Subject –Canadian Produce Marketing Association comments on the draft proposed *Safe Food for Canadians Regulations*
Comment due date: July 31, 2015
Attachments included:

- Test markets found in Compendium or New Regs_July 2015_OPMA
- Comparison of FF&VR and Compendium and New Regs_July2015_OPMA

Comment Submitted to: CFIA-Modernisation-ACIA@inspection.gc.ca

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 on the Canadian Food Inspection Agency (CFIA) proposed *Safe Food for Canadians Regulations*. CPMA would like to commend the Government of Canada and the CFIA for the opportunity to provide feedback on the draft of the proposed *Safe Food for Canadians Regulations* prior to publication in *Canada Gazette*, Part 1.

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 800 domestic and international members who are responsible for 90% of the fresh fruit and vegetables sales in Canada.

CPMA worked with industry representatives from across the supply chain to ensure robust and comprehensive comments were provided. This group included growers, wholesalers, retailers, provincial produce organizations, and other partner organizations.

We have included with this submission two attachments prepared by representatives from Ontario Produce Marketing Association (OPMA). These documents include:

- a comparison between the existing *Fresh Fruit and Vegetable Regulations* with the present version of the proposed *Safe Food for Canadians Regulations* and the *Canadian Grade Compendium, Volume 2, Fresh Fruit or Vegetables*
- a review of the proposed *Safe Food for Canadians Regulations* and the *Canadian Grade Compendium, Volume 2, Fresh Fruit or Vegetables* with existing test markets *Exemptions under the Test Marketing Provision of the Fresh Fruit and Vegetable Regulations* list

It is important to note this comparison has been done to enable a comparison by CFIA to ensure there is accuracy in the finished *Safe Food for Canadians Regulations* and the *Compendium for Fresh Fruits and Vegetables*, and that approved test market language which must be incorporated is included.

General comments:
CPMA supports the outcome-based approach that regulations are not prescriptive but rather the outcomes are regulated. An outcome-based approach allows regulated parties to adjust to methods of achieving the outcomes described in the regulations and provides flexibility to adjust methods of achieving the outcomes to allow for technological and scientifically validated innovations.

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.
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 (this would include consistency in inspection training, interpretation, investigation, etc.) and identify means by which industry can identify the inconsistencies and report to CFIA for action to ensure that.

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, 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*).

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 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.

Incorporation by Reference (IBR)
A revised IBR proposal must be consulted on 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. A likely organization that could be responsible for fresh fruit and vegetable grade standards is the Dispute Resolution Corporation.

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 Section 179, 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 ISO 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 that are involved in interprovincial food trade, in importing food or in exporting food **should be licensed** and should come under the *Safe Food for Canadians Act* and regulations regardless of size and 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". The Act defines "conveyance" - means a vessel, aircraft, train, motor vehicle, trailer or other means and includes conveyance in the meaning of "establishment"

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? Would "immediately adjacent "allow for any 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". Is a facility a building? Is an establishment the entire operation?

"**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.

➢ 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

➢ 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 <u>not</u> 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 clearly explained allowed activities, so that raw agricultural commodities are not confused with processed foods.

➢ When a different definition is used in another "Part "of the regulations it must be redefined and made clear what commodities are included exclusively for that part.

"**labelling**"-

➢ needs to be defined to clarify the scope of regulations e.g. purpose of determining if a licence is required

"**operator**" is defined in s. 39.

➢ 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?

"**person**" is not defined in this proposed regulation and must be for clarity and ensuring compliance.
➢ If it has the same meaning as in another regulation or act, or in this case the criminal code, it is essential the definition be included in the Interpretative Guidance document.

"**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 – organic, health, or nutrient content 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.

"**Licensing**":
➢ 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 be licensed?

➢ 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 licence? 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 licence? What are the prescribed activities that will require a licence?

➢ **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.

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 41 to 79.

➢ **imported food must meet requirements in sections 41 to 79 -** The rationale for not including the requirement for a written preventive control plan (s. 80 to s. 83) 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 41 to 83. For further clarity references to sections 84 to 86 should be added to s. 9 to emphasize the importance of the traceability provisions.

s. 19 (1) (a) – exemption for food for use by crew or passengers

➢ This 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. 21 The **definition "fresh fruit or vegetable" in s. 1 does not apply in this Division.**

➢ What definition does apply to fresh fruits and vegetables in 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 **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** 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.

s. 22 (a)

➢ CPMA supports the requirement for membership in the Dispute Resolution Corporation (DRC) for the fresh fruit and vegetable industry involved in interprovincial or international trade (import or export from Canada).

