

Canada Agricultural Products Act

R.S.C., 1985, c. 20 (4th Supp.)

An Act to regulate the marketing of agricultural products in import, export and interprovincial trade and to provide for national standards and grades of agricultural products, for their inspection and grading, for the registration of establishments and for standards governing establishments

[1988, c. 27, assented to 7th July, 1988]
SHORT TITLE

Short title

1. This Act may be cited as the *Canada Agricultural Products Act*.

INTERPRETATION

Definitions

2. In this Act,

"advertisement"
« *promotion* »

"advertisement" means anything that directly or indirectly promotes the sale or other distribution of agricultural products;

"agricultural product"
« *produit agricole* »

"agricultural product" means

(a) an animal, a plant or an animal or plant product,

(b) a product, including any food or drink, wholly or partly derived from an animal or a plant, or

(c) a product prescribed for the purposes of this Act;

"agricultural product legend"
« *estampille* »

"agricultural product legend" means a legend prescribed for an agricultural product;

"analyst"
« *analyste* »

"analyst" means an analyst designated pursuant to section 19;

"Board"
« *Conseil* »

"Board" means the Board of Arbitration continued by subsection 4(1);

"container"
« *contenant* »

"container" means a receptacle, package, wrapper or confining band used or to be used in connection with an agricultural product;

"convey"
« *acheminement* »

"convey" means, in respect of an agricultural product, sending or transporting the agricultural product;

"dealer"
« *marchand* »

"dealer" means a person who

(a) is engaged in the business of purchasing or selling agricultural products,

(b) negotiates consignments, sales, purchases or other transactions involving agricultural products,

(c) receives or handles, on commission, agricultural products, or

(d) is prescribed as a dealer for the purposes of this Act;

"establishment"
« *établissement* »

"establishment" means a place where agricultural products are prepared;

"grade name"
« *nom de catégorie* »

"grade name" means a prescribed name, mark or designation of a category and includes a standard prescribed for an agricultural product;

"grader"
« *classificateur* »

"grader" means a grader designated pursuant to section 19;

"inspector"
« *inspecteur* »

"inspector" means an inspector designated pursuant to section 19;

"label"
« *étiquetage* »

"label" means a label, legend, word, mark, symbol, design, imprint, stamp, brand, ticket or tag or any combination thereof that is, or is to be, applied or attached to an agricultural product or a container or that accompanies or is to accompany the product or container;

"marketing"
« *commercialisation* »

"marketing" means the preparation and advertisement of agricultural products and includes the conveyance, purchase and sale of agricultural products and any other act necessary to make agricultural products available for consumption or use;

"Minister"
« *ministre* »

"Minister" means the Minister of Agriculture and Agri-Food;

"penalty"
« *sanction* »

"penalty" means an administrative monetary penalty imposed under the *Agriculture and Agri-Food Administrative Monetary Penalties Act* for a violation;

"person"
« *personne* »

"person" means an individual, a corporation, an association or an organization;

"place"
« *lieu* »

"place" includes a vessel, an aircraft and a train or other surface vehicle;

"preparation"
« *conditionnement* »

"preparation" includes, in respect of an agricultural product, processing, slaughtering, storing, inspecting, grading, packing, assembling, pricing, marking and labelling;

"prescribed"

Version anglaise seulement

"prescribed" means prescribed by regulation;

"sell"

« *vente* »

"sell" includes

(a) agreeing to sell or offering, keeping, exposing, transmitting, conveying or delivering for sale,

(b) selling by consignment,

(c) exchanging or agreeing to exchange, and

(d) disposing of or consenting to dispose of, in any manner, for a consideration;

"Tribunal"

« *Commission* »

"Tribunal" means the Review Tribunal continued by subsection 4.1(1);

"violation"

« *violation* »

"violation" means any contravention of this Act or the regulations that may be proceeded with in accordance with the *Agriculture and Agri-Food Administrative Monetary Penalties Act*.

R.S., 1985, c. 20 (4th Supp.), s. 2; 1994, c. 38, s. 25; 1995, c. 40, s. 27; 1997, c. 6, s. 38.

HER MAJESTY

Binding on Her Majesty

3. This Act is binding on Her Majesty in right of Canada or a province.

BOARD OF ARBITRATION AND REVIEW TRIBUNAL

Board of Arbitration continued

4. (1) The Board of Arbitration, consisting of such members as are appointed by the Minister, one of whom shall be appointed as Chairperson and one as Vice-Chairperson, is hereby continued.

Tenure

(2) Each member shall be appointed for a term of not more than five years and shall hold office during good behaviour, but may be removed by the Minister for cause.

Re-appointment

(3) Each member may be re-appointed as a member in the same or another capacity.

