



Province of Alberta

MARKETING OF AGRICULTURAL PRODUCTS ACT

REVIEW AND APPEAL REGULATION

Alberta Regulation 199/2016

Extract

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ALBERTA REGULATION 199/2016
Marketing of Agricultural Products Act
REVIEW AND APPEAL REGULATION

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Definitions

1 In this Regulation,

- (a) “Act” means the *Marketing of Agricultural Products Act*;
- (b) “appeal” means an appeal under section 36(2) of the Act of a decision of a board or commission made pursuant to a review under section 36(1) of the Act;
- (c) “decision maker” means the board, commission or the Council whose decision is subject to an application for review;
- (d) “party” means the applicant and the board or commission whose decision is being appealed;
- (e) “review” means a review of a decision of a board, commission or the Council as provided for under section 36(1) of the Act.

Part 1 Reviews

Application for review

2 An application for review must, as set out in section 36(1) of the Act, be received by the decision maker within 60 days from the day the applicant was notified of the decision or served with the decision, whichever is earlier, and must

- (a) be in writing,
- (b) identify the decision that is being reviewed,

- (c) state why the decision should be rescinded or varied,
- (d) state the outcome requested,
- (e) state whether the applicant
 - (i) is requesting an oral hearing, or
 - (ii) consents to complete the review solely on the basis of written submissions,
- (f) provide the applicant's name, address and telephone number and, if available, the applicant's email address,
- (g) if the applicant has an agent to act on the applicant's behalf in respect of the review, provide the agent's name, a telephone number at which the agent may be contacted during regular business hours and, if available, the agent's email address,
- (h) provide a mailing address and, if available, an email address for the delivery of notices in respect of the review, and
- (i) be signed by the applicant or the applicant's agent.

Conducting a review

3(1) Subject to section 5, if an application for review has been received by a decision maker, the decision maker must hold a review.

(2) A review may be conducted solely on the basis of written submissions if the applicant consents.

(3) The decision maker must determine the time and place of a review and provide written notice to the applicant.

Timing of the review

4 Subject to section 5,

- (a) if an oral hearing is required, a review must be held by the decision maker within 60 days of receiving the review application, and
- (b) if the applicant has consented to complete the review solely on the basis of written submissions
 - (i) the written submissions must be received by the decision maker within 30 days of receiving the review application and consent, and

- (ii) a review must be held by the decision maker within 30 days of receiving the written submissions.

Refusal to hear

5(1) The decision maker may refuse to conduct a review if the decision maker considers the review to be trivial or not made in good faith.

(2) If the decision maker refuses to conduct a review, the decision maker must provide a written notice that sets out the reasons for refusal to the applicant within 30 days of receiving the application for the review.

Adjournments

6(1) The granting and duration of an adjournment is in the sole discretion of the decision maker.

(2) The time limits prescribed in sections 4 and 9 do not run during a period of adjournment.

Right of applicant to attend

7 The applicant has the right to attend the review, make representations, present evidence and cross-examine witnesses.

Evidence

8(1) The decision maker may receive any evidence that it considers relevant to the matter being reviewed.

(2) The rules of evidence that apply in judicial proceedings do not apply in a review.

Failure to appear

9 If a review is being held in person and the applicant fails to appear for the review within one hour from the time set out in the applicable notice or adjournment, the decision maker may

- (a) dismiss the review,
- (b) adjourn the review, or
- (c) conduct the review in the applicant's absence.

Review decisions

10(1) The decision maker may, on completion of a review, confirm, rescind or vary the decision being reviewed.

(2) The decision maker must provide a written decision, with reasons, within 30 days of the completion of the review to the applicant.

Part 2 Appeals

Appeal

11(1) An application for appeal must, as set out in section 36(2) of the Act, be received by the appeal tribunal within 60 days from the day the party requesting the review was served with the review decision, and must

- (a) be in writing,
- (b) identify the review decision that is being appealed,
- (c) state why the review decision should be rescinded,
- (d) state the outcome requested,
- (e) state whether the applicant
 - (i) is requesting an oral appeal hearing, or
 - (ii) consents to complete the appeal hearing solely on the basis of written submissions,
- (f) provide the appellant's name, mailing address and telephone number and, if available, the appellant's email address,
- (g) if the appellant has an agent to act on the appellant's behalf in respect of the review, provide the agent's name, a telephone number at which the agent may be contacted during regular business hours and, if available, the agent's email address,
- (h) provide a mailing address and, if available, an email address for delivery of notices in respect of the appeal, and
- (i) be signed by the appellant or the appellant's agent.

