

1 NYCRR PART 201

APPLE MARKETING ORDER

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Section 201.1 Definitions.

As used in this marketing order, the following terms shall have the following meanings:

(a) *Commissioner* means the Commissioner of Agriculture and Markets of the State of New York, or any officer or employee of the Department of Agriculture and Markets to whom authority may be delegated to act pursuant to section 17 of the Agriculture and Markets Law.

(b) *Department* means the Department of Agriculture and Markets of the State of New York.

(c) *Person* means any individual, firm, corporation, partnership, company, or unincorporated association.

(d) *Apples* means all apples produced in New York State for the purpose of sale.

(e) *Grower* means any person who produces or causes to be produced apples as herein defined.

(f) *Processor* means any person, firm, corporation, partnership, company, or unincorporated association which performs any of the functions or acts of processing as herein defined.

(g) *Processing* and *process* are synonymous terms and mean the operations of receiving, grading, packing, canning, freezing, dehydrating, preserving, grinding, crushing or in any other way preserving or changing the form of apples, as herein defined, for marketing in any form other than for fresh consumption.

(h) *Storage* means any building, structure, or place where apples are stored in cold, refrigerated or controlled atmosphere storage.

(i) *Storage operator* means any person who or which operates a cold, refrigerated or controlled atmosphere storage in which apples are stored.

(j) *Bushel* means a unit of 36 to 44 pounds of apples sold for fresh market use in boxes, cartons, baskets or other containers. When applied to bulk apples for fresh sales, a bushel shall mean 40 pounds of apples.

(k) *Advisory board* means the advisory board established pursuant to the provisions of subparagraph (9) of section 294 (art. 25) of the Agriculture and Markets Law and sections under heading "Apple Marketing Order Advisory Board" (§ 201.3 *et seq.*) of this order.

(l) *Declaration of harvest crop* means a statement, the form of which shall be prescribed by the commissioner, upon which the owner, lessee or other operator of an orchard shall declare the number of bushels or pounds of apples harvested and the disposition of same to processors and/or cold storage, and/or other sale or shipments as provided for in section 201.9 of this order.

(m) *New York crop reporting service* means the crop reporting service of the Bureau of Statistics of the New York State Department of Agriculture and Markets.

(n) *Act* means article 25 of the Agriculture and Markets Law of the State of New York.

(o) *Marketing season* means the period beginning July 1 of any year and extending through June 30 of the following year.

(p) *District 1* shall mean the Champlain Valley District, consisting of the counties of Clinton, Essex, Franklin, Fulton, Hamilton, Saratoga, Warren and Washington.

(q) *District 2* shall mean the Eastern Hudson Valley District, consisting of the counties of Bronx, Columbia, Dutchess, Kings, Nassau, New York, Putnam, Queens, Rensselaer, Richmond, Suffolk and Westchester.

(r) *District 3* shall mean the Western Hudson Valley District, consisting of the counties of Albany, Delaware, Greene, Montgomery, Orange, Otsego, Rockland, Schenectady, Schoharie, Sullivan and Ulster.

(s) *District 4* shall mean the Central District, consisting of the counties of Broome, Cayuga, Chenango, Cortland, Herkimer, Jefferson, Lewis, Madison, Oneida, Onondaga, Oswego, St. Lawrence, Tompkins and Tioga.

(t) *District 5* shall mean the Lake Country District, consisting of the counties of Chemung, Ontario, Schuyler, Seneca, Steuben, Wayne and Yates, and all portions of the counties of Alleghany, Livingston and Monroe situated east of the Genesee River.

(u) *District 6* shall mean the Niagara Frontier District, consisting of the counties of Cattaraugus, Chautauqua, Erie, Genesee, Niagara, Orleans and Wyoming, and those portions of the counties of Alleghany, Livingston and Monroe situated west of the Genesee River.

(v) *Direct market sales* means retail sale of a grower's own produced apples directly to a consumer.

Section 201.2 Marketing order area.

The area affected by this order shall be the State of New York.

Section 201.3 Establishment and members of advisory board.

(a) The commissioner shall appoint an advisory board consisting of nine members to advise and assist him in the administration of this marketing order. Six members of the board shall be growers; one of the members shall be a processor, one of the members shall be a storage operator who shall be neither grower nor processor; and one member shall be a representative of the department or the public generally and shall be neither grower nor processor, nor cold storage operator nor other handler.

(b) Grower, processor and storage operator members of the advisory board shall be selected and appointed by the commissioner from nominations as provided in section 201.4.