R.S., 1985, c. 20 (4th Supp.), s. 4; 1995, c. 40, s. 28.

Review Tribunal continued

4.1 (1) The Review Tribunal, consisting of such members as are appointed by the Governor in Council, one of whom shall be appointed as Chairperson, is hereby continued.

Qualifications

(2) A person is not eligible to be appointed a member of the Tribunal unless the person is knowledgeable about or has experience related to agriculture or agri-food and the Chairperson of the Tribunal and at least one other member of the Tribunal must, in addition, be a barrister or advocate of at least ten years standing at the bar of any province or a notary of at least ten years standing at the Chambre des notaires du Québec.

Membership

(3) The Chairperson of the Tribunal shall be appointed as a full-time member and the other members shall be appointed as either full-time members or part-time members of the Tribunal.

Tenure

(4) Each member of the Tribunal shall be appointed for a term of not more than five years and shall hold office during good behaviour, but may be removed by the Governor in Council for cause.

Re-appointment

(5) Each member of the Tribunal may be re-appointed as a member in the same or another capacity.

1995, c. 40, s. 29.

Not employed in the federal public administration

4.2 (1) A member of the Tribunal may not be a person employed in the federal public administration.

Conflict of interest

(2) A member of the Tribunal shall not accept or hold any office or employment that is inconsistent with the member's duties or take part in any matter before the Tribunal in which the member has an interest.

1995, c. 40, s. 29; 2003, c. 22, s. 224(E).

Contractual assistance

4.3 The Board or the Tribunal may, for specific projects, enter into contracts for the services of persons having technical or specialized knowledge of any matter relating to the work of the Board or Tribunal to advise and assist it in the exercise of its powers or the performance of its duties and functions under this Act.

1995, c. 40, s. 29.

Consultations

4.4 The members of the Board or the members of the Tribunal may consult with other members of the Board or Tribunal, as the case may be, in respect of any matter before it.

1995, c. 40, s. 29.

Absence or incapacity of members — Board

5. (1) Where a member of the Board is absent or unable to act or the member's position becomes vacant, the Minister may appoint a person to act in the member's place and, in the case of the Chairperson of the Board, the Vice-Chairperson of the Board shall act as Chairperson pending the appointment of a replacement.

Absence or incapacity of Chairperson of Tribunal

(2) Where the Chairperson of the Tribunal is absent or unable to act or the Chairperson's position becomes vacant, the members of the Tribunal shall designate a member of the Tribunal with the legal qualifications described in subsection 4.1(2) to act as Chairperson pending the appointment of a replacement.

Duties of Chairpersons

(3) The Chairperson of the Board and the Chairperson of the Tribunal are the chief executive officers of the Board and the Tribunal, respectively, and shall apportion work among their members.

R.S., 1985, c. 20 (4th Supp.), s. 5; 1995, c. 40, s. 29.

Head offices

6. (1) The head offices of the Board and the Tribunal shall be in the National Capital Region, as described in the schedule to the *National Capital Act*.

Meetings

(2) The Board may sit at such places in Canada as it considers appropriate and the Tribunal may sit at such places in Canada as may be specified by the Governor in Council.

Quorum

(3) Three members of the Board constitute a quorum.

Staff and facilities

(4) The Minister may provide the Board and the Tribunal with such officers and employees from within the federal public administration and such facilities and professional advisers as are necessary for the proper conduct of the business of the Board and the Tribunal.

R.S., 1985, c. 20 (4th Supp.), s. 6; 1995, c. 40, s. 30; 2003, c. 22, s. 224(E).

Travel and living expenses — Board

7. Each member of the Board is entitled to be paid

(a) an amount fixed by the Treasury Board for each day or part of a day that the member is performing duties under this Act unless the member is employed in the federal public administration; and

(b) reasonable travel and living expenses incurred by the member in the course of the member's duties under this Act.

R.S., 1985, c. 20 (4th Supp.), s. 7; 1995, c. 40, s. 31; 2003, c. 22, s. 224(E).

Remuneration — Tribunal

7.1 (1) Each full-time member of the Tribunal shall be paid such salary as is fixed by the Governor in Council and each part-time member of the Tribunal is entitled to be paid such fees or other remuneration for that member's services as may be fixed by the Governor in Council.

Travel and living expenses

(2) Each member of the Tribunal is entitled to be paid reasonable travel and living expenses incurred by the member in the course of the member's duties under this Act.

1995, c. 40, s. 31.

Courts of record

8. (1) The Board and the Tribunal are courts of record and each shall have an official seal that shall be judicially noticed.

Examination of witnesses, etc.

