

CHAPTER 96

AGRICULTURAL MARKETING ACT

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96.01 Agricultural marketing act; definitions. As used in this section:

(1) "Marketing order" means an order issued by the secretary of agriculture, trade and consumer protection under this chapter.

(2) "Agricultural commodity" means any agricultural, horticultural (excepting floricultural), viticultural, vegetable, poultry, and livestock products produced in this state, including milk and milk products, bees and honey, or any class, variety or utilization thereof, either in their natural state or as processed by a producer for the purpose of marketing such product or by a processor, but not including timber and wood products.

(3) "Producer" means any person engaged in the business of producing or causing to be produced for market in commercial quantities any agricultural commodity.

(4) "Handler" means any person engaged within this state in the business of distributing or placing in the channels of trade or commerce, an agricultural commodity, or any person engaged as a processor in the business of processing an agricultural commodity.

(5) "Affected producer or handler" means any producer or handler of an affected commodity who would be regulated by the provisions of a proposed marketing order other than by the provisions authorized under s. 96.16 (3).

(6) "Affected commodity" means any agricultural commodity for which the secretary has established a list of producers or handlers pursuant to this chapter.

History: 1977 c. 29 s. 1650m (2).

96.02 Policy. It is declared to be the policy of this state to promote orderly and efficient marketing of agricultural commodities and to prevent economic waste of the agricultural wealth

of this state. Unfair methods of competition, lack of uniform grading and classification of agricultural commodities, and the inability of individual producers to obtain present markets or to develop new or larger markets for Wisconsin agricultural commodities result in disorderly marketing of such commodities. As a result agricultural producers are prevented from receiving a fair return for the products which they market. Such conditions jeopardize the continued production of an adequate food supply for this and other states, and may result in unemployment with its attendant burdens on the citizens of this state. The production, processing and marketing of agricultural commodities within this state is hereby declared to be affected with a public interest and this chapter is enacted for the purpose of protecting the health, peace, safety and general welfare of the people of this state.

96.03 Authority of secretary. The secretary shall administer and enforce this chapter. In order to effectuate the declared purposes of this chapter, the secretary may issue, administer and enforce marketing orders under this chapter regulating producer marketing or handling of agricultural commodities within this state.

96.04 Marketing order. (1) Whenever the secretary has reason to believe that the issuance of a marketing order or amendments to an existing marketing order will tend to effectuate the declared policy of this chapter with respect to any agricultural commodity, he shall, either upon his own motion or upon petition signed by 5% or 100 of the producers or handlers of such agricultural commodity, whichever is less, give due notice of and an opportunity for a public hearing upon a proposed marketing order or such amendments to such existing marketing

order. Prior to the issuance of a notice of public hearing on any proposed marketing order, the secretary shall establish a list of producers or handlers of such agricultural commodity or make any such existing list current. The secretary shall publish a notice to producers or handlers of the commodity to be affected, requiring them to file with the secretary a report showing the producer's or handler's name, mailing address and the yearly average quantity of such commodity produced or handled by him in the 5 years preceding the date of the notice or in such lesser period as the producer or handler has produced or handled the commodity in question. The notice shall be published as a class 1 notice, under ch. 985, within the affected areas as the secretary prescribes and shall be mailed to all producers or handlers on record with the secretary. All reports shall be filed with the secretary within 20 days from the date of publication of the notice or within 30 days after the mailing of the notice to producers or handlers, whichever is later. The secretary shall keep such lists at all times as current as possible and may require information from affected producers or handlers at various times in accordance with rules prescribed by the secretary. Such producer or handler lists shall be final and conclusive in making determinations relative to the assent of producers or handlers upon the issuance, amendment or termination of a marketing order and in elections under this chapter. The secretary shall then notify affected producers or handlers so listed by mail that the public hearing affording opportunity for them to be heard upon the proposed issuance, amendment or termination of the marketing order will be held at the time and place stated in the notice. Such notice of the hearing shall be given not less than 10 days nor more than 60 days prior to the hearing.

