



Province of Alberta

MARKETING OF AGRICULTURAL PRODUCTS ACT

ALBERTA OAT GROWERS COMMISSION PLAN REGULATION

Alberta Regulation 133/2012

Extract

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ALBERTA REGULATION 133/2012

Marketing of Agricultural Products Act

**ALBERTA OAT GROWERS COMMISSION
PLAN REGULATION**

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Definitions

- 1 In this Regulation,
 - (a) “Act” means the *Marketing of Agricultural Products Act*;
 - (b) “annual Commission meeting” means an annual general meeting of the directors and the eligible producers;

- (c) “assets” means economic resources controlled by the body as a result of past transactions and from which future economic benefits may be obtained;
- (d) “auditor” means a person registered under the *Regulated Accounting Profession Act* or a firm or partnership of those persons;
- (e) “board” means the board of directors of the Commission;
- (f) “Commission” means the Alberta Oat Growers Commission established under section 7;
- (g) “Council” means the Alberta Agricultural Products Marketing Council;
- (h) “crop year” means the period from August 1 of one year to July 31 of the following year;
- (i) “dealer” means a person or business operation purchasing or acquiring regulated product from a producer and includes, but is not limited to,
 - (i) elevator companies, grain companies, grain dealers, food processors, feed manufacturers and livestock feeders, and
 - (ii) persons who acquire regulated product from the producer for sale on the producer’s behalf;
- (j) “directors” means the board of directors of the Commission;
- (k) “eligible producer” means a producer who qualifies as an eligible producer under section 16;
- (l) “fiscal year” means a year commencing on August 1 and concluding on July 31;
- (m) “investment” means a commitment of assets in order to gain a financial return but does not include an expenditure of assets for the purposes of research and development or current operations;
- (n) “marketing”
 - (i) means buying, owning, selling, offering for sale, storing, grading, assembling, packing, transporting, advertising or financing, and
 - (ii) includes any other function or activity designated as marketing by the Lieutenant Governor in Council;

- (o) “oat” means any seed produced by or any part of the oat plant *Avena sativa L.*;
- (p) “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);
- (q) “producer” means a person who
 - (i) grows oats for sale on one or more parcels of land in Alberta, or
 - (ii) is entitled, pursuant to a crop share arrangement, to a share of oats that are grown on the land located in Alberta;
- (r) “regulated product” means oats;
- (s) “special Commission meeting” means a special general meeting of the directors and the eligible producers.

Designation of agricultural product

2 Oats are designated as an agricultural product for the purposes of the Act.

**Part 1
General Operation of Plan****Division 1
Plan****Plan established**

3 There is hereby established a plan with the name “Alberta Oat Growers Commission Plan”.

Termination of Plan

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

Application of Plan

5 This Plan applies

- (a) to all of Alberta,
- (b) to all producers in Alberta who produce or market the regulated product, and
- (c) for the purposes of sections 9(a), (b), (c) and (f) and 12,
 - (i) to dealers, and
 - (ii) to any persons who are not producers or dealers and who market or process the regulated product.

Purpose of Plan

6(1) The purpose of this Plan is to do the following:

- (a) to initiate and carry out projects or programs related to research and studies with respect to the production and handling of oats, including research and studies concerning the development and use of oats that improve the demand, agronomic competitiveness and profitability of oats to improve profitability and end use demand;
- (b) to assist, educate and inform producers, dealers and processors in developing and improving methods regarding the production and processing of oats;
- (c) to initiate and carry out advertising programs, sales promotion programs and consumer education programs to expand the market awareness and demand for oats and oat products, both within Alberta and in export markets;
- (d) to assist generally in the development and promotion of the oats industry in Alberta;
- (e) to advise governments on matters concerning the oats industry;
- (f) to co-operate with the Government of Canada and the Government of Alberta with respect to the maintenance of the quality and standards of the regulated product;

- (g) to participate in programs under the *Advance Payments for Crops Act* (Canada);
 - (h) to work with any organization that has similar objectives to those of the Commission.
- (2) Under this Plan neither the production nor the marketing of the regulated product is to be controlled or regulated.