(2) In addition to the powers conferred by subsection (1), the Board and the Tribunal each have, with respect to the appearance, swearing and examination of witnesses, the production and inspection of documents, the enforcement of their orders and other matters necessary or proper for the due exercise of their jurisdiction, all such powers, rights and privileges as are vested in a superior court of record and, without limiting the generality of the foregoing, the Board and the Tribunal may each

(a) issue a summons requiring a person

(i) to appear at the time and place stated in the summons to testify to all matters within the person's knowledge relative to any subject-matter before the Board or the Tribunal, as the case may be, and

(ii) to bring and produce any document, book or paper in the person's possession or under the person's control relative to that subject-matter;

(b) administer oaths and examine any person on oath; and

(c) during a hearing, receive such evidence as they consider relevant and trustworthy.

Rules

(3) The Board and, subject to the *Agriculture and Agri-Food Administrative Monetary Penalties Act*, the Tribunal may, with the approval of the Governor in Council, each make rules governing

- (a) the practice and procedure in respect of hearings;
- (b) the time and manner in which applications and notices must be made or given; and
- (c) the work of the Board or the Tribunal, as the case may be.

Rules of evidence do not apply

(4) Neither the Board nor the Tribunal is bound by any legal or technical rules of evidence in conducting any matter that comes before it, and each shall deal with matters that come before it as informally and expeditiously as the circumstances and considerations of fairness and natural justice permit.

Privileged evidence not receivable

(5) Neither the Board nor the Tribunal shall receive or accept as evidence anything that would be inadmissible in a court by reason of any privilege under the law of evidence.

R.S., 1985, c. 20 (4th Supp.), s. 8; 1995, c. 40, s. 32.

COMPLAINT TO BOARD OF ARBITRATION

Complaints against dealers

9. (1) A dealer may, within the prescribed time, file with the Board a written complaint against a dealer licensed under this Act for failure to comply with the regulations relating to grades, standards or marketing of prescribed agricultural products in import, export or interprovincial trade.

Board to hear complaints

- (2) The Board shall hear a complaint and
- (a) where it finds that the complaint is not well founded, the Board shall dismiss it;
 - (b) where it finds that the complaint is well founded, the Board shall make such order as it considers will provide adequate relief from the activity complained of, including, if necessary, an order for the payment of compensation and interest; and
 - (c) the Board shall give reasons for its decision where reasons are requested by any party to the proceedings.

REVIEW

Application for review

10. (1) A party to any complaint proceedings may apply to the Tribunal for a review of the decision of the Board in accordance with subsection (1.1), and the application shall be

brought within thirty days after the Board made the decision or within such longer period as the Tribunal may allow, either before or after the expiration of the thirty days.

Nature of review

(1.1) A review referred to in subsection (1) shall be based on the record of the Board's proceedings and on the grounds of fairness, natural justice or error of law, but the Tribunal may hear evidence not previously available if it deems it necessary for the purposes of the review.

Disposition of review

(2) After concluding a review referred to in subsection (1), the Tribunal may, by order, confirm the decision, make the decision that the Board should have made or direct that the Board re-hear the matter, and the Tribunal shall, in accordance with its rules, notify the parties of any order under this subsection.

R.S., 1985, c. 20 (4th Supp.), s. 10; 1995, c. 40, s. 33.

ENFORCEMENT OF DECISIONS AND ORDERS

Filing in Federal Court

11. (1) Subject to subsection (3), any person affected by a decision or order of the Board made under subsection 9(2), if it is final, or a decision or order of the Tribunal made under subsection 10(2), may file in the Federal Court for immediate registration a copy of the decision or order, exclusive of any reasons given for it, but the decision or order shall not be filed until at least thirty days after the day on which the decision or order was made.

Effect of filing

(2) On filing in the Federal Court, a decision or order shall be registered in that Court and, when registered, it shall have the same force and effect, and all proceedings may be taken, as if the decision or order were a judgment obtained in that Court.

Staying filing

(3) The Tribunal may make an order staying the filing in the Federal Court of any order pending its review by the Tribunal.

Definition

(4) In subsection (1), the expression "order of the Board" includes an order as varied by the Tribunal, but does not include an order made by a decision that has been cancelled by the Tribunal.

R.S., 1985, c. 20 (4th Supp.), s. 11; 1995, c. 40, s. 35.

Exclusive jurisdiction

12. (1) The Board has sole and exclusive jurisdiction to hear and determine all questions of fact or law in relation to any matter over which the Board is given jurisdiction by section 9, and the Tribunal has sole and exclusive jurisdiction to hear and determine all questions of fact or law in relation to any matter over which the Tribunal is given jurisdiction by this Act and the *Agriculture and Agri-Food Administrative Monetary Penalties Act*.

