



## Confused? Concerned?

*The Food Law Guy has answers*

DEAR FOOD LAW GUY:

What is the relevance to the food industry of the proposed *Federal Accountability Act*?

*Gary from Vancouver*

DEAR GARY:

It is very relevant. Every CEO needs to be briefed on its implications. Significant additional resources are being provided to enhance enforcement so a plan to ensure compliance should be a priority for every food company.

The *Federal Accountability Act* (FAA) bans all donations from corporations, unions and organizations, and lowers to \$1,000 the maximum donation from individuals to registered parties, candidates and leadership contestants. It provides for a new ethics commissioner, a commissioner of lobbying, a new procurement auditor and several other changes designed to enhance accountability and oversight of government spending.

For a highly regulated sector like the food industry, the most significant provisions relate to proposed changes to the *Lobbyists Registration Act*. The scope of lobbying that required registration had already been extended to all individuals who are paid to communicate with public office holders about government decisions, subject to some important exceptions. Thankfully, you still don't need to register if you are just communicating "with respect to the enforcement, interpretation or application of any Act or regulation" or if you are just requesting information.

The most onerous new provision requires all lobbyists (including in-house corporate government relations/regulatory personnel who would otherwise have to register), to record and report monthly all registrable activities with senior public office holders, including with whom they met, when and on what specific subject. Since "senior public office holders" are ministers and their staff, as well as all public servants at the level of assistant deputy minister and higher, this imposes major new obligations on everyone who regularly deals with government. Recognizing the administrative burden that this requirement represents, the government has indicated that through regulations it will limit these registrable activities to pre-arranged forms of communication, specifically in-person meetings and telephone calls. Note that e-mails appear to be exempted.

There is a real worry that these provisions further stigmatize lobbying, and may chill government-industry co-opera-

tion. This concern is most acute in the case of regulatory policy making. If the government is going to regulate, it has a duty to do it well – regulatory decision-making should be transparent, timely and responsive to changing circumstances. There is already a general consensus among the regulators and the regulated that our sclerotic food regulatory system does not meet that test, and that our system is just not nimble enough to respond to the pace of change in the industry.

Highly regulated industries must be in daily communication with regulators trying to obtain interpretation guidelines, fairness in enforcement and timely decisions. Hopefully, the government's laudable search for greater accountability will not trigger the law of unintended consequences and undermine the public sector responsiveness that is so necessary if our regulatory system is to enhance innovation and competitiveness.

DEAR FOOD LAW GUY:

Highlighted ingredients and flavours have been a controversial issue for years. Whatever happened to the CFIA's commitment to introduce a comprehensive new policy?

*Patricia in Halifax*

DEAR PATRICIA:

In a draft document dated Feb. 17, 2006, with "For Information" stamped on every page, the CFIA set out very detailed guidance to provide "meaningful information for consumers and a level playing field for industry." The document is remarkable in its detail for some commodities, providing broad policy statements and several pages of examples of what would be considered acceptable and unacceptable. Not surprisingly, it lacks detail in the controversial matter of dairy terms.

Apparently this draft document is already being used in the field to guide enforcement decisions. While the food industry needs, must tolerate and has gotten used to a great deal of this kind of soft law, the status of the document must be clarified so that companies can make long-term decisions, confident in the knowledge that they will have reasonable time to comply and that the "law" won't change after they have reformulated or created whole new packaging.

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