

<h1>Regulatory Analysis Form</h1> <p>(Completed by Promulgating Agency)</p> <p>(All Comments submitted on this regulation will appear on IRRC's website)</p>		<p>INDEPENDENT REGULATORY REVIEW COMMISSION</p> <div style="border: 1px solid black; padding: 5px; text-align: center;"> <p>RECEIVED</p> <p>JUL 25 2018</p> <p>Independent Regulatory Review Commission</p> </div>
<p>(1) Agency</p> <p>Department of Agriculture</p>		<p>IRRC Number: 3181</p>
<p>(2) Agency Number: 02</p> <p>Identification Number: 185</p>		
<p>(3) PA Code Cite: 7 Pa. Code Chapter 104, Subchapter D</p>		
<p>(4) Short Title: Vegetable Marketing and Research Program</p>		
<p>(5) Agency Contacts (List Telephone Number and Email Address):</p> <p>Primary Contact: William Troxell, pvmrp@embarqmail.com, (717) 694-3596</p> <p>Secondary Contact: Dwight Smith, dwsmith@pa.gov, (717) 787-8744</p>		
<p>(6) Type of Rulemaking (check applicable box):</p> <p><input type="checkbox"/> Proposed Regulation</p> <p><input checked="" type="checkbox"/> Final Regulation</p> <p><input type="checkbox"/> Final Omitted Regulation</p>		<p><input type="checkbox"/> Emergency Certification Regulation;</p> <p><input type="checkbox"/> Certification by the Governor</p> <p><input type="checkbox"/> Certification by the Attorney General</p>
<p>(7) Briefly explain the regulation in clear and nontechnical language. (100 words or less)</p> <p>The regulation will:</p> <ol style="list-style-type: none"> relieve certain vegetable "sales agents" (vegetable processors, auctions, packing houses, cooperatives and the like) of the responsibility to document the vegetable production volume of vegetable producers with which they do business and collect "producer charges" on behalf of the Pennsylvania Vegetable Marketing and Research Program ("Program"); replace that responsibility with the simple requirement that, upon request of the Pennsylvania Department of Agriculture ("Department"), the sales agent provide the Department identifying information with respect to each vegetable producer from whom the sales agent purchased \$2,000 or more worth of vegetables in a given January 1 – December 31 marketing season; establish a uniform \$25 civil penalty that the Department may assess against a producer if that producer fails to file the required production verification statement and pay any producer charges owed the Program by January 31 each year; and make a number of "housekeeping" updates to the current regulation by bringing definitions into alignment with the Order that established the Program, simplifying the form used to verify 		

vegetable production, and adding a new term – “vegetable production unit” – to establish the basic unit of production upon which producer charges are to be calculated.

(8) State the statutory authority for the regulation. Include specific statutory citation.

The regulation is authorized under the Agricultural Commodities Marketing Act (3 Pa.C.S. §§ 4501 – 4513). The Agricultural Commodities Marketing Act authorizes (at 3 Pa.C.S. § 4511) the Secretary of Agriculture to promulgate regulations and establish penalties as necessary to enforce the provisions of any agricultural commodity marketing program established under that statute. The Pennsylvania Vegetable Marketing and Research Program is such a program.

(9) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as, any deadlines for action.

No, the regulation is not mandated by any federal or state law, court order or federal regulation.

(10) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. 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 needed to make the Program more efficient and increase participation.

The Program was established as the result of a referendum among affected vegetable producers. These same producers have voted to continue the Program in each review referendum that has been conducted (at intervals of no more than five years) since the Program was established. The most recent order continuing the Program was published in the April 21, 2018 edition of the *Pennsylvania Bulletin* (at 48 Pa.B. 2278).

Pennsylvania’s vegetable production industry is comprised primarily of thousands of small family farms. The Program allows these thousands of vegetable producers to collectively fund and conduct: (1) generic promotion of Pennsylvania grown vegetables; and (2) practical vegetable production research. These efforts benefit all Pennsylvania vegetable producers and the industries (such as farm equipment suppliers, fertilizer suppliers and the like) that support these producers, and help provide the public with fresh, nutritious locally-produced vegetables.

The Department estimates that over one-third of those Pennsylvania vegetable producers who *should* be paying producer charges to the Program are *not*. This is unfair to participating producers, and has the Program operating with less than two-thirds of the funds it should be collecting and directing to its marketing and research efforts. While there are currently about 2,050 vegetable producers paying producer charges to support the activities of the Program, the Department is aware the United States Department of Agriculture’s 2012 Agricultural Census counted over 3,300 Pennsylvania vegetable growers who produce vegetables in sufficient quantity to obligate them to pay producer charges to the Program.

As related above in Response No. 7, above, the regulation will relieve certain vegetable sales agents of the responsibility to document the vegetable production volume of vegetable producers with which they

do business and collect producer charges on behalf of the Program, and will replace that obligation with the less-burdensome requirement that – upon the request of the Department – the sales agent provide the Department identifying information with respect to those vegetable producers from whom the sales agent purchased \$2,000 or more worth of vegetables in a given calendar year. The Department believes it can use this information to identify vegetable producers who should be participating in the Program, secure their participation, make the Program more fair to affected vegetable producers and increase the breadth, depth, quality and impact of the Program’s marketing and research efforts.

The 2,050 or so vegetable producers who are currently participating in the Program will benefit from a fairer, broader-based, better-funded vegetable marketing and research effort. These benefits cannot be quantified.

Those among the 1,250 or so vegetable producers who are currently not participating in the Program or are unaware of the Program, and who are identified and brought into compliance with the Program as a result of the regulation, will have to pay producer charges to the Program. The addition of these producers to the Program will increase the amount of producer charges the Program collects each year by about \$32,500, to a total of about \$97,500/year. These funds will support vegetable marketing and research projects that will benefit all Pennsylvania vegetable producers, and these benefits are expected to exceed the costs of Program participation. If affected vegetable producers are not ultimately satisfied the Program is of benefit, though, they have the opportunity to vote the Program out of existence in a review referendum. As required by the Agricultural Commodities Marketing Act, these occur at intervals of no more than five years.

Of the 150 or so vegetable sales agents who handle or market the crops of Pennsylvania’s affected vegetable growers, *about 25* are currently obligated to collect production verification forms and producer charges from the vegetable producers with which they transact business. These sales agents will benefit from a less-burdensome regulation that relieves them of responsibility for collecting forms and producer charges from affected producers on the Program’s behalf. Instead, these sales agents will simply be required to pass along producer identification information to the Department as described above. These benefits cannot be quantified.

Several researchers at agricultural colleges and universities (such as The Pennsylvania State University) will benefit from the increased funding that the regulation is expected to generate for the Program’s vegetable research and marketing efforts. These benefits cannot be quantified.

The public, also, has an indirect interest in the continued vitality of the Program. A vibrant and prosperous Pennsylvania vegetable industry boosts the state’s economy and *also* provides the public with the benefits of a fresh, nutritious, locally-produced vegetable supply. These benefits cannot be quantified.

(11) 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 regulations.

No. There are no related federal standards.

(12) How does this regulation compare with those of the other states? How will this affect Pennsylvania's ability to compete with other states?

The regulation does not readily compare to those of other States. Although the Department is aware of vegetable-related marketing and/or research programs in two other states, these programs are distinct from Pennsylvania's Program. For example:

Ohio's vegetable program funds scientific research (but not marketing), and allows producers to request a refund of their producer charges; while

Georgia's vegetable marketing and research program is narrowly-focused – applying to just seven types of vegetables and requiring 50 or more acres of production in order to trigger the requirement that a producer participate in that program.

To the extent the regulation will have any impact upon Pennsylvania's ability to compete with other states, that impact is expected to be *positive*. The scientific vegetable production research funded by the Program should help Pennsylvania's vegetable producers produce a greater variety of vegetables, and to produce them more efficiently and in greater abundance. This, together with the marketing research funded by the Program, should help make Pennsylvania-produced vegetables more competitive in interstate commerce.

