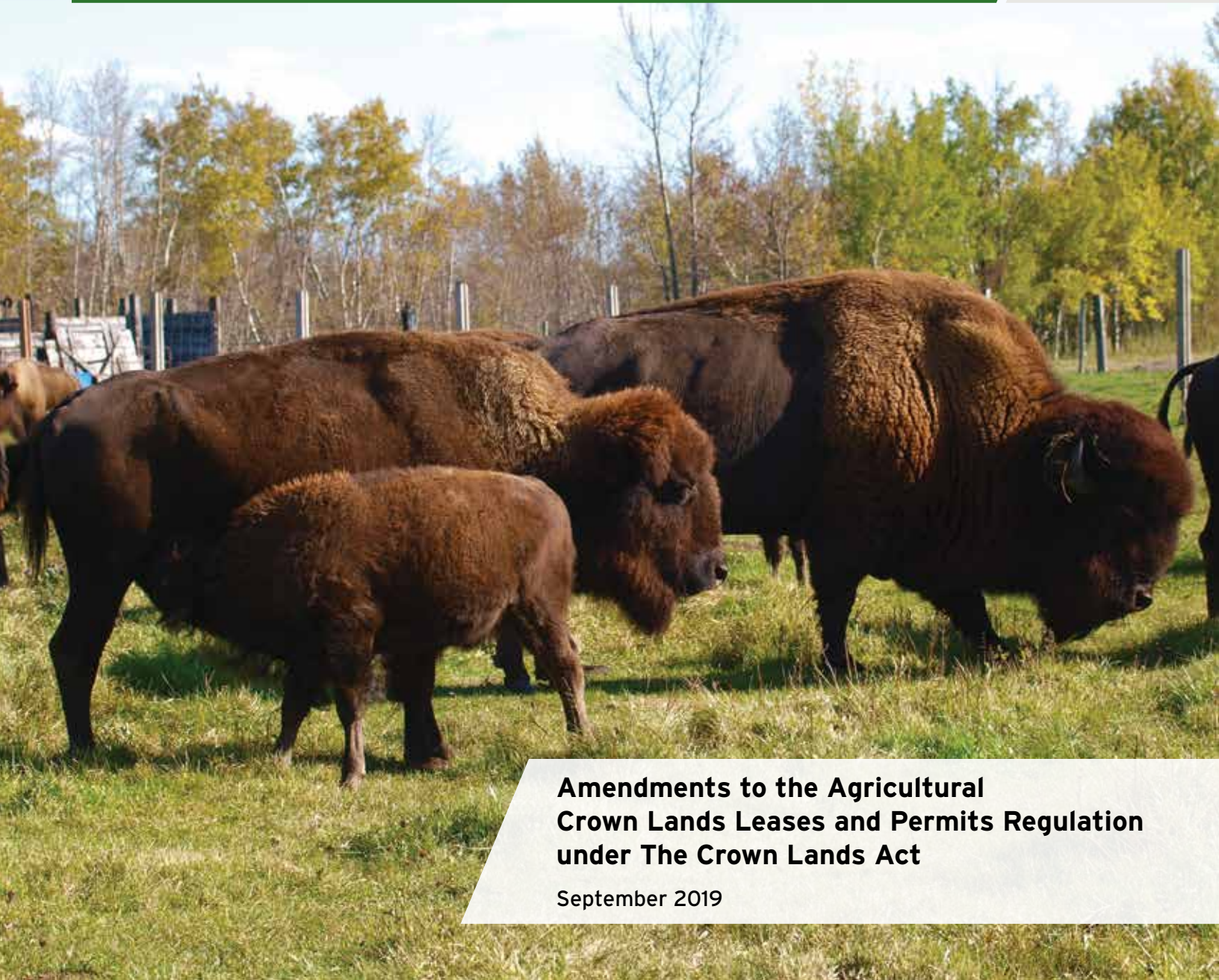

Modernizing the Agricultural Crown Lands Leasing Program in Manitoba



**Amendments to the Agricultural
Crown Lands Leases and Permits Regulation
under The Crown Lands Act**

September 2019

Minister's Message



Dear Manitobans,

I am pleased to introduce the modernization of the agricultural Crown lands leasing program and amendments to the Agricultural Crown Lands Leases and Permits Regulation (in force October 1, 2019), a regulation under The Crown Lands Act. The regulation is enabled by The Crown Lands Amendment Act (Improved Management of Community Pastures and Agricultural Crown Lands), which received royal assent on November 8, 2018, and was proclaimed with the regulatory amendment. The regulation updates the agricultural Crown lands program by:

- utilizing public auctions to allocate these leases in a fair and transparent manner
- streamlining the application process, while focusing the program on ensuring that the land is being used in a productive and sustainable manner
- striking a balance between existing and potential new users
- using a market-based formula to determine the rents for these lands

We look forward to working with stakeholders as we begin to implement changes to modernize the agricultural Crown lands leasing program.

