Ministry of Agriculture
BRIEFING NOTE FOR MINISTER FOR INFORMATION

Ref: 182418

Date: June 19, 2015

Issue: To provide information with regards to how a recent Supreme Court of Canada decision affects the growing of medical marihuana on the Agricultural Land Reserve.

Background: The federal Marihuana for Medical Purposes Regulation (MMPR) came into force on June 19, 2013.

The production of medical marihuana (MM) in accordance with the MMPR is a defined "farm use" on Agricultural Land Reserve (ALR) land. This is a clear government policy and a Minister's Bylaw Standard has been developed to provide guidance to local governments about how to regulate this activity on the ALR.

The *Controlled Drugs and Substances Act* (CDSA) previously made it illegal for medical users of MM to possess anything but dried marihuana, which required them to smoke it in order to ingest it. The Supreme Court of Canada (SCC) ruled the prohibition "limits liberty and security of the person in a manner that is arbitrary" and states that the old law does not agree with the "principles of fundamental justice".

Discussion: The SCC decision was about the prohibition on the possession by MM users of non-dried forms of MM, not about the manufacture of MM or "cannabis derivatives" (i.e. oils or other edibles). The decision was based on the old Marihuana Medical Access Regulation (MMAR), not on the new MMPR that was introduced in 2013/14. Specifically, the SCC ruled that the sections of the CDSA affecting MM users under the MMAR were "of no force and effect to the extent that they prohibit a person with a medical authorization from possessing cannabis derivatives for medical purposes."

The regulatory change to the *Agricultural Land Commission Act* (ALCA) to specifically define MM production as a "farm use" on ALR land is only relevant in relation to the MMPR, as it is defined as "the production of medical marihuana in accordance with the MMPR".

The MMAR does not allow for industrialized large-scale production of MM on ALR land or otherwise. It is based on personal use licenses that were assigned to growers, who would then operate in a gray zone of the law in selling to distributors/dispensaries. The MMAR does not allow for MM to be grown in production facilities such as those now allowed on ALR land as a defined farm use.

The only product a licensed producer may legally sell or provide to a purchaser under the MMPR is dried marihuana. Food processing of edible cannabis derivatives is not allowed under the MMPR.

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Contact: Tim Prisiak, Corporate Governance, Policy and Legislation, 250 356-1704

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Ministry of Agriculture
BRIEFING NOTE FOR MINISTER FOR INFORMATION

Ref: 181845 Date: April 17, 2015

Issue: Country of origin wine labelling requirements

Background: Wine labelling, as with all other agrifood labelling, is an area of shared federal and provincial responsibility.

Responsibility for food labelling at the federal level is shared between Health Canada and the Canadian Food Inspection Agency (CFIA). Health Canada is responsible for establishing policies, regulations and standards relating to the health, safety and nutrition quality of food sold in Canada. The CFIA is responsible for enforcing the policies and regulations that are developed by Health Canada. The CFIA also administers and enforces non-health and safety policies and regulations, such as those relate to labelling.

The wine industry has concerns about country of origin wine labelling requirements as described in a CFIA guidance document:

> **Wine - Country of Origin**
> A wine may claim to be wine of a country if:
>
> 1. the wine is made from at least 75 percent of the juice of grapes grown in that country and it is fermented, processed, blended and finished in that country, or
>
> 2. in the case of wines blended in that country, at least 75 percent of the finished wine is fermented and processed in that country from the juice of grapes grown in that country.
>
> The declaration should be stated as 'product of (naming the country)' or '(naming the country) wine'. For example:
>
> •'Product of France' or 'French Wine'
>
> The labels of products which do not meet the conditions mentioned above must describe the various origins on the label. For example:
>
> •'Made in Canada from (naming the country or countries) grapes (or juices)' or
> •'Blended in Canada from (naming the country or countries) wines'

CFIA guidelines also establish what *is* allowed on wine labels. In particular, a company "may choose to voluntarily make claims about origin of a food or any ingredient in the food provided it is truthful and not misleading". An example of this is a wine made from 100% California grapes that is cellared and aged in Canada claiming to be "Cellared in Canada".

