

1 NYCRR PART 204

**Draft Petition:** NEW YORK STATE GRAPE RESEARCH AND DEVELOPMENT PROGRAM

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**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 Grape Marketing Order Advisory Board (section 204.3 et. seq.)

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

(c) "Farm gate value" means the dollar amount paid to a grower by a processor for the grapes purchased, including operations that are both processor and grower.

(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 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 Department of Agriculture and Markets.

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

(g) 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 grape juice or wine.

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

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

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

(k) 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.

(l) Program means New York State Grape Research and Development Program (Marketing Order).

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

#### **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. 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 will 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 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 grape growers and organizations representing grape 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.

(2) The Commissioner shall appoint seven advisory board members from the 14 nominations.

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

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

(3) The first such grower meeting or meetings shall be called by the Commissioner not later than \_\_\_\_.

#### **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 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 commissioner shall make the necessary appointments in such a manner as he shall determine.

#### **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 or institutions, such as the New York State College of Agriculture and Life Science, to carry on or cause to be carried on grape production, harvesting, processing, 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 or organization, such as Cornell Cooperative Extension, 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 December 15<sup>th</sup>, each grape 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 tons of grapes harvested.

(c) A processor who uses grape produced on his or her own farm is responsible for reporting 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 other growers, or sold to other processors.

#### **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 one half of one percent (0.5%) of the farm gate value of grapes sold for processing into grape juice or wine. The total amount of budgeted administrative cost shall not exceed five percent of the total budget.

#### **Section 204.10 Collection of Assessment.**

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

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

(c) All processors shall make remittance and accounting of the proper assessment to the commissioner or his designated fiscal agent not later than the 15th of December.

#### **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) Seven years after the effective date of the marketing order and at least once during each six-year period thereafter that the order is in effect, the commissioner shall conduct a referendum of grape 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. If the continuation of the order is not approved the order shall terminate at the end of the current year.

**Section 204.13**

Effective date. This order shall take effect at a time to be determined.