

NORTH DAKOTA MILK MARKETING BOARD

Bismarck, North Dakota

House and Senate Agriculture Committee Report
For the Two-Year Period Ended June 30, 2020



Joshua C. Gallion, State Auditor

STATE OF NORTH DAKOTA MILK MARKETING BOARD

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Luke B.A. Turner, Interim Director

Kimberly Kessler, Beulah Chairperson, Retail Member	Barbara Lang, Jamestown Consumer Member	Dwane Wanzek, Cleveland Producer Member	Kriss Allard, Minot Processor Member	Julie Gardner-Robinson Consumer Member
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January 14, 2021

House and Senate Agriculture Committees

Board Members - North Dakota Milk Marketing Board

Transmitted herewith is the biennial report of the North Dakota Milk Marketing Board. This report contains a Statement of Revenues and Expenditures for the two-year period ended June 30, 2020 and a Statement of Projected Revenues and Expenditures for the current and next biennium. North Dakota Century Code section 4-24-10 contains the reporting requirements for North Dakota commodity groups.

Sincerely,

Kimberly Kessler
Chairperson

<u>Report Sections</u>	<u>Page(s)</u>
Transmittal Letter	1
Contents	2
North Dakota Milk Marketing Law	3-4
Board's Mission Statement	4
Program Objectives	4
Services Provided	4-5
Program Statistical Data	5
Summary of Activities	6
Grade 'A' Receipts & Utilization	7
Milk Utilization in North Dakota	8
Statement of Projected Revenues and Expenditures for the Current and Next Biennium (UNAUDITED)	9

MILK MARKETING LAW

North Dakota's 2015 Legislature rewrote the law that established a Milk Marketing Board with powers to regulate fluid milk prices and fair trade practices within the dairy industry and establish milk-marketing areas within the state. Experts in the field consider it to be the best and most flexible state milk law in the country.

North Dakota's fluid milk industry has operated under a pricing structure and fair trade practice law for many years that affects producers, processors, distributors, retailers, and consumers.

The five-member Board appointed by the governor includes one Grade A producer, one processor, one food retailer and two consumers.

Milk regulation is a complicated business. Listed below are some of the ways that the Milk Board helps stabilize and maintain a market for North Dakota milk.

1. The Milk Board establishes minimum prices for Grade A milk to be paid by processors to producers. Grade A producers are paid a blend price for milk based on their utilization rate between milk used for bottling and for other products. The utilization rate in the Upper Midwest Federal Milk Marketing Order was roughly 8.4% and the utilization rate under the jurisdiction of the Milk Board was roughly 87.4%. This means that producers regulated by the Milk Board have a higher utilization rate and receive a higher price. In addition, the minimum producer prices established by the Milk Board have often been greater than those established in the Upper Midwest Federal Milk Marketing Order. Although the Milk Board does not regulate the manufacturing grade price, a healthy Grade A market supports and promotes a healthy manufacturing grade market.

2. The Milk Board regularly audits processing plants to insure that producers are properly paid.

3. The Milk Board has authority to license processors, distributors and retailers. Processors and distributors must agree to provide retailers, schools, hospitals, nursing homes and restaurants the same frequency of delivery and services as are customary in the community. This provision has proven to be very helpful in maintaining delivery of milk to rural & remote areas of the state.

4. The Board has discretionary authority to adopt and enforce a wide variety of fair trade practice regulations. These include such things as gifts from dealers to retailers, free equipment, unauthorized advertising allowances, unauthorized loans and the like. The enforcement of fair trade practice regulations protects small operators from predatory and monopolistic trade practices.

5. The Board establishes minimum wholesale and retail prices for milk. This is the best way to prohibit sales below cost by retailers and dealers and prevent destructive price wars. It also establishes a floor price sufficient to keep reasonably efficient processors, distributors and retailers in business.

The Milk Board recognizes that it does not have authority to do all things for all people. The Interstate Commerce Clause of the United States Constitution prohibits the Milk Board from regulating transactions, which occur outside the geographical limits of the state even though such transactions can have an adverse impact within the state. The limitations of interstate commerce also require that the state's regulation of milk within North Dakota, its pricing, and trade practices remain competitive with surrounding states. North Dakota is a sparsely populated state resulting in extremely high distribution costs. Despite this, milk prices in North Dakota have generally been at or around the median of prices charged for milk in the United States.

