



Friday, April 21, 2017

Subject: Canadian Produce Marketing Association comments on the proposed Safe Food for Canadians Regulations published in Canada Gazette, Part I, Vol. 151 No. 3, 21 January 2017, Handbook and Guidance documents on Traceability, FEID Trade and Preventative Control Plans

Comment due date: April 21, 2017

Comment Submitted to: Mr. Richard Arsenault, Executive Director, Domestic Food Safety Systems & Meat Hygiene Directorate, Canadian Food Inspection Agency via email to CFIA-Modernisation-ACIA@inspection.gc.ca

Attachments included:

Test markets found in Compendium or New Regs_July 2015, OPMA Comments 2017-01-31
Comparison of FF&VR and Compendium and New Regs_July2015 OPMA Comments 2017-01-31

The Canadian Produce Marketing Association (CPMA) and its members strongly support the regulatory modernization efforts as part of the Safe Food for Canadians Act and is pleased to provide comments to the Canadian Food Inspection Agency (CFIA) on the proposed Safe Food for Canadians Regulations.

Based in Ottawa, Ontario, the Canadian Produce Marketing Association (CPMA) is a not-for-profit organization representing companies that are active in the marketing of fresh fruits and vegetables in Canada from the farm gate to the dinner plate. CPMA members cover all segments of the fresh produce industry, including major growers, shippers, packers and marketers; importers and exporters; transportation and logistics; brokers; distributors and wholesalers; retailers; fresh cuts and foodservice distributors; operators and processors. CPMA is proud to represent over 830 domestic and international members who are responsible for 90% of the fresh fruit and vegetable sales in Canada.

CPMA consulted with our membership, industry and government representatives to ensure robust and comprehensive comments are provided.

General comments: CPMA supports the outcome-based approach that regulations should not be prescriptive but rather the outcomes are regulated. An outcome-based approach allows regulated parties flexibility to achieve the outcomes described in the regulations. This flexibility allows organizations the freedom to adjust processes, based on sound technological and scientific advances, while still achieving the outcomes set out in regulation.

Industry strongly suggests that the Canadian Food Inspection Agency (CFIA) work with their provincial and territorial counterparts to encourage their adoption of the final regulations and

policies. Doing so will ensure a national approach to food safety and minimize the potential of unnecessary regulatory and financial burden to the Canadian economy.

For consistency of outcomes, regulations should align with trading partners and international standards. There should be recognition of national and international standards and establishment of equivalencies wherever possible.

Mechanisms should be put in place to ensure consistency of inspection and enforcement across all jurisdictions, including consistency of training, interpretation, investigation, etc. As part of this structure, there needs to be a recourse where companies can bring concerns to the attention of the CFIA for investigation and remediation.

Foreign Food Safety Recognition: CPMA is pleased that Canada and the U.S. Food and Drug Administration (USFDA) have undertaken a “reciprocal foreign food safety systems recognition.” It is imperative that CFIA begin to negotiate equivalencies or recognitions of food safety systems with our other significant trading partners. Ideally agreements could be reached prior to the coming into force of the Safe Food for Canadians legislation. In its submission to the CFIA consultation on Foreign Food Safety Systems Recognition: Proposed Framework DRAFT Consultation Document (FFSSR) in August 2014 CPMA expressed agreement with the following statement in the document: “The recognition of an exporting country’s food safety system as comparable can offer benefits to Canada as an importing country. It signals Canada’s confidence in that country’s food safety control system and enables the CFIA to take into consideration the oversight of the exporting country’s competent authority and prioritize inspection activities at import, hence, facilitating allocation of inspection resources based on risk.

Systems recognition can also advance cooperation and confidence building between regulatory counterparts, including sharing of best practices and leveraging resources (e.g., joint audits, reliance on each other’s audits) to inform food safety risk management activities and enhance the safety of food in trade.”

CPMA’s concern, however, is with the limitation that the language of the CFIA in these proposed regulation imposes. Specifically, only allowing importers who do not have a fixed place of business in Canada to obtain a CFIA importer licence if they operate from the country with which CFIA has established a FFSSR arrangement and are importing food directly from that country into Canada. The application of this proposed regulation could restrict the importation of products that do not originate from a country with an FFSSR where the importer resides. Under our current market environment, product can be shipped by a non-resident importer (NRI) directly to Canada from any jurisdiction as long as it fulfills all current regulatory requirements. While not providing any perceived additional public health benefit, the potential unintended consequences of implementing the proposed NRI model are as follows:

- restricting the importation and thus availability of some fresh produce items which are imported from a myriad of countries due to seasonal availability;
- added costs to many of the commodities that Canadians are accustomed to including in their diet year round;
- non-tariff trade barriers (and possible retaliatory actions);
- potential economic damage due to loss of Canadian employment to other jurisdictions.

Re: Non-Resident Importers: CPMA supports and appreciates that CFIA is proposing to allow importers from countries which are recognized as having a food safety systems comparable to that of Canada to be licensed as one option allowing importers from foreign countries to hold a CFIA licence to import food into Canada. We are recommending CFIA also allow importers in foreign countries, who are able to demonstrate food safety compliance equivalent to CFIA requirements and have been approved by CFIA, to be licensed to import food.

This is consistent with the CFIA commitment to Custom Self-Assessment (CSA) for food in 2015, and also consistent with the proposed Voluntary Qualified Importer Program (VQIP) under FSMA. Under CSA, foreign importers are approved to import to Canada by CBSA following demonstration of supply chain security and financial security. Also, such importers could offer to provide third party inspection, such as an audit, regulatory oversight or even a combination of both. This would provide CFIA with the opportunity to verify that a supplier meets the Canadian food safety requirements.

Under this proposal, product grown in a foreign jurisdiction recognized by Canada as having a comparable Foreign Food Safety System (FFSS) and included in the scope of the agreement, would not be included in the products available for direct shipment to Canada by an importer who resided in another jurisdiction with an FFSSR. In addition, product from a supplier who meets or even exceeds Canadian food safety requirements would be restricted entry into Canada unless the importer lived in the same jurisdiction and the country had a FFSSR with Canada.

Incorporation by Reference (IBR): A revised IBR proposal must be consulted in tandem with the proposed regulations in order to ensure that adequate checks and balances and considerations of business impacts are in place. Documents incorporated into the regulations by reference form a critical part of the larger regulatory framework that cannot be consulted on in isolation.

The industry fully supports the provision to incorporate by reference. Grade standards for fresh fruits and vegetables are constantly changing to adapt to changing consumer attitudes and expectations and are perfect examples for incorporating them by reference in the Canadian Grade Compendium so that they may be changed in a timely fashion. We would also support these grade standards being put into their own “grades document” similar to the manner in which beef grades have been prepared by the Canadian Beef Grading Agency.

Further recommendations with regards to the quality grade standards for fresh fruits and vegetables in Canada, these traditionally have been managed and maintained by the Canadian Food Inspection Agency (CFIA). CPMA collaborated with the Canadian Horticultural Council (CHC) and the Fresh Fruit and Vegetable Dispute Resolution Corporation (DRC) in an initiative to review and update the outdated quality grade standards for fresh fruit and vegetables. In addition to proposed grade amendments, the initiative identified the critical need for an alternate means to manage the standards in a timely and efficient manner especially since quality grade standards establish one of the critical baseline elements used by the DRC for credible dispute mediation and resolution. The concept of housing and maintaining the grade standards outside of the CFIA was supported by industry and has since been discussed with both the CFIA and Agriculture and Agri-Food Canada (AAFC). The CFIA has acknowledged the need to ensure that the quality grade standards contained in the *Fresh Fruit and Vegetable Regulations* continue to meet the needs of industry and that it would support, in conjunction with all stakeholders,

exploring the merits of retaining and maintaining the grade standards in a manner that would facilitate timely amendments. CPMA believes that the quality grade standards for fresh fruit and vegetables are ideally suited to be retained and managed outside of the CFIA through incorporation by reference and suggests that the Fresh Fruit and Vegetable Dispute Resolution Corporation (DRC) would be the ideal organization to house and maintain the quality grade standards for fresh fruit and vegetables in Canada

In the future, the industry would also like to explore with the Agency other requirements contained in these regulations that may be incorporated by reference. Examples include:

- standard containers now prescribed in Table 2 of Schedule 2 and volume capacities of fresh vegetables now prescribed in Tables 7 and 8 of Schedule 2,
- any inspection legends established for fresh fruits and vegetable similar to those prescribed in Part 9, or
- the largest container that may be prescribed for a fresh fruit or vegetable packaging (Section 194)

Private Certification: GFSI and/or comparable recognized programs based on HACCP principles and international standards such as CODEX for food safety must be explicitly referenced and clearly indicated as acceptable. How they will be taken into account with regards to enforcement and oversight activities, such as frequency of inspection, must be made public so as to promote their adoption and provide a level of assurance to industry. It will also provide a reduction in redundant or duplicate audits and costs which pose an unfair burden on producers and marketers (unnecessary audit cost and audit fatigue) and frustration of not being recognized for systems previously put in place.