Division 2

Operation of Plan by Commission

Commission established

7 There is hereby established a commission with the name “Alberta Oat Growers Commission”.

Functions of Commission

8(1) The Commission

- (a) is, subject to the Act, responsible for the operation, regulation, supervision and enforcement of this Plan;
- (b) must
 - (i) open one or more accounts in a bank, trust company, treasury branch, credit union or other depository,
 - (ii) designate such officers, employees and other persons as are necessary to transact the Commission’s business, and
 - (iii) generally do anything that is incidental to or in connection with the transaction of the business of the Commission with its bank, trust company, treasury branch, credit union or other depository;
- (c) when investing its assets must make prudent investments in accordance with the requirements of section 3 of the *Trustee Act* respecting the investment of assets and may delegate to an agent in accordance with section 5(1) to (3) of that Act;
- (d) must establish policies respecting the management of its assets as required by the *Operation of Boards and Commissions Regulation* (AR 26/99);
- (e) may enter into an operating line of credit or other loan agreement with its bank, trust company, treasury branch, credit union or other lending institution;

- (f) must maintain such books and records, including financial records,
 - (i) as from time to time may be required under the Act, the regulations or by virtue of any order of the Council, or
 - (ii) as may be determined by the Commission;
- (g) must maintain a head office, the location of which, at all times, is to be made known to each eligible producer;
- (h) may appoint or contract with officers, employees and agents, prescribe their duties and fix their remuneration;
- (i) subject to the Act, the regulations and any orders of the Council, may issue such general orders governing the Commission's internal operation as it may from time to time determine;
- (j) may become a member of any agricultural organization;
- (k) may contribute funds to any agricultural organization that has objectives similar to the objectives of the Commission;
- (l) may, in accordance with section 50 of the Act, be authorized to perform any function or duty and exercise any power imposed or conferred on the Commission by or under the *Agricultural Marketing Programs Act* (Canada);
- (m) subject to section 11, to finance the purposes of the Plan, may retain earnings and revenues from year to year.

(2) The books and records referred to in subsection (1)(f) are to be open for inspection at the office of the Commission at all reasonable times on the written request of a member of the Council.

Operation of Plan re regulations

9 For the purposes of enabling the Commission to operate this Plan, the Commission may be empowered by the Council, pursuant to section 26 of the Act, to make regulations

- (a) requiring any person who produces, markets or processes the regulated product to furnish to the Commission any information or record relating to the production, marketing or processing of the regulated product that the Commission considers necessary;

- (b) requiring persons other than producers to be licensed under this Plan before they become engaged in the marketing and processing, or either of those functions, of the regulated product;
- (c) governing the issuance, suspension or cancellation of a licence issued under this Plan;
- (d) providing for
 - (i) the assessment, charging and collection of service charges 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;
- (e) respecting the circumstances, if any, under which a service charge may be refundable to a producer;
- (f) requiring any person who receives the regulated product from a producer
 - (i) to deduct from the money payable to the producer any service charges payable by the producer to the Commission, and
 - (ii) to forward the amount deducted to the Commission;
- (g) providing for the use of any class of service charges or other money payable to or received by the Commission for the purpose of paying its expenses and administering this Plan and the regulations made by the Commission.

Financing of Plan

10(1) In accordance with the regulations,

- (a) this Plan is to be financed
 - (i) by the charging and collection of service charges from producers, and
 - (ii) by any other money payable to or received or accrued by the Commission;
- (b) the Commission may, from time to time, change the amount of the service charge, but the change will not be effective until it has been approved by a majority of the eligible producers at an annual Commission meeting or a special Commission meeting.

(2) The initial amount of the service charge to be established after the coming into force of this Plan is to be established by the Commission and must be approved by the Council before it becomes effective.