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

No, the regulation will not affect other regulations of the Department or other state agencies.

(14) Describe the communications with and solicitation of input from the public, any advisory council/group, small businesses and groups representing small businesses in the development and drafting of the regulation. List the specific persons and/or groups who were involved. ("Small business" is defined in Section 3 of the Regulatory Review Act, Act 76 of 2012.)

The regulation is the collaborative product of the Program Board, Program staff and the Department.

As described in detail in Response No. 15, below, the Department considers almost all of Pennsylvania's 3,300 or so vegetable growers to be "small businesses," and all but the largest (such as major chain grocery stores) of the 150 or so vegetable sales agents to be "small businesses," as well.

The current regulation, which requires about 25 of the 150 or so vegetable sales agents to collect producer charges on the Program's behalf, has not been well received by these sales agents, has been ignored by some of these sales agents and has not been effective in helping the Program identify producers and collect producer charges to fully-fund the Program's research and marketing efforts. One of the sales agents impacted by the current regulation sits on the Program Board, represents the interests of sales agents and has communicated the general dissatisfaction of these sales agents with the current regulation. Vegetable growers have also expressed exasperation relating to the involvement of sales agents in the producer charge collection process.

The Pennsylvania Vegetable Growers Association (PVGA) is a private, voluntary association of Pennsylvania vegetable growers, and regularly works with the Program to jointly fund vegetable research projects. PVGA and individual vegetable growers regularly express their frustration that less than two-thirds of the Pennsylvania vegetable growers who are required to pay producer charges to the Program actually do so. (See Response No. 10, above).

Information about the proposed regulation was published in the Program's newsletter, *Fresh Ideas*, and PVGA's newsletter, the *Pennsylvania Vegetable Growers News*. Both reach the vegetable grower community and the PVGA newsletter reaches the larger vegetable industry community, as well.

(15) Identify the types and number of persons, businesses, small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012) and organizations which will be affected by the regulation. How are they affected?

The size standards presented in the United States Small Business Administration's Small Business Size Regulations under 13 CFR Ch. 1 Part 121 (relating to Small Business Size Regulations) are the size standards that determine whether a business is a "small business" for purposes of the Regulatory Review Act. The applicable standards track with the North American Industry Classification System (NAICS) Codes, and are at 13 CFR § 121.201, in a chart titled *Small Business Size Standards by NAICS Industry*. The Department believes the following standards from that chart are applicable to the businesses and small businesses impacted by the regulation:

- Sector 11 (relating to Agriculture, Forestry, Fishing and Hunting), Subsector 111 (relating to Crop Production), provides that a crop production operation is a small business if its annual receipts are *\$750,000 or less*.
- Sector 42 (relating to Wholesale Trade), Subsector 424 (relating to Merchant Wholesalers, Nondurable Goods), provides that a fresh fruit and vegetable merchant wholesaler is a small business if it employs *100 or fewer persons*.
- Sector 44-45 (relating to Retail Trade), Subsector 445 (relating to Food and Beverage Stores) provides that a supermarket or other grocery store is a small business if its annual receipts are *\$32,500,000 or less*, and a fruit and vegetable market is a small business if its annual receipts are *\$7,500,000 or less*.

The Department estimates that approximately 3,300 Pennsylvania vegetable producers and 150 sales agents (this 150 figure includes approximately 20 produce auctions and a number of grocery store chains) will be impacted by the regulation. With the exception of several large grocery store chains and several of the largest vegetable growing operations, the Department considers *all* of these entities to be “small businesses” that will be impacted by the regulation.

Of the 3,300 or so Pennsylvania vegetable producers who will be impacted by the regulation, approximately 1,250 have not documented vegetable production or paid producer charges owed the Program. For those producers who are identified as a result of the regulation, they will have to complete an annual Assessment Form and pay modest producer charges based upon their vegetable production. These obligations are not *new*, since they have been required under the Program for many years. The regulation is expected to help the Program locate these noncompliant producers and bring them into compliance with long-standing Program requirements.

The regulation will have no adverse impact on those 2,050 or so Pennsylvania vegetable producers who are currently meeting Program requirements. The impact of the regulation is likely to be positive, in that producers who engage with sales agents will find that these sales agents are no longer required to document a producer’s vegetable production or collect producer charges on the Program’s behalf. Also, the inclusion of additional producers in the Program will help fully-fund the Program’s research and marketing efforts – which will be of benefit to all producers.

This regulation will also affect about 150 sales agents. These will be required, upon request of the Department, to provide the names and addresses of growers with respect to which they purchase or market \$2,000 or more worth of vegetables in a given marketing season (which is a calendar year). The Department may follow-up this initial request with a request the sales agent provide the exact dollar value of the vegetables purchased from any of the producers it identifies in its initial response. This process is much less burdensome on sales agents than the current regulation, which requires certain sales agents (auctions, processors, cooperatives and packing houses) to obtain production verification statements from producers and collect producer charges from producers on the Program’s behalf.

(16) List the persons, groups or entities, including small businesses, that will be required to comply with the regulation. Approximate the number that will be required to comply.

Approximately 3,300 Pennsylvania vegetable growers will be required to comply with the regulation, as will approximately 150 vegetable sales agents.

(17) Identify the financial, economic and social impact of the regulation on individuals, small businesses, businesses and labor communities and other public and private organizations. Evaluate the benefits expected as a result of the regulation.

The regulation does not: (a) establish how producer charges are to be calculated; or (b) impose the duty on Pennsylvania’s vegetable producers to account for their vegetable production; or (c) impose the obligation to pay production-based producer charges to the Program. Those are *preexisting* obligations that are imposed under the current Program Order. The current Program Order was published in the April 21, 2018 edition of the *Pennsylvania Bulletin* (at 48 Pa.B. 2278). That Order was entered by the Department under authority of the Agricultural Commodities Marketing Act, following a referendum in

which a majority of voting producers voted to continue the Program. Against this backdrop, the regulation aims to more fairly distribute the costs of the Program's marketing and research efforts among those who receive the benefits of these efforts by broadening the base of participation in the Program, and to increase the amount of producer charges that can be devoted to the marketing and research efforts of the Program.

The current producer charge assessment established under the referenced Program Order is as follows:

An affected producer pays the lesser of the following:

- A flat fee of \$25, plus \$1.50 for each acre of field vegetable production and each 1,000 square feet of greenhouse vegetable production beyond the initial five of these acreage and/or square footage units.
- An amount equal to 1.25% (.0125) of gross sales of vegetables during a given marketing season, but no less than \$25.

The regulation will eliminate the current regulatory requirement that a vegetable producer complete a Production Verification Statement form when it transacts business with a sales agent and, instead, establish the simple obligation that a producer complete an annual assessment statement form and submit that form, along with any producer charge payment owed the Program, to the Department by January 31 immediately following the marketing season (calendar year) reflected in that annual assessment statement form.

The regulation is intended to increase the rate of compliance with the requirement of timely payment of producer charges due the Program. The Program offers a rough estimate that the regulation could boost annual producer charge collections by as much as 50%. Since the administrative costs of the Program remain relatively constant, practically all of this additional money can be directed toward fully-funding the Program's vegetable marketing and research efforts. This should benefit the overall economic viability of Pennsylvania's vegetable production industry.

The regulation will also lighten the regulatory burden on vegetable sales agents, as detailed in Response No. 15, above.

A strong, vibrant local vegetable industry will be of economic benefit to Pennsylvania's agricultural and rural communities, and ultimately all the citizens of the Commonwealth.

(18) Explain how the benefits of the regulation outweigh any cost and adverse effects.

The benefits of the regulation clearly outweigh any cost and adverse effects.

