

ELIGIBILITY TO ACQUIRE AND HOLD AN AGRICULTURAL LEASE OR PERMIT

I. Objective

To provide farmers with the eligibility criteria to acquire or hold agricultural Crown lands (ACL) under lease or permit.

This policy replaces Policy 201-1: Eligibility to Acquire and/or Hold Crown Land Under Agricultural Lease or Permit, Directive 201-2: Corporations, Policy 211-1: Subletting, Sale of Hay and Temporary Modification of Use on Leased Crown Lands, and Policy 211-2: Livestock Leasing.

II. Authority

The Crown Lands Act

The Agricultural Crown Lands Leases and Permits Regulation

III. Description

Eligibility is required to be established to obtain a lease or permit via public auction, application, or transfer. In addition, eligibility must be maintained to hold an agricultural lease or permit on ACL, or to make changes, to renew, or to transfer an agricultural lease or permit.

These eligibility requirements are also applicable to any lands under management agreement with Manitoba Agriculture's Agricultural Crown Lands Program.

IV. Background

The regulation stipulates eligibility conditions to acquire a lease or permit, as follows:

Individuals must:

- be at least 18 years of age
- be a Canadian citizen or permanent resident of Canada within the meaning of the Immigration and Refugee Protection Act (Canada)

Partnerships and *forage cooperatives* must be comprised of partners or members who meet individual eligibility requirements.

A *corporation* must be comprised of shareholders who meet individual eligibility requirements, and the corporation must be legally authorized to conduct business in Manitoba.

An *organization* (band, Hutterite colony or similar organization) can hold a communal lease or permit on behalf of their communities, with the use of a member who meets the eligibility requirements, who acts as the authorized representative.

Once a lease or permit is in place, there are additional eligibility requirements (duties) stipulated in the regulation to hold a lease or permit, as follows:

- Compliance with the regulation and all conditions of the lease or permit, and provision of information to demonstrate compliance, upon request.
- ACL is used for the intended purpose, and is managed to support the long-term productivity and sustainability of the land.
- The holder maintains the lawful right to physical access of the lands.

- The holder (or authorized member of a band or Hutterite colony or similar organization) must be actively involved in the cropping, grazing or haying of the lands.

V. Establishment of Eligibility

Declaration by applicant

Prior to participating in an auction, submitting an application, conducting a renewal, or completing a transfer, the applicant must declare that they meet the eligibility requirements.

In instances of partnerships, forage cooperatives, corporations, or organizations (band or Hutterite colony or similar), a single individual with signing authority may declare that the business entity meets the eligibility requirements.

Substantiation by lease or permit holder

A lease or permit holder may be requested to substantiate that they meet eligibility requirements. This may be required at time of lease or permit allocation, as changes to membership or authorized members occurs, or at any time during the term of a lease or permit.

If not available at the time of auction or application, within five business days the following must substantiate that the signatory on the lease or permit agreement has the authority to enter into the agreement on behalf of the business entity through the provision of:

- For partnerships, business registration documentation, a list of current partners, and identification of partners with signing authority (if available). If partnership is unregistered, a declaration of partnership may be substituted.
- For forage cooperatives, business registration documentation, a list of current members, and identification of members with signing authority.
- For corporations, letters of incorporation, a list of the current board of directors, proof of authority to conduct business in the province of Manitoba, and identification of individuals with signing authority.
- For first nation bands, a declaration of chief and members of council, identification of individuals with signing authority, as well as identification of the authorized member who will be responsible for cropping/haying/grazing of the Crown land.
- For a Hutterite colony, a declaration of minister and members of the advisory board (or council), identification of individuals with signing authority, as well as identification of the authorized member who will be responsible for cropping/haying/grazing of the Crown land.

Please note all owners and operators of premises with livestock and poultry must complete a premises identification application. Confirmation of premises identification may be requested at application, auction, or at any time during the term of the lease or permit.

The holder may be requested to substantiate that they are performing the obligated duties to maintain the lease or permit, including but not limited to provision of information regarding:

- The number and species of animal units grazed and maintained on the leased lands, including grazing days on the leased lands.
- The number of tonnes of hay cut on the leased lands.
- The acreage cultivated on the leased lands including the kinds of annual crops, if any, grown on the cultivated area.