(2) If any proposed marketing order affects milk, apples or cherries, the secretary may, in lieu of other provisions of this section, establish a list of producers from records kept by the department or records that may be available from any other reliable source. Data relating to the amount of milk, apples or cherries produced shall not be required. No marketing order for milk, apples or cherries shall be issued unless the secretary finds that the list so established represents at least a majority of the affected producers. The list of producers established by the department shall be final and conclusive in determining whether a marketing order has been approved by referendum or written assent.

History: 1971 c. 31, 268

Marketing orders discussed 64 Atty Gen 198

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96.05 Public hearing. The public hearing shall be conducted in accordance with s. 227.022.

96.06 Decisions. (1) The secretary shall make and publish findings upon every material point controverted at the hearing and required by this chapter, and upon such other matters and things as he may deem fitting and proper. He shall also issue a decision within 45 days after the close of the hearing based upon his findings and shall cause copies of the findings and recommended decision to be delivered or mailed to all parties of record appearing at the hearing or their attorneys of record. The decision shall contain the text in full of any order or amendment or termination of existing order, and may deny or approve the proposal in its entirety or it may recommend a marketing order containing other or different terms or conditions from those contained in the proposal, but such decision shall be substantially within the purview of the notice of hearing and shall be supported by evidence taken at the hearing or by documents of which the secretary is authorized to take official notice. The secretary shall not approve the issuance, amendment or termination of any marketing order unless he shall find with respect thereto:

(a) That the proposed issuance, amendment or termination thereof is reasonably calculated to attain the objectives sought in such marketing order;

(b) That the proposed issuance, amendment or termination is in conformity with this chapter, and within the applicable limitations and restrictions set forth therein will tend to effectuate the declared purposes and policies of this chapter;

(c) That the interests of consumers of such commodity are protected in that the powers of this chapter are being exercised only to the extent necessary to attain such objectives.

(2) The secretary shall deliver or mail copies of the decision to the same parties to whom copies of the findings are required to be sent. If the final decision denies the proposal in its entirety, no further action shall be taken by the secretary.

96.07 Handlers and producers assent; order; referendum. (1) (a) No marketing order or major amendment thereto, directly affecting handlers shall become effective until the secretary finds that such marketing order or amendment thereto has been assented to in writing by handlers who handle not less than 65% of the volume of the agricultural commodity regulated thereby which is processed or

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distributed within the area defined in such marketing order or amendment thereto, or that such marketing order or amendment thereto has been assented to in writing by not less than 65% of the number of handlers engaged in the marketing activity or activities regulated by such marketing order, but any marketing order or major amendment thereto directly affecting processors engaged in canning fresh fruits or vegetables or canning or packing dried fruits shall not become effective until the secretary finds that such marketing order or amendment thereto has been assented to in writing by processors who processed not less than 65% of the volume of such agricultural commodity which is processed within the area defined in such marketing order or amendment thereto and by 65% of the number of such processors engaged in the marketing activity or activities regulated by such marketing order or amendment thereto.

(b) No marketing order or major amendment thereto, directly affecting producers or producer marketing shall become effective until the secretary finds one or more of the following:

1. That such marketing order or amendment thereto has been assented to in writing by not less than 65% of the producers who are engaged, within the area specified in such marketing order or amendment thereto, in the production for market or engaged in such producer marketing, of not less than 51% of the agricultural commodity specified therein in commercial quantities, or

2. That such marketing order or amendment thereto has been assented to in writing by producers who produce not less than 65% of the volume of such agricultural commodity and by 51% of the total number of producers so engaged, or

3. That such marketing order or amendment thereto has been approved by producers of record with the department in a referendum conducted among producers directly affected by such order. The producers directly affected shall be deemed to have approved a proposed order if 51% or more by number reply to the referendum within the time limited by the secretary and if, of those replying, two-thirds or more by number who produce 51% or more of the volume of the commodity in the area approve the proposed order, or if 51% of the affected producers who produce 51% of the volume of said commodity in the area approve the proposed order; volume shall be determined on the basis of the quantity of the commodity produced in the next preceding marketing season.

