# **01-001 DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY**

**OFFICE OF THE COMMISSIONER**

**Chapter 4: RULES FOR ADOPTION OF APPLE MARKET ORDERS AND APPLE MARKET AGREEMENTS**

**1. DEFINITIONS**

Unless otherwise provided in these rules, all terms shall have the meanings indicated in the *Agricultural Commodities Marketing Act*, Title 7 M.R.S.A. §423. In addition, the following terms shall have the following meanings.

A. **Act** means the *Agricultural Commodities Marketing Act*, Title 7 M.R.S.A. §§ 422-430.

B. **Apples** means all apples produced in the State of Maine for the purpose of sale.

C. **Apple Marketing Committee** means the Committee established pursuant to section 3 herein.

D. **Apple producer** means any person who produces or causes to be produced apples in quantities equal to or greater than 3,000 first sale units as defined in subsection G.

E. **Commodity** area for purposes of §425 of the Act, shall mean the State of Maine.

F. **Districts** mean the geographical divisions of apple production areas in the State as follows:

(1) **Western District** - Oxford County; Cumberland County; York County; and that portion of Androscoggin County west of the Androscoggin River.

(2) **Central District** - Franklin County; Sagadahoc County, that portion of Androscoggin County east of the Androscoggin River; that portion of Kennebec County west of the Kennebec River; and that portion of Somerset County west of the Kennebec River.

(3) **Eastern District** - Aroostook County; Hancock County; Knox County; Lincoln County; Penobscot County; Piscataquis County; Waldo County; Washington County; that portion of Kennebec County east of the Kennebec River; and that portion of Somerset county east of the Kennebec River.

G. **First sale unit** means the traditional unit of sale of apples of between 32 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 first sale unit shall mean 40 pounds of apples.

H. **Initial referendum** means the referendum establishing an apple market order pursuant to the Act, based upon statistics regarding the 1981-82 season.

I. **Marketed within the State for purposes of §429 of the Act**, means any apples marketed for fresh market use by Maine apple producers, regardless of destination.

J. **Marketing** means the act or process of selling or purchasing in a market and includes advertising, promotion, or publicity of apples or apple products as well as the research and data collection necessary to facilitate any of these efforts.

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

L. **Participated in the referendum**, for purposes of establishing compliance with §425 of the Act, shall mean filed a properly completed ballot concerning the apple market order, including both affirmative and negative ballots.

M. **Persons to be affected**, for purposes of §425 of the Act, shall include apple producers as defined in subsection D.

N. **Preceding marketing season**, for purposes of 5425 of the Act in the initial referendum, shall mean the 1981-82 marketing of the 1981 apple crop.

**2. REFERENDUM PROCEDURES**

A. **Adoption by the Commissioner**. After public hearing and the close of time for submission of written comments on any proposed market order, the Commissioner may, upon finding that the market order will effectuate the legislative policy of the Act, adopt such order.

B. **Distribution of ballots**. Upon his adoption of a market order referendum ballots shall be distributed by the Commissioner to all producers whose names appear on the lists of apple producers maintained by the Maine Pomological Society and whose names may otherwise have been made known to the Commissioner in response to the notice of the hearings concerning the market order,, or as a result of other inquiries.

C. **Return of ballots**. An apple producer shall return the referendum ballot within the time specified, indicating the producer's name, address, the volume of apples marketed for fresh market use during the preceding marketing season, and an affirmative or negative vote. Any person voting on behalf of a producer which is a corporation or business association shall indicate his authority to so vote. All ballots shall be signed and certified as to their truth. The volume of apples marketed for fresh market use shall be indicated in boxes, provided, however, that a ballot shall not be invalid if volume is otherwise indicated; pounds shall be converted by the Commissioner to boxes at a rate of 40 pounds per box.

D. **Validity of ballots**. The referendum ballots shall be considered by the Commissioner if they are received no later than 20 days after the date on which they were originally mailed by him. The Commissioner shall not consider a referendum ballot which he determines is riot properly completed and signed.

E. **Results of the referendum**. The Commissioner shall determine whether 66 2/3% of the apple producers who participated in the referendum have voted in favor of the market order and whether that affirmative vote represents 51% of the quantity of apples marketed during the preceding marketing season by those participating in the referendum; or, in the alternative, whether 511 of the producers who participated in the referendum have voted in favor of the market order and whether that affirmative vote represents 66 2/3% of the quantity of apples marketed during the preceding marketing season by those participating in the referendum.

