

FOOD AND AGRICULTURAL PRODUCTS CLASSIFICATION ACT

[SBC 2016] CHAPTER 1

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Part 1 — Interpretation and Application

Interpretation

1 (1) In this Act:

"administrator" means a person authorized under section 4 [administration of certification programs] to administer a certification program;

"agricultural product" means a product that

- (a) is derived from an animal, plant or fungus, or from a prescribed thing, and
- (b) is not intended for human consumption;

"analyses" includes the taking of samples and the conducting of tests and visual examinations;

"auditor" means a person appointed under section 30 [audit of certification programs] to audit a certification program;

"certification program" means a certification program referred to in section 3 (c) [programs and protected labels];

"container" means any form of container or packaging used in relation to food or an agricultural product;

"distribute" includes to provide or offer to provide food or an agricultural product to a person, whether directly or indirectly and with or without a fee;

"facility" means either of the following:

- (a) a place or vehicle where food or an agricultural product is possessed, reared, grown, harvested, processed, stored, transported, distributed or marketed;

(b) a place that is

- (i) subject to the Canada Agricultural Products Act, and
- (ii) designated by the minister as a facility for the purposes of this Act;

"food" includes anything intended to be used as food or drink for human consumption, including

- (a) substances manufactured, sold or represented for use as food or drink for human consumption, and
- (b) substances or ingredients, of any kind, to be mixed with food or drink for human consumption;

"grading program" means a grading program referred to in section 3 (a);

"inspector" means a person designated as an inspector under section 27 [inspectors and reviewing officers];

"mark" means a label or written notation indicating the grade of the food to which the label or notation is attached;

"market" includes

- (a) to describe, identify and advertise, and
- (b) to display to the public;

"operator" means a person who owns, manages or leases a facility;

"personal information" means recorded information about an identifiable individual;

"process" includes the following:

- (a) to preserve, by any method, food or an agricultural product for future use;
- (b) to prepare, by any method, food or an agricultural product for use;
- (c) to hold or maintain a live animal until the animal is killed, and preserved or prepared;
- (d) to kill an animal held under paragraph (c);
- (e) to manufacture a product derived, in whole or in part, from food or an agricultural product;
- (f) to put food or an agricultural product into a container;
- (g) to attach a label to food or an agricultural product;

"protected label" means a protected label referred to in section 3 (d);

"reviewing officer" means a person designated as a reviewing officer under section 27;

"standards program" means a standards program referred to in section 3 (b);

"vehicle" includes

- (a) any means of transport, whether by land, water or air, and
 - (b) trailers and cargo crates.
- (2) A reference to the attachment of a mark or label to food or an agricultural product is deemed to include the attachment of a mark or label to, and the inclusion of a mark or label in, a container that holds or is intended to hold food or an agricultural product.

Application

2 This Act applies to food and agricultural products

(a) that a person

- (i) possesses, rears, grows, harvests, processes, transports or stores in British Columbia for the purpose of distributing or marketing to other persons, or
 - (ii) distributes or markets in British Columbia, and
- (b) in respect of which a grading program, a standards program, a certification program or a protected label is established or adopted under this Act.

Part 2 — Programs and Protected Labels

Programs and protected labels

3 The Lieutenant Governor in Council may establish or adopt one or more of the following in accordance with the regulations:

(a) a grading program under which operators must have prescribed types of food graded, and a mark attached to the food, based on one or both of the following:

(i) prescribed objective characteristics;

(ii) assessments, in accordance with the regulations, of relative quality;

(b) a standards program under which prescribed types of food must meet prescribed requirements;

(c) a certification program under which operators may choose to

(i) be certified as meeting prescribed production standards, or

(ii) have prescribed types of food or agricultural products certified as meeting prescribed quality or production standards;

(d) a protected label, the use of which is restricted or prohibited unless a person meets the requirements of, or is permitted by, the regulations.

Administration of certification programs

4 (1) The Lieutenant Governor in Council may authorize, by regulation, one or more persons to administer a certification program, including to do one or more of the following:

(a) issue, attach conditions to, amend, renew, suspend or cancel an operator's certification;

(b) decide appeals from a decision made under paragraph (a);

(c) determine whether quality and production standards prescribed for the purposes of the certification program have been and continue to be met;

(d) collect and retain fees for the purposes of

(i) recovering the costs of administration,

(ii) developing quality and production standards,

(iii) educating operators and the public with respect to the certification program, and

(iv) a prescribed purpose.

(2) An administrator must do at least the following:

(a) comply with the directions of the minister, if any, given under section 29 [powers respecting administrators];

(b) appoint an individual responsible for the day-to-day operations of the certification program;

(c) ensure that officers, directors and employees of the administrator, including persons offering services on contract, are not subject to a conflict of interest;

(d) maintain a register containing the name of every certified operator and make this information available to the public by

(i) making the register available for public inspection during normal business hours, and

(ii) answering inquiries from the public respecting the register;

(e) provide to the minister,

(i) at least annually,

(A) a report on the administrator's exercise of powers and performance of duties under this Act for the past year,

(B) a financial report, and

(C) a list of current officers, directors, committees and committee members, and

(ii) on request of the minister, a report on information respecting the matters the minister requires;

(f) allow an auditor to inspect the administrator's records and audit the administrator's practices;

(g) pay costs, in accordance with the regulations, for audits of the certification program for which the administrator is responsible;

(h) monitor the use of protected labels by operators who are subject to the certification program for which the administrator is responsible;

(i) perform other prescribed duties.

(3) If authorized by the regulations, an administrator may delegate to one or more persons or bodies one or more of the functions, duties or powers described in this section.

Duties if program applies

5 (1) An operator of a facility that processes a type of food or agricultural product that is subject to a grading program, a standards program or a certification program must do all of the following:

- (a) comply with the directions and orders of an inspector made during the course of an inspection;
- (b) on request of an inspector,
 - (i) make available for examination all food and agricultural products in the person's possession or control, and
 - (ii) test or cause to be tested food or agricultural products, or samples of them, in the person's possession or control;
- (c) keep, in accordance with the regulations, prescribed records for at least 5 years;
- (d) produce the records required under paragraph (c) to an inspector or the minister, on request and within the time requested;
- (e) make reports and provide information as required by the regulations;
- (f) comply with this Act and the regulations made under it.

