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1307 COMMODITY COUNCILS AND PROMOTIONAL ORDERS 1570.0200

CHAPTER 1570 DEPARTMENT OF AGRICULTURE COMMODITY COUNCILS AND PROMOTIONAL ORDERS

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1570.0100 AUTHORITY AND PURPOSE.

This chapter is prescribed by the commissioner pursuant to Minnesota Statutes, sections 17.54, subdivision 4, 17.58, subdivision 4, and 17.63 to provide for the organization and meetings of commodity councils, to provide general polling procedures for elections and referendums, and to provide for the administration of promotional orders.

Statutory Authority: *MS s 17.54 subd 4; 17.58 subd 4; 17.63*

1570.0200 DEFINITIONS.

Subpart 1. Scope. For the purposes of this chapter, the terms defined in this chapter have the meanings given them, and the terms "agricultural commodity," "commissioner," "cooperative," "council," "first handler," "first purchaser," "marketing year," "participating producer," "person," and "promotional order" have the meanings given them in Minnesota Statutes, section 17.53.

Subp. 2. Check-off fee. "Check-off fee" means the amount set by the council and stated in the promotional order that each participating producer must pay to finance the activities proposed in the promotional order.

Subp. 3. Chief administrative officer. "Chief administrative officer" means the individual employed by the council to perform duties prescribed by the council. "Chief administrative officer" means the same as "executive director," "executive secretary," and "manager" where they appear in promotional orders.

Subp. 4. Compliance list. "Compliance list" means a list of the names of the first handlers or first purchasers of an agricultural commodity under a promotional order who have paid check-off fees to the council within the time prescribed by the council for their payment.

Subp. 5. Designated voter. "Designated voter" means a family member who has a written authorization from an individual participating producer who is a qualified voter to vote in the individual participating producer's stead at the time and in the place where the election or referendum is being held.

Subp. 6. Election. "Election" means a vote of the participating producers of any commodity to create a first council, select members of subsequent councils, or decide a referendum.

Subp. 7. Fiduciary. "Fiduciary" means any estate, trust, conservatorship, or guardianship organized or recognized under Minnesota law.

Subp. 8. Noncompliance list. "Noncompliance list" means a compilation of the names of the first handlers or first purchasers of an agricultural commodity under a promotional order who have not paid check-off fees to the council within the time prescribed by the council for the payment.

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Subp. 9. **Organized area.** "Organized area" means the area determined in accordance with Minnesota Statutes, section 17.54, subdivision 3, or areas defined elsewhere in Minnesota law for the purposes of Minnesota Statutes, sections 17.51 to 17.69.

Subp. 10. **Petitioners.** "Petitioners" means a group of producers who request either the creation of the first council or a referendum at any time during a promotional order by submitting a petition signed by 1,000 producers or 15 percent of the producers to be covered by a promotional order, whichever is less, in accordance with Minnesota Statutes, section 17.54, subdivision 1.

Subp. 11. **Producer affidavit.** "Producer affidavit" means a document qualified voters must sign under oath which affirms that they are producers of the particular agricultural commodity for which a referendum is being held, that they meet the qualifications for a producer set forth in the promotional order, and that they are casting only one vote each in the election or referendum.

Subp. 12. **Proof of paid check-off fee.** "Proof of paid check-off fee" means a check stub, a sales invoice, a photostatic copy of a check stub or sales invoice, or a statement on the first purchaser's or first handler's letterhead stationery signed by an officer or responsible representative of the first purchaser or first handler submitted as evidence of a producer's payment of a check-off fee to a first purchaser or first handler. Any proof of paid check-off fee must have a date on it.

Subp. 13. **Qualified voter.** "Qualified voter" means a person who meets the requirements in Minnesota Statutes, section 17.53, subdivision 16, and part 1570.0800, subparts 1 to 3.

Subp. 14. **Referendum.** "Referendum" means an election held to begin, continue, suspend, amend, or terminate a promotional order, or an election held to increase or decrease the amount of check-off fees under the promotional order.

