

Regulatory Analysis Form

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IRRC REVIEW COMMISSION

(1) Agency

Department of Agriculture

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

2-138

IRRC Number: 2248

(3) Short Title

Agricultural Conservation Easement Purchase Program; Agricultural Security Area Program

(4) PA Code Cite

7 Pa. Code Chapters 138, 138e and 138i

(5) Agency Contacts & Telephone Numbers

Primary Contact: Sandra Robison, (717) 783-3167

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(6) Type of Rulemaking (check one)

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

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

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

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

The Department of Agriculture's ("Department's") regulations with respect to agricultural security areas have not been revised since they were originally promulgated - in 1982. In the time since these regulations were promulgated, the Agricultural Area Security Law (the underlying authority for the regulations) has been revised numerous times. The most recent revisions to this statute were accomplished by the act of May 30 2001 (P.L. 103, No. 14)("Act 14 of 2001"). The regulation will replace the outdated agricultural security area regulations at 7 Pa. Code Chapter 138 (relating to agricultural area security program) with an entirely new regulatory chapter (Chapter 138i) that: (a) is consistent with the current Agricultural Area Security Law; (b) reflects the experience the Department has gained in administering the provisions of Chapter 138 over many years; (c) implements the numerous amendments that have been made to the Agricultural Area Security Law over the years; and (d) provides the regulated community with a more user-friendly set of standards and procedures with respect to agricultural security areas.

The regulation will also revise the regulations at 7 Pa. Code Chapter 138e (relating to agricultural conservation easement purchase program) to: (a) reflect various amendments of the Act - most recently by Act 14 of 2001; and (b) reflect the experience the Department has gained in administering the Agricultural Conservation Easement Purchase Program and Chapter 138e since that chapter was last revised.

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

The Agricultural Area Security Law (3 P.S. §§ 901-915)("Act") provides the legal authority for this regulation. In particular, section 15 of the Act (3 P.S. § 915) requires the Department to promulgate regulations necessary to promote the efficient, uniform and Statewide administration of the Act.

Regulatory Analysis Form

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

No.

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

The regulation is driven by the need to implement various revisions to the Act that have occurred since the agricultural security area and agricultural conservation easement regulations were last amended. In addition, the regulation contains provisions intended to resolve questions and ambiguities encountered by the Department in its administration of these regulations over the years. It will also formally implement a number of effective informal procedures that have evolved over the years.

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

There are no appreciable public health, safety, environmental or general welfare risks associated with nonregulation.

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

County agricultural conservation easement purchase programs will benefit from the revisions to Chapter 138e. These revisions help to resolve some current confusion with respect to various procedures related to the evaluation and purchase of agricultural conservation easements. There are more than 51 such programs throughout the Commonwealth. The benefit to these programs cannot be readily quantified.

Governing bodies of local government units will benefit from the new agricultural security area regulations at Chapter 1381. These new provisions will supplant outdated regulations that no longer track with the provisions of the underlying statute. These benefits cannot be readily quantified.

Owners of land in current agricultural security areas, landowners seeking to include their land in existing agricultural security areas and landowners seeking to establish new agricultural security areas

will also benefit from the regulation. The regulation will provide a clear, step-by-step explanation of the procedures and standards applicable to agricultural security areas. The benefits of this clarification cannot be readily quantified.

Landowners seeking to sell agricultural conservation easements with respect to their farmland will also benefit from the regulation, in that the regulation helps clarify standards and procedures for this type of transaction. These benefits cannot be readily quantified.

Regulatory Analysis Form

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

Although the regulation will impact upon the entities identified in the response to Question No. 13, above, it is not anticipated these impacts will be adverse impacts. In addition, since many of the new provisions of the regulation simply rephrase or clarify statutory requirements, the impact of these provisions is more the product of the underlying legislation than of the regulation itself.

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

County agricultural conservation easement purchase programs (of which there are more than 51), governing bodies of local government units (of which there are several thousand), owners of land in agricultural security areas (of which there are several thousand), landowners seeking to have their land included in agricultural security areas (of which there is an unknown number), owners of land subject to agricultural conservation easements purchased under authority of the Act (of which there are at least 1,500) and persons seeking to sell agricultural conservation easements with respect to their land (of which there is an unknown number) will be required to comply with the regulation.

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

The Department did not make any formal outreach to the regulated community in the drafting of the regulation. Many of the revisions accomplished by the regulation are required by amendments made to the Act since the agricultural security area and agricultural conservation easement regulations were last amended. Other revisions formalize informal procedures developed by the Department in its administration of the regulations over the years.

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

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

Regulatory Analysis Form

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

The regulation is not expected to result in appreciable costs or savings to local government units.

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

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

Regulatory Analysis Form

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

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

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

As stated in response to previous questions, the regulations are not expected to have an appreciable fiscal impact - whether favorable or adverse - on the regulated community, State government or local government.

Regulatory Analysis Form

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

Program	FY -3 (2000)	FY -2 (2001)	FY -1 (2002)	Current FY (2003)
Agricultural Conservation Easement Purchase Program	\$52,000,000	\$52,700,000	\$41,000,000	\$43,700,000 (est.)
Land Trust Reimbursement Grant Program	\$29,622.52	\$46,750.33	\$44,887.74	\$93,156.65
Installment Purchase Program	\$0	\$420,000	\$70,000	\$0

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

The Programs described in the preceding answer will all benefit from the regulation. Pennsylvania has preserved more farmland than any other state, and is looked-to as a leader and innovator in the area of farmland preservation. The regulation will improve all of the programs listed above. It will facilitate the purchase and enforcement of agricultural conservation easements, and by so doing increase the participation of land trusts in the farmland preservation effort and increase the number of persons who participate in long-term installment sales of agricultural conservation easements.

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

No nonregulatory alternatives were considered, in light of the fact the Act requires the Department to implement the provisions of that statute through regulation.

(23) Describe alternative regulatory schemes considered and the costs associated with those schemes.

Provide the reasons for their dismissal.

No alternative regulatory schemes were considered.

Regulatory Analysis Form

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

It is believed there are no federal standards addressing the subject matter set forth in the regulation. For this reason, no provision of this regulation is "more stringent" than a similar national standard.

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

The regulation will not put Pennsylvania at a competitive disadvantage with other states. Pennsylvania is the acknowledged national leader in farmland preservation. Pennsylvania has preserved more land for agricultural production than any other State, and is the model for farmland preservation efforts of other states.

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

The regulation rescinds the current regulations at 7 Pa. Code Chapter 138 (relating to agricultural area security program) and replaces it with a new chapter - Chapter 1381 (relating to agricultural security area program). It also revises current regulations at Chapter 138e (relating to agricultural conservation easement purchase program).

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

Although no public hearings or meetings are currently planned with respect to this regulation, the Department will make an active outreach to administrators of various county agricultural conservation easement purchase programs to familiarize them with the new or revised regulatory provisions.

Regulatory Analysis Form

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

The regulations will not appreciably change current reporting, record keeping or other paperwork requirements.

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

To some extent the entire regulation is geared to the special needs of farmers. Agricultural security areas are intended to provide the normal agricultural operations of farmers some measure of protection in the face of suburban encroachment into farm areas.

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

The regulation will take effect at the earliest date consistent with the regulatory promulgation requirements of the Regulatory Review Act.

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

The efficacy of this regulation shall be reviewed by the Department on an ongoing basis.

PROPOSED RULEMAKING

DEPARTMENT OF AGRICULTURE

[7 PA. CODE CHS. 138, 138e AND 138I]

Agricultural Area Security Program; Agricultural Conservation Easement Purchase Program; Agricultural Security Area Program

The Department of Agriculture (Department) proposes to delete Chapter 138 (relating to agricultural area security program), amend Chapter 138e (relating to agricultural conservation easement purchase program) and add Chapter 138I (relating to agricultural security area program) to read as set forth in Annex A.

Statutory Authority

The Agricultural Area Security Law (act) (3 P.S. §§ 901—915) provides the legal authority for this proposed rulemaking. In particular, section 15 of the act (3 P.S. § 915) requires the Department to promulgate regulations necessary to promote the efficient, uniform and Statewide administration of the act.

Purpose

The proposed rulemaking would accomplish the following regulatory objectives:

1. Replace the outdated regulations in Chapter 138 with an entirely new regulatory chapter (Chapter 138I) that: (a) more accurately tracks with the act; (b) reflects the experience the Department has gained in administering the provisions of Chapter 138 over many years; (c) implements the numerous amendments that have been made to the act over the years; and (d) provides the regulated community with a more user-friendly set of standards and procedures with respect to agricultural security areas.

2. Revise the regulations in Chapter 138e to: (a) reflect various amendments of the act—most recently by the act of May 30 2001 (P.L. 103, No. 14) (Act 14); and (b) reflect the experience the Department has gained in administering the Agricultural Conservation Easement Purchase Program and Chapter 138e since that chapter was last revised.

Background

The act addresses two critical prongs of the Commonwealth's farmland preservation effort: agricultural security areas and agricultural conservation easements. The act provides definitions, standards and procedures for each, and makes it the responsibility of the Department to implement the act through regulations.

In summary, an agricultural security area is an area of 250 acres or more of farmland so designated by a local government unit. This designation affords landowners limited protections against nuisance suits based upon agricultural activities conducted on the land, limited protections against condemnation of the land and other limited benefits. It also makes an owner of farmland located in agricultural security areas comprised of 500 or more acres eligible to sell an agricultural conservation easement with respect to that farmland. An agricultural conservation easement restricts the subject land to agricultural production.

The Department's regulations relating to agricultural security areas have not been revised since 1982—the year in which they were originally promulgated. The provisions of the act relating to agricultural security areas have been revised numerous times since 1982—most recently by Act 14. Given the extensive regulatory revisions that would be necessary to bring the current agricultural security area regulations into conformity with the act, the Department proposes to delete Chapter 138 and replace that chapter with an entirely new Chapter 138I.

The Department's regulations relating to agricultural conservation easements also need to be revised to reflect amendments to the act. This proposed rulemaking would implement these necessary revisions. In addition, a number of the revisions offered in the proposed rulemaking would fine-tune current provisions to make for the more effective and efficient administration of the Commonwealth's agricultural conservation easement purchase program. More often than not, these revisions simply formalize informal procedures that have evolved over the course of the Department's administration of this program, or that appear in the technical guidebook the Department was required to develop under section 14.1(a)(3)(xv) of the act (3 P.S. § 914.1(a)(3)(xv)).

Need for the Proposed Rulemaking

The proposed rulemaking is driven by the need to implement various revisions to the act that have occurred since the agricultural security area and agricultural conservation easement regulations were last amended. In addition, the proposed rulemaking contains provisions intended to resolve questions and "gray areas" encountered by the Department in its administration of these regulations over the years. It would also formally implement a number of effective informal procedures that have evolved over the years.

The Department is satisfied of the need for the proposed rulemaking, and believes the document is consistent with the principles outlined in Executive Order 1996-1, "Regulatory Review and Promulgation."

Overview of the Major Provisions of the Proposed Rulemaking

Proposed § 138e.3 (relating to definitions) would revise the definitions of several terms to reflect statutory revisions.

The act was revised by the act of December 21, 1998 (P.L. 1056, No. 138) (Act 138) to allow for local government units to participate in the agricultural conservation easement purchase process. A number of the provisions of this proposed rulemaking would reflect and implement this statutory change. These include §§ 138e.11, 138e.67(g) and (i), 138e.201 and 138e.204.

Act 14 amended the act to describe a narrow set of circumstances under which an agricultural conservation easement may be purchased with respect to a parcel of farmland that straddles a county or local government unit boundary line, with part of the parcel being within an agricultural security area and the remainder outside of the agricultural security area. A number of the provisions of the proposed rulemaking would reflect and implement this statutory change. Proposed § 138e.16(a) (relating to minimum criteria for applications) would revise the eligibility criteria for agricultural conservation easement purchases to allow for this type of acquisition. Proposed

§ 138e.61(b) (relating to application) would revise the application form to require the basic information necessary to determine whether a proposed agricultural conservation easement purchase meets the revised eligibility criteria.

Proposed §§ 138e.65(b) and 138e.66 (relating to easement value and purchase price; and offer of purchase by county board) would reflect that the former \$10,000-per-acre cap on the expenditure of State funds in an agricultural conservation easement purchase transaction has been rescinded (by Act 14).

Proposed § 138e.73 (relating to survey requirements) would be an entirely new section. This section is not driven by revisions to the act but, instead, by the need to have a uniform Statewide set of minimum criteria for a survey of a proposed agricultural conservation easement purchase. This section would provide needed guidance to county agricultural conservation easement purchase programs, and would provide the Department the data it needs to maintain an accurate computerized record of the location and the metes and bounds of agricultural conservation easements purchased under authority of the act. The technical requirements of this section are consistent with modern survey practices and reflect the typical quality of surveys the Department has accepted over the years. Since this section would formalize an informal standard that has been in effect for some time, the Department believes it will have minimal impact on the regulated community.

Proposed § 138e.93 (relating to postsettlement recording and reporting procedures) would be an entirely new section. There was some initial inconsistency and confusion within both the regulated community and the Department as to the appropriate documentation and post settlement follow-through that should be attendant to each agricultural conservation easement purchase under the act. Over years of administering the Statewide agricultural conservation easement purchase program, though, the basic recordkeeping, recording and reporting procedure in this proposed section evolved. The proposed section would formalize this procedure and provide a step-by-step explanation of the necessary record retention, recording and reporting requirements.

Proposed § 138e.104 (relating to installment sales) would add new language to address long-term installment purchases of agricultural conservation easements that defer the payment of principal for up to 30 years. The Department is currently involved in an effort to encourage the purchase of agricultural conservation easements by a method that allows for the purchaser to leverage purchase funds and allows the seller to gain favorable tax consequences (such as, favorable capital gains tax treatment). The proposed language addresses this effort. This long-term installment purchase effort has been facilitated by an allocation of up to \$500,000 for this purpose by Act 14.

The proposed rulemaking would place increased emphasis on the importance of a conservation plan to the Statewide agricultural conservation easement purchase effort. In summary, a conservation plan is a written description of land management practices which, when implemented, will improve and maintain the soil, water and related plant and animal resources of the land. Although the current regulation requires that a conservation plan exist with respect to a parcel of farmland before an agricultural conservation easement is sold with respect to the parcel, the Department believes it necessary to place greater regulatory emphasis on the requirement

a landowner actually implement the conservation plan. To this end, proposed § 138e.222 (relating to conservation plan) would revise that section to require a landowner to execute a "conservation plan agreement" acknowledging the need to implement the conservation plan. The conservation plan agreement would also acknowledge that failure to implement and follow-through on the requirements of a conservation plan would constitute a violation of the terms of the deed of agricultural conservation easement.

The proposed rulemaking would add several new sections describing the Land Trust Reimbursement Grant Program. This program was originally authorized under section 1716 of The Administrative Code of 1929 (71 P. S. § 456(a)(3)), which took effect in 1999. The procedures and standards for the program were established by a notice published at 29 Pa.B. 6342 (December 18, 1999), and were revised by a notice published at 30 Pa.B. 5546 (October 28, 2000). Act 14 continued this program under its authority (3 P. S. § 914.5); and required the program be formalized through regulation. Proposed §§ 138e.251—138e.256 essentially restate the procedures and standards of this ongoing program.

Proposed § 138e.253 (relating to registration of eligible land trust) would describe the documentation and procedures necessary to the registration of a land trust with the Department. The application process described in subsequent sections is rather straightforward. One of the few substantive differences between the standards and procedures for the Land Trust Reimbursement Grant Program established earlier by notice and the standards and procedures that would be established by this proposed rulemaking is found in § 138e.255(b)(3)(i)(B) (relating to State Board review of applications). That provision would allow reimbursement with respect to an agricultural conservation easement purchase involving as few as 25 acres of land, when the previous standards required at least 50 acres of land.

Proposed Chapter 138l would supplant the current regulation in Chapter 138.

Proposed § 138l.1 (relating to definitions) would repeat definitions from the act and also repeats a number of definitions from § 138e.3 (relating to definitions) of the agricultural conservation easement purchase program regulations. This section would also allow for the use of "ASA" as an abbreviation for the term "agricultural security area."

Proposed § 138l.11 (relating to agricultural security area advisory committee) would provide guidance to a local government unit on the necessity of establishing an agricultural security area (ASA) advisory committee. Although the act does not require the formation of this committee until an application for the formation of an ASA is received by the local government unit, a local government unit is free to form an ASA advisory committee at any time.

Proposed § 138l.12 (relating to eligibility to propose the creation of an ASA) would set forth the eligibility criteria for the inclusion of land within an ASA. Paragraph (1) of that section would acknowledge that some portion of land within an ASA might not be farmland or viable farmland and should not have to be surveyed-out and excluded from the ASA. This is suggested in section 3 of the act (3 P. S. § 903), under the definition of "description of the proposed area."

Prior to Act 14, an ASA could not be located in more than one local government unit unless each affected local

government unit approved its participation in that ASA. Act 14 added three other scenarios under which land might be included in the ASA of another local government unit without the consent of the local government unit in which the land is located. Proposed § 1381.15 (relating to ASA located in more than one local government unit) would summarize all four scenarios under which an ASA might include land in more than one local government unit.

Proposed § 1381.16 (relating to submitting an ASA proposal form to the local government unit) would emphasize that the only acceptable way by which to deliver an ASA proposal form to a local government unit is by certified mail, with return receipt requested. The local government unit's receipt of this notice triggers the commencement of the 180-day period within which review of the ASA proposal must be completed. The "official date of receipt" used in this section is referenced in several other sections of the chapter.

Proposed §§ 1381.17 and 1381.18 (relating to local government unit action upon receipt of an ASA proposal; and public hearing by local government unit on ASA proposal) provide step-by-step explanations of the actions a local government unit must take after receiving an ASA proposal.

The effective date of an ASA or a modification to an ASA can vary—depending on the particular circumstances involved. Proposed § 1381.21 (relating to effective date of the creation or modification of an ASA) would identify each set of circumstances and the appropriate effective date. For example, if land is added to an ASA by virtue of its being part of an agricultural conservation easement purchase, the land becomes part of the ASA as of the sale of the agricultural conservation easement. If land becomes part of an ASA because of the failure of a local government unit to approve or reject the ASA proposal within 180 days of receipt, the ASA becomes effective as of the expiration of this 180-day period. Proposed § 1381.21 would address each set of circumstances under which an ASA can be formed or modified, and assign the appropriate effective date for each ASA creation or modification.

Proposed § 1381.22 (relating to filing of ASA description by governing body; recording of ASA description) would clarify the obligation of a governing body of a local government unit to file a description of an ASA, or any modification thereof, with the county recorder of deeds, the county planning commission and the planning commission of the local government unit. In addition, it would clarify the obligation of a county recorder of deeds to properly record this information.

Proposed §§ 1381.24 and 1381.25 (relating to planning commission action with respect to an ASA proposal; and advisory committee action with respect to an ASA proposal) would describe the roles of the entities referenced in their respective titles. In summary, each of these entities must record the date of receipt of an ASA proposal or proposed modification, review the proposal within a 45-day review period, apply the same review criteria as are applied by the local government unit and report its conclusions to the local government unit. Failure to act within this 45-day review period is deemed to be a recommendation the local government unit approve the ASA proposal or proposed modification.

Proposed § 1381.26 (relating to factors to be considered by the governing body of the local government unit, the planning commission and the advisory committee) would restate review criteria prescribed by the act.

Proposed Subchapter C (relating to adding land to an existing ASA) would describe all of the various circumstances under which land may be incorporated into an existing ASA. Act 14 added several new methods by which land can be automatically incorporated into an existing ASA, and these new methods are set forth in the referenced sections.

Proposed §§ 1381.41 and 1381.42 (relating to removing land that has been in an ASA for 7 years or more; and removing land in the course of the 7-year review or interim review) would describe the two procedures by which land can be removed from an ASA. The first allows an owner of land that has been in an ASA for 7 or more years to simply notify the governing body of the land to be withdrawn from the ASA. This notice would be by certified mail, return receipt requested. Although the withdrawal would be effective upon receipt of this notice, the governing body would have the option to wait until its next review of the ASA (whether a regular 7-year review or an interim review) to record the withdrawal.

Proposed § 1381.51 (relating to 7-year review) would describe the process by which the act requires an ASA be reviewed at regular intervals. Proposed § 1381.52 (relating to interim review) would describe the process to be exercised by a local government unit that opts to review an ASA before review would ordinarily be required.

Affected Individuals and Organizations

This proposed rulemaking would have some effect upon county agricultural conservation easement purchase programs, local government units, owners of land who have land in an ASA or who seek to include land in an ASA and owners of land who seek to sell agricultural conservation easements under authority of the act. Since many of the new provisions of this proposed rulemaking simply implement statutory requirements, though, the impact of these provisions is more the product of the underlying legislation than of the regulations itself.

Fiscal Impact

Commonwealth: This proposed rulemaking would impose no costs and have no fiscal impact on the Commonwealth.

Political Subdivisions: The proposed rulemaking is not expected to impose appreciable costs upon political subdivisions. Although local government units are required to absorb the costs associated with the formation and recording of an ASA, this requirement is imposed by the act, rather than the proposed rulemaking.

Private Sector: This proposed rulemaking would impose no costs and have no fiscal impact upon the private sector.

General Public: This proposed rulemaking would impose no costs and have no fiscal impact upon the general public.

Paperwork Requirements

The proposed rulemaking would not appreciably increase the paperwork burden of the Department, local government units, county agricultural land preservation programs or other affected entities.

Effective Date

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

Sunset Date

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

Public Comment Period/Contact Person

Interested persons are invited to submit written comments regarding this proposed rulemaking within 30 days following publication in the *Pennsylvania Bulletin*. Comments are to be submitted to the Department of Agriculture, Bureau of Farmland Preservation, 2301 North Cameron Street, Harrisburg, PA 17110-9408, Attention: Sandra Robison.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on January 29, 2002, the Department submitted a copy of this proposed rulemaking to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House and Senate Committees on Agriculture and Rural Affairs. In addition to submitting the proposed rulemaking, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, if IRRC has objections to any portion of the proposed rulemaking, it will notify the Department within 10 days of the close of the Committees' review period. The notification shall specify the regulatory review criteria that have not been met by the portion of the proposed rulemaking to which an objection is made. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Department, the General Assembly and the Governor of objections raised.

SAMUEL E. HAYES, Jr.,
Secretary

Fiscal Note: 2-138. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 7. AGRICULTURE

PART V-C. FARMLAND AND FOREST LAND

CHAPTER 138. AGRICULTURAL AREA SECURITY PROGRAM

(*Editor's Note:* As part of this proposed rulemaking, the Department is proposing to delete the text of §§ 138.1—138.14 and Appendix A which currently appears in 7 Pa. Code pages 138.1—138.7, serial pages (276945)—(276951).)

§§ 138.1—138.14. (Reserved).

CHAPTER 138e. AGRICULTURAL CONSERVATION EASEMENT PURCHASE PROGRAM

GENERAL

§ 138e.3. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

* * * * *

Agricultural conservation easement or easement—An interest in land, less than fee simple, which interest represents the right to prevent the development or im-

provement of [the land] a parcel for a purpose other than agricultural production. The easement may be granted by the owner of the fee simple to a third party or to the Commonwealth; to a county governing body or to a unit of local government. It shall be granted in perpetuity as the equivalent of covenants running with the land. The exercise or failure to exercise any right granted by the easement will not be deemed to be management or control of activities at the site for purposes of enforcement of the Hazardous Sites Cleanup Act (35 P. S. §§ 6020.101—6020.1305).

Agricultural production—The production for commercial purposes of crops, livestock and livestock products, including the processing or retail marketing of the crops, livestock or livestock products if more than 50% of the processed or merchandised products are produced by the farm operator. The term includes use of land which is devoted to and meets the requirements of and qualifications for payments or other compensation under a soil conservation program under an agreement with an agency of the Federal government.

* * * * *

County planning commission—A planning commission or agency which has been designated by the county governing body to establish and foster a comprehensive plan for land management and development within the county.

* * * * *

Local government unit—Any city, borough, township or town or any home rule municipality, optional plan municipality, optional charter municipality or similar general purpose unit of government which may be created or authorized by statute.

Mansion house—The primary residential structure located upon a parcel.

* * * * *

Parcel—A tract of land in its entirety which is assessed for tax purposes by one county, including any portion of that tract that may be located in a neighboring county. The county responsible for assessing an entire tract, on its own or in conjunction with the Commonwealth or a local government unit, or both, shall be eligible to purchase agricultural conservation easements covering the entire tract.

* * * * *

REQUIREMENTS FOR CERTIFICATION OF COUNTY PROGRAM

§ 138e.11. General requirements.

* * * * *

(d) A county program shall contain provisions for the participation of local government units in the preservation of farmland through the purchase of agricultural conservation easements. These provisions shall address the following:

(1) Local government unit recommendations for joint county-local government unit purchases.

(2) Local government unit recommendations for joint Commonwealth-local government unit purchases.

(3) Local government unit recommendations for joint Commonwealth-county-local government unit purchases.

(4) Local government unit agricultural conservation easement purchases authorized under section 14.1(b.1)(4) of the act (3 P. S. § 914.1(b.1)(4)).

§ 138e.16. Minimum criteria for applications.

(a) The county program shall consider the quality of the farmland tract, including the USDA soil classification and productivity. The farmland tract shall:

(1) Be [located] one or more of the following:

(i) Located in an agricultural security area consisting of 500 acres or more.

(ii) Bisected by the dividing line between two local government units, having the majority of its viable agricultural land within an agricultural security area of 500 acres or more and the remainder in another local government unit outside of an agricultural security area.

(iii) Bisected by the dividing line between the purchasing county and an adjoining county, having the land located in the purchasing county within an agricultural security area of 500 acres or more and the remainder in another county outside of an agricultural security area, and with respect to which one of the following applies:

(A) A mansion house is on the tract and located within the purchasing county.

(B) When the mansion house on the tract is bisected by the dividing line between the two counties, the landowner has chosen the purchasing county as the situs of assessment for tax purposes.

(C) When there is no mansion house on the farmland tract, the majority of the tract's viable agricultural land is located within the purchasing county.

(2) Be [contiguous] one or more of the following:

(i) Contiguous acreage of at least 50 acres in size [unless the tract is].

(ii) Contiguous acreage of at least 10 acres in size and [is either] utilized for a crop unique to the area [or is].

(iii) Contiguous acreage of at least 10 acres in size and contiguous to a property which has a perpetual conservation easement in place which is held by a "qualified conservation organization," as that term is defined in section 170(h)(3) of the Internal Revenue Code (26 U.S.C.A. § 170(h)(3)).

* * * * *

STATE BOARD REVIEW OF COUNTY PROGRAM

§ 138e.41. Application for review of county program.

A county board seeking State Board review, certification and approval of its county program shall submit one copy of its county program and its bylaws to the State Board at the following address: Director, Bureau of Farmland [Protection], Preservation, Department of Agriculture, 2301 North Cameron Street, Harrisburg, Pennsylvania 17110-9408.

§ 138e.42. Review, certification and approval of a county program.

* * * * *

(c) A decision of the State Board to disapprove a county program shall be an adjudication subject to 2 Pa.C.S. §§ 501—508 and 701—704 (relating to the Administrative Agency Law). An appeal from a decision of the State Board to disapprove a county program may be made by the county board to the Secretary [of Agriculture] and shall be filed in writing with the Secretary within 30 days of the State Board's action. An appeal from a decision of the State Board [will] will be governed by 1 Pa. Code Part II (relating to general rules of administrative practice and procedure).

§ 138e.43. Revision of county program.

* * * * *

(b) A county board seeking review of a proposed revision to its county program shall submit one copy of the proposed revision to the State Board at the following address: Director, Bureau of Farmland [Protection] Preservation, Department of Agriculture, 2301 North Cameron Street, Harrisburg, Pennsylvania 17110-9408.

* * * * *

PROCEDURE FOR PURCHASING AN EASEMENT

§ 138e.61. Application.

(a) A separate application shall be required for each farmland tract offered for easement purchase. The application shall consist of a completed application form, locational maps and a soils report form. A copy of a soils report form is in Appendix B (relating to Form C Soils Report). If the county program contains minimum criteria for easement purchase that vary from those in § 138e.16 (relating to minimum criteria for applications), the application shall also include documentation [such as a production report form contained in a guidebook authorized by the State Board under section 14.1(a)(3)(xv) of the act (3 P. S. § 914.1(a)(3)(xv))] to demonstrate the farmland tract meets these minimum criteria.

(b) The county board shall develop and make available to a county resident an application form which requires the following information:

* * * * *

(2) [The] One of the following, as applicable:

(i) If the farmland tract is eligible to be considered for easement purchase under § 138e.16(a)(1)(i), the county, [municipality] local government unit and agricultural security area in which the farmland tract is located.

(ii) If the farmland tract is bisected by a dividing line between two units of local government and is eligible to be considered for easement purchase under § 138e.16(a)(1)(ii), the county and local government units in which the farmland tract is located, the agricultural security area in which a portion of that farmland tract is located, a breakdown of the acreage proposed for easement purchase in each local government unit and a breakdown of the number of acres of viable agricultural land in the acreage proposed for easement purchase in each local government unit.

(iii) If the farmland tract is bisected by the dividing line between two or more counties and is eligible to be considered for easement purchase under § 138e.16(a)(1)(iii), the counties and local government units in which the farmland tract is located, the agricultural security area in which a portion of that farmland tract is located, and one of the following:

(A) If there is a mansion house on the farmland tract, an acknowledgement of this fact and a designation of the county in which the mansion house is located.

(B) If there is a mansion house on the farmland tract, and the mansion house is bisected by the dividing line between two or more counties, an acknowledgement of this fact and a designation of the county the landowner has chosen as the situs of assessment for tax purposes.

(C) If there is no mansion house on the farmland tract, an acknowledgement of this fact and a breakdown of the acreage proposed for easement purchase in each county and a breakdown of the number of acres of viable agricultural land in the acreage proposed for easement purchase in each county.

* * * * *

§ 138e.65. Easement value and purchase price.

* * * * *

(b) *Maximum purchase price.* The purchase price offered for the purchase of an easement under § 138e.66(b) may not exceed, but may be less than, the value of the easement. [Regardless of the easement value, the State funds paid toward the purchase price of an easement will not exceed \$10,000 per acre.]

§ 138e.66. Offer of purchase by county board.

* * * * *

(c) Within 30 days of receipt of the written offer from the county board, an applicant may do one of the following:

* * * * *

(3) Advise the county board that the applicant is retaining, at the applicant's expense, an independent State-certified general real estate appraiser to determine the easement value. The appraiser shall be qualified, and the appraisal shall be completed in accordance with the procedure in § 138e.64 (relating to appraisal). The appraisal shall be submitted to the county board within 120 days of receipt of the county board's offer to purchase. The county board may extend the time within which this appraisal shall be submitted. This extension shall be in writing and shall extend the 120-day deadline by no more than 60 days. Upon completion, three copies of the applicant's appraisal shall be submitted to the county board. The applicant's decision to obtain an independent appraisal under this paragraph does not constitute a rejection of the county board's offer. The county board's offer shall remain open unless increased by the county board under subparagraph [(ii)] (iv) or rejected by the applicant under subparagraph [(iii) or (iv)] (v).

* * * * *

(iii) Regardless of the easement value, the purchase price may not exceed [\$10,000 per acre of State

funds] any overall purchase price limits established by the county in its county program.

* * * * *

(v) The applicant shall, within 15 days of receipt of the county board's written offer under subparagraph [(ii)(A)] (iv)(A) or receipt of the county board's written notice under subparagraph [(ii)(B)] (iv)(B), notify the county board in writing that the applicant does one of the following:

* * * * *

§ 138e.67. Requirements of the agricultural conservation easement deed.

* * * * *

(d) The farmland tract on which an easement is to be purchased shall be surveyed unless the legal description contained in the deed recorded in the land records of the county in which the farmland tract is located satisfies the requirements of subsections (b) and (c). A survey required by this paragraph shall [comply with the boundary survey measurement standards for a Class A-2 survey as published by the Pennsylvania Society of Land Surveyors] meet the requirements of § 138e.73 (relating to survey requirements).

* * * * *

(g) [A copy of the proposed deed shall be submitted to the State Board for approval prior to execution and delivery.] For purchases made using a combination of State, county and local municipality funds, the grantees shall be the Commonwealth, the county and the local municipality providing the funds under joint ownership as defined in the act.

(h) For purchases made entirely with county funds, the county shall be the sole grantee.

(i) For purchases made entirely with local municipal funds, the municipality shall be the sole grantee.

§ 138e.68. Title insurance.

(a) The county board shall provide [a title report] the following to the State Board upon submission of its recommendation for the purchase of an easement [.]:

(1) A title insurance commitment.

(2) Copies of all recorded or unrecorded documents listed on the title insurance commitment as exceptions to the title insurance policy.

* * * * *

§ 138e.71. Notification of owners of land adjoining proposed easement purchase.

