

CHAPTER 104. ENFORCEMENT OF MARKETING PROGRAMS

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Authority

The provisions of this Chapter 104 issued under act of July 16, 1968 (P. L. 359, No. 179) (3 P. S. §§ 1001—1013), unless otherwise noted.

Source

The provisions of this Chapter 104 adopted July 23, 1982, effective July 24, 1982, 12 Pa.B. 2323, unless otherwise noted.

Subchapter A. APPLE MARKETING PROGRAM

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§ 104.1. Scope.

This subchapter establishes the procedures by which apple producers pay producer charges owed the Program, and by which a sales agent is required, upon request of the Program, to produce records and information relevant to the apple production of the producer for whom it is the sales agent.

Source

The provisions of this § 104.1 adopted July 23, 1982, effective July 24, 1982, 12 Pa.B. 2323; amended August 20, 1993, effective August 21, 1993, 23 Pa.B. 3930. Immediately preceding text appears at serial page (137957).

§ 104.2. Definitions.

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

Fresh market—Apples that are marketed and have not been processed.

Marketing season—The period from July 1 of a calendar year through June 30 of the following calendar year.

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

Processing—The operation of receiving, grading, packing, canning, dehydrating, preserving, freezing, grinding, crushing or preserving or changing the form of apples for marketing in a form other than for fresh consumption.

Processor—A person who engages in processing.

Producer—A person who owns 500 or more apple trees located within this Commonwealth and who is engaged in the business of growing or producing apples, or causing apples to be grown or produced, within this Commonwealth.

Program—The Pennsylvania Apple Marketing Program.

Sales agent—A processor, a producer or a person who purchases, handles, receives, sells or contracts to sell apples originating from a producer. A producer may be a sales agent or processor with respect to apples of his own production.

Source

The provisions of this § 104.2 adopted August 20, 1993, effective August 21, 1993, 23 Pa.B. 3930.

§ 104.3. Producer charges.

The producer charges owed the Program shall be 7¢ per bushel of apples sold for fresh market use and 4¢ per hundred pounds of apples sold or accepted for processing. These producer charges may be changed by subsequent amendment of the Program in accordance with the referendum procedure in Chapter 103 (relating to referendums).

Source

The provisions of this § 104.3 adopted August 20, 1993, effective August 21, 1993, 23 Pa.B. 3930.

§ 104.4. Responsibility for payment of producer charge.

It is the responsibility of the producer to submit a complete production verification statement, as described in § 104.5 (relating to accounting and payment), and to pay the appropriate producer charge owed the Program.

Source

The provisions of this § 104.4 adopted August 20, 1993, effective August 21, 1993, 23 Pa.B. 3930.

§ 104.5. Accounting and payment.

(a) *Production verification statement.* The Program will provide the producer with production verification statement forms with which to verify the quantity of apples which it has produced for fresh market use or processing within a particular marketing season. The producer shall provide the following information on its production verification statement:

- (1) The name and address of the producer.
- (2) The number of bushels of apples sold for fresh market use within the marketing season, or other time period designated by the Program.

(3) The number of pounds, in hundreds, of apples sold for processing, transferred for processing or processed within the marketing season, or other time period designated by the Program.

(4) The names of persons to whom apples were sold or delivered for processing, and the number of pounds, in hundreds, of apples sold or delivered to each processor.

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

(b) *Deadlines.* The verification statement, and payment of the producer charges reflected on the verification statement, shall be postmarked and mailed, or actually delivered to the Program by the first day of November immediately following the previous marketing season.

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

(d) *Address.* Verification statements and payments of producer charges shall be mailed or delivered to: Department of Agriculture, Bureau of Market Development, Attn: Pennsylvania Apple Marketing Program, 2301 North Cameron Street, Harrisburg, Pennsylvania 17110-9408.

