

RULES AND REGULATIONS

Title 7—AGRICULTURE

DEPARTMENT OF AGRICULTURE

[7 PA. CODE CH. 104]

Potato Research Program

The Department of Agriculture (Department) amends Chapter 104, Subchapter B (relating to potato research program) to read as set forth in Annex A. These amendments are adopted under the authority of sections 3, 10 and 11 of the Pennsylvania Agricultural Commodities Marketing Act of 1968 (act) (3 P.S. §§ 1003, 1010 and 1011) which, respectively, direct the Department to administer and enforce the act, allow the Department to involve agricultural commodity sales agents in the collection of producer charges and delegate to the Department the power to adopt regulations necessary to implement the act.

The final regulations clarify the obligation of an affected potato producer to account for its production and pay the appropriate producer charge in a timely manner.

Compliance with Executive Order 1996-1, Regulatory Review and Promulgation

The Department reviewed this order and considered its purpose and likely impact in accordance with Executive Order 1996-1, Regulatory Review and Promulgation. This order accomplishes regulatory amendments that will more equitably spread the costs of the Potato Research Program (Program) among those who benefit from it: the Commonwealth's potato producers. This order addresses a compelling public interest and is otherwise in compliance with Executive Order 1996-1.

Comments

Notice of proposed rulemaking was published at 25 Pa.B. 3873 (September 16, 1995), and provided for a 30-day public comment period.

No comments were received from the general public.

No comments were offered by the Independent Regulatory Review Commission (IRRC).

The House Agricultural and Rural Affairs Committee (House Committee) offered several comments:

Initially, the House Committee observed that the proposed definition of "potatoes" at § 104.13 (relating to definitions) included all "...varieties of Irish potatoes grown in the Commonwealth," and asked whether Irish potatoes are the only type of potatoes grown, or likely to be grown, within this Commonwealth.

In response, the Department has deleted the word "Irish" from the definition of "potatoes." The proposed definition of "potatoes" was modeled after the definition of that term in the Federal Potato Research and Promotion Plan, at 7 CFR 1207.306. In considering the House Committee's comment, though, the Department acknowledges that the proposed definition may have caused confusion or been less expansive than intended. The revised definition of "potatoes" is also more consistent with the Program order which established the Program.

The House Committee noted that § 104.14 (relating to producer charge) bases the assessment of a producer charge upon the number of acres of potatoes planted in a particular calendar year, while § 104.18 (relating to

calculation of minimum producer charge) allows the Program to calculate a minimum producer charge using a mathematical formula that relies on average county yield statistics. The House Committee asked for an explanation of the rationale behind basing producer charges upon potato acreage planted, rather than actual potato yields.

In response, the Department notes that the current Program order provides, at Article VII, Section A, that: "The rate of assessment shall be \$4.00 per acre on all potatoes planted." This specific provision was approved by a majority of affected potato producers in a referendum conducted in 1993. Prior to that time, the producer charge assessment was based upon actual potato production.

Under section 11 of the act, the Department must promulgate regulations necessary "...to enforce the provisions of any marketing program..." Given this requirement, the final regulations cannot establish a producer charge assessment procedure at variance with the assessment procedure set forth in the current Program order.

There is precedent for a commodity marketing program basing its producer charge assessment upon some factor other than production. The Pennsylvania Apple Marketing Program (PAMP) requires an apple producer to pay an apple production-based charge if the producer has 500 or more apple trees of all ages. This requirement links responsibility for payment of a producer charge with the number of apple trees owned—regardless of whether 500 or more of the apple trees are capable of bearing fruit during a particular growing season.

The House Committee also asked the Department to clarify whether it intends to calculate a minimum producer charge in accordance with § 104.18 only with respect to those producers who have not voluntarily complied with the Program.

The Department anticipates that the Program will conduct some random spot-audits of producers using the procedures established in §§ 104.16 and 104.17 (relating to accounting and payment; and responsibilities of sales agents).

It is expected that in the vast majority of cases, though, the Program will only calculate a minimum producer charge in accordance with § 104.18 when it has evidence that a particular producer's potato production outstrips the average county per-acre potato yield figures—thereby suggesting the producer under-reported the acreage from which the potatoes were produced.

Fiscal Impact

Commonwealth

The amendments impose no costs and have no fiscal impact upon the Commonwealth. The Program obtains its operating funds entirely from producer charges collected from Pennsylvania's potato producers.

Political Subdivisions

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

Private Sector

The amendments impose minimal costs and have only slight fiscal impact upon the private sector. These costs are not readily measurable. Although requiring certain sales agents to provide information regarding the potato production of potato growers with which they transact business might impose some minor cost upon the sales

agents, these costs would certainly be lower than the cost of requiring sales agents to actually collect producer charges on the Program's behalf.

General Public

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

Paperwork Requirements

The amendments are not expected to result in an appreciable increase in paperwork.

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)) the Department submitted a copy of the notice of proposed rulemaking published at 25 Pa.B. 3873 on September 5, 1995, 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) of the Regulatory Review Act, the Department also provided IRRC and the Committees with copies of the 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 House Committee on June 11, 1996, were deemed approved by the Senate Committee on June 11, 1996, and were deemed approved by the Commission on June 20, 1996, in accordance with section 5(c) of the Regulatory Review Act.

Findings

The Department finds that:

- (1) Public notice of intention to adopt the amendments 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 amendments published at 25 Pa.B. 3873.
- (4) The adoption of the amendments in the manner provided by this order is necessary and appropriate for the administration of the authorizing statute.

Order

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

- (a) The amendments to the regulations of the Department, 7 Pa. Code Chapter 104, are amended by deleting § 104.11 and adding §§ 104.12, 104.14—104.16 and 104.18 to read as set forth at 25 Pa.B. 3873 (September 16, 1995) and by adding §§ 104.13 and 104.17 to read as set forth in Annex A.

(b) The Secretary of Agriculture shall submit this order, 25 Pa.B. 3873 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, 25 Pa.B. 3873 and Annex A and deposit them with the Legislative Reference Bureau as required by law.

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

CHARLES C. BROSIUS,
Secretary

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 26 Pa.B. 3237 (July 6, 1996).)

Fiscal Note: Fiscal Note 2-99 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 B. POTATO RESEARCH PROGRAM

§ 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.

§ 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.

[Pa.B. Doc. No. 96-1205. Filed for public inspection July 26, 1996, 9:00 a.m.]