Licensing: CPMA feels all businesses along the food supply chain which are involved in interprovincial food trade, in importing or exporting food, should be licensed and come under the Safe Food for Canadians Act and regulations. Regardless of size, there should be no exemptions to the requirements for record keeping including a written preventive control plan.

CPMA supports the flexibility built in to the licensing proposal. It is essential that regulated parties have the option of applying for licences by establishment or by activity (for example, import, prepare, etc.) or a single licence which would cover all of their operations in multiple establishments and/or multiple activities. We encourage CFIA to provide guidance to potential licensed parties on what factors they should consider in making decisions on the best ways to secure a licence.

CPMA is also supportive of optional licensing of non-regulated parties including not just manufacturers, but also distributors, agents, transporters etc., and those who may only be involved in domestic production within a province. CPMA supports CFIA oversight (as opposed to the Provincial body) in these instances.

Technical comments

Part 1 Interpretation

Definitions:

In general, for all definitions that are included in other acts, a reference should be given in list of definitions as has been done with “food”. In addition – Interpretative guidance should include these definitions for clarity.

“case” means a package that is intended to contain 30 dozen eggs.

- Since this is the only use of the word “case” in the proposed regulation it is important that the term “case” not be used in any other context in guidance documents

“catch-weight food” means food that, because of its nature, cannot normally be portioned to predetermined fixed quantities and is, as a result, usually sold in containers of different quantities.

- This definition should be allowed for fresh fruits and vegetables such as grapes, cherries, and other product when sold in open clear plastic bags, and that may have other labelling applied to it. This is important so as to exempt such products from net contents declaration. This type of product is weighed at the checkout counter by the cashier and the consumer is then made aware of the quantity of the product purchased. (While on the shelf the net contents cannot be confirmed until weighed, as it is a package that can be easily altered by consumer or store employees) Interpretative guidance should include the provisions to allow this definition to apply to other relevant fresh fruits and vegetables.

“container” means an outer receptacle or covering used or to be used in connection with a food and includes a wrapper or confining band, but does not include a conveyance or any container that is an integral part of a conveyance.

- A clear understanding of what is a “conveyance” is needed in order to clarify what constitutes a “container”.

“conveyance” means a vessel, aircraft, train, motor vehicle, trailer or other means of transportation, including a cargo container.

Safe Food for Canadians Handbook:

What is a conveyance?

35. A conveyance is something that is used as a means of transportation.

This includes fishing vessels, aircraft, trains, motor vehicles (such as cars and trucks), trailers, cargo containers, and forklifts.

36. The term conveyance is used in three ways:

- A conveyance in which a food is manufactured, prepared, stored, packaged, or labelled. In this scenario, the conveyance is the establishment.
 - For example: a fishing vessel that processes, freezes, and packages scallops.
- A conveyance that is used within an establishment. In this scenario, the term “conveyance” is used with the term “equipment.”
 - For example: a forklift used in an establishment.
- A conveyance that is used for transporting purposes outside of the establishment.
 - For example: an aircraft that carries food from point A to point B.

The term conveyance is used in many places in the regulation. It is essential that a definition be provided or cross referenced and that interpretive guidance documents should include any necessary clarification of its meaning.

“close proximity” means, with respect to an item of information that is shown on a label, immediately adjacent to the item of information without any intervening printed, written or graphic matter.

Interpretative Guidance must be provided on what is meant by “immediately adjacent” and on what would be “intervening”. (Examples: if items were one above the other on different lines – would information further along on the first line constitute intervening? Immediately adjacent should allow for spacing beside, above or below . “establishment” and “facility”

- These are terms used in the proposed regulation and need to be defined. In the Act - “establishment” means any place, including a conveyance, where a food commodity is manufactured, prepared, stored, packaged or labelled.

Interpretative guidance documents will be required for “establishment” as well as “facility”. Facility requires a definition which is specifically referenced in regulation and/or guidance documents.

“equipment”

- A clear definition must be included in interpretive guidance – what does it include: bulk bins, containers used for harvest (or are these considered “harvested product packaging materials”, etc.?) This will be important for inspector interpretation e.g. Requirements in the PCP.

“fresh fruit or vegetable” means a fresh plant or fresh edible fungus, or part of such a plant or fungus, that is a food. It does not include a food referred to in subparagraph 9(2)(c)(i). (fruit ou légume frais)

- During meetings with CFIA staff there was some indication that the definition for fresh fruits & vegetables may also include fresh nuts, fresh seeds, potted plants such as herbs, sold in the produce department as food, or salads with dips are to be included in the definition. If this is the case, it will be essential that interpretive guidance provides a list of commodities or categories that are included in the definition. This also links to the interpretation of “processed food” below and the following comments
- Do fresh salad products which contain a dressing or dip fall under this definition
- In the context of growing and harvesting fresh fruits and vegetables, a definition for “processing” is needed in the interpretive guidance to clarify the scope of the regulations.
- Which activities are considered “processing”? Do these include washing, drying/curing, trimming (e.g., topping carrots and beets, trimming celery, asparagus, outer leaves of cabbage, etc.)? Or are typical harvesting activities such as those excluded from the definition of “processing”? We strongly recommend that these are not included as “processing” activities.
- “Minimal processing” must also be defined in the Interpretive Guidance.
- Minimal processing activities [e.g., peeling, slicing, shredding, coring, grinding, shelling, , chopping, combining/mixing ingredients, juicing, modified atmosphere packing, ready-to-eat preparation, or other transformation of whole fruits and vegetables]

The following are NOT considered minimal processing activities:

- Removing outer leaves (e.g., of cabbage, broccoli, cauliflower, lettuce, etc.) after harvesting
- Trimming off leaves, ends, tops or other parts of the product generally considered inedible or unsaleable (e.g., trimming ends from asparagus, removing outer stalks of celery, removing rhubarb leaves, trimming ends from rutabagas, etc.)
- Removing tops from vegetables such as carrots, beets, turnips, etc.
- Air drying or curing products such as onions, squash, etc.
- Waxing, ripening and applying agricultural chemicals.
- Washing is identified as “washing” or “cleaning”. As such, it is not described as processing.

**It is imperative that classification of what constitutes a fresh-cut fresh fruit or vegetable does not impact trade (e.g. broadening definition does not trigger changes to the Harmonized System tariffs which would potentially dramatically impact trade). Fresh-cut (Minimally processed products) must not be classified as processed product for purposes of HS tariff codes.

- It is important that if CFIA definitions are changed for food safety purposes, that any potential impacts from how the definition of processed may be applied for non-food safety reasons be mitigated. Currently, fruits and vegetables imported for processing are subject to tariffs whereas those not for processing are not; product imported whole to be used to prepare fresh-cut do not have tariffs applied. Changing the definition of processed should be closely monitored and discussed with CBSA and possibly the Department of Finance to ensure that

the application of tariffs is not affected or will not inadvertently be subject to new interpretation in the future.

- We recommend that interpretive guidance includes well defined allowable activities, so that raw agricultural commodities are not confused with processed foods.
- When a different definition is used in another section of the regulations it must be redefined and made clear what commodities are included exclusively for that part.
- The new definition does include the exemptions listed in section 9 – however we do need to clarify if salads with additional products included fall under the definition (E.g. A fresh salad is packed with a dip, dressing or other inclusion.)

