



SECTION 1: ANNUAL PROCESSOR/PRODUCER MEETINGS

- 1. Who will pay for the annual processor/producer meetings?**
 - Regulation 440 doesn't specify who must pay for the meetings.
 - Industry needs to decide for themselves.
- 2. What constitutes quorum at the meetings?**
 - There is no quorum requirement.
 - Associated producers, or their designates, who are physically present at the meeting can vote.

SECTION 2: NEGOTIATION PROCESS VOTING:

- 3. How many producers must vote in favour of a specific negotiating process (direct negotiations vs negotiations through a negotiating agency) for it to be determined final?**
 - A simple majority (51 per cent) determines the outcome of the vote.
 - In the event of a tie, the result will be a negotiating agency.
- 4. What is the voting process? Will there be a scrutineer? If so, who?**
 - A Commission representative will conduct a secret ballot producer vote to determine which negotiation method they choose.
 - If producers decide to negotiate through a negotiating agency, they will also hold a vote to choose up to three producers to the agency.
 - A Commission representative will also conduct these elections.
 - Governance Solutions, the company which the Commission contracted to conduct the recent OPVG board elections, will remotely facilitate the electronic voting system.
 - Although there is no specific requirement for scrutineers, the Commission will ask the processor and a producer attending the meeting to review the electronic results before they are submitted to Secretariat staff.
 - Voting process details will be shared with the attendees at the annual producer meetings, which take place between January 10-15, 2020.

SECTION 3: AGREEMENTS

- 5. What are the two different agreements?**
 - Processors must have a minimum three-year term associated producer agreement with each of its producers, no matter if they negotiate directly or through a negotiating agency.
 - This agreement provides the minimum annual tonnage that that processor needs to purchase from its producer.



- Processors must also have an annual agreement with each of their producers and processors.
 - This agreement includes terms such as pricing, payment schedules and other charges.
- 6. Do processors need to have the same associated producer agreements with all of their producers?**
- No, they don't, however all associated producer agreements must meet Regulation 440 requirements (sections 15.1.2 and 15.1.2.1).
- 7. Do the associated producer agreements need to be for a minimum three-year term?**
- Yes, these agreements must be for a minimum three-year term, however, the contract can be extended if both parties wish to do so.
 - Should both parties agree that they want to terminate the agreement earlier, they can also do so.
 - If only one party wishes to terminate the agreement, they would need to either have cause or give a two-year notice to the other party.
 - If producers decide to negotiate directly with their processor, the associated producer agreements will determine a dispute resolution mechanism to be used should negotiations break down on issues (paragraph 1 of subsection 15.1.2.1(1)).
 - If a producer fails to produce a crop in a given crop year, the processor may immediately terminate the associated producer agreement, unless the producer took a one-year leave from producing vegetables, which the processor agreed to.
 - Producers are required to vote each year on whether to negotiate through a negotiating agency or negotiate directly, so a multi-year agreement on terms negotiated as part of an annual agreement, which includes terms on price, payment schedule, other charges, is not possible.
- 8. Do producers who contracted with a processor in 2019 remain associated producers of the processor in 2020?**
- Yes, producers who contracted with a processor in the 2019 crop year continue as associated producers of that processor in 2020, subject to any previous termination of the arrangement by either party.
 - All associated producers will be required to sign a minimum three-year associated producer contract with their processor.
- 9. Who enforces the tomato and carrot agreements?**
- Generally, the agreements will be enforced by the parties.
 - Adjudication may take place in the courts or, where applicable, the Commission may use its authority under the *Farm Products Marketing Act* to settle disputes.



10. Do the agreements need to be a specific format? Do they need to be shared with the Commission and OPVG?

- Regulation 440 does not have any requirements around agreement formatting or retention.
- These decisions are up to the negotiating agencies and the parties to the agreement.
- If the parties choose to negotiate through a negotiating agency, under the *Farm Products Marketing Act* (Subsection 7(4)), the agency is required to share the final agreement, or award made by an arbitrator, with the Commission.
- The agency may also choose to share the agreement or award with OPVG.
- If parties choose to negotiate directly, they will not be required to share their agreements with the Commission or OPVG.

