

Farm Products Marketing Act

R.R.O. 1990, REGULATION 441

VEGETABLES FOR PROCESSING — PLAN

Consolidation Period: From October 11, 2019 to the e-Laws currency date.

Last amendment: 334/19.

Legislative History: [+]

This is the English version of a bilingual regulation.

GENERAL

Interpretation

1. (1) In this Regulation,

“processing” means,

- (a) canning, dehydrating, drying, freezing, pickling or processing with sugar or sulphur dioxide or any other chemical or by heat, and combining or mixing a vegetable with one or more other vegetables,
- (b) entering into an agreement for the purchase of vegetables for the purpose of performing on the vegetables any of the operations mentioned in clause (a), or
- (c) entering into an agreement for the purpose of having any of the operations mentioned in clause (a) performed on vegetables; (“transformation”)

“processor” means a person engaged in the business of processing vegetables; (“transformateur”)

“producer” means a person engaged in the production of vegetables; (“producteur”)

“vegetables” means the following vegetables produced in Ontario and used for processing: green and wax beans, lima beans, red beets, cabbage other than cabbage used for coleslaw, carrots, cauliflower, sweet corn, cucumbers, Spanish-type onions used for onion rings, green peas, peppers, pumpkin and squash or tomatoes. (“légumes”) O. Reg. 334/19, s. 1 (1).

(2) A person who brines cucumbers to extend their storage life so they may be sold for processing, but who does not do to cucumbers anything else described in the definition of “processing” in subsection (1), is not considered to be a processor of cucumbers for the purposes of this Regulation. O. Reg. 334/19, s. 1 (1).

Plan

2. This Regulation sets out the plan for the control and regulation of the producing and marketing of vegetables, including the prohibition of such producing and marketing in whole or in part. O. Reg. 334/19, s. 1 (1).

LOCAL BOARD, COMPOSITION AND ELECTIONS

Local board

3. (1) The local board known as the “Ontario Processing Vegetable Growers” is continued. O. Reg. 334/19, s. 1 (1).

(2) The local board has the authority, and shall exercise the powers and perform the duties,

(a) that the Commission delegates to it under the Act; and

(b) that are given or assigned by this Regulation and by any other applicable regulation. O. Reg. 334/19, s. 1 (1).

(3) The local board has the following powers:

1. The local board has such powers of a natural person as are necessary for the local board to exercise its other powers and perform its duties under the Act or any other Act of Ontario or Canada, subject to any limitations set out in this Regulation or any other applicable regulation.

2. The local board may accept extra-provincial powers and rights.

3. If authorized by by-law, and subject to Regulation 400 of the Revised Regulations of Ontario, 1990 (By-laws for Local Boards) made under the Act, the local board may,

i. borrow money on the credit of the local board,

ii. issue, sell or pledge debt obligations of the local board, or

iii. charge, mortgage, hypothecate or pledge all or any currently owned or subsequently acquired real or personal movable or immovable property of the local board, including book debts, rights, powers, franchises and undertakings, to secure any debt obligations or any money borrowed or other debt or liability of the local board. O. Reg. 334/19, s. 1 (1).

(4) The local board shall not,

(a) establish or acquire a controlling interest in a corporation or other entity;

(b) exercise its powers and perform its duties, or purport to do so, through a corporation or other entity; or

(c) indemnify or agree to indemnify any person in relation to any action or other proceeding except as permitted by Regulation 400 of the Revised Regulations of Ontario, 1990. O. Reg. 334/19, s. 1 (1).

Composition

4. The local board shall be composed of the following nine members:

1. A chair appointed by the Commission.

2. Eight producer members who are elected or appointed. O. Reg. 334/19, s. 1 (1).

Chair

5. (1) The Commission shall appoint a person as chair of the local board for a term of two years. O. Reg. 334/19, s. 1 (1).

(2) A person appointed as chair may be reappointed for such additional terms as the Commission determines, subject to subsection (3). O. Reg. 334/19, s. 1 (1).

(3) A person shall not sit as chair for more than 10 years in total. O. Reg. 334/19, s. 1 (1).

(4) The chair shall preside at all meetings of the local board that he or she attends. O. Reg. 334/19, s. 1 (1).

(5) The Commission may appoint an acting chair who shall act in the place of the chair if the chair is absent or otherwise unable to act or if there is a vacancy in the chair. O. Reg. 334/19, s. 1 (1).

