



Brennen Young
Director, Policy and Strategic Planning
Regulatory Affairs Sector
Treasury Board Secretariat

January 29, 2021

Submitted Via Email

Dear Mr. Young:

RE: *Consultation on Regulatory Modernization*

On behalf of the Canadian Produce Marketing Association, we welcome the opportunity to provide amended comments to the Government of Canada on the following regulatory modernization initiatives:

- Targeted Regulatory Reviews (Round 2);
- Review of the Red Tape Reduction Act; and
- Suggestions for the next annual Regulatory Modernization Bill.

We would also like to express our appreciation and support of the recently-released [What We Heard Report](#) from the initial round of consultations in 2019. We believe this report captures many of the themes we have heard from our members and other industry stakeholder organizations.

The COVID-19 pandemic has demonstrated both the important role that regulations can play in protecting public health, as well as the unintended consequences of operationalizing outcome-based regulations in a prescriptive manner. As the fresh fruit and vegetable sector shifts its attention towards recovery, our comments will focus on areas in which regulatory modernization can promote economic competitiveness and ensure the viability of our sector moving forward. You will find CPMA's amended comments on the Treasury Board's questions below, along with overarching comments on areas of critical importance to the fresh fruit and vegetable industry.

Comments – Targeted Regulatory Reviews (Round 2)

(2) Are there existing or emerging technologies, processes, or products in your firm or sector, including the clean technology sector, facing barriers because of federal regulations? In particular, please identify how digitalization, technology-neutral regulations, or the application of international standards could reduce the regulatory burden for your firm or sector, or improve your ability to compete. What opportunities do you see for improved user experience in navigating regulatory requirements?

(3) How can regulations further support innovation in your sector? What opportunities do you see for regulatory experimentation (e.g. pilots or regulatory co-development) in support of clean technology, digitalization, technology-neutral regulations, or the application of international standards in regulation? Please provide concrete examples, if possible.

Clean Technology

- CPMA and the fresh fruit and vegetable sector recognize that a sustainable environment is essential to the future viability and growth of our industry and Canada as a whole, and are supportive of the Government of Canada's efforts to address climate change under the Pan-Canadian Framework on Clean Growth and Climate Change and to foster Canada's post-COVID economic recovery through clean growth. In order to ensure the effectiveness of regulations put in place to support these efforts, CPMA urges the Government to develop these regulations in a way that reflects scientific evidence and accounts for reasonable compliance timelines in implementation.
- The Canadian produce industry has been deeply engaged across all segments of the supply chain to reduce and mitigate the use of plastics. On June 4th, 2019, CPMA announced the creation of a new Plastic Packaging Working Group to chart a path forward on the use of plastics within the industry. CPMA has deliberately taken a leadership role in this space to meet consumer and societal demands and reduce the industry's impact on the environment as we move to a more sustainable, low carbon economy. Tools and resources created recently include the *Preferred Plastics* and *Packaging Material Selection Guides*, which support industry decision-making in choosing appropriate material for their product.
- To be successful in reducing the use of plastics, industry and government collaboration is essential to achieve long-term, sustainable change. While the COVID-19 pandemic has lessened the public's focus on plastic waste, as we move into recovery, it is expected that consumer support for the reduction of plastics will resume. CPMA urges the Government to work closely with industry to find solutions that are evidence-based, and include a combination of education, innovation, and effective recycling collection within communities across Canada. It is also critical that government commit to working with industry to find solutions that consider the food safety and food security implications of reducing the use of plastics for fresh produce.
- In September 2020, the Government of Canada announced that it will amend the *Canadian Environment Protection Act (CEPA)* to address plastic use, using Schedule 1 to identify certain plastic materials or forms that will be banned, and released for consultation its Discussion Paper, *A proposed integrated management approach to plastic products to prevent waste and pollution*. CPMA commends the Government of Canada's efforts in trying to reduce plastics and finds the integrated management approach generally sound, as it seeks to implement a principles-based approach to managing plastics waste. The principles outlined are aligned with common best practices of reduced use where possible, increased reuse, enhanced recycling, and strengthening domestic-end use markets for recycled plastics. Many, if not all, of these principles already drive CPMA members' efforts to reduce the environmental footprint of produce packaging. At the same time, we must caution that an overarching approach under Schedule 1 of *CEPA* that is not grounded in scientific evidence confirming the toxicity of plastics increases the likelihood that product restrictions or bans may have unintended negative consequences and not result in the desired environmental impacts desired. This risk could be mitigated if the government ensures that consultation and regulatory impact assessments are integral to any subsequent regulatory instrument proposed under the integrated management approach.

