CPMA Response to Regulatory Framework Questionnaire – November 29, 2013

A New Regulatory Framework for Federal Food Inspection: Consultation

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 various industries, integrating 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 790 domestic and international members who are responsible for 90% of the fresh fruit and vegetables sales in Canada.

CPMA and its members strongly support the regulatory modernization efforts as part of the Safe Food for Canadians Act and offer the following overarching comments:

- The provisions of the SFCA must apply to all fresh fruits and vegetables sold in Canada, whether imported or domestic, conventionally grown or organic with no exemptions for any operation subject to the *Safe Food for Canadians Act*.
- All food sectors must be considered concurrently under this initiative. Moving ahead with the Imported Food Sector regulatory proposal ahead of time would have costly, disruptive and entirely avoidable impacts on business and consumers.
- There must be provisions to allow for non-resident importers. A business impact test should be undertaken to help inform decision-making in this area, and viable alternatives to residency (such as accreditation, certification, insurance, bonding and/or mutual recognition agreements) must be explored.
- Industry strongly suggests that the Canadian Food Inspection Agency (CFIA) work with their provincial and territorial counterparts to encourage their adoption of the determined regulations and policies. Doing so will ensure a consistent approach to food safety and eliminate the potential for unnecessary financial burden to the Canadian economy should provincial/territorial regulations not harmonize with the federal requirements.

Horizontal Requirements: Licensing

Question 1: The Government is seeking comments on the proposal to move away from the registration of establishments and instead require a licence for those responsible for the preparation of food.

- Overall, CPMA is supportive of the single licensing model which supports the delivery of a risk-based inspection service.
- We are supportive of a license application which can be made for each physical location, a number of physical locations, or by activity (for example, import, export), at the discretion of the applicant. Just to be clear, there should be a license for each physical location that covers that location for all products applicant lists, and for all purposes (e.g. import, export, interprovincial) and not a separate license for each activity. There should only be one

application to fill out for all of the above. This is very important for the fresh produce industry supply chain to reduce business risk for industry given its distributed model across Canada. It is crucial that this model does not add increased financial or administrative burden to the fresh produce supply chain (grower/shipper/ wholesaler/retailer/ foodservice).

- To mitigate any negative financial impact, CPMA recommends that the Government of Canada conduct the appropriate cost/benefit analysis related to the produce industry, to determine costs associated with any new licensing model. CPMA would welcome inclusion in this process to collaboratively work with government to determine a cost model that addresses the needs of both industry and government.
- On the subject of implementing the inspection modernization licensing, CPMA suggests a staggered implementation model which starts with the high-risk activity areas, with others set to transition or apply for the new license at a secondary date.

Question 2: In certain cases, modified licence requirements for specific activities and products may be warranted. Please describe any cases that justify these modified requirements.

- For fresh produce it is recommended that the licensing also include the requirement for membership into the Dispute Resolution Corporate (DRC) and that there be no exemptions. They should be involving each of the provinces to cover this off using exactly the same licensing procedure that is used federally.

Question 3: Currently, some programs allow for importers that do not have a Canadian address (Non-Resident Importer). What are your views on whether non-resident importers should be permitted for licensing? How might the regime accommodate non-resident importers?

- The current proposed Canadian residency requirement will create undue burden to an industry that operates with perishable products and just in time transactions. The removal of the non-resident importer model would be costly and add administrative red tape, creating a new and unnecessary cottage/sub industry at a time when industry and the Government of Canada is moving towards red tape reduction and regulatory flexibility. In a recent survey of the produce industry we have found a significant volume of trade is conducted via the use of non-resident importer status. By requiring fresh produce importers to have a Canadian address or pay for brokers, or by default, creating a model where retailers would have to become the importers would require added resources and infrastructure that will result in higher costs to business and add to the cost of healthy fresh fruit and vegetables for Canadians. It would also mean that Canada could become a secondary market for fresh produce as companies will potentially delist products where the volume would not be worth the added cost, resulting in less choice for Canadians. We therefore recommend that further analysis be conducted, including risk and benefit impacts on Canadians, before changes are conducted. The development of viable alternatives to residency such as accreditation, certification, or membership in the Dispute Resolution Corporation could be considered.