“licence” means a licence that is issued under paragraph 20(1)(a) or (b) of the Act. (licence)

- Guidance is needed on the following:
 - What exactly is considered repacking (or “handling”)?
 - Is consolidating already packed product (moving smaller packages into bigger containers) considered repacking?
 - Is transferring bulk product from one bulk container to another considered handling?
 - Are such activities licensable?
 - For operations that typically serve as wholesalers or distributors who are occasionally required to repack/handle product (e.g., in the event of a recall), will they require a license?

Specific to the context of Fresh Fruits and Vegetables –the following needs to be clarified in the interpretive guidance :

- Which operations must be licensed (importer, exporter, farm, broker etc.)?
- Which must have a written PCP?
- Which must follow the regulations, but do not need to be licensed and/or have a written PCP?
- Which are exempt (proposed)?
- The above information should be provided in an easy-to-read format such as a chart/matrix/decision tree
- Additionally in s. 5.2 this is implicated – Do the following need a license? A PCP? (Written?):
 - Importers of foods for further processing (or only those in s. 12)
 - Importers of bulk
 - Exporters
 - Wholesalers who label
- This is also included in s. 6 – who needs a license? What are the prescribed activities that will require a license?

Note: related to licensing and PCP, CPMA does not support exemptions from licensing or written PCP’s for any operation regardless of size. CPMA believes that all businesses along the food supply chain that are participants in interprovincial food trade, in importing food or in exporting food should be licensed and no exemptions for record keeping should apply.

“operator” is defined in s. 42.

- There are other definitions that are used only in one Part of the proposed regulations and therefore are only included in that Part. However “operator” is used in more than one part and must be “defined” in the “Interpretation” section under definitions and clarified or redefined in each part, if different.
- Guidance is needed to clarify what exactly “packaging” means for fresh produce in the field.
- For instance, would harvesting potatoes in bulk in the back of a truck constitute “packaging”, since they’re being put into a bulk container?

“Packaging” requires a definition in the context of field packed produce.

Guidance is needed to clarify what exactly “packaging” means for fresh produce in the field.

Does it mean putting product into bins, totes, etc. (are those harvesting containers considered “packages”?)

Would harvesting potatoes in bulk in the back of a truck constitute “packaging”? (since they’re being put into a bulk container) Or is the back of a bulk truck considered a “conveyance”? If so, we have concerns about how FFV operations will meet requirements for “Conveyances”.

“person” is not defined in this proposed regulation and must be for clarity and ensuring compliance.

As per the Safe Food for Canadians Handbook:

What is a person?

37. In the Safe Food for Canadians Act, person has the same meaning as in the Criminal Code. In the Criminal Code, a person can be an individual or an organization – including an association, company and corporation.

What is the difference between a person and an individual?

38. When the term “individual” is used, the scope of the definition is limited to one individual as opposed to an organization. The term “person” is broader and its meaning can range from one individual to one organization.

CFIA must ensure “person”, as explained above, is the correct term to be used throughout the regulation based on the relevant context.

“prepackaged” requires a more concise definition.

Safe Food for Canadians handbook:

What do the terms “consumer prepackaged,” “prepackaged other than consumer prepackaged” and “prepackaged foods” mean?

39. “Consumer prepackaged” foods are in their final packaging, and ready for sale to an individual to be used for non-commercial purposes.

40. The term “prepackaged other than consumer prepackaged” food includes food packaged in bulk containers and usually sold to a person rather than an individual (see above clarification on the term “person” in item 37, noting that it can mean a company).

41. A “prepackaged food” can include both of those: consumer prepackaged foods or prepackaged other than consumer prepackaged foods.

“prepare”, in respect of a food commodity, includes to process, treat, preserve, handle, test, grade, code or slaughter it or to do any other activity in respect of it that is prescribed. [Act]

Safe Food for Canadians handbook states:

42. Prepare" includes these activities: processing, treating, preserving, handling, testing, grading, coding or slaughtering, or any other prescribed activity.

43. In the proposed SFCR, producing, including growing and harvesting of fresh fruits or vegetables, would be another prescribed activity under the definition of "prepare."

It should be clear in the regulation as the handbook states: 25. When a definition is not in the SFCA or SFCR, the plain and ordinary meaning of the term, which could include the definition found in the dictionary or the commonly understood meaning of the word, would be applied.

“principal display panel” means:

(e) in the case of a food that is not a prepackaged food, the part of the label that is applied or attached to all or part of the surface of the food that is displayed or visible under customary conditions of sale or use.

➤ It must be made clear in the Interpretive Guidance what is considered a non-prepackaged food? E.g. Bulk or /loose produce.

It must also be made clear what products will require a label directly on the surface of the food; what products or categories of products are included.

➤ Is a PLU considered a label? If not, an explanation must be included.

➤ CPMA supports the exclusion of PLU’s as labels (with an explanation in interpretive guidance as to what is acceptable information on a PLU label to maintain the exemption from being considered a label, and what included information would trigger the interpretation by CFIA that it is now considered a label. (E.g. If a PLU label has a claim such as an organic claim , it may have other labelling requirements and if so should be made clear in the interpretative guidance what the requirements are.)

It is also important that current Labelling Regulatory Modernization and Nutrition Labelling Modernization efforts align with this work to ensure all regulations are harmonized.

“principal display surface” means, in respect of the container of a consumer prepackaged food.

- This definition must be clarified to include other prepackaged food containers such as shipping and master containers for fresh fruits and vegetables (and possibly other commodities) as the term is used in *The Compendium of Grades: Volume 2 - Fresh Fruit or Vegetable Grades and Requirements* many times regarding placement and letter height size for required information.
- In the Compendium there is specification for Minimum type height based on ‘principal display surface’ for packaging other than consumer prepackaged but there is no definition. It should be made clear in the compendium

“Processing” requires a definition. The definition should make clear whether “Minimal processing” of FFV is included, and which specific activities are considered “minimal processing” of FFV

- In the context of growing and harvesting fresh fruits and vegetables, a definition for “processing” is needed to clarify the scope of the regulations.
- Which activities are considered “processing”, do these include washing, drying/curing, trimming (e.g., topping carrots and beets, trimming celery, asparagus, outer leaves of cabbage, etc.)? Or are typical harvesting activities such as those excluded from the definition of “processing”?
- Minimal processing activities [e.g., peeling, slicing, shredding, coring, grinding, shelling, husking, chopping, combining/mixing ingredients, juicing, modified atmosphere packing, ready-to-eat preparation, or other transformation of whole fruits and vegetables]

The following are NOT considered minimal processing activities:

- Removing outer leaves (e.g., of cabbage, broccoli, cauliflower, lettuce, etc.) after harvesting
- Trimming off leaves, ends, tops or other parts of the product generally considered inedible or unsaleable (e.g., trimming ends from asparagus, removing outer stalks of celery, removing rhubarb leaves, trimming ends from rutabagas, etc.)
- Removing tops from vegetables such as carrots, beets, turnips, etc.
- Air drying or curing products such as onions, squash, etc.
- Washing is identified as “washing or cleaning”. As such, it is not described

“Ready-to-eat”

What is the meaning of RTE in the context of these regulations for fresh fruits and vegetables? A significant majority of the products managed by our members could be considered RTE.

“retail”

The term retail needs to be defined either in the regulation or in a guidance document. “Retail” is interpreted in many ways based on a person’s frame of reference. Some examples of how retail is interpreted include:

- A single grocery store
- A grocery supply chain (distribution, stores, storage, logistics)
- A food service establishment
- A food service supply chain (wholesale, distributors, restaurants, logistics)
- Farmers markets

Part 2 - Trade

FIED Trade Guidance Document Comments:

P1. (1) For the purpose of this document, the use of the word “prepare”, “preparation” or “prepared” in respect of a food commodity, refers to:

- the manufacturing, processing, treating, preserving, grading, packaging, labelling, storing, handling, testing, coding of food,

Storing is not included in the meaning of prepare in the Safe Food for Canadians Handbook.

P19. 2. provisions 344-349 of the proposed SFCR, relating to the certification of various activities in respect of organic products.

Clarification is required re organic products and how certification will, or will not, be applied to transportation and storage (i.e. trucks).

s.9. Any food that is imported must have been manufactured, prepared, stored, packaged and labelled in a manner and under conditions that provide at least the same level of protection as that provided by sections 44 to 82.

