

Regulatory Analysis Form

This space for use by IRRC

(1) Agency: Agriculture

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

2-147

IRRC Number: 2473

(3) Short Title

Revision to the Nutrient Management Certification Program regulations.

(4) PA Code Cite

7 PA code; Chapter 130b

(5) Agency Contact Telephone Numbers

Primary Contact: *Johan E. Berger, Bureau of Plant Industry, (717) 772-4189*

Secondary Contact: *Michael S. Aucoin, Bureau of Plant Industry, (717) 772-5218*

(6) Type of Rulemaking (check one)

Proposed Rulemaking

Final Order Adopting Regulation

Final Order, Proposed Rulemaking Omitted

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

No

Yes: By the Attorney General

Yes: By the Governor

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

These revisions are provided to update and correct inconsistencies in the certification program developed pursuant to section 7(a) of the Nutrient Management Act (3 P.S. §1701(a)), now section 8(a) of Act 38 of 2005 (3 Pa.C.S.A. § 508(a)). This revision will allow the Department to modify the certification program activities to parallel developments in the area of nutrient management and be consistent with revisions to the Nutrient Management regulations.

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

Section 7(a) of the Nutrient Management Act, (3 P.S. §1707(a)), now section 8(a) of Act 38 of 2005, which was signed by the Governor on July 6, 2005.

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.

Yes. This regulation is required by section 7(a) of Pennsylvania's Nutrient Management Act (3 P.S. §1707(a), which is now section 8(a) of Act 38 of 2005, signed by the Governor on July 6, 2005.

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

These revisions to the current Nutrient Management Certification Program regulation are necessary to ensure that the certification program requirements remain consistent with provisions and criteria addressed under the Nutrient Management regulations (25 Pa. Code, Chapter 83 subchapter D) and current revisions thereto which are working their way through the regulatory review process. In addition, changes and developments in the field of nutrient management have made such revisions necessary.

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

The Nutrient Management Certification program assures there are persons qualified in the area of nutrient management to write and review nutrient management plans, which are required by the Nutrient Management Act – now Act 38 of 2005 (3 P.S. §§311-522). This in turn assures the plans will properly deal with and prevent contamination of groundwater.

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

Approximately 300 current certified nutrient management specialist and an additional 150 persons seeking certification in the Commercial and Public sector will benefit from these proposed revision, through the establishment of improved and new criteria that will enhance educational and certification requirements ensuring nutrient management specialists are competent in nutrient management plan development and review. These revisions will assist certified specialists to comply with changing requirements promulgated under the Nutrient Management Regulations (25 PA Code, Chapter 83, Subchapter D). In addition, these revisions will strengthen the Department's administrative effort to provide sustainable and comprehensive certification program standards consistent with industry standards and requirements set forth under the Nutrient Management Regulations and Act 38 of 2005 (3 Pa.C.S.A. §§311-522).

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.)

These proposed revisions would not adversely affect persons classified as a certified nutrient management specialist or those persons seeking similar status. This regulation is not intended to induce significant changes in the certification program by imposing stricter standards. This regulation is intended to enhance current certification standards by clarifying program criteria inconsistencies and enhancing certification category options for persons seeking certification status.

(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.)

This proposal will affect the current 300 certified Commercial, Individual and Public nutrient management specialists and approximately 100 – 150 additional persons seeking certification status under the program over the next five years.

(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 proposed revisions were provided to the Nutrient Management Advisory Board and the State Conservation Commission for review and comment prior to the proposed stage of rulemaking. Public input, as well as input from the House and Senate Agriculture and Rural Affairs Committees and the Independent Regulatory Review Commission was solicited during the rulemaking process.

(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.

A revised fee schedule will result in an increase of approximately 50% in triennial licensure fees for certified 'Individual' nutrient management specialist and an increase of approximately 100% in triennial licensure fees for certified 'Commercial' nutrient management specialists.

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.

A revised fee scheduled associated with the current Public certification category and new proposed certification category will result in an increase of approximately 150% in triennial fees for licensure of certified specialist in the Public sector. Public sector nutrient management specialist are primarily employees of county conservation districts.

(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.

There will be no additional costs to the state in the implementation of the revised regulations.

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 (2004-05)	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS	\$	\$	\$	\$	\$	\$
Regulated Community	NA	NA	NA	NA	NA	NA
Local Government	NA	NA	NA	NA	NA	NA
State Government	NA	NA	NA	NA	NA	NA
Total Savings	NA	NA	NA	NA	NA	NA
COSTS:						
Regulated Community	2,730	5,195	6,420	7,645	6,420	7,645
Local Government	640	1,900	2,475	3,050	2,475	3,050
State Government	0	0	0	0	0	0
Total Costs	3,370	7,095	8,895	10,695	8,895	10,695
REVENUE LOSSES:						
Regulated Community	NA	NA	NA	NA	NA	NA
Local Government	NA	NA	NA	NA	NA	NA
State Government	NA	NA	NA	NA	NA	NA
Total Revenue Losses		NA	NA	NA	NA	NA

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

***Regulated Community:** The existing 225 certified specialist (Individual and Commercial category) are required to renew their license on a triennial basis. The 'Individual' certified community will incur increased costs in certification fees of approximately 5 dollars per specialist for a triennial license and certificate. The 'Commercial' certified community will incur increased costs in certification fees of \$100 for a triennial license and certificate. Costs for a license and certificate will be approximately \$15 per 'Individual' specialist and \$200 per 'Commercial' specialist. There will be an estimated 55 to 60 specialists seeking certification through the program over the next five-year period effected by these regulation revisions.*

***Local Government:** The existing 65 certified 'Public' specialists are required to renew their licenses on a triennial basis. As employees of local government (county employees), the employer of the Public 'Review' or 'Dual' specialists could will incur an increase in certification fees of approximately \$15 per Public 'Review' specialist and an increase of cost of \$40 for a Public 'Dual' specialist. Costs for a triennial license and certificate will be approximately \$25 for Public 'Review' specialists and \$50 for a Public 'Dual' specialist. There will be an estimated 50 additional Public specialists seeking certification under the program over the next five-year period effected by these regulations revisions.*

State Government:

There will be no additional costs to the state in the implementation of the revised regulations.

Regulatory Analysis Form

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

Program	FY -3	FY -2	FY -1	Current FY
Program Administration (PDA)	\$262,000	\$270,000	\$278,000	\$284,000

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

Certification of persons to develop and review nutrient management plans is a mandated provision of the Nutrient Management Act (3 P.S. §1707(a)), now section 8(a) of Act 38 of 2005 (3 Pa.C.S.A. §508(a)). Persons seeking certification as a nutrient management specialist must be competent in the criteria and provisions established by Act 38 of 2005 and the attendant Nutrient Management regulation in order to develop and review nutrient management plans. The Nutrient Management Certification program assures there are persons qualified in the area of nutrient management to write and review nutrient management plans, which are required by the Nutrient Management Act – now Act 38 of 2005 (3 P.S. §§311-522). This in turn assures the plans will properly deal with and prevent contamination of groundwater.

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

These regulations are required by section 8(a) of Act 38 of 2005 (3 Pa.C.S.A. §508(a)). The proposed revisions clarify and enhance the education and certification efforts that are key components to the Nutrient Management Certification Program. The proposed revisions are necessary to insure that the educational efforts of the program maintain conformity with proposed revisions to the Nutrient Management regulations at 25 Pennsylvania Code, Chapter 83 Subchapter D, changes to industry educational standards and advancement in nutrient management technologies.

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

There were no alternative regulatory schemes considered in the development of this proposal. The regulations are required by section 8(a) of Act 38 of 2005 (3 Pa.C.S.A. §508(a)).

Regulatory Analysis Form

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

There are no provisions of the proposal that are more stringent than federal standards since there is no similar statute or counterpart regulation at the federal level. The most comparable regulations, program rules or provisions are those established by the neighboring jurisdictions of Delaware, Maryland and Virginia and the International Certified Crop Advisors program. Criteria for these programs are similar to that of the current program regulations in order to provide reciprocal certification qualifications between Pennsylvania and its neighboring jurisdictions.

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

Certification programs for nutrient management specialists are very similar in the neighboring jurisdictions of Delaware, Maryland and Virginia. Each program has developed similar criteria related to nutrient management planning and educational efforts based on national nutrient management program requirements developed under the direction of the Environmental Protection Agency. These jurisdictions, with the exception of Delaware, currently hold a reciprocity agreement with Pennsylvania that allows specialists to satisfy competency requirements in their respective jurisdictions and complete complimentary or specific requirements in the Pennsylvania program to achieve certification status. The proposed revisions will not adversely affect those related criteria but enhance the flexibility of the criteria to maintain reciprocal arrangements with other jurisdictions.

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

Yes. The proposal is a revision to the current Nutrient Management Certification regulations found in 7 Pennsylvania Code, Chapter 130(b). This revision will affect certain provisions of the current regulations.

The State Conservation Commission is currently amending nutrient management regulations, which are promulgated at (25 Pa. Code, Chapter 83, Subchapter D). The Nutrient Management Certification regulations are based, in part, on the requirements and provisions of the Nutrient Management regulations and therefore, are affected by any amendments to those regulations. The Department has worked closely with the Commission to assure the revisions to the Nutrient Management Certification regulations will continue to be consistent with the Nutrient Management regulations.

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

The Department does not anticipate scheduling/conducting hearings or informational meetings prior to submitting the final-form regulation for consideration by the House and Senate Agriculture and Rural Affairs Committees and the Independent Regulatory Review Commission.

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 current regulation establishes minimal reporting requirements for the regulated community. Existing reporting and record keeping requirements will not change as a result of the proposed revisions.

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

The revisions recognize the need to accommodate additional duties and responsibilities of Public Nutrient Management Specialists implementing the provisions of the Nutrient Management regulations and Act 38 of 2005 in the counties of the Commonwealth. These provisions provide certification flexibility to local government program staff. The regulations are being revised to give authority to Public Nutrient Management Specialists to develop nutrient management plans in addition to currently authorized review activities. This will ease the administration of and add flexibility to the review and approval process for nutrient management plans and is consistent with the review and approval process established by the Nutrient Management regulations.

(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 become effective immediately upon final approval and publication as a final rulemaking in the Pennsylvania Bulletin. Certificates required under the current regulations and proposed revised regulations will not be affected by the effective date. Specialists will have a 3-year effective date from the date of completion of certification requirements described in the regulations.

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

The Department will continually assess this regulation and make revisions when needed to address valid administrative concerns.

CDL-1

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

(Pursuant to Commonwealth Documents Law)

2473

RECEIVED
2005 SEP 28 PM 3: 03
INDEPENDENT REGULATORY
REVIEW COMMISSION
DO NOT WRITE IN THIS SPACE

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

By: _____
(Deputy Attorney General)

DATE OF APPROVAL

! Check if applicable
Copy not approved. Objections attached.

