

(no amdt)

ALBERTA REGULATION 84/2010
Marketing of Agricultural Products Act
REVIEW AND APPEAL REGULATION

Table of Contents

1 Definitions

Part 1
Reviews and Appeals

2 Application
3 Application for review or appeal
4 Hearing
5 Timing
6 Refusal to hear
7 Adjournments
8 Chair of appeal tribunal
9 Rights of parties
10 Evidence
11 Witnesses
12 Rules of Court
13 Failure to appear
14 Decision
15 Cost recovery

Part 2
Appeal Tribunal

16 Appointment of appeal tribunal
17 Appointment to hear appeal
18 Remuneration
19 Expiry
20 Coming into force

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
 - (i) in the case of a review, the board, commission or the Council whose decision is subject to an application for review, and
 - (ii) in the case of an appeal, the appeal tribunal;
- (d) “party” means
 - (i) in the case of a review, the applicant, and
 - (ii) in the case of an appeal, 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 and Appeals

Application

2 This Part sets out the rules and requirements that apply for the purpose of a review or appeal under section 36 of the Act.

Application for review or appeal

3(1) An application for a review or an appeal must be made in writing and include

- (a) the name, address and telephone number of the applicant,
- (b) a copy of the decision being reviewed or appealed, and
- (c) any other information required by the decision maker.

(2) In the case of an appeal, the appeal tribunal shall provide a copy of the application for an appeal

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

Hearing

4(1) Subject to section 6, if an application has been received by a decision maker for a review or an appeal, the decision maker shall hold a hearing.

(2) A hearing may be conducted solely on the basis of written submissions if

- (a) in the case of a review, the applicant consents, or
- (b) in the case of an appeal, the parties consent.

(3) The decision maker shall determine the time and place of a hearing and provide written notice

- (a) to the parties, and
- (b) in the case of an appeal,
 - (i) to the Council, and
 - (ii) to the Minister.

Timing

5 Subject to section 6, a review or appeal hearing shall be held by a decision maker

- (a) in the case of a review,
 - (i) if a hearing is required, within 60 days of receiving the review application, and
 - (ii) if a hearing is not required because the review will be conducted solely on the basis of written submissions, within 30 days of receiving the consent to complete the review without a hearing,

and

- (b) in the case of an appeal, within 120 days of receiving the appeal application.

Refusal to hear

6(1) A decision maker may refuse to hear a review or an appeal if the decision maker considers the review or appeal to be trivial or not made in good faith.

(2) If a decision maker refuses to hear a review or an appeal, the decision maker shall provide written notice to the applicant of the

refusal within 30 days of receiving the application for the review or appeal.

Adjournments

7(1) The granting and duration of an adjournment is in the sole discretion of the decision maker.

(2) The time limits prescribed in section 5 do not run during a period of adjournment.

Chair of appeal tribunal

8 The chair of an appeal tribunal may exercise a power of the appeal tribunal under section 6 or 7.

Rights of parties

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

Evidence

10(1) A decision maker may receive any evidence that it considers relevant to the matter being reviewed or appealed.

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

(3) In the case of an appeal, a record of the proceeding shall be maintained as required by the Council and shall include

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

Witnesses

11(1) An appeal tribunal 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.

Rules of Court

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

Failure to appear

13 If an applicant fails to appear for a review or an appeal within one hour from the time set, the decision maker may dismiss the review or appeal or conduct the hearing in the applicant's absence.

Decision

14(1) A decision maker may, on completion of a hearing,

- (a) confirm or rescind the decision being reviewed or appealed, and
- (b) in the case of an appeal, refer the decision being appealed back to the relevant board or commission for a new review and may provide recommendations.

(2) The decision maker shall provide a written decision, with reasons, within 30 days of the completion of the hearing

- (a) to the parties, and
- (b) in the case of an appeal,
 - (i) to the Council, and
 - (ii) to the Minister.

(3) The Minister may publish a decision of the appeal tribunal.

Cost recovery

15(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 2 Appeal Tribunal

Appointment of appeal tribunal

- 16(1)** The Minister shall establish an appeal tribunal.
- (2)** The appeal tribunal shall consist of at least 3 and not more than 5 members.
- (3)** In accordance with the *Public Service Act*, there may be appointed employees to provide administrative services in respect of appeals.
- (4)** A member of the Council or an employee under the Council's administration is not eligible to be an appeal tribunal member.
- (5)** The term of an appointment to the appeal tribunal is 3 years.
- (6)** 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.
- (7)** Despite subsections (2) and (5), the Minister may appoint additional persons to the appeal tribunal to hear a single matter and that appointment shall not be considered as a term for the purpose of subsection (6).

Appointment to hear appeal

- 17** When an application for an appeal is received by the appeal tribunal, the Minister shall
- (a) appoint 3 members to hear the appeal, and
 - (b) appoint one of those members as chair.

Remuneration

- 18** The Minister may determine the remuneration and expenses payable to members of the appeal tribunal.

Expiry

- 19** 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, 2019.

Coming into force

20 This Regulation comes into force on the coming into force of the *Marketing of Agricultural Products Amendment Act, 2009*.