



OFFICE OF THE LEGISLATIVE AUDITOR
STATE OF MINNESOTA

EVALUATION REPORT

Agricultural Commodity Councils

MARCH 2014

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OFFICE OF THE LEGISLATIVE AUDITOR

STATE OF MINNESOTA • James Nobles, Legislative Auditor

March 2014

Members of the Legislative Audit Commission:

Minnesota law authorizes producers of agricultural commodities to establish councils to support their specific industry. The councils are allowed to levy an assessment (“checkoff fee”) on producers and use the proceeds to fund research and promotion of the commodity. As of March 2014, Minnesota had 13 agricultural commodity councils. Annual revenues collected by the councils range from \$18,000 (Sunflower Council) to more than \$11 million (Corn Council).

Last year, you asked the Office of the Legislative Auditor to evaluate the state’s agricultural commodity councils. The report contains our assessment of the council’s goals and effectiveness, as well as the opinions we obtained from commodity producers. The report also contains our assessment of the oversight provided by the Minnesota Department of Agriculture and each council’s elected board.

Our evaluation was conducted by Judy Randall (project manager) and Laura Logsdon, with assistance from David Kirchner. The Minnesota Department of Agriculture and all 13 agricultural commodity councils cooperated with our evaluation, and we thank them for their assistance.

Sincerely,

A handwritten signature in black ink that reads "Jim Nobles".

James Nobles
Legislative Auditor

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Summary

Minnesota commodity councils are subject to minimal oversight by the Minnesota Department of Agriculture (MDA).

Major Findings:

- Minnesota law allows agricultural producers to create commodity research and promotion councils. As of March 2014, Minnesota had 13 commodity councils. (p. 4)
- Checkoff fees (the per-unit assessments made on a commodity at the time of its first purchase) made up 90 percent or more of most councils' annual revenue. Annual revenue in 2012 ranged from \$18,000 (Sunflower Council) to more than \$11 million (Corn Council). (pp. 17-18)
- Each council has an elected board of producers that establishes the council's priorities and directs expenditure decisions. (p. 11)
- Commodity councils have established broad purposes, which justify spending money on a wide array of activities. (pp. 15-16)
- Council effectiveness depends on the goals of the council, which are often not measurable. (pp. 20-21)
- Information about several councils' operations and finances is not readily available. (pp. 38-40)
- The Minnesota Department of Agriculture's (MDA) process for auditing council compliance is flawed, and staff have not followed up on inconsistencies or reports of noncompliance. (pp. 32-34)

- We had concerns about organizational conflicts of interest on the Area I Potato and Turkey council boards. (pp. 41-43)
- Minnesota statutes do not prohibit councils from using checkoff-fee revenue to influence legislation, despite a common understanding to the contrary. (p. 45)

Key Recommendations:

- MDA should review, update, and enforce its compliance audit process to ensure commodity councils comply with state law. (p. 34)
- The Legislature should amend *Minnesota Statutes* 2013, 17.57, to require agricultural commodity councils to have a Web site on which they regularly post financial, election, meeting, and contact information. (p. 40)
- The Legislature should determine the limits—if any—it wants to place on the use of checkoff-fee revenue, and then amend *Minnesota Statutes* 2013, 17.59, subd. 4, accordingly. (p. 46)
- The Legislature should consider increasing oversight of agricultural commodity councils. (p. 37)
- The Legislature should amend Minnesota statutes to address board vacancy and board conflict of interest concerns. (p. 43)

“Checkoff fees” — paid by commodity producers—are the primary revenue source for nearly all commodity councils.

Most councils focus their efforts on commodity-related research and promotions.

Report Summary

Since 1969, Minnesota law has allowed agricultural producers to establish commodity research and promotion councils. These councils collect per-unit assessments (“checkoff fees”) from Minnesota producers of certain commodities to support research and promotion of those commodities. Commodity councils also exist nationally, coordinating research and promoting commodities through recognizable campaigns like “Got Milk?” and “The Incredible, Edible Egg.” As of March 2014, Minnesota had 13 agricultural commodity councils: Barley, Beef, Canola, Corn, Dairy, Dry Edible Bean, Area I Potato, Area II Potato, Soybean, Sunflower, Turkey, Wheat, and Cultivated Wild Rice.¹

Commodity council 2012 annual revenue ranged from \$18,000 (Sunflower Council) to more than \$11 million (Corn Council). For most of the councils, more than 90 percent of annual revenue came from checkoff fees. For five of the councils (Corn, Dry Edible Bean, Area II Potato, Sunflower, and Turkey), these fees are refundable by producer request, although only a small percentage of checkoff-fee revenue has been refunded.

The Minnesota Department of Agriculture (MDA) has oversight authority for the councils, although it receives no state funds to fulfill these responsibilities. Instead, each council is required to pay MDA for its administrative services; in recent

years, this has totaled about \$100,000 annually.

Commodity councils are governed by a board of elected producers.

Producers who pay the checkoff fee elect the council board. Board size ranges from 5 elected members on the Barley, Dry Edible Bean, and Sunflower council boards to 22 on the Dairy Council board.

Councils range from having 1 part-time staff person at the Area I Potato Council, to 12 staff people and 7 on contract at the Corn Council. Several councils contract for resources. For example, the Dairy, Dry Edible Bean, Area I Potato, and Sunflower councils contract with regional or national commodity organizations for staff and for administrative, research, and programmatic services.

Minnesota commodity councils have established broad purposes, which make it difficult to measure council effectiveness.

Council purposes generally are to support promotion, research, and market development that benefit their commodity. Council activities range from investing in research about pests and diseases, to hosting booths at the Minnesota State Fair, to working to expand overseas markets. Most councils focus on commodity-related research and promotion, although the Barley Council, for one, has reported spending \$0 on research over the last four years.

We asked commodity council staff how they measure their effectiveness. Several staff said it is difficult to measure the success of their efforts; one told us the council was confident of its success because it had minimal requests for checkoff-fee refunds.

¹ Three of these commodities, Beef, Dairy, and Soybean, are also subject to federal commodity council regulations and oversight. The two potato councils represent producers in different regions of the state.

Yet other staff said they measure their success by the increase in acreage, yield, or demand for their commodity, although it is not clear to what extent the councils' efforts directly influence these outcomes.

Producers we surveyed gave generally favorable reviews of the commodity councils.

Most producers who responded to our survey were familiar with their commodity council and generally agreed with its use of checkoff-fee revenue.

To evaluate the effectiveness of the commodity councils, we surveyed almost 3,000 Minnesota producers who pay checkoff fees. The survey recipients were selected from lists of producers provided by the councils and MDA.² Although producers may pay checkoff fees on more than one commodity, we sent each producer in our sample a questionnaire about only one council. We received responses from 42 percent (1,219) of those surveyed.

For ten of the councils, at least half of the respondents indicated that they were familiar with the council's use of checkoff-fee revenue, and a majority of these respondents said they agreed with how the council used these dollars. However, almost 30 percent of dairy producers who reported they were familiar with the Dairy Council said they do not agree with how that council uses its checkoff-fee revenue. More than one-quarter of canola producers and 38 percent of sunflower producers who indicated they were familiar with their respective councils said they were not familiar enough with how their council spends its checkoff-fee money to state an opinion.

MDA does not believe it has the authority to require councils to comply with state laws.

We asked producers whether they think they have benefited from council activities. For nine of the commodity councils, a majority of respondents thought they benefited. However, a significantly smaller share of producers responding thought they benefited from the activities of the Dairy (40 percent) or Sunflower (26 percent) councils.

MDA has provided minimal oversight of commodity councils.

MDA requires councils to complete a checklist every three years to assess compliance with state laws. We reviewed the checklists submitted by the councils from 2009 to 2012 and found errors in many of them. We also found errors in the checklist itself. When we told MDA staff about these issues, they were not aware of the errors. Staff told us they were not confident in MDA's authority to enforce the checklist and instead assumed the respective council board addressed any problems identified through their audits. We recommend MDA update and enforce its compliance checklist to ensure that councils comply with the law.

Many commodity councils do not routinely provide information to the public about their finances or operations.

Despite a law requiring the councils to prepare an annual report, three councils (Barley, Area I Potato, and Area II Potato) do not do so. Most councils that have Web sites do not post information about council finances or meetings, and three councils (Barley, Area I Potato, and Sunflower) do not have a Web site.

In their responses to our survey, several producers noted the councils'

² The lists are incomplete, and therefore the results of our survey are not generalizable to the full producer population. But, the responses do provide insight into how some producers view the commodity councils.

lack of transparency. For example, one turkey producer wrote, “I would like to know the council’s budget, i.e., administration, salaries, etc. Have there been any grievances or complaints about the council? If so what are they?” Similarly, a wild rice producer commented, “Wild Rice Council should present annual expense operating statement to ALL GROWERS and projected budget. Not just to Board of Directors.” We recommend the Legislature require commodity councils to have a Web site on which they post council financial, election, meeting, and contact information.

Several councils have significant financial, managerial, and operational relationships with their corresponding growers association.

Growers associations are member-based organizations that represent the interests of groups of producers. Unlike checkoff fees, association membership is voluntary. Many of the councils have close relationships with these associations. For example, the Corn Council paid more than \$4.8 million to the Minnesota Corn Growers Association in 2012 for handling council funds, accounting, general and project management, and communications. Five councils—Barley, Corn, Soybean, Turkey, and Wheat—share staff with their growers association. These close relationships can pose complications given limits on how checkoff-fee money can be used.

Council staff and others generally believe that, unlike growers association dues, checkoff-fee dollars may not be used for political purposes or to influence legislation. However, the law is not that restrictive; it prohibits the use of checkoff fees to support political

parties or candidates, but not to influence legislation. We recommend the Legislature determine the limits it wants to place on the use of checkoff-fee revenue and amend Minnesota statutes accordingly.

The Area I Potato and Turkey council boards have potential conflicts of interest.

A 26-year board member on the Area I Potato Council has also served since 2009 as the President of the Northern Plains Potato Growers Association, an organization with which the council contracts for all of its programming activities and staff needs. While we did not find evidence of unethical actions, the individual’s role as both a board member of the council and president of the organization that receives the largest contract from the council constitutes a conflict of interest.

The 15 board members of the Turkey Council are also members of the 18-person board for the Minnesota Turkey Growers Association, a related organization. Although both groups represent turkey growers, they are separate organizations with distinct purposes. As a result, the board members have a conflict of interest: they are expected to serve the interests of the Turkey Council and the interests of the Turkey Growers Association. These dual roles are especially noteworthy since, in 2012, the Turkey Council contracted for services from the Turkey Growers Association worth almost \$330,000, or 36 percent, of the council’s total expenditures. We recommend the Legislature amend statutes to address council board conflicts of interest.

State law prohibits the use of checkoff-fee revenue to support a political party or candidate but not to influence legislation.

Introduction

For more than 45 years, producers of certain agricultural commodities in Minnesota have chosen to establish councils to support their particular industry. These agricultural commodity councils, authorized by state law, levy a per-unit assessment (a “checkoff fee”) on producers and use the proceeds to fund research and promotion of the commodity. As of March 2014, Minnesota had 13 agricultural commodity councils: Barley, Beef, Canola, Corn, Dairy, Dry Edible Bean, Area I Potato, Area II Potato, Soybean, Sunflower, Turkey, Wheat, and Cultivated Wild Rice.

In April 2013, the Legislative Audit Commission directed the Office of the Legislative Auditor to evaluate Minnesota’s agricultural commodity councils. Our evaluation addressed the following questions:

- **How much money have commodity councils collected through the agricultural commodity checkoff program? How have they spent this money?**
- **To what extent do the commodity councils measure their effectiveness? How effective have the councils been in meeting their goals?**
- **To what extent does the Minnesota Department of Agriculture oversee the councils and their use of checkoff-fee revenue? How accountable are the councils to the state and to commodity producers?**

To answer these questions, we reviewed journal articles, federal laws and relevant U.S. Supreme Court decisions, laws from Minnesota and a sample of other states, and rules promulgated by the Minnesota Department of Agriculture (MDA). For each council, we reviewed several years’ worth of annual reports, financial audits, compliance reviews, board meeting minutes, and promotional orders. We also interviewed MDA staff and representatives of all 13 councils. We reviewed data collected by MDA regarding council board election processes and voter turnout, and we toured a grain terminal to observe the collection of checkoff fees.

In addition, we talked with council staff about their goals, then reviewed annual plans and other documents to assess the extent to which councils met their goals. We spoke with several interest groups and surveyed a sample of almost 3,000 Minnesota agricultural commodity producers to gauge their opinions of the councils. We received responses from 42 percent of those surveyed (1,219 of 2,929 surveyed), although the response rates varied by council, ranging from 67 percent of barley producers surveyed to only 27 percent of sunflower producers surveyed.

Background

Minnesota law authorizes the creation of agricultural commodity councils.

The State of Minnesota promotes the agricultural industry in a variety of ways. Minnesota law gives the Minnesota Department of Agriculture (MDA) the authority to market and promote the state's agricultural industry in cooperation with stakeholders, the University of Minnesota, and state and federal agencies.¹ Minnesota law also allows for the creation of agricultural commodity research and promotion councils.² These councils collect fees from Minnesota producers of certain commodities to support research and promotion of those commodities. MDA and the commodity councils often work together on international marketing initiatives, but the department tends to focus its efforts on those commodities without the resources to promote their own industries.

In this report, we focus on the role of the commodity councils to support and promote Minnesota agricultural commodities. We did not examine MDA's marketing or promotional activities, although we did evaluate the extent to which MDA oversees commodity council activities, as discussed in Chapter 3. In this chapter, we review the history of commodity councils in the United States and discuss Minnesota's 13 councils more specifically. Subsequent chapters examine council effectiveness (Chapter 2) and oversight and accountability (Chapter 3).³

OVERVIEW OF AGRICULTURAL COMMODITY COUNCILS

Commodity councils were first created in the United States through the 1937 Agricultural Marketing Agreement Act.⁴ This Act gave commodity councils the authority to regulate and promote specific commodities in order to maintain orderly commodity marketing conditions and fair prices for producers.⁵ Once a council is created under the Act, it has the authority to establish a fee to be paid by producers to fund research and promotion of its commodity. As of March 2014, there were 20 national research and promotion councils in the United States.⁶ These councils coordinate research and promote commodities

¹ *Minnesota Statutes* 2013, 17.03, subs. 1-3 and 6; and 17.52.

² Throughout this report, we refer to Minnesota's agricultural research and promotion councils as "commodity councils" or "councils."

³ The Office of the Legislative Auditor last evaluated Minnesota's commodity councils in 1979. See Office of the Legislative Auditor, Program Evaluation Division, *Minnesota's Agricultural Commodities Promotion Councils* (St. Paul, 1979).

⁴ *Agricultural Marketing Agreement Act of 1937*, ch. 296, 50 Stat. 246.

⁵ *Agricultural Marketing Agreement Act*, 7 U.S. Code, sec. 602 (2012).

⁶ Commodities for which there is a federal council are: Beef, Blueberries, Cotton, Dairy Products, Eggs, Fluid Milk, Hass Avocados, Honey Packers and Importers, Lamb, Mangos, Mushrooms, Peanuts, Popcorn, Pork, Potatoes, Processed Raspberries, Softwood Lumber, Sorghum, Soybeans, and Watermelons.

through recognizable campaigns like “Got Milk?” and “The Incredible, Edible Egg.”

Three cases heard by the U.S. Supreme Court between 1996 and 2005 challenged the constitutionality of compelling producers to financially support commodity council activities with which they did not agree.⁷ In general, the Court has upheld the constitutionality of commodity councils, and producers’ required financial payments to them, when the councils’ promotion efforts are part of a comprehensive commodity marketing order.⁸

Commodity Councils in Minnesota

Minnesota law first enabled most producers to establish commodity councils in 1969.⁹ The law allowed councils to collect refundable assessments from all producers of a given commodity in order to promote, increase sales, and improve production of that commodity. In 1982, the Legislature overhauled the law, adding new requirements for councils and more oversight responsibilities for the Minnesota Department of Agriculture (MDA).¹⁰ Councils were required to submit annual budgets to MDA, and the department became responsible for conducting annual fiscal audits and triennial compliance audits of the councils.

Minnesota has 13 commodity councils.

As of March 2014, Minnesota has 13 commodity councils: Barley, Beef, Canola, Corn, Dairy, Dry Edible Bean, Area I Potato, Area II Potato, Soybean, Sunflower, Turkey, Wheat, and Cultivated Wild Rice.¹¹ The councils were established between 1965 and 2009, with Turkey being the first and Sunflower the most recent council created. We provide an overview of each commodity council in Appendix A. Exhibit 1.1 lists Minnesota’s commodity councils, the year they were first established, and a recent count of farms producing each commodity. The number of producers varies greatly from one commodity to another. As shown in the exhibit, more than 30,000 farms in Minnesota produce corn while only 22 produce cultivated wild rice.

⁷ *Glickman v. Wileman* 521 U.S. 457 (1997); *United States v. United Foods, Inc.* 533 U.S. 405 (2001); and *Johanns v. Livestock Marketing Assn.* 544 U.S. 550 (2005).

⁸ A marketing order provides authority for specific commodities to compel producers of that commodity to contribute funds for industry regulation and promotion.

⁹ *Laws of Minnesota* 1969, chapter 1021. Two councils predate the 1969 law; Minnesota Turkey and Area I Potato councils were established in 1965 and 1967, respectively, under specific authority to establish advisory boards for their commodities. *Laws of Minnesota* 1965, chapter 387, and *Laws of Minnesota* 1967, chapter 417.

¹⁰ *Laws of Minnesota* 1982, chapter 582.

¹¹ While most commodity councils represent producers statewide, the Area I and Area II Potato councils represent potato growers in certain regions of the state. The Area I Potato Council represents growers in Becker, Beltrami, Clay, Clearwater, Kittson, Lake of the Woods, Mahanomen, Marshall, Norman, Pennington, Polk, Red Lake, Roseau, and Wilkin counties. The Area II Potato Council represents producers in all other counties in the state. *Minnesota Statutes* 2013, 17.54, subd. 9.

Exhibit 1.1: Minnesota Agricultural Commodity Councils, Year Established and Number of Farms

	Year Established	Number of Farms
Barley Council	1990	1,038
Beef Council	1969	14,410
Canola Council	1996	263
Corn Council	1990	30,207
Dairy Council	1975	3,760
Dry Edible Bean Council	1979	550
Area I Potato Council	1967	58
Area II Potato Council	1991	39
Soybean Council	1973	27,407
Sunflower Council	2009	1,477
Turkey Council	1965	109
Wheat Council	1977	6,699
Cultivated Wild Rice Council	1974	22

NOTES: The number of farms producing canola, dry edible beans, potatoes in Area I and Area II, sunflowers, turkeys, and cultivated wild rice may be undercounted. The numbers of farms producing these seven commodities and dairy are based on 2013 information from the councils and the Minnesota Department of Agriculture. The numbers of farms producing the remaining commodities are based on 2007 agriculture census data.

