



New York State Office of the State Comptroller
Thomas P. DiNapoli

Division of State Government Accountability

Annual Assessment of Market Orders for 2012, 2013, and 2014

Department of Agriculture and Markets



Report 2014-S-58

May 2015

Executive Summary

Purpose

The purpose of this performance audit was to determine whether the Department of Agriculture and Markets (Department) has adequate procedures in place to accurately report its assessable expenses related to its administration of Article 25 of the Agriculture and Markets Law. We performed our audit pursuant to legislative mandates included in Section 294(8) of this Law, which direct that the Comptroller audit the expenditures for each market order. Our audit covered the period July 1, 2011 through June 30, 2014 for the Apple and Sour Cherry Market Orders and the period April 1, 2011 through March 31, 2014 for the Apple, Cabbage, and Onion Research and Development Programs.

Background

Within the Department, the Market Order Administration unit is responsible for administration of all farm product market orders, except those involving dairy products. Each specific market order detailed in Department regulations is established to assist the industry in achieving a variety of objectives, including product promotion, advertising, and research. These market orders include: the Apple Market Order, the Apple Research and Development Program, the Sour Cherry Market Order, the Onion Research and Development Program, and the Cabbage Research and Development Program. Article 25 of the Agriculture and Markets Law authorizes the market orders and allows for the collection of funds by assessing growers to cover expenses.

Key Findings

- The Department has adequate procedures in place to ensure that it accurately reports its assessable expenses in all material aspects.
- The Department needs to improve its oversight of its Market Order Program, particularly its Apple Market Order, which is administered pursuant to a contract with the New York Apple Association, Inc. (NYAA).

Key Recommendations

- Follow up on the questionable expenses identified in our report and seek repayment for any inappropriate or ineligible expenses.
- Strengthen policies and enforce provisions of the Apple Market Order contract by:
 - Developing written guidelines for expenses deemed necessary for NYAA's performance under its contract, including travel reimbursement in excess of State rates and business entertainment expenses; and
 - Enforcing contract criteria for maintaining documentation to support expenses, such as vehicle cost allocations, contractor bidding, and sole source justification requirements.

Other Related Audit/Report of Interest

[Department of Agriculture and Markets: 2007 and 2008 Annual Marketing Orders: Statements of Revenues, Expenses and Changes in Fund Balances \(2009-S-7\)](#)

**State of New York
Office of the State Comptroller**

Division of State Government Accountability

May 7, 2015

Mr. Richard A. Ball
Commissioner
Department of Agriculture and Markets
10B Airline Drive
Albany, NY 12235

Dear Commissioner Ball:

The Office of the State Comptroller oversees the fiscal affairs of State agencies, public authorities, and local government agencies, as well as their compliance with relevant statutes and their observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations. Audits can also identify strategies for reducing costs and strengthening controls that are intended to safeguard assets.

Following is a report of our audit of the Department of Agriculture and Markets entitled *Annual Assessment of Market Orders for 2012, 2013, and 2014*. This audit was performed pursuant to the State Comptroller's authority under Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law; and the legislative mandates included in Article 25, Section 294(8) of the Agriculture and Markets Law.

This audit's results and recommendations are resources for you to use in effectively managing your operations and in meeting the expectations of taxpayers. If you have any questions about this report, please feel free to contact us.

Respectfully submitted,

*Office of the State Comptroller
Division of State Government Accountability*

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This report is also available on our website at: www.osc.state.ny.us

Background

The mission of the Department of Agriculture and Markets (Department) is to foster a competitive food and agriculture industry that benefits producers and consumers alike. Within the Department, the Division of Agriculture Development's Market Order Administration is responsible for administration of all farm product market orders, except those involving dairy products. Article 25 of the Agriculture and Markets Law authorizes market orders and allows for the collection of funds by assessing growers to cover expenses.

Each specific market order is established within New York Codes, Rules, and Regulations (NYCRR) Title 1, Chapter IV, Parts 201-205 to assist the industry in achieving a variety of objectives that differ by individual order, but generally include product promotion, advertising, and research. These market orders include: the Apple Market Order, the Apple Research and Development Program, the Sour Cherry Market Order, the Onion Research and Development Program, and the Cabbage Research and Development Program.

The Department contracts with organizations to advertise, promote, publicize, market, and/or conduct product research and informational services. For the Apple and Sour Cherry Market Orders, the Department contracts with the New York Apple Association, Inc. (NYAA) and the New York Cherry Growers Association to provide advertising, promotion, market research, and information services for respective products. The Department also contracts with the Cornell University College of Agriculture and Life Sciences to provide research services for the Apple, Cabbage, and Onion Research and Development Programs.

