

Regulatory Analysis Form

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2004 JUN -7 PM 0:16

REVIEW COMMISSION

(1) Agency

Department of Agriculture

(2) I.D. Number (Governor's Office Use)

2-142

IRRC Number: 2370

(3) Short Title

Sheep and Lamb Marketing Program; Wine Marketing and Research Program

(4) PA Code Cite

7 Pa. Code Subchapters 104(C) and 104(F)

(5) Agency Contacts & Telephone Numbers

Primary Contact: Kyle Nagurny, (717) 787-2376

Secondary Contact: Peter Witmer, (717) 787-6041

(6) Type of Rulemaking (check one)

Proposed Rulemaking
Final Order Adopting Regulation XXXX
Final Order, Proposed Rulemaking Omitted

(7) Is a 120-Day Emergency Certification Attached?

No X
Yes: By the Attorney General
Yes: By the Governor

(8) Briefly explain the regulation in clear and nontechnical language.

The regulation rescinds the regulations of the defunct Pennsylvania Sheep and Lamb Marketing Program, at 7 Pa. Code Subchapter 104(C). It also provides the Pennsylvania Wine Marketing and Research Program (Wine Program) a process and procedure by which to collect producer charges from those "affected producers" it is intended to benefit. These affected producers are holders of limited winery licenses issued in accordance with the Liquor Code (47 P.S. §§ 1-101 through 8-803).

(9) State the statutory authority for the regulation and any relevant state or federal court decisions.

The Agricultural Commodities Marketing Act (3 Pa.C.S.A. §§ 4501-4513) (ACMA) provides the legal authority for this regulation. Both the Sheep Program and the Wine Program are agricultural commodity programs established under authority of that statute. ACMA authorizes (at 3 Pa.C.S.A. § 4511) the Department to promulgate regulations necessary to enforce the provisions of any marketing

program established under its authority.

Regulatory Analysis Form

(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.

No.

(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

The regulation provides the Wine Program and affected wine producers a clear explanation of the process by which the 15-cent-per-gallon producer charge owed the Wine Program by affected producers is to be calculated and paid. It also provides a mechanism by which the Wine Program can collect producer charges from delinquent wine producers.

(12) State the public health, safety, environmental or general welfare risks associated with nonregulation.

There are no such risks associated with nonregulation.

(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

The regulation is expected to help fully-fund the Wine Program's research and marketing efforts. This should benefit Pennsylvania's 70 (approximation) limited wineries and the grape growers that supply these wineries. The Wine Program's marketing efforts seek to increase consumer demand for Pennsylvania-produced wines, and its research efforts seek to facilitate production of high quality wine at a reasonable costs to the producer. These benefits are not readily quantifiable.

Regulatory Analysis Form

(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effects as completely as possible and approximate the number of people who will be adversely affected.)

The regulation is not expected to have an adverse impact upon any person.

(15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)

There are approximately 70 holders of limited winery licenses in this Commonwealth. These are the affected producers who must pay a producer charge to fund the research and marketing efforts of the Wine Program. This producer charge is 15-cents-per-gallon of wine sold in a given January 1 – December 31 marketing season. These 70 (the number varies slightly) affected producers will be required to comply with the regulation.

(16) Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.

The regulation was reviewed by the Wine Program Board. That body approved the proposed regulation at its September 17, 2003 meeting.

(17) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures which may be required.

The regulation is not expected to result in costs or savings to the regulated community.

Regulatory Analysis Form

(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures which may be required.

The regulation is not expected to result in costs or savings to the local governments.

(19) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required.

The regulation is not expected to result in costs or savings to state government.

Regulatory Analysis Form

(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	\$0	\$0	\$0	\$0	\$0	\$0
Regulated	0	0	0	0	0	0
Local Government	0	0	0	0	0	0
State Government	0	0	0	0	0	0
Total Savings	0	0	0	0	0	0
COSTS:	0	0	0	0	0	0
Regulated	0	0	0	0	0	0
Local Government	0	0	0	0	0	0
State Government	0	0	0	0	0	0
Total Costs	0	0	0	0	0	0
REVENUE LOSSES:	0	0	0	0	0	0
Regulated	0	0	0	0	0	0
Local Government	0	0	0	0	0	0
State Government	0	0	0	0	0	0
Total Revenue Losses	0	0	0	0	0	0

(20a) Explain how the cost estimates listed above were derived.

