

CHAPTER 4.1-07 DRY PEA AND LENTIL COUNCIL

4.1-07-01. Definitions. As used in this chapter:

1. "Council" means the North Dakota dry pea and lentil council.
2. "Dry peas and lentils" include chickpeas, lupins, and fava beans.
3. "First purchaser" means any person accepting for sale or otherwise acquiring dry peas and lentils from a grower after harvest. The term includes a mortgagee, pledgee, lienor, and any person having a claim against the producer, when the actual or constructive possession of dry peas and lentils is taken as partial payment or in satisfaction of a mortgage, pledge, lien, or claim.
4. "Participating producer" means a producer that has not applied for a refund under section 4.1-07-15 for at least three years.
5. "Producer" means any person that:
 - a. Plants or causes to be planted a dry pea and lentil 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.

4.1-07-02. Dry pea and lentil districts - Establishment. The state consists of the following five dry pea and lentil districts:

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

4.1-07-03. Dry pea and lentil council - Membership - Term.

1. The council consists of one participating producer elected from each district established in section 4.1-07-02.
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 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 three 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.

4.1-07-04. 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 dry pea and lentil producers for the purpose of electing a county representative.
 - b. The county extension agent 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 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 county extension agent, in consultation with the executive director of the county farm service agency office, determines and notifies the council that no dry pea and lentil producers willing to serve as county representatives reside within the county.

4.1-07-05. Election of district representative - Council member.

1. Upon receiving the notice required by subdivision f of subsection 1 of section 4.1-07-04, 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 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.

4.1-07-06. Election costs - Responsibility. All costs of holding county and district elections are the responsibility of the council.

4.1-07-07. 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.

4.1-07-08. 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.

4.1-07-09. 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. a. Contract with the governmental entity that is responsible for administration of the dry pea and lentil assessment in another state or province and provide for:
 - (1) The return by that governmental entity of any assessment charged on dry peas and lentils grown in this state; and
 - (2) The return by the council of any assessment charged on dry peas and lentils grown in another state or province; and
- b. Contract with any person for any other purpose permitted under this chapter;
5. Sue and be sued; and
6. Do all things necessary and proper to enforce and administer this chapter.

4.1-07-10. Council - Duties.

1. The council shall determine the uses to 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 the United States dry pea and lentil council.
2. The council shall develop and disseminate information regarding the purpose of the dry pea and lentil assessment and ways in which the assessment benefits dry pea and lentil producers.

4.1-07-11. First purchaser - Certificate.

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

4.1-07-12. Assessment. An assessment at the rate of one percent of the net value of dry peas and lentils is levied upon all dry peas and lentils grown in the state or sold to a first purchaser.

4.1-07-13. Collection of assessment - Records.

1. A first purchaser shall collect the assessment from the producer by deducting the assessment from the net purchase price of the dry peas and lentils being purchased by the first purchaser.
2. Each first purchaser shall keep documents regarding all purchases, sales, and shipments of dry peas and lentils 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 first purchaser shall file a report with the council stating, in individual and total amounts, the quantity and source of all dry peas and lentils that the first purchaser received, sold, or shipped.

4.1-07-14. Submission of assessment - Civil penalty.

1. Each first purchaser shall forward to the council all assessments collected by the first purchaser no later than the thirtieth day after the end 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 assessment due, plus interest at the rate of twelve percent per annum from the due date.

4.1-07-15. 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 then shall refund to the producer the net amount of the assessment that had been collected from the producer.

3. If a request for 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.

4.1-07-16. Reimbursement for double payment. Notwithstanding section 4.1-07-15, if a producer documents to the council that the producer has paid the assessment more than once on the same dry peas or lentils, the council shall reimburse the producer for the double payment.

4.1-07-17. Expenditure of funds. 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.

4.1-07-18. Continuing appropriation. All moneys received by the council under this chapter are appropriated on a continuing basis to the council to be used to carry out this chapter.

4.1-07-19. 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 proposed legislation to the next regular session of the legislative assembly to amend this chapter.

4.1-07-20. Penalty. Any person willfully violating this chapter is guilty of a class B misdemeanor.