- The Retail Council of Canada recently canvassed some a small sample size of 350 suppliers from the non-federally regulated sector, and 112 of them were identified as non-resident importers in the US. So 30% of all vendors would either have to establish Canadian residency or pay for brokers, or retailers would have to become the importers. All of these options require resources, administration and infrastructure, resulting in higher costs to business and consumers. It would also mean that vendors would potentially delist products where the volume would not be worth the added cost, resulting in less consumer choice.
- We therefore support the Retail Council of Canada recommendation to that a business impact test, including impacts on consumers, be undertaken to help inform decision-making in this area, and we urge you to include the Imported Food Sector Regulatory Proposal with the rest of the Regulatory Modernization initiative to allow time to develop viable alternatives to residency such as accreditation, certification, or mutual recognition agreements.
- Industry should be consulted to determine other tools or models (providing equivalency to existing systems) that could support ongoing non-resident importer status within the new regulatory framework and be equivalent to USA requirements. (It is reasonable that NRIs put in place processes to ensure that they will respond in a timely fashion in the case of a food recall.)

Question 4: Should exporters or those who prepare food commodities for export be required to hold a licence issued by the Minister? Why or why not?

- If the foodstuffs are distributed within Canada, a license should be required; if all the foodstuffs are for export only, compliance to the country of import should be the only requirement. However, if export inspections or certifications are required, then a license should be required to ensure minimum standards are adhered to, to protect the reputation of Canada.

Question 5: What requirements should a licensed exporter need to meet?

- The export license requirements must meet the necessary GAP and codex rules and support international trade.
- Country of import requirements only - there should not be any added export requirements. If the country of export has requirements that are equivalent to something the exporter may already have here in Canada, reciprocal acceptance by the export country should be arranged. The licence should indicate minimum standards have been adhered to and a program is in place to minimize food safety concerns.

Question 6: Should those who need the Minister to certify their food commodities for export be required to hold a licence, or should the Minister handle these requests on an ad hoc basis? What would be the value of a licence in this scenario?

- An adhoc basis is feasible if the process is fast and streamlined.

Question 7: What are your views on the grounds for the suspension or cancellation of a licence?

- No license should be suspended or cancelled unless the CFIA has taken the following steps:
    - It has notified the organization that there are grounds for cancellation/suspension;
    - It has provided the organization with a copy of the document that specifies the grounds for suspension, the required corrective measures and the period within which those measures must be implemented to avoid further action.
- The cancellation/suspension should remain in effect until the required corrective measures are implemented by the organization and verified by the CFIA.
- Cancellation is acceptable in cases of gross negligence or intentional fraud which endangers the public health. However, before cancellation, the license holder must be given the "opportunity to be heard".
- A senior representative or body of the Government of Canada (e.g. the Minister or his delegate, a special Tribunal, Panel or Board set up for that purpose) must be responsible for enforcement, and determination of non-compliance and its severity and be provided in a transparent fashion.

Question 8: The Government is considering imposing a 2 year period after a licence cancellation, during which a regulated party would be unable to apply for a licence. Do you agree with this? Please explain your response.

Qualified yes based on the following:

- Food safety protocols must be in place and, if a problem occurs, oversight must be taken by government to ensure the problems are addressed.

- Fresh fruit and vegetable production lacks a "kill step" and for this reason, fresh produce food safety programs are designed to minimize the risk of adulteration. In the event that a produce operation is involved in a food safety incident that results in a license revocation, a question needs be asked whether the revocation is intended to be punitive or precautionary in nature.

    - If the intent is punitive, we do not oppose the 2 year period.
    - If the intent is solely to protect public health, then the nature of fresh produce food safety programs should be taken into consideration and the determination should be based on risk rather than on an arbitrary period of time.
    - Either way, fresh produce should be viewed in proper context. A fresh produce operation's food safety program does not have the ability to totally eliminate food safety hazards.

- The regulated party that cannot apply for another licence should include all responsibly connected persons to that regulated party not being able to apply.

Question 9: Are the proposed outcome-based regulatory requirements in Annex 1 sufficiently clear for industry to understand what outcomes they will need to achieve and their regulatory responsibility?