The rationale for not including the requirement for a written preventive control plan is not apparent. All imported food should be required to demonstrate through a written plan that in its manufacture, preparation, storage, packaging and labelling has met the level of protection as that provided by sections 42 to 88.

s.10. (1) A person who imports a food and who does not have, in Canada, a fixed place of business from which they carry on business related to the food must send or convey the food directly to Canada from a foreign state in which they have such a place of business and that has a food safety system that provides at least the same level of protection as that provided by the provisions of the Act and these Regulations.

CPMA’s concern is, however, with the limitation that the language of the CFIA proposal in this draft regulation imposes. Specifically, only allowing importers who do not have a fixed place of business in Canada to obtain a CFIA importer licence if they operate from the country with which CFIA has established a FFSSR arrangement and are importing food directly from that country into Canada. The application of this proposed regulation could restrict the importation of products

that do not originate from a country with an FFSSR where the importer resides. Under our current market environment, product can be shipped by a non-resident importer (NRI) directly to Canada from any jurisdiction as long as it fulfills all current regulatory requirements. While not providing any perceived additional public health benefit, the potential unintended consequences of implementing the proposed NRI model are as follows:

- restricting the importation and thus availability of some fresh produce items which are imported from a myriad of countries due to seasonal availability;
- added costs to many of the commodities that Canadians are accustomed to including in their diet year round;
- non-tariff trade barriers (and possible retaliatory actions); and
- potential economic damage due to loss of Canadian employment to other jurisdictions.

Re: Non-Resident Importers: CPMA supports and appreciates that CFIA is proposing to allow importers from countries which are recognized by CFIA as having a food safety systems comparable to that of Canada to be licensed as one option for allowing importers from foreign countries to hold a CFIA licence to import food into Canada. We are recommending CFIA also allow importers in foreign countries, who are able to demonstrate food safety compliance equivalent to CFIA requirements and have been approved by CFIA, to be licensed to import food. This is consistent with the CFIA commitment to Custom Self-Assessment (CSA) for food for 2015, and also consistent with the proposed Voluntary Qualified Importer Program (VQIP) under FSMA. Under (CSA), foreign importers are approved to import to Canada by CBSA following demonstration of supply chain security and financial security. Also, such importers could offer to provide third party inspection, either private such as an audit, or regulatory oversight or even a combination of both. This would provide CFIA with the opportunity to verify that a supplier meets the Canadian food safety requirements.

Under this proposal, product grown in a foreign jurisdiction recognized by Canada as having a comparable Foreign Food Safety System (FFSS) and included in the scope of the agreement, would not be included in the products available for direct shipment to Canada by an importer who resided in another jurisdiction with an FFSSR. In addition, product from a supplier who meets or even exceeds Canadian food safety requirements would be restricted entry into Canada unless the importer lived in the same jurisdiction and the country had a FFSSR with Canada

s.10 (3) For the purpose of subsection (1), if the food passes only in transit through the foreign state from which the person carries on business related to the food, the person is not considered to have sent or conveyed the food directly to Canada from that foreign state.

Under this proposal, product grown in a foreign jurisdiction recognized by Canada as having a comparable Foreign Food Safety System (FFSS) and included in the scope of the agreement, would not be included in the products available for direct shipment to Canada by an importer who resided in another jurisdiction with an FFSSR. In addition, product from a supplier who

meets or even exceeds Canadian food safety requirements would be restricted entry into Canada unless the importer lived in the same jurisdiction and the country had a FFSSR with Canada.

s.15 (1) A person may send or convey from one province to another or import a food that does not meet the requirements of the Act or these Regulations — other than the requirements set out in Volume 4 of the Standards of Identity Document and the requirements set out in section 186 as that section relates to fresh fruits or vegetables, processed fruit or vegetable products or honey, sections 187 to 190, and section 301 as that section relates to fresh fruits or vegetables or processed fruit or vegetable products — if:

- (a) a label that bears the expression “For Further Preparation Only” or “pour conditionnement ultérieur seulement” is applied or attached to the food;
- (b) subject to subsection (3), the food will be manufactured, processed, treated, preserved, graded, packaged or labelled so that it meets the requirements of the Act and these Regulations within
 - (i) three months after the day on which the food is sent or conveyed from one province to another or imported, or
 - (ii) any longer period that is specified by the Minister at the person’s request; and
- (c) in the case of import, the food is not a meat product.

Section 15. (1)(a) should also allow the product to be labelled “for further packing prior to sale” and “for further labelling prior to sale” to avoid misinterpretation. Section 14 should further specify that the activity is only permitted if the product itself is not exposed during the repackaging or relabelling.

Section 15. (2) should be clarified to allow for third parties to handle or treat food under the direction of a licence holder, as in the case of an employee or contractor.

s.22 (1) The Act and these Regulations do not apply in respect of a food that is imported, exported or sent or conveyed from one province to another if

- (a) the food is carried on a conveyance for use by the crew or passengers;
- (b) the food is intended and used for analysis, evaluation, research or a Canadian or international food exhibition and is part of a shipment that weighs 100 kg or less or, in the case of eggs, is part of a shipment of five or fewer cases;
- (c) the food is not intended or sold for use as food and a label that indicates its intended use and bears the expression “Not for Use as Human Food” or “ne peut servir à l’alimentation humaine” is applied or attached to it;
- (d) in the case of a food that is imported, the food
 - (i) is imported from the United States into the Akwesasne Reserve for use by an individual who has established permanent residence on that Reserve, or
 - (ii) is part of a bonded shipment that is sent or conveyed from a foreign state to a cruise ship or military ship in Canada for use by the crew or passengers; or
- (e) in the case of a food that is sent or conveyed from one province to another, the food is sent or conveyed from one federal penitentiary to another.

In transit

(2) For the purpose of subparagraph (1)(d)(i), if the food is part of a bonded shipment that passes only in transit through the United States, the food is not considered to have been imported from the United States.

These exemption should not extend to food carried on a conveyance within Canada as CPMA supports the application of the regulations to all food businesses along the supply chain that are involved in the import, export and interprovincial trade in food and food commodities.

s.25 The definition fresh fruit or vegetable in subsection 1(1) does not apply in this Division.

CPMA notes that sections 25 and 26 concern trade in fresh fruits and vegetables and do not deal with food safety. However, it is confusing that the definition set out in s. 1 of the regulation does not apply in these sections and that no other definition is provided. A clear definition should be provided for this division.

CPMA would recommend that for this Division which relates to Trade of fresh fruits and vegetables only, that the definition utilized by the DRC should be used in this division. As mentioned in the definition for fresh fruit and vegetable in the Interpretation section above

s. 26 (2) Dispute Resolution Corporation

CPMA does not support any exemptions under these regulations from licensing for food safety purposes but would support the exemptions for the purposes of requiring membership in the DRC to promote fair and ethical trade practices that are contained in paragraphs 22 (2) (b), (c), (d) and (e).

CPMA notes that the published Safe Food for Canadians Regulations make no mention of or reference to the Destination Inspection Service. CPMA would like to draw attention to the fact that the availability of a timely and credible CFIA-generated destination inspection provides evidence which is critical to effective dispute resolution. The CPMA, along with representatives from regional trade associations, the Canadian Produce Marketing Association, U.S. grower/shipper organizations, the Dispute Resolution Corporation (DRC) and officials from the Canadian Food Inspection Agency, Agriculture and Agri-Food Canada and the Agriculture Marketing Services of the USDA worked diligently for several years to enhance fair and ethical trading practices in the Canadian marketplace, a key component of which is destination inspection. In July 2006, the CFIA announced the modernization of its Destination Inspection Service for fresh produce in an effort to improve service for an important agricultural sector and contribute to market stability the revised Fresh Produce Destination Inspection Service. Proposed amendments pertaining to Regulations Amending Certain Regulations Administered and Enforced by the Canadian Food Inspection Agency referencing Destination Inspection Service were published in Canada Gazette Part 1, Vol. 111, No. 6 on February 6, 2010 were firmly and formally

supported by the CPMA as necessary to ensure that the much-needed destination inspection service is available and sustainable.

CPMA therefore requests that this omission be looked into and that reference to the Destination Inspection Service be included in the Safe Food for Canadians Regulations.

