

**ONTARIO PROCESSING VEGETABLE GROWERS
REGULATION NO. 1**

made under

THE FARM PRODUCTS MARKETING ACT

INTERPRETATION

1. (a) In this Regulation,
 - (i) "Producer base acreage" or "producer base tonnage" for a vegetable means the largest acreage or tonnage of that vegetable that the producer has contracted in any crop year for that processor.
 - (ii) "Processor base acreage" or "Processor base tonnage" for a vegetable means the total of all producer base acreage or producer base tonnage for that vegetable for that processor.
- (b) "contract" means an agreement, oral or written, between a producer and a processor or a green shipper for the marketing of vegetables;
- (c) "crop year" means a calendar year unless otherwise specified;
- (d) "local board" means the Ontario Processing Vegetable Growers;
- (e) "marketing" includes advertising, assembling, buying, financing, offering for sale, packing, processing, selling, shipping, storing, and transporting and "market" and "marketed" have corresponding meanings;
- (f) "processing" means
 - (i) 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, or
 - (ii) entering into a contract for the purchase of vegetables for the purpose of performing on the vegetables any of the operations mentioned in subclause (i);
- (g) "green shipper" means a person, other than a processor, who purchases, acquires or obtains possession of cucumbers from producers for the purpose of sorting by size, grading, cleaning, inspecting, separating or brining.
- (h) "processor" means a person engaged in the business of processing vegetables.
- (i) "producer" means a person engaged in the production of vegetables.
- (j) "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, cucumbers, sweet corn, green peas, pumpkin and squash, peppers or tomatoes.

APPLICATION

2. This Regulation provides for the control and regulation in any or all respects of the producing and marketing within Ontario of vegetables, including the prohibition of such producing and marketing in whole or in part.

Regulation No. 1 - 2

TERM CONTRACTS

3. Every Agreement, oral or written, between a producer and a processor for the purchase and sale of vegetables produced in the crop year, including every annual contract determined in accordance with section 6, is a Term Contract except those contracts entered into as a result of an Application under Form C-2 and/or C-3 as provided for in Regulation No. 2.

4. Every term contract shall be for a period of not less than three years.

5. A Term Contract includes all of the terms and conditions prescribed by this Regulation and is subject to,

- (i) the provisions of the applicable Negotiated Agreement or Award;
- (ii) the terms and conditions of the producer's licence to produce and market the vegetable; and;
- (iii) the provisions of the Regulations of the local board;

and may include such other terms and conditions as the parties thereto may agree, provided that in the event of any conflict or ambiguity between such terms and conditions and the provisions of this Regulation, the latter shall prevail and govern.

TERMS AND CONDITIONS

6. (a) Where the total contracted acreage or tonnage requirements of a processor in any year of a term contract is less than or equal to the processor base acreage or processor base tonnage for that vegetable, the annual acreage or tonnage contracted with each producer for that year of the term contract for that vegetable shall equal the producer's pro-rata share of the processors total acreage or tonnage requirements for that vegetable for that year.

(b) The processor shall specify the producer base acreage or producer base tonnage on each producer's annual contract.

(c) To compensate for field size variations, subject to processor agreement, any acreage contract may be subject to a maximum 10% acreage tolerance, providing that such tolerance shall not be taken into account in determining the producer's pro-rata share pursuant to Section 6. (a).

7. Subject to Section 6. (a) and providing there is agreement among the producer, the processor and the local board, a producer who has a term contract for either green peas or sweet corn may interchange acreage between green peas and sweet corn.

8. (a) A processor shall use the total of all producer base acreage or producer base tonnage of producers with whom the processor has a term contract for a vegetable in determining each producer's share of that processor's annual total contracted or tonnage requirements for that vegetable under section 6, unless the local board, upon application by the processor, otherwise determines.

(b) In deciding on any such application the local board may consider,

- (i) extreme varietal differences;
- (ii) method of harvest;
- (iii) end use;
- (iv) geographic area;
- (v) any other reason the local board considers proper.