- CPMA urges the Government to commit to putting in place dedicated funding for industry research and innovation to facilitate the transition away from unnecessary and problematic plastics towards more sustainable and environmentally friendly options.
- The fruit and vegetable industry is a major contributor to job creation and Canada's GDP and will continue in this role as we move toward a low carbon economy, but the Government of Canada must put in place policies and programs to support the ongoing growth of the industry. CPMA is eager to continue working with government to ensure the success of the Pan-Canadian Framework and the Strategy on Zero-Plastic Waste.

Digitalization and Technology Neutrality

- CPMA emphasizes that the Government's digitalization efforts should use a cross-government lens and take a whole-of-government approach to reduce burden for industry. The Government's Regulatory Roadmap for Agri-Food and Aquaculture identified as an action item the digitalization of the Canadian Food Inspection Agency (CFIA) by setting up an online system for issuing export certificates (being done through MyCFIA). This is a welcome initiative with potential to have significant benefit for the fresh produce sector, particularly given the time-sensitive realities of our supply chain. Moving out of the COVID-19 pandemic, the implementation of export certificate services through the MyCFIA portal can help promote trade and investment with export markets and can support Canada in reaching its agri-food export target of \$75 billion by 2025. Indeed, the development of this type of online import and/or export portal, including CBSA's Single Window Initiative and the CBSA Assessment and Revenue Management (CARM) portal, have enormous potential to streamline processes for both industry and government. However, in order to maximize the potential benefits and minimize any burden to industry, the Government of Canada should take a whole-of-government approach to ensure consistency and integration across and between these systems wherever possible.
- CPMA also wants to emphasize that data is a key input for ensuring global competitiveness and the ability to meet the challenges of COVID recovery and moving to a low carbon economy. Unfortunately, Canadian data, particularly in agriculture, is difficult to find, incomplete or onerously expensive for associations and businesses to purchase.
- Currently, much of the data captured by Statistics Canada only goes to the Food & Beverage level and does not break down by industry or commodity group. More granular data on consumption, trends, trade, and consumer preferences would act as a catalyst for growth and greater competitiveness, as well as allowing industry to be better positioned to navigate the transition to a low carbon economy. A robust and fully funded data strategy must be implemented by the Government if we are to be competitive on the global stage and reach our agri-food export target of \$75 billion by 2025.
- Such a data strategy is also needed to ensure the development of sound, scientifically based policy and regulations. For example, the Pest Management Regulatory Agency (PMRA) currently lacks sufficient Canadian data to make sound decisions. Environmental data and Canadian pesticide use data are critical for regulators to be able to make the informed, scientific decisions needed to effectively support environmental quality, human health, agricultural stability and effective pest management.

- CPMA is pleased that innovation has been a key priority for the Government. The full scope of the impact of COVID-19 on the fresh produce industry will likely not be known for months to come, but planning for recovery must include looking at how the business environment may change permanently. A strong and growing Canadian produce industry will depend on our ability to leverage innovation.
- The growth of e-commerce could also have significant implications for growers and suppliers across the country, making access to broadband internet and cell phone coverage even more important. As noted by [the Agri-Food Economic Strategy Table](#), the lack of digital infrastructure remains a major roadblock to innovation for many growers and other businesses in the fresh produce industry. Particularly in light of the significant market shifts resulting from the COVID-19 pandemic, the Government must ensure the swift deployment of the Universal Broadband Fund to support the rapid expansion of high-speed internet infrastructure and cell phone service coverage so that all Canadians and Canadian businesses have access to the digital infrastructure they need.
- The success of the agriculture and agri-food sector will be critical to Canada's economic recovery from the COVID-19 pandemic. In fact, a 2019 [Royal Bank of Canada \(RBC\) report](#) found that with the right combination of skills, capital and technology, agriculture could add \$11 billion to Canada's GDP by 2030. The RBC report also found that Canada's share of global agtech investment is only 3.4%, falling behind countries such as Brazil and India.
- Global advancements in agricultural biotechnology pose challenges that will be amplified with gene-editing systems and tools for plants. CPMA emphasizes that the Canadian fresh fruit and vegetable sector needs access to utilize these tools in order to stay competitive globally.
- Regulatory alignment with our trading partners is vital to bolstering economic competitiveness within the fresh fruit and vegetable sector, which is highly-integrated around the globe. The U.S. has moved to exempt agricultural innovations that are the products of plant genome editing from being regulated. CPMA urges the Government of Canada to consider following suit and adopting this approach so that these products can enter the Canadian market at the same time as they become available in the U.S. to maintain the Canadian industry's competitiveness.
- Regulatory reform that supports future innovations, while avoiding uniquely Canadian regulatory requirements, would bolster the fresh produce industry, strengthen our ability to meet the challenges of moving to a low carbon economy, and contribute to our competitiveness, now and into the future.
- As part of the Agri-food and Aquaculture Roadmap Policy and Program Initiatives and Novel Approaches, CFIA's focus on Reducing Risk and Improving Trust using Distributed Ledger Technology (Blockchain) aligns with exploratory efforts in other key trading party countries. As CFIA explores the potential to adopt a data-exchange platform based on blockchain, it is crucial that impacted stakeholders are engaged early in the process to ensure that market capacity and business reality is a key component of discussions and of any eventual implementation. Also critical to this effort is the understanding that blockchain is, at its core, simply another methodology for sharing data; what is key is the data itself and, in particular, wherever possible,