* * * * *

(d) *Correction of notice.* If the date or time of the meeting at which an easement purchase recommendation is to be considered changes after the adjoining landowners receive the notice described in this section, the county board shall provide these landowners a corrective notice, providing notice of the changes, in the manner described in subsection (b) or (c).

§ 138e.73. Survey requirements.

(a) *General requirement.* If a survey of land being considered for agricultural conservation easement purchase is required under § 138e.67(d) (relating to

requirements of the agricultural conservation easement deed) or is otherwise required to determine metes and bounds of any right-of-way or other interests in the land, the survey shall indicate that it has a closure error of not greater than 1 foot per 10,000 linear feet in the survey, and shall otherwise comply with the most current boundary survey measurement standards published by the Pennsylvania Society of Land Surveyors.

(b) *Other requirements.* A survey described in subsection (a) shall also contain the following:

(1) A recordable legal description setting forth the metes and bounds of the farmland tract or other subject of the survey.

(2) A copy of the survey for each traverse in digital electronic format that complies with the conservation easement Geographic Information System (GIS) technical standards maintained in the guidebook prepared by the Department in accordance with section 14.1(a)(3)(xv) of the act (3 P.S. § 914.1(a)(3)(xv)).

(3) Geographic coordinates of at least two ground control points located sequentially along a traverse, with latitude and longitude expressed in decimal degrees. These geographic coordinates shall be based on the North American Datum of 1983 and shall be accurate to within 2 meters horizontally.

(4) A hardcopy of the plotted survey map from the digital file showing the course bearings and distances and other annotations and symbols as maintained in the guidebook prepared by the Department in accordance with section 14.1(a)(3)(xv) of the act.

(c) *Monumentation.* If a survey of land being considered for agricultural conservation easement purchase is required under § 138e.67(d) or is otherwise required to determine metes and bounds of any right-of-way or other interests in the land, the surveyor shall establish monumentation for at least the two ground control points referenced in subsection (b)(3). One point shall be a permanent, unmovable monument established with a concrete shaft, 5/8 inch steel reinforcing bar as a core with an alloy disk embedded with a stamped identification number. The second ground control point shall be a standard 5/8 inch rebar or similar concrete monument.

STATE BOARD REVIEW OF A PURCHASE RECOMMENDATION

§ 138e.91. Recommendation for purchase.

A county board shall make its recommendation for purchase of an easement by submitting the following documents to the Director, Bureau of Farmland [Protection] Preservation, Department of Agriculture, 2301 North Cameron Street, Harrisburg, Pennsylvania 17110-8408:

(1) [Twenty-two] Twenty-five copies of the summary report prepared in accordance with § 138e.70 (relating to summary report), including the following items:

* * * * *

(2) The [22] 25 copies submitted shall be individually collated and three-hole punched, but not stapled.

* * * * *

(8) A copy of the approved soil conservation plan that is required to be in place with respect to the land under § 138e.241(2) (relating to deed clauses), and a fully-executed conservation plan agreement form as described in § 138e.222(a) (relating to conservation plan).

* * * * *

§ 138e.93. Postsettlement recording and reporting procedures.

(a) *Retaining copies of essential documents.* The county board shall make and retain photocopies of the following documents after settlement is held with respect to an agricultural conservation easement purchase, and prior to the recording of the deed of agricultural conservation easement in the appropriate recorder of deeds' office:

(1) The complete and fully-executed deed of agricultural conservation easement, including the complete legal description of the land subject to the agricultural conservation easement.

(2) A marked-up title insurance commitment document, reflecting that all listed title insurance exceptions have been addressed and resolved prior to the purchase of the agricultural conservation easement.

(3) Mortgage satisfaction pieces, subordination agreements and other documents to be recorded in connection with the agricultural conservation easement purchase.

(b) *Prompt recording of the deed of agricultural conservation easement and other documents.* The county board shall record the deed of agricultural conservation easement and any other documents (such as subordination documents, satisfaction pieces and releases) at the appropriate recorder of deeds' office promptly after settlement is held with respect to the easement purchase.

(c) *Prompt recording of agricultural security area; reporting to the State Board.* If the settlement triggers the automatic inclusion into an agricultural security area of some portion of the land subject to the agricultural conservation easement under section 14.1(b)(2)(i)(B) or (C) of the act (3 P.S. § 914.1(b)(2)(i)(B) or (C)), the governing body that created the agricultural security area into which the land is automatically included shall promptly record the addition of this land into the agricultural security area in accordance with the filing, recording and notification procedures in section 8(d) and (g) of the act (3 P.S. § 914.8(d) and (g)). The governing body shall then promptly transmit to the county board written confirmation that this recording, filing and notification has been accomplished. The county board shall mail or deliver a copy of that written confirmation to the State Board within 10 days of receipt.

(d) *Reporting the agricultural conservation easement purchase to the State Board.*

(1) *General.* The county board shall mail or deliver the following documents to the Department within 10 days following the date upon which settlement is held with respect to an agricultural conservation easement purchase:

(i) A complete notification of settlement, on a form available from the Department upon request, containing the following:

PROPOSED RULEMAKING

- (A) The name of the landowners.
- (B) The county in which the land is located.
- (C) The date of settlement.
- (D) A statement identifying any additional incidental costs.
- (E) An indication (by check-off or other designation) of the other documents the county board is submitting to the Department along with the Notification of Settlement Form.
- (F) The signature of the administrator or chief executive of the county board.
- (ii) Copies of all of the documents described in subsection (b).
- (iii) A copy of the settlement sheet.
- (iv) A marked-up title insurance commitment document, reflecting that all listed title insurance exceptions have been addressed and resolved prior to the purchase of the agricultural conservation easement.
- (v) A complete verification, executed by the settlement agent at settlement, on a form available from the Department upon request, containing the following:
- (A) A statement reading substantively as follows:
- As Settlement Agent for _____ County, I hereby verify that I have submitted (or will take responsibility for submitting) the appropriate IRS 1099-S form(s) for the agricultural conservation easement identified below in accordance with the Internal Revenue Code, section 6045. I further verify that I have reported (or will report) the gross proceeds in the case of a joint purchase by the Commonwealth and the county. If this verification is not submitted to the Commonwealth within 30 days of closing, I further verify that the 1099-S form(s) will be sent to the IRS and the transferor by the deadline established by the IRS.
- (B) The name and Federal taxpayer I.D. number of each person who sold an interest in the agricultural conservation easement.
- (vi) An invoice from the county for any additional incidental costs related to the agricultural conservation easement purchase, on a form available from the Department upon request, containing the following:
- (A) The name, address and Federal taxpayer I.D. number of the county.
- (B) The date of the application.
- (C) The name, address and telephone number of the person designated by the county to act as a contact person if the Department requires further information.
- (D) The name of the farm owner, address of the farm and the number of acres under agricultural conservation easement.
- (E) A breakdown of the purposes for which reimbursement of additional incidental expenses is requested, and the amount of each expense.
- (vii) A revised statement of costs, as described in § 138e.69 (relating to statement of costs), if the incidental costs are higher or lower than originally reported.

(2) *Exception for agricultural conservation easements purchased by a local government unit solely.* Paragraph (1) notwithstanding, if an agricultural conservation easement is purchased by a local government unit solely, the county board shall mail or deliver the following documents to the Department within 30 days after recording the deed of agricultural conservation easement:

(i) A copy of the complete and fully-executed deed of agricultural conservation easement, including the complete legal description of the land subject to the agricultural conservation easement.

(ii) A current United States Geological Survey (USGS) topographical map that clearly and legibly shows the subject property location and boundaries, location of neighboring easements and exclusions withheld from the subject property.

(iii) An invoice as described in paragraph (1)(vi).

(e) *Certified copies of filed documents.* The county board shall mail or deliver certified copies of the recorded documents described in subsection (b) to the Department within 30 days following the date upon which these documents are recorded at the appropriate recorder of deeds' office. The appropriate recorder of deeds' office shall issue this certification.

(f) *Title insurance policy.* The title insurance policy should be mailed or delivered to the State Board within a reasonable time after settlement—preferably within 60 days of settlement.

ALLOCATION OF FUNDS

§ 138e.102. Allocation of funds to counties.

* * * * *

(h) If an eligible county seeks to encumber State matching funds for an agricultural conservation easement purchase to be made by the county alone, the State matching funds shall be considered encumbered when the county board has submitted to the Department a signed agreement of sale and the written certification of the county governing body that the specific amount of county matching funds necessary for the purchase of the agricultural conservation easement by the county is available and intended for this purchase.

(i) * * *

[(i)] (j) * * *

§ 138e.103. Expenditure of matching funds.

* * * * *

(d) An easement purchased using solely county funds will be considered an expenditure of county matching funds under [sections] section 14.1(h)(3), (4) and (5)(i) of the act (3 P. S. [§] § 914.1(h)(3), (4) and (5)(i)) if:

* * * * *

(2) Upon settlement of the purchase of an easement, the county board submits the following to the State Board:

(i) A copy of the [signed] complete and fully-executed deed of agricultural conservation easement, including the complete legal description of the land subject to the agricultural conservation easement.

* * * * *

(iv) The date of approval of the conservation plan, a copy of the conservation plan and a copy of the executed conservation plan agreement as described in § 138e.222 (relating to conservation plan).

(v) A completed Soil Report Form "C" (a form provided by the Department), both pages. See Appendix B (relating to Form C Soils Report).

(vi) A current United States Geological Survey (USGS) topographical map that clearly and legibly shows the subject property location and boundaries, location of neighboring easements and exclusions withheld from the subject property.

(vii) A statement of costs, as described in § 138e.69 (relating to statement of costs).

(viii) An invoice as described in § 138e.93(d)(1) (relating to postsettlement recording and reporting procedures).

* * * * *

§ 138e.104. Installment sales.

* * * * *

(c) *Installment sales with a payment period of more than 5 years.* Installment sales, other than those installment sales described in subsection (d), in which the final payment for the easement purchase is to be made more than 5 years from the date the contract of sale is fully executed are subject to the following provisions:

* * * * *

(d) *Installment sales deferring the payment of principal for up to 30 years.* Installment sales in which payment of principal is deferred to the end of a specific period of up to 30 years from the date the contract of sale is fully executed are subject to the following provisions:

(1) Purchases may be made in the name of the Commonwealth, an eligible county or jointly by the Commonwealth and an eligible county.

(2) Notwithstanding the requirement of § 138e.66(d), the county board may, subject to approval by the Department, provide the agreement of sale for purchases made under this subsection.

(3) The agreement of sale and the deed of easement shall meet the same requirements and be subject to the same conditions as set forth in §§ 138e.66(c) and 138e.67.

(4) The installment payment terms shall be negotiated between the landowner and the county board. These terms shall include the amount of cash (if any) to be received at closing, the interest rate, the period over which interest is to be paid and the point at which principal is to be paid.

(5) If landowner is responsible for the transaction costs associated with the type of purchase described in this subsection unless the county program provides otherwise.

PROCEDURE FOR INSPECTING AND ENFORCING AN EASEMENT

§ 138e.201. Responsibility.

(a) The county board shall have the primary responsibility for inspecting restricted land and enforcing [an easement] the following [.]:

(1) Agricultural conservation easements within the county.

(2) Agricultural conservation easements which were acquired under authority of section 14.1(b)(2) (i) of the act (3 P. S. § 914.1(b)(2)(i)), including any portion extending into an adjoining county.

* * * * *

§ 138e.202. Inspections.

(a) The county board shall inspect all restricted land within the county at least annually to determine compliance with the applicable deed of easement. The first inspection shall be completed within 1 year of the date of easement sale, and in sufficient time to be included in the annual report described in § 138e.203 (relating to annual report).

* * * * *

(d) Within 10 days of conducting an inspection under subsection (a), the county board shall prepare a written inspection report setting forth the following information:

* * * * *

(6) A statement indicating whether a structure permitted under section 14.1(c)(6)(iv) of the act (3 P. S. § 914.1(c)(6)(iv)) has been constructed on the restricted land and, if such a structure has been constructed, the month and year construction was completed and a description of the structure and its location on the land.

* * * * *

§ 138e.203. Annual report.

The county board shall file the following with the State [board a] Board by March 1 of each year:

(1) A copy of inspection reports for inspections conducted during the prior year[, and compile an] .

(2) An annual report which summarizes the number of inspections, violations detected, violations resolved and the circumstances surrounding unresolved violations.

§ 138e.204. Enforcement.

(a) The county board shall enforce the terms of each easement purchased within the county under the act, whether it be a local government unit, county, State or joint purchase.

* * * * *

RESPONSIBILITY OF OWNER

§ 138e.222. Conservation plan.

(a) [To preserve the agricultural viability of the restricted land, the county board shall require, and the owner of the restricted land shall implement, a conservation plan approved by the county conservation district or the county board.] The county board shall require the owner of land being considered for agricultural conservation easement purchase to do the following before the county board recommends approval of the easement purchase to the State Board:

(1) Obtain a conservation plan approved by the county conservation district or the county board for the land that would be subject to the agricultural conservation easement.

(2) Execute a conservation plan agreement containing the following:

(i) The name, address and telephone number of the landowners.

- (ii) The location of the land.
- (iii) The acreage of the land.
- (iv) An acknowledgement that the deed of agricultural conservation easement requires that all agricultural production on the subject land be conducted in accordance with the conservation plan.
- (v) An acknowledgement that a conservation plan exists with respect to the land, together with the following:
 - (A) The source of the conservation plan (typically, the county conservation district).
 - (B) An identifying number given the conservation plan.
 - (C) The date of the conservation plan.
- (vi) An acknowledgement that the landowners agree to comply with the conservation practices and implementation schedule in the conservation plan, and an acknowledgement that failure to so comply would be a violation of the terms of the deed of agricultural conservation easement.
- (vii) The signature of the landowners.

* * * * *

LAND TRUST REIMBURSEMENT GRANT PROGRAM

§ 138e.251. Program in general.

Section 14.5(a)(3) of the act (3 P.S. § 914.5(a)(3)) authorizes the expenditure of up to \$500,000 from the Supplemental Agricultural Conservation Easement Purchase Account to reimburse eligible land trusts for expenses incurred in the acquisition of agricultural conservation easements in this Commonwealth. Sections 138e.252—138e.256 describe the procedures and standards under which this reimbursement shall occur under the Land Trust Reimbursement Grant Program.

§ 138e.252. Eligibility of a land trust to register for reimbursement grants.

To be eligible to register with the State Board in accordance with § 138e.253 (relating to registration of eligible land trust) and to receive reimbursement grants under the Land Trust Reimbursement Grant Program, a land trust shall be a tax-exempt institution under section 501(c)(3) of the Internal Revenue Code, of 1986 (26 U.S.C.A. § 501(c)(3)) and include the acquisition of agricultural conservation easements or other conservation easements in its stated purpose.

§ 138e.253. Registration of eligible land trust.

(a) *Registration required.* An eligible land trust seeking reimbursement grants under the Land Trust Reimbursement Grant Program shall register with the State Board. Registration shall be accomplished by delivering a registration letter to the following address: Pennsylvania Department of Agriculture, ATTN: Bureau of Farmland Preservation, 2301 North Cameron Street, Harrisburg, Pennsylvania 17110-9408.

(b) *Contents of registration letter.* A registration letter shall:

- (1) Set forth a request that the eligible land trust be registered with the State Board for the purpose

of receiving reimbursement grants under the Land Trust Reimbursement Grant Program.

- (2) Be signed by the president or other appropriate authorized officer of the eligible land trust.

- (3) Have the following documentation enclosed

- (i) A copy of the section 501(c)(3) tax-exempt certification issued to the land trust by the Internal Revenue Service, or any other documentation demonstrating the section 501(c)(3) tax-exempt status of the land trust.

- (ii) Documentation, such as a certified copy of the corporate bylaws, demonstrating that the land trust has the acquisition of agricultural conservation easements or other conservation easements as its stated purpose.

- (4) If the eligible land trust seeks to be registered to receive reimbursement grants with respect to agricultural conservation easements it acquires in a county that is an eligible county (as that term is defined in § 138e.3 (relating to definitions)), have enclosed a letter from either the director or the chairperson of the county board of the eligible county, verifying that the land trust coordinates its farmland preservation activities with the farmland preservation activities of the county.

- (5) If an eligible land trust seeks to be registered to receive reimbursement grants with respect to agricultural conservation easements it acquires in a county that is not an eligible county (as that term is defined in § 138e.3), have enclosed a written explanation of the procedures it will follow to coordinate with the State Board on the easement acquisitions.

(c) *Acknowledgement of registration.* The Department will promptly provide an eligible land trust that delivers a complete registration letter as described in subsection (b) with written confirmation that the eligible land trust is registered to receive reimbursement grants under the Land Trust Reimbursement Grant Program, together with an application for reimbursement grant form as described in § 138e.254 (relating to applying for a reimbursement grant).

§ 138e.254. Applying for a reimbursement grant.

(a) *Application for reimbursement grant; timing.* If an eligible land trust is registered in accordance with § 138e.253 (relating to registration of eligible land trust), and seeks a reimbursement grant with respect to the acquisition of an agricultural conservation easement, it shall do the following:

- (1) Complete an application for reimbursement grant form as described in subsection (b).

- (2) Deliver the completed application to the State Board, at the address in § 138e.253(a), within 60 days of closing on the acquisition of the agricultural conservation easement with respect to which the reimbursement grant is sought.

(b) *Obtaining an application for reimbursement grant form.* Reimbursement grant application forms may be downloaded from the Department's website address: www.pda.state.pa.us. The Department will also provide reimbursement grant application forms upon written request to the address in § 138e.253(a), or upon requests telephoned to the Department, at (717) 783-3167. The Department will

also enclose a reimbursement grant application form with any acknowledgement of registration it issues under § 138e.253(c).

(c) *Content of a complete application for a reimbursement grant.* A complete application for a reimbursement grant shall contain the following:

(1) A request for reimbursement of costs incidental to the acquisition of an agricultural conservation easement.

(2) A statement of the costs (such as, costs of appraisals, legal services, title searches, document preparation, title insurance, closing fees and surveys) incidental to the acquisition of the agricultural conservation easement.

(3) A true and correct copy of the recorded deed of agricultural conservation easement.

(4) The Soil Report Form "C" (a form provided by the Department), both pages. See Appendix B (relating to Form C Soils Report).

§ 138e.255. State Board review of applications.

(a) *Department's responsibility.* The Department will stamp or otherwise identify every complete reimbursement grant application form to record the date it is received and the relative order in which these applications are received.

(b) *State Board review.* The State Board will consider reimbursement grant applications in the order in which the Department received them. The State Board will review any complete, timely application within 60 days of receipt. The State Board may not approve a reimbursement grant application unless all of the following criteria are met:

(1) The application meets the requirements of section 14.5(a)(3) of the act (3 P.S. § 914.5(a)(3)).

(2) The land use restrictions imposed under the deed of agricultural conservation easement are comparable to restrictions imposed under a deed of agricultural conservation easement acquired in accordance with the act, as described in § 138e.241 (relating to deed clauses).

(3) One of the following applies:

(i) The land subject to the agricultural conservation easement meets the following criteria:

(A) The land is in an agricultural security area consisting of 500 acres or more.

(B) The land is contiguous acreage of at least 25 acres in size unless the tract is at least 10 acres in size and is either utilized for a crop unique to the area or is contiguous to a property which has a perpetual conservation easement in place which is held by a "qualified conservation organization," as that term is defined in section 170(h)(3) of the Internal Revenue Code (26 U.S.C.A. § 170(h)(3)).

(C) The land contains at least 50% of soils which are both available for agricultural production and of land capability classes I-IV, as defined by the USDA-NRCS.

(D) The land contains the greater of 50% or 10 acres of harvested cropland, pasture or grazing land.

(ii) The land subject to the agricultural conservation easement meets the following criteria:

(A) The land is in an agricultural security area consisting of 500 acres or more.

(B) The land is of any acreage but adjoins land that is either currently subject to an agricultural conservation easement purchased under authority of the act or adjoins land that has been approved by the State Board for agricultural conservation easement purchase under authority of the act, so that—in the aggregate—the land and the restricted land it adjoins comprise at least 50 contiguous acres.

(4) There are sufficient unencumbered funds available to fund the reimbursement grant amount sought in the reimbursement grant application.

§ 138e.256. Decision of the State Board.

The State Board will, within 10 days of completing its review, mail a reimbursement grant applicant written notice as to whether the reimbursement grant application is approved. If the application is not approved, the written notice will specify the basis for disapproval.

(Editor's Note: The following chapter is new. It has been printed in regular type to enhance readability.)

CHAPTER 138I. AGRICULTURAL SECURITY AREA PROGRAM

Subchap.

- A. PRELIMINARY PROVISIONS
- B. FORMATION OF AN AGRICULTURAL SECURITY AREA
- C. ADDING LAND TO AN EXISTING ASA
- D. REMOVING LAND FROM AN EXISTING ASA
- E. SEVEN-YEAR REVIEW AND INTERIM REVIEW

Subchapter A. PRELIMINARY PROVISIONS

Sec.

- 138I.1. Definitions.
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- 138I.3. Contacting the Department.

§ 138I.1. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

ALCAB—The Agricultural Lands Condemnation Approval Board of the Commonwealth.

ASA—*Agricultural security area*—A unit of 250 or more acres used for the agricultural production of crops, livestock or livestock products under the ownership of one or more persons and one of the following applies:

(i) The land has been designated as such by the procedures in the act.

(ii) The land has been designated as such under the act of January 19, 1968 (1967 P.L. 992, No. 442) (32 P.S. §§ 5001–5012), entitled "An act authorizing the Commonwealth of Pennsylvania and the counties thereof to preserve, acquire or hold land for open space uses," prior to February 12, 1989, by the governing body of the county or governing body of the municipality in which the agricultural land is located on the basis of criteria and procedures which predate February 12, 1989, and which was not withdrawn from the ASA by August 10, 1989, by the owner providing written notice of withdrawal to the county governing body or governing body of the municipality in which the land is located.

ASA landowner—An owner of land located within an ASA.

ASA proposal form—A Proposal for the Creation or Modification of an Agricultural Security Area form created by the Department.

Act—The Agricultural Area Security Law (3 P.S. §§ 901—915).

Advisory committee—An Agricultural Security Area Advisory Committee.

Agricultural conservation easement—An interest in land, less than fee simple, which interest represents the right to prevent the development or improvement of a parcel for any purpose other than agricultural production.

(i) The easement may be granted by the owner of the fee simple to any third party or to the Commonwealth, to a county governing body or a unit of local government.

(ii) It shall be granted in perpetuity as the equivalent of covenants running with the land.

(iii) The exercise or failure to exercise any right granted by the easement will not be deemed to be management or control of activities at the site for purposes of enforcement of the Hazardous Sites Cleanup Act (35 P.S. § 6020.101—6020.1305).

Agricultural production—

(i) The production for commercial purposes of crops, livestock and livestock products, including the processing or retail marketing of the crops, livestock or livestock products if more than 50% of the processed or merchandised products are produced by the farm operator.

(ii) The term includes use of land which is devoted to and meets the requirements of and qualifications for payments or other compensation under a soil conservation program under an agreement with an agency of the Federal government.

Applicant—A landowner proposing the establishment or modification of an ASA in accordance with the requirements of the act and this chapter.

Contiguous acreage—

(i) All portions of one operational unit as described in the deed whether or not the portions are divided by streams, public roads, bridges, and whether or not described as multiple tax parcels, tracts, purparts, or other property identifiers.

(ii) The term includes supportive lands such as unpaved field access roads, drainage areas, border strips, hedgerows, submerged lands, marshes, ponds and streams, or as otherwise defined in § 138e.3 (relating to definitions).

County board—The county agricultural land preservation board as appointed by the county governing body under the act.

County fiscal year—The period from January 1 through December 31 of a particular calendar year.

County governing body—The county board of commissioners or, under home rule charters, another designated council of representatives.

County planning commission—A planning commission or agency which has been designated by the county governing body to establish and foster a comprehensive plan for land management and development within the county.

Crops, livestock and livestock products—The term includes:

(i) Field crops, including corn, wheat, oats, rye, barley, hay, potatoes and dry-beans.

(ii) Fruits, including apples, peaches, grapes, cherries and berries.

(iii) Vegetables, including tomatoes, snap beans, cabbage, carrots, beets, onions and mushrooms.

(iv) Horticultural specialties, including nursery stock and ornamental shrubs, ornamental trees and flowers.

(v) Livestock and livestock products, including cattle, sheep, hogs, goats, horses, poultry, furbearing animals, milk, eggs and furs.

(vi) Timber, wood and other wood products derived from trees.

(vii) Aquatic plants and animals and their byproducts.

Curtilage—The area surrounding a residential structure used for a yard, driveway, onlot sewerage system or other nonagricultural purposes.

Department—The Department of Agriculture of the Commonwealth.

Description of the proposed area—A complete and accurate list of the names of the owners of each parcel of land to be included in the proposed ASA, the tax parcel number or account number of each parcel and the number or account number of acres (including partial acres, to the nearest thousandth) contained in each parcel. The description shall use county tax map references for determining boundaries of each parcel, and no survey of parcels shall be required, except that an individual parcel included in the ASA shall represent less than the entire amount of contiguous land contained in the property of an owner.

Economic viability of farmland for agricultural production—The capability of a particular tract of restricted land, other than a tract of 2 acres or less upon which construction and use of the landowner's principal residence or housing for seasonal or full-time farm employees is permitted under section 14.1(c)(6)(iv) of the act (3 P.S. § 914.1(c)(6)(iv)), to meet the criteria in § 138e.16(a) (relating to minimum criteria for applications).

Eligible counties—Counties whose county programs have been approved by the State Board. For the purpose of annual allocations, an eligible county shall have its county program approved by the State Board by January 1 of the year in which the annual allocation is made. Counties of the first class are not eligible under any circumstances.

Farm—Land in this Commonwealth which is being used for agricultural production as defined in the act.

Farmland tract or tract—Land constituting all or part of a farm with respect to which easement purchase is proposed. A farmland tract may consist of multiple tracts of land that are identifiable by separate tax parcel numbers, separate deeds or other methods of property identification.

Governing body—The governing body of a local government unit.

Grazing or pasture land—Land, other than land enrolled in the USDA Conservation Reserve Program, used primarily for the growing of grasses and legumes which are consumed by livestock in the field and at least 90% of which is clear of trees, shrubs, vines or other wood growth not consumed by livestock.

Harm the economic viability of the farmland for agricultural production—To cause a particular tract of restricted land to fail to meet the criteria in § 138e.16(a) or to create, through subdivision, a tract of restricted land, other than a tract of 2 acres or less upon which construction and use of the landowner's principal residence or housing for seasonal or full-time farm employees is permitted under section 14.1(c)(6)(iv) of the act, that would fail to meet the criteria in § 138e.16(a).

Harvested cropland—

(i) Land, other than land enrolled in the USDA Conservation Reserve Program, used for the commercial production of field crops, fruit crops, vegetables and horticultural specialties, such as Christmas trees, flowers, nursery stock, ornamentals, greenhouse products and sod.

(ii) The term does not include land devoted to production of timber and wood products.

Interim review—The interim review of an existing ASA in accordance with the requirements of section 9(b) of the act (3 P. S. § 909(b)).

Land Capability Class—A group of soils designated by either the county soil survey, as published by USDA-NRCS in cooperation with the Pennsylvania State University and the Department, or the *Soil and Water Conservation Technical Guide* maintained and updated by USDA-NRCS.

Landowner—The person holding legal title to a particular farmland tract.

Land which has been devoted primarily to agricultural use—

(i) Acreage which is a part of restricted land and is harvested cropland, grazing or pasture land, land used for the production of timber and wood products, land containing nonresidential structures used for agricultural production, or other acreage immediately available for agricultural production.

(ii) The term does not include: any acreage upon which immediate agricultural production is impracticable due to residential structures and their curtilages, wetlands, soil quality, topography or other natural or manmade features.

(iii) The term does not include: any tract of 2 acres or less designated as the site upon which the landowner's principal residence or housing for seasonal or full-time employees is permitted under section 14.1(c)(6)(iv) of the act.

Local government unit—A city, borough, township or town or any home rule municipality, optional plan municipality, optional charter municipality or similar general purpose unit of government which may be created or authorized by statute.

Mansion house—The primary residential structure located upon a parcel.

Nonprofit land conservation organization—A nonprofit organization dedicated to land conservation purposes recognized by the Internal Revenue Service as a tax-exempt organization under the Internal Revenue Code of 1986 (26 U.S.C. §§ 1-7872).

Normal farming operation—

(i) The customary and generally accepted activities, practices and procedures that farmers engage in year after year in the production and preparation for market of crops, livestock and livestock products and in the produc-

tion and harvesting of agricultural, agronomic, horticultural, silvicultural, and aquacultural crops and commodities.

(ii) The term includes the storage and utilization of agricultural and food processing wastes for animal feed and the disposal of manure, other agricultural waste and food processing waste on land where the materials will improve the condition of the soil or the growth of crops or will aid in the restoration of the land for the same purposes.

Nutrient management plan—A written site-specific plan which incorporates best management practices to manage the use of plant nutrients for crop production and water quality protection consistent with the Nutrient Management Act (3 P. S. §§ 1701-1718).

Parcel—A tract of land in its entirety which is assessed for tax purposes by one county, including any portion of that tract that may be located in a neighboring county. The county responsible for assessing an entire tract, on its own or in conjunction with either the Commonwealth or a local government unit, or both, shall be eligible to purchase agricultural conservation easements covering the entire tract.

Pennsylvania Municipalities Planning Code—53 P. S. §§ 10101-11201.

Person—A corporation, partnership, business trust, other association, government entity (other than the Commonwealth), estate, trust, foundation or natural person.

Planning commission—A local government planning commission or agency which has been designated by the governing body to establish and foster a comprehensive plan for land management and development within the local government unit.

Restricted land—Land which is subject to the terms of an agricultural conservation easement acquired under the act.

Secretary—The Secretary of Agriculture.

7-year review—The periodic review of an existing ASA in accordance with the requirements of section 9(a) of the act (3 P. S. § 909(a)).

Soils available for agricultural production—Soils on land that is harvested cropland, pasture or grazing land, or land upon which no structure, easement, roadway, curtilage or natural or manmade feature would impede the use of that soil for agricultural production.

Soils report—A report which identifies and sets forth the amount of each land capability class found on a farm land tract.

State Board—The State Agricultural Land Preservation Board.

State-certified general real estate appraiser—A person who holds a current general appraiser's certificate issued under the Real Estate Appraisers Certification Act (63 P. S. §§ 457.1-457.19).

Subdivision—The division or redivision of a lot, tract or parcel of land by any means into two or more lots, tracts, parcels or other divisions of land including changes in existing lot lines for the purpose, whether immediate or future, of lease, partition by the court for distribution to heirs or devisees, transfer of ownership or building or lot development, or as otherwise defined in § 138e.3.

Title report—

(i) A report prepared by a person authorized by the Insurance Department to engage in the sale of title insurance or an attorney setting forth the existence of any liens, restrictions or other encumbrances on a farmland tract.

(ii) The term does not include the title search, but does include the title binder or the title commitment, or both.

USDA—The United States Department of Agriculture.

USDA-NRCS—The Natural Resources Conservation Service of the USDA. This entity was formerly known as the Soil Conservation Service.

Viable agricultural land—Land suitable for agricultural production and which will continue to be economically feasible for that use if real estate taxes, farm use restrictions and speculative activities are limited to levels approximating those in commercial agricultural areas not influenced by the proximity of urban and related nonagricultural development.

§ 1381.2. Purpose.

This chapter provides regulatory guidance with respect to the benefits of having land in an ASA, the application and review process under which an ASA is formed, the procedures involved in recording an ASA, the addition of land to an existing ASA and the removal of land from an existing ASA, and to otherwise further the purposes of the act.

§ 1381.3. Contacting the Department.

(a) The forms referenced in this chapter may be obtained from the Department, by contacting the following: Director, Bureau of Farmland Preservation, Department of Agriculture, 2301 North Cameron Street, Harrisburg, Pennsylvania 17110-9408, (717) 783-3167.

(b) These forms shall also be available and may be downloaded from the Department's website, at the following internet website address: www.pda.state.pa.us.

Subchapter B. FORMATION OF AN AGRICULTURAL SECURITY AREA

Sec.	
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§ 1381.11. Agricultural security area advisory committee.

(a) *Time for formation of an advisory committee.* A governing body may establish an advisory committee at any time. When a proposal for the creation of an ASA is received by a governing body, though, the governing body shall establish an advisory committee if it has not already done so.

(b) *Appointment and composition of an advisory committee.* An advisory committee shall be appointed by the

chairperson of the governing body of the local government unit in which the ASA is located, or is to be located. The members of the advisory committee shall serve at the pleasure of that chairperson. An advisory committee shall be composed of five members, as follows:

(1) A member of the governing body of the local government unit, who shall be chairperson of the advisory committee.