Part 3 – Licenses

CPMA recommends that CFIA create a database of license holders similar to the “CFIA Registries of Meat Establishments”. A database of this nature would allow domestic and international organisations, industry and government, to quickly identify potential trading partners based on their license status and related activities.

Clarification is required re the impact of the SFCR on the “Broker” community. In most cases, a Broker would never take physical control (ownership) of a produce shipment. Brokers primarily act in a facilitation role ensuring products move between trading partners in an efficient and cost effective manner. Their primary responsibilities, in the FFV world, are to ensure any import / export, phytosanitary or other documentation is correct, thus reducing any regulatory issues crossing borders and potential contract conflicts between partners.

What, if any, impact will the new regulations have on these types of activities?

s. 30 (e)

This is a section on meat yet is in the fresh fruits and vegetables section and should be moved to its proper section.

s. 31 The Minister may refuse to issue, renew or amend a licence if...

Section 31 should be amended to include a minimum 6-month grace period should the Minister refuse to renew an existing licence, during which time the applicant should be given the opportunity to take corrective actions and/or appeal. Only after a final decision on an appeal has been made should details of the refusal be made available to the public. Failure to do so would result in unnecessary cost, disruption to trade and reputational damage, particularly considering that serious food safety risks are to be addressed through licence suspension or cancellation, not refusal to renew.

Furthermore, the suspension of a licence appears automatic for a company in bankruptcy and unable to pay licence fees (s.27(b)). It will be necessary in many cases for an organization to continue to operate regardless of bankruptcy which does not necessarily mean that the organization isn't still operating safely, meeting regulatory requirements, etc. CFIA should provide direct oversight of the licence rather than suspension in such cases to ensure that existing contractual arrangements are respected to the extent possible.

We support the additional clarification of circumstances under which the Minister may suspend or cancel a licence in sections 27 and 34. That said, early awareness and outreach steps – including initial outreach, verbal warnings, and then written warnings – must occur before the suspension or cancellation of a licence.

s. 35 “ A licence becomes invalid if (a) the licence holder becomes subject to a receivership or bankrupt; or ..”

As we did in our comments to the 2014 version of the Regulation submitted in Nov 2014, CPMA requests clarity relative to licensing where a company is under bankruptcy protection and continues to operate. As this applies to imports also, clarity is required re: import licenses under similar conditions.

s. 39 Duration of suspension

A suspension of a licence remains in effect until an inspector determines that corrective action has been taken or until the licence is cancelled.

Guidance must be developed with industry on how corrective actions are to be evaluated by CFIA officials. The current proposal appears to give near total discretion to individual inspectors to reactivate a suspended licence (s.39). CPMA does not support this.

CFIA Handbook Comments:

33. Establishment means any place, including a conveyance, where a food is manufactured, prepared, stored, packaged, or labelled.

34. The proposed definition of establishment is quite broad, and extends beyond the physical structure. It includes conveyances on which certain activities are conducted or open areas that are not contained by a building (for example, fields)

Part 4 – Preventive Control Plans

Preventive Control Plan Guidance Document Comments:

P39. If land presents a risk of contamination to the food, you take measures to prevent or eliminate the risk.

Eliminate should be replaced by 'prevent or reduce to an appropriate level'

P107. 82(3)(a) and 83 Notifying the Canadian Food Inspection Agency (CFIA) when a food is recalled

Clarification, reference to existing documentation, should be provided as to how, whom and when CFIA should be notified with respect to a potential recall situation.

P112. Please refer to the decision tool called “Would you need a PCP?” to assist you in determining whether you would need to prepare, keep, maintain and implement a preventive control plan based on the proposed SFCR.

Section 85 limits PCP plan to FFV operation that require a certificate for export but should extend to all FFV operations exporting and this guidance should then include information to that effect

P114. taking into consideration the applicable requirements in “Table 2: Proposed food

safety requirements for which written descriptions may be needed,” a description of the control measures you use to prevent or eliminate the identified hazards (87(1)(c)(i))

Section 87.1 should include 'reduce to an acceptable level not eliminate and then this guidance should reflect that.

s.42 - Definitions

“operator” means

- (a) the holder of a licence to manufacture, process, treat, preserve, grade, store, package or label a food, to store and handle a meat product in its imported condition or to slaughter a food animal;
- (b) any person who grows or harvests fresh fruits or vegetables; and
- (c) any person who handles fish in a conveyance. (exploitant)

As per Safe Food for Canadians Handbook:

94. In Part 4, it is important to understand the implications of the definition of the term “operator.” An operator is:

- a holder of a licence to manufacture, process, treat, preserve, grade, store, package, or label a food; to store and handle a meat product in its imported condition; or to slaughter a food animal
- a person who grows or harvests fresh fruits or vegetables
- any person who handles fish in a conveyance (for example, a vessel)

95. Importers are not considered operators within Part 4. Therefore, when the preventive control measure is applicable to importers, it is specifically identified with the phrase “holder of a licence to import.”

If the term “operator” is used on its own, the requirement is not applicable to importers.

A more concise definition for operator is required for the SFC Handbook and regulation.

s. 44 (1) - Identification, analysis, prevention and elimination of hazards

An operator must identify and analyze the biological, chemical and physical hazards that present a risk of contamination of a food and must prevent or eliminate those hazards using control measures that are shown by evidence to be effective, including, in the case of a meat product, the control measures that are set out in the document entitled Preventive Control Plan Requirements for Biological Hazards in Meat Products, prepared by the Agency and published on its website, as amended from time to time.

s. 44 (2) - Imported food

The holder of a licence to import must comply with subsection (1) in respect of food that is imported.

44 raises new concerns by substituting “prevent or eliminate” for “control” it has not included “reduce to an acceptable level”.

Note that Codex is considering removing “eliminate” from its vocabulary respecting “control measures”.

s. 45 (1) - Treatments and processes

An operator must subject a food to any process or treatment that is necessary to eliminate any biological, chemical or physical hazard that might be present in the food and that presents a risk of contamination of the food, including any treatment that is necessary for the food to meet the standards that are set out in the document entitled Biological, Chemical and Physical Standards for Food, prepared by the Agency and published on its website, as amended from time to time.

As in 44, the use of the word “eliminate” presents a very serious problem.

s. 51 Section 51 as currently drafted will also be problematic for the fresh fruit and vegetable industry. Describing conveyances and equipment as (i) “smooth”, (ii) “free from pitting, cracks and flakes, and”, (iii) “non-absorbent” is prescriptive rather than outcome-based, and reflects expectations that would be appropriate for a processing facility environment but not a typical fruit and vegetable farm or packing shed.

In the context of fresh fruit and vegetable operations, conveyances and equipment could include, among other examples:

- a. the back of a wagon
- b. the floor of a trailer
- c. harvesting buckets
- d. leather and canvas picking bags
- e. wooden bins or totes
- f. wooden or straw baskets
- g. the back of a bulk truck, etc.

Those types of harvest containers and cargo areas of a vehicle commonly used in fresh produce operations would fail to meet the requirement as set out in the draft text. It is problematic to classify these items as “conveyances and equipment” when their surfaces are not “smooth”, “free from pitting, cracks, and flakes”, or “non-absorbent”.

According to the CanadaGAP technical standard recognized by federal and provincial governments, conveyances and equipment used for harvesting and transporting harvested fruits and vegetables are acceptable if they are in good repair, do not pose a risk of contamination and can be cleaned, including dry cleaning methods (for example, wooden bins can be swept out to remove debris). The same is true for field packing equipment, conveyor belts, and the like.

We propose a rewrite of the regulatory text in Section 51 for “Conveyances and Equipment” which would echo some of the language used in Sections 70 (“Conveyances”) or Section 183 (“Requirements for packages”). Much of the terminology used in those two sections of the

regulations would work equally well for “Conveyances and Equipment”. This kind of language is much less prescriptive and more outcome-based:

- “must be designed, constructed and maintained to prevent contamination of the food”
- “must be designed, constructed of, and maintained using, materials that are suitable for their intended use and, if the materials present a risk of contamination of the food, that are
 - (i) durable,
 - (ii) capable of withstanding repeated cleaning and, if applicable, sanitizing, and
 - (iii) free of any noxious constituent”
- “must not contain or have contained animals, *pest control products*... or any other material or substance that presents a risk of contamination of the food”
- “must be suitable for its intended use and appropriate for the food”
- “must be clean and in sanitary condition”
- “must be of sound construction and in good repair”.

