



Farm Products Council
of Canada

Conseil des produits agricoles
du Canada

PROMOTION AND RESEARCH AGENCIES: ESTABLISHMENT GUIDELINES

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FARM PRODUCTS COUNCIL OF CANADA

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PROMOTION AND RESEARCH AGENCIES¹

These guidelines provide an overview of the purposes and benefits of establishing a Promotion and Research Agency (PRA) for farm products under the federal *Farm Products Agencies Act* (the *Act*), and explain the legal and procedural requirements to create such an agency.

Pursuant to Part III of the *Act* a PRA may be established by producers to conduct promotion and research activities in relation to one or more farm products. Activities carried out by a PRA revolve around the expansion of markets through generic advertising and promotional programs; as well as investments in research; improvements in production processes, quality, and consumer education; and for the development of new products.

PRAs are accountable to their members, and have a stable base of funding through a system of levies that makes them able to promote self-reliance in the agri-food sector. The levy, the main source of funding of PRAs, is collected nationally on domestic products sold in interprovincial and export transactions. Where certain provisions are met, a levy may also be collected on imports of the regulated product. Intraprovincial commerce does not fall under the authority of the *Act*. Therefore transactions within provinces are subject to a provincial levy (if any) administered and collected by an authorized body.

The establishment of a comprehensive levy on all marketing of a given farm product requires provincial participation and federal-provincial cooperation. The *Act* provides for delegations of authority, allowing for dovetailing of federal and provincial jurisdictions to establish a comprehensive promotion and research scheme, financed by the appropriate levies.

The 1993 amendment to the *Act* permitting the creation of PRAs was a response to requests from the agriculture sector to provide for the ability to raise national levies that are commodity-based that are accountable to producers and used to fund promotion and research for farm products. This legislation ensures that all beneficiaries of research and promotion pay their fair share.

Farm Products Council of Canada (FPCC)

The FPCC reports to the Minister of Agriculture and Agri-Food Canada (AAFC). The FPCC's duties include advising the Minister on all matters relating to the establishment and operation of PRAs under the *Act*. The Council reviews the operations of these agencies, ensuring they meet their objectives. Council also works with agencies to advance more effective marketing, research and promotion of farm products. The current mission of the FPCC includes facilitating the establishment of PRAs under the *Act* where there is producer support to do so.

As part of FPCC's mandate, proposals to establish a PRA are reviewed by a panel formed of Council members. Public hearings may be held at Council's discretion to further inquire into the merits of establishing a PRA. Based

¹ This document is intended to provide information on the establishment and the operation of a PRA. These guidelines are provided for convenience purposes only and are not definitive. For the purposes of interpreting and applying the law, reference should be made to the appropriate legislation.



on the panel's findings, Council then makes its recommendations to the Minister on the establishment of the PRA. The FPCC also works to resolve disputes and deals with complaints from individuals affected by agencies' decisions.

RATIONALE

In line with governmental strategy supporting industries in their research and development efforts, producer groups are encouraged to become directly involved in financing the promotion and research of their products. Organized groups generally benefit more than individual producers from the development of new products and new crops which can expand markets, as well as new technologies which can lower production costs. Through a PRA, Canadian producers can be better organized, able to access financial support and become more competitive in both national and international markets.

By establishing a PRA, producers may be better able to effectively address promotion and research challenges facing their industry. A levy system can be established to provide the resources for the PRA's activities as well as to facilitate leveraging of additional resources from provincial and federal government programs.

PRAs provide good opportunities for increased involvement by producers in promotion and research activities at the provincial and federal levels. The *Act* was amended in 1993 to provide for the development of PRAs by Canadian producers to match the equivalent U.S. law which had been in operation for several years.

While there is limited experience to date, in Canada with PRAs, several U.S. producer groups have been able to expand their markets, influence trends in the consumption of their goods and increase consumer awareness of their products. Other U.S. groups have developed new products, improved production methods and become more involved in the processing and marketing of their products. Producers' involvement in promotion and research is part of a growing international trend.