(2) On receiving a report under this section, the minister may order the person making the report to take one or more prescribed actions.

(3) Division 2 [Making and Reviewing Orders] of Part 3 and section 22 [duty to comply with orders] apply to an order made under subsection (2) of this section as if it were an order made under that Part.

Prohibitions if grading program applies

6 If a grading program has been established or adopted under the regulations in relation to a type of food, a person must not do any of the following in respect of that type of food:

- (a) except as permitted under the regulations, transport or distribute in British Columbia food that
 - (i) has not been graded in accordance with the regulations, or
 - (ii) does not have attached to it a mark as required by the regulations;
- (b) market food as having been graded unless the food has been graded in accordance with the regulations;
- (c) market food as having a particular grade, or attach a mark to food that indicates a particular grade, if the food does not have the characteristics, does not meet the requirements or is otherwise below the standard prescribed for that grade;
- (d) possess food held in a container that previously held food and continues to have attached to or included in it all or part of a mark that applied to the previously held food.

Prohibitions if standards program applies

7 If a standards program has been established or adopted under the regulations in relation to a type of food, a person must not do any of the following in respect of that type of food:

- (a) transport or distribute in British Columbia food that does not meet or has not been produced in accordance with the prescribed standards;
- (b) market food as meeting or as having been produced in accordance with the prescribed standards if the food does not meet or was not produced in accordance with those standards.

Prohibitions if certification program applies

8 If a certification program has been established or adopted under the regulations in respect of a type of food or agricultural product, a person must not do either of the following:

- (a) hold himself or herself out as being certified under the certification program unless
 - (i) the person is certified in accordance with the regulations, and
 - (ii) the person's certification is not suspended;
- (b) market food or an agricultural product of that type as being certified as meeting the quality or production standards of the certification program unless
 - (i) the food or the operator, as applicable, is certified in accordance with the regulations, and
 - (ii) the operator's certification, if applicable, is not suspended.

Prohibitions with respect to protected labels

9 If a protected label has been established or adopted under the regulations, a person must not do any of the following except as permitted by the regulations:

- (a) attach a protected label to food or an agricultural product;
- (b) attach a protected label to or include a protected label in a record purporting to apply to food or an agricultural product;
- (c) use a protected label in connection with the marketing of food or an agricultural product.

Misrepresentation prohibited

10 A person must not do any of the following:

- (a) misrepresent the origin of food or an agricultural product;
- (b) misrepresent the characteristics or associated production practices of food or an agricultural product;
- (c) attach a false or misleading statement or device to food or an agricultural product;
- (d) attach a false or misleading statement or device to, or include a false or misleading statement or device in,
 - (i) a container, or
 - (ii) a record purporting to apply to food or an agricultural product.

Prohibitions if graded, examined, inspected or audited

11 Except as permitted by the regulations, a person must not remove, deface or alter

- (a) a mark or label attached to food or an agricultural product by an inspector or by another person authorized, under the regulations, to attach a mark or label to food or an agricultural product,
- (b) a label attached to food or an agricultural product that has been examined by an inspector or auditor, or
- (c) a record, made by an inspector or auditor, with respect to the results of an examination, inspection or audit conducted under this Act.

Part 3 — Compliance and Enforcement

Division 1 — Inspections and Orders

When inspections may be made

12 (1) Inspections under this section are subject to the limits set out in section 14 [entering to inspect].

(2) An inspector may stop a vehicle, and enter and inspect a vehicle or place, if both of the following conditions are met:

- (a) the inspector reasonably believes that the vehicle or place is
 - (i) a facility, or
 - (ii) the subject of an order made under this Act;
- (b) the purpose of the inspection is
 - (i) a purpose listed in section 16 (1) [if examination required under regulations],
 - (ii) to monitor or confirm compliance with this Act or the order,
 - (iii) to take measures to stop or prevent a contravention of this Act,
 - (iv) to determine whether an order should be varied or terminated, or
 - (v) a prescribed purpose.

Inspection powers

13 (1) An inspector may do one or more of the following for the purpose of an inspection:

- (a) pass through a place to reach the vehicle or place that is to be the subject of the inspection;
 - (b) be accompanied or assisted by a person who has special, expert or professional knowledge of a matter relevant to the inspection;
 - (c) require a person to produce relevant records or things in the person's possession or control;
 - (d) inspect, copy or remove relevant records or things, and, for this purpose, open any container;
 - (e) make records in respect of a person, place or thing;
 - (f) require a person to stop doing an activity;
 - (g) require a person whom the inspector reasonably believes to have relevant information to answer questions and otherwise give that information;
 - (h) conduct analyses, including removing food or agricultural products, or samples of them, from a container or facility for the purpose of having another person conduct analyses;
 - (i) require that a place or thing not be altered or disturbed for a reasonable period of time;
 - (j) require that food or agricultural products not be moved or be moved only in accordance with the directions of the inspector;
 - (k) attach a mark or label to food or an agricultural product;
 - (l) make an order that is necessary for the purpose of exercising a power of inspection, including ordering a person found in a vehicle or place under inspection to assist in the inspection.
- (2) If an inspector removes records or things under subsection (1) (d), the inspector must do both of the following:

- (a) give a receipt for the records or things to the person from whom the records or things were taken;
- (b) subject to a power under this or any other enactment to order a thing destroyed, promptly return the records or things
 - (i) when the records or things have served the purposes for which the records or things were taken, or
 - (ii) if a proceeding is taken under this or any other enactment as a result of an inspection and the records or things are relevant to the proceeding, in accordance with an order of a court, or, if no order is made, no later than 90 days after the conclusion of the proceeding.
- (3) Sections 23 (4) and 24 to 24.2 of the Offence Act do not apply for the purposes of subsections (1) (d) and (2) of this section.
- (4) An inspector must, on request, produce, to a person subject to an inspection, identification as described under section 28 (4) [powers respecting inspectors].