As far as the *benefits* of the regulation are concerned, the regulation will:

broaden the base of compliance with the Program Order under which the Program was established;

bring in additional money (producer charges) to the Program, which will help the Program fully-fund its vegetable marketing and research efforts;

spread the costs of the Program's vegetable marketing and research efforts more fairly among those who receive its benefits;

simplify the paperwork and payment process for vegetable producers by requiring a single, annual accounting and payment; and

eliminate the current regulatory requirement that certain sales agents obtain paperwork and collect producer charges on the Program's behalf from those vegetable producers with which they transact business (lessening administrative time and expense for these sales agents and addressing the perception among some producers that sales agents are akin to "tax collectors").

The Department further notes that the obligation of Pennsylvania vegetable producers to account for and pay producer charges to the Program is a current requirement under the Program Order and Subchapter D. This regulation will codify the current producer charge assessment and will also result in more of these producers being identified and brought into compliance with these long-standing obligations.

(19) 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. Explain how the dollar estimates were derived.

As detailed above, the regulated community consists of approximately 3,300 Pennsylvania vegetable producers and approximately 150 sales agents.

For affected vegetable producers, the codification of the regulation will impose no costs beyond those which the Program Order already requires them to incur. These are the costs associated with accounting for and paying producer charges to support the Program's marketing and research efforts. To the extent the regulation will require only a single annual accounting and payment, this is a lessening of the paperwork burden and may result in some small cost savings to affected producers. The Department offers a rough estimate that these annual cost savings will be no more than \$25-per-producer or \$82,500 statewide, calculated as follows:

The Department estimates the lighter paperwork burden described above will save each producer approximately one hour of time each year. The Department values this one hour of time at \$25. There are estimated to be 3,300 affected Pennsylvania vegetable producers. (3,300 producers) multiplied by (\$25-per-producer) equals \$82,500. This \$82,500 figure assumes 100% participation by affected producers – which is not expected to occur. For this reason the \$82,500 figure is a maximum figure and the *actual* savings figure will be lower.

The regulation will establish a \$25 penalty against a producer who fails to account for and pay producer charges to the Program by January 31 each year. This is a new cost, but will only apply to producers who do not comply with this filing deadline. The Department cannot offer a good faith estimate of the costs this provision will impose on producers, but it is entirely within the ability of each producer to avoid this penalty.

For certain sales agents, the regulation will immediately reduce the administrative costs associated with having producers account for their vegetable production and collect producer charges on the Program's behalf. Although the Department will be able to ask a sales agent to provide the name and contact information for those producers from whom it buys \$2,000 or more worth of vegetables in a single marketing season and there will be some costs associated with responding to this request: (a) these costs

are certainly less than those imposed under the current regulation; and (b) the Department expects that – over time – the instances where it requires this information from a sales agent will decrease. The Department offers a rough estimate that these annual cost savings will be no more than \$50-per-collecting-sales-agent or \$1,250 statewide, calculated as follows:

The Department estimates the lighter paperwork burden described above will save each sales agent between one hour and three hours of time each year. The Department estimates the average savings will be two hours. The Department values each hour of time at \$25 and the savings of two hours at \$50. There are estimated to be 150 affected Pennsylvania vegetable producers, of which about 25 are currently required to collect information and producer charges for the Program. (25 sales agents) multiplied by (\$50-per-sales-agent) equals \$1,250. As stated, this \$1,250 figure assumes an average of two hours of saved time, valued at \$25/hour, among 25 sales agents.

In summary, the Department estimates the maximum savings to the regulated community each year will be no more than \$83,750, of which approximately \$1,250 in savings will be realized by sales agents and no more than \$82,500 in savings will be realized by affected vegetable producers.

(20) Provide a specific estimate of the costs and/or savings to the **local governments** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

The regulation will not result in any such costs and/or savings to local governments.

(21) Provide a specific estimate of the costs and/or savings to the **state government** associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required. Explain how the dollar estimates were derived.

The regulation will not result in any such costs and/or savings to state government.

(22) For each of the groups and entities identified in items (19)-(21) above, submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

The essential reporting form required by the regulation will be the assessment statement required of all affected vegetable producers. A sample of that form is attached. The contents of that form will be prescribed by the regulation, at proposed 7 Pa. Code § 104.54 (relating to Accounting, payment and verification procedures). As proposed, that provision requires only the minimum information needed to assure compliance, and will read in pertinent part as follows:

An assessment statement form shall 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.

There are no specific forms or paperwork which sales agents will be required to use in reporting information to the Department.

(22a) Are forms required for implementation of the regulation?

The assessment statement form referenced in Response No. 22, above, is the form required for implementation of the regulation.

(22b) If forms are required for implementation of the regulation, **attach copies of the forms here.** If your agency uses electronic forms, provide links to each form or a detailed description of the information required to be reported. **Failure to attach forms, provide links, or provide a detailed description of the information to be reported will constitute a faulty delivery of the regulation.**

The current draft of the assessment statement form referenced above is attached.

(23) 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:	\$	\$	\$	\$	\$	\$
Regulated Community	\$83,750 (See Response No. 19, above, for details)	\$83,750	\$83,750	\$83,750	\$83,750	\$83,750
Local Government	\$0	\$0	\$0	\$0	\$0	\$0
State Government	\$0	\$0	\$0	\$0	\$0	\$0
Total Savings	\$83,750	\$83,750	\$83,750	\$83,750	\$83,750	\$83,750
COSTS:						
Regulated Community	\$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:						
Regulated Community	\$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

(23a) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY -3	FY -2	FY -1	Current FY
Pennsylvania Vegetable Marketing and Research Program	\$114,610	\$96,393	\$124,493	\$129,383

(24) For any regulation that may have an adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), provide an economic impact statement that includes the following:

- (a) An identification and estimate of the number of small businesses subject to the regulation.

The Department does not believe the regulation will have *any adverse impact* on small businesses. Although the regulation codifies the producer charges, these charges are existing requirements under the Program Order. Further, the regulation will simplify the process by which affected Pennsylvania vegetable producers report their vegetable production and pay production-based producer charges to support the Program, and lighten the paperwork burden that is currently shouldered by certain vegetable sales agents. The expected small business impacts associated with the regulation are described in Response Nos. 14 through 23, above.

As related in Response Nos. 14 and 15, above, the Department considers nearly all of Pennsylvania's 3,300 or so vegetable growers to be "small businesses" and all but the largest (such as major chain grocery stores) of the 150 or so vegetable sales agents to be "small businesses," as well.

- (b) The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed regulation, including the type of professional skills necessary for preparation of the report or record.

Costs of compliance will be minimal, and will be lower than the costs of compliance with the current regulation. The paperwork by which a producer will report vegetable

production and pay producer charges to the Program is very simple and straightforward, and there are no special professional skills needed to meet this reporting and payment requirement. The producer will be responsible to complete an annual assessment statement form. This will require the producer to: (a) determine the number of "vegetable production units" (an acre of vegetable production or 1,000 square feet of greenhouse vegetable production equals one such unit) devoted to vegetable production and subtract five vegetable production units from that number; (b) multiply the resultant number by \$1.50-per-vegetable-production-unit; and (c) add \$25 to that sum. That will equal the total producer charges due the Program.

(c) A statement of probable effect on impacted small businesses.

For those 2,050 or so vegetable producers who are currently complying with the Program's requirements, the Department assumes these are all "small businesses." The regulation will simplify and streamline the process by which these producers account for their vegetable production and pay the producer charges due the Program, and will benefit them by broadening the base of producer participation in the Program and better-funding the Program's vegetable marketing and research efforts.

For those 1,250 or so vegetable producers who are *not* currently complying with the Program's requirements, the Department assumes these are all "small businesses." The regulation is expected to help the Department locate these persons and bring them into compliance with the requirements of the Program Order that established the Program. As related above, the responsibility of a vegetable producer to account for vegetable production and pay production-related producer charges to the Program is imposed by the Program Order that established the Program under authority of the Agricultural Commodities Marketing Act. These producers will benefit from the Program's vegetable marketing and research efforts.