SOURCE: Office of the Legislative Auditor, analysis of data provided by the Minnesota agricultural commodity councils, Minnesota Department of Agriculture, and United States Department of Agriculture, 2007 Agriculture Census-Minnesota, http://www.agcensus.usda.gov/Publications/2007/Full_Report/Volume_1,_Chapter_1_State_Level/Minnesota/st27_1_059_059.pdf, accessed November 15, 2013.

Councils with State and Federal Marketing Orders

Three councils organized under state law—Beef, Dairy, and Soybean—are also organized under federal commodity marketing orders. If the Beef, Dairy, or Soybean councils were not organized under Minnesota statutes, producers of these commodities would still pay a commodity fee under the federal marketing orders. These three councils operate under federal marketing order requirements, which establish the fee amount, provide guidelines on collection and use of funds, and determine requirements for council oversight.¹² These councils also adhere to requirements under Minnesota statutes that do not conflict with federal regulations, such as submitting financial audits and compliance reviews to MDA. Federal marketing orders also exist for commodities that do not have a council in Minnesota, such as pork. While there is a Minnesota Pork Board, it operates under only the federal pork marketing order and is not organized as a state council under Minnesota statutes. As a result, the Minnesota Pork Board was not included in our evaluation of commodity councils.

For the fees collected under the federal marketing order, the councils must comply with the federal requirements. However, any fees collected beyond what

The Minnesota Beef, Dairy, and Soybean councils are organized under both state and federal laws.

¹² Federal Beef Order: 7 *CFR*, 1260 (2013); Federal Dairy Order: 7 *CFR*, 1150 (2013); and Federal Soybean Order: 7 *CFR*, 1220 (2013).

is required by the federal order would fall under the state commodity council requirements. For example, the Minnesota Beef Council is attempting to levy an additional, state-specific assessment through a producer referendum; the council hopes to generate funds for projects such as live cattle production research, which is prohibited by the federal marketing order. These funds would fall under state rather than federal regulations, allowing the Beef Council to decide how to use the funds within state guidelines.

Minnesota Regulations

Minnesota law outlines requirements for creating and terminating a council, establishing plans for council activities, using producer funds, and holding council elections.¹³ The law also details responsibilities of the councils and of MDA. Below, we review the creation and termination of councils; we provide a more in-depth discussion of the use of producer funds, elections, and council and MDA responsibilities in Chapters 2 and 3.

Minnesota law establishes certain requirements for commodity councils.

Council Creation. Producers may create commodity councils by filing a petition with the commissioner of MDA signed by at least 1,000 producers or 15 percent of the producers of the proposed commodity, whichever is less. Once the petition is filed, the commissioner must appoint a nominating committee of at least five producers of that commodity, and the committee must nominate at least two producer candidates for each council board position. The commissioner then must arrange an election in which producers of the commodity are eligible to vote for the first council board.¹⁴

Promotional Order. A council's first elected board develops the "promotional order," which serves as its governing charter. The order outlines council plans for promotion, research, and expansion of sales of its commodity and establishes a fee that producers pay to finance the council's activities. The commissioner of MDA must hold public hearings and conduct a referendum on the proposed promotional order, which is adopted if approved by a majority of producers voting. If the referendum fails, another may not take place for a year.¹⁵

Once commodity producers create a council, Minnesota law does not require periodic reauthorization.

Termination of Order. A council may terminate its promotional order—and thus disband itself—after a public hearing and consultation with the MDA commissioner. A promotional order may also be terminated through a producer referendum. This requires a petition of 1,000 producers or 15 percent of the producers of the commodity, followed by a referendum conducted by the MDA commissioner. The order is terminated if a majority of producers voting support termination.¹⁶ One Minnesota commodity council, the Minnesota Egg Council, terminated its promotional order and disbanded in 1989.

Minnesota law does not require reauthorization of commodity councils. Once created, councils continue to exist until a formal termination process has

¹³ *Minnesota Statutes* 2013, 17.51-17.69.

¹⁴ *Minnesota Statutes* 2013, 17.54, subds. 1, 3, and 4.

¹⁵ *Minnesota Statutes* 2013, 17.56.

¹⁶ *Minnesota Statutes* 2013, 17.64.

occurred. This differs from the federal soybean promotional order, which gives soybean producers the opportunity to request a referendum on the promotional order every five years.¹⁷

Other States

Other states also authorize commodity councils to collect assessments from producers of specific commodities. We compared the laws for five states with Minnesota's law.¹⁸ We found two different models for creating commodity councils among the states we reviewed. Minnesota, California, and Wisconsin have similar laws that provide authority for the producers of *any* commodity to form a council and collect per-unit commodity fees. This over-arching authority does not exist in Iowa, Nebraska, or South Dakota, where statutes authorize producers of *specific* commodities to form councils and collect commodity assessments. For example, Iowa has a specific statute authorizing a Corn Board and a separate statute authorizing an Egg Council.¹⁹

Among the five states we reviewed, we also found two different practices used to elect or appoint council board members. Minnesota, Iowa, and Wisconsin allow producers to elect their commodity council board members. In contrast, California, Nebraska, and South Dakota statutes generally require that board members be appointed either by the governor or the state's department of agriculture.²⁰ States also vary in the process for depositing council funds. In Minnesota, commodity councils deposit funds in a federally insured bank; in three of the other states we reviewed, councils are generally required to deposit their funds into an account with the state treasury or department of agriculture, which reallocates the funds to the council.²¹

CHECKOFF FEES

As previously stated, Minnesota law gives commodity councils the authority to collect fees from producers of that commodity, known as "checkoff fees."

- **"Checkoff fees" are the per-unit assessments made on a given commodity at the time of its first purchase.**

Checkoff-fee amounts are established by each commodity council in its promotional order; by law, the fee may not exceed 1 percent of the commodity's

Minnesota law permits the producers of any commodity to form a council.

Checkoff fees are established by each commodity council.

¹⁷ 7 *CFR*, sec. 1220.616 (2013); and 7 *U.S. Code*, sec. 6305 (2013).

¹⁸ We reviewed state laws from California, Iowa, Nebraska, South Dakota, and Wisconsin.

¹⁹ *Iowa Statutes* 2014, 185C.3 and 184.2.

²⁰ There are a few exceptions. Board members of the South Dakota Corn Council are elected by participating growers, and board members of the state's Pork Council are elected by producers after the first council has been appointed. Directors on the Nebraska Poultry and Egg Committee are also elected.

²¹ See for example: *Minnesota Statutes* 2013, 17.59, subd. 4; *Iowa Statutes* 2013, 183A.7; *Nebraska Statutes* 2013, 2-3959; and *South Dakota Statutes* 2013, 38-10-35.

Changes to checkoff-fee amounts typically require a producer referendum.

current market value.²² As discussed earlier, the checkoff-fee amounts for beef, dairy, and soybean producers are based on the national checkoff programs, rather than the amount established in their state promotional orders. The Minnesota Beef and Soybean councils are responsible for collecting all checkoff fees paid in the state and remitting 50 percent of the amount collected to their respective national commodity organizations. Dairy processors and co-ops remit two-thirds of the dairy checkoff fees directly to the Minnesota Dairy Council and the remaining one-third to the National Dairy Board.

Changes to the checkoff-fee amounts typically require a referendum of producers.²³ To increase a checkoff fee, a majority of the voting producers must support the increase. In the past five years, three of Minnesota’s commodity councils—Corn, Wheat, and Cultivated Wild Rice—increased their checkoff fees. The corn checkoff fee increased from \$0.005 to \$0.01 per bushel, the wheat checkoff fee increased from \$0.01 to \$0.02 per bushel, and the cultivated wild rice checkoff fee increased from \$0.025 to \$0.06 per finished pound. Exhibit 1.2 lists the current checkoff-fee amount for each council.

By law, the “first purchaser” is required to collect the checkoff fee and remit it to the commodity council.²⁴ A grain elevator that purchases commodities such as corn, soybean, and wheat is an example of a first purchaser. The elevator is responsible for calculating and collecting the checkoff fee, which it deducts from the amount paid to the producer for the commodities delivered. The elevator then remits the fees to the appropriate council. First purchasers receive no reimbursement for the administrative costs of collecting and remitting checkoff fees.

Although producers are required to pay checkoff fees to commodity councils,

- **Five of Minnesota’s commodity councils have refundable checkoff fees.**

Some councils—but not all—have refundable checkoff fees.

Exhibit 1.2 indicates whether the commodity councils’ checkoff fees are refundable under current practice. Checkoff fees are refundable for producers of corn, dry edible beans, potatoes in Area II, sunflowers, and turkeys. Minnesota law permits both total and “partial” refunds of the corn checkoff fee.²⁵ In the case of a partial refund, a portion of the refund can be redirected to the Minnesota Corn Growers Association in lieu of membership dues. This partial refund is specifically allowed only for corn producers.

²² *Minnesota Statutes* 2013, 17.59, subd. 1.

²³ Exceptions exist for the Canola and Cultivated Wild Rice councils. When these councils were created, producers approved promotional orders that established a maximum checkoff-fee amount, rather than a set amount. As long as the fees are less than this maximum amount, the councils can change their checkoff-fee amount without a producer referendum.

²⁴ A “first purchaser” is a person or organization that buys a commodity from a producer for movement into commercial channels. *Minnesota Statutes* 2013, 17.53, subd. 8; and 17.59, subd. 2.

²⁵ *Minnesota Statutes* 2013, 17.63.

Exhibit 1.2: Checkoff-Fee Amount and Refund Status by Council, 2013

	Checkoff-Fee Amount	Refunds Allowed
Barley Council	\$0.015 per bushel	No
Beef Council ^a	\$1 per head	No
Canola Council	\$0.06 per hundredweight	No
Corn Council	\$0.01 per bushel	Yes
Dairy Council ^b	\$0.15 per hundredweight	No
Dry Edible Bean Council	\$0.10 per hundredweight	Yes
Area I Potato Council	\$0.03 per hundredweight	No
Area II Potato Council	\$0.02 per hundredweight	Yes
Soybean Council ^c	0.5 percent of net value per bushel	No
Sunflower Council	\$0.04 per hundredweight	Yes
Turkey Council	\$0.0006499 per pound of eviscerated weight	Yes
Wheat Council	\$0.02 per bushel	No
Cultivated Wild Rice Council	\$0.06 per pound	No

^a Producers pay \$1 per head in checkoff fees; the nonrefundable federal checkoff-fee amount reflected in the exhibit supersedes the refundable checkoff-fee amount of \$0.50 per head established in the Minnesota Beef Council's promotional order.

^b Producers pay \$0.15 per hundredweight in checkoff fees; the nonrefundable federal checkoff-fee amount reflected in the exhibit supersedes the refundable checkoff-fee amount of one-half of 1 percent of market value established in the Minnesota Dairy Council's promotional order.

^c Producers pay one-half of 1 percent of net value per bushel in checkoff fees; the nonrefundable federal checkoff-fee amount reflected in the exhibit supersedes the refundable checkoff-fee amount of \$0.01 per bushel established in the Minnesota Soybean Council's promotional order. Under the federal promotional order, refunds are allowed for organic producers of soybeans; they make up a very small proportion of total soybean producers in Minnesota.

SOURCE: Office of the Legislative Auditor, analysis of data provided by the Minnesota agricultural commodity councils and the Minnesota Department of Agriculture.

When commodity councils were first authorized in 1969, producers could request refunds of checkoff fees for all commodities.²⁶ This changed as the law was amended over time. Now, producers of barley, potatoes in Area I, wheat, and cultivated wild rice are unable to request checkoff-fee refunds per state law.²⁷ Additionally, federal marketing orders do not permit refunds of checkoff fees for beef, dairy, or soybeans.²⁸ Refunds are also not permitted for canola producers because a nonrefundable checkoff fee was approved in the 1996 referendum

²⁶ *Laws of Minnesota* 1969, chapter 1021, sec. 13.

²⁷ *Minnesota Statutes* 2013, 17.63(a).

²⁸ Organic soybean producers are allowed refunds of their checkoff fees, but this made up 0.01 percent of the soybean checkoff funds kept in Minnesota in 2012. 7 *CFR*, sec. 1220.302 (2013); 7 *CFR*, sec. 1150.152 (2013); and 7 *CFR*, sec. 1260.172 (2013).

Checkoff fees are per-unit assessments on certain commodities.

establishing the Canola Council. This was approved by the Commissioner of MDA, although it contradicts state law. We discuss the Canola Council's nonrefundable checkoff fee in Chapter 3.

Minnesota statutes give the commissioner of MDA authority to create rules regarding the process for checkoff-fee refunds.²⁹ The key requirements for requesting refunds are listed below.

The Minnesota Department of Agriculture processes checkoff-fee refund requests.

- Producers interested in requesting refunds must have the checkoff fees paid on a timely basis and submit a refund request form to the commissioner of MDA. The refund request form must be submitted within the time period specified in the council's promotional order, typically within 60 days of the fee being paid.³⁰
- Refund request forms are available on the MDA Web site and require that producers also submit proof of checkoff-fee payments.
- Producers may make up to 12 requests for refunds per year; a single request may include multiple commodity sales.³¹
- MDA is responsible for processing refund requests.³² The department validates whether the producer submitted the request in the time window required, that the documentation submitted is correct, and that the documentation indicated the checkoff fee was collected by the first purchaser. If the information is incomplete when it is submitted and it is within the allowable time frame, MDA staff told us they follow-up with producers to obtain complete documentation.
- Once the refund request is approved, MDA directs the appropriate council to pay the refund.

Checkoff-fee refunds make up a small percentage of total checkoff-fee revenue collected.

The amount requested for refunds makes up a small percentage of the total checkoff-fee revenue collected, ranging from 7 percent of the Corn Council's checkoff-fee revenue in 2009 to 0 percent of the Area II Potato and Sunflower councils' checkoff-fee revenue in 2011 and 2012. Exhibit 1.3 shows the percentage of checkoff-fee revenue collected, by council, that was refunded between 2009 and 2012. The largest number of checkoff-fee refunds was for the Corn Council. In 2012, 609 corn producers requested a refund, which was 2 percent of the total farms producing corn. In 2012, the average refund request for corn producers was just over \$250, and the average refund per producer for that year was \$585. The other councils had fewer refund requests: Sunflower and Turkey each had three or fewer producers request a refund in 2011 or 2012, which equaled less than 1 percent of sunflower producers and almost 3 percent of

²⁹ *Minnesota Statutes* 2013, 17.63(a).

³⁰ *Ibid.*

³¹ *Ibid.*

³² *Ibid.*

Exhibit 1.3: Percentage of Checkoff-Fee Assessments Refunded by Council, Fiscal Years 2009 to 2012

	2009	2010	2011	2012
Corn Council	7.0%	6.3%	6.8%	5.7%
Dry Edible Bean Council	3.4	3.5	5.5	3.6
Area II Potato Council	0.0	0.0	0.0	0.0
Sunflower Council	NA	NA	0.0	0.0
Turkey Council	0.8	0.9	0.3	0.2

NOTES: "NA" means the data were not available; the Sunflower Council was established in 2009 and did not have a full year of financial information until fiscal year 2011. End date of fiscal years varies by council.

SOURCE: Office of the Legislative Auditor, analysis of agricultural commodity council financial statements.

turkey producers. The Dry Edible Bean Council had a peak of 14 producers request a refund in 2012, which equaled 2.5 percent of producers.

COUNCIL ORGANIZATION

Each commodity council is organized similarly, with elected boards overseeing council activities and staff who work on council business. In this section, we discuss council boards and staff, and introduce the councils' complex relationships with growers associations.

Council Boards

Commodity producers in Minnesota elect members to the council boards.

- **Each commodity council has an elected board of producers that establishes the council's priorities and directs expenditure decisions.**

Commodity producers elect members to their respective council boards.

According to Minnesota law, only "qualified voters" (producers who pay checkoff fees and directly share the profits and risks of growing the commodity) are eligible to vote in council board elections.³³ Producers are elected to the board to represent particular geographic districts or serve in at-large positions. Elections are conducted in person or by mail depending on council preference (we discuss the election process more in Chapter 3). Board composition and requirements of eligible nominees are generally set forth in promotional orders, although Minnesota statutes outline membership and election requirements for certain commodity councils.³⁴ Members of the council boards serve three-year

³³ *Minnesota Statutes* 2013, 17.53, subd. 16; 17.54, subd. 4; and *Minnesota Rules* 2013, 1570.0700, subp. 1(c).

³⁴ *Minnesota Statutes* 2013, 17.54, provides specific requirements for board elections and membership for the Area I and Area II Potato councils and the Dairy Council.

terms, except for the Dairy Council, on which members serve two-year terms. Board size ranges among the councils from 5 elected members on the Barley, Dry Edible Bean, and Sunflower council boards to 22 on the Dairy Council board.

Two councils include industry representatives on their boards. These representatives are people who are involved with the commodity industry but are not necessarily producers. The Canola Council has industry representatives serve as nonvoting members, while the Area I Potato Council has two voting industry representatives appointed by the governor.³⁵

Council Operations

Staffing levels at councils range from 1 part-time staff person on contract at the Area I Potato Council, to 12 permanent staff and 7 people on contract at the Corn Council. We found that:

- **Several councils work closely together and contract for resources with each other or with regional or national commodity organizations.**

For example, the Barley Council contracts with the Wheat Council and Minnesota Association of Wheat Growers for office space, telephone services, and other equipment. The Executive Director of the Barley Council told us that sharing space with the wheat organizations is an affordable way for the council to operate. He added that the close proximity to the Wheat Council allows the councils to share information easily, which is important because they serve many of the same producers.

Several councils (Dairy, Dry Edible Bean, Area I Potato, and Sunflower) contract with a regional or national commodity organization for staff and for administrative, research, and programmatic services.³⁶ For example, the Dairy Council contracts with the Midwest Dairy Association for financial, administrative, and reporting services. This relationship is significant for both organizations; the Minnesota Dairy Council provided approximately 44 percent of the Midwest Dairy Association's revenue in 2012.

Growers Associations

Growers associations are member-based organizations that represent the interests of groups of producers. Unlike checkoff fees, which are compelled and sometimes refundable, membership in a growers association is voluntary. Seven

Many councils contract for staff or services with other councils, commodity groups, or growers associations.

³⁵ The Area I Potato Council has had difficulty filling one of its industry representative seats, which we discuss further in Chapter 3.