Please see the answers to questions 17, 18 and 19, above.

Regulatory Analysis Form

(20b) Provide the past three year expenditure history for programs affected by the regulation.

Note: These numbers have been revised from those provided with respect to the proposed regulation.

Program	FY -3 The Wine Program's producer charge collections began July 1, 2001. The figure below reflects the period spanning July 1-December 31, 2001	FY -2 January 1 through December 31, 2002	FY -1 January 1 through December 31, 2003	Current FY Partial - January 1 through April 30, 2004
Pennsylvania Wine Marketing and Research Program	\$ 0	\$ 827.03	\$ 20,337.52	\$ 43,406.74

(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.

The costs and adverse effects of the Wine Program are minimal or non-existent. The benefit to be gained from a funded wine marketing and research program is expected to far outweigh any adverse effects and costs.

(22) Describe the nonregulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.

No nonregulatory alternatives were considered.

(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.

No alternative regulatory schemes were considered.

Regulatory Analysis Form

(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulation.

There are no comparable/applicable Federal standards.

(25) How does this regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?

The regulation is not unduly restrictive and does not put Pennsylvania at a competitive disadvantage with other states. To the contrary, the regulation is expected to help fully-fund the Wine Program's marketing and research efforts.

(26) Will the regulation affect existing or proposed regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

No.

(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.

No.

Regulatory Analysis Form

(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports which will be required as a result of implementation, if available.

No.

(29) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

The regulation establishes a simple, straightforward procedure by which affected producers can account for their wine production/sales and pay the appropriate producer charges to the Wine Program.

(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

The regulation will take effect as of the date of final publication in the *Pennsylvania Bulletin*. The regulation does not require affected persons to acquire any permits, licenses or approvals.

(31) Provide the schedule for continual review of the regulation.

The efficacy of the regulation will be reviewed on an ongoing basis.

**FACE SHEET
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BUREAU**

(Pursuant to Commonwealth Documents Law)

2004 JUN -7 PM 9:14

REVIEW COMMISSION

DO NOT WRITE IN THIS SPACE

2380

Copy below is hereby approved as to form and legality.
Attorney General

By: _____
(Deputy Attorney General)

DATE OF APPROVAL

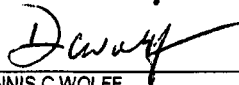
Check if applicable
Copy not approved. Objections attached.

Copy below is hereby certified to be true and
correct copy of a document issued, prescribed or
promulgated by:

(AGENCY)


DOCUMENT/FISCAL NOTE NO. 2-142

DATE OF ADOPTION May 10, 2004

BY 
DENNIS C WOLFF

TITLE
SECRETARY
Pennsylvania Department of Agriculture

Copy below is hereby approved as to form and legality
Executive or Independent Agencies

BY 
5/27/04
DATE OF APPROVAL

(Deputy General Counsel)
(~~Chief Counsel - Independent Agency~~)
(Strike inapplicable title)

Check if applicable. No Attorney General Approval
or objection within 30 days after submission.

Notice of Final Rulemaking

**Title 7 – AGRICULTURE
7 Pa. Code Chapter 104**

Subchapter C: Sheep and Lamb Marketing Program

Subchapter F: Wine Marketing and Research Program

FINAL RULEMAKING

DEPARTMENT OF AGRICULTURE

[7 PA CODE CHAPTER 104]

Sheep and Lamb Marketing Program; Wine Marketing and Research Program

The Department of Agriculture (Department) hereby deletes Subchapter C (relating to sheep and lamb marketing program) and adds Subchapter F (relating to wine marketing and research program), to read as set forth in Annex A.

Statutory Authority

The Agricultural Commodities Marketing Act (3 Pa.C.S.A. §§ 4501-4513) (Act) provides the legal authority for this regulation. Both the Pennsylvania Sheep and Lamb Marketing Program (Sheep Program) and the Pennsylvania Wine Marketing and Research Program (Wine Program) are agricultural commodity programs established under authority of the Act. Section 11 of the Act (3 Pa.C.S.A. § 4511) authorizes the Department to promulgate regulations necessary to enforce the provisions of any marketing program established under its authority.