(2) The appeal tribunal must provide a copy of the application for appeal

- (a) to the board or commission whose review decision is being appealed, and

(b) to the Minister.

(3) The board or commission whose review decision is being appealed must, within 15 days of the date when the application for appeal was provided, state in writing whether the board or commission

(a) is requesting an oral appeal hearing, or

(b) consents to complete the appeal hearing solely on the basis of written submissions.

Conducting the appeal

12(1) Subject to section 14, if an application for appeal has been received by the appeal tribunal, the application for appeal must be referred to a panel appointed in accordance with section 26(1)(a).

(2) An appeal hearing may be conducted solely on the basis of written submissions if the parties consent.

(3) The panel must determine the time and place of the appeal hearing and provide written notice to

(a) the parties,

(b) the Minister, and

(c) the Council.

Timing of the appeal hearing

13 Subject to section 14,

(a) if an oral appeal hearing is required, the panel must conduct the appeal hearing within 120 days of the date when the application for appeal was received by the appeal tribunal, and

(b) if the parties have consented to complete the appeal solely on the basis of written submissions,

(i) the written submissions must be received by the panel within 30 days of the date when the panel received the application for appeal and consent, and

(ii) the appeal hearing must be held within 90 days of the date when the written submissions were received by the appeal tribunal.

Refusal to refer

14(1) The chair of the appeal tribunal may refuse to refer an application for appeal to a panel for hearing

- (a) if the chair of the appeal tribunal considers the application for appeal to be trivial or not made in good faith, or
- (b) if the application for appeal does not satisfy the requirements set out in section 11(1).

(2) If the chair of the appeal tribunal refuses to refer an application for appeal for hearing, the chair of the appeal tribunal must provide a written notice that sets out the reasons for refusal to the appellant within 30 days of receiving the application for appeal.

Adjournments

15(1) The granting and duration of an adjournment is in the sole discretion of the panel.

(2) The time limits prescribed in sections 13 and 20 do not run during a period of adjournment.

Chair may act

16(1) The chair of the tribunal may exercise a power or perform a duty of the tribunal under section 11(2) or 12(1).

(2) The chair of a panel may exercise a power of the panel under sections 12(3) and 15.

Right of parties to attend

17 A party to an appeal has the right to attend the appeal hearing, make representations, present evidence and cross-examine witnesses.

Evidence

18(1) A panel may receive any evidence that it considers relevant to the matter being appealed.

(2) The rules of evidence that are applicable to judicial proceedings do not apply in an appeal.

(3) A record of the appeal hearing must be made and maintained as required by the Minister and must include

- (a) a written or electronic record of oral evidence, and
- (b) all records or things received in evidence.

Witnesses

19(1) A panel has the powers vested in the Court of Queen's Bench in a civil action to

- (a) summon and enforce the attendance of a witness,
- (b) compel a witness to give evidence on oath or otherwise, and
- (c) compel a witness to produce any record or thing.

(2) Subsection (1) does not apply to a member of the Council or an employee under the Council's administration.

Failure to appear

20 If an appeal hearing is being held in person and the appellant fails to appear for the appeal hearing within one hour from the time set out in the applicable notice or adjournment, the panel may

- (a) dismiss the appeal,
- (b) adjourn the appeal, or
- (c) conduct the appeal hearing in the appellant's absence.

Rules of Court

21 The provisions of the *Alberta Rules of Court* relating to the payment of conduct money and witness fees apply.

Refusal to hear

22(1) The panel may, at any time following the referral of an application for appeal, refuse to hear the appeal

- (a) if the panel considers the application for appeal to be trivial or not made in good faith, or
- (b) if the application for appeal does not satisfy the requirements set out in section 11(1).

(2) If the panel refuses to hear an application for appeal, the chair of the panel must provide a written notice that sets out the reasons for refusal to the appellant within 30 days of the refusal.