The Province's role for wine labelling is shared by the Ministries of Agriculture (AGRI) and Justice and Attorney General (JAG).

AGRI's role is confined to the Wines of Marked Quality Regulation (WMQR), which affects every wine producer. There are several prescribed terms and lists of geographical indicators that wine producers are not allowed to place on their label unless they meet the requirements of the WMQR. These include terms such as "BC VQA", "BC Wine of Distinction", and the recently added sub-geographical indicator "Golden Mile Bench".

JAG also has a role in labelling through the Liquor Control and Licensing Branch (LCLB) and the Liquor Distribution Branch (LDB). LCLB and LDB work jointly to provide internal (not public) guidelines related to the broad category of "social responsibility" with regard to labelling of alcohol (including wine). For example, profanity or highly sexualized images are not allowed on BC wine labels.

Discussion: Some of the smaller members of the BC wine industry have raised concerns about the fact that larger producers are using the designation "Cellared in Canada" on wines that are not made from BC or even Canadian grapes. s.13
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It is not clear from discussions with industry whether the concern is that producers are not properly labelling the origins of wine as required by CFIA's guidelines, or whether they want CFIA's guidelines to be more restrictive. In either case, it is worth noting that the CFIA is currently engaged in a Food Labelling Modernization initiative. The mandate for this initiative is quite broad, as they want to "develop recommendations that will lead to a modern food labelling system that responds to current and future challenges". The CFIA has completed the first round of their engagement process, and a summary of that process is attached as Appendix A. No recommendations have been made in relation to this initiative, and they have committed to ongoing engagement on this issue.

With regards to provincial responsibilities, the Wine Appellation Task Group was recently formed specifically to consider potential amendments to the WMQR that will meet industry's needs.

Conclusion: Industry representatives concerned with the federal labelling requirements have the opportunity to engage with the CFIA's labelling modernization initiative. s.13
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Contact: Timothy Prisiak, Senior Policy Analyst, (250) 356-1704

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Canadian Food Inspection Agency

Food Labelling Modernization

Engagement Summary Report
On Key Issues

June 2014

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Purpose of the Report

The Government of Canada is modernizing food labelling. Health Canada is working to modernize nutrition labelling and other areas under its mandate. At the same time, the Canadian Food Inspection Agency (CFIA) is modernizing labelling in the areas it has responsibility for.

This report presents a summary of feedback from stakeholders who participated in the first engagement phase of the CFIA's Food Labelling Modernization initiative.

Specifically, this report aims to:

- show how food labelling modernization supports the Government of Canada's commitments,
- report back to stakeholders on what was heard during the engagement activities,
- show linkages with other modernization initiatives,[1] and
- provide proposed next steps for engagement on food labelling modernization.

Objective of Modernizing Food Labelling

The overall objective of the Food Labelling Modernization initiative is to develop recommendations that will lead to a modern food labelling system that responds to current and future challenges. This will be done by engaging stakeholders and linking with other modernization initiatives at the CFIA and Health Canada.

This directly supports the government's objectives to promote healthy and safe food choices to consumers, prevent food safety risks, and protect Canadians from unsafe food. Informative labels help Canadians make healthy and safe choices for the food they buy for their families.

Modernizing food labelling supports the Government of Canada's commitments, specifically:

- improved safety oversight with stronger food safety, nutrition and labelling rules and programs,
- informed choice for consumers, including improving the way that nutrition information is presented on labels and through modernized food standards,
- more effective inspection and a renewed commitment to service, and
- better international market opportunities for industry.

[1] Other initiatives include the CFIA's Regulatory Modernization, Inspection Modernization and Importer Licensing, and Health Canada's nutrition labelling consultations.

Engagement Objectives

The Government of Canada is committed to an open, transparent process in modernizing food labelling. Consultations play an important role in developing regulations and policies. They also support ongoing dialogue with consumers, industry, other involved stakeholders and all interested Canadians.