ensuring that a common language (data) is used to harness the power of blockchain solutions. As this work progresses, including in conjunction with the Standards Council of Canada, it is critical that “Made in Canada” solutions align with international efforts, particularly with our largest trading partners. While Canadian-focused solutions can support the domestic market, lack of alignment with efforts abroad will limit private sector engagement – and ultimately the initiative’s effectiveness – as industry seeks out more international solutions.

International Standards

- As noted above, international standardization between government bodies is critical to the success of Canadian industry, particularly to the fresh produce sector, which is one of the most global supply chains in the world. This includes the harmonization of food safety standards and systems that support the mutual recognition of food safety systems, such as that which occurs between Canada and the U.S. This recognition removes unnecessary and costly duplication within both the international supply chain and government and supports competitiveness of Canadian products in the international marketplace. To capitalize on this, CPMA emphasizes the importance of designating resources to CFIA to enable further expansion of these mutual recognition efforts with other key trading countries.
- In any efforts to harmonize and standardize between governments, it is essential that government also considers the existing international standardization integrated in business. Where business has developed international/global standards – standards tested by commercial application – government must ensure that, wherever possible, the standards it chooses to implement in services and solutions reflect those business-driven and tested standards. To achieve this, as government considers new solutions, a key piece of that effort should be early engagement with business stakeholders to understand the standards which already exist and have been implemented across international supply chains.
- To increase market access and sustainability of the Canadian fresh fruit and vegetable industry, the harmonization of pesticide regulation, products, and residues must occur. This requires collaboration both within Canadian governmental agencies, and between the Canadian government and other governments with which we trade. It is critical that this process takes place during trade negotiations to prevent technical barriers arising following the signing of trade agreements.
- CPMA would like to emphasize that the harmonization of Maximum Residue Limits (MRLs) between Canada and its trading partners remains essential to the removal of non-tariff trade barriers. CPMA also continues to call on the government to fulfill Pest Management Regulatory Agency (PMRA) *Regulatory Directive DIR 98-02, Residue Chemistry Guidelines* – which furthers regulatory harmonization by considering chemistry reviews by the U.S. Environmental Protection Agency as acceptable to support MRLs here in Canada. These actions would help promote international trade and investment with export markets.
- CPMA recognizes that phytosanitary requirements that are not science-based or essential to security act as effective non-tariff trade barriers between countries and must be eliminated. CPMA therefore urges the Government to work with all trading partners to ensure that any

phytosanitary requirements for fruit and vegetable imports be based on sound science and an appropriate risk-based approach.

- Consumer confidence in the safety of the food supply is eroded when jurisdictions have different regulations, or if there is not sound science behind them. Consistent, evidence-based MRLs will serve to boost trade for producers while also allowing a variety of healthy, safe fresh produce choices to continue to be available to consumers around the world.
- Finally, CPMA notes that the Canadian Government participates in multiple international fora, such as CODEX Alimentarius and the International Plant Protection Convention (IPPC), that create guidance and standards to support regulations; this participation often involves significant resources as well as consultative involvement from stakeholders. CPMA supports the Government's participation in these bodies and recognizes the importance of this work in ensuring that Canada is a leader in implementing global best practices and standards. It is therefore imperative that the Government of Canada prioritizes the implementation of the agreed-to outcomes of these bodies, rather than implementing regulation out of line with the international standard, which creates confusion and puts Canadian industry at a competitive disadvantage.