Review by Federal Court

(2) Subject to section 10, a decision or order of the Board and a decision or order of the Tribunal may only be reviewed under the *Federal Courts Act*.

R.S., 1985, c. 20 (4th Supp.), s. 12; 1990, c. 8, s. 42; 1995, c. 40, s. 36; 2002, c. 8, s. 182.

Chairperson

12.1 (1) The jurisdiction of the Tribunal in relation to the following matters shall be exercised by the Chairperson of the Tribunal:

(a) applications under subsection 10(1);

(b) requests under subsection 8(1) or 12(2) of the *Agriculture and Agri-Food Administrative Monetary Penalties Act* for a review in respect of a notice of violation that contains a warning; and

(c) requests under paragraph 9(3)(c) or subsection 13(2) of that Act for a review in respect of a notice of violation that sets out a penalty of less than \$2,000.

Other legally qualified members

(2) The jurisdiction of the Tribunal in relation to a matter referred to in subsection (1) may be exercised, where the Chairperson of the Tribunal so directs, by any member of the Tribunal with the legal qualifications described in subsection 4.1(2).

1995, c. 40, s. 36.

Reviews under other Act

12.2 Reviews by the Tribunal under the *Agriculture and Agri-Food Administrative Monetary Penalties Act* shall be heard by a single member of the Tribunal.

1995, c. 40, s. 36.

REGISTERED ESTABLISHMENTS AND ACCREDITED LABORATORIES

Registered establishments

13. It shall be a condition of the registration and operation of an establishment as a registered establishment under this Act that the establishment and all agricultural products in it are subject to this Act and the regulations.

Accredited laboratories

14. For the purpose of administering this Act and the regulations, the Minister may designate as an accredited laboratory all or part of any building or place set aside and used for conducting research or carrying out inspections, grading, testing, analyses or experiments in science or used for the manufacture of chemical or biological products.

NATIONAL TRADE-MARKS

National trade-marks

15. Every agricultural product legend and every grade name is a national trade-mark and the exclusive property in the trade-mark and, subject to this Act, the right to the use of the trade-mark are hereby vested in Her Majesty in right of Canada.

Use of similar legend or grade name

16. No person shall

(a) apply or use a legend, word, mark, symbol or design or any combination thereof that resembles an agricultural product legend or a grade name; or

(b) market, or possess for the purpose of marketing, an agricultural product to which there is applied or in connection with which there is used a legend, word, mark, symbol or design or any combination thereof that resembles an agricultural product legend or a grade name.

TRADE IN AGRICULTURAL PRODUCTS

Prohibition

17. No person shall, except in accordance with this Act or the regulations,

(a) market an agricultural product in import, export or interprovincial trade;

(b) possess an agricultural product for the purpose of marketing it in import, export or interprovincial trade; or

(c) possess an agricultural product that has been marketed in contravention of this Act or the regulations.

Presumption

18. In any proceedings for a contravention of section 16 or 17, a person found in possession of an agricultural product in a quantity greater than is ordinarily necessary for a person's own consumption shall be deemed, in the absence of evidence to the contrary, to have been in possession of the product for the purpose of marketing it.

R.S., 1985, c. 20 (4th Supp.), s. 18; 1995, c. 40, s. 37.

ADMINISTRATIVE OFFICERS

Designation

19. (1) The President of the Canadian Food Inspection Agency may designate inspectors, analysts and graders under section 13 of the *Canadian Food Inspection Agency Act* for the purposes of this Act.

Designation

(1.1) The President of the Canada Border Services Agency may designate inspectors under paragraph 9(2)(b) of the *Canada Border Services Agency Act* for the purposes of enforcing this Act.

Certificate to be produced

(2) Inspectors shall be given certificates in a form established by the President of the Canadian Food Inspection Agency or the President of the Canada Border Services Agency, as the case may be, attesting to their designation and, on entering any place under this Act, an inspector shall show the certificate to the person in charge of the place on request.

(3) [Repealed, 1997, c. 6, s. 39]

Obstruction of administrative officers

(4) No person shall obstruct or hinder, or make any false or misleading statement either orally or in writing to, an inspector, analyst or grader who is carrying out duties or functions under this Act or the regulations.

Interference

(5) Except as authorized by an inspector, no person shall remove, alter or interfere in any way with a thing seized or detained under this Act or the regulations.

R.S., 1985, c. 20 (4th Supp.), s. 19; 1997, c. 6, s. 39; 2005, c. 38, s. 33.

Designation of methods and equipment

20. The Minister may designate methods and equipment to be used by inspectors, analysts and graders in carrying out duties and functions under this Act or the regulations.