To be more prescriptive, within the CanadaGAP program we have found it useful to distinguish between “production site equipment” and “building equipment”, since the expectations are different for each. The current draft requirements in Section 51 would fit only for what we define in CanadaGAP as “building equipment”. The proposed regulations do not fit for production site equipment, field packing equipment, or harvest containers (e.g., bins, totes, etc.).

Section 8.1 (Equipment) in the CanadaGAP food safety manuals requires that:

The person responsible ensures that design and construction of production site equipment (e.g., knives, tines, prongs, cutting blade/picking head of the harvester, cultivator/sprayer panels that touch product, field-packing equipment surfaces), will not be a source of contamination to the product, and:

- Have food contact surfaces that are easy to clean.
- Are easily accessible for cleaning and maintenance.

The person responsible ensures that design and construction of building equipment (e.g., packing, sorting, grading, repacking and cutting surfaces, knives), will not be a source of contamination to product, and:

- Have food contact surfaces that are easy to clean
- Are easily accessible for cleaning and maintenance

- Are made of non-porous surfaces (e.g., metal, stainless steel, hard plastic material, puckboard, rubber) (except for pallets)

Are equipped with shatterproof lights (if applicable), or are covered (e.g., prevent glass from falling onto product or packaging material) (e.g., packing line, forklift, bin pilers).

Within the CanadaGAP program, we have also found it useful to distinguish between “harvested product packaging materials” (a.k.a. harvest containers) and “market ready packaging materials” (i.e., containers that will go to the consumer). The requirements and expectations for each are different. CFIA could include similar distinctions within the interpretative guidance or could refer to CanadaGAP as a model system for the fresh fruit and vegetable sector.

Section 17.1 (*Packaging Materials*) in the CanadaGAP food safety manuals requires that:

- Harvested Product Packaging Materials

The person responsible purchases or selects materials that are:

- Free of objects that may become embedded in product (e.g., material is in good repair, no splinters, glass)
- Clean and free of debris (e.g., from other crops, compostable waste, garbage)
- Have not been used for any other purpose that may be a source of contamination (e.g., to carry tools, personal effects, cleaning agents, agricultural chemicals, maintenance materials)
- Market Ready (Primary and Secondary) Packaging Materials

When purchasing or selecting packaging materials, the person responsible is aware of their origin (i.e., manufactured with components that are not a source of chemical contamination)

The person responsible purchases or selects primary materials (e.g., bags, boxes) that are (choose one of the following):

- New OR
- If reused, new liners are used (Note: Liners are considered packaging accessories, not primary packaging materials) unless the materials are non-porous and are cleaned before use (see Section 17.2)

s. 54 (1) - Land

Any land that forms part of an establishment must not present a risk of contamination of a food or, if it does present such a risk, measures must be taken to eliminate the risk.

“Eliminate” again this verb excludes “prevent” or “reduce to an appropriate level”.

(2) - Location

An establishment must not be located near any place or thing that presents a risk of contamination of a food unless measures are taken to eliminate the risk.

“Eliminate” again this verb excludes “prevent” or “reduce to an appropriate level”.

s. 55 Certain terms used in Section 55 (“Interior of facility or conveyance”) of the proposed SFCR will be difficult for many fresh fruit and vegetable establishments to meet. It appears the terminology may be taken from previous regulations for meat packing plants, processing facilities, etc. Problematic terms for the fresh produce industry include: Section 55 (b) (iii) “floors, walls, ceilings, windows and doors are smooth, non-absorbent and impervious to moisture”. Such terminology is not applicable or in many cases achievable for fresh produce operations, where packing sheds are often constructed of wood or barn board.

Instead, we propose that this terminology be modified to be less prescriptive and more outcome based. For fresh fruit and vegetable operations to meet the expectations, possible wording might include: “floors, walls, ceilings, windows and doors are made of materials that do not pose a risk of contamination, are designed and maintained to discourage pest access, and can be easily cleaned”.

In practice, fresh produce operations meeting CanadaGAP requirements would comply in the ways described below. Section 2 (*Premises*) in the CanadaGAP food safety manuals requires that:

2.2. Each building is designed or constructed where there is or are:

- No areas where pests (e.g., insects, mice, birds, rats) can hide/live/feed (e.g., junk piles, long grass, bushes, garbage, unused machinery)
- No holes/crevices/leaks (e.g., walls, windows, screens)
- Doors that fit properly
- Doors that can be secured (i.e., to lock storages when unsupervised)
- Windows that can be closed OR have close-fitting screens (i.e., no gaps)

2.3. Each building IS or HAS:

- No animals, either wild or domestic (including pets), pests (e.g., birds, rodents) or bird nests
- NOT used for livestock/poultry slaughter or meat processing/storage activities
- No sources of cross-contamination that may be carried by air, foot, hands, equipment, etc. (e.g., livestock, poultry, fish, etc.)
- Lighting that is adequate (e.g., easy to see in corners, suitable for grading) Refer to Appendix F: General Guidelines for Adequate Lighting
- Lighting that is shatterproof or covered (e.g., prevent glass from falling onto product/materials) where product and packaging materials are handled or stored

- Adequate drainage (i.e., floor sloped, sump pump for backup, drain covers, backflow preventers where necessary)
- Pipes or condensation that does not leak onto product or packaging materials
- Clean areas where product and packaging materials are handled and stored (e.g., free from garbage, spills, pests and pest droppings)
- Walls, floors and ceilings without crevices
- Adequate ventilation to prevent excessive heat, steam, condensation, dust, etc. and contaminated air (e.g. with allergens from dust/dry goods, etc.) is removed.

Interpretative guidance could cover the above points or refer to CanadaGAP as a “model system” for the fresh fruit and vegetable sector.

s. 65 - Cleaning stations, lavatories, etc.

s. (2) - Hand cleaning and sanitizing stations

The hand cleaning and sanitizing stations must supply water at a temperature and pressure that permit the effective cleaning of hands.

Section 65 (2) of the *SFCR* states that “The hand cleaning and sanitizing stations must supply water at a temperature and pressure that permit the effective cleaning of hands”. The language implies that the only effective method to clean hands is using water. This is not outcome-based but rather a prescriptive approach. We propose revising the text as follows: “If hand cleaning and sanitizing stations supply water, the water must be at a temperature and pressure that permit the effective cleaning of hands.”

As set out in the CanadaGAP food safety manuals (Section 11, Personal Hygiene Facilities), hand cleaning can be accomplished effectively using one of the three methods:

- a. Potable water + soap + disposable paper towels
- b. Non-potable water + soap + disposable paper towels + hand sanitizer
- c. Hand wipes + hand sanitizer.

The CanadaGAP standard has been technically reviewed by federal and provincial governments and has been deemed technically sound. The requirements are based on published, peer-reviewed science that has studied the effectiveness of various hand cleaning options. Two recent studies listed below have investigated whether hand wipes + hand sanitizer is effective for cleaning hands; both conclude that this approach provides a good option (see references below). It is a particularly good option for the many farmers who would be unable to provide or maintain a supply of potable water in the field. Therefore, we propose that the language in the regulations and the interpretative guidance clearly provide for the option of hand wipes + hand sanitizer as an acceptable method to clean and sanitize hands in fresh fruit and vegetable operations.

s. (3) – Lavatories

Section 65 (3) of the *SFCR* states that “lavatories must not provide direct access to any area where a food is manufactured, prepared, stored, packaged or labelled...”. This requirement is

overly prescriptive and seems to reflect a processing/manufacturing facility standard. If the intent is for washroom doors not to open directly onto production areas, this will be problematic for many fruit and vegetable operations. Modifying packing sheds to install walls between washrooms and the packinghouse area will be very costly for industry when the risk of contamination from airborne pollutants or sewer backup is low. These risks are mitigated for CanadaGAP-certified companies adhering to program requirements that (1) prohibit the use of hand dryers (minimizing airborne contamination from washrooms), and (2) require maintenance of toilet facilities to prevent them from becoming a source of contamination.

