
THE FARM PRODUCTS MARKETING ACT
(C.C.S.M. c. F47)

Potato Quota Order, amendment*

Regulation 133/2003
Registered August 7, 2003

Manitoba Regulation 13/95, amended

1 The Potato Quota Order, being Manitoba Regulation 13/95, is amended by this Order.

Sections 67.1 and 67.2 added

2 The Order is amended by adding the following after section 67:

PART XII.1

RETIREMENT AND ANNUAL TABLE POTATO QUOTA REALLOCATION SYSTEM

Re-allotment under system

67.1 Quotas may be cancelled and re-allotted by the Board as a result of and in accordance with the procedure set out in Schedule "A".

Acceptance of applications discretionary

67.2 The Designated Staff referred to in Schedule "A" may refuse to accept or postpone the processing of any application to participate in the Retirement and Basic Allotment Reallocation System for such reasons or on such terms as they deem appropriate.

*This order is made under the Manitoba Vegetable Producers' Marketing Plan Regulation, Manitoba Regulation 249/87 R, and is Order No. 1, 2003 of Peak of the Market.

Schedule "A" added

3 The following Schedule is added to the end of the Order:

SCHEDULE "A"
(PART XII.1)

RETIREMENT AND ANNUAL TABLE POTATO QUOTA REALLOCATION SYSTEM

Quotas belong to Board

1 Notwithstanding the terms and provisions in this Schedule or of any forms or materials used in connection with this Schedule, as stated in section 38 of this Order, quotas belong to the Board, and any quota units allotted pursuant to the procedure set out in this Schedule may be suspended, reduced or cancelled in accordance with this Order.

No assignment of payment

2 As stated in section 39 of this Order, no person shall offer to assign or assign a payment or an entitlement to a payment or an anticipated payment under the Retirement and Annual Table Potato Quota Reallocation System to another person without the prior written consent of the Board.

Definitions

3 In this Schedule,

"**Bid**" means a request to be allotted a quota unit of a type under the System upon payment of an administration fee pursuant to the procedure set out in this Schedule;

"**bidder**" means an eligible producer or an eligible person, who in the opinion of Designated Staff has submitted a Bid in an acceptable form;

"**Designated Staff**" means those employees and other individuals designated by the Board from time to time to operate the Retirement and Annual Table Potato Quota Reallocation System;

"**eligible person**" means a person who is not a registered table potato producer and who has met the criteria set out in section 2 of this Order;

"**eligible producer**" means a registered table potato producer;

"**Notification List**" means the List maintained by the Designated Staff pursuant to section 14 of this Schedule;

"**Offer**" means an application to have quota units of a type under the System cancelled upon receipt of a retirement payment pursuant to the procedure set out in this Schedule;

"**offeror**" means a registered table potato producer who is current with all payments owing to the Board and is otherwise in good standing with the Board, and who is in the opinion of Designated Staff has submitted an Offer in an acceptable form with respect to quota units allocated to such registered producer by the Board;

"program clearing amount" ("PCA") on a Retirement and Annual Table Potato Quota Reallocation Program means the least amount, expressed in dollars and cents per quota unit, at which the cumulative volume (in an ascending order of amounts) of quota units offered for cancellation equals or most closely equals the cumulative volume (in a descending order of amounts) of quota units requested for allotment;

"quota unit" means an annual table quota equal to one 75 pound bag of a type of a table potato;

"Reallocation Day" means the day on which a Retirement and Annual Table Potato Quota Reallocation Program is operated;

"Retirement and Annual Table Potato Quota Reallocation Program" means the procedure operated from time to time pursuant to this Schedule, whereby a registered table potato producer may offer to have the whole or a portion of the quota units of a type allotted to such registered producer cancelled in the manner provided in this Schedule, and an eligible producer or an eligible person may request that quota units of a type be allotted to such person in the manner provided in this Schedule;

"Retirement Fund" means a trust account established by the Board to which all administration fees paid by successful bidders shall be credited and from which all retirement payments made to successful offerors will be debited.

Retirement and annual table potato quota reallocation system administration

4 The Retirement and Annual Table Potato Quota Reallocation System shall be operated by the Designated Staff. The Designated Staff shall be responsible for establishing the date of each Reallocation Day, publishing such dates, receiving and processing Offers and Bids, operating each Retirement and Annual Table Potato Quota Reallocation Program, and reporting such results to the Board.