LEGAL FRAMEWORK

Legislative Context and Role of the FPCC

The FPCC is a public interest oversight body created under the *Farm Products Agencies Act*. Among its duties, the Council is tasked with advising the Minister on all matters relating to the establishment of promotion and research agencies.

Specifically, paragraph 7(1)(a) of the *Act* states that:

[In order to fulfill its duties, the Council] (a) on receipt of a written request from one or more associations representing a significant number of persons engaged in the growing or production of any farm product in Canada ... shall ... inquire into the merits of (i) establishing an agency in respect of the farm product and vesting it with all or any of the powers set out in section 22 or 42 as the case may be.

While subsection 7(2) states that:

The Council, in reporting to the Minister under subsection (1), shall not recommend the establishment of an agency in respect to one or more farm products ... unless it is satisfied that ... (b) in the case of a promotion-research agency, the majority of the aggregate of the producers or, where the import trade in one or more farm products is to be included, the majority of the aggregate of the producers and importers of all those farm products, in Canada or in the region of Canada to which the recommendation relates, is in favour of that action.

And subsection 8(1) states that:

A public hearing shall be held by the Council (a) in connection with an inquiry into the merits of establishing an agency or of broadening the authority of an existing agency to cover any additional farm product or farm products.

Finally, once a decision has been made, the creation of promotion and research agencies is authorized through subsection 39(1) in part III of the *Act*:

The Governor in Council may, by Proclamation, establish a promotion-research agency with powers relating to one or more farm products, where the Governor in Council is satisfied that the majority of the aggregate of the producers or, where the import trade in one or more farm products is to be included, the majority of the aggregate of the producers and importer, of all those farm products, in Canada or in the region to which the Proclamation relates, is in favour of the establishment of such an agency.



Summary

This framework provides the requirements to be met by the producers' group and the process to be employed for the establishment of a new promotion and research agency, as follows:

- Producers group(s) submit a written request to Council to establish a PRA for a specific farm product or products;
- Group(s) demonstrate that a majority of producers are in favour of establishing the agency (including importers if required), and that other industry stakeholders are also in favour;
- Council enquires into the merit of establishing the PRA together with the powers to be vested, through a public hearing process, if warranted;
- Council makes a recommendation to the Minister;
- Minister makes the decision to establish an agency or not;
- Proclamation to establish the PRA is prepared, approved and gazetted;
- PRA is established and begins operations; and
- Council oversees and reviews PRA operations at least annually.

PREPARING A SUBMISSION: SUPPORT AND RESOURCES

Before submitting a proposal, PRA proponents should start by defining **one or more farm products** over which the proposed PRA would exercise its powers as well as defining the minimum level of production required for producers to be considered as members. Producers should decide on the geographic **scope of the PRA** as it may be based in one province, a group of provinces or region(s) or it can be national in scope or have expansion across the country as part of its plan. At this time efforts should be undertaken to compile data on the estimated volumes of domestic production of the product or products on a provincial, regional as well as national basis, as appropriate.

Once the product and its production volumes are known, the next step in preparation of a PRA proposal submission is **gaining and maintaining support among Canadian producers** and their respective provincial or regional associations. The development of a proposal and the generation of the necessary support also requires consultations with national and provincial producer organizations, provincial governments, as well as with **importers**.

Provincial producer organizations must work closely with their local producers to explain the proposal and seek their feedback and support. As well, the relevant provincial governments and supervisory boards that administer farm products marketing legislation should be kept informed of the initiative. Without these efforts, producers requesting the establishment of a PRA may have difficulty demonstrating that they have the support of a majority of national or regional producers required under the *Act* in order to establish a PRA.

Once grassroots support has been confirmed, the **preparation of a PRA submission** can be made easier by accessing knowledge and resources of provincial commodity groups. Producers often use the services of a **consultant** to assist them in preparing their proposal.