(e) *Penalty for failure to account or pay.* Producers who fail to mail or deliver the required verification statement, as described in subsection (a), and the producer charges owed the Program within 30 days of the due date, as described in subsection (b), 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 the imposition of a penalty, plus payment of producer charges due the Program, may be brought in the appropriate magisterial district. A penalty imposed shall be in addition to the delinquent producer charges owed the Program.

Source

The provisions of this § 104.5 adopted August 20, 1993, effective August 21, 1993, 23 Pa.B. 3930.

Cross References

This section cited in 7 Pa. Code § 104.4 (relating to responsibility for payment of producer charge).

§ 104.6. Responsibilities of sales agents.

(a) *Records to be kept by sales agent.* A sales agent whose business is located in this Commonwealth shall maintain records of the identity of each producer with respect to which it transacts business as described in subsection (b), the date of the transaction, the amount of apples involved in the transaction and the disposition of the apples, whether for processing or fresh market use, for at least 3 marketing seasons beyond the marketing season within which the transaction occurred.

(b) *Demand for production of information.* The Program may issue a written demand for production of information to a sales agent whose business is located in this Commonwealth with respect to apples which the sales agent:

- (1) Purchased from a particular producer.
- (2) Handled on behalf of a particular producer.
- (3) Processed on behalf of a particular producer.
- (4) Received from a particular producer.
- (5) Sold or has under contract to be sold on behalf of a particular processor.

(c) *Producer/sales agents.* A demand for production of information may be issued to a sales agent whose business is located in this Commonwealth, regardless of whether the sales agent is the producer or processor with respect to whom information is sought.

(d) *Contents of demand.* A demand for production of information shall set forth the following:

- (1) The name of the producer with respect to whom information is sought.
- (2) The marketing season, or other time period, with respect to which information is sought.
- (3) The type of information, as set forth in subsection (b), which is sought.
- (4) A description of the information, as set forth in subsection (a), which shall be produced.
- (5) The time, which shall be at least 14 days from receipt of the demand for production of information, within which the Program shall receive the sales agent's response to the demand for production of information.
- (6) A reference to the penalties which could be imposed upon the sales agent if he fails to respond, fails to respond completely or fails to respond within the time specified to a demand for production of information.

(e) *Sales agent's duty.* A sales agent whose business is located in this Commonwealth who receives a written demand for production of information is responsible for providing the requested information that is within the agent's possession or control within the time specified in the demand for production of information.

(f) *Penalty for failure to comply.* A sales agent whose business is located in this Commonwealth who fails to respond, or who fails to respond completely, or who fails to respond within the time specified to a demand for production of information shall be required to pay a penalty of at least \$100 but not more than \$300. An action seeking imposition of a penalty may be brought in the appropriate magisterial district.

Subchapter B. POTATO RESEARCH PROGRAM

- Sec.
104.11. [Reserved].
104.12. Scope.
104.13. Definitions.
104.14. Producer charge.
104.15. Responsibility for payment of producer charge.
104.16. Accounting and payment.
104.17. Responsibilities of sales agents.
104.18. Calculation of minimum producer charge.

§ 104.11. [Reserved].**Source**

The provisions of this § 104.11 reserved July 26, 1996, effective July 27, 1996, 26 Pa.B. 3534. Immediately preceding text appears at serial page (206501).

§ 104.12. Scope.

This subchapter establishes the procedures by which persons who produce 5 or more acres of potatoes in a given year account for and pay producer charges owed the Program, and by which a sales agent is required, upon request of the Program, to produce records and information relevant to the potato acreage and production of the potato producer for whom it is the sales agent.

Source

The provisions of this § 104.12 adopted July 26, 1996, effective July 27, 1996, 26 Pa.B. 3534.

§ 104.13. Definitions.

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

Act—The Pennsylvania Agricultural Commodities Marketing Act of 1968 (3 P. S. §§ 1001—1013).

Affected producer—A person who produces or grows 5 or more acres of potatoes within this Commonwealth in a calendar year for sale or marketing.

