



Province of Alberta

## MARKETING OF AGRICULTURAL PRODUCTS ACT

# **ALBERTA VEGETABLE GROWERS (PROCESSING) NEGOTIATION AND ARBITRATION REGULATION**

### **Alberta Regulation 25/2008**

With amendments up to and including Alberta Regulation 78/2015

#### Office Consolidation

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(Consolidated up to 78/2015)

**ALBERTA REGULATION 25/2008**

**Marketing of Agricultural Products Act**

**ALBERTA VEGETABLE GROWERS (PROCESSING)  
NEGOTIATION AND ARBITRATION REGULATION**

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**Interpretation**

1(1) In this Regulation,

- (a) “Act” means the *Marketing of Agricultural Products Act*;
- (b) “Agency” means the Vegetable Negotiating Agency established under Part 1;
- (c) “Agreement” means an agreement described in section 2;
- (d) “arbitrator” means an arbitrator appointed under this Regulation;
- (e) “Board” means the Alberta Vegetable Growers (Processing) Board;
- (f) repealed AR 78/2015 s3;

- (g) “Council” means the Alberta Agricultural Products Marketing Council;
- (h), (i) repealed AR 78/2015 s3;
- (j) “mediator” means a mediator appointed under Part 4;
- (k) “Plan” means the Alberta Vegetable Growers (Processing) Plan;
- (l) repealed AR 78/2015 s3.

**(2)** Words defined in the *Alberta Vegetable Growers (Processing) Plan Regulation* (AR 273/97) have the same meaning when used in this Regulation.

**(3)** Except where inconsistent with the *Marketing of Agricultural Products Act* and this Regulation, the *Arbitration Act* applies to an arbitration under this Regulation.

AR 25/2008 s1;78/2015

### **Agreement**

**(1)** The parties to an Agreement are the Board and a licensed processor.

**(2)** The subject-matter of an Agreement relates to the regulated product and must include terms respecting but not restricted to the following:

- (a) price of the regulated product;
- (b) seed;
- (c) terms of payment;
- (d) harvesting;
- (e) dockage;
- (f) bypass of the regulated product;
- (g) food safety;
- (h) acreage provisions;
- (i) cultural practices respecting the regulated product;
- (j) an arbitration clause.

**(3)** Every Agreement is deemed to contain the following terms:

- (a) if a difference arises as to the interpretation, application, operation or contravention of this Agreement, the parties agree to meet and endeavour to resolve the difference;
- (b) if the parties are unable to resolve a difference described in clause (a), or if the difference relates to whether an issue can be the subject of negotiation,
  - (i) either party may notify the other in writing of its desire to submit the difference to mediation and, if mediation fails, to arbitration, or
  - (ii) if neither party notifies the other party under subclause (i) within 30 days of the difference arising, the matter must be submitted to arbitration;
- (c) the notice referred to in clause (b) must
  - (i) contain a statement of the difference, and
  - (ii) specify a name or a list of names of persons the party is willing to accept as a mediator and as an arbitrator if mediation fails to resolve a difference described in clause (a);
- (d) this Regulation applies if the parties are unable to resolve a difference described in clause (a).

**Notice to commence negotiations**

**3(1)** Subject to the terms of an Agreement, either party may give notice in writing to the other party or, if there is no Agreement, a licensed processor may give notice in writing to the Board or the Board may give notice in writing to a licensed processor

- (a) stating that it wishes to commence negotiations,
- (b) setting out the issues it wishes to negotiate, and
- (c) setting out dates it is available to commence negotiations.

**(2)** Within 7 days from the date of receipt of a written notice under subsection (1), the party receiving the notice must, by written notice, advise the other party or, if there is no Agreement, the Board or licensed processor receiving the notice must, by written notice, advise the licensed processor or Board

- (a) whether or not one of the dates proposed to commence negotiations is suitable to it and, if not, an alternative date that is acceptable, and

- (b) whether there are any additional issues that it wishes to negotiate.