Title 1, Chapter IV, Parts 201 to 205 of the NYCRR stipulate that the total amount of the Department's budgeted costs to administer market orders shall not exceed 5 percent of the total of each Market Order Program budget. Administrative costs include the personal service, travel, fringe benefit, and other indirect costs associated with administering the Market Order Program. The assessment rates for each market order are also stipulated in the NYCRR. Section 294(8) of the Agriculture and Markets Law requires the Comptroller to audit market order expenditures. Therefore, we focused our audit efforts on the Department's procedures in place to accurately report its assessable expenses for each market order.

Two Department employees have duties over the market orders: the Market Order Administrator (Administrator) spends the majority of his time overseeing the market orders; and a Grants Administrator spends approximately a quarter of her time working with market orders. The Market Order Administrator's efforts include reviewing and processing contract payments for each of the market orders. In addition, the Administrator is responsible for monitoring to ensure appropriate assessments are received from the growers for each of the five market orders. Steps are also taken by the Administrator to identify unknown growers as well as underreported sales and harvests. The Department developed comprehensive procedures for reviewing and approving reimbursement of Market Order expenses to various contractors, including the appropriateness and eligibility of the expenses submitted for reimbursement.

Audit Findings and Recommendations

Overall, we found the Department had adequate procedures in place to report its assessable expenses accurately for the three years ending June 30, 2014 for the Apple and Sour Cherry Market Orders and for the three years ending March 31, 2014 for the Apple, Cabbage, and Onion Research and Development Programs. However, we also noted the Department could improve its oversight of the Market Orders Program, specifically the Apple Market Order, and should provide additional guidance to strengthen and to enforce provisions of the Apple Market Order contract. In general, the Department agrees with our audit findings and recommendations.

Preparation of Statements of Assessable Expenses

We found the Department accurately prepared, in all material aspects, the Statements of Assessable Expenses for the three years ended June 30, 2014 for the Apple and Sour Cherry Market Orders (presented, respectively, as Exhibits A and B to this report) as well as for the three years ended March 31, 2014 for the Apple, Cabbage, and Onion Research and Development Programs (presented as Exhibits C, D, and E, respectively). The Department's administrative expenditures are within the 5 percent limit for each market order, as required by regulation. We also noted the Department needs to improve its oversight of the Market Orders Program, particularly the Apple Market Order, and could provide additional guidance to strengthen and to enforce provisions of the Apple Market Order contract.

Department Oversight: Apple Market Order Contract Requirements

The Department reimburses the NYAA for expenses it incurs in performing the work specified in its Apple Market Order contract. The Apple Market Order contract is for the advertising, promotion, and publicity of New York apples and apple products. The contract includes an annual budget, which is monitored by the Administrator, and specifies that any modifications in excess of 10 percent of budget categories require prior written approval from the Department. The Department receives a monthly register of all expenditures made by the NYAA and performs an analysis of the expenditures compared with the contract budget.

We reviewed a judgmental sample of \$1,185,566 of expenditures included in the \$5,573,159 reimbursed to NYAA for the Apple Market Order for the three-year period ended June 30, 2014, and found the Department reimbursed the NYAA for questionable expenses. This occurred because the Apple Market Order contract does not specify which expenses are allowable for reimbursement and the Department has not provided any additional guidance. Additionally, the Department does not always enforce contract provisions that limit expense amounts, nor does it require justification for expenses that exceed set amounts. The following sections contain examples of our findings.

Travel and Entertainment Expenditures

The Department has not enforced the Market Order contract requirement that NYAA either only be reimbursed for travel expenses that do not exceed rates applicable to State employees, or that it document and justify in writing any instances when those reimbursement rates are exceeded. Nor has the Department ensured that NYAA's business-related entertainment expenses are properly documented.

We identified several instances where lodging and meal reimbursements substantially exceeded the allowable meal per diems without documentation to support the reasons for the excess cost. Department officials stated that NYAA employees are reimbursed in full for their actual meal expenses regardless of amount because they frequently incur these costs as allowable entertainment expenses (e.g., taking potential clients to dinner) in order to gain business. Although some of these expenses appear to be possible business development efforts, the only documentation to support this contention was a list of the names written on travel documents signifying those who were reportedly at the meal. NYAA did not produce additional documentation to explain either the purpose of the business meal or the resulting outcome from the meeting (e.g., new marketing client gained, new promotion discussed).

