

NEW YORK STATE APPLE MARKETING ORDER

Advisory Board Membership Handbook

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Welcome Message

Congratulations on your appointment! Thank you for your willingness to serve the farmers of New York State. Your service on the Apple Marketing Order Advisory Board is a tremendous opportunity to influence the promotion and research that can affect the ongoing continuous improvement of the apple industry in our State.

Your appointment carries a great deal of responsibility. Your preparation for and regular attendance at meetings is vital to the success of your term. Your level of participation will directly correlate to your impact on the health of the New York State apple industry. You will be expected to maintain the highest level of ethical standards and to avoid the appearance of conflicts of interest.

As you put your time and considerable talents to work, it is critical that you keep our entire apple industry in mind. You are not only their representative, you are an ambassador to your industry and your community.

Again, I deeply appreciate your commitment to public service and your assistance in increasing promotion and consumption of apples in New York State. I know you will do a great job!

Sincerely,

A handwritten signature in cursive script, appearing to read "Richard G. Ball".

Commissioner
Department of Agriculture and Markets

1. Apple Marketing Order Advisory Board

The Apple Marketing Order (“AMO”) Advisory Board (the “Board”) is established pursuant to the authority of Urban Development Corporation Law Act 174/68, Section 16-Y and Section 16-Z (See Appendix 1) and Part 201 of Title One of the Official Compilation of Codes, Rules and Regulations of the State of New York (1NYCRR Part 201; See Appendix 2).

The purpose of the Board is to assist in expanding the marketplace and increasing the profitability of New York’s apple industry by advising the Commissioner of the NYS Department of Agriculture and Markets (“AGM”) and the President of the Urban Development Corporation (“UDC”), otherwise known as Empire State Development (“ESD”) on the development and coordination of programs to advertise, promote, research and educate consumers on the uses of New York apples and apple products, both in fresh and processed forms. These activities occur through the administration of the provisions in the AMO and are intended to reach both domestic and international markets.

2. Roles and Responsibilities

2.1. Board Member Responsibilities

The Board is in a unique position to influence the apple industry in New York State. Board members are selected because of their position and expertise within New York State’s apple industry, lending to their ability to work collaboratively in recommending efficient and effective programs to the Commissioner.

Service on and the operation of this Board is a public trust, requiring Board members to put the interests of the Board above their own private gain. Board members are Public Officers and must comply with all provisions of Public Officers Law. The law is available on the New York State Commission on Ethics and Lobbying in Government’s website: <https://ethics.ny.gov/ethics-laws-and-regulations-0h>

Board members must always be familiar with and operate within their board’s governing statutes, and state and federal laws and regulations.

Board member questions or comments about Board issues shall be directed to AGM staff and the entire Board. These questions and the related responses may be shared with the entire Board.

2.1.1. Appointment

Appointments are made in accordance with 1NYCRR Part 201 (Appendix 2). Upon appointment, the members accept and acknowledge their appointments to a two-year term, at the pleasure of the Commissioner. To accept appointment, each Board member must fill out and sign an Acceptance Form (Appendix 4). Each Board member must agree to follow all applicable laws and policies not limited to those described in this handbook.

2.1.2. Attendance

Regular attendance is required. It is important to notify AGM if a Board member cannot attend a scheduled meeting since a quorum of the Board is required to conduct official business. A person may forfeit his or her position on the Board or be removed from the Board by the Commissioner as a result of poor attendance.

If approved to attend the meeting remotely, Board members must be heard, seen, and/or identified. Where possible, individuals should have their camera on during the entirety of the meeting and have their first and last name present on the shared screen.

Failure to adhere to Open Meetings Law requirements may be considered as an absence.

2.1.3. Preparation

Board members are expected to have reviewed any meeting materials that were distributed prior to the meeting. AGM staff members are available to provide any additional information that will help the Board make informed decisions.

2.1.4. Conflict of Interest Policy

Each Board member must submit to AGM a Conflict of Interest Disclosure Form (Appendix 4). This must be submitted annually and upon any change to the information on the form. Disclosure forms will be distributed for annual submissions and are required to be submitted to AGM prior to July 1st of each year. Failure to submit this form will be considered a resignation from the Board. Failure to disclose a conflict may result in removal from the Board.

A conflict of interest exists when you or your family member may substantially benefit – financially or otherwise, directly or indirectly – from a matter being decided by the Board. An appearance of conflict of interest exists when the public might reasonably conclude that such a benefit exists.

2.1.5. Open Meetings Law

Board members must at all times comply with the requirements set forth in the Open Meetings Law, including but not limited to notifying the public of the meeting, assessing quorum for purposes of conducting business, and the timely posting of meeting minutes.

Board members are prohibited from engaging in Board business outside of properly noticed Board meetings. For examples, if there happens to be four Board members together at a non-Board event, they must not discuss any matters related to the Board.

See section 4.1 below for further information on how Open Meetings Law affects other Board activities. The law is available on the Committee of Open Government's website: <https://opengovernment.ny.gov/open-meetings-law>.

Meetings whereby the appointment of a particular person or corporation, or matters concerning the contracting of services or solicited project budgets are to be discussed, shall be carried out in Executive Session and are not subject to public notice.

2.1.6. Ethics and Appearance of Fairness

The purpose of Public Officers Law is to apply to the highest standards of integrity to the operation of state government. Public Officers must always act in the best interests of the public they serve, which means avoiding any appearance of conflict of interest or impropriety. Members of the Advisory Board are considered Public Officers and must adhere to the following prohibitions:

- 2.1.6.1. All conflicts of interest, financial or otherwise, direct or indirect, must be reported immediately upon the Board member learning of the conflict.
- 2.1.6.2. You are prohibited from using for personal gain any confidential information acquired through work on the Board and from discussing confidential Board matters with non-board members.
- 2.1.6.3. You should not receive or accept money or any other consideration from anyone or any organization other than the Board—not including salary derived from one's primary employment—for the performance of duties as a Board member, unless approved by the AGM.
- 2.1.6.4. You should not receive or accept anything from anyone who is doing or seeking to do business with the Board under circumstances from which it reasonably could be inferred that the item was intended to influence the Board member in an official action.
- 2.1.6.5. You should not engage in outside employment or activities, including seeking or negotiating for employment, that conflict with Board duties and responsibilities.
- 2.1.6.6. You should never give an impression that you might be improperly influenced in the performance of your duties.
- 2.1.6.7. You should never do anything that would raise suspicion among the public that you are engaged in acts that are in violation of your trust.
- 2.1.6.8. You should never appear to be speaking on behalf of the Board, such as at professional or industry gatherings, unless specifically authorized to do so.

This law is available at the New York State Commission on Ethics and Lobbying in Government's website: <https://ethics.ny.gov/>.

2.1.7. Resignations

A Board member wishing to resign must inform the Commissioner in writing of the effective date of the resignation.

2.2. Department Responsibilities

The duties of AGM staff in support of the AMO include:

- Ensuring compliance with all applicable laws and regulations.
- Administering the approved contracts and programs.
- Keeping Board members apprised of pertinent issues.
- Arranging meetings, developing meeting agendas, preparing meeting materials, presenting proposed budgets, and compiling information and research as necessary.
- Receiving and disseminating information and materials prepared by contractors for the Board's review to ensure accuracy and completeness.

All communication between any Board member and the AGM regarding Board- specific business may be shared with the entire Board. Verbal conversations may be summarized and shared via email.

The Commissioner shall appoint a staff member to be the Recording Secretary for the Board. The duties of the Recording Secretary are to:

- Prepare meeting agendas to include a list of topics for discussion and an estimated amount of time for each item.
- Prepare meeting notices to include date, time, and location of all meetings of the Board.
- Post meeting notices on the AGM website not less than 72 hours prior to the meeting in accordance with Open Meetings Law.
- Post meeting materials on the AGM website not less than 24 hours prior to the meeting in accordance with Open Meetings Law.
- Post the recording of the meeting to the AGM website within 5 business days of the meeting.
- Prepare meeting minutes to include meeting time and location; attendance; copies of all reports received, issued, or approved; and a summary and voting record of all matters discussed, conclusions reached, and resolutions adopted. Meeting minutes will reflect who participated in person and who participated remotely due to extraordinary circumstances.
- Publish a draft of the minutes from executive sessions in accordance with the Open Meetings Law on the website within 7 days of the meeting. Draft executive session minutes should be clearly labeled "DRAFT, Subject to Board Review and Approval" at the time of posting.
- Publish a draft of the minutes in accordance with Open Meetings Law. Minutes shall be posted on the AGM website within 14 days of the meeting. Draft meeting minutes should be clearly labeled "DRAFT, Subject to Board Review and Approval" at the time of posting.
- Submit the minutes of each meeting to the Board for review and acceptance by the Board during the subsequent meeting. Once approved by the Board, the label "DRAFT, Subject to Board Review and Approval" should be removed from the meeting minutes.
- Retain copies of the approved minutes of all meetings of the Board.
- Any other duties as required.

During the first meeting of each term, the Commissioner shall select a Board Chair, after recommendations are received from the Board. The Commissioner may also at his or her discretion reselect such positions during the term if needed. These individuals provide support to the Board and execute the Board meeting agendas, in coordination with the AGM-assigned Recording Secretary.

