

(Consolidated up to 12/2008)

ALBERTA REGULATION 281/97

Marketing of Agricultural Products Act

**HATCHING EGG PRODUCERS NEGOTIATION  
AND ARBITRATION REGULATION**

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#### Definitions

1(1) In this Regulation,

- (a) “Act” means the Marketing of Agricultural Products Act;
- (b) “arbitration board” means the arbitration board appointed by the Council under Part 2;
- (c) “Association” means the Alberta Poultry Hatchery Association;
- (d) “Board” means the Alberta Hatching Egg Producers referred to in section 6 of the Plan;
- (e) “negotiating agency” means the Broiler Hatching Eggs Negotiating Agency established under Part 1;
- (f) “party” means the Board or the Association, as the case may be;
- (g) “Plan” means the Alberta Hatching Egg Plan Regulation (AR 283/96);
- (h) “producer” means a producer as defined in the Plan;
- (i) “regulated product” means the regulated product as defined in the Plan.

(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.

#### Part 1 Negotiations

##### Broiler Hatching Eggs Negotiating Agency

2(1) The Broiler Hatching Eggs Negotiating Agency established under the Alberta Hatching Egg Marketing Plan Implementation Regulation (AR 256/82) is continued.

(2) The negotiating agency shall be composed of at least 4 members as follows:

- (a) 2 persons appointed by the Board;
- (b) 2 persons appointed by the Association.

(3) The members of the negotiating agency appointed under subsection (2) may by unanimous consent appoint a 5th person as member and chair of the agency.

(4) A quorum of the negotiating agency is the 4 members appointed under subsection (2).

##### Time period for appointing members

3(1) Within 60 days of the coming into force of this Regulation, or a further period that may be prescribed by the Council, the Board and the Association shall each appoint 2 members to the negotiating agency and notify the Council of the appointment and also notify the Board or the Association, as the case may be.

(2) An appointment under subsection (1) lasts until that member's appointment is terminated by the Association or Board that appointed that member.

#### Powers of agency

4 The members of the negotiating agency have the power to conclude an agreement on the following:

- (a) a minimum price for the regulated product or for any class, variety, grade or size of the regulated product;
- (b) terms, conditions and forms of agreement relating to the producing or marketing of the regulated product;
- (c) any charges, costs or expenses relating to the production of the regulated product.

#### Notice

5(1) Subject to the terms of any agreement between the Board and the Association, either party may give 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) On receipt of a notice under subsection (1), the party receiving the notice shall by notice in writing to the other state

- (a) whether or not the items proposed for negotiation are acceptable to it, and
- (b) any other matters that it wishes to negotiate.

#### Meeting

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

(2) The matters in respect of which the negotiating agency has jurisdiction to adopt or settle by agreement are

- (a) those items agreed on by the parties as negotiable items under section 5, and
- (b) any other items both parties subsequently agree on as being negotiable items.

(3) Nothing in this section permits the negotiating agency authority to adopt or settle by agreement a matter not described in section 4.

## Agreement

7(1) An agreement concluded by the negotiating agency shall be in writing and signed by each of the members of the agency, and by the chair, if any.

(2) Every agreement concluded by the negotiating agency shall contain a method for the settlement of differences arising

- (a) as to the interpretation, application or operation of the agreement,
- (b) with respect to a contravention or alleged contravention of the agreement, and
- (c) as to whether a difference described in clause (a) or (b) can be the subject of arbitration

between the parties to or persons bound by, the agreement.

(3) An agreement concluded by the negotiating agency is binding on

- (a) the Board and the Association,
- (b) every registered producer, and
- (c) every hatchery that purchases the regulated product.

## Provisions deemed to be included

8 If an agreement concluded by the negotiating agency does not contain the provisions required under section 7(2), 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 or as to whether that difference can be the subject of arbitration, 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), either party may notify the other in writing of its desire to submit the difference to arbitration;
- (c) the notice referred to in clause (b) shall
  - (i) contain a statement of the difference, and
  - (ii) specify the name of a person, or a list of names of persons from which the party will choose a person, that the party is willing to accept as the single arbitrator;
- (d) on receipt of a notice referred to in clause (b), the party receiving the notice,

(i) if it accepts the person or one of the persons suggested to act as a single arbitrator, shall within 7 days, so notify the other party and the difference referred to in clause (a) shall be submitted to the arbitrator, or

(ii) if it does not accept any of the persons suggested to act as a single arbitrator, shall within 7 days, so notify the other party and send the name of a person, or a list of names of persons from which there is a person, that it is willing to accept as the single arbitrator;

(e) if the parties are unable to agree on a person to act as a single arbitrator, either party may request the Council in writing to appoint a single arbitrator;

(f) the single arbitrator agreed to, or appointed under clause (e), may during the arbitration hold hearings in the absence of any party or person who, after notice, fails to attend or fails to obtain an adjournment;

(g) the single arbitrator shall inquire into the difference described in clause (a) and make a determination in writing;

(h) the determination under clause (g) is final and binding on the parties and on every person affected by it;

(i) the parties agree to share equally the expenses of the single arbitrator;

(j) the single arbitrator may not alter or amend the agreement.