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

Department of Agriculture

DOCUMENT/FISCAL NOTE NO. 2-147

DATE OF ADOPTION 8-3-05

BY Dewey

TITLE: Secretary of Agriculture

EXECUTIVE OFFICER CHAIRMAN OR SECRETARY

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

BY: Andrew C. Clark

9.22.05
DATE OF APPROVAL

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

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

NOTICE OF FINAL RULEMAKING

**Department of Agriculture
Bureau of Plant Industry
7 Pa. Code Chapter 130b
Nutrient Management Certification**

**TITLE 7 – Agriculture
DEPARTMENT OF AGRICULTURE
[7 PA. CODE CH 130b.]
PART V. BUREAU OF PLANT INDUSTRY**

NUTRIENT MANAGEMENT CERTIFICATION

The Department of Agriculture (“Department”), under the specific authority conferred by section 1707(a) and (b) of the Act of May 20, 1993, P.L. 12, No. 6, known as the Nutrient Management Act (3 P.S. §§ 1701-1718), promulgated regulations at Title 7 of the *Pennsylvania Code*, Chapter 130b. (7 Pa.Code §§ 130b.1.-130b.51.), which pertains to Nutrient Management Certification. The Department published a Notice of Proposed Rulemaking at 35 *Pennsylvania Bulletin* 2101 (April 9, 2005). The proposed rulemaking set forth amendments to the existing Nutrient Management Certification regulations. On July 6, 2005, Governor Rendell signed Act 38 of 2005 (Act), to be codified at Title 3 of the Pennsylvania Consolidated Statutes, Chapter 3 and Chapter 5 (3 Pa.C.S.A. §§ 311-522). Among other things, the Act consolidates the Nutrient Management Act and adds provisions prohibiting and providing for enforcement of unauthorized local government unit actions, providing for nutrient management and odor management certification and maintaining, but re-codifying many of the provisions of the Nutrient Management Act at Title 3 of the Pennsylvania Consolidated Statutes, Chapter 3 and Chapter 5 (3 Pa.C.S.A. §§ 311-522). Given these events, the Department now seeks to amend and hereby proposes to amend the Department’s regulations at Title 7 of the *Pennsylvania Code*, Chapter 130b. (7 Pa.Code §§ 130b.1.-130b.51.), pertaining to Nutrient Management Certification, under the specific authority delineated at section 508(a) of the Act (3 Pa.C.S.A. § 508(a)).

Authority

The Department has the power and authority to promulgate and adopt these regulations. This authority is established at section 508(a) of the Act, which charges the Department, in consultation with the State Conservation Commission (“Commission”), with the duty of establishing “...a nutrient management certification program for the purpose of certifying individuals who have demonstrated the competency necessary to develop nutrient management plans....” (3 Pa.C.S.A § 508(a)) The Department or its designees is charged with the duty of developing “...such written testing procedures, educational requirements and examinations as it deems appropriate to carry out its responsibilities under this section. The Department shall by regulation establish such fees and terms and conditions of certification as it deems appropriate. The Department shall establish individual, commercial and public certification categories, including a certification category for farmers to develop and certify nutrient management plans...on their own operations.” (3 P.S. § 508(a)) Pursuant to the authority originally set forth at section 1707 of the Nutrient Management Act, the Department promulgated nutrient management certification regulations, which were adopted September 27, 1996 and became effective on September 28, 1996. These current regulations, at Title 7 of the *Pennsylvania Code*, Chapter 130b (7 Pa. Code §§ 130b.1-130b.51), set forth the criteria for certification and establish criteria for interim certification as required by section 7(b) of the Act (3 P.S. § 1707(b)).

Need for the Regulation

These amendments to the current regulations, at Title 7 of the *Pennsylvania Code*, Chapter 130b (7 Pa. Code §§ 130b.1-130b.51), are required to bring the Nutrient Management Certification Program (NMCP), created by the current regulations, into compliance with changes in the industry and pending changes to the Nutrient Management regulations at Title 25 of the *Pennsylvania Code*, Chapter 83 (25 Pa. Code §§ 83.201-83-491). The amendments add new definitions to provide clarity, streamline and redefine the certification process and make other changes in response to problems, concerns and input from those administering the NMCP over the past 9 years and from persons currently certified under the regulations. The amendments also, delete the section setting forth interim certification requirements, since interim certification is no longer necessary.

Comments

Notice of Proposed Rulemaking was published at 35 *Pennsylvania Bulletin* 2101 (April 9, 2005) and provided for a 30-day public comment period. The Department did not receive any comments from the general public nor from the Senate or House Agricultural and Rural Affairs Committees regarding this proposed rulemaking. The Department did receive comments from the Independent Regulatory Review Commission ("IRRC). The Department hereby acknowledges those comments and thanks the IRRC for its review and its insightful comments which should help to clarify and streamline the final regulations.

Comments Received

Commentator: Independent Regulatory Review Commission (IRRC)

Comment 1 – Concerning - Section 130b.2. Definitions (Related to Consistency with the statute and Clarity)

The IRRC commented that this section defines the terms, “BMP – Best management practice,” “Nutrient,” and “Nutrient management plan” differently than they are defined in the Nutrient Management Act (Act). The IRRC questioned the need for regulatory definitions which differ from the definitions contained in the Act and requested the Department explain and justify the changes.

Response

With regard to the definition of “BMP - Best management practice” the slight revisions made in the regulatory definition do not alter or change the meaning or interpretation of the definition in the Act. The slight modification merely streamlines, removes redundancy and utilizes the current style utilized by the Legislative Reference Bureau. The Department modified the last sentence of the definition slightly. The last sentence in the Act reads, “Best management practices include, but are not limited to....” In the regulations the Department modified that phrase to state, “The term includes...” and took out the phrase “but is not limited to.” Where the wording “includes” is utilized the intent that it is “not limited to” is presumed. The wording “...but is not limited to” is no longer considered necessary to invoke the intent that the list following such a term not all-inclusive and therefore may be expanded. In fact, the definition of BMP in the current regulations does not contain the phrase “but is not limited to.” In addition, the Legislative Reference Bureau will often strike the phrase “but is not limited to” from a regulation. By striking the phrase “but is not limited to” from the definition in the regulation, the Department did nothing to change or alter the meaning or interpretation of the definition. In addition, by changing the wording “Best management practices include” to “The term includes” the Department merely took out a redundancy and did nothing to change or alter the meaning or interpretation of the definition. Finally, the Department added the phrase “Practiced set forth in the nutrient management regulations” to the list of practices that may be considered best management practices. This is well within the statutory authority conveyed by the Act, as the definition in the Act is not limited to the practices set forth in that definition. In addition, the phrase helps to clarify what other practices may be considered as best management practices. The amended nutrient management regulations address new techniques and technology that can now be utilized to control nutrients and effectuate the intent of the Act. This is consistent with the provisions of section 4 of the Act (3 P.S. § 504(3)), which require that

emerging practices, methods and technology related to best management practices be continually evaluated.

Concerning the definition of “Nutrient” the regulatory definition sought to replace the term “sewage sludge” with the term “bio-solids”, which is the more current terminology utilized by the industry and the Commonwealth of Pennsylvania Department of Environmental Protection. However, since the Act maintains the same wording in its statutory definition and because some people may not be aware that the terms are interchangeable, the Department has decided to leave the wording of the definition – in the final form regulation - as it appears in the Act.

With regard to the definition of “Nutrient management plan” the Department was attempting to be more precise and add clarity to the definition without changing the intent or interpretation of the definition. The Department modified the definition by suggesting the removal of the phrase “...incorporates best management practices to manage the use of plant nutrients for crop production and water quality protection consistent with the criteria...” which is followed by the wording “in section 4 and 6 of the act” and replaced that language with the phrase “...meets the requirements set forth” followed by the phrase “in section 4 and 6 of the act.” The Department felt this streamlined the definition and removed redundancy without modifying its meaning. In addition, the Department added the phrase “...and in the nutrient management regulations at section 271,272, 281-331, and 391-441 (25 Pa.Code §§ 83.271, 83.272, 83.281-83.331, 83.391-83.441).” The Department felt this added clarity to the definition without expanding its intent or modifying its meaning. The Department is not wedded to this change however, and as it has seemed to cause confusion, instead of adding clarity, the Department has removed these changes from the final-form regulation.

It must be noted that the Department has changed the wording of the definition in the Final-Form Annex A to be consistent with the definition in the Act, by changing the referenced section numbers.

Comment 2 – Concerning - Section 130b.3. Fees.
(Related to Fiscal impact; Consistency with the statute and Reasonableness)

The IRRC commented that by attempting to establish fees through a process that would involve publishing notice of the fees or fee changes in the *Pennsylvania Bulletin*, the Department was acting contrary to the language of section 7(a) of the Act (3 P.S. § 1707(a)), which provides, “The Department of Agriculture shall by regulation establish such fees and terms and conditions of certification it deems appropriate....”

Response

The Department agrees with the IRRC concern and has removed all language setting forth a process by which fees and fee changes would be published in the *Pennsylvania Bulletin* and has set forth the amount of the fees to be charged by the

Department. The same statutory language appears in section 508(a) of the Act, so the IRRC's comment is still pertinent and the Department's response is the same.

**Comment 3 – Concerning - Section 130b.11. Determination of competence.
(Related to Implementation procedure and Clarity)**

Part 1 – Concerning subsection (a) (related to Commercial nutrient management specialist) and subsection (b) (related to Public nutrient management specialist)

The IRRC commented on four subsections contained within section 130b.11. The IRRC's comments were combined with regard to subsection (a) Commercial nutrient management specialist and subsection (b) Public nutrient management specialist. The IRRC set forth two comments concerning these subsections. First the IRRC stated that the two subsections included the phrase, "It may also include other course work related to requirements set forth in the nutrient management regulations which are determined by the Department to be necessary and appropriate." Second the IRRC noted that subsections (a) and (b) contained descriptions of requirements that were very similar to requirement for each position in subsection (g)(related to final certification requirements). The IRRC set forth three concerns generated by their comments and suggestions for changes to the final-form regulation.

First, the IRRC suggested the final-form regulation should include examples of the types of "other course work" that would be necessary in response to changes in the science or technology of nutrient management and questioned what process would be used to determine what is necessary and appropriate.

Second, the IRRC stated that to improve clarity the Department should replace the word "it" with the phrase "The precertification requirements."

Third, the IRRC suggested it is unnecessary for the requirements set forth in subsections (a) and (b) to include requirements similar to those delineated in subsection (g). The specific requirements cited by the IRRC are requirements that involve the development or review of nutrient management plans by certificate holders and determinations by the Department or its designee that these plans are adequate. The IRRC stated that it was its understanding that the successful development or review of these nutrient management plans was a requirement for final certification, not for precertification. Therefore, to improve clarity the IRRC suggested that the Department remove these final certification requirements from subsections (a) and (b).

Response

In response to the IRRC's first concern regarding the language stating that the Department "...may also include other course work related to requirements set forth in the nutrient management regulations which are determined by the Department to be necessary and appropriate", the final-form regulations contain language to clarify what the other course work would relate to and the process by which the Department would

determine such course work and training are necessary. The final-form regulations contain language stating that as changes in science and technology make new techniques and best management practices are approved by the State Conservation Commission, the Department will develop and include training materials and course work which will become part of the certification requirements. The new techniques and best management practices will not become part of the final certification requirements until they have been approved by the State Conservation Commission and until training manuals and course work have been modified to include information necessary to impart knowledge of these new techniques and best management practices.

In response to the IRRC's second comment concerning replacing the word "it" with the phrase "The precertification requirements" in order to improve clarity of the regulation, the Department has made that change in the final-form regulation

The Department responded to the IRRC's third suggested revision regarding the redundancy of the requirements set forth in subsections (a) and (b) of section 130b.11 and subsection (g) of section 130b.11, by removing the redundant final certification requirements from subsections (a) and (b).

Part 2 – Concerning subsection (d) (related to Examination)

The IRRC commented specifically with regard to subpart (9) of subsection (d), which reads "Other areas related to requirements in the nutrient management regulations, as determined appropriate by the Department." The IRRC stated their concerns with this subsection were similar to their concerns related to subsections (a) and (b) regarding examples of "other areas" and determination of "what is appropriate." The IRRC also commented that final-form regulation should clarify that new "areas" added to the examination will also be included in the required course work set forth in subsections (a) and (b).

