



Province of Alberta

MARKETING OF AGRICULTURAL PRODUCTS ACT

ALBERTA MILK NEGOTIATION AND ARBITRATION REGULATION

Alberta Regulation 153/2002

With amendments up to and including Alberta Regulation 30/2014

Office Consolidation

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Alberta Queen's Printer
7th Floor, Park Plaza
10611 - 98 Avenue
Edmonton, AB T5K 2P7
Phone: 780-427-4952
Fax: 780-452-0668

E-mail: qp@gov.ab.ca
Shop on-line at www.qp.alberta.ca

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(Consolidated up to 30/2014)

ALBERTA REGULATION 153/2002

Marketing of Agricultural Products Act

**ALBERTA MILK NEGOTIATION AND
ARBITRATION REGULATION**

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Definitions

1(1) In this Regulation,

- (a) “Alberta Dairy Council” means the Alberta Dairy Council, a registered society of milk processors in Alberta;
- (b) “Alberta Milk” means Alberta Milk, a board established pursuant to the Act;
- (c) “arbitration board” means persons appointed as an arbitration board appointed by the Council under section 8(4);
- (d) “Council” means the Agricultural Products Marketing Council;
- (e) “negotiating agency” means the Alberta Milk Negotiating Agency established under Part 1;
- (f) “Plan” means the *Alberta Milk Plan Regulation*.

(2) Except where otherwise provided in this Regulation, words not defined in this Regulation but defined in the Plan have the same meaning when used in this Regulation.

(3) In this Regulation, “class” or “sub-class” followed by a number is a reference to the class or sub-class of regulated product with that number as described in the Alberta Milk Marketing Regulation.

Part 1

Negotiations

Negotiating agency

2(1) The Alberta Milk Negotiating Agency is established in accordance with subsection (2).

(2) The negotiating agency is composed of not more than 8 members appointed as follows:

- (a) not more than 4 directors of Alberta Milk appointed by Alberta Milk;
 - (b) not more than 4 directors of the Alberta Dairy Council appointed by the Alberta Dairy Council.
- (3)** The members of the negotiating agency appointed under subsection (2) may by unanimous consent appoint a person on an annual basis to act as chair of the negotiating agency, who must serve in a non-voting capacity.
- (4)** A quorum of the negotiating agency is 3 members appointed under subsection (2)(a) and 3 members appointed under subsection (2)(b).
- (5)** Alberta Milk and the Alberta Dairy Council may have in attendance at the negotiation proceedings persons who are not members of the negotiating agency, including legal counsel and persons having special technical or other knowledge, to advise it on any matter relating to the negotiations, but those persons may not participate directly in the proceedings.

Appointment of members

- 3(1)** Prior to the commencement of any negotiations, Alberta Milk and the Alberta Dairy Council must each appoint the required number of members to the negotiating agency and notify each other of the appointments.
- (2)** An appointment under subsection (1) is for a term of one year and that member's appointment may be terminated at any time by Alberta Milk or the Alberta Dairy Council that appointed that member.
- (3)** Members may be reappointed.
- (4)** Members may be appointed in the case of a vacancy by Alberta Milk or the Alberta Dairy Council at any time and negotiations would continue regardless of appointments.

Powers of agency

- 4** The members of the negotiating agency have the power to adopt or settle by agreement or to establish by agreement a method to determine the following:
- (a) price allocation with respect to the distribution of a price change relative to components of a class of milk excluding class 1, sub-class 4m and class 5;

- (b) milk allocation with respect to policies and procedures on milk distribution in Alberta;
- (c) payment policy with respect to timing of payments;
- (d) producers' security with respect to the security of payments to producers.

Notice to commence negotiations

5(1) Subject to the terms of any agreement between Alberta Milk and the Alberta Dairy Council, either may give the other notice in writing to the other

- (a) stating that it wishes to commence negotiations, and
- (b) setting out the matters it wishes to negotiate.

(2) Within 10 day of the receipt of a notice under subsection (1), Alberta Milk or the Alberta Dairy Council receiving the notice must by notice in writing to the other state

- (a) whether or not one of the dates proposed to commence negotiations is suitable to it and if not, alternative dates that are acceptable, and
- (b) any additional matters that it wishes to negotiate.

Effecting an agreement

6(1) Following an exchange of notices under section 5, the negotiating agency must meet and endeavour to effect an agreement.

(2) Subject to section 4, the matters that the negotiating agency may adopt or settle by agreement are

- (a) those matters wished to be negotiated submitted under section 5, and
- (b) any other matters to be negotiated subsequently agreed on by Alberta Milk and the Alberta Dairy Council.

(3) An agreement concluded by the negotiating agency must be in writing and signed by each of the members of the agency and by the chair, if any.

