

1 NYCRR PART 207

NEW YORK STATE GRAPE RESEARCH AND DEVELOPMENT PROGRAM

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Section 207.1 Definitions.

(a) Act means section 16-y of the urban development corporation act of the State of New York.

(b) Advisory Board means the advisory board established pursuant to the provisions of paragraph (j) of subdivision (3) of section 16-y of the Act.

(c) Grapes means grapes that are produced in New York State that are processed into juice or wine.

(d) Farm gate value means: (1) the dollar amount paid to a grower by a processor for the grapes purchased; or (2) the value of grapes grown and used by a processor, based upon the price the processor paid for the same type of grapes purchased from another grower(s) or sold to another processor(s), or another price, determined by the president, to more accurately reflect market value.

(e) President means the president of the UDC, or any officer or employee of the UDC to whom authority has been legally delegated to.

(f) Assessments means funds submitted by processors or growers (for grapes sold out of state) and shall be considered income subject to the fiscal budget, audit, and disbursement controls as required by the UDC.

(g) Juice means that beverage that contains, predominantly, processed grapes.

(h) Grower means any person who owns or leases at least two acres of vineyards in New York State and produces or causes to be produced grapes for processing into juice or wine.

(i) Marketing season means the period beginning August 1 of any year and extending through July 31 of the following year.

(j) Person means any individual, firm, corporation, partnership, company, unincorporated association, agency or institution unless the context requires that term to mean individual.

(k) Processing and process are synonymous terms and mean the operations of receiving or crushing or in any other way preserving or changing the form of grapes for use in juice or wine.

(l) Processor means a person who or that possesses or is required to possess a food processing license pursuant to Article 20-C of the Agriculture and Markets Law.

(m) Program means the New York State Grape Research and Development Program.

(n) Research means any type of research to advance the image, desirability, marketability, production, processing, and quality of grapes, juice, or wine, and includes the accumulation and dissemination of research data with respect thereto.

(o) UDC means the urban development corporation of the State of New York.

Section 207.2 Program Area.

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

Section 207.3 Establishment and Members of Advisory Board.

(a) The president shall appoint an advisory board consisting of nine members to advise him or her in the administration of the Program. Seven members of the board shall be growers, with at least two representing the Lake Erie region (Chautauqua, Cattaraugus, Niagara, and Erie counties), at least one representing the Finger Lakes region (Monroe, Ontario, Schuyler, Seneca, Steuben and Yates counties), at least one representing the Long Island region (Suffolk county), and the remaining three to be selected from those or other regions and counties. One member of the board shall represent a processor of grapes for juice, and one shall represent a processor of grapes for wine. Board members shall be appointed for three-year terms, but the initial appointments shall be staggered with three directors appointed for a three-year term, three for a two-year term, and three for a one-year term. No member of the board may serve more than two consecutive terms without being off the board for at least one year.

(b) Grower and processor members of the advisory board shall be selected and appointed by the president as provided in section 207.4 of this Program.

(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 president from previously unselected nominations made in a manner specified in section 207.4 of this Program. In the event that additional nominations are needed, the president shall obtain such nominations in the same manner as provided in section 207.4 of this Program for regular nominations.

Section 207.4 Nominations for Advisory Board Membership.

(a) The president shall cause to be held a meeting or meetings of growers and organizations representing growers at which time those in attendance shall nominate a total of 14 growers to be eligible for appointment as members of the advisory board. The 14 nominations must include at least four from the Lake Erie region, two from the Finger Lakes region, and two from the Long Island region.

(b) The president shall appoint seven advisory board members from the 14 nominations.

(c) The president shall appoint one juice processor advisory board member and one winery processor advisory board member from nominations submitted by organizations such as the Lake Erie Regional Group, the New York State Wine Grape Growers, and the New York Wine & Grape Foundation.

(d) Not more than one advisory board member shall be appointed from any single grower or processor operation.

(3) The first such grower meeting or meetings shall be called by the president not later than 120 days after publication of the Program in the State Register.

Section 207.5 Acceptance and Terms of Office.

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

(b) Advisory board members shall serve at the pleasure of the president for one term of three years provided, however, that of the initial advisory board, three advisory board members shall be appointed for three years, three for two years, and three for one year; provided further, each advisory board member shall continue to serve until their his or her successor has been duly appointed and qualified; provided further, that they shall be eligible for renomination and re-appointment when otherwise qualified; and, provided further, that initial appointments of members of the advisory board shall be effective upon qualification and shall terminate at a time to be determined.

(c) In the event of the failure of growers or organizations such as those cited above to provide nominations as hereinbefore provided, the president shall make the necessary appointments in such a manner as he or she shall determine.