Response

Subsection (d) of the final-form regulation contains language similar to the language added – in response to the IRRC's comments – to subsections (a) and (b). As stated in the response to the IRRC's concerns regarding subsections (a) and (b), as changes in science and technology make new techniques and best management practices available to control nutrients and as such techniques and best management practices are approved by the State Conservation Commission, the Department will develop and include training materials and course work which will become part of the certification requirements. The new techniques and best management practices will not become part of the final certification requirements until they have been approved by the State Conservation Commission and until training manuals and course work have been modified to include information necessary to impart knowledge of these new techniques and best management practices. In addition, the final-form regulation specifically states that new areas will be included in the course work and training materials prior to it being added to or appearing in the written examination.

Part 3 – Concerning subsection (h) (relating to Public nutrient management specialist to commercial nutrient management specialist)

The IRRC commented that the first sentence of this subsection should be amended to read, “The Commission with the consent of the Department....”

Response

Based on the IRRC’s comments the Department reconsidered the language and intent of the first sentence of this subsection and determined there was no need for a Public Nutrient Management Specialist to obtain the consent of the Department or the Commission in order to merely attempt to gain certification as a Commercial Nutrient Management Specialist.

Comment 4 – Concerning – Section 130b.12 Final Certification (relating to Clarity)

The IRRC commented that subsection (a) requires that, “The appropriate fee shall accompany the application for final certification.” The IRRC believes that the propose regulations do not adequately address the specific fee that must accompany the application and stated the Department should include the word “certification” between the words “appropriate” and “fee” and should reference the specific subsection that sets forth the particular fee required.

Response

In the final-form regulation, the Department has made the change to the language suggested by the IRRC and has included a specific reference to the subsection that delineates the particular fee required.

Comment 5 – Concerning – Section 130b.41 General (relating to Clarity)

The IRRC commented that subsection (c) stipulates the requirements a commercial nutrient management specialist must meet to have reciprocity in this Commonwealth. However, the IRRC stated there was no clear time frame established by the regulation within which an applicant must submit the required plans to the Department or its designee for approval. The IRRC stated that if there was a time frame for such submission it should be set forth in this section.

Response

The Department intends and in the past has imposed the same time constraints set forth in the regulations for applicants from this Commonwealth. To clarify this point, in the final-form regulation, the Department has added a new subsection to section 130b.41. which reads, “The application shall complete all requirements for reciprocity in the manner and within the time periods established in § 130b.11. (relating to determination of competence) and § 130b.12. (relating to final certification) of this chapter.”

FISCAL IMPACT

Commonwealth

The proposed amendments to the regulations will impose no additional fiscal impacts upon the Commonwealth. The amendments to the regulations will not require the Department to commit any additional amount of time and manpower to review of applications or the certification process.

Political Subdivisions

The proposed amendments to the regulations will impose no costs and nor fiscal impact upon political subdivisions. The regulations do not impose any additional burden of enforcement of review on political subdivisions.

Private Sector

The proposed amendments to the regulations will impose no significant costs on the private sector. The only additional costs to the regulated community may be in increased fees necessary to administer the NMCP.

General Public

The proposed amendments to the regulations will impose no costs and have no fiscal impact on the general public.

PAPERWORK REQUIREMENTS

The proposed amendments to the regulations will not result in a substantial increase of paperwork. The Department will not have to develop new application forms or review procedures.

CONTACT PERSON

Further information is available by contacting the Department of Agriculture, Nutrient Management Certification Program, 2301 North Cameron Street, Harrisburg, Pennsylvania 17110-9408; Attn: Johan Berger (717) 772-4189.

REGULATORY REVIEW

Under Section 5(a) of the Regulatory Review Act, the Act of June 30, 1989 (P.L. 73, No. 19), (71 P.S. §§ 745.1 – 745.15), as amended by Act 24 of June 25, 1997 (P.L. 252, No. 24), the Department submitted a copy of the Notice of Proposed Rulemaking, published at 35 *Pennsylvania Bulletin* 2101 (April 9, 2005), to the Independent Regulatory Review Commission (Commission) and to the Chairpersons of the House Agriculture and Rural Affairs Committee and the Senate Agriculture and Rural Affairs Committee (Committees) for review and comment. In compliance with § 5(c) (71 P.S. § 745.5(c)), the Department also provided the Commission and the Committees with copies of all comments received, as well as, other documentation.

In preparing these final-form regulations, the Department has considered all comments received from the Commission, the Committees and the general public.

These final-form regulations were (deemed) approved by the House Agriculture and Rural Affairs Committee on _____, were (deemed) approved by the Senate Agriculture and Rural Affairs Committee on _____, and were (deemed) approved by the Independent Regulatory Review Commission on _____.

FINDINGS

The Department of Agriculture finds the following:

(1) Public notice of its intention to adopt the regulations encompassed by this Order has been given under Sections 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, Sections 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 these regulations in response to comments received do not enlarge the purpose of the proposed regulations published at 35 *Pennsylvania Bulletin* 2101 (April 9, 2005).

(4) The adoption of the regulations 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 amended regulation of the Department of Agriculture at 7 Pa. Code Chapter 130b.1-130b.51 (relating to Nutrient Management Certification) is adopted as set forth in Annex "A" attached hereto.

(2) The Secretary of Agriculture shall submit this Order and Annex "A" to the Office of General Counsel and to the Office of Attorney General for review and approval as to legality and form, as required by law.

(3) The Secretary of Agriculture shall certify this Order and Annex "A" and deposit them with the Legislative Reference Bureau, as required by law.

(4) This Order shall take effect upon publication in the *Pennsylvania Bulletin*.

BY THE DEPARTMENT OF AGRICULTURE

DENNIS C WOLFF, SECRETARY

Subchapter A. GENERAL PROVISIONS

Sec.

130b.1. Scope.

130b.2. Definitions.

130b.3. Fees.

130b.4. [Interim certification.] Certification authority.

§ 130b.1. Scope.

This chapter prescribes procedures relating to the certification and recertification of nutrient management specialists. It includes the establishment of fees and delineation of requirements for certification of commercial, public and individual specialists.

§ 130b.2. Definitions.

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

~~Act—The Nutrient Management Act (3 P. S. §§ 1701—1718)~~ Act 38 of 2005 (3 P.A.C.S.A §§ 311-522).

Agricultural operations—The management and use of farming resources for the production of crops, livestock or poultry.

BMP—Best management practice—A practice or combination of practices determined by the Commission to be effective and practicable (given technological, economic and institutional considerations) to manage nutrients to protect surface and groundwater taking into account applicable nutrient requirements for crop utilization. The term includes:

- (i) Conservation tillage.
- (ii) Crop rotation.
- (iii) Soil testing.
- (iv) Manure testing.
- (v) Diversions.
- (vi) Manure storage facilities.
- (vii) Stormwater management practices.
- (viii) Nutrient application.
- (ix) Practices set forth in the nutrient management regulations.

Certificate year—The period from January 1 to December 31.

Certification—The completion of all requirements of a nutrient management specialist contained in this chapter.

Commission—The State Conservation Commission established by the Conservation District Law (3 P. S. §§ 849—864).

Competency—Demonstrating a high level of technical or scientific knowledge as evidenced by successfully meeting the requirements of § 130b.11 (relating to determination of competence) for commercial and public nutrient management specialists, or meeting the requirements of § 130b.21 (relating to determination of competence) for individual nutrient management specialists.

Conservation district—A county conservation district established under the eConservation dDistrict HLaw (3 P. S. §§ 849—864).

Department—The Department of Agriculture of the Commonwealth.

Designee – A person chosen or appointed by the Pennsylvania Secretary of Agriculture to carry out the Secretary’s duties under this chapter.

[*Interim certification*—A temporary designation by the Department issued to persons who meet the qualifications in section 7(b) of the act (3 P. S. § 1707(b)).]

Nutrient—A substance or recognized plant nutrient, element or compound which is used or sold for its plant nutritive content or its claimed nutritive value. The term includes livestock and poultry manures, compost as fertilizer, commercially manufactured chemical fertilizers, [sewage sludge] SEWAGE SLUDGE ~~bio-solids~~ or combinations thereof.

Nutrient management plan—A written site-specific plan which [incorporates BMPs to manage the use of plant nutrients for crop production and water quality protection consistent with the criteria] INCORPORATES BEST MANAGEMENT PRACTICES TO MANAGE THE USE OF PLANT NUTRIENTS FOR CROP PRODUCTION AND WATER QUALITY PROTECTION CONSISTENT WITH THE CRITERIA ESTABLISHED ~~meets the requirements set forth~~ in sections ~~4 and 6~~ 504 (RELATING TO POWERS AND DUTIES OF THE COMMISSION) AND 506 (RELATING TO NUTRIENT MANAGEMENT PLANS) ~~of the act (3 P. S. §§ 1704 and 1706) and in the nutrient management regulations at sections 271, 272, 281-331 and 391-441 (25 Pa. Code §§ 83.271, 83.272, 83.281-83.331 and 83.391-83.441).~~

Nutrient management specialist—

(i) *Individual* – A person certified to develop nutrient management plans for his agricultural operation.

(ii) *Commercial*—A private sector person [who develops] certified to develop nutrient management plans for another person's agricultural operation [whether employed in the private or public sector].

[(ii) *Individual*—A person who develops nutrient management plans for that person's own agricultural operation.]

(iii) *Public*—A State, [or] Federal [employee,] or other public employee [who reviews nutrient management plans, or recommends approval to a conservation district or the Commission] certified to develop or review or both, Nutrient Management Plans and make recommendations for approval or denial of Nutrient Management Plans to a Conservation District or the State Conservation Commission, or both.

(a) *Review Specialist* – A Public Nutrient Management Specialist certified to review Nutrient Management Plans and make recommendations for approval or denial of Nutrient Management Plans.

(b) *Dual Specialist* – A Public Nutrient Management Specialist certified to review and develop Nutrient Management Plans for another person's agricultural operation and make recommendations for approval or denial of Nutrient Management Plans which they have not personally written or developed.

Precertification training—The initial nutrient management training courses which shall be completed by persons seeking to become nutrient management specialists.

Provisional certification— The level of certification obtained by a [An] Nutrient Management Specialist applicant [for commercial or public nutrient management specialist] who has successfully completed the precertification training and [has] passed the written examination, but has not yet [to] [prepare,] developed or reviewed or both the required number of [three] [n]Nutrient [m]Management [p]Plans.

Recertification training—The [successful] completion [by a currently certified nutrient management specialist] of continuing education and training requirements [contained] set forth in § 130b.31 of this chapter (relating to recertification).

Regulations – The Nutrient Management Regulations set forth in the Pennsylvania Code, Title 25, Chapter 83 (25 Pa.Code §§ 83.201-83.491).

§ 130b.3. Fees.

[(a) *Commercial nutrient management specialist certificate.* The triennial fee for a commercial certificate is \$100.

(b) *Public nutrient management specialist certificate.* The triennial fee for a public certificate is \$10.

(c) *Individual nutrient management specialist certificate.* The triennial fee for an individual certificate is \$10.]

(a) *Certification fees.* Certification fees are nonrefundable. The Department will establish HEREBY ESTABLISHES THE FOLLOWING certification fees for each level of nutrient management specialist: Notice of the fees or any changes to the fees in subsequent years shall be published in the *Pennsylvania Bulletin.* The published fees shall be effective for at least one calendar year. Fees shall be based on the cost of administering and enforcing the provisions of this chapter.

