

Regulatory Analysis Form		This space for use by IRRC	
(1) Agency Department of Agriculture		RECEIVED 2007 FEB 13 PM 2:42 INDEPENDENT REGULATORY REVIEW COMMISSION 2592 IRRC Number:	
(2) I.D. Number (Governor's Office Use) 2-154			
(3) Short Title Johne's Disease; Certified Apple Program; Fiscal Aid for Stem Rust Control; Quarantine Provisions; Chemsweep Pesticide Disposal Program – Statement of Policy			
(4) PA Code Cite 7 Pa. Code Chapters 11, 95, 123, 125 and 128a		(5) Agency Contacts & Telephone Numbers Primary Contact: Dwight-Jared Smith, Asst. Counsel (717) 787-8744 Secondary Contact: Leo Pandeladis, Chief Counsel (717) 787-8744	
(6) Type of Rulemaking (check one) <input checked="" type="checkbox"/> Proposed Rulemaking <input type="checkbox"/> Final Order Adopting Regulation <input type="checkbox"/> Final Order, Proposed Rulemaking Omitted		(7) Is a 120-Day Emergency Certification Attached? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes: By the Attorney General <input type="checkbox"/> Yes: By the Governor	
(8) Briefly explain the regulation in clear and nontechnical language. The regulation will rescind outdated and unneeded regulations administered by the Pennsylvania Department of Agriculture (PDA).			
(9) State the statutory authority for the regulation and any relevant state or federal court decisions. The deletion of provisions in Chapter 11 (relating to Johne's disease) is authorized under the Domestic Animal Law (3 Pa.C.S.A. §§ 2301 – 2389), at 3 Pa.C.S.A. § 2305. The deletion of provisions in Chapter 95 (relating to certified apple program) is authorized under the act of April 4, 1929 (P.L. 144, No. 148) (3 P.S. §§ 21 – 33), at 3 P.S. § 30. The deletion of provisions in Chapter 123 (relating to fiscal aid for stem rust control) is authorized under the act of July 28, 1953 (P.L. 652, No. 193) (3 P.S. §§ 251 – 252), at 3 P.S. § 251. The deletion of provisions in Chapter 125 (relating to quarantine provisions) is authorized under the Plant Pest Act (act of December 16, 1992, P.L. 1228, No. 162) (3 P.S. §§ 258.1 – 258.27), at 3 P.S. § 258.3. The deletion of provisions in Chapter 128a (relating to Chemsweep pesticide disposal program – statement of policy) is authorized under the Pennsylvania Pesticide Control Act of 1973 (act of March 11, 1974, P.L. 90. No. 24) (3 P.S. §§ 111.21 – 111.61), at 3 P.S. § 111.27(b).			

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

No.

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

The regulation will do away with outdated or unnecessary regulatory requirements, and present less of a burden to the regulated communities.

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

No such risks are associated with nonregulation.

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

Owners of cattle and goats, apple producers, the horticultural industry and pesticide users will benefit from the deletion of the various regulatory provisions accomplished by this regulation. Since these benefits will result in a lessening of the likelihood of confusion and a slight lightening of the regulatory burden, and since these benefits are spread across such a wide variety of interests, their value cannot readily be quantified.

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(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.)

No entity will be adversely affected by the regulation.

(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.)

The regulation simply deletes outdated or unnecessary regulatory provisions, and does not establish any new compliance requirements.

(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.

None.

(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.

No measurable costs or savings are expected to result from this regulation.

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.

No such costs or savings are anticipated.

(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.

No such costs or savings are anticipated.

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

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated Community	0	0	0	0	0	0
Local Government	0	0	0	0	0	0
State Government	0	0	0	0	0	0
Total Savings	0	0	0	0	0	0
COSTS:						
Regulated Community	0	0	0	0	0	0
Local Government	0	0	0	0	0	0
State Government	0	0	0	0	0	0
Total Costs	0	0	0	0	0	0
REVENUE LOSSES:						
Regulated Community	0	0	0	0	0	0
Local Government	0	0	0	0	0	0
State Government	0	0	0	0	0	0
Total Revenue Losses	0	0	0	0	0	0

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

No such costs or savings are anticipated.

