

PROPOSED CHANGES TO REGULATION 440 MADE UNDER THE *FARM PRODUCTS MARKETING ACT*

Proposal	Current Regulation	Proposed Change	Connection to Economic Analysis/Consultations
1. Industry Advisory Committee (IAC)	<ul style="list-style-type: none"> Not currently in regulation 	<ul style="list-style-type: none"> IAC would bring industry stakeholders together to collaboratively find opportunities for growth, innovation and new jobs. IAC subcommittees could focus on specific crops - created on an ad hoc basis. Proposed IAC structure: <ul style="list-style-type: none"> Commission appointed chair Maximum five Ontario Processing Vegetable Growers (OPVG) appointed growers Maximum five Commission appointed growers Maximum four Ontario Fruit and Vegetable Processors Association (OFVPA) appointed processors Maximum two Commission appointed, non-OFVPA processors Maximum three Commission appointed industry stakeholders i.e. retailers, Food and Beverage Ontario, seedling growers <p>Additional Non-Regulatory Tools</p> <ul style="list-style-type: none"> IAC members would develop a terms of reference document to outline roles, responsibilities, priorities e.g. research priorities for growth and innovation. IAC members would be tasked with developing a terms of reference document for negotiation processes for consideration by negotiating parties. The document would include procedural matters such as: <ul style="list-style-type: none"> Timing of negotiations Expectations for decorum during negotiations Process for selecting conciliator (if required) Expectation for debrief once negotiations are completed Outline a greater emphasis on negotiating terms and conditions (beyond price) Commission's role during negotiations 	<ul style="list-style-type: none"> The Commission established a successful informal processing vegetable IAC in summer 2017. During consultations, processing vegetable stakeholders agreed to the benefits of an IAC. Non processing vegetable stakeholders also highlighted the value of already established IAC's for their sectors, specifically in terms of building relationships and managing issues. An economic analysis of the sector suggested that an IAC could help industry improve current issues and relationships. Through the consultations it was noted that a better process could be established for negotiations, to improve relationships and increase the opportunity to reach agreements. The negotiation terms of reference could support improved industry relationships, more productive negotiations and more successful agreements for the sector. This could lead to increased sector competitiveness.
2.1 Crop Negotiations – Negotiating Structure	<ul style="list-style-type: none"> Rounds of negotiations for each crop For crops where there is more than one processor, typically the largest processor(s) 	<ul style="list-style-type: none"> There would be two rounds of negotiations to establish a minimum price and terms and conditions for each crop. The first round would be similar to the existing negotiating structure, whereby parties would negotiate an agreement collectively (the "base agreement"). The base agreement would include the minimum price and related terms and conditions, and would apply on tonnage up to the historical four year 	<ul style="list-style-type: none"> Both growers and processors feel that the current "one size fits all" approach to negotiations does not work This new negotiating structure would allow growers to continue to benefit from collective negotiations under the direction of OPVG while also giving growers and

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	negotiates during the first round	<p>average contracted by each processor.</p> <ul style="list-style-type: none"> The second round of negotiations would have negotiating agencies established for each processor, made up of active growers contracting with the specific processor, charged to negotiate processor specific terms and conditions related to the base agreement negotiated in round 1. In addition, the negotiating agency established as noted above would negotiate a minimum price for incremental tonnage above the historical four year average as well as related terms and conditions. 	<p>their processors, flexibility to develop tailored agreements that meet their particular needs.</p> <ul style="list-style-type: none"> The economic analysis and the consultations highlighted the benefits of tailored agreements for processors and their growers.
2.2 Crop Negotiations – Negotiating Agency (NA) Composition	<ul style="list-style-type: none"> Maximum of 10 negotiation agency members appointed by the board and by the processors. 	<ul style="list-style-type: none"> For the NAs negotiating the base agreement, the regulation would require that OPVG appoint a minimum number of active growers to each agency. An active grower is a grower who contracts with the particular processor for the crop. (If circumstances warrant, the number of active growers could be reduced or waived, if approved by the Commission): <ul style="list-style-type: none"> If there are 10 or more growers for the crop, OPVG would appoint a minimum of three active growers and up to three additional members. The processor would appoint up to six members. If there are less than 10 growers for the crop, OPVG would appoint a minimum of two active growers and up to two additional members. The processor would appoint up to four members. For second round NAs, the same number of members could be appointed as for the first round however, on the grower side, the active growers would be selected from those who grow for that processor. <p>Additional Non-Regulatory Tools</p> <ul style="list-style-type: none"> The Commission would encourage and assist OPVG to develop a process for identifying their appointees to each negotiating agency. 	<ul style="list-style-type: none"> During consultations, processors said that they wanted to negotiate with producers who grow for them. Many growers agreed. Growers provided examples where they would have accepted offers from processors that had been rejected by the OPVG because the processors wanted lower prices in exchange for overall increased contracted tonnage. Growers said they would have accepted these proposals as they would have led to growth in output, allowing for overall increased farm revenue. These kinds of agreements would have also created higher revenue and new marketing opportunities for processors. The economic analysis highlighted the benefits of having processors negotiate with their own growers to improve relationships and the negotiating process. Having active growers participate in the negotiations, in tandem with experienced OPVG members and necessary support staff, there is a greater opportunity for negotiation success.
2.3 Crop Negotiations –	<ul style="list-style-type: none"> Specific deadlines to reach agreements 	<ul style="list-style-type: none"> Develop a negotiation timeframe that enforces an earlier start date, at a minimum, three weeks before the deadline to allow more time for constructive negotiations. 	<ul style="list-style-type: none"> A desire to have negotiations completed earlier was raised during consultations and the informal IAC meetings