AGM Counsel staff provides legal guidance to the Commissioner and AGM staff administering the AMO. AGM Counsel is available to advise Board members on legal issues such as:

- Assurance that Board actions fall within the Board's statutory authority.
- Questions about compliance with all other State laws, such as Open Meetings Law, Public Officers Law, and State Finance Law.
- Review of proposed regulations and revisions.
- Drafting of legal documents.
- General legal advice about Board actions, procedures and activities.

2.3. Empire State Development Roles and Responsibilities

In 2016, AMO budgetary and contract oversight was transferred to Urban Development Corporation ("UDC"), otherwise known as Empire State Development ("ESD"). AGM is tasked with overseeing AMO program administration and regulatory functions, in cooperation with UDC/ESD. Several divisions within UDC/SD provide services to the AMO, such as fiscal and contract management. Contracts with AMO vendors are ultimately executed and maintained by UDC/ESD, while many administrative duties and Board oversight are performed by AGM.

2.4. Contractor Responsibilities

Organizations that receive funding are required to submit measurable goals and objectives to the Board prior to implementation of an awarded project. Contracted organizations are also required to submit quarterly and/or annual performance reports that include specific achievement of measurable goals as presented to the Board and are expected to present periodic status updates, to include a presentation (virtual and/or in person) that describes the progress being made, or to be made, toward achieving such measurable goals at scheduled Board meetings. Any required quarterly or annual performance reports must be submitted to AGM no later than 30 days following each end of traditional calendar year quarter, as specified by the Board.

The Board will expect that organizations who are successful in receiving AMO funding for their work will acknowledge New York State AMO support in any publication reporting results of the sponsored project. In addition, the Board requires electronic copies of final reports, which the Board and AGM may use in describing the project and its results in any publication, on the web or in any AMO annual report.

Any member of an organization that is currently funded through the AMO or anticipates asking for funding in the next solicitation period is prohibited from meeting with Board members individually. Any contact must be made during a Board meeting with all members present. If such a private meeting were to take place, such a meeting could

disqualify the applicant from seeking funding in the next solicitation period.

Organizations currently funded or seeking funding from the AMO Board are not permitted to offer or provide Board members gifts or monetary compensation including tickets to events, even if those tickets were provided at no cost to that organization.

3. Other Roles

3.1. Special Subcommittee

Special 'sub' committees may consist of any number of members of the Board as may be desirable and appointed by the Board without regard to geographic representation and may be assigned duties necessary to the handling of such specific matters as the Board deems necessary. Special committees shall have only such authority specifically granted to them by the Board and shall cease to exist upon completion of their assignment and the presentation of a report to the Board.

3.2. Advisory Workgroup

An advisory workgroup may consist of any number of persons, that are not members of the Board, as may be desired to assist with matters related to the Board proceedings. Members of the advisory workgroup may be selected by the Commissioner and the Board. An Advisory Workgroup may be formed to perform such tasks given to them with the goal of providing insight or advice to the Board regarding the effectiveness of a research or promotional program funded by the Board. Advisory Workgroups shall have only such authority specifically granted to them and shall cease to exist upon completion of their assignment.

4. Meeting Requirements

4.1. Open Meetings Law

The Open Meetings Law applies to the AMO and the Board. The latest version of the Open Meetings Law can be viewed on the Committee on Open Government's website: <https://opengovernment.ny.gov/open-meetings-law>.

For more information about conducting public meetings and public hearings, visit the Department of State's website: <https://dos.ny.gov/public-meetings-and-hearings>.

4.1.1. Use of Videoconferencing

In accordance with Open Meetings Law, a public body may, in its discretion, use videoconferencing to conduct its meetings provided that a minimum number of members are present to fulfill the public body's quorum requirement in the same physical location or locations where the public can attend. If videoconferencing is used to conduct a meeting, the meeting notice must include the following:

- 4.1.1.1. A statement that videoconferencing will be used;
- 4.1.1.2. The location where the public can attend by videoconference in real time;
- 4.1.1.3. The exact location from which every member of the public body is participating; and
- 4.1.1.4. A statement that the public has the right to attend the meeting at any location from which a member of the public body is participating. (This is true even if members of the public body are participating by videoconference from a “private” location such as a private home or while on vacation.)

Board members may participate in meetings using videoconferencing without providing their exact physical location only under extraordinary circumstances. **Pending Board Approval on 4/20/24**, The Board has defined extraordinary circumstances to include:

- 4.1.1.5. Disability
- 4.1.1.6. Illness
- 4.1.1.7. Caregiver obligation
- 4.1.1.8. Business operation obligation
- 4.1.1.9. Weather related challenges

4.1.2. Executive Sessions

Meetings whereby the appointment of a particular person or corporation, or matters concerning the contracting of services or solicited project budgets are to be discussed, shall be carried out in Executive Session and are not subject to public notice.

4.2. Public Comment

The Board may offer a 15-minute public comment period at the end of a Board meeting; however the Board is not required to offer the public an opportunity to speak. The Board may permit public participation during the meeting outside of the 15-minute public comment period if a Board member directly requests input from a participant. If a member of the public attempts to speak outside of the public comment period, the Board Chair shall request the individual wait to offer remarks until the public comment period at the end of the meeting. The Board may request a member of the public state their name and if they have an apple industry affiliation before offering comment. The Board may provide rules for speakers to follow at meetings.

4.3. Meeting Intervals

Meetings of the Board shall be held periodically, at the request of the Board or the Department. Such meetings shall be held at various locations within the state based on the nature of the meeting, the availability of necessary participants, and to maximize access to the Board meetings by interested parties.

Notices of all meetings, together with a written agenda, shall be provided to each Board member approximately one week prior to each meeting and shall be made available to the public as required by the Open Meetings Law.

Approximately meeting intervals and topics to be covered annually are listed below:

Month	Agenda Items	Notes
January	Discuss annual AMO Request for Proposal (RFP) process to be released in February.	Establish industry priorities, proposed funding levels based on historical AMO collections
March	Review proposals submitted via RFP. Rate, rank and select projects for funding. Establish tentative funding level based on anticipated collections.	If additional presentation/discussion with applicants is needed, additional meeting times will be established.
May	Final budget determination meeting, analyze AMO collections, Board member's report on outlook for growing season, set assessment rates for the upcoming year.	Final budgets sent to AGM Commissioner for approval, to ESD for contracting.
As needed	Tours of apple facilities and other relevant locations. Presentations by experts and other speakers.	Educational meeting

4.4. Quorum

Quorum is the number of Board members who must be present to conduct official business. If a quorum is not present, no official business can be transacted. The quorum protects against unrepresentative actions by a small number of individuals. Quorum is determined based on the number of positions allocated to the board, not the number of positions filled. For example, with the board's 9 positions, quorum would be 5 members, regardless if all 9 positions have been filled.

4.5. Voting

For meetings where videoconferencing is used, Board members must attend in accordance with Open Meetings Law. If a quorum is present in person, then members participating remotely due to extraordinary circumstances may participate in the vote so long as they are seen, heard, and identified.

Each member's vote is recorded as part of the public record. Voting cannot be by secret ballot.

4.6. Recusal and Conflict of Interests

Board members must annually submit the Conflict of Interest Form (Appendix 4). Conflicts may also arise in between the annual filings. Any potential conflict of interest or the potential appearance of a conflict of interest must be disclosed in writing to the Commissioner and to the Board's Recording Secretary. All conflicts will be disclosed at the following Board meeting and noted in the minutes.

Board members must recuse themselves from all discussion and votes on all matters relating to the potential conflict of interest. Recusals will be noted in the Board minutes.

To recuse, a Board member must (1) be physically and virtually absent from the room during any related discussions and votes, and (2) not discuss the issue with any Board member prior to, during or after the meeting. Discussions include, but may not be limited to: all issues involving that entity, for example: funding for proposed projects, debriefings, contract administration, performance goal/objective reviews, assessments, updates, progress reports, etc.

4.7. Reasonable Accommodation of Persons with Disabilities

The Americans with Disabilities Act (ADA) sets criteria for accessibility and accommodation. Under the ADA, people who have disabilities have a right to an equal opportunity for effective participation in the activities of boards and commissions, whether as appointed members or as members of the public.

Meetings and other Board sponsored activities must be held in accessible locations. Qualified sign language interpreters, materials in accessible formats, such as Braille large print and tape, and other forms of auxiliary aids for effective communications may be provided upon request.

5. Advisory Board Member Travel Expenses

5.1. Expense Reimbursement Guidelines

Board members will be reimbursed for actual and necessary travel expenses in accordance with guidelines published by the New York State Office of the State Comptroller (OSC).

To be reimbursed, the Board member must submit the Standard Expense Travel Voucher (Appendix 5) and attach all receipts.

A Tax-Exempt Certificate Form shall be used for overnight hotel accommodations. This form is provided in Appendix 6.

Reimbursable expenses include the following:

- Mileage for auto travel at a rate to be determined by OSC.

- Transportation charges of a common carrier at the lowest rate (first class or business class plane tickets are not allowed and use of a limousine service is not allowed).
- Bridge tolls, tips, parking, or other charges incidental to transportation, but excluding fuel, oil, auto repairs or service.
- Breakfasts and dinners while engaged in Board business will be reimbursed using per-diem rates published by the U.S. General Services Agency.
- Hotel or motel room charges when Board business requires the claimant to be away from his or her place of residence overnight, provided the rates do not exceed the rates published by the U.S. General Services Agency.