(2) One citizen residing within the local government unit.

(3) Three active farmers, each representing a different private or corporate farm situated, at least in part, within the local government unit.

(c) *Functions of an advisory committee.* An advisory committee shall advise the governing body and work with the planning commission in relation to the proposed establishment, modification, review and termination of an ASA. An advisory committee shall render expert advice as to the nature and desirability of these actions, including advice as to the nature of farming and farm resources within the proposed or existing ASA and the relationship of farming in the ASA to the local government unit as a whole.

§ 1381.12. Eligibility to propose the creation of an ASA.

An owner or a group of owners of land are eligible to propose the creation of an ASA if the following conditions are met:

(1) The land described in the proposal is used for agricultural production (although a reasonable amount of nonviable farm land and nonfarm land may be included if it is not feasible to exclude it).

(2) Some portion of the land described in the proposal lies within the local government unit to which the proposal is submitted.

(3) The total acreage described within the proposal comprises at least 250 acres of viable agricultural land.

(4) If tax parcel numbers or accounts reflect that a parcel is not contiguous to other land included in the proposal, that tax parcel or account is at least one of the following:

(i) Comprised of 10 or more acres.

(ii) Has anticipated yearly gross income of at least \$2,000 from agricultural production.

§ 1381.13. ASA proposal form.

(a) *Governing body has discretion.* The governing body may prescribe the manner and form of the process under which it will receive and consider proposals for the formation of an ASA, to the extent the exercise of that discretion does not violate any provision of the act or this chapter. A governing body may require the use of its own ASA proposal form meeting the requirements of subsection (b), or may use the Department's ASA proposal form as described in subsection (c).

(b) *Minimum requirements for a proposal.* An ASA proposal shall, at a minimum, contain the following:

(1) The name of the township, borough, city or other local government unit to which the ASA proposal is submitted.

(2) The county of the local government unit to which the ASA proposal is submitted.

(3) A description of the boundaries, of the proposed ASA.

(4) With respect to each farmland parcel listed on the ASA proposal:

(i) The printed name and address of each person owning land proposed for inclusion in the ASA.

(ii) The signature of each person described in subparagraph (i).

(iii) The county tax parcel number or account number identifying the parcel.

(iv) The acreage of the parcel.

(5) Other information as might be reasonably required to establish the boundaries of the proposed ASA, the owners of the parcels of farmland described in the ASA and compliance with the act and this chapter.

(c) *ASA proposal form available from the Department.* The Department will provide any person or local government unit, upon request, copies of an ASA proposal form created by the Department. A request for an ASA proposal form may be directed to the Department in accordance with § 1381.3 (relating to contacting the Department) or the local government unit in which the ASA proposal form could be filed.

1381.14. Fees.

(a) *General prohibition.* Except as provided in subsection (b), the governing body may not charge a landowner a fee for the filing of an ASA proposal or for any action the governing body is required to take under the act or this chapter.

(b) *Exception.* A governing body may, by resolution, impose reasonable filing fees for the administration and review of an ASA proposal if all of the following apply:

(1) The proposal includes substantially the same lands proposed in a previously-submitted application.

(2) The governing body had rejected that previously-submitted application within 36 months preceding the date the proposal was submitted.

(3) The previous rejection was based upon the recommendations of the advisory committee and the planning commission.

1381.15. ASA located in more than one local government unit.

There are four ways in which an ASA may be created or modified to contain land located in more than one local government unit as follows:

(1) The ASA proposal may be directed to the governing bodies of each of the affected local government units and approved in accordance with the process described in 1381.31(b) and (c) (relating to adding land to an existing ASA).

(2) A parcel of farmland that straddles the boundary between two local government units shall be automatically included in the ASA of one of those local government units if the other local government unit has approved an ASA and the majority of the parcel's viable agricultural land is within the local government unit seeking to create an ASA or add the parcel to an existing ASA, as described in § 1381.32 (relating to automatic inclusion of certain parcels bisected by the dividing line between local government units).

(3) A parcel of farmland that straddles the boundary between two local government units shall be auto-

matically included in the ASA if the majority of the parcel's viable agricultural land is already in the ASA and an agricultural conservation easement is purchased with respect to the parcel, as described in § 1381.33 (relating to automatic inclusion of certain parcels bisected by the dividing line between local government units upon purchase of an agricultural conservation easement by certain entities).

(4) A parcel of farmland that straddles the boundary line between two counties shall be automatically included in the ASA of one of those counties if an agricultural conservation easement is purchased with respect to the parcel, as described in § 1381.34 (relating to automatic inclusion of certain parcels bisected by the dividing line between counties upon the purchase of an agricultural conservation easement by certain entities).

§ 1381.16. Submitting an ASA proposal form to the local government unit.

(a) *Form submitted by certified mail, return receipt requested.* A person shall submit an ASA proposal form to the governing body of the local government unit in which the ASA is situated. The form shall only be submitted by certified mail, with return receipt requested.

(b) *Date of receipt.* The return receipt shall be official notice that the local government unit has received the ASA proposal form, and the date reflected on that receipt shall constitute the official date of receipt for purposes of calculating the period within which review must occur.

§ 1381.17. Local government unit action upon receipt of an ASA proposal.

(a) *Acknowledgement of receipt.* If a local government unit receives an ASA proposal form by certified mail with return receipt requested, the governing body shall acknowledge receipt of the ASA proposal at its next regular or special meeting. The acknowledgement shall be reflected in the minutes of that meeting.

(b) *Providing notice.* Within 15 days of the date of receipt of an ASA proposal, the local government unit shall provide notice of the ASA proposal by doing both of the following:

(1) Publishing a notice that meets the requirements of subsection (c) in a newspaper having general circulation within the proposed ASA.

(2) Posting a notice that meets the requirements of subsection (c) in at least five conspicuous places within, adjacent to or near the proposed ASA.

(c) *Contents of notice.* The notices described in subsection (b) shall contain the following information:

(1) A statement that an ASA proposal has been filed with the governing body under the act.

(2) A statement that the ASA proposal will be on file for public inspection in the office of the local government unit.

(3) A statement that the following persons or entities may propose modifications of the proposed ASA:

(i) Any local government unit having land within or adjacent to the proposed ASA.

(ii) Any landowner who owns land proposed to be included within the ASA.

(iii) Any landowner with lands adjacent to or near the proposed ASA.

(4) A statement that objections to the proposed ASA or proposed modifications to the proposed ASA shall be filed

with the governing body and the planning commission within 15 days of the date of publication of the notice, with an explanation of the filing procedure prescribed by the governing body.

(5) A statement that at the termination of the 15-day period described in paragraph (4), the ASA proposal and all proposed modifications will be submitted to the planning commission and the advisory committee, and that thereafter a public hearing will be held on the proposal, proposed modifications and the recommendations of the planning commission and advisory committee.

(d) *Window for receipt of objections or proposed modifications.* The governing body shall receive and consider any proposed modifications of a proposed ASA from the entities described in subsection (c)(3) until no more than 7 days prior to the advertisement of the public hearing described in § 1381.18 (relating to public hearing by local government unit on ASA proposal).

(e) *Submitting documents to the planning commission and the advisory committee.* Upon the termination of the 15-day period described in subsection (c)(4) and (5), the governing body shall submit the ASA proposal and all proposed modifications to the planning commission and the advisory committee for review. The governing body shall retain a record of the date upon which the referenced materials are submitted to these reviewing bodies.

§ 1381.18. Public hearing by local government unit on ASA proposal.

(a) *Public hearing required.* The governing body shall hold a public hearing on an ASA proposal or proposed modification of an ASA. The public hearing shall be scheduled promptly after the earlier of the following:

(1) Receipt of both the report of the planning commission, as described in § 1381.24 (relating to relating to planning commission action with respect to an ASA proposal) and the report of the advisory committee, as described in § 1381.25 (relating to advisory committee action with respect to an ASA proposal).

(2) The expiration of the 45-day review periods afforded the planning commission under § 1381.24(b) and the advisory committee under § 1381.25(b).

(b) *Hearing notice required.* The governing body shall provide notice of the public hearing described in subsection (a) by doing the following:

(i) Publishing a hearing notice in a newspaper having general circulation in the proposed ASA.

(ii) Providing a written hearing notice to the following:

(A) Any person who proposed a modification to the ASA.

(B) Any person owning land included in the proposed modifications to an existing ASA.

(C) Any person owning land included within the proposed ASA.

(iii) Posting a written hearing notice in at least five conspicuous places within, adjacent to or near the proposed ASA or the proposed modifications.

(c) *Contents of hearing notice.* The hearing notice described in subsection (b) shall contain the following:

(i) A statement of the time, date and location of the public hearing.

(ii) A description of the proposed ASA, and any proposed additions or deletions.

(iii) A summary of the recommendations contained in the reports of the planning commission and the advisory committee. If the planning commission did not render its report within the 45-day period described in § 1381.24(b), or the advisory committee did not render its report within the 45-day period described in § 1381.25(b), the notice shall report this fact and indicate that the reviewing body is deemed to have given its approval to the proposed ASA or proposed modifications.

(iv) A statement that the public hearing will be held concerning the following:

(A) The original ASA proposal.

(B) Any written amendments proposed during the review period.

(C) Any recommendations proposed by the planning commission or the advisory committee.

(d) *Location of public hearing.* The public hearing described in subsection (a) shall be held at a place either within the proposed ASA or at a location readily accessible to the proposed ASA—such as a nearby municipal building.

§ 1381.19. Decision of local government unit.

(a) *180-day deadline.* A governing body shall act to adopt or reject an ASA proposal, or any modification of a proposal, within 180 days of the official date of receipt of the ASA proposal, as this date is described in § 1381.16(b) (relating to submitting an ASA proposal form to the local government unit). If the governing body fails to act within this 180-day period, the ASA proposal shall be deemed adopted by the governing body, and any proposed modifications to the ASA proposal shall be deemed rejected by the governing body.

(b) *Factors to be considered in reaching decision.* The governing body shall consider the following in reaching its decision with respect to an ASA proposal or proposed modifications:

(1) The factors in § 1381.26(a) (relating to factors to be considered by the governing body of the local government unit, the planning commission and the advisory committee).

(2) The inclusion, to the extent feasible, of adjacent viable farmland where the landowner has applied to have the land included.

(3) The exclusion, to the extent feasible, of nonviable farmland and nonfarm land. It is not ordinarily feasible to require the exclusion or surveying-out of the incidental nonviable farm land and nonfarm land that is typically present on a parcel of viable agricultural land.

(i) This nonviable farm land or nonfarm land might include hedgerows, driveways and farm roads, lands containing soils in Land Capability Classes V—VIII, and land upon which farm buildings or residential structures and their curtilages are located.

(ii) The exclusion of nonviable farm land and nonfarm land becomes more feasible as the percentage of these types of land—as a proportion of a parcel's total acreage—increases and the percentage of viable agricultural land within the parcel decreases.

§ 1381.20. Notice of decision of the local government unit.

(a) *Rejection or modification.* If a governing body rejects or modifies an ASA proposal, it shall provide each landowner affected by the rejection or modification with a written decision as described in subsection (c). This

cision shall be provided by mail, and shall be mailed to each affected landowner within 10 days of the decision.

(b) *Approval.* If a governing body approves an ASA proposal, it shall provide each landowner affected by the approval with written notification of this approval and the effective date of the ASA or ASA modifications. This notification shall be provided by mail, and shall be mailed to each affected landowner within 10 days of the decision.

(c) *Contents of written decision.* The written decision described in subsection (a) shall contain the following:

- (1) Findings of fact.
- (2) A review of the evaluation criteria in § 1381.26 relating to factors to be considered by the governing body of the local government unit, the planning commission and the advisory committee).
- (3) A discussion of the reasons for rejection or modification of the proposal.

1381.21. Effective date of the creation or modification of an ASA.

(a) *ASA proposal or modification covering land in a single local government unit.* If an ASA proposal or proposed modification involves land located entirely within a single local government unit, the ASA shall become effective upon the date the governing body of the local government unit approves the ASA. If proposed modifications to an ASA proposal are made, and the modifications involve land located entirely within the same single local government unit as the proposed ASA, the modifications shall become effective as of the date the governing body of the local government unit approves the modifications.

(b) *ASA proposal or modification covering land in more than one local government unit.* If an ASA proposal or proposed modification involves land located in more than one local government unit, the ASA shall become effective upon the date a local government unit, or a combination of local government units, approves a portion of the ASA proposal that meets the minimum acreage and other requirements for an ASA in § 1381.12 (relating to eligibility to propose the creation of an ASA), or as otherwise prescribed by the act. The remaining portions of the ASA proposal shall become effective upon the date of local government unit approval.

(c) *Deemed approval date.* If a governing body fails to approve, reject or modify an ASA proposal within 180 days of the official date of receipt of the ASA proposal, as described in §§ 1381.16(b) and 1381.19(a) (relating to submitting an ASA proposal form to the local government unit; and decision of local government unit), the ASA proposal shall be deemed to have been adopted without modification, and the ASA shall become effective as of the expiration of that 180-day period.

(d) *Automatic inclusion: certain parcels transected by the dividing line between local government units.* If a portion of a parcel is located within a local government unit that does not have an ASA established within its borders, that portion may—without the approval of the governing body of that local government unit—be included in the ASA of an adjoining local government unit in accordance with the procedure described in § 1381.32 relating to automatic inclusion of certain parcels transected by the dividing line between local government units. The ASA shall become effective upon the date the governing body of the adjoining local government unit approves the ASA.

(e) *Automatic inclusion: certain agricultural conservation easement purchases involving land in more than one local government unit.* If a portion of a parcel is not located within an ASA, but an agricultural conservation easement is purchased with respect to the parcel in accordance with § 1381.33 (relating to automatic inclusion of portions of certain parcels bisected by the dividing line between local government units upon the purchase of an agricultural conservation easement), the portion shall become part of an ASA upon the purchase of the agricultural conservation easement.

(f) *Automatic inclusion: cross-county agricultural conservation easement purchases.* If a portion of a parcel is not located within an ASA, but an agricultural conservation easement is purchased with respect to the parcel in accordance with § 1381.34 (relating to automatic inclusion of portions of certain parcels bisected by the dividing line between counties upon the purchase of an agricultural conservation easement), the portion shall become part of an ASA upon the purchase of the agricultural conservation easement.

§ 1381.22. Filing of ASA description by governing body; recording of the ASA description.

(a) *Responsibility of governing body.* Within 10 days of the effective date of the creation of an ASA, as described in § 1381.21 (relating to effective date of the creation or modification of an ASA), the governing body shall file a description of the ASA with the following:

- (1) The recorder of deeds of any county within which the ASA is located.
- (2) The county planning commission.
- (3) The planning commission of the local government unit.

(b) *Responsibility of the recorder.* A recorder of deeds receiving an ASA description from a governing body as described in subsection (a) shall record the description in a manner sufficient to give notice to all persons who have an interest in land within the ASA or in lands adjoining the ASA.

§ 1381.23. Notification of secretary by governing body.

(a) *Responsibility of the governing body.* Within 10 days of the recording of the ASA, as described in § 1381.22 (relating to filing of ASA description by governing body; recording of the ASA description), the governing body shall notify the Secretary that the ASA has been approved, modified or terminated. This notification shall be accomplished by mailing written notification to the address in § 1381.3 (relating to contacting the Department).

(b) *Contents of notice.* The written notice described in subsection (a) shall include the following information:

(1) The number of landowners whose land is in the ASA. The notification shall include only one landowner when land is under multiple ownership or is comprised of multiple parcels or accounts.

(2) The total acreage of the ASA.

(3) The effective date of the approval, modification or termination.

(4) The date upon which the approval, modification or termination was recorded in accordance with § 1381.22.

§ 1381.24. Planning commission action with respect to an ASA proposal.

(a) *Record of the date of receipt.* If a governing body submits an ASA proposal and all proposed modifications

to a planning commission in accordance with § 1381.17(e) (relating to local government unit action upon receipt of an ASA proposal), the planning commission shall retain a record of the date upon which the referenced materials are received. This may be accomplished by time-stamping the documents, providing the governing body written confirmation of the date of receipt or other reasonable means of creating a record of the date upon which the documents were received.

(b) *45-day review period.* A planning commission shall have up to 45 days from receipt of an ASA proposal and any proposed modifications from the governing body within which to submit a report to that governing body. If the planning commission fails to submit this report to the governing body within the 45-day review period, this failure to act shall be deemed to constitute the planning commission's approval of the ASA proposal. A report is considered "submitted" when it is delivered to the governing body.

(c) *Factors to be considered.* The planning commission shall consider the factors in § 1381.26 (relating to factors to be considered by the governing body of the local government unit, the planning commission and the advisory committee) in reaching its recommendation concerning the ASA proposal and proposed modifications.

(d) *Contents of report.*

(1) *Report by a county planning commission.* If the planning commission described in subsection (b) is a county planning commission, its report shall contain that body's recommendations concerning the proposal and proposed modifications.

(2) *Report by a planning commission that is not a county planning commission.* If the planning commission described in subsection (b) is a not a county planning commission, its report shall relate the potential effect of the proposal and proposed modifications upon the local government's planning policies and objectives.

§ 1381.25. *Advisory committee action with respect to an ASA proposal.*

(a) *Record of the date of receipt.* If a governing body submits an ASA proposal and all proposed modifications to an advisory committee in accordance with § 1381.17(e) (relating to local government unit action upon receipt of an ASA proposal), the advisory committee shall retain a record of the date upon which the referenced materials are received. This may be accomplished by time-stamping the documents, providing the governing body written confirmation of the date of receipt or other reasonable means of creating a record of the date upon which the documents were received.

(b) *45-day review period.* An advisory committee shall have up to 45 days from receipt of an ASA proposal and any proposed modifications from the governing body within which to submit a report to that governing body. If the advisory committee fails to submit this report to the governing body within the 45-day review period, this failure to act shall be deemed to constitute the advisory committee's approval of the ASA proposal. A report is considered "submitted" when it is delivered to the governing body.

(c) *Factors to be considered.* The planning commission shall consider the factors in § 1381.26 (relating to factors to be considered by the governing body of the local government unit, the planning commission and the advisory committee) in reaching its recommendation concerning the ASA proposal and proposed modifications.

(d) *Contents of report.* The report of an advisory committee shall contain that body's recommendations concerning the proposal and proposed modifications.

§ 1381.26. *Factors to be considered by the governing body of the local government unit, the planning commission and the advisory committee.*

(a) *Factors.* The governing body of the local government unit, the planning commission and the advisory committee shall consider the following factors in their respective reviews of an ASA proposal and proposed modifications:

(1) *Soil quality.* Land proposed for inclusion in an ASA shall have soils which are conducive to agriculture. This factor will have been satisfied without further consideration if the land to be included in the ASA meets one or more of the following standards:

(i) At least 50% of the land contains soils classified in Land Capability Classes I—IV.

(ii) At least 50% of the land falls within the Land Capability Class for "unique farmland."

(iii) At least 50% of the land contains soils that do not meet Land Capability Classes I—IV, but the land is in current active farm use and is being maintained in accordance with a soil erosion and sedimentation plan applicable to that land.

(2) *Consistency with comprehensive plans.* The use of land proposed for inclusion in an ASA shall be compatible with local government unit comprehensive plans.

(3) *Zoning.* If the land is subject to zoning requirements, it shall be zoned so as to permit agricultural use. The land need not be zoned to exclude other uses. A landowner may propose to include any land in an ASA, but the land must meet the zoning requirements of this paragraph.

(4) *Viable agricultural land.* Land proposed for inclusion in an ASA shall be viable agricultural land.

(5) *Extent and nature of farm improvements.* The extent and nature of farm improvements shall be considered.

(6) *Trends in agricultural economics.* Anticipated trends in agricultural conditions shall be considered.

(7) *Trends in agricultural technology.* Anticipated trends in agricultural technology shall be considered.

(8) *Other factors.* The governing body of the local government unit, the planning commission and the advisory committee may consider any other matter that may be relevant to its review and decision.

(b) *Resource materials.* The following are among the resource materials that may be used in reviewing an ASA proposal and proposed modifications:

(1) Soil surveys of the Pennsylvania State University.

(2) Soil surveys and other information provided by the National Cooperative Soil Survey.

(3) Soil survey maps prepared by USDA-NRCS.

(4) The United States census of agricultural categories of land use classes.

(5) Any other relevant published data, maps, charts, results of soil or land use surveys made by any county, State or Federal agency.

Subchapter C. ADDING LAND TO AN EXISTING ASA

- Sec.
 1381.31. Adding land to an existing ASA.
 1381.32. Automatic inclusion of certain parcels bisected by the dividing line between local government units.
 1381.33. Automatic inclusion of certain parcels bisected by the dividing line between local government units upon the purchase of an agricultural conservation easement by certain entities.
 1381.34. Automatic inclusion of portions of certain parcels bisected by the dividing line between counties upon the purchase of an agricultural conservation easement by certain parties.

§ 1381.31. Adding land to an existing ASA.

(a) *Adding land to an ASA located entirely within the same local government unit as the land proposed for inclusion.* If an ASA is entirely contained within a single local government unit, land that is located within that same local government unit may be added to the ASA at any time, using the same process and procedure that is followed for the initial creation of an ASA, as set forth in this chapter.

(b) *Adding land to an ASA located within two or more local government units, where the land proposed for inclusion lies entirely within the local government units in which the existing ASA is located.* If an ASA is contained within two or more local government units, land that is located entirely within the local government units in which the ASA is located may be added to the ASA at any time, using the same process and procedure that is followed for the initial creation of an ASA, as set forth in this chapter.

(c) *Adding land to an ASA where the land proposed for inclusion lies entirely outside the local government units in which the ASA is located.* If an ASA is contained within one or more local government units, land that is located in a local government unit outside of a local government unit within which the ASA is located may be added to an ASA at any time, if the following apply:

(1) Prior to the submission of the proposal, the local government unit in which the land proposed for inclusion is located and each local government unit in which the existing ASA is located have adopted an ordinance or resolution allowing all of the land (including, at a minimum, both the land in the existing ASA and the land proposed for inclusion) to be part of a single ASA located within all of the local government units.

(2) The addition is made using the same process and procedure that is followed for the initial creation of an ASA, as set forth in this chapter.

(d) *Minimum acreage requirement is inapplicable.* Where land is proposed for inclusion into an existing ASA, it need not meet the minimum 250-acres-of-viable-agricultural-land requirement that is applicable to the initial formation of an ASA.

Example: Three parcels of farmland, totaling 120 acres of viable agricultural land, are proposed for inclusion into an existing ASA. The total acreage of the parcels proposed for inclusion does not have to meet the same 250-acres-of-viable-agricultural-land standard that was applicable to the initial formation of the ASA.

(e) *Effect of addition of land to an existing ASA on the required 7-year review of the ASA.* If land is added to an existing ASA, the added land shall be reviewed at the same time the original land undergoes its 7-year review as described in § 1381.51 (relating to 7-year review) or an interim review as described in § 1381.52 (relating to interim review).

§ 1381.32. Automatic inclusion of certain parcels bisected by the dividing line between local government units.

If a parcel of farmland is bisected by the dividing line between two local government units, the entire parcel shall be automatically included in an ASA—whether in the initial creation of the ASA or by modification of an existing ASA—if the following apply:

(1) The two local government units are in the same county.

(2) The parcel meets the eligibility requirements for inclusion in an ASA.

(3) A proposal for creation or modification of an ASA has been submitted to the governing body of one of the local government units in which the parcel is located, as set forth in this chapter seeking the following:

(i) In the case of a proposal for the creation of an ASA: the inclusion of the entire parcel in the ASA.

(ii) In the case of a proposal for the modification of an existing ASA, where no portion of the parcel is within that existing ASA: the inclusion of the entire parcel within the ASA.

(iii) In the case of a proposal for the modification of an existing ASA, where a portion of the parcel is part of the existing ASA: the inclusion of the remainder of the parcel within the ASA.

(4) A majority of the parcel's viable agricultural land lies within the local government unit to which the proposal for creation or modification of an ASA has been submitted.

(5) The local government unit in which the minority of the parcel's viable agricultural land is located has not approved the creation of an ASA within its borders.

(6) The governing body of the local government unit adopts a proposal for creation or modification of an ASA that includes—at a minimum—that portion of the parcel located within that government unit.

§ 1381.33. Automatic inclusion of certain parcels bisected by the dividing line between local government units upon the purchase of an agricultural conservation easement by certain entities.

(a) *General.* If a parcel of farmland is bisected by the dividing line between two local government units, and the portion of the parcel in one local government unit is within an ASA and the portion of the parcel in the other local government unit is not, the portion of the parcel that is not within an ASA shall be automatically included in the ASA if the following apply:

(1) A majority of the parcel's viable agricultural land lies within the local government unit in which the ASA is located.

(2) An agricultural conservation easement is purchased by any of the following with respect to the parcel:

(i) The county.

(ii) The county and the Commonwealth, jointly.

(iii) The county and a local government unit, jointly.

(iv) The county, the Commonwealth and a local government unit, jointly.

Example 1: A 100-acre parcel of farmland is comprised of 80 acres in Township A and 20 acres in Township B. The 80-acre portion of the parcel is within an ASA established by Township A. The

majority of the parcel's viable agricultural land is in Township A. The county purchases an agricultural conservation easement with respect to the parcel. Under these facts, as of the purchase of the agricultural conservation easement the 20-acre portion of the parcel located in Township B becomes part of the ASA covering the 80-acre portion of the parcel.

(b) *Exception.* Subsection (a) does not apply with respect to agricultural conservation easement purchases made solely by the Commonwealth.

§ 1381.34. Automatic inclusion of portions of certain parcels bisected by the dividing line between counties upon the purchase of an agricultural conservation easement by certain parties.

(a) *General.* If a parcel of farmland is bisected by the dividing line between two counties, and the portion of the parcel in one county is within an ASA and the portion of the parcel in the other county is not, the portion of the parcel that is not within an ASA shall be automatically included in the ASA if the following apply:

(1) One of the following applies:

(i) There is a mansion house on the parcel of farmland, and it is located in the county within which the existing ASA is located.

(ii) There is a mansion house on the parcel of farmland, and the mansion house is bisected by the dividing line between the two counties. The landowner has designated the county within which the ASA is located as the situs of assessment for tax purposes.

(iii) There is no mansion house on the parcel of farmland, but the majority of the parcel's viable agricultural land lies within the existing ASA.

(2) An agricultural conservation easement is purchased by any of the following with respect to the parcel:

(i) The county.

(ii) The county and the Commonwealth, jointly.

(iii) The county and a local government unit, jointly.

(iv) The county, the Commonwealth and a local government unit, jointly.

Example 1: A parcel of farmland straddles the boundary line between County A and County B. The portion of the parcel in County A is in an ASA. There is no mansion house on the parcel. The majority of the parcel's viable agricultural land is in County A. County A purchases an agricultural conservation easement with respect to the entire parcel. Under these facts, as of the purchase of the agricultural conservation easement the portion of the parcel in County B becomes part of the ASA in which the remainder of the parcel is located.

Example 2: A parcel of farmland straddles the boundary line between County A and County B. There is a mansion house on the parcel, and it is located in County A. County A purchases an agricultural conservation easement with respect to the entire parcel. Under these facts, as of the purchase of the agricultural conservation easement the portion of the parcel in County B becomes part of the ASA in which the remainder of the parcel is located.

Example 3: A parcel of farmland straddles the boundary line between County A and County B. There is a mansion house on the parcel, and it straddles the dividing line between County A and County B. County A is the situs of the mansion house for tax

purposes. County A purchases an agricultural conservation easement with respect to the entire parcel. Under these facts, as of the purchase of the agricultural conservation easement the portion of the parcel in County B becomes part of the ASA in which the remainder of the parcel is located.

(b) *Exception.* Subsection (a) does not apply with respect to agricultural conservation easement purchases made solely by the Commonwealth.

Subchapter D. REMOVING LAND FROM AN EXISTING ASA

Sec.

1381.41. Removing land that has been in an ASA for 7 years or more.

1381.42. Removing land in the course of the 7-year review or an interim review.

§ 1381.41. Removing land that has been in an ASA for 7 years or more.

(a) *Removal permitted.* If land has been in an ASA for seven years or more, it may be removed from the ASA at the landowner's discretion, if both of the following apply:

(1) The landowner submits to the governing body of the local government unit in which the ASA is situated a written notification to have the land deleted from the ASA. The written notification shall contain information sufficient to identify the land to be removed, and shall include the acreage of the land to be removed.

(2) The written notification is submitted by certified mail, with return receipt requested.

(b) *Limitation on authority.* The governing body does not have the authority to deny a landowner's notification to remove land from an ASA.

(c) *Effective date of removal.* The removal of land from an ASA shall take effect upon receipt of this written notification by the governing body in accordance with subsection (a)(2).

(d) *Recording the removal of land from an ASA.* The governing body may wait until the next 7-year review or interim review to record deletions of land from the ASA accomplished by the written notification described in this section.

(e) *Failure of remaining land to meet ASA eligibility requirements.* If the removal of land from an ASA in response to a landowner's written notification causes the remaining lands of the ASA to fail to meet the minimum standards for an ASA, as set forth in § 1381.12 (relating to eligibility to propose the creation of an ASA), the ASA shall terminate. The governing body shall be responsible to record this termination with the offices or entities described in § 1381.22(a)(1)–(3) (relating to filing of ASA description by governing body; recording of the ASA description).

§ 1381.42. Removing land in the course of the 7-year review or an interim review.

(a) *Removal permitted.* The landowner shall have the discretion to remove the land from the ASA in which it is located, if this removal is done in the course of the 7-year review process described in § 1381.51 (relating to 7-year review), or the interim review process described in § 1381.52 (relating to interim review), and the following apply:

(1) The landowner submits to the governing body of the local government unit in which the ASA is situated a written notification to have the land deleted from the ASA. The written notification shall contain information

sufficient to identify the land to be removed, and shall include the acreage of the land to be removed.

(2) The written notification is submitted by certified mail, with return receipt requested.

(b) *Limitation on authority.* The governing body does not have the authority to deny a landowner's notification to remove land from an ASA.

(c) *Effective date of removal.* The removal of land from an ASA shall take effect upon receipt of this written notification by the governing body in accordance with subsection (a)(2).

(d) *Recording the removal of land from an ASA.* The governing body shall record the removal of land from an ASA under this section as it would any other addition or deletion of land in the course of the 7-year review or interim review.

(e) *Failure of remaining land to meet ASA eligibility requirements.* If the removal of land from an ASA in response to a landowner's written notification causes the remaining lands of the ASA to fail to meet the minimum standards for an ASA, as set forth in § 1381.12 (relating to eligibility to propose the creation of an ASA), the ASA shall terminate. The governing body shall be responsible to record this termination with the offices or entities described in § 1381.22(a)(1)—(3) (relating to filing of ASA description by governing body; recording of the ASA description).

Subchapter E. SEVEN-YEAR REVIEW AND INTERIM REVIEW

Sec.
1381.51. Seven-year review.
1381.52. Interim review.

§ 1381.51. Seven-year review.

(a) *General.* The governing body of the local government unit shall review an ASA 7 years from the date of its creation and every 7 years thereafter, in accordance with the procedure in this section.

(b) *Advisory bodies to be consulted.* The governing body conducting a 7-year review shall request the recommendations of the planning commission, the county planning commission and the advisory committee with respect to the ASA that is being reviewed. The governing body shall seek and obtain these recommendations on its own timetable, but sufficiently in advance of the end of the 7th year to allow a summary of the recommendations of these advisory bodies to be included in the notice described in subsections (c)—(e).

(c) *Notice required 210 days or more before the end of the 7th year.* The governing body conducting a 7-year review shall, at least 210 days prior to the end of the 7th year, provide notice of the 7-year review of the ASA and the public hearing to be held as part of that review.

(d) *Notice procedure.* The notice described in subsection (c) shall be accomplished by doing the following:

- (1) Publishing a hearing notice in a newspaper having general circulation in the area in which the ASA is located.
- (2) Providing a written hearing notice to any person owning land within the ASA.
- (3) Posting a written hearing notice in at least five conspicuous places within, adjacent to or near the ASA.

(e) *Contents of hearing notice.* The hearing notice described in subsection (d) shall contain the following:

(1) A statement of the time, date and location of the public hearing.

(2) A general description of the ASA being reviewed.

(3) A general description of the recommendations of the planning commission, the county planning commission and the advisory committee.

(4) Notification that interested persons may, within 30 days of the date of the notice, submit proposed modifications to the ASA to the governing body.

(f) *Public hearing required between 120 and 180 days before the end of the 7th year.* The governing body conducting a 7-year review shall, at least 120 days prior to the end of the 7th year and no more than 180 days prior to the end of the 7th year, conduct a public hearing to review the ASA.

(g) *Location of public hearing.* The public hearing described in subsection (e) shall be held at a place either within the ASA or at a location readily accessible to the ASA—such as a nearby municipal building.