Purpose

This final-form regulation deletes Subchapter C. Since the Sheep Program was terminated some time ago, Subchapter C serves no purpose.

This final-form regulation also affirms the obligations of affected wine producers with respect to the Wine Program, provides a mechanism for accounting and payment of producer charges and establishes a mechanism for the collection of producer charges from affected producers who do not pay their fair share to support the Wine Program.

Background

The Act authorizes the establishment of an agricultural commodity marketing program through a referendum among affected producers of the agricultural commodity involved. The Wine Program was established through a referendum among persons who produce or sell wine under authority of a limited winery license issued in accordance with the Liquor Code (47 P.S. §§ 1-101 – 8-803).

The production of wine is closely regulated. Holders of limited winery licenses are required to report their wine production and sales to the Pennsylvania Liquor Control Board. This production information assists the Wine Program in calculating the producer

charges owed it by each affected wine producer. The producer charges are 15-cents-per-gallon of wine sold within a particular January 1 – December 31 marketing season.

The proposed regulation would emphasize the obligation of an affected wine producer to account for and pay the appropriate producer charges to the Wine Program and provide that program a mechanism by which to pursue collection of unpaid producer charges.

Need for the Regulation

The regulation is necessary for the operation of the Wine Program, and makes extensive use of language from existing regulations for other Act-based agricultural commodity marketing programs. The Department is satisfied of the need for the proposed regulation, and believes the document is consistent with the principles outlined in Executive Order 1996-1, “Regulatory Review and Promulgation.”

Comments

Notice of Proposed Rulemaking was published at 34 *Pennsylvania Bulletin* 561 (January 31, 2004), and provided for a 30-day public comment period. The only formal written comments received with respect to the proposed rulemaking were offered by the Independent Regulatory Review Commission (IRRC). The Department’s response to these comments follows:

Comment 1: IRRC observed that proposed § 104.71 (relating to scope) states that persons who produce and sell wine under authority of a limited winery license will be required to pay producer charges to the Wine Program, and recommended that the final-form regulation include a reference to the 47 P.S. § 5-505.2 – the provision of the Liquor Code addressing limited wineries.

Response: The Department has implemented this recommendation in the final-form regulation.

Comment 2: IRRC recommended that the terms “marketing contract,” “PLCB” and “ACMA” be deleted from § 104.72 (relating to definitions), since these terms are not used elsewhere in the body of the document. This same recommendation had been made informally by *Pennsylvania Bulletin* staff when the proposed regulation was submitted for publication.

Response: The Department has implemented this recommendation in the final-form regulation.

Comment 3: IRRC asked the Department to either explain or delete the phrase “or other time period designated by the Program” in proposed § 104.75(a)(2) (relating to accounting and payment).

Response: The referenced phrase has been deleted from the final-form regulation.

Comment 4: With respect to proposed § 104.75(e), IRRC offered the following:

This subsection requires producers to pay a penalty for nonpayment of producer charges “of at least \$100 but not more than \$5,000, and as nearly equivalent to 100% of the amount of the delinquent producer charge as is practicable.” We note in the Vegetable Marketing and Research Program and the Peach and Nectarine Research Program the maximum fine levied is \$500. Why has the Department chosen to implement a much higher fine for this Program? The preamble should include the Department’s reasoning for the fines in this subsection.

Response: The object of the subsection is to allow for a penalty that would – in most cases - effectively double the amount of money a delinquent producer would have to pay the Wine Program. This penalty amount is tempered by the \$5,000 ceiling set forth in the regulation. The Department and the Wine Program Board considered the upward civil penalty limits imposed by the commodity marketing programs described in the comment, but felt that the \$5,000 figure is more appropriate for the Wine Program, and that this figure would help provide an incentive for compliance with the accounting and payment provisions of the final-form regulation.

Fiscal Impact

Commonwealth: The regulation imposes no costs and has no fiscal impact on the Commonwealth.

Political Subdivisions: The regulation imposes no costs and has no fiscal impact on political subdivisions.