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

Program	FY -3	FY -2	FY -1	Current FY
Bureau of Animal Health and Diagnostic Services (Bureau Budget)	\$7.9 million (estimate)	\$7,971,212	\$8,563,712	\$8,563,712
Bureau of Plant Industry (relevant budgetary provision for related programs)	\$200,000	\$200,000	\$200,000	\$0
Bureau of Market Development	\$0	\$0	\$0	\$0

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

No costs are expected to result from the regulations. The expected benefits will be rather intangible, but will certainly outweigh the costs.

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

No nonregulatory alternatives were considered.

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

No alternative regulatory schemes were considered.

Regulatory Analysis Form

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

No.

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

The regulation will not put Pennsylvania at a competitive disadvantage with other states.

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

No.

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

No.

Regulatory Analysis Form

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

No.

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

No such special provisions have been developed.

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

The regulation will take effect upon publication of the final-form regulation in the *Pennsylvania Bulletin*.

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

PDA assesses the need for regulations on an ongoing basis.

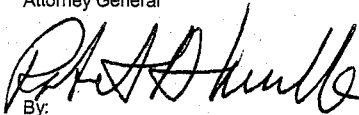
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Copy below is hereby approved as to form and legality.
Attorney General



By: _____
(Deputy Attorney General)

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DATE OF APPROVAL

Check if applicable
Copy not approved. Objections attached.

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correct copy of a document issued, prescribed or
promulgated by:

(AGENCY)

DOCUMENT/FISCAL NOTE NO. 2-154

DATE OF ADOPTION 9/29/06

BY 
DENNIS C WOLFF

TITLE
SECRETARY
Pennsylvania Department of Agriculture

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

BY 

DEC 13 2006
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 Proposed Rulemaking

Title 7 – AGRICULTURE
7 Pa. Code Chapters 11, 95, 123, 125 and 128a

Johne's Disease; Certified Apple Program;
Fiscal Aid for Stem Rust Control; Quarantine Provisions;
Chemsweep Pesticide Disposal Program – Statement of Policy

PROPOSED RULEMAKING

DEPARTMENT OF AGRICULTURE

JOHNE'S DISEASE; CERTIFIED APPLE PROGRAM; FISCAL AID; FOR STEM RUST CONTROL; QUARANTINE PROVISIONS; CHEMSWEEP PESTICIDE DISPOSAL PROGRAM – STATEMENT OF POLICY

[7 PA. CODE CHS. 11, 95, 123, 125 and 128a]

The Department of Agriculture (Department) proposes to revise Title 7 of the Pa. Code (Agriculture) by deleting provisions of Chapters 11 (relating to Johne's disease), deleting Chapters 95 (relating to certified apple program), 123 (relating to fiscal aid for stem rust control) and 125 (relating to quarantine provisions) in their entirety, and deleting the statement of policy at Chapter 128a (relating to Chemsweep pesticide disposal program – statement of policy), as set forth in Annex A. The provisions proposed for deletion are outdated or unnecessary.

Statutory Authority

The proposed deletion of provisions in Chapter 11 (relating to Johne's disease) is authorized under the Domestic Animal Law (3 Pa.C.S.A. §§ 2301 – 2389). The statute addresses subjects such as animal health and disease detection and eradication. The provision at 3 Pa.C.S.A. § 2305 authorizes the Department to regulate as necessary to exclude or contain dangerous transmissible diseases of animals.

The proposed deletion of provisions in Chapter 95 (relating to certified apple program) is authorized under the act of April 4, 1929 (P.L. 144, No. 148) (3 P.S. §§ 21 – 33). The statute addresses standards for farm products. The provision at 3 P.S. § 30 authorizes the Department to regulate as necessary to carry out the provisions of that statute.