(h) *Factors to be considered by governing body.* The governing body shall consider the factors in § 1381.19(b) (relating to decision of local government unit) in reaching its decision to approve the ASA without change, modify the ASA or terminate the ASA.

(i) *Decision of governing body.* The governing body conducting a 7-year review shall, following the public hearing, approve the ASA without change, modify the ASA or terminate the ASA.

(j) *Notice of decision.* The governing body conducting a 7-year review shall provide notice of its decision in accordance with § 1381.20 (relating to notice of decision of local government unit).

(k) *Failure to act is deemed to be approval of the ASA without modification.* If the governing body fails to complete the steps set forth in subsections (a)—(i) prior to the end of the 7th year, or if a proposed modification to the ASA is rejected, the ASA shall be deemed to be readopted without modification for another 7 years.

(l) *Recording a modification of an ASA or a termination of an ASA.* If the governing body modifies an ASA or terminates an ASA it shall, within 10 days of its decision, file a notice of termination or modification with the following:

- (1) The recorder of deeds of any county within which the ASA is located.
- (2) The county planning commission.
- (3) The planning commission of the local government unit.

(m) *Responsibility of the recorder.* A recorder of deeds receiving a notice of termination or modification of an ASA from a governing body as described in subsection (l) shall record the description in a manner sufficient to give notice to all persons who have an interest in land within the ASA or in lands adjoining the ASA.

§ 1381.52. Interim review.

(a) *Discretion.* If 10% or more of the land within an ASA is diverted to residential or nonagricultural commercial development at any time prior to a 7-year review of the ASA, the governing body may review the ASA and consider modifying or terminating the ASA, in accordance with the procedure in this section.

(b) *Advisory bodies to be consulted.* If the governing body elects to pursue the interim review described in

subsection (a), it shall request, in writing, that the planning commission, the county planning commission and the advisory committee review the ASA and make recommendations with respect to modification or termination of the ASA within 30 days of receiving the written request.

(c) *Responsibility of advisory bodies.* The advisory bodies referenced in subsection (b) shall issue written recommendations within 30 days of receiving a request for recommendations from the governing body.

(d) *Public hearing requirements.* If the governing body elects to pursue the interim review described in subsection (a), it shall conduct a public hearing no sooner than 45 days after it submits its request for recommendations to the planning commission, the county planning commission and the advisory committee. The governing body shall provide the same notice for the public hearing as is described in § 1381.18(b) and (c) (relating to public hearing by local government unit on ASA proposal).

(e) *Location of public hearing.* The public hearing described in subsection (d) shall be held at a place either within the proposed ASA or at a location readily accessible to the proposed ASA—such as a nearby municipal building.

[Pa.B. Doc. No. 02-213. Filed for public inspection February 8, 2002, 9:00 a.m.]

DEPARTMENT OF HEALTH

[28 PA. CODE CH. 6]

Drugs Which May be Used by Certain Optometrists

The Secretary of Health (Secretary) proposes to amend the list of drugs which may be used by certain optometrists in § 6.1 (relating to approved drugs), to read as set forth in Annex A.

A. Purpose of the Amendment

Under section 2 of the Optometric Practice and Licensure Act (act) (63 P.S. § 244.2), optometrists may use pharmaceutical agents for diagnostic purposes, and for certain therapeutic purposes, only as approved by the Secretary. The pharmaceutical agents, and the purposes for which they may be used by optometrists are in § 6.1. The drugs included on the list must be approved by the Secretary. The State Board of Optometry (Board) requested that the Secretary approve certain additional therapeutic drugs. In its request to the Secretary, the Board identified the drugs by brand name and generic name, which are listed in this paragraph with the generic name in parentheses. Currently, the regulations identify drugs only by the generic name. It is proposed that any added drugs will also be listed by the generic name only. The Secretary has approved a request from the Board to add antibacterial agent Quixin (levofloxacin); oral analgesic Ultram (tramadol); and topical analgesics Alamast (pemirolast potassium), Emadine (emedastine difumarate), Optivar (azelastine hydrochloride) and Zaditor (ketotifen fumerate) to the list of approved drugs. Antibacterial agents destroy bacteria. Analgesic drugs are used as pain relievers.

The Board also requested that certain oral antibiotics [Cipro (ciprofloxacin), Lenezolid (zyvox) and Levaquin (levofloxacin)] be added to the list. The Secretary declined the request to add these agents. As broad-spectrum oral

antibiotics, Cipro, zyvox and Levaquin should be limited to treating resistant or serious infections only. Further, the Federal Food and Drug Administration (FDA) has expressed concerns about inappropriate use of antibiotics leading to increase in resistant organisms; thereby recommending that alternatives should be considered before initiating treatment with antibiotics such as zyvox in the outpatient setting.

Using broad-spectrum antibiotics also creates a higher risk of certain side effects, such as the development of pseudomembranous colitis and superinfections. Also, due to the pharmacological profile of these antibiotics, periodic assessment of organ system functions, including renal, hepatic and hematopoietic functions, is advisable during prolonged therapy.

For these reasons, the antibiotic drugs rejected for inclusion in the list of drugs that optometrists may use in their practice should only be prescribed by a licensed health professional with extended pharmacological, diagnostic and treatment education.

B. Requirements of the Amendment

The Secretary proposes to add the following pharmaceutical agents to the approved drug products listed in § 6.1(b):

1. Levofloxacin
2. Tramadol
3. Pemirolast potassium
4. Emedastine difumarate
5. Azelastine hydrochloride
6. Ketotifen fumerate

C. Affected Persons

Optometrists will be able to use, administer and prescribe additional pharmaceutical agents and their patients will be able to receive them for therapeutic purposes. The patients would potentially benefit in that they would have a wider range of agents available to them, thus potentially enhancing their care and treatment.

D. Fiscal Impact

This proposed rulemaking will have no measurable fiscal impact on the Commonwealth, local government, the private sector or the general public. This proposed rulemaking merely enhances the availability of therapeutic agents to patients of certain optometrists.

E. Paperwork Requirements

The addition of these agents to the list of approved drugs will not result in additional costs or paperwork.

F. Effective Date/Sunset Date

This proposed rulemaking will become effective immediately upon publication as a final-form regulation. This regulation is continually monitored and updated as needed. There is no sunset date.

G. Statutory Authority

The proposed amendment to the list of drugs which optometrists may use in the course of their practice is made under section 2 of the act which defines the "practice of optometry" to include the administration and prescription of legend and nonlegend drugs as approved by the Secretary for treatment. Treatment may include the prescription or administration of pharmaceutical agents for therapeutic purposes. The proposed amendment is also authorized under section 2101 of The

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Notice of Final Rulemaking

Title 7 - AGRICULTURE
7 Pa. Code Chapters 138, 138e and 138f

Agricultural Area Security Program; Agricultural
Conservation Easement Purchase Program; Agricultural
Security Area Program

FINAL RULEMAKING

DEPARTMENT OF AGRICULTURE

AGRICULTURAL AREA SECURITY PROGRAM; AGRICULTURAL CONSERVATION EASEMENT PURCHASE PROGRAM; AGRICULTURAL SECURITY AREA PROGRAM [7 PA. CODE CHS. 138, 138e and 138l]

The Department of Agriculture (Department) hereby revises Title 7 of the Pennsylvania Code by rescinding the regulations at Chapter 138 (relating to agricultural area security program), amending the regulations at Chapter 138e (relating to agricultural conservation easement purchase program) and establishing new regulations at Chapter 138l (relating to agricultural security area program). The revisions read as set forth in Annex A.

Statutory Authority

The Agricultural Area Security Law (3 P.S. §§ 901-915)("Act") provides the legal authority for this regulation. In particular, section 15 of the Act (3 P.S. § 915) requires the Department to promulgate regulations necessary to promote the efficient, uniform and Statewide administration of the Act.

Purpose

The regulation accomplishes several regulatory objectives.

First, it replaces the outdated regulations at 7 Pa. Code Chapter 138 (relating to agricultural area security program) with an entirely new regulatory chapter (Chapter 138l) that: (a) more-accurately tracks with the Act; (b) reflects the experience the Department has gained in administering the provisions of Chapter 138 over many years; (c) implements the numerous amendments that have been made to the Act over the years; and (d) provides the regulated community with a more user-friendly set of standards and procedures with respect to agricultural security areas.

Second, it revises the regulations at 7 Pa. Code Chapter 138e (relating to agricultural conservation easement purchase program) to: (a) reflect various amendments of the Act - most recently by the act of May 30 2001 (P.L. 103, No. 14)("Act 14 of 2001"); and (b) reflect the experience the Department has gained in administering the Agricultural Conservation Easement Purchase Program and Chapter 138e since that chapter was last revised.

Need for the Regulation

The regulation is clearly needed. As explained above, it implements various revisions to the Act that have occurred since the agricultural security area and agricultural conservation easement regulations were last amended. In addition, it contains provisions intended to resolve questions and "gray areas" encountered by the Department in its administration of these regulations over the years. It also formally implements a number of effective informal procedures that have evolved over the years.

The Department is satisfied of the need for the proposed regulation, and believes the document is consistent with the principles outlined in Executive Order 1996-1, "Regulatory Review and Promulgation."

Comments

Notice of Proposed Rulemaking was published at 32 *Pennsylvania Bulletin* 775 (February 9, 2002), and provided for a 30-day public comment period.

Comments were received from the Independent Regulatory Review Commission (IRRC), Senator Mike Waugh, Chairman of the Senate Agriculture and Rural Affairs Committee (Senator Waugh), Representative Raymond Bunt, Jr., Chairman of the House Agriculture and Rural Affairs Committee during the legislative comment period (Representative Bunt), the Pennsylvania Association of Realtors, the Farm and Natural Lands Trust of York County, the Pennsylvania Farm Bureau, Christopher Hartman, Esq., Chairman of the Agricultural Law Committee of the Pennsylvania Bar Association (Attorney Hartman), the Pennsylvania Farmland Preservation Association (PFPA), the Bradford County Agricultural Land Preservation Board (Bradford County Board), the Lancaster County Agricultural Preserve Board (Lancaster County Board), the Lehigh County Agricultural Land Preservation Board (Lehigh County Board) and the York County Agricultural Land Preservation Board (York County Board).

Comment 1: The Lancaster County Board expressed general concern regarding the "subdivision" of a farm subject to an agricultural conservation easement. The Act does not define the term "subdivision," although it prescribes a process by which an owner of farmland under agricultural conservation easement must obtain county board and State board approval to subdivide the restricted land.

Section 138e.3 (relating to definitions) defines "subdivision" in much the same way it is defined in the Municipalities Planning Code. In simple terms, this definition describes the acquisition of a new legal right to sell something less than the entirety of a larger tract. For example, where the owner of a 50-acre tract seeks to acquire the legal right to divide the tract into 25 two-acre parcels and sell each of those parcels, he or she must go through the "subdivision" process.

The Lancaster County Board would prefer the term "subdivision" mean the transfer of anything less than all of the land described in a single deed of agricultural conservation easement.

The following illustrates the Lancaster County Board's point: A landowner might combine a number of separately deeded tracts into a single application for the sale of an agricultural conservation easement. For illustrative purposes, assume a 5-acre tract, a 10-

acre tract, a 50-acre tract and a 100-acre tract are combined on a single application seeking to sell an agricultural conservation easement with respect to the entire 165 acres. After the easement is sold, assume the landowner seeks to sell the 5-acre tract to a third party. The current definition of "subdivision" does not address this proposed sale, and the subdivision review described in the Act would *not* be required. By contrast, if a single 165-acre tract was the subject of an agricultural conservation easement, the subdivision review described in the Act would be required if the landowner sought to convey anything less than the entire 165-acre tract.

The Lancaster County Board's point is that although the Act uses the term "subdivision," the term should be interpreted as meaning "the transfer of anything less than the entirety of the acreage described in a single deed of agricultural conservation easement."

The commentator acknowledges that it might be necessary to address this situation by amending the Act, rather than the regulations, and encourages the Department to do something to address this problem.

Response: The commentator's point is well taken. The Department agrees the use of the undefined term "subdivision" in the Act presents the potential problems described by the commentator, but believes a statutory amendment is the procedure by which this problem must be rectified. The Department has drafted proposed statutory language to require advance county and State Board approval of any transaction which would result in the sale of anything less than the entirety of the acreage described in a single deed of agricultural conservation easement, and plans to pursue this revision.

Comment 2: Proposed § 138e.11(d) (relating to general requirements) would require a county agricultural land preservation program to contain provisions addressing the participation of a local government unit in the agricultural conservation easement purchase process. The York County Board recommended additional language be added to specify that any easement purchase in which a local government unit seeks to acquire the easement as a joint owner with a county or the Commonwealth be subject to the same eligibility and ranking standards that would apply if the local government unit was not involved in the transaction.

Response: Paragraph 14.1(b.1)(4) of the Act (3 P.S. § 914.1(b.1)(4)) requires that an agricultural conservation easement purchase involving local government unit participation be made pursuant to the same criteria applied by a county in all of its agricultural conservation easement purchase transactions. Since proposed paragraph 138e.11(d)(4) references this statutory requirement, the Department does not believe the additional language recommended by the commentator is necessary.

Comment 3: The Lehigh County Board reviewed proposed § 138e.16 (relating to minimum criteria for applications), and asked whether it is correct in its interpretation that there is no authority for a county board to acquire an agricultural conservation easement with respect to a tract of farmland that straddles the line between the purchasing county and an adjoining county, with part of the land being within an ASA established

within the purchasing county and part being of the land being within a different ASA organized in the adjoining county.

The Pennsylvania Farmland Protection Association offered essentially the same comment as the Lehigh County Board. Both commentators conceded that the language in this proposed section derives from language added to the Act by the act of May 14, 2001 (P.L. 103, No. 14)(Act 14 of 2001).

The Lehigh County Board offered a revision to proposed § 138e.16(a)(1)(i) to allow a tract with land located in "one or more" agricultural security areas of 500 acres or more to be considered for easement purchase. The commentator offered a related comment with respect to proposed § 138e.61 (relating to applications), discussed below.

Response: The interpretation offered by the Lehigh County Board is correct. Act 14 of 2001 revised the Act (at 3 P.S. § 914.1(b)(2)(i)(B)) to prescribe specific conditions under which an agricultural conservation easement can be purchased with respect to a tract of land that straddles county boundary lines, but only allows this type of purchase where the portion in one of the counties "is not within an agricultural security area." For this reason, the Department cannot implement the revision offered by the Lehigh County Board.

Comment 4: Representative Bunt suggested that proposed § 138e.16(a)(2) (relating to minimum criteria for applications) be revised to decrease the minimum number of contiguous acres necessary for a tract of land to be eligible for agricultural conservation easement purchase. The current provision requires at least 50 contiguous acres. Representative Bunt proposes this be reduced to 25 acres. In support of his proposal, Representative Bunt noted proposed § 138e.255(b)(3)(i)(B) (relating to State Board review of applications) would allow the Department to reimburse a portion of the costs incurred by a land trust in the acquisition of an agricultural conservation easement on as few as 25 contiguous acres. The Representative also noted:

...there are a growing number of eligible counties receiving applications from productive farms which are less than 50 acres and are not adjacent to other preserved land. There are various situations and reasons why the farms remain productive on smaller areas of acreage, and why they will never qualify for state funding under the current regulations...

Response: The Department declines to implement the suggested decrease in the minimum amount of contiguous acreage necessary for a tract of land to be eligible for agricultural conservation easement purchase.

The Supplemental Agricultural Conservation Easement Purchase Program (at 3 P.S. § 914.5(a)(3)) dedicated up to \$500,000 "to reimburse land trusts for expenses incurred to acquire agricultural conservation easements," and limited this reimbursement to no more than \$5,000-per-easement. The Department established the Land Trust Reimbursement Grant Program (Program) under this authority. Some time after the comment period for the proposed regulation expired, the Department amended the procedures and standards for the Program by deleting the requirement that an agricultural conservation easement *acquired by a land trust* be of *any* specific minimum acreage in order for the land trust to be eligible for reimbursement of a portion of its expenses under

that program. This revision was published at 33 *Pennsylvania Bulletin* 39 (January 4, 2003), and has been incorporated into the final-form regulation at § 138e.255(b)(3). This change does not substantively affect the Department's response to the comment.

The Department's basis for its position is as follows:

First: As a general rule, the larger the tract of land being considered for agricultural conservation easement purchase, the more likely that tract is to remain a viable, productive farm well into the future. The Department acknowledges there are exceptions to this general rule, but believes its role as a steward of the public funds available for agricultural conservation easement purchases under the Act is best served by acquiring agricultural conservation easements on larger tracts of qualified land.

Second: The per-acre cost of preserving larger farms is (again, as a general principle) lower than the per-acre cost of preserving smaller farms. Smaller farms tend to be in areas facing the greatest development pressure, and this typically results in an increase in the appraised value (and purchase price) of an agricultural conservation easement.

Third: The typical agricultural conservation easement purchase transaction results in several thousand dollars of "incidental costs" (survey costs, appraisal costs, legal costs, filing fees, etc...). These costs are paid from the pool of money available for easement purchases. By way of illustration, the Department believes it would be better to incur incidental costs relating to a *single 100-acre* easement purchase than to incur *four separate sets* of incidental costs to preserve four 25-acre farms.

Fourth: At present (and for the foreseeable future), the agricultural conservation easement purchase program is a "buyer's market." There is a large backlog of owners of farms of 50 acres or more waiting for consideration of their applications to sell agricultural conservation easements. The Department believes that in the absence of a shortage of applicants to sell agricultural conservation easements with respect to farms of 50 acres or more, it should not lower the 50-acre minimum standard. In fact, the current backlog of applications suggests it would not be unreasonable to *increase* the minimum acreage necessary for easement purchase to 75 or 100 acres. The Department is willing to revisit this issue if the day comes where there is a shortage of applications to sell agricultural conservation easements.

Fifth: The 25-acre-minimum standard referenced by the commentator has – since the close of the applicable comment period for the proposed regulation – been rescinded. The Program no longer requires that an agricultural conservation easement acquired by a land trust be of any particular minimum acreage in order for the land trust to be eligible for reimbursement of up to \$5,000 of the costs it incurred in acquiring the easement. The Department disagrees with the suggestion that the previous 25-acre minimum requirement (or the current absence of a minimum acreage requirement) under the Program should be equated with a determination by the Department that less than 50 acres is an acceptable minimum size for a farm being considered for agricultural conservation easement purchase. Under the Program, a land trust, rather than the Commonwealth of Pennsylvania or a county, is the holder of the easement. The purpose of the Program is to *supplement* the Commonwealth's agricultural conservation easement purchase effort by facilitating the acquisition of easements by private trusts on lands that might not ordinarily qualify for easement purchase under the Act, but that enhance the

overall agricultural conservation easement purchase effort. This is discussed further below, in the response to Comment No. 5.

Comment 5: IRRC observed that proposed § 138e.16(a)(2)(i) (relating to minimum criteria for applications) references a 50-acre minimum standard for an agricultural conservation easement purchase, while proposed § 138e.255(b)(3)(i)(B) (relating to State Board review of applications) would require at least 25 acres of land be placed under agricultural conservation easement in order for a land trust to receive a donated easement to be eligible for reimbursement of part of its expenses in acquiring the easement. IRRC recommended the Department either "make both of these requirements 25 acres or explain why different standards are appropriate."

Response: As described in the preceding response, proposed paragraph 138e.255(b)(3) has been revised by deleting the requirement that an agricultural conservation easement acquired by a land trust be of any particular minimum acreage in order for the land trust to be eligible for reimbursement under the Land Trust Reimbursement Grant Program (Program). The reimbursement is for up to \$5,000 of the costs incurred by the land trust in acquiring the easement. This change does not substantively affect the Department's response to the comment.

A number of qualified land trusts recommended that the Program's minimum acreage requirements for grant eligibility be revised to include a broader range of agricultural conservation easements. This would include agricultural conservation easements that, although limiting the subject land to agricultural production in perpetuity, would not qualify for purchase by the Commonwealth, an eligible county or a local government unit (or some combination thereof) under the Act. The Department heeded these suggestions and revised the minimum criteria for participation in the Program twice: the first by reducing the original 50-acre minimum acreage to 25 acres, and the second by doing away with a minimum acreage requirement altogether. This approach allows eligible counties to coordinate with qualified land trusts in their farmland preservation activities and facilitate the acquisition of agricultural conservation easements on tracts of land which - although not by themselves "economically viable for agricultural production" under the strict definition of that term - help create larger blocks of contiguous preserved farmland or otherwise further the eligible county's farmland preservation effort. The Department believes this approach is consistent with the statutory authority for the Program.

Comment 6: As part of its recommendation with respect to proposed § 138e.16 (relating to minimum criteria for applications), addressed above, the Lehigh County Board recommended proposed § 138e.61 (relating to application) be revised to require the application for agricultural conservation easement sale to provide space for an applicant to designate whether the farm is located within more than one ASA.

Response: The Department cannot make the requested revision. There is only statutory authority for the purchase of an agricultural conservation easement on a tract of land that straddles county boundary lines where the portion in *one* of the counties is not within an agricultural security area. This is discussed in the response to Comment No. 3,

above. However, a county has the option to add additional information on the application for Agricultural Conservation Easements to meet the needs and requirements of that particular county program. It is already permitted for additional space to be added for ASA designations. A county may request as much information as it deems necessary to evaluate an easement application.

Comment 7: Proposed § 138e.61(b)(2)(ii) (relating to application) would require a county board to provide a "breakdown of the acreage proposed for purchase in each local government unit and a breakdown of the number of acres of viable agricultural land in the acreage proposed for easement purchase in each local government unit" on an agricultural conservation easement purchase application. The Lancaster County Board questioned the relevance of this information and the purpose of the proposed requirement.

The commentator also asked whether the term "viable agricultural land" has been defined.

The commentator offered that the referenced language "appears to serve no valuable purpose and oddly enough the same has not been clearly specified in the following section addressing a farmland tract that is bisected by the dividing line between two or more counties."

Response: The Department declines to revise the referenced subparagraphs. Proposed § 138e.61(b)(ii) and (iii) illustrate a distinction in the requirements that must be met with respect to a proposed agricultural conservation easement purchase on land that straddles the dividing line *between two units of local government* and an easement purchase on land that straddles the dividing line *between two counties*. Although the acreage information requested in proposed § 138e.61(b)(2)(ii) is necessary in the context of a proposed agricultural conservation easement purchase involving a tract that straddles lines between units of local government, it is not necessary in the context of a proposed easement purchase involving a tract that straddles county lines unless there is no mansion house on that tract.

Act 14 of 2001 revised the Act (at 3 P.S. § 914.1(b)(2)(i)(B)) to allow for the purchase of agricultural conservation easements on land bisected by the dividing line between two units of local government where the portion of the land in one unit of local government is within an ASA and the portion within the other unit of local government is not. The "majority of the farm's viable agricultural land" must be located within the ASA for this purchase to proceed. The Department believes it is reasonable to require an application for this type of easement purchase to specify the number of "acres of viable agricultural land" in each unit of local government in which the land is located. The transaction cannot proceed without the majority of the viable agricultural land being located within an ASA.

The Department differs with the commentator's assertion that proposed § 138e.61(b)(iii) does not clearly specify the circumstances under which the acreage and viable agricultural land information must be provided. This acreage information does not come into play unless there is no "mansion house" on the tract being considered for agricultural conservation easement purchase. For example, if a 100-acre tract straddles a county line, with 98 acres in County A and 2 acres in County B, and the mansion house is

located on that two-acre portion, County B may purchase an easement on the entire 100-acre tract. The acreage of the viable agricultural land lying in County A and County B does not become important unless there is no mansion house. In such a situation, the majority of the viable agricultural land of the tract must be located within the county that seeks to purchase the agricultural conservation easement. It is therefore reasonable for the Department to require a breakdown of these acreages (at proposed § 138e.61b)(ii)(C)).

The commentator also asked whether the term "viable agricultural land" has been defined. The term is defined in the Act, at 3 P.S. § 903.

Comment 8: The Bradford County Board offered a comment with respect to proposed § 138e.65(b) (relating to easement value and purchase price). The proposed revision would delete the \$10,000-per-acre cap on the amount of State funds that can be used for the purchase of an agricultural conservation easement. The Bradford County Board believes this cap should remain in place, arguing the removal of the cap: (1) "severely challenges the cost-effectiveness of a program touted for the number of acres it preserves;" (2) is "contrary to addressing the pending backlog of applications" for sale of agricultural conservation easements; (3) appears to favor a minority of interests and locations; (4) facilitates the purchase of agricultural conservation easements in areas where agriculture and development are in competition, leading to higher easement prices and an increased potential for conflicts, easement violations and agriculture-related nuisance issues; (5) benefits those eligible counties that already receive the greatest percentage of allocations and matching funds" for agricultural conservation easement purchases; (6) creates a situation where "one (1) acre of farmland under extreme development pressure is being preserved at the expense of preserving seven to ten (7-10) acres elsewhere;" and (7) "decreases the ability to achieve an even distribution of agricultural conservation easements across the State."

Response: The commentator makes a number of valid points. The proposed revision to § 138e.65(b) does nothing more than implement Act 14 of 2001 – the statutory amendment that deleted the \$10,000-per-acre purchase price cap from the Act (at 3 P.S. § 914.1(g)). The Department has no discretion to establish through regulation a cap the General Assembly has rescinded through legislation. The county still has the ability to set a maximum per-acre or a percentage cap if it is established in an approved county program.

Comment 9: The Department has, over the course of administering the agricultural conservation easement purchase program effort, received suggestions that § 138e.68 (relating to title insurance) be revised to specify that the amount of title insurance coverage should be at least equal to the appraised value of the agricultural conservation easement at the time of purchase.

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

Comment 10: The York County Board, the Lancaster County Board, the Lehigh County Board, the Pennsylvania Farmland Protection Association, IRRC and Senator Waugh offered comments with respect to proposed § 138e.73 (relating to survey requirements).

The York County Board recommended the survey requirements proposed in this section be reviewed by various survey firms to determine whether the firms have the technological ability to meet these standards and, if so, whether meeting these standards would require a significant increase in the cost of the survey.

The Lehigh County Board was also concerned with potential survey cost increases, and planned to run a "test case" with its surveyor to determine the extent of any such increase. IRRC expanded on this cost issue, and asked the cost of a typical survey that would meet the requirements of the proposed regulation.

The Lehigh County Board, the York County Board and the Pennsylvania Farmland Protection Association expressed apprehension as to whether surveyors commonly have the global positioning gear necessary to provide the GIS information described in the proposed section, and as to the cost of acquiring this gear if they do not already have it. The Pennsylvania Farmland Protection Association requested clarification as to the type of global positioning equipment that would be necessary in order to obtain the +/- 2-meter horizontal accuracy for the two control points.

The York County Board also expressed agreement with the proposed language requiring surveys to be in compliance with standards published by the Pennsylvania Society of Land Surveyors, referring to these standards as efficient, cost-effective, uniform and user-friendly.

The Lehigh County Board related its general support for the proposed language requiring geo references (coordinates calculated using global positioning equipment) in boundary surveys and requiring more permanent monumentation for the two ground control points located along the boundary survey.

The Lehigh County Board, the Lancaster County Board and the Pennsylvania Farmland Protection Association expressed strong concerns relating to the *cost* of meeting the proposed survey requirements. These commentators also expressed concern regarding whether surveyors typically have the global positioning equipment that would be required in order for a survey to meet the proposed survey requirements.

The Pennsylvania Farmland Protection Association offered the suggestion the digital survey requirements be made optional, rather than mandatory.

Senator Waugh and Representative Bunt requested the Department carefully consider the various comments offered with respect to proposed § 138e.73.

Response: The Department gave careful consideration to the commentators' concerns and recommendations. As far as the requirements relating to global positioning equipment are concerned, the Department has deleted the specific requirement that global positioning system (GPS) coordinates be obtained, or that they be "accurate to within 2 meters horizontally." This deletion removes any potential significant cost increase with respect to the collection of survey data. Coordinate values can be obtained by using relatively inexpensive GPS units; and these units are already in extensive use among surveyors.

The Department agrees with the Lehigh County Board concerning the need for more permanent monumentation for the two ground control points located along the boundary survey, and has revised proposed paragraph 138e.73(c) to be more specific in this regard. These monumentation requirements are consistent with the current Manual of Practice for Professional Land Surveyors in the Commonwealth of Pennsylvania, adopted July 10, 1998.

The Department has also removed any reference to “unmovable” monumentation and the term “rebar.”

Comment 11: IRRC raised three questions with respect to proposed § 138e.73(a) (relating to survey requirements). IRRC asked: (1) where the "standards published by the Pennsylvania Society of Land Surveyors" could be found; (2) how a person could determine whether these standards are the most current version of the standards; and (3) whether a survey conducted in accordance with these standards would be acceptable if - after the survey is conducted - the standards are revised such that the survey would not meet these revised standards.

Response: The Department is satisfied that land surveyors within the Commonwealth of Pennsylvania are quite familiar with the boundary survey measurement standards published by the Pennsylvania Society of Land Surveyors. This organization is headquartered at 2040 Singleton Road, Suite 200, Harrisburg, PA. The current standards are published in *The Manual of Practice for Professional Land Surveyors in the Commonwealth of Pennsylvania*, which was adopted by the Pennsylvania society of Land Surveyors on July 10, 1998. Proposed § 138e.73(a) has been revised to more specifically set-forth this reference.

Interested persons can obtain a copy of these standards through that organization.

The Department expects surveying professionals to be familiar with the most recent version of these standards of practice. As an added precaution, however, it will notify administrators of county programs in the event it learns these standards are going to be (or have been) revised.

In the event the referenced standards change *after* the survey is completed and *before* the subject agricultural conservation easement is considered for approval by the State Board, the Department will consider the survey to be acceptable as long as – at the time the survey was done – it was completed in accordance with the standards that were in effect at that time.

Comment 12: IRRC reviewed proposed § 138e.73(c) (relating to survey requirements), and asked for clarification as to what would qualify as an "unmovable monument." The commentator also recommended the phrase "reinforcing bar" be used in place of "rebar" in that subsection.

Response: The Department has removed both of these terms from the final-form regulation.

Comment 13: Proposed § 138e.91(1) (relating to recommendation for purchase) would require a county to submit 25 copies of a summary report to the Department. IRRC noted this creates a significant paper burden, and asked whether the need for this many copies is outdated and whether there is a practical means by which a county might provide this material electronically.

Response: Although the Department understands the desirability of reducing the amount of paperwork involved in an agricultural conservation easement purchase transaction, experience has shown these transactions are - of necessity - paperwork-intensive. There are 17 members of the State Board - each of whom receives and reviews a copy of the documents described in proposed § 138e.91. The additional eight copies are required for internal review by the Department (Bureau of Farmland Preservation administrators and staff, Deputy Secretaries and additional file copies).

There is not a practical means by which a county could provide the information described in proposed § 138e.91 electronically. The documents include maps, tables, appraisals, title insurance documents, IRS forms, letters, a conservation plan and (as required) a nutrient management plan. Although the Department will remain mindful of the need to reduce the paperwork burden on the regulated community wherever practicable, an agricultural conservation easement purchase transaction simply does not lend itself to an electronic filing format.

Comment 14: Proposed § 138e.91(8) (relating to recommendation for purchase) would require that a copy of an approved conservation plan and a conservation plan agreement form be submitted to the Department as part of a county board's recommendation of State Board approval of a particular agricultural conservation easement purchase. The York County Board, the Lancaster County Board, IRRC and Senator Waugh offered comments with respect to this proposed provision.

The York County Board believes it is unreasonable to require this material prior to State Board review. Instead, the commentator proposes that a county board be required to submit a letter verifying that a conservation plan shall be completed and in place prior to settlement on the easement purchase transaction. The conservation plan and conservation plan agreement form could then be provided to the Department prior to settlement. The commentator believes this would help conservation and preservation officials prioritize their workloads. IRRC also made note of this comment, and requested an explanation of the need for a fully-executed conservation plan agreement at this point in the agricultural conservation easement purchase process.

The York County Board also believes the proposed requirements would result in some counties not being able to submit these required materials in time to meet year-end deadlines for the encumbrance of funds by the Department for agricultural conservation easement purchases.

The York County Board also notes that the type of conservation plan required in York County is the "Resource Management Plan" (RMP), and suggested the final regulation provide more detail as to what constitutes an acceptable conservation plan.

The Lancaster County Board questions the need for the proposed conservation plan agreement form, and whether the requirement would be legal. The commentator offered that "frequently it is the tenant farmer who is farming the ground and has the

Conservation Plan for the subject property," and suggested the conservation plan agreement form would be "another piece of paper that may or may not be useful."

IRRC noted the proposed subsection would reference a "conservation plan agreement form as described in § 138e.222(a) ...", and that § 138e.222(a) (relating to conservation plan) does not specifically mention this form. IRRC recommended these provisions be reconciled.

Senator Waugh and Representative Bunt requested the Department carefully consider the various comments offered with respect to proposed § 138e.91(8).