Producers also recognize that they need local plants to purchase their product who could earn a reasonable rate of return on their investment. They also recognize that the plants need retailers to market North Dakota milk to North Dakota consumers at a price which is fair to both. The Milk Board does not

guarantee a profit to anyone. The Milk Board establishes a safety net so that milk wars and predatory trade practices will not force reasonably efficient producers, processors and retailers to go out of business. The proponents of economic development and growth in North Dakota indicate that the best opportunity for such development and growth is the processing and finishing of agricultural products. This is what the North Dakota dairy industry has done in the past and would like to continue in the future.

The dairy industry of North Dakota believes that the Milk Board is essential to give North Dakota people the privilege of drinking milk which is produced by North Dakota farmers, processed in North Dakota plants and sold at a fair price to North Dakota consumers with some North Dakota milk production left over for export.

It is conceded in the North Dakota dairy industry that if the Milk Board became ineffective or was lost, that all of North Dakota would soon be included in the Upper Midwest Federal Milk Marketing Order, and thus, become subject to market pricing based predominantly in markets outside of the state. That said, the choice is not whether or not there will be milk regulation; the choice is whether there will be state regulation or federal regulation.

The overwhelming majority of persons in the state's dairy industry believe that the Milk Marketing Board is an essential element in maintaining a strong and viable dairy industry in North Dakota.

BOARD'S MISSION STATEMENT

Promote and ensure an adequate supply of fresh and wholesome milk to the public of the State and recognizing the perishable nature of milk to set minimum dairy farmer, wholesale and retail prices on milk products, to eliminate unfair and demoralizing trade practices and to provide economic stabilization to the dairy industry. The Board, through public hearings and audits, supervises, investigates and regulates all segments of the Grade A dairy industry. The Board may also act as a mediator or arbitrator in connection with any controversy or issue among or between dairy farmers, processors, distributors, retailers or consumers if such controversy or issue pertains to the production, transportation, processing, storage, distribution or sale of milk products.

The Board through its licensing functions provides a viable market for Grade A dairy farmer milk and Grade A milk products manufactured within the State and strives to protect the State from becoming a dumping ground for dairy products from other States at the expense of our North Dakota dairy farmers, independent distributors and processing plants.

PROGRAM OBJECTIVES

Set minimum dairy farmer, wholesale and retail prices on milk products. Eliminate unfair and demoralizing trade practices and to provide economic stabilization to the state's dairy industry. Audit, supervise, investigate and regulate all segments of the Grade A dairy industry. Act as a mediator or arbitrator in connection with any controversy or issue among or between dairy farmers, processors, distributors, retailers or consumers if such controversy or issue pertains to the production, transportation, processing, storage, distribution or sale of milk products. Provide a viable market for Grade A dairy farmer milk and Grade A milk products manufactured within North Dakota and protect the state from dumping becoming a ground for dairy products from other states.

SERVICES PROVIDED

Establish, publish and audit monthly minimum Grade A dairy farmer Class I, II and III prices.

Promulgate and enforce regulations governing farm-to-plant dairy farmer hauling rates. Promulgate and enforce regulations governing dairy farmer purchasing agreements. Enforce regulations governing milk classification, reporting and auditing procedures. Conduct a processing plant audit program to insure compliance of item 1 through 4 above. Conduct cost studies and economic surveys regarding the production and marketing of Grade A milk products. Establish minimum and/or maximum wholesale and retail prices and audit for compliance of such. Eliminate unfair, unjust and demoralizing trade practices through audit and investigation of such. Recover dairy farmer underpayments and assessment underpayments. Issue dairy farmer, processor, distributor and retailer licenses. Hold public hearings, take sworn testimony, study exhibits, and enter into deliberations and issue marketing plans.

PROGRAM STATISTICAL DATA

The audit program has recovered over \$1,359,471 in under payments to Grade "A" dairy farmers to date and assessment underpayments recovered to date amount to over \$453,270. The Board has ensured that an adequate supply of milk is available to consumers in all areas of the State. The Board has brought economic stability to the Grade A dairy industry of this State and eliminated the chaotic, destructive trade practices within the dairy industry. The Board has ensured that this State has not become a dumping ground for surplus dairy products from other States at the expense of our North Dakota dairy industry.

Funds to administer the law are obtained from a check-off / assessment of eighteen cents per hundredweight (\$0.18) on the total volume of Class I and Class II milk sales in the State by all licensed processors and distributors.