Comments – Review of the Red Tape Reduction Act

(2) The objective of the RTRA is to control the administrative burden that regulations impose on business. Has the RTRA had an impact on your organization or sector and, if so, how?

(3) Do you find regulators' estimates of administrative burden cost in line with your experience or consistent with your own data? Would you be willing to share more of your costing data to provide regulators with more information to design offsets of costs?

(4) What more should be done to reduce administrative burden? Please provide concrete examples, if possible

- CPMA supports the objective of the *Red Tape Reduction Act* to control the administrative burden that regulations impose on business; however, work remains to be done in the advancement of this goal. In particular, CPMA urges the Government of Canada to prioritize genuine consultation with industry prior to making regulatory changes, and move away from a 'check-box' approach to stakeholder consultation, to better understand the administrative or other costs of proposed changes, and to avoid imposing undue administrative or financial burden on industry.
- For example, with the coming into force of the *Safe Food for Canadians Regulations*, test market provisions have expanded to apply to all foods. Test market authorizations (TMAs) can now be issued for the purpose of test marketing a food that has not been sold previously in Canada in that form and differ substantially from any other food sold in Canada with respect to its composition, function, state or packaging form. CPMA and other industry stakeholders have raised significant concerns that the new TMA provisions and CFIA's definition of what constitutes a "new food" will make it very difficult, or impossible, for the fresh fruit and vegetable industry to test the market for products in new or different packaging, labelling and in grade standard. To date, CFIA has indicated that the new TMA and Ministerial Exemption processes are limited to a very specific set

of cases and that the issues industry has raised are best handled through Incorporation by Reference (IbR) changes. However, industry does not view the IbR change process as a workable mechanism for our sector, due to the lengthy review processes and WTO notification requirements. The fresh fruit and vegetable industry is seeking a regulatory mechanism to replace what was repealed in the previous *Fruit and Vegetable Regulations*. This mechanism is critical to granting industry the timely flexibility to market their product and test new and innovative compositions and packages for consumers.

- Similarly, CPMA is deeply concerned about the Government’s consultation process to establish traceability requirements under the *Safe Food for Canadians Regulations*. One specific requirement has resulted in massive resource utilization, (both financially, in the multi-millions of dollars, and from a human resource perspective), to comply with what industry believes is an unnecessary and ineffective regulation. This includes thousands of hours spent by both government and industry to determine and implement “concessions” to enable compliance. While these concessions are appreciated, all of this could have been avoided. Furthermore, a lack of industry-specific understanding and the “one food” approach to the regulations have created unintended consequences which, in some cases, will result in reduced access to traceability information and country of origin information, with what industry believes will be little to no food safety benefit.
- CPMA emphasizes that making regulatory changes such as those listed above without genuine, thorough consultation or notification to industry imposes undue burden on industry by reducing the time available to understand the impact of changes and become compliant – and increases the risk that mistakes will be made by Government in the development of regulation due to lack of industry-specific understanding.

Comments – Suggestions for the next annual Regulatory Modernization Bill

(1) Is there legislation that prohibits the regulatory flexibility and/or experimentation necessary to allow emerging technologies to enter the market?

(3) Are there any federal legislative requirements that are duplicative, redundant, out-of-date, or unclear?

- CPMA supports the Government of Canada’s ongoing efforts towards regulatory modernization, which is necessary to maintain and bolster the fresh produce industry’s global competitiveness. Future Regulatory Modernization legislation to address the following challenges would be a welcome step in pursuing this goal.
- CPMA would like to emphasize the need for greater federal oversight of ports and Port Authorities across Canada. Our members regularly report delays in inspection and shipment clearance times at the Ports, with neither CBSA nor the Port Authorities taking responsibility for service standards for the total movement and clearance of goods, as each party has jurisdictional ownership over certain parts, but not the whole, of the process. Given the perishability of our products, inspection delays and shipping disruptions not only mean demurrage and inspection-related costs for industry, but can also result in significant loss to the value of the product itself. For example, our members reported that the August 2020 strike at the Port of Montreal impacted 312 to 340 shipping containers and resulted in product losses totalling upwards of \$11.7 million. Moving

forward, it is crucial that the Government of Canada take a more holistic approach to facilitating the smooth flow of goods at the Canadian border, with a particular focus on ensuring that essential and perishable goods are able to reach Canadians.