9. Hand harvest cucumbers and mechanical harvest cucumbers shall be considered separate classes of vegetables and subject to separate Term Contracts.

LEAVE OF ABSENCE

10. (a) A one year leave of absence from a Term Contract may be implemented upon agreement in writing between the parties which agreement shall set out all terms and conditions attached to the leave of absence.
- (b) Upon expiry of the leave of absence, the Term Contract shall continue in full force and effect for the remainder of its term and may include a corresponding one year extension as determined by the processor party as a term and condition under paragraph (a).
- (c) The processor shall assign any acreage or tonnage made available as a result of a leave of absence to satisfy producer base acreage or tonnage obligations in accordance with clause 6 (a). Any tonnage or acreage, resulting from a leave of absence above a processor's base acreage or a processor's base tonnage may be allocated to a producer on a one year basis.

TERMINATION

11. A Term Contract may only be terminated or have its contract tonnage or acreage reduced by a processor in accordance with this section.
 - (a) Processor Vertical Integration, Two Year Notice.
 - (i) a processor which intends to vertically integrate any of its production requirements, may terminate or reduce a Term Contract by giving written notice to the local board and to each producer which the processor intends to terminate or reduce on or before the December 1st two years prior to the crop year in which the reduction or termination is intended to be effective;
 - (ii) a termination or reduction under paragraph (a) shall only become effective upon and to the extent of the vertical integration taking place, failing which each Term Contract remains in full force and effect.
 - (b) Processor Two Year Notice. A processor may terminate a Term Contract with two year's notice by giving written notice of termination with reasons to the local board and the producer on or before the 1st day of May two years prior to the crop year in which the termination is to be effective.
 - (c) Immediate Termination for Cause
 - (i) A processor may terminate a Term Contract immediately for cause by giving written notice of intention to do so with reasons to the producer and the local board on or before the 1st day of December in the year immediately preceding the crop year in which the termination is intended to be effective.
 - (ii) Where a producer wishes to appeal a termination for cause, the producer shall, within 45 days of receipt of the termination notice, advise the local board of his intention to appeal, and the local board may conduct a hearing to determine the effectiveness of the termination notice failing which the termination shall be effective according to its terms.
 - (iii) The local board would consider the following, provided they are established to the satisfaction of the local board, as valid reasons for termination of a term contract;
 - (i) processor closure where alternate contracting arrangements cannot reasonably be implemented;
 - (ii) where a processor is responsible for harvesting and delivery, the producer's pro-rata share falls below a reasonable unit of production;
 - (iii) where a producer's productivity or quality falls below a reasonable standard;
 - (iv) where a producer fails to meet delivery schedules on a regular basis and such failure can be documented to the satisfaction of the board.
 - (v) material breach of contract;

Regulation No. 1 - 4

- (vi) mutual agreement;
- (vii) such other reasons as the local board may consider proper;
- (iv) Notwithstanding the intended date of termination, the local board may substitute such other effective date as it considers proper and may impose additional terms and conditions to the producer's licence;
- (v) The local board may, upon application by a producer or a processor, waive the manner and time of giving notice described under section 11 (a), 11 (b) and 11 (c).

NOTICE PROVISION

- 12. (a) Any notice required to be given under this regulation shall be given personally or by registered mail or by facsimile transmission to:
 - (i) the producer or processor at the address specified in the term contract;
 - (ii) the local board at its head office, 435 Consortium Court, London, Ontario, N6E 2S8;
- (b) Any notice given as aforesaid shall be deemed to be received by the other party on the date of personal delivery or facsimile transmission or on the third day after the posting thereof.

EXEMPTION PROVISION

- 13. The local board may upon application exempt any persons from any provision in this regulation.

REVOCATION

- 14. Regulation No. 1 - 2004 made by the local board on the 20th day of April, 2004 is revoked.

ONTARIO PROCESSING VEGETABLE GROWERS

Bruce Shackleton (Signed)
CHAIRMAN

John S. Mumford (Signed)
SECRETARY

DATED at London, Ontario, this 24th day of April, 2006.