Response: The regulatory requirement that there be a written conservation plan, and that it be submitted along with the other materials in support of a county board's recommendation that the State Board approve a particular agricultural conservation easement purchase, exists under the current regulation and is not proposed as a *new* requirement. Although the Department has revised proposed § 138e.91(8) by deleting the requirement that a fully-executed conservation plan agreement form be part of the submittal described in the preceding sentence, it declines to revise the requirement that the conservation plan, itself, be part of the submittal. Given that the decision to purchase an agricultural conservation easement is largely premised upon the quality of the soil on the land that would be subject to the easement, the Department believes it makes good sense for it to have a conservation plan in-hand as part of the materials to be reviewed by the State Board in considering whether to purchase the easement in the first place. The implementation of the conservation plan on land that is subject to an agricultural conservation easement is perhaps the ultimate protection of the public's investment in that easement.

The final-form regulation still requires that a conservation plan agreement form be executed and recorded with respect to each agricultural conservation easement purchase transaction, but does not require this document until settlement. Proposed §§ 138e.93 (relating to postsettlement recording and reporting procedures) and 138e.222 (relating to conservation plan) have been revised to implement this change.

The Department's experience has been that the most common violations of the terms of a deed of agricultural conservation easement relate to the failure of a landowner to fully-implement the conservation plan or required nutrient management practices. These violations are almost always unintentional oversights on the landowners' part, and are readily corrected. The number of these unintentional violations suggests that the regulation should attempt to place greater emphasis on the importance of fully-implementing conservation plans.

A typical conservation plan, which is prepared by the United States Department of Agriculture – Natural Resources Conservation Service (USDA-NRCS) and approved by the local Conservation District, does not contain a formal written acknowledgment on the landowner's part that he or she will fully-implement all of the conservation measures recommended in the plan. The Department believes that by obtaining this formal written acknowledgment – the conservation plan agreement form described in proposed § 138e.222 – the number of unintentional violations relating to failure to implement conservation plans will decrease and the owners of land subject to agricultural conservation easements will have a better understanding of their responsibilities. The Department is aware that several county programs (including Chester County's) have

taken a similar approach to that proposed by the Department, and that this approach has met with success in reaching the objectives described in the preceding sentence.

The Department understands that the Chester County Agricultural Land Preservation Program currently requires the recording of a conservation plan agreement form as part of the settlement on an agricultural conservation easement purchase transaction, and believes this is a good approach that should be implemented Statewide.

The Department also gave thought to whether the regulatory requirements with respect to conservation plans impose too great a burden and would cause counties to miss year-end deadlines for the encumbrance of funds available for agricultural conservation easement purchases. As stated above, the requirement of a conservation plan is not new. USDA-NRCS and the local conservation district are the entities that, respectively, prepare and approve conservation plans. The Department conducted an informal survey among the USDA-NRCS field offices with the largest conservation planning workloads. It was the unanimous opinion of the USDA-NRCS District Conservationists that the conservation plan can be completed in accordance with the requirements of the final-form regulation. The State Resource Conservationist for USDA-NRCS concurred with this opinion. USDA-NRCS field personnel stressed that as soon as the application ranking process is complete and a county board prioritizes its planned agricultural conservation easement purchase recommendations, USDA-NRCS should be notified and should begin preparation of the conservation plan. If this timetable is kept, USDA-NRCS would typically have approximately one year within which to complete the conservation plan before the county board is ready to submit its easement purchase recommendation to the Department in accordance with proposed § 138e.91. Given this time period, USDA-NRCS expressed confidence it can complete conservation plans within sufficient time to avoid delaying the progress of an agricultural conservation easement purchase application through the regulatory process.

As to the York County Board's suggestion that the final-form regulation contain more detail as to the contents of a conservation plan, the Department believes the definition of "conservation plan" in § 138e.3 (relating to definitions) and the references to conservation plans in § 138e.222 of the final-form regulation provide adequate detail and guidance in this regard.

The Lancaster County Board is correct when it notes that it is not uncommon for land that is subject to an agricultural conservation easement to be farmed by tenant farmers, rather than the landowners. Even where this is the case, the Department believes it is the landowner who is ultimately responsible for implementation of the conservation plan.

Comment 15: The Pennsylvania Association of Realtors expressed concern that smaller counties or rural counties might not have the administrative capacity to comply with the postsettlement recording and reporting procedures set forth in proposed § 138e.93 (relating to postsettlement recording and reporting procedures).

Response: Although § 138e.93 is a new regulatory section, it does not (with the exception of the conservation plan agreement form described above in the response to Comment No. 14) impose requirements that are new or different. Eligible counties have been following these procedures since the inception of the Commonwealth's agricultural

conservation easement purchase program without raising a complaint concerning administrative or financial burdens. In addition, the post-settlement recordings are normally carried out by the settlement agent, placing no burden on the county staff.

Comment 16: The Lancaster County Board offered several comments with respect to proposed § 138e.93 (relating to postsettlement recording and reporting procedures). IRRC joined in several of these comments.

First, the Lancaster County Board reviewed subsection (a) and asked what purpose is served by the proposed requirement the county retain copies of various essential documents of the agricultural conservation easement purchase transaction. The commentator believes this might be a redundant or unnecessary requirement, and sought the Department's rationale for this provision.

Second, the Lancaster County Board recommended proposed subparagraph (d)(1)(iii) be revised to address the possibility a settlement agent might not require a settlement sheet at the settlement on an agricultural conservation easement purchase transaction. The commentator offered language for the recommended revision. IRRC offered its agreement with the commentator on this point.

Third, the Lancaster County Board suggested proposed subparagraph (d)(1)(iv) be revised to address the possibility the actual title insurance policy - as opposed to a marked-up title insurance commitment - might be available immediately after settlement. IRRC offered its agreement with the commentator on this point.

Fourth, the Lancaster County Board questioned whether it is necessary for a county board to provide the Department certified copies of the recorded deed of agricultural conservation easement and other documents referenced in proposed subsection (e).

Response: The Department offers its response to the correspondingly-designated paragraphs of the comment:

First, the Department believes that the essential documents of the agricultural conservation easement purchase transaction should be retained for a subsequent audit (whether by county, State or federal entities). In addition, these documents might comprise important evidence in the event the county must go to court to correct a violation of the terms of an agricultural conservation easement or address a title issue. The county board has primary enforcement authority with respect to such easements, and should retain the documents potentially necessary to its performance of that responsibility.

Second, the Department agrees that proposed §138e.93(d)(1)(iii) should be revised to address the possibility a settlement agent might not require a formal settlement sheet at the settlement on an agricultural conservation easement purchase transaction. The referenced provision in the final-form regulation has been revised to implement the Lancaster County Board's suggested revision.

Third, the Department agrees proposed §138e.93(d)(1)(iv) should be revised to address the possibility the title insurance policy might be available immediately after settlement. The suggestion has been implemented in the final-form regulation.

Fourth, the Department agrees with the commentator and has removed the word "certified" from the referenced subparagraph.

Comment 17: IRRC requested the Department explain what is intended by the use of the word "promptly" in proposed § 138e.93(b) and (c) (relating to postsettlement recording and reporting procedures). The commentator also asked what happens if a local government unit fails to "promptly" record documents as required.

Response: The Department agrees to remove the term "promptly" from § 138e.93(b) and (c) in the final-form regulation.

Comment 18: The Lehigh County Board reviewed proposed § 138e.93(c) (relating to postsettlement recording and reporting procedures). That subsection would require a local governing body to promptly record the inclusion of land into an ASA if the land has been automatically incorporated into an ASA upon the purchase of an agricultural conservation easement, and report that recording to the county board. The commentator believes this provision will be difficult to enforce, since its experience has been that townships are frequently remiss in recording their ASAs in a timely fashion. The commentator asked what would happen to a township that failed to record an addition to its ASA. It also noted that some townships might balk at having to pay for recording the addition of land located in another township or county in its ASA.

Response: The Department agrees, but notes that this recording is required under paragraph 5(a.2)(2) of the Act (3 P.S. § 905(a.2)(2)).

Comment 19: Proposed § 138e.102(h) (relating to allocation of funds to counties) would require an eligible county that seeks to purchase an agricultural conservation easement in its own name using State matching funds to provide a copy of the signed agreement of sale for the proposed transaction and a written certification from the county governing body confirming the availability of the specific amount of county matching funds necessary for the proposed purchase. Receipt of these two documents would result in the Department encumbering the State funds sought by the eligible county for the transaction.

The Lehigh County Board commented that the certification of available county matching funds for the transaction seems duplicative, since the county is already required to provide the Department an annual certification of the amount of county matching funds available for agricultural conservation easement purchases. This certification is described in § 138e.102 (relating to allocation of funds to counties).

The commentator suggested that if a second certification is necessary, it would be preferable if the certification could be issued by the county executive or chief fiscal officer. IRRC offered its agreement with the commentator on this point.

Response: The Department agrees with the commentator's suggestion and has deleted proposed subsection 138e.102(g.1) from the final-form regulation.

Comment 20: The Pennsylvania Association of Realtors reviewed proposed § 138e.104 (relating to installment sales). The Act authorizes (at 3 P.S. § 914.5(a)) the Department to spend up to \$500,000 to acquire technical assistance to facilitate long-term

installment purchases of agricultural conservation easements. The commentator asked whether the Department has a plan for the expenditure of this \$500,000 sum, and emphasized the sum should be used "solely for the purchase of easements and not for administrative purposes."

Response: The Department has used these funds to develop basic forms and a process for long-term installment purchases of agricultural conservation easements, but has declined to use any of these funds for its own administrative purposes. The entire \$500,000 sum has been spent or encumbered.

Comment 21: The Lehigh County Board suggested the first word of proposed § 138e.104(d)(5) (relating to installment sales) should be "The" instead of "If." IRRC also recommended this provision be reworded for clarity.

Response: The Department agrees with the commentator and has implemented the suggestion in the final-form regulation.

Comment 22: The York County Board requested that language be added to proposed § 138e.201 (relating to responsibility) to clarify that the agricultural conservation easements for which a county board has inspection and enforcement responsibilities do not include easements purchased by private land trusts or local government units. The commentator suggested a county might elect to assume these responsibilities under a cooperative agreement detailing the conditions of inspection and enforcement.

Senator Waugh also requested the Department carefully consider the comments offered by the York County Board with respect to this section.

Response: The requested clarification has been added to paragraph 138e.201(a)(1) of the final-form regulation.

Comment 23: IRRC reviewed proposed § 138e.202(a) (relating to inspections) and noted that - where a tract of land is placed under agricultural conservation easement relatively late in the year - it might be difficult for a county to comply with the proposed requirement that the initial inspection of the restricted land occur within sufficient time to be included in the annual report that must be submitted to the State Board by March 1 of the following year. IRRC asked whether the proposed inspection requirement would be practical under these circumstances.

Response: The Department agrees with the commentator and has revised the referenced provision accordingly.

Comment 24: Senator Waugh requested the Department consider revising proposed § 138e.204(a) (relating to enforcement) to address concerns raised informally by several county agricultural land preservation program directors outside of the formal comment process. These commentators recommended the subsection be revised to reflect that a county board might enter into agreements with local government units

pursuant to which the county would enforce an agricultural conservation easement owned solely by the local government unit.

Response: The Department believes a county board is free to contract with a land trust to assume responsibility for enforcement of agricultural conservation easements acquired or owned by a land trust, but that this is properly the subject of contract between the county board and the land trust, rather than of this regulation.

Comment 25: The Pennsylvania Association of Realtors considered proposed § 138e.222 (relating to conservation plan), and expressed concern over the long-term maintenance of agricultural conservation easements. The Association believes this provision: "...does not specifically address remedies and/or penalties for violating a conservation plan agreement" and urged the Department to include these remedies and penalties in the final regulation.

Response: The Department believes the provisions of §138e.204 (relating to enforcement) and § 138e.206 (relating to enforcement actions) adequately address the extent of the authority and procedure by which the terms of an agricultural conservation easement are to be enforced. The ultimate remedy for a violation of the terms of a Deed of Agricultural Conservation Easement or a conservation plan required under the terms of the easement sale is an action in the appropriate Court of Common Pleas seeking injunctive relief to abate the violation and restore the affected land. Primary enforcement responsibility lies with the County Agricultural Land Preservation Board. The Act does not provide the Department authority to impose a monetary penalty on a landowner who violates the terms of a deed of agricultural conservation easement.

Comment 26: The Lancaster County Board offered comments with respect to the conservation plan and conservation plan agreement form referenced in proposed § 138e.91(8) (relating to recommendation for purchase). Those comments are summarized and addressed above. The commentator noted the referenced comments are also applicable to proposed § 138e.222 (relating to conservation plan).

Response: The Department has addressed this comment above, in its response to Comment No. 14.

Comment 27: The Lehigh County Board considered proposed § 138e.222 (relating to conservation plan), and offered the following comment: "We feel the requirement for a signed conservation plan agreement and an approved conservation plan prior to State Board approval is a very good idea. We do need to make landowners more aware that good conservation will be a requirement for all land enrolled in the farmland preservation program!"

Response: The Department agrees with this comment, for the reasons stated above, in its response to Comment No. 14.

Comment 28: Senator Waugh and Representative Bunt requested the Department carefully consider the various comments offered above with respect to proposed § 138e.222 (relating to conservation plan).

Response: The Department gave careful consideration to these requests from members of the Legislature, and has addressed this subject above, in its response to Comment No. 14.

Comment 29: Senator Waugh requested that the Department consider revising proposed § 138e.254(c) (relating to applying for a reimbursement grant) to address concerns raised informally by several county agricultural land preservation program directors outside of the formal comment process.

Response: The Department has deleted proposed paragraph 138e.254(c)(4), which would have required that a Soil Report Form accompany a reimbursement grant application. In addition, the Department has addressed the substance of these informal comments above, in its responses to Comment Nos. 4 and 5.

Comment 30: Several comments were received with respect to proposed § 138e.255(b)(3)(i)(B) (relating to state board review of applications).

At the time the comments were offered, the referenced provision would allow a land trust to be reimbursed for up to \$5,000 of the expenses incidental to the acquisition of an agricultural conservation easement if the easement covered a tract of at least 25 acres. Although this minimum acreage figure had been 50 acres in previous guidelines for the Land Trust Reimbursement Grant Program, the guidelines were subsequently revised to lower this minimum acreage figure to 25 acres in the proposed rulemaking.

Some time after the comment period for the proposed regulation expired, the Department amended the procedures and standards for the Program by deleting the requirement that an agricultural conservation easement *acquired by a land trust* be of any specific minimum acreage in order for the land trust to be eligible for reimbursement of a portion of its expenses under the Land Trust Reimbursement Grant Program. This revision was published at 33 *Pennsylvania Bulletin* 39 (January 4, 2003), and has been incorporated into the final-form regulation at § 138e.255(b)(3). This is explained further above, in the Department's response to Comment Nos. 4 and 5. The final-form regulation would formalize this revision, and is expected to increase the number of easement purchases that qualify for reimbursement under the Land Trust Reimbursement Grant Program.

The Pennsylvania Association of Realtors commented that the Department should maintain the 50-acre minimum standards, and requested the Department's rationale for proposing to reduce the standard to 25 acres. As stated in the preceding paragraph, the minimum acreage standard has since been eliminated altogether.

The Farm and Natural Lands Trust of York County supported the proposed 25-acre minimum standard. The commentator offered that many landowners "can not fully utilize the tax deduction created by a conservation easement due (to) the IRS code restriction on charitable deductions not exceeding 30% of adjusted gross income." The commentator believes the proposed 25-acre standard would allow a landowner to realize

the full extent of the favorable tax consequences that attend the donation of an agricultural conservation easement to the Land Trust by allowing for a series of smaller donations over several years.

The Pennsylvania Farmland Protection Association also registered its support for the proposed 25-acre minimum standard described above, noting the preservation of "small farmland tracts can be very important in maintaining the agricultural integrity of areas targeted for farmland preservation."

Response: The Department has addressed this comment above, in its responses to Comment Nos. 4 and 5.

Comment 31: The Lehigh County Board expressed its general approval of proposed Chapter 1381 (relating to agricultural security area program), and offered several additional comments addressed below.

Response: The Department accepts the comment.

Comment 32: Attorney Hartman offered the general comment that although the Act and proposed Chapter 1381 (relating to agricultural security area program) imply that an ASA is typically a single "unified area," in reality an ASA is "usually a smattering of properties throughout a municipality." The commentator believes this causes confusion in the interpretation of the Act and regulations.

Response: The commentator's observation is correct. An ASA need not be comprised of contiguous tracts, as long as any tract that is not contiguous to other tracts included in the ASA is comprised of at least 10 acres or has anticipated yearly gross income of \$2,000 from agricultural production. This is described in proposed § 1381.12 (relating to eligibility to propose the creation of an ASA). The Department is aware there has been confusion on this subject in the past, and expects the regulation will help reduce this confusion.

Comment 33: Attorney Hartman also offered the following general comment with respect to proposed Chapter 1381 (relating to agricultural security area program): "The term 'modification' is used in two respects with regard to ASAs. One is with respect to changes to ASA proposals; the other is with respect to changes to existing ASAs. This can be confusing. I would prefer 'modification' to refer only to proposals, and that the terms 'additions' or 'removals' would be used in the context of changes to existing ASAs."

Response: The Department believes the term "modification" adequately describes any change to an ASA - whether that change is an addition or removal of land. For this reason, the Department declines to implement the recommended change.

Comment 34: The Pennsylvania Association of Realtors raised several general questions regarding proposed Chapter 1381 (relating to agricultural security area program). First, the Association requested an explanation of what happens to an ASA

when - through removal of parcels from the ASA - the total remaining acreage of the ASA is less than the required 250-acre-minimum. Second, the Association asked how the Department determined there would be no fiscal cost involved in implementing the proposed rulemaking. Third, the Association asked: "What is the agricultural goal of Farmland Preservation?"

Response: In response to the first comment, an ASA is, by definition (at 3 P.S. § 903) a "unit of 250 or more acres." If an ASA loses acreage to the point it no longer contains 250 acres, it ceases being an ASA.

In response to the second comment, the Department determined there would be no new costs on the public, the private sector, local government or State government as a result of the promulgation of proposed Chapter 138I (relating to agricultural area security program) because the proposed regulation *does not require any of these entities to do any act or incur any expense it is not already required to incur under the Act.* To the extent there are costs associated with the creation and modification of an ASA, these costs are imposed by the Act, rather than by regulation.

In response to the third comment, the Department assumes the question relates to the objective of the proposed regulation. The Department seeks to replace the long-outdated and inadequate regulatory provisions relating to the creation, operation and termination of ASAs with a set of regulatory standards that tracks with statutory authority.

Pennsylvania leads the nation in the number of acres preserved for agricultural production, and is looked to as a leader in this area. The Department seeks to retain this hard-earned status, and preserve as much quality farmland as resources allow.

The Department's priorities with respect to farmland preservation include the preservation of the best soils - including prime soils, soils of Statewide importance and soils in Land Capability Classes I-IV.

The Department also seeks to emphasize the importance of preserving blocks of farmland or clustering blocks of preserved farmland to sustain a stable agricultural economy in the farming community.

The Department also seeks to maintain Pennsylvania's ability to produce food, enhance production and the agricultural way of life.

It is not an objective of the Department's farmland preservation efforts to compete with development and growth.

Comment 35: Senator Waugh offered the suggestion that a new section be added to proposed Chapter 138I (relating to agricultural security area program) to explain the benefits a landowner might realize from having land within an ASA. The commentator noted the current regulation at § 138.3 (relating to benefits to landowners of joining an agricultural area) describes these benefits, and that the Department proposes to rescind that provision without adding a similar provision to Chapter 138I. The commentator believes the referenced current regulatory language "is significant and imperative, and should be retained." The commentator also noted that the referenced current regulatory language is consistent with the protections afforded certain agricultural operations under the "Right-to-Farm Law" (3 P.S. §§ 951-957). Senator Waugh offered proposed language through which the Department could implement his suggestion.

Response: The Department has implemented the commentator's suggestion in the final-form regulation, by adding § 1381.4 (relating to benefits of having land within an ASA).

Comment 36: IRRC offered several comments with respect to proposed § 1381.1 (relating to definitions).

First, IRRC noted the section defines the terms "eligible counties," "planning commission" and "Secretary" in a manner that does not match the definition of these same terms in the Act. The commentator requested the Department either justify its proposed language or revise these definitions to track with the Act.

Second, the commentator recommended the definition of "economic viability of farmland for agricultural production" be reconfigured to include the reference to § 138e.16(a) at the beginning of the definition.

Third, the commentator noted the proposed definition of the term "interim review" contains the term itself, and suggested this be revised.

Response: In response to the first comment, the Department has revised the referenced definitions in the final-form regulation to read as they appear in the Act.

In response to the second comment, the Department declines to revise the definition of "economic viability of farmland for agricultural production." This term is also defined in § 138e.3 (relating to definitions), is used extensively in the context of the Department's agricultural conservation easement purchase program, and has been adopted by most (if not all) eligible counties in their agricultural conservation easement purchase programs. On balance, the Department believes the recommended revision would not be so significant an improvement as to offset the problems and confusion that would be attendant to implementing this revision.

In response to the third comment, the definition has been revised as suggested by the commentator.

Comment 37: The Lehigh County Board reviewed proposed § 1381.13(a) (relating to ASA proposal form) and asked whether a governing body would have the right to designate open enrollment periods for additions to ASAs and refuse acceptance of applications at other times.

Response: The Department believes that although a local government unit might encourage applications to be submitted during particular periods, it may not require applications to be submitted during these periods. The Act describes a timetable for review and action that begins when the governing body of a local government unit receives an application by certified mail with return receipt requested. This is found in § 5(a.1) of the Act (3 P.S. § 905(a.1)). The timetables for review and action on the application begin as of this official submission date. The Department does not believe that the Act affords local government units the authority to refuse a properly-submitted application. A local government unit might - in the interest of keeping costs to a minimum or for administrative convenience - encourage applications to be filed during designated application periods.

Comment 38: Proposed § 1381.17(b)(2) would require a local government unit to post notice of an ASA proposal in at least five conspicuous places within, adjacent to or near the proposed ASA." Attorney Hartman suggested the notice provision would be more effective if it required the notices be posted within, adjacent or near to the parcels being *added* to the ASA, and not within, adjacent or near to the existing portions of the ASA.

The commentator also described a situation where several non-contiguous parcels are being added to an existing ASA. In these instances the commentator has advised his clients that a *total* of five notices must be posted, rather than five notices at each separate location of non-contiguous land to be included in the ASA. The commentator suggested this could be clarified in the final-form regulation.

Response: The Department is reluctant to revise the proposed regulation to specifically require that the referenced postings be made in proximity to the land being considered for inclusion in the ASA. The referenced regulatory language comes from § 5(b) of the Act (3 P.S. § 5(b)).

The Department believes the phrase "within, adjacent to or near the proposed ASA" in proposed § 1381.17(b)(2) provides adequate guidance as to the requirements for posting the referenced notice, and declines to revise that language in the final-form regulation.

Comment 39: Attorney Hartman noted proposed § 1381.17(c)(3) (relating to local government unit action upon receipt of an ASA proposal) would allow a person owning land within, adjacent to or near a proposed ASA or proposed ASA modification to offer a modification to the ASA proposal. The commentator believes the proposed language is more general than the provision at § 5(b)(3) of the Act (3 P.S. § 905(b)(3)), and could be interpreted as allowing the referenced landowners to force the inclusion of another person's land in an ASA without the consent of the landowner. The commentator noted that if this were possible, then ASAs could be designed to look more like zoning districts, perhaps overlaying effective agricultural zoning districts.

Response: The Department believes the Act and the regulations are sufficiently clear that a person cannot force the inclusion of another person's land in an ASA. Sections 5(a) and 8(e) of the Act (3 P.S. §§ 905(a) and 908(e)), respectively, make clear that "an owner or owners of land" may apply to include that land in an ASA and that participation in an ASA is available "on a voluntary basis to landowners...".

Comment 40: Attorney Hartman identified a typographical error in proposed § 1381.18(a)(1) (relating to public hearing by local government unit on ASA proposal).

Response: The Department has made the correction in the final-form regulation.

Comment 41: IRRC suggested that the term "person" in proposed § 1381.18(b)(ii)(A) (relating to public hearing by local government unit on ASA proposal)

be replaced with "landowner." IRRC noted this revision would make the regulation more consistent with the Act (at 3 P.S. § 906(c)).

Response: The Department has implemented the suggested change in the final-form regulation.

Comment 42: IRRC reviewed the factors listed at proposed §§ 1381.19(b) (relating to decision of local government unit) and noted the list does not contain the reference to existing utilities found in the corresponding provision of the Act (at 3 P.S. § 908(a)). IRRC recommended this reference be added to the final form regulation.

Response: The Department has implemented the recommended change in the final-form regulation.

Comment 43: Attorney Hartman reviewed the factors listed at proposed §§ 1381.19(b) (relating to decision of local government unit) and 1381.26(a) (relating to factors to be considered by the governing body of the local governing unit, the planning commission and the advisory committee) and asked why the factors are set forth at two separate locations in the proposed regulation. The commentator suggested combining the referenced subsections.

Response: The Department believes it appropriate to maintain the two referenced subsections addressing review requirements. The factors identified in proposed § 1381.26(a) are factors to be considered by *all reviewing entities*, and are required by § 7(a) of the Act (3 P.S. § 907(a)).

The factors identified at 138e.19(b) are factors to be considered by *the local government unit*, and include all of the factors listed in proposed § 1381.26(a), as well as the additional factors required by § 8(a) of the Act (3 P.S. § 908(a)).

Comment 44: Attorney Hartman reviewed proposed § 1381.20 (relating to notice of decision of the local government unit) and requested the Department more clearly identify the "affected" landowners to whom the notice described in that section is to be provided.

Response: The Department believes the term "affected" is sufficiently specific in the context in which it is used in the proposed regulation. The Department is also apprehensive it could not craft a regulatory definition for this term that would be applicable in all instances. Although the typical person "affected" by a decision regarding an ASA proposal would be the person who submits it for consideration, there are circumstances where other landowners might have an interest in the decision. On balance, the Department is satisfied the term "affected" is as specific as the regulation should be on this subject.

Comment 45: Attorney Hartman suggested the phrase "or as otherwise prescribed by the act" be deleted from proposed § 1381.21(b) (relating to effective date of the creation or modification of an ASA).

Response: The Department declines to implement this suggestion. The referenced phrase is intended to address the fact there would be lag time between an amendment of the Act and a revision of the Act's attendant regulations. The referenced phrase is intended as a reminder that the language of the Act shall prevail over the regulation.

Comment 46: The Lehigh County Board suggested proposed § 1381.22 (relating to filing of ASA description by governing body; recording of the ASA description) be revised to add the local farmland preservation office (if one exists) to the list of entities upon which a governing body is required to file an ASA description.

Senator Waugh requested the Department carefully consider the comments offered above with respect to proposed § 1381.22.

Response: The Department has added language affording governing bodies of local government units the *option* to notify the office of the county board (if the county has a county board) of the creation or change in composition of an ASA. This language is added at paragraph 1381.22(a)(4) of the final-form regulation.

Comment 47: Attorney Hartman noted that proposed § 1381.23 (relating to notification of secretary by governing body) makes reference to notices that are required upon termination of an ASA. The commentator suggested this subject be addressed later in the document, in those provisions of Subchapter (D) or (E) addressing termination of an ASA and removal of land from an ASA.

Response: Although the commentator's point is well taken, the Department declines to implement the suggested change. The Department acknowledges there are repeated references to notification requirements throughout the proposed regulation. Given the importance of these requirements and the fact they have been frequently overlooked or ignored by governing bodies in the past, the Department believes it reasonable to repeat these requirements at every juncture in the proposed regulation where notification of the Department is necessary.

Comment 48: The Lehigh County Board suggested proposed §§ 1381.24 (relating to planning commission action with respect to an ASA proposal), 1381.25 (relating to advisory committee action with respect to an ASA proposal) and 1381.26 (relating to factors to be considered by the governing body of the local government unit, the planning commission and the advisory committee) should be moved and renumbered as §§ 1381.18, 1381.19 and 1381.20, respectively. The commentator stated that this would "put the information in the sequence that the municipalities should follow after receiving an ASA proposal."

Response: The Department understands the commentator's point, but declines to rearrange the referenced sections. Subchapter B (relating to formation of an agricultural security area) groups the basic responsibilities of a local government unit in a series of consecutive sections (§§ 1381.18 through 1381.23) before addressing the responsibilities

of the planning commission and the advisory committee. Although this format does not place the sections in strict chronological order, the Department believes this arrangement is clear and that any confusion can be resolved by reference to the subchapter index.

Comment 49: Attorney Hartman identified a typographical error in proposed § 1381.24(b) (relating to planning commission action with respect to an ASA proposal).

Response: The Department has made the correction in the final-form regulation.

Comment 50: Proposed § 1381.24(d)(2) (relating to planning commission action with respect to an ASA proposal) requests an impact analysis from the non-county planning commission, but not a recommendation. Attorney Hartman made note of this, and suggested: "there should be a recommendation, as well as an impact analysis." The commentator also acknowledged that the referenced provision follows the Act.

Response: As the commentator acknowledges, the proposed regulatory language is consistent with the Act. Section 5(d) of the Act (3 P.S. § 905(d)) addresses this subject. Given this fact, the Department is reluctant to add a specific requirement that a recommendation accompany the impact analysis. The planning commission is free to include a recommendation as part of its impact analysis, but is not required under the Act to do so.

Comment 51: Proposed § 1381.26(a)(3) (relating to factors to be considered by the governing body of the local government unit, the planning commission and the advisory committee) requires that if land is subject to zoning restrictions it be "zoned so as to permit agricultural use." Attorney Hartman asked whether land upon which a lawfully nonconforming agricultural use exists meets this requirement, and referenced the most recent amendments to the Municipalities Planning Code.

Response: The Department believes land upon which a lawfully nonconforming agricultural use exists meets the referenced regulatory requirement. The Department notes that the regulation essentially restates paragraphs 7(a)(2) and (3) of the Act (3 P.S. §§ 907(a)(2) and (3)).

Comment 52: Proposed § 1381.31(d) (relating to adding land to an existing ASA) provides that land being added to an existing ASA need not meet the same 250-acre minimum that would be required for the initial formation of an ASA. Attorney Hartman asked whether non-contiguous tracts of land being considered for inclusion into an existing ASA would have to meet the minimum acreage (10 acres) or minimum annual agricultural income (\$2,000) standards set forth in proposed § 1381.12(4) (relating to eligibility to propose the creation of an ASA).

Response: The Department believes non-contiguous tracts of land being considered for inclusion into an existing ASA would have to meet the minimum acreage (10 acres) or minimum annual agricultural income (\$2,000) standards set forth in proposed § 1381.12(4) (relating to eligibility to propose the creation of an ASA).

Comment 53: The Lehigh County Board requested proposed § 1381.32 (relating to automatic inclusion of certain parcels bisected by the dividing line between local government units) be revised by adding examples.

The commentator presented the following scenario, and asked whether it is accurate: “If a farm bisected by a township boundary has previously enrolled the majority of its viable agricultural land in Township A's ASA, the farmland owner needs to apply to Township B to get the other portion of their farm into an ASA, if township B has an existing ASA. In a different scenario, where Township B does not have an existing ASA, the landowner would apply to Township A to get their additional land into Township A's ASA.”

Response: Act 14 of 2001 revised the Act to allow (at 3 P.S. § 905(a.2)) for automatic inclusion of certain parcels bisected by the dividing line between local government units.

The factual scenario presented by the commentator is accurate.

The Department believes the Act and the regulation are sufficiently clear on this subject, and declines to insert examples into the final-form regulation. If subsequent experience demonstrates the need for such examples, the Department is willing to revisit this regulation.

Comment 54: The Lehigh County Board reviewed proposed § 1381.33 (relating to automatic inclusion of certain parcels bisected by the dividing line between local government units upon the purchase of an agricultural conservation easement by certain entities), and asked why that provision is not applicable to agricultural conservation easement purchases purchased solely by the Commonwealth.

Response: Act 14 of 2001 revised the Act to allow for the automatic incorporation of land into an ASA in the context of certain designated agricultural conservation easement purchase transactions. The language describing the types of agricultural conservation easement purchases where this automatic incorporation can occur, though, does not authorize this automatic incorporation in the context of an agricultural conservation easement purchase made *solely by the Commonwealth*. The relevant statutory language is in §§ 14.1(b)(2)(i)(A) and (B) of the Act (3 P.S. §§ 914.1(b)(2)(i)(B) and (C)).

Comment 55: The Lehigh County Board and the Pennsylvania Farmland Preservation Association raised the same question as in the preceding comment with respect to proposed § 1381.34 (relating to automatic inclusion of portions of certain parcels bisected by the dividing line between counties upon the purchase of an agricultural conservation easement by certain entities). The Pennsylvania Farmland Preservation Association acknowledged that the Act is specific in this regard, but expressed a desire to see the Act revised.