4. That with respect to a marketing order affecting producers of milk, apples or cherries the marketing order is approved by not less than 51% of the producers of those voting in a

referendum, provided that 50% of the producers on the established list vote in such referendum. In determining whether a marketing order has been approved by producers the secretary shall consider the approval or disapproval of a cooperative association that purchases milk, apples or cherries from its members as the approval or disapproval of such members, providing the cooperative has first notified its members in writing of its intention to cast a bloc vote. Such notice shall inform the producer of his right to cast his vote individually by requesting a ballot from the department. In like manner a cooperative association that markets milk, apples or cherries as agent of its members may cast a bloc vote for its members who are not member patrons of another dairy, apple or cherry cooperative. At least 30 days prior to the commencement of a referendum a cooperative that intends to cast a bloc vote for its members shall file with the department a list of its members for whom it is eligible to vote, together with a statement that it has complied with the notice requirements of this subdivision.

5. That with respect to a marketing order that affects producers of milk, apples or cherries the marketing order has been assented to in writing by not less than 51% of the producers as determined from the list established by the department. The bloc voting provisions of subd. 4 apply to this subdivision, but a member of a cooperative may notify the department that he approves or disapproves of the order and his name shall be deleted from the written vote of a cooperative.

6. That a marketing order affecting producers of milk, which provides solely for the establishment of advertising and sales promotion plans as provided in s. 96.20 (3), is approved by not less than 51% of the producers voting in a referendum. The ballots in a referendum conducted under this subdivision shall be post-marked no later than 10 days after mailing of the ballots to the producers. Ballots received after the period provided in this subdivision shall not be counted. The bloc voting provisions of subd. 4 shall not apply to this subdivision.

7. Section 96.08 applies to marketing orders affecting producers of milk, apples or cherries, but provisions relating to volume of milk, apples or cherries produced by those voting do not apply.

(bm) Regardless of whether it directly affects handlers or producers, no marketing order or major amendment thereto covering any vegetable crop contracted to be grown for canning shall become effective until the secretary finds that such marketing order or amendment thereto has been assented to in writing by both

handlers and producers in the same manner as if each were directly affected.

(c) In finding whether such marketing order or major amendment thereto is assented to in writing or approved or favored by producers pursuant to this chapter, the secretary shall consider the approval of any agricultural cooperative marketing association, which is authorized by its members so to assent, as being the assent, approval or favor of the producers who are members of such agricultural cooperative marketing association, provided that any member of a cooperative may elect to cast his vote individually if he so notifies the cooperative and the secretary in writing.

(d) 1. At each public hearing upon a marketing order or a major amendment thereto, the secretary shall receive testimony or evidence relative to the period of time which may be necessarily required for the filing, checking, and tabulating of written assents prescribed in this section. At the conclusion of each such hearing the secretary shall make a finding, based upon the evidence and testimony so received, with respect to the period of time which may be reasonably and necessarily required for such filing, checking and tabulating. On the basis of such finding the secretary shall fix and limit the period during which such assents may be received by the secretary and such period shall be announced by the secretary at the time of mailing of assent forms to producers and handlers affected, but if the secretary finds that an extension of such period is reasonably warranted he may extend such period for receiving assents.

2. At a public hearing held to consider a proposed marketing order or major amendment to an existing marketing order which directly affects producers or producer marketing, the secretary shall also receive testimony or evidence from which he can determine whether the assent, approval or favor of such producers shall be determined by written assents or by referendum. Upon the conclusion of any hearing which involves a marketing order or a major amendment thereto directly affecting producers or producer marketing, the secretary shall make a finding, based upon testimony and evidence received, whether producer assent, approval or favor shall be determined by written assents or by referendum.

(2) Subject to the provisions, restrictions and limitations imposed herein, the secretary may issue marketing orders regulating producer marketing, the processing, distributing or handling in any manner of agricultural commodities by any and all persons engaged in such producer marketing, processing, distributing or handling

of such agricultural commodities within this state.

History: 1971 c. 31, 268; 1975 c. 53.

