

1 NYCRR PART 200

RULES AND REGULATIONS RELATING TO MARKETING ORDERS

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Section 200.1 Definitions.

- (a) *Commissioner* means the Commissioner of Agriculture and Markets of the State of New York.
- (b) *Department* means the Department of Agriculture and Markets.
- (c) The terms *agricultural commodity*, *producer*, *handler*, *processor*, *distributor*, *marketing agreement* and *marketing order* shall have the same meaning as is given such terms in section 293 of the Agriculture and Markets Law.
- (d) The term *person* includes a firm, corporation, partnership, company or unincorporated association.
- (e) *Grade* means the official United States or New York State terminology applied to an agricultural commodity as determined by the presence or absence of certain quality and type, and characteristics and other related factors.
- (f) *Product* means an agricultural commodity which has been produced by the producer and placed in condition for sale or distribution by the producer, handler, processor or distributor.
- (g) *Marketable agricultural product* is a product which meets the requirements of any marketing order, marketing agreement or regulation in effect in the area in which the same is produced or handled.
- (h) The words *container* and *original container* shall be construed as such words are respectively defined by sections 192 and 190 of the Agriculture and Markets Law.

(i) *Production area* shall mean that territory consisting of a county or town, or parts thereof, or any combination of counties or towns, or parts thereof, designated by the commissioner and wherein is produced any particular agricultural commodity proposed for regulations by a marketing agreement or a marketing order.

Section 200.2 Interpretations.

(a) In the language of any marketing agreement or order, the present tense shall include the past and future tenses, and the future tense shall include the present. The masculine gender shall include the feminine and neuter. The singular number includes the plural and vice versa.

(b) *County, town, city or village* shall mean a municipal corporation of the State of New York, and the inhabitants within its boundaries.

(c) The word *sell* includes offer for sale, expose for sale, have in possession for sale, exchange, barter or trade.

(d) *Marketing area* shall mean any county, city, town or village or two or more counties, cities, towns or villages or any combination or parts thereof designated by the commissioner.

Section 200.3 Marketing order.

Any producer or group of producers of a particular agricultural commodity or commodities may petition the commissioner for an order. The petition shall be in writing and shall set forth in concise terms the particular marketing situation and economic condition thereof regarding which it is alleged a marketing order is needed and such petition shall be verified. The commissioner shall investigate the allegations of the petition and if he is satisfied that the subject or condition alleged warrants a hearing he shall call a hearing on the petition so filed.

Section 200.4 Hearings.

Written notice of any such hearing called to consider a marketing order, the amendment, suspension or termination of a marketing order shall be given. It shall be mailed to every person who, with respect to a particular order, files in the office of the commissioner a written request for such notice. It shall be posted on a public bulletin board maintained by the commissioner in the Department of Agriculture and Markets at Albany, New York, and a copy of such notice shall be published in the *New York State Register* of the Department of State and in at least two newspapers having general circulation in the area affected by the proposed marketing order as the commissioner may decide. It shall specify which method or methods of approval set forth in subdivision 2 of section 294 of the Agriculture and Markets Law the commissioner is considering using in the event a referendum vote is appropriate, as set forth more fully in section 200.6 of this Part.

Section 200.5 Parties.

On any administrative hearing, those who favor or support a marketing order shall be called the "petitioners." Those who oppose or who do not favor an order shall be called "respondents." The presiding officer shall be designated by the commissioner and shall be known as the "hearing master." He shall have complete control of the hearing. Parties may be represented by attorney and the practice established by section 34 of the Agriculture and Markets Law shall be followed. A written record of proceedings shall be made and proof of publication of the notice of hearing shall be filed as part of the hearing record. After the close of the hearing, the hearing master shall refer the proceeding to the commissioner with his written recommendation.

Section 200.6 Referendum.

If after such hearing the commissioner shall find upon the testimony given at the hearing the existence of conditions referred to in section 292 of the Agriculture and Markets Law which result in an unreasonable and unnecessary economic waste and respect to the agricultural commodity covered by the hearing notice and that the declared public policy of such section should be effectuated, he shall submit the proposed order to a referendum vote as provided by subdivision 2 of section 294 of the Agriculture and Markets Law. If after such hearing, the commissioner shall find upon said testimony that such conditions do not exist with respect to the agricultural commodity covered by the notice of hearing, he shall render a decision in accordance with such finding and shall not submit the proposed order to any referendum.