➢ 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).

s. 26 (f)

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

s. 32 " 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 "operator"

➢ includes the term "person" in the definition of operator – this is another section where "person" is used and will need to be clarified in interpretive guidance as to its meaning

s. 52

➢ We object to certain terms used relative to facilities– i.e., (b) (iii) "floors, walls, ceilings, windows and doors are smooth, non-absorbent and impervious to moisture". These are prescriptive words that are inappropriate for outcome-based regulations. The requirement is over-reaching and not applicable to fresh fruit and vegetable establishments. Words such as "are easily cleaned", "resistant to moisture" etc. would be more suitable. The CanadaGAP program (Section 2: Premises) uses terms such as:

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

s. 48

➢ We object to certain terms used in (i) describing conveyances and equipment – i.e., (i) "smooth", (ii) "free from pitting, cracks and flakes, and", (iii) "non-absorbent". These are prescriptive words that are inappropriate for outcome-based regulations. The requirements are over-reaching and not applicable to fresh fruit and vegetable packing establishments. Words such as "are easily cleaned" etc. would be more suitable.

Conveyances could be the back of a truck or wooden trailer. Equipment used for harvesting fruits and vegetables could include wooden bins, totes, etc. These are acceptable if they are in good repair, don't pose a risk of contamination and can be cleaned, including dry cleaning methods (wooden bins can be swept out, for example, to remove debris). The same could be said for field packing equipment, conveyor belts, and the like. These can't be "smooth, non- absorbent and impervious to moisture".

The CanadaGAP program uses the following wording:

Section 8.1: 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).

Section 17.1:

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. 62 (1)

➢ We propose the removal of the reference to "drinking water stations" from the draft regulatory text. This requirement is related to worker health, not to food safety.

s. 62

➢ In this section we propose the addition of another option for fresh fruit and vegetable establishments. Rather than potable water, operations should have the option to provide a hand washing option consisting of proper use of hand wipes (or non-potable water followed by paper towels) plus hand sanitizer, for employees to effectively wash their hands. It is not always possible in the field or in storage facilities to have potable running water.

➢ We recommend changing "potable" to "meets microbiological standards for drinking water."

s.62 (3)

➢ We propose the removal of Section 62 (3) as a requirement for fresh fruit and vegetable facilities. This requirement for washroom doors not to open directly onto production areas is overkill for these types of operations and reflects a processing /manufacturing facility standard. The hazard is mitigated in the CanadaGAP program by requiring handwashing stations as close as possible to where product is being handled.

s. 70

➢ this is a another section where "person" is used - please see comment for "person" in s. 39 above

➢ "competency" the proposed regulations should compare with terminology used in FSMA Rule to describe operator competency.

s. 73

- We propose a rewrite of this section to reflect that any of these prohibited activities, including drinking water, may occur only in designated areas (e.g., in break areas). There is a food safety risk with hand-to-mouth contact from drinking bottled water and this practice should not be permitted.

s. 80 (3)

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

s. 81

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

Traceability

s. s. 84 -86 – Traceability requirements

- CPMA recognizes the positive nature of the extensive revisions to the Traceability Requirements which reflect comments made by multiple organizations. There are, however, some areas that still require clarification and/or revision as follows:

- Clarifying language in a guidance document is required to ensure clear guidance relative to traceability capture, labelling and storage. This includes having the information within operations or the "link" to where the information resides (i.e. one up/one down) such that, for example, information must be available to clearly link to the shipper or receiver but the lot code, the complete contact information for the shipper or receiver (i.e. email, phone number, street address), can be accessed at the shipper's or receiver's as long as the "person" has information that provides a direct and immediate link (this precise information is stored by the entity that created the product and is accessible via a link such as a shipment ID but is not shared all along the supply chain. This example would apply to the shipping documents along the supply chain (i.e. one up/one down) for all "persons" who take possession of the product including repackers, wholesalers and brokers. This is of particular importance for lot code since the date, principal place of business, etc. will provide the direct link to the lots shipped. CFIA have provided earlier clarification noting that the intent is definitely not to include lot 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 traceback).
- Suggested regulatory language: s. 84 (1) (a) "…a lot code to enable the food to be traced…or labelled; however; lot code does not need to be kept by each person but records must include a shipment identifier that enables a direct link to the lot codes for that food;"

s. 84 (1) (a) "a lot code to enable the food to be traced"