For those 150 or so vegetable sales agents in the Commonwealth, the Department assumes that all but a few are "small businesses." The regulation will eliminate certain requirements that some of these sales agents (about 25) assist in obtaining verification of vegetable production and producer charges from the vegetable producers with which they transact business. Instead, a sales agent will be required to provide – upon the request of the Department – identifying information with respect to those vegetable producers from whom the sales agent purchased \$2,000 or more worth of vegetables in a given calendar year, and to follow-up with additional information if the Department so requests.

(d) A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.

No less-intrusive or less-costly alternative methods of achieving the purpose of the final-form regulation were considered, since (as detailed in the responses above) the final-form regulation will revise the current regulation to make it less-costly and less-intrusive and presents a "common sense" revision that should make the collection of producer charges more efficient for the Department and less of a burden for producers and sales agents.

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

No such special provisions have been developed.

For affected vegetable growers, the Department assumes almost all are “small businesses” and “farmers,” and that many of these farmers are “elderly” and/or “minorities.” The regulation imposes only a very light regulatory burden. As has been stated in the responses above, the regulation streamlines and simplifies accounting and payment requirements imposed by the Program Order that established the Program under authority of the Agricultural Commodities Marketing Act.

For affected sales agents, the Department assumes almost all are “small businesses.” The regulation will impose a much lighter burden than the current regulation. This is detailed in Response Nos. 14, 15, 19 and 24(c).

(26) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

No alternative regulatory provisions were considered. The regulation streamlines current regulatory reporting and payment requirements for both affected vegetable producers and the vegetable sales agents with which they transact business. Since the problems the regulation seeks to address *are the product of current statutory language*, there is no workable alternative to revising that regulatory language.

The Department is satisfied that the regulation is the least burdensome approach in this instance.

(27) In conducting a regulatory flexibility analysis, explain whether regulatory methods were considered that will minimize any adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), including:

- a) The establishment of less stringent compliance or reporting requirements for small businesses;

An important purpose of the Program is to provide vegetable producers – almost all of whom the Department believes are “small businesses” – a means to collectively fund beneficial vegetable research and marketing projects that an individual producer would not, by itself, be able to fund. This is a *collective effort* that benefits *all* these small businesses. Against a backdrop where almost all Program participants are small businesses, the regulation does not establish less-stringent requirements for any subset of this group.

The regulation decreases reporting and paperwork requirements for sales agents, as well. This is detailed in Response Nos. 14, 15, 19 and 24(c), above.

- b) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;

The regulation establishes a filing deadline of January 31, by which affected vegetable producers (almost all of which the Department assumes are small businesses) are to account for and pay producer charges owed the Program with respect to the preceding year. There

is no basis or reason to have a less-stringent or less-consistent filing and compliance deadline for vegetables producers.

- c) The consolidation or simplification of compliance or reporting requirements for small businesses;

As stated in responses above, the regulation accomplishes a simplification and streamlining of the process by which affected vegetable producers account for and pay producer charges due the Program each year, and eliminates documentation and collection requirements that are imposed on sales agents under the current regulation.

- d) The establishment of performance standards for small businesses to replace design or operational standards required in the regulation; and

No such alternative regulatory methods were considered, since practically all affected vegetable producers and sales agents are "small businesses."

- e) The exemption of small businesses from all or any part of the requirements contained in the regulation.

No such alternative regulatory methods were considered, since practically all affected vegetable producers and sales agents are "small businesses."

(28) If data is the basis for this regulation, please provide a description of the data, explain in detail how the data was obtained, and how it meets the acceptability standard for empirical, replicable and testable data that is supported by documentation, statistics, reports, studies or research. Please submit data or supporting materials with the regulatory package. If the material exceeds 50 pages, please provide it in a searchable electronic format or provide a list of citations and internet links that, where possible, can be accessed in a searchable format in lieu of the actual material. If other data was considered but not used, please explain why that data was determined not to be acceptable.

No such data forms the basis for this regulation.

(29) Include a schedule for review of the regulation including:

- | | |
|--|--------------------------------|
| A. The length of the public comment period: | 30 Days |
| B. The date or dates on which any public meetings or hearings will be held: | No such hearings will be held. |
| C. The expected date of delivery of the final-form regulation: | August 2018 |
| D. The expected effective date of the final-form regulation:
final-form regulation in the PA Bulletin | Upon publication of the |
| E. The expected date by which compliance with the final-form | |

regulation will be required:
final-form regulation in the PA Bulletin

Upon publication of the

F. The expected date by which required permits, licenses or other
approvals must be obtained:

Not applicable.

(30) Describe the plan developed for evaluating the continuing effectiveness of the regulations after its implementation.

The Department will evaluate the efficacy of the regulation on an ongoing basis.

Also, the Agricultural Commodities Marketing Act requires that the continued existence of the Program, itself, be considered through a referendum among affected Pennsylvania vegetable producers every five years. If the affected producers vote against the continuation of the Program, its existence would be ended by Order of the Secretary of Agriculture.

**PENNSYLVANIA
Vegetable Marketing
& Research Program**

2301 North Cameron Street, Harrisburg, Pennsylvania 17110-9408
717-694-3596 pvmrp@embarqmail.com www.paveggies.org

ASSESSMENT STATEMENT for 2017 Marketing Season

Program ID Number _____ PLEASE INCLUDE YOUR PHONE AND EMAIL HERE
Name _____ Telephone _____
Farm Name _____
Address _____ Email _____
City/State/Zip _____

PLEASE MAKE ANY NECESSARY CORRECTIONS to the name, address, phone or email above and complete the following information:

Is your farm: certified organic sustainable (non-certified organic or minimal pesticides) conventional (IPM)

For fresh market growers, how do you sell your produce? Retail Wholesale (check all that apply)

If you sell your produce retail, what forms of retail sales do you use? (check all that apply)

Roadside Market Community Farmer's Market CSA Other _____

If you sell your produce wholesale, what type of wholesale outlets do you sell to? (check all that apply)

Auction Chain Store Warehouse Direct Store Delivery Wholesaler/Broker Restaurant
 Cooperative Other _____

If you wish, you may designate what percentage of your assessment payment should be used for marketing activities (point-of-purchase materials, PAF Produce Month, press releases, recipe contest, etc.) and what percentage should be used for research.

____ % Research ____ % Marketing

Number of acres of fresh market vegetables grown and sold in 2017 **A** _____
(to the nearest whole acre).

Number of acres of processing vegetables grown and sold in 2017 **B** _____
(to the nearest whole acre).

Number of thousand sq. ft. of greenhouse and HIGH TUNNEL vegetables grown and sold in 2017 **C** _____
(to the nearest thousand--for 5,300, enter 5; for 24,800, enter 25).

Total number of production units (Total of lines A, B and C) **D** _____

Assessment (see Table of Assessment Rates on the back of the pink form)
Make checks payable to the : PA Veg. Marketing & Research Prog. **\$** _____

Balance Due from Point-of-Purchase Order (if any – ADD to line above) **\$** _____

Total Due (total of assessment plus any balance from point-of-purchase order) **\$** _____

I affirm that the foregoing statements are true and correct, and make said statements subject to the penalties of 18 Pa. C.S. Section 4904 (relating to unsworn falsification to authorities). I also authorize the collecting sales agent listed below to deduct any assessment due from his payments to me.

Signature (required) _____ Date _____

Sales Agent (name and address -- if applicable)

Return this form to:

PA Veg. Marketing & Research Prog., 2301 N. Cameron St., Harrisburg, PA 17110-9408

if you did NOT grow vegetables for sale on one or more acres of land or in 1,000 or more sq. ft. of greenhouse area or grew and sold less than \$2,000 worth of vegetables in 2017, please check the appropriate box below:

- I do not grow any vegetables for sale or am permanently out of the vegetable business.
 I grow vegetables for sale but less than one acre and less than 1,000 sq. ft. of greenhouse vegetables and sold less than \$2,000 worth.
 I normally grow or intend to grow vegetables for sale on one or more acres of land or 1,000 or more sq. ft. of greenhouse area or sell more than \$2,000 worth but did not do so in this growing season.