All overnight travel requires pre-approval from the Department. See Appendix 7 for additional information on NYS travel guidelines.

5.2. Authority to Reimburse Advisory Board Member Expenses

Urban Development Corporation Act 174/68

§ 16-y. Marketing of Agricultural Products, Section 3 (j)

(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.

NYS Regulations, Part 40

§ 40.21 Compensation and expenses.

The members of the advisory board shall not receive salaries, but each member shall be reimbursed for his or her actual and reasonable expenses while attending a meeting or committee meeting of the advisory board or in performing a duty necessary to the functions and activities of the advisory board as determined by the Commissioner. The monies required for payment to members of the advisory board as authorized pursuant to this section shall be paid by the Commissioner, as trustee, from the funds obtained through assessments against producers pursuant to the terms of this Part.

6. Fiscal Year

The Board's fiscal year is July 1 through June 30.

7. Proposals

The Department is responsible for seeking proposals for the Board to review. A request for proposal or similar competitive process may be used to solicit proposals from interested parties for the purposes of procuring a service from such parties. Proposals are typically requested annually and upon receipt are evaluated and rated by the Board against a set of criteria.

All contracts executed under this proposal process are required to comply with Section 112 of the State Finance Law. The Office of the State Comptroller independently reviews and approves contracts administered under the AMO.

This independent review of contracts protects taxpayers, agencies, not-for-profit organizations contracting with the State and other vendors by validating that a contract's costs are reasonable, that its terms are favorable to the State, and that a level playing field exists for bidders. Independent review also serves as an important deterrent to waste, fraud and abuse.

7.1. Timeline of Proposals

If a Request for Proposals is to be released, these requests are typically issued and announced in the February or March prior to the upcoming AMO budget cycle (July 1st of a given year). The application deadline for proposals must be at least 30 days after the request is announced.

7.2. Presentation of Proposals, Progress and Activities

RFP applicants and/or funded entities may be allotted time to present to the board during meetings. The Board has discretion to allot as much time as needed for potential or actual awardees to make presentations on proposals, contract progress, and/or funded activities. Presentation time shall be used for asking and answering questions about the pre-recorded presentations the Board reviewed prior to the meeting.

7.3. Contract Assessment

At the beginning of the fiscal year, all contractors funded by the Board will submit measurable goals and objectives. All contractors will be evaluated against these goals and objectives throughout the fiscal year.

All contractors are required to submit an annual performance report. Contractors will include specific achievement of measurable goals as presented to the Advisory Board. Annual performance reports must be submitted to the Department no later than 30 days following each end of traditional calendar year.

Contractors using funds for social media marketing and campaigns shall track and provide specific metrics. Contractors shall indicate work performed on paid and unpaid social media campaigns, providing the funding amount used directly for paid campaigns.

7.4. Budget Modifications

Organizations must notify the Department when proposing ANY changes in scope or budget costs. However, when changes to approved project costs total at least 10 percent of the project amount, Department of Agriculture and Markets

review of a budget modification is required and the vendor should be notified of approval before proceeding.

When organizations submit a contract budget modification, the following shall apply:

- Budget modifications that result in a reallocation of funds that equal 10 percent or more of a project's total cost (not total contract amount), shall require Department of Agriculture and Markets review and Board notification.
- Budget modifications that result in the addition or deletion of a funded project/program, regardless of the dollar amount, shall require Board notification and an official vote.
- When a request for a budget reallocation is less than 10 percent of the project total cost, the Department of Agriculture and Markets will approve or deny the reallocation without notifying the Board.

8. Freedom of Information Law (FOIL)

State agencies and boards are required to have available for public inspection and copying their public records, and other records, written or electronic. Exemptions to disclosure are limited and identified in statute. Board members in receipt of a FOIL request must notify the Department's Counsel's Office immediately, or as soon thereafter. Board Members must cooperate fully and in a timely manner with Counsel's Office in response to the FOIL request.

9. Effective Date

The policies within this Handbook become effective upon approval by the Commissioner.

10. Dissolution

In the event of dissolution of the Board, the affairs of the Board shall be liquidated in the manner outlined in Urban Development Corporation Law.

Useful Links

NYS Department of Agriculture and Markets

<https://www.agriculture.ny.gov/>

Open Meetings Law

<https://opengovernment.ny.gov/open-meetings-law>

Open Meetings Law – Advisory Opinions

<https://opengovernment.ny.gov/open-meetings-law-oml-advisory-opinions>

Public Officers Law – Code of Ethics Section 74

<https://ethics.ny.gov/ethics-laws-and-regulations-0>

Public Ethics – Conflicts of Interests Discussed

<https://ethics.ny.gov/conflicts-interest>

Public Ethics – Advisory Opinions

<https://ethics.ny.gov/ethics-advisory-opinions>

NYS Department of Agriculture and Markets – AMO Advisory Board meetings

<https://agriculture.ny.gov/farming/marketing-order-administration>

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Appendix 1: Urban Development Corporation Act 174/68

§ 16-Y – Marketing of Agricultural Products

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.

§ 16-z. Marketing orders.

The marketing orders, the regulatory provisions relating thereto, set forth in title one of the official compilation of codes, rules and regulations of the state of New York parts 40, 200, 201, 202, 203, 204, and 205, and the contracts relating thereto shall remain in full force and effect until amended or repealed pursuant to the statutory authority set forth in sections 16-x and 16-y of this act except that:

- (a) such marketing orders, the regulatory provisions relating thereto, and the contracts relating thereto shall be administered by and under the supervision of the president of the corporation as of the effective date of sections 16-x and 16-y of this act;
- (b) all undisbursed funds under the control of the department of agriculture and markets shall be transferred to the corporation on or before such effective date; and
- (c) any assessments due and payable under such marketing orders shall be remitted to the corporation starting 30 days after the effective date of this section.

Appendix 2: Part 201 NYS Regulations

1 NYCRR PART 201

APPLE MARKETING ORDER

Sec.	
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201.13	Termination and periodic referendum.
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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

Appendix 3: Advisory Board Appointment Acceptance

New York Apple Marketing Order Advisory Board Appointment Acceptance

**TO: Richard A. Ball
Commissioner of Agriculture and Markets
10B Airline Drive
Albany, NY 12235**

I, _____, having been appointed by you as a member of the Apple Marketing Order Advisory Board, as established by 1 NYCRR Part 201, do hereby notify you that I accept such appointment and I agree to serve on said Advisory Board at your pleasure, without salary, except actual expenses incurred while performing my duties as such member, as authorized in New York State Unconsolidated Laws Section 6266-y, for the upcoming 2-year term (7/1/XX – 6/30/XX)

Dated: _____

Name: _____

Address: _____

Telephone: _____

Fax: _____

Email: _____

Appendix 4: Conflict of Interest Disclosure Statement with NYS Ethics Law Section 74

Conflict of Interest Disclosure Statement

Section 74 of the Public Officer's Law includes the prohibition of any interest, financial or otherwise, direct or indirect or engage in any business or transaction or professional activity or incur any obligation of any nature, which is in substantial conflict with the proper discharge of his duties in the public interest.

Additionally, an officer or employee of a state agency, member of the legislature or legislative employee should not by his conduct give reasonable basis for the impression that any person can improperly influence him or unduly enjoy his favor in the performance of his official duties, or that he is affected by the kinship, rank, position or influence of any party or person.

Therefore, I, _____ (name) declare the following organizations to be potential conflicts within my duties as a member of the Commissioner's Apple Marketing Order Advisory Board. If any other potential conflicts come to my attention, I shall notify the Commissioner immediately, and recuse myself from the related discussions. Additionally, I will disclose to the Commissioner if I receive compensation or expense reimbursement from any other source related to my duties on the Advisory Board.

Signature	Date
Organization	Nature of potential conflict
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

Name of Organization Providing Compensation or Expense Reimbursement related to my duties on the Advisory Board

PUBLIC OFFICERS LAW
ARTICLE 4. POWERS AND DUTIES OF PUBLIC OFFICERS
NY CLS Pub § 74

§ 74. Code of ethics

1. Definition. As used in this section: The term "state agency" shall mean any state department, or division, board, commission, or bureau of any state department or any public benefit corporation or public authority at least one of whose members is appointed by the governor or corporations closely affiliated with specific state agencies as defined by paragraph (d) of subdivision five of section fifty-three-a of the state finance law or their successors.

The term "legislative employee" shall mean any officer or employee of the legislature but it shall not include members of the legislature.

2. Rule with respect to conflicts of interest. No officer or employee of a state agency, member of the legislature or legislative employee should have any interest, financial or otherwise, direct or indirect, or engage in any business or transaction or professional activity or incur any obligation of any nature, which is in substantial conflict with the proper discharge of his duties in the public interest.

