

RULES AND REGULATIONS

Title 7—AGRICULTURE

DEPARTMENT OF AGRICULTURE

[7 PA. CODE CH. 104]

Vegetable Marketing and Research Program

The Department of Agriculture (Department) amends Chapter 104, Subchapter D (relating to Vegetable Marketing and Research Program) to read as set forth in Annex A.

Effective Date

This final-form rulemaking will be effective upon publication in the *Pennsylvania Bulletin*.

Authority

This final-form rulemaking is authorized under 3 Pa.C.S. §§ 4501—4513 (relating to Agricultural Commodities Marketing Act) (act). Section 4511 of the act (relating to rules and regulations for enforcement) authorizes the Secretary of Agriculture (Secretary) to promulgate regulations and establish penalties as necessary to enforce the provisions of an agricultural commodity marketing program established under the act, including the Pennsylvania Vegetable Marketing and Research Program (Program).

Background and Summary

The Program exists and operates under a Program Order published at 48 Pa.B. 2278 (April 21, 2018). That Program Order was issued by the Secretary following a referendum conducted by the Department among affected vegetable growers in this Commonwealth. In that referendum, a majority of those growers, representing a majority of vegetable production, voted to continue the Program in accordance with the Program Order. The Program is the subject of a review referendum among these vegetable growers at intervals of no more than 5 years.

The Program focuses on vegetable producers (affected producers) in this Commonwealth who in a given calendar year grow and market: 1) 1 acre or more of vegetables; 2) 1,000 square feet or more of greenhouse vegetables; or 3) \$2,000 or more worth of vegetables. The Program requires that these producers pay a production-based assessment (producer charges) to support the vegetable marketing and vegetable research efforts of the Program. This collective effort allows the vegetable production industry in this Commonwealth, which is primarily comprised of small farms, to fund marketing and research projects that these small farms would not individually be able to fund, and that are of broad benefit to the vegetable production industry in this Commonwealth.

The Department administers the Program. The Department estimates that over one-third of affected producers who are required to pay producer charges to help support the Program do not. There are about 2,050 affected producers supporting the Program while there are about 1,250 who are either unaware of the Program or who have been able to avoid paying their fair share to support the marketing and research efforts of the Program. Against this backdrop, the regulation is needed to: 1) relieve certain vegetable sales agents of the obligation to verify that affected producers with which they transact business have paid their producer charges to the Program or to collect those charges on behalf of the Program; 2) create a simple process by which vegetable sales agents

can respond to requests from the Department for information to help identify these affected producers and their vegetable production; 3) establish a \$25 civil penalty with respect to affected producers who do not account for and pay their producer charges to the Program by January 31 each year; and 4) accomplish a general “housekeeping” update to the current regulation to reflect the experience the Department has gained in administering the Program and Chapter 104, Subchapter D over the years.

Response to Comments

Notice of proposed rulemaking was published at 47 Pa.B. 6489 (October 21, 2017), with a 30-day public comment period. No comments were received from the public, the Independent Regulatory Review Commission (IRRC) or the General Assembly.

Fiscal Impact

Commonwealth

This final-form rulemaking will have no appreciable fiscal impact upon the Commonwealth.

Political Subdivisions

This final-form rulemaking will have no appreciable fiscal impact on political subdivisions.

Private Sector

This final-form rulemaking will have some positive fiscal impact upon the private sector. Since only about two-thirds (2,050 of 3,300) of affected vegetable producers currently participate in the Program and this final-form rulemaking would bring the other third (approximately 1,250 of 3,300) into the Program, the Department estimates the amount of producer charges the Program collects each year will increase by about \$32,500, to a total of about \$97,500 per year. To the extent this final-form rulemaking helps swell the numbers of affected producers who participate in the Program, and helps fully-fund the Program’s vegetable marketing and research efforts, it will have a net positive fiscal impact on vegetable producers in this Commonwealth and the industries that support them, such as farm equipment suppliers and the like. The fully-funded vegetable marketing and research projects are expected to provide vegetable producers information that will help them more efficiently grow and market their vegetables.

General Public

This final-form rulemaking will have no appreciable fiscal impact on the general public, although to the extent this final-form rulemaking helps maintain a vital vegetable production industry in this Commonwealth the general public will benefit from a ready supply of locally-grown nutritious vegetables. This benefit cannot be quantified.