The proposed deletion of provisions in Chapter 123 (relating to fiscal aid for stem rust control) is authorized under the act of July 28, 1953 (P.L. 652, No. 193) (3 P.S. §§ 251 – 252). That statute addresses barberry bushes and stem rust disease. The provision at 3 P.S. § 251 authorizes the Department to regulate a program to reimburse counties for expenses relating to the eradication of rust from barberry bushes and stem rust disease in certain other plant species.

The proposed deletion of provisions in Chapter 125 (relating to quarantine provisions) is authorized under the Plant Pest Act (act of December 16, 1992, P.L. 1228, No. 162) (3 P.S. §§ 258.1 – 258.27). The statute addresses plant diseases. The provision at 3 P.S. § 258.3 authorizes the Department to regulate as necessary to carry out the provisions of that statute.

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Chapter 128a (relating to Chemsweep pesticide disposal program – statement of policy) is a statement of policy, rather than a regulation. Although this chapter could be rescinded without going through the formal regulatory promulgation process, the Department references its intention to rescind this statement of policy in this proposed rulemaking, will consider any comments offered on this subject as this document proceeds through the promulgation process, and proposes to rescind this statement of policy in the same final order that rescinds the regulatory provisions described above. Chapter 128a is authorized under the Pennsylvania Pesticide Control Act of 1973 (act of March 11, 1974, P.L. 90. No. 24) (3 P.S. §§ 111.21 – 111.61). The statute addresses pesticide use and disposal. The provision at 3 P.S. § 111.27(b) authorizes the Department to regulate as necessary to carry out the provisions of that statute.

Purpose

The regulation would delete outdated or unneeded regulatory provisions that are currently administered and enforced by the Department.

Background

The Department administers and enforces regulations addressing a wide range of statutory subjects. The need for some of these regulations has ended – whether due to changes in the authorizing statutes, subsequent regulations, changes in the regulated industries, technological advances or other factors.

The proposed deletion of provisions in Chapter 11 is driven by new testing and procedures that obviate the need for these provisions. In addition, the Domestic Animal Law affords the Department adequate authority to quickly impose a quarantine to deal with any problems related to the presence of Johne's disease in an animal.

The Certified Apple Program addressed in Chapter 95 has long been obsolete, as the apple industry has moved on to other quality assurance standards and programs.

Chapter 123 is proposed for deletion because the fiscal aid that had once been available for stem rust control has long been gone.

The various plant pest quarantines addressed in Chapter 125 are no longer necessary; and the Department retains the ability to quickly address the presence of any plant pests by use of the quarantine authority provided it under the Plant Pest Act.

The proposed deletion of the statement of policy in Chapter 128a is driven by the fact that this document has been entirely supplanted by the subsequent regulation at Chapter 128b (relating to Chemsweep Pesticide Disposal Program).

Need for the Proposed Rulemaking

The proposed regulation is necessary in order to remove outdated and unnecessary regulatory provisions from Title 7.

The Department is satisfied there are no reasonable alternatives to proceeding with the proposed regulation. The Department is also satisfied the proposed regulation meets the requirements of Executive Order No. 1996-1, "Regulatory Review and Promulgation."

Overview of the Major Provisions of the Proposed Rulemaking

The provisions of the proposed regulation would accomplish a straightforward deletion of outdated or unnecessary regulations.

Affected Individuals and Organizations

The proposed regulation would have no adverse impact on the various regulated communities.

The deletion of the outdated or unnecessary provisions addressed in the proposed regulation would likely help avoid confusion in the regulated communities.

Fiscal Impact

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

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

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

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

Paperwork Requirements

The proposed regulation is not likely to impact upon the paperwork generated by the Department or the regulated communities.

Effective Date

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

Sunset Date

There is no sunset date for the proposed rulemaking.

Public Comment Period / Contact Person

Interested persons are invited to submit written comments regarding the proposed regulation within 30 days following publication in the *Pennsylvania Bulletin*. Comments are to be submitted to the Department of Agriculture, Legal Office, 2301 North Cameron Street, Harrisburg, PA 17110-9408, Attention: Angela M. Black.

Regulatory Review

The Department submitted a copy of the proposed regulation to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Standing Committees on Agriculture and Rural Affairs on February 13, 2007, in accordance with section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)). The Department also provided IRRC and the Committees a detailed Regulatory Analysis Form prepared by the Department in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available to the public upon request.

