

## **CHAPTER 4.1-09 OILSEED COUNCIL**

### **4.1-09-01. Definitions.**

As used in this chapter:

1. "Council" means the North Dakota oilseed council.
2. "First purchaser" means any person that buys, accepts for shipment, or otherwise acquires oilseeds from a producer. The term includes a mortgagee, pledgee, lienor, and any other person having a claim against a producer if the actual or constructive possession of the oilseed is taken as partial payment or in satisfaction of the mortgage, pledge, lien, or claim.
3. "Oilseeds" include canola, crambe, flax, rapeseed, safflowers, and sunflowers.
4. "Participating producer" means a producer that has not applied for a refund under section 4.1-09-19 during the preceding twelve months.
5. "Producer" means any person that:
  - a. Plants or causes to be planted an oilseed 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.

### **4.1-09-02. Sunflower districts - Establishment.**

The state consists of the following seven sunflower districts:

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

### **4.1-09-03. Canola districts - Establishment.**

The state consists of the following three canola districts:

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

### **4.1-09-04. North Dakota oilseed council - Membership - Term.**

1. The council consists of:
  - a. One participating sunflower producer elected from each of the seven districts established in section 4.1-09-02;
  - b. One participating canola producer elected from each of the three districts established in section 4.1-09-03;
  - c. One participating safflower producer appointed by the governor;
  - d. One participating flax producer appointed by the governor;
  - e. (1) One participating producer of an oilseed other than sunflowers, canola, safflowers, or flax, appointed by the governor; or

- (2) One participating producer of any oilseed, appointed by the governor, if the governor is unable to appoint a participating producer who meets the requirements of paragraph 1; and
- f. One individual appointed by the director of the agricultural experiment station.
- 2. Each member of the council who represents a district must be a resident of and participating producer in that district.
- 3. a. The term of each member who represents a sunflower district is three years and begins on April first following the member's election. The terms of members who represent sunflower districts must be staggered so that:
  - (1) No more than three expire in any one year; and
  - (2) The term of the member who represents Bottineau, Burke, Divide, Renville, McHenry, McLean, Mountrail, Ward, and Williams Counties is identical to that of the member who represents Adams, Billings, Bowman, Dunn, Golden Valley, Grant, Hettinger, McKenzie, Mercer, Morton, Oliver, Sioux, Slope, and Stark Counties.
- b. The term of each member who represents a canola district is three years and begins on April first following the member's election. The terms of members who represent canola districts must be staggered so that no more than one term expires in any one year.
- c. The term of each member who is appointed is three years and begins on April first following the member's appointment. The terms of members who are appointed must be staggered so that no more than two expire in any one year.
- 4. If at any time a member of the council ceases to possess any of the qualifications required by this section, the member's office is deemed vacant.
  - a. If the office was held by an elected member, the remaining members of the council shall appoint another qualified producer for the remainder of the term.
  - b. If the office was held by a gubernatorial appointee, the governor shall appoint another qualified producer.
  - c. If the office was held by an appointee of the director of the agricultural experiment station, the director shall appoint another qualified individual.
- 5. A member of the council may not serve more than four consecutive terms.
- 6. 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.

**4.1-09-05. Election of county representative - Sunflower producers - Waiver.**

- 1. a. No later than March first of the year in which the term of a council member who represents a sunflower district is to expire, the extension agent for each county in that member's district shall hold a meeting of sunflower producers for the purpose of electing a county representative.
- b. The council 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.
- c. The meeting must be held within the county.
- d. During the meeting, the county extension agent shall conduct the election.
- e. Any participating sunflower producer who resides in the county may vote in the election.
- f. The county extension agent shall canvass the votes, notify the director of the North Dakota state university extension service and the council that the election has taken place, and provide to the director and the council the name and address of the newly elected county representative.
- 2. Subsection 1 does not apply if the county extension agent, in consultation with the executive director of the county farm service agency office, determines and notifies the council that no sunflower producers willing to serve as county representatives reside within the county.

**4.1-09-06. Election of county representative - Canola producers - Waiver.**

1. a. No later than March first of the year in which the term of a council member who represents a canola district is to expire, the extension agent for each county in that member's district shall hold a meeting of canola producers for the purpose of electing a county representative.
  - b. The council 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.
  - c. The meeting must be held within the county.
  - d. During the meeting, the county extension agent shall conduct the election.
  - e. Any participating canola producer who resides in the county may vote in the election.
  - f. The county extension agent shall canvass the votes, notify the director of the North Dakota state university extension service and the council that the election has taken place, and provide to the director and the council the name and address of the newly elected county representative.
2. Subsection 1 does not apply if the county extension agent, in consultation with the executive director of the county farm service agency office, determines and notifies the council that no canola producers willing to serve as county representatives reside within the county.

**4.1-09-07. Election of council member - Sunflower district representative.**

1. Upon receiving the notice required by subdivision f of subsection 1 of section 4.1-09-05, the director of the North Dakota state university extension service shall call a meeting of all county representatives in the sunflower district represented by the member whose term is to expire.
2. The director shall notify each county representative in the sunflower district of the meeting, by 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 council member from that district.
5. The director shall notify the governor and the council that the election has taken place and shall provide to the governor and the council the name and address of the newly elected council member.

