

Section 16-Y Marketing of agricultural products

Urban Development Corporation Act 174/68 (UDA)

Declaration of policy. (a) It is hereby declared that the mission of the corporation is to promote a vigorous and growing state economy. In implementing this mission, the corporation has undertaken a vigorous campaign to market the state's assets and by carrying out the provisions of this section, would further this mission by promoting the development of markets for agricultural products grown and produced in the state.

(b) It is further declared that the marketing of agricultural commodities and aquatic products in this state, in excess of reasonable and normal market demands therefor; disorderly marketing of such commodities; improper preparation for market and lack of uniform grading and classification of agricultural commodities and aquatic products; unfair methods of competition in the marketing of such commodities and the inability of individual producers to develop new and larger markets for agricultural commodities and aquatic products, result in an unreasonable and unnecessary economic waste of the agricultural wealth of this state. Such conditions and the accompanying waste jeopardize the future continued production of adequate food supplies for the people of this and other states. These conditions vitally concern the health, safety and general welfare of the people of this state.

It is therefore declared the legislative purpose and the policy of this state:

- (i) To enable agricultural producers and aquatic producers of this state, with the aid of the state, more effectively to correlate the marketing of their agricultural commodities and aquatic products with market demands therefor.
- (ii) To establish orderly, efficient and equitable marketing of agricultural commodities and aquatic products.
- (iii) To provide for uniform grading and proper preparation of agricultural commodities and aquatic products for market.
- (iv) To provide methods and means for the development of new and larger markets for agricultural commodities and aquatic products produced in New York.
- (v) To eliminate or reduce the economic waste in the marketing of agricultural commodities and aquatic products.
- (vi) To eliminate unjust impairment of the purchasing power of aquatic producers and the agricultural producers of this state; and
- (vii) To aid agricultural and aquatic producers in maintaining an income at an adequate and equitable level.

2. Definitions. (a) "Agricultural commodity" means any and all agricultural, horticultural,

vineyard products, corn for grain, oats, soybeans, barley, wheat, poultry or poultry products, bees, maple sap and pure maple products produced therefrom, christmas trees, livestock, including swine, and honey, sold in the state either in their natural state or as processed by the producer thereof but does not include milk, timber or timber products, other than christmas trees, all hay, rye and legumes except for soybeans.

(b) "Aquaculture" means the culture, cultivation and harvest of aquatic plants and animals.

(c) "Aquatic products" means any food or fiber products obtained through the practice of aquaculture, including mariculture; or by harvest from the sea when such products are cultured or landed in this state. Such products include but are not limited to fish, shellfish, seaweed or other water based plant life.

(d) "Producer" means any person engaged within this state in the business of producing, or causing to be produced for any market, any agricultural commodity or aquatic product.

(e) "Handler" means any person engaged in the operation of packing, grading, selling, offering for sale or marketing any marketable agricultural commodities or aquatic products, who as owner, agent or otherwise ships or causes an agricultural commodity to be shipped.

(f) "Processor" means any person engaged within this state in processing, or in the operation of receiving, grading, packing, canning, freezing, dehydrating, fermenting, distilling, extracting, preserving, grinding, crushing, or in any other way preserving or changing the form of an agricultural product or aquatic product for the purpose of marketing such commodity but shall not include a person engaged in manufacturing from an agricultural commodity or aquatic product another and different product.

(g) "Distributor" means any person engaged within this state, in selling, offering for sale, marketing or distributing an agricultural commodity or aquatic product which he or she has purchased or acquired from a producer or other person or which he or she is marketing on behalf of a producer or other person, whether as owner, agent, employee, broker or otherwise, but shall not include a retailer, except such retailer who purchases or acquires from, or handles on behalf of any producer or other person, an agricultural commodity or aquatic product subject to regulation by the marketing agreement or order covering such commodity.

(h) "President" means the president of the corporation.

(i) "Marketing agreement" means an agreement entered into, with the approval of the president, by producers with distributors, processors and handlers regulating the preparation, sale and handling of agricultural commodities or aquatic products.

(j) "Marketing order" means an order issued by the president pursuant to this section, prescribing rules and regulations governing the marketing for processing, the distributing, the sale of, or the handling in any manner of any agricultural commodity or aquatic product sold in this state during any specified period or periods.

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

(l) "Department" means the New York state department of agriculture and markets.

3. Powers and duties of the president. (a) In order to effectuate the declared policy of this section, the president, in consultation with the commissioner, may, after due notice and opportunity for hearing, approve marketing agreements, which marketing agreements shall thereupon be binding upon the signatories thereto exclusively.

(b) The president, in consultation with the commissioner and the producers, may make and issue marketing orders, after due notice and opportunity for hearing, subject to:

(i) approval of not less than sixty-six and two-thirds per centum of the producers participating in a referendum in the area affected, or

(ii) approval of not less than sixty-five per centum of the producers participating in a referendum vote, in the area affected, and having marketed not less than fifty-one per centum of the total quantity of the commodity which was marketed in the next preceding, ordinary marketing season by all producers that voted in the referendum, or

(iii) approval of not less than fifty-one per centum of the producers participating in a referendum vote, in the area affected, and having marketed not less than sixty-five per centum of the total quantity of the commodity which was marketed in the next preceding, ordinary marketing season by all producers that voted in the referendum. The president may, and upon written petition duly signed by twenty-five per centum of the producers in the area amend or terminate such order after due notice and opportunity for hearing, but subject to the approval of not less than fifty per centum of such producers participating in a referendum vote.