Section 207.6 Duties and Responsibilities of the Advisory Board.

It shall be the duty of the advisory board to advise and assist the president in all matters pertaining to the operation of the Program, subject only to such limitations as may be prescribed in section 16-y of the Act. Such duties may specifically include any or all of the following:

- (a) the recommendation to the president of administrative rules and regulations relating to the Program;
- (b) recommending to the president such amendments to the Program as seem advisable;
- (c) the preparation and submission to the president of the estimated budget that includes contract funding allocations covering specific board approved research projects required for the proper operation of the Program;
- (d) recommending to the president methods for assessing members of the industry and methods for collecting the necessary funds;
- (e) assisting the president in collecting and assembling information and data necessary to the proper administration of the Program; and
- (f) the performance of such other duties in connection with the Program as the president shall designate.

Section 207.7 Research.

The president is hereby authorized to enter into a contract with any person, including but not limited to, the New York State College of Agriculture and Life Science at Cornell University, to carry on or cause to be carried on research, and to expend any available monies therefor.

Section 207.8 Informational Services.

- (a) The president is hereby authorized, after receiving the advice of the advisory board, to contract with any person, including but not limited to, the Cornell Cooperative Extension, to provide for information services designed to keep producers informed of research information deemed important to them 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 adjustments as required in section 207.9 of this Part, each grower shall file with the president, no later than December 15 of the marketing season, a declaration of harvested crop, on a form provided by the president, that sets forth the quantity of grapes harvested, expressed in tons or a portion thereof.
- (c) A processor who uses grape produced on his or her own farm is responsible for reporting the number of tons and the farm gate value of the self-grown grapes based on the price he or she paid for the same type of grapes purchased from another grower(s), or sold to another processor(s), or another price, determined by the president, to more accurately reflect market value. A processor who purchases grapes from others must report the price paid, the volume purchased, and the identity of the person from whom the grapes were purchased. A grower/processor who or that neither purchases grapes nor sells grapes to others shall be

liable for assessments.

Section 207.9 Budget and Assessment.

During each marketing season and not later than July 1 thereof, the president shall estimate a budget that includes assessments necessary for the administration and enforcement of the Program and for carrying on duly authorized activities including marketing, product research, and informational services as hereinbefore provided. The president shall announce rates of assessment to provide adequate funds to defray expenditures in the budget. The rate of assessment shall not exceed one half of one percent (0.5%) of the farm gate value of grapes sold or used for processing into juice or wine. The total amount of administrative cost shall not exceed five percent of the total budget.

Section 207.10 Collection of Assessment.

(a) Each processor receiving and processing grapes shall be responsible for collection of the assessment fixed by the president upon grapes purchased and shall be responsible for payment thereof as provided in this Program. Each processor using grapes of his or her own production shall be responsible for payment of the assessment fixed by the president, as provided in this Program.

(b) For each grower from whom a processor receives grapes such processor shall deduct from monies owed to the grower the assessment on the grapes so received and report and remit to the president the amount collected.

(c) Each processor shall make remittance and accounting, on a form prescribed by the president, and shall pay the proper assessment to the president or his or her designated fiscal agent, not later than December 15th of each marketing season for which remittance and accounting is due, based upon the farm gate value thereof.

(d) Each grower who sells grapes to a purchaser or purchasers located outside of New York State shall make remittance and accounting in a form prescribed by the president and shall pay the proper assessment to the president or his or her designated fiscal agent, not later than December 15th of each marketing season for which remittance and accounting is due, based upon the farm gate value thereof.

(e) To address the unique payment cycle of cooperatives, the president shall calculate the farm gate value of grapes sold to a processor(s) by averaging the three most recent crops that have been paid in full.

Section 207.11 Disbursement of Funds.

Disbursement of funds shall be made in the manner described in the Act and in this Program, to effectuate the provisions and intent of the act, and in accordance with the provisions of this program.

Section 207.12 Termination and Periodic Referendum.

(a) This Program may be terminated or suspended pursuant to the provisions of section 16-y of the Act and the provisions of this Program.

(b) The president shall, no later than seven years after the effective date of this Program and at least once during each six-year period thereafter, conduct a referendum of growers in the area affected to substantiate approval of the Program; provided, however, that if a petition to terminate or suspend the Program is submitted to the president pursuant to subparagraph (iii) of paragraph (b) of subdivision (3) of section 16-y of the Act, a new six-year period will begin April 1st, following the date of the president's certification of the approval of the Program. If the continuation of the Program is not approved, the Program shall terminate at the end of the current year.

Section 207.13

Effective date. This Program shall take effect 60 days after publication of the Program in the State Register.