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Timing of Negotiations	<ul style="list-style-type: none"> Often negotiations do not start until just before the deadlines compressing the time available for conciliation/arbitration, impacting contracting and planting decisions. 	<ul style="list-style-type: none"> Start the negotiation process with a meeting of the agency, where position papers are exchanged between parties. Commission would attend the meeting. The second round of negotiations that address processor specific terms and conditions, and price related to contracted volumes over historical average would be negotiated after base agreements. 	<ul style="list-style-type: none"> Earlier negotiations would improve industry relationships by reducing time pressures, and would allow more time to discuss issues necessary to reach an agreement that benefits processors and growers, further supporting the competitiveness of the sector.
3.1 Dispute Resolution – Mandatory Conciliation	<ul style="list-style-type: none"> Conciliation is an optional process that can be triggered, if parties agree, before final offer arbitration. Historically, parties have not used conciliation as a tool to reach agreement. 	<ul style="list-style-type: none"> For all negotiations: <ul style="list-style-type: none"> Make conciliation a tool that could be triggered by either party at any time during negotiations. Establish a timeline for the appointment of a conciliator. Commission would be responsible for appointing a conciliator, however the negotiating parties would be responsible for paying for the conciliator's services. <p>Additional Non-Regulatory Tools</p> <ul style="list-style-type: none"> The Commission would observe and/or facilitate the negotiation process. 	<ul style="list-style-type: none"> Consultations and the economic analysis highlighted issues when negotiations breakdown and lead to arbitration. Arbitration can lead to either the processor or grower being at a major disadvantage, which is not positive for growth and competitiveness of the sector. Use of a conciliator to facilitate discussions increases the chances of reaching an agreement without the need to resort to arbitration. Also, by allowing either party to trigger conciliation at any time during negotiations, the parties may be able to avoid or overcome an impasse in negotiations earlier in the process.
3.2 Dispute Resolution – Grower Meeting	<ul style="list-style-type: none"> There is an optional conciliation process and a final offer arbitration process. If an agreement cannot be reached, the negotiating agency typically elects to go straight to final offer arbitration without input from affected growers. 	<ul style="list-style-type: none"> For all negotiations, if at least ten per cent of the affected growers request it, negotiation agency members would be required to hold a meeting for growers before deciding whether to proceed to arbitration. The meeting would inform the agency's next steps about whether to proceed to arbitration. 	<ul style="list-style-type: none"> During consultations, growers and processors raised the benefits of more consultations during negotiations. The economic analysis noted that final offer arbitration in its current form didn't serve the industry as it caused divisiveness among parties. Consultation prior to arbitration could result in fewer matters having to be settled by arbitration.
3.3 Dispute Resolution - Arbitration	<ul style="list-style-type: none"> If negotiating agency members cannot reach agreement, the matter is referred to an arbitrator. 	<ul style="list-style-type: none"> For all negotiations, arbitration would no longer be final offer. If parties cannot reach agreement, the matter would still be referred to arbitration, however the arbitrator would not be required to make an award by selecting the final offer of one of 	<ul style="list-style-type: none"> The economic analysis concluded that final offer arbitration can lead to one side being at a significant disadvantage, which is not positive for growth and competitiveness.

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	<ul style="list-style-type: none"> The arbitrator selects one of the parties' final offers in its entirety. 	the parties in its entirety. The arbitrator will have discretion with respect to the content of the award.	<ul style="list-style-type: none"> Proposed changes encourage stronger industry relationships and more constructive dialogue among industry participants leading to fewer matters having to be settled by arbitration. Where arbitration is required, parties may be inclined to present more reasonable positions to the arbitrator, knowing that the arbitrator will have discretion with respect to the content of the award.
4. Oversight of OPVG's Authorities	<ul style="list-style-type: none"> Delegates authorities to the board, which OPVG uses to make its own regulations. 	<ul style="list-style-type: none"> Require that the OPVG must provide the Commission with 30 days advance notice of any proposed changes OPVG is proposing to make to its own regulations through the exercise of the authorities granted to OPVG under the Farm Products Marketing Act (e.g. licensing powers, exemption powers etc.). <p>Additional Non-Regulatory Tools</p> <ul style="list-style-type: none"> When providing notice, Commission would require OPVG to provide a rationale for the change and information about any consultations OPVG undertook with affected stakeholders with respect to the changes. 	<ul style="list-style-type: none"> Additional oversight would enable the Commission to proactively ensure that OPVG exercises its delegated authorities in ways that promote growth and innovation in the industry.
5. Administrative Updates – Notice of NA Appointees	<ul style="list-style-type: none"> Requires parties to provide names of the individuals appointed to the negotiation agencies by specified dates. 	<ul style="list-style-type: none"> Require the names of agency members to be provided no later than five business days prior to the start of negotiations. 	<ul style="list-style-type: none"> The Commission is proposing this amendment to address an inconsistency in the regulation.
6. Review	<ul style="list-style-type: none"> Not currently in regulation 	<ul style="list-style-type: none"> The Commission would monitor the implementation of the proposed amended regulation, with a commitment to complete a full review by March 31, 2020. 	<ul style="list-style-type: none"> The review would ensure that the amendments are working well for the industry and have the desired effect of growth and competitiveness.