Appeal decisions

23(1) The panel may, on completion of an appeal hearing,

- (a) confirm the decision being appealed, or

- (b) rescind the decision being appealed and refer the matter being appealed back to the relevant decision maker with or without recommendations.
- (2) The panel must provide a written decision, with reasons, within 30 days of the completion of the appeal hearing to
 - (a) the parties,
 - (b) the Council, and
 - (c) the Minister.
- (3) The Minister may publish an appeal decision.

Cost recovery

- 24(1)** The appeal tribunal may recover the cost of administering and hearing an appeal, including the costs for legal counsel for the appeal tribunal.
- (2) The total costs assessed by the appeal tribunal under subsection (1) is a debt owing to the Government of Alberta as follows:
 - (a) for the first day of the hearing, 35% is owed by each party;
 - (b) for every other day of the hearing, 50% is owed by each party.
- (3) The Minister may, on the request of a party, waive payment, in whole or in part, of the costs recovered under subsection (1).

Part 3 Appeal Tribunal

Appointment of appeal tribunal

- 25(1)** The Minister must establish an appeal tribunal.
- (2) The appeal tribunal must consist of at least 5 members.
- (3) The term of an appointment to the appeal tribunal is 3 years.
- (4) A person who has been appointed to an appeal tribunal for 2 consecutive terms is not eligible to be appointed to the appeal tribunal until one year has passed since the expiration of the 2nd consecutive term.
- (5) Despite subsections (2) and (3), the Minister may appoint additional persons to the appeal tribunal to hear a single appeal and

that appointment shall not be considered as a term for the purpose of subsection (4).

(6) The Minister must designate one member of the appeal tribunal as the chair and another member as the vice-chair of the appeal tribunal.

(7) The chair of the appeal tribunal must perform the responsibilities imposed on, and may exercise the powers given to, the chair by this Regulation.

(8) If the chair is absent or unable to act for any reason or if the position of chair is vacant, the vice-chair must act as chair and, while so acting, must perform all the responsibilities imposed on, and may exercise all the powers given to, the chair.

(9) In accordance with the *Public Service Act*, there may be appointed employees to provide administrative services in respect of appeals.

(10) A member of the Council or an employee under the Council's administration is not eligible to be an appeal tribunal member.

Appointment to hear appeal

26(1) When an application for an appeal is received by the appeal tribunal, the chair of the appeal tribunal or, in the absence or inability to act of the chair, the vice-chair must

- (a) appoint an appeal panel consisting of 3 members of the appeal tribunal to hear the appeal, and
- (b) appoint one of the 3 members as chair.

(2) If the chair is a member of a panel under subsection (1), he or she must designate himself or herself as chair of the panel for the purposes of subsection (1).

(3) If the vice-chair is a member of a panel under subsection (1) and the chair is not a member of the panel, the vice-chair must designate himself or herself as chair of the panel for the purposes of subsection (1).

(4) If a panel is established under subsection (1) and neither the chair nor the vice-chair is designated as a member of the panel, the chair or vice-chair, as the case may be, must designate one of the members of the panel as chair.

Remuneration

27 The Minister may determine the remuneration and expenses payable to members of the appeal tribunal.

Part 4 Transitional Provisions, Repeal and Expiry

Transitional

28(1) The designation of a person who immediately before the coming into force of this Regulation was a member, chair or vice-chair of the appeal tribunal under the *Review and Appeal Regulation* (AR 84/2010) shall continue in force as if the person had been designated under section 25 of this Regulation.

(2) A notice, adjournment, referral, refusal or any other thing done in the course of a review or appeal under the *Review and Appeal Regulation* (AR 84/2010) before this Regulation came into force is considered to have been made or done under this Regulation and to have the same effect under this Regulation as under the former Regulation.

(3) This Regulation applies to an application for review submitted in accordance with the *Review and Appeal Regulation* (AR 84/2010) that has not been concluded.

(4) If, before the coming into force of this Regulation, a decision maker as defined in the *Review and Appeal Regulation* (AR 84/2010) has received an appeal for hearing in accordance with that Regulation, the decision maker must complete the appeal hearing and provide an appeal decision as if the former *Review and Appeal Regulation* (AR 84/2010) was still in force.

Repeal

29 The *Review and Appeal Regulation* (AR 84/2010) is repealed.

Expiry

30 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 November 30, 2024.



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