## **Part 1**

### **Vegetable Negotiating Agency**

#### **Agency established**

- 4(1)** Within 7 days from the date of receipt of a written notice under section 3(2), a Vegetable Negotiating Agency must be established.
- (2)** The Agency is composed of the following:
- (a) one or more individuals appointed by each licensed processor;
  - (b) one or more licensed producers appointed by the Board;
  - (c) an individual appointed as the chair of the Agency under subsection (4);
  - (d) an individual appointed as the secretary of the Agency under subsection (4);
  - (e) alternate members appointed under subsection (6).
- (3)** The number of licensed producers appointed under subsection (2)(b) shall not be greater in number than the number of individuals appointed under subsection (2)(a).
- (4)** The members of the Agency appointed under subsection (2)(a) and (b) must appoint
- (a) an individual to be the chair of the Agency, and
  - (b) an individual to be the secretary of the Agency.
- (5)** A person who is appointed as a member of the Agency under subsection (2)(a) or (b) is not, while being a member of the Agency appointed under subsection (2)(a) or (b), eligible to be appointed as the chair or secretary of the Agency.
- (6)** A person who appoints a member of the Agency under subsection (2)(a) or (b) must appoint an alternate for that member who must act during the absence of the member or inability of the member to act.
- (7)** The term of office of a member of the Agency is the lesser of

- (a) the period of time required to effect an Agreement for which notice is given, as described in subsection (1), and
- (b) one year.

**(8)** When the Agency considers it appropriate, the individuals appointed under subsection (2)(a) may be excluded from a meeting of the Agency at which the Agency is to consider and, if possible, conclude matters with respect to an individual licensed processor.

**(9)** The Agency may review and provide recommendations to the Board with respect to issues that are relevant to the growing, production, marketing or processing of the regulated product.

AR 25/2008 s4;78/2015

#### **Vacancies, etc.**

**5(1)** If a vacancy occurs on the Agency with respect to a member who was appointed under section 4(2)(a) or (b), the person who had appointed the member must, within 7 days from the day that the vacancy occurred, appoint a replacement member who must serve for the balance of the term.

**(2)** If a vacancy occurs with respect to the chair or secretary of the Agency, the members of the Agency appointed under section 4(2)(a), (b) or (6), if any, must, within 7 days from the day that the vacancy occurred, appoint an individual to be the chair or secretary who must serve for the balance of the term.

#### **Failure to appoint**

**6(1)** If any person who is entitled to appoint a member of the Agency fails to appoint a member of the Agency, the Council must, on that person's behalf, appoint an individual as a member of the Agency.

**(2)** If the members of the Agency fail to appoint a chair or a secretary of the Agency, the Council must, on behalf of those members, appoint a chair or a secretary.

#### **Quorum**

**7** A majority of the members of the Agency then holding office constitutes a quorum.

#### **Duties of secretary**

**8(1)** The secretary must

- (a) record all decisions and recommendations of the Agency,

- (b) provide the decisions and recommendations in writing to the Agency, and
- (c) provide a copy of the decisions and recommendations referred to in clause (b) to the Council.

(2) As soon as practicable after a meeting of the Agency, the secretary must prepare the minutes of the meeting and provide a copy of the minutes to the members of the Agency.

#### **Conduct of meetings**

**9(1)** Subject to this section, the Agency may make rules governing the conduct of its meetings.

(2) The chair and the secretary of the Agency may not vote at a meeting of the Agency.

(3) Voting at a meeting of the Agency is by show of hands.

(4) Notwithstanding subsection (3), any member present at a meeting of the Agency may require that a vote be conducted by secret ballot.

## **Part 2**

### **Negotiations to Effect an Agreement**

#### **Effecting an Agreement**

**10(1)** Following an exchange of notices under section 3, the Agency must meet and endeavour to effect an Agreement.

(2) Subject to the notice under section 3, the matters that the Agency may adopt or settle by Agreement are

- (a) those issues submitted by the parties under section 3, and
- (b) any other issues subsequently agreed on by both parties.

(3) Subject to subsection (2), the Agency is empowered to adopt or settle by Agreement any or all of the following matters:

- (a) the minimum price to be paid to licensed producers for the regulated product or any class, variety, grade, size or kind of the regulated product, and may include any product resulting from processing;
- (b) a method for the determination of the minimum price;
- (c) the terms and form of Agreement relating to the production or marketing of the regulated product;

- (d) any charges, costs or expenses relating to the production or marketing of the regulated product.