- Where possible, any requirement should have examples (clear guidance) of what that requirement may look like (e.g. "keep books" – what is a book? Bound hardcover paper book, excel spreadsheets, etc.). Use a Q&A format where possible.

The following relate to multiple questions which include questions 9, 10, 11 &12:

- Express support for the decision to ground the regulation and the concept of preventive controls in the internationally accepted food safety management approach based on hazard analysis and the Codex HACCP principles.
- Note that CFIA and industry have developed their food safety management programs and systems using common terms and definitions and strongly recommend that the new regulations should continue to use the language that industry is comfortable with and not introduce new language to describe well established concepts.
- Recognize that the proposed preventive controls, as whole, cover more than food safety and include, for example, controls related to quality, labelling, etc.
- Note that CFIA and industry have a clear current understanding about the meanings of HACCP and HACCP-based and suggest that these be clearly defined in the regulations. In particular, given CFIA's recognition of various industry-led food safety programs as "HACCP-based" (i.e. developed through a generic hazard analysis that incorporates Codex principles and FSEP tools, etc.) that this distinction must be clearly stated.
- Express concern that, as written, the proposed regulatory framework does not require all segments of the supply chain involved in interprovincial, import or export trade to put in place a preventive control plan.
- Express concern that responses to queries during the consultations on the regulatory framework imply that intermediaries along the supply chain (e.g. 3rd party transporters, cold storage facilities, etc.) will not be required by the regulation to have in place preventive control plans, but that other regulated parties (e.g. manufacturers, etc.) would be required to include these parties in their preventive control plans. Note that this creates a potential extra burden for these 3rd parties due to multiple demands from other regulated parties and ignores the fact that for some segments industry-led programs have been developed and recognized by CFIA.
- Indicate that the regulations should promote "best practice" as an outcome in the development and implementation of preventive control plans and suggest that this best practice should be grounded in international standards (both intergovernmental and voluntary).
- Note that the topic of validation is only briefly mentioned in the discussion paper. Indicate that validation presents considerable challenges for MSMEs with limited resources and access to bodies competent to conduct validations (suggested example - recognized "validation authority" perhaps a kin to the US "process authority" concept).

Question 10: Is there anything missing in the requirements that should be addressed to ensure food safety?

- Company and/or process specific validations to prove the (company) system will provide the required outcome; should be required if the organization does not adhere to "traditional" or current accepted practices.
- Note that the proposed preventive controls, as described in the text and in the two annexes have deficiencies and appear to be less stringent that the requirements of food safety management system certification schemes currently operating in the Canadian and international marketplaces.
- Indicate that this is particularly the case with respect to widely accepted concepts related to the "management system" components of a food safety management system (i.e. management responsibility and review, system verification activities, continuous improvement, etc.) which can have a significant impact on the stringency of the implementation of preventive controls (e.g. prerequisite programs, HACCP plans, etc.).
- Note that the proposals are silent on other areas where preventive controls are required by other governments or certification schemes (e.g. supplier approval and intentional food contamination (i.e. defense, fraud, etc.) and suggest that these areas require further consultation with industry.

Question 11: Industry is responsible for safe food and meeting regulatory requirements. The CFIA will be developing a suite of guidance documents. How could CFIA assist industry in meeting these outcomes through guidance documents, or other tools/methods?

- For training utilize workshops as opposed to seminars
- On-line training & tools for better access for small & remote companies
    - templates with recommended non-binding model practices or procedures that facilitate compliance
- Impacted industries should participate, or be consulted, during the drafting of the guidance documents.
- Request that a discussion paper on validation (expectations, acceptable methods, competences, including inspector competences, etc.) be released for consultation prior to the prepublication of the regulations in *Canada Gazette Part I*.
- Additionally, to ensure consistency, CFIA inspectors should be provided with guidance documents which industry can also have access to. This will ensure a clear understanding and interpretation across the country.
- Use of simple, easy-to-understand language, not complicated legalise but language must meet business needs (i.e. provide the detail necessary to ensure compliance); have someone from the industry proof them for simplicity before they go out – should be easy and comprehensive for both government and industry.

Question 12: To address potential unforeseen emerging issues that would not be covered by a standard hazard analysis process but may have an impact on public safety, should PCPs also include a requirement for regulated parties to routinely consider how to make their food safety approaches resilient in the face of new emerging threats?

