

DOCKET NO. A-15

STATE OF COLORADO

COLORADO DEPARTMENT OF AGRICULTURE

1525 Sherman Street
Denver, Colorado 80203

MARKETING ORDER TO PROMOTE THE MARKETING OF APPLES PRODUCED
IN DELTA AND MONTROSE COUNTIES IN THE STATE OF COLORADO

WHEREAS, the Commissioner of Agriculture of the State of Colorado, having reason to believe that the issuance of an Apple Marketing Order would tend to effectuate the declared purposes of the Colorado Agricultural Marketing Act of 1939, 35-28-101, et seq., Colorado Revised Statutes 1973, pursuant to this Act gave due notice thereof and held public hearings on behalf of an Apple Marketing Order on August 31, 1982; and

WHEREAS, a referendum was held during the period September 3, to September 13, 1982, in which more than two-thirds (2/3) of the voters who produced more than two-thirds (2/3) of the volume voted in the referendum favored adoption of a Marketing Order; and

WHEREAS, the Commissioner of Agriculture finds, pursuant to the provisions of said Act, that this Marketing Order promoting the marketing of apples produced in Delta and Montrose counties in the State of Colorado, will tend to:

1. Reestablish or maintain prices received by producers for apples, at a level which will give to apples a purchasing power, with respect to the articles and services which farmers commonly buy, equivalent to the purchasing power of apples in the base period.
2. Approach such equality of purchasing power at as rapid a rate as is feasible in view of the market demand for apples;
3. Prevent the unreasonable and unnecessary waste of agricultural wealth because of improper preparation of apples for market, or excessive shipments to markets;
4. Protect the interests of consumers of apples by exercising the powers of this Act only to the extent as is necessary to effectuate the declared purposes of this Act by assuring the consumer of an adequate supply of apples at a reasonable cost; and

WHEREAS, in making the findings herein set forth, the Commissioner of Agriculture has taken into consideration any and all facts available to him with respect to the economic factors specified in Section 35-28-106 of the Act; and

WHEREAS, this Marketing Order promoting the marketing of apples in Delta and Montrose counties, in the State of Colorado, embraces all persons of a like class who are engaged in the marketing of apples; and

WHEREAS, the current marketing season for apples in the area covered by this Marketing Order has already commenced and immediate implementation of this Marketing Order will significantly and materially effectuate the purposes and goals of this Marketing Order and the Act;

THEREFORE, the Commissioner hereby finds that immediate adoption of this Marketing Order is imperatively necessary for the preservation of public safety and welfare and that compliance with the publication requirements of 24-4-103, Colorado Revised Statutes, 1973, would be contrary to the public interest.

NOW THEREFORE, it is ordered by the Commissioner, acting under the authority vested in him by the Act, that such marketing of apples produced in Delta and Montrose counties, in the State of Colorado, from and after the date herein specified, shall be in conformity to and in compliance with the terms and conditions of this Marketing Order.

SECTION I

DEFINITIONS

Definitions as used herein have the following meanings;

- A. "COMMISSIONER" means the Commissioner of Agriculture for the State of Colorado.
- B. "ACT" means Title 35, Article 28, Colorado Revised Statutes 1973, as amended.
- C. "PERSON" means an individual, partnership, corporation, association legal representative, or any organized group of individuals.
- D. "APPLES" means all apples grown in the counties of Delta, and Montrose, in the State of Colorado.
- E. "ADMINISTRATIVE COMMITTEE" means the Board of Control established pursuant to Section II herein.
- F. "PRODUCER" means any person who normally produces or causes to be produced, apples for market in quantities in excess of one thousand (1,000) bushels annually, in the area of the state of Colorado covered by this Order.

- G. "PRODUCER-HANDLER" means a producer who performs one or more of the functions of a handler.
- H. "HANDLER" means any person engaged in the operation of selling, marketing, or distributing apples which he has produced, purchased or acquired from a producer, or which he is marketing on behalf of a producer, whether as owner, agent, employee, broker, or otherwise.
- I. "TO HANDLE" means to engage in the business of a handler as herein defined.
- J. "SHIP" means to sell, transport, or offer for sale or transportation apples produced in the area of the state covered by the Order, to a point or points outside of the area by any means whatsoever.
- K. "FISCAL PERIOD" means the period beginning and ending on the dates approved by the Commissioner pursuant to recommendations by the Administrative Committee.
- L. "SELL" means a transaction wherein the ownership in apples is transferred from the producer or handler to a purchaser for a consideration.
- M. "PROCESSING" means the operation of canning, freezing, fermenting, distilling, extracting, preserving, drying, grinding, crushing, or changing the physical form of apples in the operation of marketing such apples.

