GUIDELINES FOR THE FARMING AND FISHING INDUSTRIES DEVELOPMENT ACT

Part 1: Establishing a Council and Fund

2013

British Columbia
Ministry of Agriculture

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USING THIS MANUAL

These guidelines refer to the process of starting a commodity development council and fund. If a council and fund have already been established, refer to Part 2 of these guidelines.

Not all portions of these guidelines will apply in every situation. These guidelines may not provide all answers. The aim of these guidelines is to communicate ministry policy in respect of establishing councils and to respond to some questions regarding the *Farming Fishing and Industries Development Act* (FFIDA). These guidelines should not be seen as a substitute for full consideration of any issues and problems encountered by a steering committee or council.

For issues that are not addressed in these guidelines, please contact:

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DISCLAIMER

This document is not a legal authority, and should not be used as a substitute for the *Farming and Fishing Industries Development Act* (*click to access FFIDA on BC Laws web page*) and regulations.

Persons interested in establishing an industry development council are encouraged to seek independent legal advice regarding the obligations and requirements of the *Farming and Fishing Industries Development Act* and regulations.

INTRODUCTION

In today's rapidly changing and competitive global economy, commodity producers in British Columbia feel the need to take a lead role in the development of their industries. The *Farming and Fishing Industries Development Act* (the "Act") is one way the Ministry of Agriculture has responded to that need. The Act enables industry councils to undertake promotion, market development, research and other activities to benefit and promote their industry by creating a fund from a self-imposed levy. The use of the funds by councils should benefit the producers as well as the larger industry and must meet the requirements of the Act.

A council is composed of producers and may include other representatives involved in the industry. A majority of the council must be producers. Except for some general supervision by government, a levy fund is entirely controlled by a council and the monies raised by the payment of levies are spent at the council's discretion.

A council has a high level of autonomy and accountability, operating within legislative requirements. This structure is designed to ensure that the management of funds generated by the imposition of a levy is open to some degree of scrutiny by producers and the government. If the council is accountable and responsive to the producers, and conducts itself in an open and fair manner, it is most likely that producers will be satisfied with its work.

PROCESS

The process as laid out in the following steps can take anywhere from a few months to a year. Adequate time must be allotted to carrying out each step and factors such as growing or harvest season must be considered when developing timelines. Clear and frequent communication is of particular importance. Effort invested in clear and frequent communication with the industry will provide dividends down the road.

Step 1: Gather Information

As a first step, persons interested in starting a commodity development council should get acquainted with the legislation, these guidelines and the Ministry of Agriculture. Ministry staff will be able to discuss the requirements for creating and operating councils under the Act. Persons interested in a starting a council also may wish to contact other councils for their insights and experience. It also is very important to compile and retain information about the industry, which will be a valuable resource through the creation and administration of a council.

Step 2: Establish a Steering Committee

A steering committee should be established to lead the process of drafting a development plan, and conducting a plebiscite of producers to approve the plan. All key partners in the commodity industry should be approached to contribute their knowledge and insights to a steering committee. For example, processors, distributors and marketing specialists should all be consulted and communicated with and any concerns raised should be addressed early on. A steering committee also would benefit from independent financial and legal expertise, particularly in understanding the requirements of the Act, and the implications of collecting the levy and managing a fund.

Step 3: Evaluate the Information

Before drafting a development plan as required in the Act, a steering committee should spend some time taking stock of the industry. Key questions that should be considered include:

- What are the industry's long-term prospects?
- What opportunities and threats does the industry face?
- What can a council do to benefit the industry that other organizations cannot do?

Step 4: Draft the Development Plan

The key elements of the development plan are: the levy system, constitution of the council, and the plebiscite process.

At this point, a steering committee also should estimate and include in the development plan the possible income that could be generated by a levy, the costs of operating a council and the amount of revenue that would remain available to apply to projects. This information not only helps focus the development plan, it may also help to guide a council's operation in the future.

Step 5: Request Minister's Approval of the Development Plan

Before conducting the plebiscite, a steering committee must send the development plan to the Minister of Agriculture (the Minister). Ministry staff will check to see that all the basic elements are in place, and may require a steering committee to further develop certain parts of the plan. The Minister must approve the plan before the plebiscite can be held.

Step 6: Conduct the Plebiscite

A plebiscite is a polling of the producers to determine support for the development plan. The plebiscite process includes informing producers, conducting the vote and tallying the results.

Final Steps

Once a plebiscite is held and the results show producer support, the steering committee informs the Minister of the results and requests in writing that a council and a fund be established. Once the inaugural council is established, it must pass a resolution to implement the levy described in the development plan. The resolution is forwarded to the Minister and must be approved through an Order in Council before it can take effect.