(1) INDIVIDUAL NUTRIENT MANAGEMENT SPECIALIST – \$15

(2) COMMERCIAL NUTRIENT MANAGEMENT SPECIALIST – \$200

(3) PUBLIC NUTRIENT MANAGEMENT SPECIALIST

(i) REVIEW SPECIALIST – \$25

(ii) DUAL SPECIALIST – \$50

(b) Examination fees. Examination fees are nonrefundable. The Department will establish **HEREBY ESTABLISHES THE FOLLOWING** examination fees for each level of nutrient management specialist: Notice of the fees or any changes to the fees in subsequent years shall be published in the Pennsylvania Bulletin. The published fees shall be effective for at least one calendar year. Fees shall be based on the cost of developing, amending and administering the tests and enforcing the provisions of this chapter. [The following examination fees, with payment made in advance, will be charged:

(1) Commercial/public nutrient management specialist examination—\$50.

(2) Individual nutrient management specialist examination—no charge.]

(1) INDIVIDUAL NUTRIENT MANAGEMENT SPECIALIST – NO CHARGE

(2) COMMERCIAL NUTRIENT MANAGEMENT SPECIALIST – \$50

(3) PUBLIC NUTRIENT MANAGEMENT SPECIALIST

(i) REVIEW SPECIALIST – \$50

(ii) DUAL SPECIALIST – \$50

§ 130b.4. [Interim certification] Certification authority.

[A person who has interim certification as of September 28, 1996, will be provided written notice, within 30 days, by first class mail, that the Department has completed development of finalized regulations and is beginning to implement the official nutrient management certification program. This notice shall also inform recipients that upon receipt, their interim status shall cease and is no longer valid. An application and instructions to apply for certification will accompany the notification.]

(a) Individual Certification Authority - A person duly certified under these regulations as an Individual Nutrient Management Specialist is authorized to develop nutrient management plans for his own agricultural operation. An Individual Nutrient Management Specialist has no authority to develop a nutrient management plan for another person or review and recommend action on a nutrient management plan.

(b) Commercial Certification Authority - A person duly certified under these regulations as a Commercial Nutrient Management Specialist is authorized to develop nutrient management plans for another person's agricultural operation. A Commercial Nutrient Management Specialist has no authority to review or recommend action on a nutrient management plan.

(c) Public Certification Authority - A public employee certified as a Public Nutrient Management Specialist has authority to review and recommend action or develop a nutrient management plan for another person or both dependent on the certification requirements he has successfully completed.

(i) Public Nutrient Management Review Specialist – A person duly certified under these regulations as a Public Nutrient Management Review Specialist is authorized to review nutrient management plans and make recommendations for approval or denial of nutrient management plans.

(ii) Public Nutrient Management Dual Specialist – A person duly certified under these regulations as a Public Nutrient Management Dual Specialist is authorized to review and develop nutrient management plans for another person's agricultural operation and make recommendations for approval or denial of nutrient management plans which they have not personally developed.

Subchapter B. CERTIFICATION

COMMERCIAL AND PUBLIC NUTRIENT MANAGEMENT SPECIALISTS

Sec.

130b.11. Determination of competence.

130b.12. [Eligibility] Final certification.

INDIVIDUAL NUTRIENT MANAGEMENT SPECIALISTS

130b.21. Determination of competence.

130b.22 [Eligibility] Final certification.

RECERTIFICATION

130b.31. Recertification.

RECIPROCITY

130b.41. General.

130b.42. Procedure.

DENIAL, SUSPENSION AND REVOCATION OF CERTIFICATES

130b.51. Denial, suspension and revocation of certificates.

COMMERCIAL AND PUBLIC NUTRIENT MANAGEMENT SPECIALISTS

§ 130b.11. Determination of competence.

(a) Commercial Nutrient Management Specialist. -

Determination of competence for a commercial nutrient management specialist[s] shall be based on [a] the successful completion of precertification training and examinations as set forth in this section. Precertification requirements for a Commercial Nutrient Management Specialist shall include an orientation [precertification] training course, [a written examination approved by the Department and the development of three nutrient management plans] a nutrient management plan writing course, AND a written examination approved by the Department. ~~and the development of three approved nutrient management plans.~~ AS ADVANCEMENTS IN SCIENCE AND TECHNOLOGY MAKE NEW NUTRIENT MANAGEMENT TECHNIQUES AND BEST MANAGEMENT PRACTICES AVAILABLE AND AFTER SUCH TECHNIQUES AND BEST MANAGEMENT PRACTICES ARE APPROVED BY THE STATE CONSERVATION COMMISSION, THE PRECERTIFICATION REQUIREMENTS ~~It may also include~~ other course work related to THOSE TECHNIQUES AND BEST MANAGEMENT REQUIREMENTS, AS WELL AS, ANY NEW requirements set forth in the NUTRIENT MANAGEMENT regulations, which are determined by the ~~Department to be necessary and appropriate.~~ AS PART OF THE CERTIFICATION COURSE AND TRAINING REQUIREMENTS. THE NEW TECHNIQUES AND BEST MANAGEMENT PRACTICES WILL NOT BECOME PART OF THE FINAL CERTIFICATION REQUIREMENTS UNTIL AFTER TRAINING MANUALS AND COURSE WORK HAVE BEEN MODIFIED TO INCLUDE THE INFORMATION NECESSARY TO IMPART KNOWLEDGE OF THESE NEW TECHNIQUES AND BEST MANAGEMENT PRACTICES. Nutrient management plans

developed under this subsection shall be determined to be adequate by the Department or its designee.

(b) Public Nutrient Management Specialist. - Determination of competence for a public nutrient management specialist[s] shall be based on [a precertification training course, a written examination approved by the department and the development of one plan and review of two plans] the level of certification sought to be attained. [All prepared plans and plan reviews completed under this subsection shall be determined to be adequate by the Commission or its designee.]

(1) Public Nutrient Management Review Specialist. - In order to be certified as a Public Nutrient Management Review Specialist the applicant must successfully complete precertification training and examinations as set forth in this section. The precertification requirements for a Public Nutrient Management Review Specialist shall include an orientation training course, a nutrient management plan review course, a nutrient management plan writing course, AND a written examination approved by the Department, the successful review of two nutrient management plans and development of one approved nutrient management plan. AS

ADVANCEMENTS IN SCIENCE AND TECHNOLOGY MAKE NEW NUTRIENT MANAGEMENT TECHNIQUES AND BEST MANAGEMENT PRACTICES AVAILABLE AND AFTER SUCH TECHNIQUES AND BEST MANAGEMENT PRACTICES ARE APPROVED BY THE STATE CONSERVATION COMMISSION, THE PRECERTIFICATION REQUIREMENTS ~~It may also include~~ other course work related to THOSE TECHNIQUES AND BEST MANAGEMENT REQUIREMENTS, AS WELL AS, ANY NEW requirements set forth in the NUTRIENT MANAGEMENT regulations, which are determined by the Department to be necessary and appropriate. AS PART OF THE CERTIFICATION COURSE AND TRAINING REQUIREMENTS. THE NEW TECHNIQUES AND BEST MANAGEMENT PRACTICES WILL NOT BECOME PART OF THE EXAMINATION UNTIL AFTER TRAINING MANUALS AND COURSE WORK HAVE BEEN

MODIFIED TO INCLUDE THE INFORMATION NECESSARY TO IMPART KNOWLEDGE OF THESE NEW TECHNIQUES AND BEST MANAGEMENT PRACTICES. Nutrient management plan reviews completed and nutrient management plans developed under this subsection shall be determined to be adequate by the Department or its designee.

(2) Public Nutrient Management Dual Specialist. – In order to be certified as a Public Nutrient Management Dual Specialist the applicant must successfully complete precertification training and examinations as set forth in this section. The precertification requirements for a Public Nutrient Management Dual Specialist shall include an orientation training course, a nutrient management plan review course, a nutrient management plan writing course, AND a written examination approved by the Department, the successful review of two nutrient management plans and the development of two approved nutrient management plans. AS ADVANCEMENTS IN SCIENCE AND TECHNOLOGY MAKE NEW NUTRIENT MANAGEMENT TECHNIQUES AND BEST MANAGEMENT PRACTICES AVAILABLE AND AFTER SUCH TECHNIQUES AND BEST MANAGEMENT PRACTICES ARE APPROVED BY THE STATE CONSERVATION COMMISSION, THE PRECERTIFICATION REQUIREMENTS - It may also include other course work related to THOSE TECHNIQUES AND BEST MANAGEMENT REQUIREMENTS, AS WELL AS, ANY NEW requirements set forth in the NUTRIENT MANAGEMENT regulations, which are determined by the Department to be necessary and appropriate. AS PART OF THE CERTIFICATION COURSE AND TRAINING REQUIREMENTS. THE NEW TECHNIQUES AND BEST MANAGEMENT PRACTICES WILL NOT BECOME PART OF THE FINAL CERTIFICATION REQUIREMENTS UNTIL AFTER TRAINING MANUALS AND COURSE WORK HAVE BEEN MODIFIED TO INCLUDE THE INFORMATION NECESSARY TO IMPART KNOWLEDGE OF THESE NEW TECHNIQUES AND BEST MANAGEMENT PRACTICES. Nutrient management plan reviews completed and nutrient management plans developed

under this subsection shall be determined to be adequate by the Department or its designee.

([b]c) Precertification. - The precertification training courses shall, at a minimum, consist of the following areas of nutrient management planning:

(1) Nutrient application including:

(i) Determination of the cropping system and crop nutrient requirements.

(ii) Determination of sources of nutrients available for application on the farm.

(iii) Determination of additional nutrients required to obtain realistic expected crop yields.

(iv) Application records.

(2) Manure management.

(3) Excess manure alternatives.

(4) Stormwater runoff control.

(5) Applicable laws and regulations.

(6) Proper nutrient management plan review procedures ([p]Public Nutrient Management [s]Specialists only).

(7) Proper nutrient management plan writing procedures (Commercial, Public Nutrient Management Specialists only).

(8) Other areas and course work related to requirements set forth in the regulations, as determined appropriate by the Department.

([c]d) Examination. - The written examination will be proctored by the Department or its designee. The Department will administer the examination at least twice per year, or more often as deemed necessary by the Department. At a minimum,

the successful completion of the examination will demonstrate an examinee's technical knowledge relating to nutrient management planning and nutrient management plan development in the following areas:

- (1) Competency in soil science and soil fertility.
- (2) Competency in nutrient application and management.
- (3) Competency in crop production.
- (4) Competency in soil and manure testing and interpretation.
- (5) Understanding in determining needed BMPs related to proper utilization of nutrients and stormwater management.
- (6) Competency in fertilizer materials and their characteristics.
- (7) Understanding of environmental and economic impacts associated with nutrient management.
- (8) Understanding of the act and other applicable laws and regulations.

(9) Other areas related to NEW TECHNOLOGY AND BEST MANAGEMENT PRACTICES THAT BECOME AVAILABLE AND ARE APPROVED BY THE STATE CONSERVATION COMMISSION, AS WELL AS, NEW requirements set forth in the NUTRIENT MANAGEMENT regulations, as determined appropriate by the Department. THESE OTHER AREAS WILL NOT BECOME PART OF THE FINAL CERTIFICATION REQUIREMENTS UNTIL TRAINING MANUALS AND COURSE WORK HAVE BEEN MODIFIED TO INCLUDE INFORMATION NECESSARY TO IMPART KNOWLEDGE OF THESE NEW TECHNIQUES AND BEST MANAGEMENT PRACTICES.

([d]e) Other examinations. - The Department may approve the use of written examinations other than the Pennsylvania nutrient management examination, if the written examinations meet the requirements in subsection ([c]d).

