

CHAPTER 179

DAIRY INDUSTRY COMMISSION

Referred to in §8A.502, 97B.1A, 159.6

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179.1 Definitions.

As used in this chapter:

1. “*Collection period*” means a calendar year.
2. The term “*commission*” shall mean the Iowa dairy industry commission.
3. “*First purchaser*” means a person who buys milk from a producer and resells that milk or products made from the milk to another person.
4. “*Nutrition education*” means activities intended to broaden the understanding of sound nutritional principles including the role of milk in a balanced diet.
5. The term “*person*” shall mean individuals, corporations, partnerships, trusts, associations, cooperatives, and any and all other business units.
6. “*Producer*” means a person who produces milk from cows and thereafter sells the same as milk.
7. “*Promotion*” means actions including but not limited to advertising, sales, promotion, and publicity to advance the image and sales of and demand for milk.
8. “*Qualified financial institution*” means a bank or credit union as defined in section 12C.1.
9. “*Research*” means studies testing the effectiveness of market development and promotion efforts, studies relating to the nutritional value of milk and to product utilization, and other related efforts to expand demand for milk.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §179.1]

85 Acts, ch 126, §1 – 4; 94 Acts, ch 1146, §1; 2012 Acts, ch 1017, §47; 2012 Acts, ch 1023, §157

[T] Code editor directive applied

[T] Subsection 8 amended

179.2 Commission created — suspension during national order — reactivation.

1. There is created an Iowa dairy industry commission, referred to in this chapter as the commission. The commission shall be composed of the secretary of agriculture or the secretary’s designee, the dean of agriculture at Iowa state university of science and technology or the dean’s designee, and sixteen members appointed by the secretary of agriculture as provided in this section.

2. Commissioners shall serve until their successors are duly appointed and qualify. Vacancies occurring in the membership of the commission resulting from death, inability or refusal to serve, or failure to meet the definition of a producer, shall be filled within three months of the time the vacancy occurs in the manner provided by the commission. Vacancy appointments shall be only for the remainder of the unexpired term. A commissioner shall not serve more than two consecutive full terms.

3. Appointive members of the commission shall receive a per diem as specified in section 7E.6 for each day spent on official business of the commission, not to exceed six hundred dollars per annum, and their actual necessary expenses, while engaged in commission activity.

4. When a national promotional order is established by the United States department of agriculture pursuant to the Dairy Product Stabilization Act of 1983, collection of the excise tax in section 179.5 shall be suspended for the period in which the national order is in effect. The commission shall continue to operate thereafter for only the period of time necessary to pay refunds and disburse the funds remaining in the dairy industry fund for the purposes enumerated in this chapter. Upon completion of these acts, the existence of the Iowa dairy industry commission shall be suspended. The secretary of agriculture shall certify the suspension of the commission as of a date certain to the Iowa dairy industry commission and the Iowa state dairy association. When the existence of the commission is suspended, the terms of office being served by individual commissioners shall terminate.

5. When the national promotional order expires, the period of suspension of the excise tax in section 179.5 shall terminate and the secretary of agriculture shall take the steps necessary to collect that excise tax and otherwise fulfill the duties of the commission, except that of expending funds collected under the excise tax, until those duties can be resumed by the reactivated commission. When the national promotional order expires, the period of suspension of the commission shall terminate. The secretary of agriculture shall call the first meeting of the reactivated commission. Upon reactivation, the commission shall reimburse the secretary of agriculture for expenses incurred in carrying out the duties provided in this subsection.

6. When the national dairy promotion program expires and the suspension of the Iowa dairy industry commission terminates pursuant to subsection 5, all first purchasers shall, in a manner designed to reflect their proportionate contributions to the national dairy promotion program in its most recently completed fiscal year, nominate two resident producers for each of the sixteen offices of the commission. The secretary of agriculture shall then appoint one nominee from each set of two nominees as commissioners of the reactivated Iowa dairy industry commission. The secretary of agriculture shall stagger the terms of the reactivated commission resulting in as nearly as possible one third of the commissioners serving for one year, one third of the commissioners serving for two years, and one third of the commissioners serving for three years. After the initial staggering of terms by the secretary, commissioners shall be appointed to three-year terms.

7. After the reactivated commission has been formed, nominations for commissioners shall be made by first purchasers in a manner designed to reflect their proportionate contributions to the Iowa dairy industry commission in its most recently completed fiscal year.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §179.2]

84 Acts, ch 1183, §1; 85 Acts, ch 126, §5 – 8; 91 Acts, ch 258, §32

179.3 Powers and duties.

The powers and duties of the commission shall include the following:

1. To elect a chairperson, a secretary, and from time to time such other officers as it may deem advisable, and from time to time to adopt, rescind, modify and amend all proper and necessary rules, regulations and orders for the exercise of its power and the performance of its duties, which rules and orders shall have the force and effect of law when not inconsistent with existing laws.

