

1570.0900 ADMINISTRATION OF PROMOTIONAL ORDERS.

Subpart 1. **Formulation.** The first council shall meet within 15 days of certification of its election, and subsequent councils shall meet whenever appropriate, to formulate a promotional order, including the amount of a check-off fee to be paid by producers of the agricultural commodity to finance the proposed activities.

Subp. 2. **Hearings and referendum.** Before any referendum is conducted, the commissioner shall consult with the council and shall hold public hearings on the proposed promotional order in organized areas. Upon completion of the hearings, the commissioner and council shall determine whether the promotional order will be amended, modified, or supplemented. If a promotional order is substantially changed by this process, the commissioner shall hold further public hearings on the changed promotional order. Upon completion of these hearings, the commissioner shall conduct a referendum according to parts 1570.0700, subpart 3, and 1570.0800. The hearings in this part are not subject to Minnesota Statutes, chapter 14.

Subp. 3. **Payment of check-off fees.** The procedures in items A to E must be used by the council in collecting the check-off fees from first purchasers or first handlers:

A. The council must determine the type of check-off fee system to be used for the particular agricultural commodity.

B. The council must determine the first handler or first purchaser for the agricultural commodity. First handlers or first purchasers are responsible for collecting from participating producers and remitting the check-off fee to the council by the date stated in the promotional order.

C. The council must provide forms for the first handler or first purchaser to use in collecting and remitting check-off fees.

D. The council must monitor the compliance of each first handler or first purchaser with the terms of the promotional order and maintain a compliance list. In instances where the first handler or the first purchaser is not complying with the terms of the promotional order for collecting and remitting check-off fees, the procedures in subpart 5 must be followed.

E. The council or chief executive officer must deposit check-off fees collected in a federally insured depository institution. Any deposited amount in excess of the maximum amount insured under federal law must be secured by the federally insured depository institution. Deposits may be used for either checking or investment, but not for purposes inconsistent with Minnesota Statutes, sections 17.51 to 17.69, or this chapter.

Subp. 4. **Refund of check-off fee.** The procedures in items A to F must be followed for those councils whose check-off fees are refundable:

A. Any participating producer wishing a refund of a check-off fee must submit a refund application form to the commissioner.

B. Upon receipt of the completed refund application form and the proof of paid check-off fee, the commissioner will verify that the information on the refund application form is valid and will forward the original copy of the refund application form and proof of paid check-off fee to the council. Requests for refunds must be received by the commissioner within the time prescribed in the promotional order for the particular agricultural commodity in order to be valid.

C. The council may proceed to write a refund check only if the refund application has been approved by the commissioner and if the check-off fee has been sent from the first purchaser or the first handler to the council.

D. The council shall mail the refund check and the proof of paid check-off fee to the participating producer.

E. Refunds will be made by the commissioner and the council within 30 days of the date of the commissioner's receipt of the refund application form except when the check-off fee has not yet been received by the council. In those instances, the council shall write the first purchaser or first handler and request remittance of the check-off fee. When the council has received the check-off fee, the council shall send the refund check to the producer.

F. Requests from participating producers for refunds will not be accepted more than 12 times per calendar year.

Subp. 5. **Procedures for noncompliance.** The procedures in items A to D shall be followed by the council and commissioner in determining and acting upon noncompliance by first handlers or first purchasers whose check-off fee collection or other information required under subpart 3, item B, is not current:

A. The council shall maintain a current noncompliance list as noted in part 1570.0500, subpart 6, item D, and shall use it to determine when a first handler or first purchaser has become delinquent in collecting and remitting check-off fees, based on the remittance period provided in the promotional order.

B. Either the council or the chief administrative officer shall investigate the reason for noncompliance and make written notation of the date and individual contacted whether by a telephone call, visit, or mail. If a second contact is by mail, the letter must be certified.

C. If no response is forthcoming after two contacts have been made, the council may request that the commissioner write to the delinquent first handler or first purchaser and to the producer whose check-off fee is delayed. The council's request must be accompanied by the noncompliance list, a summary of the steps that have already been taken, and a statement of the length of the noncompliance period. The commissioner's letter must be certified.

D. If there is still no response from the delinquent first handler or first purchaser after the steps in items A to C have been taken, the council may engage legal counsel to pursue the matter.

Subp. 6. **Suspension or termination of a promotional order.** A promotional order for an agricultural commodity may be suspended or terminated pursuant to this subpart. Public hearings conducted by the commissioner prior to the suspension or termination of a promotional order will not be held pursuant to Minnesota Statutes, chapter 14. No suspension or termination of a promotional order shall take effect until the end of the current marketing year.

After consultation between the council and the commissioner, and after a public hearing and findings by the council that a promotional order is contrary to or does not effectuate the provisions of Minnesota Statutes, sections 17.51 to 17.69, or a finding that it is economically unfeasible to continue operating, the council may suspend or terminate a promotional order with the approval of a majority of the qualified voters who vote in the referendum.

Within 60 days of receipt of a petition from the same number of producers required to initiate a promotional order, which includes a statement that the signatures are those of participating producers, the commissioner shall conduct a referendum according to parts 1570.0700, subpart 3, and 1570.0800. A majority vote of the qualified voters who vote in the referendum will suspend or terminate the promotional order.

"Suspension" means discontinuing the collection of check-off fees from first purchasers as required under Minnesota Statutes, section 17.59, and the meeting requirements under part 1570.0600 for one year. During the suspension, a commodity council must continue to honor all legal and contractual obligations, submit to the audit requirements under Minnesota Statutes, section 17.58, subdivision 5, and the corresponding rules, and meet no later than six months before the end of the marketing year to decide whether to terminate. If the council decides not to terminate pursuant to Minnesota Statutes, section 17.64, the council must hold elections for those council members whose terms expire during the suspension before the beginning of the next marketing year. All council duties and activities will resume beginning the next marketing year. The council is responsible for notifying first purchasers of the suspension, termination, or resuming of collecting of check-off fees. A commodity council shall only suspend for one year and must either terminate or resume activities within the following 12 months.

Subp. 7. **Commissioner's handling of funds.** Fees or income received by the commissioner in the administration of Minnesota Statutes, sections 17.51 to 17.69, shall be deposited in accordance with Minnesota Statutes, section 17.59, subdivision 5.

Statutory Authority: *MS s 17.54; 17.58; 17.63*

History: *34 SR 1327*

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