

CHAPTER 4.1-10 POTATO COUNCIL

4.1-10-01. Definitions.

As used in this chapter:

1. "Commissioner" means agriculture commissioner or the commissioner's designee.
2. "Council" means the North Dakota potato council.
3. "Designated handler" means a person that initially places potatoes into the channels of trade and commerce or a person who processes potatoes into food for human consumption.
4. "Participating producer" means a producer that has not gained exemption from the payment of an assessment under this chapter for a particular year or a producer that is not exempt from the payment of an assessment under the terms of this chapter.
5. "Potato" means any variety of Irish potatoes harvested within this state.
6. "Producer" means a person that:
 - a. Plants or causes to be planted, on at least ten acres [4.05 hectares], a potato 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.

4.1-10-02. Potato districts - Establishment.

The state consists of the following five potato districts:

1. Cavalier and Pembina Counties;
2. Walsh County in and west of range fifty-four;
3. Walsh County in and east of range fifty-three;
4. Benson, Grand Forks, and Nelson Counties; and
5. All remaining counties in the state.

4.1-10-03. North Dakota potato council - Membership - Term.

1. The North Dakota potato council is composed of one participating producer elected from each of the five districts established in section 4.1-10-02.
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 July 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 that member ceases to possess any of the qualifications provided for in this chapter, that member's office is deemed vacant and the council 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.

4.1-10-04. Election of council members.

1. Each year during the month of May, 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 five other producers.
3. In order 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. That date may not be later than May thirty-first.
4. The commissioner shall prepare election ballots and mail the ballots to the participating 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.

4.1-10-05. Chairman - Meetings.

Annually, the council shall elect one member to serve as the chairman. 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.

4.1-10-06. 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.

4.1-10-07. 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.

4.1-10-08. Council - Duties.

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

4.1-10-09. Designated handler - Certification.

1. Before a designated handler may sell, process, or ship potatoes, the designated handler shall obtain certification from the council. The certification is available upon submission to the council of an application containing the name under which the handler is transacting business within the state, the designated handler's place of

- business, and the location of loading and shipping places of the designated handler's agents.
2.
 - a. If the designated handler is a corporation, the application must include the corporate name and the names and addresses of its principal officers and agents within the state.
 - b. If the designated handler is a partnership, the application must include names and addresses of the persons constituting the partnership.
 - c. If the designated handler is a limited liability company, the application must include the names and addresses of its principal managers and agents within the state.
 3. The designated handler shall notify the council whenever there is a change of information required by this section.

4.1-10-10. Assessment.

1. Except as otherwise provided, an assessment at the rate of three cents per hundredweight [45.36 kilograms] is imposed upon all potatoes grown in this state or sold to a designated handler.
2. The council may increase the assessment by no more than one-half cent per hundredweight [45.36 kilograms] annually until a maximum assessment of four cents per hundredweight [45.36 kilograms] is reached.
3. This assessment is not imposed on any potatoes retained by producers for seed or for consumption by the producer, the producer's family, and nonpaying guests.

4.1-10-11. Collection of assessment - Records.

1. Each designated handler shall collect the assessment from the seller by deducting the assessment from the total price of the potatoes purchased by the designated handler.
2. Each designated handler shall keep documents regarding all purchases, sales, and shipments of raw potatoes 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 the quantity of potatoes that the designated handler received, sold, or shipped.

4.1-10-12. 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 levy a penalty equal to ten percent of the amount due, plus interest at the rate of six percent per annum from the due date.

4.1-10-13. Refund of assessment - Letters of request.

1. To receive a refund of any assessments paid in accordance with this chapter, a producer shall:
 - a. Between January first and July fifteenth, submit a letter to the council indicating that the producer intends to request a refund of assessments paid on potatoes grown during that calendar year; and
 - b. Between June first and June fifteenth of the calendar year following the date of the letter required by subdivision a, submit a letter to the council requesting the refund of assessments paid by the producer on potatoes grown during the previous calendar year.
2. Upon verification that the requirements of this section have been met, the council shall provide the requested refund to the producer.
3. Notwithstanding subsections 1 and 2, a producer is not entitled to a refund under this section unless the refundable amount meets or exceeds five dollars.

4.1-10-14. Expenditures.

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.

4.1-10-15. Continuing appropriation.

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

4.1-10-16. 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 a 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 to amend this chapter.

4.1-10-17. Penalty - Criminal.

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