

(Consolidated up to 216/2013)

ALBERTA REGULATION 285/97

Marketing of Agricultural Products Act

**ALBERTA SUGAR BEET GROWERS NEGOTIATION,
MEDIATION AND ARBITRATION REGULATION**

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Definitions

1(1) In this Regulation,

- (a) “arbitration board” means an arbitration board appointed by the Council under Part 3;
- (b) “Board” means the Alberta Sugar Beet Growers referred to in section 7 of the Plan;
- (c) “Company” means Lantic Inc.;
- (d) “negotiating agency” means the Sugar Beet Negotiating Agency established under Part 1;
- (e) “party” means the Board or the Company, as the case may be;
- (f) “Plan” means the *Sugar Beet Marketing Plan Regulation* (AR 275/97);
- (g) “regulated product” means sugar beets produced for processing.

(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.

AR 285/97 s1;187/2008

Part 1 Negotiations

Negotiating agency

2(1) The Sugar Beet Negotiating Agency established under the *Sugar Beet Marketing Plan Implementation Regulation* (AR 2/91) is continued.

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

- (a) not more than 4 persons appointed by the Board;
- (b) not more than 4 persons appointed by the Company.

(3) The members of the negotiating agency appointed under subsection (2) may by unanimous consent appoint a person to act as chair of the agency, who shall serve in a non-voting capacity.

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

(5) Any party 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 shall not participate directly in the proceedings.

Appointment of members

3(1) Prior to the commencement of any negotiations, the Board and the Company shall each appoint the required number of members to the negotiating agency and notify the other party of the appointments.

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

Powers of agency

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

- (a) a method for the determination of the final price to be paid to producers for the regulated product, and may include any product resulting from processing;
- (b) the terms, conditions and forms of agreement relating to the production or marketing of the regulated product;

- (c) any charges, costs or expenses relating to the production or marketing of the regulated product.

Notice to commence negotiations

5(1) Subject to the terms of any agreement between the Board and the Company, either party may give notice in writing to the other

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

(2) Within 10 days of the 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 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 shall 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 items submitted by the parties under section 5, and
- (b) any other items subsequently agreed on by both parties.

Effect of agreement

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

(2) Repealed AR 273/2002 s2.

AR 285/97 s7;273/2002;187/2008

Contents of agreement

8 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, 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), or if the difference relates to whether an item can be the subject of negotiation, either party may notify the other in writing specifying the difference and that party's 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 a name of a person or a list of names of persons 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 specified in the notice 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 or a list of names of persons 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 hold hearings or proceed in such other manner as the single arbitrator considers appropriate during the arbitration;
- (g) the single arbitrator shall inquire into the difference described in the notice and make a determination in writing;
- (h) the single arbitrator shall not alter or amend the agreement;
- (i) subject to the Act, the determination under clause (g) is final and binding on the parties and on every person

affected by it to the extent that they choose to produce, market or process the regulated product within Alberta;

- (j) the parties shall share equally the expenses of the single arbitrator.

Part 2 Mediation

Request for mediation

9(1) At any time after a notice to commence negotiations is served, either the Board or the Company may request that the Council recommend the services of a mediator to informally assist in the negotiation process.

(2) On receiving a request under subsection (1), the Council may recommend a mediator.

Duties of mediator

10(1) The mediator shall inquire into the dispute and endeavour to effect a settlement.

(2) During the mediator's inquiry, the mediator may

- (a) hear any representations made by the parties to the dispute,
- (b) mediate between the parties to the dispute, and
- (c) encourage the parties to the dispute to effect a settlement.

Lack of settlement

11 If a settlement is not effected between the Board and the Company within 14 days from the date of the appointment of the mediator, or within any longer period of time agreed to by the parties to the dispute, the mediator may

- (a) recommend terms for settlement to the parties for them to accept or reject within a time fixed by the mediator, or
- (b) notify the parties that no recommendation under clause (a) will be made.

Acceptance of recommendations

12 If the Board and the Company accept the recommendations of the mediator, the parties shall notify the mediator accordingly and the recommendations are binding on the parties as if they were an

agreement adopted or settled by the negotiating agency in accordance with sections 6 and 7.