The objective of the food labelling engagement was to identify issues, through open and transparent discussions with a wide range of stakeholders, in four key areas. These are:

1. Roles, Responsibilities and Partnerships
2. Food Labelling Regulations
3. Policy and Program Development
4. Service Delivery

Through the food labelling engagement we:

- collected views from internal and external stakeholders, including consumers, industry and government, using an inclusive approach, in order to gain a balanced perspective;
- worked with other departments who have responsibility for food labelling, particularly Health Canada; and
- integrated with other CFIA and Health Canada modernization activities, where possible.

The intention is to use the information gathered from the various engagement activities to inform future engagement sessions with stakeholders.

Who was Engaged and How

Who: a broad, inclusive and diverse group of stakeholders

We captured the views of over 3700 stakeholders, from a broad cross-section of groups. These included

- consumers and consumer groups
- industry and industry associations
- CFIA employees
- provincial and territorial governments
- academia
- health care professionals
- other government departments
- international partners

How: extensive, integrated and multi-faceted types of engagement

The CFIA carried out extensive integrated engagement and outreach across Canada between the spring of 2013 and the winter of 2014, with internal and external stakeholders. Various means of engagement were used to reach as many stakeholders as possible. This included:

- pre-launch engagement activities with over 160 CFIA staff in March and April of 2013,
- CFIA Food Safety Regulatory Forum in June 2013 with over 200 participants,
- an online consultation that received 704 responses,
- integrated face-to-face sessions held in 5 cities across Canada, attended by 420 participants,

- webinar sessions with regional staff on the CFIA's transformation agenda, with more than 900 participants,
- online focused questionnaire on food labelling regulations with 21 associations, who consolidated input on behalf of their members, and
- other modernization engagement activities within the CFIA, and Health Canada's nutrition labelling consultations, with over 2400 participants (mined for relevant stakeholder feedback).

Summary of Top Issues

Overall, the opportunity to provide feedback was very well received by stakeholders who realize and understand the complexity of issues in food labelling. Stakeholders generally felt that the CFIA is on the right path and that they have identified the right outcomes for modernizing food labelling.

A summary of the top issues in each of the four key areas of labelling modernization is found below. The views expressed here are those raised by stakeholders during the engagement period.

These key issues will be reviewed and prioritized and will help to inform the development of strategic options for modernizing the food labelling system, for consideration by stakeholders in the next phase of engagement.

Key Area 1: Roles, Responsibilities and Partnerships

Stakeholders identified two key issues with regard to roles, responsibilities and partnerships in food labelling.

Key Issue 1: There is a general lack of understanding of the roles and responsibilities of all stakeholders as it relates to consumer protection and food labelling.

- **Consumers lack information to make informed purchasing decisions.**
- **Industry is not clear on how Health Canada and the CFIA work and how to access information in an efficient manner to make business decisions.**

In general, stakeholders indicated that there is a lack of clarity in the roles and responsibilities of consumers, industry and government. They also indicated that there is a need for a better understanding of food labelling to effectively fulfill their responsibilities.

Specifically, these same stakeholders found it difficult to understand the CFIA's consumer protection and food labelling roles, and how they fit into the CFIA's overall vision and priorities. Both internal and external stakeholders felt that currently there is not enough focus on the consumer protection and food labelling aspects of the mandate shared by Health Canada and the CFIA.

Stakeholders reported that the working relationship between the CFIA and Health Canada is unclear and that there appears to be a lack of alignment between the organizations and their labelling modernization initiatives.

Overall, stakeholders indicated that there is a general lack of understanding and clarity of the roles and responsibilities of consumers, industry and government as they relate to consumer protection and food labelling. Many stakeholders also identified a need for a better understanding of food labelling to properly fulfill their roles (this issue also links to points raised under service delivery).

"As a consumer, I expect to see clear and consistent labelling information. But do not know who is responsible, from the three tiers, exactly who that is."(Consumer)

Key Issue 2: Participants indicated that they want more involvement in labelling. The way roles and responsibilities are currently aligned often limits the involvement of stakeholders and there are not enough opportunities for partnering.