Statutory Authority: *MS s 17.54 subd 4; 17.58 subd 4; 17.63*

1570.0300 CREATION OF A COUNCIL.

Upon receipt of a petition to create a council developed in accordance with Minnesota Statutes, section 17.54, subdivision 1, the commissioner shall take the following actions:

A. determine the size of the council and the distribution of council membership in consultation with the petitioners;

B. appoint a nominating committee to nominate producer candidates for council positions in accordance with Minnesota Statutes, section 17.54, subdivision 3;

C. conduct an election to select the first council in accordance with part 1570.0700, subpart 1; and

D. determine by lot the term of office for each of the council positions in accordance with Minnesota Statutes, section 17.54, subdivision 5.

Statutory Authority: *MS s 17.54 subd 4; 17.58 subd 4; 17.63*

1570.0400 OFFICERS AND EXECUTIVE COMMITTEE.

Each council shall elect from its own membership a chairman, vice-chairman, secretary, and other officers deemed appropriate by the council. An executive committee of no more than five members, including the officers, may also be elected by the council. The council officers and executive committee members shall have the powers and fulfill the duties in part 1570.0500 or delegate them to a chief administrative officer.

Statutory Authority: *MS s 17.54 subd 4; 17.58 subd 4; 17.63*

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1570.0500 POWERS AND DUTIES OF THE COUNCIL.

Subpart 1. **Meetings.** The council shall convene and conduct meetings in accordance with part 1570.0600.

Subp. 2. **Promotional orders.** The council shall participate in the formulation and administration of promotional orders in accordance with part 1570.0900.

Subp. 3. **Chief administrative officer.** With the approval of the commissioner, the council shall appoint, employ, discharge, fix compensation for, and prescribe the duties of the first chief administrative officer of the council. Subsequent chief administrative officers and all other personnel employed do not require the commissioner's approval. The council and commissioner shall determine the amount of bond required for all individuals on the council and all individuals employed by the council who control, handle, expend, or deposit check-off fees or other funds, including those individuals authorized to sign checks.

Subp. 4. **Other actions.** The council shall take the actions listed in items A to D:

A. The council shall prepare an annual estimated budget for the operation of the promotional order and submit it to the commissioner for approval before the marketing year begins unless the promotional order directs otherwise. Budgets may be revised during the marketing year. If they are, the commissioner must be notified within 20 days of the revision. Minutes of the council meeting, documenting the changes and the reasons for them, shall constitute notification to the commissioner. Budgets or budget revisions may be prepared on forms provided by the commissioner or on similar forms.

B. The council shall consult with banks where funds are deposited regarding check signing procedures. No more than four authorized signatures of council members, the chief administrative officer, or council employees may be provided to the bank, two of which must appear on all checks except refund checks. Refund checks require only one signature, which may be any one of the four authorized.

C. The council shall apply for tax exempt status for the council on forms provided by the commissioner. Upon receipt of the completed forms, the commissioner shall handle the request with appropriate federal agencies.

D. The council shall complete a financial statement at the close of each marketing year on forms provided by the commissioner or similar forms.

Subp. 5. **Petty cash.** A council may establish a petty cash account after a favorable vote by a majority of the council members, provided that the use of these funds is consistent with the purposes of Minnesota Statutes, sections 17.51 to 17.69 and this chapter. The bond for the council and its staff must be sufficient to cover the amounts in any petty cash accounts created pursuant to this subpart.

Subp. 6. **Records.** The council shall keep a record of the following materials and shall make reasonable arrangements for the time and place of inspection of the records by the public:

A. the council's annual budgets and financial statements;

B. annual reports on promotional order programs of the previous marketing year required under Minnesota Statutes, section 17.57, subdivision 3;

C. minutes of all council and executive committee meetings documenting all actions;

D. noncompliance lists related to the promotional order, which must be submitted to the commissioner on a semiannual basis;

E. information and data collected for the proper administration of promotional orders in accordance with Minnesota Statutes, section 17.57, subdivision 4; and

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F. any other information deemed by the commissioner or council to be reasonably related to the organization of the council or to the administration of its promotional order.

Subp. 7. **Donations.** The council may receive any donations from public or private sources for the purposes of Minnesota Statutes, sections 17.51 to 17.69, or this chapter.

