

NEBRASKA DEPARTMENT OF AGRICULTURE
FEE COLLECTION PROGRAM

ENFORCEMENT PROCEDURES

FOR COLLECTION OF FEES AS PROVIDED FOR
IN THE DAIRY INDUSTRY DEVELOPMENT ACT (SECTION 2-3948)

Requirement:

There shall be paid, to the Nebraska Dairy Industry Development Board, a mandatory assessment of ten cents (10¢) per hundredweight (cwt) on all milk produced in the state of Nebraska for commercial use. The assessment shall be paid by producers at the time of first sale or delivery of milk for commercial use and shall be collected by the first purchaser of milk. Producer/processors shall remit the assessments to the Board. The first purchaser shall maintain the necessary record of fees collected for each purchase of milk produced in the state of Nebraska. All assessments shall be remitted to the Board no later than the last day of month following the month in which the milk was commercially used, and a report shall be filed by the person responsible for remitting the assessment at the time the assessment is remitted.

Any request from a producer for a refund under the Program will be honored by forwarding that portion of such refund equal to the amount of credit, that otherwise would be applicable to the Program, to either the National Dairy Promotion and Research Board or a qualified program designated by the producer.

Definitions:

1. First purchaser of milk shall mean a person who buys milk from a producer and resells to another person the milk or products manufactured or processed from the milk.
2. Board shall mean the Nebraska Dairy Industry Development Board.
3. Commercial use shall mean sale for retail consumption or sale for resale, for manufacturing for resale, or for processing for resale.
4. Milk shall mean any class of cow's milk produced in the state of Nebraska.
5. Milk production units shall mean any producer licensed by the Department of Agriculture.
6. Producer shall mean any person engaged in the production of milk for commercial use.
7. Producer/processor shall mean a producer who processes and markets the producer's own milk.

8. Qualified program shall mean any state or regional dairy product promotion, research, or nutrition education program which is certified pursuant to 7 C.F.R. 1150.153.

Confidentiality:

The independent collection agency shall maintain all fee collection records in strict confidence in accordance with State statutes. Only agency total data will be released to the Board or the public upon request. The independent collection agency will release data related to the first purchaser only after written permission is received by the independent collection agency from the Board.

Procedure for Determining First Purchaser:

When a party or board member gives a name of an individual or firm to the Nebraska Dairy Industry Development Board which they believe is a first purchaser of milk and not assessing the checkoff, the Fee Collection Program will take the following action:

1. A letter is written to the individual or firm in question advising that the mailing list is being updated and asking whether or not they are a first purchaser.
2. If they respond they are a first purchaser of milk, they will be set up on the mailing list to receive fee forms. A packet of fee forms, envelopes, and the statute will be sent to them to finish out the fiscal year. (They receive a year's supply of forms and envelopes the beginning of every calendar year.)
3. If they respond they are not a first purchaser of milk, the Fee Collection Program will inform the Dairy Industry Development Board of the response.
4. Board action will determine enforcement action and enforcement steps desired to garner compliance. This may include a request for a special audit or request the State Attorney General Office to initiate legal proceedings in accordance with the law.

Procedure for Collecting the Assessment from First Purchasers:

1. Postcards will be mailed at the end of the production month, with the due date indicated. First purchasers are required to file on-line. If a check is preferred, they must complete the Fee Form on-line, print, and mail with payment.
2. Non-respondents will be mailed delinquent second notice letters with penalty due the first week following the month they were due.

- If the form is received late (according to the postmark), the firm will receive a letter for payment on the penalty.
 - If, after the due date, we haven't received the fee form, a letter notifying the firm of being delinquent and having the penalty due will be sent.
 - Penalty assessed shall be 1½% each month, beginning with the day following the date such assessment was due. Any remaining amount due, including any unpaid charges previously made pursuant to the act, shall be increased at the same rate on the corresponding day of each succeeding month until paid.
3. If no response, a third notice notification will be sent (for the appropriate situation in #2) the first week following the month in which the second notice was sent with the penalty added into the letter for each month delinquent. The letter will be signed by the Fee Collection Program, and a copy will be sent to the Chairman of the Board.
 4. If, after two weeks, there is no response after the third notice, a call will be made to the firm and a delinquent list will be sent to the Board. Legal enforcement of the Nebraska Dairy Industry Development Board statutory requirements will be the Board's responsibility.
 5. Board action will determine enforcement action and enforcement steps desired to garner compliance. This may include a request for a special audit, or utilizing the State Attorney General's Office to initiate legal proceedings in accordance with the law.

Auditing Procedures:

Audit Authority:

Neb. Rev. Stat. §2-3958(2) R.R.S., 1997, states:

The Board may audit financial and other records of first purchasers of milk, producers, and their agents pertaining to the assessment provided for in this section and otherwise ensure compliance with the Dairy Industry Development Act.

Audit Scope:

Neb. Rev. Stat. §2-3958(1) R.R.S., 1997, states:

There shall be paid to the Board a mandatory assessment of ten cents (.10) per hundredweight on all milk produced in the State of Nebraska for commercial use.

The auditor will verify reports submitted to the Dairy Industry Development Board by examining records that may include, but are not limited to, the general ledger and its accounts, purchases journals or registers, check registers, producer accounts, and/or any other record or records which pertain to the assessment or compliance with the Act. A primary contact person will be noted for use in follow up for making future contact, and will be presented with the results of the audit. The standard audit form presented will serve as a notice of refund due in the case an overpayment, or as an invoice in the case of an underpayment. Payments are to be sent to the customary fee collection agency and not collected by the auditor. The audit results, less any proprietary information, will also be presented to the Board at its next regularly scheduled meeting.

The auditor conducts compliance reviews of first purchasers on a random sample basis. The audit covers a one-year review of the monthly forms that are received. Special audits may also be conducted at the specific request of the Board.

An internal review will be done on a quarterly basis to verify accuracy of the Dairy Industry Development Board fee form data. This review will include a comparison to data received from the National Dairy Promotion and Research Board. Total pounds of milk purchased from pooled and non-pooled sources are compared and a reconciliation is done. In addition, the Nebraska Department of Agriculture will verify Grade A milk purchased by an individual entity to data received by the Department of Agriculture Dairy Regulatory Division under the Nebraska Pasteurized Milk Law. A report of all findings will be discussed at each Nebraska Dairy Industry Development Board meeting. The Milk Market Administrator, not the Department of Agriculture, will be able to verify manufactured milk purchases made. These would be incorporated into first purchaser on-site audits conducted under agreement by the Department of Agriculture and the Board.

The Nebraska Dairy Industry Development Board contracts for fee collection, audit, and fiscal services with the Nebraska Department of Agriculture. The Memorandum of Agreement, entered into annually, details services performed by the Department of Agriculture for the Dairy Industry Development Board and the amount and method of reimbursing costs incurred.

7/18/13
Date

Bobbi Wirth
For Greg Ibach, Director
Department of Agriculture

6-17-13
Date

James Eschleman
Chairman
Nebraska Dairy Industry Development Board