Private Sector: The regulation imposes no costs and has no adverse fiscal impact upon the private sector. Although the regulation references the 15¢ per gallon producer charge, the charge has been established through a referendum among affected producers, in accordance with the provisions of the Act. The regulation repeats this existing obligation, but does not create it. The regulation will help to fully-fund the research and marketing efforts of the Wine Program. Although this is expected to have a favorable economic impact upon Pennsylvania’s wine production industry, this benefit is not readily quantifiable.

General Public: The regulation imposes no costs and has no adverse fiscal impact upon the general public.

Paperwork Requirements

The regulation will not appreciably increase the paperwork burden of the Department, other government units or affected wine producers.

Sunset Date

There is no sunset date for the regulation. The Department will review the efficacy of this regulation on an ongoing basis.

Contact Person

Further information is available by contacting the Department of Agriculture, Bureau of Market Development, Pennsylvania Wine Marketing and Research Program, 2301 North Cameron Street, Harrisburg, PA 17110-9408, Attention: Kyle Nagurny. Telephone: (717) 787-2376.

Regulatory Review

Under § 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 34 *Pennsylvania Bulletin* 561 (January 31, 2004) on January 16, 2004 to the Independent Regulatory Review Commission and to the Chairpersons of the House and Senate Standing Committees on Agriculture and Rural Affairs for review and comment. In compliance with § 5(b.1), the Department also provided the Commission and the Committees with copies of all comments received, as well as other documentation.

In preparing this final-form regulation, the Department has considered all comments received from the Commission, the Committees and the public.

This final-form regulation was approved or deemed approved by the House Agricultural and Rural Affairs Committee on _____, 2004, was approved or deemed approved by the Senate Agriculture and Rural Affairs Committee on _____, 2004, and was approved by the Commission on _____, 2004.

Findings

The Department of Agriculture finds the following:

1. Public notice of its intention to adopt the regulation encompassed by this Order has been given under §§ 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240)(45 P.S. §§ 1201 and 1202) and their attendant regulations at 1 Pa. Code §§ 7.1 and 7.2.
2. A public comment period was provided as required by law and all comments received were considered.
3. The modifications that were made to this regulation in response to comments received do not enlarge the purpose of the proposed

regulation published at 34 *Pennsylvania Bulletin* 561 (January 31, 2004).

4. The adoption of the regulation in the manner provided in this Order is necessary and appropriate for the administration of the authorizing statute.

Order

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

1. The regulations of the Department of Agriculture at 7 Pa. Code Subchapter 104(C) (relating to sheep and lamb marketing program) are rescinded, and Subchapter 104(F) (relating to wine marketing and research program) is adopted, to read as set forth at Annex A hereto.
2. The Secretary of Agriculture shall submit this Order, 34 *Pennsylvania Bulletin* 561 (January 31, 2004) and Annex "A" hereto to the Office of General Counsel and to the Office of Attorney General for approval as required by law.
3. The Secretary of Agriculture shall certify this Order, 34 *Pennsylvania Bulletin* 561 (January 31, 2004) and Annex "A" hereto and deposit them with the Legislative Reference Bureau as required by law.
4. This Order shall take effect upon publication in the *Pennsylvania Bulletin*.

DENNIS C WOLFF,
Secretary

Annex A

Title 7 – Agriculture

Chapter 104 – Enforcement of Marketing Programs

Subchapter C. [SHEEP AND LAMB MARKETING PROGRAM] (Reserved)

§§ 104.21-104.30. (Reserved).

Subchapter F. WINE MARKETING AND RESEARCH PROGRAM

<u>Sec.</u>	<u>Title</u>
104.71.	<u>Scope.</u>
104.72.	<u>Definitions.</u>
104.73.	<u>Producer charges.</u>
104.74.	<u>Responsibility for payment of producer charge.</u>
104.75.	<u>Accounting and payment.</u>

§ 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 THE LIQUOR CODE (AT 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:

~~ACMA – The Agricultural Commodities Marketing Act (3 Pa. C. S. §§ 4501-4513).~~

~~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 Contract – Any contract or agreement between the Board and a person for the performance of service related to advertising, promotion, research, marketing, or other objectives in furtherance of the marketing and research program set forth in this subchapter.~~

~~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.~~

~~PLCB – The Pennsylvania Liquor Control Board.~~

~~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, or other time period designated by the Program.

(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 \$5000, 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.