Subp. 8. **Executive committee.** The council may authorize the executive committee to meet as needed to handle any matter prescribed by the council. At a regularly scheduled meeting of the council, any council member may inquire into the actions taken by the executive committee. Minutes of the executive committee meetings shall be sent to all council members, the commissioner, and the commissioner's designee in accordance with part 1570.0600, subpart 5.

Statutory Authority: *MS s 17.54 subd 4; 17.58 subd 4; 17.63*

1570.0600 COUNCIL MEETINGS.

Subpart 1. **Notice.** The chief administrative officer shall arrange dates and physical facilities for meetings of the council and executive committee after consultation with the council chairman or vice-chairman and the commissioner. The chief administrative officer shall also send written notice of the time and place of the meeting to all council members, the commissioner, and the commissioner's designee at least seven days in advance of council meetings.

Subp. 2. **Agenda.** An agenda for each council meeting shall be formulated by the chief administrative officer in consultation with the council chairman or vice-chairman and shall be mailed with the meeting notice. Additional items may be included by council members or the commissioner at the time of the meeting.

Subp. 3. **Frequency and location of council and executive committee meetings.** The council shall meet at least four times annually in a location which is reasonably accessible to all council members. Telephone consultations are permitted, but must not replace actual meetings. The executive committee shall meet as frequently as authorized by the council in a location which is reasonably accessible to all executive committee members. Telephone consultations may be held in lieu of actual meetings.

Subp. 4. **Quorum.** A majority of the members of a council constitutes a quorum for the transaction of all business in carrying out council duties.

Subp. 5. **Minutes.** All actions and decisions taken at meetings of the council and the executive committee must be documented in the minutes. At least one copy of the minutes signed by the presiding officer and the secretary must be kept in the council's permanent file. Copies of minutes must be sent to all council members and submitted to the commissioner and to the commissioner's designee within 30 days of the date of each meeting.

Statutory Authority: *MS s 17.54 subd 4; 17.58 subd 4; 17.63*

1570.0700 ELECTIONS.

Subpart 1. **Election of the first council.** The procedures in items A to C must be followed in electing the first council:

A. Upon receipt of nominations for council offices, the commissioner shall promptly arrange for an election, designate polling places reasonably convenient for the producers of the particular agricultural commodity, and provide notice of the election to all media having a general circulation in the organized area.

B. The commissioner shall make available ballots which set forth the names of the nominated candidates and shall provide space for write-in candidates at all polling places. Mail balloting is permitted in accordance with part 1570.0800, subpart 5.

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C. Only qualified voters may vote in an election of the first council.

Subp. 2. **Subsequent council elections.** In addition to the procedures for electing the first council in subpart 1, the commissioner shall take the following actions in subsequent council elections:

- A. determine the manner of selecting the nominating committee;
- B. set the time limit for accepting nominations; and
- C. set the times and places of subsequent elections.

Subp. 3. **Referendums.** The procedures in items A to G must be followed in conducting a referendum:

A. The council, in consultation with the commissioner, shall set the time and places for the referendum when required under part 1570.0800, subpart 4.

B. The commissioner shall conduct a referendum in accordance with the general polling procedures outlined in part 1570.0800.

C. The commissioner shall publish a notice of the referendum, including time and place, in legal newspapers with general circulation in the organized area and shall provide notice to other media at least ten days in advance of the date of the referendum.

D. The commissioner shall provide a complete copy of the promotional order to be voted on to each county extension office in the organized areas.

E. Only qualified voters may vote in referendums.

F. The promotional order shall become effective, suspended, amended, or terminated if approved by a majority of the qualified voters who vote in the referendum.

G. If a referendum fails, the commissioner shall not conduct another referendum on any promotional order for the same agricultural commodity until one year has elapsed.

Subp. 4. **Financing elections and referendums.** Petitioners must deposit with the commissioner in advance an amount sufficient to defray the expenses of electing the first council, formulating the initial promotional order, conducting the first referendum, and issuing that promotional order. The funds will be deposited in accordance with part 1570.0900, subpart 7. Full reimbursement will be made to petitioners by the council when the promotional order is adopted and funds are available from the collection of check-off fees. Petitioners may choose to leave the funds from this reimbursement with the council. Partial reimbursement on a pro rata basis shall be made by the commissioner in cases where the referendum fails and there are funds remaining after the expenses of conducting it are paid. Subsequent elections and referendums will be financed by the council.

