

Farm Products Marketing Act

**ONTARIO REGULATION 485/09**

**GRAIN (GRAIN CORN, SOYBEANS AND WHEAT) — LICENSING AND REGULATION**

Consolidation Period: From June 1, 2010 to the e-Laws currency date.

No amendments.

This is the English version of a bilingual regulation.

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#### Definitions and Application

##### Definitions

1. In this Regulation,

“buyer” means a person who purchases grain directly from a producer, whether through an agent or otherwise; (“acheteur”)

“farm animal” means,

(a) livestock, including poultry and ratites,

(b) fur-bearing animals,

- (c) bees,
- (d) cultured fish,
- (e) deer and elk, and
- (f) game animals and birds; (“animal d’élevage”)

“farm operation” means an agricultural, aquacultural, horticultural or silvicultural operation that is operated for the purpose of making a profit and includes,

- (a) growing, producing or raising farm animals,
- (b) the production of agricultural crops, including greenhouse crops, nursery stock, tobacco and trees, and
- (c) the production of eggs, cream and milk; (“exploitation agricole”)

“fiscal year” means the fiscal year of the local board; (“exercice”)

“grain” means one or more of grain corn, soybeans and wheat; (“grain”)

“Grain Committee” means the Grain Section Committee of the Ontario Agri Business Association; (“comité des céréales”)

“grain corn” means corn, other than seed corn, sweet corn or popping corn, produced in Ontario; (“maïs-grain”)

“licence” means a licence referred to in subsection 4 (1); (“permis”)

“local board” means the Grain Farmers of Ontario established by Ontario Regulation 484/09 (Grain (Grain Corn, Soybeans and Wheat) — Plan) made under the Act; (“commission locale”)

“processing” means cleaning, drying, treating, turning, washing, grinding, roasting, rolling, pulverizing, cracking, crimping, crushing, fractionalizing, micronizing, distilling or any similar activity, and includes,

- (a) processing with or without other ingredients, and
- (b) processing or manufacturing articles of food or drink in whole or in part from grain; (“transformation”)

“processor” means a person engaged in processing grain in Ontario; (“transformateur”)

“producer” means a sole proprietor, corporation, partnership or joint venture that produces grain in Ontario; (“producteur”)

“soybeans” means soybeans produced in Ontario; (“soya”)

“wheat” means any variety of wheat produced in Ontario. (“blé”) O. Reg. 485/09, s. 1.

#### Application — exceptions

2. This Regulation does not apply to,

- (a) grain produced and used by a producer at his or her own farm operation; or
- (b) grain produced and sold by a producer directly to a farm owner or operator, if,

(i) the grain is not processed by the producer beyond being cleaned, dried or turned, or any combination of them, before it is sold, and

(ii) the farm owner or operator intends to use the grain at his or her farm operation. O. Reg. 485/09, s. 2.

#### Licensing

##### Requirement for licence

3. (1) No producer shall sell or offer to sell grain that he or she has produced except under the authority of a licence. O. Reg. 485/09, s. 3 (1).

(2) Subsection (1) applies in respect of grain that is,

(a) unprocessed; or

(b) processed by the producer. O. Reg. 485/09, s. 3 (2).

##### Deemed to be licensed

4. (1) Every producer who sells or offers to sell grain that he or she has produced, regardless of whether the producer has first processed the grain, is deemed to be the holder of a licence, unless the licence is suspended or revoked. O. Reg. 485/09, s. 4 (1).

(2) The local board may, after a hearing, impose such terms and conditions on a licence as the local board considers proper. O. Reg. 485/09, s. 4 (2).

(3) The local board may, after a hearing, suspend or revoke a licence where the local board is of the opinion that a licensee has failed to comply with or has contravened the Act, the applicable regulations or any order or direction of the local board that applies to the licensee. O. Reg. 485/09, s. 4 (3).

##### Licence fees

5. (1) Every licensee shall pay to the local board the licence fees fixed by the local board under paragraph 2 of section 7. O. Reg. 485/09, s. 5 (1).

(2) The local board may, for the purpose of paying its expenses in carrying out and enforcing the Act and the regulations with respect to grain but for no other purpose, use licence fees and other money it receives. O. Reg. 485/09, s. 5 (2).