3. Standards.

a. No officer or employee of a state agency, member of the legislature or legislative employee should accept other employment which will impair his independence of judgment in the exercise of his official duties.

b. No officer or employee of a state agency, member of the legislature or legislative employee should accept employment or engage in any business or professional activity which will require him to disclose confidential information which he has gained by reason of his official position or authority.

c. No officer or employee of a state agency, member of the legislature or legislative employee should disclose confidential information acquired by him in the course of his official duties nor use such information to further his personal interests.

d. No officer or employee of a state agency, member of the legislature or legislative employee should use or attempt to use his official position to secure unwarranted privileges or exemptions for himself or others.

e. No officer or employee of a state agency, member of the legislature or legislative employee should engage in any transaction as representative or agent of the state with any business entity in which he has a direct or indirect financial interest that might reasonably tend to conflict with the proper discharge of his official duties.

f. An officer or employee of a state agency, member of the legislature or legislative employee should not by his conduct give reasonable basis for the impression that any person can improperly influence him or unduly enjoy his favor in the performance of his official duties, or that he is affected by the kinship, rank, position or influence of any party or person.

g. An officer or employee of a state agency should abstain from making personal investments in enterprises which he has reason to believe may be directly involved in

decisions to be made by him or which will otherwise create substantial conflict between his duty in the public interest and his private interest.

h. An officer or employee of a state agency, member of the legislature or legislative employee should endeavor to pursue a course of conduct which will not raise suspicion among the public that he is likely to be engaged in acts that are in violation of his trust.

i. No officer or employee of a state agency employed on a full-time basis nor any firm or association of which such an officer or employee is a member nor corporation a substantial portion of the stock of which is owned or controlled directly or indirectly by such officer or employee, should sell goods or services to any person, firm, corporation or association which is licensed or whose rates are fixed by the state agency in which such officer or employee serves or is employed.

4. Violations. In addition to any penalty contained in any other provision of law any such officer, member or employee who shall knowingly and intentionally violate any of the provisions of this section may be fined, suspended or removed from office or employment in the manner provided by law. Any such individual who knowingly and intentionally violates the provisions of paragraph b, c, d or i of subdivision three of this section shall be subject to a civil penalty in an amount not to exceed ten thousand dollars and the value of any gift, compensation or benefit received as a result of such violation. Any such individual who knowingly and intentionally violates the provisions of paragraph a, e or g of subdivision three of this section shall be subject to a civil penalty in an amount not to exceed the value of any gift, compensation or benefit received as a result of such violation

Appendix 5: NYS Travel Voucher (See next page)

**State
of
New York**

CLAIM FOR TRAVEL REIMBURSEMENT BY A NON-EMPLOYEE

Agency traveled for			
Vendor ID		Vendor Name	
Last Name		First Name	MI
Suffix			
Address			
City		State	Zip
Business Purpose		Travel Destination	
Travel Start Date and Time		Travel End Date and Time	
Travel Description			

Indicate All Expenses – If more space is required in any section, use the associated detail form (number shown in parentheses below)	Totals
Lodging	
Transportation (AC3259-S)	
Meals (AC3258-S)	
Mileage Claimed (AC160-S)	
miles @ ¢ per mile =	
Incidental Expenses – List (AC3259-S)	
Total Amount Claimed	

Vendor's Certification

I certify that the above bill is just, true and correct; that no part thereof has been paid except as stated and that the balance is actually due and owing, and that taxes from which the State is exempt are excluded.

Signature _____ Title _____ Date _____

Appendix 6: Form ST-129 – Tax Exempt Certificate (See next page)



Department of Taxation and Finance
New York State and Local Sales and Use Tax
Exemption Certificate
 Tax on occupancy of hotel or motel rooms

ST-129
 (2/18)

This form may only be used by government employees of the United States, New York State, or political subdivisions of New York State.

Name of hotel or motel		Dates of occupancy	
		From:	To:
Address (number and street)	City	State	ZIP code
			Country

Certification: I certify that I am an employee of the department, agency, or instrumentality of New York State, the United States government, or the political subdivision of New York State indicated below; that the charges for the occupancy of the above business on the dates listed have been or will be paid for by that governmental entity; and that these charges are incurred in the performance of my official duties as an employee of that governmental entity. I certify that the above statements are true, complete, and correct, and that no material information has been omitted. I make these statements and issue this exemption certificate with the knowledge that this document provides evidence that state and local sales or use taxes do not apply to a transaction or transactions for which I tendered this document, and that willfully issuing this document with the intent to evade any such tax may constitute a felony or other crime under New York State Law, punishable by a substantial fine and a possible jail sentence. I understand that the vendor is a trustee for, and on account of, New York State and any locality with respect to any state or local sales or use tax the vendor is required to collect from me; that the vendor is required to collect such taxes from me unless I properly furnish this certificate to the vendor; and that the vendor must retain this certificate and make it available to the Tax Department upon request. I also understand that the Tax Department is authorized to investigate the validity of tax exemptions claimed and the accuracy of any information entered on this document.

Governmental entity (federal, state, or local)	Agency, department, or division		
Employee name (print or type)	Employee title	Employee signature	Date prepared

Instructions

Who may use this certificate

If you are an employee of an entity of New York State or the United States government and you are on official New York State or federal government business and staying in a hotel or motel, you may use this form to certify the exemption from paying state-administered New York State and local sales taxes (including the \$1.50 hotel unit fee in New York City).

New York State governmental entities include any of its agencies, instrumentalities, public corporations, or political subdivisions.

Agencies and instrumentalities include any authority, commission, or independent board created by an act of the New York State Legislature for a public purpose. Examples include:

- New York State Department of Taxation and Finance
- New York State Department of Education

Public corporations include municipal, district, or public benefit corporations chartered by the New York State Legislature for a public purpose or in accordance with an agreement or compact with another state. Examples include:

- Empire State Development Corporation
- New York State Canal Corporation
- Industrial Development Agencies and Authorities

Political subdivisions include counties, cities, towns, villages, and school districts.

The United States of America and its agencies and instrumentalities are also exempt from paying New York State sales tax. Examples include:

- United States Department of State
- Internal Revenue Service

Other states of the United States and their agencies and political subdivisions **do not** qualify for sales tax exemption. Examples include:

- the city of Boston
- the state of Vermont

To the government representative or employee

renting the room

Complete all information requested on the form. Give the completed Form ST-129 to the operator of the hotel or motel upon check in or when you are checking out. You must also provide the operator with proper identification. Sign and date the exemption certificate. You may pay your bill with cash, a personal check or credit/debit card, or a government-issued voucher or credit card.

Note: If you stay at more than one location while on official business, you must complete an exemption certificate for each location. If you are in a group traveling on official business, each person must complete a separate exemption certificate and give it to the hotel or motel operator.

To the hotel or motel operator

Keep the completed Form ST-129 as evidence of exempt occupancy by New York State and federal government employees who are on official business and staying at your place of business. The certificate should be presented to you when the occupant checks in or upon checkout. The certificate must be presented no later than 90 days after the last day of the first period of occupancy. If you accept this certificate after 90 days, you have the burden of proving the occupancy was exempt. You must keep this certificate for at least three years after the later of:

- the due date of the last sales tax return to which this exemption certificate applies; or
- the date when you filed the return.

This exemption certificate is valid if the government employee is paying with one of the following:

- cash
- personal check or credit/debit card
- government-issued voucher or credit card

Do not accept this certificate unless the employee presenting it shows appropriate and satisfactory identification.

Note: New York State and the United States government are not subject to locally imposed and administered hotel occupancy taxes, also known as *local bed taxes*.

Substantial penalties will result from misuse of this certificate.

Appendix 7: NYS Travel Guidelines

Summary of Travel Guidelines for AMO Advisory Board Members

Mileage – The estimated or actual number of miles driven by you in your personal vehicle to and from your destination. This may include the meeting location and / or the airport. The IRS rate per mile will be used for reimbursement.

Parking – all receipted parking charges.

Airfare – all receipted airfare to the destination. Only coach fares will be reimbursed.

Taxi – All receipted taxi fares, including a reasonable gratuity.

Hotel – The receipted hotel charges.

Please be aware that hotel charges are generally limited to the IRS rate for the state / county that the hotel is located in. Please make every effort to pay a rate (excluding of taxes) that is at or below this rate. https://www.gsa.gov/node/86696?utm_source=OGP&utm_medium=print-radio&utm_term=portal/category/21287&utm_campaign=shortcuts

Hotel taxes should be avoided by providing a tax-exempt certificate to the hotel upon registration. This exempt certificate is not usable outside of NYS, so taxes WILL be reimbursed for out-of-state lodging.

Tolls – all receipted tolls. EZ Pass statement are acceptable receipts.

Meals while traveling overnight – The IRS permits a fixed allowance for all meals for each overnight stay based on the state / county destination. (See above link) This allowance is in lieu of actual meal receipts. However, if the meeting or conference includes either breakfast or dinner, then this allowance is reduced by the portion of the allowance that was intended to cover that meal.

Meals while traveling for just the day – The State Comptroller permits an allowance of \$25.00 to cover “meals and incidental” expenses for traveling for the day. This is in addition to receipted travel costs and any lunch provided during the AMO meeting. Please be aware that this will be considered taxable income.

Extending travel for personal reasons, or adding a guest to the trip: If the traveler extends the trip for personal reasons or travels with a guest, then all associated costs will be excluded from reimbursement.

Appendix 8: NYSDAM – Legal Opinion regarding Conflicts of Interest

Please note that while that the opinions below were provided for and directed to the Dairy Promotion Order Advisory Board, the same principles have been deemed applicable to the Apple Marketing Order Board.

