

## **CHAPTER 4.1-06 DRY BEAN COUNCIL**

### **4.1-06-01. Definitions.**

As used in this chapter:

1. "Commissioner" means the agriculture commissioner or the commissioner's designee.
2. "Council" means the North Dakota dry bean council.
3. "Designated handler" means any person that initially places dry beans into the channels of trade and commerce or any person that is engaged in the processing of beans into food for human consumption. The term does not include a producer selling the producer's unharvested dry beans or delivering the producer's dry beans from the farm on which they are produced to storage facilities, packing sheds, or processing plants within the state.
4. "Dry beans" mean all varieties of dry beans harvested in this state. The term does not include soybeans.
5. "Participating producer" means a producer that has not applied for a refund under section 4.1-06-15 during the preceding twelve months.
6. "Producer" means any person that:
  - a. Plants or causes to be planted a dry bean 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.

### **4.1-06-02. Dry bean districts - Establishment.**

The state consists of the following six dry bean districts:

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

### **4.1-06-03. North Dakota dry bean council - Membership - Term.**

1. The council consists of one participating producer elected from each of the districts established in section 4.1-06-02.
2. Each member of the council must be a United States citizen.
3. Each member of the council must be a resident of and participating producer in the district that the member represents.
4. The term of each elected member is three years and begins on May 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 three consecutive terms. 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.

#### **4.1-06-04. Election of council member.**

1. Each year during the month of February the commissioner shall identify the districts represented by council members whose terms are about to expire.
2.
  - a. The commissioner shall forward to each producer residing in the district a letter inviting the producer to place the producer's own name or the name of another producer into nomination for election to the council.
  - b. The commissioner shall include a statement of eligibility to be completed by the producer seeking election and a nomination petition to be signed by four other producers.
3. For a name to be placed on the ballot, the statement of eligibility and the nomination petition must be received by the council on the date specified by the commissioner which may not be later than April tenth.
4. The commissioner shall prepare election ballots and mail the ballots to the producers in the district together with a statement indicating:
  - a. The last date by which the ballots must be postmarked or filed with the council;
  - b. The date, time, and location at which the council will open and tabulate the ballots; and
  - c. That any participating producer may be present at the time the ballots are opened and tabulated.
5. The date selected 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.
6. After the election, the council shall notify the governor that the election has taken place and shall provide to the governor the name and address of the newly elected council member.
7. If, by April tenth or the date specified by the commissioner, the council does not receive any nomination petitions from eligible producers in districts represented by council members whose terms are about to expire, the council may appoint an eligible producer from the district to serve on the council until the seat is filled by a write-in candidate in accordance with subsection 4.

#### **4.1-06-05. Election costs - Responsibility.**

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

#### **4.1-06-06. Quorum.**

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

#### **4.1-06-07. 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.

#### **4.1-06-08. 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 officers if the member is attending meetings or performing duties directed by the council.

#### **4.1-06-09. Council - Powers.**

1. The council 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 council may not engage in a commercial business enterprise.

**4.1-06-10. 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 commodity councils.
2. The council shall develop and disseminate information regarding the purpose of the dry bean assessment and ways in which the assessment benefits dry bean producers.

**4.1-06-11. Designated handler - Certificate.**

1. Before a designated handler may sell, process, or ship dry beans, the designated handler 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 designated handler is transacting business within this state, the designated handler's place of business, and the location of loading and shipping places of the designated handler's agents.
  - a. If the designated handler 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 designated handler is a partnership, the application must include the names and addresses of the persons constituting the partnership.
  - c. If the designated handler 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 designated handler shall notify the council whenever there is a change of information required by this section.

**4.1-06-12. Assessment.**

1. An assessment at the rate of ten cents per hundredweight [45.36 kilograms] must be imposed upon all dry beans grown in this state, delivered into this state, or sold to a designated handler.
2. The assessment imposed by this section does not apply to dry bean seeds nor to dry beans used for purposes other than human consumption.

**4.1-06-13. Collection of assessment - Records.**

1. The designated handler shall collect the assessment from the seller by deducting the assessment from the total price of the dry beans being purchased by the designated handler.
2. Each designated handler shall keep documents regarding all purchases, sales, and shipments of raw dry beans 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 stating, in individual and total amounts, the quantity of all dry beans that the handler received, sold, or shipped, and the source of all dry beans that the handler received, sold, or shipped.

**4.1-06-14. Submission of assessments - Civil penalty.**

1. Each designated handler shall forward to the council all assessments collected by the handler no later than the thirtieth day 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 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.

#### **4.1-06-15. 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 to the producer 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.

#### **4.1-06-16. Reimbursement for double payment.**

Notwithstanding section 4.1-06-15, if a producer documents to the council that the producer has paid the assessment more than once on the same dry beans, the council shall reimburse the producer for the double payment.

#### **4.1-06-17. 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.

#### **4.1-06-18. Continuing appropriation.**

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

#### **4.1-06-19. 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 a bill to the next legislative assembly to amend this chapter.

#### **4.1-06-20. Penalty.**

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