

Chapter Ag 7

DAIRY PLANT TRUSTEESHIPS

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Ag 7.01 Trusteeships. When the department requires the operator of a dairy plant to file a trust agreement pursuant to s. 100.06(2)(b), Stats., as a condition to the issuance or continuance of a license the trusteehip shall be established and operated in conformity with the requirements of this chapter.

Note: This chapter is adopted by the department under authority of ss. 93.07 (1) and 227.11 (2) (a), Stats., to interpret s. 100.06, Stats. Violations of this chapter are subject to the penalties prescribed in s. 100.26 (5), Stats.

History: Cr. Register, August, 1956, No. 8, eff. 9-1-56; am. Register, January, 1978, No. 265, eff. 2-1-78.

Ag 7.02 Definitions. (1) "Department" means the state of Wisconsin department of agriculture, trade and consumer protection.

(2) "Dairy plant" or "plant" means a dairy plant or receiving station as defined in s. 97.20, Stats.

(3) "Dealer" means any person purchasing milk or dairy products from a dairy plant for purposes of resale or further processing or manufacturing.

(4) "Maximum due and accrued producer liability" means the largest gross amount of money due and owing to producers at any one time during the license year by a dairy plant operator for milk or cream purchased by the operator and for which payment has not been made.

(5) "Plant operator" or "operator" means the person licensed to operate a dairy plant under ss. 97.20 and 100.06, Stats.

(6) "Proceeds" means proceeds as defined in s. 409.306, Stats.

(7) "Producer" means any person who produces and sells milk or cream, directly or through a marketing agent acting under a written agency contract, to a dairy plant from one or more cows or goats under the person's ownership or control.

History: Cr. Register, January, 1978, No. 268, eff. 2-1-78; am. (7), Register, July, 1986, No. 367, eff. 8-1-86.

Ag 7.03 Selection of trustee. The producers shall select a trustee by a majority vote of producers present at a meeting called for the purpose of selecting a trustee. The person presiding at the meeting shall file with the department a sworn statement on forms provided by the department certifying the person selected as trustee. In the alternative, a trustee may be selected by the filing of a petition subscribed by a majority of the producers requesting the appointment of the person named as trustee.

History: Cr. Register, August, 1956, No. 8, eff. 9-1-56; renum. from Ag 7.02 and am. Register, January, 1978, No. 265, eff. 2-1-78.

Register, July, 1986, No. 367

Ag 7.04 Qualifications of trustee. (1) A trustee may be either a natural person or a firm or corporation having trust powers. A natural person shall be an adult resident of the state of Wisconsin who understands to the satisfaction of the department the bookkeeping and accounts employed in the purchase of milk from producers and the sale of manufactured dairy products. Persons selected as trustees shall be subject to the confirmation and approval of the department and may be removed by vote of the producers or by the department as provided in sub. (2).

(2) After notice and opportunity for hearing, the department may withdraw approval of any trustee, whether a natural person or a firm or corporation having trust powers, if the trustee does not faithfully perform all duties prescribed under this chapter.

History: Cr. Register, August, 1956, No. 8, eff. 9-1-56. renum. from Ag 7.03 and am. Register, January, 1978, No. 265, eff. 2-1-78.

Ag 7.05 Duties of trustee. (1) The trustee shall enter into a written trust agreement with the operator on forms prescribed by the department granting the trustee control over all milk purchased by the plant and all dairy products manufactured or processed at the plant including all proceeds derived from the sale or disposition of such milk and dairy products and prohibiting the sale or disposition of milk and dairy products except as provided in this chapter. A copy of this agreement shall be filed with the department.

(2) In connection with the trust agreement, the trustee shall obtain from the operator a security agreement granting to the trustee a security interest in all inventories of milk and dairy products and all proceeds derived therefrom, including accounts receivable. The security interest granted to the trustee shall be perfected by the filing of financing statements as required under ch. 409, Stats., and shall take priority over and not be subject to any other outstanding security interest in the collateral. The security agreement and financing statements shall specify that the security is granted to the trustee (giving the trustee's name) as trustee for the dairy plant (giving the dairy plant's name) under s. 100.06 (2) (b), Stats., and ch. Ag 7. Evidence of the perfection of the security interest shall be filed with the department.

(3) The trustee shall secure and file with the department a bond, written by a commercial bonding company, in the form prescribed by the department.

(a) The amount of the bond shall not be less than 75% of the maximum due and accrued producer liability of the dairy plant.

(b) The bond shall be conditioned on the faithful performance by the trustee of the trustee's duties including, without limitation, compliance with the requirements of s. 100.06 (2) (b), Stats., and this chapter.