FPCC is available to provide guidance on the process and content for a submission. However, FPCC cannot provide legal advice or provide financial aid for the preparation of a submission nor the establishment of a PRA. Government departments such as Agriculture and Agri-Food Canada (AAFC), Department of Foreign Affairs, Trade and Development (DFATD) as well as Justice Canada should be consulted for specific information as required.



PREPARING A SUBMISSION: CONTENT

Producer associations that decide to launch a request to establish a PRA should inform the FPCC of their intention to create such an agency. The FPCC will provide guidance on the *Act* and the establishment and operation of agencies. AAFC may also provide information on other issues relevant to establishing a PRA.

The following checklist of questions provides a guide to the major components of the documentation required to be submitted to the FPCC for consideration.

1. RATIONALE

- Why is the PRA needed?
- How would the PRA be in the public interest?
- How is the farm product industry structured? Describe the statistics of production, national and provincial, trade, interprovincial, imports, exports; main players; provincial and national numbers of producers and importers.
- What specific evidence is available of support for the PRA from producers, provincial supervisory boards, other provincial or national bodies, as well as importers?
- Are there any issues that need to be resolved for the PRA to be established or to operate? Describe provincial legislative authority; levy collection mechanism, etc.

2. MERIT

- What are the details of the PRA plan? Is there a clearly defined promotion and research plan as well as business objectives and activities?
- What are the plans for the implementation of the PRA and its activities in terms of timing and resources?
- What will be the agency's budget for the first year of operations?
- What are the levy requirements to support the PRA plan and budget?
- How will the levy system work in each participating province on production and interprovincial trade, and where applicable on imports?
- Who will collect the levies and how will they be managed?
- Are legal authorities in place in the provinces for levy collection?
- How will the levy funds be administered by the PRA?

3. LEGAL

- How many members will be set for the PRA Board of Directors and how will they be appointed? See Section 40(2) of the *Act*.
- What steps have to be taken to ensure the legally required composition of board members is respected? The majority of the members of the agency shall be primary producers and importers, in proportion to the share of each such group on aggregate of the total intraprovincial, interprovincial and import trade (if applicable). See Section 40(3) and (4) of the *Act*.



PREPARING A SUBMISSION: CONSULTATION

Sponsoring producer associations should conduct meetings with producers, importers, provincial supervisory boards, provinces and other stakeholders to communicate and discuss how the proposal will affect their members, explain the benefits of a PRA, and seek feedback and support.

Structuring the PRA proposal in a manner that best reflects the needs and concerns of supporting organizations will be of great use to boost the level of grassroots support required for the PRA review process.

It is important to provide credible evidence of the level of support, as there is a legislative requirement to show that the majority of producers in the participating provinces support the proposal, together with importers, if import trade is to be included in the PRA. See the *Act*, Section 39(1).

Evidence of support may be demonstrated by presentation of any of the following:

- Results of producer surveys;
- Minutes of national or provincial meetings where producer and/or board member votes in support of the PRA proposal are recorded;
- Letters of endorsement from provincial supervisory boards, governments and other stakeholder groups; and
- Records of meetings with individual importers, and importers groups.

The *Act* does provide for the Governor in Council (GIC) to ask provincial governments to carry out plebiscites in order to evaluate the level of support, if such a step were warranted. See Section 39(2).

FPCC REVIEW OF THE PRA SUBMISSION

Once the PRA proposal has been finalized and submitted to FPCC, a panel of Council members chosen by the FPCC Chairman and assisted by FPCC staff will review and enquire into the merit of the proposal.