## Part 2 Arbitration

### Matters referred to arbitration

9(1) If the members of the negotiating agency unanimously agree to refer the unconcluded agreement or specific items in dispute to arbitration, the negotiating agency shall notify the Council and then those matters shall 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 the Board or the Association may notify the other in writing of its desire to submit the unconcluded agreement, or specific items in dispute, to arbitration and, on so notifying, shall notify the Council.

(3) The notice referred to in subsection (2) shall contain a statement of the matters proposed for arbitration.

### Appointment of arbitration board

10(1) A copy of the notice referred to in section 9(2) sent to the Council shall include a request for the appointment of a one- or 3-person arbitration board and, if a 3-person arbitration board is proposed, the name of its nominee to the arbitration board.

(2) On receipt of a notice under section 9(2), the party receiving the notice shall

(a) notify the other, either that it accepts the matters proposed for arbitration or what matters it proposes, and

(b) notify the Council that it accepts a one-person arbitration board or, if a 3-person board is proposed, the name of its nominee to the arbitration board.

(3) On receipt of a notice described in subsections (1) and (2), the Council shall appoint persons to an arbitration board as follows:

(a) one person, if both parties agree to a one-person arbitration board;

(b) 3 persons, one nominated by each of the parties and the chair appointed by the Council, if either of the parties wishes to have a 3-person arbitration board.

(4) On appointing an arbitration board, the Council shall forward to the arbitration board

(a) copies of the notices received by it from the parties, and

(b) a copy of this Regulation.

(5) When an arbitration board is appointed, each party shall send to the other party and the arbitration board its address for service.

#### Administrative services

11 In any arbitration under this Regulation, the arbitration board may make use of the available administrative services of the Council.

#### To act with reasonable dispatch

12 An arbitration board shall use all reasonable dispatch in conducting hearings and making a determination on the unconcluded agreement or the specific items in dispute, as the case may be.

#### Direction from arbitration board

13(1) Any direction from the arbitration board to the parties shall be in writing or if given orally shall be confirmed in writing by the arbitration board within 7 days from the day of the direction's being given orally.

(2) The written direction shall be served in accordance with section 18.

#### Whether matters can be considered

14(1) The arbitration board shall consider whether the matters proposed for arbitration are matters that could be the subject of an agreement under section 4.

(2) If, after hearing any representation from the parties, the arbitration board concludes that any matters proposed for arbitration cannot be the subject of an agreement under section 4, the board shall not deal with those matters.

#### Direction to parties

15 The arbitration board shall, with or without preliminary hearings, direct the parties as to how the arbitration is to be conducted.

#### Application to arbitration board

16(1) A party may apply in writing to the arbitration board on any subject relating to matters referred to in section 9(2).

(2) A party, on receipt of a copy of an application described in subsection (1), may within 7 days make an objection in writing to the arbitration board.

(3) On receipt of an application or objection, the arbitration board may, with or without holding an oral hearing, give directions that it considers appropriate.

#### Production of documents, etc.

17 The arbitration board may direct the parties to produce to it and to each other documents, correspondence, books and records in their possession or power that, in the opinion of the arbitration board, are relevant to the dispute.

#### Service

18(1) A notice, application, direction or communication in an arbitration under this Regulation is deemed to have been properly served if it is sent by post or electronic means or delivered by hand to the address given by the party as that party's address for service.

(2) Notwithstanding subsection (1), if any party to whom a notice, application, direction or communication must be 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) A party who sends a written notice, application, objection or communication to the arbitration board shall forthwith serve a copy of it on the other party and notify the arbitration board that the copy has been served.

#### Change of address for service

19 A party that changes its address for service shall give notice in writing to the arbitration board and the other party of the new address.

#### Notification of hearing

20 If the arbitration board orders that a hearing be held, it shall notify the parties in writing of the date, time and place of the hearing.

#### Hearing to be held

21 Subject to any adjournments that the arbitration board considers reasonable, the hearing shall be held daily until concluded.

## Who may attend

22 The only persons who may be present at the hearing are the arbitration board, the recording secretary, the parties, their representatives, the witnesses and the officers of the Council, unless the arbitration board, after consulting with the parties, orders otherwise.