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

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

DENNIS C WOLFF, *Secretary*

Title 7 - AGRICULTURE

PART I. BUREAU OF ANIMAL HEALTH AND
DIAGNOSTIC SERVICES

* * * * *

CHAPTER 11. JOHNE'S DISEASE

* * * * *

Subchapter B. REQUIREMENTS FOR A JOHNE'S DISEASE
INFECTED ANIMAL

* * * * *

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[§ 11.11. Quarantine required on infected livestock.] [Reserved].

[(a) When a Johne's disease reactor is disclosed, a Bureau agent will establish a quarantine on the animal.

(b) If the herd owner requests to destroy the reactor and receive State indemnity, the appraisal shall be conducted within 15 days after receiving the positive diagnosis from the official laboratory. The animal shall go directly to slaughter, under permit, within 30 days following appraisal.]

[§ 11.12. Quarantine tagging and branding.] [Reserved].

[When reactors are disclosed and appraised for indemnity, a Bureau agent will apply a quarantine tag (red metal reactor tag) to the left ear. A brand shall be applied with a hot iron—cattle only—and shall be the letter "T" on the left jaw. The branding may not be construed as cruelty to animals.]

[§ 11.13. Appraisal and slaughter.] [Reserved].

[(a) Reactors shall be appraised within 15 days after diagnosis to be eligible for State indemnity purposes. The appraised value shall be the current replacement value at the time of appraisal which depends on conditions as cited in Chapter 8 Subchapter B (relating to procedures for appraisement) and described in the act of October 10, 1974 (P. L. 680, No. 227) (3 P. S. § § 398—399.2).

(b) Reactors shall be disposed of within 30 days after appraisal to be eligible for indemnity.]

[§ 11.14. Permits for movement of Johne's disease reactor.] [Reserved].

[If the reactor is to remain in the herd without appraisal for more than 15 days, it shall remain under quarantine and be sold only for slaughter under permit issued by the Bureau. These animals will never qualify for indemnity.]

[§ 11.15. Reactors sold for salvage and indemnity.] [Reserved].

[(a) The salvage is determined by competitive bids from the two or more buyers in a manner to yield the highest possible salvage.

(b) When bids have been obtained the movement of the reactors shall be permitted with the understanding that they will be purchased and that the payment will be made directly to the owner on either a hot dressed weight and price per pound basis or a live weight lump sum purchase.

(c) Reactors shall be sold subject to inspection at the risk of the owner.

(d) Indemnity payments are dependent on requirements as described in Chapter 8 Subchapter C (relating to provisions for payment of indemnity) and the act of October 10, 1974 (P. L. 680, No. 227) (3 P. S. § § 398—399.2).]

[§ 11.16. Cleaning and disinfecting of infected premises.] [Reserved].

[The herd owner shall complete the cleaning of his premises within 15 days after removal of the reactors or after diagnosis of disease when tentatively appraised. The premises will be disinfected under the supervision of the Bureau using an approved disinfectant. Disinfecting at other times may be conducted by the Bureau when necessary.]

[§ 11.17. Retest of reactors.] [Reserved].

[Reactors remaining under quarantine in any herd may be retested by fecal culture and, if negative on two successive tests, the quarantine will be revoked.]

[§ 11.18. Vaccination of replacement calves.] [Reserved].

[(a) The Bureau will provide vaccine for those herds under a Johne's disease control program if the vaccine is required.

(b) Herds shall be tuberculin tested by an approved veterinarian and be negative to the tuberculin test before any vaccine can be used to vaccinate calves.]

Subchapter C. RETESTING OF HERDS DISCLOSING REACTORS

[§ 11.21. Conditions required for retesting.] [Reserved].

[(a) Surveillance tests will be authorized for those herd owners who request participation in official control program.

(b) The Bureau will conduct surveillance retests on the herd.

(c) The length of time between retests will be determined by the Bureau and will be dependent upon the amount of infection disclosed on each test.]