- Yes – this should be a collaborative approach between all stakeholders including government and relevant industries.

Horizontal Requirements: Systems Equivalence

Question 13: What criteria could be used as a basis for foreign system recognition? What benefits or risks exist with such recognition that need to be taken into account in regulations or program design?

- Benchmark systems will help importers & exporters identify differences in systems and enable them to request modifications for compliance. Many schemes include requirements that are not related to food safety, these should be readily identified.
- Clarification required to ensure they:
    - Work successfully in the foreign country
    - Have been adopted by other countries
    - If not identical, are at least equivalent to Canadian requirements
- Support the concept of systems equivalence at the country level.
- Particular attention needs to be paid to the role that recognition of industry-led and other private standards have in the system of the country being compared. (This relates to the CFIA recognition program for Canadian industry-led programs.)
- CFIA already recognizes various government/industry certification schemes (e.g. California Leafy Greens Marketing Agreement) as preconditions for the import of product into Canada. The role of these programs in "systems equivalence" needs to be clarified and the technical and administrative standards to which they are held should be, at a minimum, equivalent to those set in the CFIA led national on-farm and post-farm recognition programs.

Question 14: The current regulations for egg, dairy and meat products require that imports can only be from countries with equivalent food safety systems. Given the proposed requirement on importers to have a licence and a PCP, are equivalency provisions still needed for these commodities? Please explain.

- Although this question is specific to egg, dairy and meat products it is important that CFIA recognize foreign food safety systems which achieve comparable outcomes as reflected in the Canadian requirements. Regulators should look to the model of CanadaGAP as a model for what these equivalency provisions should include.

Horizontal Requirements: Traceability

Question 15: What are your thoughts on the proposed traceability requirements?

- The produce industry supports the application of the Codex standard of one step forward, one step backwards to every stage of the food supply chain, from primary producer to retailer, regardless of size of operation (e.g. no exclusions for micro or small companies).
- The only exclusion is that retailers, restaurants and catering companies will not be required to collect information about consumer purchases. (This could have privacy issues and is virtually impossible to execute within current global technology.)
- Clarification is required to specify retail responsibility in business models where retail sells to foodservice (e.g. small restaurants) as part of their business model.
- To underscore the need to ensure there are no exemptions from requirements, it should be noted that traceability is a clear example where exclusion of SMEs (e.g. those selling at farmers' markets) could dramatically impact the scope of a recall and the ability for CFIA to do an accurate traceback.
- From CFIA communication to the Canadian Produce Marketing Association re "specified traceability records":
    - *Proposed **minimum** requirements for traceability are identified as: a) for each food commodity supplied to them, keep documents of: the name of the supplier, the address of the supplier, the nature of products supplied, the date of each transaction / delivery, the name of a contact person within the supplier, along with current contact details; and*
    - *b) for each food or feed supplied by them, keep documents of: the name of the customer, the address of the customer, the nature of the products supplied, the date of transaction / delivery, the name of a contact person within the customer, along with current contact details. This will be further expanded on in guidance documents and model systems, as well as in record-keeping requirements for PCPs.*
    - *"un-encrypted" means in clear text, that can be understood by the party receiving the information, is not password protected, and has not had security applied. [Data may be encrypted in a system, and a key or code needs to be applied to translate the information. Data needs to be received in the un-encrypted form]*

- CFIA must confirm the above as the specified requirements but additionally should recognize and deem satisfactory, currently industry-defined traceability requirements including the information to capture, record and share to ensure whole chain traceability. A tremendous volume of time by hundreds of traceability experts around the globe have defined standards – anything beyond or contrary would isolate Canada and Canadian industry within the global market. Organizations such as the International Federation of Produce Standards, CPMA, CanAgPlus (Canada GAP) and GS1 are all groups that need to be considered in determining the most efficient means to execute traceability including the information required in the event of an incident. For example: "the nature of the products supplied" must specify that part of this information is a lot number. Without including this fundamental specification, the scope of a recall would be immense and potentially decimate an industry/commodity.