- **Industry, consumers and other stakeholders want to play an enhanced role in food labelling.**

Stakeholders indicated that the way roles and responsibilities are currently aligned often limits their involvement and that this can result in missed opportunities for partnerships. Industry and government require clear guidance and tools, and consumers need truthful information on food labels.

Consumers, industry and other stakeholders felt they are not adequately involved in developing policies and regulations that are related to consumer value labelling.

"As a consumer, I feel left out of the discussion. I feel my voice isn't heard when decisions are made. The public does not have a voice as much as industry does..." (Consumer)

"Multiple changes to business practices and systems at different times are costly, uncoordinated and confusing to consumers."

Respondent, Focused Questionnaire

In general, participants felt that partnerships between the CFIA and all stakeholders could be enhanced, including with consumers, industry associations and provincial governments. Or, in some cases, such partnerships need to be established.

"The Agency should form a small, core group of food sector stakeholders, including consumer and industry representatives, which could help shape the modernized food labelling policies and regulations, and guide their evolution." (Industry)

"... there are opportunities to increase ... impact by aligning efforts and sharing information and insights between ... levels of government. A more formalized process is in order..." (Provincial/Territorial Governments)

Key Area 2: Food Labelling Regulations

Two key issues with food labelling regulations were consistently raised by stakeholders.

Key Issue 3: Some regulations do not meet current market practices, or industry and consumer needs.

Stakeholders identified the following as top issues: regulations on the list of ingredients, common names (modified standardized common names), date markings (best before date) and the Nutrition Facts table.

"I want full disclosure of what is actually in the food product, in plain language, and not hidden." (General Public)

"*We need simpler messaging for consumers and the ability for consumer to compare similar products with ease. The information is comprehensive but not always useful to consumers." (General Public)*

"Clear, simple rules on labelling can reduce the risk of non-compliance and degree of uncertainty in making decisions during label reviews"

Respondent, Focused Questionnaire

Industry and government identified several standards that are outdated or too prescriptive, such as the standard for beer, bread, vegetable oils, flavours, and spices. These pose barriers to trade, stifle innovation, limit consumer offerings and impact the cost of foods.

"All standards should allow for new product innovation and future advances in food technologies."

Participant at face-to-face session

"Many standardized products are outdated and do not reflect the use of the items in today's manufacturing process, not to mention for items being imported from around the world." (Industry)

As well, it was indicated that many federal regulations are not in alignment with municipal and provincial requirements, or with the requirements of major trading partners. This hinders innovation and makes trade challenging.

It was also felt that there is limited control and monitoring of imported products. Many domestic producers felt that their products are being held to a higher standard than imported products, and that there is not a level playing field in the marketplace.

Key Issue 4: Labelling regulations are complex, not presented in plain language, and are spread through many different acts.

Food labelling requirements are spread through numerous acts and this has created issues with duplication, inconsistencies and overlap, all of which can result in a higher incidence of non-compliance.

Industry and CFIA staff also mentioned that the language used for labelling requirements is often complex and not in plain language, resulting in inconsistent interpretation and negative service delivery.

Industry also indicated that there should be more use of the incorporation by reference tool when modernizing regulations.

"Consideration should be given to incorporating by reference food standards, when regulation is necessary." (Industry Association)

Key Area 3: Policy and Program Development

There were three key issues that consistently emerged regarding policy and program development.

Key Issue 5: Interpretation and enforcement of the laws that prohibit "false and misleading" labelling and advertising can be difficult.

- **It is challenging for industry to develop claims, for consumers to understand these claims, and for the CFIA to enforce the rules with consistency and predictability.**

Stakeholders indicated that it can be difficult to interpret the *Food and Drugs Act* section 5(1) and the *Consumer Packaging and Labelling Act* section 7(1), which prohibit false and misleading representation on labels. This creates complications in enforcement and compliance, largely due to a lack of supporting regulations, tools and processes that clearly define what would constitute false and misleading representation.