96.08 Termination of orders. Marketing orders may be terminated in the same manner provided for their issuance, except that the required assent shall be 51% or more by number of those voting, representing 51% or more by volume of the affected commodity produced or handled by those voting; but the secretary shall suspend or terminate any marketing order whenever he finds, after public hearing duly noticed and held in accordance with this chapter, that such marketing order is contrary to or does not tend to effectuate the declared purposes of this chapter. Every marketing order shall terminate 3 years from the date of its issuance or last assent. Within 6 months of the expiration of such 3-year period the secretary shall conduct a referendum as provided for in s. 96.07 to determine whether such marketing order shall remain in effect.

96.09 Public record. Each referendum shall be conducted by secret ballot, and the ballots and results shall be a matter of public record and open to inspection.

96.10 Marketing agreements. In order to effectuate the declared policy of this chapter, the secretary, after due notice and opportunity for hearing, may enter into marketing agreements with distributors, producers and others engaged in the handling of any agricultural commodity, regulating the preparation for marketing and handling of such agricultural commodity. Such marketing agreements shall be binding upon the signatories thereto exclusively. The purposes and provisions of this chapter relating to marketing orders shall be applicable to marketing agreements, except for the provisions relating to establishing a list of producers or handlers and conducting a referendum.

96.11 Reports. The secretary may require handlers and producers of agricultural commodities to file such information and reports as may be reasonably necessary to assist him in carrying out his functions under this chapter.

96.12 Rules. The secretary may issue such rules as may be necessary for each order to facilitate his administration of this chapter, including, but not limited to, rules relative to the collection of assessments and expenditures of funds.

96.13 Definition of area. A marketing order shall define the area of the state to be covered by

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the order, which may be all or any portion of the state. The order may provide that its provisions apply with respect to the affected commodity marketed or sold within such area regardless of where produced.

96.14 Marketing order councils. (1) SELECTION. Every marketing order issued pursuant to this chapter shall provide for the establishment of a council to assist the secretary in the administration of the marketing order. If the marketing order affects directly only producers of a particular commodity, the members of the council shall be producers. If the marketing order affects directly only handlers of a particular commodity, the members of the council shall be handlers. If the marketing order affects directly both producers and handlers of a particular commodity or covers any vegetable crop contracted to be grown for canning, such council shall be composed of both producers and handlers. Each marketing order shall prescribe the number and term of office of members of the council. Persons who will serve on the council if the marketing order is assented to shall be selected by the affected producers and handlers by secret ballot at the time of the referendum provided for in s. 96.07. Notice of the secretary's decision shall contain a call for nominations and limit the time within which they can be filed. Nominations shall be signed by at least 5 persons qualified to vote for such candidates.

(2) DUTIES. The duties of the council shall be limited to the following:

(a) To recommend to the secretary administrative rules relating to the marketing order.

(b) To receive and report to the secretary complaints of violations of the marketing order.

(c) To recommend to the secretary amendments to the marketing order.

(d) To advise the secretary in the assessment of members of the industry and in the collection of funds to cover expenses incurred by the secretary in the administration of the marketing order.

(e) To advise the secretary in the collection of such information and data as he deems necessary to the proper administration of this chapter.

(f) To advise the secretary in the administration of this chapter.

(3) VACANCIES. The secretary shall appoint affected producers or handlers to fill any vacancies on the council.

96.15 Assessments. Each marketing order issued under this chapter shall provide for the levying and collection of assessments in sufficient amounts to defray the necessary expenses

incurred by the secretary in formulating, issuing, administering and enforcing the order. Each marketing order shall indicate the maximum rate of any such assessment which may be collected and the proportion, if any, payable by each producer and handler directly affected by such marketing order. The council elected to advise the secretary in administering each marketing order shall recommend to the secretary budgets to cover necessary expenses and the assessment rate necessary to provide sufficient funds. If the secretary finds that each such budget and assessment rate are proper and equitable and will provide sufficient moneys to defray the necessary expenses, he may provide such budget and rate of assessment and order that each producer and handler so assessed shall pay to the secretary, at such times and in such instalments as the secretary prescribes, an assessment based upon the units in which such agricultural commodity is marketed or upon any other uniform basis which the secretary determines to be reasonable and equitable, but in amounts which in the case of producers, in addition to inspection fees, will not exceed 2% of the gross dollar volume of sales of the affected commodity by all such producers regulated by such marketing order, or in amounts which in the case of handlers will not exceed 2% of the gross dollar volume of purchases of the commodity affected by the marketing order from producers or of the gross dollar volume of sales of the commodity affected by the marketing order and handled by all distributors or other handlers regulated by such marketing order during the marketing seasons during which such marketing order is effective. Such assessments shall be in addition to fees which are established by the department to cover actual cost of inspection.

