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AR 280/96 Alberta Fresh Vegetable Producers' Plan
(Consolidated up to 3/98)

ALBERTA REGULATION 280/96

Marketing of Agricultural Products Act

ALBERTA FRESH VEGETABLE
PRODUCERS' PLAN REGULATION

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Definitions

1 In this Regulation,

- (a) "Act" means the Marketing of Agricultural Products Act;
- (b) "Board" means the Board continued under section 9;
- (c) "broker" means a person who, on behalf of a producer, sells or offers for sale or receives for either of those purposes, the regulated product produced by that producer;
- (d) "consumer" means a person who receives or purchases the regulated product
 - (i) for the use of that person, or
 - (ii) in the case of an individual, for the use of that person's family,and not for the purpose of re-sale in any form;
- (e) "Council" means the Alberta Agricultural Products Marketing Council;
- (f) "fresh cut vegetables" means field-grown fresh vegetables that have been peeled, sliced, chopped or shredded, but that have not been cooked, canned, frozen or dried for any type of long term preservation;
- (g) "marketing" means buying, owning, selling, offering for sale, storing, grading, assembling, packing, transporting, advertising or financing the regulated product in any manner by any person;
- (h) "person" means a person as defined in the Interpretation Act and includes
 - (i) a partnership as defined in the Partnership Act,
 - (ii) any unincorporated organization that is not a partnership referred to in subclause (i), and
 - (iii) any group of individuals who are carrying on an activity for a common purpose and are neither a partnership referred to in subclause (i) nor an unincorporated organization referred to in subclause (ii);
- (i) "Plan" means the Plan continued under section 4;
- (j) "producer" means any person who produces the regulated product;
- (k) "registered producer" means a producer who is registered with the Board;
- (l) "regulated product" means field-grown fresh vegetables grown in Alberta, including fresh cut vegetables, but does not include vegetables grown for processing or potatoes;
- (m) "representative" means an individual appointed as a representative under section 31;
- (n) "retailer" means a person, other than a producer or broker, who sells the regulated product directly to a consumer;
- (o) "voters list" means a list of individuals entitled to vote in an election provided for in this Regulation;
- (p) "wholesaler" means a person, other than a producer or broker, who sells the regulated product to anyone other than a consumer.

Designation of agricultural product

2 Field-grown fresh vegetables and fresh cut vegetables are designated as

agricultural products for the purpose of the Act.

Designation of Canada Act

3 The Advance Payments for Crops Act (Canada) including any amendments to or replacements of it is hereby designated as a Canada Act.

PART 1

GENERAL OPERATION OF PLAN

Division 1
Plan

Plan continued

4 The Alberta Fresh Vegetable Marketing Plan, 1974 established under Alberta Regulation 167/74 and continued as the Alberta Fresh Vegetable Marketing Plan under Alberta Regulation 331/90 is hereby amended and continued under this Regulation with the name "Alberta Fresh Vegetable Producers' Plan".

Termination of Plan

5 This Plan does not terminate at the conclusion of a specific period of time and shall remain in force unless otherwise terminated pursuant to the Act.

Application of Plan

6(1) This Plan applies

- (a) to all of Alberta, and
 - (b) to all persons who produce or market or produce and market the regulated product.
- (2) Notwithstanding subsection (1), the sales by a producer directly to a consumer of the regulated product produced by the producer are exempt from this Plan.

Purpose and intent

7 The purpose of the Plan is to encourage the development of a globally competitive industry through the effective promotion, control and regulation of the marketing of the regulated product in Alberta and, without limitation, to accomplish the following:

- (a) the licensing of producers and brokers;
- (b) the promotion of sound supply chain management practices to ensure continuity of a high quality market supply of the regulated product and services year round;
- (c) the promotion of
 - (i) the replacement of imported field-grown fresh vegetables and fresh cut vegetables by the regulated product produced by Alberta producers,
 - (ii) market expansion for the regulated product, and
 - (iii) integrated production and marketing of the regulated product;
- (d) the maintenance of industry statistics and the use of market surveys, industry analyses and international market studies by producers to encourage the transfer of technology, marketing systems and research;
- (e) the promotion of co-operative marketing structures by producers and others and the development of provincial, national and international strategic alliances with other marketing boards and commissions, corporations, grower associations and co-operatives to enable producer participation in national and international markets;
- (f) to assist producers in meeting the requirements of national and international quality control and food safety programs, product identification and handling systems;
- (g) to encourage understanding of international trade agreements;
- (h) the establishment and maintenance of a system of grading wherein all regulated product must be graded before sale to anyone other than a consumer;
- (i) the establishment and maintenance of minimum price or prices of

the regulated product or any class, variety, grade, size or kind of the regulated product, whether packaged or handled in bulk, to ensure competitive pricing against any imported product for the producer or broker, when selling to any person other than a consumer;