INSPECTION

Powers of inspectors

21. (1) For the purpose of ensuring compliance with this Act and the regulations, an inspector may, subject to section 22, enter and inspect any place, or stop any vehicle, in which the inspector believes on reasonable grounds there is any agricultural product or other thing in respect of which this Act or the regulations apply, and the inspector may

(a) open any container that the inspector believes on reasonable grounds contains an agricultural product;

(b) inspect any agricultural product or other thing and take samples of it free of charge; and

(c) require any person to produce for inspection or copying, in whole or in part, any record or other document that the inspector believes on reasonable grounds contains any information relevant to the administration of this Act or the regulations.

Operation of data processing systems and copying equipment

(2) In carrying out an inspection under this section, an inspector may

(a) use or cause to be used any data processing system at the place to examine any data contained in or available to the data processing system;

(b) reproduce any record or cause it to be reproduced from the data in the form of a printout or other intelligible output and take the printout or other output for examination or copying; and

(c) use or cause to be used any copying equipment at the place to make copies of any record or other document.

Assistance to inspectors

(3) The owner or person in charge of a place referred to in subsection (1) and every person found in that place shall give the inspector all reasonable assistance to enable the inspector to carry out the inspector's duties and functions under this Act and shall furnish the inspector with such information with respect to the administration of this Act or the regulations as the inspector may reasonably require.

Warrant required to enter dwelling-place

22. (1) An inspector may not enter a dwelling-place except with the consent of the occupant of the dwelling-place or under the authority of a warrant issued under subsection (2).

Authority to issue warrant

(2) Where on *ex parte* application a justice is satisfied by information on oath that

(a) the conditions for entry described in section 21 exist in relation to a dwelling-place,

(b) entry to the dwelling-place is necessary for any purpose relating to the administration of this Act or the regulations, and

(c) entry to the dwelling-place has been refused or that there are reasonable grounds for believing that entry will be refused,

the justice may issue a warrant authorizing the inspector named in the warrant to enter the dwelling-place subject to such conditions as may be specified in the warrant.

Use of force

(3) An inspector who executes a warrant issued under subsection (2) shall not use force unless the inspector is accompanied by a peace officer and the use of force has been specifically authorized in the warrant.

Assistance of peace officers

(4) A peace officer shall provide such assistance as an inspector may request for the purpose of enforcing this Act or the regulations.

Seizure

23. Where an inspector believes on reasonable grounds that this Act or the regulations have been contravened, the inspector may seize and detain any agricultural product or other thing

(a) by means of or in relation to which the inspector believes on reasonable grounds the contravention occurred; or

(b) that the inspector believes on reasonable grounds will afford evidence in respect of a contravention of this Act or the regulations.

SEARCH

Warrant

24. (1) Where on *ex parte* application a justice is satisfied by information on oath that there are reasonable grounds to believe that there is in any place an agricultural product, record, document or other thing

(a) by means of or in relation to which this Act or the regulations have been contravened or are suspected of having been contravened, or

(b) that there are reasonable grounds to believe will afford evidence in respect of a contravention of this Act or the regulations,

the justice may at any time issue a warrant authorizing an inspector to enter and search the place for the agricultural product, record, document or thing and to seize it.

Search and seizure powers

(2) An inspector who executes a warrant issued under subsection (1) may exercise the powers described in section 21 and may seize, in addition to any thing mentioned in the warrant, any agricultural product or other thing

(a) by means of or in relation to which the inspector believes on reasonable grounds that this Act or the regulations have been contravened; or

(b) that the inspector believes on reasonable grounds will afford evidence in respect of a contravention of this Act or the regulations.

Execution of search warrant

(3) A warrant issued under subsection (1) shall be executed by day unless the justice authorizes its execution by night.

Where warrant not necessary

(4) An inspector may exercise any of the powers referred to in subsections (1) and (2) without a warrant if the conditions for obtaining a warrant exist but by reason of exigent circumstances it would not be practical to obtain a warrant.

DISPOSITION OF THINGS SEIZED

Storage and removal

25. (1) A thing seized and detained under this Act may be stored by an inspector, or by any person designated by an inspector, in the place where it was seized or may, at the inspector's discretion, be removed to any other place for storage and the costs of storage or removal shall be paid by the owner of the thing or by the person who was in possession of it at the time of its seizure.

Perishable agricultural products

(2) An inspector who seizes a perishable agricultural product under this Act may dispose of or destroy the product and any proceeds realized from its disposition shall be paid to the Receiver General.

Redelivery on deposit of security

26. In proceedings for a violation the Tribunal may, and in proceedings for an offence under this Act the court in which the proceedings are or may be brought may, with the consent of the Minister, order redelivery of a thing seized under this Act, or delivery of any proceeds realized from its disposition under section 25, to the person from whom the thing was seized if security is given to the Minister in an amount and form satisfactory to the Minister.