**Effect of Agreement**

**11(1)** If an Agreement is concluded by the Agency, the Agreement must be in writing and signed by each of the members of the Agency.

**(2)** Subject to the Act, an Agreement concluded by the Agency is binding on

- (a) the Board and the licensed processor, and
- (b) every licensed producer

to the extent that they choose to produce, market or process the regulated product in the area of Alberta to which the Plan applies.

**Referral to mediation, arbitration**

**12(1)** If the members of the Agency agree to refer an uneffected Agreement or specific issues in it to mediation, the Agency must

- (a) notify the Council in writing, and
- (b) refer the uneffected Agreement or specific issues to a mediator in accordance with Part 4.

**(2)** If the members of the Agency do not agree to refer an uneffected Agreement or specific issues in it to mediation, the Agency must

- (a) notify the Council in writing, and
- (b) refer the uneffected Agreement or specific issues to arbitration in accordance with Part 5.

**Part 3** Repealed AR 78/2015 s5.

## **Part 4 Mediation**

**Mediator appointed**

**16** The Council, on receipt of a written notice under section 12(1) must, in consultation with the licensed processor and the Board, appoint a mediator.

AR 25/2008 s16;78/2015

**Mediation process**

**17(1)** On being appointed, a mediator must contact the Board and the licensed processor to arrange commencement of mediation as soon as is reasonably practicable.

**(2)** A mediator is to effect a mutually acceptable Agreement in accordance with the following:

- (a) a mediator may not unilaterally determine an Agreement;
- (b) a mediator may not have contact with the arbitrator;
- (c) a mediator may not be selected as the arbitrator if arbitration is necessary.

**(3)** The parties must share equally the fees and expenses of the mediator.

AR 25/2008 s17;78/2015

**Mediation fails**

**18(1)** If the mediator cannot effect an Agreement under section 17(2),

- (a) the mediator must notify the Council in writing of the issues with respect to an Agreement that have not been resolved, and
- (b) the Council must refer the issues that have not been resolved to an arbitrator in accordance with Part 5.

**(2)** The notice under subsection (1) must include a request for the appointment of an arbitrator.

**(3)** Repealed AR 78/2015 s8.

AR 25/2008 s18;78/2015

## **Part 5 Arbitration**

**Arbitrator appointed**

**19(1)** On receipt of a notice under section 12(2) or 18(1), the Council must appoint an arbitrator.

**(2)** On appointing an arbitrator, the Council must forward to the arbitrator

- (a) a copy of the notices received by the Council from the parties, and

- (b) a copy of this Regulation.

AR 25/2008 s19;78/2015

#### **Staff**

**20** For the purposes of any arbitration under this Regulation, an arbitrator may

- (a) employ persons that the arbitrator considers necessary to carry out the arbitrator's functions, and
- (b) make use of the available administrative services of the Council.

#### **Reasonable dispatch**

**21** The arbitrator must conduct hearings and make a decision on the uneffected Agreement as soon as is reasonably practicable.

AR 25/2008 s21;78/2015

#### **Final offer selection**

**22(1)** The arbitrator must use final offer selection, whereby each party to the arbitration submits to the arbitrator the party's final offer in respect of all unresolved issues and the arbitrator must select, without modification, the complete offer of one of the parties.

**(2)** If all of the parties agree, the arbitrator must make an award on individual, or a combination of, unresolved issues.

**(3)** If the parties cannot reach an Agreement under subsection (2) at the beginning of the first day of the arbitration proceedings, the arbitrator must select, without modification, the complete offer submitted by one of the parties.

**(4)** The last offer made by either party to the arbitration during negotiations or mediation does not constitute that party's final offer or the complete offer referred to in subsection (1) or that party's complete offer referred to in subsection (3) unless that party

- (a) submits that offer to the arbitrator under subsection (1), or
- (b) agrees that it may be used by the arbitrator as the party's final offer under subsection (1) or complete offer under subsection (3).