The Manitoba Council may appoint Members of its Staff to act as observers and auditors of each Retirement and Annual Table Potato Quota Reallocation Program.

Except as provided in subsection 7(15) and section 15 of this Schedule, all particulars with respect to an individual Offer or to an individual Bid shall be kept confidential by the Designated Staff and Manitoba Council observers and auditors, and shall not be disclosed to the Members of the Board, Board staff who are not Designated Staff, or any other person whatsoever.

The Board may prescribe forms to be used in the operation of a Retirement and Annual Table Potato Quota Reallocation Program from time to time. The Designated Staff may accept a Bid or an Offer, or an amendment or a withdrawal of a Bid or an Offer which is not in a prescribed form, as long as same is in writing and in the opinion of the Designated Staff substantially complies with any such prescribed form.

Application fees

5 The Board may by Resolution from time to time establish a non-refundable application fee for Offers under this Schedule. Each Offer must be accompanied by any necessary application fee. All application fees shall be credited to an operating account of the Board.

Administration fees and retirement payments

6 In this Schedule, and in all forms and materials used in connection with the Retirement and Annual Table Potato Quota Reallocation System, all references to administration fees, and all references to retirement payments shall be expressed or shall be assumed to be expressed on a quota unit basis.

Each administration fee paid by a successful bidder must be paid on each quota unit allocated to such person.

Each retirement payment paid to a successful offeror will be paid on 90% of the quota units cancelled (see section 10 re Transfer Assessment).

Retirement and annual table potato quota allotment reallocation program procedures

7(1) The Designated Staff shall operate a Retirement and Annual Table Potato Quota Reallocation Program for each type on or before January 15th in each calendar year following a calendar year in which notification of receipt of an Offer is given by the Board to an eligible producers and eligible persons.

7(2) Designated Staff may cancel, or may postpone, for up to 14 days at any time, the operation of any Retirement and Annual Table Potato Quota Reallocation Program for a type for any reason they deem advisable.

7(3) A person wishing to submit an Offer must do so in writing, by letter, in a form satisfactory to the Designated Staff, to the Board's head office, which must be received prior to 4:00 o'clock in the afternoon before the last working day of November in each year.

7(4) Each Offer must include any necessary application fee established by the Board for processing an Offer, together with the following information:

- (a) the name, address and signature of the offeror;
- (b) the Producer Registration Number of the offeror;
- (c) the number of quota units offered for cancellation;
- (d) the type of the quota units offered;
- (e) the minimum retirement payment to the nearest cent per quota unit which the offeror is willing to accept upon cancellation of the quota units offered for cancellation;
- (f) an undertaking that the Offer will not be withdrawn by the offeror once a notice of the Offer has been given pursuant to subsection 7(5); and
- (g) an acknowledgment that in the event that Bids received for a Program are less than the number of quota units offered for cancellation on that Program, the Offer of the offeror may be reduced to a lesser number.

The Designated Staff may require an offeror to provide proof of the consent of any secured creditor of the offeror to the submission of such Offer.

7(5) Upon receipt of an Offer in an acceptable form, the Designated Staff shall cause a notice to be mailed, faxed or e-mailed to each eligible producer and each eligible person indicating the fact that an Offer has been received; the number of offerors; the retirement payment per quota unit which each offeror is willing to accept upon cancellation of the quota units offered for cancellation by that offeror; the number of quota units offered for cancellation; by each offeror at the proposed retirement payment level; the total number of quota units offered for cancellation; the type of quota units offered; and the Reallocation Day. The notice may contain such other information with respect to the Offer and the options available to the registered producer as the Designated Staff deems appropriate.

7(6) An eligible producer or an eligible person wishing to submit a Bid on a Retirement and Quota Reallocation System must do so in writing, by letter, to the Board's head office, in a form satisfactory to the Designated Staff, which Bid must be received by the Designated Staff prior to 4:00 p.m. on the last working day before January 10th on which the proposed Retirement and Annual Table Potato Quota Reallocation Program is to be held.

