

December 1, 2020

Dear Minister Yurek,

Re: ERO number 019-2579

We are writing on behalf of the Ontario Produce Marketing Association (OPMA) members to provide input on the proposed regulation, and proposed regulatory amendments, to make producers responsible for operating blue box programs. The OPMA represents companies across the produce industry from growers, packers and transport companies through to importers, wholesalers and retailers of produce.

The OPMA supports the government's objective to work towards a stronger circular economy of packaging in Ontario. We have nine recommendations on the proposed regulation.

Recommendation 1

Provide greater clarity on the definition of producer and how responsibility for collection and reporting can be determined. (Section 4: Definition of producer)

Rationale:

Responses during consultations on this regulation indicate the intent is for the responsibility as producer to lie with the company that makes the decision to pack the product and the packaging to be used. However, this intent is not clear in the draft regulation as written. Clarity on this intent would be useful and prevent confusion.

In the fresh produce sector, the decision to add packaging and the type of packaging used does not always reside with the brand holder or the company packing the product. This may be dictated by the grocery chain procuring the product to sell to consumers.

For example, a grocery chain may request an Ontario vegetable grower and packing company to provide packs of vegetables in bags, with specific requirements about the type of packaging and labelling. The grower packs the vegetables in the requested packaging and provides them to the retailer. The brand on pack belongs to the grower packer but the packaging decision is determined by the retailer.

As the regulation is currently written, it is not clear who is responsible as 'the producer'. According to subsection 1, the grower / packer is responsible as the brand holder. However, the decision on the packaging to be used belongs to the grocery chain, so they would be responsible according to subsection 2.3 (*A person adds blue box packaging to a product if the person causes another person to add the blue box packaging to a product*).

Guidance on which of these takes precedence would be useful.

Recommendation 2

Include a requirement for responsibility as producer to be taken by a company that aggregates product from many small producers. (Section 65: Exemption, small producers)

Rationale:

Providing exceptions for producers with annual revenue of less than \$2 million introduces the potential for misuse of the regulation. Large packaging companies that source from a number of smaller producers could avoid responsibility by passing responsibility to the small producers who are exempt. This would lead to large amounts of packaging not entering the system.

Recommendation 3

Include clarification on the intended disposal path for the many tonnes of packaging that is exempt from this regulation as a result of the exemption of small producers. (Section 65: Exemption, small producers)

Rationale:

As with the current system, consumers are likely to place exempt items in the common collection system. If this packaging is exempt, many tonnes of packaging that could be recycled will be left unprocessed. It is understandable that very small brand holders do not have the capacity to take part in the program. However, if the government is exempting these brand holders, there should be a clear path for these materials to ensure responsible recycling and disposal of all packaging, and clear responsibility for payment of the processing.

Recommendation 4

Provide clarity on responsibility for reporting of exported product. (Section 33)

Rationale:

An Ontario-based grower of fresh produce (a producer) may sell a product to a grocery chain, which then takes ownership of the product. The distribution from the grocery chain distribution centre to stores is at the discretion of the grocery chain and depends on a range of variables. The grocery chain may decide to export the product to another province. The producer will not be aware of the amount exported in any given period. It is not clear if the retailer is responsible for reporting to the Authority, or to the original producer. Producers may over estimate and over pay for product not sold in Ontario. Guidance would be useful on the reporting responsibility for product purchased and then subsequently exported.

Recommendation 5

Government involvement in developing and delivering consumer messaging so there is a coordinated and clear message.

Rationale:

Education and communications to consumers should be clear, simple and consistent. This is best achieved by coordinating the education through a single voice.

In the current system, municipalities provide detailed education materials to consumers on what packaging goes in the Blue Box. Even with this single message, consumers put the wrong articles in the bins. Shifting responsibility to the thousands of different producers will create inconsistent messages available in a multitude of different places the consumer must find. This relies on a highly motivated consumer and sets the stage for a very complicated communications message.

Involvement of the government in developing and delivering consumer messaging will ensure communication of a clear, simple and consistent message. Individual producers could supplement this with information about their specific packages, using the government's message as a template for consistency.

Recommendation 6

Set national standards for recycling facilities across Canada that will ensure efficient recycling of packaging.

Rationale:

A significant assumption in draft regulation is that all producers have the power and capacity to influence the types of packaging available in the market and also have a multitude of packaging supply options available to choose from. The assumption is that this influence will drive innovation in packaging and improvements in recycling.

In reality, growers in the fresh produce industry who are packing their produce for market have no such influence to drive change in either direction. Being just one of seven links in the overall packaging value chain, the type of packaging used by the food industry is heavily influenced and restricted by packaging manufacturers (resin suppliers and material converters), many of whom do not operate in Canada and are not bound by Canadian regulations. These organizations directly impact the economic viability of the material recycling sector.

In terms of driving change in recycling efficiencies, with limited options for selection of a PRO, the grower will have limited power to select one PRO over another and thus no way to drive a competitive recycling marketplace. Equally, the fresh produce growers are not large multi-national companies with the ability, funds or internal staffing to form a PRO of their own. They will pay the PRO that emerges.

Setting national standards for recycling facilities, including materials accepted, as a complement to this regulation would help provide the guidance needed to steer packaging innovation by the packaging manufacturers who ultimately control the materials available in the market.

Recommendation 7

Any programs put in place by Ontario should align with federal standards for single use plastics and recyclable materials. Many products are sold across Canada and there needs to be a harmonized approach across the country.

Recommendation 8

The start date for registration be postponed from April 1, 2021.

Rationale:

Given a number of items in the regulation require clarification, not least the definition of the brandholder / producer, there is likely to be significant confusion among stakeholders. Greater clarity on the regulation and the Authority reporting requirements is needed before registration and reporting can be expected to commence.

Recommendation 9

Include a clear standard for compostable materials

Rationale:

We were pleased to hear the definition of compostable material would be refined in the draft regulation. This is a rapidly evolving area of packaging innovation. A clear standard for compostable materials is critical. Producers and developers of this material need a clear target to aim for and innovate towards.

Thank you for the opportunity to comment on the proposed regulation to make producers responsible for operating blue box programs. The OPMA congratulates the government on promoting innovation in packaging as part of a move to a more circular economy. We are committed to working the government and the Authority to work towards a robust circular economy for the packaging in Ontario.

Please do not hesitate to contact the OPMA should you wish to discuss the points in this submission.

Sincerely,

Houman Madani
Chair, OPMA Board
Metro Inc.

Michelle Broom
Chair, OPMA Packaging Round Table

About the OPMA

The OPMA is a member-based not-for-profit organization representing companies across the produce industry from within and outside Ontario, with the primary objective to connect people and information. The OPMA provides opportunities to collaborate and share information, works to attract and retain talent in the industry and encourages consumption of fresh produce.

Ontario contributes over one third of Canada's total fruit and vegetable production, contributing more than \$4.2 billion and over 66,000 jobs to the economy. The OPMA office is located at the Ontario Food Terminal in Etobicoke, where over 2 billion pounds of produce, both local and imported, is distributed every year. Over 100,000 people are either directly or indirectly employed through business at the Ontario Food Terminal including more than 600 Ontario farmers.