- We support the need for record keeping by all stages of the food supply chain and that they are typically made available to CFIA, upon request, within 24 hours. It should be recognized that some circumstances may impact this timeframe such as foreign suppliers (delays due to language issues) and weekend or holiday schedules.
- We do not support the need for traceability records to be maintained for a period of three years as currently suggested. Food safety protocols and other government requirements do not go beyond 2 years and alignment should be ensured so as not to place unfair or unnecessary burden on the Canadian food supply chain. Additionally, consideration should be given to the provision within the EU Food Law which notes that "for highly perishable products, which have a "use by" date less than 3 months or without a specified date (products such as fruits, vegetables and non pre-packed products) destined directly to final consumer, records could be kept for the period of 6 months after date of manufacturing or delivery."

Horizontal Requirements: Record Keeping

Question 16: What are your comments on the proposed record keeping requirements? Should the requirement be limited to record availability?

- Clarity is needed – specifically is this question related only to traceability or to ALL records – if so, more information is needed regarding the type of records this refers to. Until that clarification is provided it is impossible to provide sufficient input.
- As noted above, CFIA should recognize that in extraordinary circumstances (e.g. foreign supplier language issues, weekend or holiday schedules), accessibility to records may be somewhat delayed.
- Recommend that records requested should be related only to established food safety systems which are therefore both accessible and relevant.

Horizontal Requirements: International and Inter-provincial Trade

Question 17: Do you think the described situations where regulations would not apply to the import, export, or inter-provincial trade of a food commodity should be maintained? Are there any other situations you can envision where the regulations should not apply?

- The regulations should not apply to product samples, provided they comply with relevant phytosanitary and quarantine requirements.

Question 18: Sometimes food commodities are imported into Canada solely for export to a third country, or "trans-shipped" through Canada, and are not offered for sale in Canada. In these cases, should these shipments be exempt from the application of the Act and the Regulations? Why or why not?

- These shipments should be exempt from the application of the Act and the regulations**.** This is especially important for the sweet cherry sector in the Pacific Northwest but also applies to transshipments of apples and pears that cross Canada on the way to an East Coast port and ultimately western Russia or Europe.

- Under the U.S. Food and Drug Administration's proposed rule for Foreign Supplier Verification Programs for Importers of Food for Humans and Animals, Section B. 4. (proposed § 1.501) regulations would not apply to food that is transshipped through the United States to another country or imported for future export and that is neither consumed nor distributed in the United States.

Review Mechanism (Under the CFIA Act)

The proposed regulations would include:

- Who can make a request for review of a decision,
- The manner in which a review officer must conduct the review,
- The time in which an application must be made, and
- Which decisions are reviewable.

Areas currently being considered under the SFCA are:

- Suspension or cancellation of a licence
- Restriction of movement of an item
- Start or stop an activity or prohibiting or limiting access
- Seizure and detention
- Removal or destruction of unlawful imports.

Question 19: What additional decisions, if any, would you like to see as reviewable, and why?

- When information that is attached to a company or product brand is made public it should have a review mechanism attached to it.
- As noted in previous questions (questions 5, 6,7,& 8), licensing review has particular points of input.

Question 20: What would be an appropriate time-frame within which an application may be made?

- 14 days – this will allow a sufficient time for providing the necessary information which may require internal consultations and may occur over holidays which impact timing.

Commodity-Specific Safety Requirements: Food Safety Requirements for Fresh Fruits and Vegetables

Question 21: Do you support a requirement for fresh fruit and vegetable producers to develop, document, implement and maintain a PCP if they send or convey directly to market in other provinces or other countries?

- Yes, however a risk based, food safety management systems model should be acceptable as the basis for producer implementation of a comprehensive food safety program that's founded on preventive controls. (For on-farm production, one supported example is the GFSI benchmarked CanadaGAP.)

Consumer Protection and Labelling: Horizontal Labelling Requirements

Question 22: What are your thoughts on the proposed approach to referencing the FDR where appropriate?

- Good, reduces duplication and time lags for updates.
- Until the new regulations are in place, existing regulations should continue to apply.

Consumer Protection and Labelling: Commodity Specific Consumer Protection Requirements

Question 23: Do you support the use of incorporation by reference for the grade standards, standards of identity, container sizes? Under what conditions/controls should IBR be used, or not used?