R.S., 1985, c. 20 (4th Supp.), s. 26; 1995, c. 40, s. 38.

Detention

27. (1) A thing seized under this Act, or the proceeds realized from its disposition under section 25, shall not be detained after

(a) an inspector determines that the thing is in conformity with the provisions of this Act and the regulations, or

(b) the expiration of one hundred and eighty days after the day of its seizure, or such longer period as may be prescribed,

unless before that time proceedings are instituted in relation to the thing seized, in which case it may be detained until the proceedings are finally concluded.

Application for return

(2) Subject to subsection 28(2), where proceedings are instituted in accordance with subsection (1) in respect of a thing seized, other than an agricultural product bearing an agricultural product legend or a grade name, the owner of the thing or the person in possession of it at the time of its seizure may apply

(a) in the case of a violation, to the Tribunal, or

(b) in the case of an offence, to the court before which the proceedings are being held,

for an order that the thing be returned.

Order

(3) Where the Tribunal or court, as the case may be, is satisfied that sufficient evidence exists or may reasonably be obtained without detaining the thing, the Tribunal or court may order it to be returned to the applicant, subject to any conditions the Tribunal or court may impose to ensure that it is preserved for any purpose for which it may subsequently be required.

R.S., 1985, c. 20 (4th Supp.), s. 27; 1995, c. 40, s. 39.

Forfeiture

28. (1) Where the Tribunal decides that a person has committed a violation, or a person is convicted of an offence under this Act, the Tribunal or the convicting court, as the case may be, may, on its own motion or at the request of any party to the proceedings, in addition to any penalty or punishment imposed, order that any thing by means of or in relation to which the violation or offence was committed, or any proceeds realized from its disposition, be forfeited to Her Majesty in right of Canada.

Forfeiture without conviction

(2) Where the owner of a thing seized under this Act or the person in possession of it at the time of its seizure consents to its forfeiture, it is thereupon forfeited to Her Majesty in right of Canada.

R.S., 1985, c. 20 (4th Supp.), s. 28; 1993, c. 34, s. 12(F); 1995, c. 40, s. 40.

Disposal of forfeited things

29. (1) Where proceedings mentioned in subsection 27(1) are instituted within the time provided in that subsection and, at the final conclusion of those proceedings, the Tribunal or court orders the forfeiture of a seized thing, it may be disposed of, at the expense of the person from whom it was seized, in accordance with the regulations, unless the Minister directs otherwise.

Return of seized things where no forfeiture ordered

(2) Where the Tribunal or court does not order the forfeiture of the thing seized, it shall be returned to the person from whom it was seized or any proceeds realized from its disposition or any security given for it shall be returned to that person.

Exception

(3) Where the Tribunal decides that the person from whom a thing was seized has committed a violation, or a person from whom a thing was seized is convicted of an offence under this Act, the thing, any proceeds realized from its disposition or any security given for it may be retained until the penalty or fine, as the case may be, is paid, or the thing may be sold under execution in satisfaction of the penalty or fine or the proceeds or the security or any part thereof may be applied in payment of the penalty or fine.

R.S., 1985, c. 20 (4th Supp.), s. 29; 1993, c. 34, s. 13(F); 1995, c. 40, s. 41.

ILLEGAL IMPORT

Notice for removal

30. (1) Where an inspector believes on reasonable grounds that an agricultural product is being or has been imported into Canada in contravention of this Act or the regulations, the inspector may, whether or not the product is seized, require the importer to remove it from Canada by delivering personally to the importer a notice for its removal or by sending the notice by registered mail to the importer's business address in Canada.

Forfeiture and disposal

(2) Where an agricultural product is not removed from Canada within the period specified for its removal in a notice delivered or sent under subsection (1) or, where no period is specified, within ninety days after the notice was delivered or sent to the importer, the agricultural product shall, notwithstanding section 27, be forfeited to Her Majesty in right of Canada and may be disposed of, at the expense of the importer, in accordance with the regulations, unless the Minister directs otherwise.

R.S., 1985, c. 20 (4th Supp.), s. 30; 1995, c. 40, s. 42(F).

FINANCIAL RESPONSIBILITY

Evidence of financial responsibility

31. The Minister may require any person or class of persons marketing agricultural products in import, export or interprovincial trade to provide evidence of financial responsibility in any form, including an insurance or indemnity bond, or a suretyship, that is satisfactory to the Minister.

R.S., 1985, c. 20 (4th Supp.), s. 31; 2001, c. 4, s. 63.