Costs

13 The Board and the Company shall share equally the costs of the mediation unless otherwise agreed between the parties.

Part 3 Arbitration

Referral of matters to arbitration board

14(1) If the members of the negotiating agency unanimously agree to refer an unconcluded agreement or specific items in it to arbitration, the parties shall notify the Council in writing 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 to refer matters under subsection (1) to arbitration, the unconcluded agreement or specific items in it that are in dispute shall not be referred to an arbitration board unless both parties subsequently agree to refer the matters to arbitration and so notify the Council in writing.

(3) The notice referred to in this section shall

- (a) contain a statement of the matters proposed for arbitration, and
- (b) include a request for the appointment of a one-person or a 3-person arbitration board and, if a 3-person arbitration board is proposed, the name of the person nominated to the arbitration board by each party.

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

- (a) one person, if both parties agree to a one-person arbitrator;
- (b) 3 persons, one person to be nominated by each of the parties and the chair to be appointed by the Council, if either of the parties requests to have a 3-person arbitration board.

Information to arbitration board

15 On appointing an arbitration board, the Council shall forward to the arbitration board

- (a) a copy of the notices received by it from the parties, and
- (b) a copy of this Regulation.

Staff

16 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.

AR 285/97 s16;273/2002

Reasonable dispatch

17 The arbitration board shall use all reasonable dispatch in conducting hearings and making a determination on the uncompleted agreement or the specific items in it, as the case may be.

Service of notices

18(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 party to be served.

(2) Notwithstanding subsection (1), if any party 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) 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.

Application to board for directions

19(1) A party may apply in writing to the arbitration board on any subject relating to matters before the arbitration board.

(2) When a party makes an application under subsection (1), it shall serve a copy of the application on the other party.

(3) 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.

(4) On receipt of an application or objection under this section, the arbitration board may, with or without holding a hearing, give directions that it considers appropriate.

Directions by arbitration board

20(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.

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

Determining jurisdiction of arbitration board

21(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 the arbitration board concludes that any matters proposed for arbitration cannot be the subject of an agreement under section 4, the arbitration board shall not deal with those matters.

Conduct of arbitration

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

Hearings and evidence

23(1) The arbitration board may hold a hearing in the presence of both parties and consider documentary evidence and hear oral evidence and arguments that a party or its representative submits.

(2) Notwithstanding subsection (1), if the arbitration board considers it appropriate, it may dispense with a hearing and consider written submissions of the parties.

(3) Repealed AR 273/2002 s4.

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

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

AR 285/97 s23;273/2002

Attendance at hearing

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

Representation

25(1) Unless otherwise agreed to by the parties and approved by the arbitration board, any party may be represented at any stage of the proceedings by legal counsel or other representative, if the 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), it shall instruct its representative, and the party itself may participate in the proceedings only as a witness.

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

Adjournment of hearing

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

- (a) if a party has a representative, and notice in accordance with section 25(1) has not, in the opinion of the arbitration board, been sufficient, or
- (b) for any other reason it considers proper.

Adjournment on failure to attend

27(1) If any party 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, shall be served forthwith on both parties by the arbitration board.

Evidence

28(1) Unless otherwise agreed to by the parties, the arbitration board shall 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.

29 Repealed AR 273/2002 s5.

Conclusions

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.

Determination in writing

31 The arbitration board shall make its determination in writing as soon as practicable and shall notify the parties of it.

Incorporation of settlement into determination

32(1) If the parties settle on any item referred to in section 14, they shall notify the arbitration board of the settlement and the arbitration board 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.

Settlement terminating arbitration

33 If, before the publication of the arbitration board's determination, the parties themselves settle all the items in dispute, they shall immediately notify the arbitration board in writing and the arbitration board shall accept the notice as terminating the arbitration proceedings.

34 Repealed AR 273/2002 s5.

Fees and expenses of board

35 The parties shall share equally the fees and expenses of the arbitration board.

Fees and expenses in case of settlement

36 If the arbitration proceedings are terminated by agreement of the parties before a determination is made and a settlement of the matters in dispute has been reached, the fees and expenses incurred by the arbitration board shall be shared equally by the parties.

Removal of member or chair

37(1) If a party 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 the parties may wish to make, may remove the member or chair from the arbitration board.

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

- (a) was nominated under section 14(4), 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 appointed under section 14(4), the Council shall appoint a person to that office forthwith.

38 Repealed AR 273/2002 s5.

Expiry

39 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, 2018.

AR 285/97 s39;273/2002;217/2007;187/2008;216/2013