(3) Subsection (2) does not apply in respect of the following expenses incurred by the local board:

1. Expenses incurred in providing services under paragraph 4 of subsection 9 (1).

2. Expenses incurred from the sale of wheat under subsection 10 (1).

3. Expenses incurred in relation to the fund established under section 11. O. Reg. 485/09, s. 5 (3).

(4) Subsection (2) does not apply in respect of the following money received by the local board:

1. Service charges received by the local board under paragraph 5 of subsection 9 (1).

2. Money received by the local board from the sale of wheat under subsection 10 (1).

3. Money received by the local board in relation to the fund established under section 11. O. Reg. 485/09, s. 5 (4).

#### Powers of Local Board

##### Delegation of powers

6. The following powers of the Commission are delegated to the local board under subsection 3 (3) of the Act:

1. Requiring producers, buyers, processors and any persons or bodies who assemble, offer to sell, sell, ship, store or transport grain to register their names, business addresses and e-mail addresses with the local board.

2. Requiring producers, buyers, processors and any persons or bodies who assemble, offer to sell, sell, ship, store or transport grain to furnish such information relating to their activities with respect to the production or marketing, as the case may be, of grain as the local board determines is necessary to enable it to exercise its powers and perform its duties under the Act and the regulations.

3. Appointing persons to inspect, at any reasonable time, the books, records, documents and premises, excluding a dwelling, of producers, buyers, processors or any persons or bodies who assemble, offer to sell, sell, ship, store or transport grain, if,

i. the books, records, documents or premises relate to the production or marketing of grain, and

ii. the inspection of the books, records, documents or premises is necessary to the local board's exercise of its powers or performance of its duties under the Act and the regulations.

4. Appointing persons to inspect, at any reasonable time, grain in the possession of producers, buyers, processors or any persons or bodies who assemble, offer to sell, sell, ship, store or transport grain, if the inspection of the grain is necessary to the local board's exercise of its powers or performance of its duties under the Act and the regulations.

5. Making such orders and issuing such directions as are necessary to enforce the Act and the regulations with respect to grain. O. Reg. 485/09, s. 6.

##### Delegation of regulation-making powers

7. The following regulation-making powers of the Commission are delegated to the local board under subsection 7 (7) of the Act:

1. Providing for the imposition, disposition, use and, subject to subsection 7 (2) of the Act, amount of penalties where, after a hearing, the local board is of the opinion that a licensee has failed to comply with or has contravened any term or condition of the licence, any provision of the Act or the application regulations, or any order or direction of the local board.

2. Providing for the fixing of licence fees and the timing of their payment and for the collection of outstanding licence fees, including their recovery by way of a legal proceeding.

3. Requiring any person who receives grain to deduct from the money payable for the grain any licence fees payable to the local board by the person from whom the person receives the grain, and to forward such licence fees to the local board.

4. Requiring every processor who processes grain that he or she has produced to furnish to the local board statements of the amounts of grain that he or she produced and used for processing in any year.

5. Providing for exemption from any or all of the regulations made by the local board of,

- i. any class, variety, grade or size of any grain, or
- ii. any class of persons engaged in assembling, buying, offering to sell, processing, producing, selling, shipping, storing or transporting grain or any class, variety, grade or size of any grain.

6. Authorizing the fixing of,

- i. prompt payment discounts for licence fees, and
- ii. interest on outstanding licence fees payable by any person required to pay the fees. O. Reg. 485/09, s. 7.

Other powers

8. (1) The local board may stimulate, increase and improve the production or marketing of grain by such means as the local board considers proper in view of the purpose of the Act. O. Reg. 485/09, s. 8 (1).

(2) The local board may co-operate with any of the following for the purposes of improving the production or marketing of grain:

- 1. The government of Canada or of any province of Canada.
- 2. Any local board, marketing board, marketing commission or marketing agency in Canada.
- 3. Any organization of producers of farm products in Canada. O. Reg. 485/09, s. 8 (2).

