

1 NYCRR PART 205

NEW YORK STATE CABBAGE RESEARCH AND DEVELOPMENT PROGRAM

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Section 205.1 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 subparagraph (9), section 294, (article 25) of the Agriculture and Markets Law, and sections of this order relating to the Cabbage Marketing Order advisory board (section 205.3 *et seq.*)

(c) *Cabbage* means all cabbage that is produced in the defined production areas of New York State.

(d) *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.

(e) *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 section 205.9 of this Part.

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

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

(h) *Handler* means any person engaged in the operation of packing, grading, selling, offering for sale, or marketing cabbage, who as owner, agent, or otherwise, ships or causes cabbage to be shipped.

(i) *Marketing season* means the period beginning July 1st of any year and extending through June 30th of the following year.

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

(k) *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 cabbage, as herein defined for marketing in any form other than for fresh consumption.

(l) *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.

(m) *Program* means New York State Cabbage Research and Development Program (marketing order).

(n) *Research* means any research to advance the image, desirability, marketability, production of quality of cabbage, and the accumulation and dissemination of research data with respect thereto.

(o) *Storage* means any building, structure, or place where cabbage are stored in cold, refrigerated, or controlled atmosphere storage.

(p) *Storage operator* means any person who or which operates a cold, refrigerated, or controlled atmosphere storage in which cabbage is stored.

Section 205.2 Program area.

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

Section 205.3 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. Seven members of the board shall be growers, one member shall be a processor representative, and one member shall be appointed to represent handlers.

(b) Grower, processor, handler members of the advisory board shall be selected and appointed by the commissioner as provided in section 205.4 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 expired term shall be selected by the commissioner from previously unselected nominations made in a manner specified in section 205.4 of this Part. In the event additional nominations are needed, the commissioner shall obtain such nominations in the same manner as provided in section 205.4 of this Part for regular nominations.

Section 205.4 Nomination for advisory board membership.

(a) The commissioner shall solicit nominations from New York cabbage growers, New York cabbage processing associations and New York cabbage handler associations, to be eligible for appointment to the advisory board.

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

Section 205.5 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 reappointment when otherwise qualified; and provided further, that initial appointments of members shall be effective upon qualification and shall terminate at the completion of the three year term.

Section 205.6 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 205.7 Research.

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

Section 205.8 Informational services.

The commissioner is hereby authorized to contract with, upon 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.

Section 205.9 Budget and assessment.

During each marketing season and not later than July 1st, 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, product research and informational services as hereinbefore provided. The commissioner shall announce upon recommendation of the advisory board, a rate of assessment not to exceed \$4 per acre to defray expenditures under this program. The rate of assessment shall remain in effect for the duration of the program unless changed by the commissioner. The total amount of budgeted administrative cost shall not exceed five percent of the total budget.

Section 205.10 Collection of assessment.

(a) Each grower shall be responsible for payment of the proper assessment for the acres of cabbage which he planted during the marketing season.

(b) All growers shall make accounting and remittance of the proper assessment to the commissioner or his designated fiscal agent on an annual basis not later than December 15th of each marketing season.

Section 205.11 Disbursement of funds.

Disbursement of funds shall be made in the manner described 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 205.12 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 cabbage 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 July, following the date of the commissioner's certification of the approval of the order.

Section 205.13 Effective date.

This order shall take effect on July 1, 1999 or on the date of publication in the *State Register*, (8-11-99) whichever is later.

Section 205.14 Exemptions.

Any grower whose aggregate number of planted acres of cabbage in production in the marketing season is less than five shall be exempt from reporting and payment for that marketing season.

January 5, 2007