([e]f) Provisional certification. - Upon the successful completion of the requirements in subsections ([b]c) and ([c]d), the applicant for certification as a [c]Commercial or [p]Public[n]Nutrient [m]Management [s]Specialist will be issued the appropriate provisional certification. The holder of a provisional certification is qualified, dependant on the type of provisional certification attained, to develop or review or both, nutrient management plans for the purpose of satisfying the requirements of this section regarding final certification. [as provided in subsection (f).] Provisional certification is valid for 3 years ending on the last day of the month from the date of issuance.

([f]g) Final certification requirements. - Once provisional certification has been granted the provisionally certified specialist shall complete one of the following dependant on the type of provisional certification granted and final certification sought.

(1) Commercial Nutrient Management Specialist. - [a] In order to attain final certification, a provisionally certified [c]Commercial [n]Nutrient [m]Management [s]Specialist shall develop three approved nutrient management plans which meet the requirements of section 6(e) of the act (3 P.S. § 1706(e) Pa.C.S.A. § 506(e)). Nutrient management plans developed by the applicant shall be submitted to the Department or its designee for approval.

(2) Public Nutrient Management Specialist. - In order to attain final certification, a provisionally certified Public Nutrient Management Specialist shall do one of the following dependant upon the level of provisional certification attained and the level of final certification sought.

(i) Public Nutrient Management Review Specialist. - In order to attain final certification, [A]a provisionally certified P[p]ublic [n]Nutrient [m]Management Review [s]Specialist shall [develop one plan and] successfully review two nutrient management plans and develop one approved nutrient management plan which meets the requirements of [in accordance with] section 6(e) of the act (3 P.S. § 1706(e) Pa.C.S.A. § 506(e)). [Commercial specialists shall submit, to the Department, evidence that the Commission or its designee has actually reviewed and approved the three plans. Public specialists shall submit to the Department, evidence that the Commission or its designee has actually reviewed and approved one prepared plan and determined the public specialist's review of two plans to be adequate.] Nutrient management plan reviews completed and nutrient management plans developed by the applicant shall be submitted to the Department or its designee for approval.

(ii) Public Nutrient Management Dual Specialist. In order to attain final certification, a provisionally certified Public Nutrient Management Dual Specialist shall successfully review two nutrient management plans and develop two approved nutrient management plan in accordance with section 6(e) of the act (3 P.S. § 1706(e) Pa.C.S.A. § 506(e)). Nutrient management plan reviews completed and nutrient management plans developed by the applicant shall be submitted to the Department or its designee for approval.

[(g) Upon completion of all the requirements of this section, a commercial nutrient management specialist may apply for certification to develop nutrient management plans and a public nutrient management specialist may apply for certification to review nutrient management plans. The appropriate fee shall accompany the specialist's application for certification.]

(h) Public Nutrient Management Specialist to Commercial Nutrient Management Specialist. – [A currently] Where the Department or the Commission with the consent of the Department determines it is necessary or appropriate, A [c]Certified [p]Public [n]Nutrient [m]Management [s]Specialist [who wishes to obtain] may obtain certification as a [c]Commercial [n]Nutrient [m]Management [s]Specialist. In order to attain such certification a Certified Public Nutrient Management Review Specialist shall develop two approved nutrient management plans or a Certified Public Nutrient Management Dual Specialist shall develop [two] one approved nutrient management plan[s] in accordance with section 6(e) of the act (3 P.S. § 1706(e) Pa.C.S.A. § 506(e)). The Certified [p]Public [n]Nutrient [m]Management [s]Specialist seeking such certification shall submit the nutrient management plans or plan to the Department or its designee for review and approval.[, evidence that the Commission or its designee has actually reviewed and approved the plans.]

(i) Public Nutrient Management Review Specialist to Public Nutrient Management Dual Specialist. -

A certified Public Nutrient Management Review Specialist may obtain certification as a Public Nutrient Management Dual Specialist. In order to attain such certification, the Certified Public Nutrient Management Review Specialist shall develop one approved nutrient management plan in accordance with section 6(e) of the act (3 P.S. § 1706(e) Pa.C.S.A. § 506(e)). The applicant seeking to attain such certification shall submit the nutrient management plan to the Department or its designee for review and approval.

([i]j) Commercial Nutrient Management Specialist to Public Nutrient Management Specialist. - A [currently] Certified [c]Commercial [n]Nutrient [m]Management [s]Specialist who wishes to obtain certification as a [p]Public [n]Nutrient [m]Management [s]Specialist [certification] shall complete a nutrient management plan review [precertification] course covering proper nutrient management plan review procedures and shall successfully review two nutrient

managements plans in accordance with section 6(e) of the act (~~3 P.S. § 1706(e)~~ Pa.C.S.A. § 506(e)). The [commercial nutrient management specialist] applicant seeking to attain such certification shall submit[,] the nutrient management plan reviews to the Department[, evidence that the Commission] or its designee for review and approval. [has actually reviewed and determined the specialist's review of the two plans to be adequate.]

§ 130b.12. Final certification [Eligibility].

(a) Application for final certification. - Upon completion of all the requirements of this chapter, a Commercial Nutrient Management Specialist or a Public Nutrient Management Specialist may submit an application to the Department for final certification. The appropriate CERTIFICATION fee, AS SET FORTH IN SUBSECTION 130b.3(a) OF THIS CHAPTER shall accompany the application for final certification.

([a]b) Eligibility for final certification. - A person is eligible to apply for final certification as a [c]Commercial or [p]Public [n]Nutrient [m]Management [s]Specialist upon fulfilling the applicable requirements established under § 130b.11 (relating to determination of competence) of this chapter. An application for final certification may be obtained from the Department.

([b]c) Time period for filing application. - An application for final certification shall be filed with the Department within [180]120-calendar days of notification by the Department of meeting the appropriate requirements set forth in § 130.b.11 of this chapter.[of § 130b.11(f).] If the applicant fails to file an application with the Department within the prescribed [180]120-calendar days, that person shall again satisfy the appropriate competency requirements as provided in § 130b.11 (relating to determination of competence.[(a)—(f)].

([c]d) **Time period final certification is valid.** - A final certification[e] is valid for 3 years ending on December 31 of the third year following the date of final certification. However, the Department will authorize an additional year when the certification[e] is issued during the last 2 months of the initial certificate year.

INDIVIDUAL NUTRIENT MANAGEMENT SPECIALISTS

§ 130b.21. Determination of competence.

(a) Determination of competence for an individual nutrient management specialist shall be based on the completion of precertification training which includes an orientation [a precertification] training course and a written examination approved by the Department.

(b) The orientation [precertification] training course shall at a minimum consist of the same requirements as in § 130b.11([b]c) (relating to determination of competence).

(c) The written examination shall be proctored by the Department or its designee. The Department will administer the examination on an as needed basis, which will be determined by the number of requests for such testing. [at least twice per year, or more often as deemed necessary by the Department.] At a minimum, the successful completion of the examination will demonstrate an examinee's technical knowledge relating to nutrient management planning and nutrient management plan development in the following areas:

- (1) Competency in nutrient application and management.
- (2) Competency in crop production.
- (3) Competency in soil and manure testing and interpretation.

(4) Understanding in determining needed BMPs related to proper utilization of nutrients and stormwater management.

(5) Understanding of soil science and soil fertility.

(6) Understanding of fertilizer materials and their characteristics.

(7) Understanding of environmental and economic impacts associated with nutrient management.

(8) Understanding of the act and other applicable laws and regulations.

(9) Other areas and coursework related to the requirements set forth in the regulations as determined appropriate by the Department.

(d) The Department may approve the use of written examinations other than the Pennsylvania nutrient management examination, if the written examinations meet the requirements in subsection (c).

(e) Individual nutrient management specialists are exempt from the nutrient management plan preparation requirement.

§ 130b.22. [Eligibility] Final certification.

(a) A person is eligible to apply for final certification as an individual nutrient management specialist upon fulfilling the requirements under § 130b.21 (relating to determination of competence). An application for certification may be obtained from the Department. The appropriate fee shall accompany the specialist's application for certification.

(b) An application for certification shall be filed with the Department no later than [180]120-calendar days after the applicant's completion of the competency requirements. If the applicant fails to file an application with the Department within the prescribed [180]120-calendar days, that person shall again

satisfy the competency requirements as provided in § 130b.21(a)—(d).

(c) A certificate is valid for 3 years ending on December 31 of the third year following the date of certification. However, the Department will authorize an additional year when the certification~~[e]~~ is issued during the last 2 months of the initial certificate year.

RECERTIFICATION

§ 130b.31. Recertification.

(a) At intervals of 3 years, [provisionally certified or] final certified [c]Commercial, [p]Public or [i]Individual [n]Nutrient [m]Management [s]Specialists shall provide written documentation of having received continuing education and training in Department-approved training courses in nutrient management planning and nutrient management plan development. Training shall address the specific areas in § 130b.11([b]c) and ([c]d) (relating to determination of competence) for [c]Commercial and [p]Public [s]Specialists and § 130b.21(b) and (c) (relating to determination of competence) for [i]Individual [s]Specialists.

(b) Recertification credits approved by the Department will be given on the basis of attendance at approved training sessions, as provided in subsection (a). The Department will evaluate the training and assign the appropriate credits. Commercial and [p]Public [s]Specialists are required to obtain [ten] twenty credits with one quarter or five of those credits being obtained through Department or Commission conducted courses.[and i]Individual [s]Specialists are required to obtain six credits during the recertification interval. The Department may, if deemed necessary, require specific training for certified nutrient management specialists, in addition to the required training in §§ 130b.11 and 130b.21. The Department will provide written notification to the certified nutrient management specialists of required specific training.

(c) Training will be approved for recertification credits at the rate of 1 credit per hour of applicable instruction, exclusive of coffee breaks, lunches, visits to exhibits, and the like. Credits will be assigned to each training session based upon the subjects covered and the amount of time expended on each subject. Credits assigned may be modified if either the content or length of the training substantially differs from the originally approved course.

(d) Sponsors of recertification training shall first submit a written request for course approval to the Department of Agriculture, Bureau of Plant Industry, 2301 North Cameron Street, Harrisburg, Pennsylvania 17110-9408. A request shall be submitted to the Department at least 15 working days prior to the training date and shall include the following information:

(1) The name and phone number of the contact person who is coordinating the training.

(2) The specific location of the training.

(3) The date of the training.

(4) A listing of the speakers, subject matter and time allotted to each subject.

(5) A statement whether the training is open to the public and if there is a charge to attend.

(e) A recertification training course will be approved if at a minimum it consists of the same requirements as set forth in § 130b.11([b]c) and ([c]d) and is conducted or sponsored by an educational institution, an association, a business, a governmental agency or other qualified source. Preapproval of recertification courses is vested solely with the Department.

(f) Falsification by a course sponsor of information required under this section may result in the withdrawal of credits or course approval, or both.

(g) If the Department or its designee is unable to monitor the training, the sponsor shall be responsible for verifying attendance and shall compile a list of Pennsylvania certified specialists in attendance. The list shall be returned to the Department within 10 working days following the training date and shall include the name of each person attending and their certification[e] number.

(h) If a nutrient management specialist allows [the] his final certification [of a nutrient management specialist is allowed] to expire and does not obtain recertification in accordance with this chapter [credits are due], his final certification shall be suspended and the specialist must refrain from all duties relating to his certification until [recertification of that specialist shall first require the completion of] all delinquent recertification credits are acquired as described in subsection (b) of this section.

(i) If a nutrient management specialist whose final certification has been suspended as set forth in subsection (h) of this section fails to complete delinquent recertification credits within 1 year from the expiration date of his final certification [expiration date], then his final certification shall be revoked and that person shall again satisfy the requirements of § 130b.11 and § 130b.12 (relating to eligibility) for [c]Commercial and [p]Public [s]Specialists, and § 130b.21 and § 130b.22 (relating to eligibility) for [i]Individual [s]Specialist.

