

HORT FLASH!!

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Beef Decision Bodes Well for New York Marketing Orders!!

(The following comments are from the US Apple Association)

Monday's decision by the U.S Supreme Court upholding the constitutionality of the Beef Promotion and Research Order (also called the "beef check-off program") represents a watershed legal victory for supporters of mandatory industry-funded promotional programs. The Court found that the Order does not violate First Amendment free speech rights of producers compelled to fund the program. The decision, which overturned lower court rulings, stated that promotional messages under the program are government speech, rather than the private speech of beef producers. It also preserved the funding mechanism of mandatory industry payments.

A number of states have apple marketing orders, which provide funds for promotion of apples and apple products, and also for other purposes in some cases (such as research and producer/consumer information). These programs operate and are regulated under individual state laws and are funded by the apple industry. The Supreme Court decision identified certain characteristics of the beef check-off's promotional program when finding it constitutes government speech. The overarching principle driving the Court's decision is that the beef check-off is part of a comprehensive program whose basic message, some of its elements and final approval authority are established by law, approved by Congress, and tightly regulated and administered by the U.S. Department of Agriculture.

Agriculture Secretary Johanns hailed the Supreme Court action as a victory, saying "This is certainly a win for the many producers who recognize the power of pooled resources. As this administration has always contended, USDA regards such programs, when properly administered, as effective tools for market enhancement."

Questions and Answers on the Stone Fruit Marketing Orders for Research

What is a Research and Development Fund?

A Research and Development Fund is an official regulation created by the Commissioner of the NYS Department of Agriculture and Markets. The initiative for proposing the fund must come from the producers who will be affected. In this case, it is the New York State Horticultural Society that is drafting the petitions for each stone fruit crop. Growers and other interested parties will have an opportunity to comment on the proposals at public hearings for each crop. Following the hearings, the Commissioner submits the proposals to the growers for approval.

Why is a Research and Development Fund needed for stone fruit (apricots, peaches/nectarines, plums, sweet cherries, tart cherries)?

The United States Department of Agriculture has stated that it is their role is to fund only fundamental research. It is their view that this basic research is highly speculative and is designed to solve the long-range problems of the industry, not shorter term, and field-oriented work. Cornell University and other Land Grant Universities will continue to receive a decreasing amount of federal funding for applied research. If this type of research work is to continue, the New York produce industry will need to support it. It is likely that without industry dollars, Cornell will no longer be able to support a stone fruit program.

Don't we already have such a fund for NY tart cherries?

No! The New York Cherry Association was established several decades ago by tart cherry growers in New York to help support advertising/promotional projects for processed tart cherries grown in New York. Thirty years ago New York tart cherry growers petitioned the Commissioner of Agriculture and Markets to conduct an industry-wide hearing about creating a legally mandated tart cherry advertising and promotion fund. Industry approval was obtained and has remained in place since that time. This advertising/promotional fund has become known as the NY State Cherry Market Order (NYSCMO). Processors assist NYS Agriculture and Markets to collect a check-off fee from all the tart cherries they receive that are grown in NY. None of these Market Order funds are legally allowed to be used for applied research. Like Apples, if tart cherry producers want a mandated check-off fund for applied research for tart cherries, they must approve the creation of a separate fund for this purpose. One for promotion and another one for applied research. All the other NY tree fruit crops have neither a mandated fund for promotion nor one for applied research.

Why is it necessary to have separate votes for each stone fruit crop?

Review of this question by the legal staff of the NYS Department of Agriculture and Markets led to the opinion that there is not enough similarity among stone fruit crops in their usage in commerce or in their individual biological problems to allow elected producer representatives to determine equitable distribution of funds among research projects if they were all lumped together into one fund. Ag and Markets decided that peach and nectarines could be combined because they are similar in their usage, biology and marketing.

What percentage of growers needs to support the proposal for it to pass?

The proposal can be approved only if 51% of the producers who participate in the vote say yes, and this 51% must represent at least 65% of the crop marketed in NYS in the preceding season.

If approved, how much will this cost the grower?

The assessment rate will be on a per acre basis and will have an upper limit that is voted on crop by crop in the referendum. The actual assessment rate for each crop season will be determined by an elected advisory board for each crop as appointed by the Commissioner of NYS Agriculture and Markets. The maximum assessment rate that is being considered is \$20.00 per acre for plantings four years old and older and \$5.00 for plantings under that age. An industry-wide discussion about producer's opinions regarding maximum rates for each crop will be conducted prior to any vote.

How much will NYS Agriculture and Markets charge to administer the fund?

Their administrative costs cannot exceed 5% of all the moneys collected.

How is it determined which projects will be funded?