(j) to promote suitable forms of market information and to encourage communication and producer information exchange through management programs;

(k) to promote and support development of horticultural human resource training programs for management and employees and the certification of those persons;

(l) to establish and maintain a research fund enabling the conduct of research into the production of the regulated product, development of storage, fresh-cut technology, packing and marketing;

(m) to promote the registration of necessary pesticides and chemicals and to support necessary testing of them for use in Alberta;

(n) to promote and facilitate for producers and co-operative marketing organizations the access to appropriate sources of capital for construction of storage and handling facilities and of plant and equipment for the purposes of encouraging industry growth and efficiency;

(o) to promote the interests of producers in representations to governments regarding legislation which may impact on the production or marketing of the regulated product and the pursuit of suitable forms of crop insurance and safety nets;

(p) to co-operate with marketing boards and commissions, corporations, grower associations and co-operatives located in Alberta and in other provinces that have objectives similar to those of the Board;

(q) to co-operate with the Government of Canada and the Government of Alberta in respect of the maintenance of the quality and the marketing of the regulated product;

(r) the participation in the program under the Advance Payments for Crops Act (Canada).

Districts

8 For the purposes of this Plan, Alberta is divided into the 2 following districts:

(a) Alberta North consisting of all that area of Alberta that is north of the 7th base line;

(b) Alberta South consisting of all that area of Alberta that is south of the 7th base line.

Division 2

Operation of Plan by Board

Board continued

9 The Alberta Fresh Vegetable Marketing Board is hereby continued with the name "Alberta Fresh Vegetable Producers".

Functions of Board

10 The Board

(a) is responsible, subject to the Act, for the operation, regulation, supervision and enforcement of this Plan;

(b) shall open one or more bank accounts and designate any officers, employees and other persons necessary to sign cheques and transact the Board's business with its financial institution, and shall generally do all things incidental to or in connection with the transaction of the Board's business with its financial institution;

(c) shall maintain or cause to be maintained books and records that from time to time may be required under the Act, the regulations or by virtue of any order of the Council or that may be required by the Board;

(d) shall open its books and records for inspection at all reasonable times at the office of the Board on the written request of any registered producer or any member of the Council;

(e) shall forward to each registered producer a copy of the auditor's report with a notice of the annual general meeting;

(f) shall maintain an office and notify the Council and each registered producer, dealer and other person or agency licensed by the

Board of the location of the office;

(g) may appoint officers and agents, prescribe their duties and fix and provide for their remuneration;

(h) may, subject to the Act, the regulations and any orders of the Council, issue orders governing the Board's internal operations.

Regulations to operate Plan

11(1) For the purposes of enabling the Board to operate this Plan, the Council, with the approval of the Minister, may authorize the Board, pursuant to section 26 of the Act, to make regulations

(a) requiring producers engaged in the production or marketing, or both, of the regulated product to register their names and addresses with the Board;

(b) requiring any person who produces or markets the regulated product to furnish to the Board any information or record relating to the production or marketing of the regulated product that the Board considers necessary;

(c) requiring persons to be licensed under this Plan before they become engaged in the production or marketing or the production and marketing of the regulated product;

(d) prohibiting persons from engaging in the production or marketing of the regulated product except under the authority of a licence;

(e) governing the issuance, suspension or cancellation of a licence under this Plan;

(f) providing for

(i) the assessment, charging and collection of service charges and licence fees from producers from time to time for the purposes of this Plan, and

(ii) the taking of legal action to enforce payment of the service charges and licence fees;

(g) requiring any person who receives the regulated product from a producer

(i) to deduct from the money payable to the producer any service charges and licence fees payable by the producer to the Board, and

(ii) to forward the amount deducted to the Board;

(h) providing for the use of any class of service charges, licence fees or other money payable to or received by the Board for the purposes of paying its expenses and administering this Plan and the regulations made by the Board;

(i) requiring persons who produce or market the regulated product to mark the containers of their products to show the place of origin or place of production to the satisfaction of the Board;

(j) providing for the payment to a Canada Board of money that is payable under a Canada Act.