PROPOSED RULEMAKING

DEPARTMENT OF AGRICULTURE

[7 PA. CODE CH. 104]

Sheep and Lamb Marketing Program; Wine Marketing and Research Program

The Department of Agriculture (Department) proposes to delete Subchapter C (relating to sheep and lamb marketing program) and add Subchapter F (relating to wine marketing and research program) to read as set forth in Annex A. The Pennsylvania Sheep and Lamb Marketing Program (Sheep Program) is no longer in existence. Therefore, Subchapter C is unnecessary. Proposed Subchapter F provides the Pennsylvania Wine Marketing and Research Program (Wine Program) needed regulatory authority, while providing affected wine producers guidance as to their obligations to the Wine Program.

Statutory Authority

The Agricultural Commodities Marketing Act (act) (3 Pa.C.S. §§ 4501—4513) provides the legal authority for this proposed rulemaking. Both the Sheep Program and the Wine Program are agricultural commodity programs established under authority of the act. Section 11 of the act (3 Pa.C.S. § 4511) authorizes the Department to promulgate regulations necessary to enforce the provisions of any marketing program established under its authority.

Purpose

The proposed rulemaking deletes Subchapter C. Due to the termination of the Sheep Program, Subchapter C serves no purpose.

The proposed rulemaking also affirms the obligations of affected wine producers with respect to the Wine Program, provides a mechanism for accounting and payment of producer charges and establishes a mechanism for the collection of producer charges from affected producers who do not pay their fair share to support the Wine Program.

Background

The act authorizes the establishment of an agricultural commodity marketing program through a referendum among affected producers of the agricultural commodity involved. The Wine Program was established through a referendum among persons who produce or sell wine under authority of a limited winery license issued in accordance with the Liquor Code (47 P.S. §§ 1-101—8-803).

The production of wine is closely regulated. Holders of limited winery licenses are required to report their wine production and sales to the Liquor Control Board. This production information assists the Wine Program in calculating the producer charges owed it by each affected wine producer. The producer charges are 15¢ per gallon of wine sold within a particular January 1—December 31 marketing season.

The proposed rulemaking emphasizes the obligation of an affected wine producer to account for and pay the appropriate producer charges to the Wine Program and

provides the Wine Program a mechanism by which to pursue collection of unpaid producer charges.

Need for the Proposed Rulemaking

The proposed rulemaking is necessary for the operation of the Wine Program and makes extensive use of language from existing regulations for other act-based agricultural commodity marketing programs. The Department is satisfied of the need for the proposed rulemaking.

Overview of the Major Provisions of the Proposed Rulemaking

Proposed §§ 104.73 and 104.74 (relating to producer charges; and responsibility for payment of producer charge), respectively, set forth the formula for calculation of producer charge amounts and the responsibility of an affected wine producer to pay these charges.

Proposed § 104.75 (relating to accounting and payment) describes the annual production verification statement forms by which an affected wine producer is to verify the quantity of wine produced within a given marketing season. It also describes the procedures for payment of producer charges and allows for the imposition of a penalty of between \$100 and \$5,000 against affected producers who are delinquent with payment.

Affected Individuals and Organizations

There are approximately 70 holders of limited winery licenses at present. The proposed rulemaking affects these persons.

Fiscal Impact

Commonwealth—The proposed rulemaking imposes no costs and has no fiscal impact on the Commonwealth.

Political Subdivisions—The proposed rulemaking imposes no costs and has no fiscal impact on political subdivisions.

Private Sector—The proposed rulemaking imposes no costs and has no adverse fiscal impact upon the private sector. Although the proposed rulemaking references the 15¢ per gallon producer charge, the charge has been established through a referendum among affected producers in accordance with the provisions of the act. The proposed rulemaking repeats this existing obligation. The proposed rulemaking does not create it. The proposed rulemaking helps to fully fund the research and marketing efforts of the Wine Program. Although this is expected to have a favorable economic impact upon this Commonwealth's wine production industry, this benefit is not readily quantifiable.

General Public—The proposed rulemaking imposes no costs and has no adverse fiscal impact upon the general public.

Paperwork Requirements

The proposed rulemaking does not appreciably increase the paperwork burden of the Department, other government units or affected wine producers.