For example, the Department paid NYAA \$265 per night for an NYAA employee to attend a three-day conference in Chicago in August 2011, even though the allowable hotel rate for this location was \$146 – a difference of \$119 per night. Although the conference also provided attendees with at least five meals, the Department also paid NYAA \$291 for additional meals during this trip – almost \$100 per day. In another case, one NYAA employee charged an \$85 dinner and reported on travel documentation the meal was for himself and a second NYAA employee. However, according to this other employee's travel voucher, the employee had dinner on the same day, at a similar time, but in a completely different city as the first employee.

Based on the limited documentation maintained by NYAA, it is difficult for the Department to distinguish between business entertainment expenses and reimbursable meals due an individual NYAA employee who is in travel status. Department officials therefore agreed to provide additional guidance to NYAA regarding documentation of these expenses.

Documentation of Vehicle Use

The NYAA has purchased cars for the exclusive use of two employees and allows these employees to use the vehicles for commuting and personal use. The Department has reimbursed NYAA for all costs associated with these two vehicles. However, no documentation of vehicle usage is maintained, even though the Apple Market Order contract requires detailed records for all funds expended under the contract. As a result, the Department cannot determine what portion of these expenditures should be reimbursed as business-related vehicle expenses and what portion should be considered employee compensation.

Department officials told us that, based on their analysis of total vehicle operating expenses for the three-year scope period, the Department would likely be obligated to reimburse NYAA for

the entire cost of the employees' personal use of the vehicles as a fringe benefit because the expenses for this category were within the acceptable budget limitations for all three years as laid out in the Apple Market Order contract.

Contracts Not Bid

The Department has not ensured that NYAA follows the Market Order contract requirement to solicit a minimum of three written bids for purchases of \$5,000 or more or to document and justify in writing any instances where goods and services are not purchased from the lowest responsible bidder.

We identified several contractors who were paid in excess of the \$5,000 limit but whose work was not bid. Nor were the reasons for not bidding justified as required by the NYAA contract. One of these contractors has been used since 1994 and another since 2013. Both provide merchandising services in the Metropolitan and Tri-State area and were paid \$114,100 and \$14,400, respectively, for the three years ending June 30, 2014. This occurred because the Department has not enforced the contract criteria to ensure that expenses are reasonable and appropriate. As a result of our discussions, Department officials pledged to further review the questionable costs noted during our audit.

Recommendations

1. Follow up on the questionable expenses identified in this report and seek repayment for any inappropriate or ineligible costs.
2. Strengthen policies and enforce provisions of the Apple Market Order contract by:
 - Developing written guidelines for reimbursement of contract expenses that the Department deems necessary for NYAA's performance under its contract, such as travel reimbursement in excess of State rates and business entertainment expenses; and
 - Enforcing contract criteria for maintaining documentation to support expenses, such as vehicle cost allocations, contractor bidding records, and sole source justifications.

Audit Scope and Methodology

We audited whether the Department has adequate procedures in place to accurately report its assessable expenses related to its administration of Article 25 of the Agriculture and Markets Law. Our audit covered the three-year period ending March 31, 2014 for the Apple, Cabbage, and Onion Research and Development Programs and for the three-year period ending June 30, 2014 for the Apple and Sour Cherry Market Orders.

To achieve our audit objective, we reviewed relevant laws and regulations, policies, and procedures and interviewed Department officials. We also examined the Department's internal controls related

to preparing the appropriate cost reports. We applied audit procedures to market order financial reports and records maintained by the Department. These audit procedures included analytical reviews to identify areas of risk and unique expenses that warrant additional consideration. Based on our analytical review, we chose a judgmental sample of transactions representing \$1,324,531 of \$6,584,446 in expenses reimbursed by the Department for the Apple and Sour Cherry Market Orders as well as the Apple, Cabbage, and Onion Research and Development Programs. We performed site visits to the New York Apple Association, Inc. and the Cornell University College of Agriculture and Life Sciences to further review applicable expense records associated with our judgmental sample. We also substantiated the assessable costs presented in these statements by tracing them to the financial records maintained by the Department and by the State Comptroller.

We conducted our performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State. These include operating the State's accounting system; preparing the State's financial statements; and approving State contracts, refunds, and other payments. In addition, the Comptroller appoints members to certain boards, commissions, and public authorities, some of whom have minority voting rights. These duties may therefore be considered management functions for purposes of evaluating threats to organizational independence under generally accepted government auditing standards. In our opinion, these threats and functions do not affect our ability to conduct independent audits of program performance.

Authority

The audit was performed pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law and the legislative mandates included in Article 25, Section 294(8) of the Agriculture and Markets Law.