Service charges refundable

11(1) In accordance with the regulations,

- (a) the service charge is refundable to a producer on request of the producer;
- (b) the request for a refund of the service charge must
 - (i) be made in writing on a form established by the Commission, and
 - (ii) contain the following information:
 - (A) the producer's name;
 - (B) the producer's mailing address, telephone number and, if available, e-mail address;
 - (C) a copy of the original cash ticket showing the total dollar amount, the quantity of regulated product sold and the deduction of the service charge;
 - (D) the name, mailing address, telephone number and, if available, e-mail address of any dealer who collected the service charge on behalf of the producer;
 - (E) the legal land description of the land where the regulated product was grown;
 - (F) the amount of the service charge deducted;
 - (G) any specifics of the refund request;
- (c) requests for refunds must be received by the Commission at its head office
 - (i) prior to the end of August, for service charges collected during the period commencing on the previous February 1 and ending on July 31, and
 - (ii) prior to the end of February, for service charges collected during the period commencing on the previous August 1 and ending on January 31;

- (d) any request for a refund that is not received by the Commission within the time periods specified under clause (c) shall not, subject to clause (e), be considered by the Commission and the producer will not be entitled to a refund in respect of the service charge in question;
- (e) the Commission may consider an application for a refund that is received after the applicable time period referred to in clause (c) if the Commission is satisfied that extenuating circumstances exist;
- (f) the Commission must refund the service charge to the producer within 90 days from the end of the period in which the request for a refund of the service charge is received, if the request complies with the regulations.

(2) In the event that within one crop year

- (a) the eligible producers requesting refunds of the service charge comprise more than 35% of existing eligible producers, and
- (b) those eligible producers requesting a refund in clause (a) account for at least 35% of the service charges collected during the current crop year,

the continued operation of this Plan is to be subject to the approval of a majority of the eligible producers of the regulated product at a plebiscite to be held under the direction of the Council pursuant to the Act.

(3) The Commission must, within 90 days following the end of a crop year, report to the Council the refunds made under this section for that crop year.

Collection of service charge

12 In accordance with the regulations,

- (a) all dealers who
 - (i) purchase regulated product from a producer, or
 - (ii) acquire regulated product from a producer for sale on the producer's behalf

must collect the service charge for the regulated product by deducting from any proceeds payable to or on behalf of the producer the amount of the service charge;

- (b) any person who receives proceeds on behalf of the producer with respect to the sale by the producer of regulated product must collect the service charge for the regulated product by deducting from the proceeds payable to or on behalf of the producer the amount of the service charge;
- (c) any person who collects a service charge must pay the amount of the service charge to the Commission within 45 days from the end of the month within which the service charge was collected;
- (d) all persons required under this Plan to collect and pay to the Commission the service charge payable by a producer must
 - (i) pay the service charge to the Commission, and
 - (ii) provide to the Commission, for each producer, a summary detailing
 - (A) the amount of regulated product obtained from the producer,
 - (B) the amount of the service charge being paid on behalf of the producer, and
 - (C) the name, mailing address, telephone number and, if available, e-mail address of the producer.

Auditor

13 The auditor for the Commission is to be appointed from time to time at an annual Commission meeting or a special Commission meeting.

Indemnification fund

14 A fund shall not be established under section 34 or 35 of the Act.

Honorary memberships, etc.

15 The Commission may establish non-voting associate, industry, affiliate or honorary memberships under this Plan to provide interested individuals or organizations with the opportunity to contribute to the efforts of the Commission.