NY stone fruit crop growers will be the ones who decide how to spend their money. An advisory board for each crop will be established to decide on the projects to be funded. Each board will consist of 9 members (7 growers, 1 processor, 1 packer/handler). A call for proposals would be sent out to all appropriate University, Extension, and Ag business candidates. Funding for proposals would not be limited to New York. If the advisory board felt that appropriate work could be conducted in other states, those proposals could be funded.

Are any growers exempt?

This is not a voluntary program. Only growers who produce and market less than 1 acre in any year are exempt.

How do growers pay?

All growers must pay their assessment to the Commissioner of NYS Agriculture and Markets no later than December 15.

What types of projects will this money be used for?

Disease, insect, and weed control strategies All stone fruit crops are susceptible to numerous plant pathogens and insects and ground cover management challenges. It is essential to manage these pest factors to optimize crop development and yields of marketable fruit. This will lead to more effective Integrated Pest Management practices, which will in turn lead to improved market potential for NY grown stone fruit crops. New chemistry for products influencing pest management will be evaluated.

Variety and Rootstock selection and testing: New varieties are the backbone of agricultural crop profitability, coupled with successful market identification. Both variety trials and breeding need to be conducted to determine which varieties have the horticultural characteristics and the market qualities sought by the industry. Funding would allow for more comprehensive trials not just in one or two locations. There are many interesting accessions from both Cornell and other states in Dr. Bob Andersen's program. Evaluating them in the different fruit growing districts of NY will happen more rapidly and more comprehensively if money for grower-cooperator trials is available. Funding requests for additional breeding at Geneva is not currently under consideration. However, requests for funding of existing variety testing and rootstock trials at Geneva are anticipated (because they are the source of new candidates for both rootstock and scion candidates for grower trials.)

Marketing research: What do consumers want from NY-grown stone fruits? Market researchers are collaborating with horticulturists and food scientists to find out what will sell, and why. Funds to do this type of market research for stone fruit crops among Eastern US consumers are extremely hard to come by.

New uses: Food scientists have experiments underway with graduate students to create technology that enhances new juice products and new human medical products from stone fruits. As is the case in marketing research with minor crops, funds for this work are also difficult to come by.

Eating quality: Factors affecting quality vary according to the genetics of the variety, field conditions and post harvest practices. Obvious targets are bruising reduction, rot control and management of known shelf-life limits. Eastern-grown stone fruits can improve eating quality image through applied research to demonstrate how their competitive advantage of short shipping distances can be optimized.

Storage Issues: Factors important for longer-term storage of riper, locally grown stone fruits need be discovered.

Crop Management Issues: Thinning materials and plant growth regulators like Gibberellins need more thorough research for NY stone fruits.

Premier Apple

Cooperatively Owned

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Marketing Forum Registration Form

Holiday Inn Carrier Circle, 6555 Old Collamer Road, E. Syracuse, NY 13057

*For Holiday Inn reservations, call 1-800-431-2761 by June 13th
and give code NNH for \$75 rate*

To facilitate Planning, please send your Forum reservation form by June 13th

I/We will attend the Marketing Forum in Syracuse on June 27-28, 2005

Total members @ \$60.00 _____

Total non- members @ \$85.00 _____

Total enclosed _____

The registration fee includes lunch, dinner and breakfast

Name _____

Company _____

Mailing address _____

City _____ State _____ Zip _____ County _____

Phone _____ Fax _____ E-mail _____

Thank You for Your Continued Support!!!

Producer's Security Fund a Valuable Asset To New York Farmers!

The Agricultural Producers Security Fund was created by the legislature to protect farmers from dealers who fail to pay for farm products they have purchased. However, in order to be protected producers must follow the rules. **The law provides that producers must be paid within 30 days of sale and delivery of the product, unless a written agreement exists between the producer and the dealer that extends the terms for payment up to a maximum of 120 days.**

One of the points of controversy is when is the product sold and delivered. In the fresh apple business the product is normally considered sold when it is packed, so the marketer then has up to 120 days to make payment assuming a written agreement exists. This is justified by proponents on the basis that the growers' product is identified and, theoretically, could be reclaimed and is not co-mingled. Some processors are now claiming the same interpretation applies to them, even though the grower may not be able to reclaim his apples under some situations. This point needs additional clarification.