(2) For the purposes of enabling the Board to operate this Plan, the Council, with the approval of the Minister, may authorize the Board, pursuant to section 27(1) of the Act, to make regulations

(a) requiring any person who provides an agricultural product to a producer under this Plan to furnish to the Board any information requested by the Board;

(b) providing for the establishment and operation of one or more programs for the disposition of any regulated product considered to be surplus to market requirements;

(c) determining from time to time the minimum price or prices that shall be paid to producers for the regulated product or any class, variety, grade, size or kind of the regulated product and determining different prices for different parts of Alberta;

(d) requiring that the money payable or owing to a producer for the regulated product be paid to or through the Board;

(e) providing for the payment to a producer of the money payable or owing for the regulated product, less any service charges owing to the Board by the producer, and fixing the time or times at which or within

which the payments shall be made;

(f) providing

(i) for the operation of one or more pools for the distribution of all money payable to the producers from the sale of the regulated product, and

(ii) for the deduction of reasonable and proper disbursements and expenses with respect to the operation of the pool;

(g) providing for the collection from any person by legal action of money owing to a producer for the regulated product.

Financing of Plan

12 In accordance with the regulations, this Plan shall be financed

(a) by the charging and collection of service charges or licence fees, or both, and

(b) by other money payable to or received by the Board including, without restricting the generality of the foregoing, money arising from investments of and other income earned by the Board.

Remuneration

13 The remuneration to be paid to the Chairman of the Board and to the other members of the Board shall be fixed by a vote of the registered producers at an annual general meeting or special general meeting of the registered producers.

Appointment of auditor

14(1) The registered producers shall from time to time appoint an auditor for the Board.

(2) The appointment of an auditor shall be made at an annual general meeting or special general meeting of the registered producers.

Authority from Governor in Council

15 In accordance with section 50 of the Act, the Board may, with respect to the production or marketing, or both, of the regulated product, be authorized to perform any function or duty and exercise any power imposed or conferred on the Board by or under the Agricultural Products Marketing Act (Canada) or the Farm Products Agencies Act (Canada), or both of them.

Indemnification fund

16 The Board shall not establish and operate a fund under section 34 or 35 of the Act.

PART 2

GOVERNANCE OF PLAN

Division 1 Board

Members of the Board

17 The Board shall consist of 7 members as follows who must be registered producers:

(a) 3 members representing Alberta North;

(b) 4 members representing Alberta South.

Representation by areas

18 The Board, with the approval of the Council, may divide a district into areas, which shall be represented by members of the Board elected within each area.

Chairman

19(1) The members of the Board shall, at their first meeting following each election of members to the Board, elect from the members of the Board one member to serve as Chairman of the Board and one member to serve as Vice-chairman of the Board.

(2) Where the Chairman's position becomes vacant the Vice-chairman shall assume the position of the Chairman and the Board shall elect from the members of the Board one member to serve as Vice-chairman.

Board meetings

20 The Board may, at the call of the Chairman or 3 other members of the Board, conduct meetings of the members of the Board.

Quorum

21 The quorum necessary under this Plan for a meeting of the members of the Board is a majority of the members on the Board at the time.

Terms of office

22(1) The term of office of a person elected as a member of the Board under section 33 shall

(a) commence on the conclusion of the annual general meeting at which the election is held to fill the office, and

(b) expire on the conclusion of the annual general meeting held in the 3rd year following the year in which the term commenced.

(2) No person shall serve for more than 2 consecutive full terms as a member of the Board.

Missing meetings

23 Where a member of the Board is absent for 3 consecutive meetings of the Board, the member's seat on the Board becomes vacant at the conclusion of the 3rd consecutive meeting from which the member was absent unless the Board considers that extenuating circumstances exist, in which case the Board may waive the application of this section.

Filling vacancies

24(1) Where a vacancy occurs on the Board, the Board may, with the approval of Council, appoint, from among the registered producers who are eligible to be elected or who are eligible to have representatives elected to the Board, an individual

(a) as a member for the unexpired portion of the term, or

(b) as a member until the next annual general meeting, when the position must be filled in accordance with subsection (2).

(2) At an election held to fill a position under subsection (1)(b), the person elected shall hold office

(a) for the unexpired portion, if any, of the term of the member who originally vacated the position, or

(b) in accordance with section 22, in any other case.

Division 2

General Meetings of Producers

Annual general meetings

25(1) The Board shall hold an annual general meeting of registered producers at least once in each calendar year.

(2) Not more than 15 months may elapse between annual general meetings of registered producers.

Special general meetings

26 Special general meetings of registered producers

(a) may be called by the Board at any time, and

(b) shall be called by the Board on the written request of 10 or more registered producers.