AR 25/2008 s22;78/2015

**Service of notices, etc.**

**23(1)** A notice, application, direction, order or other communication made in respect of an arbitration under this Part may be served on the person to whom it applies or is directed

- (a) by personal service, or
- (b) by being
  - (i) sent by registered or certified mail addressed to the latest address of that person, or
  - (ii) transmitted by electronic means to that person at the latest number or address at which the transmission can be received,

that is shown on the records of the Board or that is provided to the arbitrator by that person.

**(2)** An electronic means may be used under subsection (1)(b)(ii) only if the person receiving the communication receives at least a printed image of the contents of the communication that is being served.

**(3)** Notwithstanding subsection (1), if any party to whom a notice, application, direction, order or other communication has been sent for the purpose of this Part cannot be found or if for any reason service cannot be readily effected in accordance with this Part, the arbitrator may dispense with service or may grant an order allowing for substitutional service by a method that the arbitrator considers appropriate.

**(4)** A party who sends a notice, application, direction, order or other communication to the arbitrator must forthwith serve a copy of it on the other party and notify the arbitrator that the copy has been served.

**Application for directions**

**24(1)** A party may apply in writing to the arbitrator on any subject relating to the issues before the arbitrator.

**(2)** When a party makes an application under subsection (1), it must serve a copy of the application on the other party.

**(3)** A party, on receipt of a copy of an application served under subsection (2), may, within 7 days from the day the party was served with a copy of the application, make an objection in writing to the arbitrator.

(4) On receipt of an application or objection under this section, the arbitrator may, with or without holding a hearing, give directions that the arbitrator considers appropriate.

#### **Directions by arbitrator**

**25(1)** Any direction from the arbitrator to the parties must

- (a) be in writing, or
- (b) if given orally, be confirmed in writing by the arbitrator within 7 days from the day that the directions were given.

(2) The written direction or the written confirmation of an oral direction must be served on the parties.

#### **Determining jurisdiction of arbitrator**

**26(1)** The arbitrator must consider whether the issues proposed for arbitration are matters that could be the subject of an Agreement.

(2) If the arbitrator concludes that an issue proposed for arbitration cannot be the subject of an Agreement, the arbitrator shall not deal with that issue.

AR 25/2008 s26;78/2015

#### **Conduct of arbitration**

**27** The arbitrator must, with or without preliminary hearings, direct the parties as to how the arbitration is to be conducted.

#### **Hearings and evidence**

**28(1)** The arbitrator must, in conducting an arbitration,

- (a) hold a hearing in the presence of the parties,
- (b) consider documentary evidence submitted by a party or a party's legal counsel or other representative,
- (c) hear oral evidence, and
- (d) consider arguments submitted by a party or the party's legal counsel or other representative.

(2) Notwithstanding subsection (1), if the arbitrator considers it appropriate, the arbitrator may dispense with a hearing but must

- (a) consider written submissions, documentary evidence and written arguments submitted by the parties or the party's legal counsel or other representative, and

- (b) review and examine any matters referred to the arbitrator, as the arbitrator considers necessary.
- (3) The parties or their legal counsel or other representative are entitled to be present at any review and examination conducted by the arbitrator under subsection (2)(b).
- (4) If the arbitrator is to hold a hearing, the arbitrator must notify the parties in writing of the date, time and place for the hearing.
- (5) Subject to an adjournment being granted, the hearing must be held daily until the arbitration is concluded.

#### **Attendance at hearing**

**29** Unless the arbitrator, after consulting with the parties, orders otherwise, only the following persons may be present at a hearing:

- (a) the arbitrator;
- (b) the arbitrator's officers and employees;
- (c) each party;
- (d) subject to section 30, legal counsel or other representatives of the parties and the arbitrator;
- (e) the witnesses;
- (f) officers or members of the Council.

#### **Representation**

**30(1)** Unless otherwise agreed to by the parties and approved by the arbitrator, any party may be represented at any stage of the proceedings by legal counsel or other representative if the notice of the intended representation is given in writing to the arbitrator and to the other party in sufficient time for each of them to be able to arrange to be similarly represented.