Statutory Authority: *MS s 17.54 subd 4; 17.58 subd 4; 17.63*

1570.0800 GENERAL POLLING PROCEDURES.

Subpart 1. **Qualified voters.** Participating producers who may vote in any election or referendum must meet all the conditions in subpart 2 and at least one of the conditions in subpart 3. All qualified voters or designated voters must sign the producer affidavit at the time they vote.

Subp. 2. **Conditions for all qualified voters.** The conditions in items A to E apply to all qualified voters:

A. Persons, firms, universities, colleges, foundations, landlords, tenants, or fiduciaries may cast one vote only if they have shared in the profits and risk of loss from producing the particular agricultural commodity during the current or preceding marketing year.

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B. A voter, except a designated voter, even if the voter represents a corporation, association, cooperative, or partnership, must meet Minnesota's general election voting age requirements.

C. A voter must be a Minnesota resident or a permanent resident alien, as defined in Minnesota Statutes, section 500.221, who resides in Minnesota.

D. Absentee mail voting by individual qualified voters is not permitted. Mail balloting is permitted only in accordance with subpart 5.

E. No individual, landlord, tenant, partnership, association, cooperative, corporation, fiduciary, firm, university, college, or foundation may cast more than one vote per election or referendum even if operations are carried on in more than one organized area of the council.

Subp. 3. Conditions for specific qualified votes. The specific provisions in items A to E apply to the qualified voters named:

A. Each individual production unit may cast only one vote. Either the husband or the wife may cast this vote if both operate the production unit but both may not vote.

B. Both a landlord and a tenant may vote if each meets the criteria in subpart 2, item A.

C. A partnership, whether in two or more names or in the name of a firm, may cast only one vote. The parties to the partnership must determine which one of them will cast the vote for the partnership.

D. An association, cooperative, or corporation may cast only one vote. Any officer of an association, cooperative, or corporation may cast its vote.

E. A fiduciary may cast only one vote. Only the legal guardian of a fiduciary may cast its vote, even if a husband and wife are jointly carrying on the farming operation subject to a fiduciary arrangement.

Subp. 4. Balloting at polling places. The procedures in items A and B must be followed whenever the commissioner determines that an election will be held at established polling places or a council determines that a referendum will be conducted at established polling places:

A. Election and referendum judges will be selected by the commissioner in consultation with the council. Judges must not indicate their opinions about the election or referendum on the day of the election or referendum. Each polling place must have at least one judge. The judges are to do the following:

(1) meet at the polling place at least one-half hour before voting begins;

(2) assure that at least one judge remains at the polling place at all times to oversee the polling process;

(3) take an oath of election judges and sign the form provided by the commissioner before the polling begins;

(4) monitor the placement of ballots into the ballot box and be responsible for the overall security of the polling process;

(5) have each qualified or designated voter write the qualified voter's name, organization, title, and county of business, when appropriate, on a producer affidavit to be provided by the commissioner and have each qualified or designated voter sign the producer affidavit. The written authorization of the designated voter must be attached to the producer affidavit;

(6) initial the back of the ballot and give it to each qualified or designated voter provided the qualified or designated voter has signed the producer affidavit;

(7) provide each qualified or designated voter with the voter instruction sheet provided by the commissioner;

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(8) collect a signed producer affidavit at the time a qualified or designated voter places a ballot in the ballot box:

(9) tabulate the results of the vote and telephone the commissioner the same day with the results;

(10) complete the certification of election judges form, provided by the commissioner, after the polls have closed: and

(11) return all the voting materials listed in item B to the commissioner.

B. The election and referendum judges shall return the following voting materials to the commissioner by first class mail: completed ballots, signed producer affidavits, judges' oath forms, certification of election form, and any expense vouchers. The election judges handbook must be retained by the chief judge for 30 days after the election or referendum and then destroyed. Any unused ballots or producer affidavits must also be destroyed.