Agriculture and Markets

MEMORANDUM

TO: Dan McCarthy

FROM: Chris Cuddeback

DATED: February 15, 2018

SUBJECT: Dairy Promotion Advisory Board - Conflict of Interest

You requested a legal opinion regarding possible conflicts of interest of various members of the Dairy Promotion Order Advisory Board ("Advisory Board"). These possible conflicts of interest may arise due to various members of the Advisory Board also serving on other boards or having a relationship with various not-for-profits that are funded by or do business with the Advisory Board.

QUESTION

Whether an Advisory Board member may take any official action that directly concerns their affiliated board or organizations.

ANSWER

An Advisory Board member may not take any official action, including voting on funding, that would directly affect their respective board or organization.

DISCUSSION

In Advisory Opinion No. 98-07, the Ethics Commission, the predecessor to JCOPE, considered the application of Public Officers Law § 74 to State advisory boards. The Commission noted that "in many instances appointees to advisory boards will be selected because of their institutional affiliations or perspectives" (italics added), and "it is reasonable to assume that their opinions will be affected by their background and experience." Advisory board members are often selected to provide industry experience and expertise in decision-making. Thus, the mere fact of such an institutional affiliation is not, by itself, a conflict, and a rule that required recusal each time the board considered a matter that could affect such an affiliated institution would be unworkable. However, under Public Officers Law § 74, State officers

and employees, including those who serve in unpaid or per diem status, must avoid a conflict between their private interests and their public duties. The risk that such a conflict will arise depends on the influence of the Board. Where decisions of an advisory board invariably become the decisions of the agency, the risk that interests or activities of a member will conflict with the proper discharge of the member's duties will be "substantial". Where advisory board decisions merely inform a policy maker's decisions, the risk of conflict is less substantial.

The Ethics Commission concluded that there are too many advisory boards with widely varying functions, to allow the Commission to set forth detailed rules that could apply to all boards in all instances. However, advisory board members clearly cannot engage in acts which represent direct conflicts of interest. An example of a prohibited action is the acceptance by a board member of a gift from any party interested in the outcome of a subject the board is considering. Another example of a prohibited act by an advisory board member is voting on a matter that directly affects his or her specific employer, as opposed to the general area of interest that the member represents. Other potential conflicts must be examined in light of the powers and functions of the board and all other relevant factors in the particular situation.

The Advisory Board members may not take any official action, including voting on funding, that directly affect their respective boards or organizations. Such action would be a direct conflict of interest. If for example, funding is being considered or discussed for their respective board or organization, the Advisory Board member should recuse him or herself from those discussions and voting on such funding.

Appendix 9: Public Ethics – Legal Opinion regarding recusal

Please note that while that the opinions below were provided for and directed to the Dairy Promotion Order Advisory Board, the same principles have been deemed applicable to the Apple Marketing Order Board.

From: [Cuddeback, Chris \(AGRICULTURE\)](#)
To: [McCarthy, Dan \(AGRICULTURE\)](#)
Subject: RE: Request
Date: Tuesday, March 06, 2018 1:43:54 PM

Hi Dan,

See response from JCOPE below.

Regards,

Chris

Chris Cuddeback

Associate Attorney

Department of Agriculture and Markets

10B Airline Drive, Albany, NY 12235

(518) 457-6468 | Chris.Cuddeback@agriculture.ny.gov

<http://www.agriculture.ny.gov>

From: Sande, Michael (JCOPE)

Sent: Tuesday, March 06, 2018 12:43 PM

To: Cuddeback, Chris (AGRICULTURE) <Chris.Cuddeback@agriculture.ny.gov>

Subject: RE: Advisory Board

Members Hi Chris –

An advisory board member with a direct conflict of interest in a matter before the board must disclose the conflict to the board and remove him- or herself from the room during any discussion or vote, or any other activity or action taken by the board with respect to that matter. There should be no attempt to address the matter with other board members, informally or otherwise, outside the board meetings.

Best,

Mich

ael

Michael E. Sande

Deputy Director of Advice and

Guidance NYS Joint Commission on

Public Ethics Direct Line: (212) 480-7434

Fax: (212) 480-7749

michael.sande@jcope.ny.gov

From: Cuddeback, Chris (AGRICULTURE)

Sent: Tuesday, March 06, 2018 12:34 PM

To: Sande, Michael (JCOPE) <Michael.Sande@jcope.ny.gov>

Subject: RE: Advisory Board

Members Michael,

I have been asked to follow up regarding recusal vs. abstention. What is required if an advisory board member has a direct conflict of interest with a matter before the board? Is the member (518) 457-6468 | Chris.Cuddeback@agriculture.ny.gov

required to disclose the conflict and leave the room or may the conflicted board member remain in the room and simply not vote?

Thank

you,

Chris

Chris Cuddeback

Associate Attorney

Department of Agriculture and Markets

10B Airline Drive, Albany, NY 12235

<http://www.agriculture.ny.gov>

From: McCarthy, Dan (AGRICULTURE)

Sent: Monday, February 26, 2018 4:22 PM

To: Cuddeback, Chris (AGRICULTURE)

Subject: Request

Hi Chris,

If you recall our brief conversation about a week ago...

Regarding the requirement that the DPO Advisory Board Members recuse themselves (and physically leave the room) during a discussion and vote on a contract, I believe that you offered to confirm with JCOPE that this is indeed the case.

Deputy Commissioner Trodden would like to avail ourselves of this option so that there can be no question.

Did I understand this discussion correctly, and can we do this?

Thanks

Dan McCarthy

Program Manager, Dairy Services

New York State Department of Agriculture and Markets

10B Airline Drive, Albany NY 12235

(518) 457-4921 | Fax (518) 485-8730

Dan.McCarthy@Agriculture.NY.Gov

Appendix 10: NYSDAM – Legal Opinion regarding Open Meetings

Please note that while that the opinions below were provided for and directed to the Dairy Promotion Order Advisory Board, the same principles have been deemed applicable to the Apple Marketing Order Board.



MEMORANDUM

TO: Dan McCarthy
FROM: Chris Cuddeback
DATED: February 15, 2018
SUBJECT: Dairy Promotion Advisory Board – Open Meetings Law

You have requested a legal opinion on whether the meetings of the Dairy Promotion Advisory Board ("Advisory Board") are required to be open the public.

QUESTION

Whether meetings of the Dairy Promotion Advisory Board are required to be open to the public pursuant to § 103 of the Public Officers Law (the "Open Meetings Law").

ANSWER

The meetings of the Board are required to be open under Public Officers Law § 103(a).

DISCUSSION

Public Officers Law (POL) § 103(a) requires that "[e]very meeting of a public body shall be open to the general public..." Section 102(2) of the POL defines public body as "any entity for which a quorum is required in order to conduct public business, which consists of two or more members and which performs a governmental function for the state or for an agency or department thereof ... or committee or subcommittee or other similar body of such public body."

There are some judicial decisions that indicate that advisory bodies that have no power to take final action and are advisory only, may not be performing a governmental function within the meaning of the Open Meetings Law.

However, an entity may be considered a public body if "[i]t has officially established duties and organizational attributes of a substantive nature which fulfill a governmental function for public benefit." (Canandaigua Messenger, Inc. v. Wharmby, Supreme Court, Ontario County, May 11, 2001) or if it "performs a necessary step in the process of decision making". (MFY Legal Services v. Toia [402 NYS 2d 510 (1977)]).

The courts have considered various criteria in determining whether an entity is performing a governmental function, including the authority under which the entity was created, the power

Appendix 11: NYSDAM – Legal Opinion regarding voting in-person

Please note that while that the opinions below were provided for and directed to the Dairy Promotion Order Advisory Board, the same principles have been deemed applicable to the Apple Marketing Order Board.

From: [Swartz, Larry \(AGRICULTURE\)](#)
To: [McCarthy, Dan \(AGRICULTURE\)](#)
Cc: [Markham, Lesley \(AGRICULTURE\)](#)
Subject: RE: Electronic meetings, votes question - DPO
Date: Monday, July 11, 2016 1:28:17 PM

Hi Dan – The question set forth in your email is best sent to the person to whom you sent it to (i.e., me). I understand that the Dairy Promotion Order’s Advisory Board (“Board”) would like to conduct its meetings by “electronic means”, of whatever type. 1 NYCRR section 40.20 seems to contemplate that the duties and responsibilities entrusted to the Board, as set forth in 1 NYCRR section 40.19, must be carried out “[a]t assembled meetings [where] all votes shall be cast in person”. (Emphasis added) The definition of the term “in person” is not set forth 1 NYCRR Part 40 but it is commonly understood to mean that a person “[meets] with someone [else] rather than talking on the phone, emailing, or writing to the person” (see Cambridge Dictionary, on-line, for the definition of that term). Saying that, however, another meaning of that term is that a person acts “without the help or interaction of others” (see Collins Dictionary, on-line). I cannot contend that the most commonly understood meaning of that term should be disregarded, as an anachronism that is inconsistent with the intent underlying 1 NYCRR Part 40, because 1 NYCRR section 40.20 was made effective on March 15, 1972, a time when fax machines, emails, text messaging, etc. did not exist but the telephone certainly did. I would, however, not be totally uncomfortable if the less commonly understood meaning of that term were adopted in this context, as long as an independent means of verifying that the person voting by “electronic means” was actually a member of the Board and not someone, authorized or unauthorized, acting in his/her stead (which safeguard would, I believe, vindicate the purpose of the “in person” requirement).