- Industry supports Incorporation by Reference (IBR) to ensure ability to react to changes in market demands and innovation without going through the long regulatory change process.
- Temporary market or production conditions should allow for temporary relaxation of IBR - provided there is buyer acceptance, mechanisms should be in place to meet situations such as poor growing conditions which produce small or mis-shapen fruits; if the variances are acceptable to the customer, this should be allowed. To prevent misunderstandings, documentation should be specific in the description of the variance and the acceptance of the variances be documented from the buyer.
- Referenced document should only contain fresh fruit and vegetable grade and DRC be responsible for updating based on advice from both CPMA and CHC. Government should not be the keeper of this document – should be industry managed to negate and delays in reaction.

Question 24: Do you support the proposed approach to the commodity-specific requirements?

- Clarification is required to detail which "commodity-specific requirements" are referenced here.
- If relative to grades, for example, we would agree as this would facilitate the inclusion of new varieties and products in a more expedient manner.
- If relative to trade and commerce, industry would also like to see commodity specific requirements.

Consumer Protection and Labelling: Standards of Identity

Question 25: Do you have any comments that CFIA and Health Canada should take into account as we work to consider the best approach regarding existing standards?

- Should include "equivalent" databases such as USA GRAS (generally regarded as safe).

Complementary Regulations: Disclosure of Information

Question 26: What are your views on the proposed disclosures? Would more compliance and enforcement information be of interest?

- More clarity is required around what information would be disclosed – consultation should occur with stakeholders to ensure the new authority given to the Minister under the SFCA does go beyond what is acceptable.
- Only disclosed if there is a very serious infraction. Information that would unnecessarily portray a commodity or group of commodities or a company or brand should not be made public.

Complementary Regulations: Administrative Monetary Penalties

Question 27: What are your comments in regard to the use of AMPs for contraventions under the SFCA and its regulations?

- AMPs are a good method to achieve compliance however should not be excessive (i.e. amount needs to reflect violation level) and must be carefully administered after "informed compliance" period to give industry the opportunity to become compliant to new requirements.
- For clarification: How do AMPs work in the case of an unlicensed operator?

Requirements for Fresh Fruit and Vegetable Dealers

Question 28: Do you support the proposed approach of industry providing arbitration of fair trade practices for fresh fruit and vegetable dealers?

- Yes, we support the proposed approach of industry providing arbitration of fair trade practices for fresh fruit and vegetable dealers. Fresh fruit and vegetable dealers have been effectively licensed, mediated, arbitrated and educated by an industry based organization since the inception of the Dispute Resolution Corporation (DRC) 13 years ago. Currently, the challenge for the marketplace is the dual licensing model which includes an option of either DRC members and/or CFIA license to import or trade fresh produce in Canada. Moving to a single industry provided system which includes the rules and service of the DRC would be widely supported.

Question 29: Under what conditions should an entity be selected to carry on this function?

- As note in Question 28, since the inception of the Dispute Resolution Corporation (DRC) in Canada, the industry in Canada and the US has been working using the two sets of functional tools on the vast majority of transactions. For sales in the US, we benefit under PACA rules and for our Canadian sales we benefit as members of the DRC and the DRC rules in Canada. For true trading success, the conditions an entity should be selected under should be based on the system and model as currently administered by DRC. Additionally, DRC-like rules and standards must be supported by regulation.

Question 30: Do you support the identification of the DRC as the entity for this function?

- Yes, the DRC meets all of the above noted requirements expected by industry. We are fully supportive of the DRC as the entity for this function.

Organic Products Regulations, 2009

Question 31: What are your comments on the proposed approach to extend the requirements for organic products to aquaculture products?

Question 32: What other accommodations could be made, in regulation or in program design, to support small businesses?

- Phased in period for existing operations - new operations should meet criteria prior to handling foodstuffs.

Review & Report

Question 33: Do you support the approach to conduct reviews of regulations on a regular 5 year cycle?

- Yes, unless industry or consumer complaints warrant an earlier review; reviews should include stakeholder groups.

Do you have any additional comments?

- All labeling requirements should be less prescriptive, e.g. size of lettering on principal display panels is unnecessary. If labeling can be easily read, then allow it. Can company websites be used instead of actual name and address of responsible party?
- Any quantitative references in regulation should include a mechanism for rapid review to meet advances in science and innovation.