Entering to inspect

14 (1) An inspector may conduct an inspection at any reasonable hour.

(2) Before entering a place, an inspector must

- (a) take reasonable steps to notify the owner or occupier of the place of the date and time that the inspector will be entering, and
- (b) if the place is a private dwelling, obtain either the consent of the owner or occupier or a warrant to enter.
- (3) Despite subsection (2) (a), an inspector may conduct an inspection without providing notice in any of the following circumstances:
 - (a) the thing to be inspected is on display in a public place;
 - (b) providing notice would not be reasonably practical in the circumstances;
 - (c) providing notice might frustrate the purpose of the inspection.

Orders that may be made

15 An inspector may order a person to do one or more of the following:

- (a) give to the inspector information, records, samples or other things relevant to the purpose of the inspection;
- (b) keep food, agricultural products or vehicles in a specified place;
- (c) not deal with or dispose of food or agricultural products, or do so only in accordance with the directions of the inspector;
- (d) attach a label to, or remove a label from, food, agricultural products or things;
- (e) require that a mark or label be attached to or removed from food, agricultural products or things, or be replaced by a different mark or label;
- (f) make or keep a specified record, and provide a specified record within a specified time and in a specified manner;
- (g) stop doing an activity that is in contravention of this Act;
- (h) take specified measures to
 - (i) prevent a contravention of this Act, or
 - (ii) bring the person into compliance with this Act;
- (i) take a prescribed action.

If examination required under regulations

16 (1) This section applies if an inspector is required under the regulations, or is requested by an operator, to examine

- (a) food for the purpose of having the food graded and a mark attached to the food in accordance with a grading program,
- (b) food, a facility or production practices for the purpose of determining whether the operator is complying with a standards program, or
- (c) food to which a protected label is attached.
- (2) An inspector may refuse to examine food or agricultural products found in a place that the inspector considers unsanitary or unsuitable for the purpose of carrying out the activities referred to in subsection (1).
- (3) The operator must pay, in accordance with the regulations, the prescribed fee for each of the following, as applicable:
 - (a) an examination;

(b) the costs of analyses, if food or agricultural products, or samples of them, are submitted to a laboratory or a person with special expertise for conducting analyses.

Division 2 — Making and Reviewing Orders

Contents of orders

17 (1) An order made under this Part must be made in writing and describe all of the following:

- (a) who must comply with the order;
 - (b) what must be done or not done, and any conditions, including, if applicable, the date by which something must be done;
 - (c) the date on which, or the circumstances under which, the order is to terminate, if the date or circumstances are known;
 - (d) subject to the regulations, information sufficient to enable a person to contact the person who made the order;
 - (e) how the person subject to the order may have the order reconsidered;
 - (f) any prescribed matter.
- (2) Two or more orders may be combined in a single written notice.

Service of orders

18 An order made under this Part must be served in accordance with the regulations.

Variation and reassessment of orders

19 (1) A person who makes an order under this Part may vary or terminate the order, at any time, on the person's own initiative.

(2) Subject to the regulations, a person subject to an order made under this Part may request the person who made the order to

- (a) reassess the relevant circumstances,
- (b) assess the extent to which the order has been complied with, and
- (c) determine whether the order continues to be necessary for the purposes of this Act.

(3) On receiving a request under subsection (2), the person who made the order may, based on the matters referred to in that subsection, confirm, vary or terminate the order.

Reconsideration of orders

20 (1) A person subject to an order made under this Part may request the person who made the order to reconsider the order if

- (a) the person subject to the order has additional relevant information that was not reasonably available at the time the order was made, and
- (b) less than 20 days has passed since the order was made.

(2) After considering a request for reconsideration, the person who made the order may do one or more of the following:

- (a) reject the request on the basis that the information submitted in support of the request is not relevant or was reasonably available at the time the order was made;
- (b) delay the date the order is to take effect or suspend the order, if satisfied that the delay or suspension would not be contrary to the public interest;
- (c) confirm, vary or rescind the order.

(3) The person who made the order must give written reasons for a decision to reject the request under subsection (2) (a) or to confirm or vary the order under subsection (2) (c), and the person subject to the order may not request further reconsideration.

(4) An order is not suspended during the period of reconsideration unless the person who made the order states, in writing, that the order is suspended.

(5) For the purposes of this section, if multiple orders are made that address related matters or issues, the person who made the orders may reconsider the orders separately or together.

(6) If a person is unable or unavailable to reconsider an order the person made, a person the minister designates may act under this section in respect of the order as if the designated person had made the order.

Review of orders

21 (1) Subject to subsection (2), a person subject to an order made under this Part may request a reviewing officer to review the order by submitting a request and the prescribed fee to the reviewing officer.

(2) A request for a review may be made only if less than 20 days has passed since

(a) the order was made, if reconsideration is not available under section 20 (1) [reconsideration of orders], or
(b) an action was taken under section 20 (2).

(3) A review must be based on the record.

(4) An order is not suspended during the period of review unless the reviewing officer states, in writing, that the order is suspended.

(5) After considering a request for a review, the reviewing officer may do one or more of the following in relation to the order under review:

(a) delay the date the order is to take effect or suspend the order, if satisfied that the delay or suspension would not be contrary to the public interest;

(b) confirm, vary or rescind the order;

(c) refer the matter back to the person who made the order, with or without directions.

(6) The reviewing officer must give written reasons for an action taken under subsection (5) (b) or (c), and the person subject to the order under review may not request further review of the order.

Division 3 — Compliance and Enforcement

Duty to comply with orders

22 A person subject to an order made under this Part must comply with the order.

If order or notice posted

23 If an inspector or a person acting under the direction of an inspector posts an order or notice under this Act, a person other than an inspector or a person acting under the direction of an inspector must not remove, deface or alter the posted order or notice.