- The regulations should be explicit that "lot code" is a generic, flexible term meant to include any code that allows for traceability, as opposed to any specific or defined code system currently in use. It is important that guidance/regulations make it clear that "lot code" is not required at every point in record keeping but that the information be available in the operations or there be a "link" to where it resides (i.e. one up/ one down) and lot code must be on the product itself where possible (e.g. bulk produce does not have the capacity to include a lot code on the item); at a minimum lot code must be on the shipping container.

s. 84 (1) (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.

➢ How does that differ from (b) and (c) "….the name and address of the person –"to whom the food was provided" "and who provided the food to them",

s. 84 (1) (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. 84(1) (d) & (e)

➢ Clarification should be included to ensure these two requirements are not interpreted to mean that they apply in the case of a manufactured or prepared food sold as a finished product to a retail or foodservice operation (e.g. can of soup, package of dried package, mixed bagged salad, etc.). Detailed ingredient information on a food sold as a finished product is part of the internal traceability records of an organization and often is confidential/proprietary product information

s.84 (1) (e) "the address of each place where the food…were moved before the food was provided to another person"

➢ Clarification is required around "movement" of food. Within an organization, movement of food is internal traceability information and should not be shared with the trading partner but be available internally within the organization's records. (This type of internal traceability suggested guidance could be in a compendium to help organizations record their internal traceability information but is outside the scope of one up/one down traceability.)

s. 84 (3) retention period for documents

➢ 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.

s. 85 (1) (a) "…or within a shorter time limit if the Minister considers that it be necessary…"

➢ This proposed regulatory text, as was the case with the previous consultation documents proposes that documents be provided to the Minister within 24 hours with no reference to level or severity of risk. The regulations should specify that only during investigations with clear and immediate risks to public health should this timing be invoked. While in many instances 24 hours may be feasible, some situations require more time. Examples include:

- Large recalls with numerous products
- Weekends and holidays (domestic and international)
- Global time zones
- Need for translation

➢ The regulations must allow 48 hours or more in such circumstances.

s. 86 "…a label that bears the information referred to in paragraph 84(1) (*a*) must be applied or attached to, or accompany, a food, other than a food that is to be exported, that is provided…"

➢ 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.

➢ Why is exported food exempt? Doesn't this undermine Canada's goal to ensure we are seen as exporting safe foods? 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 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).

➢ See **General comments** above for previous comments made on 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.

➢ Please refer to **General comments** above for previous comments made on FFSSR.

s. 176. "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 purposes of test-marketing a food or of alleviating a shortage in Canada of a domestically produced food."

➢ Both provisions, 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.**

s. 187. "For the purposes of subsection 6(1) of the Act, packaging a food in a manner that is false, misleading or deceptive or is likely to create an erroneous impression includes using a package

that is of a colour, or that has a design or mark, that enhances the appearance of the food with respect to its quality or composition."

- An exemption exists allowing colour enhancement for fresh fruits and vegetables per a test market 29 Nov 1996 which was accepted and it **must be clearly stated that this section does not apply to fresh fruits and vegetables.**

s. 204 and 205

- Section 204 only exempts consumer prepackaged foods, meant for export and that will not be consumed in Canada, from the labelling provisions of this section. Why are master and shipping containers (prepackaged products which are not consumer prepackaged products) that are meant for export only, not also included in this section?
- 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. 210 (b)

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

s. 223. "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 "

- Clarity must be provided in Interpretative guidance as to what constitutes "distinct contrast"

s. 264 Subsection (1) "The label of prepackaged fresh fruits or vegetables must bear the following information: (*a*) in the case of apples, the name of the variety; and (*b*) in all cases, a declaration of net quantity."