SECTION II

APPLE ADMINISTRATIVE COMMITTEE

For the administration of the business of the Apple Marketing Order during the period between its establishment and the first annual meeting, an interim Administrative Committee shall be established. This Committee shall consist of those persons selected by the members of the previous Apple Marketing Order at their last annual meeting and appointed by the Commissioner. Thereafter, succeeding administrative committees shall be selected and appointed as described hereinafter in this Section.

A. ESTABLISHMENT AND MEMBERSHIP

An Administrative Committee is hereby established, consisting of seven (7) members, five (5) of whom shall represent producers, and two (2) of whom shall represent handlers. There shall be an alternate for each member.

B. REPRESENTATION FOR COMMITTEE MEMBERS

1. PRODUCER MEMBERS

Producer members and their respective alternates shall be producers of apples in the districts which they are chosen to represent. For the purpose of selecting the producer members and alternates to the Administrative Committee, the area of the state covered by this Order shall be divided into the following districts:

District No. 1 -- Delta County.

District No. 2 -- Montrose County.

Each district shall have the following representation on the Administrative Committee: District No. 1, three (3) members, and three (3) alternates; District No. 2, one (1) member, and one (1) alternate. One (1) member, and one (1) alternate shall be selected from the area at large.

2. Additional district or districts may be established to give representation on the Apple Administrative Committee to other counties that may be brought under the order. The composition of the Committee may be reestablished where necessary under the provisions of II-D and II-E-2 to provide this representation.

3. HANDLER MEMBERS

Handler members and their respective alternates shall be selected at large from the area of the state covered by the Order.

C. NOMINATION AND SELECTION OF MEMBERS

1. At least thirty (30) days prior to the end of the fiscal period, meetings shall be held for the purpose of selecting nominees for members and alternates to the Apple Administrative Committee.

2. At each such meeting, one or more nominees shall be designated for each impending vacancy as a member or an alternate. Such designation may be by ballot of those present in voting capacity.

3. Only producers may participate in designating producer nominees; only handlers may participate in designating handler nominees.

4. Each producer and each handler shall be entitled to cast only one (1) vote on behalf of himself, his agents, subsidiaries, affiliates, and representatives. Members of the same household producing and marketing apples jointly in any combination shall be considered one member and shall have but one (1) vote. Proxy votes shall be prohibited.

5. If a producer is engaged in producing apples in more than one (1) district, such producer shall elect the district in which he may participate in

designating nominees. In no event shall there be participation in more than one (1) district.

- D. Any county not included in this Order and wishing to come under the Order may, after holding a hearing and referendum wherein the Order has been approved by 66 2/3 percent of the producers voting in such referendum who produced 66 2/3 percent of the production voted in such referendum, petition the Commissioner of Agriculture and the Apple Administrative Committee for admission under the Order. The county may have representation on the Apple Administrative Committee in accordance with the provisions of Sections II-B-2 and II-E-2.

E. REESTABLISHMENT

1. Districts and the distribution of representation among the districts may be reestablished by the Commissioner upon the Administrative Committee recommendations. In recommending any such changes, the Committee shall consider (1) the relative importance of new producing sections (2) relative production, (3) the geographic locations of producing sections as they would affect the efficiency of administration of this Order, and (4) other relevant factors.
2. The composition of the Apple Administrative Committee may be re-established as to number of members or representation on the Committee by producers or handlers, by the Commissioner at any time upon recommendation of the Administrative Committee.

F. FAILURE TO NOMINATE

If nominations are not made pursuant to the provisions of Section II-C by the date provided therein, the Commissioner may, without regard to nominations, select members and alternates on the basis of the representation provided for in this Order.

G. QUALIFICATION BY MEMBERS AND ALTERNATES

Any person selected by the Commissioner as a member or as an alternate for a member of the Administrative Committee shall qualify therefor by filing a written acceptance with the Commissioner within fifteen (15) days after being notified of such selection.

