

## **CHAPTER 4.1-05**

### **DAIRY PROMOTION COMMISSION**

#### **4.1-05-01. Definitions.**

As used in this chapter:

1. "Commission" means the North Dakota dairy promotion commission.
2. "Dairy product" means a product for human consumption which is derived from the processing of milk from cows. The term includes a milk product normally consumed in liquid form as a beverage.
3. "Dealer" means any person that handles, ships, buys, or sells dairy products, or who acts as a sales or purchasing agent, broker, or factor of dairy products.
4. "Gross receipts" means the amount paid to a producer for milk or for a product derived from milk and sold by such producer.
5. "Processor" means a person that takes delivery of milk or cream and then:
  - a. Cans, dries, prepares, or packages the milk or cream; or
  - b. Produces another product from the milk or cream.
6. "Producer" means a person engaged in the production of milk from cows for commercial use.

#### **4.1-05-02. North Dakota dairy promotion commission - Membership - Terms.**

1. The North Dakota dairy promotion commission consists of the following voting members:
  - a. Two producers appointed by the governor from a list of nominees submitted by the milk producers association of North Dakota;
  - b. The chairman of the North Dakota division of the midwest dairy association; and
  - c. Two individuals who are members of and elected by the North Dakota division of the midwest dairy association.
2.
  - a. The term of each producer appointed by the governor is two years and must be staggered so that the term of only one producer expires each year.
  - b. The term of each individual who is a member of and elected by the North Dakota division of the midwest dairy association is two years and must be staggered so that the term of only one individual expires each year.
3. Each term of office begins July first.
4. Whenever an association is required by subsection 1 to submit nominees to the governor, that association shall submit at least two nominees for each position to be filled.

#### **4.1-05-03. Nonvoting members - Appointment.**

The commission may appoint up to four nonvoting members. The commission shall adopt policies governing the appointments and qualifications of nonvoting members.

#### **4.1-05-04. Election of chairman and officers - Meetings.**

1. Annually, the commission shall elect one member to serve as the chairman.
2. The chairman shall call all meetings of the commission and shall call a special meeting of the commission within seven days when petitioned to do so by three commission members.
3. Annually, the commission shall elect other officers, including a vice chairman and a secretary-treasurer.

#### **4.1-05-05. Commission members - Compensation.**

Each member of the commission is entitled to receive compensation, in the amount established by the commission, but not exceeding one hundred thirty-five dollars per day plus reimbursement for expenses as provided by law for state officers if the member is attending meetings or performing duties directed by the commission. The compensation provided for in this section may not be paid to any member of the commission who receives a salary or other

compensation as an employee or official of this state if the individual is serving on the commission by virtue of the individual's state office or state employment.

#### **4.1-05-06. Commission - Powers.**

The commission may:

1. Expend moneys collected pursuant to this chapter for its administration;
2. Employ, bond, and compensate necessary personnel;
3. Accept gifts, grants, and donations of money, property, and services, to carry out this chapter;
4. Contract with any person for any purpose permitted under this chapter;
5. Sue and be sued; and
6. Do all things necessary and proper to enforce and administer this chapter.

#### **4.1-05-07. Commission - Duties.**

The commission shall determine the uses to which any moneys raised under this chapter may be expended. The uses may include the funding of research, education programs, and market development efforts, to promote the increased sale and consumption of dairy products, as well as participation in programs under the auspices of state, regional, national, and international dairy promotion groups.

#### **4.1-05-08. Assessment - Collection.**

1. Each producer must pay an assessment of ten cents per hundredweight [45.36 kilograms] on all milk sold by the producer and on any milk used by the producer to manufacture other products.
2. All assessments imposed by this section:
  - a. Must be collected by the first dealer or processor by deducting the amount of the assessment from the producer's gross receipts; or
  - b. Are payable by the producer upon sale of the milk products by the producer directly to the consumer.

#### **4.1-05-09. Submission of assessments - Civil penalty.**

1. Any person in possession of assessments required by this section shall forward the assessments to the commission on or before the final day of the month following the month in which the milk or milk products were marketed.
2. If a person fails to submit the assessments imposed by this chapter to the commission as required by this section, the commission may assess a one-time penalty equal to one and one-half percent of the amount of the assessment.

#### **4.1-05-10. Record retention.**

Any person responsible for the collection and submission of assessments under this chapter shall keep a record of all gross receipts subject to the assessment. These records must be retained for a period of three years from the date of the transaction and are subject to inspection by the commission.

#### **4.1-05-11. Reports.**

1. Any person required by section 4.1-05-10 to keep a record shall:
  - a. Submit to the commission a form indicating:
    - (1) The amount of milk that was subject to the assessment during the preceding month; and
    - (2) Any other information that the commission requests; and
  - b. Retain a copy of the form for a period of three years from the date of the submission.
2. Any dealer or processor required to submit a form under this section shall make the form available upon request to any producer who sold milk to the dealer or processor.

**4.1-05-12. Refund of assessment - Required certification by attorney general.**

1. When the attorney general certifies to the commission that refunds of assessments paid in accordance with this chapter are no longer precluded by the Dairy Research and Promotion Act [7 U.S.C. 4501 et seq.] or by any other applicable law, the commission may provide refunds to producers.
2.
  - a. To receive a refund of any assessment paid in accordance with this chapter, a producer shall submit to the commission a written request for refund application within sixty days after the date of the assessment or final settlement.
  - b. The producer shall complete the refund application and return the application to the commission, together with a record of the assessment paid, within ninety days after the date of the assessment or final settlement. The commission shall then refund the net amount of the assessment that had been collected.
  - c. If a request for a refund is not submitted to the commission within the prescribed time period, the producer is presumed to have agreed to the assessment.

**4.1-05-13. Expenditure of funds.**

The commission shall approve all expenditures made pursuant to this chapter and shall submit an itemized voucher to the office of management and budget for payment.

**4.1-05-14. Continuing appropriation.**

The commission shall forward all moneys received under this chapter to the state treasurer for deposit in the North Dakota dairy promotion commission fund. All moneys in the North Dakota dairy promotion commission fund are appropriated on a continuing basis to the commission to be used exclusively to carry out this chapter.

**4.1-05-15. Penalty.**

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