[§ 11.22. Reactors on retests.] [Reserved].

[Retests of reactors which are positive on subsequent tests shall remain under quarantine until disposed of under permit and may not qualify for indemnity.]

* * * * *

CHAPTER 95. CERTIFIED APPLE PROGRAM

[§ 95.1. Definitions.] [Reserved].

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

Container—Any box, carton, crate, bag, wrap or other process or device used to hold and protect a product.

Department—The Department of Agriculture of the Commonwealth.

Program—The Commonwealth of Pennsylvania Certified Apple Program.

Seal of certified quality—The design approved by the Department which when imprinted or affixed on labels, packages, products or used in advertising or in any manner shall signify the quality standards provided for in this chapter.]

[§ 95.2. Participation.] [Reserved].

[(a) Participation in the program is voluntary.

(b) A person, firm, association or corporation wishing to participate shall apply to the Department for registration under the program. The application shall be accompanied by a registration fee of \$5.

(c) Upon notification of acceptance in the program, the applicant shall be entitled to request certified quality inspection services from the Department and to use the seal of certified quality in compliance with the requirements of this chapter.]

[§ 95.3. Quality standards.] [Reserved].

[All apples bearing the seal of certified quality shall comply with the following:

(1) Meet the requirements of the Combination United States Fancy and United States Extra Fancy grade as provided in 7 CFR 51.300 et seq., as amended or revised, except that:

(i) The minimum color requirement shall be 50% for all varieties listed in 7 CFR 51.305 as requiring 50% or more red color in the United States Extra Fancy Grade.

(ii) The tolerance for grade defects may not exceed 6%. If 75% of the apples grade United States Extra Fancy, an additional 2% or a total of 8%, tolerance for grade defects shall be permitted.

(2) Meet the 5%-tolerance requirement of the United States Condition Standards for Export (7 CFR 51.323) except that after May 31 following the year of production, an additional tolerance of 15% shall be allowed for ripe apples, provided that not more than one-tenth of this 20% total, or 2%, shall be allowed for over-ripe apples.]

[§ 95.4. Inspection fee.] [Reserved].

[A charge shall be made for each inspection at the prevailing schedule of fees and expenses established by the Department for shipping point inspection.]

[§ 95.5. Seals or facsimiles.] [Reserved].

[(a) A seal or certified quality or approved facsimile may not be used on containers unless an authorized Federal-State inspector has conducted an inspection and the Department has issued an official certificate.

(b) The seal of certified quality or facsimile thereof may not be reproduced by anyone without written authorization from the Department.

(c) Seals may be provided by the Department to registrants at a reasonable charge that shall consist of the cost of the seals plus a nominal handling charge.]

[§ 95.6. Miscellaneous provisions.] Reserved.

[(a) Adequate records shall be kept by registrants on the quantity of apples packed under this chapter, and the records shall be made available to authorized Department representatives upon request.

(b) United States Federal Standards for grading and marketing fruits and vegetables shall be applied by the Department as the official standards in this Commonwealth. Copies of the standards may be requested from the Division of Fruits and Vegetables, Bureau of Market Development, Pennsylvania Department of Agriculture, 2301 North Cameron Street, Harrisburg, Pennsylvania, 17120.]

[§ 95.7. Penalty.] Reserved.

[Violations of this chapter shall be punishable under the applicable provisions of the act of April 4, 1929 (P. L. 144, No. 148) (3 P. S. § § 21—33).]

* * * * *

PART V. BUREAU OF PLANT INDUSTRY

* * * * *

CHAPTER 123. FISCAL AID FOR STEM RUST CONTROL

[§ 123.1. Definitions.] Reserved.

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

Announcement notice—A written notice sent to the county commissioners of each county of this Commonwealth, stating the sum of money available for aid in stem rust control for the particular fiscal year.

Department—The Department of Agriculture of the Commonwealth.

Participating county—A county of this Commonwealth which, by written notice, signed and approved by the county commissioners, agrees to expend a fixed sum of money in stem rust control and expresses the willingness to enter into a contract governing the expenditure and receipt of reimbursement from the Commonwealth.]