Contents of agreement

7 The agreement is deemed to contain the following provisions:

- (a) if a difference arises as to the interpretation, application, operation or contravention of this agreement, Alberta Milk and the Alberta Dairy Council agree to meet and endeavour to resolve the difference;
- (b) if Alberta Milk and the Alberta Dairy Council are unable to resolve a difference described in clause (a), or if the difference relates to whether an item can be the subject of negotiation, either may notify the other in writing specifying the difference and that it desires to submit the difference to arbitration;
- (c) the notice referred to in clause (b) must
 - (i) contain a statement of the difference, and
 - (ii) specify a name of a person or a list of names of persons Alberta Milk or the Alberta Dairy Council is willing to accept as the single arbitrator;
- (d) on receipt of a notice referred to in clause (b), the recipient,
 - (i) if it accepts the person or one of the persons suggested to act as a single arbitrator, must within 7 days so notify Alberta Milk or the Alberta Dairy Council and the difference specified in the notice must be submitted to the arbitrator, or
 - (ii) if it does not accept any of the persons suggested to act as a single arbitrator, must within 7 days so notify Alberta Milk or the Alberta Dairy Council and send the name or a list of names of persons it is willing to accept as the single arbitrator;
- (e) if Alberta Milk or the Alberta Dairy Council are unable to agree on a person to act as a single arbitrator, either may request the Council in writing to appoint a single arbitrator;
- (f) the single arbitrator agreed to, or appointed under clause (a), may hold hearings or proceed in any other manner that the single arbitrator considers appropriate during the arbitration;
- (g) the single arbitrator must inquire into the difference described in the notice and make a determination in writing;
- (h) the single arbitrator must not alter or amend the agreement;

- (i) Alberta Milk and the Alberta Dairy Council must share equally the expenses of the single arbitrator.

Part 2 Arbitration

Referral of matters to arbitration board

8(1) If the members of the negotiating agency unanimously agree to refer an unconcluded agreement or specific matters in it to arbitration, Alberta Milk or the Alberta Dairy Council must notify the Council in writing and then those matters must be referred to an arbitration board in accordance with this Part.

(2) If the members of the negotiating agency do not unanimously agree under subsection (1), either Alberta Milk or the Alberta Dairy Council may notify the other in writing of its desire to submit the unconcluded agreement, or specific matters in dispute, to arbitration and, on so notifying, must notify the Council.

(3) The notice referred to in this section must

- (a) contain a statement of the matters proposed for arbitration, and
- (b) include a request for the appointment of either a one-person arbitration board or the appointment of a 3-person arbitration board and, if a 3-person arbitration board is proposed, Alberta Milk or the Alberta Dairy Council is to include the name of the person they nominate to the arbitration board.

(4) On receipt of a notice under this section, the Council must appoint persons to an arbitration board as follows:

- (a) one person, if Alberta Milk and the Alberta Dairy Council agree to a one-person arbitrator;
- (b) if either Alberta Milk or the Alberta Dairy Council requests a 3-person arbitration board, the Council must appoint 3 persons, of which one person is nominated by Alberta Milk, one person is nominated by the Alberta Dairy Council and the chair is appointed by the Council.

Information to arbitration board

9 On appointing an arbitration board, the Council must forward to the arbitration board

- (a) a copy of the notices received by it from Alberta Milk and the Alberta Dairy Council, and
- (b) a copy of this Regulation.

Staff

10 For the purposes of any arbitration under this Regulation, an arbitration board

- (a) may be assisted by persons that it considers necessary to carry out its functions, and
- (b) may make use of the available administrative services of the Council.

Reasonable dispatch

11 The arbitration board must conduct hearings and make a determination on the unconcluded agreement or the specific matters in it as promptly as reasonably possible.

Service of notices

12(1) A notice, application, direction or communication in an arbitration under this Regulation is deemed to have been properly served if sent by post or electronic means, or delivered by hand, to the usual business address of the person to be served.

(2) Notwithstanding subsection (1), if any person to whom a notice, application, direction or communication has been sent for the purpose of this Regulation cannot be found or if for any reason service cannot be readily effected in accordance with this Regulation, the arbitration board may dispense with service or may grant an order of substitutional service by a method that the arbitration board considers appropriate.

(3) If Alberta Milk or the Alberta Dairy Council sends a written notice, application, objection or communication to the arbitration board, it must forthwith serve a copy of it on Alberta Milk or the Alberta Dairy Council and notify the arbitration board that the copy has been served.

Application to arbitration board for directions

13(1) Alberta Milk or the Alberta Dairy Council may apply in writing to the arbitration board on any subject relating to matters before the arbitration board.

- (2) When an applicant makes an application under subsection (1), it must serve a copy of the application on Alberta Milk or the Alberta Dairy Council.
- (3) On receipt of a copy of an application under subsection (2), the recipient may within 7 days make an objection in writing to the arbitration board.
- (4) On receipt of an application or objection under subsection (3), the arbitration board may, with or without holding a hearing, give directions that it considers appropriate.

Directions by arbitration board

- 14(1)** Any direction from the arbitration board to Alberta Milk or the Alberta Dairy Council must be in writing or, if given orally, must be confirmed in writing by the arbitration board within 7 days.
- (2) The written direction must be served on Alberta Milk or the Alberta Dairy Council in accordance with section 12.

