

1 NYCRR PART 204

NEW YORK STATE APPLE RESEARCH AND DEVELOPMENT PROGRAM

| | |
|--------|--|
| Sec. | |
| 204.1 | Definition. |
| 204.2 | Program area. |
| 204.3 | Establishment and members of Advisory Board. |
| 204.4 | Nominations for Advisory Board membership. |
| 204.5 | Acceptance and terms of office. |
| 204.6 | Duties and responsibilities of the Advisory Board. |
| 204.7 | Research. |
| 204.8 | Informational services. |
| 204.9 | Budget and assessment. |
| 204.10 | Collection of assessment. |
| 204.11 | Disbursement of funds. |
| 204.12 | Termination and periodic referendum. |
| 204.13 | Effective date. |

Section 204.1 Definition.

- (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 subparagraph (9), section 294, (article 25) of the Agriculture and Markets Law, and sections of this order relating to the Apple Marketing Order Advisory Board (section 204.3 *et. seq.*)
- (c) *Apples* means all apples that are produced in the defined production areas of New York State.
- (d) *Bushel* means a unit of 36 to 44 pounds of apples sold for fresh market use in boxes, cartons, baskets or other containers. When applied to bulk apples for fresh sales, a bushel shall mean 40 pounds of apples.
- (e) *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.
- (f) *Contributions* means funds submitted by any person including processors, grower sales agents, storage operators or other handlers and shall be considered income subject to the same fiscal budget, audit, and disbursement controls as remitted grower assessments provided in 204.9 of this Part.

- (g) *Department* means the Department of Agriculture and Markets of the State of New York.
- (h) *Eastern production area* means that part of the State of New York east of the counties of St. Lawrence, Herkimer, Otsego, Chenango and Broome.
- (i) *Grower* means any person who produces or causes to be produced apples as herein defined.
- (j) *Handler* means any person engaged in the operation of packing, grading, selling, offering for sale or marketing apples who as owner, agent or otherwise ships or causes apples to be shipped.
- (k) *Marketing season* means the period beginning July 1 of any year and extending through June 30 of the following year.
- (l) *Person* means any individual, firm, corporation, partnership, company, unincorporated association, agency or institution.
- (m) *Processing* and *process* are synonymous terms and means the operations of receiving, grading packing, canning, freezing, dehydrating, preserving, grinding, crushing or in any other way preserving or changing the form of apples, as herein defined for marketing in any form other than for fresh consumption.
- (n) *Processor* means any person, firm, corporation, partnership, company, or unincorporated association which is licensed to perform any of the functions of processing as herein defined.
- (o) *Program* means New York State Apple Research and Development Program (Marketing Order).
- (p) *Research* means any type of research to advance the image, desirability, marketability, production of quality of apples and the accumulation and dissemination of research data with respect thereto.
- (q) *Storage* means any building, structure, or place where apples are stored in cold, refrigerated or controlled atmosphere storage.
- (r) *Storage operator* means any person who or which operates a cold, refrigerated or controlled atmosphere storage in which apples are stored.
- (s) *Western production area* means that part of the State of New York consisting of the counties of and west of and including St. Lawrence, Herkimer, Otsego, Chenango and Broome.

Section 204.2 Program area.

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

Section 204.3 Establishment and members of Advisory Board.

(a) The commissioner shall appoint an advisory board consisting of nine members to advise him in the administration of this marketing order. Six members of the board shall be growers, one member shall be a processor representative, one member shall be appointed to represent handlers, and one member shall be representative of the department or the public generally and shall be neither grower, nor processor, nor handler.

(b) Grower, processor, handler members of the advisory board shall be selected and appointed by the commissioner as provided in section 204.4 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 unexpired term shall be selected by the commissioner from previously unselected nominations made in a manner specified in section 204.4 of this Part. In the event additional nominations are needed, the commissioner shall obtain such nominations in the same manner as provided in section 204.4 of this Part for regular nominations.

Section 204.4 Nominations for Advisory Board membership.

(a)

(1) The Commissioner shall cause to be held a meeting or meetings of New York State apple growers at which time growers in attendance shall nominate a total of 12 growers to be eligible for appointment as members of the advisory board. Of the 12 nominations, six shall be growers whose farms are located in the Western production area, six shall be growers whose farms are located in the eastern production area.

(2) The Commissioner shall appoint three advisory board members from nominations made from the western production area, and three advisory board members from nominations made from the eastern production area.

(3) The first such grower meeting or meetings shall be called by the Commissioner not later than January 31, 1991. Beginning in 1993 in the western and eastern production areas triennial meetings shall be held prior to March 31st of each marketing season for as long as this order is in effect.

(b) The commissioner shall appoint one processor advisory board member from nominations submitted by organizations such as the "Associated New York State Food Processors", or successor organizations by whatever name known, or any New York State organization representing processors.

