

## **CHAPTER 4.1-13 WHEAT COMMISSION**

### **4.1-13-01. Definitions.**

As used in this chapter:

1. "Commercial channels" means the sale of wheat by a producer to any person who resells wheat or any product produced from wheat.
2. "Commission" means the North Dakota state wheat commission.
3. "Final settlement" means:
  - a. The date that wheat upon which a loan was obtained is:
    - (1) Sold to a person other than a governmental entity; or
    - (2) Assigned or transferred to a United States government agency; or
  - b. The date upon which payment for the wheat is actually made if the wheat is sold in accordance with the terms of a deferred payment contract.
4. "First purchaser" means any person buying, accepting for sale, or otherwise acquiring, after harvest, the property in or to wheat, from the producer. The term includes a mortgagee, pledgee, lienor, or other person having a claim against the producer if the actual or constructive possession of wheat is taken as partial payment or in satisfaction of a mortgage, pledge, lien, or claim.
5. "Producer" means any person that:
  - a. Plants or causes to be planted a wheat crop in which the person has an ownership interest, with the intent that upon maturity the crop will be harvested;
  - b. Will have met the requirements of subdivision a during the next available growing season; or
  - c. Has met the requirements of subdivision a during the immediately preceding growing season.
6. "Sale" includes any pledge or mortgage of wheat, after harvest, to any person.
7. "Wheat" includes all classes of wheat.

### **4.1-13-02. Wheat districts - Establishment.**

The state consists of the following six wheat districts:

1. Adams, Billings, Bowman, Dunn, Golden Valley, Grant, Hettinger, Mercer, Morton, Oliver, Sioux, Slope, and Stark Counties;
2. Burke, Divide, McKenzie, Mountrail, Renville, Ward, and Williams Counties;
3. Burleigh, Eddy, Emmons, Foster, Kidder, Logan, McIntosh, McLean, Sheridan, Stutsman, and Wells Counties;
4. Benson, Bottineau, McHenry, Pierce, Ramsey, Rolette, and Towner Counties;
5. Barnes, Cass, Dickey, Griggs, LaMoure, Ransom, Richland, Sargent, Steele, and Traill Counties; and
6. Cavalier, Grand Forks, Nelson, Pembina, and Walsh Counties.

### **4.1-13-03. Wheat commission - Membership - Eligibility.**

1. The wheat commission consists of:
  - a. One individual elected from each of the six districts established in section 4.1-13-02; and
  - b. One individual appointed to represent the state at large.
2. Each elected member of the wheat commission must be a resident of the district that the member represents, a qualified elector, and a producer.
3. The member at large must be a resident of this state, a qualified elector, and a producer.
4. Any individual who requested a refund under section 4.1-13-18 during the twelve months preceding the date on which the term being sought would begin is not eligible to serve as a member of the commission.

#### **4.1-13-04. Terms of office.**

1. The term of each commission member is four years.
2. The term of an elected member begins on July first following the date of the member's election and continues until the member's successor has been elected and qualified. The term of the member at large begins on July first of the year in which the member is appointed and continues until the member's successor has been appointed.
3. The terms must be staggered so that no more than two expire each year.
4. An individual may not serve more than three terms as a commission member.
5. If an individual is appointed to complete a vacancy, that service is not counted as a term for purposes of this section unless the duration of that service exceeds one year.

#### **4.1-13-05. Election of county representative.**

1. No later than May first of the year in which the term of an elected commission member is to expire, the extension agent for each county in that member's district shall hold a meeting of producers for the purpose of electing a county representative.
2. The commission shall publish notice of the meeting in the official newspaper of the county for two consecutive weeks. The last notice must be published no fewer than five nor more than ten days before the meeting.
3. The meeting must be held within the county.
4. During the meeting, the county extension agent shall conduct the election.
5. Any participating producer who resides in the county may vote in the election.
6. The county extension agent shall canvass the votes, notify the director of the North Dakota state university extension service and the commission that the election has taken place, and provide to the director and the commission the name and address of the newly elected county representative.
7. Only those individuals who would be qualified to serve as elected commission members may be elected as county representatives after July 31, 2009.
8. If an individual is unable or unwilling to continue serving as a county representative, the county extension agent may appoint another qualified producer to serve in that capacity, until the next county representative is elected in accordance with this section.