Effective Date

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

Sunset Date

There is no sunset date for the proposed rulemaking. The Department will review the efficacy of these regulations on an ongoing basis.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on January 16, 2004, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Standing Committees on Agriculture and Rural Affairs. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections shall specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Department, the General Assembly and the Governor of comments, recommendations or objections raised.

Public Comment Period/Contact Person

Interested persons are invited to submit written comments regarding the proposed rulemaking within 30 days following publication in the *Pennsylvania Bulletin* to the Department of Agriculture, Bureau of Market Development, 2301 North Cameron Street, Harrisburg, PA 17110-9408, Attn: Kyle Nagurny.

DENNIS C WOLFF,
Secretary

Fiscal Note: 2-142. No fiscal impact; (8) recommends adoption.

Annex A**TITLE 7. AGRICULTURE****PART IV. BUREAU OF MARKET DEVELOPMENT****CHAPTER 104. ENFORCEMENT OF MARKETING PROGRAMS****Subchapter C. [SHEEP AND LAMB MARKETING PROGRAM] (Reserved)**

(Editor's Note: As part of this proposed rulemaking, the Department is proposing to rescind §§ 104.21—104.30, which appear in 7 Pa. Code pages 104-10—104-16, serial pages (266924)—(266930).)

§§ 104.21—104.30. (Reserved).

Subchapter F. WINE MARKETING AND RESEARCH PROGRAM

Sec.	
104.71.	Scope.
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104.75.	Accounting and payment.

§ 104.71. Scope.

This subchapter establishes the procedures by which persons who produce or sell wine under authority of a limited winery license 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:

ACMA—The Agricultural Commodities Marketing Act (3 Pa.C.S. §§ 4501—4513).

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 contract—Any contract or agreement between the Board and a person for the performance of service related to advertising, promotion, research, marketing, or other objectives in furtherance of the marketing and research program set forth in this subchapter.

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.

PLCB—The Pennsylvania Liquor Control Board.

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, or other time period designated by the Program.
- (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 Program."

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

Department of Agriculture,
Bureau of Market Development
Attn: Pennsylvania Wine 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 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.

[Pa.B. Doc. No. 04-176. Filed for public inspection January 30, 2004, 9:00 a.m.]

STATE BOARD OF OSTEOPATHIC MEDICINE

[49 PA. CODE CH. 25]

Continuing Medical Education

The State Board of Osteopathic Medicine (Board) proposes to amend §§ 25.1 and 25.271 (relating to definitions; and requirements for renewal) to read as set forth in Annex A.

Effective Date

The proposed rulemaking will be effective upon final-form publication in the *Pennsylvania Bulletin*. The Legislature has required that the Board promulgate regulations within 6 months of the effective date of section 910 of the Medical Care Availability and Reduction of Error (MCARE) Act (act) (40 P. S. § 1303.910).

Statutory Authority

Under section 910 of the act, the Board is required to establish requirements for continuing medical education for physicians as a condition for renewal of their licenses. Physicians are required to complete 100 credit hours of mandatory continuing medical education during each 2-year licensure period.

Background and Purpose

The proposed rulemaking implements section 910 of the act, which requires completion of 100 credit hours of continuing education as a condition of biennial licensure renewal of physician licenses by the State Board of Medicine and the Board. Although the Board already required 100 credit hours of continuing medical education each biennium, the act imposed a requirement that the

Board establish a minimum number of hours in the areas of patient safety and risk management.

Description of Proposed Rulemaking

The proposed rulemaking requires proof of completion of 100 credit hours of continuing medical education as a condition of license renewal, and sets forth a requirement that at least 20 of the 100 hours be American Osteopathic Association (AOA) category 1 credits and that at least 10 credit hours must be in the area of patient safety and risk management. Courses in the area of patient safety and risk management may include topics such as improving medical records and recordkeeping, reducing medical errors, professional conduct and ethics, improving communications, preventative medicine and healthcare quality improvement. The proposed rulemaking further designates the Accreditation Council on Continuing Medical Education and the AOA as the accrediting bodies for purposes of approving continuing medical education providers.

Fiscal Impact and Paperwork Requirements

The proposed rulemaking requires the Board to alter its license renewal forms to include data regarding the physician's compliance with the continuing education requirements, and also requires physicians to maintain their own records of continuing education credits, but otherwise, should have no adverse fiscal impact on the Commonwealth or its political subdivisions.