(c) To fill any vacancy caused by the failure of any person selected and appointed as a board member to qualify, or in the event of the death, removal, resignation or disqualification of any member, a successor for his unexpired term shall be selected by the commissioner from previously unselected nominations made in the manner specified in section 201.4. In the event additional nominations are needed, the commissioner shall obtain such nominations in the same manner as provided in section 201.4 for regular nominations.

Section 201.4 Nominations for advisory board membership.

[Agriculture and Markets Law, § 294(2)]

(a)

(1) The commissioner shall cause to be held a meeting or meetings of New York State apple growers, at which time the growers in attendance shall nominate a total of 12 growers to be eligible for appointment as members of the advisory board. Of the 12 nominees, six shall be

growers whose farms are located in District 1, 2 or 3 and six shall be growers whose farms are located in District 4, 5 or 6.

(2) The commissioner shall appoint three advisory board members from nominations made from each of the said areas.

(3) The first such grower meeting or meetings shall be called by the commissioner not later than July 1, 1959. The second meeting or meetings shall be between January 1 and June 1, 1961. Beginning in 1963, biennial meetings shall be called by the commissioner between January 1 and June 1 for as long as this marketing order is in effect.

(b) The Associated New York State Food Processors, Inc., or successor organization, by whatever name known, shall nominate two members to be eligible for appointment as processor members of the advisory board.

(c) The New York State Association of Refrigerated Warehouses shall nominate two members to be eligible as storage operator members of the advisory board.

(d) The commissioner may appoint the representative of the department or the public generally in such manner as he may determine.

(e) Not more than one member shall be appointed from any single grower, processor or storage operation.

Section 201.5 Acceptance and terms of office.

[Agriculture and Markets Law, § 294(2)]

(a) Any person selected for appointment by the commissioner as an advisory board member shall qualify by filing a written acceptance with the commissioner within 15 days after being notified of such selection.

(b)

(1) Members shall serve at the pleasure of the commissioner for one term of two years; provided, however, that they shall continue to serve until their successors have been duly appointed and qualified; provided, further, that they shall be eligible for re-nomination and re-appointment when otherwise qualified; and provided, further, that initial nominations and appointments shall be effective upon qualification and for one full calendar year beginning on the next January 1 following the effective date of this order.

(2) In the event of the failure of growers, the Associated New York State Food Processors, Inc., or successor organization, by whatever name known, or the New York State Association of Refrigerated Warehouses to provide nominations as hereinbefore provided, the commissioner shall make the necessary appointments in such manner as he shall determine; providing, however, that of the six grower members, no more than three shall be growers whose farms are

located in District 4, 5 or 6 and no more than three shall be growers whose farms are located in District 1, 2 or 3.

Section 201.6 Duties and responsibilities of the advisory board.

It shall be the duty of the advisory board to advise and assist the commissioner in all matters pertaining to the operation of this marketing order, subject only to such limitations as may be prescribed in section 294 of the Agriculture and Markets Law. Such duties may specifically include any or all of the following:

- (a) the recommendation to the commissioner of administrative rules and regulations relating to the marketing order;
- (b) recommending to the commissioner such amendments to the marketing order as seem advisable;
- (c) the preparation and submission to the commissioner of the estimated budget required for the proper operation of the marketing order;
- (d) recommending to the commissioner methods for assessing members of the industry and methods for collecting the necessary funds;
- (e) assisting the commissioner 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 commissioner shall designate.

Section 201.7 Advertising, promotion and publicity of apples and apple products.

The commissioner is hereby authorized to contract with any person or persons, including the New York Apple Association, Inc. to carry on or cause to be carried on such advertising, promotion, and publicity programs as he may believe will create new markets for apples and/or apple products or maintain present markets therefor. For such purposes he may expend such monies, or any part thereof, as may be available to him pursuant to this order. No advertising, promotion or publicity programs shall be conducted with reference to any particular private brand or trade name and no such program shall disparage the quality, value, sale or use of any other agricultural commodity.

Section 201.8 Marketing and product research.

The commissioner is hereby authorized to contract with any person or persons, including the New York Apple Association, Inc., to carry on or cause to be carried on apple marketing and/or product research and to expend any available monies for such purpose.

Section 201.9 Information services.