Paperwork Requirements

This final-form rulemaking will simplify the paperwork requirements imposed on vegetable producers by requiring a single, annual accounting and payment. It will also eliminate reporting requirements (and the attendant paperwork) currently imposed on approximately 25 vegetable sales agents. It will not appreciably impact the Department’s paperwork load.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on October 5, 2017, the Department

submitted a copy of the notice of proposed rulemaking, published at 47 Pa.B. 6489, to IRRC and the Chairpersons of the House and Senate Agriculture and Rural Affairs Committees for review and comment.

Under section 5(c) of the Regulatory Review Act, the Department is required to submit to IRRC and the referenced Legislative Standing Committees copies of comments received during the public comment period, as well as other documents when requested. Comments were not received with respect to the proposed rulemaking.

Under section 5.1(j.2) of the Regulatory Review Act (71 P.S. § 745.5a(j.2)), on September 13, 2018, this final-form rulemaking was deemed approved by the House and Senate Agriculture and Rural Affairs Committees. IRRC did not comment on, make recommendations regarding or object to any portion of the proposed regulation, and the Department did not make any changes to the proposed regulation. Thus, under section 5.1(e) of the Regulatory Review Act (71 P.S. § 745.5a(e)), IRRC met on September 13, 2018, and this final-form rulemaking was deemed approved under section 5(g) of the Regulatory Review Act.

Additional Information

Additional information may be obtained from William Troxell, Director, Pennsylvania Vegetable Marketing and Research Program, Department of Agriculture, 2301 North Cameron Street, Harrisburg, PA 17110-9408, (717) 694-3596.

Findings

The Department finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) and regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law and no comments were received.

(3) The amendments made to this final-form rulemaking do not enlarge the purpose of the proposed rulemaking published at 47 Pa.B. 6489.

(4) The amendments to the regulations of the Department are necessary and appropriate for the administration of the authorizing statute.

Order

The Department, acting under its authorizing statute, orders that:

(1) The regulations of the Department, 7 Pa. Code Chapter 104, Subchapter D are amended by amending §§ 104.51—140.57 to read as set forth in Annex A.

(2) The Department shall submit a copy of Annex A to the Office of the Attorney General and the Office of General Counsel for approval as required by law.

(3) The Department shall submit this order and Annex A to IRRC, as required by law.

(4) The Department shall certify this order and Annex A and shall deposit them with the Legislative Reference Bureau as required by law.

(5) The regulations shall take effect immediately upon publication in the *Pennsylvania Bulletin*.

RUSSELL C. REDDING,
Secretary

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 48 Pa.B. 6359 (September 29, 2018).)

Fiscal Note: Fiscal Note 02-185 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 D. VEGETABLE MARKETING AND RESEARCH PROGRAM

§ 104.51. Scope.

This subchapter establishes the procedures by which vegetable producers shall account for and pay the producer charges owed the Program.

§ 104.52. Definitions.

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

Auction—A market where producers provide vegetables in wholesale quantities to be auctioned to wholesale buyers.

Cooperative—A sales agent that markets fresh market vegetables on behalf of two or more producers, and which is owned by the producers for which it markets vegetables.

Fresh market vegetables—Vegetables that have not been processed and that are marketed to persons other than processors.

Greenhouse—

(i) An enclosed structure for growing vegetables, including structures where the internal temperature is controlled or high tunnels where additional heat is not supplied.

(ii) The term does not include low tunnels.

Marketing season—The period from January 1 through December 31 of each calendar year.

Packing house—A facility that receives, washes, grades, packages or packs fresh market vegetables produced by a person other than the owner or operator of that facility.

Person—An individual, firm, corporation, association or other business unit.

Processing—The operation of preserving vegetables for storage by canning, dehydrating, freezing, grinding, crushing, packaging or other means.

Processor—A person who engages in processing.

Producer—

A person who does one or more of the following during a particular marketing season:

(i) Grows 1 or more acres of vegetables in this Commonwealth for the purpose of selling the vegetables.

(ii) Grows vegetables in one or more greenhouses in this Commonwealth if all of the following are accurate:

(A) The greenhouse grows vegetables in 1,000 square feet or more of growing space.

(B) The vegetables are grown for sale.

(C) The vegetables are not grown to be transplanted outdoors.

(iii) Grows vegetables in this Commonwealth and sells \$2,000 or more of the vegetables grown in a given marketing season.

Program—The Pennsylvania Vegetable Marketing and Research Program.

Sales agent—A processor, auction, packing house, fresh market vegetable stand, cooperative, broker, wholesaler, commission merchant or another person who purchases, handles, processes, receives, sells or contracts to sell vegetables originating from a producer. A person may be a sales agent with respect to vegetables of the person's own production.