- According to s237 (d), s 264 (1)(b) does not apply to prepackaged consumer product and therefore is only referring to pre-packaged fresh fruits and vegetables that are not consumer products.
- There is an exemption which exists in Sec.23 of the existing Fresh Fruit and Vegetable Regulations for the declaration of net quantity on master containers:

  Fresh Fruit and Vegetable Regulations:

  Sec **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 container, the same information is not required to be shown on the outer container.
- This section requires a **clear definition** of a "master container" or "shipping container" as these terms are used in the produce industry. A "master container" is typically referring to a container that contains smaller prepackaged items (e.g., a large cardboard box containing product packaged

in clamshells; a reusable plastic container (RPC) containing packages of broccoli or lettuce, etc.). A "shipping container" contains bulk product (loose fresh fruits and vegetables)

s. 265 (2) "If prepackaged fresh fruits or vegetables that are labelled in accordance with this Part are placed in another container and the resulting product is prepackaged fresh fruits or vegetables, other than consumer prepackaged fresh fruits or vegetables, the resulting product is not required to be labelled with the information referred to in subsection (1) if that information is readily discernible and legible without having to open the container of the resulting product and is not obscured by the container."

- This would be referring to labelling on a "master container" and should be defined in this section (see previous comment)
- Would this labelling exemption apply to the following
  - Mesh bags for sweet corn. (reference: *Fresh Fruit and Vegetable Regulations*, s.8)
  - Secondary transparent bag into which smaller bags that contain required identifying information are packed (reference: *Fresh Fruit and Vegetable Regulations*, s.23)
- Presently under Sec 23 of the Fresh Fruit and Vegetable Regulations (see above in comment to 264) grade name, country of origin and also **identity and principal place of business of the person by or for whom the produce was produced or packaged for resale** are also included in this exemption for master containers.
- Net contents presently is not required on master containers of fresh fruits and vegetables –(Inner consumer prepackaged products are labelled with the net contents)
- Clear regulatory language is required as well as Interpretive guidance as to what container/packages would be exempt under section 265

s. 266 (1) "The information that is required by s.265 must, if shown on a principal display surface of an area set out in column 1 or 2 of Schedule 4, be printed in boldface type in characters of the minimum height set out, respectively, in column 3 or 4. "

- Since this only refers to principal display surface, which is only defined in these regulations for consumer prepackages, then it would follow that the intent is that "master" and "shipping" containers be exempt from the bolding and size requirements for this information. **CPMA would support this provision**.
- It would then be imperative to make it clear in this regulation what requirements are not meant for "master" or "shipping" containers, if the definition of principal display surface is to be extended.

s. 297 "A label of a consumer prepackaged food need not bear the declaration of net quantity referred to in section 212 if the consumer prepackaged food is
(b) a catch-weight food that is sold to a retailer; or "

- As mentioned in the section on definitions the term **catch-weight** food should be allowed for fresh fruits and vegetables such as grapes, cherries, and other product **when sold to the consumer** in **open** (unsealed) bags and that may have 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 relevant fresh fruits and vegetables.

s. 298 "Sections 212, 221 and 234 do not apply in respect of consumer prepackaged raspberries or consumer prepackaged strawberries that are packaged in the field in a container having a capacity of 1.14 L or less."

- Why are these exemptions restricted to just raspberries and strawberries?

s. 554 "If any expression referred to in subsection 555 (1) or (2) is used on the label of an organic product that has been imported or that is to be sent or conveyed from one province to another, the following must also appear on the product's label":

- This section should say "If any expression referred to in subsection **553** (1) or (2)."

s. 555 (1) "Subject to subsection (2), any expression referred to in section 555 or 556 must appear on the label of a food commodity in both official languages.
(2) An expression referred to in section 555 or 556 may appear on the label of a food commodity in either official language if the food commodity is any of the following:"

- This should say :(1) Subject to subsection (2), any expression referred to in section **553 or 554** must appear on the label of a food commodity in both official languages. (2) An expression referred to in section **553 or 554** may appear on the label of a food commodity in either official language if the food commodity is any of the following:

s. 538 "organic product" means a food commodity that has been certified as organic in accordance with subsection 546 (1) or that has been certified as organic as set out in paragraph 561 (1) (*b*) or (*c*).

- This section should state "organic product" means a food commodity that has been certified as organic in accordance with subsection **544 (1)** or that has been certified as organic as set out in paragraph 559 (1) (*b*) or (*c*).