

New York State Consolidated Laws

Agriculture & Markets

ARTICLE 21-AA DAIRY PROMOTION ACT

Section 258-aa. Declaration of policy.

§ 258-aa. Declaration of policy. (a) It is hereby declared that the dairy industry is a paramount agricultural industry of this state, and is an industry affecting the health and welfare of the inhabitants of the state; that the continued existence of the dairy industry and the continued production of milk on the farms of this state is of vast economic importance to the state and to the health and welfare of the inhabitants thereof; that it is essential, in order to assure such continued production of milk and its handling and distribution, that prices to producers be such as to return reasonable costs of production, and at the same time assure an adequate supply of milk and dairy products to consumers at reasonable prices; and to these ends it is essential that consumers and others be adequately informed as to the dietary needs and advantages of milk and dairy products and as to the economies resulting from the use of milk and dairy products, and to command for milk and dairy products, consumer attention and demand consistent with their importance and value. It is further declared that continued decline in the consumption of fluid milk and some other dairy products will jeopardize the production of adequate supplies of milk and dairy products because of increasing surpluses necessarily returning less to producers; and that continued adequate supplies of milk and dairy products is a matter of vital concern as affecting the health and general welfare of the people of this state. It is therefore declared to be the legislative intent and policy of the state:

(1) To enable milk producers and others in the dairy industry, with the aid of the state, to more effectively promote the consumption of milk and dairy products,

(2) To provide methods and means for the development of new and improved dairy products, and to promote their use, and

(3) To this end, eliminate the possible impairment of the purchasing power of the milk producers of this state and to assure an adequate supply of milk for consumers at reasonable prices.

(b) Definitions. As used in this act the following terms shall have the following meanings:

(1) "Commissioner" means the commissioner of agriculture and markets of the state of New York.

(2) "Dairy products" means milk and products derived therefrom, and products of which milk or a portion thereof is a significant part.

(3) "Producer" means any person in this state who is engaged in the production of milk or who causes milk to be produced for any market in this or any other state.

(4) "Advisory board" means the persons appointed by the commissioner from nominations from producers as herein defined to assist the commissioner in administering a dairy promotion order.

(5) "Milk dealer" means any person who purchases or handles or receives or sells milk, including individuals, partnerships, corporations, cooperative associations, and unincorporated cooperative associations.

(6) "Dairy promotion order" means an order issued by the commissioner, pursuant to the provisions of this act.

(7) "Cooperative" means an association or federation or cooperative of milk producers organized under the laws of New York state, or any other

state, having agreements with their producer members to market, bargain for or sell the milk of such producers, and is actually performing one or more of these services in the marketing of the milk produced by their members, through the cooperative or through a federation of milk cooperatives in which the cooperative has membership.

(c) Powers and duties of the commissioner.

(1) The commissioner shall administer and enforce the provisions of this act, and shall have and may exercise any or all the administrative powers conferred upon the head of a department. In order to effectuate the declared policy of this act the commissioner may, after due notice and hearing, make and issue a dairy promotion order, or orders.

(2) Such order or orders shall be issued and amended or terminated in accordance with the following procedures:

(a) Before any such order may become effective it must be approved by fifty-one per centum of the producers of milk voting in the referendum for the area to be regulated by such order. Such referendum shall not constitute valid approval unless fifty-one per centum of all milk producers for the area to be regulated vote in the referendum. Producers may vote by individual ballot or through their cooperatives in accordance with the following procedures:

(i) Cooperatives may submit written approval of such order within a period of one hundred twenty days after the commissioner has announced a referendum on a proposed order, for such producers who are listed and certified to the commissioner as members of such cooperative, provided, however, that any cooperative before submitting such written approval shall give at least sixty days prior written notice to each producer who is its member, of the intention of the cooperative to approve such proposed order, and further provide that if such cooperative does not intend to approve such proposed order, it shall likewise give written notice to each such producer who is its member, of its intention not to approve of such proposed order.

(ii) Any producer may obtain a ballot from the commissioner so that he may register his own approval or disapproval of the proposed order.

(iii) A producer who is a member of a cooperative which has notified him of its intent to approve or not to approve of a proposed order, and who obtains a ballot and with such ballot expresses his approval or disapproval of the proposed order, shall notify the commissioner as to the name of the cooperative of which he is a member, and the commissioner shall remove such producer's name from the list certified by such cooperative.

(iv) In order to insure that all milk producers are informed regarding a proposed order, the commissioner shall notify all milk producers that an order is being considered and that each producer may register his approval or disapproval with the commissioner either directly or through his cooperative.