Warrants

24 (1) Without notice to any person, an inspector may apply, in the manner set out in the regulations, to a justice of the peace for a warrant under this section.

(2) A justice of the peace may issue a warrant, in the prescribed form, authorizing an inspector, or a person acting on behalf of an inspector, to enter and search a place, including a private dwelling, and take any necessary action if satisfied by evidence on oath or affirmation that doing so is necessary for the purpose of

(a) taking an action authorized under this Act, or

(b) determining whether an action authorized under this Act should be taken.

(3) If an inspector is of the opinion that it would be impractical to appear personally before a justice of the peace to apply for a warrant under this section, the inspector may submit an information on oath by telephone or other means of telecommunication and, for this purpose, section 22 of the Offence Act applies.

Injunctions

25 (1) Without notice to any person, an inspector may apply, in the manner set out in the regulations, to a judge of the Supreme Court for an injunction or an order under this section.

(2) A judge of the Supreme Court may grant an injunction restraining a person from contravening, or requiring a person to comply with, a provision of this Act if satisfied by evidence on oath or affirmation that there has been or will be a contravention of this Act.

(3) A judge of the Supreme Court may order a person to do or refrain from doing those things the judge considers necessary if satisfied by evidence on oath or affirmation that the person is interfering with or obstructing, or will likely interfere with or obstruct, a person who is exercising powers or performing duties under this Act.

(4) A judge of the Supreme Court may grant an interim injunction or order until the outcome of an application commenced under this section.

Peace officer assistance

26 (1) An inspector may call on the assistance of a peace officer for the purpose of taking an action authorized under this or any other enactment, including, without limitation, for either of the following purposes:

- (a) carrying out an inspection or making or enforcing an order;
 - (b) assisting a person to comply with or to carry out an order of the inspector.
- (2) A peace officer called on under this section may take any action that is necessary for a purpose described in subsection (1) and may use such force as is reasonably required for that purpose.

Part 4 — Ministerial Powers

Inspectors and reviewing officers

27 (1) The minister may designate, by order, the following persons as inspectors:

- (a) employees of a ministry of the government;
 - (b) employees of the government of Canada having duties under an enactment of Canada related to the grading or inspection of food or agricultural products;
 - (c) employees of a public body having duties under an enactment of British Columbia or Canada related to the grading or inspection of food or agricultural products;
 - (d) an individual or employees of a person if the minister is satisfied that
 - (i) the individual or person is accredited for the purpose of grading or inspecting food or agricultural products, or the employees to be designated have sufficient training and experience to carry out the powers and duties of an inspector, and
 - (ii) the individual or the employees to be designated will carry out powers and duties under this Act in an independent and impartial manner.
- (2) The minister may designate, by order, employees of a ministry of the government as reviewing officers.
- (3) The minister may do one or both of the following in an order made under subsection (1) or (2):
- (a) name a specific person as an inspector or a reviewing officer;
 - (b) provide that a person who holds a specified title or position is an inspector or a reviewing officer.
- (4) The minister may limit, by order, the powers and duties of an inspector or a reviewing officer, or a class of inspectors or reviewing officers, including to one or both of the following:
- (a) a geographic area;
 - (b) a class of food, agricultural products, operators or facilities.

Powers respecting inspectors

28 (1) The minister may do, by order, one or both of the following:

- (a) establish training and qualifications for inspectors, including requiring that inspectors participate in ongoing training;
 - (b) establish standards of practice for inspectors, and issue instructions to inspectors, in relation to the exercise of their powers and the performance of their duties under this Act.
- (2) An inspector must comply with all applicable standards established, and instructions issued, under subsection (1).
- (3) Despite subsections (1) and (2), those subsections do not apply to inspectors who are employees of the government of Canada or of a public body having duties under an enactment of Canada.
- (4) The minister may give to inspectors identification for use in exercising powers and performing duties under this Act.

Powers respecting administrators

29 (1) Subject to the regulations, the minister may give, by order, directions, in respect of an administrator or a class of administrators, for the following:

- (a) the exercise of powers and the performance of duties by administrators, including limits and conditions on the exercise of those powers and duties;
- (b) the avoidance of conflicts of interest, including with respect to what constitutes a conflict of interest;
- (c) the constitution of panels and rules with respect to quorum;
- (d) the practices and procedures to be followed by administrators and panels in exercising their powers and duties;
- (e) the criteria that administrators must consider when making decisions with respect to certification and appeals;
- (f) any other matter as authorized under the regulations.

(2) On receiving a report under section 4 (2) (e) [administration of certification programs] from an administrator, the minister may do one or both of the following:

- (a) order the person making the report to take one or more actions;
- (b) give a copy of the report to an auditor.

(3) Division 2 [Making and Reviewing Orders] of Part 3 and section 22 [duty to comply with orders] apply to an order made under subsection (2) (a) of this section as if it were an order made under that Part.

(4) An administrator that is incorporated or registered as a society must not change its bylaws without first obtaining the minister's approval.

(5) If a person ceases to be an administrator, the person must immediately deliver to the minister all records, in that person's possession or control, with respect to the certification program for which the administrator was responsible.

Audit of certification programs

30 (1) The minister may appoint, by order, one or more persons to audit certification programs.

(2) Subject to the regulations, the minister may do one or more of the following in an order made under subsection (1):

- (a) specify the powers and duties of auditors and set limits and conditions on the exercise of those powers and duties;
- (b) establish practices and procedures to be followed by auditors in exercising their powers and duties, including with respect to the frequency and nature of audits;
- (c) provide for the recovery, from administrators, of the costs of audits;
- (d) provide for any other matter as authorized under the regulations.

(3) The minister may authorize an auditor to exercise, with or without limits or conditions, one or more powers of an inspector under this Act for the purpose of conducting an audit.

(4) In any provision of this Act or the regulations identified by the minister for the purposes of subsection (3), a reference to an inspector is deemed to include a reference to an auditor.