Response: The Department offers the same response it offered above with respect to Comment No. 54.

Comment 56: Attorney Hartman suggested proposed § 1381.34 (relating to automatic inclusion of portions of certain parcels bisected by the dividing line between counties upon the purchase of an agricultural conservation easement by certain parties) is unnecessary, because "when a parcel is divided by a county line, it is also always divided by a municipal boundary," and that subject is addressed in proposed § 1381.33 (relating to automatic inclusion of certain parcels bisected by the dividing line between local government units upon the purchase of an agricultural conservation easement by certain entities).

Response: The Department agrees that where a parcel is divided by a county line, it is also always divided by a municipal boundary line. The Department notes that the Act treats farmland tracts that are divided by county lines differently than it treats tracts that are only divided by township lines. Since the distinction between whether a tract is bisected by a county line or a township line is a meaningful distinction under the Act, the Department believes it important to preserve and clarify this distinction in the corresponding regulations. The Act addresses the referenced distinctions in §§ 14.1(b)(2)(i)(B) and (C) (3 P.S. §§ 914.1(b)(2)(i)(A) and (B)).

Comment 57: Several comments were received with respect to proposed §§ 1381.41 (relating to removing land that has been in an ASA for 7 years or more) and 1381.42 (relating to removing land in the course of the 7-year review or an interim period).

Senator Waugh requested the Department carefully consider the various comments offered with respect to the referenced proposed sections.

Representative Bunt offered a detailed comment with respect to proposed §§ 1381.41 and 1381.42, noting it was "...the original (and continuing) intent for deletions of land from an ASA to occur only after at least seven years have passed since the land was included in the ASA and a proposal to delete land can only occur during and in accordance with..." the 7- year review process or the interim review process described in the Act. Representative Bunt offered a detailed explanation of the evolution of the statutory language describing the circumstances under which land may be removed from an ASA. The statutory analysis concluded with the recommendation that proposed §§ 1381.41 and 1381.42 be revised to reflect that "...a proposal for deletion of land from an ASA must follow the same procedures as that of adding land, and shall only occur at the seven-year review period provided for in Section 9 of the act."

Proposed § 1381.41 would require land to remain in an ASA for at least 7 years before it can be removed by the landowner. The Pennsylvania Farm Bureau takes the position that a landowner can remove his or her land from an ASA at any time, and that the proposed provisions "contradict this long held interpretation of the law." The Pennsylvania Farm Bureau asked what would happen to a landowner who wishes to remove land from an ASA before it has been in the ASA for 7 years, and what the regulatory consequences for the farmer might be.

The Lancaster County Board expressed its belief that the Act only allowed the withdrawal of land from an ASA at the 7-year review interval or at an interim review, and asked whether the language of proposed § 138e.41(a) was the product of an

amendment of the Act. If the Act doesn't allow a landowner to remove land from an ASA at any time after it has been in the ASA for seven years, the Lancaster County Board would recommend the proposed section be revised to clarify this. The commentator believes the proposed section "could cause substantial monitoring problems for townships, counties and the Commonwealth" and that the 7-year review or interim review standard is more equitable and easy to manage.

The Lehigh County Board expressed concern over the provision in proposed § 1381.41 that allows a landowner to remove his or her land from an ASA at any time after it has been in the ASA for 7 years or more, and asked whether this option is addressed in the Act. The Lehigh County Board was apprehensive that owners of large tracts of land or land speculators might:

...use this provision in the regulations to effectively eliminate entire ASAs by pulling enough of their land out of an ASA to cause the termination of an ASA; thus penalizing other farmland owners who may rely on the farming protections afforded by their ASA. This could also be harmful and destabilizing to areas where agricultural conservation easements have been acquired.

Response: The Act provides (at 3 P.S. § 908(e)) that: "The deletion of land in the agricultural security area shall only occur after seven years or whenever the agricultural security area is subject to review by the governing body." The Department believes that – regardless of the legislative intent behind this provision - the plain grammatical meaning of this sentence is: "The deletion of land in the agricultural security area shall only occur: (1) after seven years; or (2) whenever the agricultural security area is subject to review by the governing body." Proposed §§ 1381.41 and 1381.42 were drafted in accordance with this reading of the statutory language.

Although the Department is ordinarily inclined to give great deference to comments offered by Legislators with respect to the legislative intent behind particular statutes, in this instance it does not believe it can interpret the statutory language quoted in the preceding paragraph in any way other than it has done. The Department would be supportive of an amendment of the Act to clarify the legislative intent on this subject (one way or the other). In the absence of that clarification, though, the Department believes it must follow the guidance of the Statutory Construction Act of 1972, which provides (at 1 Pa.C.S.A. § 1921(b)) that when: "... the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit."

Comment 58: Attorney Hartman noted proposed § 1381.41(d) (relating to removing land that has been in an ASA for 7 years or more) would authorize postponement of the recording of the removal of land from an ASA until the next 7-year review, and suggested the provision be revised to reflect the removal may be recorded with other revisions resulting from an interim review (a review that does not occur at the 7-year intervals).

The commentator also suggested proposed §§ 1381.41 and 1381.42 be combined.

Response: The Department believes its response to the following comment addresses most of the commentator's concerns. With respect to the suggestion that proposed §§ 1381.41 and 1381.42 be combined, the Department prefers to keep these

sections separate in the final-form regulation. Although a good bit of the material in each section repeats material found in the other, the Department believes the final-form regulation will be more readable and user-friendly if these two sections are kept separate.

Comment 59: The Pennsylvania Farmland Preservation Association reviewed proposed § 1381.41(d) (relating to removing land that has been in an ASA for 7 years or more), which would allow a governing body to wait until the next 7-year or interim review of an ASA to record deletions of land from that ASA. The commentator suggested the recording "should take place within 10 days of the deletion, as is required when land is added to an ASA." The commentator emphasized the need for county farmland preservation programs to have accurate and up-to-date information regarding whether land is or is not part of an ASA.

Response: The Department agrees with the commentator, and has revised proposed §§ 1381.41(d) (relating to removing land that has been in an ASA for 7 years or more) and 1381.42(d) (relating to removing land in the course of the 7-year review or an interim review) to require the recording of deletions of land from an ASA within 10 days of the deletion. As the commentator suggests, this 10-day deadline is consistent with the recording deadlines for a newly created ASA or modifications to an existing ASA in proposed § 1381.22(a) (relating to filing of ASA description by governing body; recording of the ASA description). The comment also prompted a slight revision of proposed § 1381.22(a) to clarify the 10-day deadline is also applicable to modifications of an existing ASA.

Comment 60: The Pennsylvania Farmland Protection Association requested an explanation of the 210-day interval referenced in proposed § 1381.51 (relating to seven-year review).

Response: The Department reviewed the repeated references to the "210-day" interval, and agrees the proposed language is confusing. The 210-day figure is the sum of the 180-day period referenced in that section and the 30-day advance notice period referenced in section 9 of the Act (3 P.S. § 909). The Department has revised proposed § 1381.51 to remove this confusing reference.

Fiscal Impact

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

Political Subdivisions: The regulation is not expected to impose appreciable costs upon political subdivisions. Although local government units are required to absorb the costs associated with the formation and recording of an ASA, this requirement is imposed by the Act, rather than the regulation.

Private Sector: The regulation will impose no costs and have no fiscal impact upon the private sector.

General Public: The regulation will impose no costs and have no fiscal impact upon the general public.

Paperwork Requirements

The regulation will not appreciably increase the paperwork burden of the Department, local government units, county agricultural land preservation programs or other affected entities.

Sunset Date

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

Contact Person

Further information is available by contacting the Department of Agriculture, Bureau of Farmland Preservation, 2301 North Cameron Street, Harrisburg, PA 17110-9408, Attention: Sandra Robison. Telephone: (717) 783-3167.

Regulatory Review

Under § 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), the Department submitted a copy of the Notice of Proposed Rulemaking published at 32 *Pennsylvania Bulletin* 775 (February 9, 2002) on January 29, 2002 to the Independent Regulatory Review Commission and to the Chairpersons of the House and Senate Standing Committees on Agriculture and Rural Affairs for review and comment. In compliance with § 5(b.1), the Department also provided the Commission and the Committees with copies of all comments received, as well as other documentation.

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

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

Findings

The Department of Agriculture finds the following:

1. Public notice of its intention to adopt the regulation encompassed by this Order has been given under §§ 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240)(45 P.S. §§ 1201 and 1202) and their attendant regulations at 1 Pa. Code §§ 7.1 and 7.2.

2. A public comment period was provided as required by law and all comments received were considered.

3. The modifications that were made to this regulation in response to comments received do not enlarge the purpose of the proposed regulation published at 32 *Pennsylvania Bulletin* 775 (February 9, 2002).

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

Order

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

1. The regulations of the Department of Agriculture at 7 Pa. Code Chapters 138e (relating to agricultural conservation easement purchase program) and 138l (relating to agricultural security area program) are adopted as set forth at Annex A hereto.

2. The regulations of the Department of Agriculture at 7 Pa. Code Chapter 138 (relating to agricultural area security program) are hereby rescinded in their entirety.

3. The Secretary of Agriculture shall submit this Order, 32 *Pennsylvania Bulletin* 1046 (February 23, 2002) and Annex "A" hereto to the Office of General Counsel and to the Office of Attorney General for approval as required by law.

4. The Secretary of Agriculture shall certify this Order, 32 *Pennsylvania Bulletin* 775 (February 9, 2002) and Annex "A" hereto and deposit them with the Legislative Reference Bureau as required by law.

5. This Order shall take effect upon publication in the *Pennsylvania Bulletin*.

DENNIS C WOLFF,
Secretary

Note: This document has been formatted using single-spacing instead of double-spacing, to keep it a reasonable length.

Annex A
TITLE 7. AGRICULTURE
PART V-C. FARMLAND AND FOREST LAND
CHAPTER 138. AGRICULTURAL AREA SECURITY PROGRAM

§§ 138.1--138.14. (Reserved).

**CHAPTER 138e. AGRICULTURAL CONSERVATION
EASEMENT PURCHASE PROGRAM**

GENERAL

§ 138e.3. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

* * * * *

Agricultural conservation easement or easement--An interest in land, less than fee simple, which interest represents the right to prevent the development or improvement of [the land] a parcel for a purpose other than agricultural production. The easement may be granted by the owner of the fee simple to a third party or to the Commonwealth, to a county governing body or to a unit of local government. It shall be granted in perpetuity, as the equivalent of covenants running with the land. The exercise or failure to exercise any right granted by the easement will not be deemed to be management or control of activities at the site for purposes of enforcement of the Hazardous Sites Cleanup Act (35 P. S. §§ 6020.101--6020.1305).

Agricultural production--The production for commercial purposes of crops, livestock and livestock products, including the processing or retail marketing of the crops, livestock or livestock products if more than 50% of the processed or merchandised products are produced by the farm operator. The term includes use of land which is devoted to and meets the requirements of and qualifications for payments or other compensation under a soil conservation program under an agreement with an agency of the Federal government.

* * * * *

County planning commission--A planning commission or agency which has been designated by the county governing body to establish and foster a comprehensive plan for land management and development within the county.

* * * * *

Local government unit--Any city, borough, township or town or any home rule municipality, optional plan municipality, optional charter municipality or similar general purpose unit of government which may be created or authorized by statute.

Mansion house--The primary residential structure located upon a parcel.

* * * * *

Parcel--A tract of land in its entirety which is assessed for tax purposes by one county, including any portion of that tract that may be located in a neighboring county. The county responsible for assessing an entire tract, on its own or in conjunction with the Commonwealth or a local government unit, or both, shall be eligible to purchase agricultural conservation easements covering the entire tract.

* * * * *

REQUIREMENTS FOR CERTIFICATION OF COUNTY PROGRAM

§ 138e.11. General requirements.

* * * * *

(d) A county program shall contain provisions for the participation of local government units in the preservation of farmland through the purchase of agricultural conservation easements. These provisions shall address the following:

- (1) Local government unit recommendations for joint county-local government unit purchases.
- (2) Local government unit recommendations for joint Commonwealth-local government unit purchases.
- (3) Local government unit recommendations for joint Commonwealth-county-local government unit purchases.
- (4) Local government unit agricultural conservation easement purchases authorized under section 14.1(b.1)(4) of the act (3 P. S. § 914.1(b.1)(4)).

* * * * *

§ 138e.16. Minimum criteria for applications.

(a) The county program shall consider the quality of the farmland tract, including the USDA soil classification and productivity. The farmland tract shall:

- (1) Be [located] one or more of the following:
 - (i) Located in an agricultural security area consisting of 500 acres or more.
 - (ii) Bisected by the dividing line between two local government units, having the majority of its viable agricultural land within an agricultural security area of 500 acres or more and the remainder in another local government unit outside of an agricultural security area.
 - (iii) Bisected by the dividing line between the purchasing county and an adjoining county, having the land located in the purchasing county within an agricultural security area of 500 acres or more and the remainder in another county outside of an agricultural security area, and with respect to which one of the following applies:

- (A) A mansion house is on the tract and located within the purchasing county.
- (B) When the mansion house on the tract is bisected by the dividing line between the two counties, the landowner has chosen the purchasing county as the situs of assessment for tax purposes.
- (C) When there is no mansion house on the farmland tract, the majority of the tract's viable agricultural land is located within the purchasing county.

(2) Be [contiguous] one or more of the following:

- (i) Contiguous acreage of at least 50 acres in size [unless the tract is].
- (ii) Contiguous acreage of at least 10 acres in size and [is either] utilized for a crop unique to the area [or is].
- (iii) Contiguous acreage of at least 10 acres in size and contiguous to a property which has a perpetual conservation easement in place which is held by a "qualified conservation organization," as that term is defined in section 170(h)(3) of the Internal Revenue Code (26 U.S.C.A. § 170(h)(3)).

* * * * *

STATE BOARD REVIEW OF COUNTY PROGRAM

§ 138e.41. Application for review of county program.

A county board seeking State Board review, certification and approval of its county program shall submit one copy of its county program and its bylaws to the State Board at the following address: Director, Bureau of Farmland [Protection] Preservation, Department of Agriculture, 2301 North Cameron Street, Harrisburg, Pennsylvania 17110-9408.

§ 138e.42. Review, certification and approval of a county program.

* * * * *

(c) A decision of the State Board to disapprove a county program shall be an adjudication subject to 2 Pa.C.S. §§ 501--508 and 701--704 (relating to the Administrative Agency Law). An appeal from a decision of the State Board to disapprove a county program may be made by the county board to the Secretary [of Agriculture] and shall be filed in writing with the Secretary within 30 days of the State Board's action. An appeal from a decision of the State Board [will] will be governed by 1 Pa. Code Part II (relating to general rules of administrative practice and procedure).

§ 138e.43. Revision of county program.

* * * * *

(b) A county board seeking review of a proposed revision to its county program shall submit one copy of the proposed revision to the State Board at the following address: Director, Bureau of Farmland [Protection] Preservation, Department of Agriculture, 2301 North Cameron Street, Harrisburg, Pennsylvania 17110-9408.

* * * * *

PROCEDURE FOR PURCHASING AN EASEMENT

§ 138e.61. Application.

(a) A separate application shall be required for each farmland tract offered for easement purchase. The application shall consist of a completed application form, locational maps and a soils report form. A copy of a soils report form is in Appendix B (relating to Form C Soils Report). If the county program contains minimum criteria for easement purchase that vary from those in § 138e.16 (relating to minimum criteria for applications), the application shall also include documentation [(such as a production report form contained in a guidebook authorized by the State Board under section 14.1(a)(3)(xv) of the act (3 P. S. § 914.1(a)(3)(xv))] to demonstrate the farmland tract meets these minimum criteria.

(b) The county board shall develop and make available to a county resident an application form which requires the following information:

* * * * *

(2) [The] One of the following, as applicable:

(i) If the farmland tract is eligible to be considered for easement purchase under § 138e.16(a)(1)(i), the county, [municipality] local government unit and agricultural security area in which the farmland tract is located.

(ii) If the farmland tract is bisected by a dividing line between two units of local government and is eligible to be considered for easement purchase under § 138e.16(a)(1)(ii), the county and local government units in which the farmland tract is located, the agricultural security area in which a portion of that farmland tract is located, a breakdown of the acreage proposed for easement purchase in each local government unit and a breakdown of the number of acres of viable agricultural land in the acreage proposed for easement purchase in each local government unit.

(iii) If the farmland tract is bisected by the dividing line between two or more counties and is eligible to be considered for easement purchase under § 138e.16(a)(1)(iii), the counties and local government units in which the farmland tract is located, the agricultural security area in which a portion of that farmland tract is located, and one of the following:

(A) If there is a mansion house on the farmland tract, an acknowledgement of this fact and a designation of the county in which the mansion house is located.

(B) If there is a mansion house on the farmland tract, and the mansion house is bisected by the dividing line between two or more counties, an acknowledgement of this fact and a designation of the county the landowner has chosen as the situs of assessment for tax purposes.

(C) If there is no mansion house on the farmland tract, an acknowledgement of this fact and a breakdown of the acreage proposed for easement purchase in each county and a breakdown of the number of acres of viable agricultural land in the acreage proposed for easement purchase in each county.

* * * * *

§ 138e.65. Easement value and purchase price.

* * * * *

(b) *Maximum purchase price.* The purchase price offered for the purchase of an easement under § 138e.66(b) may not exceed, but may be less than, the value of the easement. [Regardless of the easement value, the State funds paid toward the purchase price of an easement will not exceed \$10,000 per acre.]

§ 138e.66. Offer of purchase by county board.

* * * * *

(c) Within 30 days of receipt of the written offer from the county board, an applicant may do one of the following:

* * * * *

(3) Advise the county board that the applicant is retaining, at the applicant's expense, an independent State-certified general real estate appraiser to determine the easement value. The appraiser shall be qualified, and the appraisal shall be completed in accordance with the procedure in § 138e.64 (relating to appraisal). The appraisal shall be submitted to the county board within 120 days of receipt of the county board's offer to purchase. The county board may extend the time within which this appraisal shall be submitted. This extension shall be in writing and shall extend the 120-day deadline by no more than 60 days. Upon completion, three copies of the applicant's appraisal shall be submitted to the county board. The applicant's decision to obtain an independent appraisal under this paragraph does not constitute a rejection of the county board's offer. The county board's offer shall remain open unless increased by the county board under subparagraph [(ii)] (iv) or rejected by the applicant under subparagraph [(iii) or (iv)] (v).

* * * * *

(iii) Regardless of the easement value, the purchase price may not exceed [\$10,000 per acre of State funds] any overall purchase price limits established by the county in its county program.

* * * * *

(v) The applicant shall, within 15 days of receipt of the county board's written offer under subparagraph [(ii)(A)] (iv)(A) or receipt of the county board's written notice under subparagraph [(ii)(B)] (iv)(B), notify the county board in writing that the applicant does one of the following:

* * * * *

§ 138e.67. Requirements of the agricultural conservation easement deed.

* * * * *

(d) The farmland tract on which an easement is to be purchased shall be surveyed unless the legal description contained in the deed recorded in the land records of the county in which the farmland tract is located satisfies the requirements of subsections (b) and (c). A survey required by this paragraph shall [comply with the boundary survey measurement standards for a Class A-2 survey as published by the Pennsylvania Society of Land Surveyors] meet the requirements of § 138e.73 (relating to survey requirements).

* * * * *

(g) [A copy of the proposed deed shall be submitted to the State Board for approval prior to execution and delivery.] For purchases made using a combination of State, county and local municipality funds, the grantees shall be the Commonwealth, the county and the local municipality providing the funds under joint ownership as defined in the act.

(h) For purchases made entirely with county funds, the county shall be the sole grantee.

(i) For purchases made entirely with local municipal funds, the municipality shall be the sole grantee.

(J) FOR PURCHASES MADE ENTIRELY WITH STATE FUNDS, THE COMMONWEALTH SHALL BE THE SOLE GRANTEE.

§ 138e.68. Title insurance.

(a) The county board shall provide [a title report] the following to the State Board upon submission of its recommendation for the purchase of an easement [.]:

(1) A title insurance commitment.

(2) Copies of all recorded or unrecorded documents listed on the title insurance commitment as exceptions to the title insurance policy.

(b) At settlement, the county board shall provide a title insurance policy issued by a title insurance company authorized to conduct business in this Commonwealth by the Insurance Department. A marked up title commitment may serve as a policy until the FINAL policy is issued. THE AMOUNT OF TITLE INSURANCE COVERAGE SHALL EQUAL OR EXCEED THE HIGHER OF THE FOLLOWING AMOUNTS:

(1) THE DIFFERENCE BETWEEN THE APPRAISED MARKET VALUE AND THE APPRAISED FARMLAND VALUE, AS DESCRIBED IN SUBSECTION 138e.65(a) (RELATING TO EASEMENT VALUE AND PURCHASE PRICE).

(2) THE DIFFERENCE BETWEEN THE AGRICULTURAL VALUE AND THE NONAGRICULTURAL VALUE, AS DESCRIBED IN SUBSECTION 138e.66(c)(3) (RELATING TO OFFER OF PURCHASE BY COUNTY BOARD), IF SUCH VALUES ARE USED TO CALCULATE THE EASEMENT VALUE.

* * * * *

§ 138e.71. Notification of owners of land adjoining proposed easement purchase.

* * * * *

(d) Correction of notice. If the date or time of the meeting at which an easement purchase recommendation is to be considered changes after the adjoining landowners receive the notice described in this section, the county board shall provide these landowners a corrective notice, providing notice of the changes, in the manner described in subsection (b) or (c).

§ 138e.73. Survey requirements.

(a) General requirement. If a survey of land being considered for agricultural conservation easement purchase is required under § 138e.67(d) (relating to requirements of the agricultural conservation easement deed) or is otherwise required to determine metes and bounds of any right-of-way or other interests in the land, the survey shall indicate that it has a closure error of not greater than 1 foot per 10,000 linear feet in the survey, and shall otherwise comply with the ~~most current~~ boundary survey measurement standards published by the Pennsylvania Society of Land Surveyors IN ITS MANUAL OF PRACTICE FOR PROFESSIONAL LAND SURVEYORS IN THE COMMONWEALTH OF PENNSYLVANIA, ADOPTED JULY 10, 1998, OR ITS MOST-CURRENT SUCCESSOR DOCUMENT.

(b) Other requirements. A survey described in subsection (a) shall also contain the following:

(1) A recordable legal description setting forth the metes and bounds of, MONUMENTATION, EXCEPTIONS, EASEMENTS AND RIGHTS-OF-WAY WITH RESPECT TO the farmland tract or other subject of the survey.

(2) A copy of the FINAL BOUNDARY survey for each traverse in digital electronic format that complies with the conservation easement Geographic Information System (GIS) technical standards maintained in the guidebook prepared by the Department in accordance with section 14.1(a)(3)(xv) of the act (3 P. S. § 914.1(a)(3)(xv)). THE DIGITAL FORMAT SHALL SHOW THE BEARINGS AND DISTANCES BETWEEN EACH MONUMENT AND CONTAIN THE NORTHING AND EASTING OF EACH MONUMENT.

(3) Geographic coordinates COORDINATES of at least two ground control points located sequentially along a traverse THE BOUNDARY SURVEY, with latitude and longitude expressed in decimal degrees WITH AN ACCURACY OF 6 RECORDED DECIMAL PLACES. ~~These geographic coordinates shall be based on the North American Datum of 1983 and shall be accurate to within 2 meters horizontally,~~ OR ITS MOST-CURRENT SUCCESSOR DOCUMENT, AND SHALL BE OBTAINED THROUGH FIELD OBSERVATION OR VERIFICATION OF DATUM.

(4) A ~~hardcopy~~ PAPER COPY of the plotted FINAL survey map from the digital file showing the course bearings and distances and other annotations and symbols as maintained in the guidebook prepared by the Department in accordance with section 14.1(a)(3)(xv) of the act.

(c) Monumentation. If a survey of land being considered for agricultural conservation easement purchase is required under § 138e.67(d) or is otherwise required to determine metes and bounds of any right-of-way or other interests in the land, the surveyor shall establish monumentation for at least the two ground control points ~~referenced in~~ REQUIRED UNDER subsection (b)(3). ~~One point shall be a permanent, unmovable monument established with a concrete shaft, 5/8 inch steel reinforcing bar as a core with an alloy disk embedded with a stamped identification number. The second ground control point shall be a standard 5/8 inch rebar or similar concrete monument.~~ THIS MONUMENTATION SHALL CONSIST OF PERMANENT, CONCRETE MARKERS OF SUBSTANTIAL LENGTH AND WIDTH CONTAINING FERROUS OR

OTHER MATERIALS DETECTABLE BY AN ELECTROMAGNETIC LOCATOR. THE IDENTITY OF THE SURVEYOR WHO PLACES A MONUMENT SHALL BE AFFIXED OR MARKED UPON THE MONUMENT SUCH THAT IT CAN BE ASCERTAINED BY INSPECTION OF THE MONUMNET IN THE FIELD.

STATE BOARD REVIEW OF A PURCHASE RECOMMENDATION

§ 138e.91. Recommendation for purchase.

A county board shall make its recommendation for purchase of an easement by submitting the following documents to the Director, Bureau of Farmland [Protection] Preservation, Department of Agriculture, 2301 North Cameron Street, Harrisburg, Pennsylvania 17110-9408:

(1) [Twenty-two] Twenty-five copies of the summary report prepared in accordance with § 138e.70 (relating to summary report), including the following items:

* * * * *

(x) The [22] 25 copies submitted shall be individually collated and three-hole punched, but not stapled.

* * * * *

(8) A copy of the approved soil conservation plan that is required to be in place with respect to the land under § 138e.241(2) (relating to deed clauses), and a fully executed conservation plan agreement form as described in § 138e.222(a) (relating to conservation plan).

* * * * *

§ 138e.93. Postsettlement recording and reporting procedures.

(a) Retaining copies of essential documents. The county board shall make and retain photocopies of the following documents after settlement is held with respect to an agricultural conservation easement purchase, and prior to the recording of the deed of agricultural conservation easement in the appropriate recorder of deeds' office:

(1) The complete and fully-executed deed of agricultural conservation easement, including the complete legal description of the land subject to the agricultural conservation easement.

(2) A marked-up title insurance commitment document, reflecting that all listed title insurance exceptions have been addressed and resolved prior to the purchase of the agricultural conservation easement.

(3) Mortgage satisfaction pieces, subordination agreements and other documents to be recorded in connection with the agricultural conservation easement purchase.

(4) THE COMPLETE AND FULLY-EXECUTED CONSERVATION PLAN AGREEMENT FORM AS DESCRIBED IN SUBSECTION § 138e.222 (a) (RELATING TO CONSERVATION PLAN).

(b) Prompt recording RECORDING of the deed of agricultural conservation easement and other documents. The county board shall record the deed of agricultural conservation easement

and any other documents (such as subordination documents, satisfaction pieces and releases, AND THE CONSERVATION PLAN AGREEMENT FORM) at the appropriate recorder of deeds' office promptly after settlement is held with respect to the easement purchase.

(c) ~~Prompt recording~~ RECORDING of agricultural security area; reporting to the State Board. If the settlement triggers the automatic inclusion into an agricultural security area of some portion of the land subject to the agricultural conservation easement under section 14.1(b)(2)(i)(B) or (C) of the act (3 P. S. § 914.1(b)(2)(i)(B) or (C)), the governing body that created the agricultural security area into which the land is automatically included shall promptly record the addition of this land into the agricultural security area in accordance with the filing, recording and notification procedures in section 8(d) and (g) of the act (3 P. S. § 914.8(d) and (g)). The governing body shall then promptly transmit to the county board written confirmation that this recording, filing and notification has been accomplished. The county board shall mail or deliver a copy of that written confirmation to the State Board within 10 days of receipt.

(d) Reporting the agricultural conservation easement purchase to the State Board.

(1) General. The county board shall mail or deliver the following documents to the Department within 10 days following the date upon which settlement is held with respect to an agricultural conservation easement purchase:

(i) A complete notification of settlement, on a form available from the Department upon request, containing the following:

(A) The name of the landowners.

(B) The county in which the land is located.

(C) The date of settlement.

(D) A statement identifying any additional incidental costs.

(E) An indication (by check-off or other designation) of the other documents the county board is submitting to the Department along with the Notification of Settlement Form.

(F) The signature of the administrator or chief executive of the county board.

(ii) Copies of all of the documents described in subsection (b).

(iii) A copy of the settlement sheet, IF THE EXECUTION OF SUCH A DOCUMENT IS PART OF THE SETTLEMENT TRANSACTION.

(iv) A marked-up title insurance commitment document OR A TITLE INSURANCE POLICY, reflecting that all listed title insurance exceptions have been addressed and resolved prior to the purchase of the agricultural conservation easement.

(v) A complete verification, executed by the settlement agent at settlement, on a form available from the Department upon request, containing the following:

(A) A statement reading substantively as follows:

As Settlement Agent for _____ County, I hereby verify that I have submitted (or will take responsibility for submitting) the appropriate IRS 1099-S form(s) for the agricultural conservation easement identified below in accordance with the Internal Revenue Code, section 6045. I further verify that I have reported (or will report) the gross proceeds in the case of a joint purchase by the Commonwealth and the county. If this verification is not submitted to the Commonwealth within 30 days of closing, I further verify that the 1099-S form(s) will be sent to the IRS and the transferor by the deadline established by the IRS.

- (B) The name and Federal taxpayer I.D. number of each person who sold an interest in the agricultural conservation easement.
- (vi) An invoice from the county for any additional incidental costs related to the agricultural conservation easement purchase, on a form available from the Department upon request, containing the following:
- (A) The name, address and Federal taxpayer I.D. number of the county.
 - (B) The date of the application.
 - (C) The name, address and telephone number of the person designated by the county to act as a contact person if the Department requires further information.
 - (D) The name of the farm owner, address of the farm and the number of acres under agricultural conservation easement.
 - (E) A breakdown of the purposes for which reimbursement of additional incidental expenses is requested, and the amount of each expense.
- (vii) A revised statement of costs, as described in § 138e.69 (relating to statement of costs), if the incidental costs are higher or lower than originally reported.
- (2) Exception for agricultural conservation easements purchased by a local government unit solely. Paragraph (1) notwithstanding, if an agricultural conservation easement is purchased by a local government unit solely, the county board shall mail or deliver the following documents to the Department within 30 days after recording the deed of agricultural conservation easement:
- (i) A copy of the complete and fully-executed deed of agricultural conservation easement, including the complete legal description of the land subject to the agricultural conservation easement.
 - (ii) A current United States Geological Survey (USGS) topographical map that clearly and legibly shows the subject property location and boundaries, location of neighboring easements and exclusions withheld from the subject property.
 - (iii) An invoice as described in paragraph (1)(vi).
- (e) Certified copies COPIES of filed documents. The county board shall mail or deliver certified copies of the recorded documents described in subsection (b) to the Department within 30 days following the date upon which these documents are recorded at the appropriate recorder of deeds' office. The appropriate recorder of deeds' office shall issue this certification. THE DATE AND PLACE OF RECORDING SHALL APPEAR ON EACH DOCUMENT.
- (f) Title insurance policy. The title insurance policy should be mailed or delivered to the State Board within a reasonable time after settlement--preferably within 60 days of settlement.

ALLOCATION OF FUNDS

§ 138e.102. Allocation of funds to counties.

* * * * *

(h) ~~If an eligible county seeks to encumber State matching funds for an agricultural conservation easement purchase to be made by the county alone, the State matching funds shall be considered encumbered when the county board has submitted to the Department a signed agreement of sale and the written certification of the county governing body that the specific~~

amount of county matching funds necessary for the purchase of the agricultural conservation easement by the county is available and intended for this purchase.

~~(i)~~ * * *
~~{(i)}~~ (i) * * *

§ 138e.103. Expenditure of matching funds.

* * * * *

(d) An easement purchased using solely county funds will be considered an expenditure of county matching funds under [sections] section 14.1(h)(3), (4) and (5)(i) of the act (3 P. S. [§]§ 914.1(h)(3), (4) and (5)(i)) if:

* * * * *

(2) Upon settlement of the purchase of an easement, the county board submits the following to the State Board:

(i) A copy of the [signed] complete and fully-executed deed of agricultural conservation easement, including the complete legal description of the land subject to the agricultural conservation easement.

* * * * *

(iv) The date of approval of the conservation plan, a copy of the conservation plan and a copy of the executed conservation plan agreement as described in § 138e.222 (relating to conservation plan).

(v) A completed Soil Report Form "C" (a form provided by the Department), both pages. See Appendix B (relating to Form C Soils Report).

(vi) A current United States Geological Survey (USGS) topographical map that clearly and legibly shows the subject property location and boundaries, location of neighboring easements and exclusions withheld from the subject property.

(vii) A statement of costs, as described in § 138e.69 (relating to statement of costs).

(viii) An invoice as described in § 138e.93(d)(1) (vi) (relating to postsettlement recording and reporting procedures).

