

# RULES AND REGULATIONS

## Title 7—AGRICULTURE

### DEPARTMENT OF AGRICULTURE

[7 PA. CODE CH. 104]

#### Peach and Nectarine Research Program

The Department of Agriculture (Department) amends its regulations in Chapter 104 by adding a new Subchapter E to address the Pennsylvania Peach and Nectarine Research Program (Program). The regulations are promulgated under the authority of sections 3 and 11 of the Pennsylvania Agricultural Commodities Marketing Act of 1968 (PACMA) (3 P. S. §§ 1003 and 1011) which, respectively, direct the Department to administer and enforce PACMA and delegate to the Department the authority to adopt regulations necessary to implement PACMA.

The Program funds its research efforts through the collection of a \$5-per-acre producer charge from those peach and nectarine producers having 500 or more peach or nectarine trees in their production operations. Currently, there are approximately 130 of these producers in this Commonwealth.

In summary, the regulations define necessary terms, set forth the obligation of an affected producer to account for and pay annual producer charges owed the Program, clarify the procedures by which this obligation is to be met and set forth penalties for noncompliance.

#### *Comments*

Notice of proposed rulemaking was published at 27 Pa.B. 2124 (May 3, 1997) and provided for a 30-day public comment period.

Comments were received from the State Horticultural Association of Pennsylvania and the Independent Regulatory Review Commission (IRRC).

The State Horticultural Association of Pennsylvania offered its general support for the regulations, noting it "... provides management flexibility for the board and reinforces the responsibility of eligible growers to participate in the assessment."

IRRC expressed concern over § 104.63 (relating to producer charge), which referenced the fact that the Program might change the \$5-per-acre producer charge through the referendum process described in PACMA and Chapter 103 (relating to referendums). IRRC recommended that language be added to this section to state that a change in the producer charge would only be accomplished through a referendum and an amendment of this regulatory section.

The Department accepts IRRC's recommendation in part, and has added language to require the Department to amend § 104.63 if the Program adjusts its producer charge through the referendum process. The Department's purpose in including the reference to the possibility that the producer charge might be changed by referendum was to apprise affected persons that there would, for the time between the completion of the referendum and the promulgation of regulatory revisions to reflect the results of that referendum, be a discrepancy between the actual producer charge and the producer charge stated in § 104.63. During this period, affected producers would be expected to pay the producer charge established by referendum. The Department also added

language to emphasize that it is the referendum process and the program order that establishes the producer charge, and not the regulations. The regulations restate the producer charge, but do not establish it.

IRRC raised a similar concern with respect to § 104.65(e) (relating to accounting and payment). That section references the fact that the deadline for submitting annual statement forms to the Department may be changed by referendum. For reasons similar to those set forth in the preceding paragraph, the Department accepted IRRC's suggestion in part and added language to require the Department to revise its regulations to reflect any change to this deadline date accomplished through the referendum process, and to emphasize that the regulations restate the deadline date but do not establish it.

IRRC also recommended § 104.65 be revised to describe the calendar year to which the annual statement form is applicable.

The Department implemented IRRC's recommendation by adding language in § 104.65(a). Ordinarily, the annual statement form provided to affected producers by the Department will be applicable to the current calendar year. It is not unusual, though, for the Department to seek production information with respect to years past. The year to which the form is applicable, therefore, will be printed on the form itself.

IRRC's final suggestion was that the regulations apprise affected producers of the date by which they should ordinarily expect to have received their annual statement forms from the Department, and advise an affected producer who has not received the form by that date to contact the Department.

The Department has implemented IRRC's suggestion by adding a new § 104.65(b) and redesignating subsequent subsections. The Department will ordinarily mail or deliver annual statement forms to affected producers in August. An affected producer who does not receive the form by September 1 should contact the Department to obtain one.

The regulations will provide affected producers a clearer understanding of their obligations with respect to the Program and will formalize procedures to be used by the Department.

#### *Fiscal Impact*

##### *Commonwealth*

The regulations will impose no costs and will have no fiscal impact upon the Commonwealth.

##### *Political Subdivisions*

The regulations will impose no costs and will have no fiscal impact upon political subdivisions.

##### *Private Sector*

The regulations will impose no costs and will have no fiscal impact on the private sector. Although some recalcitrant producers may ultimately be compelled to pay their fair share of the Program's costs as a result of the regulations, these producers have a preexisting responsibility to make these payments.

##### *General Public*

The regulations will impose no costs and will have no fiscal impact upon the general public.

*Paperwork Requirements*

The regulations are not expected to result in an appreciable increase in paperwork. The Program currently provides annual statement forms to approximately 130 affected producers throughout this Commonwealth. Although the regulations may ultimately result in the identification of additional affected producers, this is not expected to significantly impact upon the overall paperwork burden imposed on the Department and affected producers.

*Contact Person*

Further information is available by contacting the Department of Agriculture, Attention: Michael Varner, Bureau of Market Development, 2301 North Cameron Street, Harrisburg, PA 17110-9408.

*Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on April 18, 1997, the Department submitted a copy of the notice of proposed rulemaking published at 27 Pa.B. 2124 (May 3, 1997) to IRRC and to the Chairpersons of the House and Senate Standing Committees on Agriculture and Rural Affairs for review and comment. In compliance with section 5(b.1), the Department also provided IRRC and the Committees with copies of all comments received, as well as other documentation.

In preparing these final-form regulations, the Department has considered all comments received from IRRC, the Committees and the public.

These final-form regulations were deemed approved by the Committees on September 22, 1997, and were approved by IRRC on October 9, 1997, in accordance with section 5(c) of the Regulatory Review Act.

*Findings*

The Department finds that:

- (1) Public notice of intention to adopt the regulations encompassed by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240)(45 P.S. §§ 1201 and 1202) and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.
- (2) A public comment period was provided as required by law and that all comments received were considered.
- (3) The modifications that were made to these regulations in response to comments received do not enlarge the purpose of the proposed regulation published at 27 Pa.B. 2124.
- (4) The adoption of the regulations in the manner provided in this order is necessary and appropriate for the administration of the authorizing statute.

*Order*

The Department, acting under authority of the authorizing statute, orders that:

- (a) The new regulations of the Department, 7 Pa. Code Chapter 104, are amended by adding §§ 104.61, 104.62 and 104.64 to read as set forth at 27 Pa.B. 2124 and by adding §§ 104.63 and 104.65 to read as set forth at Annex A.
- (b) The Secretary of Agriculture shall submit this order, 27 Pa.B. 2124 and Annex A to the Office of General Counsel and to the Office of Attorney General for approval as required by law.

(c) The Secretary of Agriculture shall certify this order, 27 Pa.B. 2124 and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(4) This order shall take effect upon publication in the *Pennsylvania Bulletin*.

SAMUEL E. HAYES, Jr.,  
*Secretary*

*(Editor's Note:* For the text of the order of the Independent Regulatory Review Commission relating to this document, see 27 Pa.B. 5561 (October 25, 1997).)

**Fiscal Note:** Fiscal Note 2-110 remains valid for the final adoption of the subject regulations.

**Annex A**

**TITLE 7. AGRICULTURE**

**PART IV. BUREAU OF MARKET DEVELOPMENT**

**CHAPTER 104. ENFORCEMENT OF MARKETING PROGRAMS**

**Subchapter E. PEACH AND NECTARINE RESEARCH PROGRAM**

**§ 104.63. Producer charge.**

The producer charge owed the Program is \$5 with respect to each acre of peach trees or nectarine trees, or both, grown by an affected producer. This producer charge was established by referendum among affected producers and by the order pursuant to which the Program was established under the act, and may be changed by subsequent amendment of the Program in accordance with the referendum procedure in Chapter 103 (relating to referendums). Although the Department will amend this section to reflect any revised producer charge, an affected producer is responsible to pay the revised producer charge regardless of whether this amendment has been completed.

**§ 104.65. Accounting and payment.**

(a) *Annual statement.* The Program will provide the producer with annual statement forms with which to verify the producer's name and address, whether the producer is an affected producer with respect to the calendar year referenced on the form and the number of acres of peach trees or nectarine trees, or both, that are subject to the producer charge. The affected producer shall complete and submit the annual statement form in accordance with this section.

(b) *Obtaining a form.* The Department will endeavor to mail or deliver annual statement forms to known producers in August of each year. If an affected producer does not receive an annual statement form from the Department by September 1, the affected producer shall obtain a form by contacting the Department at the address set forth in subsection (d).

(c) *Form of payment.* Payment of a producer charge shall be by check or money order payable to the "PA Peach and Nectarine Research Program."

(d) *Address.* The annual statement form and payment described in subsections (a) and (c) shall be mailed or delivered to: Department of Agriculture, Bureau of Market Development, Attn.: PA Peach and Nectarine, 2301 North Cameron Street, Harrisburg, PA 17110-9408.

(e) *Deadline.* The annual statement form and payment described in subsections (a) and (c) shall be postmarked and mailed, or actually delivered to the Program, by October 1 of each year any person is an affected producer. This due date was established by referendum among

affected producers and by the order pursuant to which the program was established under the act, and may be changed by amendment of the Program in accordance with the referendum procedure in Chapter 103 (relating to referendums). Although the Department will amend this section to reflect any revised due date, an affected producer is responsible to comply with the revised due date regardless of whether this amendment has been completed.

(f) *Penalty for noncompliance.* An affected producer who fails to mail or deliver the required annual statement form as described in subsection (a), and the producer charges owed the Program within 30 days of the

due date, as described in subsection (e), shall be required to pay a penalty of at least \$100 but not more than \$500, and as nearly equivalent to 100% of the amount of the delinquent producer charges as is practicable. An action seeking imposition of a penalty, plus payment of producer charges owed the Program, may be brought in the appropriate magisterial district. A penalty shall be in addition to the delinquent producer charges owed the Program.

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