Each Bid on a particular Retirement and Annual Table Potato Quota Reallocation Program must include the following information:

- (a) the name, address and signature of the bidder;
- (b) the Producer Registration Number of the bidder, where applicable;
- (c) the number of quota units requested for allotment;
- (d) the type of the quota units requested;
- (e) the administration fee, to the nearest cent per quota unit, which the bidder is willing to pay upon allotment of the quota units requested for allotment;
- (f) an acknowledgment that the bidder is prepared to accept less than the number of quota units comprising the Bid; and
- (g) an acknowledgment that the Bid will not be valid if the number of quota units requested when taken together with the number of quota units comprising the bidder's quota exceeds maximum quota.

In order for a Bid to be eligible to be processed on a Program, the bidder must submit a separate bank draft or credit union primary order (or other method of payment acceptable to the Designated Staff) payable to the Board representing the full amount of the administration fee such bidder proposes to pay in connection with that Bid which must be received at the Board's head office no later than 4:00 p.m. of the last working day before January 10th on which the proposed Retirement and Annual Table Potato Quota Reallocation Program is to be held.

7(7) In the case of an omission or defect in a Bid or in an Offer the Designated Staff may not make changes or additions to such Bid or Offer, and the Bid or Offer will be rejected. A member of the Designated Staff shall attempt to contact the bidder or offeror and to advise such person of such rejection. The fact that a Bid or an Offer is rejected shall not preclude the bidder or offeror from submitting a subsequent Bid or Offer.

7(8) A Bid may be amended or withdrawn, provided such withdrawal or amendment is in writing and in the form of a letter satisfactory to the Designated Staff, sent by the bidder, and is received at the head office of the Board prior to 4:00 p.m. of the last working day before January 10th on which the proposed Retirement and Annual Table Potato Quota Reallocation Program is to be held. Such withdrawal or amendment must be clear and unambiguous and must identify the bidder by name and by Producer Registration Number, where applicable, and must specify the Bid that is to be withdrawn or amended.

Any Bid which is received after any deadline for submission for that Program will be rejected by the Designated Staff.

No Bid will be processed if the number of quota units comprising the Bid, when aggregated with the quota units allocated to such bidder, would exceed maximum quota.

7(9) As provided in section 67.2 of this Order, the Designated Staff may refuse to accept or may postpone processing of any Bid or any Offer. Any decision to postpone the processing of a Bid or an Offer, or to reject a Bid or Offer made by the Designated Staff shall be final. The Designated Staff may also establish terms and conditions before a Bid or an Offer will be processed in the future. Any person who is not satisfied with the terms and conditions established by the Designated Staff before a Bid or Offer will be processed in the future may appeal such decision in writing to the Board.

7(10) On each Reallocation Day, the Designated Staff shall qualify all valid Bids and proceed to match as closely as possible the cumulative volume, in an ascending order of quota units of each type offered in the Offer(s) with the cumulative volume, in a descending order of quota units of that type submitted in the Bids. This procedure shall be known as "clearing" the Retirement and Annual Table Potato Quota Reallocation Program. The program clearing amount (PCA) for a type, as determined by clearing the Retirement and Annual Table Potato Quota Reallocation Program, shall be the least amount at which the cumulative volumes of that type most closely match, and shall be the amount of the administration fee payable to the Board by a successful bidder and the amount of the retirement allowance payable by the Board to a successful offeror under the Retirement and Annual Table Potato Quota Reallocation Program for that type.

7(11) Subject to subsections (12) and (13) herein and to the acceptance of the results by the Board under subsection (15),

(a) if a bidder has submitted a Bid with an administration fee equal to, or higher than, the PCA, then that Bid shall be deemed successful and the Board may negotiate the bank draft or primary order representing the full amount of the administration fee submitted by the bidder as payment for the quota units bid;

(b) if an offeror has submitted an Offer at a retirement allowance equal to or lower than, the PCA, then that Offer shall be deemed successful and the offeror shall be entitled to receive from the Board a retirement allowance equal to the PCA for such quota units offered upon cancellation of the quota.

7(12) Upon the clearing of a Retirement and Annual Table Potato Quota Reallocation Program for a type, if it is determined by the Designated Staff that, at the PCA, the cumulative volume of quota units in the Offers for that type is less than the cumulative volume of quota units in the Bids for that type, the Designated Staff may:

(a) deem the successful bidders to have bid, at the PCA, a percentage of their Bid based on the ratio of the quota units comprising the successful Offers to the quota units comprising the successful Bids, in which case, the bidder shall be entitled to a refund of that portion of the administration fee submitted by the bidder in excess of the fee payable under the deemed Bid; or

(b) cancel the Program for that type.