F. **Certification**. The commissioner shall certify the results of the referendum to the Attorney General and shall file the order with the Secretary of State.

**3. ESTABLISHMENT OF THE APPLE MARKETING COMMITTEE**

A. **Membership and representation**. The membership of the Apple Marketing Committee shall be as defined in the Apple Market Order. one member shall represent the Eastern District, two members the Western District, and two members the Central District, providing not more than one member shall be from any single grower operation.

B. **Initial Appointments**. The apple producer members of the initial Apple Marketing Committee shall be selected and appointed by the Commissioner from nominations made through the following procedure.

(1) The Commissioner shall cause to be held a meeting or meetings of apple producers at which time the producers in attendance shall nominate a total of eleven growers to be eligible for appointment to the Apple Marketing Committee.

(2) Of the eleven nominees, four shall be growers whose orchards are principally located in the Western District, four shall be growers whose orchards are principally located in the Central District, and three shall be growers whose orchards are principally located in the Eastern District.

(3) The first meeting of growers for the purpose of nominating members of the marketing committee shall be held not later than August 15, 1983.

C. **Election Procedures**. The following election procedures shall be instituted.

(1) The initial Apple Marketing Committee shall cause an election to he held to, select subsequent members of the Apple Marketing Committee. Beginning in calendar year 1984, an annual meeting shall be held between January I and August 15 for the purpose of nominating members of the Apple Marketing Committee. Nominations of apple producers for the Apple Marketing Committee election shall be as provided in subsection B.(2).

(2) Election of members shall be conducted by written ballot and subject to the approval of the Commissioner.

D. **Term of Office**. Members of the Apple Marketing Committee shall serve at the pleasure of the Commissioner for the following periods.

(1) Any person selected for appointment by the Commissioner pursuant to subsection B or elected pursuant to subsection C shall qualify by being sworn to office by a Justice of the Peace and by filing a written acceptance with the Secretary of State within 30 days of being notified of selection.

(2) The Commissioner in making initial appointments pursuant to subsection 13 shall appoint two members for terms of three years, two members for terms of two years, and one member for a term of one year. Subsequent terms of office except appointments to fill vacancies pursuant to subsection E shall be filled pursuant to subsection C and shall be for three years each.

(3) No member shall serve for more than two consecutive terms.

(4) In all cases, members shall continue to serve until a successor has been appointed and qualified.

E. **Vacancies**. Vacancies in the Apple Marketing Committee shall be filled by the Commissioner consistent with the following guidelines.

(1) To fill any vacancy caused by the failure of any initial appointment to qualify or in the event of the death, removal, resignation or disqualification of any member, a successor for the unexpired term shall, if possible, be selected by the Commissioner from the previously unselected nominations made pursuant to subsection B.

(2) in the event of any other failure of apple producers to provide the requisite nominations or elected representatives, or in the event of other vacancies, the Commissioner shall make the necessary appointments in such manner as he determines appropriate with the advice of the existing members of the Apple Marketing Committee.

(3) In all cases, the geographic representation established in subsection A and the staggered terms established pursuant to subsection D shall be maintained.

F. **Duties**. The Apple Marketing Committee shall advise and assist the Commissioner in all matters pertaining to the operation of the Apple Market Order, subject only to the limitations of §427 of the Act. Such duties may specifically include any or all of the following:

(1) the recommendation to the Commissioner of administrative rules and regulations relating to the marketing order;

(2) the recommendation to the Commissioner of such amendments to the marketing order as seem advisable;

(3) the preparation and submission to the Commissioner of the estimated budget required for the proper operation of the marketing order;

(4) the recommendation to the Commissioner of methods for assessing members of the industry and methods for collecting the necessary funds;

(5) the provision of assistance to the Commissioner in the collection and assembling of information and data necessary to the proper administration of the order;

(6) the performance of such other duties in connection with the marketing order as the Commissioner shall designate.

**4. PURPOSES OF EXPENDITURES UNDER THE APPLE MARKET ORDER**

The Apple Marketing Committee and the Commissioner may expend funds obtained pursuant to the Apple Market Order for the following purposes.

