

1 NYCRR PART 203

NEW YORK STATE ONION RESEARCH AND DEVELOPMENT PROGRAM

Sec.	
203.1	Definitions.
203.2	Program area.
203.3	Establishment and members of advisory board.
203.4	Nominations for advisory board membership.
203.5	Acceptance and terms of office.
203.6	Duties and responsibilities of the advisory board.
203.7	Research.
203.8	Advertising, promotion and publicity of onions and onion products.
203.9	Information.
203.10	Budget and assessment.
203.11	Collection of assessment.
203.12	Disbursement of funds.
203.13	Termination and periodic referendum.
203.14	Effective date.
203.15	Exemptions.
203.16	Rate of assessment.
203.17	Surplus moneys order.

Section 203.1 Definitions.

(a) *Act* means article 25 of the Agriculture and Markets Law of the State of New York.

(b) *Advisory board* means the advisory board established pursuant to the provisions of subdivision 9 of section 294 of article 25 of the Agriculture and Markets Law and section 203.3 of this Part.

(c) *Central area* means that part of the State of New York consisting of the following counties: Wayne, Tioga, Broome, Seneca, Schuyler, Cayuga, Madison, Chemung, Oswego, Oneida, Onondaga, Lewis, Cortland, Jefferson, Tompkins and Chenango.

(d) *Eastern area* means that part of the State of New York consisting of the following counties: Franklin, Clinton, Essex, Hamilton, Warren, Herkimer, Otsego, Delaware, Schoharie, Montgomery, Fulton, Saratoga, Washington, Schenectady, Albany, Rensselaer, Greene, Columbia, Ulster, Dutchess, Sullivan, Orange, Putnam, Westchester, Rockland, Nassau, Suffolk and St. Lawrence.

(e) *Western area* means that part of the State of New York consisting of the following counties:

Niagara, Monroe, Erie, Orleans, Genesee, Wyoming, Chautauqua, Cattaraugus, Allegany, Steuben, Yates, Ontario and Livingston.

(f) *Commissioner* means the Commissioner of Agriculture and Markets of the State of New York, or any officer or employee of the Department of Agriculture and Markets to whom authority may be delegated to act pursuant to section 17 of the Agriculture and Markets Law.

(g) *Declaration of planted acres* means a statement, the form of which shall be prescribed by the commissioner, upon which the owner, lessee or other operator of an onion-growing farm shall declare the number of acres of onions in production.

(h) *Department* means the Department of Agriculture and Markets of the State of New York.

(i) *Grower* means any person who produces or causes to be produced onions as defined herein.

(j) *Handler* means any person engaged within New York State in buying and/or selling, offering for sale, marketing, processing and distributing onions or onion products which he has purchased or acquired from a grower, or which he is marketing on behalf of a grower, whether as owner, agent, employee, broker or otherwise.

(k) *Marketing season* means the period beginning April 1st of any year and extending through March 31st of the following year.

(l) *Planted onions* means the botanical structures used for planting purposes in New York State and commonly referred to as seeds or sets or plants.

(m) *Onions* means all onions produced in New York State for the purpose of sale.

(n) *Person* means any individual, firm, corporation, partnership, company, unincorporated association, agency or institution.

(o) *Research* means any type of activity to advance the image, desirability, marketability, production or quality of onions or onion products and the accumulation and dissemination of research data with respect thereto.

(p) *Program* means the New York State Onion Research and Development Program (marketing order).

Section 203.2 Program area.

The area affected by this program shall be the State of New York.

Section 203.3 Establishment and members of advisory board.

(a) The commissioner shall appoint eight members of the board who shall be growers, and one member shall be a representative of the department or the public generally, and shall be neither grower nor handler.

(b) Grower members of the advisory board shall be selected and appointed by the commissioner from nominations as provided in section 203.4 of this Part.

(c) To fill any vacancy caused by the failure of any person selected and appointed as a board member to qualify, or in the event of the death, removal, resignation or disqualification of any member, a successor for his or her unexpired term shall be selected by the commissioner from previously unselected nominations made in the manner specified in section 203.4 of this Part. In the event additional nominations are needed, the commissioner shall obtain such nominations in the same manner as provided in section 203.4 for regular nominations.

Section 203.4 Nominations for advisory board membership.

(a)

(1) The commissioner shall cause to be held a meeting or meetings of New York State onion growers in each of the eastern, central and western areas. At these meetings, growers in attendance shall nominate a total of 16 growers to be eligible for appointment as members of the advisory board. Of the 16 nominees, eight shall be growers from the eastern area, four shall be growers from the central area, and four shall be growers from the western area.

(2) The commissioner shall appoint four advisory board members from nominees made from the eastern area, two advisory board members from nominees made from the central area, and two advisory board members from nominees made from the western area. For the central area, one board member must be from Madison County and one from one of the remaining counties in the central area.

(3) The first such grower meeting or meetings shall be called by the commissioner not later than December 31, 1985. Beginning in 1986 in the eastern area, in 1987 in the central area and in 1988 in the western area, triennial meetings shall be held between July 1st and December 31st of each marketing season for as long as this program is in effect.

(b) The commissioner may appoint one person who is neither a producer nor handler to represent the Department of Agriculture and Markets.

(c) Not more than one member shall be appointed from any single grower or handler operation.

Section 203.5 Acceptance and terms of office.

(a) Any person selected for appointment by the commissioner as an advisory board member shall qualify by filing a written acceptance with the commissioner within 15 days after being notified of such selection.

(b) Members shall serve at the pleasure of the commissioner for one term of three years; provided, however, that they shall continue to serve until their successor has been duly appointed and qualified; and provided, further, that initial nominations and appointments shall be effective upon qualification and beginning January first for a one-year term in the eastern area, for a two-year term in the central area, and for a three-year term in the western area beginning on the first day of January following the effective date of the program.