96.16 Collection. To collect such assessments each order may require:

(1) Payment of producer assessment before the affected units are shipped off the farm, or payment of assessment at different or later times and in such event the order may require any person subject to the assessment to give adequate assurance or security for its payment.

(2) Every affected producer or handler subject to assessment under such order to deposit with the secretary in advance an amount based on the estimated number of affected units upon which such person will be subject to such assessment in any one year during which such marketing order is in force, or upon any other basis which the secretary determines to be reasonable and equitable and specifies in such order, but in no event shall such deposit exceed 25% of the

estimated total annual assessment payable by such person. At the close of such marketing year the sum so deposited shall be adjusted to the total of such assessments payable by such person.

(3) Handlers receiving the affected commodity from the producer, including warehousemen, to collect producer assessments from producers whose production they handle and remit the same to the secretary. Lending agencies for commodity credit corporation loans to producers shall be deemed handlers for the purpose of this subsection. No affected units shall be transported, carried, shipped, sold, stored or otherwise handled or disposed of until every due and payable assessment provided for by this section has been paid and a receipt issued, but no liability under this section shall attach to common carriers in the regular course of their business.

96.17 Refunds. Moneys collected by the secretary pursuant to any marketing order from any assessment for marketing purposes or as an advance deposit thereon shall be used by the secretary only for the purpose of paying for the costs or expenses arising in connection with carrying out the purposes and provisions of such agreement or order. Upon termination of any marketing order, any and all moneys remaining with the secretary and not required to defray expenses or repay obligations incurred shall be returned to the affected producers or handlers in proportion to the assessments paid by each in the 2-year period preceding the date of the termination order.

96.18 Nonpayment. Any due and payable assessment levied under this chapter and every sum due under any marketing order in a specified amount shall constitute a personal debt of every person so assessed or who otherwise owes the same and the same shall be due and payable to the secretary when payment is called for by the secretary. In the event any person fails to pay the full amount of such assessment or such other sum on or before the due date, the secretary may add to such unpaid assessment or sum an amount not exceeding 10% of the same to defray the cost of enforcing the collection of the same. In the event of failure of such person or persons to pay any such due and payable assessment or sum, the secretary may bring a civil action against such person in a court of competent jurisdiction for the collection thereof, together with the above specified 10% thereon, and such action shall be tried and judgment rendered as in any other cause of action for debt due and payable.

96.19 Application of funds. All moneys which are collected or otherwise received pursuant to each marketing order created under this chapter shall be used by the secretary solely for the administration of the marketing order concerned in accordance with s. 20.115 (3) (i) and shall not be used for any other marketing order or to influence either state or federal legislation.

96.20 Marketing order provisions. Subject to the restrictions and limitations set forth in this chapter, any marketing order issued by the secretary pursuant to this chapter may contain any or all of the following provisions for regulating or providing methods for regulating producer marketing or handling, or any of the operations of distributing by handlers of any agricultural commodity within this state:

(1) Provisions establishing or providing for establishing, with respect to any agricultural commodity, either as delivered by producers to handlers, or as handled or marketed by producers or handlers: grading standards, standards of quality, condition, size or maturity, which standards may include minimum standards, provided the standards so established shall not be established below any minimum standards prescribed by law for such commodity; uniform inspection and grading of such commodity in accordance with the standards so established; and provisions prohibiting the sale of commodities specified in the order as undergrade in regular trade channels, whether or not produced in the area affected by the marketing order.

(2) Provisions relating to the prohibition of unfair trade practices. In addition to the unfair trade practices now prohibited by law, applicable to the distributing or handling of agricultural commodities within this state, the secretary may include in any marketing order issued under this chapter provisions designed to correct any trade practice affecting the distributing or handling of any agricultural commodity within this state which the secretary finds is unfair and detrimental to the effectuation of the declared purposes of this chapter.

