

Serial Number 1942/314



THE APPLE AND PEAR MARKETING REGULATIONS 1942

C. L. N. NEWALL, Governor-General.

ORDER IN COUNCIL.

At the Government House at Wellington, this 4th day of
November, 1942.

Present :

HIS EXCELLENCY THE GOVERNOR-GENERAL IN COUNCIL.

PURSUANT to the Marketing Act, 1936, and the Agriculture (Emergency Powers) Act, 1934, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, doth hereby make the following regulations.

REGULATIONS.

PART I.—PRELIMINARY.

1 : 1. These regulations may be cited as the Apple and Pear Marketing Regulations 1942.

1 : 2. These regulations shall come into force on the day following the notification in the *Gazette* of the making thereof.*

1 : 3. The Apple and Pear Marketing Regulations 1940† are revoked.

1 : 4. All certificates, registers, and generally all acts of authority and all other documents, matters, acts, and things which originated or had effect under the regulations hereby revoked and are of continuing effect at the time of coming into force of these regulations shall enure for the purpose of these regulations as fully and effectually as if they had originated under the corresponding provisions of these regulations, and accordingly shall, where necessary, be deemed to have so originated.

1 : 5. All matters and proceedings commenced under the regulations hereby revoked and pending or in progress at the time of coming into force of these regulations may be continued, completed, and enforced under these regulations.

1 : 6. In these regulations, unless inconsistent with the context,—

“Minister” means the Minister of Marketing :

“Department” means the Marketing Department established by the Marketing Act, 1936, and includes every person by whom, pursuant to the said Act, the functions of the Department may be exercised :

“Fruit” means apples and pears :

“Graded” means graded as provided by Regulation 3 : 1 hereof :

* See end note.

† Statutory Regulations 1940, Serial number 1940/30, page 72.

- “Manufacturer” means a person who purchases apples or pears for the purpose of manufacture for sale by way of wholesale of a product containing apples or pears :
- “Packed apples and pears” means apples and pears packed in containers in accordance with any requirements notified from time to time by the Department :
- “Producer” means a person engaged in the business of producing apples and pears for sale and being the occupier of an orchard registered pursuant to the Orchard and Garden Diseases Act, 1928, and includes any agent or other person acting on his behalf :
- “Public notice” means the publication in the *Gazette* or in a newspaper or newspapers commonly circulating in the apple and pear growing districts of the Dominion as the Minister thinks fit :
- “Sale” includes inviting to purchase, offering to sell, attempting to sell, receiving for sale, having in possession for sale, exposing for sale, sending or delivering for sale and causing or allowing to be sold, offered, advertised, or exposed for sale, and includes barter and exchange ; and “to sell” has a corresponding meaning :
- “Purchase” includes barter and exchange, and includes an offer to purchase ; and “to purchase” has a corresponding meaning.

1 : 7. For the purpose of general interpretation these regulations shall be deemed to be made under the Marketing Act, 1936, and unless a contrary intention appears, expressions used herein have the same meaning as in that Act :

1 : 8. If any conflict arises between the provisions of the New-Zealand-grown Fruit Regulations 1940* and these regulations, the provisions of these regulations shall prevail.

1 : 9. In any proceedings for an offence against these regulations the onus of proving where such proof would constitute an answer to the charge that any person in possession at any material time of apples or pears came into possession thereof in a manner not prohibited by these regulations shall lie upon the person charged.

1 : 10. Every person commits a breach of these regulations, and is liable accordingly, who refuses to give information or gives false or misleading information in answer to an inquiry made by an authorized officer of the Department in performance of his duty under the Marketing Act, 1936, the Agriculture (Emergency Powers) Act, 1934, or these regulations.

PART 2.—SALE OF APPLES AND PEARS.

2 : 1. No producer shall sell any apples or pears unless such sale is made in accordance with these regulations, and no person shall purchase any apples or pears if such purchase is made contrary to the provisions of these regulations.

2 : 2. It shall be lawful for a producer to sell any graded apples or pears to any consumer purchasing for his own use and not for resale, and any consumer may buy any graded apples or pears from a producer for his own use and not for resale so long as—

- (a) Such sale is made directly by the producer ; and either
- (b) Actual delivery is made directly to the purchaser at the registered orchard of the producer or in the immediate vicinity thereof ; or

* Statutory Regulations 1940, Serial number 1940/195, page 621.

(c) In the case of a sale of not more than two cases each containing not more than one bushel of fruit delivery is effected by the Railways Department or other common carrier.