Part 2 Governance of Plan

Division 1 Producers

Eligible producers

16 For the purposes of this Plan,

- (a) any producer who has paid a service charge under this Plan in a crop year is an eligible producer for that crop year;
- (b) the Commission must maintain a list of eligible producers;
- (c) all producers who can be identified by the Commission as having paid a service charge under this Plan during a crop year are to be included on the list of eligible producers for that crop year;
- (d) any producer who is not listed on the Commission's list of eligible producers must be added to the list where the producer can provide proof to the Commission that the producer has paid a service charge under this Plan in the crop year for which the application is made;
- (e) once a producer is listed with the Commission as an eligible producer, the producer continues to be recognized as an eligible producer from crop year to crop year, unless the eligible producer ceases to pay a service charge under this Plan in 2 subsequent crop years, in which case the producer ceases to be an eligible producer;
- (f) where a producer ceases to be an eligible producer under clause (e), the producer is entitled to again become an eligible producer for any crop year in which the producer pays a service charge under this Plan.

General rights of eligible producers

17 In accordance with and subject to this Plan, an eligible producer is entitled, as a matter of right,

- (a) to attend annual Commission meetings and special Commission meetings;
- (b) to make representations on any matter pertaining to this Plan, the Commission and the board;
- (c) to vote on any matter under this Plan;

- (d) to vote in any election for directors;
- (e) to hold office as a director;
- (f) to vote in any plebiscites of producers held under the Act.

Eligible producers who are individuals

18 Where an eligible producer is an individual, that individual may, subject to this Plan, exercise the rights of an eligible producer referred to in section 17.

Eligible producers that are not individuals

19(1) Where an eligible producer is not an individual, that eligible producer may, only in accordance with this section, exercise the rights of an eligible producer referred to in section 17.

(2) An eligible producer to which this section applies must appoint an individual to be the representative of the producer.

(3) A representative appointed by an eligible producer under this section shall, subject to this Plan, exercise on behalf of the eligible producer the rights referred to in section 17.

(4) If an eligible producer is

- (a) a corporation, it must appoint an individual who is a director, shareholder, member, officer or employee of the corporation as its representative,
- (b) a partnership, it must appoint an individual who is a partner or employee of the partnership as its representative, or
- (c) an organization other than a corporation or a partnership, it must 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

- (a) in writing, and
- (b) in the case where a vote is to be taken at a meeting, filed with the returning officer prior to the calling to order of the meeting at which a vote is to take place.

(6) An individual who is the representative of an eligible producer shall not cast a vote under this Plan unless

- (a) the individual presents a document signed by the eligible producer indicating the name of the person who may vote for the eligible producer, or
 - (b) the individual makes a statutory declaration in writing stating that
 - (i) the individual is a representative of the eligible producer, and
 - (ii) the individual has not previously voted in the election or on the matter in respect of which the individual wishes to cast a vote.
- (7) A statutory declaration made under subsection (6)(b) must be made in writing before the returning officer or the deputy returning officer prior to the vote being cast.
- (8) An individual cannot at any one time be a representative under this section for more than one eligible producer.
- (9) A representative shall not vote or hold office before the representative's appointment is filed in accordance with subsection (5).

Annual Commission meeting

20(1) An annual Commission meeting must be held for the purposes of providing the following to the eligible producers:

- (a) information with respect to the Commission;
 - (b) an opportunity to provide suggestions and recommendations to the board.
- (2) An annual Commission meeting must be held
- (a) once in each crop year, and
 - (b) within 15 months following the date of the commencement of the last annual Commission meeting.

Special Commission meetings

21 The Commission must hold a special Commission meeting

- (a) when requested to do so by the Council, or
- (b) on the written request of not less than 30% of the eligible producers.

Calling of meetings

22(1) The Commission shall set the time, place and date of any annual Commission meeting or special Commission meeting.

(2) The Commission must

- (a) in the case of an annual Commission meeting, notify the eligible producers of the annual Commission meeting at least 21 days before that meeting is to be held, and
- (b) in the case of a special Commission meeting, notify the eligible producers of the special Commission meeting at least 21 days before that meeting is to be held.

(3) The notice under subsection (2) must state the time, place, date and purpose of the meeting.

(4) The Commission may provide notice under this section in any form or in any manner the Commission considers appropriate.

Quorum

23 The quorum necessary for the conduct of business at an annual Commission meeting or a special Commission meeting is not fewer than 15 eligible producers.