(6) Subsections (1), (2) and (5) apply with respect to the appointment of the chair despite anything to the contrary in section 5 of Regulation 400 of the Revised Regulations of Ontario, 1990 (By-laws for Local Boards) made under the Act. O. Reg. 334/19, s. 1 (1).

Quorum

6. Despite section 6 of Regulation 400 of the Revised Regulations of Ontario, 1990 (By-laws for Local Boards) made under the Act, a majority of the members of the local board shall constitute a quorum at a meeting of the local board but only if either the chair or acting chair is present at the meeting. O. Reg. 334/19, s. 1 (1).

Districts

7. Producers are divided into three districts as follows:

1. District 1, comprising the counties of Essex and Kent.
2. District 2, comprising the counties of Bruce, Huron, Lambton, Middlesex, Oxford, Perth, Hastings, Northumberland, Prince Edward and The Regional Municipality of Durham.
3. District 3, comprising the counties of Brant and Elgin and The Regional Municipality of Haldimand-Norfolk and The Regional Municipality of Niagara. O. Reg. 334/19, s. 1 (1).

Membership in district

8. (1) A producer whose place of production is located in a district mentioned in section 7 is a member of that district. O. Reg. 334/19, s. 1 (1).

(2) A producer whose place of production is not located in a district mentioned in section 7 is a member of the district nearest to the place of production. O. Reg. 334/19, s. 1 (1).

(3) If a producer has more than one place of production that would result in the producer being a member of more than one district under subsections (1) and (2), for the purposes of determining the producer's eligibility to vote in or to stand for any election under this Regulation or to be appointed to the local board under this Regulation, including where necessary to fill a vacancy, the following rules apply:

1. The producer shall be considered a member of the district in which the producer's place of residence is located or that is nearest to the producer's place of residence.
2. Despite paragraph 1, the producer may designate, by filing with the local board a form provided by the local board, a different district in which the producer produces vegetables.
3. In order to be valid, any designation under paragraph 2 must be filed at least 30 days before voting in an election for the local board is scheduled to begin and remains in effect until a producer files a further designation with the local board designating a different district. O. Reg. 334/19, s. 1 (1).

(4) Despite paragraph 3 of subsection (3), in order for a designation to be valid in 2019, it must be filed during the period beginning on November 1 and ending on November 15. O. Reg. 334/19, s. 1 (1).

Note: On February 1, 2020, subsection 8 (4) of the Regulation is revoked. (See: O. Reg. 334/19, s. 1 (2))

Elections to local board

9. (1) On or after November 1 but before December 31 in each year, producers shall elect four producers to the local board to replace the four members of the local board who were elected two years previously. O. Reg. 334/19, s. 1 (1).

(2) The members referred to in subsection (1) shall be elected as follows:

1. The producers from District 1 shall elect two members from among themselves.
2. The producers from District 2 shall elect one member from among themselves.
3. The producers from District 3 shall elect one member from among themselves. O. Reg. 334/19, s. 1 (1).

(3) The election of members of the local board shall be by secret ballot and in accordance with the requirements of sections 10 to 13. O. Reg. 334/19, s. 1 (1).

(4) A member elected in accordance with the requirements of sections 10 to 13 shall take office at the beginning of the first meeting of the local board held in the year after the election. O. Reg. 334/19, s. 1 (1).

Appointment of returning officer

10. (1) Subject to the approval of the Commission, the local board shall, in each year, appoint a returning officer to oversee the delivery and conduct of elections. O. Reg. 334/19, s. 1 (1).

(2) The Commission may appoint a returning officer if, on or before the first Friday of September, a returning officer has not been appointed under subsection (1). O. Reg. 334/19, s. 1 (1).

Timelines for election

11. If an election is to be held in a district, the returning officer shall,

(a) determine the day on which voting is scheduled to begin in the district; and

(b) notify all producers in the district of this day and the period during which nominations for election will be accepted pursuant to section 12. O. Reg. 334/19, s. 1 (1).

Nominations

12. (1) The local board shall accept nominations for election to the local board unless,

(a) the nomination is submitted less than 30 days before voting is scheduled to begin;

(b) the nominee is ineligible under section 17; or

(c) the nomination is not submitted by or with the approval of the nominee. O. Reg. 334/19, s. 1 (1).

(2) A nominee may withdraw his or her nomination by notifying the local board in writing no later than 30 days before voting is scheduled to begin. O. Reg. 334/19, s. 1 (1).