Demonstration

A lease or permit holder may be requested to demonstrate appropriate management and utilization of the Crown land for sustainable agricultural production. This may include, but is not limited to:

- inspection of the Crown land to assess utilization by departmental employees
- inspection of the leaseholder's documentation related to lease or permit management
- inspection of forage (e.g., for evidence of overgrazing or brush encroachment) and livestock present on an ACL forage lease or permit
- inspection of crops present on an ACL cropping lease

Fraud

Provision of inaccurate information in the application process, or at any point in the establishment or demonstration of eligibility, is considered fraud. In addition to any law or penalty that may apply, there may be additional penalties applied in relation to the ACL program, including cancellation of existing leases or permits, and prevention from participating in an allocation process for up to five years.

Cancellations or other penalties applied in relation to fraud are not appealable.

VI. Additional Eligibility conditions

- A. Declaration of employment by provincial departments of Agriculture or Finance
The Crown Lands Act obligates individuals to declare if they hold an office under The Crown Lands Act, or are an employee, or a family member of a current employee of these departments. If this is the case, additional approvals must be obtained prior to finalizing the lease agreement.
- B. Must be in good standing with the Agricultural Crown Land Program
The applicant must be in good standing with the Agricultural Crown Land Program in order to participate in the allocation process and obtain a new lease or permit, or to be eligible for renewal of a lease or permit. The following conditions must be met:
1. Accounts must be paid in full with no financial arrears.
 2. No cancellation(s) of an agricultural lease or permit within the last two calendar years.
 3. No notices of cancellation issued within the last two calendar years.
 4. No instances of fraud in any application process in the last five calendar years.

In the case of Partnerships, Cooperatives, Corporations, Indigenous or Religious Communities:

- A *partnership* is considered to be a business relationship, and not a legal entity. As such, compliance issues associated with any individual may impact on the eligibility of a partnership of which the individual is a part, and vice versa.
- A lease held by a *band* (First Nations), *Hutterite colony* or similar organization has an authorized member, which enables the community to be eligible to hold a lease. As such, compliance issues associated with the authorized member may impact on the eligibility of the community which the individual represents, and vice versa.
- A *forage cooperative* or a *corporation* is considered to be a separate legal entity. As such, compliance issues associated with any individual does not impact on the eligibility of a forage cooperative or corporation of which the individual is a part. However, if an individual is ineligible to participate in an allocation process, it

renders the forage cooperative or corporation of which the individual is a part ineligible to participate in an allocation process.

C. Must not be bankrupt or insolvent, and must not have taken the benefit of any law pertaining to bankrupt or insolvent debtors.

VII. Exceptions

Accommodations Relating to Active Involvement

Upon written request of a lease or permit holder, there may be up to a three-year grace period, within which a lease or permit holder may not be actively involved in the haying, grazing or cropping on the ACL lease or permit. This negotiated time period can be used to enable a farmer to establish or expand their operation, enable improvements to the land to begin or improve use (e.g., fencing, water development, etc.), or facilitate accommodation under extenuating circumstances (e.g., illness). This is in place as a temporary accommodation measure only, and is not intended to afford any financial benefit to the lease or permit holder.

VIII. Transitional measures

The obligation to be in good standing with the ACL program includes the condition that the applicant has not been issued a notice of cancellation within the last two calendar years (refer to VI. B. 3). As the program currently operates with significant late payments and issues notices of cancellation on a regular basis, it is intended that this condition not apply until two calendar years after implementation of the amended regulation (i.e., effective September, 2021), whereby payments are obligated prior to the season of use to enable existing clients (as potential applicants) to redeem their eligibility as per the new requirements.

IX. Compliance and Enforcement

If a lease or permit holder is found to be non-compliant in respect of eligibility, the lease or permit is subject to cancellation.

However, in some instances, the lease or permit holder may request permission to extend a grace period, within which the lease or permit holder can re-establish eligibility. These considerations are discretionary, and may only be applied where:

- The noncompliance is not a result of fraud.
- The noncompliance is not part of a pattern for the lease or permit holder.
- The noncompliance does not introduce risk to ACL or the general public.

EFFECTIVE 01 OCTOBER 2019 UNTIL RESCINDED OR AMENDED

Original signed by

HONOURABLE RALPH EICHLER
MINISTER OF AGRICULTURE