Additional Powers of Local Board — Wheat

Vesting of powers re wheat

9. (1) The following powers are vested in the local board under subsection 8 (1) of the Act with respect to wheat:

- 1. To direct and control the assembling, processing, selling, storing or transporting of wheat that the local board,
  - i. purchases or otherwise acquires from a producer, or
  - ii. sells on behalf of producers under subsection 10 (1).
- 2. To determine the quality of each class, variety, grade and size of wheat that a producer may sell, offer to sell or process.
- 3. To prohibit producers from selling, offering to sell or processing any class, variety, grade or size of wheat.
- 4. To offer services to producers with respect to the advertising, assembling, buying, cleaning, drying, offering for sale, selling, shipping, storing, turning or transporting of wheat and to provide one or more of the offered services to a producer at the producer's request.
- 5. To fix service charges for every service provided under paragraph 4 and to require producers who receive a service to pay the service charges.
- 6. To collect from any person by way of a legal proceeding the price of wheat sold by the local board.
- 7. To purchase or otherwise acquire such quantities of wheat as the local board considers advisable and to sell or otherwise dispose of any of the wheat.

8. To pay to producers from whom it purchases wheat the price for the wheat less any service charges imposed under paragraph 5. O. Reg. 485/09, s. 9 (1).

(2) If the local board provides services to a producer under paragraph 4 of subsection (1), the local board shall provide to the producer a statement showing the particulars of the services provided and the charges fixed under paragraph 5 of that subsection for the services. O. Reg. 485/09, s. 9 (2).

(3) If the local board sells wheat on behalf of a producer under paragraph 4 of subsection (1), each payment under paragraph 8 of that subsection in respect of the wheat sold shall be accompanied by a statement from the local board showing the class, variety, grade or size and the quantity of wheat that was sold and the price paid for the wheat. O. Reg. 485/09, s. 9 (3).

(4) The local board may, for the purpose of paying expenses incurred by it in providing services under paragraph 4 of subsection (1) but for no other purpose, use service charges received by the local board under paragraph 5 of that subsection. O. Reg. 485/09, s. 9 (4).

#### Power to conduct pools re wheat

10. (1) The local board may conduct sales of wheat that it consolidates into pools of a specified class, variety, grade or size, on behalf of producers who deliver wheat of that class, variety, grade or size for the purpose. O. Reg. 485/09, s. 10 (1).

(2) The local board shall conduct a pool for distributing all money received by the local board from sales conducted in respect of each pool under subsection (1) and, after deducting all necessary and proper disbursements and expenses, shall distribute the remainder of the money received from the sale in such manner that every producer of wheat receives a share of the remainder of the money received from the sale in relation to the amount, class, variety, grade or size of wheat delivered by the producer, and may make an initial payment on delivery of the wheat and subsequent payments until all of the remainder of the money received from the sale is distributed to the producers. O. Reg. 485/09, s. 10 (2).

#### Power to establish fund for wheat price risk mitigation

11. (1) The local board may establish a fund for the purpose of mitigating the risk of fluctuation in the price of the wheat that it buys or sells. O. Reg. 485/09, s. 11 (1).

(2) A fund established under subsection (1) may be used for,

(a) buying and selling wheat futures contracts and wheat futures options;

(b) buying and selling currency futures contracts and currency futures options; and

(c) any other similar or related wheat price hedging activity. O. Reg. 485/09, s. 11 (2).

(3) All necessary and proper expenses related to the activities referred to in subsection (2) shall be paid from the fund, subject to subsections (4) and (5). O. Reg. 485/09, s. 11 (3).

(4) If the local board carries out activities referred to in subsection (2) in relation to wheat that it sells on behalf of a producer under paragraph 4 of subsection 9 (1), all necessary and proper expenses related to the activities shall be fixed as service charges payable by the producer under paragraph 5 of subsection 9 (1). O. Reg. 485/09, s. 11 (4).

(5) If the local board carries out activities referred to in subsection (2) in relation to wheat sold on behalf of producers under subsection 10 (1), all necessary and proper expenses related to the activities shall be deducted from the money received from the sale of the wheat in accordance with subsection 10 (3). O. Reg. 485/09, s. 11 (5).

#### Power to appoint agents re wheat

12. The local board may, in respect of wheat, appoint agents, prescribe their duties and terms and conditions of appointment, and provide for their remuneration. O. Reg. 485/09, s. 12.