Section 200.7 Publication.

Upon the promulgation of an approved marketing order, an effective date therefor shall be entered by the commissioner who shall publish the same in accordance with section 19 of the Agriculture and Markets Law and section 102 of the Executive Law. A copy of such order shall be filed with the secretary of the department and posted on a board for that purpose maintained by the Division of Markets.

Section 200.8 Decision of the commissioner.

Every marketing order shall be accompanied by a written decision of the commissioner, and such decision shall recite the referendum vote for and against the order and shall contain a certification that the percentage of producers required to approve the order, as provided in section 294, subdivision 2 of the Agriculture and Markets Law, has been met. If a marketing order is not approved, a written decision shall be rendered by the commissioner stating the number of votes against and for approval, and certifying that the percentage of producers required to approve the order, as provided by the aforesaid subdivision of the law, has not been met.

Section 200.10 Payment of monies.

Disbursement of money may only be made on a verified voucher which, except in the case of an employee, shall be filed by claimant. Such voucher shall be submitted to the Comptroller for audit

on an abstract certified by the commissioner. Payment shall be made by check countersigned by the Comptroller. Each month the balance in each fund shall be reported to the Comptroller by the commissioner's finance officer.

Section 200.11 Form of abstract.

The abstract of vouchers rendered shall show the balance of cash on hand as per previous statement, the collections received since the last statement, the interest on the bank balance, any miscellaneous receipts, a deduction for vouchers itemized in the schedule and the balance remaining on hand.

Section 200.12 Suspension of order.

(a) In exercising the authority given him by subdivision 4 of section 294 of the Agriculture and Markets Law, temporarily to suspend an effective marketing order, the commissioner on his own motion may conduct an investigation, and if he has reason to believe that during any one growing or marketing season regulation by a marketing order is not within the declared legislative purposes and policy, he may call a hearing on notice to consider suspension of the operation of the order.

(b) A petition to suspend an order under subdivision 4 of section 294 may be filed with the commissioner by any person showing a proper interest therein. If the commissioner has reason to believe, after an investigation of his own, that such petition presents a sufficient cause for further consideration, he shall call a hearing on notice to consider suspension of the operation of the order identified in the petition.

Section 200.13 Termination of order.

If termination of a marketing order is sought by petition pursuant to subdivision 2 of section 294 of the Agriculture and Markets Law, or if the commissioner shall decide in the exercise of his discretion that an order should be terminated, he shall hold a hearing on notice as hereinbefore specified, and shall conduct the prescribed referendum vote of producers in the area affected. The vote shall be announced as heretofore mentioned by section 200.8 of this Part. If the vote is to terminate, the commissioner shall certify that 50 per centum of the producers participating in the referendum approved termination. If the vote is against termination, the decision shall state the vote and certify that less than 50 per centum of the producers participating in the referendum approved termination.

Section 200.14 Amendment procedure.

Whenever 25 per centum of the producers in an area who seek an amendment of the order file a written petition duly signed by them, the same procedure adopted herein for the issuance of an original order shall be followed. If after hearing the commissioner shall find the existence of conditions referred to in section 292 of the Agriculture and Markets Law which will result in an unreasonable or unnecessary economic waste with respect to the agricultural commodity covered

by the hearing notice, only the amendment or amendments shall be submitted to a referendum vote and the approval of 50 per centum of such producers participating in the referendum vote shall in such event be required to effectuate such amendment or amendments. As in the case of the promulgation of an original marketing order, an amendment thereof shall be accompanied by a written decision of the commissioner reciting the referendum vote and containing a certification of said 50 per centum approval. If after such hearing the commissioner shall not find the existence of said conditions he shall render a decision in accordance with his finding and shall not submit the proposed amendment or amendments to a referendum vote. If the commissioner, in the absence of a petition, shall move to amend an order pursuant to subdivision 2 of section 294 of the Agriculture and Markets Law, he shall hold a hearing on notice as set forth in section 200.4 of this Part and shall follow the procedure respecting decision as stated in this section.

Section 200.15 Commission empowered by law.

In the administration of any marketing order, the commissioner shall have the complete powers given the Department of Agriculture and Markets by the Agriculture and Markets Law which shall be construed to aid and assist him carrying out the intent and purpose of article 25.

January 5, 2007.