



June 9, 2016

Wanda Gorsuch, BSc, MA
Manager, Issues and Planning
BC Farm Industry Review Board (BCFIRB)
780 Blanshard St.
Victoria BC V8W 2H1

VIA EMAIL

Dear Wanda:

Re: Proposed Operating Agreement Special Voting amendments - section 3.28

FIRB has asked CFC to comment on whether the proposed special voting provisions in section 3.28 of the amended Operating Agreement (OA) are compatible with the requirement in section 9.03 of the FPA that supervisory boards approve OA amendments. From a CFC perspective, the two provisions are compatible. To understand why this is the case requires some examination of the context of existing as well as proposed special voting provisions.

Legal Framework of Special Voting provisions

The existing 2001 FPA includes a package of features designed to strike a balance between the need for stability and flexibility in the orderly marketing system for chicken. The goal of stability is reflected in, among other things, the overall structure of the quota system for chicken, and in the limits on chicken production and marketing that such an orderly marketing system entails. The goal of flexibility is reflected in various design features, including, to mention a few examples:

- The continued discretion accorded to CFC in making periodic quota allocations by double majority vote¹;
- The ability for provincial boards to submit market requirements using a bottom up approach within the limits of provincial and regional ranges; and of the market responsiveness pool²;

¹ See section 3.09 of the OA.

² Section 3.05 of the OA.

- The ability to make temporary changes to the limits entailed in provincial and regional ranges with triple majority vote support;³
- Exceptional circumstance requests;⁴ and
- Certain adjustments to the quota allocation methodology through special voting procedures, as further discussed below.

The 2001 FPA is structured to include a skeletal, high level FPA, which can only be amended with the agreement of all signatories (including Ministers),⁵ and the more detailed, operationally oriented OA (FPA Schedule B), which, as the FIRB is aware, can be amended with the agreement of provincial supervisory boards, provincial commodity boards and CFC⁶.

The previously mentioned flexibility design features in the existing OA – including existing special voting provisions - were understood by FPA signatories to not trigger the requirement of a formal OA amendment, and to be fully compatible with FPA section 9.03. In a similar manner, amendments to the OA, with approval of supervisory boards, commodity boards and CFC, do not require a formal FPA amendment, and this arrangement is compatible with the authority of Ministers as signatories to the FPA.

The flexibility design features in the OA are designed to work in tandem with the supervisory functions exercised nationally by FPCC and provincially by the FIRB and other supervisory boards and tribunals. FPA section 5.01 is quite explicit in stating that: “Nothing in this Agreement diminishes the statutorily mandated role of the National Farm Products Council (the “Council”), the Provincial Supervisory Boards and the Provincial Tribunals.”

Existing Special Voting Procedures

Existing special voting procedure allow for adjustments to the quota allocation methodology, but only with a vote having the unanimous support of CFC and all ten provincial commodity boards members from across Canada.⁷ Under the current OA, as amended in 2006, such adjustments are permitted in relation to:

³ Section 4.02(a) of the OA.

⁴ Sections 4.08 to 4.11 of the OA.

⁵ Sections 9.01 of the FPA.

⁶ Section 9.03 of the FPA, which states:

9.03 Amendments to Schedule “B” (the Operating Agreement) to this Agreement shall require the unanimous consent of the Provincial Supervisory Boards, the Provincial Commodity Boards and CFC only. Prior to implementation, Council will review amendments to Schedule “B” (the Operating Agreement) to determine whether the amendments require approval of the Governor in Council.

⁷ Section 2.01(q) define a special vote as follows:

(q) “special vote”, as referenced in this Operating Agreement, means a CFC vote having the support of all Provincial Commodity Board members present for the vote.



- Initial base allocation increases;⁸
- The anticipated growth range (“AGR”);⁹
- Longer term changes to the limits inherent in the regional range, as well as to regional range market indicators and regional range reviews;¹⁰
- Longer term changes to the limits inherent in the provincial range;¹¹ and
- The sleeve for over-marketing levies.¹²

Any allocation resulting from a special vote requires prior approval of FPCC, and is subject to the complaint procedures before the FPCC. CFC is also subject to ongoing supervision by FPCC, which in turn has a statutory duty to “consult, on an ongoing basis” with the FIRB and other provincial supervisory bodies.¹³

In the 15 years since they have been provided for, special votes have been rare, and have always been preceded by lengthy discussions and negotiations. Special votes are held in open CFC meetings. CFC also liaises with provincial supervisory boards through the NAASA, and there is also a regular annual review by CFC of the quota allocation process in which supervisory boards are invited to participate.