2. To administer and enforce this chapter, and do and perform all acts and exercise all powers reasonably necessary to effectuate the purpose of this chapter.

3. To employ at its pleasure and discharge at its pleasure such attorneys, advertising counsel, advertising agencies, clerks and employees as it deems necessary, and to prescribe their duties and powers and fix their compensation.

4. To establish offices and incur any and all expense, and to enter into any and all contracts and agreements for the proper administration and enforcement of this chapter.

5. To report alleged violations of this chapter to the attorney general of the state of Iowa.

6. To conduct scientific research for the purpose of developing and discovering the health, food, therapeutic, dietetic, and industrial uses for products of milk or its derivatives.

7. To make in the name of the commission such advertising contracts and other

agreements as it deems necessary to promote the sale and consumption of dairy products on either a state or national basis.

8. To keep accurate books, records, and accounts of all its dealings, which books, records, and accounts shall be audited annually by the auditor of state.

9. To receive, administer, disburse and account for, in addition to the funds received from the excise tax hereinafter imposed by section 179.5, all such other funds as may be voluntarily contributed to said commission for the purpose of promoting dairy products.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §179.3]

85 Acts, ch 126, §9

179.4 Expenditure of funds.

Funds collected through the excise tax are to be used for purposes of advertising and promotion, product, process, and nutrition, dietetics, and physiology research, nutrition education, public relations, research and development, and for other activities that contribute to producer efficiency and productivity. In addition, the commission shall use these funds to maintain existing markets, to make contributions to organizations working toward the purposes of this section, and to assist in the development of new or enlarged markets for milk, both domestic and foreign. The primary purpose for use of these funds is to increase consumption of milk. The commission may contract for advertising, publicity, sales promotion, research, and educational services the committee deems appropriate to further the objectives of this section.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §179.4]

85 Acts, ch 126, §10

179.5 Excise tax — administration of moneys — appropriation.

1. There is levied and imposed an excise tax on all producers within the state of three-fourths of one percent of the gross value of milk produced in the state.

2. All taxes levied and imposed under this chapter shall be deducted from the price received by the producer and shall be collected by the first purchaser, except as follows:

a. If the producer produces milk from cows and sells the milk directly to the consumer, the taxes shall be remitted by that producer.

b. If the producer sells milk to a first purchaser outside the state, the taxes are due and payable by that producer before the shipment is made, except that the commission may make agreements with extra state purchasers for the keeping of records and the collection of the taxes as necessary to secure the payment of the taxes within the time fixed by this chapter.

3. All taxes levied and imposed under this chapter and other contributions made to the dairy industry commission shall be paid to and collected by the commission within thirty days after the end of the month during which the milk was marketed. The commission shall remit the taxes and other contributions to the treasurer of the state each quarter, and at the same time render to the director of the department of administrative services an itemized and verified report showing the source from which the taxes and voluntary contributions were obtained. All taxes and voluntary contributions received, collected, and remitted shall be placed in a special fund by the treasurer of state and the director of the department of administrative services, to be known as the “*dairy industry fund*” to be used by the Iowa dairy industry commission for the purposes set out in this chapter and to administer and enforce the laws relative to this chapter. The department of administrative services shall transfer moneys from the fund to the commission for deposit into an account established by the commission in a qualified financial institution. The department shall transfer the moneys as provided in a resolution adopted by the commission. However, the department is only required to transfer moneys once during each day and only during hours when the offices of the state are open. Moneys deposited in the fund and transferred to the commission as provided in this section are appropriated and shall be used for the purpose of carrying out the provisions of this chapter.

4. A person from whom the excise tax provided in this chapter is collected may, by

application filed with the commission within thirty days after the collection of the tax, have the tax refunded to that person by the commission.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §179.5]

85 Acts, ch 126, §11; 94 Acts, ch 1146, §2; 2003 Acts, ch 145, §286

Referred to in §179.2, 179.3, 179.8

[P] Suspension during national order; see §179.2

179.5A Right to refund not subject to legal process or transfer.

The right of a person to a refund under this chapter or under chapter 181, 182, 183A, 184A, 185, or 185C is not subject to execution, levy, attachment, garnishment, or other legal process, and is not transferable or assignable at law or in equity.

86 Acts, ch 1100, §1; 89 Acts, ch 137, §1

179.6 Records of producers, first purchasers.

Every producer shipping milk to a first purchaser outside of Iowa who is not by agreement with the commission collecting the tax imposed by this chapter, and every first purchaser within the state, and every producer distributing milk directly to the consumer, shall keep a complete and accurate record of all milk produced or purchased by the person during the period for which an excise tax levy is imposed under this chapter. The records shall be in the form and contain the information prescribed by the commission, shall be preserved by the person charged with their making for a period of two years, and shall be offered or submitted for inspection at any time upon written or oral request by the commission or its duly authorized agent or employee.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §179.6]