#### Limits in Financial Matters

##### Limit on fees

13. (1) The total amount of licence fees established by the local board under paragraph 2 of section 7 that are payable in any fiscal year shall not exceed the amount of the necessary and proper expenses incurred by the local board during that fiscal year. O. Reg. 485/09, s. 13 (1).

(2) The expenses referred to in subsection (1) do not include,

(a) expenses incurred in providing services under paragraph 4 of subsection 9 (1);

(b) expenses incurred from the sale of wheat under subsection 10 (1); or

(c) expenses incurred in relation to the fund established under section 11. O. Reg. 485/09, s. 13 (2).

##### Limit on service charges

14. The total amount of service charges fixed by the local board under paragraph 5 of subsection 9 (1) for services provided under paragraph 4 of that subsection shall not exceed the necessary and proper expenses incurred by the local board in providing those services. O. Reg. 485/09, s. 14.

##### Limit on operating reserve

15. The local board may maintain an operating reserve, but the amount of the reserve in any fiscal year shall not exceed the amount of the local board's annual expenses for that fiscal year, as determined under section 17. O. Reg. 485/09, s. 15.

##### Limit on net assets

16. (1) The net assets of the local board in any fiscal year shall not exceed the amount of the local board's annual expenses for that fiscal year, as determined under section 17. O. Reg. 485/09, s. 16 (1).

(2) The net assets referred to in subsection (1) do not include the following amounts:

1. The local board's net fixed capital assets.

2. Net assets related to the provision of services by the local board under paragraph 4 of subsection 9 (1).

3. Net assets related to the sale of wheat under subsection 10 (1).

4. Net assets related to the fund established under section 11. O. Reg. 485/09, s. 16 (2).

##### Determining annual expenses

17. (1) For the purposes of sections 15 and 16, the annual expenses of the local board shall be determined in accordance with the following rules:

1. The annual expenses for the fiscal year ending in 2011 shall be determined by adding the following values and dividing the sum by three:



- i. The sum of the audited expenses of each of the Ontario Corn Producers' Association, the Ontario Soybean Growers and The Ontario Wheat Producers' Marketing Board for its last complete fiscal year.
  - ii. The sum of the audited expenses of each of the Ontario Corn Producers' Association, the Ontario Soybean Growers and The Ontario Wheat Producers' Marketing Board for the fiscal year immediately preceding its last complete fiscal year.
  - iii. The sum of the audited expenses of each of the Ontario Corn Producers' Association, the Ontario Soybean Growers and The Ontario Wheat Producers' Marketing Board for the fiscal year immediately preceding the fiscal year referred to in subparagraph ii.
2. The annual expenses for the fiscal year ending in 2012 shall be determined by adding the following values and dividing the sum by three:
- i. The audited expenses of the local board for its fiscal year ending in 2011.
  - ii. The sum of the audited expenses of each of the Ontario Corn Producers' Association, the Ontario Soybean Growers and The Ontario Wheat Producers' Marketing Board for its last complete fiscal year.
  - iii. The sum of the audited expenses of each of the Ontario Corn Producers' Association, the Ontario Soybean Growers and The Ontario Wheat Producers' Marketing Board for the fiscal year immediately preceding its last complete fiscal year.
3. The annual expenses for the fiscal year ending in 2013 shall be determined by adding the following values and dividing the sum by three:
- i. The audited expenses of the local board for its fiscal year ending in 2012.
  - ii. The audited expenses of the local board for its fiscal year ending in 2011.
  - iii. The sum of the audited expenses of each of the Ontario Corn Producers' Association, the Ontario Soybean Growers and The Ontario Wheat Producers' Marketing Board for its last complete fiscal year.
4. The annual expenses for every fiscal year ending in or after 2014 shall be determined by adding the audited expenses of the local board for each of its three fiscal years immediately preceding the fiscal year in respect of which the determination is being made, and dividing the sum by three. O. Reg. 485/09, s. 17 (1).
- (2) For the purposes of subsection (1), expenses of the local board include any expenses incurred by the local board in carrying out and enforcing the Act and the regulations with respect to grain, other than the following expenses, as set out in the local board's audited financial statements:
1. Extraordinary expenses.
  2. Depreciation, amortization expenses or other fixed capital expenses.
  3. Expenses incurred in providing services under paragraph 4 of subsection 9 (1).
  4. Expenses incurred from the sale of wheat under subsection 10 (1).
  5. Expenses incurred in relation to the fund established under section 11. O. Reg. 485/09, s. 17 (2).
- (3) Subsection (2) applies with necessary modifications with respect to the expenses of the Ontario Corn Producers' Association, the Ontario Soybean Growers and The Ontario Wheat Producers' Marketing Board. O. Reg. 485/09, s. 17 (3).

