

## 1 NYCRR PART 202

### SOUR CHERRY MARKETING ORDER

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#### Section 202.1 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 has been or may be delegated to act in his stead.

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

(c) *Person* means any individual, partnership, corporation, cooperative association, or any other business unit.

(d) *Sour cherries* means all marketable sour cherries produced in New York State for the purpose of processing.

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

(f) *Processor* means any person, firm, cooperative association, corporation, partnership, company or other business unit which performs any of the functions of processing sour cherries as herein defined.

(g) *Process* and *processing* are synonymous terms and mean the operations of receiving, cleaning, grading, canning, freezing, preserving, brining, crushing, juicing, or otherwise preparing sour cherries as herein defined for marketing in any other form than for fresh consumption.

(h) *Sour cherry advisory committee* means the committee established pursuant to the provision of sections under heading "Sour Cherry Advisory Committee" (§ 202.3 *et seq.*) in this order.

(i) *Books* and *records* means any books, records, contracts, documents, memoranda, papers, correspondence or other written data pertaining to matters relating to this marketing order of any grower or processor directly affected by this marketing order.

(j) *Marketing season* means the period beginning April 1st of any year and extending through March 31st of the following year.

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

(l) *Marketable sour cherries* means all sour cherries sold to processor and accepted for processing.

(m) *Fiscal agent* means such trust company as may be designated by the commissioner.

(n) *Administration fund* means the monies received by the commissioner from assessments on sour cherries delivered by a grower to a processor as provided in sections 202.10-202.12 of this order.

## **Section 202.2 Marketing area.**

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

## **Section 202.3 Establishment and members of advisory committee.**

(a) The commissioner shall appoint a sour cherry advisory committee, consisting of nine members, to advise with him on the administration of this marketing order. Five members of the committee shall be growers, three of the members shall be processors, and one shall be a representative of consumers and shall be neither a processor nor a grower.

(b) Grower and processor members of the sour cherry advisory committee shall be selected by the commissioner from nominations as provided in section 202.4 of this Part.

(c) To fill any vacancy caused by the failure of any person selected as a committee member to qualify, or in the event of the death, removal, resignation or disqualification of any member, a successor for his unexpired term may be selected by the commissioner from previously unselected nominations made in the manner specified in section 202.4 of this Part.

#### **Section 202.4 Nominations for committee membership.**

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

(a)

(1) The commissioner shall cause to be held a meeting of New York State cherry growers, at which time the growers in attendance will nominate 16 growers to be eligible for appointment as members of the sour cherry advisory committee. Eight of said nominees shall be growers whose farms are located east of Rochester, and eight shall be growers whose farms are located west of Rochester.

(2) The next such grower meeting shall be called by the commissioner between January 1, 1974 and June 1, 1974 and, beginning in 1976, biennial meetings shall be held between January first and June first, for as long as this marketing order is in effect. In the event that additional nominations are needed, the commissioner may call a special grower meeting for that purpose.

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

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

#### **Section 202.5 Acceptance.**

Any person selected by the commissioner as a committee member shall qualify by filing a written acceptance with the commissioner within 15 days after being notified of such selection.

#### **Section 202.6 Duties and functions of the committee.**

It shall be the function of the committee to advise with the commissioner on all matters having to do with the promotion, advertising, publicity, marketing research and informational services for sour cherries under this order. Committee members shall serve during the commissioner's pleasure.

#### **Section 202.7 Advertising and promotion of sour cherries.**

The commissioner is hereby authorized to contract with any person, including the New York Cherry Growers Association and the National Red Cherry Institute, to carry on or cause to be carried on such promotion, advertising and publicity programs as he may believe will create new

markets for sour cherries or maintain present markets therefor. For such purpose he may expend such monies or any part thereof as may be available to him pursuant to this order. No advertising or promotion programs shall be conducted with reference to any particular private brand or trade name; no such program shall disparage the quality, value, sale or use of any other agricultural commodity.

#### **Section 202.8 Marketing research.**

The commissioner is hereby authorized to contract with any person, including the New York Cherry Growers Association, to carry on or cause to be carried on marketing research or marketing study and to expend any available monies for such purpose.

#### **Section 202.9 Information service.**

The commissioner is authorized to provide for informational service designed to keep producers informed on crop, pack, market research and promotion and to expend such monies as may be available and required to disseminate such information. The commissioner may contract with New York Cherry Growers Association for such service. Specific information obtained from examination of the books and records of growers and processors shall be treated as confidential.

#### **Section 202.10 Budget and assessment.**

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

During each marketing season and not later than July first, the commissioner shall estimate a budget necessary for the administration and enforcement of this order and for carrying on duly authorized activities, including advertising, promotion, marketing research and informational service. The commissioner shall announce a rate of assessment to provide adequate funds to defray expenditures in the budget. The rate of assessment shall not exceed \$10 per ton of sour cherries, and shall not 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 202.11 Collection of assessment.**

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

(b) For each grower from whom processor receives sour cherries, such processor shall deduct, from monies owed to the grower, the assessment on the marketable cherries so received.

(c) At least 50 percent of all assessment shall be paid pursuant hereto on or before September 15th of the marketing season, and the remaining amount shall be due and payable on or before December 15th of the marketing season.

(d) In case of delivery of sour cherries to processors outside of New York State, the grower or other seller shall be liable and responsible for remittance of assessment to the commissioner or to the designated fiscal agent.

(e) Any person other than a grower making delivery of sour cherries or causing sour cherries to be delivered to a processor shall, for assessment purposes, be treated in the same manner as if such person were the grower of the cherries. When cherries are resold by a processor prior to processing, the seller shall be responsible for said cherries for assessment purposes.

#### **Section 202.12 Disbursement of funds.**

Disbursement of funds shall be made in the manner described in the Act and in the rules and regulations promulgated by the commissioner to effectuate the provisions and intent of the Act.

#### **Section 202.13 Termination.**

This marketing order may be terminated or suspended pursuant to the provisions of the Agriculture and Markets Law.

#### **Section 202.14 Effective date.**

This order shall take effect on the first day of July, 1958.

#### **Section 202.15 Rates of assessment.**

*[Agriculture and Markets Law, § 294]*

#### **1993-1994**

The rate of assessment to be paid pursuant to this order for the period July 1, 1993 through June 30, 1994 is hereby established at \$10 per ton of sour cherries.

#### **Section 202.16 Surplus moneys order.**

*[Agriculture and Markets Law, § 294(8)]*

*Whereas*, As of June 30, 1993, there is a surplus under the sour cherry marketing order known as F.V. No. 1 (1 NYCRR Part 202), in the sum of \$51,692.29, and

*Whereas*, Upon investigation and recommendation of the administrator of said order, the said moneys should be retained to defray the costs of operating such marketing order in the succeeding marketing season,

*Now, therefore*, I, Richard McGuire, Commissioner of Agriculture and Markets of the State of New York, do find, pursuant to section 294, subdivision 8, of the Agriculture and Markets Law, that said

\$51,692.29 is necessary to defray the costs of operating such marketing order in the succeeding marketing season, and I do, accordingly,

*Order,* That said moneys shall be carried over into the next succeeding marketing season for the purposes of said marketing order.

January 5, 2007.