Department—The Department of Agriculture of the Commonwealth.

PASS—The Pennsylvania Agricultural Statistics Service.

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

Potatoes—All varieties of potatoes grown in this Commonwealth.

Processor—A person who commercially processes potatoes into potato products, including frozen, dehydrated or canned potato products, potato chips, shoestring potatoes and flour.

Program—The Pennsylvania Potato Research Program.

Sales agent—A processor, a producer or a person who purchases, handles, receives, sells or contracts to sell potatoes originating from a producer. A producer may be a sales agent with respect to potatoes of his own production.

Source

The provisions of this § 104.13 adopted July 26, 1996, effective July 27, 1996, 26 Pa.B. 3534.

§ 104.14. Producer charge.

The producer charge owed the Program shall be \$4 with respect to each acre of potatoes planted by an affected producer in a particular calendar year. This producer charge may be changed by subsequent amendment of the Program in accordance with the referendum procedure in Chapter 103 (relating to referendums).

Source

The provisions of this § 104.14 adopted July 26, 1996, effective July 27, 1996, 26 Pa.B. 3534.

§ 104.15. Responsibility for payment of producer charge.

It is the responsibility of an affected producer to submit an annual statement, as described in § 104.16 (relating to accounting and payment) and to pay the appropriate producer charge owed the Program.

Source

The provisions of this § 104.15 adopted July 26, 1996, effective July 27, 1996, 26 Pa.B. 3534.

§ 104.16. 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 and the number of acres of planted potatoes that are subject to the producer charge. The affected producer shall complete and submit the annual statement form in accordance with this section.

(b) *Form of payment.* Payment of a producer charge shall be by check or money order made payable to the "PA Potato Research Program."

(c) *Address.* The annual statement form and payment described in subsections (a) and (b) shall be mailed or delivered to:

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

(d) *Deadline.* The annual statement form and payment described in subsections (a) and (b) shall be postmarked and mailed, or actually delivered to the Program, by July 31 of the calendar year in which the potatoes were planted.

(e) *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 (d), 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 the imposition of a penalty, plus payment of producer charges owed the Program, may be brought in the appropriate magisterial district. A penalty imposed shall be in addition to the delinquent producer charges owed the Program.

Source

The provisions of this § 104.16 adopted July 26, 1996, effective July 27, 1996, 26 Pa.B. 3534.

Cross References

This section cited in 7 Pa. Code § 104.15 (relating to responsibility for payment of producer charge).

§ 104.17. Responsibilities of sales agents.

(a) *Required records.* A sales agent whose business is located in this Commonwealth shall maintain records of the identity of each producer with respect to which it transacts business, the date of the transaction and the weight of the potatoes involved in the transaction. A transaction includes the purchase of potatoes from a producer, the handling of potatoes on behalf of a producer, the processing of potatoes on behalf of a producer, the receipt of potatoes from a producer, the sale of potatoes on behalf of a producer and the contracting to sell potatoes on behalf of a producer.

(b) *Retention of records.* A sales agent who is required to keep records under subsection (a) shall retain these records for at least 2 calendar years beyond the calendar year within which the transaction occurred.

(c) *Demand for production of information.* The Program may issue a written demand for production of the records described in subsection (a) upon a sales agent whose business is located in this Commonwealth.

(d) *Contents of demand.* A demand for production of information shall set forth the following:

(1) The time period with respect to which information is sought.

(2) A general description of the information which must be produced. This description may include the names of specific producers with respect to which information is sought.

(3) The date by which the sales agent shall mail or deliver its response to the Program. This date shall be at least 14 days from receipt of the demand for production of information.

(4) A reference to the penalties which could be imposed upon the sales agent if it fails to respond, fails to respond completely or fails to respond within the time specified to a demand for production of information.

(e) *Sales agent's duty.* A sales agent whose business is located in this Commonwealth who receives a written demand for production of information is responsible for providing the requested information that is within the sales agent's possession or control within the time specified in the demand for production of information.

