



Province of Alberta

MARKETING OF AGRICULTURAL PRODUCTS ACT

POTATO GROWERS OF ALBERTA COMMISSION REGULATION

Alberta Regulation 277/1998

With amendments up to and including Alberta Regulation 7/2015

Office Consolidation

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(Consolidated up to 7/2015)

ALBERTA REGULATION 277/98

Marketing of Agricultural Products Act

**POTATO GROWERS OF ALBERTA
COMMISSION REGULATION**

Table of Contents

- 1 Definitions
- 2 Application of regulation

Prohibitions

- 3 Licences
- 4 Marketing
- 5 Application for licence
- 6 Issue and renewal of licences
- 7 Refusal, cancellation, suspension and non-renewal

Service Charge

- 8 Service charge
- 9 Exemptions from paying service charge
- 9.1 Refund of service charge

Records and Information

- 10 Request for information
- 11 Licensed producer
- 12 Dealer or processor

General

- 14 Use of funds
- 14.1 Late payment of service charges
- 15 Legal action
- 16 Service
- 18 Repeal
- 19 Expiry

Definitions

1(1) In this Regulation,

- (a) “culled” or “cullage” means potatoes that

- (i) do not meet the Canada No. 1 Grade or Canada No. 2 Grade, in accordance with the *Fresh Fruit and Vegetable Regulations*, C.R.C. c.285 under the *Canada Agricultural Products Act* (Canada),
 - (ii) do not meet the requirements specified in a contract respecting potato processing between a licensed producer and a processor, or
 - (iii) do not meet the standards respecting seed potatoes under the *Seeds Act* (Canada) and the regulations made under that Act;
- (b) “farmer’s market” means a specific location recognized by the Department of Agriculture and Rural Development as a farmer’s market where producers of agricultural products assemble regularly or seasonally to sell their agricultural products but does not include a motor vehicle from which agricultural products are sold;
- (c) “foreign material” means all material contained in a load of potatoes other than potatoes whether or not the material is used for consumption;
- (d) “licence” means a licence issued under section 6;
- (e) “marketable product” means potatoes that are graded as Canada No. 1 Grade or Canada No. 2 Grade, in accordance with the *Fresh Fruit and Vegetable Regulations*, C.R.C. c.285 under the *Canada Agricultural Products Act* (Canada) or the *Seeds Act* (Canada);
- (f) “Plan” means the Plan continued by the *Potato Growers of Alberta Plan Regulation* (AR 291/2002).

(2) Words used in this Regulation have the same meaning as they do in the Plan.

AR 277/98 s1;206/2001;300/2002;35/2007;68/2008;9/2014

Application of regulation

2 This Regulation does not apply to persons who

- (a) grow potatoes on one or more parcels of land that do not in the aggregate exceed 5 acres, or
- (b) grow potatoes by means of an undertaking that consists of a facility or operation made up of one or more greenhouses or laboratories or any combination of greenhouses and laboratories where the annual gross

income, sales and transfers arising from potatoes derived from that undertaking does not exceed \$10 000.

AR 277/98 s2;300/2002

Prohibitions

Licences

3 No person shall commence or continue to engage in the production, marketing or processing of potatoes or carry on the activity of a producer, dealer or processor unless that person has been issued a licence for that purpose by the Commission.

AR 277/98 s3;300/2002;9/2014

Marketing

4 No licensed producer shall market potatoes to any person other than in accordance with this Regulation.

Application for licence

5(1) A person may apply to the Commission for one or more licences to operate as

- (a) a licensed producer;
- (b) a dealer;
- (c) a processor.

(2) An application for a licence shall contain the information required by the Commission.

(3) The Commission may require an applicant for a licence to submit any additional information the Commission considers necessary.

(4) The Commission shall consider every application that it receives.

(5) If a person operates in more than one capacity as a licensed producer, dealer or processor that person shall apply to the Commission for a licence for each such capacity.

(6) The Commission by means of an annual resolution must fix the fees for licences issued to licensed producers.

AR 277/98 s5;300/2002

Issue and renewal of licences

6(1) Subject to section 7, the Commission shall issue a licence to an applicant.

- (2) The term of a licence is from August 1 to the next following July 31.
- (3) A licence is not transferable.
- (4) A licence issued by the Commission
 - (a) is a licence to engage in the activity stated in the licence,
 - (b) is not an endorsement by the Commission of the licence holder, and
 - (c) shall not be represented by the licence holder or any other person as an endorsement by the Commission.