(3) The local board shall hold an election in a district unless the number of nominees from the district is equal to or less than the number of members to be elected to the local board from the district in which case,

(a) any nominees shall be acclaimed; and

(b) the Commission shall appoint producers to fill any remaining vacancies. O. Reg. 334/19, s. 1 (1).

(4) If a vacancy is to be filled by the Commission under clause (3) (b), a producer in the same district as the member whose vacancy is to be filled shall be appointed. O. Reg. 334/19, s. 1 (1).

(5) Despite subsection (4), if no producer in the same district as the member whose vacancy is being filled is available to be appointed, the Commission may fill the position by appointing any producer. O. Reg. 334/19, s. 1 (1).

Manner of conducting elections

13. (1) An election in a district shall be held by mail or by electronic means. O. Reg. 334/19, s. 1 (1).

(2) If the election is conducted by mail, the returning officer shall,

(a) ensure that one ballot is mailed or delivered to each producer in the district; and

(b) notify the producer of when they must mail or deliver the completed ballot to the returning officer. O. Reg. 334/19, s. 1 (1).

(3) If the election is conducted by electronic means, the returning officer shall,

(a) establish a method to allow producers to securely vote by electronic means; and

(b) fix the period of time during which producers may vote electronically and inform the producers in the district. O. Reg. 334/19, s. 1 (1).

(4) The votes shall be counted in accordance with the following procedure:

1. The returning officer shall fix a day on which the votes are to be counted.
2. The local board and the Commission may each appoint one scrutineer, if they choose do so, no later than one week before the day on which votes are to be counted.
3. Any scrutineer appointed in accordance with paragraph 2 is entitled to be present for the counting of the votes.
4. If the election is conducted by mail, the returning officer shall not accept a ballot if,
 - i. it was mailed or delivered to the returning officer after the date referred to in clause (2) (b),
 - ii. it contains votes for more persons than available vacancies,
 - iii. it contains any information or was accompanied by any information that could be used to identify the voter, or
 - iv. it is in a form that was not supplied by the local board. O. Reg. 334/19, s. 1 (1).

(5) The returning officer shall prepare a report that sets out,

- (a) the total number of votes cast;
- (b) the number of votes cast and the number of votes allowed for each candidate; and
- (c) the number of ballots that were not accepted by the returning officer. O. Reg. 334/19, s. 1 (1).

(6) The returning officer shall deliver the report to the local board. O. Reg. 334/19, s. 1 (1).

(7) The returning officer shall declare the candidate or candidates who received the largest number of votes to have been elected to the local board and notify the producers of the candidates who have been elected and the number of votes allowed for each candidate. O. Reg. 334/19, s. 1 (1).

(8) Any candidate who was not elected may request that the votes be recounted by delivering a written notice to the local board no later than seven days after being notified under subsection (7). O. Reg. 334/19, s. 1 (1).

(9) If the returning officer receives a notice under subsection (8), the officer shall conduct a recount of the ballots at which any scrutineers present during the initial counting of the votes as well as each candidate, or a person designated by the candidate, are entitled to be present. O. Reg. 334/19, s. 1 (1).

(10) The results of a recount are final. O. Reg. 334/19, s. 1 (1).

(11) In the case of a tie vote, the returning officer shall select between the candidates by lot. O. Reg. 334/19, s. 1 (1).

(12) Subsection (11) does not apply if a candidate has already been selected by lot and a recount confirms a tie vote between the same candidates. O. Reg. 334/19, s. 1 (1).

(13) The returning officer shall retain the ballots for at least 15 days after the votes are counted in accordance with subsection (4) or for any longer period as necessary to facilitate any recount. O. Reg. 334/19, s. 1 (1).

(14) Once the period referred to in subsection (13) has elapsed, the returning officer shall destroy the ballots. O. Reg. 334/19, s. 1 (1).

(15) Despite any conflicting rules set out in sections 10, 11 and 12 and this section, the following specific rules apply to an election held in 2019:

1. The Commission shall appoint the returning officer.
2. The local board shall accept nominations during the period beginning on November 1 and ending on November 15.
3. If the election is held by mail,
 - i. the local board shall ensure that one ballot is mailed or delivered to each producer in the district by November 22, and
 - ii. producers shall mail or deliver completed ballots to the returning officer by December 13 in order to be valid.
4. The local board and the Commission each have until December 13 to appoint a respective scrutineer.
5. The returning officer shall ensure that votes are counted on or before December 20.
6. The local board shall, by no later than December 23, declare the candidates who have been elected to the local board and notify the producers in the district of the candidates who have been elected and the number of votes allowed for each candidate. O. Reg. 334/19, s. 1 (1).