- Finally, CPMA emphasizes that greater consideration is needed regarding implementation timelines for regulatory reform. For example, the Government's recent and significant changes under the *Safe Food for Canadians Regulations* are not yet fully implemented, and the Government is already eager to move forward with the next phase of reform. More time should be allocated for the implementation of regulatory changes, not only to allow industry to fully understand the changes and become compliant, but also for Government to be able to assess the impact and effectiveness of implemented changes before proposing more.

Other Comments

While the Government's move toward increased consultation with industry is welcome, there remains work to be done to ensure that these consultations are effective and provide benefit to both government and stakeholders.

The Canadian Chamber of Commerce 2019 Regulatory Reform report card gave a failing grade to the Government's execution of regulatory reform when it comes to consultation with stakeholders, noting that Chamber members indicated that consultations seemed to be more a 'check-box' to justify decisions already made, rather than genuine engagement with those impacted by regulations. The Chamber report card stated:

"[There is] evidence that regulators will continue to use consultation as an exercise to justify their preferred regulatory options rather than to try and improve them....Instances such as this leave many stakeholders questioning why they should invest time and effort to try to improve regulations if regulators are going to proceed with their initial proposals." (page 8)

CPMA has also grown increasingly concerned with the process for government consultations on regulations and policy. Of particular concern is the frequency and short timeframes for stakeholder submissions. For example, between June 13th, 2019 and the time of CPMA's original submission on September 5th of that year, 21 federal government consultations pertinent to our members were announced, with all but three deadlines falling between July 22nd and September 13th (and an overall average of 7 weeks for industry to submit comments). The intensity of this consultation schedule – especially during the summer months when many industry experts and stakeholders are in the midst of their harvest and production season and are therefore unavailable – makes it extremely difficult for CPMA and our partner organizations to solicit and report on member input. CPMA therefore urges the Government of Canada to undertake a whole-of-government review of its consultation processes in order to better facilitate thorough stakeholder participation.

The complexities and unique considerations of the fresh produce sector, related to the nature and perishability of our product as well as time-sensitivity across the supply chain, can often mean that a one-size-fits-all regulatory approach will be ineffective, inefficient and impose undue burden on industry, with little benefit to the Canadian Government or indeed the Canadian public. The Government of Canada should therefore utilize a more business-focused lens to regulatory modernization and should draw upon the expertise of industry to avoid unintentional errors in the creation of regulations resulting from a lack of industry-specific knowledge. In addition, when, after regulations are enacted, unintended consequences arise, government must show flexibility to address these consequences. Improvements are

required to ensure tight adherence to regulation or departmental policy does not significantly impact business and Canada's ability to engage in both domestic and international trade and commerce.

When significant impacts arise, and government departments feel bound by regulation, a mechanism should exist to allow for independent examination of the industry/regulatory issue with a goal of determining a pragmatic solution that does not undermine business while supporting an outcome-based model to regulatory compliance.

Where possible, the Government of Canada should engage with the fresh produce industry as they determine proposed models and implementation plans for the key areas noted in this submission. Furthermore, a monitoring and accountability mechanism should be established, with key objectives assessed in an annual public report. A collaborative approach to find workable solutions for industry and government is the backbone to success for regulatory and policy compliance. CPMA and Canada's fresh produce industry are keen to partner with government to ensure the success of its Regulatory Modernization agenda.

Thank you for taking the time to review our comments.

Regards,

A handwritten signature in black ink, appearing to be 'RL', followed by a horizontal line extending to the right.

Ron Lemaire
President
Canadian Produce Marketing Association

About CPMA

Based in Ottawa, the Canadian Produce Marketing Association (CPMA) is a not-for-profit organization representing companies active in the marketing of fresh fruit and vegetables in Canada, from the farm gate to the dinner plate, spanning the entire produce industry. The produce industry generates over \$17 billion annually in economic activity throughout the supply chain and supports over 249,000 jobs across Canada. The Association's members include major growers, shippers, packers and marketers; importers and exporters; transportation and logistics firms; brokers, distributors and wholesalers; retailers and foodservice distributors; and fresh cut operators and processors. Founded in 1925, CPMA is today proud to represent over 800 domestic and international members who are responsible for 90% of fresh fruit and vegetable sales in Canada.