Division 2 Board of Directors

Board of directors

24(1) The Commission shall have a board of directors consisting of a minimum of 6 directors.

Responsibilities of board of directors

25(1) The responsibilities of the Commission, the authority delegated to the Commission by the Council and the direction, administration and management of the Commission's work, business and affairs, including the control and management of all the assets owned, held or acquired by the Commission are vested in the board.

(2) The board has the power to do all things that are necessary to carry out the purpose of this Plan and the responsibilities and authority of the Commission.

(3) The board may authorize any person, entity or committee to exercise any of the powers of the board as set forth in this Plan or otherwise.

- (4) Where a person, entity or committee is authorized under subsection (3) to exercise any power of the board,
- (a) that person, entity or committee is to report back to the board with respect to the exercise of that power, and
 - (b) the board retains a supervisory function to oversee the actions of that person, entity or committee in the exercise of that power.

Chair and other officers

26(1) Following the annual Commission meeting in each year, the directors shall elect from among the members of the board the officers of the Commission, including the chair and vice-chair of the Commission.

(2) The remuneration to be paid to the directors and officers of the Commission may, from time to time, be prescribed by the board.

Term of office

27(1) Each director may

- (a) hold office for a term of up to 3 years, and
- (b) only hold office for a maximum of 3 consecutive terms.

(2) Notwithstanding subsection (1)(b), an eligible producer who was a director is once again eligible to be elected as a director if at least one year has elapsed since that eligible producer's last term as a director concluded.

(3) The term of office of a director

- (a) commences on the conclusion of the annual Commission meeting at which the director was declared elected, and
- (b) expires on the conclusion of the annual Commission meeting that takes place in the year that the director's term of office is to expire.

Removal from office

28(1) The board may, on a motion passed by two-thirds of the directors currently in office at a special or regular meeting of the board, remove a director from office if the director fails to abide by any of the Commission's policies.

(2) Where a majority of the directors vote in favour of a motion to remove the chair or vice-chair of the Commission, that person's

position as chair or vice-chair of the Commission on the passing of the motion becomes vacant.

Filling vacancies by appointment

29(1) If a vacancy occurs on the board, the remaining directors may, with the approval of the Council, appoint an individual to fill the position from among the eligible producers who are eligible to be elected as a director.

(2) Where an individual is appointed as a director to fill a vacancy, that director is to serve for the unexpired portion of the term.

(3) Where

- (a) in accordance with this section a person is appointed to fill a vacancy, and
- (b) the term of office served by that person pursuant to that appointment is not greater than 18 months,

the time served by that person as a director pursuant to that appointment is not to be taken into consideration for the purposes of section 27.

(4) If the Council declares an election invalid, the Council may

- (a) direct that the Commission fill the vacancy pursuant to this section, or
- (b) direct that another election be held.

Part 3

Voting and Elections

Election of directors

30(1) The election for directors is to be conducted, subject to section 38(5), at the annual Commission meeting.

(2) The Commission is to solicit nominations for the position of director

- (a) by publishing a notice in the Commission's newsletter, or
- (b) by any other means of notice that the board determines.

(3) A nomination referred to in subsection (2) must be

- (a) in writing and filed at the Commission's office by a date fixed by the Commission,

- (b) signed by at least 3 eligible producers, and
- (c) accompanied by the written consent of the eligible producer who is being nominated as a director.

Election of director by mail ballot

31(1) Notwithstanding section 30, the Commission may direct that the election of a director be carried out by means of a mail ballot.

(2) Where an election is to be carried out by means of a mail ballot,

- (a) subsections (2) and (3) but not (1) of section 30 apply to the election;
- (b) the mail ballot must be designed for a secret vote;
- (c) the election must be conducted in such a manner so as to ensure a secret vote;
- (d) a mail ballot must be made available to each eligible producer by being mailed to each eligible producer at least 30 days prior to the ballot closing date;
- (e) the ballot closing date
 - (i) is to be fixed by the Commission, and
 - (ii) must be a date that is within 42 days immediately preceding the annual Commission meeting.