If you are uncomfortable “pushing the envelope” so dramatically, I am of the opinion that the 1 NYCRR section 40.20 may, at least arguably, be amended without the necessity of holding a hearing to consider amending it, notwithstanding the provisions of A&ML section 258-aa (c)(2)(b) that provides that “[t]he commissioner may . . . call a hearing to amend [an] order, and any such amendment . . . 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 ” (this provision is somewhat

ambiguous – it can be argued that it allows the commissioner to amend an order, without having to hold a hearing and without the producers regulated thereby having the power to express their approval or disapproval thereof - I don’t mean to suggest that this is a preferred construction but raise it only to illustrate the imprecision of the terms of the provision). It has been the Dep’t’s long- standing position that the commissioner need not hold a hearing prior to adopting a “technical” amendment to the Dairy Promotion Order but, rather, may promulgate such an amendment pursuant

to consensus rulemaking, as authorized in the State Administrative Procedure Act. An amendment to 1NYCRR section 40.20 to allow for participation and voting by “electronic means” is, obviously, not the equivalent of correcting a typographical error but, also, does not affect substantive provisions of an order but, rather, addresses a relatively insignificant procedural requirement (at least as compared to, say, the procedural requirement that an order, to be effective, must be approved by fifty one percent of the producers that would be regulated [see A&ML section 258-bb (c)(2)(a)]).

Please contact me if you’d like to discuss this matter. Larry

Larry A. Swartz, Esq.

Department of Agriculture and Markets

10B Airline Drive, Albany, NY 12235
(518) 457-1059 | Larry.Swartz@agriculture.ny.gov
<http://www.agriculture.ny.gov>

From: McCarthy, Dan (AGRICULTURE)
Sent: Monday, July 11, 2016 10:45 AM
To: Swartz, Larry (AGRICULTURE)
Cc: Caputo, Frank (AGRICULTURE)
Subject: Electronic meetings, votes question - DPO

Hi Larry,

Who would this question best be sent to?

Our DPO Advisory Board would like to know if they can transact any business or meet "by electronic means" in the future. Specifically by conference call, video meeting and / or vote by email.

Below are the relevant parts that I think may address this question.

I am hopeful that this can be some kind of routine change that may not need a referendum vote.

Thanks

1 NYCRR

§ 40.20 Quorum and vote majority.

majority of the advisory board members shall be necessary to constitute a quorum. A simple voting majority present shall be required to pass any motion or approve any advisory board action. **At assembled meetings all votes shall be cast in person.**

(Can I infer that if the meeting is not an 'assembled meeting' then the vote need not be 'cast in person'?)

(Is there any law or regulation that gives blanket authority to include electronic meetings?)

Article 21 AA

(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.

Dan McCarthy

Program Manager, Dairy Services
New York State Department of Agriculture and Markets
10B Airline Drive, Albany, NY 12235
(518) 457-4921 | Fax 518-485-8730
Dan.McCarthy@agriculture.ny.gov
<http://www.agriculture.ny.gov>

Appendix 12: NYSDAM – Legal Opinion regarding payment of honoraria

Please note that while that the opinions below were provided for and directed to the Dairy Promotion Order Advisory Board, the same principles have been deemed applicable to the Apple Marketing Order Board.



MEMORANDUM

TO: Jennifer Trodden

FROM: Chris Cuddeback

DATED: April 30, 2018

SUBJECT: Dairy Promotion Advisory Board

You requested a legal opinion regarding the propriety of the Dairy Promotion and Advisory Board ("Advisory Board") members receiving "honoraria".

Whether the Advisory Board members may receive reimbursements for their actual travel expenses and a "honoraria" for \$200 per day that they work on Dairy Promotion Order business.

Agriculture and Markets Law provides that "[n]o 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." AML § 258-aa(j)(2). It seems that the legislative intent in establishing the Advisory Board under Agriculture and Markets Law § 258-aa(j) was to only allow the Advisory Board members to receive compensation exclusively for the reimbursement of actual and reasonable expenses.

The Advisory Board members are only entitled to reimbursement of actual expenses under the statute.

Appendix 13: NYSDAM – Legal Opinion regarding payment of expenses to replace the board member on the farm



MEMORANDM

TO: Scott Wyner
FROM: Chris Cuddeback
DATED: May 16, 2018
SUBJECT: Dairy Promotion Advisory Board

You requested a legal opinion regarding whether or not members of the Dairy Promotion and Advisory Board ("Advisory Board") could receive payment for the expense of paying someone else to "fill in" or perform tasks for the member while they were conducting Advisory Board duties.

Whether the cost of paying someone else to operate the business or carryout the normal job duties of the Advisory Board member while he or she is away performing Advisory Board functions is a reimbursable actual and reasonable expense incurred while performing Dairy Promotion Order business.

Agriculture and Markets Law provides that "[n]o 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." AML § 258- aa(j)(2). I found nothing during my research that would support the interpretation that the cost of lost time, earnings or profit, while serving on a volunteer board is a permissible reasonable actual reimbursable expense. I believe the intent of the statute is to provide for out-of-pocket expenses of travel to the meeting and performing board business, such as travel, lodging and meals.

I asked for Lisa Brooks, Director Fiscal Management and Adam Roberts, Director of Internal Auditor to provide their opinion on this question. Both agreed that actual and reasonable expenses are provided to alleviate some burden on travel and miscellaneous costs associated with serving on the board. I contacted State Expenditures, Office of the New York State Comptroller ("OSC") and was informed that such a payment would not be considered a reasonable reimbursable expense incurred while the board member is performing board duties. I also contacted Kevin J. King, Associate Counsel, OSC, who informed that it was commonly understood that the term "actual and reasonable expenses" is meant to refer to the costs associated with travel while serving on various State boards and commissions.

Finally, to receive reimbursement each member of the Advisory Board is required complete form AC3257-S, "Claim for Travel Reimbursement by a Non-employee". This form requires the claimant to identify all expenses from the following categories: lodging, transportation, meals, mileage claimed and incidental expenses. OSC's "Travel Manual" identifies nonreimbursable miscellaneous expenses as non-business related expenses such as: speeding fines, parking tickets, laundry, entertainment (e.g., theatre tickets, in-room movies), and other personal charges. The expense of paying of someone to carry out your personal business while conducting board business would be classified as a personal charge under the Travel Manual.

The Advisory Board members are not entitled to reimbursement for the expense of paying someone else to operate their business or perform their normal job duties as an actual and reasonable expense under the statute.

Appendix 14: NYSDAM – Legal Opinion regarding producers directing funds

Please note that while that the opinions below were provided for and directed to the Dairy Promotion Order Advisory Board, the same principles have been deemed applicable to the Apple Marketing Order Board.

From: [Swartz, Larry \(AGRICULTURE\)](#)
To: [Knirk, Maria \(AGRICULTURE\)](#)
Cc: [McCue, Casey \(AGRICULTURE\)](#); [Wyner, Scott \(AGRICULTURE\)](#); [McCarthy, Dan \(AGRICULTURE\)](#)
Subject: FW: Assistance with DPO funds
Date: Thursday, September 03, 2015 2:40:20 PM
Attachments: [00.02.02_western_ny_request.pdf](#)
[00.04.05_counsel_response.pdf](#) [00.07.31_commissioner_directive.pdf](#) [00.08.03_commissioner_response.pdf](#)
[93.04.12_internal_memo.pdf](#) [Checkoff sent directly to MFH.docx](#)

Maria – In response to questions #'s 1 and 2, neither an individual producer nor a cooperative would be able to direct his/her/its assessment to a particular promotion activity. To begin with, a producer and a cooperative dealing only in the milk of its own members (and, if it does deal only in the milk of its own members, if it is not an operating cooperative – see the Western New York Milk Marketing Order [1NYCRR section 21.10(d)]) does not, him/her/itself, remit assessments to the DPO; rather, the milk dealer to whom the producer or cooperative sells milk remits the appropriate assessment to the commissioner for deposit in the DPO's account. Furthermore, 1 NYCRR section 40.32 provides, in appropriate part, that "[n]o advertising, promotion or publicity programs shall be conducted pursuant to [the DPO] which make reference to any particular brand or trade name" and section 40.34 provides, in appropriate part, that "[t]he monies deposited in the [DPO] shall be disbursed by the commissioner with the advice and consent of the advisory board " – it would be contrary to the relatively plain language, and certainly to the intent, of these provisions if an individual producer or a cooperative could cause an assessment to be directed to "a particular promotion activity".

In response to question #3, the commissioner is authorized, pursuant to 1NYCRR section 40.32, ". . . to contract with any personto carry on or cause to be carried on milk marketing and/or dairy product research "; the commissioner is, therefore, authorized to approve "particular promotion activity" assuming that it can be characterized as affecting milk marketing or related to dairy product research, and assuming that it arguably promotes the interests of the milk industry as a whole (compare Johanns v. Livestock Marketing Assn., 544 U.S. 550 [2005]).