H. TERM OF OFFICE

The term of office of each committee member and alternate shall be for two (2) years. The dates on which terms of offices for each committee shall begin and end shall be established by the Commissioner pursuant to respective committee recommendations. Terms of offices of committee members shall be arranged so that approximately one-half shall terminate each year. Determination of which initial members and alternates shall serve for one year or two years shall be by lot.

I. ALTERNATE MEMBERS OF THE ADMINISTRATIVE COMMITTEE

An alternate for a member shall act in place and stead of such member during such member's absence, or in the event of death, removal, resignation, or disqualification of such member, and until a successor for such member is selected and has qualified.

J. VACANCIES

To fill any vacancy occasioned by the failure of any person selected as a member or as an alternate to qualify, or in the event of the death, removal, resignation, or disqualification of a member or alternate, a successor for his unexpired term may be selected by the Commissioner from nominations made pursuant to Section II-C from previously unselected nominees on the current nominee list, or from other eligible persons.

K. POWERS AND DUTIES

By virtue of the authority delegated to the Apple Administrative Committee by the Commissioner, and acting in his behalf, the said Administrative Committee shall have the following powers and duties, subject to the approval of the Commissioner:

1. To administer this Marketing Order;
2. To employ necessary personnel, including an attorney approved by the Attorney General of the State of Colorado, to fix their compensation and terms of employment, and to incur and pay such expenses from monies collected as herein provided, as it may deem necessary and proper to enable the Administrative Committee to properly perform all its duties as authorized herein;
3. To recommend administrative rules and regulations relating to the administration of this Order;
4. To receive, investigate, and report to the Commissioner complaints of violations of this Order;
5. To submit to the Commissioner for his approval an estimated budget of expenses necessary for the operation hereof; and also submit for approval a method of assessing and collecting such funds as the Committee may find necessary for administration of this Order;
6. To collect and disburse fees assessed for administration of this Order according to the terms and conditions specified herein;

7. To keep minutes, books, and records which will clearly reflect all the acts and transactions of the Administrative Committee, which minutes, books, and records shall be subject at any time to examination by the Commissioner;
8. To cause the books of the Administrative Committee to be audited by a competent accountant at least once each fiscal period and such times as the Administrative Committee may deem necessary, or as the Commissioner may request, and to file with the Commissioner and the Governor copies of any and all audit reports;
9. To give the Commissioner the same notice of all meetings of the Administrative Committee as given to the members;
10. To select a chairman and such other officers of the Administrative Committee as may be deemed advisable;
11. To perform such duties as may be assigned to it by the Commissioner in connection with the administration hereof; and
12. To cooperate, consult, and confer with committees administering other marketing agreements and orders, and with other governmental agencies and industry groups engaged in marketing research and development activities deemed beneficial to the marketing of apples.

L. PROCEDURE

1. A majority of all members of the Administrative Committee shall be necessary to constitute a quorum or to pass any motion or approve any Committee action.
2. The members of the Administrative Committee, including successors, alternates, and any agent or employee appointed or employed by the Committee, shall be subject to removal or suspension by the Commissioner for cause at any time. Each and every regulation, decision, determination, or other act of the Committee shall be subject to the continuing right of the Commissioner to disapprove of the same at any time, and upon such disapproval shall be deemed null and void except as to acts done in reliance thereon or in compliance therewith prior to such disapproval by the Commissioner.
3. Upon the death, removal, resignation, or expiration of term of office of any member of the Administrative Committee, all books, records, and other property in his possession shall be delivered to his successor in office or to the Committee, and such assignments and other instruments shall be executed as may be necessary to vest in his successor or the Committee full title to all

books, records, and other proper possessions under the control of such members pursuant hereto.

SECTION III

ADVERTISING AND SALES PROMOTION

- A. Whenever the Administrative Committee deems it advisable that an advertising and sales promotion plan be established, it may recommend to the Commissioner the establishment of such a plan. If the Commissioner determines that such a plan will effectuate the purposes of the act, he shall approve the proposed plan.
- B. In planning promotional programs, the time of maturity of apples of various locations and varieties shall be taken into consideration by the Administrative Committee to the extent that all production areas covered by the Order will receive proper advertising and promotional coverage at the most opportune time.
- C. The Administrative Committee shall administer any plan issued pursuant to this section.

SECTION IV

RESEARCH

- A. Whenever the Administrative Committee deems it advisable that programs in the field of research be established for the control of insects or disease, the improvement of production, harvesting, storing, transporting, marketing, handling, or processing of apples, it may recommend to the Commissioner the establishment of such programs. If the Commissioner determines that such programs will effectuate the purposes of the act, he shall approve the proposed programs.
- B. The Administrative Committee shall administer any research program issued pursuant to this section.