(f) *Option for designated handlers under the Potato Research and Promotion Act.* A sales agent who is also a designated handler under the Potato Research and Promotion Act (7 U.S.C.A. §§ 2611—2627) and its attendant regulations, 7 CFR 1207.512 and 1207.513 (relating to designated handler; and payment of assessments), may satisfy its duty under subsection (e) by providing the Program with a copy of the appropriate designated handler report described at 7 CFR 1207.513(c).

(g) *Penalty for noncompliance.* A sales agent whose business is located in this Commonwealth who fails to respond, or who fails to respond completely, or who fails to respond within the time specified to a demand for production of information shall be required to pay a penalty of at least \$100 but not more than \$300. An action seeking imposition of a penalty may be brought in the appropriate magisterial district.

Source

The provisions of this § 104.17 adopted July 26, 1996, effective July 27, 1996, 26 Pa.B. 3534.

Cross References

This section cited in 7 Pa. Code § 104.18 (relating to calculation of minimum producer charge).

§ 104.18. Calculation of minimum producer charge.

(a) *General.* The Program may calculate a minimum producer charge in accordance with this section and pursue collection of that charge.

(b) *Presumption.* At any proceeding at which the Program seeks payment of a producer charge from an affected producer, there shall be a rebuttable presumption that a minimum producer charge calculated in accordance with this section is the actual producer charge owed the Program.

(c) *Calculation.* To calculate a minimum producer charge, the Program will do the following:

(1) Determine the minimum weight of potatoes produced by an affected producer within a particular calendar year. This may be accomplished by using production information obtained from sales agents under § 104.17 (relating to responsibilities of sales agents).

(2) Obtain the county-by-county summary of potato acreage, yield, production and value compiled by PASS in its annual statistical summary for the calendar year at issue.

(3) Determine the PASS average per-acre potato yield figure for that county, if the county from which the potatoes were produced is known. If the figure is not available for that county, or if the potatoes were produced from more than one county, or if the county from which the potatoes were produced is not known, determine the PASS average per-acre potato yield figure for the entire Commonwealth.

(4) Divide the weight of potatoes determined under paragraph (1) by 110% of the applicable average per-acre potato yield figure determined under paragraph (3). This quotient equals the minimum number of acres of planted potatoes that are subject to a producer charge.

(5) Multiply the minimum number of acres of planted potatoes, rounded to the next-lowest whole number, by the \$4-per-acre producer charge. This product is the minimum producer charge owed by the affected producer.

(d) *Examples.*

(1) The Program confirms that an affected producer sold 500,000 pounds of potatoes to a sales agent. The producer's potato acreage is entirely in Erie County. The PASS average per-acre potato yield figure for Erie County with respect to the calendar year in question is 26,000 pounds. One hundred and ten percent of that figure is 28,600 pounds. Five hundred thousand pounds divided by 28,600 pounds-per-acre equals 17.48 acres. The affected producer owes a minimum producer charge of \$4-per-acre multiplied by 17 acres: \$68.

(2) The Program confirms that an affected producer sold 750,000 pounds of potatoes to a sales agent. The producer's potato acreage lies in two counties. The PASS average per-acre potato yield figure for this Commonwealth with respect to the calendar year in question is 25,200 pounds. One hundred and ten percent of that figure is 27,720 pounds. Seven hundred and fifty thousand pounds divided by 27,720 pounds-per-acre equals 27.06 acres. The affected producer owes a minimum producer charge of \$4-per-acre multiplied by 27 acres: \$108.

Source

The provisions of this § 104.18 adopted July 26, 1996, effective July 27, 1996, 26 Pa.B. 3534.

Subchapter C. [Reserved]

§§ 104.21 and 104.22. [Reserved].