Please contact me if you'd like to discuss this matter. Thank you. Larry

From: McCarthy, Dan (AGRICULTURE)
Sent: Thursday, September 03, 2015 12:54 PM
To: Knirk, Maria (AGRICULTURE) ; Wyner, Scott (AGRICULTURE) ; Swartz, Larry (AGRICULTURE)
Cc: McCue, Casey (AGRICULTURE)
Subject: RE: Assistance with DPO funds I found

these documents.

From: Knirk, Maria (AGRICULTURE)

Sent: Thursday, September 03, 2015 12:40 PM

To: Wyner, Scott (AGRICULTURE) <Scott.Wyner@agriculture.ny.gov>; McCarthy, Dan (AGRICULTURE) <Dan.McCarthy@agriculture.ny.gov>

Cc: McCue, Casey (AGRICULTURE) <Casey.McCue@agriculture.ny.gov>

Subject: Assistance with DPO funds

Scott,

Not sure who the right contact is in Counsel's: could you have someone help figure out the answer to a few questions related to article 21-AA, section 258aa for the Dairy Promotion Act:

1. Would an individual producer be eligible to direct their individual assessment to a particular promotion activity?
2. Would an individual cooperative be eligible for the same?
3. Or Conversely, does the commissioner have the authority to approve of this type of activity?

I have a call with a farmer tomorrow morning and I'd like to have a little bit more to share with him about whether we have a review on this. I am told there may also be an opinion about this that has been written before.

Dan,

Can you please attach the opinion that Charlie mentioned last week on this topic as it is supposed to be in your shared drive in dairy?

Thanks,

MK

Appendix 15: NYSDAM – Legal Opinion regarding Funding a specific project

Please note that while that the opinions below were provided for and directed to the Dairy Promotion Order Advisory Board, the same principles have been deemed applicable to the Apple Marketing Order Board.

From: [Swartz, Larry \(AGRICULTURE\)](#)
To: [McCarthy, Dan \(AGRICULTURE\)](#)
Cc: [Markham, Lesley \(AGRICULTURE\)](#)
Subject: FW: Request for an Opinion - Dairy Promotion Order - Proposed project for funding
Date: Tuesday, May 30, 2017 3:14:02 PM

Dan – As you may be aware, chapter 58 of the laws of 2016 repealed Article 21-AA of the A&ML, headed “Dairy Promotion Act” (which was the statutory authority for the Dairy Promotion Order, set forth in 1NYCRR Part 40) and enacted section 6266-x of the Unconsolidated Laws, headed the same as was Article 21-AA of the A&ML”; that chapter amendment, however, also enacted section 6266-z of the Unconsolidated Laws that provides, in part, that “[t]he marketing [order] . . . set forth in title one of the official compilation of codes, rules and regulations of the state of New York [part] 40 . . . shall remain in full force and effect until amended or repealed pursuant to the statutory authority set forth in [certain section of the unconsolidated laws] ” Because the urban development

corporation has not caused the repeal of the Dairy Promotion Order (“the “Order” or “the DPO”), the Order remains extant.

The DPO was promulgated , in short, to promote the consumption of milk and milk products, to encourage the development of new milk and milk products, and to ensure an adequate supply of milk and milk products (see former A&ML section 258-aa [a]). It appears that “Project 9: Development of Cornell Undergraduates for Leadership Roles in the Dairy Food System” (“the project”) is designed to provide Cornell students with certain skills that will make them more employable in, and of greater value to, the dairy industry (I don’t construe the penultimate line in the first paragraph under the heading “Project Rationale” in the project document, which provides that project graduates will be able to “. . . make a positive impact in the food industry ”

[emphasis added], to mean that the project might prepare graduates to, say, participate in the canned beet industry – the rest of the project document indicates that the project is designed to serve the dairy industry only).

Even though the project is designed to serve the dairy industry, I don’t believe that it can be funded through the DPO. The DPO, in sections 40.31, 40.32, and 40.33 of 1NYCRR, allows the commissioner to enter into contracts, using DPO funds, for particular purposes. 1NYCRR section 40.31 allows the commissioner to enter into a contact “. . . with [a] person . . . to carry onadvertising, promotion, education and publicity programs as he may believe will create new markets for the milk of producers or maintain present markets therefor”. It seems to me that the commissioner cannot

fund the project pursuant to 1NYCRR section 40.31 even though Cornell is carrying on an “education” program, of a type – the project is not designed to “create new markets for . . . milk . . . or maintain present markets therefor” but, rather, to achieve a totally different objective, as set

forth the project document.

1NYCRR sections 40.32 and 40.33 also do not provide a basis for the commissioner to fund the project using DPO funds; those sections allow the commissioner to enter into contracts to “..... carry on . . . milk marketing and/or dairy product research” and to “.....provide informational services designed to keep producers informed on milk marketing dairy product research, promotion, advertising , education and publicity program.....” – the project is not designed to achieve either of those objectives.

I hope that the preceding answers your question you posed to Mr. Wyner on 5/25/17; please contact me if you’d like to discuss this matter. Thank you. Larry

From: Wyner, Scott (AGRICULTURE)
Sent: Thursday, May 25, 2017 2:08 PM
To: Swartz, Larry (AGRICULTURE) <Larry.Swartz@agriculture.ny.gov>
Cc: McCarthy, Dan (AGRICULTURE) <Dan.McCarthy@agriculture.ny.gov>; McCue, Casey (AGRICULTURE) <Casey.McCue@agriculture.ny.gov>; Markham, Lesley (AGRICULTURE) <Lesley.Markham@agriculture.ny.gov>
Subject: FW: Request for an Opinion - Dairy Promotion Order - Proposed project for funding
Could you consider and advise Dan.

Scott H. Wyner
Counsel
Department of Agriculture and Markets
10B Airline Drive, Albany, NY 12235
(518) 457-2449 | Scott.Wyner@agriculture.ny.gov
<http://www.agriculture.ny.gov>

From: McCarthy, Dan (AGRICULTURE)
Sent: Thursday, May 25, 2017 1:59 PM
To: Wyner, Scott (AGRICULTURE) <Scott.Wyner@agriculture.ny.gov>
Cc: McCue, Casey (AGRICULTURE) <Casey.McCue@agriculture.ny.gov>
Subject: Request for an Opinion - Dairy Promotion Order - Proposed project for funding
Hi Mr. Wyner,

We are requesting an opinion as to whether a certain proposed research project can be funded by the Dairy Promotion Order.

Cornell researchers proposed a project to assist in operating a program to support university student internship placements. A full description of their proposal is attached for further reference.

An excerpt of the relevant regulation:

Regulations – Part 40

§ 40.31 Advertising, promotion, education and publicity of dairy products.

The commissioner, with the advice and assistance of the advisory board, is hereby authorized to contract with any person or persons to carry on or cause to be carried on such advertising, promotion, education and publicity programs as he may **believe will create new markets for the milk of producers as defined in this Part or maintain present markets therefor.** For such purposes, he may expend such monies or any part thereof as may be available pursuant to this Part. No advertising, promotion or publicity programs shall be conducted pursuant to this Part which make reference to any particular brand or trade name.

§ 40.32 Marketing and product research.

The commissioner, with the advice and assistance of the advisory board, is hereby authorized to contract with any person or persons to carry on or cause to be carried on **milk marketing and/or dairy product research** and to expend such monies as may be available pursuant to this Part for such purpose.

§ 40.33 Information services.

The commissioner, with the advice and assistance of the advisory board, is hereby authorized to contract with any person or persons to provide for informational services designed to keep producers and others informed on milk marketing and dairy product research, promotion, advertising, education and publicity programs and any other dairy industry information deemed important, and to expend such monies as may be available and required pursuant to this Part to obtain and disseminate such information.

§ 40.34 Disbursement of funds.

The monies deposited in the dairy promotion fund shall be disbursed by the commissioner with the advice and assistance of the advisory board for the necessary expenses incurred with respect to this Part. **All such disbursements shall be made in the manner prescribed by the act and the provisions of this Part and shall be in accordance with any rules and regulations promulgated by the commissioner to effectuate the provisions and intent thereof.** The expenses incurred with respect to this Part shall be audited by the State Comptroller at least annually and a copy of the audit report shall be made available to any producer for inspection.

Please let me know if additional information is needed.

Thank You

Dan McCarthy

Program Manager, Dairy Services

New York State Department of Agriculture and Markets

10B Airline Drive, Albany, NY 12235

(518) 457-4921 | Fax 518-485-8730

Dan.McCarthy@agriculture.ny.gov

<http://www.agriculture.ny.gov>

Appendix 16: NYSDAM – Legal Opinion regarding Communications During a Request for Proposals/Applications

Please note that while that the opinions below were provided for and directed to the Dairy Promotion Order Advisory Board, the same principles have been deemed applicable to the Apple Marketing Order Board.



ANDREW M. CUOMO
Governor

Agriculture
and Markets

RICHARD A. BALL
Commissioner

MEMORANDUM

TO: Jennifer Trodden
FROM: Chris Cuddeback
DATE: September 25, 2020

SUBJECT: Communications During a Request For Proposals/Applications

Please find below the policy regarding communications during an open procurement process.