Power to enter into agreements

31 The minister may enter into agreements with any person, including the government of another jurisdiction, for one or both of the following purposes:

- (a) to administer this Act, a grading program or a certification program;
- (b) to exchange information, including personal information, for a purpose set out in section 32 (1) (a) or (b) [power to collect or disclose information].

Power to collect or disclose information

32 (1) The minister may collect or disclose information under this Act for one or more of the following purposes:

- (a) to administer this Act, a grading program, a standards program or a certification program;
 - (b) to administer or to assist with the administration of an enactment or a government program, of Canada or any jurisdiction in Canada, that has as one of its purposes
 - (i) the classification of food or agricultural products, or
 - (ii) the setting of standards in relation to the quality or production of food or agricultural products;
 - (c) to disclose prescribed information in respect of an order made under this Act;
 - (d) to publish or disclose statistical information, in relation to food or agricultural products, for economic, educational, scientific or research purposes;
 - (e) to publish or disclose information if, in the opinion of the minister, it would be in the public interest to publish or disclose that information.
- (2) For greater certainty, information that may be collected or disclosed under subsection (1) (a) to (c) and (e) includes personal information.

Power to delegate

33 (1) The minister may delegate, in writing, to a person or class of persons any of the minister's powers or duties under the following provisions:

- (a) sections 5 (1) (d) and (2) [duties if program applies] and 29 (2) [powers respecting reports];
- (b) section 32 [power to collect or disclose information].

(2) A person to whom the minister delegates a power or duty referred to in subsection (1) may not further delegate the power or duty.

General administrative powers

34 (1) The minister may make, by order, forms and proof of certification for the purposes of this Act and the regulations made under it, other than a form for the purposes of section 41 (3) [recovery of administrative penalties].

(2) Unless the minister provides otherwise, use of a form made under subsection (1) is compulsory.

(3) The minister may specify, by order, the manner in which requests or reports may be made, or information must be given, under this Act.

(4) A record or report made under this Act must include all information the minister requires.

Exemption power

35 The minister may exempt, by order, a person or facility from one or more provisions of this Act or the regulations and, for this purpose, may

(a) make the exemption subject to limits or conditions, or

(b) substitute a different requirement than one imposed under this Act.

Part 5 — Contraventions

Division 1 — Evidence

Documentary and certificate evidence

36 (1) A copy of a document issued under this Act by an inspector, an administrator or an auditor, and certified by the inspector, administrator or auditor as a true copy, is

(a) evidence of the document, and

(b) evidence that the inspector, administrator or auditor was authorized to issue the document.

(2) Subsection (1) applies without proof of the person's signature, appointment or authorization.

Inspector may seize offence-related things

37 (1) If, during an inspection under section 13 [inspection powers], an inspector reasonably believes that an offence under this Act has been committed, the inspector may seize anything that may constitute evidence of the offence.

(2) If food or an agricultural product is seized under subsection (1), the inspector may

(a) detain the food or agricultural product, and

(b) conduct analyses of the food or agricultural product or submit, for the conduct of analyses, the food or agricultural product, or samples of either, to a laboratory or a person with special, expert or professional knowledge.

(3) If an inspector is of the opinion that seized or detained food or a seized or detained agricultural product is not required for the purpose of a proceeding under this Act, the inspector must

(a) return the food or agricultural product to the person from whom it was seized, or

(b) dispose of or destroy the food or agricultural product, or order another person to dispose of or destroy the food or agricultural product, if return under paragraph (a) is not reasonably practical.

(4) An inspector must give written notice to a person from whom food or an agricultural product is seized before taking an action under subsection (2) (a) or (3) (b).

Costs of seizure

38 (1) This section applies to the seizure, and disposal or destruction, under section 37 [inspector may seize offence-related things] of food or agricultural products.

(2) A person from whom food or agricultural products are seized is responsible for all costs incurred under section 37 by an inspector, including costs to have another person take an action on behalf of the inspector.

(3) The costs referred to in subsection (2) constitute a debt due to the government and are recoverable by action in a court that has jurisdiction.

(4) A person has no right of action as a result of an action referred to in subsection (1) and must not commence or maintain proceedings

(a) to claim damages or compensation of any kind from the government, or

(b) to obtain a declaration that damages or compensation is payable by the government.

Division 2 — Administrative Penalties

Imposing administrative penalties

39 (1) If authorized by regulation to impose an administrative penalty, the minister may impose an administrative penalty in the amount permitted by the regulations if satisfied on a balance of probabilities that a person has done either of the following:

(a) contravened a prescribed provision of this Act or a regulation made under it;

(b) failed to comply with an order made under this Act.

(2) An administrative penalty may be imposed by serving notice of the administrative penalty in the prescribed manner.

(3) If a person is subject to an administrative penalty, the person must do one of the following within the prescribed time:

(a) pay the administrative penalty;

(b) dispute the administrative penalty in accordance with the regulations, including disputing the amount of the administrative penalty on any ground permitted by the regulations;

(c) agree, in writing, with the minister to do one or more things, including paying a reduced administrative penalty, that the minister is of the opinion would

(i) be sufficient to ensure that requirements or standards of quality and production with respect to food or agricultural products are met, and that the public is not misled with respect to whether those requirements or standards have been met, and

(ii) if applicable, bring the person into compliance with this Act or the regulations or an order made under it.

(4) If an administrative penalty is disputed or made the subject of an agreement under subsection (3) (b) or (c), as the case may be, the person subject to the administrative penalty must pay the administrative penalty, or any part of it that remains outstanding,

(a) under the terms of the agreement,

(b) on receiving notice, following a dispute, that the person remains subject to all or part of the administrative penalty, or

(c) on receiving notice that the person failed to meet the terms of the agreement to the satisfaction of the person who imposed the administrative penalty.

(5) If a corporation contravenes this Act or a regulation made under it, or fails to comply with an order made under this Act, an employee, officer, director or agent of the corporation who authorized, permitted or acquiesced in the contravention or failure to comply is also liable under this section even though the corporation is liable for or pays an administrative penalty.