(4) The trustee shall enter into contracts with the operator and all dealers to whom milk or dairy products are sold. Contracts shall include a provision that payment of the gross proceeds of all sales shall be made directly to the trustee. The contracts shall further provide that the purchaser of dairy products shall make no deductions or offsets from the gross purchase price for any purpose. Contracts shall be executed in quadruplicate on forms prescribed by the department. The trustee shall retain one copy, and furnish copies to the dairy plant operator, the dealer and the department.

Register, July, 1986, No. 367

(5) (a) The trustee shall open and maintain a separate bank account designated as follows: (Name of dairy plant), (Name of trustee), Trustee. All checks written on the trustee account shall be imprinted with the name and designation of the trustee as trustee for the dairy plant (giving the dairy plant's name).

(b) The trustee shall collect the gross proceeds for dairy products sold and deposit such sums in the trustee account.

(c) The trustee shall remit cash proceeds received under dairy product purchase contracts to producers in accordance with the agreed price between producers and the dairy plant operator, and in the amounts shown in the producer payroll. The trustee shall examine each payroll to determine the accuracy of its computation and shall keep a memorandum of all producer-operator price agreements.

(d) The trustee shall personally execute or supervise the execution of all checks written on the trustee account.

(e) Any advance payment granted to a producer shall be completely set off against the amount due such payee at the end of each payroll period by the trustee, and in no event shall any advance to a producer exceed the reasonable accrued value of the milk or cream delivered by the producer prior to the date of the advance payment.

(f) The trustee shall pay no factory or dairy plant operator obligations out of the trust account.

(g) Cash proceeds from milk or cream purchased or dairy products manufactured from such milk or cream during any payroll period shall first be applied by the trustee in payment for milk and cream delivered by producers during such period and no part thereof or any other payment may be paid to the operator except for amounts in excess of that required to meet the producer payroll liability for that period or any prior period. Cash proceeds from milk or cream purchased or dairy products manufactured from such milk or cream during any subsequent payroll period may not be used for payment for milk delivered by producers during a prior payroll period or released to the operator unless they exceed the amounts required to meet the producer payroll for that period. Prior to the final settlement of each producer payroll, the trustee shall make a written calculation to determine whether sufficient funds have been received from the sale or disposal of milk and processed dairy products manufactured during the payroll period to pay the producers for milk delivered within that payroll period. Such written calculations shall be retained by the trustee for 3 years.

(h) The trustee shall maintain a daily book balance for the trust account and obtain a monthly bank statement for the trust account and reconcile it to the book balance.

(i) In the event of the appointment of a new trustee, the new trustee shall open and maintain a trust account separate and apart from any former trust account. The new trustee shall not pay from the new trust account any obligations incurred prior to the effective date of the new trusteeship.

(6) On or before March 1 of each year the trustee shall submit a true and accurate account of all transactions affecting the trusteeship during the immediately preceding calendar year to producers, the operator and

the department on forms furnished by the department. Upon termination of a trusteeship the trustee shall submit a final accounting on forms furnished by the department.

(7) The trustee shall promptly report any shortage which occurs in the trust account to the department and the bonding company.

(8) No resignation of a trustee shall be effective unless the trustee shall have been relieved or a successor appointed.

History: Cr. Register, August, 1956, No. 8, eff. 9-1-56; renum from Ag 7.05 and am. Register, January, 1978, No. 265, eff. 2-1-78.

Ag 7.06 Duties of operator. (1) The operator shall enter into a written trust agreement and security agreement with the trustee as described in Ag 7.05 (1) and (2) and be responsible for all fees necessary for the perfection and periodic renewal of the security agreement.

(2) The operator shall assist the trustee in obtaining a bond as described in Ag 7.05 (3) and be responsible for payment of premiums and other expenses incurred in obtaining the bond.

(3) The operator shall enter into contracts with the trustee and all dealers to whom milk or dairy products are sold, as described in Ag 7.05 (4).

(4) At the end of each week the operator shall account to the trustee for all sales made directly at retail of dairy products manufactured at the plant except for sales to producers constituting an offset against the producer payroll and pay to the trustee the cash proceeds derived from such sales. Sales on credit to employees may not be used as an offset against salaries or wages unless the cash equivalent of such offset is paid by the operator to the trustee.

(5) The operator shall commit no act that impairs the ability of the trustee to carry out the trustee's duties, or that impairs the security interest granted the trustee under this section. No operator may pledge dairy product inventories or receivables as collateral for a loan without the written consent of the trustee and direct payment of the proceeds of such loan to the trustee.

(6) The operator shall make payroll and production records available to the trustee in a timely manner.

History: Cr. Register, January, 1978, No. 265, eff. 2-1-78.