PLEASE NOTE – YOU MUST FILL OUT BOTH COPIES SEPARATELY
Return the White Copy to the Veg. Mktg. & Res. Program - Keep the Pink Copy for your records.

CDL-1

**FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE
BUREAU**

(Pursuant to Commonwealth Documents Law)



DO NOT WRITE IN THIS SPACE

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. 2-185

DATE OF ADOPTION 3/13/2018

BY Russell C. Redding
RUSSELL C. REDDING

TITLE
SECRETARY
Pennsylvania Department of Agriculture

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

BY Marissa H. Z. Zehr

JUL 20 2018
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 D**

Vegetable Marketing and Research Program

NOTICE OF FINAL RULEMAKING
DEPARTMENT OF AGRICULTURE

[7 PA. CODE CH. 104]

Vegetable Marketing and Research Program

The Department of Agriculture (Department) amends Chapter 104, Subchapter D (relating to Vegetable Marketing and Research Program) to read as set forth in Annex A.

Effective Date

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

Authority

The regulation is authorized under 3 Pa.C.S. §§ 4501 – 4513 (relating to Agricultural Commodities Marketing Act) (act). Section 4511 of the act (relating to rules and regulations for enforcement) authorizes the Secretary of Agriculture (Secretary) to promulgate regulations and establish penalties as necessary to enforce the provisions of an agricultural commodity marketing program established under the act, including the Pennsylvania Vegetable Marketing and Research Program (Program).

Background and Summary

The Program exists and operates under a Program Order published in the April 21, 2018 edition of the *Pennsylvania Bulletin* (at 48 Pa.B. 2278). That Program Order was issued by the Secretary following a referendum conducted by the Department among affected Pennsylvania vegetable growers. In that referendum, a majority of those growers, representing a majority of vegetable production, voted to continue the Program in accordance with the Program Order. The Program is the subject of a review referendum among these vegetable growers at intervals of no more than 5 years.

The Program focuses on vegetable producers (affected producers) in this Commonwealth who in a given calendar year grow and market: 1) 1 acre or more of vegetables; 2) 1,000 square feet or more of greenhouse vegetables; or 3) \$2,000 or more worth of vegetables. The Program requires that these producers pay a production-based assessment (producer charges) to support the vegetable marketing and vegetable research efforts of the Program. This collective effort allows the vegetable production industry in this Commonwealth, which is primarily comprised of small farms, to fund marketing and research projects that these small farms would not individually be able to fund, and that are of broad benefit to the vegetable production industry in this Commonwealth.

The Department administers the Program. The Department estimates that over one-third of affected producers who are required to pay producer charges to help support the Program do not. There are about 2,050 affected producers supporting the Program while there are about 1,250

who are either unaware of the Program or who have been able to avoid paying their fair share to support the marketing and research efforts of the Program. Against this backdrop, the regulation is needed to: 1) relieve certain vegetable sales agents of the obligation to verify that affected producers with which they transact business have paid their producer charges to the Program or to collect those charges on behalf of the Program; 2) create a simple process by which vegetable sales agents can respond to requests from the Department for information to help identify these affected producers and their vegetable production; 3) establish a \$25 civil penalty with respect to affected producers who do not account for and pay their producer charges to the Program by January 31 each year; and 4) accomplish a general “housekeeping” update to the current regulation to reflect the experience the Department has gained in administering the Program and Chapter 104, Subchapter D over the years.

Response to Comments

Notice of proposed rulemaking was published at 47 Pa.B. 6489 (October 21, 2017), with a 30-day public comment period. No comments were received from the public, the Independent Regulatory Review Commission or the General Assembly.

Fiscal Impact

Commonwealth

The regulation will have no appreciable fiscal impact upon the Commonwealth.

Political Subdivisions

The regulation will have no appreciable fiscal impact on political subdivisions.

Private Sector

The regulation will have some positive fiscal impact upon the private sector. Since only about two-thirds (2,050 of 3,300) of affected vegetable producers currently participate in the Program and the regulation would bring the other third (approximately 1,250 of 3,300) into the Program, the Department estimates the amount of producer charges the Program collects each year will increase by about \$32,500, to a total of about \$97,500 per year. To the extent the regulation helps swell the numbers of affected producers who participate in the Program, and helps fully-fund the Program’s vegetable marketing and research efforts, it will have a net positive fiscal impact on vegetable producers in this Commonwealth and the industries that support them, such as farm equipment suppliers and the like. The fully-funded vegetable marketing and research projects are expected to provide vegetable producers information that will help them more efficiently grow and market their vegetables.

General Public

The regulation will have no appreciable fiscal impact on the general public, although to the extent the regulation helps maintain a vital vegetable production industry in this Commonwealth

the general public will benefit from a ready supply of locally-grown nutritious vegetables. This benefit cannot be quantified.

Paperwork Requirements

The regulation will simplify the paperwork requirements imposed on vegetable producers by requiring a single, annual accounting and payment. It will also eliminate reporting requirements (and the attendant paperwork) currently imposed on approximately 25 vegetable sales agents. It will not appreciably impact the Department's paperwork load.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on October 5, 2017, the Department submitted a copy of the notice of proposed rulemaking, published at 47 Pa.B. 6489 (October 21, 2017), to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House and Senate Agriculture and Rural Affairs Committees for review and comment.

Under section 5(c) of the Regulatory Review Act, the Department is required to submit to IRRC and the referenced Legislative Standing Committees copies of comments received during the public comment period, as well as other documents when requested. No such comments were received with respect to the proposed rulemaking.

Under section 5.1(j.2) of the Regulatory Review Act (71 P.S. § 745.5a(j.2)), on _____, the final-form rulemaking was deemed approved by the House and Senate Agriculture and Rural Affairs Committees. IRRC did not comment on, make recommendations regarding or object to any portion of the proposed regulation, and the Department did not make any changes to the proposed regulation. Thus, under section 5.1(e) of the Regulatory Review Act (71 P.S. § 745.5a(e)), IRRC met on _____ and the final-form regulation was deemed approved pursuant to section 5(g) of the Regulatory Review Act.

Additional Information

Additional information may be obtained from William Troxell, Director, Pennsylvania Vegetable Marketing and Research Program, Department of Agriculture, 2301 North Cameron Street, Harrisburg, PA 17110-9408, (717) 694-3596.

Findings

The Department finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) and regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law and no comments were received.

(3) The amendments made to the final-form rulemaking do not enlarge the purpose of the proposed rulemaking published at 47 Pa.B. 6489 (October 21, 2017).

(4) The amendments to the regulations of the Department are necessary and appropriate for the administration of the authorizing statute.

Order

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

(1) The regulations of the Department at 7 Pa. Code Chapter 104, Subchapter D (relating to Vegetable Marketing and Research Program) are amended to read as set forth in Annex A.

(2) The Department shall submit a copy of Annex A to the Office of the Attorney General and the Office of General Counsel for approval as required by law.

(3) The Department shall submit this order and Annex A to IRRC, as required by law.

(4) The Department shall certify this order and Annex A and shall deposit them with the Legislative Reference Bureau as required by law.

(5) The regulations shall take effect immediately upon publication in the *Pennsylvania Bulletin*.

RUSSELL C. REDDING, *Secretary*

Annex A

TITLE 7. AGRICULTURE

PART IV. BUREAU OF MARKET DEVELOPMENT

CHAPTER 104. ENFORCEMENT OF MARKETING PROGRAMS

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

§ 104.51. Scope.