AR 277/98 s6;300/2002

Refusal, cancellation, suspension and non-renewal

- 7(1) The Commission may refuse to issue a licence
 - (a) if the applicant fails to provide information or additional information required by the Commission under section 5(2) or (3),
 - (b) if the applicant has contravened
 - (i) the Act,
 - (ii) the Plan,
 - (iii) this Regulation,
 - (iv) any other regulation made under the Act in respect of the Plan, or
 - (v) an order or direction of the Council or the Commission,

or

 - (c) for any other reason that in the Commission's determination is appropriate.
- (2) The Commission may cancel or suspend a licence or refuse to renew a licence
 - (a) if the licensee has contravened
 - (i) the Act,
 - (ii) the Plan,

- (iii) this Regulation,
- (iv) any other regulation made under the Act in respect of the Plan, or
- (v) an order or direction of the Council or the Commission,

or

- (b) for any other reason that in the Commission's determination is appropriate.

(3) If the Commission refuses to issue, cancels, suspends or refuses to renew a licence, the Commission must advise the applicant or licensee in writing of its decision.

(4) The Commission may

- (a) suspend a licence for a period of time that it considers appropriate, or
- (b) in the case of a licence that is suspended, remove the suspension.

(5) Where the Commission refuses to issue, cancels, suspends or refuses to renew a licence,

- (a) the licensee must, on receiving notice of the Commission's decision, immediately cease carrying on the activity authorized by the licence, and
- (b) the licensee or applicant, as the case may be, may make an application for a review under section 36 of the Act.

(6) The Commission may grant a new licence to an applicant whose licence was suspended, cancelled or not renewed pursuant to this section.

AR 277/98 s7;300/2002

Service Charge

Service charge

8(1) A licensed producer who sells or transfers potatoes to any person or entity must pay to the Commission a service charge for net marketable product of

- (a) \$0.07 for each 100 pounds of potatoes sold for processing, and

- (b) \$0.02 for each 100 pounds of culled potatoes sold for processing.

(1.1) A licensed producer who sells or transfers potatoes to any person or entity must pay to the Commission a service charge of

- (a) \$25.00 per harvested acre produced for table use,
- (b) \$35.00 per certified harvested seed acres, and
- (c) 0.75% of annual gross income, sales or transfers of plantlets or potatoes derived from an undertaking consisting of a facility or operation of one or more laboratory greenhouses.

(2) With respect to potatoes for processing or culled potatoes for processing, a licensed producer who sells or transfers those potatoes to a person other than a dealer or processor must, no later than 30 days from the last day of the month in which the potatoes were sold or transferred,

- (a) pay the appropriate service charge referred to in subsection (1) to the Commission,
- (b) provide an accounting to the Commission for the service charge in a manner prescribed by the Commission, and
- (c) provide to the Commission any information that the Commission requires respecting the production, transfers, sale, marketing or processing of potatoes.

(2.1) With respect to potatoes for seed, a licensed producer must, within the time specified by the Commission,

- (a) pay to the Commission the appropriate service charge referred to in subsection (1),
- (b) provide an accounting to the Commission of the certified harvested acres in a manner prescribed by the Commission, and
- (c) provide to the Commission any information that the Commission requires respecting the production, transfer, sale, marketing or processing of potatoes.

(2.11) With respect to potatoes for table use, a licensed producer who sells or transfers those potatoes to a person other than a dealer or processor must, within the time specified by the Commission,

- (a) pay the appropriate service charge referred to in subsection (1) to the Commission,

- (b) provide an accounting to the Commission for the service charge in a manner prescribed by the Commission, and
- (c) provide to the Commission any information that the Commission requires respecting the production, transfers, sale, marketing or processing of potatoes.

(2.2) With respect to potatoes, including plantlets grown in a greenhouse or a laboratory, a licensed producer must, within the time specified by the Commission,

- (a) pay to the Commission the appropriate service charge referred to in subsection (1),
- (b) provide an accounting to the Commission for the service charge in a manner prescribed by the Commission, and
- (c) provide to the Commission any information that the Commission requires respecting the production, transfer, sale, marketing or processing of potatoes.

(3) Notwithstanding subsection (2) or (2.1), if the total amount of the service charges payable by a licensed producer during the term of the licence is less than \$100, that amount may be remitted to the Commission on or before July 31 of that licence year.