³⁶ The Dairy Council contracts with the Midwest Dairy Association; the Dry Edible Bean Council contracts with the Northarvest Bean Growers Association; the Area I Potato Council contracts with the Northern Plains Potato Growers Association; and the Sunflower Council contracts with the National Sunflower Association.

commodity councils have corresponding Minnesota growers associations.³⁷ Five of these councils—Barley, Corn, Soybean, Turkey, and Wheat—share staff with their Minnesota growers association. Beyond sharing staff, some councils, such as Barley, Corn, and Soybean, have regular or occasional joint board meetings with their related growers association boards.

Both the Corn and Soybean councils have board committees that include board members of their respective growers association. On the Soybean Council committees, priorities and funding recommendations are made by council and growers association members, but final decisions on the use of council dollars are made by the council board. Corn committees similarly rely on council and growers association members to set priorities. Board members of both corn organizations make funding decisions regarding council dollars, although the council must give final approval. The relationships between agricultural commodity councils and growers associations are discussed more in Chapter 3.

³⁷ The Barley, Beef, Corn, Dairy, Soybean, Turkey, and Wheat councils have active Minnesota growers associations.

Effectiveness

A council’s “promotional order” establishes purposes for which checkoff-fee revenue may be used.

Minnesota statutes authorize agricultural commodity councils as a means to promote the use, sale, and consumption of agricultural commodities, and to improve methods of producing, processing, and marketing the commodities.¹ In this chapter, we examine the extent to which the councils conduct these activities, and whether the councils—by their own measures and in the opinions of producers—have been effective in achieving their purposes.

COUNCIL PURPOSES

As discussed in Chapter 1, when producers of a commodity choose to establish a commodity council, the newly elected council board must develop and approve a *promotional order*, which serves as a charter for the council.² The promotional order establishes the purposes for which the checkoff-fee revenue may be used. We reviewed the promotional orders for the 13 councils and found that:

- **Minnesota agricultural commodity councils have established broad purposes, which support spending money on a wide array of activities.**

In their promotional orders, almost all of the councils identified the following general purpose:

...to generate funds equitably from [the specific commodity] producers for the establishment of market development, promotion, and research projects to benefit the [specific commodity] industry and sale of its product.³

The councils’ promotional orders elaborate on this general purpose; many identify the following key purposes of the councils:

- (1) to participate in and develop research projects and programs that will assist in the development of the Minnesota [commodity] industry;
- (2) to participate in and develop education and information programs, alone or with other groups and organizations, that will assist in the development of the Minnesota [commodity] industry; and

¹ *Minnesota Statutes* 2013, 17.52.

² *Minnesota Statutes* 2013, 17.56, subsd. 1-5.

³ This purpose is included in the promotional orders for the Barley, Beef, Canola, Corn, Dairy, Dry Edible Bean, Area I Potato, Area II Potato, Sunflower, Wheat, and Cultivated Wild Rice councils; the Soybean and Turkey councils have very similar language in their promotional orders.

- (3) to work with state, regional, national, or international activities, groups, and organizations to develop new markets, expand existing markets, and reduce the costs of marketing [commodity] products.

Councils typically focus on research and promotion activities.

Within the broad guidelines of the promotional orders, the councils focus on specific activities. For example, the Area I Potato, Sunflower, Turkey, and Wheat councils, among others, have invested funds into research about pests and diseases that harm their respective commodities. The Beef, Turkey, and Cultivated Wild Rice councils host booths at the Minnesota State Fair to promote their commodities. Several councils, including Dairy, Dry Edible Bean, and Cultivated Wild Rice, have worked to increase the use of their commodities in school lunches. Some of the larger councils, such as the Soybean Council, have worked to expand commodity exports by developing connections to overseas markets. Additionally, the two largest councils—Corn and Soybean—have used billboards, television, and online media to promote farming and farmers generally. Staff from some councils told us that the councils provide critical funding for commodity-based research. For example, the Cultivated Wild Rice Council Executive Director told us that council funding helped continue research that had previously been funded through a federal grant.

Exhibit 2.1 lists a sample of recent commodity council activities. Councils focus largely on research and promotion activities, although there are some exceptions. For example, according to its executive director, the Area II Potato Council focuses solely on research and does not invest in any promotional activities. In contrast, as reported in its financial statements, the Barley Council did not spend any funds directly on research activities from 2009 to 2012.

Councils that operate under a federal order (Beef, Dairy, and Soybean) must also comply with national regulations and may, therefore, have less control over how their checkoff-fee revenue can be used. Like the state orders, the general purpose of the federal orders is for commodity research and promotion, but there can be

Exhibit 2.1: Sample Commodity Council Activities

- Fund research on production, disease, weed control, and new commodity uses
- Host a booth at the Minnesota State Fair and distribute recipes, brochures, and marketing materials
- Host and participate in trade missions; develop connections to overseas markets
- Promote use of commodities in school lunches
- Partner with retail markets for in-store demonstrations of commodity uses
- Partner with schools to help children better understand what farmers do and demonstrate how food is raised
- Provide commodity-focused consumer and student education
- Provide commodity-focused information to “influencers,” including dietitians, doctors, nurses, school nutrition staff, and grocery store personnel

NOTE: Exhibit does not list all activities in which Minnesota agricultural commodity councils participate, nor do all councils participate in the activities listed above.

SOURCE: Office of the Legislative Auditor, analysis of agricultural commodity council annual reports.

differences. For example, the federal order for beef restricts research funding to the “sale, distribution, marketing, and utilization of beef;” thus, the council cannot fund research on live cattle production.⁴

COUNCIL REVENUES AND EXPENDITURES

We reviewed the financial statements for Minnesota’s 13 agricultural commodity councils from 2009 to 2012, and we found that total revenues and expenditures varied greatly between councils. In this section, we provide an overview of council revenues and expenditures, focusing on sources of revenue and the variations in expenditures between councils.

Revenue

Revenue varied significantly across councils over the period reviewed. We found that:

- **Commodity council 2012 revenue ranged from \$18,000 (Sunflower Council) to more than \$11 million (Corn Council).**

Exhibit 2.2 lists the total annual revenue for each council from 2009 to 2012, and the percentage change in revenue over this time period. Seven councils—Canola, Corn, Dry Edible Bean, Area I Potato, Soybean, Wheat, and Cultivated Wild Rice—increased revenue during this period. For three councils, Corn, Wheat, and Cultivated Wild Rice, the increased revenue was due in part to checkoff-fee increases during this time period.

Our review of council financial statements showed the importance of checkoff-fee revenue to nearly all Minnesota commodity councils. We found that:

- **For most of the councils, checkoff-fee revenue accounted for more than 90 percent of their annual revenue.**

For six councils—Corn, Dairy, Dry Edible Bean, Area I Potato, Area II Potato, and Sunflower—checkoff-fee revenue represented 99 percent of their annual revenue. Notable exceptions were the Canola Council, where in 2012 checkoff fees represented less than 30 percent of total revenue, and the Barley Council, where in 2012 checkoff fees represented two-thirds of total revenue. Other sources of revenue for the Canola Council included donations from agricultural companies and the Canola Production Centre, where companies pay to use land to research canola seed varieties. The Barley Council supplemented its revenue with an agreement with the Minnesota Turf Seed Council, which paid the Barley Council for some of the executive director’s time.

Checkoff fees are the primary source of revenue for most councils.

⁴ 7 CFR, 1260 (2013).

Exhibit 2.2: Annual Revenue by Council, Fiscal Years 2009 to 2012

	2009 (000s)	2010 (000s)	2011 (000s)	2012 (000s)	Percentage Change 2009-2012
Barley Council	\$ 133	\$ 109	\$ 102	\$ 101	-24.5%
Beef Council	774	789	771	719	-7.1
Canola Council	67	73	101	77	15.6
Corn Council	5,612	10,597	10,765	11,110	98.0
Dairy Council	8,994	9,004	8,777	8,923	-0.8
Dry Edible Bean Council	235	277	284	309	31.7
Area I Potato Council	63	74	51	67	5.6
Area II Potato Council	256	255	262	225	-12.2
Soybean Council	7,538	6,711	9,022	8,870	17.7
Sunflower Council	NA	NA	35	18	NA
Turkey Council	898	940	961	864	-3.8
Wheat Council	935	922	2,134	1,544	65.2
Cultivated Wild Rice Council	355	266	158	433	21.9

NOTES: "NA" means the data were not available; the Sunflower Council was established in 2009 and did not have a full year of financial information until fiscal year 2011. Revenue was calculated to include interest income. End date of fiscal years varies by council. Percentage change calculated based on actual, rather than rounded, revenue data.

SOURCE: Office of the Legislative Auditor, analysis of agricultural commodity council financial statements.

Expenditures

Although councils may only use checkoff-fee revenues for purposes outlined in the promotional orders, this restriction does not limit expenditures in many meaningful ways.⁵ The only significant limitation on expenditures is regarding political purposes; Minnesota statutes prohibit commodity councils from using checkoff fees to "support or oppose a political party or a candidate for nomination or election to a public office."⁶ We found:

- **Because of the broad purposes set forth in the promotional orders, a wide range of council expenditures are allowable by law.**

Our review of council expenditures included analysis of expenditure categories and trends between 2009 and 2012. This analysis demonstrates that councils spend their funds on a range of activities, as discussed below.

Expenditure Categories

Exhibit 2.3 details councils' 2012 expenditures by category. The exhibit demonstrates significant differences in total annual expenditures across councils, from the Sunflower Council (\$23,000) to the Corn Council (more than \$9.5 million). The exhibit also shows the variation in how councils spend their money. For example:

⁵ *Minnesota Statutes* 2013, 17.59, subd. 4; and 17.56, subd. 1.

⁶ *Minnesota Statutes* 2013, 17.59, subd. 4.

Expenditures vary significantly among Minnesota's commodity councils.

- The Barley Council allocated 86 percent of its 2012 expenditures to administrative costs.
- The Beef Council directed more than 50 percent of its 2012 expenditures to promotion activities, including “consumer information” (16 percent), “industry information” (9 percent), and “producer communications” (8 percent).
- The Canola and Cultivated Wild Rice councils were the only councils to include an expenditure category in their financial statements called “Regulatory/Legislative;” the councils spent 19 percent (Canola) and 9 percent (Cultivated Wild Rice) of their 2012 expenditures in this category.
- In 2012, the Area II Potato and Cultivated Wild Rice councils spent two-thirds or more of their expenditures on research activities; in contrast, the Barley Council spent 0 percent of its expenditures on research activities.

Four councils (Dairy, Dry Edible Bean, Area I Potato, and Sunflower) rely on regional or national commodity organizations to provide their research,

Exhibit 2.3: Commodity Council Expenditures by Category, Fiscal Year 2012

	Percentage Spent on:			Total Expenditures (000s)
	Research and Promotion	Administration	Other	
Barley Council	14%	86%	0%	\$ 115
Beef Council ^a	62	29	9	760
Canola Council	59	21	19	62
Corn Council	NA	10	NA	9,548
Dairy Council	99	1	0	8,926
Dry Edible Bean Council	96	2	1	291
Area I Potato Council	77	20	2	78
Area II Potato Council	79	21	0	232
Soybean Council	NA	14	0	9,102
Sunflower Council	NA	NA	NA	23
Turkey Council	78	22	0	918
Wheat Council	79	21	0	1,393
Cultivated Wild Rice Council	81	9	10	401

NOTES: “NA” indicates the information is not available. The Corn, Soybean, and Sunflower councils do not use all of these categories in their financial statements. In 2012, these councils contracted with their Minnesota growers associations or national commodity organization for various services: Corn (\$4.9 million to the Minnesota Corn Growers Association), Soybean (\$7.1 million to the Minnesota Soybean Growers Association), and Sunflower (\$15,000 to the National Sunflower Association).

^a Beef Council promotion expenditures include consumer information (\$123,000), industry information (\$69,000), and producer communications (\$59,000).

SOURCE: Office of the Legislative Auditor, analysis of agricultural commodity council financial statements.

promotion, and administrative activities. In 2012, the Dairy Council's contract with the Midwest Dairy Association totaled \$8.9 million, the Dry Edible Bean Council paid \$280,000 to the Northharvest Bean Growers Association, the Area I Potato Council's contract with the Northern Plains Potato Growers Association totaled \$50,000, and the Sunflower Council paid the National Sunflower Association \$15,000. For the Dairy, Dry Edible Bean, and Area I Potato councils, their contracts with regional commodity organizations accounted for nearly all of their 2012 expenditures.

Expenditure Trends

Expenditure trends varied across councils, although total expenditures increased for most councils between 2009 and 2012. The increase ranged from less than 1 percent for the Barley, Beef, and Canola councils to 133 percent for the Sunflower Council.⁷ Three councils, Dairy, Area II Potato, and Turkey, reduced expenditures over the period reviewed.

The Corn Council, which increased expenditures by 83 percent from 2009 to 2012, increased spending in several program and administrative categories.⁸ Areas such as "producer services," which includes event sponsorships and Minnesota State Fair programming, and "production stewardship," which includes nutrient-management research, saw more than 90 percent expenditure increases. The council also increased spending on "communication, promotion, and education" by 180 percent, which includes media campaigns to promote ethanol and general farm practices. From 2009 to 2012, the council's contract with the Minnesota Corn Growers Association for management of funds, projects, and communications increased by 73 percent.

The Soybean Council also increased spending on a variety of program and administrative categories. The council expanded "producer communications," which includes a soybean magazine and weekly radio updates, by 270 percent, and "consumer education," which includes a campaign to provide farm tours for non-farm audiences, by 111 percent. The council's contract with the Minnesota Soybean Growers Association for management of council funds and communications increased by 70 percent from 2009 to 2012.

COUNCIL GOALS AND EFFECTIVENESS

Legislators and other stakeholders have expressed interest in whether commodity councils have been effective in achieving their purposes. However, we found that:

- **Council effectiveness is not easily measured and depends on the goals of the council.**

⁷ The Sunflower Council likely had expenditures unique to starting a new council. The council had a 133 percent increase in expenditures from 2011 to 2012, the first two years financial data were collected on the council's operations.

⁸ The Corn Council's revenue increased 98 percent over the period reviewed, in part due to a doubling of its checkoff-fee amount from \$0.005 to \$0.01 per bushel in 2009.

The Corn and Soybean councils had the greatest total expenditures in 2012.

As noted previously, because the councils' purposes are so broad, a wide range of expenditures can be justified. The extent of a council's effectiveness depends on what the council is trying to achieve.

Councils have different approaches to identifying their priorities. Several councils (for example, Beef, Corn, Dairy, Soybean, Turkey, and Wheat) have undergone strategic planning sessions to identify council goals and priorities. In contrast, some of the smaller councils, such as Canola and Cultivated Wild Rice, rely on regular council meetings to establish council priorities.

Many of the strategic plans we reviewed identify specific council goals. For example, the Wheat Council developed a long-range plan with seven specific goals (including "Expand partnerships with groups that work to advance wheat" and "Incorporate new technologies and methods in wheat") and specific action steps to support these goals. Similarly, the Corn Council has established three priority areas (including "Environmental Stewardship and Minnesota Corn Growers" and "Minnesota Corn's Biofuel (Ethanol) Priority") and identified short- and long-term goals on which to focus. In some cases, however, councils' goals are not easily measurable. For example, the Beef Council seeks to "Enhance image of Minnesota Beef industry" and to "Leverage partnerships to maximize resources." Measuring the effectiveness of the council on these dimensions is difficult, at best.

Several councils have broad goals and assessing their effectiveness is difficult.

When we asked the commodity councils how they measure their own effectiveness, we received a range of responses. Several councils acknowledged that it is difficult or expensive to measure the success of their efforts. Staff from some councils, including Turkey and Cultivated Wild Rice, told us they were confident of their success, either because they had minimal requests for checkoff-fee refunds or because producers wanted to increase the checkoff-fee amount.⁹ Staff from some other councils, such as Dry Edible Bean and Sunflower, indicated they measure their success by the increase in acreage, yield, or demand for their commodity, although it is not clear to what extent the councils' efforts directly influence these outcomes.

PRODUCER OPINIONS

Although we could not find objective measures of efficacy, one way to measure the effectiveness of the commodity councils is to gather the opinions of those served by the councils: the producers. To learn more about what producers think about the commodity councils, we conducted a mail survey of almost 3,000 Minnesota producers. The survey recipients were selected from producer lists provided by the agricultural commodity councils and MDA.¹⁰ The councils maintain these lists (for election purposes and general producer communication, among other things) and include all known producers of the given commodity.

⁹ The number of checkoff-fee refund requests is only a relevant measure for those councils that allow checkoff-fee refunds. As discussed in Chapter 1, only five councils (Corn, Dry Edible Bean, Area II Potato, Sunflower, and Turkey) permit refunds.

¹⁰ MDA maintains the most up-to-date list of dairy producers; for all other commodities, we obtained producer lists from the commodity councils. Appendix B explains the methodology we used to select our survey sample.

We surveyed almost 3,000 Minnesota commodity producers.

Nevertheless, the lists are incomplete. Most councils do not know all producers who pay the checkoff fee. For example, the list of corn producers provided by the Corn Council identified 5,249 farms producing corn in Minnesota. In contrast, the 2007 U.S. Department of Agriculture *Census of Agriculture* identified 30,207 Minnesota farms producing corn.¹¹ In most cases, producers must contact MDA or the council to receive an election ballot or be placed on a producer list. As a result, the lists likely include those producers who are more familiar with the councils and their activities. Due to the way the lists are compiled, the results of our survey are not generalizable to the full producer population. Appendix B provides a more in-depth discussion of our survey methodology and the shortcomings of our survey results. Despite these limitations, the responses provide useful insight into how some producers view the commodity councils.

Many producers pay checkoff fees on multiple commodities, but we sent producers a questionnaire specific to only one of the councils to which they paid fees. We received responses from 1,219 of the 2,929 producers surveyed (42 percent), although the response rates varied by council. Exhibit 2.4 shows the number of producers of each commodity we surveyed and the response rate.¹²

Use of Checkoff-Fee Dollars

As a baseline measure of effectiveness, we asked producers, “How familiar are you with how the [Commodity] Council uses the checkoff-fee dollars?” Exhibit 2.5 shows that for most of the councils, at least half of the respondents who answered this question indicated that they were “very” or “moderately” familiar with the council’s use of checkoff-fee dollars. However, only 40 percent of the dry edible bean producers and 20 percent of the sunflower producers that responded to this question said they were familiar with their council’s use of checkoff-fee dollars.¹³

For nearly all councils, the majority of producers who indicated they were familiar with how the council spends its checkoff-fee revenue agreed with how the council uses checkoff-fee dollars. However, it is noteworthy that nearly 30 percent of dairy producers who indicated familiarity with the Dairy Council said they do not agree with how the council uses its checkoff-fee revenue.