If the draft text is retained, CFIA will need to clarify what is meant by “direct access”. We propose that the requirement be rewritten to be more outcome-based, i.e., “lavatories must be located and maintained so as not to pose a risk of contamination to any area where a food is manufactured, prepared, stored, packaged or labelled...”.

s. 70 Conveyances

Any conveyance that is used to convey a food to or from an establishment and that is unloaded or loaded at the establishment

(c) must be capable of maintaining the temperature and humidity at levels that are appropriate for the food and, if necessary, be equipped with instruments that control, indicate and record those levels;

“If necessary” is a vague descriptor and should be clarified. Where a temperature or humidity recorder is required, the record created should be stored for 2-years as per other documentation referenced in the regulation.

s. 84 (1) - Licence holders

A licence holder must prepare, keep and maintain a written preventive control plan that meets the requirements of section 87 for any activity that they conduct in respect of a food or food animal that is identified in their licence.

(2) Exception — food to be exported

Despite subsection (1), a preventive control plan is not required to be prepared, kept or maintained for any activity that the licence holder conducts in respect of a food, other than fish or a meat product, that is to be exported, unless a certificate or other document referred to in section 48 of the Act will be sought in respect of the food.

(3) Exception - sales of \$30,000 or less

Despite subsection (1), if a licence holder’s gross sales that are derived from food are \$30,000 or less for the 12 months before the day on which they most recently made an application for the issuance, renewal or amendment of a licence, a preventive control plan must be prepared, kept and maintained only for any activity that they conduct in respect of

(a) food animals, meat products, fish, dairy products, eggs, processed egg products and processed fruit or vegetable products that are identified in their licence; and

(b) any food in respect of which a certificate or other document referred to in section 48 of the Act will be sought.

We object to exemption (3) from licensing for operations whose sales total less than \$30,000 per year.

s. 85 - Growers or harvesters of fresh fruits or vegetables

Any person who grows or harvests fresh fruits or vegetables must prepare, keep and maintain a written preventive control plan that meets the requirements of section 87 for any activity that they conduct in respect of those fresh fruits or vegetables if the fresh fruits or vegetables are:

- (a) to be exported and a certificate or other document referred to in section 48 of the Act will be sought in respect of the fresh fruits or vegetables; or
- (b) to be sent or conveyed from one province to another and the person's gross sales that are derived from food are more than \$30,000 for the previous 12 months.

We object to the exemption (b) from licensing for operations whose sales total less than \$30,000 per year.

Part 5 - Traceability

CPMA recognizes and supports the positive nature of the extensive revisions to the Traceability Requirements which reflect comments made by multiple organizations including:

- Retention period of documents of two years.
- The spirit of one-up/one-down traceability which is reflective of other country regulations and international standards.
- Document preparation and storage which includes:
 - The common name of the food,
 - The date on which the food was provided (unless sold at retail),
 - In general, the exclusion from traceability requirements for food sold at retail to consumers,
 - The name and address of the person who provided the food, or, if applicable, the same for whom it was provided to; and
 - The name and principal place of business of the person by or for whom the food was manufactured, prepared, stored, packaged or labelled.

There are, however, some areas that still require clarification, an explanation and/or revision as follows:

- **Lot Codes & Reference Numbers:** To meet the regulatory requirements to enable access to information for traceability purposes, but not negatively impact business, in all instances within the regulations the words "lot code" should be replaced with "reference number". Lot code has a distinct meaning within the food industry as a specific unique code assigned to a food at the point of packing, production or manufacturing. What is crucial is that all persons have access to the specific product information through a number such as Shipment ID, Purchase Order, etc. which links to that information/lot

codes. For example, retailers do not track lot codes. Rather they are able to efficiently trace products through linking with the purchase orders received from vendors/suppliers and are able to remove products from shelf using the lot codes identified on packaging. Retailers will always withdraw product based on eliminating consumer risk and meeting consumer expectations for a safe food supply; i.e. the outcome required is met. (It should be noted that CFIA have provided clarification noting that the intent is definitely not to include lot code in the record keeping requirements but have records like a Shipment ID, P.O., etc. that links to the lot numbers and other precise business information necessary to complete a trace back.)

- **Internal vs External Traceability (88):** In consideration of the intent to develop outcome-based regulations, government is strongly urged to ensure regulations embody one-up/one-down traceability from person to person (external traceability) and not be restrictive relative to within a person (internal traceability). Therefore 88 (1)(e) should be removed (i.e. “if applicable, the address of each location where the food and any food commodity referred to in paragraph (d) were moved before the food was provided to another person, the name of an individual who is responsible for each location and the date of each movement.” Internally within a person (organization) it is common practice to keep records when food moves; however, if these records are not kept, it is understood that the scope of their recall will expand. Government need not introduce unnecessary burden in record keeping but allow each person to determine what scope of their product is implicated. Whether broad or narrow in scope within the person, the result of removal of any impacted food is the same; i.e. the outcome required is met.
- **Production of Documents (89):** The requirement to provide traceability information to the Minister within a period shorter than 24 hours as specified by the Minister is both unreasonable and unnecessary in a number of circumstances. These include recalls that affect numerous products, where there is involvement from foreign suppliers, where the health risk is low, the request is made after business hours or on weekends/holidays, and where there may be a minor non-conformance to the regulations. The timelines required should be dependent on the risk the food presents to the public and this notion should be included in the regulations and guidance documents. CFIA is encouraged to work with industry to determine various scenarios and reasonable timelines associated with each.
- **Labelling (90):** It is unreasonable to require information “be applied or attached to, or accompany, a food...”. Clarification is required on this point as it seems to imply that traceability information (including reference numbers) must be on the food or in documents that accompany the food. As noted above relative to reference numbers and the ability to link to required information, these numbers will offer quick access to the specific food information required and it is not feasible for traceability documentation to continually accompany the food. What is required is the ability to access traceability documentation when requested. This is currently being done in a number of ways within existing food chains.

Safe Food for Canadians Handbook:

114. Traceability requirements for intra-provincially traded foods apply to retailers, and importers selling the food within their province.

This section needs to be removed. See Internal vs External Traceability above.

Traceability Guidance Document Comments:

P6. In addition, traceability information would be required to accompany the food (other than food that is to be exported).

Clarification is required on this point. It seems to imply that traceability information (including lot numbers) must be on the food or in documents that accompany the food - what about electronic records? It is not feasible for traceability documentation to continually accompany the food. What's required is the ability to access traceability documentation when requested. This can be accomplished in a number of ways within the existing food chains.

P6. The overall outcome of an effective traceability system will contribute to:

- protecting consumers against the risk of injury to their health from hazards that may be present in the food
- reducing the cost associated with a recall by narrowing the scope to only those foods that may present a risk of injury to human health
- increasing consumer confidence and trust in the safety of food sold in Canada's marketplace.

This comment is misleading unless food service, internet sales, farmers markets, etc. are required to comply to the same level as the retail (grocery) industry. Given the significant amount of food purchased by consumers in these segments, and instances of outbreaks associated with food consumed outside the home, these segments play an integral role in safeguarding the health of Canadians.

P7. The places and dates the food was moved before you sold it to another person, and the individuals responsible for each of those places.

This comment creates significant ambiguity with respect to "individuals". Clarification is required to fully explain the intent of the statement and how CFIA would expect it to be acted upon in the event the information is requested.

s. 88 (1) – Documents

(a) "Principal place of business of the person..."

What information does this include (e.g. complete address, city/province/state only)? Also, is this the same information required on a consumer package? As provided in our comments submitted to CFIA on June 30 2015, to the recent on-line CFIA Labelling Modernization consultation:

- CPMA generally supports the proposal to enhance the dealer name and address requirements to come in line with international trading partners to include either a postal code, zip code etc. Specific to the postal or zip codes, for jurisdictions that do not include postal codes or zip

codes the address should be sufficient so that a mail delivery would be reasonably expected or may include a telephone number or email address.

- We would also be supportive of allowing other electronic addresses (e.g. website, QR code, matrix barcodes, etc.) as new technologies emerge thus giving consumers many choices to reach the desired contact.

s. 88 (1) – Documents

(b) – “unless the food was sold at retail “

CPMA supports the exclusion of retail to this requirement; however, the exclusion should include foodservice operators who sell direct to consumer (e.g. restaurants, cafeterias, etc.).

s. 88 (3) Retention period for documents

The documents referred to in subsections (1) and (2) must be kept for two years after the day on which the food was provided to another person or sold at retail, as the case may be, and must be accessible in Canada.