Note: On February 1, 2020, subsection 13 (15) of the Regulation is revoked. (See: O. Reg. 334/19, s. 1 (2))

Information

14. The local board shall provide any information or assistance to the returning officer that the officer requires in order to conduct elections under sections 11 to 13. O. Reg. 334/19, s. 1 (1).

COMMITTEE, COMPOSITION AND ELECTION

Committee

15. There shall be a committee in each district to be known as the "District Vegetable Growers' Committee". O. Reg. 334/19, s. 1 (1).

Election to committee

16. (1) Subject to subsection (2), the members of each district shall, on or before December 31 in each year, elect from among themselves one member to the District Vegetable Growers' Committee for each 20 producers or fraction of 20 producers. O. Reg. 334/19, s. 1 (1).

(2) The members in each district shall elect at least 10 members to the District Vegetable Growers' Committee. O. Reg. 334/19, s. 1 (1).

ELIGIBILITY, DELEGATES AND VACANCIES

Eligibility

17. Except as they relate to the appointment of the chair or the acting chair of a local board, the following rules apply with respect to voting and being eligible to hold office on the local board or a District Vegetable Growers' Committee:

1. Only a producer who is a member of a district is eligible to vote or to be elected or appointed to the local board in the district, except as permitted under this Regulation.
2. A producer who is a producer in more than one district is not eligible to be elected or appointed to the local board or to vote in more than one district.
3. A producer may only submit one ballot in an election in a district.
4. A producer is not eligible to be elected or appointed as a member of the local board where the producer has been convicted of any offence under the *Criminal Code* (Canada) involving fraud in the five years preceding the date of the election or appointment.
5. A producer may be a member of both the local board and a District Vegetable Growers' Committee.

6. A producer who has been elected as a member of the local board for four consecutive two-year terms is not eligible to be elected or appointed to the local board until two years after the end of the producer's fourth term.
7. A producer is not eligible to be elected or appointed as a member of the local board if the producer has sat as a member of the local board for a total period of more than 12 years. O. Reg. 334/19, s. 1 (1).

Producers who are not individuals

18. (1) If a producer is not an individual, the producer shall designate in writing an individual who may, on behalf of the producer,

- (a) vote in an election of the local board;
- (b) be elected or appointed as a member of the local board; or
- (c) be appointed as a member of a local board to fill a vacancy. O. Reg. 334/19, s. 1 (1).

(2) A producer who designates an individual under subsection (1) may designate only one of the following individuals:

1. An officer or employee of the producer.
2. In the case of a corporation, a shareholder or director of the corporation.
3. In the case of a partnership, a partner.
4. In the case of a joint venture, a member of the joint venture. O. Reg. 334/19, s. 1 (1).

(3) A designation under subsection (1) shall be in a form approved by the local board. O. Reg. 334/19, s. 1 (1).

(4) Any reference to a producer in sections 4 to 17 and in this section, in the case of a producer who is not an individual, is deemed to be a reference to the individual designated by the producer under subsection (1). O. Reg. 334/19, s. 1 (1).

Vacancies

19. (1) If, before the expiry of a member of the local board's term, the member dies, resigns, ceases to be a producer or otherwise becomes unable to act, the other members of the local board shall, within 30 days after the applicable event, appoint a producer to fill the vacancy for the remainder of the term. O. Reg. 334/19, s. 1 (1).

(2) If the members of the local board fail to appoint a producer to fill a vacancy in accordance with subsection (1), the Commission may appoint a producer to fill the vacancy. O. Reg. 334/19, s. 1 (1).

(3) If a vacancy is to be filled under this section, a producer in the same district as the member whose vacancy is to be filled shall be appointed. O. Reg. 334/19, s. 1 (1).

(4) Despite subsection (3), if no producer in the same district as the member whose vacancy is being filled is available to be appointed, the local board or the Commission, as the case may be, may fill the position by appointing any producer. O. Reg. 334/19, s. 1 (1).

SCHEDULE REVOKED: O. REG. 334/19, S. 2.

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