Reporting Requirements

We provided a draft version of this report to Department officials for their review and comment. Officials agreed with our recommendations and reported that steps have already been taken to implement each one. The Department's response is attached in its entirety at the end of this report.

Within 90 days after final release of this report, as required by Section 170 of the Executive Law, the Commissioner of the Department of Agriculture and Markets shall report to the Governor, the State Comptroller, and the leaders of the Legislature and fiscal committees, advising what steps

were taken to implement the recommendations contained herein, and where recommendations were not implemented, the reasons why.

Contributors to This Report

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Vision

A team of accountability experts respected for providing information that decision makers value.

Mission

To improve government operations by conducting independent audits, reviews and evaluations of New York State and New York City taxpayer financed programs.

Exhibit A

**Apple Market Order
Statement of Assessable Expenses
for Three Fiscal Years Ended June 30, 2014**

	Fiscal Year Ended June 30		
	2014	2013	2012
Expenses:			
Contracted Expenses	\$1,959,548	\$1,495,000	\$2,118,611
Administrative	94,029	67,374	93,956
Bad Debt Expense	-	13,463	-
Total Expenses	\$2,053,577	\$1,575,837	\$2,212,567

Exhibit B

**Sour Cherry Market Order
Statement of Assessable Expenses
for Three Fiscal Years Ended June 30, 2014**

	Fiscal Year Ended June 30		
	2014	2013	2012
Assessable Expenses:			
Contracted Expenses:			
NY Cherry Growers	\$19,900	\$4,953	\$13,986
Total Expenses	\$19,900	\$4,953	\$13,986

Exhibit C

**Apple Research and Development Program
Statement of Assessable Expenses
for Three Fiscal Years Ended March 31, 2014**

	Fiscal Year Ended March 31		
	2014	2013	2012
Assessable Expenses:			
Research Contracts	\$245,054	\$327,142	\$225,173
Fruit Quarterly	9,200	9,200	9,200
Administrative	3,655	1,372	5,348
Bad Debt Expense	-	2,117	-
Amendment Referendum Expenses	-	-	2,176
Total Assessable Expenses	\$257,909	\$339,831	\$241,897

Exhibit D

**Cabbage Research and Development Program
Statement of Assessable Expenses
for Three Fiscal Years Ended March 31, 2014**

	Fiscal Year Ended March 31		
	2014	2013	2012
Assessable Expenses:			
Contract Expenses	\$14,452	\$30,434	\$27,998
Administrative Expenses	227	179	110
Bad Debt Expense	-	579	1,483
Total Assessable Expenses	\$14,679	\$31,192	\$29,591

Exhibit E

**Onion Research and Development Program
Statement of Assessable Expenses
for Three Fiscal Years Ended March 31, 2014**

	Fiscal Year Ended March 31		
	2014	2013	2012
Assessable Expenses:			
Contract Expenses	\$34,000	\$33,921	\$34,274
Administrative Expenses	439	115	1,717
Total Assessable Expenses	\$34,439	\$34,036	\$35,991

Agency Comments



ANDREW M. CUOMO
Governor

Agriculture and Markets

RICHARD A. BALL
Commissioner

May 1, 2015

Mr. John Buyce, CPA, CIA, CGFM
Audit Director, Office of the State Comptroller
Division of State Government Accountability
110 State Street – 11th Floor
Albany NY 12236-0001

RE: Response to Draft Audit Report (2014-S-58)
Annual Assessment of Market Orders for 2012, 2013, & 2014

Dear Mr. Buyce:

Thank you for the opportunity to respond to the above-referenced draft audit report. We would also like to reiterate our gratitude to your audit team for its cooperation and professionalism during the audit.

As noted in the report, we agree with both of your recommendations. Our comments are few and we are already addressing the areas of concern.

Related to your first recommendation, to follow up on the questionable expenses identified in the report, the New York Apple Association (NYAA) has agreed to reimburse the Department for the costs in question.

Regarding the second recommendation, to strengthen policies and enforce provisions of the Apple Market Order contract, we would like to note that the Department has provided prior guidance to the NYAA as issues arose. This includes several on-site audits of the NYAA conducted by the Department. Where findings were noted, recommendations were provided at that time. Given this, the examples cited in the draft audit report indicate that additional guidance and clarification is still necessary. The Department will continue to work with the NYAA to implement guidelines and reimbursement protocols to provide reasonable assurance that submitted costs are eligible for reimbursement.

Should you need additional information, kindly contact Dan McCarthy, Marketing Order Administrator, at (518) 457-4921.

Sincerely,

Richard A. Ball
Commissioner