REGULATIONS

Regulations

32. The Governor in Council may make regulations for carrying out the purposes and provisions of this Act and prescribing anything that is to be prescribed under this Act and, without limiting the generality of the foregoing, may make regulations

(a) prescribing agricultural product legends and grade names and generally respecting agricultural product legends, grade names and other labels;

(b) for the licensing, registration or accreditation of any activity or operation to which this Act applies, including regulations

(i) prescribing the records to be kept in respect of any licensed, registered or accredited activity or operation,

(ii) governing the registration of establishments and the licensing of dealers and operators of establishments,

(iii) governing the renewal, cancellation and suspension of the registration of establishments and the licences of dealers and operators of establishments,

(iv) providing for the accreditation of operations involving inspection, analysis or grading, and

(v) requiring dealers or operators of establishments to post bonds or to provide suretyships, or to provide other security satisfactory to the Minister, as a guarantee that they will comply with the terms and conditions of any licence or registration issued to them and providing for the forfeiture of the bonds, suretyships or other security if they fail to comply with those terms and conditions;

(c) governing the design, construction, hygiene, sanitation and maintenance of registered establishments and of the equipment and facilities in them and governing

(i) the operation of registered establishments and the suspension of their operations, and

(ii) the procedures to be followed and the standards to be maintained in registered establishments for the preparation of agricultural products;

(d) providing for the inspection of establishments and the inspection, analysis, testing, grading and sampling of agricultural products;

(e) governing analyses related to pesticide residues and any other dangerous or potentially dangerous substance that is found on, in or near agricultural products;

(f) establishing grades and standards, including standards of wholesomeness, for agricultural products and establishing standards for containers;

(g) regulating or prohibiting the preparation of any agricultural product;

(h) providing for measures, including slaughter and destruction, to be taken respecting agricultural products or other things that

(i) are, or are suspected on reasonable grounds of being, injurious to health, or

(ii) do not meet, or are suspected on reasonable grounds of not meeting, the requirements of this Act and the regulations

and prohibiting any slaughter or destruction that is not in accordance with those measures;

(l) providing for systems to ascertain the places of origin or destination of agricultural products;

(j) establishing requirements governing the seizure and detention of things under this Act, providing for the safe-keeping and disposal of things seized, detained or forfeited under this Act and regulating the inspection of places and the stopping of vehicles;

(k) regulating or prohibiting the marketing of any agricultural product, other than a fresh or processed fruit or vegetable, in import, export or interprovincial trade and establishing terms and conditions governing that marketing;

(l) regulating or prohibiting the marketing of any fresh or processed fruit or vegetable in import, export or interprovincial trade, including regulations

(i) establishing the terms and conditions governing that marketing,

(ii) defining fresh or processed fruits or vegetables,

(iii) controlling the consignment selling of fresh fruits and vegetables,

(iv) permitting the Minister or a delegate of the Minister to exempt the marketing of any fresh or processed fruit or vegetable in import or interprovincial trade from any of the requirements of this Act or the regulations where the Minister or delegate considers that it is necessary to do so in order to alleviate a shortage in Canada of the fruit or vegetable or an equivalent fruit or vegetable, and

(v) permitting the Minister or a delegate of the Minister to exempt the marketing of any fresh or processed fruit or vegetable in export trade from any of the requirements of this Act or the regulations;

(m) prescribing agricultural products for the purposes of sections 9 to 12;

(n) for exempting any person, establishment, agricultural product, class of agricultural products, container or other thing from the application of any or all of the provisions of this Act or the regulations;

(o) providing for the collection of market information and statistics, the publication of studies dealing with the marketing of agricultural products and the conduct of surveys on any matter related to this Act or the regulations; and

(p) prescribing any fees or charges required for the administration of this Act or the regulations and the interest that shall accrue on unpaid fees or charges.

R.S., 1985, c. 20 (4th Supp.), s. 32; 2001, c. 4, s. 64(E).

OFFENCE AND PUNISHMENT

Indictable or summary conviction offences

33. (1) Every person who contravenes any provision of this Act or the regulations

(a) is guilty of an offence punishable on summary conviction and liable to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding six months, or to both; or

(b) is guilty of an indictable offence and liable to a fine not exceeding \$250,000 or to imprisonment for a term not exceeding two years, or to both.

Time limit

(2) Proceedings by way of summary conviction in respect of an offence under this Act may be instituted at any time within, but not later than, two years after the time when the Minister became aware of the subject-matter of the proceedings.

Minister's certificate

(3) A document purporting to have been issued by the Minister, certifying the day on which the Minister became aware of the subject-matter of any proceedings, shall be received in evidence and, in the absence of any evidence to the contrary, the document shall be considered as conclusive proof of that fact without proof of the signature or of the official character of the person appearing to have signed the document and without further proof.

R.S., 1985, c. 20 (4th Supp.), s. 33; 1995, c. 40, s. 43.