Sincerely,

Original signed by

Ralph Eichler
Minister of Manitoba Agriculture

INTRODUCTION

The Agricultural Crown Lands Program

Provincial Crown lands are lands that are vested with the provincial government of Manitoba. The Manitoba government uses a careful planning process to determine how parcels of Crown land may be used. Based on this planning process, land is identified that is suitable for agricultural uses – this land is designated as agricultural Crown land (ACL). This land is classified into lands suitable for grazing, haying or annual cropping, depending on the capability of the land.

ACL are used by approximately 1,750 forage leaseholders, primarily for grazing. The land administered by this program is sufficient to feed nearly 90,000 cattle for the grazing season.

ACL is also used for cropping by approximately 60 cropping leaseholders. Cropping leases comprise a minor part of the ACL program, and are less impacted by the changes. Thus, this summary document focusses primarily on forage dispositions.

The ACL Program supports the sustainable expansion of the livestock herd in Manitoba, contributes to ecological goods and services, and provides mitigation and adaptation to climate change. These leases and permits are available to farmers and ranchers, to provide an additional land base on which to conduct agricultural activities.

Proclamation of Amendments to The Crown Lands Act

In November 2018, the Manitoba government passed The Crown Lands Amendment Act (Improved Management of Community Pastures and Agricultural Crown Lands), which allows for public auctions of these leases.

The amendments to The Crown Lands Act, other than those dealing with community pastures, came into force at the same time as the updates to the regulation.

Agricultural Crown Lands in Manitoba

- Forage Lands: 1,450,000 acres
- 602,000 animal unit months of forage
- Cropping Lands: 11,000 acres

There are additional provincial Crown lands used for agricultural purposes in Manitoba as community pastures, covering 411,000 acres with an estimated forage capacity of 204,600 animal unit months.

The New Approach

The updated regulation will:

- Implement a system of allocating ACL leases by way of a public auction. Through consultation with stakeholders, it has been determined that this is the best way of achieving a fair and transparent system.
- Place the emphasis on ensuring that ACL are effectively used in a sustainable manner that contributes to economic growth in Manitoba.
- Ensure that a relevant rent is set for the private use of a public asset. The rent for forage leases will be based on the price of beef cattle, which is relevant for the significant majority of forage ACL leases. The rent for cropping leases will remain based on assessed land values.

- Introduce new fees for administrative aspects of the ACL program that afford solely private benefit, including allocations and transfers. The fees are nominal in nature to address partial cost recovery without introduction of barriers to participation.

With the primary use of ACL being for forage, Manitoba Agriculture seeks to increase the utilization of the lands to support growth of the livestock industry in Manitoba in a sustainable manner, by using market forces to encourage efficient and innovative use of ACL.

Note: Throughout this document, referral to forage leases includes renewable hay and grazing permits, as it is intended they will be treated the same way.

Expected Outcomes

The updated regulation is part of the modernization of the ACL leasing program, and will:

- Facilitate interprovincial trade, and comply with the principles of the New West Partnership Trade Agreement and the Canadian Free Trade Agreement.
- Increase transparency and accountability of ACL Program administration for the management of ACL as a public asset.
- Contribute to Red Tape Reduction, by ensuring the ACL Program is administered in an efficient, effective manner.
- Contribute to provincial economic growth by helping to expand the livestock industry.
- Ensure appropriate use of Crown lands to optimize agricultural potential, while maintaining landscape stewardship.
- Recognize innovation in agriculture at all levels, including hay and rangeland management practices.
- Ensure trade resiliency from the use of a fair market-based rental rate.

Issues and Opportunities

While cropping leases have long been awarded based on a public tender system, ACL leases and permits for forage (haying and grazing) have been issued according to a complicated points-based system. This system had a number of problems.