RECIPROCITY

§ 130b.41. General.

(a) A person who has a valid certificate or license from another state may obtain certification in this Commonwealth if:

(1) The state in which that person is certified has a reciprocal agreement with the Department.

(2) The applicant satisfies the required precertification training as set forth in § 130b.11([b]c) (relating to precertification [determination of competence]). The applicant will not be required to take a written examination to determine competence if the applicant satisfies the requirements of this subsection.

(b) Upon the successful completion of the requirements in subsection (a) of this section, the applicant for certification as a [c]Commercial or [p]Public [n]Nutrient [m]Management [s]Specialist will be issued provisional certification and shall complete the requirements in § 130b.11([f]g) (relating to final certification requirements). Provisional certification is valid for 3 years ending on the last day of the month from the date of issuance.

(c) In addition to the requirements in subsection (a) of this section, if the applicant is a [commercial nutrient management specialist that person shall submit written evidence to the Department, that the Commission or its designee has reviewed and approved three plans as provided in section 6(e) of the act (3 P. S. § 1706(e))] Commercial Nutrient Management Specialist, that person shall develop three approved nutrient management plans which meet the requirements of section 6(e) of the act (3 P. S. § 1706(e)-Pa.C.S.A. § 506(e)). If the applicant is a [public nutrient management specialist, that person shall submit to the Department, evidence that the Commission or its designee has reviewed and approved one prepared plan and determined the public specialist's review of two plans to be adequate] Public Nutrient Management Review Specialist, that person shall successfully review two nutrient management plans and develop one approved nutrient management plan which meets the requirements of section 6(e) of the act (3 P. S. § 1706(e)-Pa.C.S.A. § 506(e)). If the applicant is a Public Nutrient Management Dual Specialist, that person shall successfully review two nutrient management plans and develop two approved nutrient management plans which meet the requirements of section 6(e) of the act (3 P. S. § 1706(e)-Pa.C.S.A. § 506(e)). Nutrient management plan reviews completed and nutrient management plans developed

by the applicant shall be submitted to the Department or its designee for approval.

(D) THE APPLICANT SHALL COMPLETE ALL REQUIREMENTS FOR RECIPROCITY IN THE MANNER AND WITHIN THE TIME FRAMES ESTABLISHED IN § 130b.11. (RELATING TO DETERMINATION OF COMPETENCE) AND § 130b.12. (RELATING TO FINAL CERTIFICATION) OF THIS CHAPTER.

§ 130b.42. Procedure.

A person desiring a certificate under § 130b.41(a)(1) and (2) (relating to general) shall submit to the Department a properly completed application and appropriate fee, as set forth in § 130b.3 (relating to fees) along with a copy of the persons out-of-State certificate.

DENIAL, SUSPENSION AND REVOCATION OF CERTIFICATES

§ 130b.51. Denial, suspension and revocation of certificates.

(a) The Department may, after notice, including a statement of the reasons therefore, [and opportunity for a hearing,] deny, suspend or revoke a [c]Commercial, [p]Public or [i]Individual [n]Nutrient [m]Management [s]Specialists certification for any of the following:

- (1) Any[a] violation of the act or these [its resulting] regulations.
- (2) Failure to obtain the required recertification credits.
- (3) Inconsistency and demonstration of a lack of knowledge of Nutrient Management Plan writing and review skills.
- (4) Three or more occurrences within a three-year period of delay or non-communication with landowner or review agency during plan development or review.
- (5) Falsifying information.

- (6) Misrepresentation of the Nutrient Management Act program.
- (7) Any violation of program policy established by the Department, its designee or the State Conservation Commission.

(b) An applicant or nutrient management specialist may request a hearing, in writing, within 15 days of receipt of notice of the denial, suspension or revocation from the Department. The request shall be sent to the Bureau of Plant Industry, Agriculture Building, 2301 North Cameron Street, Harrisburg, Pennsylvania, 17110.

PROPOSED RULEMAKING

DEPARTMENT OF AGRICULTURE

[7 PA. CODE CH. 130b]

Nutrient Management Certification

The Department of Agriculture (Department), under section 7(a) and (b) of the Nutrient Management Act (act) (3 P.S. § 1707(a) and (b)), proposes to amend Chapter 130b (relating to nutrient management certification). Section 7(a) of the act, charges the Department of Agriculture (Department) in consultation with the State Conservation Commission (Commission) with the duty of, "... establishing a nutrient management certification program for the purpose of certifying individuals who have demonstrated the competency necessary to develop nutrient management plans." The Department was required to promulgate nutrient management certification regulations to, "... establish such fees and terms and conditions of certification as it deems appropriate and establish individual, commercial and public certification categories, including a certification category for farmers to develop and certify nutrient management plans for their own agricultural operations." The current chapter sets forth those criteria and establish criteria for interim certification as required by section 7(b) of the act.

This proposed rulemaking is required to bring the Nutrient Management Certification Program (NMCP), into compliance with changes in the industry and pending changes to the nutrient management regulations in 25 Pa. Code Chapter 83, Subchapter D (relating to nutrient management). This proposed rulemaking will add new definitions to provide clarity, streamline and redefine the certification process and make other changes in response to problems, concerns and input from those administering the NMCP over the past 8 years and from persons currently certified under this chapter. This proposed rulemaking also deletes the section setting forth interim certification requirements, since interim certification is no longer necessary.

Summary of Major Features

Section 130b.2. Definitions

New definitions have been included for the terms "designee," "individual nutrient management specialist," "commercial nutrient management specialist," "nutrient management regulation," and "public nutrient management specialist." The definitions of "BMP," "nutrient," "nutrient management plan," "provisional certification" and "recertification training" have also been amended. The definitions were added or revised to provide clarification based on implementation of existing regulations over the past several years.

Section 130b.3. Fees

Language has been added to allow the Department to change certification and examination fees in any given year and publish those fees in the *Pennsylvania Bulletin*.

Section 130b.4. Interim certification

This section has been rescinded as there is no longer a need for an interim certification program.

Section 130b.5. Certification authority

Language has been added to clarify the authority under each nutrient management specialist certification cat-

egory: "individual," "commercial" and "public." New categories have been added to further define and establish specific roles under the public nutrient management specialist category: "public review specialist" and "public dual specialist."

Section 130b.11. Determination of competence

Language has been added to clarify the training and certification requirements for each category of nutrient management specialist certification. In addition, two new categories and the training and certification requirements for those categories have been added for a public nutrient management specialist certification. In addition, language has been added to clarify the authority of the Department to determine mandatory courses. Furthermore, language was revised to change the provisional certification expiration to now end on the last day of the month on the third year from the date of issuance of the provisional certification.

Revisions were made to clarify the final certification requirements for "commercial nutrient management specialist" and "public nutrient management specialist."

Language was added to delineate that nutrient management plans required for final certification had to be approved nutrient management plans.

Finally, language was added to establish the procedures for a final certified nutrient management specialist to add or gain certification in an additional nutrient management specialist category.

Section 130b.12. Final certification

The heading of this section was revised for clarity. This section had previously been entitled "eligibility."

Language in this section was revised to reduce the time period for filing and submitting the fee for final certification from 180 days to 120 days.

Section 130b.21. Determination of competence

Language in this section was revised to reflect the name change from precertification training to orientation training. Language was added to the regulations to allow the Department to determine additional courses that would be needed to meet nutrient management certification requirements.

Section 130b.22. Final certification

The heading of this section was revised for clarity. This section had previously been entitled "eligibility."

Language in this section was revised to reduce the time period for filing and submitting the fee for final certification from 180 days to 120 days.

Section 130b.31. Recertification

The language of this section was amended to remove the ability of provisionally certified nutrient management specialists to earn continuing education credits. The new language will allow only final certified nutrient management specialists to receive continuing education credits.

Language was added to increase the amount of continuing education credits needed for recertification from 10 to 20 credits for commercial and public nutrient management specialists. Language was also added to establish that 5 of those 20 continuing education credits needed to be obtained through Department or Commission con-

ducted courses to allow the Department better oversight of the type of courses specialists receive for certification.

Language was added to suspend a nutrient management specialist's final certification if the nutrient management specialist fails to obtain the appropriate number and type of continuing education credits necessary for recertification.

Section 130b.41. General

Language was added to address the new nutrient management categories under public specialists—"public review specialist" and "public dual specialist"—which were created by amendments to previous sections of the chapter.

Section 130b.51. Denial, suspension and revocation of certificates

Language was added to establish criteria for the denial, suspension or revocation of a nutrient management specialist's certification.

Fiscal Impact

Commonwealth

The proposed amendments will impose no additional fiscal impacts upon the Commonwealth. The proposed amendments will not require the Department to commit any additional amount of time and manpower to review of applications or the certification process.

Political Subdivisions

The proposed amendments will impose no costs and no fiscal impact upon political subdivisions. The proposed amendments do not impose any additional burden of enforcement of review on political subdivisions.

Private Sector

The proposed amendments will impose no significant costs on the private sector. The only additional costs to the regulated community may be in increased fees necessary to administer the NMCP.

General Public

The proposed amendments will impose no costs and have no fiscal impact on the general public.

Paperwork Requirements

The proposed amendments will not result in a substantial increase of paperwork. The Department will not have to develop new application forms or review procedures.

Public Comment Period

Interested persons are invited to submit written comments regarding the proposed amendments within 30 days following publication in the *Pennsylvania Bulletin*.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on March 30, 2005, the Department submitted a copy of the proposed amendments to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Agriculture and Rural Affairs Committee and the Senate Agriculture and Rural Affairs Committee (Committees). In addition to submitting the proposed amendments, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form. A copy of this material is available to the public upon request.

If IRRC has an objection to any portion of the proposed amendments, it will notify the Department within 30 days after the close of the public comment period. The

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

Contact Person

Further information is available by contacting the Department of Agriculture, Nutrient Management Certification Program, 2301 North Cameron Street, Harrisburg, PA 17110-9408; Attn: Johan Berger (717) 772-4189.

Effective Date

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

DENNIS C WOLFF,
Secretary

Fiscal Note: 2-147. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 7. AGRICULTURE

PART V. BUREAU OF PLANT INDUSTRY CHAPTER 130b. NUTRIENT MANAGEMENT CERTIFICATION

Subchapter A. GENERAL PROVISIONS

§ 130b.2. Definitions.

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

* * * * *

BMP—Best management practice—A practice or combination of practices determined by the Commission to be effective and practicable (given technological, economic and institutional considerations) to manage nutrients to protect surface and groundwater taking into account applicable nutrient requirements for crop utilization. The term includes:

* * * * *

(ix) Practices set forth in the nutrient management regulations.

* * * * *

Designee—A person chosen or appointed by the Secretary of Agriculture to carry out the Secretary's duties under this chapter.

[Interim certification—A temporary designation by the Department issued to persons who meet the qualifications in section 7(b) of the act (3 P.S. § 1707(b)).]

Nutrient—A substance or recognized plant nutrient, element or compound which is used or sold for its plant nutritive content or its claimed nutritive value. The term includes livestock and poultry manures, compost as fertilizer, commercially manufactured chemical fertilizers, [sewage sludge] bio-solids or combinations thereof.

Nutrient management plan—A written site-specific plan which [incorporates BMPs to manage the use of plant nutrients for crop production and water quality protection consistent with the criteria] meets the requirements in sections 4 and 6 of the act (3 P.S. §§ 1704 and 1706) and in 25 Pa. Code Chapter 88, Subchapter D (relating to nutrient management).