Subp. 5. **Mail balloting.** For any election or referendum conducted by mail, the procedures in items A to E must be followed:

A. A council must have a current and complete list of its participating producers before an election or a referendum can be conducted by mail. The list must be submitted to the commissioner at least 30 days before the starting date of the election or referendum.

B. The commissioner shall mail to all participating producers on the council's list a ballot, a producer affidavit, a voter instruction sheet, a ballot envelope, and a return envelope.

C. The length of time for the mail balloting shall be determined by the commissioner for each election or referendum, but must not be less than 14 days and must not exceed 30 days.

D. If a participating producer of the agricultural commodity for which an election or a referendum is being conducted by mail has not received the voting materials listed in item B by the time half of the time period in item C has elapsed, the participating producer or the council may telephone or write the commissioner to request that the voting materials be mailed directly to the participating producer.

E. In order to be counted, mail ballots must be returned to the commissioner and must be postmarked on or before the closing date of the election or referendum set by the commissioner under item C.

Subp. 6. **Dairy industry referendums.** The procedures in items A and B must be followed in dairy industry referendums:

A. Dairy cooperative associations may choose to bloc vote their producers in accordance with Minnesota Statutes, section 17.54, subdivision 12. The commissioner shall provide the dairy cooperative association with appropriate voting materials.

B. Private dairy processors must file with the commissioner a list of their participating producers marketing the bulk of their production with the private dairy processor. The commissioner shall use this list and the procedures in subpart 5 in mail balloting producers with private dairy processors during a referendum on any dairy promotional order.

Subp. 7. **Certification of election or referendum.** The commissioner shall follow the procedures in items A to D in certifying an election or referendum:

A. Before certifying an election or referendum conducted in accordance with subpart 4, the commissioner shall assure that:

(1) all materials required in subpart 4, item B are returned to the commissioner;

(2) all completed ballots are initialed on the back by an election or referendum judge, and there is no more than one vote per question on the completed ballot;

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- (3) the oath of election judges form is signed;
- (4) all producer affidavits are signed; and
- (5) the judges' certification of election form is signed.

B. Before certifying an election or referendum conducted in accordance with subpart 5, the commissioner shall assure that:

- (1) returned ballots and producer affidavits have been postmarked by the closing date set in subpart 5, item C;
- (2) there is no more than one vote per question on the ballot; and
- (3) the producer affidavits are signed.

C. If any one of the criteria in item A, subitem (2) or item B are not met, the commissioner shall declare the individual ballots invalid and shall not count them toward the outcome of the election or referendum.

D. An impartial committee of at least three people appointed by the commissioner shall count the ballots received from the elections or referendums conducted under subpart 4 or 5.

Statutory Authority: *MS s 17.54 subd 4; 17.58 subd 4; 17.63*

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 in accordance with the procedures in part 1570.0700, subpart 3 and part 1570.0800. The hearings in this section 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.

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Subp. 4. **Refund of check-off fee.** The procedures in items A to G must be followed in refunding check-off fees:

A. Any participating producer wishing a refund of a check-off fee may telephone or write to the commissioner or request in person a refund application form to fill out.

B. The participating producer must complete the refund application form and return the original and second copy, along with a proof of paid check-off fee, to the commissioner.

C. 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 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.

D. The council may proceed to write a refund check only if the check-off fee has been sent from the first purchaser or the first handler to the council. The council will retain the original copy of the refund application form and will forward the refund check to the commissioner.

E. The commissioner shall mail the refund check and the proof of paid check-off fee to the participating producer. The commissioner shall also return the participating producer's copy of the refund application form if the participating producer did not retain it.

F. 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 determine the amount of refund and send the refund check to the commissioner. Immediately upon receipt, the commissioner shall mail the refund check to the producer.

G. 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 E 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 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 three contacts have been made, the council may request that the commissioner write to the delinquent first handler or first purchaser. 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. At the request of the council, the commissioner may send a second letter to delinquent first handlers or first purchasers requesting compliance.

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

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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, 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 in accordance with part 1570.0700, subpart 3 and part 1570.0800. A majority vote of the qualified voters who vote in the referendum will suspend or terminate the promotional order.

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 subd 4; 17.58 subd 4; 17.63*