- The panel will review and may ask questions or seek clarification from the proponents.
- A public hearings process will be initiated to allow for public consultation and input into the PRA proposal, as provided for in the *Act*.
- The process will begin with a public notice in the Canada Gazette and in newspapers and other media across the country.
- The PRA proposal will be posted on the FPCC website for public access and for submissions to be received on the proposal. All submissions are made public on the FPCC website.
- Sittings for the public hearings are scheduled and organized in appropriate locations. The information on sittings is communicated widely and those who wish to appear are identified and invited.
- Once the sittings have been completed and the information received has been collated and analyzed, the FPCC panel members will assess the level of producer support; consider the terms and requirements of the promotion and research plan, as well as the powers of the proposed PRA. They will also examine whether the establishment of the proposed PRA would be in the public interest.
- The panel will present its report and recommendations to the full Council.
- After due consideration, the Council will develop its own report and recommendations on the establishment of the PRA which will be sent to the Minister of Agriculture and Agri-Food, who makes the decision.



The Council, in the formal submission of its recommendations to the Minister of Agriculture and Agri-Food, includes suggested terms and conditions of a promotion and research plan that the agency is authorized to implement, and the powers under the *Act* that would be vested in that agency.

If the Minister supports the establishment of the proposed PRA, the Minister will make a recommendation to the GIC. If the GIC agrees with the merits of the plan recommended by the Minister, the establishment of the PRA will take place by Proclamation, which will outline how the agency will operate. The Proclamation will be developed by the FPCC and Justice Canada, in consultation with the proponents and with participating provinces on the terms of their participation that will appear in the Proclamation.

The Proclamation is then gazetted for public notice. On completion of the legislative process, the agency can begin operations.

PRA OPERATIONS

Accountability to producers and importers involved in the PRA will be ensured by the membership of their representatives on the board and their participation in the PRA's affairs as well as by annual audits. Agency members can be appointed by the GIC, or in any other manner described in its Proclamation, including, through elections (see Sections 18 and 19 of the *Act*). Auditors are also approved by the GIC for conducting annual audits on the agency's accounts and financial transactions (see Section 29 of the *Act*). The audit reports are submitted to both the Council and the Minister.

Once the PRA has been established, the FPCC oversees its activities to ensure that the PRA serves the public interest and fulfills its objectives under the *Act*. The FPCC will also review the PRA operations to ensure that the PRA operates in conformity with its promotion and research plan and that the levy system is working in the best interests of all stakeholders. Furthermore, all levy orders and amendments proposed by the agency must be approved by Council before they are officially registered by the agency and become effective.

The agency also is required to prepare an annual report to the Council and Minister within three months of the end of its fiscal year (see Section 30 of the *Act*). This report must provide details of the agency's activities and performance according to criteria developed in collaboration with FPCC which are consistent with the Minister's requirements. Once reviewed by Council, this report will be passed to the Minister for review and then to Parliament.

ESTABLISHING A LEVY

The *Act* provides the authority of a PRA to collect a levy on the farm products, whether domestically produced or imported, as described in its Proclamation. This levy is the principal source of funding for a PRA.

With respect to levy setting and collection, **provincial authority** exists for levies collected on products marketed within the province, also termed intraprovincial trade. **Federal authority** exists for levies on products traded interprovincially, as well as on products which are exported or imported.

Levies may be voluntary or mandatory; they can also be refundable or non-refundable.

Proponents of a PRA must explore with their provincial governments what legislation exists and the necessary procedures related to levy collection for its farm products and what provisions need to be included in their proposal in order for the PRA to establish a levy, its collection and management.



Levy on imported products

A PRA can propose to collect a levy on imports of the farm products. This levy must be in compliance with the World Trade Organization's (WTO) definition of national treatment. This means that imported goods should be treated no less favourably for levy purposes than domestically-produced goods.

Specifically, the sum of the intraprovincial levy and the interprovincial levy sets the maximum amount of levy that can be collected on imports. Although the levy imposed on interprovincial trade should be consistent throughout the country, levies on intraprovincial trade can vary among provinces. With different intraprovincial levies, the national treatment levy is that of the province with the lowest sum of the intraprovincial and interprovincial levies. This levy can legally be applied on all imported forms of the farm products covered by the PRA.

Proponents of the PRA should also investigate the amount of levy, if any, charged by U.S. authorities on Canadian exports of their farm products, or similar products, to the U.S., as a reference for the levy they expect to collect on U.S. imports to Canada.