Operator not to be subject to both administrative penalty and offence

40 (1) A person who must pay an administrative penalty may not be convicted of an offence in respect of the same incident that gave rise to the administrative penalty.

(2) If a person is convicted of an offence under this Act, an administrative penalty may not be imposed on the person in respect of the same circumstances that gave rise to the conviction.

Recovery of administrative penalties

41 (1) An administrative penalty under this Act may be recovered as a debt due to the government.

(2) If a person fails to pay an administrative penalty as required, the minister may file a certificate with a court that has jurisdiction, and, on filing, the certificate has the same force and effect, and all proceedings may be taken on it, as if it were a judgment of the court with which it is filed.

(3) A certificate under subsection (2) must be in the prescribed form, be signed by the minister and contain

(a) the name of the person who is liable for the administrative penalty,

(b) the contravention or failure in relation to which the administrative penalty is imposed, and

(c) the amount of the administrative penalty.

Division 3 — Offences and Penalties

Offences

42 (1) A person who contravenes any of the following provisions commits an offence:

- (a) section 5 (1) (a) or (b) [failure to comply with direction, order or request];
- (b) section 5 (1) (c) or (d) [failure to keep or produce records as required];
- (c) section 5 (1) (e) [failure to make reports or provide information as required];
- (d) section 5 (1) (f) [failure to comply with Act or regulations];
- (e) section 6 [unlawful activity if grading program applies];
- (f) section 7 [unlawful activity if standards program applies];
- (g) section 8 [unlawful activity if certification program applies];
- (h) section 9 [unlawful activity with respect to protected label];
- (i) section 10 [unlawful misrepresentation or false or misleading statement];
- (j) section 11 [unlawful removal, defacement or alteration of mark, label or record];
- (k) section 22 [failure to comply with order];
- (l) section 23 [unlawful removal, defacement or alteration of order or notice].

(2) A person who does either of the following commits an offence:

- (a) knowingly gives false or misleading information to a person exercising powers or duties under this Act, or to a person acting under the order or direction of a person exercising powers or duties under this Act;
- (b) wilfully interferes with, or obstructs, a person exercising powers or duties under this Act, or a person acting under the order or direction of a person exercising powers or duties under this Act.

Other matters respecting offences

43 (1) A person who commits an offence under this Act may be liable for the offence, whether or not an order is made under this Act in respect of the matter that is the subject of the offence.

(2) A proceeding for an offence under this Act may not be commenced in any court more than 2 years after the facts on which the proceeding is based first come to the knowledge of the minister.

(3) For the purposes of subsection (2), a document purporting to have been issued by the minister, certifying the date on which the minister became aware of the facts on which a proceeding is based,

- (a) is admissible without proof of the signature or official character of the person appearing to have signed the certificate, and
- (b) is proof of the certified facts.

(4) If a person commits an offence under this Act and an order is made by an inspector in respect of the matter that is the subject of the offence, but the offence continues after the date by which the order is to be complied with, the person may be prosecuted both for the original offence and for the additional offence of contravening the order.

(5) Sections 4 and 5 of the Offence Act do not apply in respect of this Act or the regulations made under it.

Offence by corporation or employee

44 (1) If a corporation commits an offence under this Act, an employee, officer, director or agent of the corporation who authorized, permitted or acquiesced in the offence commits the offence, whether or not the corporation is convicted.

(2) If an employee commits an offence under this Act, an employer who authorized, permitted or acquiesced in the offence commits the offence, whether or not the employee is identified or convicted.

Penalties

45 (1) An individual who commits an offence under this Act is liable to the following:

- (a) a fine of not more than \$5 000 for each day or part of a day on which the offence occurs or continues;
- (b) imprisonment for not more than 6 months;
- (c) both the fine referred to in paragraph (a) and the imprisonment referred to in paragraph (b).

(2) A corporation that commits an offence under this Act is liable to a fine of not more than \$20 000 for each day or part of a day on which the offence occurs or continues.

Sentencing

46 (1) When sentencing a person convicted of an offence under this Act, the court may order the offender to pay compensation or make restitution to the government or a person for the actual loss or damage caused by or arising out of the commission of the offence, including, without limitation, compensation or restitution for any costs incurred in relation to

- (a) any inspection or audit related to an investigation of the offence, and

- (b) an investigation of the offence.
- (2) When sentencing a person convicted of an offence under this Act, the court may order that any food or agricultural product in relation to which the offence was committed is forfeited, without compensation to any person, to the government and may be disposed of or destroyed as the minister may direct.
- (3) An order for compensation or restitution under subsection (1) or forfeiture under subsection (2) is in addition to and not in place of any other fine or penalty under this Act.
- (4) If an order is made under subsection (1) in favour of the government or a person,
 - (a) the government or person may, by filing the order in a registry of the Supreme Court, enter as a judgment the amount ordered to be paid, and
 - (b) that judgment is enforceable against the offender in the same manner as if it were a judgment against that offender in civil proceedings in that court.
- (5) Nothing in this section precludes the government or a person from taking any civil action or exercising any right of recovery against a person who commits an offence under this Act.

Part 6 — Regulations

Regulations respecting programs

47 (1) The Lieutenant Governor in Council may make regulations prescribing things as agricultural products.

(2) The Lieutenant Governor in Council may make regulations establishing or adopting grading programs, including making regulations respecting the following:

- (a) the types of food to which a grading program applies;
- (b) the names of grades and the marks associated with each grade;
- (c) the objective characteristics that food must have to be assigned a particular grade;
- (d) the factors that must be taken into consideration for the purpose of assessing the quality of food and the assignment of a particular grade;
- (e) the process of grading food;
- (f) the attachment of a mark to food;
- (g) processes, equipment and qualifications for measuring weight, volume or other things;
- (h) respecting the identification of persons who transport or distribute ungraded food;
- (i) respecting the processing, storing, transporting, distributing, marketing or disposing of
 - (i) ungraded food, and
 - (ii) food that, on grading, is found to be unfit for human consumption.