Nutrient management regulations—The regulations set forth in 25 Pa. Code Chapter 83, Subchapter D (relating to nutrient management).

Nutrient management specialist—

(i) **Individual**—A person certified to develop nutrient management plans for his agricultural operation.

(ii) **Commercial**—A private sector person [who develops] certified to develop nutrient management plans for another [whether employed in the private or public sector] person's agricultural operation.

[(ii) **Individual**—A person who develops nutrient management plans for that person's own agricultural operation.]

(iii) **Public**—A State [or], Federal [employe,] or other public [employe who reviews nutrient management plans, or recommends approval to a conservation district or the Commission] employee certified to develop or review or both, nutrient management plans and make recommendations for approval or denial of nutrient management plans to a conservation district or the State Conservation Commission, or both.

(A) **Review specialist.** A public nutrient management specialist certified to review nutrient management plans and make recommendations for approval or denial of nutrient management plans.

(B) **Dual specialist.** A public nutrient management specialist certified to review and develop nutrient management plans for another person's agricultural operation and make recommendations for approval or denial of nutrient management plans which the specialist has not personally written or developed.

* * * * *

Provisional certification—[An] The level of certification obtained by a nutrient management specialist applicant [for commercial or public nutrient management specialist] who has successfully completed the precertification training and [has] passed the written examination, but has not yet [to prepare,] developed or [review three] reviewed, or both, the required number of nutrient management plans.

Recertification training—The [successful] completion [by a currently certified nutrient management specialist] of continuing education and training requirements [contained] in § 130b.31 (relating to recertification).

§ 130b.3. Fees.

(a) [**Commercial nutrient management specialist certificate.** The triennial fee for a commercial certificate is \$100.

(b) **Public nutrient management specialist certificate.** The triennial fee for a public certificate is \$10.

(c) **Individual nutrient management specialist certificate.** The triennial fee for an individual certificate is \$10.]

Certification fees. Certification fees are nonrefundable. The Department will establish certification

fees for each level of nutrient management specialist. Notice of the fees or any changes to the fees in subsequent years will be published in the *Pennsylvania Bulletin*. The published fees will be effective for at least 1 calendar year. Fees will be based on the cost of administering and enforcing this chapter.

(b) **Examination [fee] fees.** Examination fees are nonrefundable. The Department will establish examination fees for each level of nutrient management specialist. Notice of the fees or any changes to the fees in subsequent years will be published in the *Pennsylvania Bulletin*. The published fees will be effective for at least 1 calendar year. Fees will be based on the cost of developing, amending and administering the tests and enforcing this chapter. [The following examination fees, with payment made in advance, will be charged:

(1) Commercial/public nutrient management specialist examination—\$50.

(2) Individual nutrient management specialist examination—no charge.]

§ 130b.4. [**Interim certification**] (Reserved).

[A person who has interim certification as of September 28, 1996, will be provided written notice, within 30 days, by first class mail, that the Department has completed development of finalized regulations and is beginning to implement the official nutrient management certification program. This notice shall also inform recipients that upon receipt, their interim status shall cease and is no longer valid. An application and instructions to apply for certification will accompany the notification.]

§ 130b.5. Certification authority.

(a) **Individual certification authority.** A person certified under this chapter as an individual nutrient management specialist is authorized to develop nutrient management plans for his own agricultural operation. An individual nutrient management specialist has no authority to develop a nutrient management plan for another person or review and recommend action on a nutrient management plan.

(b) **Commercial certification authority.** A person certified under this chapter as a commercial nutrient management specialist is authorized to develop nutrient management plans for another person's agricultural operation. A commercial nutrient management specialist has no authority to review or recommend action on a nutrient management plan.

(c) **Public certification authority.** A public employee certified as a public nutrient management specialist has authority to review and recommend action or develop a nutrient management plan for another person, or both, dependent on the certification requirements he has successfully completed.

(1) **Public nutrient management review specialist.** A person certified under this chapter as a public nutrient management review specialist is authorized to review nutrient management plans and make recommendations for approval or denial of nutrient management plans.

(2) *Public nutrient management dual specialist.* A person certified under this chapter as a public nutrient management dual specialist is authorized to review and develop nutrient management plans for another person's agricultural operation and make recommendations for approval or denial of nutrient management plans which the specialist has not personally developed.

Subchapter B. CERTIFICATION

COMMERCIAL AND PUBLIC NUTRIENT MANAGEMENT SPECIALISTS

§ 130b.11. Determination of competence.

(a) *Commercial nutrient management specialist.* Determination of competence for a commercial nutrient management [specialists] specialist shall be based on [a precertification] the successful completion of precertification training and examinations as set forth in this section. Precertification requirements for a commercial nutrient management specialist shall include an orientation training course, [a written examination approved by the Department and the development of three nutrient management plans] a nutrient management plan writing course, a written examination approved by the Department and the development of three approved nutrient management plans. It may also include other course work related to requirements in the nutrient management regulations, which are determined by the Department to be necessary and appropriate. Nutrient management plans developed under this subsection will be determined to be adequate by the Department or its designee.

(b) *Public nutrient management specialist.* Determination of competence for a public nutrient management [specialists] specialist shall be based on [a precertification training course, a written examination approved by the Department and the development of one plan and review of two plans] the level of certification sought to be attained. [All prepared plans and plan reviews completed under this subsection shall be determined to be adequate by the Commission or its designee.]

(1) *Public nutrient management review specialist.* To be certified as a public nutrient management review specialist, the applicant shall successfully complete precertification training and examinations as set forth in this section. The precertification requirements for a public nutrient management review specialist must include an orientation training course, a nutrient management plan review course, a nutrient management plan writing course, a written examination approved by the Department, the successful review of two nutrient management plans and development of one approved nutrient management plan. It may also include other course work related to requirements set forth in the nutrient management regulations determined by the Department to be necessary and appropriate. Nutrient management plan reviews completed and nutrient management plans developed under this subsection will be determined to be adequate by the Department or its designee.

(2) *Public nutrient management dual specialist.* To be certified as a public nutrient management dual specialist, the applicant shall successfully

complete precertification training and examinations as set forth in this section. The precertification requirements for a public nutrient management dual specialist must include an orientation training course, a nutrient management plan review course, a nutrient management plan writing course, a written examination approved by the Department, the successful review of two nutrient management plans and the development of two approved nutrient management plans. It may also include other course work related to requirements set forth in the nutrient management regulations determined by the Department to be necessary and appropriate. Nutrient management plan reviews completed and nutrient management plans developed under this subsection will be determined to be adequate by the Department or its designee.

[(b)] (c) *Precertification.* The precertification training [course shall] must, at a minimum, consist of the following areas of nutrient management planning:

* * * * *

(6) Proper nutrient management plan review procedures (public nutrient management specialists only).

(7) Proper nutrient management plan writing procedures (commercial, public nutrient management specialists only).

(8) Other areas and course work related to requirements in the nutrient management regulations, as determined appropriate by the Department.

[(c)] (d) *Examination.* The written examination will be proctored by the Department or its designee. The Department will administer the examination at least twice per year, or more often as deemed necessary by the Department. At a minimum, the successful completion of the examination will demonstrate an examinee's technical knowledge relating to nutrient management planning and nutrient management plan development in the following areas:

* * * * *

(9) Other areas related to requirements in the nutrient management regulations, as determined appropriate by the Department.

[(d)] (e) *Other examinations.* The Department may approve the use of written examinations other than the Pennsylvania nutrient management examination, if the written examinations meet the requirements in subsection [(c)] (d).

[(e)] (f) *Provisional certification.* Upon the successful completion of the requirements in subsections [(b)] (c) and [(c)] (d), the applicant for certification as a commercial or public nutrient management specialist will be issued the appropriate provisional certification. The holder of a provisional certification is qualified, dependant on the type of provisional certification attained, to develop or review, or both, nutrient management plans [as provided in subsection (f).] for the purpose of satisfying the requirements of this section regarding final certification. Provisional certification is valid for 3 years ending on the last day of the month from the date of issuance.

[(f)] (g) *Final certification requirements.* Once provisional certification has been granted, [a] the pro-

visionally certified specialist shall complete one of the following dependent on the type of provisional certification granted and final certification sought.

(1) *Commercial nutrient management specialist.* To attain final certification, a provisionally certified commercial nutrient management specialist shall develop three approved nutrient management plans which meet the requirements of section 6(e) of the act (3 P. S. § 1706(e)). Nutrient management plans developed by the applicant shall be submitted to the Department or its designee for approval.

(2) *Public nutrient management specialist.* To attain final certification, a provisionally certified public nutrient management specialist shall do one of the following, dependent upon the level of provisional certification attained and the level of final certification sought:

(i) *Public nutrient management review specialist.* [A] To attain final certification, a provisionally certified public nutrient management review specialist shall [develop one plan and] successfully review two nutrient management plans [in accordance with] and develop one approved nutrient management plan which meets the requirements of section 6(e) of the act. [Commercial specialists shall submit, to the Department, evidence that the Commission or its designee has actually reviewed and approved the three plans. Public specialists shall submit to the Department, evidence that the Commission or its designee has actually reviewed and approved one prepared plan and determined the public specialist's review of two plans to be adequate.] Nutrient management plan reviews completed and nutrient management plans developed by the applicant shall be submitted to the Department or its designee for approval.

(ii) *Public nutrient management dual specialist.* To attain final certification, a provisionally certified public nutrient management dual specialist shall successfully review two nutrient management plans and develop two approved nutrient management plans in accordance with section 6(e) of the act. Nutrient management plan reviews completed and nutrient management plans developed by the applicant shall be submitted to the Department or its designee for approval.

[(g) Upon completion of all the requirements of this section, a commercial nutrient management specialist may apply for certification to develop nutrient management plans and a public nutrient management specialist may apply for certification to review nutrient management plans. The appropriate fee shall accompany the specialist's application for certification.]

(h) *Public nutrient management specialist to commercial nutrient management specialist.* [A currently] When the Department or the Commission with the consent of the Department determines it is necessary or appropriate, a certified public nutrient management specialist [who wishes to] may obtain certification as a commercial nutrient management specialist. To attain the certification, a certified public nutrient management review specialist shall develop two approved nutrient management plans or a certified public nutrient management dual spe-

cialist shall develop [two] one approved nutrient management [plans] plan in accordance with section 6(e) of the act. The certified public nutrient management specialist seeking the certification shall submit the nutrient management plans or plan to the Department[, evidence that the Commission or its designee has actually reviewed and approved the plans] or its designee for review and approval.

(i) *Public nutrient management review specialist to public nutrient management dual specialist.* A certified public nutrient management review specialist may obtain certification as a public nutrient management dual specialist. To attain the certification, the certified public nutrient management review specialist shall develop one approved nutrient management plan in accordance with section 6(e) of the act. The applicant seeking to attain the certification shall submit the nutrient management plan to the Department or its designee for review and approval.

(j) *Commercial nutrient management specialist to public nutrient management specialist.* A [currently] certified commercial nutrient management specialist who wishes to obtain certification as a public nutrient management specialist [certification] shall complete a [precertification] nutrient management plan review course covering proper nutrient management plan review procedures and shall successfully review two nutrient management plans in accordance with section 6(e) of the act. The [commercial nutrient management specialist] applicant seeking to attain the certification shall submit[,] the nutrient management plan reviews to the Department[, evidence that the Commission] or its designee [has actually reviewed and determined the specialist's review of the two plans to be adequate] for review and approval.

§ 130b.12. [Eligibility] Final certification.

(a) *Application for final certification.* Upon completion of all the requirements of this chapter, a commercial nutrient management specialist or a public nutrient management specialist may submit an application to the Department for final certification. The appropriate fee shall accompany the application for final certification.