Clarification is required re the “...sold at retail...” requirement in 88(3). Currently, retailers may, or may not, have access to that level of data depending on their size and the sophistication of their data management systems.

CPMA is pleased to see that in this iteration of the proposed regulation, the document retention period has been reduced from three (3) years to two (2); this is in alignment with the pending FSMA proposal and aligns with other food safety and government protocols. CPMA also supports that the documents be “accessible” in Canada.

Guidance Document Requirement - Clarification is required as this section does not make it clear if this is a requirement for a label on a consumer prepackaged product or on a master or shipping container (prepackaged products). If the requirement is for a consumer item this cannot be accomplished for loose/bulk produce, bakery products sold bulk, etc.

Example: A 3-pack “sleeve” of peppers can be labelled as required. However, peppers which arrive bulk and are sold individually cannot carry the label information required.

Why is exported food exempt?

Doesn't this undermine Canada's goal to ensure we are seen as exporting safe foods?

Guidance Document Requirement: Given that another country might want different information on the label, it is imperative that exported food still have the record keeping or the traceability information available even if not on the label.

Part 6 – Commodity Specific Requirements

Division 5 – Fresh Fruits & Vegetables

No Comments

Part 7 – Recognition of Foreign Systems

This part only outlines detail for meat and fish. It is our understanding that presently, for fresh fruits and vegetables, the only Recognition of a foreign system which will be in place when the regulation comes into force is that of the US.

CPMA is pleased that Canada and the U.S. Food and Drug Administration (USFDA) have undertaken a “reciprocal foreign food safety systems recognition.

It is imperative that CFIA begin to negotiate equivalencies or recognitions of food safety systems with our other significant trading partners, and ideally agreements be reached before the coming into force of the Safe Food for Canadians Act (SFCA) and Safe Food for Canadians Regulations (SFCR).

Recognition is a crucial factor in the requirements for residency for Non – resident importers (NRI's).

Recognition of other foreign systems will also facilitate more seamless trade across our borders and easier access to the foods that Canadians enjoy eating year round.

Part 8 – Ministerial Exceptions

s. 173 - Application

A person may apply, in a form approved by the President, for an exemption from the application of a provision of the Act or these Regulations for the purpose of test marketing a food or of alleviating a shortage in Canada in the available supply of a food that is manufactured, processed or produced in Canada

Both provisions, in the use of Ministerial Exemptions to allow the trade of bulk produce and test markets, are critical to the produce industry, i.e. alleviating shortages and allowing the test marketing of new and innovative packaging, changed grade standards, etc. It appears these sections are written well enough to continue the purpose that was intended by the provisions in the Fresh Fruit and Vegetable Regulations under the CAP Act and CPMA fully supports the inclusion of this section in these regulations.

Part 9 – Inspection Legends

Part 10 – Packaging

No comments re parts 9 or 10.

Part 11- Labelling

The SFCR will need to provide flexibility in situations where commodities are harvested in one province and shipped to another province for processing / packaging. For instance, it is very common for Blueberries to be harvested, placed in field totes and shipped from one province to another for further processing. A similar situation occurs with Apples harvested and placed in bins for transport across a provincial border. These scenarios are quite common in the Maritimes

and likely occur in other provinces as well. Currently, labelling is not required for these activities and this practice should be allowed to continue.

s. 199

This Division does not apply in respect of a consumer prepackaged food that is manufactured, prepared, packaged or labelled only for export and that is not sold for consumption in Canada.

Clarification is needed on why, according to this Division, prepackaged bulk products for export or master containers of consumer prepackaged products for export only, require labelling according to the regulations, when consumer prepackaged products are exempted.

s. 204 - Exception — common name

(1) The following foods need not be labelled with the common name:

- (a) prepackaged fresh fruits or vegetables that are packaged in such a manner that the fresh fruits or vegetables are visible and identifiable in the container; and
- (b) consumer prepackaged fresh apples or pears that are packaged in such a manner that the name of their variety is shown on any part of the label except the part, if any, that is applied to the bottom of the container.

Pears no longer require variety name per the Test Market of 11 September 1998 which was accepted.

Clarification is needed on why, according to this Division, prepackaged bulk products for export or master containers of consumer prepackaged products for export only, require labelling according to the regulations, when consumer prepackaged products are exempted. (s.199)

s. 217 - Consumer prepackaged food

The declaration of net quantity that is shown on the label of a consumer prepackaged food must

- (a) be in distinct contrast to any other information or pictorial representation on the label; and
- (b) show the numerical quantity in boldface type.

Clarity must be provided in Interpretative guidance as to what constitutes “distinct contrast” and once defined should make the need for boldface redundant.

From comments to Food Label Modernization in 2017:

Currently for fresh fruits and vegetables, the type size requirement for net contents, grade name and the country of origin declaration is according to the area of the principal display surface. The requirement for these declarations should be the same as for other required information and consistent with all commodities. Given that required information on a label in Canada must be in a bilingual format and when prepared for the Quebec marketplace there is a requirement that the French translation must be at least as prominent as the English, type size requirements s must be taken into consideration when determining requirements for minimum letter heights, bolding, etc.

There is an exemption in the existing Fresh Fruit and Vegetable Regulations for the declaration of net quantity on master containers which has not been carried forward to this section

The following provisions, from the Fresh Fruit and Vegetable Regulations have also not been carried forward to this regulation or the compendium (other than 23 b which is included in Section 4 (3) of the Canadian Grade Compendium Volume 2):

Section 23. Where a container of produce is packed in another container, the outer container need be marked only with

- (a) the common name of the produce,
- (b) the grade name, if any, established by these Regulations for the produce, except in the case of imported produce,
- (c) the identity and principal place of business of the person by or for whom the produce was produced or packaged for resale, and
- (d) the country of origin, in the case of imported produce, in accordance with subsection 10(11), but where the produce or any of the information referred to in paragraphs (a) to (d) is easily and clearly discernible in or on the inner container without opening the outer the same information is not required to be shown on the outer container.

s.233. Food or Container

The following exemptions, found in the current Fresh Fruit and Vegetable Regulations, have not been carried over to the SFCR.

- Mesh bags for sweet corn (reference: *Fresh Fruit and Vegetable Regulations*, s.8). The FFV regulations required that sweet corn be packaged in new, mesh bags. Industry should be consulted to determine if this remains the expectation, and if so, that should be reflected in the SFCR.
- Secondary transparent plastic bag into which smaller bags that contain required identifying information are packed (reference: *Fresh Fruit and Vegetable Regulations*, s.23). The exemption was carried over to the compendium for the purposes of grade and country of origin labelling; however, the exemption for common name and principal place of business does not appear to have been carried over.

Part 12 – Grade and Grade Names

Part 13 – Seizure and Detention

No comments re parts 12 and 13

Part 14 – Organic Products

CPMA does not support the transportation or storage as activities of a third party that would require organic certification but rather be included in the organic plan or the provider of the organic product (e.g. producer, manufacturer) would suggest this align with NOP :

If your operation only sells, transports, stores, receives, or acquires products that are received in and remain in a container without being processed*, the operation does not need to be certified. An example of such an “excluded” operation would be one that handles boxed organic cereal. However, you must prevent commingling with non-organic products and contact with prohibited substances.

If your operation handles bulk, unpackaged organic products (such as cattle, milk, or grain), you need to be certified or be included under an organic producer or handler’s organic system plan.

There is a Fact sheet on the USDA site as to who needs to be certified-

<https://www.ams.usda.gov/sites/default/files/media/DoINeedTobeCertifiedOrganicFactSheet.pdf>

Part 15 - Temporary Non-application to Certain Food Commodities and Persons

Part 16 - Transitional Provisions

Part 17 - Consequential Amendments, Repeals and Coming into Force

No comments for parts 15, 16 and 17

CPMA’s member organizations would like to thank CFIA for the consultative approach taken when developing the Safe Food for Canadians Act and Regulations. We hope this open consultative process will be the model for future regulatory initiatives within CFIA, Health Canada and the federal government as a whole.