(3) The Lieutenant Governor in Council may make regulations establishing or adopting standards programs, including making regulations as follows:

- (a) respecting the types of food to which a standards program applies;
- (b) requiring operators to comply with requirements established under an enactment of Canada, whether or not the operator's food will be exported from British Columbia;
- (c) requiring operators to comply with requirements that are more stringent than those established under an enactment of Canada, if an enactment of Canada applies to the operator's food.

(4) The Lieutenant Governor in Council may make regulations establishing or adopting certification programs, including making regulations respecting the following:

- (a) the types of food or agricultural products to which a certification program applies;
- (b) quality standards of food or agricultural products, including but not limited to standards in relation to the following:
 - (i) colour, size, variety, grade, character, nature or origin;
 - (ii) chemical or physical composition or content;
 - (iii) treatment;
 - (iv) insect, pest or disease status;
 - (v) genetic variations;
 - (vi) qualitative traits relating to human or animal health;
 - (vii) consumption;
- (c) production standards in relation to possessing, rearing, growing, harvesting, processing, storing, transporting, distributing or marketing food or agricultural products;
- (d) persons authorized to be administrators, and the powers and duties of administrators;
- (e) eligibility for certification, including requiring membership in a trade or an operator certification agency;

- (f) the issuance, amendment, renewal, suspension or cancellation of certification, the terms and conditions that must or may be attached to certification, and appeals from decisions respecting certification;
- (g) the determination of whether prescribed quality or production standards have been met;
- (h) the collection and retention of fees by administrators;
- (i) the delegation, by administrators, to persons or bodies of one or more functions and duties of the administrator.

(5) The Lieutenant Governor in Council may make regulations establishing or adopting protected labels, including making regulations as follows:

- (a) designating a word, name, phrase, symbol, label or type of container as a protected label;
 - (b) respecting the information that a protected label is intended to convey with respect to food or agricultural products;
 - (c) respecting the attachment, inclusion or use of a protected label, including
 - (i) prescribing the requirements a person must meet to attach, include or use a protected label,
 - (ii) permitting the attachment, inclusion or use of a protected label with or without conditions, and
 - (iii) prescribing circumstances in which attaching, including or using a protected label is prohibited.
- (6) The Lieutenant Governor in Council may make regulations respecting the processing, storing, transporting, distributing or marketing of food or agricultural products to which a grading program, standards program or certification program applies, or to which a protected label is attached, including
- (a) prohibiting matters in respect of these activities, and
 - (b) restricting or putting conditions on the performance of these activities.

Regulations respecting duties and prohibitions

48 The Lieutenant Governor in Council may make regulations for the purpose of Part 2 [Programs and Protected Labels], including making regulations as follows:

- (a) respecting the keeping and production of records;
- (b) respecting the making of reports;
- (c) respecting the provision of information to persons or bodies, including to the public, whether by labels attached to food or agricultural products or by other means;
- (d) respecting actions that may be the subject of an order under section 5 (2) [duties if program applies];
- (e) respecting circumstances deemed to be a misrepresentation or a false or misleading statement or device for the purpose of section 10 [misrepresentation prohibited];
- (f) permitting the alteration, removal or obliteration of marks and labels in certain circumstances for the purpose of section 11 [prohibitions if graded, examined, inspected or audited].

Regulations respecting enforcement

49 (1) The Lieutenant Governor in Council may make regulations authorizing further purposes for which an inspection may be made.

(2) The Lieutenant Governor in Council may make regulations respecting orders made under this Act, including making regulations respecting the following:

- (a) actions that an inspector may require, by order, to be taken for the purposes of section 15 (i) [orders that may be made];
- (b) the contents of an order;
- (c) service of orders, including service by posting or publishing notice of the order or by any other means;
- (d) reassessments under section 19 [variation and reassessment of orders], including limiting the circumstances in which, and how often, a request may be made;
- (e) fees for reviews of orders, including prescribing different fees based on
 - (i) the provision of this Act or of a regulation under which the order was made, or
 - (ii) the type of food or agricultural product, or the class or size of facility, to which the order will apply;
- (f) the publication of orders, including the disclosure of information in respect of an order.

(3) The Lieutenant Governor in Council may make regulations respecting examinations for the purpose of section 16 [if examination required under regulations], including making regulations as follows:

- (a) respecting the taking and retention of food or agricultural products, or samples of them, for analyses;
- (b) respecting the conduct of analyses;
- (c) respecting equipment or assistance that operators must supply, or actions that operators must take, for the purpose of an examination;
- (d) imposing duties on inspectors for the purpose of an examination;

(e) respecting fees, including

(i) respecting the amount of the fee, and

(ii) respecting when and the manner in which the fee must be paid.

(4) The Lieutenant Governor in Council may make regulations respecting enforcement, including making regulations as follows:

(a) respecting the process for making an application to the court, including

(i) authorizing applications to be made electronically or by any other means,

(ii) respecting the giving of notice of an application, and

(iii) respecting affidavits or other evidence that must accompany an application;

(b) prescribing the rules that apply to the hearing of an application by the court, including providing that the Supreme Court Civil Rules apply with or without modification;

(c) prescribing the form of a warrant for the purposes of section 24 [warrants].

Regulations respecting administrative penalties

50 (1) The Lieutenant Governor in Council may make regulations respecting administrative penalties under Division 2 [Administrative Penalties] of Part 5 as follows:

(a) authorizing the imposition of administrative penalties;

(b) prescribing provisions of this Act or the regulations made under it in respect of which administrative penalties may be imposed;

(c) respecting an administrative penalty that may be imposed in respect of any failure to comply with a provision of this Act, including

(i) providing for greater penalties for subsequent contraventions,

(ii) setting the maximum and minimum penalties that may be imposed,

(iii) providing, if the penalty is expressed as a range, factors to be considered in the determination of the appropriate penalty, and

(iv) prescribing the grounds on which the penalty may be reduced;

(d) respecting notices for the purposes of that Division, including the form, content and service of notices;

(e) prescribing the time in which an administrative penalty must be paid, disputed or made the subject of an agreement, including the time in which the penalty must be paid following a dispute, an agreement or a failure to meet the terms of an agreement;

(f) providing for payment, by instalments, of an administrative penalty;

(g) respecting disputes of administrative penalties, including

(i) providing for a reconsideration of the penalty, and

(ii) authorizing a reconsideration of the penalty to be considered together with a reconsideration of an order made under this Act;

(h) respecting the form of a certificate under section 41 (3) [recovery of administrative penalties].