(b) *Eligibility for final certification.* A person is eligible to apply for final certification as a commercial or public nutrient management specialist upon fulfilling the applicable requirements established under § 130b.11 (relating to determination of competence). An application for final certification may be obtained from the Department.

[(b)] (c) *Time period for filing application.* An application for final certification shall be filed with the Department within [180] 120-calendar days of notification by the Department of meeting the appropriate requirements in § 130b.11 [(f)]. If the applicant fails to file an application with the Department within the prescribed [180] 120-calendar days, that person shall again satisfy the appropriate competency requirements as provided in § 130b.11 [(a)—(f)].

[(c)] (d) *Time period final certification is valid.* A final [certificate] certification is valid for 3 years

ending on December 31 of the third year following the date of final certification. However, the Department will authorize an additional year when the [certificate] certification is issued during the last 2 months of the initial certificate year.

INDIVIDUAL NUTRIENT MANAGEMENT SPECIALISTS

§ 130b.21. Determination of competence.

(a) Determination of competence for an individual nutrient management specialist shall be based on [a precertification] the completion of precertification training which includes an orientation training course and a written examination approved by the Department.

(b) The [precertification] orientation training course shall at a minimum consist of the same requirements as in § 130b.11[(b)] (c) (relating to determination of competence).

(c) The written examination shall be proctored by the Department or its designee. The Department will administer the examination [at least twice per year, or more often as deemed necessary by the Department] on an as needed basis, which will be determined by the number of requests for the testing. At a minimum, the successful completion of the examination will demonstrate an examinee's technical knowledge relating to nutrient management planning and nutrient management plan development in the following areas:

* * * * *

(9) Other areas and coursework related to the requirements set forth in the nutrient management regulations as determined appropriate by the Department.

* * * * *

§ 130b.22. [Eligibility] Final certification.

(a) A person is eligible to apply for final certification as an individual nutrient management specialist upon fulfilling the requirements under § 130b.21 (relating to determination of competence). An application for certification may be obtained from the Department. The appropriate fee shall accompany the specialist's application for certification.

(b) An application for certification shall be filed with the Department no later than [180] 120-calendar days after the applicant's completion of the competency requirements. If the applicant fails to file an application with the Department within the prescribed [180] 120-calendar days, that person shall again satisfy the competency requirements as provided in § 130b.21(a)-(d).

(c) A certificate is valid for 3 years ending on December 31 of the third year following the date of certification. However, the Department will authorize an additional year when the [certificate] certification is issued during the last 2 months of the initial certificate year.

RECERTIFICATION

§ 130b.31. Recertification.

(a) At intervals of 3 years, [provisionally certified or] final certified commercial, public or individual nutrient management specialists shall provide written documentation of having received continuing education and training in Department-approved training courses in nu-

trient management planning and nutrient management plan development. Training shall address the specific areas in § 130b.11[(b)] (c) and [(c)] (d) (relating to determination of competence) for commercial and public specialists and § 130b.21(b) and (c) (relating to determination of competence) for individual specialists.

(b) Recertification credits approved by the Department will be given on the basis of attendance at approved training sessions, as provided in subsection (a). The Department will evaluate the training and assign the appropriate credits. Commercial and public specialists are required to obtain [ten] 20 credits [and individual] with one quarter or five of those credits being obtained through Department or Commission conducted courses. Individual specialists are required to obtain six credits during the recertification interval. The Department may, if deemed necessary, require specific training for certified nutrient management specialists, in addition to the required training in §§ 130b.11 and 130b.21. The Department will provide written notification to the certified nutrient management specialists of required specific training.

* * * * *

(e) A recertification training course will be approved if at a minimum it consists of the same requirements as set forth in § 130b.11[(b)] (c) and [(c)] (d) and is conducted or sponsored by an educational institution, an association, a business, a governmental agency or other qualified source. Preapproval of recertification courses is vested solely with the Department.

* * * * *

(g) If the Department or its designee is unable to monitor the training, the sponsor shall be responsible for verifying attendance and shall compile a list of Pennsylvania certified specialists in attendance. The list shall be returned to the Department within 10 working days following the training date and shall include the name of each person attending and their [certificate] certification number.

(h) If [the] a nutrient management specialist allows his final certification [of a nutrient management specialist is allowed] to expire and does not obtain recertification [credits are due, recertification of that specialist shall first require completion of] in accordance with this chapter, his final certification shall be suspended and the specialist shall refrain from all duties relating to his certification until all delinquent recertification credits are acquired as described in subsection (b).

(i) If a nutrient management specialist whose final certification has been suspended as set forth in subsection (h) fails to complete delinquent recertification credits within 1 year from the expiration date of his final certification [expiration date], his final certification shall be revoked and that person shall again satisfy the requirements of § 130b.11 and § 130b.12 (relating to eligibility) for commercial and public specialists, and § 130b.21 and § 130b.22 (relating to eligibility) for individual specialist.

RECIPROCITY

§ 130b.41. General.

(a) A person who has a valid certificate or license from another state may obtain certification in this Commonwealth if:

* * * * *

The applicant satisfies the required precertification as set forth in § 130b.11 [(b)] (c) (relating to definition of competence). The applicant will not be required to take a written examination to determine evidence if the applicant satisfies the requirements of subsection.

Upon the successful completion of the requirements in subsection (a), the applicant for certification as a commercial or public nutrient management specialist will receive provisional certification and shall complete the requirements in § 130b.11 [(f)] (g). Provisional certification is valid for 3 years ending on the last day of the month from the date of issuance.

In addition to the requirements in subsection (a), if the applicant is a commercial nutrient management specialist, that [person shall submit written evidence to the Department, that the Commission or designee has reviewed and approved three plans provided in section 6(e) of the act (3 P.S. § 130b.11 (e))] person shall develop three approved nutrient management plans which meet the requirements of section 6(e) of the act (3 P.S. § 130b.11 (e)). If the applicant is a public nutrient management specialist, [that person shall submit to the Department, evidence that the Commission or designee has reviewed and approved one pre-approved plan and determined the public specialist's review of two plans to be adequate], that person shall successfully review two nutrient management plans and develop one approved nutrient management plan which meets the requirements of section 6(e) of the act. If the applicant is a public nutrient management specialist, that person shall successfully review two nutrient management plans which meet the requirements of section 6(e) of the act. Nutrient management plan reviews commercial and nutrient management plans developed by the applicant shall be submitted to the Department for its designee for approval.

5. DENIAL, SUSPENSION AND REVOCATION OF CERTIFICATES

51. Denial, suspension and revocation of certificates.

The Department may, after notice, including a statement of the reasons therefore, [and opportunity for a hearing,] deny, suspend or revoke a commercial, public or individual nutrient management specialist's certification for [a] any of the following:

any violation of the act or [its resulting regulations in this chapter.

failure to obtain the required recertification

inconsistency and demonstration of a lack of knowledge of nutrient management plan writing or review skills.

three or more occurrences within a 3-year period of delay or noncommunication with landowner or review agency during plan development review.

falsifying information.

(6) Misrepresentation of the Nutrient Management Act Program.

(7) Any violation of program policy established by the Department, its designee or the State Conservation Commission.

* * * * *

[Pa.B. Doc. No. 05-650. Filed for public inspection April 8, 2005, 9:00 a.m.]

ENVIRONMENTAL HEARING BOARD

[25 PA. CODE CH. 1021]
Practice and Procedure

The Environmental Hearing Board (EHB) proposes to amend Chapter 1021 (relating to practice and procedures) by adding new procedural rules to read as set forth in Annex A.

The proposed procedural rules have the following objectives:

(1) To provide the regulated community and the Department of Environmental Protection (Department) and other potential litigants with more specific guidance on how to represent their interests before the EHB.

(2) To improve the rules of practice and procedure before the EHB.

I. Statutory Authority for Proposed Revisions

The EHB has the authority under section 5 of the Environmental Hearing Board Act (act) (35 P.S. § 7515) to adopt regulations pertaining to practice and procedure before the EHB.

II. Description of Proposed Revisions

The proposed revisions are modifications to provisions of the rules to improve practice and procedure before the EHB. These proposed revisions are based on the recommendations of the EHB Rules Committee (Rules Committee), a nine member advisory committee created by section 5 of the act to make recommendations to the EHB on its rules of practice and procedure. The EHB may promulgate proposed regulations based in whole or in part on the recommendations of the Rules Committee.

This summary provides a description of: (1) The existing rules of practice and procedure when relevant to proposed revisions; (2) the EHB's proposed revisions; and (3) how, if any, the proposal differs from the Rules Committee's recommendations.

Where the recommendations of the EHB Rules Committee were not in proper legislative style and format, they have been modified to conform to those requirements. Similarly, where recommendations did not contain proper cross references to 1 Pa. Code Part II (relating to the General Rules of Administrative Practice and Procedure), references to those rules have been added.

The proposed rulemaking can be divided into five categories: 1) renumbering of certain rules; 2) adoption of a new rule; 3) substantive amendments to existing rules; 4) adoption of comments to certain rules; and 5) correction of typographical errors.

COMMONWEALTH OF PENNSYLVANIA



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

OFFICE OF CHIEF COUNSEL

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

September 28, 2005

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

RE: FINAL-FORM REGULATION
Department of Agriculture - Bureau of Plant Industry
7 Pa. Code Chapter 130b
I.D. No. 2-147
Proposed Rulemaking: 35 Pa. Bulletin 2101 (April 9, 2005)
Approved by Office of General Counsel: September 22, 2005

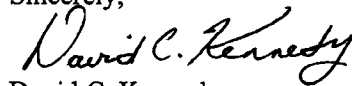
Dear Sir or Madam:

Please find enclosed a copy of the above-referenced final-form regulation (Preamble and Annex "A"). Copies of the Regulatory Analysis Form and Notice of Proposed Rulemaking are also enclosed. This material is submitted to you in accordance with the Regulatory Review Act (at 71 P.S. § 745.5a(a)). The Department did not receive any public comments regarding this regulation. The Department's responses to the Independent Regulatory Review Commission's comments received with respect to the proposed version of this regulation are set forth in the Preamble and Annex "A" of the final-form regulation.

The Regulatory Review Act (at 71 P.S. § 745.5a (j.1)) provides the Committee 20 days from receipt of the enclosed material within which to convey its approval or disapproval of the final-form regulation to the Independent Regulatory Review Commission. Failure to disapprove the final-form regulation within that 20-day period would constitute approval.

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

Sincerely,


David C. Kennedy
Assistant Counsel

Enclosures

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

I.D. NUMBER: 2-147
 SUBJECT: Bureau of Plant Industry: Nutrient Management Certification
 AGENCY: DEPARTMENT OF AGRICULTURE

2473

TYPE OF REGULATION

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

RECEIVED
 2005 SEP 28 PM 3:03
 REGULATION COMMISSION

FILING OF REGULATION

DATE	SIGNATURE		DESIGNATION
9-28-05	<u>Cindy Ziu</u>	HERSHEY	HOUSE COMMITTEE ON AGRICULTURE & RURAL AFFAIRS
9-28-05	<u>Danielle Tomland</u>	DALEY	
9-28-05	<u>Cecilia Boyer</u>	WAUGH	SENATE COMMITTEE ON AGRICULTURE & RURAL AFFAIRS
9-28-05	<u>Jim O'PAKE</u>	O'PAKE	
9-28-05	<u>Steph. J. Hoffman</u>	IRRC	INDEPENDENT REGULATORY REVIEW COMMISSION
			ATTORNEY GENERAL (for Final Omitted only)
			LEGISLATIVE REFERENCE BUREAU (for Proposed only)

September 22, 2005