## Grain Industry Advisory Committee

### Advisory committee

18. (1) There shall be a Grain Industry Advisory Committee established in accordance with this section. O. Reg. 485/09, s. 18 (1).

(2) The Grain Industry Advisory Committee shall be composed of 13 members, appointed as follows:

1. Five members shall be appointed by the local board.
2. Four members shall be appointed by the Grain Committee.
3. One member shall be appointed by the Commission.
4. One member shall be appointed by the Canadian Seed Trade Association.
5. One member shall be appointed by the Ontario Flour Millers' Association.
6. One member shall be appointed by the processors. O. Reg. 485/09, s. 18 (2).

(3) The member appointed by the Commission under paragraph 3 of subsection (2) shall be the chair of the Grain Industry Advisory Committee. O. Reg. 485/09, s. 18 (3).

(4) The members of the Grain Industry Advisory Committee shall be appointed after March 31 in any given year for a one year term that begins on April 15 of that year and ends on April 14 of the following year. O. Reg. 485/09, s. 18 (4).

(5) If a member of a Grain Industry Advisory Committee dies, resigns or is unable to act, the persons or body that appointed the member shall appoint a replacement member to fill the vacancy for the remainder of the member's term. O. Reg. 485/09, s. 18 (5).

(6) If any of the persons or bodies referred to in subsection (2) fails to appoint a member in accordance with that subsection or to appoint a replacement member in accordance with subsection (5), the Commission may appoint the member or replacement member. O. Reg. 485/09, s. 18 (6).

(7) The Grain Industry Advisory Committee has the power to advise and make recommendations to any of the persons or bodies referred to in subsection (2) in respect of,

- (a) the promotion of harmonious relationships between persons engaged in the production and marketing of grain;
- (b) the promotion of greater efficiency in the production and marketing of grain;
- (c) the prevention and correction of irregularities and inequities in the marketing of grain;
- (d) the improvement of the quality and variety of grain;
- (e) the improvement of the circulation of market information respecting grain; and
- (f) without limiting the generality of any of clauses (a) to (e), any matter relating to grain with respect to which the Commission or the local board may be empowered to make regulations under the Act. O. Reg. 485/09, s. 18 (7).

(8) The Grain Industry Advisory Committee shall meet at least once a year. O. Reg. 485/09, s. 18 (8).

## Negotiating Agency for Soybeans

### Negotiating agency

19. (1) A negotiating agency shall be established in accordance with this section and section 20 for the purpose of adopting an agreement between the local board, the processors of soybeans and the Grain Committee respecting,

(a) terms, conditions and forms of agreement relating to the assembling, buying, offering to sell, processing, selling, shipping, storing or transporting of soybeans, other than prices for soybeans or for any class, variety, grade or size of soybeans; and

(b) any charges, costs or expenses relating to the assembling, buying, offering to sell, processing, producing, selling, shipping, storing or transporting of soybeans. O. Reg. 485/09, s. 19 (1).

(2) The negotiating agency shall be established after January 31 and on or before March 15 in every year in which an agreement referred to in subsection (1) expires. O. Reg. 485/09, s. 19 (2).

(3) The agreement referred to in subsection (1) shall take effect on September 1 following the appointment of the negotiating agency and shall terminate on August 31 of the year specified in the agreement. O. Reg. 485/09, s. 19 (3).

### Composition and appointment

20. (1) The negotiating agency shall be composed of the following 10 members:

1. Five members appointed by the local board.

2. Two members appointed by the processors of soybeans.

3. Three members appointed by the Grain Committee. O. Reg. 485/09, s. 20 (1).

(2) In addition to the members referred to in subsection (1), the local board, the processors of soybeans and the Grain Committee shall also each appoint one alternate member, who may attend meetings of the negotiating agency as observers and who, in the absence of a member of the agency representing the persons or body that appointed the alternate member, shall perform the absent member's functions in his or her place. O. Reg. 485/09, s. 20 (2).