(4) A dealer or processor, as the case may be, who buys or receives potatoes from a licensed producer must

- (a) deduct the appropriate service charge referred to in subsection (1) from the purchase price payable to that producer, and
- (b) not later than 30 days from the last day of the month in which the service charge was deducted forward to the Commission the service charge and account for the service charge in the manner prescribed by the Commission.

(5) If a dealer or processor who buys or receives potatoes from a licensed producer fails to deduct the service charge as required by subsection (4), the licensed producer and the dealer or processor are jointly and severally liable to the Commission for damages in an amount equal to the service charge which should have been deducted.

(6) The Commission shall use the following for the purposes of carrying out or sponsoring research projects respecting potatoes as determined by the Commission:

- (a) \$0.01 of the service charge collected on each 100 pounds of potatoes sold;
- (b) 1/6 of the service charge collected on acres of potatoes harvested for table use and certified harvested seed acres.

(7) Notwithstanding anything in this section, with respect to potatoes that are grown in a greenhouse or a laboratory, a licensed producer is not required to pay a service charge on sales or transfers derived from those potatoes if the producer shows to the satisfaction of the Commission that the potatoes raised in that person's greenhouse or laboratory were planted in a greenhouse or a laboratory owned or controlled by that person or on land owned or controlled by that person.

(8) In this section, "certified harvested acres" means harvested acres of seed potatoes certified by the Canadian Food Inspection Agency under the *Seeds Act* (Canada).

AR 277/98 s8;328/2000;246/2001;300/2002;265/2004;
115/2009;74/2011;9/2014;7/2015

Exemptions from paying service charge

9 Notwithstanding anything in this Regulation, service charges are not payable on potatoes marketed at a farmer's market.

Refund of service charge

9.1(1) Any service charge that is paid by or on behalf of a licensed producer must be refunded to the licensed producer on the request of the licensed producer.

(2) A licensed producer may request a refund of all or a portion of the service charge paid.

(3) A request for a refund of service charges must be made by the licensed producer in writing in a form provided by or acceptable to the Commission and the licensed producer must

- (a) submit a notice of intention to request a refund of service charges prior to May 31 immediately prior to the upcoming crop year, and
- (b) submit a request for refund of service charges prior to September 30 immediately following the end of that crop year.

(4) A notice of intention to request a refund of service charges must include the following information:

- (a) the licensed producer's name;

- (b) the licensed producer's mailing address and telephone number;
 - (c) the percentage of the service charges requested to be refunded.
- (5) A request for refund of service charges must include the following information:
- (a) the licensed producer's name;
 - (b) the licensed producer's mailing address and telephone number;
 - (c) the percentage of the service charges requested to be refunded;
 - (d) the purchaser's name;
 - (e) the purchaser's mailing address and telephone number;
 - (f) the volume of potatoes sold;
 - (g) the service charge amount deducted.
- (6) A request for a refund of service charges must be in the same name as the name in which the service charge was paid.
- (7) The Commission must refund the service charge within 60 days after the request for refund of service charges is received by the Commission.
- (8) This section applies to service charges during the 2010-11 fiscal year and subsequent fiscal years.

AR 130/2011 s2

Records and Information

Request for information

- 10(1)** The Commission may request a person engaged in the production, marketing or processing of potatoes to furnish to the Commission any information relating to the production, marketing or processing of potatoes that is specified in the request.
- (2) A person who is required by this Regulation to keep records or other information must
- (a) retain the records or other information for not less than 7 years from the date the records or other information was made, and

- (b) as requested by the Commission,
 - (i) make the records or information available for inspection by the Commission during normal business hours, or
 - (ii) deliver the records or information to the Commission within 15 days from the date the request is received by that person.

AR 277/98 s10;300/2002

Licensed producer

11(1) A licensed producer must maintain and submit to the Commission the following records:

- (a) within 10 days from the completion of planting or June 15, whichever is earlier, a record of
 - (i) total acres planted,
 - (ii) total acres under irrigation,
 - (iii) total acres dry land, and
 - (iv) total area of greenhouse or laboratory devoted to potato production, including plantlets;
- (b) within 10 days from the completion of planting or June 15, whichever is earlier, a record for each variety of potatoes planted of
 - (i) the number of acres,
 - (ii) the class of seed,
 - (iii) the source or sources of seed, and
 - (iv) the certification number of the seed;
- (c) within 10 days from the completion of harvest or November 15, whichever is earlier, a record for each variety of potatoes planted of
 - (i) the number of acres harvested,
 - (ii) the number of and reason for any lost acres,
 - (iii) the average yield per acre, and
 - (iv) the gross tons of potatoes produced;