ISSUES	OPPORTUNITIES FOR IMPROVEMENT
<p>Burdensome application process. The six page application form could take hours to complete.</p> <p>Many appeals. Incomplete or inaccurate information could skew the scoring and allocation results. The way that points were awarded and scored was not transparent.</p>	<p>A public auction streamlines and simplifies the application process, leads to more transparency and fewer appeals, and is a fair and market-driven method of allocating leases.</p>
<p>Inefficient, ineffective and non-transparent method of calculating rental rates.</p>	<p>Rental rates are linked to publicly available livestock market prices.</p>
<p>Ageism in term length. Leases were issued until an applicant turned 65 (up to 47 years long), and could be expected to retire.</p> <p>Out of date lease terms and conditions due to very long lease length. (There are ACL leases that do not expire until 2062.)</p> <p>Limited opportunities for farmers to use ACL for establishment and expansion.</p>	<p>Term length of leases and permits are structured to be long enough to allow for return on investments made, while providing other farmers, including new farmers, a future opportunity to acquire the lease at auction.</p>

Finding the Correct Balance

Through engagement with stakeholders, there was little required to address the administration of cropping leases. However, for forage leases and permits, it was evident that there were disparate views on the desired future state of the ACL program.

- Existing clients have expressed concerns about potential changes to the ACL program, as often these lands have been handed down through the generations, and have become part of a family's livestock operation.
- However, prospective clients are eager for change in the ACL program, to allow them the ability to acquire rights to lease publicly-owned lands to either establish or expand their livestock operations.
- Members of the general public want to ensure that the lands are being managed in a sustainable manner, and ensure relevant rent is captured from the private use of a public asset.

Summary of Regulation Amendments

	PREVIOUS SYSTEM	AMENDED SYSTEM
Allocation of leases	<p>Cropping leases were allocated via public tender.</p> <p>Forage leases were allocated via a points-based system.</p>	Leases are allocated by a public auction .
Term lengths of leases	<p>The regulation specified a maximum term of 50 years.</p> <p>Cropping leases were issued for five-year terms.</p> <p>Forage leases were issued until the leaseholder turned 65 years of age (up to 47 years from age 18-65). Renewals were possible.</p>	<p>The regulation specifies a maximum term of 15 years.</p> <p>Cropping leases will remain as five-year terms.</p> <p>Forage leases will be issued for finite 15-year terms.</p>
Updates to eligibility criteria	<p>Lease agreements dictated a 4800 AUM limit for holding ACL forage leases.</p> <p>Requirement for individuals to be actively involved in the management of the lands.</p>	<p>There is no limit in place for holding ACL forage leases.</p> <p>Requirement for individuals to be actively involved in the haying, grazing or cropping of the land.</p> <p>Bands, Hutterite colonies, and similar organizations are eligible for a communally held lease.</p>
Rental rates	<p>Cropping leases: rent was set via public tender, with a minimum bid based on assessed land value.</p> <p>Forage leases: rent was set by a triennial survey of private rents (frozen since 2013).</p>	<p>Cropping leases: rent is set via public auction, with a minimum bid based on assessed land value.</p> <p>Forage leases: rent is set using a market based formula.</p>
Transfers of leases	<p>Cropping leases were only for the remaining term of the lease with a unit or family transfer.</p> <p>Forage leases were issued a new lease (up to 50 years) with a unit or family transfer.</p>	Leaseholders can transfer the remaining term of lease to another eligible family member.

NUMBER ONE

The Auction System

ACL leases and permits will be allocated by a public auction. Minimum bids will be established and advertised prior to the auction. While cropping leases have long used a public tender system to allocate those leases, forage leases were allocated using a complicated points-based system. A public auction streamlines and simplifies the application process, leads to more transparency and fewer appeals, and is a fair and market-driven method of allocating leases.

Forage Leases and Renewable Permits

The auction will determine who has the right to acquire the forage lease or permit. The minimum bid is established as a \$200 administrative reserve. Any value, including or above the administrative reserve, will be a one-time fee tied to the acquisition of the lease and not contribute to the rent (rent is set by formula) for the lease or permit.

Cropping Leases

The auction will determine the rent for cropping leases. The minimum bid is established using a \$200 administrative reserve, and a minimum rent of two percent of assessed land value for the cultivated acres. Any value including or above the minimum rent will set the annual rental amount for each year of the lease.