This subchapter establishes the procedures by which vegetable producers shall account for and pay the producer charges owed the Program. [Depending upon the type of sales agent involved in marketing a producer's vegetables, the producer shall either account for and pay the producer charges directly to the Program or through the sales agent.]

§ 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.

[*Collecting sales agent*—A processor, auction, packing house or cooperative which is located in this Commonwealth and which handles, processes, receives, sells or contracts to sell vegetables originating from a producer.]

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.

[*Growing season*—The period from October 15 of a calendar year through October 14 of the following calendar year.]

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 grows 1 or more acres of vegetables within this Commonwealth for the purpose of selling the vegetables. The term also includes persons who grow vegetables in greenhouses located within this Commonwealth if the following exist:

- (i) The greenhouse grows vegetables in 1,000 square feet or more of growing space.
- (ii) The vegetables are grown for sale.
- (iii) The vegetables are not grown to be transplanted outdoors.]

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.

[The producer charges owed the Program shall be a fee of \$25 per producer plus \$1.50 per acre for each acre over 10 acres in vegetable production and \$1.50 per 1,000 square feet for each 1,000 square feet over 10,000 square feet in greenhouse vegetable production. Producer charges shall accrue on a growing season basis.]

(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 [set forth] in Chapter 103 (relating to referendums).

§ 104.54. Accounting, payment and verification procedures.

[(a) *Production verification statement.* The Program will provide a producer or collecting sales agent with production verification 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 growing season. A production verification statement form shall bear a unique serial number and shall require the following information of a producer completing the form for the first time within a particular growing season:

(1) The name and address of the producer.

(2) The name and address of the collecting sales agent, if the form is to be submitted to the Program through a collecting sales agent.

(3) The number of acres of vegetables raised by the producer for processing or fresh market use within the growing season, or other time period designated by the Program, if applicable.

(4) The square footage of greenhouse-grown vegetables raised by the producer within the growing season, or other time period designated by the Program.

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

(6) The date upon which the form was completed.

(b) *Subsequent production verification statements filed within the same growing season.* A production verification statement form shall require the following information of a producer who has already completed a production verification statement form within that same growing season:

(1) The name and address of the producer.

(2) The serial number of the first production verification statement form completed by the producer within that same growing season.

(3) The name and address of the collecting sales agent, if the form is to be submitted to the Program through a collecting sales agent.

(4) The date upon which the form was completed.

(c) *Circumstances under which no production verification statement form is required.* If a producer has completed a production verification statement form, whether the original form described in subsection (a) or the abbreviated form described in subsection (b), and has submitted it to the Program through a collecting sales agent, that producer need not complete further production verification statement forms with respect to vegetable transactions with that particular collecting sales agent during that particular growing season.

(d) *Deadline for collecting sales agents.* A collecting sales agent shall submit a production verification statement or producer charge which it collects on the Program's behalf by mailing or delivering the same to the Program within 30 days from the time that the collecting sales agent receives the production verification statement and deducts the producer charges reflected on the

production verification statement from proceeds otherwise due the producer, or by October 31 immediately following the applicable growing season, whichever occurs first.

(e) *Deadline for producers.* A producer which does not submit a production verification statement and payment of producer charges through a collecting sales agent shall mail or deliver them to the Program by October 31 immediately following the applicable growing season.

(f) *Form of payment.* Whether the payments are made directly to the Program by the producer or are deducted by a collecting sales agent, payments of producer charges shall be by check or money order made payable to the "PA Vegetable Marketing and Research Program."

(g) *Address.* Production verification statements 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]

(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

§ 104.55. Responsibilities of the producer.

It is the responsibility of the producer to submit a complete [production verification statement] assessment statement form, as described in § 104.54 (relating to accounting, payment and verification procedures) and the appropriate producer charge owed the Program. [This material shall be submitted to the Program either directly by the producer or through a person who is a collecting sales agent with respect to the producer's vegetables.] The producer shall retain a copy of any [production verification] assessment statement form which is submitted to the Program for at least [2 growing seasons beyond the growing] two marketing seasons beyond the marketing season with respect to which the form is submitted.

§ 104.56. Responsibilities of the [collecting] sales agent.

[(a) *Compliance.* It is the responsibility of a collecting sales agent to require a producer with which it transacts business as a sales agent to submit a completed production verification statement form, as described at § 104.54(a) and (b) (relating to accounting, payment and verification procedures) to the collecting sales agent, unless the producer has submitted a production verification statement form to that collecting sales agent earlier in the same growing season. A person other than a collecting sales agent may not collect producer charges or production verification statement forms on the Program's behalf. The collecting sales agent shall deduct the producer charges reflected on the production verification statement form from proceeds otherwise due the producer. The collecting sales agent shall provide a copy of the completed production verification statement form to the producer and shall retain a copy for its records. The collecting sales agent shall mail or deliver to the Program the original of the

production verification statement form, along with the payment of producer charges reflected on the statement form.

(b) *Records.* A collecting sales agent shall retain a copy of any production verification statement form which is received from a producer for at least 2 growing seasons beyond the growing season with respect to which the form was received.]

(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) [*Collecting sales*] *Sales agents.* If a [collecting] 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[, plus the payment of producer charges owed]. [Any penalty sought by the Department will be in addition to payment of delinquent producer charges].

(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 Section 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.

PROPOSED RULEMAKING

DEPARTMENT OF AGRICULTURE

[7 PA. CODE CH. 104]

Vegetable Marketing and Research Program

[47 Pa.B. 6489]

[Saturday, October 21, 2017]

The Department of Agriculture (Department) proposes to amend Chapter 104, Subchapter D (relating to Vegetable Marketing and Research Program) to read as set forth in Annex A.

Authority

This proposed rulemaking is authorized under 3 Pa.C.S. §§ 4501—4513 (relating to Agricultural Commodities Marketing Act) (act). Section 4511 of the act (relating to rules and regulations for enforcement) authorizes the Secretary of Agriculture (Secretary) to promulgate regulations and establish penalties as necessary to enforce the provisions of an agricultural commodity marketing program established under the act, including the Pennsylvania Vegetable Marketing and Research Program (Program).

Need for this Proposed Rulemaking

The Program exists and operates under a Program Order published at 44 Pa.B. 6565 (October 11, 2014) that was issued by the Secretary following a referendum conducted by the Department among affected Pennsylvania vegetable growers. In that referendum, a majority of those growers, representing a majority of vegetable production, voted to establish the Program in accordance with the Program Order. The Program is the subject of a review referendum among these vegetable growers at intervals of no more than 5 years.

The Program focuses on vegetable producers (affected producers) in this Commonwealth who in a given calendar year grow and market: 1) 1 acre or more of vegetables; 2) 1,000 square feet or more of greenhouse vegetables; or 3) \$2,000 or more worth of vegetables. The Program requires that these producers pay a production-based assessment (producer charges) to support the vegetable marketing and vegetable research efforts of the Program. This collective effort allows the vegetable production industry in this Commonwealth, which is primarily comprised of small farms, to fund marketing and research projects that these small farms would not individually be able to fund, and that are of broad benefit to the vegetable production industry in this Commonwealth.

The Department administers the Program. The Department estimates that over half of affected producers who are required to pay producer charges to help support the Program do not. There are about 1,600 affected producers supporting the Program while there are about 1,700 who are either unaware of the Program or who have been able to avoid paying their fair share to support the marketing and research efforts of the Program. Against this backdrop, this proposed rulemaking is needed to: 1) relieve certain vegetable sales agents of the obligation to verify that affected producers with which they transact business have paid their producer charges to the Program or to collect those charges on behalf of the Program; 2) create a simple process by which vegetable sales agents can respond to requests from the Department for information to help identify these affected producers and their vegetable production; 3) establish a \$25 civil penalty with respect to affected producers who do not account for and pay their producer charges to the Program by January 31 each year; and 4) accomplish a general "housekeeping" update to reflect the experience the Department has gained in administering the Program and Chapter 104, Subchapter D over the years.