For most councils, at least half of the survey respondents were familiar with their council’s use of checkoff-fee dollars.

¹¹ United States Department of Agriculture, 2007 *Agriculture Census-Minnesota*, http://www.agcensus.usda.gov/Publications/2007/Full_Report/Volume_1,_Chapter_1_State_Level/Minnesota/st27_1_059_059.pdf, accessed November 15, 2013.

¹² Although our response rates were quite strong for this type of survey, the small size of some of the councils meant that we received few surveys from their members. Therefore, we have statistically less confidence in the results of our survey for the smallest councils (those with fewer than 100 members) because they generally had larger margins of error. Calculated 95 percent confidence intervals for survey responses ranged from plus or minus 7 percentage points (Beef) to plus or minus 16 percentage points (Cultivated Wild Rice). However, because the lists of producers we used to choose survey respondents were incomplete, these confidence intervals should be interpreted with caution. See Appendix B for more details on our survey.

¹³ As noted previously, the Minnesota Sunflower Council is the newest commodity council having formed in 2009. As a result, sunflower producers may be less familiar with the council’s activities.

Exhibit 2.4: Producer Survey Response Rate by Commodity Council

	Number Surveyed	Response Rate
Barley Council	73	67%
Beef Council	338	52
Canola Council	254	32
Corn Council	339	37
Dairy Council	346	46
Dry Edible Bean Council	340	46
Area I Potato Council	55	44
Area II Potato Council	39	56
Soybean Council	354	40
Sunflower Council	330	27
Turkey Council	109	60
Wheat Council	330	36
Cultivated Wild Rice Council	22	64

NOTE: For councils with fewer than 300 known producers, we surveyed all producers; for councils with more than 300 known producers, we surveyed a sample of producers.

SOURCE: Office of the Legislative Auditor, survey of commodity council producers, 2013.

Exhibit 2.5: Producers' Familiarity with Councils' Use of Checkoff-Fee Revenue

How familiar are you with how the [Commodity] Council uses checkoff dollars?

	Very Familiar	Moderately Familiar	Not Very Familiar	Not at all Familiar
Barley Council	47%	36%	15%	2%
Beef Council	28	51	18	2
Canola Council	14	35	38	14
Corn Council	22	50	23	5
Dairy Council	11	45	29	15
Dry Edible Bean Council	11	29	36	24
Area I Potato Council	26	32	37	5
Area II Potato Council	62	33	5	0
Soybean Council	16	59	22	3
Sunflower Council	6	14	38	43
Turkey Council	35	40	22	3
Wheat Council	16	56	24	4
Cultivated Wild Rice Council	50	29	21	0

NOTES: The percentages shown are based on the number of producers who responded to this question; percentages may not sum to 100 due to rounding. Because the lists of producers we used to choose survey respondents were incomplete, the percentages listed above cannot be generalized to the entire population of commodity producers. When considering only those producers that appeared on the councils' lists, calculated 95 percent confidence intervals for survey responses ranged from plus or minus 7 percentage points (Beef) to plus or minus 18 percentage points (Cultivated Wild Rice). Generally, councils with fewer than 100 members had the largest margins of error. See Appendix B for more details on our survey.

SOURCE: Office of the Legislative Auditor, survey of commodity council producers, 2013.

A majority of producers wanted their council to focus on production research, consumer education, or market development.

Additionally, 28 percent of canola producers and 38 percent of sunflower producers who indicated they were familiar with their respective councils said they were not familiar enough with how their council spends its checkoff-fee revenue to state an opinion.

We also asked producers how they would like the councils to use the checkoff-fee revenue. We provided a range of options from which producers could choose, including production or market research; advertising; education of consumers, members, or policy makers; and administrative activities. For most of the councils, a majority of producers answering this question indicated an interest in the following activities: (1) production-focused research, (2) consumer-focused education, or (3) domestic or international market development. The only council where actual spending did not align with producers' desires is the Barley Council. More than 90 percent of barley producers who answered this question wanted the council to spend checkoff-fee dollars on research into barley production or new uses for barley. However, as indicated earlier, the Barley Council reported spending \$0 on research over the past four years.

Refund Requests

Another indication of producer satisfaction with the commodity councils is the extent to which producers request refunds. We asked producers of corn, dry edible beans, potatoes in Area II, sunflowers, and turkeys (the commodities that have refundable checkoff fees) whether they had ever requested a refund. The vast majority of producers who responded to this question indicated that they had never requested a refund, although the responses varied by council. Turkey (12 percent) and corn (12 percent) producers were the most likely to have requested checkoff-fee refunds, while sunflower producers (1 percent) were the least likely. Voicing support for refundable checkoff fees, one dry edible bean producer said:

I have no problem paying checkoff dollars when there is a way to voice your opinion when things are not going well. By being able to request a refund it will send a clear message that things are not going well.

We asked producers of the other eight councils—those that do not permit refunds—whether checkoff-fee refunds should be allowed. Among these producers who answered the question, the response was generally divided, as shown in Exhibit 2.6. Notably, a majority (74 percent) of only the barley producers thought checkoff-fee refunds should not be permitted; producers of the other seven commodities were more evenly split. Several producers commented in favor of having refundable checkoff fees; for example, one wheat producer wrote:

Check offs should offer the option of reimbursement & be completely optional. Large operators are paying much more than their fair share to check-offs.

Exhibit 2.6: Producer Support for Checkoff-Fee Refunds

Do you think checkoff-fee refunds should be permitted for the [Commodity] Council?

	Yes	No	No Opinion
Barley Council	13%	74%	13%
Beef Council	36	48	16
Canola Council	36	35	29
Dairy Council	33	38	29
Area I Potato Council	50	35	15
Soybean Council	34	44	21
Wheat Council	45	37	18
Cultivated Wild Rice Council	50	43	7

Producers that pay nonrefundable checkoff fees had mixed opinions on whether refunds should be allowed.

NOTES: We asked this question of producers who pay nonrefundable checkoff fees to the Barley, Beef, Canola, Dairy, Area I Potato, Soybean, Wheat, or Cultivated Wild Rice councils. The percentages shown are based on the number of producers who responded to this question; percentages do not sum to 100 due to rounding. Because the lists of producers we used to choose survey respondents were incomplete, the percentages listed above cannot be generalized to the entire population of commodity producers. When considering only those producers that appeared on the councils' lists, calculated 95 percent confidence intervals for survey responses ranged from plus or minus 7 percentage points (Beef) to plus or minus 18 percentage points (Cultivated Wild Rice). Generally, councils with fewer than 100 members had the largest margins of error. See Appendix B for more details on our survey.

SOURCE: Office of the Legislative Auditor, survey of commodity council producers, 2013.

And a beef producer said:

Mandatory checkoffs should NOT be allowed—they only benefit the organizations that control them.

On the other hand, another beef producer said, “Every producer shares in the results of the checkoff \$ and everyone should always pay in!” and a canola producer said, “the point of the checkoff is to promote the canola industry-no one should get a refund.”

Benefits

Perhaps most telling about whether producers think the councils are effective is whether producers think they or their industry have benefited from council activities. As part of our survey, we asked producers whether they thought they personally benefited from their commodity council's activities. For nine of the commodity councils, a majority of producers who responded to this question thought they benefited from council activities, as shown in Exhibit 2.7.

However, fewer producers thought they personally benefited from the activities of the Canola, Dairy, Dry Edible Bean, or Sunflower councils. Respondents were generally more confident that the councils benefited the industry as a whole, as also shown in Exhibit 2.7. A majority of producers commenting on all but the Dairy and Sunflower councils thought council activities benefited Minnesota producers of that commodity.

Exhibit 2.7: Producer Opinions of Personal and Industry Benefit from Councils

In your opinion, do you benefit from the [Commodity] Council's activities?

	Yes	No	No Opinion
Barley Council	78%	9%	13%
Beef Council	67	17	15
Canola Council	41	15	44
Corn Council	72	7	21
Dairy Council	40	30	30
Dry Edible Bean Council	47	13	40
Area I Potato Council	70	15	15
Area II Potato Council	81	14	5
Soybean Council	72	11	18
Sunflower Council	26	24	50
Turkey Council	78	6	15
Wheat Council	66	12	22
Cultivated Wild Rice Council	64	21	14

Do you think that Minnesota [commodity] producers benefit from the council's activities?

	Yes	No	No Opinion
Barley Council	91%	0%	9%
Beef Council	75	13	12
Canola Council	54	10	36
Corn Council	76	6	18
Dairy Council	44	28	28
Dry Edible Bean Council	53	11	36
Area I Potato Council	70	10	20
Area II Potato Council	81	14	5
Soybean Council	77	9	13
Sunflower Council	30	13	58
Turkey Council	78	5	17
Wheat Council	73	9	18
Cultivated Wild Rice Council	64	21	14

NOTES: The percentages shown are based on the number of producers who responded to this question; percentages do not sum to 100 due to rounding. Because the lists of producers we used to choose survey respondents were incomplete, the percentages listed above cannot be generalized to the entire population of commodity producers. When considering only those producers that appeared on the councils' lists, calculated 95 percent confidence intervals for survey responses ranged from plus or minus 7 percentage points (Beef) to plus or minus 18 percentage points (Cultivated Wild Rice). Generally, councils with fewer than 100 members had the largest margins of error. See Appendix B for more details on our survey.

SOURCE: Office of the Legislative Auditor, survey of commodity council producers, 2013.

When we looked at the responses from only those producers who said they were familiar with how the council uses checkoff-fee revenue, responses were generally more positive. Across all of the councils, a majority of producers who were familiar with the councils' activities indicated that they thought they and the industry as a whole benefited from their council's activities.

A number of producers commented on the costs and benefits of the councils, some supporting the commodity councils and some questioning their value. For example, a dry edible bean producer commented, "I think the return I get from my investments in commodity councils is the best investment on my farm," and a beef producer wrote, "This type of promotion is important to our industry!" One corn producer said:

The checkoff fees we pay to all the commodity councils is the best money we as farmers can ever spend. Through the councils we can team up with other farmers to effectively promote the great products we raise. If we as farmers don't work to promote our own products why should anyone else do it for us??

Similarly, a soybean producer wrote:

These councils are very important for farmers to work together, improve upon and open new markets. These dollars help farmers.... I realize these councils not only help our commodity but can help me be a better farmer and produce a better product that the consumer wants.

And a barley producer said:

I think this checkoff program is the most effective program yet conceived to provide information, market development, and research for commodities farmers produce. It only works when everyone participates though.

On the other hand, one dry edible bean producer questioned the value of the Dry Edible Bean Council, and noted:

In dry bean business, it always comes down to supply & demand to give direction to the market. The demand has hardly moved that much over the last 20 years compared to other commodities. Therefore I believe we are wasting our funds on the dry bean council.

Similarly, a beef producer commented:

Reasons not in favor of Beef checkoff. 1. For the money collected it doesn't increase the value of Beef in relation to the money spent. 2. Many other promoters of Beef are doing a much better job without checkoff dollars....

DISCUSSION

The effectiveness of the councils is not clear. Without measurable goals identifying what the councils plan to achieve, it is hard to determine whether they have been successful. Changes in acreage and yield can be the result of myriad factors, many of which, such as weather and the global markets, are outside of the councils' control.

Respondents generally thought councils benefited their industry and them personally, although this varied by council.

Producers who responded to our questionnaire were mixed in their opinions of the commodity councils; we received comments supporting the councils and others questioning their value. If they do not agree with a council's direction, producers of certain commodities can request refunds of their checkoff-fee assessments.¹⁴ Yet as we reported in Chapter 1, checkoff-fee refund requests have been a small percentage of the total checkoff fees collected, and most of the councils do not permit refunds. As a result, one of the primary mechanisms for producers to express dissatisfaction with council actions or priorities is through council board elections. We discuss council elections, and council oversight and accountability more generally, in Chapter 3.

¹⁴ Producers may request refunds of checkoff fees paid to the Corn, Dry Edible Bean, Area II Potato, Sunflower, and Turkey councils.

Oversight and Accountability

State law compels producers of certain commodities to pay checkoff fees to agricultural commodity councils.¹ Because the state requires payment of these fees, it has an obligation to ensure that councils comply with the law and use the funds as intended. In this chapter, we discuss oversight and accountability of the commodity councils. First, we examine the oversight role of the Minnesota Department of Agriculture. Then we review the accountability of the councils, as demonstrated through their transparency, board composition, and relationships with related growers associations.

In general, we found that:

- **Minnesota agricultural commodity councils have few limits on how they can spend money, are subject to minimal oversight, and have limited consequences for not complying with the law.**

We discuss this finding in more detail below.

MINNESOTA DEPARTMENT OF AGRICULTURE

Within state government, Minnesota’s commodity councils fall under the purview of the Minnesota Department of Agriculture (MDA).

- **By law, the Minnesota Department of Agriculture has oversight responsibility for agricultural commodity councils.**

The department plays a critical role in helping to establish new commodity councils, including certifying a council’s first election and holding public hearings on proposed promotional orders.² MDA also conducts referenda on proposed final promotional orders and oversees the process for terminating commodity councils.³

In addition, the department has important ongoing oversight responsibilities regarding the councils. MDA must approve council contracts, process

¹ *Minnesota Statutes* 2013, 17.51-17.69.

² As discussed in Chapter 2, a council’s promotional order establishes the council’s “program for promotion, advertising, production, market research, and market development of the growing, processing, distributing, sale or handling of an agricultural commodity and provides for the collection of checkoff fees.” See *Minnesota Statutes* 2013, 17.53, subd. 15.

³ *Minnesota Statutes* 2013, 17.56, subs. 1-3; and 17.64.

Commodity councils fall under the purview of the Minnesota Department of Agriculture (MDA).

checkoff-fee refund requests, and oversee council board elections.⁴ The department also must conduct an annual fiscal audit and a triennial compliance audit of each council.⁵ Exhibit 3.1 lists MDA's key responsibilities regarding agricultural commodity councils. No state funds are appropriated to MDA for these activities. Instead, the councils must reimburse the department each year for the administration of these services; this has amounted to a total of about \$100,000 annually in recent years.⁶

Exhibit 3.1: Key Minnesota Department of Agriculture Responsibilities Regarding Commodity Councils

MDA has specific oversight responsibilities for commodity councils.

- Receive petitions from producers of a commodity to create a commodity council
- Determine the size of council boards and distribution of their membership
- Oversee first council elections
- Fix the manner of choosing nominating committees, time of nominations, and election times and locations for annual council elections
- Consult with councils on promotional orders and determine if they should be amended or modified; hold public hearings and conduct referenda on proposed promotional orders
- Serve as a nonvoting member of each council
- Receive estimated operational budgets from councils
- Approve contracts
- Conduct an annual fiscal audit
- Conduct compliance audits every three years
- Establish the procedure for payment of checkoff fees
- Process refund requests
- Consult with councils that are terminating or suspending promotional orders
- Oversee council terminations initiated by producers

NOTE: Exhibit does not list all of the Minnesota Department of Agriculture's responsibilities regarding agricultural commodity councils.

SOURCE: *Minnesota Statutes* 2013, 17.51-17.69.

According to MDA staff, their efforts are focused on four areas: approving contracts entered into by the councils, reviewing financial and compliance audits, overseeing council elections, and processing checkoff-fee refund requests. We discuss the first three of these responsibilities in more depth below.⁷ We also discuss the department's responsibility regarding councils' promotional orders.

⁴ *Minnesota Statutes* 2013, 17.58, subd. 1 (approve contracts); 17.63 (process refund requests); and 17.54, subd. 4 (oversee elections).

⁵ *Minnesota Statutes* 2013, 17.58, subd. 5. *Minnesota Rules* 2013, 1570.0500, subp. 9, requires a financial audit only once every three years for councils that gross less than \$150,000 annually; in the other two years, those councils must have a financial review.

⁶ *Minnesota Statutes* 2013, 17.59.

⁷ We discussed the checkoff-fee refund process in Chapter 1.

Contract Approval

As noted above, commodity councils are required by law to have MDA approve their contracts.⁸ However, based on our examination of council documents and interviews with council and MDA staff, we found that:

- **Four councils—Beef, Area II Potato, Turkey, and Wheat—did not always have contracts approved by the Minnesota Department of Agriculture prior to the date work began on the contract.**

Councils are required by law to have MDA approve their contracts, but that does not always occur.

For all four of these councils, this was a persistent finding occurring over multiple years. MDA staff told us they remind the councils to obtain department approval before the contracts have started, but they do not enforce this requirement. Instead, MDA staff told us “it would be nice if [the councils] came to us prior to starting the contract.”

Contracts for three of these councils were eventually approved by MDA. However, the Area II Potato Council Executive Secretary told us that his council viewed MDA’s approval of its contracts as an “unnecessary intrusion” into the council’s activities. He told us that MDA did not insist on the council’s compliance with this requirement, and the Area II Potato Council planned to continue with its practice of not obtaining MDA’s approval on its contracts. MDA staff provided us with a document from December 2000 demonstrating communication between the department and the Area II Potato Council regarding the requirement to obtain contract approval. No other documentation was made available to us to demonstrate more recent attempts by MDA to enforce this requirement.

RECOMMENDATION

The Minnesota Department of Agriculture should require commodity councils to submit contracts for review and approval before work on the contract has begun.

MDA staff told us that when a contract is submitted late, they remind the council of the legal requirement to obtain department approval before a contract starts. MDA does not believe that Minnesota statutes give the department legal authority to deny the contract or impose any penalty on the councils through enforcement proceedings. However, in our view, Minnesota statutes clearly require councils to submit contracts to MDA for its approval.⁹ The department has an obligation to ensure the councils comply with this requirement. Reviewing these contracts gives MDA the opportunity to provide oversight and ensure the councils are spending funds in a manner consistent with their promotional orders and the law. If the councils do not comply, MDA should levy

⁸ *Minnesota Statutes* 2013, 17.58, subd. 1.

⁹ MDA does not have the authority to review and approve employment contracts other than the first chief administrative officer of any council established after July 1, 1982. *Minnesota Statutes* 2013, 17.58, subd. 2.

consequences on them. For example, the department could conduct additional oversight and monitoring of the noncompliant council, at the council's expense. We discuss oversight options in more detail later in this chapter.

Financial and Compliance Audits

Another of MDA's key responsibilities is to conduct each council's financial and compliance audits. Minnesota law states:

Minnesota law requires MDA to conduct annual fiscal audits and triennial compliance audits of the councils.

