

Regulatory Analysis Form

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REVIEW COMMISSION

(1) Agency

Department of Agriculture

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

2-142

IRRC Number: 2380

(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 X
Final Order Adopting Regulation
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.

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(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 cost 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.

Program	FY -3 (The Wine Program was not in existence in 2000)	FY -2 (The Wine Program's producer charge collections began July 1, 2001. The figure below reflects the period spanning July 1-December 31, 2001)	FY -1 (January 1 through December 31, 2002)	Current FY (Partial - January 1 through June 30, 2003)
Pennsylvania Wine Marketing and Research Program	\$0	\$48,625.50	\$82,107.80	\$26,977.16

(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
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE
BUREAU**

(Pursuant to Commonwealth Documents Law)

#2380

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DO NOT WRITE IN THIS SPACE

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

By: *Anthony M. Elliott*
(Deputy Attorney General)

JAN 07 2004

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:

Agriculture

(AGENCY)

DOCUMENT/FISCAL NOTE NO. 2-142

DATE OF ADOPTION 10/1/03

BY *D. Wolff*
DENNIS C WOLFF

TITLE
SECRETARY
Pennsylvania Department of Agriculture

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

BY *Tanya Cole*

DATE OF APPROVAL
12/11/03
(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 Proposed Rulemaking

**Title 7 – AGRICULTURE
7 Pa. Code Subchapters 104(C) and 104(F)**

Sheep and Lamb Marketing Program; Wine Marketing and Research Program

PROPOSED RULEMAKING

DEPARTMENT OF AGRICULTURE

[7 PA CODE SUBCHAPTERS 104(C) AND 104(F)]

Sheep and Lamb Marketing Program; Wine Marketing and Research Program

The Department of Agriculture (Department) proposes to revise Title 7 of the Pennsylvania Code by rescinding Subchapter 104(C) (relating to sheep and lamb marketing program) and adding Subchapter 104(F) (relating to wine marketing and research program). The Pennsylvania Sheep and Lamb Marketing Program (Sheep Program) is no longer in existence - obviating the need for Subchapter 104(C). Proposed Subchapter 104(F) would provide the Pennsylvania Wine Marketing and Research Program (Wine Program) needed regulatory authority, while providing affected wine producers guidance as to their obligations to that program. The revisions would read as set forth in Annex A.

Statutory Authority

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.

Purpose

The proposed regulation would rescind subchapter 104(C), a subchapter that – with the termination of the Sheep Program – serves no purpose.

The proposed regulation would also affirm the obligations of affected wine producers with respect to the Wine Program, provide a mechanism for accounting and payment of producer charges and establish a mechanism for the collection of producer charges from affected producers who do not pay their fair share to support the Wine Program.

Background

ACMA 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 Proposed Rulemaking

The proposed regulation is necessary for the operation of the Wine Program, and makes extensive use of language from existing regulations for other ACMA-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."

Overview of the Major Provisions of the Proposed Rulemaking

Proposed §§ 104.73 (relating to producer charges) and 104.74 (relating to responsibility for payment of producer charge) would, 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) would describe 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 would also describe the procedures for payment of producer charges, and would allow for the imposition of a penalty of between \$100 and \$5000 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 regulation would affect these persons.

Fiscal Impact

Commonwealth: The proposed regulation would impose no costs and have no fiscal impact on the Commonwealth.

Political Subdivisions: The proposed regulation would impose no costs and have no fiscal impact on political subdivisions.

Private Sector: The proposed regulation would impose no costs and have no adverse fiscal impact upon the private sector. Although the document references the 15-cent-per-gallon producer charge, that charge has been established through a referendum among affected producers, in accordance with the provisions of ACMA. The proposed regulation would *repeat* this existing obligation - not *create* it. The proposed regulation would 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 proposed regulation would impose no costs and have no adverse fiscal impact upon the general public.