(3) Appointments under subsection (1) or (2) shall be in writing. O. Reg. 485/09, s. 20 (3).

(4) Notice of appointments made under subsection (1) or (2) shall be given, immediately after they are made, to the Commission by the persons or body who made the appointments, and the notice shall contain the names of the members appointed by the persons or body. O. Reg. 485/09, s. 20 (4).

(5) The members and alternate members of the negotiating agency shall hold office until January 31 of the year following the year in which their appointment was made. O. Reg. 485/09, s. 20 (5).

(6) If a member or alternate member of the negotiating agency dies, resigns or is unable to continue to act, the persons or body that appointed the member shall, within seven days after the vacancy occurs, appoint a replacement member or alternate member to fill the vacancy for the remainder of the member's or alternate member's term. O. Reg. 485/09, s. 20 (6).

(7) If any of the local board, the processors of soybeans or the Grain Committee fails to appoint members, alternate members, or replacement members or alternate members in accordance with this section, the Commission shall as soon as possible make the necessary appointments. O. Reg. 485/09, s. 20 (7).

#### Negotiation of agreement

21. (1) The negotiating agency shall enter into negotiations and attempt to reach an agreement between the parties respecting the matters referred to in subsection 19 (1) on or before April 30 of the year in which agency was established. O. Reg. 485/09, s. 21 (1).

(2) The five members appointed by the local board, the two members appointed by the processors of soybeans or the three members appointed by the Grain Committee may request a meeting of the negotiating agency by giving written notice of the meeting to the other members of the agency. O. Reg. 485/09, s. 21 (2).

(3) The notice shall state the date, time and place of the meeting, and shall be given at least seven days before the meeting date. O. Reg. 485/09, s. 21 (3).

#### Arbitration

22. (1) If the negotiating agency does not reach an agreement between the parties respecting the matters referred to in subsection 19 (1) on or before April 30, it shall immediately notify the Commission in writing of the fact. O. Reg. 485/09, s. 22 (1).

(2) If the negotiating agency decides before April 30 that it will not be possible to reach an agreement between the parties respecting the matters referred to in subsection 19 (1) on or before that date, it shall immediately notify the Commission in writing of the fact. O. Reg. 485/09, s. 22 (2).

(3) A notice referred to in subsection (1) or (2) shall include a statement respecting the matters in dispute and the final positions of the parties with respect to each of those matters. O. Reg. 485/09, s. 22 (3).

(4) The matters in dispute shall be subject to final offer arbitration. O. Reg. 485/09, s. 22 (4).

(5) If the negotiating agency gives notice to the Commission under subsection (1) or (2), the agency shall, no later than seven days after the earlier of the day on which the notice was given and April 30, appoint an arbitrator to settle the matters in dispute. O. Reg. 485/09, s. 22 (5).

(6) The negotiating agency shall only appoint as an arbitrator a person appointed as an arbitrator by the Commission under subsection 12 (10) of the Ministry of Agriculture, Food and Rural Affairs Act. O. Reg. 485/09, s. 22 (6).

(7) If the negotiating agency does not appoint an arbitrator in accordance with subsections (5) and (6), the Commission shall appoint an arbitrator to settle the matters in dispute. O. Reg. 485/09, s. 22 (7).

(8) The negotiating agency or the Commission, as the case may be, shall provide to the arbitrator a copy of the statement referred to in subsection (3). O. Reg. 485/09, s. 22 (8).

(9) The arbitrator shall, as soon as possible after his or her appointment, meet with the negotiating agency and determine each matter in dispute by adopting one of the final positions on the matter set out in the statement referred to in subsection (3). O. Reg. 485/09, s. 22 (9).

(10) The arbitrator shall determine all matters referred to him or her no later than August 31 of any given year. O. Reg. 485/09, s. 22 (10).

23. Omitted (revokes other Regulations). O. Reg. 485/09, s. 23.

24. Omitted (provides for coming into force of provisions of this Regulation). O. Reg. 485/09, s. 24.