To facilitate the collection of the import levy, the *Act* provides authorization for the PRA to receive customs information obtained under the *Customs Act* (Section 46). With this authority, a PRA could, for example, invoice importers of the farm product, on a monthly or quarterly basis, for the levies due on the imports recorded.



Levy collection - how it works

There are three main options available to the PRA to collect a levy:

1. Provincial boards collect the levy on intraprovincial and interprovincial trade. The total or a portion of the levy collected is then transferred to the national agency that administers the national promotion and research plan according to a delegation of authority agreement between the national PRA and provincial partner boards.
2. The provincial boards delegate their authority to collect levies on intraprovincial marketing to the national PRA. The national agency collects levies on intra and interprovincial trade, thereafter redistributing the relevant portions of the funds collected to provincial boards.
3. There are no delegations of authority. Provincial boards collect the levy on intraprovincial trade separately from the national agency which collects the levy on interprovincial trade.

All levies that are collected have to be accounted for in the national PRA plan. Then, the PRA has different options:

1. Use all levies at the national level for activities identified in the PRA plan.
2. Use a portion for national level activities and distribute a portion to the provincial or regional level for those activities that have been identified in the PRA plan.

Potential levy revenue

The revenue from the levy collected will be the main source of funds for the operation of the PRA and the execution of its plan. Therefore it is important to estimate the level of potential revenue based on the proposed levy amount and data on production and imports (where warranted) upon which levies can be based. This information should be included in the proposal together with the budget and workplan.



FUNDING THE ESTABLISHMENT OF A PRA

The *Act* does not provide for any financial support to assist in establishing a PRA. However there may be provincial government programs available which can be accessed for this purpose.

Once established, the PRA may qualify for funding under federal or provincial programs promoting agricultural research, development and innovation, particularly under the auspices of AAFC's Growing Forward II initiative. Interested PRAs should contact AAFC and relevant provincial departments of agriculture to identify which project initiatives of the PRA may qualify for support, based on the PRA's capacity to execute the project and provide its own financial contribution to the total budget.



ANNEX I – PROMOTION AND RESEARCH AGENCY PROPOSAL CHECKLIST

<i>Requirement</i>	<i>Details</i>	<i>✓ Included</i>
1. RATIONALE		
Product	Clear definition of the farm product or products to be administered by the PRA.	
Purpose	Detailed motivations behind this proposal and how it will be in the interest of producers, consumers and importers (where applicable).	
Need	Clear expression of the need for a PRA and why it is in the public interest.	
Producers/importers support	Evidence showing that the majority of producers or, where import trade is included, the majority of the aggregate of producers and importers, in Canada or in the region to which the Proclamation will relate, is in favour of the establishment of such an agency.	
Production data	Provincial distribution of producers and farm product production which can support the case for majority support; other support data such as employment and economic importance, and where applicable import data and major importers should be provided.	
Stakeholder consultation	Reports on consultations with provincial organizations and with provincial supervisory boards on whether or not legal authority exists to collect a levy. Copies of letters of endorsement (or not) of the PRA proposal resulting from these consultations.	
2. PRA PLAN		
Promotion and Research Plan	Details of the promotion and research plan that the agency is seeking to implement, including research and development activities, advertising campaigns and promotion for the product together with timelines and resource requirements.	
Budget	A preliminary budget showing how the agency is to conduct its operations on a self-sustaining financial basis and how the levy is to be used.	
Levy Administration	Explanation of how the levy system will work in each participating province, and where relevant on imports; who would be responsible for collecting the levy and how funds would be administered.	
Annual Report	Details on what will be included in the PRA's annual report to Council, the Minister and Parliament.	
3. LEGAL ESTABLISHMENT PLAN		
Implementation Plan	The timeline and milestones for the establishment of the agency.	
Board Members	The number of members (3 to 16) of the agency and the manner of their appointment.	