(3) Provisions for the establishment of plans for advertising and sales promotion to maintain present markets or to create new or larger markets for agricultural commodities grown in this state. The secretary may prepare, issue, administer and enforce plans for promoting the sale of any agricultural commodity. Any such plan shall be directed toward increasing the sale of such commodity without reference to a particular brand or trade name. No advertising or sales promotion program shall be issued by the secretary which shall make use of false or unwarranted claims on behalf of any such product

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or disparage the quality, value, sale or use of any other agricultural commodity. The costs of such program shall be defrayed by the assessments provided for herein.

(4) Provisions for carrying on applied research studies in the production, processing or distribution of any agricultural commodity and for the expenditure of moneys for such purposes.

(5) Provisions establishing or providing authority for establishing for any agricultural commodity, either as such commodity is produced or is delivered by producers to handlers, or as handled or otherwise prepared for market, or as marketed by producers or handlers, an educational program designed to acquaint producers, handlers or other interested persons with quality improvement, including sanitation practices, procedures or methods as applied to such commodity.

(6) Provisions for the adoption of a uniform brand name or device to identify affected commodities of a specified quality produced or handled under a marketing order; but no marketing order provision issued under this subsection shall make the use of such brand name or device by affected handlers or producers compulsory.

(7) Provisions establishing procedures to be followed where the secretary finds that the imposition of the order as to any individual producer would result in undue hardship.

96.21 Milk stabilization provisions. (1)

POLICY. It is the intent of the legislature to protect the health and welfare of the people of this state; to promote an adequate supply of milk for dairy product manufacture by assuring orderly marketing at reasonable prices for producers; and to provide a method whereby producers of milk for manufacturing purposes may by voluntary action initiate a statewide marketing order which, on a complementary basis, would enable pricing stability for milk not regulated as to price under federal marketing orders.

(2) **DEFINITIONS.** Under this section "milk" means milk produced and sold for manufacturing dairy products, other than Grade A milk subject to federal price regulations under 7 USC 601-674, as amended.

(3) **PROVISIONS.** (a) Upon petition by 5% or 100, whichever is less, of the milk producers in the marketing area proposed in the petition to be affected by a marketing order under this section and after notice and hearing under ss. 96.04 and 96.05, the secretary may issue a marketing order establishing minimum prices at which milk may be purchased from milk producers in the affected area. Different minimum prices may be

established for various marketing areas in the state.

(b) In establishing minimum prices for milk purchased from producers the following economic factors shall be taken into consideration:

1. The differing methods by which milk is produced and transported;

2. Reasonable and necessary costs of production and transportation, including a reasonable return on investment;

3. Quantities of dairy products consumed; and

4. Other economic factors which substantially and directly affect supply and demand of milk and dairy products.

(c) Section 96.07 (1) (a) does not apply to marketing orders issued under this section.

History: 1973 c. 311.

Marketing orders discussed. 64 Atty. Gen. 198.

96.22 Restraint of trade. In any civil or criminal action or proceeding for violation of any rule of statutory or common law against monopolies or combinations in restraint of trade, proof that the act complained of was done in compliance with this chapter or a marketing order issued under this chapter and in furtherance of the purposes and provisions of this chapter shall be a complete defense to such action or proceeding.

96.23 Price fixing. Nothing contained in this chapter shall permit fixing of prices not otherwise permitted by law or any limitation on production, and no marketing order or agreement, or any rule thereunder, shall contain any such provision, except as permitted under s. 96.21.

History: 1973 c. 311.

96.24 Enforcement. Any person who violates this chapter or any order issued pursuant thereto may be fined not more than \$100 or imprisoned not more than 30 days. In the event of violation or threatened violation of this chapter or of any marketing order duly issued or entered into pursuant to this chapter, the secretary shall be entitled to an injunction to prevent further violation and to a decree of specific performance of such order, and to a temporary restraining order; and upon trial of such action, if judgment is in favor of the plaintiff, the court shall permanently enjoin the defendant from further violation.

History: 1973 c. 311.