(a) The commissioner is hereby authorized to contract with any person or persons, including the New York Apple Association, Inc., to provide for informational services designed to keep producers informed on apple crop, pack, storage holdings, marketing and product research, promotion, advertising and publicity programs and any other apple industry information deemed important to producers, and to expend such monies as may be available and required to obtain and disseminate such information.

(b) To facilitate factual and accurate informational services and to provide a basis for budget estimation and adjustment as required in section 201.10 of this order hereinafter specified during each marketing season not later than December 1st each apple grower shall file with the commissioner each year, on forms prescribed and supplied by him a declaration of harvested crop which shall declare the number of bushels or pounds of apples harvested and the disposition of same to processors and/or cold storage and/or other sales or shipments.

Section 201.10 Budget and assessment.

During each marketing season and not later than July 1st, the commissioner shall estimate a budget necessary for the administration and enforcement of this order and for carrying on duly authorized programs and activities including advertising, promotion and publicity, marketing and product research and informational services as hereinbefore provided. The commissioner shall announce rates of assessment to provide adequate funds to defray expenditures in the budget. The rate of assessment shall not exceed: eight cents per hundred pounds of apples delivered to juice or cider processing plants for processing into juice or cider or products thereof; eight cents per hundred pounds of apples purchased or accepted for all other processing; and sixteen cents per bushel or bushel weight equivalent of apples sold for fresh market use; provided, however, the maximum assessment for fresh apples sold for direct market sale shall be eight cents per bushel. It is further provided that none of the foregoing rates of assessment shall exceed the maximum rate authorized in paragraph 2(d) of section 294 of the act. The total amount of budgeted administrative cost shall not exceed five percent of the total budget.

Section 201.11 Collection of assessment.

(a) Each grower shall be responsible for payment of the proper assessment upon the apples which he produces and sells or delivers for sale.

(b) Each processor receiving and processing apples shall be responsible for the collection of any assessment fixed by the commissioner upon apples and liable for payment thereof as in this order provided.

(c) For each grower from whom a processor receives apples such processor shall deduct from monies owed to the grower the assessment on the marketable apples so received and report and remit to the Department the amount collected, in accordance with subdivision (g) of this section.

(d) Each storage operator receiving and storing his own apples or other apples shall be responsible for the collection of any assessment fixed by the commissioner and shall be liable for payment thereof as in this order provided.

(e) For each grower for whom storage operator sells or otherwise transfers apples from his cold storage, said storage operator shall deduct from monies owed to the grower the proper assessment on the bushels or bushel equivalent sold or otherwise transferred from storage or in the event storage operator is not the seller shall include charge for the proper assessment in billing grower for storage and other handling charges and shall make payment therefrom, except that in the case of apples put into cold storage for the account of a processor or sold to a processor, such processor shall be responsible for the collection and payment of the proper assessment.

(f) For all apples sold or otherwise marketed by the grower and not placed in storage in New York State and not sold or delivered to a processor in New York State each grower shall be liable and responsible for proper accounting and payment of the proper assessment except that in the case of apples sold or otherwise marketed through grower sales agents or grower sales cooperatives in New York State, such grower sales agents and grower sales cooperatives shall be liable and responsible for the collection, accounting and payment of the proper assessment as fixed by the commissioner.

(g) All growers, processors, grower sales cooperatives, grower sales agents, and storage operators shall make remittance and accounting of the proper assessment to the commissioner or his designated fiscal agent not later than the 15th of each of the months of November, February, May and August. Such quarterly remittance and accounting shall be inclusive of all sales of apples and/or removal of apples from storage through the end of the month just preceding the months herein designated.

Section 201.12 Disbursement of funds.

Disbursement of funds shall be made in the manner described in article 25 of the Agriculture and Markets Law and in the rules and regulations promulgated by the commissioner to effectuate the provisions and intent thereof, and in accordance with the provisions of this order.

Section 201.13 Termination and periodic referendum.

[Agriculture and Markets Law, § 294(2)]

(a) This marketing order may be terminated or suspended pursuant to the provisions of article 25 of the Agriculture and Markets Law and the rules and regulations promulgated by the commissioner pursuant thereto.

(b) At least once during each eight-year period that the order is in effect, the commissioner shall conduct a referendum of apple growers in the area affected to substantiate approval of the order, the first such eight-year period to commence July 1, 1973, and provided further, in the event a

petition to terminate or suspend the order is exercised as provided herein, a new eight-year period will begin, effective the first of July following the date of certification of approval of the order by the commission.

Section 201.14 Effective date.

This order shall take effect on the first day of July, 1959.

January 5, 2007