(c) In the event of the failure of growers to provide nominations as hereinbefore provided, the commissioner shall make the necessary appointments in such a manner as he shall deem appropriate; provided, however, that of the eight grower members of the board, no more than four shall be growers whose farms are located in the eastern area, no more than two shall be growers whose farms are located in the central area, and no more than two shall be growers whose farms are located in the western area.

Section 203.6 Duties and responsibilities of the advisory board.

It shall be the duty of the advisory board to advise and assist the commissioner in all matters pertaining to the operation of this program, subject only to such limitations as may be prescribed in section 294 of the Agriculture and Markets Law. Such duties may specifically include any or all of the following:

(a) the recommendation to the commissioner of administrative rules and regulations relating to the program;

(b) recommending to the commissioner such amendments to the program as seem advisable;

(c) the preparation and submission to the commissioner of the estimated budget required for the proper operation of the program;

(d) recommending to the commissioner methods for assessing members of the industry and methods for collecting the necessary funds;

(e) assisting the commissioner in the collection and assembling of information and data necessary to the proper administration of the order; and

(f) the performance of such other duties in connection with the program as the commissioner shall designate.

Section 203.7 Research.

The commissioner is hereby authorized to contract with any person or persons, including the New York State College of Agriculture and Life Sciences, to carry on or cause to be carried on onion production, marketing, storage, product or byproduct research, and to expend any available monies for such purpose and pursuant to this program.

Section 203.8 Advertising, promotion and publicity of onions and onion products.

The commissioner is hereby authorized to contract with any person to carry on or cause to be carried on such promotion, advertising and publicity programs as he may believe will create new markets for onions or maintain present markets therefor. For such purpose he may expend such monies or any part thereof as may be available to him pursuant to this program. No advertising or promotion programs shall be conducted with reference to any particular private brand or trade name; no such program shall disparage the quality, value, sale or use of any other agricultural commodity.

Section 203.9 Information.

(a) The commissioner is hereby authorized to contract with any person or persons to provide for informational services designed to keep producers informed on onion crop production, packaging, storage holdings, marketing and research, promotion, advertising and publicity programs and any other onion industry information determined important to growers, and to expend such monies as may be available and required to obtain and disseminate such information.

(b) To facilitate factual and accurate informational services and to provide a means for budget estimation and adjustment as required in section 203.10 of this program hereinafter specified during each marketing season not later than July 1st, each onion grower shall file with the commissioner each year, on forms prescribed and supplied by him, a declaration of planted acres of onions in production.

Section 203.10 Budget and assessment.

During each marketing season, and not later than April first, the commissioner shall estimate a budget necessary for the administration and enforcement of this program and for carrying on duly authorized programs and activities, including research, advertising, promotion and publicity, marketing and informational services as herein provided, with the following limitations: The amount of budgeted costs for advertising, promotion and publicity shall not exceed 10 percent of the total budget. The amount of budgeted costs to provide informational services shall not exceed 10 percent. The amount of budgeted administrative costs shall not exceed five percent. The rate of assessment shall not exceed \$4 per acre of planted onions in production.

Section 203.11 Collection of assessment.

(a) Each grower shall be responsible for the payment of the proper assessment upon the number of acres of onions in production.

(b) All program assessments due shall be remitted to the commissioner or the designated fiscal agent on or before January 1st. Such annual remittances and accounting shall be inclusive of the declared planted acres of onions in production in each marketing season.

Section 203.12 Disbursement of funds.

Disbursement of funds shall be made in the manner described in article 25 of the Agriculture and Markets Law and in the rules and regulations promulgated by the commissioner to effectuate the provisions and intent thereof, and in accordance with the provisions of this program.

Section 203.13 Termination and periodic referendum.

(a) This program may be terminated or suspended pursuant to the provisions of article 25 of the Agriculture and Markets Law and the rules and regulations promulgated by the commissioner pursuant thereto.

(b) At least once during each six-year period that the program is in effect, the commissioner shall conduct a referendum of onion growers in the area affected to substantiate approval of the program; and provided further, in the event a petition to terminate or suspend the program is exercised as provided herein, a new six-year period will begin effective the first of April following the date of certification of approval of the program by the commissioner.

Section 203.14 Effective date.

This program shall take effect on the first day of July 1985.

Section 203.15 Exemptions.

Any grower whose aggregate number of planted acres of onions in production in any marketing season is less than five shall be exempt for that marketing season.

Section 203.16 Rate of assessment.

[Agriculture and Markets Law, § 294]

1993-1994

The rate of assessment to be paid pursuant to this program for the period April 1, 1993 through March 31, 1994 is hereby established at \$4 per acre.

Section 203.17 Surplus moneys order.

[Agriculture and Markets Law, § 294(8)]

WHEREAS, As of March 31, 1993 there is a surplus under the onion marketing order known as F.V. No. 1 (1 NYCRR Part 203), in the sum of \$34,954.15, and

WHEREAS, Upon investigation and recommendation of the administrator of said order, the said moneys should be retained to defray the costs of operating such marketing order in the succeeding marketing season,

NOW, THEREFORE, I, Richard McGuire, Commissioner of Agriculture and Markets of the State of New York, do find, pursuant to section 294, subdivision 8, of the Agriculture and Markets Law, that said \$34,954.15 is necessary to defray the costs of operating such marketing order in the succeeding marketing season, and I do, accordingly,

ORDER, That said moneys shall be carried over into the next succeeding marketing season for the purposes of said marketing order.

January 5, 2007.