

CHAPTER 4.1-02 BARLEY COUNCIL

4.1-02-01. Definitions.

As used in this chapter:

1. "Barley" means all varieties of barley harvested in the state.
2. "Council" means the North Dakota barley council.
3. "First purchaser" means any person accepting for shipment or otherwise acquiring barley from a producer. The term includes a mortgagee, pledgee, lienor, or other person having a claim against the producer, if the actual or constructive possession of the barley is taken as partial payment or in satisfaction of the mortgage, pledge, lien, or claim.
4. "Participating producer" means a producer that has not applied for a refund under section 4.1-02-16 during the preceding twelve months.
5. "Producer" means any person that:
 - a. Plants or causes to be planted a barley 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.

4.1-02-02. Barley council - Districts.

The state consists of the following five barley districts:

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

4.1-02-03. Council - Membership - Election - Term.

1. The council consists of one individual elected from each district established in section 4.1-02-02.
2. Each member of the council must be a resident of and a participating producer in the district that the member represents.
3. The term of each elected member is four years and begins on April first. The terms must be staggered so that no more than two terms expire each year.
4. If at any time during a member's term the member ceases to possess any of the qualifications provided for in this section, the member's office is deemed vacant and the council, by majority vote, shall appoint another qualified producer for the remainder of the term.
5. 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.

4.1-02-04. 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 barley 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 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 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 barley producers willing to serve as county representatives reside within the county.

4.1-02-05. Election of district representative - Council member.

1. Upon receiving the notice required by subdivision f of subsection 1 of section 4.1-02-04, 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.

4.1-02-06. Election costs - Responsibility.

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

4.1-02-07. Quorum.

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

4.1-02-08. 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.

4.1-02-09. 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.

4.1-02-10. 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.

4.1-02-11. Council - Duties.

1. The council shall determine the uses to which any moneys raised under this chapter may be expended. The uses may include:
 - a. The funding of research, education programs, and market development efforts; and
 - b. The support of state, regional, national, and international entities that promote barley utilization.
2. The council shall develop and disseminate information regarding the purpose of the barley assessment and ways in which the assessment benefits barley producers.

4.1-02-12. Assessment.

An assessment at the rate of twenty mills per bushel [35.24 liters] is imposed upon all barley grown in this state, delivered to this state, or sold to a first purchaser in this state. The assessment does not apply to barley grown by a producer and used by the producer as livestock feed.

4.1-02-13. Collection of assessment - Records.

1. The first purchaser shall collect the assessment from the seller by deducting the assessment from the total price of the barley being purchased by the first purchaser.
2. The first purchaser shall keep documents regarding all purchases, sales, and shipments of barley for a period of three years. The first purchaser shall make these records available to the council for examination at all reasonable times.
3. No later than thirty days after the conclusion of each calendar quarter, each first purchaser shall file with the council a report stating the quantity of all barley received, sold, or shipped by the first purchaser.

4.1-02-14. Submission of assessments - Civil penalty.

1. The first purchaser shall forward to the council all assessments collected by the first purchaser within thirty days after the conclusion 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.

4.1-02-15. Out-of-state sale - Submission of assessment by producer - Civil penalty.

1. If a producer sells barley to a first purchaser located outside this state and if the first purchaser has not contracted with the barley council to collect and remit assessments in accordance with this chapter, the producer shall determine the assessment due and shall submit that amount to the council within thirty days after the conclusion of the calendar quarter. The producer shall keep a record of the transaction for a period of three years and shall make the record available to the council for examination upon request.
2. If a producer fails to submit an assessment 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.

4.1-02-16. 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.

4.1-02-17. Reimbursement for double payments.

Notwithstanding section 4.1-02-16, if a producer documents to the council that the producer has paid the assessment more than once on the same barley, the council shall reimburse the producer for the double payment.

4.1-02-18. 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.

4.1-02-19. Continuing appropriation.

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

4.1-02-20. Advisory referendum.

1. a. When petitioned to do so by at least 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 a bill to the next legislative assembly to amend this chapter.

4.1-02-21. Penalty.

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