In short, CFC’s track record shows that existing special vote procedures have been used sparingly and responsibly.

Proposed OA Changes, Including Special Voting Provisions

The proposed OA amendments include a differential growth formula that allows for adjustments to the formula by special vote¹⁴ and continuing residual discretion in the making of periodic quota allocation decisions.¹⁵

In other words, CFC is agreeing through the new OA provisions to place more structure around its discretion, while building in a degree of flexibility so that the new quota allocation methodology works as intended and CFC is able to properly fulfill its mandate.

Draft OA section 3.28 provides as follows¹⁶:

⁸ Section 3.03.

⁹ Section 3.06.

¹⁰ Sections 4.01, 4.03(b) and 4.05.

¹¹ Section 4.06.

¹² Section 6.02(c).

¹³ FPAA, section 6(2).

¹⁴ Sections 3.27 and 3.28, as reproduced below.

¹⁵ Section 3.09 and 3.36.

¹⁶ FIRB has not asked for comments regarding section 3.27, but it should be noted that section 3.27 states:



3.28 Amendments to the weighting of components, or the addition or subtraction of components may be authorized by special vote.

A special vote under section 3.28 to adjust the formula components or their weighting would be exceptional and would only happen after intensive discussions and multiple annual reviews suggesting such an adjustment is required. Moreover, under CFC's bylaws, all provincial board members must be present for a special vote in connection with section 3.28

The Practical Importance of Special Voting and Other Forms of Flexibility

From CFC's perspective, special voting, and the other forms of flexibility in the OA, are fundamentally important to the proper functioning of the orderly marketing system.

Some might ask: why not simply amend the FPA or the OA when adjustments to the quota allocation methodology or components are required? The answer boils down to practical and institutional realities.

The FPA has 33 signatories, including federal and provincial Ministers, Supervisory Boards and Provincial Marketing Boards as well as CFC. Despite all the changes industry has experienced, the FPA has only been amended once in the past four decades, and then only after many, many years of complex federal-provincial negotiations.

The OA can be amended with the agreement of provincial supervisory boards and provincial commodity boards, and in theory this should make it easier to amend than the FPA. However, securing agreement of all ten provinces to even relatively modest changes to the OA takes an inordinately long time, due to the complex and diverse federal-provincial landscape in agriculture.

To illustrate, CFC initiated a process in late 2002 to introduce the concept of the anticipated growth rate (AGR) and to limited make clean-up changes to the OA text. It took close to four years – until October 2006 - to implement these fairly modest changes reflected in the current text, in part because of ancillary demands of a single province.

All it takes is one province to withhold its consent, for reasons that may have nothing to do with the merits of a proposed OA modification, and essential but even limited amendments to the OA may be delayed indefinitely.

No one has a crystal ball. Unanticipated issues and market changes will emerge, and the industry must find a way to adapt. The extremely short life cycle of chicken production, reflected in eight week marketing periods, underscores this point. The adaptability accorded by special vote

3.27 Amendments to the methodology for calculating the differential growth components may be authorized by special vote.

adjustments is all the more important given the consensus to move to a differential growth formula model.

In other words, without the special voting provisions, including but not limited to the provisions in section 3.28, CFC is at serious risk of being unable to fulfil its statutory objects of promoting a strong, efficient and competitive production and marketing industry for chicken having due regard to producer and consumer interests.

CFC is prepared to accept limits on its discretion through the adoption of a formula-driven approach, but only if stability measures are balanced with flexibility measures like the special voting provisions in section 3.28. Having to spend years to secure approval of 10 supervisory boards to necessary but minor adjustments to the quota methodology is simply not a viable option.

Yours sincerely,

A handwritten signature in black ink that reads "Mike Dugate". The signature is written in a cursive, flowing style.

Mike Dugate
Executive Director