SECTION V

FINANCING

- A. EXPENSES
 - 1. The Administrative Committee is authorized to incur such expenses as the Commissioner finds reasonable and likely to be incurred by such Administrative Committee for the administration and operation of the provisions of this Order. The Administrative Committee shall prepare and submit to the Commissioner a proposed budget of expenses and a proposed rate of assessment for the then current fiscal period. The funds to cover such

expenses shall be acquired by the levying of assessments as provided in this section. Such assessment shall not exceed \$0.10 per 40-pound bushel. The amount of assessment in any fiscal period shall be determined by a majority vote of the producers present at the annual meeting held at the beginning of that fiscal period. HOWEVER, the initial assessment for the fiscal year, prior to the first annual meeting, shall be \$.05 per 40-pound bushel.

B. ASSESSMENTS

Each producer's pro-rata share shall be based upon the rate of assessment fixed by the Commissioner and shall be that proportion of such expenses which the total quantity of apples sold by such producer is of the total quantity of apples sold by all producers during said fiscal period.

C. COLLECTION OF ASSESSMENTS

1. All assessments made and levied pursuant to the provisions of this marketing order shall be paid by the respective producers who shall be primarily liable therefor. Such assessments shall be collected from the producers by the first handler thereof; and such handler shall remit to the Administrative Committee, upon demand, all assessments so collected. Any handler, within the area covered by this Order, who fails or neglects to collect such assessment from any producer and to remit such collection to the Committee as herein provided, shall be deemed guilty of a violation of this Order.
2. Any producer who by virtue of his activities or circumstances shall be within the meaning of the term "producer-handler," as defined, shall forthwith remit to the Administrative Committee the full amount of the assessment due. Any producer who fails to pay or remit such assessment as herein provided shall be deemed guilty of a violation of this Order.
3. The Commissioner may, at the request of the Administrative Committee, require each and every producer or handler directly affected herein to deposit with the Administrative Committee, in advance, an amount based upon the estimated gross volume of sales by such producer or handler during any given fiscal period and based upon the rate of assessment for such fiscal period. At the close of such fiscal period, the sum so deposited shall be adjusted to the amount which is chargeable against such producer or handler upon the basis of the actual gross volume of sales by such producer or handler during such fiscal period.
4. The Administrative Committee, with the approval of the Commissioner, shall establish methods and procedures for the collection of assessments. The Commissioner may issue necessary regulations to enforce the provisions of this section.

D. ACCOUNTING

1. If, at the end of a fiscal period, the assessments collected are in excess of expenses incurred, such excess shall be accounted for in accordance with one of the following procedures:
 - a. The Administrative Committee, with the approval of the Commissioner, may carry over such excess into subsequent fiscal periods as a reserve.
 - b. If such excess is not retained in a reserve as provided in subparagraph "a" of this paragraph, it shall be refunded proportionately to the persons from whom it was collected. Upon such liquidation, any funds not required to defray the necessary expenses of liquidation shall be disposed of in such manner as the Commissioner may determine to be appropriate. To the extent practical, such funds shall be returned pro-rata to the persons from whom such funds were collected.
2. Any monies collected pursuant to this Order shall be deposited in a bank, or banks, or other depository approved by the State Treasurer, allocated to the Apple Administrative Committee, and disbursed only for the necessary expenses incurred by the Committee and the Commissioner and approved by the Commissioner. Funds so collected shall be deposited and disbursed in conformity with appropriate rules and regulations prescribed by the Commissioner.

S E C T I O N V I

COMPLIANCE

The Administrative Committee, with the approval of the Commissioner, shall establish methods and procedures by which producers, handlers, and producer-handlers shall transport, sell, ship, or handle apples to insure compliance with all the provisions of this Order. The Commissioner shall issue the necessary regulations to enforce the provisions of this Order.

S E C T I O N V I I

REPORTS AND RECORDS

The Commissioner may require any and all producers, producer-handlers, or handlers to maintain books and records reflecting their operations, as such, to furnish to the Commissioner, or his duly authorized or designated representative, such information as may be from time to time requested by him relating to such operations, and to permit the inspection by said Commissioner, or his duly authorized or designated representatives, of such portions of such books and records as relate to such operations.