(3) If the eligible producers fail to elect a director by means of a mail ballot, the election of the director is to be held at the next annual Commission meeting that is held after the time at which election by means of a mail ballot was to have been held.

Eligibility re director

32 To be eligible as a director a person must be an eligible producer.

Quorum

33(1) At a meeting of the board, the quorum necessary for the conduct of business is a majority of the directors holding office at the time.

(2) In determining a quorum under subsection (1), vacant positions on the board shall not be considered.

Eligibility to vote

34(1) An eligible producer is eligible to vote

- (a) on any question put to a vote at an annual Commission meeting or a special Commission meeting if the eligible producer is present at the meeting at which the vote is held,
- (b) in any election for a director that is conducted at an annual Commission meeting if the eligible producer is present at the meeting and eligible to vote in such an election, and
- (c) in an election for a director that is conducted by means of a mail ballot.

(2) An eligible producer, irrespective as to whether the eligible producer is or is not an individual, may vote once only on each matter put to a vote.

(3) An eligible producer may vote once on each matter, notwithstanding that the eligible producer may manage or operate or own, lease or hold equity in 2 or more operations.

Must be on list of eligible producers

35 An eligible producer shall only cast a vote under this Plan if the eligible producer's name appears on the current list of eligible producers.

Returning officer

36(1) The Commission is to appoint a returning officer for the purposes of and in connection with any election or vote taken under this Plan.

(2) The returning officer may appoint individuals as deputy returning officers to assist in the conduct of elections and votes under this Plan.

(3) The returning officer

- (a) must compile and maintain a voters list of eligible producers who are entitled to vote under this Plan,
- (b) is to ensure that a person does not cast a vote, except in accordance with this Plan, and
- (c) must permit scrutiny of the actions of the returning officer and the deputy returning officers by a scrutineer in respect of the conduct of a vote taken under this Plan.

(4) Unless otherwise directed by the Council, no person shall destroy any records or ballots in respect of a vote or election held under this Plan until 90 days have elapsed from the day on which the vote was taken.

Tie votes

37 If there occurs a tie vote for the position of director, the returning officer or deputy returning officer must immediately select by a draw, drawn from the names of all the tied candidates, the name of the candidate to fill the position and the person whose name is drawn is deemed to have been elected to that position.

Controverted election

38(1) If an eligible 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 other irregularity with respect to the conduct of an election,

and

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

the eligible producer may, not later than 15 days after the day on which the election was held, apply in writing to the Council to have the election declared invalid and the position declared vacant.

(2) If, within the 15-day period referred to in subsection (1), the Council has not received an application under subsection (1), a person elected at that election is deemed to be duly elected.

(3) On receipt of an application under subsection (1), the Council must 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 the 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 Plan 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.

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

(5) 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 Commission meeting be held and an election be conducted to fill the vacant position, or
- (b) appoint from among the eligible producers who are eligible to be elected to the position an individual to fill the vacant position.

(6) Where a person fills a position under subsection (5), that person is to serve for the unexpired portion of the term.

Part 4

Transitional Provisions and Review

Transitional re directors

39(1) Notwithstanding section 27(1), at the initial election for directors and regional representatives held after this Plan comes into force,

- (a) a maximum of 2 directors are to be elected for a term of 3 years,
- (b) a maximum of 2 directors are to be elected for a term of 2 years, and

(c) a minimum of 2 directors are to be elected for a term of 1 year.

(2) At the conclusion of the terms referred to in subsection (1), directors are to be elected for a term of office in accordance with section 27(1).

(3) In determining under section 27 whether an eligible producer is eligible to be a director, the term of office served under section 27(1)(a) or (b) is to be considered as a term of office.

Review

40 In compliance with the ongoing regulatory review initiative, this Regulation must be reviewed on or before July 31, 2017.

Coming into force

41 This Regulation comes into force on August 1, 2012.