The following points are taken from "Tips on Selling" included in Agricultural Producers Security Program from Ag and Markets:

- *Sell to licensed dealers who make prompt payment.*
- *Adhere to the prompt payment provision of the law. The law requires dealers to pay producers within 30 days of sale and delivery, unless you have a written agreement to extend the payment terms. Payment terms cannot exceed 120 days from the sale and delivery.*
- *Good business requires good records with clear terms of sale. Keep copies of receipts, invoices, delivery and/or weight tickets with a complete description of the terms of sale.*
- *Be conscious of the time limits to be eligible for financial protection under the Agricultural Producers Security Program.*
- *Discuss issues of nonpayment immediately with the dealer to resolve any problems.*
- *Do not continue to sell until your account is current. If you are unsuccessful in resolving the payment problem, notify the Department immediately and file a complaint by calling 1-800-554-4501.*

A new trust benefit that was added last year is a legal mechanism that holds a dealer responsible for the full amount owed to a producer. Known as the "Article 20 Trust," it is established upon delivery of the producer's farm products to a dealer and ends once the amount due is fully paid. The trust assets are the farm products and the proceeds from the sale of those farm products. To initiate the Article 20 Trust, a producer must provide a written notice to the dealer within 30 days from the date when payment is due informing the dealer of the content of the trust. The written notice should provide details of the transaction, including the dealer's name, transaction date, product sold, quantity, price per unit, amount owed and the date payment is due. As a practical matter, a producer may wish to provide written notice to a dealer on the invoice itself.

In the event of nonpayment by a dealer, producers may enforce the trust provision of Article 20 by contacting their attorney for a court action under the jurisdiction of the Supreme Court. A producer who prevails in an action to enforce payment from the trust shall recover from the dealer related costs, fees and disbursements and may recover reasonable attorney fees as determined by the court.

It is always recommended that producers consult their attorney concerning matters involving preservation of their benefit or to enforce the trust.

For up-to-date information about the law, a copy of the brochure or a list of licensed dealers, please visit the Department's website at www.agmkt.state.ny.us/programs/apsf.html, or call the Department at 1-800-554-4501 or directly at 518-457-1954.

Program for the Premier Apple Marketing Forum

Holliday Inn, Carrier Circle, Syracuse

June 27 – 28, 2005

Growing OUR Share of the U.S. Apple Business!

Monday, June 27th

12 PM – 1 PM - Buffet Lunch at the Holliday Inn Carrier Circle

1:00 – 1:30 PM - Welcome & The Eastern Market Spells Opportunity – George Lamont, Pres. Prem. Apple

1:30 – 2:10 PM - What constitutes eating quality to a consumer and how do we measure quality–
Dr. Susan Brown – Cornell-Geneva Apple Breeder

2:10 – 2:30 PM - Results of our supermarket and packing line quality studies –
Dr. Edelgard Pavel, Cornell Cooperative Extension

2:30 – 3:30 PM - An update on SmartFresh – Chris Watkins, Cornell
Panel – Dr. Chris Watkins, Cornell, a SmartFresh rep, and storage operators

3:30 – 3:45 PM - Break – sponsored by

3:45 – 4:30 PM - How can we improve the packaging of Eastern Apples –
Dr Hotchkiss, Chair, Cornell Food Sci. Dep't, plus panel of packers & packing suppliers

4:30 – 5:45 PM - Marketing Apples with a Healthy Message –
Jim Allen, NYAA, Wendy Davis, US Apple, Dr. Rui Hai Liu, Cornell, & Linda Quinn,
NYAA

5:45 – 6:15 PM– Social Hour

6:15 – 7:30 PM– Dinner

7:30 – 8:30 PM– What changes are taking place in Washington and China, and how will they effect the eastern
apple industry? – “Des” O’Rourke

Tuesday, June 28th

7:00 – 8:00 AM – Buffet breakfast

8:00 – 9:00 AM - Challenges for Today’s Supermarkets: Implications for the Eastern Apple Industry –
Dr. Ed McLaughlin, Director, Cornell Food Industry Management Program

9:00 – 9:30 AM - What are the different models for industry collaboration – Dr. “Des” O’Rourke

9:30 – 10:00 AM - How do we compete with Washington - Panel of marketers

10:00 –10:15 AM - Break sponsored by

10:15 –11:15 AM - Pricing this year’s crop – How do we determine the right price that covers all
costs and make it stick? - Panel of Marketers

11:15- 11:45 AM - How can we work together more effectively? –
Panel of Premier Marketing Advisory Committee

11:45 – 12:00 PM – Wrap up

12:00 PM Adjourn

MEAL TICKETS:

Blue – Monday Lunch

Red – Monday Dinner

White – Tuesday Breakfast

***The Proposed New York State Research And Development Funds
For Stone Fruit Crops***

The New York State Horticultural Society has proposed that NYS Marketing Orders be established to collect funds for research on stone fruit crops. This was done on behalf of NYS Stone Fruit Growers. NYS Dept. of Ag and Markets is going to hold hearings on the proposed orders and it is up to stone fruit growers to show up and voice their support! Based on grower testimony at the hearings, the Dept. will decide if there is enough support to send it to the growers for a vote.

The hearings are:

Tuesday, June 7 @ 1 PM - Niagara Co. Coop Ext

Wednesday, June 8 @ 10 AM - East Williamson Fire Hall

Friday, June 10 @ 10 AM - Hudson Valley Lab

****See article inside on Agricultural Producers Security Fund.**

NYSHS

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