Each year the commissioner shall conduct a fiscal audit, and at least every three years the commissioner shall conduct a compliance audit of each council. A compliance audit is an audit to determine that a council has complied with the terms of sections 17.51 to 17.69, with all other applicable federal or state laws, and with the terms of any promotional orders established.¹⁰

MDA requires councils to complete a compliance "checklist" every three years to assess compliance with Minnesota laws. According to MDA staff, the checklist was initially developed to ensure council auditors were conducting compliance reviews as required by law. The checklist requires councils and their auditors to review a range of management activities, including whether (1) an annual report was prepared and distributed; (2) checkoff funds were deposited in federally insured bank accounts; and (3) notice of the time and location of council meetings was provided in advance to council board members and the Commissioner of MDA. Exhibit 3.2 lists a sample of items included on the department's compliance checklist for agricultural commodity councils.

Based on interviews with MDA staff and our review of council compliance checklists, we found that:

- **The Minnesota Department of Agriculture's compliance audit process is flawed, and staff have not followed up on several inconsistencies or reports of noncompliance.**

However, MDA has not established a strong audit presence at the councils.

We reviewed the compliance checklists submitted by the 13 councils from 2009 to 2012 and found errors in many of them. For example, several councils indicated they did not have contracts with related associations when they actually had contracts with their related growers associations or with a regional commodity organization. When we asked council staff about these omissions, they agreed the submitted checklists were incorrect. Additionally, the Barley and Area I Potato councils indicated on their checklists that they had completed and distributed annual reports (as required by law). However, when we requested copies, council staff told us they did not produce annual reports.

Over the past several years, the department has not consistently required councils to submit a compliance checklist, and some councils—notably Area I Potato and Beef—have not always done so. Additionally, MDA's compliance checklist is itself inaccurate. For example, some versions have an incorrect list of which

¹⁰ *Minnesota Statutes* 2013, 17.58, subd. 5.

Councils assess their own compliance with state laws using an MDA checklist.

Exhibit 3.2: Select Items on the Agricultural Commodity Council Compliance Checklist

- Was an annual report prepared, and does it detail the council's programs?
- Are the checkoff funds deposited in federally insured accounts?
- Was the budget prepared, adopted by the council, and submitted to the commissioner of Agriculture within 30 days of the first of the fiscal year?
- Was the budget revised during the current fiscal year, and was the commissioner notified of budget revisions?
- Have there been any changes in the chief administrative officer's position?
- Were all contracts prepared and properly executed prior to commencement of work under the contract?
- Were all contracts approved by the commissioner prior to the date work began on the contract?
- Has the council approved all payments of per diem and expenses for the council members?
- Is an agenda prepared for each meeting and a copy included with the mailing of the meeting notice?
- Are written procedures in place to verify that a timely claim for refund was made?

NOTE: Exhibit does not list all of the items in the Minnesota Department of Agriculture's Compliance Checklist for agricultural commodity councils.

SOURCE: Minnesota Department of Agriculture, *Promotion Council Audit Checklist* (St. Paul, 2013).

councils permit refunds, and the 2013 version of the checklist does not include the Sunflower Council on a list of commodity councils.

When we raised these concerns to MDA staff, they did not know about the checklist errors. Additionally, department staff said they were not concerned that some council answers were inaccurate because they rely primarily on independent auditors' compliance reports for this information. MDA staff also told us that some items on the checklist are not required by law, and therefore MDA staff do not review all items in the same way. For example, the checklist asks whether the councils have a written policy for investing excess funds, which is not a requirement in law.

We found errors in the checklists submitted by some councils and in MDA's checklist itself.

We find the department's reliance on auditors' legal compliance reports problematic. While these reports list findings of the auditors related to financial and legal compliance, the reports we reviewed did not always identify issues of noncompliance with state law that were included in the compliance checklists. For example, the Area II Potato Council's 2012 compliance checklist noted that the council had not prepared an annual report or mailed a copy to the county extension offices as required by law, but this was not included in the list of findings in the auditor's report on compliance.

Even when the independent auditors do identify findings, MDA staff do not follow up with the councils. Instead, MDA staff told us they assumed the respective council board addressed any problems identified in their audits. Some department staff questioned whether MDA has the authority to follow up on

findings in the checklist. Other MDA staff said they would raise an issue with the relevant board if there was an “egregious” finding, which, they said, there had not yet been.

RECOMMENDATION

The Minnesota Department of Agriculture (MDA) should periodically review and update its compliance checklist to ensure it (1) aligns with state law and (2) provides useful information. Once the checklist has been improved, MDA staff should use the submitted checklists to help ensure and enforce compliance with state law.

Ensuring agricultural commodity councils’ compliance with Minnesota laws is an important oversight responsibility of MDA. Minnesota statutes clearly require the department to conduct compliance reviews.¹¹ The current mechanism MDA uses to meet these requirements is to have the councils complete the compliance checklist.

MDA should update the compliance checklist to ensure it aligns with state law. Given the omissions we identified in the independent auditors’ compliance reviews, we believe the department has an important oversight role to ensure councils’ comply with state laws. Department staff should review the submitted checklists, follow up with the councils on any items that indicate noncompliance—such as not receiving contract approval from MDA—and establish an action plan to rectify identified problems.

Council Elections

Minnesota law requires the MDA Commissioner to establish the procedures for council elections.¹² Elections generally happen in one of two ways: they are either conducted by mail (for most of the councils) or they are conducted in person at a council or industry meeting (Area II Potato and Wheat councils).¹³ In both cases, MDA oversees the elections and certifies the final results.

For elections that happen by mail, the councils forward to the department a list of all known qualified voters. Qualified voters are producers who “have shared in the profits and risk of loss from producing the particular agricultural commodity during the current or preceding marketing year.”¹⁴ Most of the councils do not have a way to identify all producers who have paid the checkoff fee; instead,

By law, MDA oversees council board elections.

¹¹ *Minnesota Statutes* 2013, 17.58, subd. 5.

¹² *Minnesota Statutes* 2013, 17.54, subd. 4; and *Minnesota Rules* 2013, 1570.0700 and 1570.0800.

¹³ According to the Executive Director of the Wheat Council, that council has conducted elections both in person and by mail and has found a better turnout when the election is conducted in person at the council’s small grains district meetings. As per *Minnesota Rules* 2013, 1570.0800, subp. 2C, absentee mail voting is permitted.

¹⁴ *Minnesota Rules* 2013, 1570.0800, subp. 2A. The Minnesota Department of Agriculture generates a list of dairy producers based on its inspection responsibilities.

producers request an election ballot and then are kept on the council’s list for future elections. For councils with a large number of producers, the lists are often incomplete. For example, we noted in Exhibit 1.1 that there were more than 30,000 Minnesota farms that produced corn in 2007; yet, the Corn Council’s list of producers identifies less than 5,500 corn producers. MDA advertises the elections through press releases and media interviews to encourage producers not already on the list to request ballots.

In our survey, producers had generally favorable opinions of the council election process.

For the councils with a large number of producers, MDA uses a private firm to print, mail, and tally the ballots; MDA handles these election logistics internally for councils with fewer producers. All ballots must be accompanied by a signed certification indicating the person is a qualified voter.

For the two councils that hold in-person elections—Area II Potato and Wheat—an MDA representative is present to oversee the election. MDA officials told us that when producers vote in person, they must submit the ballot with a signed certification stating that they are a qualified voter. MDA officials noted that voting eligibility is mostly on the honor code, especially since eligibility can change when producers change their crops.

As discussed in Chapter 2, we surveyed almost 3,000 producers to learn their opinions of the commodity councils. Producers who responded to our survey reported generally favorable opinions of the council election process. Across all councils, more than 90 percent of respondents who indicated they had voted in a council board election said it was “easy” or “very easy” to do so.

Council Promotional Orders

MDA’s Assistant Commissioner with oversight responsibility for the councils told us that the department’s jurisdiction over the councils is to run fair board elections, process refund requests, and ensure that checkoff dollars are spent in accordance with the councils’ promotional orders. Beyond that, he said, it is up to the councils to regulate themselves. We disagree. We believe the department also has broader oversight responsibilities of the councils, which it has not always fulfilled.

One of MDA’s responsibilities is to administer referenda related to proposed establishment or termination of a council, or modification of an existing promotional order.¹⁵ If changes to a promotional order are suggested, the department is to hold public hearings and conduct referenda on the proposed changes. Any change to the promotional order or checkoff-fee amount requires a referendum voted on by producers of the commodity.¹⁶ However, we learned that:

- **The Dry Edible Bean Council increased its checkoff-fee amount in 1997 without following the requirements outlined in law.**

MDA has not always required councils to follow state laws related to issuing a promotional order.

¹⁵ *Minnesota Rules* 2013, 1570.0900, subp. 2.

¹⁶ *Minnesota Statutes* 2013, 17.59, subd. 1; and *Minnesota Rules* 2013, 1570.0700, subp. 3.

In 1997, the Dry Edible Bean Council doubled its checkoff fee from \$0.05 per hundredweight to \$0.10 per hundredweight. The council did not hold a referendum to make this change, as required by law; instead, the council held two producer forums on the issue and then implemented the change.¹⁷ The increased amount was collected for ten years before a producer vote was finally held in 2008, at which point the increase was retroactively approved.

In another example of lapsed MDA oversight, we found that:

State law gives canola producers the right to have checkoff fees refunded, yet MDA and the council have approved a nonrefundable checkoff fee.

- **The Canola Council does not permit checkoff-fee refunds, despite laws to the contrary.**

The Canola Council promotional order, which was approved in 1996 by 61 percent of voting canola producers and the commissioner of MDA, establishes a nonrefundable checkoff fee on canola grown in Minnesota. However, Minnesota law clearly gives canola producers the right to have their checkoff-fee assessments refunded.¹⁸ In particular, the law states:

Any producer, except a producer of potatoes in area number one...a producer of wheat or barley, or a producer of cultivated wild rice, may, by the use of forms to be provided by the commissioner and upon presentation of such proof as the commissioner requires, have the checkoff fee paid...fully or partially refunded, provided the checkoff fee was remitted on a timely basis.¹⁹

When we asked MDA staff why they permitted the canola checkoff fee to be nonrefundable, they cited a more general statute that allows a council's first elected board to formulate a promotional order and establish a checkoff fee.²⁰ We disagree with the department's interpretation. A promotional order approved by 61 percent of voting canola producers should not supersede a specific and directly relevant state law, yet MDA approved the promotional order and has continued to permit the Canola Council to assess nonrefundable checkoff fees.

RECOMMENDATION

The Legislature should determine whether to make the canola checkoff fee nonrefundable and, if needed, amend Minnesota Statutes 2013, 17.63(a), accordingly.

Minnesota statutes require many checkoff fees, including canola checkoff fees, to be refundable. However, the Canola Council's promotional order, approved by voting canola producers and the commissioner of MDA in 1996, establishes a

¹⁷ *Minnesota Statutes* 2013, 17.59, subd. 1.

¹⁸ *Minnesota Statutes* 2013, 17.63(a).

¹⁹ *Ibid.*

²⁰ *Minnesota Statutes* 2013, 17.56, subd. 1.

nonrefundable checkoff fee. The Legislature should determine whether it wants to permit the Canola Council to levy a nonrefundable checkoff fee. If so, the Legislature should amend *Minnesota Statutes* 2013, 17.63(a), accordingly, and include canola with those commodities permitted to have a nonrefundable checkoff fee. If, on the other hand, the Legislature chooses to permit refunds of the canola checkoff fee, it should affirm the current statutes and ensure correct understanding by both the Canola Council and MDA.

Oversight Options

Because state law requires producers of certain commodities to pay checkoff fees, the state has an obligation to ensure the commodity councils are using these funds appropriately. However, given the limited oversight provided by MDA, as discussed above, we think there is a need for Minnesota's agricultural commodity councils to have increased accountability.

RECOMMENDATION

The Legislature should consider increasing oversight of agricultural commodity councils.

Under current law, MDA has limited authority to direct council activities or provide meaningful oversight. Although MDA does have some specific responsibilities, the councils are largely governed by their own elected boards, as discussed in the following sections. Additionally, MDA does not receive state funds to provide oversight of the commodity councils. Instead, it receives reimbursement from the councils for administrative activities.

MDA believes it has only limited authority over the councils; its oversight authority and ability to enforce consequences could be made more explicit.

If the Legislature agrees there is a need for more state oversight, it should give MDA the tools—both in terms of the ability to levy consequences on the councils and access to resources—for the department to provide an increased level of oversight. Based on conversations we had with MDA staff, it is clear the department is reluctant to impose consequences on the councils due to its belief that it has limited authority over the councils. Although we believe the department already has the authority to impose consequences on councils if needed—for example, by providing more oversight of noncompliant councils at the councils' expense—the Legislature could make this authority more explicit. In particular, the Legislature could clarify the department's authority to approve (or not) council contracts and levy consequences for council noncompliance.

An alternative to increased MDA oversight is to have producers periodically vote to reauthorize the councils. The federal soybean promotional order provides precedence for this. Every five years, soybean producers are given an opportunity to request a referendum on the federal soybean promotional order.²¹ For Minnesota commodity councils, the threshold for reauthorization could be the same as creating a council (approval by 1,000 producers or 15 percent of the producers, whichever is less) or as terminating a council (approval by a majority

²¹ 7 U.S. Code, sec. 6305 (2013).

of producers voting). Undergoing a reauthorization process would pose an administrative burden on MDA and the councils, but it may be warranted given the extra level of accountability it would provide.

Instead of increasing the requirements for MDA oversight of the councils, the Legislature could choose to rely on the councils' elected boards. We discuss our findings and recommendations regarding council boards and accountability below.

COUNCIL TRANSPARENCY

When we asked Minnesota Department of Agriculture staff about the effectiveness of the commodity councils, they noted that board members are elected and if producers are not satisfied with how a council is operating, the producers could elect new board members or run for the council boards themselves. For a producer to decide to run for a council board, or even simply to be an informed voter, he or she must be aware of the council's priorities and activities. However, we found that:

- **It is difficult to obtain information about some councils' activities or finances.**

Not all councils prepare or distribute annual reports, as required by law.

As required by law, each council must "prepare an annual report on the programs pursuant to its promotional order..." and mail this report to "each county extension office in any county involved in the promotional order."²² Despite the requirement in law, three councils (Barley, Area I Potato, and Area II Potato) neither prepare nor distribute an annual report, and the Turkey and Wheat councils have not distributed annual reports in the past. Additionally, three councils (Barley, Area I Potato, and Sunflower) do not have a Web site with information about their activities. The Barley Council Web site simply redirects users to the Minnesota Wheat Council Web site, and information about the Minnesota Sunflower Council can be found only through the National Sunflower Association Web site.

Most of the councils that have Web sites do not post information regarding council operations. For example, many councils do not post their annual reports or financial statements on their Web sites.²³ Additionally, many of the councils do not post information about council board meetings, including meeting times, agendas, or minutes. The Minnesota Beef Council had a page on its Web site that posted the date, time, and location of upcoming board meetings as well as minutes from previous meetings, but it had not been updated since April 2012.²⁴ The Minnesota Corn Council has an event calendar on its Web site, but council

²² *Minnesota Statutes* 2013, 17.57, subd. 3.

²³ Exceptions are Beef, Canola, Dairy, and Soybean councils, which post their annual reports, and the Wheat Council, which posts its research reports.

²⁴ <http://www.mnbeef.org/councilmeetings.aspx>, accessed December 20, 2013.

meetings are not posted on it.²⁵ Several other councils, including Canola, Dairy, and Dry Edible Bean, make no mention of council board meetings on their Web sites.

As discussed previously, we surveyed almost 3,000 producers to learn their opinions of the commodity councils. Producers' familiarity with the councils and their activities varied by commodity. For example, 83 percent of barley producers that responded to a question asking them about their familiarity with the Barley Council said they were "very" or "moderately" familiar with how the council uses its checkoff-fee dollars. On the other hand, only 20 percent of sunflower producers that responded to the question were familiar with how the Sunflower Council uses its checkoff-fee dollars. In general, a lack of transparency can impact producers' abilities to understand council activities and its use of checkoff dollars; it can also affect their interest in becoming engaged in the council's work.

A majority of surveyed barley producers want their council to focus on research, yet the Barley Council spent \$0 directly on research from 2009 to 2012.

There may also be an important distinction between producers believing they know how a council spends checkoff-fee revenue and knowing how the council actually uses these funds. As noted above, 83 percent of barley producers that responded to the question said they were familiar with the Barley Council's use of checkoff fees. However, the council does not produce an annual report and has no Web site. Additionally, a majority of barley producers who responded to a question about how they would like the council to use its funds indicated they wanted the Barley Council to focus on research; yet, the council reported spending \$0 on research from 2009 to 2012.

In their responses to our questionnaire, several producers commented on the lack of transparency of the councils' activities. For example, one turkey producer wrote, "I would like to know the council's budget, i.e., administration, salaries, etc. Have there been any grievances or complaints about the council? If so what are they?" Similarly, a wild rice producer commented, "Wild Rice Council should present annual expense operating statement to ALL GROWERS and projected budget. Not just to Board of Directors." Finally, a soybean producer wrote, "I believe checkoff money is ok but I worry that they will spend everything they collect. I would like to see the budget and not spend money just to spend. I believe there is a lot of wasteful spending."

²⁵ <http://www.mncorn.org/members/events/2014>, accessed December 20, 2013. Upon reviewing a draft of this evaluation, the Corn Council added council meetings to its Web site event calendar. <http://www.mncorn.org/members/events/megamcrpc-joint-boardcouncil-meeting>, accessed February 24, 2014.

RECOMMENDATION

The Legislature should amend Minnesota Statutes 2013, 17.57, to require agricultural commodity councils to regularly provide information about their finances and activities. Councils should be required to have a Web site on which they post their:

- *annual reports, financial statements, and current promotional order;*
 - *contact information for council board and staff;*
 - *election information;*
 - *upcoming council meeting locations, dates, times, and agendas; and*
 - *minutes from previous council meetings.*
-

Minnesota rules require councils to make annual budgets, financial statements, annual reports, and meeting minutes available to the public.²⁶ In our opinion, posting these documents on council Web sites is the best way to make this information available to the public.

Having this information readily available will also give producers the opportunity to become more engaged in council activities. With better information, producers can decide whether they agree with council priorities or want to make changes.

COMPOSITION OF COUNCIL BOARDS

Most councils reported difficulty in securing candidates to run for board positions.

As discussed in Chapter 1, producers are elected to serve on the boards of the commodity councils. The boards then make key decisions regarding the councils' activities and expenditures. Most of the councils reported difficulty in securing candidates to run for open positions on the board, and several councils told us that candidates for the board often run unopposed.²⁷ Additionally, voter turnout across all councils has been relatively low in recent years, ranging from 4 percent of eligible Sunflower Council voters in 2011 to almost half of eligible Beef Council voters in 2010. Exhibit 3.3 details voter turnout by council from 2009 to 2012.