* * * * *

§ 138e.104. Installment sales.

* * * * *

(c) Installment sales with a payment period of more than 5 years. Installment sales, other than those installment sales described in subsection (d), in which the final payment for the easement purchase is to be made more than 5 years from the date the contract of sale is fully executed are subject to the following provisions:

* * * * *

(d) Installment sales deferring the payment of principal for up to 30 years. Installment sales in which payment of principal is deferred to the end of a specific period of up to 30 years from the date the contract of sale is fully executed are subject to the following provisions:

(1) Purchases may be made in the name of the Commonwealth, an eligible county or jointly by the Commonwealth and an eligible county.

(2) Notwithstanding the requirement of § 138e.66(d), the county board may, subject to approval by the Department, provide the agreement of sale for purchases made under this subsection.

(3) The agreement of sale and the deed of easement shall meet the same requirements and be subject to the same conditions as set forth in §§ 138e.66(c) and 138e.67.

(4) The installment payment terms shall be negotiated between the landowner and the county board. These terms shall include the amount of cash (if any) to be received at closing, the interest rate, the period over which interest is to be paid and the point at which principal is to be paid.

(5) ~~If~~ THE landowner is responsible for the transaction costs associated with the type of purchase described in this subsection unless the county program provides otherwise.

PROCEDURE FOR INSPECTING AND ENFORCING AN EASEMENT

§ 138e.201. Responsibility.

(a) The county board shall have the primary responsibility for inspecting restricted land and enforcing [an easement] the following[.]:

(1) Agricultural conservation easements THAT WERE ACQUIRED UNDER AUTHORITY OF THE ACT AND ARE LOCATED within the county.

(2) Agricultural conservation easements which were acquired under authority of section 14.1(b)(2) (i) of the act (3 P. S. § 914.1(b)(2)(i)), including any portion extending into an adjoining county.

* * * * *

§ 138e.202. Inspections.

(a) The county board shall inspect all restricted land within the county at least annually to determine compliance with the applicable deed of easement. The first inspection shall be completed within 1 year of the date of easement sale, and in sufficient time to SHALL be included in the annual report described in § 138e.203 (relating to annual report) NO LATER THAN THE FIRST ANNUAL REPORT FOLLOWING THAT 1-YEAR PERIOD.

* * * * *

(d) Within 10 days of conducting an inspection under subsection (a), the county board shall prepare a written inspection report setting forth the following information:

* * * * *

(6) A statement indicating whether a structure permitted under section 14.1(c)(6)(iv) of the act (3 P. S. § 914.1(c)(6)(iv)) has been constructed on the restricted land and, if such a structure has

been constructed, the month and year construction was completed and a description of the structure and its location on the land.

* * * * *

§ 138e.203. Annual report.

The county board shall file the following with the State [board a] Board by March 1 of each year:

(1) A copy of inspection reports for inspections conducted during the prior year[, and compile an].

(2) An annual report which summarizes the number of inspections, violations detected, violations resolved and the circumstances surrounding unresolved violations.

§ 138e.204. Enforcement.

(a) The county board shall enforce the terms of each easement purchased within the county under the act, whether it be a local government unit, county, State or joint purchase.

* * * * *

RESPONSIBILITY OF OWNER

§ 138e.222. Conservation plan.

(a) [To preserve the agricultural viability of the restricted land, the county board shall require, and the owner of the restricted land shall implement, a conservation plan approved by the county conservation district or the county board.] The county board shall require the owner of land being considered for agricultural conservation easement purchase to do the following before the county board recommends approval of the easement purchase to the State Board:

(1) Obtain BEFORE THE COUNTY BOARD RECOMMENDS APPROVAL OF THE EASEMENT PURCHASE TO THE STATE BOARD, OBTAIN a conservation plan approved by the county conservation district or the county board for the land that would be subject to the agricultural conservation easement.

(2) Execute AS PART OF THE SETTLEMENT DOCUMENTS DESCRIBED IN § 138e.93 (RELATING TO POSTSETTLEMENT RECORDING AND REPORTING PROCEDURES), EXECUTE a conservation plan agreement FORM containing the following:

(i) The name, address and telephone number of the landowners.

(ii) The location of the land.

(iii) The acreage of the land.

(iv) An acknowledgement that the deed of agricultural conservation easement requires that all agricultural production on the subject land be conducted in accordance with the conservation plan.

(v) An acknowledgement that a conservation plan exists with respect to the land, together with the following:

(A) The source of the conservation plan (typically, the county conservation district).

(B) An identifying number given the conservation plan.

(C) The date of the conservation plan.

(vi) An acknowledgement that the landowners agree to comply with the conservation practices and implementation schedule in the conservation plan, and an acknowledgement that failure to so comply would be a violation of the terms of the deed of agricultural conservation easement.

(vii) The signature of the landowners.

* * * * *

LAND TRUST REIMBURSEMENT GRANT PROGRAM

§ 138e.251. Program in general.

Section 14.5(a)(3) of the act (3 P. S. § 914.5(a)(3)) authorizes the expenditure of up to \$500,000 from the Supplemental Agricultural Conservation Easement Purchase Account to reimburse eligible land trusts for expenses incurred in the acquisition of agricultural conservation easements in this Commonwealth. Sections 138e.252--138e.256 describe the procedures and standards under which this reimbursement shall occur under the Land Trust Reimbursement Grant Program.

§ 138e.252. Eligibility of a land trust to register for reimbursement grants.

To be eligible to register with the State Board in accordance with § 138e.253 (relating to registration of eligible land trust) and to receive reimbursement grants under the Land Trust Reimbursement Grant Program, a land trust shall be a tax-exempt institution under section 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C.A. § 501(c)(3)) and include the acquisition of agricultural conservation easements or other conservation easements in its stated purpose.

§ 138e.253. Registration of eligible land trust.

(a) Registration required. An eligible land trust seeking reimbursement grants under the Land Trust Reimbursement Grant Program shall register with the State Board. Registration shall be accomplished by delivering a registration letter to the following address: Pennsylvania Department of Agriculture, ATTN: Bureau of Farmland Preservation, 2301 North Cameron Street, Harrisburg, Pennsylvania 17110-9408.

(b) Contents of registration letter. A registration letter shall:

(1) Set forth a request that the eligible land trust be registered with the State Board for the purpose of receiving reimbursement grants under the Land Trust Reimbursement Grant Program.

(2) Be signed by the president or other appropriate authorized officer of the eligible land trust.

(3) Have the following documentation enclosed:

(i) A copy of the section 501(c)(3) tax-exempt certification issued to the land trust by the Internal Revenue Service, or any other documentation demonstrating the section 501(c)(3) tax-exempt status of the land trust.

(ii) Documentation, such as a certified copy of the corporate bylaws, demonstrating that the land trust has the acquisition of agricultural conservation easements or other conservation easements as its stated purpose.

(4) If the eligible land trust seeks to be registered to receive reimbursement grants with respect to agricultural conservation easements it acquires in a county that is an eligible county (as that term is defined in § 138e.3 (relating to definitions)), have enclosed a letter from either the director or the chairperson of the county board of the eligible county, verifying that the land trust coordinates its farmland preservation activities with the farmland preservation activities of the county.

(5) If an eligible land trust seeks to be registered to receive reimbursement grants with respect to agricultural conservation easements it acquires in a county that is not an eligible county (as that term is defined in § 138e.3), have enclosed a written explanation of the procedures it will follow to coordinate with the State Board on the easement acquisitions.

(c) Acknowledgement of registration. The Department will promptly provide an eligible land trust that delivers a complete registration letter as described in subsection (b) with written confirmation that the eligible land trust is registered to receive reimbursement grants under the Land Trust Reimbursement Grant Program, together with an application for reimbursement grant form as described in § 138e.254 (relating to applying for a reimbursement grant).

§ 138e.254. Applying for a reimbursement grant.

(a) Application for reimbursement grant; timing. If an eligible land trust is registered in accordance with § 138e.253 (relating to registration of eligible land trust), and seeks a reimbursement grant with respect to the acquisition of an agricultural conservation easement, it shall do the following:

(1) Complete an application for reimbursement grant form as described in subsection (b).

(2) Deliver the completed application to the State Board, at the address in § 138e.253(a), within 60 days of closing on the acquisition of the agricultural conservation easement with respect to which the reimbursement grant is sought.

(b) Obtaining an application for reimbursement grant form. Reimbursement grant application forms may be downloaded from the Department's website address: www.pda.state.pa.us. The Department will also provide reimbursement grant application forms upon written request to the address in § 138e.253(a), or upon requests telephoned to the Department, at (717) 783-3167. The Department will also enclose a reimbursement grant application form with any acknowledgement of registration it issues under § 138e.253(c).

(c) Content of a complete application for a reimbursement grant. A complete application for a reimbursement grant shall contain the following:

(1) A request for reimbursement of costs incidental to the acquisition of an agricultural conservation easement.

(2) A statement of the costs (such as, costs of appraisals, legal services, title searches, document preparation, title insurance, closing fees and surveys) incidental to the acquisition of the agricultural conservation easement.

(3) A true and correct copy of the recorded deed of agricultural conservation easement.

(4) The Soil Report Form "C" (a form provided by the Department), both pages. See Appendix B (relating to Form C Soils Report).

§ 138e.255. State Board review of applications.

(a) Department's responsibility. The Department will stamp or otherwise identify every complete reimbursement grant application form to record the date it is received and the relative order in which these applications are received.

(b) State Board review. The State Board will consider reimbursement grant applications in the order in which the Department received them. The State Board will review any complete, timely application within 60 days of receipt. The State Board may not approve a reimbursement grant application unless all of the following criteria are met:

(1) The application meets the requirements of section 14.5(a)(3) of the act (3 P. S. § 914.5(a)(3)).

(2) The land use restrictions imposed under the deed of agricultural conservation easement are comparable to restrictions imposed under a deed of agricultural conservation easement acquired in accordance with the act, as described in § 138e.241 (relating to deed clauses).

(3) One of the following applies:

—(i) The land subject to the agricultural conservation easement meets the following criteria:

—(A) The land is in an agricultural security area consisting of 500 acres or more.

—(B) The land is contiguous acreage of at least 25 acres in size unless the tract is at least 10 acres in size and is either utilized for a crop unique to the area or is contiguous to a property which has a perpetual conservation easement in place which is held by a "qualified conservation organization," as that term is defined in section 170(h)(3) of the Internal Revenue Code (26 U.S.C.A. § 170(h)(3)).

—(C) The land contains at least 50% of soils which are both available for agricultural production and of land capability classes I-IV, as defined by the USDA NRCS.

—(D) The land contains the greater of 50% or 10 acres of harvested cropland, pasture or grazing land.

—(ii) The land subject to the agricultural conservation easement meets the following criteria:

—(A) The land is in an agricultural security area consisting of 500 acres or more.

—(B) The land is of any acreage but adjoins land that is either currently subject to an agricultural conservation easement purchased under authority of the act or adjoins land that has been approved by the State Board for agricultural conservation easement purchase under authority of the act, so that in the aggregate the land and the restricted land it adjoins comprise at least 50 contiguous acres.

THE LAND SUBJECT TO THE AGRICULTURAL CONSERVATION EASEMENT IS WITHIN AN AGRICULTURAL SECURITY AREA.

(4) There are sufficient unencumbered funds available to fund the reimbursement grant amount sought in the reimbursement grant application.

§ 138e.256. Decision of the State Board.

The State Board will, within 10 days of completing its review, mail a reimbursement grant applicant written notice as to whether the reimbursement grant application is approved. If the application is not approved, the written notice will specify the basis for disapproval.

CHAPTER 138I. AGRICULTURAL SECURITY AREA PROGRAM

Subchap.

- A. PRELIMINARY PROVISIONS
- B. FORMATION OF AN AGRICULTURAL SECURITY AREA
- C. ADDING LAND TO AN EXISTING ASA
- D. REMOVING LAND FROM AN EXISTING ASA
- E. SEVEN-YEAR REVIEW AND INTERIM REVIEW

Subchapter A. PRELIMINARY PROVISIONS

Sec.

- 138I.1. Definitions.
- 138I.2. Purpose.
- 138I.3. Contacting the Department.
- 138I.4. BENEFITS OF HAVING LAND WITHIN AN ASA.

§ 138I.1. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

ALCAB--The Agricultural Lands Condemnation Approval Board of the Commonwealth.

ASA--Agricultural security area--A unit of 250 or more acres used for the agricultural production of crops, livestock or livestock products under the ownership of one or more persons and one of the following applies:

(i) The land has been designated as such by the procedures in the act.

(ii) The land has been designated as such under the act of January 19, 1968 (1967 P. L. 992, No. 442) (32 P. S. §§ 5001--5012), entitled "An act authorizing the Commonwealth of Pennsylvania and the counties thereof to preserve, acquire or hold land for open space uses," prior to February 12, 1989, by the governing body of the county or governing body of the municipality in which the agricultural land is located on the basis of criteria and procedures which predate February 12, 1989, and which was not withdrawn from the ASA by August 10, 1989, by the owner providing written notice of withdrawal to the county governing body or governing body of the municipality in which the land is located.

ASA landowner--An owner of land located within an ASA.

ASA proposal form--A Proposal for the Creation or Modification of an Agricultural Security Area form created by the Department.

Act--The Agricultural Area Security Law (3 P. S. §§ 901--915).

Advisory committee--An Agricultural Security Area Advisory Committee.

Agricultural conservation easement--An interest in land, less than fee simple, which interest represents the right to prevent the development or improvement of a parcel for any purpose other than agricultural production.

(i) The easement may be granted by the owner of the fee simple to any third party or to the Commonwealth, to a county governing body or a unit of local government.

(ii) It shall be granted in perpetuity as the equivalent of covenants running with the land.

(iii) The exercise or failure to exercise any right granted by the easement will not be deemed to be management or control of activities at the site for purposes of enforcement of the Hazardous Sites Cleanup Act (35 P. S. § 6020.101--6020.1305).

Agricultural production--

(i) The production for commercial purposes of crops, livestock and livestock products, including the processing or retail marketing of the crops, livestock or livestock products if more than 50% of the processed or merchandised products are produced by the farm operator.

(ii) The term includes use of land which is devoted to and meets the requirements of and qualifications for payments or other compensation under a soil conservation program under an agreement with an agency of the Federal government.

Applicant--A landowner proposing the establishment or modification of an ASA in accordance with the requirements of the act and this chapter.

Contiguous acreage--

(i) All portions of one operational unit as described in the deed whether or not the portions are divided by streams, public roads, bridges, and whether or not described as multiple tax parcels, tracts, purparts, or other property identifiers.

(ii) The term includes supportive lands such as unpaved field access roads, drainage areas, border strips, hedgerows, submerged lands, marshes, ponds and streams, or as otherwise defined in § 138e.3 (relating to definitions).

County board--The county agricultural land preservation board as appointed by the county governing body under the act.

County fiscal year--The period from January 1 through December 31 of a particular calendar year.

County governing body--The county board of commissioners or, under home rule charters, another designated council of representatives.

County planning commission--A planning commission or agency which has been designated by the county governing body to establish and foster a comprehensive plan for land management and development within the county.

Crops, livestock and livestock products--The term includes:

(i) Field crops, including corn, wheat, oats, rye, barley, hay, potatoes and dry-beans.

(ii) Fruits, including apples, peaches, grapes, cherries and berries.

(iii) Vegetables, including tomatoes, snap beans, cabbage, carrots, beets, onions and mushrooms.

(iv) Horticultural specialties, including nursery stock and ornamental shrubs, ornamental trees and flowers.

(v) Livestock and livestock products, including cattle, sheep, hogs, goats, horses, poultry, furbearing animals, milk, eggs and furs.

(vi) Timber, wood and other wood products derived from trees.

(vii) Aquatic plants and animals and their byproducts.

Curtilage--The area surrounding a residential structure used for a yard, driveway, onlot sewerage system or other nonagricultural purposes.

Department--The Department of Agriculture of the Commonwealth.

Description of the proposed area--A complete and accurate list of the names of the owners of each parcel of land to be included in the proposed ASA, the tax parcel number or account number of each parcel and the number or account number of acres (including partial acres, to the nearest thousandth) contained in each parcel. The description shall use county tax map references for determining boundaries of each parcel, and no survey of parcels shall be required, except that an individual parcel included in the ASA shall represent less than the entire amount of contiguous land contained in the property of an owner.

Economic viability of farmland for agricultural production--The capability of a particular tract of restricted land, other than a tract of 2 acres or less upon which construction and use of the landowner's principal residence or housing for seasonal or full-time farm employees is permitted under section 14.1(c)(6)(iv) of the act (3 P. S. § 914.1(c)(6)(iv)), to meet the criteria in § 138e.16(a) (relating to minimum criteria for applications).

Eligible counties--Counties whose ~~county~~ EASEMENT PURCHASE programs have been approved by the State Board. For the purpose of annual allocations, an eligible county shall MUST have its ~~county~~ EASEMENT PURCHASE approved by the State AGRICULTURAL LAND PRESERVATION Board by January 1 of the year in which the annual allocation is made. Counties of the first class are not eligible under any circumstances.

Farm--Land in this Commonwealth which is being used for agricultural production as defined in the act.

Farmland tract or tract--Land constituting all or part of a farm with respect to which easement purchase is proposed. A farmland tract may consist of multiple tracts of land that are identifiable by separate tax parcel numbers, separate deeds or other methods of property identification.

Governing body--The governing body of a local government unit.

Grazing or pasture land--Land, other than land enrolled in the USDA Conservation Reserve Program, used primarily for the growing of grasses and legumes which are consumed by livestock in the field and at least 90% of which is clear of trees, shrubs, vines or other woody growth not consumed by livestock.

Harm the economic viability of the farmland for agricultural production--To cause a particular tract of restricted land to fail to meet the criteria in § 138e.16(a) or to create, through subdivision, a tract of restricted land, other than a tract of 2 acres or less upon which construction and use of the landowner's principal residence or housing for seasonal or full-time farm employees is permitted under section 14.1(c)(6)(iv) of the act, that would fail to meet the criteria in § 138e.16(a).

Harvested cropland--

(i) Land, other than land enrolled in the USDA Conservation Reserve Program, used for the commercial production of field crops, fruit crops, vegetables and horticultural specialties, such as Christmas trees, flowers, nursery stock, ornamentals, greenhouse products and sod.

(ii) The term does not include land devoted to production of timber and wood products.

Interim review--The interim review of an existing ASA in accordance with the requirements of section 9(b) of the act (3 P. S. § 909(b)).

Land Capability Class--A group of soils designated by either the county soil survey, as published by USDA-NRCS in cooperation with the Pennsylvania State University and the Department, or the Soil and Water Conservation Technical Guide maintained and updated by USDA-NRCS.

Landowner--The person holding legal title to a particular farmland tract.

Land which has been devoted primarily to agricultural use--

(i) Acreage which is a part of restricted land and is harvested cropland, grazing or pasture land, land used for the production of timber and wood products, land containing nonresidential structures used for agricultural production, or other acreage immediately available for agricultural production.

(ii) The term does not include: any acreage upon which immediate agricultural production is impracticable due to residential structures and their curtilages, wetlands, soil quality, topography or other natural or manmade features.

(iii) The term does not include: any tract of 2 acres or less designated as the site upon which the landowner's principal residence or housing for seasonal or full-time employees is permitted under section 14.1(c)(6)(iv) of the act.

Local government unit--A city, borough, township or town or any home rule municipality, optional plan municipality, optional charter municipality or similar general purpose unit of government which may be created or authorized by statute.

Mansion house--The primary residential structure located upon a parcel.

Nonprofit land conservation organization--A nonprofit organization dedicated to land conservation purposes recognized by the Internal Revenue Service as a tax-exempt organization under the Internal Revenue Code of 1986 (26 U.S.C. §§ 1--7872).

Normal farming operation--

(i) The customary and generally accepted activities, practices and procedures that farmers engage in year after year in the production and preparation for market of crops, livestock and livestock products and in the production and harvesting of agricultural, agronomic, horticultural, silvicultural, and aquacultural crops and commodities.

(ii) The term includes the storage and utilization of agricultural and food processing wastes for animal feed and the disposal of manure, other agricultural waste and food processing waste on land where the materials will improve the condition of the soil or the growth of crops or will aid in the restoration of the land for the same purposes.

Nutrient management plan--A written site-specific plan which incorporates best management practices to manage the use of plant nutrients for crop production and water quality protection consistent with the Nutrient Management Act (3 P. S. §§ 1701--1718).

Parcel--A tract of land in its entirety which is assessed for tax purposes by one county, including any portion of that tract that may be located in a neighboring county. The county responsible for assessing an entire tract, on its own or in conjunction with either the Commonwealth or a local government unit, or both, shall be eligible to purchase agricultural conservation easements covering the entire tract.

Pennsylvania Municipalities Planning Code--53 P. S. §§ 10101--11201.

Person--A corporation, partnership, business trust, other association, government entity (other than the Commonwealth), estate, trust, foundation or natural person.

Planning commission--A local government planning commission or agency which has been designated by the governing body OF THE LOCAL GOVERNMENT UNIT to establish and foster a comprehensive plan for land management and development within the local government unit.

Restricted land--Land which is subject to the terms of an agricultural conservation easement acquired under the act.

Secretary--The Secretary of Agriculture OF THE COMMONWEALTH.

7-year review--The periodic review of an existing ASA in accordance with the requirements of section 9(a) of the act (3 P. S. § 909(a)).

Soils available for agricultural production--Soils on land that is harvested cropland, pasture or grazing land, or land upon which no structure, easement, roadway, curtilage or natural or manmade feature would impede the use of that soil for agricultural production.

Soils report--A report which identifies and sets forth the amount of each land capability class found on a farm land tract.

State Board--The State Agricultural Land Preservation Board.

State-certified general real estate appraiser--A person who holds a current general appraiser's certificate issued under the Real Estate Appraisers Certification Act (63 P. S. §§ 457.1--457.19).

Subdivision--The division or redivision of a lot, tract or parcel of land by any means into two or more lots, tracts, parcels or other divisions of land including changes in existing lot lines for the purpose, whether immediate or future, of lease, partition by the court for distribution to heirs or devisees, transfer of ownership or building or lot development, or as otherwise defined in § 138e.3.

Title report--

(i) A report prepared by a person authorized by the Insurance Department to engage in the sale of title insurance or an attorney setting forth the existence of any liens, restrictions or other encumbrances on a farmland tract.

(ii) The term does not include the title search, but does include the title binder or the title commitment, or both.

USDA--The United States Department of Agriculture.

USDA-NRCS--The Natural Resources Conservation Service of the USDA. This entity was formerly known as the Soil Conservation Service.

Viable agricultural land--Land suitable for agricultural production and which will continue to be economically feasible for that use if real estate taxes, farm use restrictions and speculative activities are limited to levels approximating those in commercial agricultural areas not influenced by the proximity of urban and related nonagricultural development.

§ 138l.2. Purpose.

This chapter provides regulatory guidance with respect to the benefits of having land in an ASA, the application and review process under which an ASA is formed, the procedures involved in recording an ASA, the addition of land to an existing ASA and the removal of land from an existing ASA, and to otherwise further the purposes of the act.

§ 138l.3. Contacting the Department.

(a) The forms referenced in this chapter may be obtained from the Department, by contacting the following: Director, Bureau of Farmland Preservation, Department of Agriculture, 2301 North Cameron Street, Harrisburg, Pennsylvania 17110-9408, (717) 783-3167.

(b) These forms shall also be available and may be downloaded from the Department's website, at the following internet website address: www.pda.state.pa.us.

§ 183L.4. BENEFITS OF HAVING LAND WITHIN AN ASA.

THE FOLLOWING ARE AMONG THE BENEFITS AND PROTECTIONS RESULTING FROM THE INCLUSION OF LAND WITHIN AN ASA:

(1) PURSUANT TO SECTION 11 OF THE ACT (3 P.S. § 911), LOCAL GOVERNMENT UNITS MUST ENCOURAGE THE ASA BY NOT ENACTING LAWS OR ORDINANCES WHICH WOULD RESTRICT FARM STRUCTURES OR FARM PRACTICES, UNLESS THE LAWS OR ORDINANCES BEAR A DIRECT RELATIONSHIP TO THE PUBLIC HEALTH OR SAFETY.

(2) PURSUANT TO SUBSECTION 11 OF THE ACT (3 P.S. § 911), A LOCAL LAW OR ORDINANCE DEFINING OR PROHIBITING A PUBLIC NUISANCE MUST EXCLUDE FROM THE DEFINITION OF THE NUISANCE ANY AGRICULTURAL ACTIVITY OR OPERATION CONDUCTED USING NORMAL FARMING OPERATIONS WITHIN THE ASA IF THE AGRICULTURAL ACTIVITY OR OPERATION DOES NOT BEAR A DIRECT RELATIONSHIP TO THE PUBLIC HEALTH AND SAFETY.

(3) PURSUANT TO SECTION 12 OF THE ACT (3 P.S. § 912), COMMONWEALTH AGENCIES WITH PROGRAMS THAT MIGHT NEGATIVELY AFFECT FARMERS MUST CONDUCT THEIR PROGRAMS IN A MANNER THAT WILL ENCOURAGE THE CONTINUANCE OF VIABLE AGRICULTURE IN THE ASA.

(4) PURSUANT TO SECTION 13 OF THE ACT (3 P.S. § 913), ENTITIES SEEKING TO ACQUIRE LAND WITHIN AN ASA BY EMINENT DOMAIN (CONDEMNATION) MUST – UNDER CERTAIN CIRCUMSTANCES DELINEATED IN THE ACT – OBTAIN THE ADVANCE APPROVAL OF ALCAB BEFORE THE TAKING CAN OCCUR.

(5) PURSUANT TO SECTION 14.1 OF THE ACT (3 P.S. § 914.1), THE OWNER OF LAND WITHIN AN ASA COMPRISED OF 500 OR MORE ACRES MAY BE ELIGIBLE TO APPLY THROUGH THE COUNTY BOARD TO SELL AN AGRICULTURAL CONSERVATION EASEMENT TO THE COMMONWEALTH, THE COUNTY, A LOCAL GOVERNMENT UNIT OR SOME COMBINATION THEREOF.

Subchapter B. FORMATION OF AN AGRICULTURAL SECURITY AREA

Sec.

1381.11. Agricultural security area advisory committee.

1381.12. Eligibility to propose the creation of an ASA.

1381.13. ASA proposal form.

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- 1381.16. Submitting an ASA proposal form to the local government unit.
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- 1381.18. Public hearing by local government unit on ASA proposal.
- 1381.19. Decision of local government unit.
- 1381.20. Notice of decision of the local government unit.
- 1381.21. Effective date of the creation or modification of an ASA.
- 1381.22. Filing of ASA description by governing body; recording of the ASA description.
- 1381.23. Notification of Secretary by governing body.
- 1381.24. Planning commission action with respect to an ASA proposal.
- 1381.25. Advisory committee action with respect to an ASA proposal.
- 1381.26. Factors to be considered by the governing body of the local government unit, the planning commission and the advisory committee.

§ 1381.11. Agricultural security area advisory committee.

(a) Time for formation of an advisory committee. A governing body may establish an advisory committee at any time. When a proposal for the creation of an ASA is received by a governing body, though, the governing body shall establish an advisory committee if it has not already done so.

(b) Appointment and composition of an advisory committee. An advisory committee shall be appointed by the chairperson of the governing body of the local government unit in which the ASA is located, or is to be located. The members of the advisory committee shall serve at the pleasure of that chairperson. An advisory committee shall be composed of five members, as follows:

(1) A member of the governing body of the local government unit, who shall be chairperson of the advisory committee.

(2) One citizen residing within the local government unit.

(3) Three active farmers, each representing a different private or corporate farm situated, at least in part, within the local government unit.

(c) Functions of an advisory committee. An advisory committee shall advise the governing body and work with the planning commission in relation to the proposed establishment, modification, review and termination of an ASA. An advisory committee shall render expert advice as to the nature and desirability of these actions, including advice as to the nature of farming and farm resources within the proposed or existing ASA and the relationship of farming in the ASA to the local government unit as a whole.

§ 1381.12. Eligibility to propose the creation of an ASA.

An owner or a group of owners of land are eligible to propose the creation of an ASA if the following conditions are met:

(1) The land described in the proposal is used for agricultural production (although a reasonable amount of nonviable farm land and nonfarm land may be included if it is not feasible to exclude it).

(2) Some portion of the land described in the proposal lies within the local government unit to which the proposal is submitted.

(3) The total acreage described within the proposal comprises at least 250 acres of viable agricultural land.

(4) If tax parcel numbers or accounts reflect that a parcel is not contiguous to other land included in the proposal, that tax parcel or account is at least one of the following:

(i) Comprised of 10 or more acres.

(ii) Has anticipated yearly gross income of at least \$2,000 from agricultural production.

§ 1381.13. ASA proposal form.

(a) Governing body has discretion. The governing body may prescribe the manner and form of the process under which it will receive and consider proposals for the formation of an ASA, to the extent the exercise of that discretion does not violate any provision of the act or this chapter. A governing body may require the use of its own ASA proposal form meeting the requirements of subsection (b), or may use the Department's ASA proposal form as described in subsection (c).

(b) Minimum requirements for a proposal. An ASA proposal shall, at a minimum, contain the following:

(1) The name of the township, borough, city or other local government unit to which the ASA proposal is submitted.

(2) The county of the local government unit to which the ASA proposal is submitted.

(3) A description of the boundaries of the proposed ASA.

(4) With respect to each farmland parcel listed on the ASA proposal:

(i) The printed name and address of each person owning land proposed for inclusion in the ASA.

(ii) The signature of each person described in subparagraph (i).

(iii) The county tax parcel number or account number identifying the parcel.

(iv) The acreage of the parcel.

(5) Other information as might be reasonably required to establish the boundaries of the proposed ASA, the owners of the parcels of farmland described in the ASA and compliance with the act and this chapter.

(c) ASA proposal form available from the Department. The Department will provide any person or local government unit, upon request, copies of an ASA proposal form created by the Department. A request for an ASA proposal form may be directed to the Department in accordance with § 1381.3 (relating to contacting the Department) or the local government unit in which the ASA proposal form would be filed.

§ 1381.14. Fees.

(a) General prohibition. Except as provided in subsection (b), the governing body may not charge a landowner any fee for the filing of an ASA proposal or for any action the governing body is required to take under the act or this chapter.

(b) Exception. A governing body may, by resolution, impose reasonable filing fees for the administration and review of an ASA proposal if all of the following apply:

(1) The proposal includes substantially the same lands as proposed in a previously-submitted application.

(2) The governing body had rejected that previously-submitted application within 36 months preceding the date the proposal was submitted.

(3) The previous rejection was based upon the recommendations of the advisory committee and the planning commission.

§ 138l.15. ASA located in more than one local government unit.

There are four ways in which an ASA may be created or modified to contain land located in more than one local government unit as follows:

(1) The ASA proposal may be directed to the governing bodies of each of the affected local government units and approved in accordance with the process described in § 138l.31(b) and (c) (relating to adding land to an existing ASA).

(2) A parcel of farmland that straddles the boundary line between two local government units shall be automatically included in the ASA of one of those local government units if the other local government unit has not approved an ASA and the majority of the parcel's viable agricultural land is within the local government unit seeking to create an ASA or add the parcel to an existing ASA, as described in § 138l.32 (relating to automatic inclusion of certain parcels bisected by the dividing line between local government units).

(3) A parcel of farmland that straddles the boundary line between two local government units shall be automatically included in the ASA if the majority of the parcel's viable agricultural land is already in the ASA and an agricultural conservation easement is purchased with respect to the parcel, as described in § 138l.33 (relating to automatic inclusion of certain parcels bisected by the dividing line between local government units upon purchase of an agricultural conservation easement by certain entities).

(4) A parcel of farmland that straddles the boundary line between two counties shall be automatically included in the ASA of one of those counties if an agricultural conservation easement is purchased with respect to the parcel, as described in § 138l.34 (relating to automatic inclusion of certain parcels bisected by the dividing line between counties upon the purchase of an agricultural conservation easement by certain entities).

§ 138l.16. Submitting an ASA proposal form to the local government unit.

(a) Form submitted by certified mail, return receipt requested. A person shall submit an ASA proposal form to the governing body of the local government unit in which the ASA is situated. The form shall only be submitted by certified mail, with return receipt requested.

(b) Date of receipt. The return receipt shall be official notice that the local government unit has received the ASA proposal form, and the date reflected on that receipt shall constitute the official date of receipt for purposes of calculating the period within which review must occur.

§ 138l.17. Local government unit action upon receipt of an ASA proposal.

(a) Acknowledgement of receipt. If a local government unit receives an ASA proposal form by certified mail with return receipt requested, the governing body shall acknowledge receipt of the ASA proposal at its next regular or special meeting. The acknowledgement shall be reflected in the minutes of that meeting.

