Into Force (Clause 129)

The provisions of the bill, except clause 128, come into force on a day to be fixed by order of the Governor in Council.

COMMENTARY

It would appear that, to date, there has been little commentary on Bill C-27 in the press. However, according to an article in the *Western Producer*⁽¹⁾ on 15 December 2004, the meat packing industry welcomes Bill C-27 as a way to bring clarity to inspection rules. “More information is coming on this but it looks like this bill will add some consistency and authority to

(1) Barry Wilson, “Packers like inspection changes,” *Western Producer*, 15 December 2004.

the process” said Canadian Meat Council President Jim Laws in a 10 December interview. He went on to say, “It will standardize rules for inspectors in different commodities. It also provides authority to act on tampering with products and our members think that is a good thing.”

The same article notes that when the bill was discussed in the House of Commons on 7 December, Opposition MPs were less charitable than the industry representative. It mentions the concerns expressed by Diane Finley, MP, Conservative agriculture critic, who complained that there had been too little consultation with industry before the bill was written. Having also stated in the House that her party “supports a less intrusive approach to regulatory policy in Canada,” she went on to note, “Granting the CFIA authority to make regulations dealing with mandatory record keeping, food quality and safety programs could result in regulations being created without adequate consideration for the implications felt from these by the agriculture and agri-food industries.”

The article also stated that NDP MP Charlie Angus flagged the provisions that will give CFIA inspectors many of the same border powers available to American inspectors under rules of the U.S. *Homeland Security Act of 2002*. These new powers include the right to stop imports of food, seed, feed and fertilizer at the border, the authority to record the origins and destination of imported products and the right to share collected information with other countries. “When we talk about merging our regulatory practices with the United States, we have to ask, are we dumbing down our regulations to go for cross border sales?” Mr. Angus stated. “In the long run, that will affect consumer confidence and if it affects that confidence, it could affect our domestic markets.”

A subsequent article in the *Western Producer*⁽²⁾ on 5 January 2005 noted that Conservative critics have also warned in the House that the bill will give inspectors too many powers with too little accountability. Gurmant Grewal, MP, is quoted as saying, “I am concerned that the bill does not incorporate any aspect of accountability for fair and effective enforcement. ... It fails to address accountability for frivolous or false detainment and destruction of products and materials.” The MP complained that regulatory inconsistencies often mean that ethnic foods that are acceptable in the United States are not allowed into Canada. He stated, “The criteria used in decisions often appear to be arbitrary and unfair.”

MPs will have a further opportunity to express any concerns they may have regarding the bill when it is referred to the House of Commons Standing Committee on Agriculture and Agri-Food prior to second reading in the House.

(2) Barry Wilson, “Committee to review CFIA bill,” *Western Producer*, 5 January 2005.