#### **4.1-13-06. Election of district representative - Commission member.**

1. Upon receiving the notice required by subsection 6 of section 4.1-13-05, the director of the North Dakota state university extension service shall call a meeting of all county representatives in the district represented by the member whose term is to expire.
2. The director shall notify each county representative in the district of the meeting, by registered mail, at least five days before the meeting.
3. The meeting must be held within the district.
4. At the meeting, the county representatives shall elect one from among themselves to serve as the commission member from that district.
5. The director shall notify the governor and the commission that the election has taken place and shall provide to the governor and the commission the name and address of the newly elected commission member.

#### **4.1-13-07. County representative - Additional duties - Reimbursement of expenses.**

In addition to any other duties established in section 4.1-13-06, the commission may require county representatives to attend meetings for the purpose of promoting commission programs and to perform other duties as directed by the commission. The commission shall reimburse the expenses of county representatives who perform such additional duties in the same manner as that provided by law for state officials.

#### **4.1-13-08. Election costs - Responsibility.**

All costs of holding county and district meetings and elections are the responsibility of the commission.

#### **4.1-13-09. Member at large - Nominating commission - Appointment by governor.**

1. No sooner than sixty days before the term of the commission's member at large is to expire, the agriculture commissioner, serving as the chairman, shall convene a nominating committee consisting of the following individuals:
  - a. The agriculture commissioner;
  - b. The director of the North Dakota agricultural experiment station;
  - c. The president of the North Dakota crop improvement association;
  - d. The president of the North Dakota farm bureau;
  - e. The president of the North Dakota farmers union;
  - f. The president of the North Dakota grain dealers association;
  - g. The president of the North Dakota grain growers association;
  - h. The director of the North Dakota state university extension service; and
  - i. A resident of this state who is a member of, and selected by, the United States durum growers association.
2. The committee shall submit to the governor the names of three individuals who are qualified to serve as a member at large.
3. Before the member's term is to expire, the governor shall appoint one of the three individuals to serve as the member at large.
4. Any member of the nominating committee may appoint a designee to carry out the requirements of this section.

#### **4.1-13-10. Commission vacancies.**

1. The commission shall declare a member to be ineligible and the member's position vacant if the commission determines that the member no longer meets the qualifications set forth in section 4.1-13-03.
2. The commission may declare a member to be ineligible and the member's position vacant if the commission determines that the member has failed to attend two consecutive commission meetings.
3. If an elected commission member is declared by the commission to be ineligible or is otherwise unable to continue serving for the duration of the term to which the member was elected, the commission shall direct the county representatives to hold an election for the purpose of filling the vacancy. The election must be conducted in the same manner as that provided for under section 4.1-13-06.
4. If the commission member serving at large is declared by the commission to be ineligible or is otherwise unable to continue serving for the duration of the term to which the member was appointed, the commission shall direct the nominating committee to submit the names of three eligible individuals to the governor for the purpose of filling the vacancy. The appointment must be conducted in the same manner as that provided for under section 4.1-13-09.

#### **4.1-13-11. Election of chairman - Meetings.**

1. Annually, the commission shall elect one member to serve as the chairman and another to serve as the vice chairman.
2. The chairman shall call all meetings of the commission and shall call a special meeting of the commission within seven days when petitioned to do so by three commission members.
3. The commission shall meet at least once every calendar quarter.

#### **4.1-13-12. Commission members - Compensation.**

Each member of the commission is entitled to receive compensation in the amount established by the commission, but not exceeding one hundred thirty-five dollars per day plus reimbursement for expenses as provided by law for state officers if the member is attending meetings or performing duties directed by the commission.

#### **4.1-13-13. Commission - Powers.**

1. The commission may:
  - a. Expend moneys collected pursuant to this chapter for its administration;
  - b. Employ, bond, and compensate necessary personnel;
  - c. Accept gifts, grants, and donations of money, property, and services to carry out this chapter;
  - d. Contract with any person for any purpose permitted under this chapter;
  - e. Sue and be sued; and
  - f. Do all things necessary and proper to enforce and administer this chapter.
2. The commission may not engage in a commercial business enterprise.

