

## **CHAPTER 4.1-04 CORN UTILIZATION COUNCIL**

### **4.1-04-01. Definitions.**

As used in this chapter:

1. "Commissioner" means the agriculture commissioner or the commissioner's designee.
2. "Corn" means all varieties of corn, except sweet corn and popcorn.
3. "Council" means the North Dakota corn utilization council.
4. "Designated handler" means:
  - a. Any public warehouse, licensed grain buyer, roving grain buyer, processing plant, merchandising company, or ethanol plant that purchases corn from a producer; and
  - b. Any person having a claim against the producer if the actual or constructive possession of the corn is taken as security, 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 corn 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.

### **4.1-04-02. Corn districts - Establishment.**

The state consists of the following seven corn districts:

1. Richland County;
2. Cass, Steele, and Traill Counties;
3. Benson, Bottineau, Burke, Cavalier, Divide, Grand Forks, McHenry, Mountrail, Nelson, Pembina, Pierce, Ramsey, Renville, Rolette, Towner, Walsh, Ward, and Williams Counties;
4. Barnes, Eddy, Foster, Griggs, and Stutsman Counties;
5. Sargent and Ransom Counties;
6. Dickey and LaMoure Counties; and
7. All remaining counties in which corn is grown.

### **4.1-04-03. Corn council - Membership - Term.**

1. The council consists of one producer elected from each of the seven districts established in section 4.1-04-02.
2. Each member of the council must be a resident of the district that the member represents.
3. A member of the council may not have requested a refund under section 4.1-04-13 during the preceding year.
4. The term of each member is four years and begins on April first following the member's election. The terms must be staggered so that no more than two expire each year.
5. If at any time during a member's term the member ceases to possess any of the qualifications provided for in this chapter, the member's office is deemed vacant and the council, by majority vote, shall appoint another qualified producer for the remainder of the term.
6. An elected member of the council may not serve more than two consecutive terms.
7. 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.

#### **4.1-04-04. Election of county representative.**

1. a. No later than March first of the year in which the term of a council member is to expire, the extension agent for each county in that member's district shall hold a meeting of corn 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 producer who resides in the county and who did not request a refund during the preceding year 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 extension agent for a county, in consultation with the executive director of the county farm service agency office, determines and notifies the council that no corn producers willing to serve as county representatives reside within the county.

#### **4.1-04-04.1. Election of district representative - Council members.**

1. Upon receiving the notice required by subdivision f of subsection 1 of section 4.1-04-04, 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 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.

#### **4.1-04-05. Election costs - Responsibility.**

All costs of holding an election are the responsibility of the council.

#### **4.1-04-06. 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.

#### **4.1-04-07. Council members - Compensation.**

Each member of the council 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 officials if the member is attending meetings or performing duties directed by the council.

#### **4.1-04-08. Council - Powers.**

The council may:

1. Expend moneys collected pursuant to this chapter for its administration;
2. Employ, bond, and compensate necessary personnel;
3. Accept gifts, grants, and donations of money, property, and services to carry out this chapter;

4. Contract with any person for any purpose related to this chapter, including research, education, publicity, promotion, and transportation;
5. Sue and be sued; and
6. Do all things necessary and proper to enforce and administer this chapter.

**4.1-04-09. 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 promotion groups.
2. The council shall develop and disseminate information regarding the purpose of the corn assessment and ways in which the assessment benefits corn producers.

**4.1-04-10. Assessment.**

Until the commissioner certifies that a national corn checkoff is in effect, an assessment at the rate of one-quarter of one percent of the value of a bushel must be imposed upon all corn purchased by the first designated handler in this state.

**4.1-04-11. Collection of assessment - Records.**

1. A designated handler shall collect the assessment from the producer by deducting the assessment from the purchase price of the corn.
2. Each designated handler shall keep documents regarding all purchases, sales, and shipments of corn 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 designated handler shall file a report with the council. The report must state, in individual and total amounts, the quantity of all corn that the designated handler received, sold, or shipped, and the source of all corn that the designated handler received, sold, or shipped.

**4.1-04-12. Submission of assessment by producer - Civil penalty.**

1. If a producer sells corn to a person that is not a designated handler, the producer shall forward the assessment to the council within thirty days after the end of each calendar quarter.
2. If a producer fails to submit the assessments as required by this section, the council may levy a penalty equal to ten percent of the assessment due, plus interest at the rate of twelve percent per annum from the due date.

**4.1-04-13. Refund of assessment - Form.**

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 to the producer the net amount of the assessment that had been collected from the producer.
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.

**4.1-04-14. Reimbursement for double payments.**

Notwithstanding section 4.1-04-13, if a producer documents to the council that the producer has paid the assessment more than once on the same corn, the council shall reimburse the producer for the double payment.

**4.1-04-15. Submission of assessments - Civil penalty.**

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

**4.1-04-16. Expenditures - Approval - Records.**

The council shall approve all expenditures made pursuant to this chapter. The expenditures must be recorded on itemized vouchers and the records must be maintained as directed by the state records administrator.

**4.1-04-17. Continuing appropriation.**

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

**4.1-04-18. Advisory referendum.**

1.
  - a. When petitioned to do so by fifteen percent of the producers, the council shall conduct a referendum among the 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 producers who signed the petition may reside in one district.
2. The council shall determine the date on which in-person voting will take place.
3. The council shall prepare the ballots and make the ballots available to producers at each county extension office in the state.
4. Each ballot must include a statement indicating:
  - a. The date, time, and location at which the council will open and tabulate the ballots; and
  - b. That any producer may be present at the time the ballots are opened and tabulated.
5.
  - a. Beginning no sooner than thirty days before the date established for in-person voting in accordance with subsection 2, the council also shall provide absentee ballots upon request to producers who expect to be absent from their county of residence on the date established for in-person voting in accordance with subsection 2.
  - b. The council shall include with each absentee ballot requested a form indicating that the producer is eligible to participate in the referendum. The form must be signed by the absentee producer and returned with the absentee ballot.
  - c. In order to be counted, an absentee ballot and the voter's statement of eligibility must be received by the council at least forty-eight hours before the time at which the council stated it would open and tabulate ballots.
6. If a majority of the 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 to amend this chapter.

**4.1-04-19. Penalty.**

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