One contributing factor to poor voter turnout may be that many councils do not have access to contact information for all producers who pay checkoff fees. When we surveyed producers regarding their opinions of the commodity

²⁶ *Minnesota Rules* 2013, 1570.0500, subp. 6.

²⁷ In particular, representatives from the Barley, Beef, Canola, Dairy, Dry Edible Bean, Area I Potato, Area II Potato, Turkey, and Cultivated Wild Rice councils told us their board elections are generally not competitive.

Exhibit 3.3: Voter Turnout for Board Elections by Council, 2009 to 2012

	2009		2010		2011		2012	
	Qualified Voters	% Voted						
Barley Council	94	27%	50	26%	50	14%	74	26%
Beef Council	904	47	761	48	767	32	963	35
Canola Council	514	10	246	13	335	13	254	12
Corn Council	4,119	25	3,715	22	3,868	24	4,106	19
Dairy Council	2,525	16	2,138	16	2,337	21	2,005	13
Dry Edible Bean Council	217	19	252	13	252	13	274	11
Area I Potato Council	48	8	55	47	46	26	47	13
Area II Potato Council	NA	NA	NA	NA	NA	NA	NA	NA
Soybean Council	3,280	30	3,949	24	3,679	30	3,789	24
Sunflower Council	1,536	5	846	8	1,505	4	785	7
Turkey Council	157	35	140	40	483	36	166	31
Wheat Council	NA	NA	NA	NA	NA	NA	NA	NA
Cultivated Wild Rice Council	29	38	28	36	26	35	26	42

NOTES: "NA" means the data were not available. The Area II Potato and Wheat councils conducted their board elections in person, and therefore the number of qualified voters and the percentage of voters who returned a completed ballot are not available.

SOURCE: Office of the Legislative Auditor, analysis of election data collected by Minnesota Department of Agriculture.

councils, we drew our survey sample from the producer lists maintained by the councils. However, we found several instances of producers listed multiple times on a single list, and a number of cases where the mailing address on the list was incorrect. We found an especially high number of errors on the list of sunflower producers. Among the 330 sunflower producers to whom we mailed a questionnaire, more than 6 percent told us they did not grow sunflowers and almost 4 percent said they had previously grown sunflowers but no longer did so.

Through our interviews with council staff, we learned about council board structures and identified several problems. In particular:

- **We had concerns regarding the composition of the boards of two commodity councils—Area I Potato and Turkey.**

We had different concerns about these two councils, which we discuss in more detail below.

Area I Potato Council

We have the following concerns regarding the Area I Potato Council board:

- (1) there has been a long-term vacancy of a governor-appointed board position,
- (2) an ineligible person is serving as a board member, and
- (3) a board member has a potential conflict of interest.

The Area I Potato Council board has seven seats; five members are potato producers from Area I, elected by the producers, and two members are appointed by the Governor—one wash plant representative and one processor

The Area I Potato Council board has a long-time vacancy and a board member with a potential conflict of interest.

representative.²⁸ The appointed seat on the Area I Potato Council representing processing facilities has been vacant for more than a decade, in large part because there is no longer a processing facility in the Area I region. According to a council representative, the council has requested—but has not received—assistance from MDA to help fill the seat or change the law requiring a processor representative on the board.

The second appointed seat on the Area I Potato Council, representing wash plants, is filled by a former employee of a wash plant. This person retired from the wash plant in 2008 but has continued to fill the appointed seat, even though he no longer works at the plant. The wash plant representative told us he has forwarded to MDA a list of people who would qualify for the seat in hopes that the Governor would appoint someone new to the board. According to this individual and MDA staff, the department has not yet taken action on his request to be replaced on the board.

We also learned that this same member of the Area I Potato Council has a potential conflict of interest. In addition to serving as the wash plant representative on the Area I Potato Council for more than 25 years, he has served since 2009 as the President of the Northern Plains Potato Growers Association, an organization with which the council contracts for all of its programming activities and staff needs. According to the Minnesota Office of Grants Management,

A conflict of interest, actual or perceived, occurs when a person has actual or apparent duty or loyalty to more than one organization and the competing duties or loyalties may result in actions which are adverse to one or both parties. A conflict of interest exists even if no unethical, improper or illegal act results from it.²⁹

The individual's role as both a board member of the Area I Potato Council and president of the organization that receives the largest contract from the council constitutes a conflict of interest. While we did not find evidence of unethical actions, the dual roles present competing loyalties for this board member. The board member told us he has expressed concern about his potential conflict of interest to MDA staff and hoped the Governor would appoint someone else to the council board. When we first raised the issue with MDA staff, they were not aware of the conflict of interest concern, even though the situation has been in place for the past four years. MDA staff told us they now plan to take action to have a new wash plant representative appointed to the Area I Potato Council.

²⁸ *Minnesota Statutes* 2013, 17.54, subs. 9 and 11. As explained in Chapter 1, the Area I Potato Council represents potato producers in the counties of Becker, Beltrami, Clay, Clearwater, Kittson, Lake of the Woods, Mahnomon, Marshall, Norman, Pennington, Polk, Red Lake, Roseau, and Wilkin.

²⁹ Minnesota Department of Administration, Office of Grants Management, *Policy Number 08-01, Conflict of Interest Policy for State Grant-Making* (St. Paul, July 2008).

The Turkey Council has a potential organizational conflict of interest.

Turkey Council

We also have concerns about organizational conflicts of interest with board members of the Turkey Council. The 15 board members of the Turkey Council are also members of the 18-person board for the Minnesota Turkey Growers Association, a related organization. These producers are elected to board positions on both the council and the growers association simultaneously, using the same ballot. Although both groups represent turkey growers, they are separate organizations with distinct purposes. Because the council board members are board members in both organizations, they have an organizational conflict of interest: they are expected to serve in the best interests of the Turkey Council and in the best interests of the Turkey Growers Association. The board members' dual roles are especially noteworthy since, in 2012, the Turkey Council contracted for services from the Turkey Growers Association worth almost \$330,000, or 36 percent, of the council's total expenditures.

Recommendations

To address our concerns regarding council boards, we have two recommendations: one specific to the composition of the Area I Potato Council board and one regarding conflicts of interest on all agricultural commodity council boards.

RECOMMENDATION

The Legislature should amend Minnesota Statutes 2013, 17.54, subd. 11, to not require a processing facility representative to be on the board of the Area I Potato Council.

As discussed above, one of the seats on the Area I Potato Council board is for a governor-appointed representative of a potato processing facility; however, there are no longer processing plants in the Area I region. Because no one can meet the criteria to fill the seat, we recommend the Legislature remove the requirement for a processing facility representative on the council's board. Both Area I Potato Council and MDA officials told us they support this change in law.

RECOMMENDATION

The Legislature should amend Minnesota statutes to require council board members to be independent from related boards and ensure not just individual, but also organizational, independence.

As noted above, we identified conflict of interest concerns on two of the commodity council boards. Although Minnesota law addresses conflict of interest concerns for state employees and elected officials, it does not require

commodity council board members to comply with the same standards.³⁰ The Department of Administration's Office of Grants Management standards regarding conflicts of interest are also not binding for council board members.

Conflicts of interest are a persistent concern within state government and among nonprofit organizations. As a result, we think it is important that the agricultural commodity councils proactively address any potential conflict of interest. The first step is for the Legislature to clearly lay out its expectations regarding individual and organizational conflicts of interest for council board members. The Legislature could amend *Minnesota Statutes* 2013, 17.54, and include conflict of interest provisions directly in the Agricultural Commodities Promotion Act. Alternatively, the Legislature could amend *Minnesota Statutes* 2013, 10A.07, which addresses conflicts of interest for public or locally elected officials, and have it also apply to commodity council boards. In addition to these changes to the law, MDA could work with the councils to help them develop conflict of interest policies and increase understanding of conflict of interest concerns.³¹

RELATIONSHIPS WITH GROWERS ASSOCIATIONS

As discussed in Chapter 1, growers associations are voluntary, member-based organizations that represent the interests of agricultural producers. They do not receive revenue from checkoff fees; instead, their revenue is based on member dues. We found that:

- **Many of the councils have a close relationship with their related growers association.**

Several councils have significant financial, managerial, and operational relationships with their growers associations.

Several councils have significant financial, managerial, and operational relationships with their corresponding growers associations. For example, the Corn Council paid \$4.9 million to the Minnesota Corn Growers Association in 2012 for handling council funds, accounting, general and project management, and communications. Five councils—Barley, Corn, Soybean, Turkey, and Wheat—share staff with their corresponding growers association.

Several of the councils hold joint committee or board meetings with their related growers association. For example, the Barley Council and Barley Growers Association hold joint meetings, as do the Corn Council and Corn Growers Association. The Corn and Soybean councils have joint committees with their growers associations. As discussed in Chapter 1, these joint committees make funding recommendations to the council boards regarding how to allocate

³⁰ *Minnesota Statutes* 2013, 43A.38, subs. 5-7, address conflicts of interest for state employees in the Executive Branch; *Minnesota Statutes* 2013, 10A.07, addresses conflicts of interest for public or locally elected officials.

³¹ Following conversations the Office of the Legislative Auditor had with MDA staff regarding conflict of interest concerns, MDA held a meeting with commodity council staff. The agenda of the December 2013 meeting included a discussion regarding conflicts of interest.

Checkoff-fee dollars may not be used to support political parties or candidates.

checkoff-fee revenue. Finally, as noted above, the Turkey Council board members all also serve on the Turkey Growers Association board.

While the councils and growers associations generally represent the same producers, there is an important distinction between how councils and growers associations may use their revenue: checkoff-fee dollars may not be used to support political parties or candidates, while growers associations may use their funds for these activities.³² As a result, councils must ensure funds they pay growers associations are used for allowable expenses; this is not always easy to ensure or verify.

There is a general understanding among council staff that they are not permitted to use checkoff-fee dollars for political purposes or to influence legislation. Staff from MDA and many of the councils acknowledged the distinction between permissible and impermissible uses of checkoff-fee dollars; however,

- **Minnesota statutes do not prohibit councils from using checkoff-fee revenue to influence legislation, despite a common understanding to the contrary.**

Minnesota statutes state only that:

Checkoff fees collected shall be used exclusively for the purpose collected and not to support or oppose a political party or a candidate for nomination or election to a public office.³³

Commodities that are governed by a federal marketing order, such as beef, dairy, and soybean, are subject to stricter limitations on allowable uses of checkoff-fee revenues. For example, the federal soybean promotional order states that the Soybean Council checkoff-fee dollars:

...shall not be used in any manner for the purpose of influencing any action or policy of the United States Government, any foreign or State government, or any political subdivision thereof.³⁴

The federal Beef and Dairy promotional orders have similar limitations on using checkoff-fee revenue to influence government policy or action.³⁵

³² Growers associations with 501(c)(5) tax-exempt status, such as the Minnesota Association of Wheat Growers, Minnesota Barley Growers Association, Minnesota Corn Growers Association, Minnesota Soybean Growers Association, and the Minnesota State Cattlemen's Association, and associations with 501(c)(6) tax-exempt status, such as the Minnesota Milk Producers Association and Minnesota Turkey Growers Association, may engage in political campaigns as long as it is not the organization's primary activity. See John Francis Reilly and Barbara A. Braig Allen, *Political Campaign and Lobbying Activities of IRC 501(c)(4), (c)(5), and (c)(6) Organizations*, <http://www.irs.gov/pub/irs-tege/eotopicl03.pdf>, accessed January 24, 2014.

³³ *Minnesota Statutes* 2013, 17.59, subd. 4.

³⁴ 7 *CFR*, sec. 1220.228 a(1)(ix)(A) (2013).

³⁵ See 7 *CFR*, sec. 1260.181 (b)(7) (2013) (Beef); and 7 *CFR*, sec. 1150.154 (2013) (Dairy).

RECOMMENDATION

The Legislature should determine the limits it wants to place on the use of checkoff-fee revenue and then amend Minnesota Statutes 2013, 17.59, subd. 4, accordingly.

As noted above, and in contrast to Minnesota law, federal marketing orders place explicit restrictions on using checkoff-fee revenue to influence legislation. Some of the other states we reviewed place similar limits on the use of checkoff-fee dollars. For example, the Wisconsin law governing agricultural commodity councils states that “no such funds may be used...to influence either state or federal legislation...”³⁶ The Iowa Code has similar language for specific commodities where it states that “no portion of the [commodity] promotion fund shall be used, directly or indirectly, to influence legislation...”³⁷ The Legislature should determine if it wants to impose comparable limitations on the use of Minnesota checkoff-fee revenue. Amending state law to explicitly limit the use of checkoff-fee revenue would better align the law with the general understanding of what is permitted.

³⁶ Wisconsin Statutes 2011, 12, 96.16.

³⁷ See, for example, Iowa Code 2013, 183A.14 and 185.35.

List of Recommendations

- The Minnesota Department of Agriculture should require commodity councils to submit contracts for review and approval before work on the contract has begun. (p. 31)
- The Minnesota Department of Agriculture (MDA) should periodically review and update its compliance checklist to ensure it (1) aligns with state law and (2) provides useful information. Once the checklist has been improved, MDA staff should use the submitted checklists to help ensure and enforce compliance with state law. (p. 34)
- The Legislature should determine whether to make the canola checkoff fee nonrefundable and, if needed, amend *Minnesota Statutes* 2013, 17.63(a), accordingly. (p. 36)
- The Legislature should consider increasing oversight of agricultural commodity councils. (p. 37)
- The Legislature should amend *Minnesota Statutes* 2013, 17.57, to require agricultural commodity councils to regularly provide information about their finances and activities. Councils should be required to have a Web site on which they post their:
 - annual reports, financial statements, and current promotional order;
 - contact information for council board and staff;
 - election information;
 - upcoming council meeting locations, dates, times, and agendas; and
 - minutes from previous council meetings. (p. 40)
- The Legislature should amend *Minnesota Statutes* 2013, 17.54, subd. 11, to not require a processing facility representative to be on the board of the Area I Potato Council. (p. 43)
- The Legislature should amend Minnesota statutes to require council board members to be independent from related boards and ensure not just individual, but also organizational, independence. (p. 43)
- The Legislature should determine the limits it wants to place on the use of checkoff-fee revenue and then amend *Minnesota Statutes* 2013, 17.59, subd. 4, accordingly. (p. 46)

Council Profiles

APPENDIX A

Appendix A provides a brief overview of each commodity council. For each council, we provide basic information, such as the checkoff-fee amount and number of farms producing that commodity. We also provide key facts about each council based on our evaluation. Finally, we present select information from each council's financial statements from 2009 through 2012.

BARLEY COUNCIL

Key Facts

- The Barley Council was the only commodity council to spend \$0 on research from 2009 to 2012.
- More than 85 percent of the Barley Council's 2012 expenditures were on administration.
- The council does not produce an annual report or have a Web site.
- From 2009 to 2012, the council's revenue decreased 25 percent and expenditures increased less than 1 percent.

Date Formed:	1990
Initial Checkoff Fee:	\$0.01 per bushel
2014 Checkoff Fee:	\$0.015 per bushel
# of Farms (2007):	1,038
# of Board Members:	5
Are Fees Refundable?	No
Total Fees Collected Since 1990:	\$4.1 million
Fees as % of Council Revenue/Income (2012):	66 percent

Notable Relationships

The Barley Council shares staff and conducts concurrent board meetings with the Minnesota Barley Growers Association. The council also contracts with the Minnesota Wheat Council and Minnesota Association of Wheat Growers for office space and equipment.

Select Barley Council Revenue and Expenditures, 2009 to 2012

Category	2009	2010	2011	2012
Total Revenue and Income	\$133,378	\$109,448	\$101,636	\$100,743
Checkoff-Fee Revenue	95,413	70,667	63,795	66,902
Total Expenditures	114,294	116,398	121,652	115,192
Research Expenses	0	0	0	0
Promotion Expenses	16,416	14,510	19,115	15,642
Administrative Expenses	97,878	101,888	102,537	99,550

NOTES: Figures in table do not sum to 100 percent of revenue and expenditures; the table reflects only selected revenue sources and expenditure categories. "Total Revenue and Income" includes total revenue and total nonoperating income.

SOURCES: Minnesota Barley Research and Promotion Council, *Financial Statements Together with Independent Auditor's Report as of June 30, 2012 and 2011* (Red Lake Falls, MN, September 2012); and Minnesota Barley Research and Promotion Council, *Financial Statements Together with Independent Auditor's Report as of June 30, 2010 and 2009* (Red Lake Falls, MN, August 2010).

BEEF COUNCIL

Key Facts

- The Beef Council is authorized under state law and the federal Beef Marketing Order.¹ The council must collect all beef checkoff fees paid in the state and remit 50 percent of the amount collected to the national Cattlemen's Beef Board.
- The Beef Council did not submit its compliance checklist to the Minnesota Department of Agriculture (MDA) from 2006 to 2011, in part because MDA did not enforce submission of the checklist during this time period.
- The council is attempting to raise its state checkoff fee by \$1.00 and has scheduled a producer referendum for 2014.

Date Formed:	1969
Initial Checkoff Fee:	\$0.15 per head
2014 Checkoff Fee:	\$1 per head
# of Farms (2007):	14,410
# of Board Members:	16
Are Fees Refundable?	No
Total Fees Collected for MN Since 1990:	\$16.9 million
Fees as % of Council Revenue/Income (2012):	93 percent

Notable Relationships

The national Cattlemen's Beef Board provides oversight for the Minnesota Beef Council, ensuring the council collects checkoff fees and follows federal expenditure guidelines.

Select Beef Council Revenue and Expenditures, 2009 to 2012

Category	2009	2010	2011	2012
Total Revenue and Income	\$773,830	\$789,332	\$771,474	\$719,249
Checkoff-Fee Revenue	684,482	719,247	719,463	670,756
Total Expenditures	753,646	772,204	819,962	759,658
Research Expenses	37,323	43,414	48,955	67,334
Promotion Expenses	448,700	458,305	520,367	402,353
Administrative Expenses	160,714	189,209	187,074	218,287

NOTES: Figures in table do not sum to 100 percent of revenue and expenditures; the table reflects only selected revenue sources and expenditure categories. "Total Revenue and Income" includes total revenue and total nonoperating income. "Checkoff-Fee Revenue" reflects amount of checkoff-fee revenue kept in Minnesota. Promotion expenses include expenditures on consumer information, industry information, and producer communications.