Auction Process

The intention is that there will be in-person auctions held across the province, in the areas where the land being auctioned is located. The primary auction would occur in the fall in the year prior to intended use. If any lands remain unallocated, or if additional lands become available, there could be a secondary auction in the spring. The auction process is as follows:

1. Bidders will register prior to the start of the auction. Proxy bidders may be required to register ahead of the auction date.
2. The auction will open with a question and answer period, so that everyone at the auction can learn together.
3. Lease auctioning will begin. The auctioneer will list the tracts in a pre-determined legal land description order.
4. The highest bid will secure the allocation of the ACL lease.
5. Once the auction has been completed, successful bidders will review and sign a settlement sheet, and make payment for the winning auction bid (includes rent for cropping leases), the first year's rent and taxes, and any other fees that may be known for the parcel of land. Settlement will occur in the order of bidder registration numbers.



NUMBER TWO

Lease Terms

- The maximum length of a forage lease is reduced from 50 years to **15 years**.
- The term length of cropping leases will remain at five years.
- Forage (hay and grazing) renewable permit terms remain at one year, but will be aligned with forage lease terms through enabling renewals for a maximum duration of 15 years.

A 15-year maximum for forage leases was chosen to strike a fair balance between having a lease that is long enough that leaseholders can obtain a return on investments made into the land, such as building or repairing fence lines; and short enough that other interested farmers and ranchers can have a future opportunity to acquire use of this public asset.

How does this impact current leaseholders?

- Existing leaseholders will hold their lease until the end of their lease term.
- Existing leaseholders can transfer the remaining term of their lease.
- To provide an opportunity for current leaseholders to adjust, existing leaseholders can extend their lease term up to December 31, 2034 (15 years after the regulation comes into force).
- Eventually, all agricultural Crown land leases will cycle through an auction every 15 years.



NUMBER THREE

Eligibility

Eligibility parameters at the time of application or participation in an auction have been simplified, obligating an individual to be an adult Canadian citizen or permanent resident of Canada (as per the Immigration and Refugee Protection Act (Canada)).

No limitation on area to be held under forage lease

Previously, forage leases included a limitation on area of 4,800 AUM per leaseholder. In recognition that farm sizes are increasing and that in some specific regions it can be restrictive to growth, the limitation is removed.

Communal leases are enabled

Provisions are added to allow for a band (as per the Indian Act (Canada)), Hutterite colony or similar types of organizations to be eligible for leases. The use of an authorized member of the organization ensures ongoing eligibility parameters are maintained.

In order to continue to hold a lease, these eligibility parameters must be maintained throughout the lease term:

Active involvement in **cultivating crops, grazing livestock, or haying**

The previous wording required a person be “a farmer or rancher who is actively involved in the management of the leased or permitted lands.” The wording is changed to ensure that the person who holds a lease is the farmer who is cutting hay, cultivating crops or grazing livestock.

Agricultural use of the ACL in a manner that supports long term **productivity and sustainability** is obligated

The leaseholder is obligated to use the ACL for the intended agricultural purposes for the full term of the lease, ensuring appropriate use under agro-climatic conditions.

Accommodation for **new or beginning farmers**

The director of the program will have the ability to make an exception for a new farmer who needs time to be able to fully utilize the land.

Onus of proof is placed on the leaseholder

The leaseholder is obligated to provide requested information to demonstrate compliance with the terms and conditions of the lease.

NUMBER FOUR

Rental Rates

Forage Leases and Permits

The formula for determining forage rent will be replaced with the following formula:

$$\text{Rent} = \text{Beef Price} \times 3.5\% \text{ Rate of Return} \times \text{Forage Capacity}$$

In this formula,

- *Average Beef Price* is the average sale price per hundredweight for the previous 36 months, ending September 30 for 500-600 pound heifers and steers in the province, as published by Canfax, an operating division of the Canadian Cattleman's Association.
- *Rate of Return* is the percentage assigned by Manitoba Agriculture to capture a relevant rent to the province in recognition of public access, tax burden, environmental and land stewardship factors, and improvement costs. The rate of return is set at 3.5 per cent, and will be re-evaluated in regular intervals to ensure ongoing relevance.
- *Forage Capacity* is the number of Animal Unit Months (AUMs) that the land is capable of producing in an average year, as determined by Manitoba Agriculture.