A. **Promotion**. The Apple Marketing Committee, with the approval of the Commissioner, may carry out such advertising, promotion and publicity programs as they believe will maintain or enhance present markets or create new markets for apples and/or apple products. However, no such advertising, promotion or publicity programs shall he 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.

B. **Marketing and product research**. The Apple Marketing Committee, with the approval of the Commissioner, may carry out such marketing and/or product research as they believe to be beneficial to the Maine apple industry.

C. **Information services**. The Apple Marketing Committee, with the approval of the Commissioner, may establish mechanisms to provide for information services designed to keep producers informed of such factors as apple crop, pack, storage holdings, marketing and product research, promotion, advertising and publicity programs, and similar information relevant to the Maine apple industry.

**5. BUDGET AND ASSESSMENTS**

All apple producers shall be subject to the assessment levied under the Apple Market Order pursuant to this section.

A. **Budget**. During each marketing season, and not later than August 15, the Apple Marketing Committee shall estimate a budget necessary for the administration and enforcement of the order and for carrying out the programs created thereunder. The total amount budgeted for administrative costs shall not exceed 5% of the total budget.

B. **Assessment**

(1) Consistent with the budget established pursuant to subsection A, the Commissioner shall announce rates of assessment to provide adequate funds to defray expenditures in the budget. The assessment rate shall not exceed the rate set in the Apple Market Order and, in any case, shall not exceed the maximum statutory rate.

(2) An increase in the rate of assessment above 5 cents shall occur only after a referendum pursuant to procedures established in section 2.

**6. REPORTING**

Reports are required to facilitate factual and accurate informational services and to provide a basis for budget estimation and adjustment. Not later than December 1 of each marketing season, each apple producer shall file with the Apple Marketing Committee, on forms prescribed and supplied by that Committee, a declaration of harvested crop which shall declare the number of first sale units of apples harvested and the disposition of same to processors, cold storage, and/or other destinations.

**7. COLLECTION**

A. **Liability of the producer**. Each apple producer shall be responsible for proper accounting and payment of the proper assessment upon the apples which he produces and markets.

B. **Payment arrangements**. For each grower for whom a broker or other agent sells or otherwise transfers apples, said broker may, at the grower's option, deduct from monies owed to the grower the proper assessment on the first sale units sold or otherwise transferred from storage.

C. **Payment schedule**. All growers, grower sales cooperatives, and/or grower sales agents 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.

**8. TERMINATION**

A. **By the Commissioner**. The Commissioner may terminate a market order in a manner provided by 5429 of the Act whenever he determines that the provisions of the order do not tend to effectuate legislative policy.

B. **By petition**. The Commissioner shall terminate a market order at the end of the fiscal year if he has received, prior to April 15 of that year, a properly completed petition for termination and has determined, prior to June 15th of that year, that termination is favored by at least 50% of the producers who produced at least 51% of the volume marketed as required by §429 of the Act. Petitions and termination procedures shall be governed by the following provisions.

(1) A petition for termination shall provide that its signatories favor termination of the existing market order. Each person signing shall certify that he was a producer engaged in the production of apples for market during the preceding marketing season and shall certify, in boxes, the volume of apples marketed.

(2) A petition for termination shall be considered properly completed only if it contains a sufficient number of signatures to represent 25% of the producers who marketed 25% of the volume of apples.

(3) Upon receipt of a petition for termination, the Commissioner shall distribute and tabulate termination ballots in the same manner as referendum ballots pursuant to Section 3 herein.

C. **Producers and volume specified**. For purposes of 5429 of the Act, the Commissioner determines that the volume of apples marketed during the 1981-82 marketing season was 89 million pounds, and that the number of producers was 225. Upon receipt of a petition pursuant to subsection B, or at an earlier time, the Commissioner shall determine the volume of apples marketed and the number of producers for the preceding marketing season.

D. **Five year mandatory review**. At least once during each five-year period that the order is in effect, the Apple Marketing Committee shall conduct a referendum of apple producers in the commodity area to substantiate approval of the order, the first such five-year period to commence September 1, 1983. In the event of suspension or a petition to terminate, a new five-year period will begin, effective the first of July following the date of certification of approval of the order by the Commissioner.

STATUTORY AUTHORITY: 7 M.R.S.A. §§ 421-430

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