(v) The commissioner may appoint a referendum advisory committee to assist and advise him in the conduct of the referendum. Such committee shall review referendum procedures and the tabulation of results, and shall advise the commissioner of its findings. The final certification of the referendum results shall be made by the commissioner. The committee shall consist of not less than three members, none of whom shall be persons directly affected by the promotion order being voted upon. Two members shall be representatives of general farm organizations which are not directly affected by the order being voted upon. The members of the committee shall not receive a salary but shall be entitled to actual and reasonable expenses incurred in the performance of their duties.

(b) The commissioner may, and upon written petition of not less than ten per centum of the producers in the area, either as individuals or through cooperative representation, shall, call a hearing to amend or

terminate such order, and any such amendment or termination shall be effective only upon approval of fifty-one per centum of the producers of milk for the area regulated participating in a referendum vote as provided pursuant to paragraph two of subdivision (c) of this section.

(3) The commissioner shall administer and enforce any such dairy promotion order while it is in effect, for the purpose of:

(a) Encouraging the consumption of milk and dairy products by acquainting consumers and others with the advantages and economy of using more of such products,

(b) Protecting the health and welfare of consumers by assuring an adequate supply of milk and dairy products,

(c) Providing for research programs designed to develop new and improved dairy products,

(d) Providing for research programs designed to acquaint consumers and the public generally with the effects of the use of milk and dairy products on the health of such consumers,

(e) Carrying out, in other ways, the declared policy and intent of this act.

(d) Provisions of dairy promotion orders. Any dairy promotion order or orders may contain, among others, any or all of the following:

(1) Provision for levying an assessment against all producers subject to the regulation for the purpose of carrying out the provisions of such order and to pay the cost of administering and enforcing such order. In order to collect any such assessments, provision shall be made for each milk dealer who receives milk from producers to deduct the amount of assessment from moneys otherwise due to producers for the milk so delivered. The rate of such assessment shall not exceed two per cent per hundredweight of the gross value of the producers milk, and there may be credited against any such assessment the amounts per hundredweight otherwise paid by any producer covered by the order by voluntary contribution or otherwise pursuant to any other federal or state milk market order for any similar research promotion or advertising program. Notwithstanding the provisions of paragraph two of subdivision (c) of this section, the commissioner, upon written petition of no less than twenty-five per cent of producers in the area, either as individuals or through cooperative representation, may call a hearing for the sole purpose of establishing a new rate of assessment hereunder and may submit a proposed change in the rate of assessment to the producers for acceptance or rejection without otherwise affecting the order. The producers in the area may vote on the proposed rate either as individuals or through cooperative representation. Notwithstanding the foregoing provisions of this paragraph and of paragraph two of subdivision (c) of this section, or the provisions of any order promulgated pursuant to this section, the rate of assessment, for any period during which a dairy products promotion and research order established pursuant to the federal dairy and tobacco adjustment act of 1983 is in effect, shall not be less than an amount equal to the maximum credit which producers participating in this state's dairy products promotion or nutrition education programs may receive pursuant to subdivision (g) of Sec. 113 of said federal act.

(2) Provision for payments to organizations engaged in campaigns by advertisements or otherwise, including participation in similar regional or national plans or campaigns to promote the increased consumption of milk and dairy products, to acquaint the public with the dietary advantages of milk and dairy products and with the economy of their inclusion in the diet and to command, for milk and dairy products, consumer attention consistent with their importance and value.

(3) Provision for payments to institutions or organizations engaged in research leading to the development of new or improved dairy products or research with respect to the value of milk and dairy products in the

human diet.

(4) Provision for requiring records to be kept and reports to be filed by milk dealers with respect to milk received from producers and with respect to assessments on the milk of such producers.

(5) Provision for the auditing of the records of such milk dealers for the purpose of verifying payment of producer assessments.

(6) Provision for an advisory board as hereinafter indicated.

(7) Such other provisions as may be necessary to effectuate the declared policies of the act.

(e) Matters to be considered. In carrying out the provisions of this act and particularly in determining whether or not a dairy promotion order shall be issued, the commissioner shall take into consideration, among others, facts available to him with respect to the following:

(1) The total production of milk in the area and the proportion of such milk being utilized in fluid form and in other products,

(2) The prices being received for milk by producers in the area,

(3) The level of consumption per capita for fluid milk and of other dairy products,

(4) The purchasing power of consumers,

(5) Other products which compete with milk and dairy products and prices of such products.