- (2) If a party is represented in accordance with subsection (1),
  - (a) the party must instruct its legal counsel or other representative, and
  - (b) the party may only participate in the proceedings as a witness.
- (3) If a person appears at a hearing as a representative, that person is not precluded from appearing as a witness at that hearing.

(4) If a party has not, in the opinion of the arbitrator, given notice in accordance with subsection (1), the arbitrator may adjourn the hearing so that subsection (1) is complied with in a manner satisfactory to the arbitrator.

#### **Adjournment of hearing**

**31** The arbitrator may, for any reason that the arbitrator considers appropriate, adjourn a hearing at any time prior to the commencement of the hearing or at any time during the hearing.

#### **Failure to attend**

**32(1)** If any party or the party's legal counsel or other representative fails to attend a hearing for which notice was served by the arbitrator, the arbitrator may, on any conditions that the arbitrator considers appropriate,

- (a) adjourn the hearing for not more than 7 days, and
- (b) at the conclusion of the adjournment, proceed to hear and determine the matter whether or not the party in respect of whom the adjournment was granted attends or is represented.

(2) Written notice of the date for the adjourned hearing and of the arbitrator's intention to proceed must be served forthwith on both parties by the arbitrator.

#### **Evidence**

**33(1)** Unless otherwise agreed to by the parties, the arbitrator must require witnesses to be examined on oath or affirmation.

(2) The arbitrator may set the terms and conditions under which evidence may be given.

#### **Production of documents**

**34** The arbitrator may direct the parties to produce to the arbitrator the documents, correspondence, books and records in their possession or under their control that, in the opinion of the arbitrator, are relevant to the dispute.

#### **Conclusions**

**35** The arbitrator is entitled to use the arbitrator's own technical knowledge, skills and general knowledge when reaching conclusions based on the arbitrator's inspections under section 28(2), considerations and evaluation of the evidence.

**Determination in writing**

**36** The arbitrator must

- (a) make a decision in writing as soon as practicable, and
- (b) notify the parties of it.

**Incorporation of settlement into determination**

**37(1)** If the parties settle on any issue under arbitration, they must notify the arbitrator of the settlement and the arbitrator must incorporate the settlement into the arbitrator's decision.

**(2)** If the parties' settlement does not resolve all the issues in dispute, the outstanding issues are the issues on which the arbitrator must make a decision.

**Settlement terminating arbitration**

**38** If, before the publication of the arbitrator's decision, the parties themselves settle all the issues in dispute, they must immediately notify the arbitrator in writing and the arbitrator must accept the notice as terminating the arbitration proceedings.

**Arbitration determination final**

**39** Subject to the Act, a decision of the arbitrator is final and binding on

- (a) the Board and the licensed processor, and
- (b) every licensed producer

to the extent that they choose to produce, market or process the regulated product in the area of Alberta to which the Plan applies.

**Fees and expenses of arbitrator**

**40** The parties must share equally the fees and expenses of the arbitrator.

## **Part 6**

### **Board Power**

**Negotiation not commenced or completed**

**41(1)** If

- (a) a party, the Board or a licensed processor, as the case may be, receives a notice under section 3(1) and does not

advise the other party, the Board or the licensed processor, as the case may be, under section 3(2), or

- (b) the members of the Agency do not refer an unaffected Agreement or specific issues in it to either mediation or arbitration, or both, in accordance with this Regulation,

then

- (c) the Board may determine the minimum prices that must be paid to licensed producers for the regulated product or any class, variety, grade, size or kind of the regulated product, and
- (d) if the Board makes a determination pursuant to clause (c), the Board must issue an administrative order or directive to that effect.

(2) An administrative order or directive issued pursuant to subsection (1)(b) is binding on the licensed processors and the licensed producers.

AR 25/2008 s41;78/2015

## **Part 7**

### **Repeal and Expiry**

#### **Repeal**

**42** The *Vegetable Negotiating Agency Regulation* (AR 63/94) is repealed.

#### **Expiry**

**43** 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 November 30, 2025.

AR 25/2008 s43;78/2015





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