**4.1-09-08. Election of council member - Canola district representative.**

1. Upon receiving the notice required by subdivision f of subsection 1 of section 4.1-09-06, the director of the North Dakota state university extension service shall call a meeting of all county representatives in the canola district represented by the member whose term is to expire.
2. The director shall notify each county representative in the canola district of the meeting, by 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 council member from that district.
5. The director shall notify the governor and the council that the election has taken place and shall provide to the governor and the council the name and address of the newly elected council member.

**4.1-09-09. Election costs - Responsibility.**

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

**4.1-09-10. Quorum.**

A majority of the council's voting members constitutes a quorum for the transaction of business.

#### **4.1-09-11. Election of chairman - Meetings.**

1. Annually, the council shall elect one member to serve as the chairman.
2. The chairman shall call all meetings of the council and shall call a special meeting of the council within seven days when petitioned to do so by three council members.

#### **4.1-09-12. Council members - Compensation.**

Each member of the council, except the individual appointed by the director of the agricultural experiment station, is entitled to receive compensation in the amount established by the council 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 council.

#### **4.1-09-13. Council - Powers.**

1. The council may:
  - a. Expend moneys collected pursuant to this chapter for 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 council may not engage in a commercial business enterprise.

#### **4.1-09-14. Council - Duties.**

1. The council 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 programs under the auspices of other state, regional, national, and international oilseed promotion councils.
2. The council shall develop and disseminate information regarding the purpose of the oilseed assessment and ways in which the assessment benefits oilseed producers.

#### **4.1-09-15. First purchaser - Certificate.**

1. Before a first purchaser may sell, process, or ship any oilseeds, the first purchaser shall obtain a certificate from the council.
2. The certificate is available upon submission to the council of an application containing the name under which the first purchaser is transacting business within this state, the first purchaser's place of business, and the location of loading and shipping places of the first purchaser's agents.
  - a. If the first purchaser is a corporation, the application must include the corporate name and the names and addresses of the principal officers and agents within this state.
  - b. If the first purchaser is a partnership, the application must include the names and addresses of the persons constituting the partnership.
  - c. If the first purchaser is a limited liability company, the application must include the name of the limited liability company and the names and addresses of its principal managers and agents within this state.
3. The first purchaser shall notify the council whenever there is a change of information required by this section.

#### **4.1-09-16. Assessment.**

1. An assessment at the rate of four cents per hundredweight [45.36 kilograms] is imposed upon all sunflowers and canola grown in this state or sold to a first purchaser.
2. An assessment at the rate of three cents per bushel [35.24 liters] is imposed upon all flax grown in this state or sold to a first purchaser.

3. An assessment at the rate of three cents per hundredweight [45.36 kilograms] is imposed upon all other oilseeds grown in this state or sold to a first purchaser.

**4.1-09-17. Collection of assessment - Records.**

1. The first purchaser shall collect the assessment from the producer by deducting the assessment from the total price of the oilseeds being purchased by the first purchaser.
2. Each first purchaser shall keep documents regarding all purchases, sales, and shipments of oilseeds for a period of three years. The records may be examined by the council upon request.
3. At the time and in the manner prescribed by the council, each first purchaser shall file a report stating, in individual and total amounts, the quantity of all oilseeds that the first purchaser received, sold, or shipped.

**4.1-09-18. Submission of assessments - Civil penalty.**

1. Each first purchaser shall forward to the council all assessments collected by the first purchaser within thirty days after the end of each calendar quarter.
2. If a first purchaser fails to submit the assessments as required by this section, the council may impose a penalty equal to ten percent of the amount due, plus interest at the rate of six percent per annum from the due date.

**4.1-09-19. Refund of assessment.**

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

**4.1-09-20. Reimbursement for double payments.**

Notwithstanding section 4.1-09-19, if a producer documents to the council that the producer has paid the assessment more than once on the same oilseeds, the council shall reimburse the producer for the double payment.

**4.1-09-21. Expenditure of funds.**

The council shall approve all expenditures made pursuant to this chapter and shall submit an itemized voucher to the office of management and budget for payment.

**4.1-09-22. Continuing appropriation.**

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

**4.1-09-23. Advisory referendum.**

1. a. When petitioned to do so by fifteen percent of the participating producers, the council shall conduct a referendum among the participating producers of the state to determine the amount by which the assessment imposed by this chapter should be raised or lowered.
- b. To be considered a valid petition, no more than fifty percent of the participating producers who signed the petition may reside in one district.

2. The council shall prepare the ballots and mail the ballots to each participating producer at least thirty days before the last date for filing ballots.
3. Each ballot must include a statement indicating:
  - a. The date on which the petition was filed and the number of signatures on the petition;
  - b. The date, time, and location at which the council will open and tabulate the ballots;
  - c. The last date by which the ballots must be postmarked or filed with the council; and
  - d. That any participating producer may be present at the time the ballots are opened and tabulated.
4. The date selected by the council for the opening and tabulation of ballots must be at least five days after the date by which ballots must be postmarked or filed with the council.
5. If the majority of the participating producers voting upon the question are in favor of the proposed change, the council shall submit proposed legislation to the next regular session of the legislative assembly.

**4.1-09-24. Penalty.**

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