85 Acts, ch 126, §12; 86 Acts, ch 1238, §8

179.7 Returns filed with commission.

Every person charged by this chapter or by agreement with the commission with the keeping of records provided for in this chapter shall at the times the commission may by rule require, file with the commission a return on forms to be prescribed and furnished by the commission. Producers shall state the quantity of milk produced. First purchasers shall state the quantity of milk handled, bottled, processed, distributed, delivered to, or purchased by the person from the producers of dairy products or their agents in the state. Returns shall contain other information as the commission may require, and shall be made in triplicate, one copy of which shall be for the files of the person making the return, one copy available at the office of the person for the use of the person's patrons, and the original filed with the commission.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §179.7]

85 Acts, ch 126, §13; 86 Acts, ch 1238, §9

179.8 Payment of expenses — limitation.

No part of the expense incurred by the commission shall be paid out of moneys in the state treasury except moneys transferred to the commission from the dairy industry fund. Moneys transferred from the fund to the commission, as provided in section 179.5, shall be used for the payment of all salaries, and other expenses necessary, to carry out the provisions of this chapter. However, in no event shall the total expenses exceed the total taxes collected and transferred from the fund to the commission.

No more than five percent of the excise tax collected and received by the commission pursuant to section 179.5 shall be utilized for administrative expenses of the commission.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §179.8]

85 Acts, ch 126, §14; 94 Acts, ch 1146, §3

179.9 Investigations by commission.

The commission shall have the power to cause its authorized agents to enter upon the premises of any person charged by this chapter or by agreement with the commission with the collection of the excise tax imposed by this chapter, and to cause to be examined by any such agent any books, records, documents, or other instruments bearing upon the amount

of such tax collected or to be collected by such person; provided that the commission has reasonable ground to believe that all the tax herein levied has not been collected, or if it has not been fully accounted for as herein provided.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §179.9]

179.10 Report.

The commission shall each year prepare and submit a report summarizing the activities of the commission under this chapter to the auditor of state and the secretary of agriculture. The report shall show all income, expenses, and other relevant information concerning fees collected and expended under this chapter.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §179.10]

85 Acts, ch 126, §15; 94 Acts, ch 1146, §4

179.11 Penalties.

Except as otherwise provided, any person who shall violate or aid in the violation of any of the provisions of this chapter shall be deemed guilty of a simple misdemeanor. All prosecutions for alleged violations of the provisions of this chapter shall be by the county attorney of the county in which such alleged violation occurred and shall be instituted and conducted under the direction and authority of the attorney general of the state.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §179.11]

Referred to in §331.756(34)

179.12 Repealed by 74 Acts, ch 1153, § 8.

179.13 Referendum.

At a time designated by the commission within eighteen months after termination of the national promotional order made pursuant to the Dairy Product Stabilization Act of 1983, the commission shall conduct a referendum under administrative procedures prescribed by the department.

Upon signing a statement certifying to the department that the person is a bona fide producer as defined in this chapter, each producer is entitled to one vote in each referendum. When the secretary is required to determine the approval or disapproval of producers under this section, the secretary shall consider the approval or disapproval of a cooperative association of producers, engaged in a bona fide manner in marketing milk, as the approval or disapproval of the producers who are members of or contract with the cooperative association of producers. If a cooperative association elects to vote on behalf of its members, the cooperative association shall provide each producer on whose behalf the cooperative association is expressing approval or disapproval with a description of the question presented in the referendum together with a statement of the manner in which the cooperative association intends to cast its vote on behalf of the membership. The information shall inform the producer of procedures to follow to cast an individual ballot if the producer chooses to do so within the period of time established by the secretary for casting ballots. The notification shall be made at least thirty days prior to the referendum and shall include an official ballot. The ballots shall be tabulated by the secretary and the vote of the cooperative association shall be adjusted to reflect the individual votes.

The department shall count and tabulate the ballots filed during the referendum within thirty days of the close of the referendum. If from the tabulation the department determines that a majority of the total number of producers voting in the referendum favors the proposal, the excise tax provided for in this chapter shall be continued. The ballots cast pursuant to this section constitute complete and conclusive evidence for use in determinations made by the department under this chapter.

The secretary may conduct a referendum at any time after the Iowa dairy industry commission is reactivated, and shall hold a referendum on request of a representative group comprising ten percent or more of the number of producers eligible to vote, to determine whether the producers favor the termination or suspension of the excise tax. The secretary shall suspend or terminate collection of the excise tax within six months after the secretary

determines that suspension or termination of the excise tax is favored by a majority of the producers voting in the referendum, and shall terminate the excise tax in an orderly manner as soon as practicable after the determination.

[C75, 77, 79, 81, §179.13]

85 Acts, ch 126, §16

179.14 Influencing legislation.

Neither commissioners, nor employees of the commission, shall attempt in any manner to influence legislation affecting any matters pertaining to the activities of the commission. No portion of the dairy industry fund shall be used in any manner to influence legislation or support any political candidate for public office, either directly or indirectly, or to support any political party.

[C75, 77, 79, 81, §179.14]