7(13) Upon the clearing of a Retirement and Annual Table Potato Quota Reallocation Program for a type, if it is determined by the Designated Staff that, at the PCA, the cumulative volume of quota units in the Bids for that type is less than the cumulative volume of quota units in the Offers for that type, the Designated Staff may:

(a) deem the successful offerors to have offered, at the PCA, a percentage of their Offer based on the ratio of the quota units comprising the successful Bids to the quota units comprising the successful Offers; or

(b) cancel the Program for that type.

7(14) In the event the Designated Staff cancels a Program for a type, the Board may ask the Designated Staff to operate a Retirement and Annual Table Potato Quota Reallocation Program for that type on or before March 15th in that calendar year, in which case the provisions of this section shall apply to such Program except that:

(a) the deadline for submitting an Offer under subsection 7(3) shall be prior to 4:00 p.m. before the last working day of January in that year;

(b) the deadline for submitting a Bid and the necessary administration fee under subsection 7(6) shall be prior to 4:00 p.m. on the last working day before February 15th in that year;

(c) the deadline for amending or withdrawing a Bid under subsection 7(8) shall be prior to 4:00 p.m. on the last working day before February 15th in that year;

(d) the Reallocation Day shall be no later than March 15th in that year; and

(e) the Board shall indicate any other necessary changes to provide for the logical operation of such Program.

7(15) Following the operation of a Retirement and Annual Table Potato Quota Reallocation Program, the Designated Staff shall report to the Board the number of Offers received, particulars of the Offers as set out in subsection 7(5), the number of Bids received, the number of quota units and the amounts bid or offered in each Bid or Offer, together with the PCA and particulars of the successful Bids and successful Offers. The Board will review such report and if satisfied, in its sole discretion, that there have been no irregularities or deficiencies in the operation of that Retirement and Annual Table Potato Quota Reallocation Program, the Board may pass a resolution to accept such results.

Following the acceptance of the results of a Retirement and Annual Table Potato Quota Reallocation Program, the Board will pass a resolution to allot quota units to the successful bidder and to cancel quota units of successful offerors in order to implement such results.

The allotment of quota units of a type to a successful bidder who is a registered table potato producer will be effective as of the first day of July after the date on which the results of a Retirement and Annual Table Potato Quota Reallocation Program were accepted by the Board and shall be applicable to the marketing of table potatoes harvested after such effective date.

The allotment of quota units of a type to a successful bidder who is an eligible person will be effective upon the first day of July after the date on which the results of a Retirement and Annual Table Potato Quota Reallocation Program were accepted by the Board.

The cancellation of quota units of a type allotted to a successful offeror will be effective as of the last day of June after the date on which the results of a Retirement and Annual Table Potato Quota Reallocation Program were accepted by the Board, provided however that the offeror shall be entitled to continue marketing table potatoes of that type after such date, provided those table potatoes were produced in the prior crop year and are of an acceptable quality, under the systems operated by the Board.

7(16) Following the Board's consideration of the results of a Retirement and Annual Table Potato Quota Reallocation Program, each participant in the Retirement and Annual Table Potato Quota Reallocation Program will be advised in writing by the Designated Staff whether such participant's Offer or Bid was successful, and if the Bid or Offer was successful, and if successful, the effective date of the allotment or cancellation.

7(17) All funds submitted by unsuccessful bidders as proposed administration fees will be returned to such bidder.

All surplus funds submitted by successful bidders as proposed administration fees will be returned to such bidder.

Limits on bids and offers

8 An Offer which would result in the remaining annual table quota of a type allocated to that offeror being reduced to a level below 6,000 75-pound bags of that type of table potatoes will be rejected by the Designated Staff. Any offeror allotted an annual table quota of 6,000 75-pound bags of table potatoes or less of a type must offer to cancel all such quota units of that type to be eligible to be an offeror on the Retirement and Annual Table Potato Quota Reallocation Program.

No Offer of less than 1,000 quota units will be processed.

No Bid of less than 1,000 quota units will be processed.