Cropping Leases

Rental rates for cropping leases will be set by an auction instead of a tender. The minimum bid on cropping leases will be reduced from three percent of the assessed value of the land, to two percent, to take into account recent increases in land prices.

Impacts on existing leaseholders (forage leases):

- In 2019, the rental rate has remained at \$2.13 per AUM.
- In 2020, the rental rate will be the average of the 2019 rate and the amount described in the formula.
- In 2021 and thereafter, the rent will be determined using the formula.

What is an AUM?

The amount of forage required by one animal unit (AU) for one month is called an Animal Unit Month (AUM). One AU is defined as a 1,000 lb. (450 kg) beef cow, with or without a nursing calf, with a daily requirement of 26 lbs. (11.8 kg) of dry matter forage. Therefore, one AUM is equal to 780 lbs. (355 kg) of dry matter forage (30 days X daily forage requirement). The average cow in Manitoba is 1,350 lbs or 1.35 AUMs. For more information on AUMs, visit www.gov.mb.ca.

NUMBER FIVE

Transfers (Unit and Family)

Forage Leases and Permits

Family Transfers: The ability to transfer a lease to a family member is continuing for both existing and new leases. Previously, when a family transfer occurred, a new lease was issued with a new term. Going forward, only the remaining term on an ACL forage lease will be transferred to an eligible family member.

Unit Transfers: These are transfers of an ACL lease to a non-family member, generally as part of a farm sale and have been known as unit transfers.

- Existing leases issued prior to the regulation being amended will be able to transfer the remaining term of a lease through a unit transfer.

- Going forward, new leases will not be eligible to transfer the lease to a non-family member.

Cropping Leases

Previously, cropping leases were available for the remainder of the lease term, for both unit and family transfers. Going forward, the remaining term of an ACL cropping lease can be transferred to an eligible family member.

NUMBER SIX

Updates to the Payment Process and Fees

Payment process changes: Previously, the invoicing for ACL leases was not sent until January of a given year. Lease agreements stipulate that the rent must be paid in advance of January 1 prior to the year of use. This inconsistency introduced inefficiencies in payment timing and caused the breach of lease agreements on a regular basis.

To ensure this is no longer an issue, payment for the first year of a lease will be due at the time of the auction. In subsequent years, a lease may be cancelled

if payment is not made within 30 days of the invoice being provided. The plan is for invoices to be provided in November or December of each year, such that payments can be made prior to the season of use.

Fee changes and minimum bids: A \$200 administrative fee will contribute to the reserve bid at auction for both cropping and forage leases, and be applied to applications to transfer any agricultural leases and permits, to partly cover the cost of issuing the lease or permit.

NUMBER SEVEN

Enforcement of the Regulations

Manitoba's ACL are important for Manitoba's economy and environment. It is important to ensure that they are used in a sustainable way. Because there are more farmers who would like to lease this land than land that can be leased, it is important to ensure that those with an ACL lease are using the land for the intended agricultural purpose. Leaseholders are required to make reasonable efforts to use their lease in a sustainable manner. Where a leaseholder is not using their lease, or is not using it sustainably, the lease can be cancelled.

Potential bidders are required to declare that they meet eligibility criteria prior to bidding at auction. The regulation states that the onus is on the leaseholder to demonstrate eligibility, if requested by the director.

Should a leaseholder be found non-compliant, the director may cancel the lease, unless the leaseholder can correct the issue within a reasonable amount of time.

In addition to offence provisions in The Crown Lands Act, if a person provides false information, is found to be ineligible to hold a lease or permit, or has not made payment, the director may prohibit them from obtaining a lease or permit for up to five years.

It is anticipated that Agricultural Crown Lands staff will be spending less time administering leases and permits with an auction system, as well as participating in fewer appeals, which in turn will afford more resources towards promoting compliance and conducting enforcement.

Getting Informed

For 2020 allocations, it is planned that the first auctions will occur in November 2019. We look forward to seeing you at the auctions for ACL leases and permits this fall.

As this is our implementation year for using an allocation via auction process, we want to ensure that you understand how it will work. Please review

the Frequently Asked Questions and the policy documents posted on the Manitoba Agriculture website. If you still have questions about the process, please feel free to contact your **Agricultural Crown Lands Farm Production Extension Specialist** or our main office, ahead of the auction dates, to ensure that you are prepared for an allocation via auction.

Contact us

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