(2) A penalty prescribed under subsection (1) (c) must not be greater than \$5 000.

Other regulation-making powers

51 (1) The Lieutenant Governor in Council may make regulations exempting a class of persons, food, agricultural products, facilities or things from one or more provisions of the regulations.

(2) The Lieutenant Governor in Council may make regulations respecting service and deemed receipt of a notice that an inspector or the minister must give under this Act.

(3) The Lieutenant Governor in Council may make regulations for the purposes of sections 29 [powers respecting administrators] and 30 [audit of certification programs], including making regulations respecting the following:

(a) imposing requirements, and setting limits and conditions, with respect to the directions the minister must or may give to administrators;

(b) respecting the powers and duties of auditors;

(c) respecting the recovery of audit costs from administrators, including

(i) respecting the amount of costs that may be recovered, including by setting a combined fee or rates for services performed,

(ii) respecting when and the manner in which costs may be recovered, and

(iii) respecting the collection and retention of costs by auditors.

(4) The Lieutenant Governor in Council may prescribe information or types of information for the purposes of section 32 [power to collect or disclose information].

(5) To the extent that regulation-making authority has not already been provided for in this Part, the Lieutenant Governor in Council may make regulations respecting any matter for which regulations are contemplated by this Act.

General powers respecting regulations

52 (1) The Lieutenant Governor in Council may make regulations referred to in section 41 of the Interpretation Act.

(2) A person must not read any section of this Part as limiting the general powers to make regulations described in subsection (1) of this section or as limiting the specific powers to make regulations described in each section of this Part.

(3) A regulation made under this Act may

(a) establish classes of persons, food, agricultural products, facilities or things to which this Act applies, and

(b) make regulations that are different for different classes.

(4) A regulation made under this Act may limit the application of the regulation to one or more

(a) geographic areas, and

(b) classes of persons, food, agricultural products, facilities or things to which this Act applies.

(5) A regulation made under this Act may confer a discretion on the minister, a reviewing officer or an inspector.

(6) A regulation made under this Act may adopt by reference, in whole or in part and with any changes the Lieutenant Governor in Council considers appropriate, a regulation, code, standard or rule as follows:

(a) for any purpose, a regulation, code, standard or rule

(i) enacted as or under a law of another jurisdiction, including a foreign jurisdiction, or

(ii) set by a provincial, national or international body or any other body that may make codes, standards or rules;

(b) for the purposes of a certification program, a code or standard set by an administrator or any prescribed person.

(7) A code or standard referred to in subsection (6) (b) is adopted as amended if

(a) the administrator or prescribed person first sends notice of the proposed amendment to the minister,

(b) the minister confirms that the notice has been received, and

(c) the minister does not reject the proposed amendment within 60 days of confirming receipt under paragraph (b) of this subsection.

(8) Unless rejected under subsection (7) (c), an amendment proposed under that subsection is effective on the later of

(a) the date stated in the notice sent under subsection (7) (a) as the effective date of the proposed amendment, and

(b) the end of the period referred to in subsection (7) (c).

(9) If, in a regulation made under this Act, the Lieutenant Governor in Council provides that contravention of the regulation is an offence, the Lieutenant Governor in Council may provide that a person who commits the offence is liable on conviction to a fine not exceeding \$5 000 or to imprisonment for a term not exceeding 6 months, or to both.

Part 7 — Transitional Provision, Repeals and Consequential and Related Amendments

Transitional Provision

Transition

53 (1) If

(a) a person holds a valid and subsisting licence, issued under the Agricultural Produce Grading Act, at the time that Act is repealed by this Act, and

(b) a regulation made under the Animal Health Act prescribes the activity for which the person is licensed under the Agricultural Produce Grading Act as an activity that requires a licence under the Animal Health Act,

the person is deemed to hold a licence under the Animal Health Act for the activity, subject to any limits and conditions set out in the regulation or attached to the licence.

- (2) An order, direction or instruction of an inspector, issued under the Agricultural Produce Grading Act, the Agri-Food Choice and Quality Act or the Food Products Standards Act, that is in force at the time that Act is repealed by this Act is deemed to be an order issued under this Act.
- (3) The Lieutenant Governor in Council may make regulations the Lieutenant Governor in Council considers necessary or advisable for the orderly transition to this Act from the Agricultural Produce Grading Act, the Agri-Food Choice and Quality Act or the Food Products Standards Act.
- (4) The authority to make or amend a regulation under subsection (3), but not the authority to repeal a regulation made under that subsection, ends 3 years after the date on which that subsection comes into force.
- (5) A regulation made under the Agricultural Produce Grading Act or the Agri-Food Choice and Quality Act that is inconsistent with or not authorized to be made under this Act, or, in respect of a licence, under the Animal Health Act, is deemed to be valid and is given effect until the earliest of
- (a) the regulation's repeal by regulation of the Lieutenant Governor in Council,
 - (b) the regulation's amendment in accordance with this Act, and
 - (c) 3 years from the date this section comes into force.

Repeals

54 The following are repealed:

- (a) the Agricultural Produce Grading Act, R.S.B.C. 1996, c. 11;
- (b) the Agri-Food Choice and Quality Act, S.B.C. 2000, c. 20;
- (c) the Food Products Standards Act, R.S.B.C. 1996, c. 153.

Consequential and Related Amendments

[Note: See Table of Legislative Changes for the status of sections 55 to 59.]

Section(s)	Affected Act
55-56	Animal Health Act
57-59	Fish and Seafood Act

Commencement

60 This Act comes into force by regulation of the Lieutenant Governor in Council.

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