<u>Step 5</u> Steering Committee submits Development Plan to Minister	→ Minister approves Development Plan	→ <u>Step 6</u> Plebiscite held, and results presented to Minister	→ Minister appoints inaugural council and establishes fund per the Development Plan	→ Inaugural council passes resolution to establish levy. The levy is approved by Government through an OIC.

THE DEVELOPMENT PLAN

BASIC ELEMENTS OF THE DEVELOPMENT PLAN

Background

- A description of the industry (strengths, weaknesses, opportunities, threats).
- Current and future markets.
- Purpose of the council and its priorities.

Levy

- The initial purpose of the levy.
- Who is subject to it and how it is calculated.
- Method of remitting and collecting the levy.
- Whether or not the levy will be refundable.
- Method for changing the levy amount in future.

Council

- The composition of a council and the appointment/election of its members, as applicable.

Plebiscite

- How the group will inform producers of the proposed council, fund and levy.
- How voting support for the development plan will be measured.

Background

In preparing the development plan, it is a good idea to begin with a description of how the industry is organized:

- Are the producers geographically concentrated or dispersed?
- Does the industry include large and small operators?
- What products are generated by this industry?
- How are the products processed and distributed?
- Are products packaged/processed on or off the farm?
- Who purchases the products?

A brief summary of related industry organizations that support producers also would be useful. Relevant information about the structure of the industry, its products and how it has evolved until the present also may be included. The goal is to gain a complete understanding of the industry.

A market profile also should be included that addresses the following questions:

- What changes are needed to current marketing strategy and activities to access more or better markets?
- Where is research and development carried out and how does the industry benefit?
- How does the consumer learn about products derived from this commodity?
- How could marketing and research be improved, and how could council work to achieve those improvements?

Levy

Purpose

Under the Act, a fund is set up to benefit and promote the levied commodity, to conduct or support research and educational projects that benefit the industry and to pay a council's administrative expenses. It is important for a steering committee to consider how the levies collected will be applied for those purposes. A steering committee also should consider the following questions:

- Will a council use a fund for market or production research, or research related to transfer of technology?
- Will a council focus on new market opportunities or improving market share? What about export markets?
- How will council prioritize projects to be funded?
- Will a council call for proposals for projects and/or try to find partners for projects?
- Will a council fund public education about the commodity?

Remittance

The levy is essentially a tax on production or the value of production. Payment is a legal obligation. The remittance process describes how producers are expected to pay the levy. It should describe how and when the amount payable is forwarded to the council or the levy collector. Timelines and procedures should be clearly laid out so the system is transparent and well understood.

Collection

Most producers likely will pay the levy, but some will not. As well, there may be delays in remitting the levy or other infractions of the remittance process that must be addressed. The Act allows for levy collectors to charge a commission. A steering committee should consider the following questions and provide details of the proposed collection system in the development plan:

- Given the established marketing channels of the industry, what would be the sensible point for collection of the levy, first receiver or someone else in the distribution chain?
- What steps will be taken to collect the levy if producers are late in remitting the levy or refuse to remit the levy?
- Will the levy collectors need any form of assistance to facilitate collection? Is a commission appropriate and if so, what is a reasonable amount to pay the collectors?
- When and how do the levy collector and council interact, if at all?

Amount

It is important to describe the levy in the plan so that producers are fully aware of their legal obligations once a council and fund are established. Early consultation in advance of the development of the plan is advisable. Key issues to consider in determining the amount of the levy include:

- What type of projects should a council undertake? Large or small?
- How much revenue will be required to fund such projects and meet other costs?
- What is a fair and reasonable amount for the producers to pay? Do all producers pay equally?

CALCULATING THE LEVY: SOME EXAMPLES

Actual Sales
A percentage of the actual value of producers sales

Actual Production or Catch
An assigned dollar value applied to an producer's production (e.g. number of recorded animal births, weight of fish caught or planted acreage)

Average Production
Total commodity harvest ÷ total numbers of producers gives an average figure for harvest per producer. A predetermined percentage can be applied to this average value to determine the levy amount payable. If the equation is applied to a harvest sales (expressed in dollars), this equation results in the actual levy payable. If the equation is applied to harvest volume, then a price would need to be assigned to the levy volume to calculate the levy payable.

<u>Production-based levy</u>

Harvest volume = 50,000 tonnes and total producers = 250
Average production = 50,000 tonnes ÷ 250 producers = 200 tonnes/producer

Apply a predetermined percentage of 0.5 % that is used to calculate the portion of production that represents the levy:

200 tonnes x 0.005 = 1 tonne per producer
Average sales value = $400/tonne
Levy payable = $400/tonne x 1 tonne = $400 per producer

<u>Sales-based levy</u>

Harvest value = $20,000,000 and total producers = 250
Average sales = $20,000,000 ÷ 250 producers = $80,000 per producer

Apply a predetermined percentage of 0.5 % that is used to calculate the portion of sales that represents the levy:

Levy payable = $80,000 per producer x 0.005 =$400 per producer

It may be appropriate to establish classes of levies, depending on whether the plan covers one commodity or several, and the manner in which the commodity is sold. Essentially, establishing classes of levies allows some very small producers to be exempt from payment of the levy. Issues to consider when establishing different classes of levies include:

- Which producers will pay the levy?
- Will there be different classes of levies? If so, how will these classes be differentiated?