Vegetable production unit—A unit equal to 1 acre of field vegetable production or 1,000 square feet of greenhouse vegetable production sold in a single marketing season.

Vegetables—Vegetables except Irish potatoes. The term includes: asparagus, beans (snap, dry and lima), beets, cabbage, cauliflower, broccoli, Brussels sprouts, collards, kale, mustard greens, kohlrabi, carrots, celery, corn (sweet, pop and ornamental), cucumbers, eggplant, garlic, horseradish, leeks, lettuce, muskmelons, watermelon, onions, parsley, parsnips, peas, peppers, pumpkins and squash (edible or decorative), gourds, radishes, rutabagas, spinach, sweet potatoes, tomatoes and turnips produced in this Commonwealth for the purpose of sale by a producer.

Verification—A written statement of fact made subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).

§ 104.53. Producer charges.

(a) A producer owes a producer charge to the Program each marketing season. The producer charge is the lesser of the following:

(1) A flat fee of \$25, plus \$1.50 for each vegetable production unit exceeding five vegetable production units.

Example: A grower conducts field vegetable production on 10 acres of land and also has 6,000 square feet of greenhouse vegetable production. This means the grower's vegetable production occurs on a total of 16 vegetable production units (10 of which are attributable to the 10 1-acre units devoted to field vegetable production and 6 of which are attributable to the 6 1,000-square-foot units devoted to greenhouse vegetable production). The \$1.50-per-vegetable-production-unit producer charge does not apply to the first five of these 16 vegetable production units, but applies to the remaining 11. The producer charge is \$41.50, calculated by adding (the flat fee of \$25) plus (11 vegetable production units multiplied by \$1.50 per vegetable production unit).

(2) An amount equal to 1.25% (0.0125) of gross sales of vegetables during a particular marketing season, but no less than \$25.

(b) Producer charges may be changed by subsequent amendment of the Program in accordance with the referendum procedures in Chapter 103 (relating to referendums).

§ 104.54. Accounting, payment and verification procedures.

(a) *Assessment statement.* The Program will provide producers with assessment statement forms with which to verify the acreage, or the square-footage in the case of greenhouse-grown vegetables, of vegetables which the producer raises within a particular marketing season. The Program will provide these forms upon request and make these forms available for producers to download from the Program's web site at www.paveggies.org. An assessment statement form will require the following information of a producer with respect to each marketing season:

(1) The name, address and telephone number of the producer.

(2) The marketing season with respect to which the form is submitted.

(3) The number of acres of vegetables raised by the producer for processing or fresh market use and sold within that marketing season.

(4) The square footage of greenhouse-grown vegetables raised by the producer and sold within that marketing season.

(5) The calculation of the amount of producer charges owed the Program by the producer.

(6) The date upon which the form was completed.

(7) A verification, signed by the person submitting the form, confirming the accuracy of the information provided.

(b) *Deadline for producers.* A producer shall mail or deliver to the Program a completed assessment statement form and any producer charges due the Program no later than January 31 immediately following the applicable marketing season.

(c) *Form of payment.* Payments of producer charges shall be by check or money order made payable to "PA Vegetable Marketing and Research Program."

(d) *Address.* Assessment statement forms and payments of producer charges shall be mailed or delivered to:

Department of Agriculture
 Bureau of Market Development
 Attn: Pennsylvania Vegetable Marketing and Research Program
 2301 North Cameron Street
 Harrisburg, Pennsylvania 17110-9408

§ 104.55. Responsibilities of the producer.

It is the responsibility of the producer to submit a complete assessment statement form, as described in § 104.54 (relating to accounting, payment and verification procedures) and the appropriate producer charge owed the Program. The producer shall retain a copy of any assessment statement form which is submitted to the Program for at least two marketing seasons beyond the marketing season with respect to which the form is submitted.

§ 104.56. Responsibilities of the sales agent.

(a) *Providing basic producer information.* The Department may issue a sales agent a written notice that the sales agent is to provide the Department the name and address of each producer from which the sales agent purchased \$2,000 or more worth of vegetables in a given marketing season. If the Department issues a written notice, the sales agent shall provide the requested information to the Department within 30 days of the date of the written notice.

(b) *Providing production value information.* After the Department has issued a sales agent the written notice described in subsection (a), the Department may follow-up with a subsequent notice that the sales agent is to provide the Department the dollar value of vegetables purchased in a given marketing season from any of the producers identified in the sales agent's initial response to the Department under subsection (a). If the Department issues a follow-up notice, the sales agent shall provide the requested information to the Department within 30 days of the date of the follow-up notice.

§ 104.57. Penalties for noncompliance.