The result is an increase in consumer and trade (company-to-company) complaints, impacting areas around roles and responsibilities and service delivery. Guidelines on highlighted ingredients and flavours, local, and method of production were examples identified by stakeholders.

> *"Vague, unclear claims do not inform the consumer about the food and can mislead consumers into purchasing the food. Claims should be clearly defined or not used at all." (General Public)*

> *"The 'natural' claim is over-used and misunderstood. It misleads consumers into thinking the food is a healthy choice."(Health Professionals)*

Industry generally supported a move towards outcome-based food regulations because it promotes flexibility and allows the ability to innovate.

However, industry emphasized the costs and risks associated with operating in an unclear regulatory framework, and they stressed the importance of strengthening guidance in support of outcome-based regulations.

From a CFIA perspective, it was indicated that the lack of more specific regulations creates significant challenges in providing clear and consistent interpretation and guidance to industry, and in training inspection staff.

> *"... the industry is struggling with increased public and media scrutiny if anything on a label is viewed as being false, misleading or deceptive. The Agency needs to provide guidance on these issues in an effort to promote compliance and apply consistent and equitable enforcement responses." (Industry)*

"Outcome-based regulations require significant guidance and policy documents to support field staff, and industry, to confidently complete activities and assess compliance."
-Participant at face-to-face session

Key Issue 6: Stakeholders indicated that the model for developing policies to address consumer values labelling issues is not sufficiently based on risk; does not leverage partnerships and involvement of stakeholders, particularly industry and consumers; is not proactive; and does not allow for varying government oversight depending on the level of risk.

All stakeholders (consumers, industry, and government) want to be more meaningfully involved in the policy development process, so that policies meet the needs of consumers, industry, and government.

- Stakeholders felt that the CFIA's policy development process is not sufficiently proactive, timely, consultative or transparent.
- They also felt that there is not enough communication and collaboration throughout the entire process and that they are not consulted enough.

"Interpretation of regulations should be open to industry and the public."

Participant at face-to-face session

"The market place, production methods, and scientific insights are evolving quickly and we need labelling policy to keep pace." (Industry)

"CFIA needs to increase stakeholder engagement." (Health Professionals)

Stakeholders indicated that although the CFIA's first priority should be health and safety risks, the CFIA's mandate is to also protect consumers from misrepresentation and fraud.

"The CFIA must not only protect consumers against issues of food safety, but also against false, deceptive or misleading labelling." (Industry)

Stakeholders added that the role of consumers and industry is not well defined, and models such as third-party or private certification schemes were important. This relates to the key issues in Roles and Responsibilities.

"There is a need for third party certification of voluntary claims such as animal welfare related claims." (General Public)

Key Issue 7: Policies do not always provide the guidance and information needed to achieve their objective.

Interpretations of the regulations, often found in guidance documents, can be challenging for industry to implement and for the CFIA to consistently enforce.

In addition, consumers believed that they do not have enough knowledge and understanding of guidelines and policies (for example, "local," "natural," "Product of Canada" and highlighted ingredients).

- The lack of clarity in guidelines and policies is impacting stakeholders' ability to properly fulfil their roles, which relates to issues identified in Roles and Responsibilities.
- There are inconsistencies in interpretation which can result in misrepresentation and misleading consumers.
- In addition, guidelines are too long and complicated, not sufficiently clear and standardized and are open to interpretation. This results in a lack of predictability for enforcement and difficulties for consumers in making informed purchasing decisions.

"The information is often complex and open to interpretation. For that reason, it may not be consistently applied within an organization or among many organizations." (Industry)

"When developing policy, make sure guidance is based on practical criteria that can be easily used." (General Public)

Key Area 4: Service Delivery

There were four key issues that consistently emerged with regard to service delivery.

Key Issue 8: Stakeholders indicated that enforcement is inconsistent, lacks transparency and is at times ineffective.

Stakeholders, particularly industry, commented that enforcement strategies are not applied in an effective, consistent, and transparent manner. Enforcement plans (including inspection priorities) often do not address gaps or make opportunities for uniformity easier. There is limited control and monitoring of imported products.