2:3. It shall be lawful, without complying with such of these regulations as restrict sales, for a producer to sell to a manufacturer and for a manufacturer to purchase from a producer any apples or pears sold and purchased for the purpose of wholesale manufacture for sale of a product containing apples or pears.

2:4. It shall be lawful for a producer, without complying with such of these regulations as restrict sales, to sell to any person whom he knows not to be a retailer fruit below the standard of grading provided in Regulation 3:1 hereof, or for any person other than a retailer to purchase such fruit from a producer if such fruit is sold and purchased for any purpose other than for human consumption.

2:5. No person having purchased fruit under the authorities conferred by Regulations 2:2, 2:3, and 2:4 hereof shall sell or offer to sell any fruit so purchased.

2:6. Except as provided by these regulations, no producer shall sell or offer for sale any apples or pears except to the Department and no person shall sell or offer for sale, whether by wholesale or by retail, any apples or pears not procured from the Department or an authorized agent of the Department.

2:7. Except as provided by these regulations, no person shall knowingly purchase or offer to purchase any apples or pears unless such apples or pears have been procured by the vendor directly or indirectly from the Department or an authorized agent of the Department.

2:8. Every person engaged in the production, distribution, or storage of apples or pears shall keep adequate records of all apples or pears harvested, received, or disposed of by him, and shall when required at any reasonable time by a duly authorized officer of the Department allow such officer to examine all stocks of apples or pears for the time being in his possession, and shall produce for his inspection the books of account and other records relating to the production, distribution, or storage of apples or pears, and such officer shall have the right to make copies of the entries appearing in such books of account and records.

2:9. Every producer shall, when required by the Department so to do, furnish a return in writing to the Department showing the estimated quantity of each or any variety of apples or pears expected to be harvested from the orchard registered in his name during such period or periods as the Department may specify.

2:10. The Department may in its discretion appoint any producer to act as an agent for the Department for the sale of apples or pears to persons for further resale where in the opinion of the Department the requirements of distribution would be better suited if such an agency were granted.

2:11. Any such agency may be subject to such conditions as the Department may think fit to impose, and may at any time be revoked by the Department by notice in writing given by the Department to the agent.

2:12. Every producer shall, whenever required by the Department so to do, make a return in writing to the Department setting out the date, quantity of fruit, kind of fruit, and purchase-price attending every sale effected by him under the authority of Regulations 2:2, 2:3, and 2:4 hereof and not the subject of any previous like return theretofore made by him.

2 : 13. Except as hereinbefore provided, all apples and pears intended by a producer for sale and grown in any orchard registered in his name pursuant to the Orchard and Garden Diseases Act, 1928, shall be delivered by the producer to the Department at such places and at such times as the Department may from time to time, by public notice or by notice served on a producer, appoint as times and places for delivery.

2 : 14. Acceptance by the Department of any apples or pears delivered by a producer as aforesaid shall be evidenced by delivery to the producer of a stamped and signed copy of a submit-note as herein-after provided, and the acceptance of the fruit and delivery of the submit-note shall be deemed to constitute an agreement for the sale of the fruit to the Department at prices to be determined as herein-after provided and subject in all respects to the provisions of these regulations, including provisions for rejection.

PART 3.—GRADING, PACKING, AND INSPECTING.

3 : 1. All apples or pears delivered to the Department or offered by a producer for sale shall be packed in containers in accordance with any requirements notified from time to time by the Department and, subject to Regulations 2 : 3 and 2 : 4 hereof, shall be graded according to the grades and grading standards specified in the New-Zealand-grown Fruit Regulations 1940,* except so far as they may be incompatible with any requirements notified from time to time by the Department. Every package of apples or pears delivered to the Department or offered by a producer for sale shall be marked with the correct name of the variety or varieties of fruit contained in the package.

3 : 2. All fruit delivered to the Department shall be inspected by an Inspector appointed under the Orchard and Garden Diseases Act, 1928, and the Inspector shall determine whether or not the fruit is packed and graded in accordance with these regulations.

3 : 3. The Inspector may reject any fruit which in his opinion does not belong to one of the grades hereinbefore referred to or is for any reason unfit for marketing as packed and delivered.

3 : 4. No fruit which has been rejected after examination by an Inspector shall be resubmitted to the Department or sold to a consumer for his own use unless it has been regraded and repacked so as to conform in every way to the requirements of these regulations.

