

This is not the official version.

Copyright © 2003: Queen's Printer,
St. John's, Newfoundland and Labrador, Canada

CONSOLIDATED NEWFOUNDLAND AND LABRADOR REGULATION 1195/96

Berry Regulations
under the
Natural Products Marketing Act
(O.C. 96- 938)

Under the authority of section 10 of the *Natural Products Marketing Act* and the *Subordinate Legislation Revision and Consolidation Act*, the Lieutenant-Governor in Council makes the following regulations.

ORDER

Analysis

1. Short title
2. Definitions
3. Berry picking prohibited
4. Damage prohibited
5. Sale prohibited
6. Processing licence
7. Exemption certificate
8. Exemption certificate required
9. Expiry of refusal of exemption certificate.

10. Unripe blueberries permitted

11. Infested berries

12. Appointment of inspectors

13. Powers of inspectors

14. Detention and testing of infested berries

15. Risk carried by owner

16. Copy of notice

17. Alteration of notice of detention

18. Notice of release

19. Cost of disposal

20. Penalty

21. Penalty

Schedule

Short title

1. These regulations may be cited as the *Berry Regulations*.

Definitions

2. In these regulations

- (a) "Act" means the *Natural Products Marketing Act*;
- (b) "berries" means
 - (i) blueberries,
 - (ii) partridgeberries (lingonberries), and
 - (iii) bakeapples (cloudberries);
- (c) "blueberry maggot" means *Rhagoletis mendax* Curran;
- (d) "blueberry management unit" means an area of crown land that has been designated as a special management unit under section 57 of the *Lands Act*;
- (e) "cleaned" means a process by which debris, leaves, floaters and other foreign material are removed from ripe, unprocessed blueberries;
- (f) "designated area" means any area of crown land that has been set aside for berry production;
- (g) "facility" means an establishment or place used for the processing of berries and includes a packing plant, vessel or motor vehicle;
- (h) "floaters" means immature berries that float to the surface when placed in still water;
- (i) "importer" means a person, company or concern engaged in the practice of bringing berries into the province;
- (j) "infested area" means a place listed in the Schedule or any other place where the blueberry maggot is known to occur;
- (k) "inspection" means the act of examining berries to determine compliance with these regulations;
- (l) "inspector" means a person appointed by the minister as an inspector under the Act;
- (m) "licence" means a licence issued by the minister in accordance with these regulations;
- (n) "minister" means the minister appointed under the *Executive Council Act* to administer the Act;
- (o) "packing plant" means a place where berries are graded, packaged and marked for shipment;

(p) "person" includes an individual, an association of individuals, a partnership or corporation and an unincorporated society or association;

(q) "pick" means to gather by hand, by berry rake or by any other mechanical device;

(r) "processing" includes the cleaning, grading, freezing and packaging of berries;

(s) "registered blueberry producer" means a person who

(i) leases a blueberry management unit from the province, or

(ii) owns or leases land in the province other than a blueberry management unit when it is used for blueberry production, and

(iii) applies for and receives an exemption certificate from the minister under section 7 of these regulations;

(t) "retail sale" means the sale of berries by a person to another person who acquires those berries

(i) for his or her own personal use as a consumer and not for resale to another person, or

(ii) for resale within the province to any person for personal use as a consumer, but does not include a sale for the purpose of resale to another person; and

(u) "ripe unprocessed blueberries" means blueberries that have been picked and that

(i) are all blue and meet the Canada Number 1 Grade Standard, or

(ii) meet the standard for percentage of floating berries prescribed under section 10.

Berry picking prohibited

3. A person shall not pick berries in a designated area before the date that the minister may by public notice specify each year.

Damage prohibited

4. A person shall not cause damage in or upon a blueberry management unit or designated area, or remove from a blueberry management unit or designated area

(a) soil;

(b) peat;

(c) rock; or

(d) vegetation

except as may be authorized by the minister.

Sale prohibited

5. (1) A person shall not sell, offer for sale or market blueberries harvested in the province except for retail sale unless the blueberries have been processed by or at a packing plant or facility issued a licence for that purpose by the minister.

(2) All blueberries marketed, sold or offered for retail sale shall meet the minimum grading standards that are prescribed by the minister.

Processing licence

6. A facility shall not be issued a licence to process blueberries by the minister unless blueberries are cleaned or cleaned and frozen at that facility.

Exemption certificate

7. The minister may, in his or her discretion, issue a certificate to a registered blueberry producer exempting a site from the application of these regulations.

Exemption certificate required

8. (1) A person, except a registered blueberry producer who applies for and receives an exemption certificate shall not

- (a) purchase;
- (b) sell or offer for sale;
- (c) market; or
- (d) have in his or her possession

at a site in his or her ownership or control in excess of 50 kilograms of unprocessed blueberries unless they are ripe unprocessed blueberries.