- (d) within the time prescribed by the Commission in each year, a record for stored potatoes of
 - (i) the gross tons of seed, table and processing potatoes in storage,
 - (ii) the estimated percentage of cullage,
 - (iii) the net tons of potatoes in storage, and
 - (iv) the gross tons stored with each buyer, dealer or processor;
- (e) within 10 days from the last day of each month, a record of the potatoes marketed, sold or transferred to each producer, buyer, dealer or processor of
 - (i) the gross tons marketed,
 - (ii) the percentage of cullage,
 - (iii) the price per ton of potatoes,
 - (iv) the gross tons of potatoes rejected,
 - (v) the amount of payment received in accordance with tons marketed, and
 - (vi) the amount and gross dollar value of greenhouse or laboratory product marketed, sold or transferred.

(2) Notwithstanding subsection (1)(e), with respect to potatoes that are seed potatoes or that are grown in a greenhouse or a laboratory, a licensed producer who sells or transfers those potatoes to a producer or buyer must, no later than 10 days from the last day of the licensed producer's annual shipping, submit to the Commission a record of the potatoes marketed, sold or transferred to each producer or buyer.

AR 277/98 s11;300/2002;8/2009;9/2014

Dealer or processor

12(1) A dealer or processor must submit to the Commission for each month within 30 days from the last day of the month

- (a) a record of potatoes delivered to the dealer or processor or its agents, including, but not limited to,
 - (i) gross tons of potatoes received,
 - (ii) tons of cullage,

- (iii) net tons of potatoes purchased,
 - (iv) gross purchase price for the potatoes,
 - (v) type and amount of deduction from the gross purchase price, and
 - (vi) net purchase price,
- (b) a record of the payment of service charges to the Commission, and
- (c) any information or record respecting the administration of a Canada Act.

(2) Notwithstanding subsection (1), a processor is not required to submit the information under subsection (1)(a)(iv), (v) and (vi) to the Commission.

AR 277/98 s12;300/2002

General

13 Repealed AR 300/2002 s8.

Use of funds

14(1) In this section, “funds” includes the following:

- (a) service charges;
- (b) licence fees;
- (c) any other money received or earned by the Commission;
- (d) any interest that accrues from maintaining the money referred to in clauses (a), (b) and (c).

(2) Any funds received by the Commission may be used by the Commission for the purpose of paying its expenses and administering and enforcing

- (a) the Act,
- (b) the Plan,
- (c) this Regulation,
- (d) any other regulations made under the Act in respect of the Plan or Commission, and

- (e) any order or direction of the Council or the Commission.
AR 277/98 s14;300/2002

Late payment of service charges

14.1 Where service charges payable to the Commission are not paid to the Commission within the time provided for under this Regulation or by the Commission, a one-time late fee calculated at a rate of 2% of the outstanding balance due must be paid to the Commission.

AR 265/2004 s3

Legal action

15 The Commission may recover by legal action from a licensed producer, dealer or processor

- (a) the amount of any service charge that is not deducted and paid as required by this Regulation,
- (b) the amount of any licence fee that is not paid as required by this Regulation, and
- (c) legal costs on a solicitor-client basis incurred in the recovery of any amount referred to in clauses (a) and (b).

AR 277/98 s15;300/2002

Service

16(1) A request for information under section 10(1) must be in writing and may be served

- (a) by ordinary mail sent to that person's last address shown on the records of the Commission, or
- (b) by facsimile, e-mail or other electronic means sent to that person's last electronic address shown on the records of the Commission.

(2) A notice, order or request for information served

- (a) under subsection (1)(a) is deemed to be received no later than 7 days from the date of mailing;
- (b) under subsection (1)(b) is deemed to be received the same day it is transmitted.

AR 277/98 s16;300/2002

17 Repealed AR 9/2014 s8.

Repeal

18 The *Potato Marketing Licensing Regulation* (AR 262/88) is repealed.

Expiry

19 For the purpose of ensuring that this Regulation is reviewed for ongoing relevancy and necessity, with the option that it may be repassed in its present or an amended form following a review, this Regulation expires on March 31, 2019.

AR 277/98 s19;300/2002;13/2008;8/2009;9/2014



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