## Representative of party

23(1) Unless otherwise agreed to by the parties and approved of by the arbitration board, any party may be represented at any stage of the proceedings by a representative, including legal counsel, if notice of the intended representation is given in writing to the arbitration board and to the other party in sufficient time for each to be able to arrange to be similarly represented.

(2) If a party is represented in accordance with subsection (1), the party shall instruct its representative, and thereafter the party itself may only participate in the proceedings as a witness.

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

## Adjournments

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

(a) if a party has a representative and notice in accordance with section 23(1) has not been given to the other party, or

(b) for any other reason it considers sufficient.

## Examination under oath

25 Unless otherwise agreed to by the parties, the arbitration board shall require witnesses to be examined on oath or affirmation.

## Affidavits

26 The arbitration board may direct the terms and conditions under which evidence may be given by affidavit.

## Conduct of hearing

27(1) The arbitration board at a hearing shall, in the presence of both parties, consider documentary evidence and hear oral evidence and arguments that a party or its representative submits.

(2) Notwithstanding subsection (1) and subject to section 29, if the arbitration board considers it appropriate and on the agreement of the parties, the arbitration board may dispense with a hearing and consider written submissions of the parties and inspect the documents, correspondence, books and records referred to in section 17, as it considers necessary.

## Failure to attend

28(1) If any party or its representative fails to attend a hearing of which notice was served by the arbitration board, the arbitration board may, on conditions that it considers appropriate including proceeding ex parte, adjourn the hearing for not less than 14 clear days.

(2) Notwithstanding section 18(1), written notice of the date for the adjourned hearing and of the arbitration board's intention to proceed ex parte if necessary shall be served by single registered mail on both parties by the arbitration board within 2 days of the adjournment.

#### Inspection

29 The parties are entitled to be present at any inspection conducted by the arbitration board under section 27(2).

#### Arbitration board's own knowledge

30 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.

#### Settlement of some items

31(1) If the parties settle on any item referred to in section 12, they shall notify the arbitration board of the settlement and, if the arbitration board approves, it shall incorporate the settlement into its determination.

(2) If the parties' settlement does not resolve all the items in dispute, the outstanding items shall be determined by the arbitration board.

#### Determination to be in writing

32(1) The arbitration board shall make its determination in writing as soon as practicable and shall notify the parties of it.

(2) The arbitration board may direct that a written determination be prepared and that both parties sign it, unless the parties have already settled all the items in dispute.

#### Settlement of dispute

33 If before the publication of the arbitration board's determination the parties settle the dispute, they shall immediately notify the arbitration board in writing.

#### Determination is final

34 Subject to the Act, a determination of the arbitration board is final and binding on

- (a) the Board and the Association,
- (b) every registered producer, and
- (c) every hatchery that purchases the regulated product.

## Costs

35(1) The costs of the parties and costs of the arbitration and determination, including the fees and expenses of the arbitration board, are at the discretion of the arbitration board.

(2) The arbitration board may direct by and to whom and in what manner the costs under subsection (1) or any part of them shall be paid.

(3) The liability of the parties for costs directed under subsection (2) shall be joint and several.

## Termination, etc. of proceedings

36 If the arbitration proceedings are terminated or abandoned by agreement of the parties before a determination is made and a settlement of the matters in dispute has not been reached, the fees and expenses of the arbitration board shall be paid by the parties in the proportion to which they agree, or in the absence of an agreement, as the arbitration board directs.

## Late settlement

37 If the parties settle the items in dispute after the arbitration board has convened a hearing, then the arbitration board may include as costs its fees, including a fee for the time allocated by it for the hearing, and it may make a direction in the same manner as a direction under section 35(2).

## Removal of member

38(1) The Council may, on the application of any party and after hearing any representations by both parties, remove a member of an arbitration board who fails to use all reasonable dispatch in entering into or proceeding with the arbitration and in making a determination.

(2) If a party applies to the Council for the removal of a member of the arbitration board or the chair of the arbitration board on the grounds that

- (a) the person is not or may not be impartial, or
- (b) the person is not capable of acting as a member of the arbitration board,

the Council on consideration of representations, if any, made by the parties or by the person concerned may revoke the appointment.

(3) If the person removed under subsection (1) or (2)

(a) was nominated under section 10(3), the party nominating that person may nominate another person in that person's place, but if it fails to do so the Council shall do so, or

(b) was the chair or was appointed under section 10(3), the Council shall appoint a person to that office forthwith.

(4) A member of an arbitration board who is removed by the Council under this section is not entitled to receive any remuneration in respect of that member's services unless otherwise ordered by the Council.

Arbitration Act to apply

39 Except where inconsistent with the Act or this Regulation, the Arbitration Act applies to an arbitration under this Regulation.

Expiry

40 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 May 31, 2009.

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