(b) Providing notice. Within 15 days of the date of receipt of an ASA proposal, the local government unit shall provide notice of the ASA proposal by doing both of the following:

(1) Publishing a notice that meets the requirements of subsection (c) in a newspaper having general circulation within the proposed ASA.

(2) Posting a notice that meets the requirements of subsection (c) in at least five conspicuous places within, adjacent to or near the proposed ASA.

(c) Contents of notice. The notices described in subsection (b) shall contain the following information:

(1) A statement that an ASA proposal has been filed with the governing body under the act.

(2) A statement that the ASA proposal will be on file for public inspection in the office of the local government unit.

(3) A statement that the following persons or entities may propose modifications of the proposed ASA:

(i) Any local government unit having land within or adjacent to the proposed ASA.

(ii) Any landowner who owns land proposed to be included within the ASA.

(iii) Any landowner with lands adjacent to or near the proposed ASA.

(4) A statement that objections to the proposed ASA or proposed modifications to the proposed ASA shall be filed with the governing body and the planning commission within 15 days of the date of publication of the notice, with an explanation of the filing procedure prescribed by the governing body.

(5) A statement that at the termination of the 15-day period described in paragraph (4), the ASA proposal and all proposed modifications will be submitted to the planning commission and the advisory committee, and that thereafter a public hearing will be held on the proposal, proposed modifications and the recommendations of the planning commission and advisory committee.

(d) Window for receipt of objections or proposed modifications. The governing body shall receive and consider any proposed modifications of a proposed ASA from the entities described in subsection (c)(3) until no more than 7 days prior to the advertisement of the public hearing described in § 1381.18 (relating to public hearing by local government unit on ASA proposal).

(e) Submitting documents to the planning commission and the advisory committee. Upon the termination of the 15-day period described in subsection (c)(4) and (5), the governing body shall submit the ASA proposal and all proposed modifications to the planning commission and the advisory committee for review. The governing body shall retain a record of the date upon which the referenced materials are submitted to these reviewing bodies.

§ 1381.18. Public hearing by local government unit on ASA proposal.

(a) Public hearing required. The governing body shall hold a public hearing on an ASA proposal or proposed modification of an ASA. The public hearing shall be scheduled promptly after the earlier of the following:

(1) Receipt of both the report of the planning commission, as described in § 1381.24 (relating to relating to planning commission action with respect to an ASA proposal) and the report of the advisory committee, as described in § 1381.25 (relating to advisory committee action with respect to an ASA proposal).

(2) The expiration of the 45-day review periods afforded the planning commission under § 1381.24(b) and the advisory committee under § 1381.25(b).

(b) *Hearing notice required.* The governing body shall provide notice of the public hearing described in subsection (a) by doing the following:

(i) Publishing a hearing notice in a newspaper having general circulation in the proposed ASA.

(ii) Providing a written hearing notice to the following:

(A) Any ~~person~~ LANDOWNER who proposed a modification to the ASA.

(B) Any person owning land included in the proposed modifications to an existing ASA.

(C) Any person owning land included within the proposed ASA.

(iii) Posting a written hearing notice in at least five conspicuous places within, adjacent to or near the proposed ASA or the proposed modifications.

(c) *Contents of hearing notice.* The hearing notice described in subsection (b) shall contain the following:

(i) A statement of the time, date and location of the public hearing.

(ii) A description of the proposed ASA, and any proposed additions or deletions.

(iii) A summary of the recommendations contained in the reports of the planning commission and the advisory committee. If the planning commission did not render its report within the 45-day period described in § 1381.24(b), or the advisory committee did not render its report within the 45-day period described in § 1381.25(b), the notice shall report this fact and indicate that the reviewing body is deemed to have given its approval to the proposed ASA or proposed modifications.

(iv) A statement that the public hearing will be held concerning the following:

(A) The original ASA proposal.

(B) Any written amendments proposed during the review period.

(C) Any recommendations proposed by the planning commission or the advisory committee.

(d) *Location of public hearing.* The public hearing described in subsection (a) shall be held at a place either within the proposed ASA or at a location readily accessible to the proposed ASA--such as a nearby municipal building.

§ 1381.19. Decision of local government unit.

(a) *180-day deadline.* A governing body shall act to adopt or reject an ASA proposal, or any modification of a proposal, within 180 days of the official date of receipt of the ASA proposal, as this date is described in § 1381.16(b) (relating to submitting an ASA proposal form to the local government unit). If the governing body fails to act within this 180-day period, the ASA proposal shall be deemed adopted by the governing body, and any proposed modifications to the ASA proposal shall be deemed rejected by the governing body.

(b) *Factors to be considered in reaching decision.* The governing body shall consider the following in reaching its decision with respect to an ASA proposal or proposed modifications:

(1) The factors in § 1381.26(a) (relating to factors to be considered by the governing body of the local government unit, the planning commission and the advisory committee).

(2) The inclusion, to the extent feasible, of adjacent viable farmland where the landowner has applied to have the land included.

(3) The exclusion, to the extent feasible, of nonviable farmland and nonfarm land. It is not ordinarily feasible to require the exclusion or surveying-out of the incidental nonviable farm land and nonfarm land that is typically present on a parcel of viable agricultural land.

(i) This nonviable farm land or nonfarm land might include hedgerows, driveways and farm roads, lands containing soils in Land Capability Classes V--VIII, and land upon which farm buildings or residential structures and their curtilages are located.

(ii) The exclusion of nonviable farm land and nonfarm land becomes more feasible as the percentage of these types of land--as a proportion of a parcel's total acreage--increases and the percentage of viable agricultural land within the parcel decreases.

(4) THE EXISTENCE OF UTILITY FACILITIES ON LAND PROPOSED FOR INCLUSION IN AN ASA SHALL NOT PREVENT THE INCLUSION OF THAT LAND IN AN ASA .

§ 1381.20. Notice of decision of the local government unit.

(a) Rejection or modification. If a governing body rejects or modifies an ASA proposal, it shall provide each landowner affected by the rejection or modification with a written decision as described in subsection (c). This decision shall be provided by mail, and shall be mailed to each affected landowner within 10 days of the decision.

(b) Approval. If a governing body approves an ASA proposal, it shall provide each landowner affected by the approval with written notification of this approval and the effective date of the ASA or ASA modifications. This notification shall be provided by mail, and shall be mailed to each affected landowner within 10 days of the decision.

(c) Contents of written decision. The written decision described in subsection (a) shall contain the following:

(1) Findings of fact.

(2) A review of the evaluation criteria in § 1381.26 (relating to factors to be considered by the governing body of the local government unit, the planning commission and the advisory committee).

(3) A discussion of the reasons for rejection or modification of the proposal.

§ 1381.21. Effective date of the creation or modification of an ASA.

(a) ASA proposal or modification covering land in a single local government unit. If an ASA proposal or proposed modification involves land located entirely within a single local government unit, the ASA shall become effective upon the date the governing body of the local government unit approves the ASA. If proposed modifications to an ASA proposal are made, and the modifications involve land located entirely within the same single local government unit as the proposed ASA, the modifications shall become effective as of the date the governing body of the local government unit approves the modifications.

(b) ASA proposal or modification covering land in more than one local government unit. If an ASA proposal or proposed modification involves land located in more than one local government unit, the ASA shall become effective upon the date a local government unit, or a

combination of local government units, approves a portion of the ASA proposal that meets the minimum acreage and other requirements for an ASA in § 1381.12 (relating to eligibility to propose the creation of an ASA), or as otherwise prescribed by the act. The remaining portions of the ASA proposal shall become effective upon the date of local government unit approval.

(c) Deemed approval date. If a governing body fails to approve, reject or modify an ASA proposal within 180-days of the official date of receipt of the ASA proposal, as described in §§ 1381.16(b) and 1381.19(a) (relating to submitting an ASA proposal form to the local government unit; and decision of local government unit), the ASA proposal shall be deemed to have been adopted without modification, and the ASA shall become effective as of the expiration of that 180-day period.

(d) Automatic inclusion: certain parcels transected by the dividing line between local government units. If a portion of a parcel is located within a local government unit that does not have an ASA established within its borders, that portion may--without the approval of the governing body of that local government unit--be included in the ASA of an adjoining local government unit in accordance with the procedure described in § 1381.32 (relating to automatic inclusion of certain parcels transected by the dividing line between local government units). The ASA shall become effective upon the date the governing body of the adjoining local government unit approves the ASA.

(e) Automatic inclusion: certain agricultural conservation easement purchases involving land in more than one local government unit. If a portion of a parcel is not located within an ASA, but an agricultural conservation easement is purchased with respect to the parcel in accordance with § 1381.33 (relating to automatic inclusion of portions of certain parcels bisected by the dividing line between local government units upon the purchase of an agricultural conservation easement), the portion shall become part of an ASA upon the purchase of the agricultural conservation easement.

(f) Automatic inclusion: cross-county agricultural conservation easement purchases. If a portion of a parcel is not located within an ASA, but an agricultural conservation easement is purchased with respect to the parcel in accordance with § 1381.34 (relating to automatic inclusion of portions of certain parcels bisected by the dividing line between counties upon the purchase of an agricultural conservation easement), the portion shall become part of an ASA upon the purchase of the agricultural conservation easement.

§ 1381.22. Filing of ASA description by governing body; recording of the ASA description.

(a) Responsibility of governing body. Within 10 days of the effective date of the creation OR MODIFICATION of an ASA, as described in § 1381.21 (relating to effective date of the creation or modification of an ASA), the governing body shall file a description of the ASA with the following:

- (1) The recorder of deeds of any county within which the ASA is located.
- (2) The county planning commission.
- (3) The planning commission of the local government unit.

(B) OPTIONAL FILING BY GOVERNING BODY. THE GOVERNING BODY MAY FILE A DESCRIPTION OF THE ASA WITH THE OFFICE OF THE COUNTY BOARD. THIS FILING IS ENCOURAGED, BUT NOT REQUIRED.

(b) (C) Responsibility of the recorder. A recorder of deeds receiving an ASA description from a governing body as described in subsection (a) shall record the description in a manner sufficient to give notice to all persons who have an interest in land within the ASA or in lands adjoining the ASA.

§ 1381.23. Notification of secretary by governing body.

(a) Responsibility of the governing body. Within 10 days of the recording of the ASA, as described in § 1381.22 (relating to filing of ASA description by governing body; recording of the ASA description), the governing body shall notify the Secretary that the ASA has been approved, modified or terminated. This notification shall be accomplished by mailing written notification to the address in § 1381.3 (relating to contacting the Department).

(b) Contents of notice. The written notice described in subsection (a) shall include the following information:

(1) The number of landowners whose land is in the ASA. The notification shall include only one landowner when land is under multiple ownership or is comprised of multiple parcels or accounts.

(2) The total acreage of the ASA.

(3) The effective date of the approval, modification or termination.

(4) The date upon which the approval, modification or termination was recorded in accordance with § 1381.22.

§ 1381.24. Planning commission action with respect to an ASA proposal.

(a) Record of the date of receipt. If a governing body submits an ASA proposal and all proposed modifications to a planning commission in accordance with § 1381.17(e) (relating to local government unit action upon receipt of an ASA proposal), the planning commission shall retain a record of the date upon which the referenced materials are received. This may be accomplished by time-stamping the documents, providing the governing body written confirmation of the date of receipt or other reasonable means of creating a record of the date upon which the documents were received.

(b) 45-day review period. A planning commission shall have up to 45 days from receipt of an ASA proposal and any AND ANY proposed modifications from the governing body within which to submit a report to that governing body. If the planning commission fails to submit this report to the governing body within the 45-day review period, this failure to act shall be deemed to constitute the planning commission's approval of the ASA proposal. A report is considered "submitted" when it is delivered to the governing body.

(c) Factors to be considered. The planning commission shall consider the factors in § 1381.26 (relating to factors to be considered by the governing body of the local government unit, the planning commission and the advisory committee) in reaching its recommendation concerning the ASA proposal and proposed modifications.

(d) Contents of report.

(1) Report by a county planning commission. If the planning commission described in subsection (b) is a county planning commission, its report shall contain that body's recommendations concerning the proposal and proposed modifications.

(2) Report by a planning commission that is not a county planning commission. If the planning commission described in subsection (b) is not a county planning commission, its report shall relate the potential effect of the proposal and proposed modifications upon the local government's planning policies and objectives.

§ 1381.25. Advisory committee action with respect to an ASA proposal.

(a) Record of the date of receipt. If a governing body submits an ASA proposal and all proposed modifications to an advisory committee in accordance with § 1381.17(e) (relating to local government unit action upon receipt of an ASA proposal), the advisory committee shall retain a record of the date upon which the referenced materials are received. This may be accomplished by time-stamping the documents, providing the governing body written confirmation of the date of receipt or other reasonable means of creating a record of the date upon which the documents were received.

(b) 45-day review period. An advisory committee shall have up to 45 days from receipt of an ASA proposal and any proposed modifications from the governing body within which to submit a report to that governing body. If the advisory committee fails to submit this report to the governing body within the 45-day review period, this failure to act shall be deemed to constitute the advisory committee's approval of the ASA proposal. A report is considered "submitted" when it is delivered to the governing body.

(c) Factors to be considered. The planning commission shall consider the factors in § 1381.26 (relating to factors to be considered by the governing body of the local government unit, the planning commission and the advisory committee) in reaching its recommendation concerning the ASA proposal and proposed modifications.

(d) Contents of report. The report of an advisory committee shall contain that body's recommendations concerning the proposal and proposed modifications.

§ 1381.26. Factors to be considered by the governing body of the local government unit, the planning commission and the advisory committee.

(a) Factors. The governing body of the local government unit, the planning commission and the advisory committee shall consider the following factors in their respective reviews of an ASA proposal and proposed modifications:

(1) Soil quality. Land proposed for inclusion in an ASA shall have soils which are conducive to agriculture. This factor will have been satisfied without further consideration if the land to be included in the ASA meets one or more of the following standards:

(i) At least 50% of the land contains soils classified in Land Capability Classes I--IV.

(ii) At least 50% of the land falls within the Land Capability Class for "unique farmland."

(iii) At least 50% of the land contains soils that do not meet Land Capability Classes I--IV, but the land is in current active farm use and is being maintained in accordance with a soil erosion and sedimentation plan applicable to that land.

(2) Consistency with comprehensive plans. The use of land proposed for inclusion in an ASA shall be compatible with local government unit comprehensive plans.

(3) Zoning. If the land is subject to zoning requirements, it shall be zoned so as to permit agricultural use. The land need not be zoned to exclude other uses. A landowner may propose to include any land in an ASA, but the land must meet the zoning requirements of this paragraph.

(4) Viable agricultural land. Land proposed for inclusion in an ASA shall be viable agricultural land.

(5) Extent and nature of farm improvements. The extent and nature of farm improvements shall be considered.

(6) Trends in agricultural economics. Anticipated trends in agricultural conditions shall be considered.

(7) Trends in agricultural technology. Anticipated trends in agricultural technology shall be considered.

(8) Other factors. The governing body of the local government unit, the planning commission and the advisory committee may consider any other matter that may be relevant to its review and decision.

(b) Resource materials. The following are among the resource materials that may be used in reviewing an ASA proposal and proposed modifications:

(1) Soil surveys of the Pennsylvania State University.

(2) Soil surveys and other information provided by the National Cooperative Soil Survey.

(3) Soil survey maps prepared by USDA-NRCS.

(4) The United States census of agricultural categories of land use classes.

(5) Any other relevant published data, maps, charts, or results of soil or land use surveys made by any county, State or Federal agency.

Subchapter C. ADDING LAND TO AN EXISTING ASA

Sec.

138l.31. Adding land to an existing ASA.

138l.32. Automatic inclusion of certain parcels bisected by the dividing line between local government units.

138l.33. Automatic inclusion of certain parcels bisected by the dividing line between local government units upon the purchase of an agricultural conservation easement by certain entities.

138l.34. Automatic inclusion of portions of certain parcels bisected by the dividing line between counties upon the purchase of an agricultural conservation easement by certain parties.

§ 138l.31. Adding land to an existing ASA.

(a) Adding land to an ASA located entirely within the same local government unit as the land proposed for inclusion. If an ASA is entirely contained within a single local government unit, land that is located within that same local government unit may be added to the ASA at any time, using the same process and procedure that is followed for the initial creation of an ASA, as set forth in this chapter.

(b) Adding land to an ASA located within two or more local government units, where the land proposed for inclusion lies entirely within the local government units in which the existing ASA is located. If an ASA is contained within two or more local government units, land that is located entirely within the local government units in which the ASA is located may be added to the ASA at any time, using the same process and procedure that is followed for the initial creation of an ASA, as set forth in this chapter.

(c) Adding land to an ASA where the land proposed for inclusion lies entirely outside the local government units in which the ASA is located. If an ASA is contained within one or more local government units, land that is located in a local government unit outside of a local government unit within which the ASA is located may be added to an ASA at any time, if the following apply:

(1) Prior to the submission of the proposal, the local government unit in which the land proposed for inclusion is located and each local government unit in which the existing ASA is located have adopted an ordinance or resolution allowing all of the land (including, at a minimum, both the land in the existing ASA and the land proposed for inclusion) to be part of a single ASA located within all of the local government units.

(2) The addition is made using the same process and procedure that is followed for the initial creation of an ASA, as set forth in this chapter.

(d) Minimum acreage requirement is inapplicable. Where land is proposed for inclusion into an existing ASA, it need not meet the minimum 250-acres-of-viable-agricultural-land requirement that is applicable to the initial formation of an ASA.

Example: Three parcels of farmland, totaling 120 acres of viable agricultural land, are proposed for inclusion into an existing ASA. The total acreage of the parcels proposed for inclusion does not have to meet the same 250-acres-of-viable-agricultural-land standard that was applicable to the initial formation of the ASA.

(e) Effect of addition of land to an existing ASA on the required 7-year review of the ASA. If land is added to an existing ASA, the added land shall be reviewed at the same time the original land undergoes its 7-year review as described in § 1381.51 (relating to 7-year review) or an interim review as described in § 1381.52 (relating to interim review).

§ 1381.32. Automatic inclusion of certain parcels bisected by the dividing line between local government units.

If a parcel of farmland is bisected by the dividing line between two local government units, the entire parcel shall be automatically included in an ASA--whether in the initial creation of the ASA or by modification of an existing ASA--if the following apply:

(1) The two local government units are in the same county.

(2) The parcel meets the eligibility requirements for inclusion in an ASA.

(3) A proposal for creation or modification of an ASA has been submitted to the governing body of one of the local government units in which the parcel is located, as set forth in this chapter, seeking the following:

(i) In the case of a proposal for the creation of an ASA: the inclusion of the entire parcel in the ASA.

(ii) In the case of a proposal for the modification of an existing ASA, where no portion of the parcel is within that existing ASA: the inclusion of the entire parcel within the ASA.

(iii) In the case of a proposal for the modification of an existing ASA, where a portion of the parcel is part of the existing ASA: the inclusion of the remainder of the parcel within the ASA.

(4) A majority of the parcel's viable agricultural land lies within the local government unit to which the proposal for creation or modification of an ASA has been submitted.

(5) The local government unit in which the minority of the parcel's viable agricultural land is located has not approved the creation of an ASA within its borders.

(6) The governing body of the local government unit adopts a proposal for creation or modification of an ASA that includes--at a minimum--that portion of the parcel located within that government unit.

§ 138l.33. Automatic inclusion of certain parcels bisected by the dividing line between local government units upon the purchase of an agricultural conservation easement by certain entities.

(a) General. If a parcel of farmland is bisected by the dividing line between two local government units, and the portion of the parcel in one local government unit is within an ASA and the portion of the parcel in the other local government unit is not, the portion of the parcel that is not within an ASA shall be automatically included in the ASA if the following apply:

(1) A majority of the parcel's viable agricultural land lies within the local government unit in which the ASA is located.

(2) An agricultural conservation easement is purchased by any of the following with respect to the parcel:

(i) The county.

(ii) The county and the Commonwealth, jointly.

(iii) The county and a local government unit, jointly.

(iv) The county, the Commonwealth and a local government unit, jointly.

Example 1: A 100-acre parcel of farmland is comprised of 80 acres in Township A and 20 acres in Township B. The 80-acre portion of the parcel is within an ASA established by Township A. The majority of the parcel's viable agricultural land is in Township A. The county purchases an agricultural conservation easement with respect to the parcel. Under these facts, as of the purchase of the agricultural conservation easement the 20-acre portion of the parcel located in Township B becomes part of the ASA covering the 80-acre portion of the parcel.

(b) Exception. Subsection (a) does not apply with respect to agricultural conservation easement purchases made solely by the Commonwealth.

§ 138l.34. Automatic inclusion of portions of certain parcels bisected by the dividing line between counties upon the purchase of an agricultural conservation easement by certain parties.

(a) General. If a parcel of farmland is bisected by the dividing line between two counties, and the portion of the parcel in one county is within an ASA and the portion of the parcel in the other county is not, the portion of the parcel that is not within an ASA shall be automatically included in the ASA if the following apply:

(1) One of the following applies:

(i) There is a mansion house on the parcel of farmland, and it is located in the county within which the existing ASA is located.

(ii) There is a mansion house on the parcel of farmland, and the mansion house is bisected by the dividing line between the two counties. The landowner has designated the county within which the ASA is located as the situs of assessment for tax purposes.

(iii) There is no mansion house on the parcel of farmland, but the majority of the parcel's viable agricultural land lies within the existing ASA.

(2) An agricultural conservation easement is purchased by any of the following with respect to the parcel:

(i) The county.

(ii) The county and the Commonwealth, jointly.

(iii) The county and a local government unit, jointly.

(iv) The county, the Commonwealth and a local government unit, jointly.

Example 1: A parcel of farmland straddles the boundary line between County A and County B. The portion of the parcel in County A is in an ASA. There is no mansion house on the parcel. The majority of the parcel's viable agricultural land is in County A. County A purchases an agricultural conservation easement with respect to the entire parcel. Under these facts, as of the purchase of the agricultural conservation easement the portion of the parcel in County B becomes part of the ASA in which the remainder of the parcel is located.

Example 2: A parcel of farmland straddles the boundary line between County A and County B. There is a mansion house on the parcel, and it is located in County A. County A purchases an agricultural conservation easement with respect to the entire parcel. Under these facts, as of the purchase of the agricultural conservation easement the portion of the parcel in County B becomes part of the ASA in which the remainder of the parcel is located.

Example 3: A parcel of farmland straddles the boundary line between County A and County B. There is a mansion house on the parcel, and it straddles the dividing line between County A and County B. County A is the situs of the mansion house for tax purposes. County A purchases an agricultural conservation easement with respect to the entire parcel. Under these facts, as of the purchase of the agricultural conservation easement the portion of the parcel in County B becomes part of the ASA in which the remainder of the parcel is located.

(b) Exception. Subsection (a) does not apply with respect to agricultural conservation easement purchases made solely by the Commonwealth.

Subchapter D. REMOVING LAND FROM AN EXISTING ASA

Sec.

1381.41. Removing land that has been in an ASA for 7 years or more.

1381.42. Removing land in the course of the 7-year review or an interim review.

§ 1381.41. Removing land that has been in an ASA for 7 years or more.

(a) Removal permitted. If land has been in an ASA for seven years or more, it may be removed from the ASA at the landowner's discretion, if both of the following apply:

(1) The landowner submits to the governing body of the local government unit in which the ASA is situated a written notification to have the land deleted from the ASA. The written notification shall contain information sufficient to identify the land to be removed, and shall include the acreage of the land to be removed.

(2) The written notification is submitted by certified mail, with return receipt requested.

(b) Limitation on authority. The governing body does not have the authority to deny a landowner's notification to remove land from an ASA.

(c) Effective date of removal. The removal of land from an ASA shall take effect upon receipt of this written notification by the governing body in accordance with subsection (a)(2).

(d) Recording the removal of land from an ASA. ~~The governing body may wait until the next 7-year review or interim review to record deletions of land from the ASA accomplished by the written notification described in this section~~ SHALL RECORD THE DESCRIPTION OF AN ASA FROM WHICH LAND HAS BEEN REMOVED WITHIN 10 DAYS OF THE EFFECTIVE DATE OF THE REMOVAL. THIS RECORDING SHALL BE IN ACCORDANCE WITH § 1381.22 (RELATING TO FILING AN ASA DESCRIPTION BY GOVERNING BODY; RECORDING OF THE ASA DESCRIPTION).

(e) Failure of remaining land to meet ASA eligibility requirements. If the removal of land from an ASA in response to a landowner's written notification causes the remaining lands of the ASA to fail to meet the minimum standards for an ASA, as set forth in § 1381.12 (relating to eligibility to propose the creation of an ASA), the ASA shall terminate. The governing body shall be responsible to record this termination with the offices or entities described in § 1381.22(a)(1)-(3) (relating to filing of ASA description by governing body; recording of the ASA description).

§ 1381.42. Removing land in the course of the 7-year review or an interim review.

(a) Removal permitted. The landowner shall have the discretion to remove the land from the ASA in which it is located, if this removal is done in the course of the 7-year review process described in § 1381.51 (relating to 7-year review), or the interim review process described in § 1381.52 (relating to interim review), and the following apply:

(1) The landowner submits to the governing body of the local government unit in which the ASA is situated a written notification to have the land deleted from the ASA. The written notification shall contain information sufficient to identify the land to be removed, and shall include the acreage of the land to be removed.

(2) The written notification is submitted by certified mail, with return receipt requested.

(b) Limitation on authority. The governing body does not have the authority to deny a landowner's notification to remove land from an ASA.

(c) Effective date of removal. The removal of land from an ASA shall take effect upon receipt of this written notification by the governing body in accordance with subsection (a)(2).

(d) Recording the removal of land from an ASA. The governing body shall record the removal of land from an ASA under this section as it would any other addition or deletion of land in the course of the 7-year review or interim review DESCRIPTION OF AN ASA FROM WHICH LAND HAS BEEN REMOVED WITHIN 10 DAYS OF THE EFFECTIVE DATE OF THE REMOVAL. THIS RECORDING SHALL BE IN ACCORDANCE WITH § 1381.22 (RELATING TO FILING AN ASA DESCRIPTION BY GOVERNING BODY; RECORDING OF THE ASA DESCRIPTION).

(e) Failure of remaining land to meet ASA eligibility requirements. If the removal of land from an ASA in response to a landowner's written notification causes the remaining lands of the ASA to fail to meet the minimum standards for an ASA, as set forth in § 1381.12 (relating to eligibility to propose the creation of an ASA), the ASA shall terminate. The governing body shall be responsible to record this termination with the offices or entities described in § 1381.22(a)(1)--(3) (relating to filing of ASA description by governing body; recording of the ASA description).

Subchapter E. SEVEN-YEAR REVIEW AND INTERIM REVIEW

Sec.

1381.51. Seven-year review.

1381.52. Interim review.

§ 1381.51. Seven-year review.

(a) General. The governing body of the local government unit shall review an ASA 7 years from the date of its creation and every 7 years thereafter, in accordance with the procedure in this section.

(b) Advisory bodies to be consulted. The governing body conducting a 7-year review shall request the recommendations of the planning commission, the county planning commission and the advisory committee with respect to the ASA that is being reviewed. The governing body shall seek and obtain these recommendations on its own timetable, but sufficiently in advance of the end of the 7th year to allow a summary of the recommendations of these advisory bodies to be included in the notice described in subsections (c)--(e).

(c) Notice required ~~210~~ 30 days or more before the end of the 7th year COMMENCEMENT OF REVIEW. The governing body conducting a 7-year review shall, at least ~~210~~ 30 days prior to the end of the 7th year COMMENCEMENT OF A 7-YEAR REVIEW, provide notice of the 7-year review of the ASA and the public hearing to be held as part of that review.

(d) Notice procedure. The notice described in subsection (c) shall be accomplished by doing the following:

(1) Publishing a hearing notice in a newspaper having general circulation in the area in which the ASA is located.

(2) Providing a written hearing notice to any person owning land within the ASA.

(3) Posting a written hearing notice in at least five conspicuous places within, adjacent to or near the ASA.

(e) Contents of hearing notice. The hearing notice described in subsection (d) shall contain the following:

- (1) A statement of the time, date and location of the public hearing.
- (2) A general description of the ASA being reviewed.
- (3) A general description of the recommendations of the planning commission, the county planning commission and the advisory committee.
- (4) Notification that interested persons may, within 30 days of the date of the notice, submit proposed modifications to the ASA to the governing body.
- (f) Public hearing required between 120 and 180 days before the end of the 7th year. The governing body conducting a 7-year review shall, at least 120 days prior to the end of the 7th year and no more than 180 days prior to the end of the 7th year, conduct a public hearing to review the ASA.
- (g) Location of public hearing. The public hearing described in subsection (e) shall be held at a place either within the ASA or at a location readily accessible to the ASA--such as a nearby municipal building.
- (h) Factors to be considered by governing body. The governing body shall consider the factors in § 1381.19(b) (relating to decision of local government unit) in reaching its decision to approve the ASA without change, modify the ASA or terminate the ASA.
- (i) Decision of governing body. The governing body conducting a 7-year review shall, following the public hearing, approve the ASA without change, modify the ASA or terminate the ASA.
- (j) Notice of decision. The governing body conducting a 7-year review shall provide notice of its decision in accordance with § 1381.20 (relating to notice of decision of local government unit).
- (k) Failure to act is deemed to be approval of the ASA without modification. If the governing body fails to complete the steps set forth in subsections (a)--(i) prior to the end of the 7th year, or if a proposed modification to the ASA is rejected, the ASA shall be deemed to be readopted without modification for another 7 years.
- (l) Recording a modification of an ASA or a termination of an ASA. If the governing body modifies an ASA or terminates an ASA it shall, within 10 days of its decision, file a notice of termination or modification with the following:
 - (1) The recorder of deeds of any county within which the ASA is located.
 - (2) The county planning commission.
 - (3) The planning commission of the local government unit.
- (m) Responsibility of the recorder. A recorder of deeds receiving a notice of termination or modification of an ASA from a governing body as described in subsection (l) shall record the description in a manner sufficient to give notice to all persons who have an interest in land within the ASA or in lands adjoining the ASA.

§ 1381.52. Interim review.

- (a) Discretion. If 10% or more of the land within an ASA is diverted to residential or nonagricultural commercial development at any time prior to a 7-year review of the ASA, the governing body may review the ASA and consider modifying or terminating the ASA, in accordance with the procedure in this section.
- (b) Advisory bodies to be consulted. If the governing body elects to pursue the interim review described in subsection (a), it shall request, in writing, that the planning commission, the county

planning commission and the advisory committee review the ASA and make recommendations with respect to modification or termination of the ASA within 30 days of receiving the written request.

(c) *Responsibility of advisory bodies.* The advisory bodies referenced in subsection (b) shall issue written recommendations within 30 days of receiving a request for recommendations from the governing body.

(d) *Public hearing requirements.* If the governing body elects to pursue the interim review described in subsection (a), it shall conduct a public hearing no sooner than 45 days after it submits its request for recommendations to the planning commission, the county planning commission and the advisory committee. The governing body shall provide the same notice for the public hearing as is described in § 1381.18(b) and (c) (relating to public hearing by local government unit on ASA proposal).

(e) *Location of public hearing.* The public hearing described in subsection (d) shall be held at a place either within the proposed ASA or at a location readily accessible to the proposed ASA-- such as a nearby municipal building.



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February 13, 2004

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

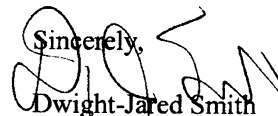
RE: FINAL-FORM REGULATION
Department of Agriculture
7 Pa. Code Chapters 138, 138e and 138l
Agricultural Area Security Program; Agricultural Conservation
Easement Purchase Program; Agricultural Security Area Program
Proposed Rulemaking: 32 Pa. Bulletin 775 (February 9, 2002)
Approved by Office of General Counsel: February 3, 2004

Dear Sir or Madam:

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

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

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

Sincerely,

Dwight-Jared Smith
Assistant Counsel

Enclosures

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

I.D. NUMBER: 2-138

SUBJECT: Agricultural Area Security Program; Agricultural Conservation Easement Purchase Program; Agricultural Security Area Program

AGENCY: DEPARTMENT OF AGRICULTURE

TYPE OF REGULATION

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

RECEIVED IN THE
 AGRICULTURE COMMISSION
 FEBRUARY 19 2004 11:51 AM

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
2-13-04	<i>W. Alexander</i>	HERSHEY HOUSE COMMITTEE ON AGRICULTURE & RURAL AFFAIRS
2-13-04	<i>M. Donley</i>	DALEY
2-13-04	<i>W. Kostoff</i>	WAUGH SENATE COMMITTEE ON AGRICULTURE & RURAL AFFAIRS
2-13-04	<i>C. O'Leary</i>	O'PAKE
2-13-04	<i>E. Page</i>	IRRC INDEPENDENT REGULATORY REVIEW COMMISSION
_____	_____	ATTORNEY GENERAL (for Final Omitted only)
_____	_____	LEGISLATIVE REFERENCE BUREAU (for Proposed only)