(f) Interstate orders for compacts. The commissioner is authorized to confer and cooperate with the legally constituted authorities of other states and of the United States with respect to the issuance and operation of joint and concurrent dairy promotion orders or other activities tending to carry out the declared intent of the act. He may join with such other authorities in conducting joint investigations, holding joint hearings and issuing joint or concurrent order or orders complementary to those of the federal government and shall have the authority to employ or designate a joint agent or joint agencies to carry out and enforce such joint, concurrent or supplementary orders.

(g) Prior assessments. Prior to the effective date of any dairy promotion order as provided in this act, the commissioner may require that cooperative associations which have petitioned for such an order and who have approved of the issuance of such an order, to deposit with the commissioner such amounts as he may deem necessary to defray the expense of administering and enforcing such order until such time as the assessments as herein before provided are adequate for that purpose. Such funds shall be received, deposited and disbursed by the commissioner in the same manner as other funds received by him pursuant to this article and the commissioner shall reimburse those who paid these prior assessments from other funds received by him pursuant to this article.

(h) Status of funds. Any moneys collected under any market order issued pursuant to this article shall not be deemed to be state funds and shall be deposited in a bank or other depository in this state, approved by the commissioner and the state comptroller, allocated to each dairy promotion order under which they were collected, and shall be disbursed by the commissioner only for the necessary expenses incurred by the commissioner with respect to each separate order, all in accordance with the rules and regulations of the commissioner. All such expenses shall be audited by the state comptroller at least annually and within thirty days after the completion thereof the state comptroller shall give a copy thereof to the commissioner. Any moneys remaining in such fund allocable to a particular order, after the termination of such order and not required by the commissioner to defray the expenses of operating such order, may in the discretion of the commissioner be refunded on a pro-rata basis to all persons from whom assessments therefor were collected; provided, however, that if the commissioner finds that the amounts so refundable are so small as to make

impracticable the computation and refunding of such moneys, the commissioner may use such moneys to defray the expenses incurred by him in the promulgation, issuance, administration or enforcement of any other similar dairy promotion order or in the absence of any other such dairy promotion order, the commissioner may pay such moneys to any organization or institution as provided in paragraphs (2) or (3) of subdivision (d) of this section.

(i) Budget. The commissioner shall prepare a budget for the administration and operating costs and expenses including advertising and sales promotion when required in any dairy promotion order executed hereunder and to provide for the collection of such necessary fees or assessments to defray costs and expenses, in no case to exceed two per cent per hundredweight of the gross value of milk marketed by producers in the area covered by the order.

(j) Advisory board.

(1) Any dairy promotion order issued pursuant to this article shall provide for the establishment of an advisory board to advise and assist the commissioner in the administration of such order. This board shall consist of not less than five members and shall be appointed by the commissioner from nominations submitted by producers marketing milk in the area to which the order applies. Nominating procedure, qualification, representation, and size of the advisory board shall be prescribed in the order for which such board was appointed.

(2) No member of an advisory board shall receive a salary but shall be entitled to his actual and reasonable expenses incurred while performing his duties as authorized herein.

(3) The duties and responsibilities of the advisory board shall be prescribed by the commissioner and he may specifically delegate to the advisory board, by inclusion in the dairy promotion order, all or any of the following duties and responsibilities:

(a) The recommendation to the commissioner of administrative rules and regulations relating to the order.

(b) Recommending to the commissioner such amendments to the order as seem advisable.

(c) The preparation and submission to the commissioner of an estimated budget required for the proper operation of the order.

(d) Recommending to the commissioner methods for assessing producers and methods for collecting the necessary funds.

(e) Assisting the commissioner in the collection and assembly of information and data necessary for the proper administration of the order.

(f) The performance of such other duties in connection with the order as the commissioner shall designate.

(k) Rules and regulations enforcement.

(1) Rules and regulations. The commissioner may, with the advice and assistance of the advisory board, make and issue such rules and regulations as may be necessary to effectuate the provisions and intent of this article and to enforce the provisions of any dairy promotion order, all of which shall have the force and effect of law.

(2) Enforcement. The commissioner may institute such action at law or in equity as may appear necessary to enforce compliance with any provision of this article, or any rule or regulation, or dairy promotion order committed to his administration, and in addition to any other remedy under article three of this chapter or otherwise, may apply for relief by injunction if necessary to protect the public interest without being compelled to allege or prove that an adequate remedy at law does not exist. Such application shall be made to the supreme court in any district or county provided in the civil practice law or rules, or to the supreme court in the third judicial district.