Source

The provisions of these §§ 104.21 and 104.22 adopted July 30, 1993, effective July 31, 1993, 23 Pa.B. 3577; amended June 14, 1996, effective June 15, 1996, 26 Pa.B. 2783; reserved August 20, 2004, effective August 21, 2004, 34 Pa.B. 4573. Immediately preceding text appears at serial pages (266924) to (266925).

§ 104.23. [Reserved].

Source

The provisions of this § 104.23 adopted July 30, 1993, effective July 31, 1993, 23 Pa.B. 3577; reserved August 20, 2004, effective August 21, 2004, 34 Pa.B. 4573. Immediately preceding text appears at serial page (266925).

§ 104.24—104.26. [Reserved].

Source

The provisions of these §§ 104.24—104.26 adopted July 30, 1993, effective July 31, 1993, 23 Pa.B. 3577; amended June 14, 1996, effective June 15, 1996, 26 Pa.B. 2783; reserved August 20, 2004, effective August 21, 2004, 34 Pa.B. 4573. Immediately preceding text appears at serial pages (266925) to (266928).

§ 104.27. [Reserved].

Source

The provisions of this § 104.27 adopted July 30, 1993, effective July 31, 1993, 23 Pa.B. 3577; reserved August 20, 2004, effective August 21, 2004, 34 Pa.B. 4573. Immediately preceding text appears at serial page (266928).

§§ 104.28—104.30. [Reserved].

Source

The provisions of these §§ 104.28—104.30 adopted July 30, 1993, effective July 31, 1993, 23 Pa.B. 3577; amended June 14, 1996, effective June 15, 1996, 26 Pa.B. 2783; reserved August 20, 2004, effective August 21, 2004, 34 Pa.B. 4573. Immediately preceding text appears at serial pages (266928) to (266930).

**Subchapter D. VEGETABLE MARKETING AND
RESEARCH PROGRAM**

Sec.	
104.51.	Scope.
104.52.	Definitions.
104.53.	Producer charges.
104.54.	Accounting, payment and verification procedures.
104.55.	Responsibilities of the producer.
104.56.	Responsibilities of the sales agent.
104.57.	Penalties for noncompliance.

Authority

The provisions of this Subchapter D amended under the Agricultural Commodities Marketing Act, 3 Pa.C.S. §§ 4501—4513, unless otherwise noted.

Source

The provisions of this subchapter amended December 7, 2018, effective December 8, 2018, 48 Pa.B. 7527. Immediately preceding text appears at serial pages (305245) to (305249), unless otherwise noted.

§ 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

Cross References

This section cited in 7 Pa. Code § 104.55 (relating to responsibilities of the producer); and 7 Pa. Code § 104.57 (relating to penalties for noncompliance).

§ 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.

Subchapter E. PEACH AND NECTARINE RESEARCH PROGRAM

Sec.	
104.61.	Scope.
104.62.	Definitions.
104.63.	Producer charge.
104.64.	Responsibility for payment of producer charge.
104.65.	Accounting and payment.

Authority

The provisions of Subchapter E issued under sections 3 and 11 of the Pennsylvania Agricultural Commodities Marketing Act of 1968 (3 P. S. §§ 1003 and 1011), unless otherwise noted.

Source

The provisions of this Subchapter E adopted November 14, 1997, effective November 15, 1997, 27 Pa.B. 5964, unless otherwise noted.

§ 104.61. Scope.

This subchapter establishes the procedures by which peach and nectarine producers pay producer charges owed the Program.

§ 104.62. Definitions.

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

Act—The Pennsylvania Agricultural Commodities Marketing Act of 1968 (3 P. S. §§ 1001—1013).

Affected producer—A person who produces, grows or causes to be grown 500 or more peach trees or nectarine trees, or both, of all ages, for the production of peaches or nectarines, or both, for sale or marketing.

Department—The Department of Agriculture of the Commonwealth.

Peaches and nectarines—All peaches and nectarines (*prunus persica*) produced in this Commonwealth for the purpose of sale by a producer as defined in this subchapter.