A council also may adopt a "sliding scale" method of applying levies, which would see the larger producers pay a smaller amount per volume of production, but their total payments would still be greatest because their production is higher. A council could opt to cap the total amount payable by individual producers to ensure that no one person or segment of producers bears a disproportionate share of the total levy.

Refunds

All development councils formed before 1992 have a refundable levy system. Under a refundable levy system, producers that apply for an annual refund by January 31 can have their levy returned to them. The producer is not required to justify the refund request. Councils with refundable levies should include a contingency in their budgets for the amount they can reasonably expect to pay at year end. This will be easier to do after a couple of years' experience. In the meantime, it is prudent to be conservative. If a producer-supported non-refundable levy system is implemented, then no refund applications can be made or accepted.

The pros and cons of making a levy refundable need to be considered by a council.

PROS AND CONS OF LEVIES	
Refundable Levies: Pros • Easier to obtain and maintain support for the levy. • Provides freedom of choice. • Refund requests can be used as a measure of producer satisfaction.	**Non-refundable Levies: Pros** • Levy funds remain predictable and accessible. • Less administration. • Greater financial stability. • Maintains equality among producers.
Refundable Levies: Cons • Total amount of funds available is unpredictable. • Requires a contingency reserve. • Requires extra administrative work to process refunds.	**Non-refundable Levies: Cons** • No direct indication of producer satisfaction. • Producers may feel that this type of levy infringes on freedom of choice.

It is important to identify to producers how future requests will be made to the government to approve of changes to the levy amount, and what role producers would have (if any) in approving requests for future changes.

Council

Design of a Council

The development plan should outline who will sit on the inaugural council, and the process for establishing councils.

It is important that those seeking positions on council are qualified based on education, skills, knowledge, past performance, community and industry service, and level of commitment. Balanced representation is encouraged to ensure that council membership reflects the geographic and or demographic composition of its industry among other criteria. A strong and representative council can include individuals within the industry that have diverging views, are traditionally under-represented members of the industry (including women and minorities), as well as individuals with skills and special interests that are important to a council.

A steering committee also should consider having the council supported by outside agencies.

- Have government agencies or non-government agencies been providing advice at the development stage of a council? Will they continue to provide such advice?
- Under what financial or organizational arrangements would this advice continue to be provided?

Size of a Council

The number of members on a council will likely be influenced by how the industry is organized. Experience has shown that a very large and complex industry with, a thousand or more producers, may need a larger council (e.g. 10-15 members) to adequately represent the industry. If a commodity group has 100 or fewer producers, then a smaller council (e.g. 5-6 members) may be effective in bringing all the issues to the table. The cost of bringing individuals together is paid from the levy fund, and this may be significant in some cases.

Plebiscite

The plebiscite process includes:

- The communications process for notifying producers about all elements of the development plan. For example:
  - town hall meeting(s);
  - mail out information package and/or copy of the development plan; or
  - scheduled producer meetings, including meetings of industry stakeholders other than producers.
- The conduct of the vote.
- Tallying the results.

The communications process can offer excellent opportunities to exchange information and explain the benefits of a proposed council, to share ideas for future work, and obtain a preliminary indication of support for the development plan. Feedback from meetings can be used to fine tune the development plan before it is submitted to the Minister and put to a vote. A summary of these consultations should be included in the development plan. Future consultations, if any, also should be indicated in the development plan.

The Polling Process

The development plan should clearly indicate to the Minister how producers will be polled to determine support for the development plan, which describes the creation of a council, fund and levy among other things. The details of the polling process include:

- What is the proposed date of the plebiscite?
- Prior to the plebiscite, when will information be available to producers? (A steering committee should consider whether the proposed timeline provides producers with enough notice to study the levy proposal, make inquiries and discuss with colleagues.
- Is there a forum for questions and discussion, either on paper or in meetings?
- Will the vote be weighted? How?
- How will the vote be taken? Is the industry small and centralized enough that a meeting could be held for the vote or will a mail or electronic ballot be required?
- If the vote is done by mail or electronically, who will tally the results and how?
- Will results be tallied to enable tracking of results by demographics?
- If taken at a meeting, will it be by show of hands or silent ballot? Who will verify the results at a meeting?