SECTION VIII

LIABILITY

The members of any such Administrative Committee duly appointed by the Commissioner, including employees of such Committee, shall not be held responsible individually in any way whatsoever to any producer, distributor, or handler, or to any other person, for errors in judgment, mistakes, or other acts, either of commission or omission, as principal, agent, person, or employee, except for their own individual acts of dishonesty or crime. No such person shall be held responsible individually for any act or omission of any other member of such Committee. The liability of such Committee shall be several and not joint, and no member shall be liable for the default of any other member.

SECTION IX

EFFECTIVE TIME AND TERMINATION

A. EFFECTIVE TIME

The provisions hereof shall become effective at such times as the Commissioner may declare above his signature, attached hereto, and shall continue in force until terminated as specified in this section.

B. TERMINATION

1. The Commissioner shall suspend, amend, or terminate any provision hereof whenever he finds that such provision does not tend to effectuate the declared purpose of the Act within standards and subject to the limitations and restrictions therein imposed, provided that such suspension or termination shall not be effective until the expiration of the then current marketing season.
2. If the Commissioner finds that the termination hereof is requested in writing by more than fifty (50) percent of producers within the counties covered by this Order, or who produce more than fifty (50) percent of the volume of apples produced for market within the area covered by the Order, the Commissioner shall terminate the provisions hereof, provided that such termination shall be effective only if announced thirty (30) days before the end of the then current fiscal period.
3. The provisions hereof shall, in any event, terminate whenever the provisions of the act authorizing them cease to be in effect.

C. PROCEEDINGS AFTER TERMINATION

Upon the termination of the provisions of this Order, the Commissioner may appoint the members of the Administrative Committee then functioning to continue as joint trustees, for the purposes of liquidating the affairs of the Committee, of all property then in the possession, or under the control, of the Committee, including property not delivered at the time of such termination; provided that, upon termination by the Commissioner of this marketing order, any and all monies remaining and not required by the Commissioner to defray the expenses of this marketing order shall be returned by the Commissioner on a pro-rata basis to all persons from whom assessments were collected; provided, further, however, that if the Commissioner finds that the amounts so returnable are so small as to make impractical the computation and remitting of such pro-rata refund to such persons, the Commissioner may use the monies in such fund to defray the expenses incurred by him in the formulation, issuance, administration, or enforcement of any subsequent marketing order for such commodity.

SECTION X

APPLES NOT SUBJECT TO ASSESSMENT

Nothing contained herein shall be construed to authorize any limitation of the right of any person to ship: (1) apples for consumption by a charitable institution or for any distribution for relief purposes or for distribution by a relief agency; or (2) apples for processing on a commercial scale. The assessment provisions hereof shall not be applicable to apples so shipped. The Administrative Committee may prescribe adequate safeguards to prevent apples, shipped for such purposes, from entering commercial channels of trade contrary to the provisions hereof.

SECTION XI

DURATION OF IMMUNITIES

The benefits, privileges, and immunities conferred upon any person by virtue hereof shall cease upon the termination hereof, except with respect to acts done under and during the existence hereof.

SECTION XII

SEPARABILITY

If any provision hereof is declared invalid, or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder hereof of the applicability thereof to any person, circumstance, or thing shall not be affected thereby.

SECTION XIII

DEROGATION

Nothing contained herein is or shall be construed to be in derogation or in modification of the rights of the Commissioner, or of the State of Colorado, to exercise any powers granted by the Act or otherwise, or, in accordance with such powers, to act in the premises whenever such notice is deemed advisable.

SECTION XIV

AMENDMENTS

Amendments hereto may be proposed from time to time by the Administrative Committee, or by the Commissioner. When such amendments are proposed, a hearing and referendum shall be held as was held on the original Order.

IN WITNESS WHEREOF, I, J. Evan Goulding, Commissioner of Agriculture, for the State of Colorado, pursuant to the authority in me invested by law, do hereby execute, issue and publish this Marketing Order at my office in Denver, Colorado, this 24th day of September, 1982, and do declare that I have this day posted a notice of the issuance of this Order on a public bulletin board in my office, and a copy of said notice is hereby published in a newspaper of general circulation published in the State of Colorado, and, therefore, this Order shall be in full force and effect on and after 12:01 a.m., MDT, October 1, 1982.

(Signature on file)

J. EVAN GOULDING
Commissioner