Time and place of general meeting

27 The time and place of an annual general meeting or a special general meeting shall be fixed by the Board.

Notification of general meeting

28(1) The Board shall send to all registered producers entitled to vote written notice not less than 15 days prior to a meeting referred to in section 27 setting out

(a) the time and location of the meeting, and

(b) if special or extraordinary business is to be transacted at the meeting, the nature of the business.

(2) A notice under subsection (1) may be conveyed to a registered producer at the registered producer's last address shown on the records of the Board and the notice may be sent by the following means:

- (a) by ordinary mail;
- (b) by electronic mail or other electronic means.

Quorum

29 The quorum necessary under this Plan for an annual general meeting or a special general meeting of registered producers is 15% of the registered producers.

Division 3

Eligibility, Voting and Elections

Producers who are individuals

30(1) A registered producer who is an individual may, subject to this Plan,

- (a) make representations on any matter pertaining to this Plan,
- (b) attend meetings held under this Plan,
- (c) vote on any matter under this Plan,
- (d) vote at an election under this Plan, and
- (e) hold office under this Plan.

(2) An individual who is eligible to vote may appoint another individual as a proxy to vote on the individual's behalf if the individual appointing the proxy deposits with the returning officer, at least 2 days before the day on which the vote is to be held, the document under which the proxy is appointed.

(3) An individual may not act as a proxy for more than one individual in respect of the same vote.

Producers who are not individuals

31(1) If a registered producer is not an individual and

- (a) makes representations on any matter pertaining to this Plan,
- (b) attends meetings held under this Plan,
- (c) votes on any matter under this Plan,
- (d) votes at an election under this Plan, or
- (e) holds office under this Plan,

that registered producer shall do so in accordance with this section.

(2) A registered producer that is not an individual shall appoint an individual to be the representative of the registered producer.

(3) A representative appointed by a registered producer under this section shall

- (a) represent the registered producer in any matter pertaining to this Plan,
- (b) attend meetings on behalf of the registered producer, and
- (c) vote and hold office, as the case may be, on behalf of the registered producer.

(4) If a registered producer is

(a) a corporation, it shall appoint an individual who is a director, shareholder, member, officer or employee of the corporation as its representative,

(b) a partnership, it shall appoint an individual who is a partner or employee of the partnership as its representative, or

(c) an organization, other than a corporation or partnership, it shall appoint an individual who is a member, officer or employee of the organization as its representative.

(5) An appointment of a representative under this section must be in

writing.

(6) In the case where a vote is to be taken at a meeting, the registered producer must deposit a document with the returning officer at least 2 days before the day on which the vote is to be held indicating the name of the person who may vote as a representative of the registered producer.

(7) An individual may not be a representative under this section for more than one registered producer.

(8) A representative shall not vote or hold office before the representative's appointment is deposited in accordance with subsection (6).

Voting

32(1) Subject to sections 30 and 31, a person who

(a) is a registered producer or a representative of a registered producer,

(b) resides in Alberta, and

(c) is present at an annual general meeting or special general meeting

is eligible to vote on any matter at that meeting and is eligible to vote in the election of members of the Board.

(2) A person who is eligible to vote may

(a) vote once on each matter, and

(b) in the case of an election of members of the Board, vote for any number of candidates the person chooses, not exceeding the number of members to be elected to the Board,

notwithstanding that the person may

(c) manage or operate or own, lease or hold equity in one or more operations that are registered separately with the Board, or

(d) hold a proxy for another registered producer.

(3) Nothing in this Plan prohibits a voter who is resident in one district or area from voting for a candidate who is resident in another district or area and who is standing for election as a member of the Board representing that other district or area.

(4) Subject to subsection (5), a registered producer shall not vote in any election unless the registered producer's name appears on the voters list.

(5) Where the name of a registered producer who is eligible to vote does not appear on the voters list, that registered producer, or the registered producer's representative, shall be allowed to vote if the individual who intends to vote signs a declaration, witnessed by the returning officer and an individual entitled to vote, stating that the individual

(a) is a registered producer or is appointed under section 31 as a representative of a registered producer, and

(b) has not previously voted in that election.

Election for member of the Board

33 Where the term of office of a member of the Board expires at the conclusion of an annual general meeting, an election shall be held to fill that office at the annual general meeting at which the term of office is to expire.

Eligibility re Board member

34(1) A person is not eligible to be a member of the Board unless the person

(a) is a registered producer or a representative of a registered producer, and

(b) resides in

(i) the district, or

(ii) the area within the district, if the district is divided into areas under this Plan,

that the member is to represent.