A successful bidder will not subsequently be eligible to receive a retirement allowance in connection with the cancellation of the equivalent number of quota units under the System if all quota units allotted to such producer are cancelled within five years of such successful Bid. In the event such person subsequently submits an Offer of all quota units allotted to during such five year period, an equivalent number of quota units shall be debited against the number of quota units offered, so that the offeror will only be entitled to receive a retirement payment with respect to 90% of the balance of such quota units, and the quota units so debited shall be credited to the Transfer Assessment Pool.

A person who has been allocated allotment under section 8 of this Order shall not be entitled to submit an Offer which would result in the annual table quota allotted to such person being reduced below the level established prior to such allotment for a minimum of five years following the date of such allotment.

No Bid shall be processed if the number of quota units comprising the Bid, when aggregated with the quota units allocated to such bidder, would exceed maximum allotment.

No Bid by an eligible person of less than 6,000 quota units of a type will be processed.

No Bid by a registered table potato producer of less than 6,000 quota units of a type will be processed unless the bidder has already been allotted quota units of that type.

Retirement fund

9(1) All administration fees paid to the Board by successful bidders will be allocated to the Retirement Fund.

9(2) All retirement payments made by the Board to successful offerors will be paid from the Retirement Fund.

Transfer assessment and transfer assessment pool

10(1) Each Offer shall be deemed to be reduced by a Transfer Assessment equivalent to 10% of the quota units offered for cancellation. In the event such calculation results in a fraction, the Transfer Assessment shall not include such fraction.

10(2) If an Offer is accepted, in whole or in part, as provided herein, the Transfer Assessment shall be credited to the Transfer Assessment Pool.

10(3) The Transfer Assessment Pool will be maintained on a gross 75 pound bag basis, without distinguishing types.

Allocation from the transfer assessment pool

11(1) The quota units credited to the Transfer Assessment Pool may, from time to time, be allocated by the Board as follows:

- (a) a total of 67% to eligible producers who have applied in writing for an increase in their annual table quota during the application period commencing December 1, and terminating December 31 of the previous calendar year, in equal numbers of quota units, provided that the quota units allocated to an eligible producer shall not be increased above maximum quota; and

(b) a total of 33% to those persons who are on the waiting list referred to in section 4 of this Order, in the order of priority set out on such waiting list, in amounts of 6,000 quota units each.

11(2) Applicants who are allotted quota units pursuant to clause (1)(b) shall be eligible to request allocation of additional quota units in subsequent allocations pursuant to clause (1)(a).

11(3) A person who receives an allotment under clause (1)(b) shall not be entitled to submit an Offer which would result in the annual table quota allotted to such person being reduced below 6,000 75-pound bags of a type of table potatoes for a maximum of five years from the date of such allotment.

11(4) An eligible producer may be a successful bidder and may receive an allotment of quota units under subsection (1) on the same Reallocation Day.

Type and effective date of allocation from pool

12 In making an allocation from the Transfer Assessment Pool, the Board will specify the type of such allocation and the effective date of the allotment.

Limitation re new producers

13 In the event a person is allotted an annual table quota (the "initial allotment") and becomes a registered table potato producer pursuant to an application to the Board under section 4 of this Order, such person shall not be entitled to submit an Offer which would result in the annual table quota allotted to that person being reduced below the initial allotment for a minimum of five years from the date of such initial allotment.

Notification lists

14 Any person who is not an eligible producer and who wishes to participate in a Retirement and Annual Table Potato Quota Reallocation Program as a bidder may request in writing, in such form as the Board may prescribe for such purposes, that such person's name be added to the Notification List.

Any person added to the Notification List shall be deleted from that List one year after being added to such List. A person on such List may request, in such form as the Board may prescribe for such purposes, that such person's name be included on such list for a further one year period, provided such application is made not earlier than one month prior to the date upon which such person's name would otherwise be deleted from such List.

Information

15 The Board will forward to each eligible producer, in a form approved by the Manitoba Council, within fifteen days following Board approval, the results of the Retirement and Annual Table Potato Quota Reallocation Program.

January 21, 2003

PEAK OF THE MARKET:

David Jeffries
Chairman

Doug Connery
Secretary

APPROVED

August 6, 2003

MANITOBA FARM PRODUCTS
MARKETING COUNCIL:

Rhéal Cenerini
Chair

Gordon H. MacKenzie
Secretary