Ticket offences

34. (1) The Governor in Council may make regulations designating the contravention of any provision of this Act or the regulations as an offence with respect to which

(a) notwithstanding the provisions of the *Criminal Code*, an inspector may issue and serve a summons by completing a ticket in the prescribed form, signing it and delivering it to the accused; or

(b) the summons may be served by mailing it to the accused at the latest known address of the accused.

Failure to respond to ticket

(2) Where a person is served with a ticket and does not enter a plea within the prescribed time, a justice shall examine the ticket and

(a) if the ticket is complete and regular on its face, the justice shall enter a conviction in the person's absence and impose a fine of the prescribed amount; or

(b) if the ticket is not complete and regular on its face, the justice shall quash the proceedings.

Regulations

(3) The Governor in Council may make regulations for the purposes of applying this section, including regulations prescribing the amount of the fine for any offence and establishing a procedure for entering a plea of guilty and paying the fine.

Repeated offences

(4) The amount of the fine for an offence may be prescribed to be higher with respect to persons who are convicted of the offence for a second or further time.

Recovery of fines

35. Where a person is convicted of an offence under this Act and a fine imposed as punishment is not paid when required, the prosecutor may, by filing the conviction, enter as a judgment the amount of the fine and costs, if any, in the superior court of the province in which the trial was held, and the judgment is enforceable against the convicted person in the same manner as if it were a judgment obtained by Her Majesty in right of Canada against the person in that court in civil proceedings.

Officers, etc., of corporations

36. Where a corporation commits an offence under this Act, any officer, director or agent of the corporation who directed, authorized, assented to or acquiesced or participated in the commission of the offence is a party to and guilty of the offence and is liable on conviction to the punishment provided for the offence, whether or not the corporation has been prosecuted or convicted.

Offences by employees or agents

37. In any prosecution for an offence under this Act, it is sufficient proof of the offence to establish that it was committed by an employee or agent of the accused, whether or not the employee or agent is identified or has been prosecuted for the offence, unless the accused establishes that the offence was committed without the knowledge or consent of the accused and that the accused exercised all due diligence to prevent its commission.

Venue

38. A prosecution for an offence under this Act may be instituted, heard and determined

(a) in the place where the offence was committed or the subject-matter of the prosecution arose;

(b) where the accused was apprehended; or

(c) where the accused happens to be or is carrying on business.

Unpaid fees or charges

39. Where any fees or charges imposed under this Act or the regulations, or any interest thereon, are unpaid, they may be recovered from the person on whom they were imposed as a debt due to Her Majesty in right of Canada.

EVIDENCE

Admissibility of certain documents

40. (1) In any proceedings for a violation, or for an offence under this Act, a certificate or report of an analyst, inspector or grader, purporting to have been signed by the analyst, inspector or grader, and stating the results of the relevant analysis, inspection or grading, is admissible in evidence without proof of the signature or official character of the person appearing to have signed the certificate or report and, in the absence of evidence to the contrary, is proof of the matters asserted in the certificate or report.

Copies of documents

(2) In any proceedings for a violation, or for an offence under this Act, a copy of or an extract from any book, record or document made by an inspector under paragraph 21(1)(c) or (2)(b) or subsection 24(2) or (4) and appearing to have been certified under the inspector's signature as a true copy or extract is admissible in evidence without proof of the signature or official character of the person appearing to have signed the copy and extract and, in the absence of evidence to the contrary, has the same probative force as the original would have if it were proved in the ordinary way.

Notice

(3) No certificate, report, copy or extract referred to in this section shall be received in evidence unless the party intending to produce it has, before the trial, served on the party against whom it is intended to be produced reasonable notice of that intention together with a duplicate of the certificate, report, copy or extract.

Evidence of identification

41. In any proceedings for a violation, or for an offence under this Act, proof that an agricultural product or its container bore

(a) a name and address purporting to be that of the person who prepared it, or

(b) a registered number or registered brand mark purporting to be that of the establishment where it was prepared,

is proof, in the absence of evidence to the contrary, that the agricultural product was prepared by the person or at the establishment whose name, address, registered number or registered brand mark appeared on the agricultural product or container.

R.S., 1985, c. 20 (4th Supp.), s. 41; 1995, c. 40, s. 45.

REPEAL

42. [Repeal]

AMENDMENTS NOT IN FORCE

— **1991, c. 24, s. 51 (Sch. III, s. 2)**

2. Paragraph 32(*p*) is repealed and the following substituted therefor:

(*p*) prescribing any fees or charges required for the administration of this Act or the regulations.

— **1992, c. 47, s. 84 (Sch., s. 1)**

1. Section 34 is repealed.