The Dairy Promotion Order Advisory Board’s (“DPOAB”) Policy Regarding Communications during solicitations includes and imposes certain restrictions on contacts between the DPOAB and an Offeror/bidder during the procurement process. An Offeror/bidder is restricted from making contacts from the earliest notice of intent to solicit bids/proposals through final award and approval of the Procurement Contract by the Office of the State Comptroller (“restricted period”) to other than designated Department of Agriculture & Markets staff. DPOAB members and Department of Agriculture & Markets employees are also required to obtain certain information (name, telephone number, employer, and whether the person making contact was retained by the offeror/bidder or another entity) when contacted during the restricted period and make a determination of the responsibility of the Offeror/bidder pursuant to the criteria set out in SFL sections 139-j and 139-k. Certain findings of non-responsibility will in the future result in rejection for contract award and in the event of two findings within a four-year period, the Offeror/bidder will

be debarred from obtaining governmental Procurement Contracts.

Appendix 17: USDA Approval – Approval of Faculty Position program funding

Please note that while that the opinions below were provided for and directed to the Dairy Promotion Order Advisory Board, the same principles have been deemed applicable to the Apple Marketing Order Board.



1400 Independence Avenue, SW.
Room 2958-S, STOP 0233
Washington, DC 20250-0233

June 26, 2013

Mr. Darrel J. Aubertine
Commissioner
State of New York
Department of Agriculture and Markets
10B Airline Drive
Albany, New York 12235

*Thank you to
your attention to
my request*

Dear Mr. Aubertine:

This is in response to your May 15, 2013, letter requesting project approval for a new faculty member position to conduct research in the area of dairy fermentation at Cornell University's Department of Food Science. Upon review of your submitted project proposal and after discussions with Dr. Martin Wiedmann, professor and Director of Graduate Studies for Cornell University's Department of Food Science, Dairy Programs has determined that your project is approved. All salaries and expenses associated with the new faculty member will support only dairy-related research and no project costs are associated with construction or the acquisition of equipment or other facilities.

The National Dairy Promotion and Research Program, authorized by the Dairy Production Stabilization Act of 1983, and implemented through the Dairy Promotion and Research Order (Order), provides authority for dairy producers and importers to develop and finance promotion, research, and nutrition education programs designed to maintain and expand markets and uses for fluid milk and dairy products. The Order defines three categories of acceptable expenditures - promotion, research, and nutrition education. Specifically, section 1150.115 defines research as "studies testing the effectiveness of market development and promotion efforts, studies relating to the nutritional value of milk and dairy products, and other related efforts to expand demand for dairy products."

Sincerely,


Whitney A. Rick, Director
Promotion, Research, and Planning Division
Dairy Programs

Appendix 18: Conflict of Interest Frequently Asked Questions

TOPIC	ISSUES / QUESTIONS	ANSWERS
PROGRAM PARTICIPATION	Can AMO board members participate in any local or state program that is run by an organization that is funded by the AMO board?	Answer: Yes, board members and their family members can participate in local and state events that are run by organizations that are funded by the AMO board provided the opportunity to participate is open and available to all apple farmers. The selection process used must be fair and equitable and is subject to being audited by the Department. AMO board members, or their family, should not be targeted or selected because they are a AMO board member.
	Can a board member volunteer to participate on a panel hosted by an organization they fund?	Answer: Yes, board members can volunteer to participate on a panel hosted by an organization they fund provided the panel invitation is extended to all apple farmers. If the panel is limited or needs special expertise, the posting should list the skills/expertise that is needed to serve as a volunteer on the panel. The selection process used must be fair and equitable and is subject to being audited by the Department. AMO board members should not be targeted or selected because they are a AMO board member.
	Can a AMO board member participate on a panel as a judge for the final round of a competition that is funded by the AMO board?	Answer: Yes, board members can volunteer to participate on a judging panel for a competition run by an organization the AMO board funds provided, the judging panel invitation is extended to all apple farmers, and such apple farmers selected do not have a conflict with any of the companies competing in the competition. If the panel is limited, the seat should be offered on a first come, first serve basis.
MEETINGS/ CONFERENCES	Can a AMO board member attend a meeting or conference hosted by an organization they fund?	Answer: Yes, board members can attend meetings/conferences hosted by an organization they fund provided the meeting/conference invitation is extended to all apple farmers. If seats are limited, the seats should be offered on a first come, first serve basis. The selection process used must be fair and equitable and is subject to being audited by the Department. AMO board members should not be targeted or selected because they are a AMO board member.
	Are there restrictions if a board member attends a meeting/conference hosted by an organization they fund and receives a gift at the event?	Answer: Yes. Board members attending a meeting/conference that meets the criteria stated below*, cannot accept a gift offered to them if the value of the items exceed \$15, regardless of if the items are offered to all in attendance. (*Board members can attend meetings/conferences hosted by an organization they fund provided the meeting/conference invitation is extended to all apple farmers. If seats are limited, the seats should be offered on a first come, first serve basis. The selection process used must be fair and equitable and is subject to being audited by the Department. AMO board members, or their family, should not be targeted or selected because they are a AMO board member).
	Are there restrictions if a board member attends a meeting/conference hosted by an organization they fund and receives food at the event?	Answer: Yes. Board members attending a meeting/conference that meets the criteria below*, can only accept food and/or drinks if the same items are offered to all those attending the meeting/conference. (*Board members can attend meetings/conferences hosted by an organization they fund provided the meeting/conference invitation is extended to all apple farmers. If seats are limited, the seats should be offered on a first come, first serve basis. The selection process used must be fair and equitable and is subject to being audited by the Department. AMO board members, or their family, should not be targeted or selected because they are a AMO board member).

DEFINITION OF FAMILY	In the public officers law, what constitutes a family member?	Answer: In the New York State Public Officer's Law 73(1)(m): A relative* is "any person living in the same household as the individual and any person who is a direct descendant of that individual's grandparents or the spouse of such descendant." <i>A relative* is (a) someone living in your house (even if the person is not related to you); (b) your parents; (c) your children/grandchildren; (d) your siblings and their children/grandchildren; (e) your cousins and their children/grandchildren; or (f) anyone who is married to a person covered in (c) through (e).</i>
DEGREE OF SEPERATION	What degree of separation does not pose a conflict of interest?	Answer: A remote interest between a board member and a third party, does not pose a conflict of interest. <i>A remote interest is one that is not direct and immediate or reasonably foreseeable to create a conflict.</i> For Example: Awarding funding to a remote "business partner" would present an indirect conflict of interest. Awarding funding to an active "business partner" would present a direct conflict of interest as the board member is also awarding funding to his/her own business.
APPEARANCE OF A CONFLICT	Can a board member sponsor an applicant or family member to participate in a competition funded by the AMO board?	Answer: Yes, a board member can sponsor a person/family member who participates in a competition run by an organization the AMO board funds, provided the opportunity to participate in the competition is open to all apple farmers. The selection process used must be fair and equitable and is subject to being audited by the Department. AMO board members, or their family, should not be targeted, selected or quoted because they are a AMO board member.
	Can a board member or their family member volunteer as an advocate or coordinator for a program or organization funded by the AMO board?	Answer: Yes, a board member or a member of their family can be a spokesperson or advocate or coordinator for a program or organization funded by the board provided the opportunity to be an advocate, coordinator or spokesperson is open to all apple farmers. The selection process used must be fair and equitable and is subject to being audited by the Department. AMO board members, or their family, should not be targeted or selected because they are a AMO board member.
INTERACTION WITH BOARD MEMBERS	Are AMO Board member farms completely off limits?	Answer: No, funded organizations can work with AMO members and their farms on programs funded by the AMO board provided the opportunity to participate in the program is open to all apple farms. The selection process used must be fair and equitable and is subject to being audited by the Department. AMO board members, or their family, should not be targeted or selected because they are a AMO board member.
	Can a AMO board funded organization, work with AMO members, members/employees of their farm?	Answer: Yes, funded organizations can work with AMO members, members of their family, their employees and their farms, on programs funded by the AMO board provided the opportunity to participate in the program is open to all apple farms. The selection process used must be fair and equitable and is subject to being audited by the Department. AMO board members, or their family, should not be targeted or selected because they are a AMO board member.
	Can organizations who receive funding from the AMO board, offer board members tickets they receive for events i.e. sporting events, galas, concerts, etc.?	Answer: No, organizations seeking funding from the AMO board are not permitted to offer or provide board members tickets to events, even if those tickets were provided at no cost to that organization. The funded organization can host a competition giving all apple farmers an equal opportunity to win tickets to such events. The selection process used to determine the winner of the competition must be fair and equitable and is subject to being audited by the Department.
	Can organizations seeking funding from the AMO board reach out to board members during the RFP process and prior to funding being awarded?	Answer: No, organizations seeking funding from the AMO board are not permitted to contact board members prior to funds being awarded. This restriction extends to family members of the AMO board and to board members and/or employees from the organizations seeking funding.

SERVICES OFFERED/PROGRAM	Can AMO members ask organizations the AMO board funds for help/assistance using one of the programs run by an organization the AMO funds?	Answer: Yes, if this service is available to all apple farmers, AMO funded organizations can continue to work with farms requesting their assistance even if that farm is owned by a AMO member. The selection process used to identify who the organization provides assistance to, must be fair and equitable and is subject to being audited by the Department. AMO board members should not be targeted or selected because they are a AMO board member.
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I, _____ (print) Advisory Board Member, have read and understood the Apple Marketing Order Handbook.

Signed _____

Date _____