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

Program—The Pennsylvania 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.

§ 104.64. Responsibility for payment of producer charge.

It is the responsibility of an affected producer to submit an annual statement, as described in § 104.65 (relating to accounting and payment) and to pay the appropriate producer charge owed the Program.

§ 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.

Cross References

This section cited in 7 Pa. Code § 104.64 (relating to responsibility for payment of producer charge).

Subchapter F. WINE MARKETING AND RESEARCH PROGRAM

Sec.

- 104.71. Scope.
- 104.72. Definitions.
- 104.73. Producer charges.
- 104.74. Responsibility for payment of producer charge.
- 104.75. Accounting and payment.

Authority

The provisions of this Subchapter F issued under the Agricultural Commodities Marketing Act, 3 Pa.C.S. §§4501—4513, unless otherwise noted.

Source

The provisions of this Subchapter F adopted August 20, 2004, effective August 21, 2004, 34 Pa.B. 4573, unless otherwise noted.

§ 104.71. Scope.

This subchapter establishes the procedures by which persons who produce or sell wine under authority of a limited winery license issued under authority of section 505.2 of the Liquor Code (47 P. S. § 5-505.2) shall account for and pay producer charges owed the Program.

§ 104.72. Definitions.

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

Board—The persons appointed by the Secretary from among those producers whose commodities are subject to the marketing and research program set forth in this subchapter.

Department—The Department of Agriculture of the Commonwealth.

Limited winery—The holder of a limited winery license issued under authority of the Liquor Code (47 P. S. §§ 1-101—8-803).

Marketing season—

(i) The initial marketing season for purposes of this subchapter shall be from July 1, 2001, through December 31, 2001.

(ii) Thereafter, the marketing season shall be the period beginning January 1 of any year and extending through December 31 of the same year.

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

Producer—A person who produces or sells wine under authority of a limited winery license during a particular marketing season.

Program—The Pennsylvania Wine Marketing and Research Program.

Secretary—The Secretary of the Department.

§ 104.73. Producer charges.

The producer charges owed the Program shall be 15¢ per gallon of wine sold within a given marketing season, except in-State winery-to-winery sales in bond. In-State winery-to-winery sales in bond are exempt from charges. The producer charges may be changed by subsequent amendment of the Program in accordance with the referendum procedure in Chapter 103 (relating to referendums).

§ 104.74. Responsibility for payment of producer charge.

It is the responsibility of the producer to pay the appropriate producer charge owed the Program within the time period set forth in § 104.75(b) (relating to accounting and payment) and in the manner set forth in § 104.75(a).

§ 104.75. Accounting and payment.

(a) *Annual production statement.* The Program will provide a producer with annual production statement forms with which to verify the quantity of wine that

it has produced within a particular marketing season. The producer shall provide the following information on the annual production statement and submit the form in accordance with this section.

- (1) The name and address of the producer.
- (2) The number of gallons of wine sold within the marketing season.
- (3) A calculation of the amount of producer charges owed the Program by the producer.

(b) *Deadlines.* The payment of the producer charges shall be postmarked and mailed, or actually delivered to the Program, by the first day of February immediately following the previous marketing season.

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

(d) *Address.* Payments of producer charges shall be mailed or delivered to:

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

(e) *Penalty for failure to account or pay.* Producers who fail to mail or deliver the required producer charges owed the Program within 30 days of the due date, as described in subsection (b), shall be required to pay a penalty of at least \$100 but not more than \$5,000, and as nearly equivalent to 100% of the amount of the delinquent producer charges as is practicable. An action seeking the imposition of a penalty, plus payment of producer charges due the Program, may be brought in the appropriate magisterial district. A penalty imposed shall be in addition to the delinquent producer charges owed the Program.

Cross References

This section cited in 7 Pa. Code § 104.74 (relating to responsibility for payment of producer charge); and 40 Pa. Code § 5.409 (relating to records, receipts and reports).

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