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**INDEPENDENT REGULATORY REVIEW COMMISSION
COMMONWEALTH OF PENNSYLVANIA
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March 31, 2004

Honorable Dennis C. Wolff, Secretary
Department of Agriculture
211 Agriculture Building
2301 North Cameron Street
Harrisburg, PA 17110

Re: Regulation #2-142 (IRRC #2380)
Department of Agriculture
Sheep and Lamb Marketing Program; Wine Marketing and Research Program

Dear Secretary Wolff:

Enclosed are the Commission's comments for consideration when you prepare the final version of this regulation. These comments are not a formal approval or disapproval of the regulation. However, they specify the regulation review criteria that have not been met.

The comments will be available on our website at www.irrc.state.pa.us. If you would like to discuss them, please contact my office at 783-5417.

Sincerely,

Robert E. Nyce
Executive Director

wbg

Enclosure

cc: Honorable Mike Waugh, Chairman, Senate Agriculture and Rural Affairs Committee
Honorable Michael A. O'Pake, Minority Chairman, Senate Agriculture and Rural Affairs Committee
Honorable Arthur D. Hershey, Majority Chairman, House Agriculture and Rural Affairs Committee
Honorable Peter J. Daley, II, Democratic Chairman, House Agriculture and Rural Affairs Committee

Comments of the Independent Regulatory Review Commission

on

Department of Agriculture Regulation No. 2-142

Sheep and Lamb Marketing Program; Wine Marketing and Research Program

March 31, 2004

We submit for your consideration the following comments that include references to the criteria in the Regulatory Review Act (71 P.S. § 745.5b) which have not been met. The Department of Agriculture (Department) must respond to these comments when it submits the final-form regulation. The public comment period for this regulation closed on March 1, 2004. If the final-form regulation is not delivered within two years of the close of the public comment period, the regulation will be deemed withdrawn.

1. Section 104.71. Scope. – Clarity.

Section 104.71 states that persons who produce or sell wine under the authority of a limited winery license will be required to pay producer charges to the Wine Marketing and Research Program (Program). The Department should add a citation in this section to 47 P.S. § 5-505.2 relating to limited wineries in the Liquor Code.

2. Section 104.72. Definitions. – Need; clarity.

The terms “marketing contract,” “PLCB” and “ACMA” are defined in this section but not used elsewhere in the regulation. We question the need for defining these terms. The Department should delete the above terms from this section in the final-form regulation.

3. Section 104.75. Accounting and payment. – Clarity.

Subsection (a)(2)

This subsection includes the language, “or other time period designated by the Program.” What would be an “other time period” besides what is stated in the definition of “marketing season”? The Department should either specify what an “other time period” would be, or delete it from this subsection.

Subsection (e)

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 charges 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.

Facsimile Cover Sheet

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Agency: Department of Agriculture
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Date: March 31, 2004
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Comments: We are submitting the Independent Regulatory Review Commission's comments on the Department of Agriculture's regulation #2-142 (IRRC #2380). Upon receipt, please sign below and return to me immediately at our fax number 783-2664. We have sent the original through interdepartmental mail. You should expect delivery in a few days. Thank you.

Accepted by: *Jill Brownfield* Date: 3/31/04