Determining jurisdiction of arbitration board

- 15(1)** The arbitration board must consider whether the matters proposed for arbitration could be the subject of an agreement under section 4.
- (2) If the arbitration board concludes that any matters proposed for arbitration cannot be the subject of an agreement under section 4, the arbitration board may not deal with those matters.

Conduct of arbitration

- 16** The arbitration board must, with or without preliminary hearings, direct Alberta Milk or the Alberta Dairy Council as to how the arbitration is to be conducted.

Hearings and evidence

- 17(1)** The arbitration board may hold a hearing in the presence of Alberta Milk and the Alberta Dairy Council and consider documentary evidence and arguments that either of them or its representative submits.
- (2) Despite subsection (1), if the arbitration board considers it appropriate, it may dispense with a hearing and consider written submissions of Alberta Milk and the Alberta Dairy Council.

- (3) If the arbitration board orders that a hearing be held, it must notify Alberta Milk or the Alberta Dairy Council in writing of the date, time and place for the hearing.
- (4) Subject to any adjournments that the arbitration board considers reasonable, the hearing must be held daily until concluded.

Attendance at hearing

18 The only persons who may be present at a hearing are the arbitration board, persons assisting it, Alberta Milk and the Alberta Dairy Council representatives, the witnesses and the officers of the Council, unless the arbitration board, after consulting with Alberta Milk or the Alberta Dairy Council, orders otherwise.

Representation

19(1) Unless otherwise agreed to by Alberta Milk or the Alberta Dairy Council and approved by the arbitration board, either of them may be represented at any stage of the proceedings by legal counsel or another representative, if the notice of the intended representation is given in writing to the arbitration board and to each other in sufficient time for each to be able to arrange to be similarly represented.

(2) If Alberta Milk or the Alberta Dairy Council is represented in accordance with subsection (1), it

- (a) must instruct its representative, and
- (b) may participate in the proceedings only as a witness.

(3) The appearance of a person as a representative does not prevent the person appearing as a witness in the same proceeding.

Adjournment of hearing

20 The arbitration board may adjourn the hearing as it considers appropriate

- (a) if Alberta Milk or the Alberta Dairy Council has a representative, and notice in accordance with section 19(1) has not, in the opinion of the arbitration board, been sufficient, or
- (b) for any other reason it considers proper.

Adjournment for failure to attend

21(1) If Alberta Milk or the Alberta Dairy Council or its representative fails to attend a hearing, notice of which was served by the arbitration board, the arbitration board may, on any conditions that it considers appropriate, adjourn the hearing for not more than 7 days.

(2) Written notice of the date for the adjourned hearing and of the arbitration board's intention to proceed, ex parte if necessary, must be served forthwith on Alberta Milk and the Alberta Dairy Council by the arbitration board.

Evidence

22(1) Unless otherwise agreed to by Alberta Milk or the Alberta Dairy Council, the arbitration board must require witnesses to be examined on oath or affirmation.

(2) The arbitration board may direct the terms and conditions under which evidence may be given.

Conclusions

23 The arbitration board is entitled to use its own technical knowledge, skills and general knowledge in reaching conclusions from its inspections, considerations and evaluation of the evidence.

Determination in writing

24 The arbitration board must make its determination in writing as soon as practicable and must notify Alberta Milk or the Alberta Dairy Council of it.

Incorporation of settlement into determination

25(1) If Alberta Milk or the Alberta Dairy Council settle an unconcluded agreement or any specific matter referred to in section 13, they must notify the arbitration board of the settlement and the arbitration board must incorporate the settlement into its determination.

(2) If Alberta Milk or the Alberta Dairy Council's settlement does not resolve all the matters in dispute, the unresolved matters must be determined by the arbitration board.

Settlement terminating arbitration

26 If, before the publication of the arbitration board's determination, Alberta Milk or the Alberta Dairy Council themselves settle the unconcluded agreement or all the specific

matters in dispute, they must immediately notify the arbitration board in writing and the arbitration board must accept the notice as terminating the arbitration proceedings.

Fees and expenses of arbitration board

27 Alberta Milk or the Alberta Dairy Council must share equally the fees and expenses of the arbitration board and of the assistance received pursuant to section 10(a).

Removal of member or chair of the arbitration board

28(1) If Alberta Milk or the Alberta Dairy Council applies to the Council for the removal of a member or the chair of an arbitration board, the Council, on consideration or any representations either of them may wish to make, may remove the member or chair from the arbitration board.

(2) If the person removed under subsection (1) was nominated under section 8(4)(b), the nominator of that person may nominate another person in that person's place but, if it fails to do so, the Council must do so.

(3) If the chair is removed under subsection (1), the Council must appoint a person to that office forthwith.

Part 3 Expiry and Coming into Force

Expiry

29 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 February 28, 2024.

AR 153/2002 s29;12/2008;142/2008;30/2014

Coming into force

30 This Regulation comes into force on the coming into force of the *Dairy Industry Omnibus Act, 2002*.



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