The Department is satisfied there is a need for this proposed rulemaking and that it is otherwise consistent with Executive Order 1996-1, "Regulatory Review and Promulgation."

Summary of this Proposed Rulemaking

Proposed amendments to § 104.52 (relating to definitions) delete the definition of "collecting sales agent" since this proposed rulemaking no longer requires sales agents to collect producer charges on the Program's behalf. The definition of "growing season" is proposed to be deleted and replaced with "marketing season," a term used in the Program Order. The definition of "producer" is proposed to be amended to align it with the Program Order's definition of this term. This proposed rulemaking adds a definition of "vegetable

production unit," a term used in proposed amendments to § 104.53 (relating to producer charges), which is the basic unit upon which producer charges would be calculated.

Proposed amendments to § 104.53 clarify how producer charges owed to the Program are to be calculated and introduce the new term "vegetable production unit." Proposed amendments also present the option for an affected producer to pay producer charges equaling the lesser of: 1) \$25 plus \$1.50-per-vegetable-production-unit exceeding five vegetable production units; or 2) 1.25% of gross sales of vegetables during the marketing season, but no less than \$25. This second option was established in the Program Order published at 44 Pa.B. 6563 (October 11, 2014), but had not been codified in this section.

Proposed amendments to §§ 104.54 and 104.55 (relating to accounting, payment and verification procedures; and responsibilities of the producer) simplify and streamline the process by which affected producers are required to account for their vegetable production and pay the appropriate producer charge to the Program. These producers would complete a simple assessment statement form, calculate producer charges due the Program, and submit that form and payment by January 31 of the year immediately following the year in which the vegetables were produced.

Proposed amendments to § 104.56 (relating to responsibilities of the sales agent) lighten the regulatory burden placed on approximately 25 of the approximately 150 vegetable sales agents, relieving them of any responsibility for documenting an affected vegetable producer's vegetable production or collecting producer charges on the Program's behalf. This proposed rulemaking would replace this with a straightforward requirement that, upon the request of the Department, a sales agent identify producers from whom the sales agent purchased \$2,000 or more worth of vegetables in a single marketing season (a calendar year). The Department may follow-up and require the sales agent to provide the exact dollar value of the subject vegetables, which would help the Department in calculating the producer charges the affected producer owes the Program.

Proposed amendments to § 104.57 (relating to penalties for noncompliance) delete language referencing and regarding "collecting" sales agents. The current \$300 civil penalty that may be assessed against a sales agent that fails to comply with this section is not proposed to be amended. Proposed amendments add a \$25 civil penalty that may be assessed against producers who do not file their assessment statement forms and producer charges with the Program by the January 31 annual filing deadline.

Persons Likely to be Affected

This proposed rulemaking is not expected to have an adverse impact on any group or entity. It is codifying an existing requirement that affected producers pay producer charges to support the Program.

The vegetable production industry in this Commonwealth is largely comprised of thousands of small family farms. There are approximately 3,300 vegetable producers who would be affected by this proposed rulemaking. Of these, about 1,600 vegetable producers are currently reporting their vegetable production and paying producer charges to support the Program, while approximately 1,700 vegetable producers are either unaware of the Program or are evading its requirements. This is unfair to participating producers and has the Program operating with less than half the funds it should be collecting and directing to its marketing and research efforts. This proposed rulemaking seeks to remedy this situation by allowing the Program to more readily identify those vegetable producers who should be helping to support the Program's efforts.

Of the approximately 150 vegetable sales agents in this Commonwealth, about 25 are currently required to obtain vegetable production information from producers with which they transact business and collect producer charges on the Program's behalf. This proposed rulemaking would relieve these sales agents of that burden and require that, upon request of the Department, a sales agent provide the name and address of any producer from which it purchases \$2,000 or more worth of vegetables in a specific calendar-year marketing season. The Department believes it can use this information to identify vegetable producers who should be participating in the Program, secure their participation, apply the Program to all affected vegetable producers, and increase the breadth, depth, quality and impact of the Program's marketing and research efforts.

The Program allows vegetable growers in this Commonwealth to collectively fund and conduct: 1) generic promotion of Pennsylvania grown vegetables; and 2) practical vegetable production research. These efforts benefit all vegetable producers and the industries in this Commonwealth (such as farm equipment suppliers, fertilizer suppliers, and the like) that support these producers, and help provide the public with fresh, nutritious locally-produced vegetables. Also, several researchers at agricultural colleges and universities (such as The Pennsylvania State University) will benefit from the increased funding that this proposed rulemaking is expected to generate for the Program's vegetable research and marketing efforts.

The public also has an indirect interest in the continued vitality of the Program. A vibrant and prosperous Pennsylvania vegetable industry boosts the

economy in this Commonwealth and also provides the public with the benefits of a fresh, nutritious, locally-produced vegetable supply. These benefits cannot be quantified.

Fiscal Impact

Commonwealth

This proposed rulemaking will not have appreciable fiscal impact upon the Commonwealth.

Political subdivisions

This proposed rulemaking will not have appreciable fiscal impact on political subdivisions.

Private sector

This proposed rulemaking will have some positive fiscal impact upon the private sector. Since only about half (1,600 of 3,300) of affected vegetable producers currently participate in the Program and this proposed rulemaking would bring the other half (approximately 1,700 of 3,300) into the Program, the Department estimates the amount of producer charges the Program collects each year will roughly double, to approximately \$250,000 per year. To the extent this proposed rulemaking helps swell the numbers of affected producers who participate in the Program, and helps fully-fund the Program's vegetable marketing and research efforts, it will have a net positive fiscal impact on vegetable producers in this Commonwealth and the industries that support them, such as farm equipment suppliers and the like. The fully-funded vegetable marketing and research projects are expected to provide vegetable producers information that will help them more efficiently grow and market their vegetables.

General public

This proposed rulemaking will not have appreciable fiscal impact on the general public, although to the extent this proposed rulemaking helps maintain a vital vegetable production industry in this Commonwealth the general public will benefit from a ready supply of locally-grown nutritious vegetables. This benefit cannot be quantified.

Paperwork Requirements

This proposed rulemaking will simplify the paperwork requirements imposed on vegetable producers by requiring a single, annual accounting and payment. It would also eliminate reporting requirements (and the attendant paperwork) currently imposed on approximately 25 vegetable sales agents. It will not appreciably impact the Department's paperwork load.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on October 5, 2017, 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 comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria in section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b) 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.

Effective Date

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

Sunset Date

There is not a sunset date for this proposed rulemaking. The Department will review the efficacy of these regulations on an ongoing basis.

Public Comments

Interested persons are invited to submit written comments, suggestions or objections regarding this proposed rulemaking to William Troxell, Director, Pennsylvania Vegetable Marketing and Research Program, Department of Agriculture, 2301 North Cameron Street, Harrisburg, PA 17110-9408, (717) 694-3596 within 30 days of the publication of this proposed rulemaking in the *Pennsylvania Bulletin*.

Contact Person

The contact person for technical questions regarding this proposed rulemaking is William Troxell, Director, Pennsylvania Vegetable Marketing and Research Program, Department of Agriculture, 2301 North Cameron Street, Harrisburg, PA 17110-9408, (717) 694-3596.

RUSSELL C. REDDING,
Secretary

Fiscal Note: 2-185. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 7. AGRICULTURE

PART IV. BUREAU OF MARKET DEVELOPMENT

CHAPTER 104. ENFORCEMENT OF MARKETING PROGRAMS

Subchapter D. VEGETABLE MARKETING AND RESEARCH PROGRAM

§ 104.51. Scope.

This subchapter establishes the procedures by which vegetable producers shall account for and pay the producer charges owed the Program. **[Depending upon the type of sales agent involved in marketing a producer's vegetables, the producer shall either account for and pay the producer charges directly to the Program or through the sales agent.]**

§ 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.