Paperwork Requirements

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

Effective Date

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

Sunset Date

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

Public Comment Period/Contact Person

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

Regulatory Review

The Department submitted a copy of the proposed regulation to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Standing Committees on Agriculture and Rural Affairs on January 16, 2004, in accordance with section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)). The Department also provided IRRC and the Committees a detailed Regulatory Analysis Form prepared by the Department in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available to the public upon request.

If IRRC has an objection to any portion of the proposed regulation, it must so notify the Department within 30 days of the close of the public comment period.

The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act sets forth detailed procedures for review of these objections by the Department, the General Assembly and the Governor prior to the final publication of the proposed regulation.

DENNIS C WOLFF,
Secretary

(Replacement Page – December 22, 2003)

Annex A

Title 7 – Agriculture

Chapter 104 – Enforcement of Marketing Programs

Subchapter C.

Sheep and Lamb Marketing Program

[Reserved]

Subchapter F.

Wine Marketing and Research Program

<u>Sec.</u>	<u>Title</u>
<u>104.71.</u>	<u>Scope.</u>
<u>104.72.</u>	<u>Definitions.</u>
<u>104.73.</u>	<u>Producer charges.</u>
<u>104.74.</u>	<u>Responsibility for payment of producer charge.</u>
<u>104.75.</u>	<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 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 (act of March 24, 1998, P.L. 217, No. 39) (3 Pa. C. S. §§ 4501-4513).

“Board” – The persons appointed by the Secretary from among those producers whose commodities are subject to this marketing and research program.

“Department” – The Department of Agriculture of the Commonwealth of Pennsylvania.

“Limited Winery” - The holder of a limited winery license issued under authority of the Liquor Code (47 P.S. §§ 1-101 through 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 this marketing and research program.

“Marketing Season” – The initial marketing season for purposes of this order shall be from July 1, 2001 through December 31, 2001. 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.

“PLCB” - The Pennsylvania Liquor Control Board.

“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 Agriculture of the Commonwealth of Pennsylvania.

§ 104.73. Producer charges.

The producer charges owed the Program shall be 15¢ per gallon of wine sold within a given marketing season, except instate winery-to-winery sales in bond. Instate 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 (7 Pa. Code § 103).

§ 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) 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 \$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.

COMMONWEALTH OF PENNSYLVANIA



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

January 16, 2004

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

Re: NOTICE OF PROPOSED RULEMAKING
Department of Agriculture
7 Pa. Code Chapter 104
Sheep and Lamb Marketing Program;
Wine Marketing and Research Program
I.D. No. 2-142

Dear Sirs:

Please find enclosed copies of the Face Sheet, Preamble, Annex "A" and Regulatory Analysis Form with respect to the above proposed regulation.

Copies of these documents have been submitted to the majority and minority chairpersons of the House and Senate Agriculture and Rural Affairs Committees and to the Legislative Reference Bureau on this date.

The proposed regulation will be published in the January 31, 2004 edition of the *Pennsylvania Bulletin*. If I may be of further information, please advise.

Sincerely,

A handwritten signature in black ink, appearing to read "Dwight-Jared Smith".

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; Wine Marketing & Research Program
AGENCY: DEPARTMENT OF AGRICULTURE

TYPE OF REGULATION

- X Proposed Regulation
 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

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FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
1-16-04	<u><i>Eileen Huckle</i></u>	HERSHEY HOUSE COMMITTEE ON AGRICULTURE & RURAL AFFAIRS
1-16-04	<u><i>Sandy Atland</i></u>	DALEY
1-16-04	<u><i>Cecilia Boyer</i></u>	WAUGH SENATE COMMITTEE ON AGRICULTURE & RURAL AFFAIRS
1-16-04	<u><i>Judith M. Egan</i></u>	O'PAKE
1-16-04	<u><i>Sharon Payne</i></u>	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL (for Final Omitted only)
1-16-04	<u><i>Robert L. ...</i></u>	LRB LEGISLATIVE REFERENCE BUREAU (for Proposed only)

January 8, 2004