11. Do negotiating agencies report to OPVG?

- No.

12. How will minimum annual tonnage be determined in year four, after 2023? Should there be an increase in tonnage, will it be distributed equally among all producers?

- The three-year associated producer agreement ends prior to “year four”.
- At year four, the parties may enter into a new three-year associated producer agreement.
- There are no requirements for minimum annual tonnage within the regulation after 2023.

13. How will quota be determined?

- The concept of “quota” does not exist under Regulation 440.

SECTION 4: NEGOTIATIONS

14. Who will pay for negotiations?

- Regulation 440 doesn't specify who must pay for the meetings.
- Industry needs to decide for themselves.

15. Does OPVG's board still have a role in tomato and carrot negotiations?

- OPVG's board no longer has a formal role in tomato and carrot negotiations,
- The board can still continue to support its producers by providing resources such as pricing data and analysis or sample agreements/clauses, promotion, research and advocacy.



Negotiating Agencies

16. What is the composition of the negotiating agency?

- Negotiating agencies for each processor will now comprise:
 - up to three elected producers;
 - up to three additional producer members, which may be appointed by the processor (this group cannot exceed elected members); and
 - any number of processor members appointed by the processor.

17. What role do processor-appointed producers play in the negotiation agency?

- All producers on the negotiating agency, whether appointed by their processor or elected by producer members, are expected to negotiate on behalf of the producers, with the same responsibilities, rights and privileges.

18. Can a producer request OPVG or a lawyer to represent them during negotiations? If they can't represent, can they at least attend the negotiations?

- Regulation 440 does not prohibit individuals who are not part of the negotiating agency from being present during negotiations (subsection 23.5(1)), however only negotiation agency members can actually do the negotiating.

19. Are members of a negotiating agency permitted to speak with others outside of negotiations?

- There are potential legal issues with negotiating agency members exchanging information during negotiations.
- These include a breach of any non-disclosure agreements that may have been signed during the negotiation process or possible non-compliance with the *Competition Act* (Canada).
- Legal advice should be sought if this type of action is being considered.

Direct Negotiations

20. Can producers who choose to negotiate directly with their processors work collectively with other producers to ensure that everyone has the same agreement?

- Regulation 440 does not provide a structure for direct negotiations between producers and processors.
- Parties must determine the structure of negotiations and the development of agreements themselves, provided this they are consistent with Regulation 440 and other applicable legal requirements.



- Legal advice should be sought with regard to these issues.

SECTION 5: DISPUTE RESOLUTION & ARBITRATION

21. Can parties request a mediator or arbitrator if they can't come to an agreement? If they can, who will pay for these services?

- Under Regulation 440, the Commission shall appoint a mediator acceptable to the members of the negotiating agency during the negotiations unless both producer and processor members of the negotiating agency provide written notice to the Commission that they do not wish to retain a mediator (Section 23.9).
- Where a mediator is appointed, this mediator will move into an arbitrator role if no agreement has been reached by the negotiating deadline (Column 4 of the Schedule to Regulation 440).
- Where no mediator is appointed, an arbitrator will be appointed by the Commission.
- In appointing a mediator or arbitrator, the Commission may continue its previous practice of providing a list of possible mediator/arbitrator candidates to the negotiating agency.
- Regulation 440 does not stipulate who will pay for these services.
- Industry needs to make this decision.

22. Can an agreement be reached by a negotiating agency after a decision is made to exchange final offers and proceed to arbitration?

- Yes.

SECTION 6: PRODUCTION INSURANCE

23. Will the amendments impact on crop insurance?

- The Commission is not aware of an impact on Crop Insurance; however, we will work with OPVG's board, OMAFRA staff and Agricorp to better understand OPVG's concerns.