SOURCES: Minnesota Beef Research and Promotion Council, *Financial Statements, June 30, 2012 and 2011* (Minneapolis, MN, August 2012); and Minnesota Beef Research and Promotion Council, *Financial Statements, June 30, 2010 and 2009* (Minneapolis, MN, November 2010).

¹ 7 CFR, 1260 (2013); and *Minnesota Statutes* 2013, 17.51-17.69.

CANOLA COUNCIL

Key Facts

- In 2012 checkoff fees made up less than 30 percent, and donations accounted for 38 percent, of the Canola Council's total revenue. Donations came primarily from agricultural companies, including seed, crushers, equipment, and insurance organizations.
- The Canola Council does not permit checkoff-fee refunds; a nonrefundable checkoff fee was approved by the commissioner of the Minnesota Department of Agriculture and in the 1996 referendum establishing the council, although it contradicts state law.²
- Council revenues increased 16 percent and expenditures increased less than 1 percent from 2009 to 2012.

Date Formed:	1996
Initial Checkoff Fee:	\$0.12 per hundredweight
2014 Checkoff Fee:	\$0.06 per hundredweight
# of Farms (2013):	263
# of Board Members:	7 (voting)
Are Fees Refundable?	No
Total Fees Collected Since 1997:	\$724,000
Fees as % of Council Revenue/Income (2012):	28 percent

Notable Relationships

The Canola and Cultivated Wild Rice councils contract with the same executive director.

Select Canola Council Revenue and Expenditures, 2009 to 2012

Category	2009	2010	2011	2012
Total Revenue and Income	\$66,903	\$72,562	\$101,367	\$77,307
Checkoff-Fee Revenue	16,300	17,498	35,875	21,807
Total Expenditures	61,146	62,207	61,564	61,650
Research Expenses	18,055	18,495	17,055	17,084
Promotion, Education, and Public Relations Expenses	18,484	18,409	19,050	19,451
Regulatory/Legislative Expenses	11,254	12,212	12,152	11,891
Administrative Expenses	13,353	12,930	13,064	13,119

NOTES: Figures in table do not sum to 100 percent of revenue and expenditures; the table reflects only selected revenue sources and expenditure categories. "Total Revenue and Income" includes total revenue and total nonoperating income.

SOURCES: Minnesota Canola Council, *Financial Statements and Accompanying Information for the Years Ended August 31, 2012 (Audited) and 2011 (Reviewed)* (Minneapolis, MN, December 2012); and Minnesota Canola Council, *Financial Statements and Accompanying Information for the Years Ended August 31, 2010 (Reviewed) and 2009 (Audited)* (Minneapolis, MN, December 2010).

² *Minnesota Statutes* 2013, 17.63(a).

CORN COUNCIL

Key Facts

- State law permits total and “partial” refunds of corn checkoff fees; with a partial refund, a portion may be redirected to the Minnesota Corn Growers Association (MCGA) in lieu of membership dues.³

Date Formed:	1990
Initial Checkoff Fee:	\$0.005 per bushel
2014 Checkoff Fee:	\$0.01 per bushel
# of Farms (2007):	30,207
# of Board Members:	11
Are Fees Refundable?	Yes
Total Fees Collected Since 1990:	\$96.8 million
Fees as % of Council Revenue/Income (2012):	99 percent

- The Corn Council and MCGA share staff and hold joint board meetings.
- The corn checkoff fee increased to \$0.01 per bushel in 2009.

Notable Relationships

The Corn Council has a significant organizational and financial relationship with MCGA. The Council paid \$4.9 million to MCGA in 2012 for general and project management, and to handle council funds, accounting, and communications.

Select Corn Council Revenue and Expenditures, 2009 to 2012

Category	2009	2010	2011	2012
Total Revenue and Income	\$5,612,401	\$10,596,712	\$10,765,026	\$11,110,197
Checkoff-Fee Revenue	5,983,138	11,250,506	11,486,861	11,709,255
Checkoff-Fee Refunds	(418,554)	(705,245)	(778,343)	(663,484)
Total Expenditures^a	5,225,424	6,077,296	7,458,407	9,548,237
Program Expenses	4,568,172	5,549,256	6,810,383	8,602,295
<i>Expanded Uses</i>	600,392	665,235	634,585	1,015,234
<i>Producer Services</i>	760,592	859,811	1,119,111	1,460,774
<i>Production Stewardship</i>	825,125	971,269	1,180,176	1,584,111
<i>Food and Bioenergy</i>	624,050	850,143	861,415	973,271
<i>Policy and Priority Focus</i>	225,197	208,755	258,244	255,165
<i>Communication, Promotion & Education</i>	541,430	728,601	1,021,786	1,516,513
Administrative Expenses	657,252	528,040	648,024	945,942

NOTES: Figures in table do not sum to 100 percent of revenue and expenditures; the table reflects only selected revenue sources and expenditure categories. “Total Revenue and Income” includes total revenue and total nonoperating income.

^a The Corn Council contracted with the Minnesota Corn Growers Association for project and administrative services from 2009 to 2012. The annual contracts totaled: \$2,812,879 (2009), \$2,675,663 (2010), \$3,498,525 (2011), and \$4,866,811 (2012).

SOURCES: Minnesota Corn Research and Promotion Council, *Financial Statements Years Ended September 30, 2012 and 2011* (Minneapolis, MN, January 2013); and Minnesota Corn Research and Promotion Council, *Financial Statements Years Ended September 30, 2010 and 2009* (Minneapolis, MN, January 2011).

³ *Minnesota Statutes* 2013, 17.63(b).

DAIRY COUNCIL

Key Facts

- The Dairy Council is authorized under both state law and the federal Dairy Marketing Order.⁴
- Dairy checkoff fees are remitted directly to the Minnesota Dairy Council and the National Dairy Board by dairy processors and co-ops.

Date Formed:	1975
Initial Checkoff Fee:	0.5 percent of market value
2014 Checkoff Fee:	\$0.15 per hundredweight
# of Farms (2013):	3,760
# of Board Members:	22
Are Fees Refundable?	No
Total Fees Collected for MN Since 1975:	\$293.2 million
Fees as % of Council Revenue/Income (2012):	100 percent

- The Dairy Council allocated nearly 100 percent of its 2012 expenditures to the Midwest Dairy Association, a regional commodity organization.
- The council's revenue decreased by less than 1 percent and its expenditures decreased by 12 percent from 2009 to 2012.

Notable Relationships

The Dairy Council has a significant organizational and financial relationship with the Midwest Dairy Association. The council contracts with the Midwest Dairy Association for administrative, financial, research, and promotion activities.

Select Dairy Council Revenue and Expenditures, 2009 to 2012

Category	2009	2010	2011	2012
Total Revenue and Income	\$ 8,993,947	\$9,003,603	\$8,777,291	\$8,922,709
Checkoff-Fee Revenue	8,979,226	8,995,304	8,773,696	8,918,244
Total Expenditures^a	10,105,197	8,920,246	8,496,317	8,925,614
Administrative Expenses	46,771	47,385	49,232	49,297
Program Expenses	10,058,300	8,872,800	8,446,000	8,876,300

NOTES: Figures in table do not sum to 100 percent of revenue and expenditures; the table reflects only selected revenue sources and expenditure categories. "Total Revenue and Income" includes total revenue and total nonoperating income. "Checkoff-Fee Revenue" reflects amount kept in Minnesota.

^a The Dairy Council contracted with the Midwest Dairy Association for program and administrative services from 2009 to 2012. The annual contracts for administration totaled: \$21,700 (2009), \$22,200 (2010), \$23,000 (2011), and \$23,700 (2012). The annual contracts for programming totaled: \$10,033,300 (2009), \$8,872,800 (2010), \$8,135,000 (2011), and \$8,876,300 (2012).

SOURCES: Minnesota Dairy Research and Promotion Council, *Financial Statements, Supplementary Information, and Independent Auditor's Report, December 31, 2012 and 2011* (Saint Paul, MN, February 2013); and Minnesota Dairy Research and Promotion Council, *Financial Statements, Supplementary Information, and Independent Auditor's Report, December 31, 2010 and 2009* (Saint Paul, MN, February 2011).

⁴ 7 CFR, 1150 (2013); and *Minnesota Statutes* 2013, 17.51-17.69.

DRY EDIBLE BEAN COUNCIL

Key Facts

- The Dry Edible Bean Council increased its checkoff-fee amount in 1997 from \$0.05 to \$0.10 per hundredweight without holding a referendum. A producer vote was not held until 2008, retroactively approving the increase to the checkoff fee more than ten years late.
- The Dry Edible Bean Council's revenue increased 32 percent and its expenditures increased 28 percent from 2009 to 2012.

Date Formed:	1979
Initial Checkoff Fee:	\$0.05 per hundredweight
2014 Checkoff Fee:	\$0.10 per hundredweight
# of Farms (2013):	550
# of Board Members:	5
Are Fees Refundable?	Yes
Total Fees Collected Since 1979:	\$4.4 million
Fees as % of Council Revenue/Income (2012):	100 percent

Notable Relationships

The Dry Edible Bean Council contracts with the Northharvest Bean Growers Association (NBGA), a regional commodity organization, for research, promotion, staff, and administrative services. In 2012, the contract with NBGA accounted for 96 percent of the council's total expenditures.

Select Dry Edible Bean Council Revenue and Expenditures, 2009 to 2012

Category	2009	2010	2011	2012
Total Revenue and Income	\$234,879	\$276,617	\$284,169	\$309,360
Checkoff-Fee Revenue	238,926	283,991	299,033	319,782
Checkoff-Fee Refunds	(8,157)	(9,864)	(16,455)	(11,458)
Total Expenditures^a	227,277	210,320	245,618	290,502
Research and Promotion Expenses	216,000	200,000	236,000	279,576
Administrative Expenses	6,550	6,600	6,791	6,758
Council Member Expenses	4,727	3,720	2,827	4,168

NOTES: Figures in table do not sum to 100 percent of revenue and expenditures; the table reflects only selected revenue sources and expenditure categories. "Total Revenue and Income" includes total revenue and total nonoperating income.

^a The Dry Edible Bean Council contracted with the Northharvest Bean Growers Association for research, promotion, and administrative services from 2009 to 2012. The annual contracts totaled: \$216,000 (2009), \$200,000 (2010), \$236,000 (2011), and \$279,576 (2012).

SOURCES: Minnesota Dry Edible Bean Research and Promotion Council, *Financial Statements Years Ended June 30, 2012 and 2011* (Perham, MN, December 2012); and Minnesota Dry Edible Bean Research and Promotion Council, *Financial Statements Years Ended June 30, 2010 and 2009* (Perham, MN, December 2010).

AREA I POTATO COUNCIL

Key Facts

- The Area I Potato Council represents producers in 14 counties.⁵
- The council's board includes two governor-appointed industry representatives; one position has been vacant for ten years and the other is filled by a person no longer eligible for the position.
- One board member has a conflict of interest because he also serves as the President of the Northern Plains Potato Growers Association (NPPGA), a regional commodity organization with which the council has a contract.
- The Area I Potato Council does not produce an annual report or have a Web site, and the council has not consistently submitted a compliance checklist to the Minnesota Department of Agriculture.

Date Formed:	1967
Initial Checkoff Fee:	\$1 per acre
2014 Checkoff Fee:	\$0.03 per hundredweight
# of Farms (2013):	58
# of Board Members:	7
Are Fees Refundable?	No
Total Fees Collected Since 1999:	\$942,800
Fees as % of Council Revenue/Income (2012):	100 percent

Notable Relationships

The council contracts with NPPGA for research, promotion, staff, and administrative services.

Select Area I Potato Council Revenue and Expenditures, 2009 to 2012

Category	2009	2010	2011	2012
Total Revenue and Income	\$63,166	\$74,209	\$51,351	\$66,679
Checkoff-Fee Revenue	63,165	73,507	50,765	66,678
Total Expenditures^a	70,519	70,517	34,556	77,681
Research and Promotion Expenses	50,000	50,000	20,000	60,000
Administrative Expenses	14,317	17,099	12,943	15,752

NOTES: Figures in table do not sum to 100 percent of revenue and expenditures; the table reflects only selected revenue sources and expenditure categories. "Total Revenue and Income" includes total revenue and total nonoperating income.

^a The Area I Potato Council contracted with the Northern Plains Potato Growers Association for research and promotion services from 2009 to 2012. The annual contracts totaled: \$50,000 (2009), \$50,000 (2010), \$20,000 (2011), and \$50,000 (2012).

SOURCES: Minnesota Area I Potato Research and Promotion Council, *Financial Statements, June 30, 2012* (Grand Forks, ND, November 2013); Minnesota Area I Potato Research and Promotion Council, *Financial Statements, June 30, 2011, 2010, and 2009* (Grand Forks, ND, December 2011); and Minnesota Area I Potato Research and Promotion Council, *Contracts Executed by the Council, June 30, 2012*.

⁵ The Area I Potato Council represents producers in Becker, Beltrami, Clay, Clearwater, Kittson, Lake of the Woods, Mahanomen, Marshall, Norman, Pennington, Polk, Red Lake, Roseau, and Wilkin counties.

AREA II POTATO COUNCIL

Key Facts

- The Area II Potato Council represents producers in all counties not represented by the Area I Potato Council.⁶
- The Area II Potato Council spent 75 percent of its expenditures on research and 21 percent on administration in 2012.
- The Area II Potato Council conducts council board elections in person.
- The Area II Potato Council does not prepare an annual report.
- The council’s revenue and expenditures decreased from 2009 to 2012 by 12 percent and 8 percent, respectively.
- The Area II Potato Council did not always have contracts approved by the Minnesota Department of Agriculture prior to the date work began on the contract.

Date Formed:	1991
Initial Checkoff Fee:	\$0.01 per hundredweight
2014 Checkoff Fee:	\$0.02 per hundredweight
# of Farms (2013):	39
# of Board Members:	7
Are Fees Refundable?	Yes
Total Fees Collected Since 1992:	\$3 million
Fees as % of Council Revenue/Income (2012):	99 percent

Select Area II Potato Council Revenue and Expenditures, 2009 to 2012

Category	2009	2010	2011	2012
Total Revenue and Income	\$255,994	\$254,501	\$262,132	\$224,757
Checkoff-Fee Revenue	253,196	253,117	260,825	223,509
Total Expenditures	253,247	268,751	227,214	232,227
Research and Promotion Expenses	185,740	207,695	176,112	182,492
Administrative Expenses	67,507	61,056	51,102	49,735

NOTES: Figures in table do not sum to 100 percent of revenue and expenditures; the table reflects only selected revenue sources and expenditure categories. “Total Revenue and Income” includes total revenue and total nonoperating income.

SOURCES: Minnesota Area II Potato Research and Promotion Council, *Financial Statements and Accompanying Information for Years Ended July 31, 2012 and 2011* (Minneapolis, MN, February 2013); and Minnesota Area II Potato Research and Promotion Council, *Financial Statements and Accompanying Information for Years Ended July 31, 2010 and 2009* (Minneapolis, MN, January 2011).

⁶ The Area I Potato Council represents producers in Becker, Beltrami, Clay, Clearwater, Kittson, Lake of the Woods, Mahanomen, Marshall, Norman, Pennington, Polk, Red Lake, Roseau, and Wilkin counties.

SOYBEAN COUNCIL

Key Facts

- The Soybean Council is authorized under both state law and the federal Soybean Promotion and Research Order.⁷
- Under the federal order, the council must remit half of the checkoff fees collected to the United Soybean Board; in 2012 the council remitted \$10.8 million.
- From 2009 to 2012, the council's revenue increased 18 percent and expenditures increased 55 percent.

Date Formed:	1973
Initial Checkoff Fee:	\$0.005 per bushel
2014 Checkoff Fee:	0.5 percent net value per bushel
# of Farms (2007):	27,407
# of Board Members:	15
Are Fees Refundable?	Only for certified organic soybeans
Total Fees Collected for MN Since 1992:	\$90 million
Fees as % of Council Revenue/Income (2012):	98 percent

Notable Relationships

The Soybean Council contracts for administrative services, fund management, and promotion with the Minnesota Soybean Growers Association (MSGA). The council and the association also share staff. The council's contract with MSGA accounted for 78 percent of the council's total expenditures in 2012.

Select Soybean Council Revenue and Expenditures, 2009 to 2012

Category	2009	2010	2011	2012
Total Revenue and Income	\$7,537,906	\$6,711,351	\$9,022,210	\$8,870,203
Checkoff-Fee Revenue	7,221,424	6,943,380	8,748,659	8,666,848
Total Expenditures^a	5,861,016	7,492,419	8,158,567	9,102,061
Program Expenses	4,586,350	6,322,942	6,850,249	7,806,588
<i>Domestic Marketing</i>	1,223,028	1,509,378	1,410,769	1,085,659
<i>International Marketing</i>	669,493	1,701,855	841,813	1,060,728
<i>Consumer Education</i>	375,615	436,591	629,701	791,620
<i>Producer Communications</i>	565,982	687,947	1,686,322	2,094,695
<i>Research</i>	1,590,232	1,979,171	2,271,644	2,198,018
Administrative Expenses	1,274,666	1,169,477	1,308,318	1,295,473

NOTES: Figures in table do not sum to 100 percent of revenue and expenditures; the table reflects only selected revenue sources and expenditure categories. "Total Revenue and Income" includes total revenue and total nonoperating income. "Checkoff-Fee Revenue" reflects amount kept in Minnesota.

^a The Soybean Council contracted with the Minnesota Soybean Growers Association for promotion and administrative services from 2009 to 2012. The annual contracts totaled: \$4,198,901 (2009), \$5,680,268 (2010), \$6,106,013 (2011), and \$7,119,616 (2012).

SOURCES: Minnesota Soybean Research and Promotion Council, *Financial Statements with Additional Information, August 31, 2012 and 2011* (Rochester, MN, December 2012); Minnesota Soybean Research and Promotion Council, *Financial Statements with Supplementary Information, August 31, 2011 and 2010* (Rochester, MN, November 2011); and Minnesota Soybean Research and Promotion Council, *Financial Statements with Supplementary Information, August 31, 2009 and 2008* (Rochester, MN, November 2009).

⁷ 7 CFR, 1220 (2013); and *Minnesota Statutes* 2013, 17.51-17.69.

SUNFLOWER COUNCIL

Key Facts

- The Sunflower Council does not maintain a Web site.
- Voter turnout for the Sunflower Council’s 2011 board election was 4 percent of eligible voters, the lowest of any council from 2009 to 2012.