Stakeholders also identified the following issues:

- lack of clarity, duplication and overlap in regulations,
- difficulty in interpreting and enforcing the laws that prohibit "false and misleading representation",
- policies that are not sufficiently clear and do not provide enough guidance and information for implementation and enforcement, and
- a complaints resolution process that is not clear, timely or transparent enough.

"The CFIA should hold industry more accountable – after a complaint, provide updates. Communicate process and resolution in a transparent manner..." (Health Professionals)

"Policies like Highlighted Ingredients...need to be widely accessible if industry is to consistently comply with them and consumers are to understand them." (Industry)

"There should be an easy method for consumers to file complaints against food products that they perceive to be improperly labelled or misleading and the CFIA should be required to report back to consumers in a transparent matter."

Respondent, Focused Questionnaire

Key Issue 9: The inquiries process could be more efficient and timely.

Stakeholders said they did not know who to contact for information. In addition, responses to their questions are not consistent or timely, and do not always get answers to their questions.

They also noted a need for increased involvement in decision making. This point relates to issues raised under Roles and Responsibilities.

"Currently, channels through which industry can contact the CFIA for guidance and discussion on regulatory interpretation are not always clear and response times are very slow and do not reflect the pace of industry timelines." (Industry)

Key issue 10: Consumers, industry, government, and other stakeholders indicated that labelling information on the website is in too many different places; it needs to be updated and organized better.

- **Existing information technology and management tools are inadequate.**
- **Information, guidance and tools for food labelling could be enhanced. The labelling information on the website is in too many different places; it needs to be updated and better organized.**

Stakeholders said that the existing information management/information technology (IM/IT) tools, including those used to capture inspection data and other data, are inadequate for successfully delivering the food labelling program. As well, there are multiple, outdated systems that do not speak to one another and do not allow for planning, reporting and performance measurement.

Industry, consumers and government also felt there is not enough guidance, education and support to promote compliance. The CFIA website is not user-friendly or easily searchable; food labelling information is not logically organized and gaps exist in information.

> *"CFIA online resources are written in legal jargon making them complex and not easily usable.... Food label information is not in one place on the web. It would be helpful for consumers if there was coordination between CFIA and Health Canada." (Health Professionals)*

> *"The actual layout/presentation of information online is often not intuitive, and difficult to navigate. Finding pertinent regulatory information is time consuming." (Industry)*

Key issue 11: Stakeholders reported that there is not enough training for inspectors. As well, there are limited education and awareness programs for consumers and industry.

All stakeholders raised lack of training and awareness as an issue.

Consumers need more information and awareness on how to use labelling information and industry and government need more comprehensive training on food labelling. This links to Roles and Responsibilities.

> *"It is important that government provide sufficient information and education to keep industry and consumers informed of the regulations and policies." (Industry Association)*

Linkages with Other Modernization Activities

The Food Labelling Modernization initiative is part of the CFIA's Safe Food for Canadians Action Plan, contributes to the Healthy and Safe Food for Canadians framework, and links to other modernization and change agenda activities in the CFIA and Health Canada. These include:

- Regulatory Modernization,
- Inspection Modernization,
- Food Safety Modernization,
- Compliance Promotion,
- Importer Licensing, and
- Health Canada's commitment to consult with Canadians on nutrition labelling.

Successes in these initiatives will help to modernize food labelling. We will continue to take an integrated approach to engage stakeholders and develop options for recommendations.

Next Steps

While we may not be able to address all the issues raised, the issues we gathered will help contribute to the development of options for modernizing food labelling. We will consult you on these in our next phase of engagement. During this phase the CFIA will do the following:

- Continue discussion with a broad range of stakeholders to present and engage on options and possibilities to modernize the food labelling system in the four key areas through:
    - an online questionnaire, and
    - listening sessions.
- Work closely with Health Canada, who will take the lead on nutrition and health policy, and integrate engagement where possible.
- Lead in the other areas of labelling, which fall within our mandate.
- Work closely with other CFIA modernization activities.