[Collecting sales agent—A processor, auction, packing house or cooperative which is located in this Commonwealth and which handles, processes, receives, sells or contracts to sell vegetables originating from a producer.]

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.

[Growing season—The period from October 15 of a calendar year through October 14 of the following calendar year.]

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 grows 1 or more acres of vegetables within this Commonwealth for the purpose of selling the vegetables. The term also includes persons who grow vegetables in greenhouses located within this Commonwealth if the following exist:

(i) The greenhouse grows vegetables in 1,000 square feet or more of growing space.

(ii) The vegetables are grown for sale.

(iii) The vegetables are not grown to be transplanted outdoors.]

A person who does one or more of the following during a particular marketing season:

(i) Grows 1 acre or more 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.

[The producer charges owed the Program shall be a fee of \$25 per producer plus \$1.50 per acre for each acre over 10 acres in vegetable production and \$1.50 per 1,000 square feet for each 1,000 square feet over 10,000 square feet in greenhouse vegetable production. Producer charges shall accrue on a growing season basis.]

(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 5 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 [set forth] in Chapter 103 (relating to referendums).

§ 104.54. Accounting, payment and verification procedures.

[(a) *Production verification statement.* The Program will provide a producer or collecting sales agent with production verification 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 growing season. A production verification statement form shall bear a unique serial number and shall require the following information of a producer completing the form for the first time within a particular growing season:

(1) The name and address of the producer.

(2) The name and address of the collecting sales agent, if the form is to be submitted to the Program through a collecting sales agent.

(3) The number of acres of vegetables raised by the producer for processing or fresh market use within the growing season, or other time period designated by the Program, if applicable.

(4) The square footage of greenhouse-grown vegetables raised by the producer within the growing season, or other time period designated by the Program.

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

(6) The date upon which the form was completed.

(b) *Subsequent production verification statements filed within the same growing season.* A production verification statement form shall require the following information of a producer who has already completed a production verification statement form within that same growing season:

(1) The name and address of the producer.

(2) The serial number of the first production verification statement form completed by the producer within that same growing season.

(3) The name and address of the collecting sales agent, if the form is to be submitted to the Program through a collecting sales agent.

(4) The date upon which the form was completed.

(c) *Circumstances under which no production verification statement form is required.* If a producer has completed a production verification statement

form, whether the original form described in subsection (a) or the abbreviated form described in subsection (b), and has submitted it to the Program through a collecting sales agent, that producer need not complete further production verification statement forms with respect to vegetable transactions with that particular collecting sales agent during that particular growing season.

(d) *Deadline for collecting sales agents.* A collecting sales agent shall submit a production verification statement or producer charge which it collects on the Program's behalf by mailing or delivering the same to the Program within 30 days from the time that the collecting sales agent receives the production verification statement and deducts the producer charges reflected on the production verification statement from proceeds otherwise due the producer, or by October 31 immediately following the applicable growing season, whichever occurs first.

(e) *Deadline for producers.* A producer which does not submit a production verification statement and payment of producer charges through a collecting sales agent shall mail or deliver them to the Program by October 31 immediately following the applicable growing season.

(f) *Form of payment.* Whether the payments are made directly to the Program by the producer or are deducted by a collecting sales agent, payments of producer charges shall be by check or money order made payable to the "PA Vegetable Marketing and Research Program."

(g) *Address.* Production verification statements 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]

(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**

§ 104.55. Responsibilities of the producer.

It is the responsibility of the producer to submit a complete **[production verification statement]** assessment statement form, as described in § 104.54 (relating to accounting, payment and verification procedures), and the appropriate producer charge owed the Program. **[This material shall be submitted to the Program either directly by the producer or through a person who is a collecting sales agent with respect to the producer's vegetables.]** The producer shall retain a copy of any **[production verification]** assessment statement form which is submitted to the Program for at least **[2 growing seasons beyond the growing]** two marketing seasons beyond the marketing season with respect to which the form is submitted.

§ 104.56. Responsibilities of the **[collecting]** sales agent.

[(a) *Compliance.* It is the responsibility of a collecting sales agent to require a producer with which it transacts business as a sales agent to submit a completed production verification statement form, as described at § 104.54(a) and (b) (relating to accounting, payment and verification procedures) to the collecting sales agent, unless the producer has submitted a production verification statement form to that collecting sales agent earlier in the same growing season. A person other than a collecting sales agent may not collect producer charges or production verification statement forms on the Program's behalf. The collecting sales agent shall deduct the producer charges reflected on the production verification statement form from proceeds otherwise due the producer. The collecting sales agent shall provide a copy of the completed production verification statement form to the producer and shall retain a copy for its records. The collecting sales agent shall mail or deliver to the Program the original of the production verification statement form, along with the payment of producer charges reflected on the statement form.

(b) *Records.* A collecting sales agent shall retain a copy of any production verification statement form which is received from a producer for at least 2 growing seasons beyond the growing season with respect to which the form was received.]

(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) [*Collecting sales*] *Sales agents.* If a [collecting] 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[, plus the payment of producer charges owed]. [Any penalty sought by the Department will be in addition to payment of delinquent producer charges.]

(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.

[Pa.B. Doc. No. 17-1730. Filed for public inspection October 20, 2017, 9:00 a.m.]

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COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE OF GENERAL COUNSEL

July 25, 2018

Independent Regulatory Review Commission
333 Market Street, 14th Floor
Harrisburg, PA 17101

RE: NOTICE OF FINAL RULEMAKING
Department of Agriculture
7 Pa. Code Chapter 104, Subchapter D
Vegetable Marketing and Research Program
I.D. No. 2-185
Proposed Rulemaking: 47 Pa. Bulletin 6489 (October 21, 2017)
Approved by Office of General Counsel: July 20, 2018

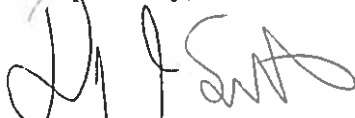
Dear Sir or Madam:

Please find enclosed a copy of the above-referenced final-form regulation (Face Sheet, Preamble and Annex A). Copies of the Regulatory Analysis Form and Notice of Proposed Rulemaking are also enclosed. This material is submitted to you in accordance with the Regulatory Review Act (at 71 P.S. § 745.5a(a)).

No objections, comments or recommendations were received from the public, the Independent Regulatory Review Commission or the General Assembly with respect to the proposed rulemaking.

I respectfully request the Commission's approval of this final-form regulation. The Department will provide any assistance you may require to facilitate a thorough review of this final-form regulation. Thank you for your consideration of this document.

Respectfully,



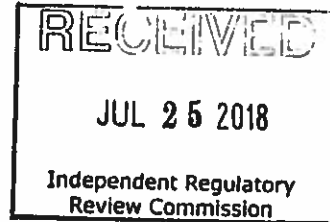
Dwight-Jared Smith
Assistant Counsel

Enclosures

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

I.D. NUMBER: 2-185
SUBJECT: VEGETABLE MARKETING RESEARCH PROGRAM
AGENCY: DEPARTMENT OF AGRICULTURE

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

FILING OF REGULATION

<u>DATE</u>	<u>SIGNATURE</u>	<u>DESIGNATION</u>
		<i>HOUSE COMMITTEE ON AGRICULTURE & RURAL AFFAIRS</i>
7-25-18		MAJORITY CHAIR <u>Causer</u>
7-25-18		MINORITY CHAIR <u>Pashinski</u>
		<i>SENATE COMMITTEE ON AGRICULTURE & RURAL AFFAIRS</i>
7-25-18		MAJORITY CHAIR <u>Vogel</u>
7-25-18		MINORITY CHAIR <u>Schwank</u>
7-25-18		<i>INDEPENDENT REGULATORY REVIEW COMMISSION</i>
_____	_____	<i>ATTORNEY GENERAL</i> (for Final Omitted only)
_____	_____	<i>LEGISLATIVE REFERENCE BUREAU</i> (for Proposed only)