The polling process should clearly set out the required level of support that the steering committee considers appropriate to satisfy the Minister. Since all producers are legally obliged to pay the levy once it is established, more than a simple majority of those producers voting likely will be required to demonstrate to the Minister that there is sufficient support for the plan.

In determining an acceptable level of support, the polling process should communicate the necessary levels of support that will be required in at least each of the following areas:

- Percentage of producers that voted (“voter turnout”);
- Percentage of votes in favour; and
- Percentage of the industry’s total production volume represented by the votes in favour.

These targets should be set in consultation with Ministry staff so that the industry may be confident that the results will be satisfactory to the Minister to approve a council and fund.

Conduct of the Vote

After the Minister approves the development plan, the producer vote to approve all proposals in the plan may be conducted. A full and objective description of all elements of the development plan is crucial to a fair vote, as is adequate notice. A steering committee should give producers plenty of time to consider the proposals in the development plan and get answers to any questions.

All producers of the commodity who will be required to play the levy must be reached with information and ballots since the levy, once it is established, will apply by law to all producers of the commodity. A steering committee must be able to guarantee the plebiscite was fairly and impartially implemented. To avoid actual bias or unfairness or any appearance of bias or unfairness in tabulating the results, organizers should consider hiring an impartial third party to conduct the vote and tally the results.

Evaluating Producer Support

The Act requires that the Minister must be satisfied there is producer support for the creation of a council and a fund before s/he may establish a council. The Minister will want to be satisfied that:

- The process by which producers had proposals explained to them was clear; and
- The method used for producers to voice their support for the system was open and democratic.

The plebiscite will be judged not only by the results of the vote, but by the quality of information producers have received and on which they based their decision. Producers must be given a full explanation of the levy system and have ample opportunity to ask questions and voice concerns before it goes to a vote.

Multi-Commodity Councils

When a number of commodity groups wish to form a council, additional communication and co-ordination will be required. Costs may be greater, but it remains vital in these cases that all producers be informed of the proposals and given an opportunity to vote. Extra measures may include the placement of posters or bulletins in locations where producers are likely to read them. Steering committees proposing multi-commodity councils should have a clear communications strategy when preparing the development plan for the Minister's approval.

The Vote and its Outcome

As set out above, the vote to establish a council and levy system can be taken by a show of hands, a secret ballot or mail-in or electronic ballot. Any of these mechanisms may be approved by the Minister as part of the development plan put forward by a steering committee. The appropriate form of the vote will depend on the size and geographic distribution of the industry.

In the case of a mail-in ballot, it may be advisable to include a self-addressed return envelope to increase the participation rate. Some mail-in votes also include a special ballot envelope which is sealed and placed in the return envelope to ensure confidentiality.

Once the vote is conducted, both producers and the Minister must be satisfied that it was fair and open, that results were properly tallied, and that the imposition of the levy is supported by producers.

The degree of support required from producers may vary. For example, in some cases, "yes" votes may need to represent a significant percentage of the total production volume as well as numerical support from a majority of producers (see the table "Plebiscite Examples"). Each steering committee in consultation with producers and Ministry staff will have to determine the appropriate method of determining support.

PLEBISCITE EXAMPLES

An industry of 4,000 producers opted for a mail-in ballot. To consider the vote statistically fair, the steering committee decided that at least 40% of the ballots must be returned unspoiled. Of the returned ballots, if 65% representing 51% of the total volume voted in favour, this was considered enough to show producer support.

In another example, where producers were voting on a non-refundable levy system, an overall return rate of 65% was required. Since the producers would not have a right to any refund if this measure passed, the higher standard is justified.

INFORMING THE MINISTER OF AGRICULTURE

The Minister should be advised in writing of the outcome of the poll. Details should include how notice was sent to producers, how many participated, how many voted in favour, and how many voted against. If volume of production is a factor in calculating the results, these details also should be provided. If the committee thinks the results display support for the formation of a council, a formal request to create a council should be made to the Minister. If the Minister is satisfied the vote was free and fair, and if the Minister is convinced the producers were well-informed of its purpose, then the Minister may establish a council and fund.

FARMING AND FISHING INDUSTRIES DEVELOPMENT ACT REGULATION

Once the council is in place it must pass a resolution to implement the levy described in the approved development plan. The resolution is forwarded to the Minister and must be approved through an Order in Council before it can take effect. This step can take a number of months and Ministry staff do not control this process.

Each industry that establishes a council under the *Farming and Fishing Industries Development Act* has its own regulation. The regulation defines what the commodity is, who the producer is, who collects the levy, and when the levy must be remitted.

The Lieutenant Governor in Council also has authority to prescribe regulations on a variety of topics affecting councils, including council practices and procedures, calling of annual general meetings, and election of council members.