(c) The president, consulting with and seeking the advice and consent of the advisory board shall administer and enforce any marketing order, while it is in effect, to:

(i) Encourage and maintain stable prices received by producers for such agricultural commodity and aquatic product at a level which is consistent with the provisions and aims of this act.

(ii) Prevent the unreasonable or unnecessary waste of land or water based wealth.

(iii) Protect the interests of consumers of such commodity, by exercising the powers of this section to such extent as is necessary to effectuate the purposes of this act.

(iv) Provide consultation to the commissioner who shall budget for the administration and operating costs and expenses, seeking the advice and consent of the advisory board, including advertising and sales promotion when required in any marketing agreement or order executed in this section and to provide for the collection and retention of such necessary fees to defray such costs and expenses, in no case to exceed five percent of the gross dollar volume of sales or dollar volume of purchases or amounts handled, to be collected from each person engaged in the

production, processing, distributing or the handling of any marketable agricultural commodity and aquatic product produced or landed in this state and directly affected by any marketing order issued pursuant to this section for such commodity.

(v) Confer and cooperate with the legally constituted authorities of other states and the United States.

(d) Any marketing agreement or order issued by the president pursuant to this section, in consultation with the commissioner, may contain any or all of the following:

(i) Provisions for determining the existence and extent of the surplus of any agricultural commodity, or of any grade, size or quality thereof, and providing for the regulation and disposition of such surplus.

(ii) Provisions for limiting the total quantity of any agricultural product, or of any grade or grades, size or sizes, or quality or portions or combinations thereof, which may be marketed during any specified period or periods. Such total quantity of any such commodity so regulated shall not be less than the quantity which the president shall find is reasonably necessary to supply the market demand of consumers for such commodity.

(iii) Provisions regulating to the period, or periods, during which any agricultural commodity, or any grade or grades, size or sizes or quality or portions or combinations of such commodity, may be marketed.

(iv) Provisions for the establishment of uniform grading, standards, and inspection of any agricultural commodity delivered by producers or other persons to handlers, processors, distributors or others engaging in the handling thereof, and for the establishment of grading or standards of quality, condition, size, maturity or pack for any agricultural commodity, and the inspection and grading of such commodity in accordance with such grading or standards so established; and for provisions that no producer, handler, processor or distributor of any agricultural commodity for which grading or standards are so established may, except as otherwise provided in such marketing agreement or order, sell, offer for sale, process, distribute or otherwise handle any such commodity whether produced within or without this state, not meeting and complying with such established grading or standards. For the purposes of this section, the federal-state inspection service shall perform all inspections made necessary by such provisions.

(v) Provisions for the establishment of research programs designed to benefit a specified commodity or New York agriculture in general.

(vi) Provisions for the president to retain money collected under any marketing order issued pursuant to this section to defray the costs and expenses in the administration thereof.

(vii) Such other provisions as may be necessary to effectuate the declared policies of this section.

(viii) Provisions to establish marketing promotion and research programs for aquatic products which may include subparagraphs (i) through (vii) of this paragraph.

(e) The president, seeking the advice and the consent of the advisory board, may temporarily suspend the operation of an effective marketing order for a continuing period of not longer than one growing and marketing season, if the purposes of this section are deemed unnecessary during such season.

(f) In carrying out the purposes of this section, the president, in consultation with the commissioner and consulting with and seeking the advice and consent of the advisory board, shall take into consideration any and all facts available to him or her with respect to the following economic factors:

(i) The quantity of such agricultural commodity available for distribution.

(ii) The quantity of such agricultural commodity normally required by consumers.

(iii) The cost of producing such agricultural commodity.

(iv) The purchasing power of consumers.

(v) The level of prices of commodities, services and sections which the farmers commonly buy.

(vi) The level of prices of other commodities which compete with or are utilized as substitutes for such agricultural commodity.

(g) The execution of such marketing agreements shall in no manner affect the issuance, administration or enforcement of any marketing order provided for in this section. The president, in consultation with the commissioner, may issue such marketing order without executing a marketing agreement or may execute a marketing agreement without issuing a marketing order covering the same commodity. The president, in his or her discretion, in consultation with the commissioner may hold a concurrent hearing upon a proposed marketing agreement and a proposed marketing order in the manner provided for giving due notice and opportunity for hearing for a marketing order as provided in this section.

(h) Prior to the issuance, amendment or termination of any marketing order, the president may require the applicants for such issuance, amendment or termination to deposit with him or her such amount as he or she may deem necessary to defray the expenses of preparing and making effective amending or terminating a marketing order. Such funds shall be received, deposited and disbursed by the president in the same manner as other fees received by him or her under this section and, in the event the application for adoption, amendment or termination of a marketing order is approved in a referendum, the president shall reimburse any such applicant in the amount of any such deposit from any unexpended monies collected under the marketing order affected by such referendum.