(a) *Sales agents.* If a sales agent fails to comply, or fails to comply completely or fails to comply with this subchapter within the time specified, the Department may bring a civil action in the appropriate magisterial district seeking a penalty of at least \$100 but not more than \$300.

(b) *Producers.*

(1) *Failure to Mail or Deliver Assessment Statement Form and Payment by January 31.* If a producer fails to mail or deliver an assessment statement form and the required payment of producer charges to the Program by the January 31 immediately following the applicable marketing season, as required under § 104.54 (relating to accounting, payment and verification procedures), the producer owes a penalty of \$25. The \$25 penalty is in addition to the producer charges owed and any penalty imposed under Paragraph (2).

(2) *Penalty.* If a producer fails to comply, or fails to comply completely or fails to comply with this subchapter within the time specified, the Department may bring an action in the appropriate magisterial district seeking a penalty of at least \$100 but not more than \$500, plus payment of producer charges owed. If the producer owes producer charges, the Department will seek a penalty as nearly equivalent to 100% of the delinquent amount as is practicable. A penalty sought by the Department will be in addition to payment of delinquent producer charges.

[Pa.B. Doc. No. 18-1893. Filed for public inspection December 7, 2018, 9:00 a.m.]

Title 58—RECREATION**FISH AND BOAT COMMISSION****[58 PA. CODE CH. 65]****Fishing; Special Fishing Regulations**

The Fish and Boat Commission (Commission) amends Chapter 65 (relating to special fishing regulations). The Commission is publishing this final-form rulemaking under the authority of 30 Pa.C.S. (relating to Fish and Boat Code) (code).

A. Effective Date

This final-form rulemaking will go into effect upon publication in the *Pennsylvania Bulletin*.

B. Contact Person

For further information on this final-form rulemaking, contact Wayne Melnick, Esq., P.O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7810. This final-form rulemaking is available on the Commission's web site at www.fish.state.pa.us.

C. Statutory Authority

The amendment to § 65.21 (relating to waters limited to specific purposes—exclusive use fishing areas) are published under the statutory authority of section 2307 of the code (relating to waters limited to specific purposes).

D. Purpose and Background

This final-form rulemaking is designed to improve, enhance and update the Commission's fishing regulations. The specific purpose of the final-form amendment is described in more detail under the summary of proposal.

E. Summary of Proposal

Under section 2307 of the code, the Commission has the authority to promulgate regulations for exclusive use fishing areas. Those regulations are laid out in § 65.21. In subsection (b) the term "children" is defined as a person "12 years of age or under."

In recent discussions Commissioners and staff have questioned why the age is set at 12 years of age when an individual is not required to purchase a license until they have reached 16 years of age. The Commission has explored the history of the age determination and has not found evidence suggesting why the lower age was adopted in § 65.21. Additionally, the Commission has been looking for additional opportunities to get more youth interested in fishing. The rationale in changing the age to 15 years of age and under for these areas is to bring more angling opportunities to a broader range of youth.

The Commission amends § 65.21 to read as set forth in the proposed rulemaking published at 48 Pa.B. 5495 (September 1, 2018).

F. Paperwork

This final-form rulemaking will not increase paperwork and will not create new paperwork requirements.

G. Fiscal Impact

This final-form rulemaking will not have adverse fiscal impacts on the Commonwealth or its political subdivisions. This final-form rulemaking will not impose new costs on the private sector or the general public.

H. Public Involvement

Notice of proposed rulemaking was published at 48 Pa.B. 5495. The Commission received one public comment supporting the proposal.

Findings

The Commission finds that:

(1) Public notice of intention to adopt the amendment adopted 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 promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided and the comment received was considered.

(3) The adoption of the amendments of the Commission in the manner provided in this order is necessary and appropriate for administration and enforcement of the authorizing statutes.

Order

The Commission, acting under the authorizing statutes, orders that:

(A) The regulations of the Commission, 58 Pa. Code Chapter 65, are amended by amending § 65.21 to read as set forth at 48 Pa.B. 5495.

(B) The Executive Director will submit this order and 48 Pa.B. 5495 to the Office of Attorney General for

approval as to legality and form as required by law.

(C) The Executive Director shall certify this order and 48 Pa.B. 5495 and deposit them with the Legislative Reference Bureau as required by law.

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

JOHN A. ARWAY,
Executive Director

Fiscal Note: Fiscal Note 48A-281 remains valid for the final adoption of the subject regulation.

[Pa.B. Doc. No. 18-1894. Filed for public inspection December 7, 2018, 9:00 a.m.]