Date Formed:	2009
Initial Checkoff Fee:	\$0.04 per hundredweight
2014 Checkoff Fee:	\$0.04 per hundredweight
# of Farms (2013):	1,477
# of Board Members:	5
Are Fees Refundable?	Yes
Total Fees Collected Since 2009:	\$80,835
Fees as % of Council Revenue/Income (2012):	100 percent

- Among the 330 sunflower producers to whom we mailed a questionnaire, more than 6 percent told us they did not grow sunflowers and almost 4 percent said they had previously grown sunflowers but no longer did so.

Notable Relationships

The council contracts with the National Sunflower Association, a national commodity organization, for research, promotion, staff, and administrative services. In 2012 this contract accounted for 65 percent of the council’s total expenditures.

Select Sunflower Council Revenue and Expenditures, 2011 to 2012

Category	2011	2012
Total Revenue and Income	\$34,853	\$17,807
Checkoff-Fee Revenue	34,853	17,777
Total Expenditures	9,883	23,003
Program Expenses	9,883	23,003
<i>Contract with National Sunflower Association</i>	5,000	15,000

NOTES: Figures in table do not sum to 100 percent of revenue and expenditures; the table reflects only selected revenue sources and expenditure categories. The Sunflower Council’s promotional order was approved in December 2009, and the council did not report a full year of financial information until 2011. “Total Revenue and Income” includes total revenue and total nonoperating income.

SOURCES: Minnesota Sunflower Council, *Independent Accountant’s Review Report, June 30, 2012* (Mandan, ND, February 2013); and Minnesota Sunflower Council, *Independent Accountant’s Review Report, June 30, 2011* (Mandan, ND, April 2012).

TURKEY COUNCIL

Key Facts

- The Turkey Council shares staff and board members with the Minnesota Turkey Growers Association (MTGA). Board members are elected to both councils simultaneously using the same ballot.
- From 2009 to 2012, the council's revenue decreased 4 percent and its expenditures decreased 3 percent.

Date Formed:	1965
Initial Checkoff Fee:	\$0.02/turkey over 10 lbs. eviscerated weight \$0.01/turkey less than 10 lbs. eviscerated weight
2014 Checkoff Fee:	\$0.0006499/lb. eviscerated weight
# of Farms (2013):	109
# of Board Members:	15
Are Fees Refundable?	Yes
Total Fees Collected Since 1965:	\$22 million
Fees as % of Council Revenue/Income (2012):	90 percent

Notable Relationships

The Turkey Council contracts with MTGA for promotion, administration, and fund management. In 2012 this contract accounted for 36 percent of the council's total expenditures.

Select Turkey Council Revenue and Expenditures, 2009 to 2012

Category	2009	2010	2011	2012
Total Revenue and Income	\$897,817	\$940,192	\$960,662	\$864,138
Checkoff-Fee Revenue	764,855	786,690	790,524	778,453
Checkoff-Fee Refunds	(6,084)	(7,462)	(2,716)	(1,630)
Total Expenditures^a	942,582	996,424	939,657	917,735
Research Expenses	195,789	250,936	236,510	177,653
Promotion Expenses	525,955	545,166	506,086	542,613
Administrative Expenses	220,838	200,322	197,061	197,469

NOTES: Figures in table do not sum to 100 percent of revenue and expenditures; the table reflects only selected revenue sources and expenditure categories. "Total Revenue and Income" includes total revenue and total nonoperating income.

^a The Turkey Council contracted with the Minnesota Turkey Growers Association for promotion and administrative services from 2009 to 2012. The annual contracts totaled: \$326,740 (2009), \$326,890 (2010), \$326,740 (2011), and \$329,530 (2012).

SOURCES: Minnesota Turkey Research and Promotion Council, *Financial Statements and Accompanying Information for Years Ended February 29, 2012 and February 28, 2011* (Minneapolis, MN, June 2012); and Minnesota Turkey Research and Promotion Council, *Financial Statements and Accompanying Information for Years Ended February 28, 2010 and 2009* (Minneapolis, MN, June 2010).

WHEAT COUNCIL

Key Facts

- The council increased its checkoff fee to \$0.02 per bushel in 2010, contributing to a 65 percent revenue increase from 2009 to 2012; its expenditures increased 32 percent over the same time period.
- The Wheat Council shares office space with and provides services to the Minnesota Barley Council.
- The Wheat Council conducts board elections in person.

Date Formed:	1977
Initial Checkoff Fee:	\$0.01 per bushel
2014 Checkoff Fee:	\$0.02 per bushel
# of Farms (2007):	6,699
# of Board Members:	9
Are Fees Refundable?	No
Total Fees Collected Since 1977:	\$33 million
Fees as % of Council Revenue/Income (2012):	90 percent

Notable Relationships

The council shares staff with the Minnesota Association of Wheat Growers (MAWG). The council and MAWG contract with each other; the council provides MAWG with communications and fund management, while MAWG provides the council with office space and education programming. The Wheat Council also has a contract with the Minnesota Barley Council; the Wheat Council provides the Barley Council with office equipment.

Select Wheat Council Revenue and Expenditures, 2009 to 2012

Category	2009	2010	2011	2012
Total Revenue and Income	\$ 934,695	\$921,523	\$2,134,482	\$1,544,209
Checkoff-Fee Revenue	868,632	872,287	2,090,195	1,392,625
Total Expenditures	1,052,347	957,977	951,395	1,393,236
Research Expenses	248,787	231,232	223,223	616,065
Promotion Expenses	520,766	465,345	451,970	489,480
Administrative Expenses	282,794	270,400	276,202	287,691

NOTES: Figures in table do not sum to 100 percent of revenue and expenditures; the table reflects only selected revenue sources and expenditure categories. "Total Revenue and Income" includes total revenue and total nonoperating income.

SOURCES: Minnesota Wheat Research and Promotion Council, *Financial Statements Together with Independent Auditor's Report as of June 30, 2012 and 2011* (Thief River Falls, MN, November 2012); Minnesota Wheat Research and Promotion Council, *Financial Statements Together with Independent Auditor's Report as of June 30, 2010 and 2009* (Thief River Falls, MN, September 2010).

CULTIVATED WILD RICE COUNCIL

Key Facts

- The council increased its checkoff fee to \$0.06 per pound in fiscal year 2012, contributing to a 22 percent revenue increase from 2009 to 2012; expenditures increased 75 percent over the same period.

Date Formed:	1974
Initial Checkoff Fee:	\$0.04 per pound
2014 Checkoff Fee:	\$0.06 per pound
# of Farms (2013):	22
# of Board Members:	7
Are Fees Refundable?	No
Total Fees Collected Since 1974:	\$5.4 million
Fees as % of Council Revenue/Income (2012):	91 percent

- In 2012 the Cultivated Wild Rice Council spent 67 percent of its total expenditures on research.
- The council had high voter turnout for elections as compared to other councils, reaching 42 percent of eligible voters in 2012.

Notable Relationships

The Cultivated Wild Rice and Canola councils contract with the same executive director.

Select Cultivated Wild Rice Council Revenue and Expenditures, 2009 to 2012

Category	2009	2010	2011	2012
Total Revenue and Income	\$354,793	\$265,647	\$158,285	\$432,505
Checkoff-Fee Revenue	326,888	229,265	127,561	394,397
Total Expenditures	229,611	318,765	400,659	400,957
Research Expenses	100,948	184,775	269,009	267,872
Promotion, Education, and Public Relations Expenses	56,222	64,647	55,527	55,509
Administrative Expenses	34,726	36,014	37,111	37,470
Regulatory/Legislative Expenses	29,109	28,405	35,060	35,860

NOTES: Figures in table do not sum to 100 percent of revenue and expenditures; the table reflects only selected revenue sources and expenditure categories. "Total Revenue and Income" includes total revenue and total nonoperating income.

SOURCES: Minnesota Cultivated Wild Rice Council, *Financial Statements and Accompanying Information for the Years Ended October 31, 2012 and 2011* (Minneapolis, MN, February 2013); and Minnesota Cultivated Wild Rice Council, *Financial Statements and Accompanying Information for the Years Ended October 31, 2010 and 2009* (Minneapolis, MN, January 2011).

Survey Methodology

APPENDIX B

Our research included a survey of producers of the commodities associated with each Minnesota commodity council. As far as we are aware, no listings exist of all Minnesota producers and the commodities they produce. Although all producers of these commodities pay checkoff fees, the Minnesota Department of Agriculture (MDA) and most councils do not have access to full contact information for the producers whose fees are collected.

As a result, we identified possible survey respondents using producer lists kept by each individual commodity council and in one case by MDA.¹ The lists do not include all producers who pay the checkoff fees. For example, the 2007 Agriculture Census counted 27,407 soybean producers in Minnesota; the list we received from the Soybean Council comprised only 4,199 producers.² Additionally, some producers on the lists told us in their returned surveys that they did not produce the commodities about which we asked them. The use of these incomplete lists likely affected our survey responses. Producers are typically on council lists because of prior interactions with the council (such as voting in an election); therefore, the producers answering our surveys may be more familiar with the councils than other producers who also pay checkoff fees but do not appear on council lists. One council is an exception; because dairy farms must be inspected and permitted by the state of Minnesota, the Dairy Council's listing should be comprehensive.

Our survey was further complicated by the fact that 21 percent of the producers on the council lists produced multiple commodities and paid checkoff fees to more than one council. To reduce confusion among survey respondents, we sent questions about only one council to each producer we surveyed. For example, a producer of beef, corn, and soybeans would receive only one survey—about the Beef Council, perhaps—and would not be asked about the other two commodity councils.

For the commodity councils with fewer producers (Barley, Canola, Area I Potato, Area II Potato, Turkey, and Cultivated Wild Rice), we surveyed every producer on the council lists.³ Any producer from one of these councils who was also on a list from one of the larger councils was assigned to the smaller council and

¹ The councils maintain these lists for producer communications and election purposes. MDA provided a list of dairy producers, which it maintains due to its responsibility for inspecting and permitting dairy producers.

² United States Department of Agriculture, 2007 Agriculture Census-Minnesota, http://www.agcensus.usda.gov/Publications/2007/Full_Report/Volume_1,_Chapter_1_State_Level/Minnesota/st27_1_059_059.pdf, accessed November 15, 2013.

³ These six councils had fewer than 300 producers on their producer lists.

removed from the list of possible survey respondents for the larger council.⁴ A small number of producers appeared on multiple small-council lists. In these instances, we assigned the producer to whichever council had the smallest number of potential respondents in order to maximize the number of survey recipients for the smallest councils.

For example, 8 producers appeared on the lists for both the Barley Council (73 producers) and the Canola Council (263 producers). Almost all of these eight producers were also on other commodity council lists, such as the Soybean and Wheat councils, but they were excluded from those surveys because they produced one of the commodities associated with the smaller councils. Further, since the Barley Council list had fewer producers than the Canola Council list, all eight producers were sent a Barley Council survey. But had any of these producers also been on the list from an even smaller council (such as Cultivated Wild Rice), he or she would have received that council's survey instead of the Barley Council survey.

For the commodity councils with a larger number of producers (Beef, Corn, Dairy, Dry Edible Bean, Soybean, Sunflower, and Wheat), we used statistical sampling techniques to randomly select the producers surveyed. To address the many producers that appeared on multiple council lists, each producer was assigned to a separate sampling group. Some groups comprised producers that appeared on only one council list (such as Sunflower only), while others comprised producers that appeared on similar combinations of council lists (such as Beef and Dairy).⁵ Within each sampling group, each producer had the same chance of being chosen to receive a survey, but we selected more from some groups than others in order to more closely match the population as a whole. This process allowed us to construct our samples so that the proportions of surveyed producers associated with more than one council were the same in the sample as in the total population. For example, because 39 percent of all producers on the Corn Council's list also appeared on other council lists, we constructed our sample so that 39 percent of those receiving the survey about the Corn Council were producers who also appeared on other council lists, while 61 percent appeared solely on the Corn Council list.

Generally, we found that producers who were on more than one council's list tended to offer answers that were more supportive of the councils. For a few councils, these differences were quite pronounced: 25 percent of dairy producers that appeared solely on the Dairy Council's list said they disagreed with how the Dairy Council uses checkoff dollars, but no dairy producers that appeared on other councils' lists said they disagreed.⁶

⁴ Seven councils, the so-called "larger councils," had more than 300 producers on their list: Beef, Corn, Dairy, Dry Edible Bean, Soybean, Sunflower, and Wheat.

⁵ There are 127 possible combinations of council membership among just the largest seven councils; we created separate sampling groups for only the most frequently appearing overlaps.

⁶ We investigated weighting the survey results to take into account producers' appearances on multiple lists, but found that the differences from unweighted results were minor. Thus, we present unweighted survey results in our report.

The incompleteness of the producer lists we used to generate our survey samples has important implications for calculating confidence intervals and margins of error. The statistical calculation of the margin of error assumes that each person in the population has a chance of being included in the sample. Alternatively, one can use various techniques to “impute” answers to nonsurveyed populations by assuming the nonsurveyed individuals are like some subgroup of the sampled individuals. However, for this survey, we know that large numbers of farmers were not on council lists and thus had no chance of being selected for our survey. Further, it appears unlikely that those we could not survey are similar to those we could. Individuals who appear on council lists—because they voted in an election or interacted in some other way with the council—likely have different or more strongly held opinions than farmers who have never interacted with the council except by having checkoff fees deducted from their commodity transactions.

As a result, our survey results are—at best—generalizable only to the individuals that appear on council lists. We did calculate 95 percent confidence intervals for each survey, which ranged from plus or minus 7 percentage points (Beef) to plus or minus 16 percentage points (Cultivated Wild Rice). However, those intervals must be interpreted with caution. For example, we indicated in Exhibit 2.6 that 36 percent of beef producers who answered a question regarding checkoff-fee refunds thought that their checkoff fees should be refundable. Applying the confidence interval cited above could lead us to infer that the true percentage of beef producers wanting refundable fees likely lies between 29 percent and 43 percent. However, we can extrapolate that result only to the 1,309 producers that were on the Beef Council’s list; we cannot draw statistically defensible conclusions about the opinions of the more than 14,000 beef producers in Minnesota.



March 7, 2014

James R. Nobles
Legislative Auditor
Room 140 Centennial Building
658 Cedar Street
St. Paul, MN 55155-1603

RE: Agricultural Commodity Councils Evaluation

Dear Mr. Nobles:

Thank you for the opportunity to review and respond to the Agricultural Commodity Councils evaluation report. We appreciate this external review and have already begun the process of implementing those recommendations of the report that were directed toward the Department.

We commend the OLA staff for conducting a survey of producers which generated more than 1,200 survey responses and an excellent response rate of 42 percent. We are pleased that a high percentage of producers reported that they are familiar with how their council uses checkoff fees. In addition, we are pleased to learn that across all of the councils, a majority of producers who were familiar with the councils' activities indicated that they and the industry as a whole benefited from their council's activities.

We take pride in our agency's ongoing administration of council elections, referenda and the processing of refund requests. The lack of recommendations in these areas is a strong indication of our success in ensuring that producers are able to participate in fair elections to determine whether or not to implement a promotion order as well as to choose their own leadership. We are pleased with the report's finding that "across all councils, more than 90 percent of respondents who indicated they had voted in a council board election said it was "easy" or "very easy" to do so".

The compliance checklist is being updated to ensure compliance with state law. We agree with the recommendation to require commodity councils to submit contracts for review and approval before work on a contract has begun. We will continue to work with councils to ensure more timely and consistent compliance with this requirement.

We look forward to participating in a productive dialogue with legislators and the councils on the recommendations directed toward the legislature.

Thank you again for the opportunity to respond to the evaluation and for your constructive recommendations. We anticipate positive improvements will result from this evaluation and the subsequent policy discussions.

Sincerely,

A handwritten signature in black ink, reading "David J. Frederickson", is displayed on a light gray rectangular background.

David J. Frederickson
Commissioner

Forthcoming OLA Evaluations

DNR Forest Management, 2014
Managed Care Organizations' Administrative Expenses, 2014
MnDOT Selection of Pavement Surface for Road Rehabilitation, 2014

Recent OLA Evaluations

Agriculture

Agricultural Commodity Councils, March 2014
"Green Acres" and Agricultural Land Preservation Programs, February 2008
Pesticide Regulation, March 2006

Criminal Justice

Health Services in State Correctional Facilities, February 2014
Law Enforcement's Use of State Databases, February 2013
Public Defender System, February 2010
MINNCOR Industries, February 2009
Substance Abuse Treatment, February 2006
Community Supervision of Sex Offenders, January 2005

Education, K-12, and Preschool

Special Education, February 2013
K-12 Online Learning, September 2011
Alternative Education Programs, February 2010
Q Comp: Quality Compensation for Teachers, February 2009
Charter Schools, June 2008

Education, Postsecondary

Preventive Maintenance for University of Minnesota Buildings, June 2012
MnSCU System Office, February 2010
MnSCU Occupational Programs, March 2009
Compensation at the University of Minnesota, February 2004

Energy

Renewable Energy Development Fund, October 2010
Biofuel Policies and Programs, April 2009
Energy Conservation Improvement Program, January 2005

Environment and Natural Resources

Sustainable Forest Incentive Program, November 2013
Conservation Easements, February 2013
Environmental Review and Permitting, March 2011
Natural Resource Land, March 2010
Watershed Management, January 2007

Government Operations

Councils on Asian-Pacific Minnesotans, Black Minnesotans, Chicano/Latino People, and Indian Affairs, March 2014
Helping Communities Recover from Natural Disasters, March 2012
Fiscal Notes, February 2012
Capitol Complex Security, May 2009
County Veterans Service Offices, January 2008
Pensions for Volunteer Firefighters, January 2007
Postemployment Benefits for Public Employees, January 2007

Health

Financial Management of Health Care Programs, February 2008
Nursing Home Inspections, February 2005

Human Services

Medical Assistance Payment Rates for Dental Services, March 2013
State-Operated Human Services, February 2013
Child Protection Screening, February 2012
Civil Commitment of Sex Offenders, March 2011
Medical Nonemergency Transportation, February 2011
Personal Care Assistance, January 2009

Housing and Local Government

Consolidation of Local Governments, April 2012

Jobs, Training, and Labor

State Employee Union Fair Share Fee Calculations, July 2013
Workforce Programs, February 2010
E-Verify, June 2009
Oversight of Workers' Compensation, February 2009
JOBZ Program, February 2008
Misclassification of Employees as Independent Contractors, November 2007
Prevailing Wages, February 2007

Miscellaneous

The Legacy Amendment, November 2011
Public Libraries, March 2010
Economic Impact of Immigrants, May 2006
Liquor Regulation, March 2006
Gambling Regulation and Oversight, January 2005
Minnesota State Lottery, February 2004

Transportation

MnDOT Noise Barriers, October 2013
Governance of Transit in the Twin Cities Region, January 2011
State Highways and Bridges, February 2008