(i) Any moneys collected by the president pursuant to this section shall not be deemed state or

corporation funds and shall be deposited in a bank or other depository of the corporation, approved by the president, allocated to each marketing order under which they are collected, and shall be disbursed by the president only for the necessary expenses incurred by the president with respect to each such separate marketing order, all in accordance with the rules and regulations of the president. All such expenditures shall be subject to audits by the state comptroller. Any moneys remaining in such fund allocable to any particular commodity affected by a marketing order may, in the discretion of the president, be refunded at the close of any marketing season upon a pro-rata basis to all persons from whom assessments therefor were collected or, whenever the president finds that such moneys may be necessary to defray the cost of operating such marketing order in a succeeding marketing season, he or she may carry over all or any portion of such moneys into the next such succeeding season. Upon the termination by the president of any marketing order, all moneys remaining and not required by the president to defray the expenses of operating such marketing order, shall be refunded by the president upon a pro-rata basis to all persons from whom assessments therefor were collected; provided, however, that if the president finds that the amounts so refundable are so small as to make impracticable the computation and refunding of such refunds, the president may use such moneys to defray the expenses incurred by him or her in the formulation, issuance, administration or enforcement of any subsequent marketing order for such commodity.

(j) Advisory board. (i) Any marketing order issued pursuant to this section shall provide for the establishment of an advisory board, to consist of not less than five members nor more than nine members, to advise the president in the administration of such marketing order in accordance with its terms and provisions. The president shall administer and enforce any such order while it is in effect, consulting with the advisory board and seeking its advice and consent. The members of said board shall be appointed by the commissioner from nominations received from the commodity group for which the marketing order is established. Nominating procedure, qualification, representation and size of the advisory board shall be prescribed in each marketing order for which such board is appointed. Each advisory board shall be composed of such producers and handlers or processors as are directly affected by the marketing order in such proportion of representation as the order shall prescribe. The commissioner may appoint one person who is neither a producer, processor or other handler to represent the department of agriculture and markets, the corporation, or the public generally.

(ii) No member of an advisory board shall receive a salary, but each shall be entitled to his or her actual expenses incurred while engaged in performing his or her duties herein authorized.

(iii) The duties and responsibilities of each advisory board shall be prescribed by the president, in consultation with the commissioner, and he or she shall specifically delegate to the advisory board, by inclusion in the marketing order, the following duties and responsibilities:

(A) The recommendation to the president of administrative rules and regulations relating to the marketing order.

(B) Recommending to the president such amendments to the marketing order as deemed advisable.

(C) The preparation and submission to the commissioner, in consultation with the president, of the estimated budget required for the proper operation of the marketing order.

(D) Recommending to the president methods for assessing members of the industry and methods for collecting the necessary funds.

(E) Assisting the president in the collection and assembling of information and data necessary to the proper administration of the order.

(F) The performance of such other duties in connection with the marketing order as the president shall designate.

4. Rules and regulations; enforcement. The president, with the advice and consent of the advisory board, may make and promulgate such rules and regulations as may be necessary to effectuate the provisions and intent of this section and to enforce the provision of any marketing agreement or order, all of which shall have the force and effect of law.

The president, in consultation with the commissioner may institute such action at law or in equity as may appear necessary to enforce compliance with any provision of this section, or any rule or regulation, marketing agreement or order, committed to his or her administration, and in addition 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 may be made to the supreme court in any district or county as provided in the civil practice law and rules, or to the supreme court in the third judicial district.

5. Cooperation by the department. The president of the corporation may request and receive, within ninety days of such request, from the department such assistance, information and cooperation as may be necessary for the corporation to provide services with respect to the administration of the procedures set forth for the issuance, termination or amendment of any agricultural, commodities or aquatic order and/or the administration of any such order. The corporation shall retain an amount equal to the expenses incurred by the corporation in performing its duties pursuant to this section and reimburse the department an amount equal to the expenses incurred by the department in supplying such services, subsequent to submission and audit of a voucher therefor. Such reimbursement shall not exceed the total amount of funds collected by the corporation pursuant to this section less the reasonable expenses incurred by the corporation in performing its duties pursuant to this section.

6. Indemnification. The state shall defend, indemnify and hold harmless the corporation, its directors, officers, and employees, from and against any and all claims, demands, causes of action, damages, costs and expenses whatsoever arising directly or indirectly from, or relating to, the administration of any agricultural, commodities or aquatic promotion order issued or administered pursuant to this section. In connection with the foregoing, the corporation shall give the state (a) prompt written notice of any action, claim or threat of suit, (b) the opportunity to take over, settle or defend such action, claim or suit at the state's sole expense, and (c) assistance in the defense of any such action at the expense of the state.

7. Contractual provisions. The corporation may contract for services with respect to the implementation of this section in accordance with the corporation's policies, procedures and guidelines. Notwithstanding section 2879 of the public authorities law or any other law to the contrary, any such contract may be procured by the corporation on a sole-source basis, and shall not be subject to competitive bid or competitive request for proposal requirements.