(c) The commissioner shall appoint one handler member from nominations submitted by the New York State Horticultural Society or successor organizations by whatever name known or any New York State organization representing western or eastern production area growers. Of the two

nominations one shall be a handler whose principle business address is located in the western production area and one shall be a handler whose principle business address is located in the eastern production area.

(d) The commissioner may appoint the representative of the department or the public generally in such manner as he may determine.

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

Section 204.5 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 successors have 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 shall be effective upon qualification and shall terminate March 31, 1993.

(c) In the event of the failure of growers or organizations such as the Associated New York State Food Processors, or successor organizations by whatever name known, or any New York State organizations representing processors or growers, to provide nominations as hereinbefore provided, the commissioner shall make the necessary appointments in such a manner as he shall determine provided, however, that of the six grower members, no more than three shall be growers whose farms are located in the eastern production area, and three shall be growers whose farms are located in the western production area and further provided that one handler shall be appointed whose principle business is located in either the western or the eastern production area.

Section 204.6 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 marketing order, 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 marketing order;

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

(c) the preparation and submission to the commissioner 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 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 marketing order as the commissioner shall designate.

Section 204.7 Research.

The commissioner is hereby authorized to contract with the advice of the advisory board any person or persons, such as the New York State College of Agriculture and Life Science to carry on or cause to be carried on apple production, harvesting, storage and marketing quality research, and to expend any available monies for such purpose and pursuant to this order.

Section 204.8 Informational services.

(a) The commissioner is hereby authorized to contract with the advice of the advisory board any person or persons, to provide for informational services designed to keep producers informed on research information deemed 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 adjustments as required in section 204.9 of this Part hereinafter specified during each marketing season not later than November 15th each apple grower shall file with the commissioner each year on forms prescribed and supplied by him a declaration of harvested crop which shall declare the number of bushels or pounds of apples harvested and the disposition of same to processors and/or cold storage and/or sales or shipments.

Section 204.9 Budget and assessment.

During each marketing season and not later than July 1, the commissioner shall estimate a budget that includes contributions and assessments necessary for the administration and enforcement of this order and for carrying on duly authorized programs and activities including marketing, and product research and informational services as hereinbefore provided. The commissioner shall announce rates of assessment to provide adequate funds to defray expenditures in the budget. The rate of assessment shall not exceed four cents per hundred pounds of apples or 16 mils (.016) per bushel of apples sold for processing, juice or fresh

market use. The total amount of budgeted administrative cost shall not exceed five percent of the total budget.

Section 204.10 Collection of assessment.

(a) Each grower shall be responsible for payment of the proper assessment upon the apples which he produces and sells or delivers for sale.

(b) Each processor receiving and processing apples shall be responsible for the collection of any assessment fixed by the commissioner upon apples and liable for payment thereof as in this order provided.

(c) For each grower from whom a processor receives apples such processor shall deduct from monies owed to the grower the assessment on the marketable apples so received and report and remit to the department the amount collected, in accordance with subdivision (g) of this section.

(d) Each storage operator receiving and storing his own apples or other apples shall be responsible for the collection of any assessment fixed by the commissioner and shall be liable for payment thereof as in this order provided.

(e) For each grower for whom storage operator sells or otherwise transfers apples from cold storage, said storage operator shall deduct from monies owed to grower the proper assessment on the bushels or bushel equivalent sold or otherwise transferred from storage or in the event the storage operator is not the seller shall include charges and shall make payment therefrom, except that in the case of apples put into cold storage for the account of a processor or sold to a processor, such processor shall be responsible for the collection and payment of the proper assessment.

(f) For all apples sold or otherwise marketed by the grower and not placed in storage in New York State and not sold or delivered to a processor in New York State each grower shall be liable and responsible for proper accounting and payment of the proper assessment except that in the case of apples sold or otherwise marketed through grower sales agents or grower sales cooperatives in New York State, such grower sales agents and grower sales cooperatives shall be liable and responsible for the collection, accounting and payment of the proper assessment as fixed by the commissioner.

(g) All growers, processors, grower sales cooperatives, grower sales agents, and storage operators shall make remittance and accounting of the proper assessment to the commissioner or his designated fiscal agent not later than the 15th of each of the months of November, February, May, and August. Such quarterly remittance and accounting shall be inclusive of all sales of apples and/or removal of apples from storage through the end of the month just preceding the months herein designated.

Section 204.11 Disbursement of funds.

Disbursement of funds shall be made in the manner described in the act and in the rules and regulations promulgated by the commissioner to effectuate the provisions and intent of the act, and in accordance with the provisions of this program.

Section 204.12 Termination and periodic referendum.

(a) This marketing order 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 thereto.

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

Section 204.13 Effective date.

This order shall take effect on the first day of August 1990.

August 30, 2011