#### **4.1-13-14. Commission - Duties.**

1. The commission shall determine the uses for which any moneys raised under this chapter may be expended. The uses may include the funding of research, education programs, and market development efforts, as well as participation in efforts under the auspices of other state, regional, national, and international organizations.
2. The commission shall develop and disseminate information regarding the purpose of the wheat assessment and ways in which the assessment benefits wheat producers.

#### **4.1-13-15. Assessment.**

An assessment at the rate of fifteen mills per bushel [35.24 liters] by weight is imposed upon:

1. All wheat grown in this state, at the time of its sale;
2. All wheat delivered into this state, at the time of its sale; and
3. All wheat sold through commercial channels to a first purchaser in this state.

#### **4.1-13-16. Collection of assessment - Records.**

1. The first purchaser shall collect the assessment from the seller by deducting the assessment from the total price of the wheat being purchased. If the wheat is subject to a lien, pledge, or mortgage, the assessment must:
  - a. Be deducted from the proceeds of the loan; or
  - b. The claim must be secured and must be subject to adjustment at the time of settlement if the number of bushels [liters] is not accurately determined at the time of the lien, pledge, or mortgage.
2. At the time of the sale, the first purchaser shall provide a record of the transaction to the seller in the manner prescribed by the commission.

#### **4.1-13-17. Submission of assessments.**

No later than thirty days after the conclusion of each calendar quarter, each first purchaser shall:

1. Complete and file with the commission a form prescribed by the commission; and
2. Forward to the commission all assessments collected by the first purchaser.

#### **4.1-13-18. Refund of assessment - Form - Exception.**

1.
  - a. To receive a refund of any assessment paid in accordance with this chapter, a producer shall submit to the commission a written request for a refund application within sixty days after the date of the assessment or final settlement.
  - b. The producer shall complete the refund application and return the application to the commission, together with a record of the assessment collected within ninety days after the date of the assessment or final settlement. The commission then shall refund the net amount of the assessment that had been collected.
  - c. If a request for a refund is not submitted to the commission within the prescribed time period, the producer is presumed to have agreed to the assessment.
2. A producer is not entitled to a refund under this section unless the refundable amount meets or exceeds five dollars.

3. Notwithstanding subsection 1, a member of the wheat commission is not eligible to receive a refund under this section.

**4.1-13-19. Reimbursement for double payments.**

Notwithstanding section 4.1-13-18, if a producer documents to the commission that the producer has paid the assessment more than once on the same wheat, the commission shall reimburse the producer for the double payment.

**4.1-13-20. Expenditure of funds.**

The commission shall approve all expenditures made pursuant to this chapter. All expenditures must be recorded on vouchers approved by the commission.

**4.1-13-21. Continuing appropriation.**

The commission shall forward all moneys received under this chapter to the state treasurer for deposit in the state wheat commission fund. All moneys in the state wheat commission fund are appropriated on a continuing basis to the commission to carry out this chapter.

**4.1-13-22. Commission - Report to legislative assembly.**

At the time the commission presents the report required by section 4.1-44-04, the commission shall present a separate report detailing the nature and extent of the commission's efforts to address trade and domestic policy issues. The commission may invite other entities with which it has contracted to assist in the presentation.

**4.1-13-23. Contract with trade associations.**

The commission shall expend an amount at least equal to that raised by two mills of the assessment provided for in section 4.1-13-15 to contract for activities related to domestic wheat policy issues, wheat production, promotion, and sales. The contracts may be with no more than two trade associations that are incorporated in this state and which have as their primary purpose the representation of wheat producers. The contracts must require that any trade association receiving money under this section pay from that money all dues required as a condition of the trade association's membership in any national trade association. The contracts must prohibit any trade association receiving money under this section from eliminating any dues required as a condition of membership in that trade association or from reducing such dues below the amount required for membership as of January 1, 2005.

**4.1-13-24. Contract with trade associations - Report to legislative assembly.**

At the time the commission presents the report required by section 4.1-54-04, each trade association with which the commission has contracted under section 4.1-13-23 shall present a report detailing all activities in which the trade association engaged under the contract.

**4.1-13-25. Legal counsel - Provision by attorney general.**

The attorney general shall provide legal counsel to the commission or designate an assistant for that purpose.

**4.1-13-26. Penalty.**

Any person willfully violating this chapter is guilty of a class B misdemeanor.