**ND MILK MARKETING BOARD
Bismarck, North Dakota**

**SUMMARY OF ACTIVITIES
For Fiscal Years Ended June 30, 2019 and 2020**

	<u>2019</u>	<u>2020</u>
Board Meetings.....	4	6
Official Orders and Supplements Issued.....	36	32
Public Hearings.....	1	0
Administrative Hearings.....	0	1
Hearing Notices Issued.....	214	190
Official Orders and Supplements Issued.....	4,098	3,642
Complaints of Violations Received.....	69	71
Violations Investigated.....	78	86
Plant-Distributor Cost Studies.....	2	2
Producer Cost Studies.....	3	3
Hauling Rate Cost Studies.....	2	2
Citations Issued.....	0	0
Injunctive Actions.....	0	0
Administrative Complaints Filed.....	0	0
Number of Plants Audited for Producer Payments and Assessments.	30	30
Number of Months Audited.....	360	360
Number of Producer Adjustments.....	164	164
Total Underpayments Recovered for Dairy Farmers.....	\$11,394	\$11,041
Total Underpayments Recovered for Dairy Farmers to Date.....	\$1,348,430	\$1,359,471
Total Assessment Underpayments Recovered to Date.....	\$412,446	\$453,270
North Dakota Processors and Distributors Licenses.....	45	44
Out-of-State Processors and Distributor Licenses.....	22	22

**ND MILK MARKETING BOARD
Bismarck, North Dakota**

**GRADE "A" RECEIPTS / UTILIZATION
For Fiscal Years Ended June 30, 2019 And 2020**

	<u>2019 & 2020</u>
GRADE A RECEIPTS	530,084,812 Lbs
<u>UTILIZATION</u>	
Class I	424,597,934 Lbs
Class II	22,263,563 Lbs
Class III	83,223,315 Lbs
% I	80.1 %
% II	4.2 %
% III	15.7 %
BOARD MEMBERS	5
STAFF	3
EXPENSES	\$ 529,780
Class I Fluid Consumption	424,597,934 Lbs
In Quarts	197,487,411 Qts
Cost of Administration. Per Quart	\$.00268
Population	761,723 (EST)
Per Capita Fluid Consumption Per Year	278.71 Lbs.
In Quarts	129.63 Qts
Cost of Administration Per Person Per Year	\$ 0.3478
Milk Marketing Board Revenue	\$ 0.1675 per CWT Class I and II (only)

**ND MILK MARKETING BOARD
Bismarck, North Dakota**

**MILK UTILIZATION IN NORTH DAKOTA
For Fiscal Years Ended June 30, 2019 and 2020**

	<u>2019 & 2020</u>
Grade "A" Receipts North Dakota Producers	530,084,812 Lbs.
Gross \$ Payment North Dakota Producers	\$ 93,171,430.58
State Wide Blend Price Per CWT	\$ 16.75
Average Butterfat Test	3.88 %
Class I Price Range Per CWT Within F.M.O	\$ 20.98 to \$13.67
Average Class I Price Per CWT Within F.M.O	\$ 17.93
Class I Price Range Per CWT State Ordered	\$ 21.74 to \$13.76
Average Class I Price Per CWT State Ordered	\$ 18.64
Premium Range Per CWT Class I Over F.M.O	\$ 0.83 to \$0.09
Average Premium Per CWT Class I Over F.M.O	\$ 0.71
Gross Premium Payment	\$ 3,014,645.00
Average Premium Blend Per CWT N.D. Over F.M.O.	\$.61
Average Class II Price Paid N.D. Dairy Farmers Per CWT.	\$ 15.96
Average Class III Price Paid N.D. Dairy Farmers Per CWT.	\$ 14.91

**ND MILK MARKETING BOARD
Bismarck, North Dakota**

STATEMENT OF PROJECTED REVENUES AND EXPENDITURES
For the Current and Next Biennium
2019-2021 and 2021-2023

(UNAUDITED)

Prepared by the North Dakota Milk Marketing Board

	<u>2019-2021</u> <u>Biennium</u>	<u>2021-2023</u> <u>Biennium</u>
<u>REVENUES:</u>		
Assessments	\$ 569,269	\$ 638,122
Interest	<u>3,374</u>	<u>2,854</u>
 TOTAL REVENUES	 \$ 572,643	 \$ 640,976
 <u>EXPENDITURES:</u>		
Operating Expenditures	\$ 533,358	\$ 600,232
 TOTAL EXPENDITURES	 \$ 533,358	 \$ 600,232
 Revenue Over Expenditures	 <u>\$ 39,285</u>	 <u>\$ 40,744</u>