(2) A registered blueberry producer shall not

- (a) transport;
- (b) sell or offer for sale;
- (c) purchase or offer to purchase;
- (d) market; or
- (e) have in his or her possession

at a site in the province under his or her ownership or control blueberries other than blueberries obtained from a site in respect of which the registered blueberry processor has obtained an exemption certificate under these regulations.

Expiry or refusal of exemption certificate

9. (1) An exemption certificate issued under these regulations shall expire on December 31 of the year in which it is issued.

(2) The minister may refuse to issue an exemption certificate without assigning any reasons for the refusal.

Unripe blueberries permitted

10. (1) A person may sell blueberries, including unripe blueberries such that when 2 out of 3 samples of them are measured and tested by an inspector with a properly calibrated instrument approved by the minister for that purpose, 15% or less of these berries by count float to the surface when placed in still water.

(2) Where circumstances warrant, the minister may, by order, determine that the 15% requirement in subsection (1) shall not apply for a period of time and prescribe a percent requirement which shall apply for that same period.

Infested berries

11. (1) A person shall not

- (a) bring or cause to be brought into the province;
- (b) transport or cause to be transported from place to place within the province; or
- (c) have, sell or offer for sale, exchange or otherwise market or dispose of for any use;

any berries originating in an infested area unless it can be shown to the satisfaction of an inspector that those berries have been treated in a way that eradicates the blueberry maggot or its reproductive capabilities.

(2) The minister may, by order, specify the type of treatment required to eradicate the blueberry maggot or its reproductive capabilities for blueberries from an infested area.

Appointment of inspectors

12. The minister may appoint those inspectors he or she considers necessary for the enforcement of these regulations.

Powers of inspectors

13. An inspector appointed under section 12 may

- (a) enter a place or premises where berries are kept for sale;
 - (b) require a person in possession of berries for sale to produce for inspection for the purpose of obtaining information any
 - (i) books,
 - (ii) shipping bills,
 - (iii) bills of lading,
 - (iv) sales records,
 - (v) temperature records, or
 - (vi) other papers
- with respect to the harvesting, storage, marketing, sale or other disposal of berries; and
- (c) inspect a site where berries are found or any berries being transported by vehicle and require the driver of a vehicle which the inspector may reasonably suspect to be carrying berries to stop for the purposes of inspection.

Detention and testing of infested berries

- 14.** (1) An inspector may detain for a time that is necessary to complete his or her inspection any berry shipment and shall place in a prominent area on the berries a notice of detention as prescribed by the minister.
- (2) An inspector may take a sample of berries at any facility or other place where berries are found or are being collected.

Risk carried by owner

- 15.** Any berries detained by an inspector shall be detained at the risk and expense of the owner of those berries.

Copy of notice

- 16.** Within 24 hours of attaching a notice of detention as prescribed by the minister, an inspector shall deliver or mail to the person possessing those berries and to the owner of the berries if known to the inspector a copy of the completed notice of detention.

Alteration of notice of detention

- 17.** (1) A person shall not alter, deface or remove a notice of detention.
- (2) A person shall not move, sell or dispose of berries detained under a notice of detention until authorized to do so by an inspector.

Notice of release

18. An inspector satisfied that berries held in detention comply with these regulations shall

- (a) complete a notice of release as prescribed by the minister; and
- (b) deliver or mail one copy of the notice of release to each person to whom he or she sent a copy of the notice of detention under section 16.

Cost of disposal

19. Berries detained under these regulations shall be disposed of at the owner's or importer's expense and in the manner that the minister may direct.

Penalty

20. (1) A person who fails to comply with section 3 is liable upon summary conviction

- (a) upon a first conviction to a fine of not more than \$150; and
- (b) upon each subsequent conviction, to a fine of not more than \$300.

(2) In default of payment of a fine imposed under subsection (1), a person is liable to imprisonment for not more than 60 days.

Penalty

21. (1) A person who fails to comply with sections 4, 6, 8, 11, and 17 is liable upon summary conviction

- (a) upon a first conviction to a fine of not less than \$2500 nor more than \$5000; and
- (b) upon each subsequent conviction to a fine of not less than \$5000 nor more than \$10, 000.

(2) In default of payment to a fine imposed under subsection (1) the person is liable to imprisonment for not more than 60 days.

Schedule

Infested Areas Where the Blueberry
Maggot is Known to Occur

Canada

Nova Scotia

New Brunswick

Prince Edward Island

Ontario Quebec

United States

Connecticut

Delaware

District of Columbia

Florida

Georgia

Maine

Maryland

Massachusetts

Michigan

New Hampshire

New Jersey

New York

North Carolina

Ohio

Pennsylvania

Rhode Island

South Carolina

Tennessee

Vermont

Virginia

West Virginia

Wisconsin