3 : 5. With each consignment of fruit delivered to the Department the producer shall furnish, in quadruplicate, the form of submit-note authorized by the Department, in which shall be set out the correct variety, grade, and quantity of the consignment, or other particulars as may be required by the Department.

3 : 6. The Inspector may make such alterations in the submit-note as he thinks necessary to make it a true description of the fruit, and when the Inspector is satisfied that all details have been properly set out he shall stamp and sign all copies of the submit-note and verify by his initials all alterations made therein, and the Department shall deliver one copy to the producer.

3 : 7. If in the opinion of the Inspector the variety, grade, or quantity of any fruit is so incorrectly set out in the submit-note as not to be readily capable of correction by alteration of the submit-note, he shall give the producer the option of taking back such fruit

* Statutory Regulations 1940, Serial number 1940/195, page 621.

to be regraded by the producer or of having the fruit regraded by the Department at the expense of the producer, or having it otherwise disposed of at the expense of the producer.

3 : 8. The Department may arrange for re-examination of any fruit which has been delivered to the Department, and if upon such re-examination the Department is satisfied that by reason of faulty grading, faulty packing, or any defect which was existing but not observed at the original inspection it would be inadvisable to allow such fruit to be marketed without being regraded, repacked, or otherwise dealt with the Department may within fourteen days after the first receipt of the fruit and prior to its being placed on the market, by notice in writing delivered to the producer, reject the fruit or may in its discretion regrade, repack, or otherwise deal with the fruit in preparation for marketing. All fruit so rejected may be disposed of by the direction of the Department on behalf of the producer or dealt with in any other manner which the Department may direct. All costs incurred in the disposal of such fruit or in the regrading or repacking thereof or other dealing therewith shall be paid by the producer.

PART 4.—PURCHASE-PRICES AND PAYMENT.

4 : 1. The prices to be paid from time to time by the Department to producers for apples and pears shall be such as the Minister may from time to time fix by public notice.

4 : 2. Prices so fixed may be made to depend on the variety of the fruit and on the grade assigned to the fruit under Regulation 3 : 1 hereof and on any other ground of discrimination that the Minister thinks fit to take into account.

4 : 3. Payment of the price of any fruit delivered to and accepted by the Department shall be deferred until such time as the Minister may think fit :

Provided that advance payments to producers may be made and such advances shall be deducted when final payment for the fruit is made to the producer in accordance with the price fixed as aforesaid.

4 : 4. Payment of the price of any apples or pears delivered to and accepted by the Department may be made by cheque drawn on the appropriate account established under the Marketing Act, 1936, and made payable to the order of the producer or the order of a person named by him for the purpose.

PART 5.—NATIONAL FRUIT MARKETING ADVISORY COMMITTEE.

5 : 1. The Minister may appoint a committee to be known as the National Fruit Marketing Advisory Committee (hereinafter referred to as the Committee).

5 : 2. The Committee shall consist of such persons as the Minister may from time to time appoint (in this Part of these regulations referred to as appointed members), together with the persons who for the time being are members of the Fruit-export Control Board.

5 : 3. Every appointment of an appointed member of the Committee shall be made by notification under the hand of the Minister published in the *Gazette*, and shall take effect on the date of notification or such later date as may be stated therein.

5 : 4. The appointed members of the Committee shall hold office during the pleasure of the Minister.

5 : 5. No business shall be transacted at any meeting of the Committee unless at least one-half of the members are present to form a quorum.

5 : 6. The function of the Committee shall be to advise the Department with respect to any matter referred to it in relation to the administration of these regulations and generally in relation to the marketing of apples or pears.

5 : 7. The Travelling-allowance Regulations 1941* shall apply to and be deemed to be incorporated in these regulations so as to relate to the National Fruit Marketing Advisory Committee and its members.

5 : 8. The subsistence-allowance referred to in Regulation 4 of the Travelling allowance Regulations 1941* shall be at the rate of 12s. 6d. per half-day.

5 : 9. The mileage-allowance referred to in Regulation 11 of the Travelling-allowance Regulations 1941* shall be for journeys performed in a motor-vehicle an allowance of 4½d. per mile.

C. A. JEFFERY,
Clerk of the Executive Council.

* Statutory Regulations 1941, Serial number 1941/149, page 486.

Issued under the authority of the Regulations Act, 1936.

Date of notification in *Gazette* : 5th day of November, 1942.

These regulations are administered in the Internal Marketing Division of the Marketing Department.