(2) Where, during the term of office of a member of the Board,

(a) in the case of a registered producer who is an individual, the individual ceases to be a registered producer, or

(b) in the case of a registered producer who is not an individual,

(i) the registered producer ceases to be a registered producer, or

(ii) the registered producer terminates an individual's appointment as its representative,

that person ceases to be a member of the Board effective on the day the individual ceases to be a registered producer, the registered producer who is not an individual ceases to be a registered producer or the registered producer who is not an individual terminates the individual's appointment as the representative of the registered producer, as the case may be.

Returning officer

35(1) The Secretary-Manager of the Board or another person designated by the Board shall be the returning officer for elections carried out under this Plan and is responsible for the elections of members of the Board and for the administrative procedures relating to the conduct of an election.

(2) The returning officer shall

(a) prepare the voters list,

(b) ensure that each person who votes in an election is on the voters list or has signed a declaration pursuant to section 32(5), and

(c) permit scrutiny of the returning officer's actions by a scrutineer in respect of the conduct of an election.

Election records

36 Unless otherwise directed by Council, the Board shall not destroy any records relating to an election until at least 90 days have expired after the day of the election.

Result of invalid election

37(1) If an election is held under this Plan and there is in attendance at the meeting at which the election is held an insufficient number of persons who are eligible to vote at the election,

(a) the election is void, and

(b) the position for which the election was held is vacant.

(2) Notwithstanding that a position is vacant under subsection (1), the term of office of the position is deemed to have commenced as if a person had been elected to the position.

(3) Notwithstanding section 24, if a position is vacant under subsection (1), the Council shall fill the position by appointing, from persons eligible to be elected to that position, a person to fill that position.

(4) A person appointed under subsection (3) shall serve that portion of the term that runs to the next annual general meeting following the person's appointment, at which time

(a) the person ceases to hold office, and

(b) an election shall be held

(i) to fill the office for the unexpired portion, if any, of the term of the vacant position, or

(ii) in accordance with section 22, in any other case.

Controverted election

38(1) If a registered producer

(a) questions

(i) the eligibility of a candidate,

(ii) the eligibility of a voter,

(iii) any matter relating to a ballot or the tabulation of ballots, or

(iv) any irregularity with respect to the conduct of an election,

and

(b) seeks to have the election declared invalid and the position declared vacant,

the registered producer shall, not later than 30 days after the day of the election, apply in writing to the Council to have the election declared invalid and the position declared vacant.

(2) On receipt of an application under subsection (1), the Council shall consider the matter and may

(a) declare the election to be proper and the position filled, if in the opinion of the Council there is no basis for the application,

(b) declare the election to be proper and the position filled, notwithstanding that there is a basis for the application, if, in the opinion of Council,

(i) the basis for the application did not materially affect the result of the election, and

(ii) the election was conducted substantially in accordance with this Regulation and the Act,

or

(c) declare the election to be void and the position vacant, if in the opinion of the Council there is a basis for the application and the basis is sufficient to or did affect the result of the election.

(3) Notwithstanding that an election is declared void and a position is declared vacant under subsection (2)(c), the term of office of the position declared vacant is deemed to have commenced on the day that the election which was declared void was held.

(4) Notwithstanding section 24, if the Council declares an election to be void and the position vacant, the Council may

(a) order that, within the time that the Council considers proper, a special general meeting be held and an election conducted to fill the vacant position, or

(b) appoint, from among the persons who are eligible to be elected to the position, a person to fill the vacant position.

(5) A person elected under subsection (4)(a) shall hold office for the unexpired portion of the term.

(6) A person appointed under subsection (4)(b) shall serve that portion of the term that runs to the next annual general meeting following that person's appointment, at which time

(a) that person ceases to hold office, and

(b) an election shall be held

(i) to fill the unexpired portion, if any, of the term,

or

(ii) in accordance with section 33, in any other case.

PART 3

TRANSITIONAL, REVIEW AND REPEAL

Transitional

39(1) In this section,

(a) "new Plan" means this Plan as continued by this Regulation;

(b) "previous Plan" means the Alberta Fresh Vegetable Marketing Plan Regulation (Alta. Reg. 331/90) as it read immediately before the coming into force of this Regulation.

(2) The persons who, immediately before the coming into force of this Regulation, were members of the Board under the previous Plan shall, on the coming into force of the new Plan, continue as members of the Board under the new Plan until members of the Board are elected under the new Plan.

Review

40 In compliance with the on-going regulatory review initiative, this
Regulation must be reviewed on or before June 30, 1998.
AR 280/96 s40;3/98

Repeal

41 Alberta Regulation 331/90 is repealed.