Sunset Date

The Board continuously monitors the cost effectiveness of its regulations. Therefore, no sunset date has been assigned.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on January 20, 2004, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate Consumer Protection and Professional Licensure Committee and the House Professional Licensure Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections shall specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Board, the General Assembly and the Governor of comments, recommendations or objections raised.

Public Comment

Interested persons are invited to submit written comments, recommendations or objections regarding this proposed rulemaking to Amy L. Nelson, Counsel, State Board of Osteopathic Medicine, P. O. Box 2649, Harrisburg, PA 17105-2649 within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*.

THOMAS R. CZARNECKI, D.O.,
Chairperson

Fiscal Note: 16A-5313. No fiscal impact; (8) recommends adoption.



GOVERNOR'S OFFICE OF GENERAL COUNSEL
DEPARTMENT OF AGRICULTURE
2301 N. Cameron Street • Room 201
Harrisburg, Pennsylvania 17110-9408

OFFICE OF CHIEF COUNSEL

Tel: 717-787-8744
Fax: 717-787-1270

June 7, 2004

Independent Regulatory Review Commission
333 Market Street, 14TH Floor
Harrisburg, PA 17120

RE: FINAL-FORM REGULATION - Department of Agriculture
7 Pa. Code Chapter 104
Sheep and Lamb Marketing Program;
Wine Marketing and Research Program
Proposed Rulemaking: 34 Pa. Bulletin 561 (January 31, 2004)
Approved by Office of General Counsel: May 27, 2004

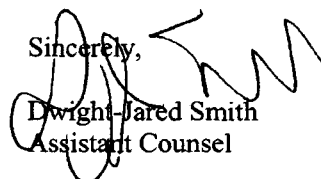
Dear Sir or Madam:

Please find enclosed a copy of the above-referenced final-form regulation. This material includes copies of the Preamble and Annex "A". Copies of the Notice of Proposed Rulemaking and Regulatory Analysis Form are also enclosed. I respectfully request the Independent Regulatory Review Commission review and approve the above-referenced final-form regulation in accordance with the requirements and procedures of the Regulatory Review Act.

This Department's responses to the comments received from the public, the Legislature and the Independent Regulatory Review Commission with respect to the proposed regulation are set forth in the Preamble to the final-form regulation. Copies of this final-form regulation have been delivered to the appropriate Legislative Committees (the House and Senate Agricultural and Rural Affairs Committees), and have been mailed or delivered to each commentator on this date. In response to the requirement (at 71 P.S. § 745.5a(b) and 1 Pa. Code § 307.2(c)(7)) that this Department provide the names and addresses of commentators who requested additional information on the final-form regulation, the Department hereby relates that no commentators have made this request.

The Department will provide you with any assistance you may require to facilitate a thorough review of this final-form regulation. Thank you for your attention to this matter.

Sincerely,



Dwight-Jared Smith
Assistant Counsel

Enclosures

**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT**

I.D. NUMBER: 2-142
 SUBJECT: Sheep & Lamb Marketing Program and Wine Marketing Research Program
 AGENCY: DEPARTMENT OF AGRICULTURE # 2380

TYPE OF REGULATION

- Proposed Regulation
- X Final Regulation
- Final Regulation with Notice of Proposed Rulemaking Omitted
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor
- Delivery of Tolled Regulation
 - a. With Revisions
 - b. Without Revisions

RECEIVED
 REGULATORY REVIEW COMMISSION
 JUN 7 2004

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
6-7-04	<u>Cindy Zimm</u>	HERSHEY HOUSE COMMITTEE ON AGRICULTURE & RURAL AFFAIRS
6-7-04	<u>S. Oakland</u>	DALEY
6-7-04	<u>C. Boyer</u>	WAUGH SENATE COMMITTEE ON AGRICULTURE & RURAL AFFAIRS
6-7-04	<u>Judy Metz Eagle</u>	O'PAKE
6-7-04	<u>Stephen F. Pappas</u>	IRRC INDEPENDENT REGULATORY REVIEW COMMISSION
_____	_____	ATTORNEY GENERAL (for Final Omitted only)
_____	_____	LEGISLATIVE REFERENCE BUREAU (for Proposed only)

June 1, 2004