[§ 123.2. Notice to Commissioners.] Reserved.

[The Department, through the Director of the Bureau of Plant Industry, shall give notice to the commissioners of each county of this Commonwealth at or near the beginning of each fiscal year of the total amount of funds made available for use during that year for aid to the counties in stem rust control.]

[§ 123.3. Period for reply.] Reserved.

[County commissioners who fail to reply within a 10-day period following the date of the announcement notice shall be presumed not to desire to participate in the announced program for the fiscal year.]

[§ 123.4. Contract forms.] Reserved.

[County commissioners expressing an interest in the stem rust control program for their county, and having given an estimate of the total money they are prepared to expend shall be sent appropriate contract forms which shall be completed and returned.]

[§ 123.5. Payments.] Reserved.

[Participating counties shall send statements of actual expenditures on an approved form to the Department at the end of each quarter of the fiscal year. The months of July, August and September shall constitute the first quarter.]

[§ 123.6. Extension of time.] Reserved.

[An unused portion of an allotment made for a particular fiscal year may be, with the approval of the Department, expended during the first two quarters of the following fiscal year (to be concluded on December 31), as designated in the contract.]

CHAPTER 125. QUARANTINE PROVISIONS

Subchapter A. QUARANTINE No. 25—BLACK STEM RUST

GENERAL PROVISIONS

[§ 125.1. Definitions.] Reserved.

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

Barberry, Mahonia and Mahoberberis plants—Plants or parts of plants capable of propagation (other than seeds and fruits) of any species, horticultural variety or hybrid within the genera *Berberis*, *Mahonia* and *Mahoberberis*.

Barberry, Mahonia and Mahoberberis seeds and fruits—Seeds and fruits of any species, horticultural variety or hybrid within the genera *Berberis*, *Mahonia* and *Mahoberberis*.

Black stem rust—The disease commonly known as the black stem rust of grains (*Puccinia graminis*), in any stage of development.

Department—The Department of Agriculture of the Commonwealth.

Inspector—An inspector of the Department or United States Department of Agriculture, authorized to act in this capacity.

Moved, move, movement—Shipped, carried, transported, allowed to be moved or received for transportation by common carrier from one part of this Commonwealth to the other.

Permit—An official document authorizing the intrastate or interstate movement of the regulated products.

Rust-resistant plants—The species or horticultural varieties within the genera *Berberis*, *Mahonia* and *Mahoberberis* which have been designated by the Department as

being resistant to the black stem rust. The designations shall be given in administrative instructions supplemental to this quarantine.]

[§ 125.2. Duration.] Reserved.

[This subchapter became effective March 20, 1953, and continues until revoked by the Department.]

[§ 125.3. Susceptibility to disease.] Reserved.

[European (common) Barberry (*Berberis vulgaris*), its horticultural varieties, and certain other species of *Berberis*, *Mahonia* and *Mahoberberis* found growing in this Commonwealth, are capable of harboring black stem rust (*Puccinia graminis*) of wheat, oats, barley, rye and many wild and cultivated grasses, resulting in substantial financial loss to growers of those crops.]

[§ 125.4. Quarantine.] Reserved.

[A quarantine throughout this Commonwealth is established by this subchapter prohibiting the growing of, or movement within this Commonwealth, of species and varieties of *Berberis*, *Mahonia* and *Mahoberberis* which have not been determined resistant to black stem rust.]

[§ 125.5. Purpose.] Reserved.

[The purpose of this subchapter is to remove the requirement of a permit for intrastate shipment of rust-resistant varieties of Barberry, Mahonia and Mahoberberis plants which have passed inspection. It shall also provide a method for the movement of 1-year-old Barberry and Mahoberberis plants from one nursery to another in this Commonwealth.]

[§ 125.6. Regulated area.] Reserved.

[The quarantine is effective throughout this Commonwealth.]

[§ 125.7. Regulated products.] Reserved.

[Plants, seed, fruit and other parts of plants capable of propagation of all species, horticultural varieties and hybrids of Barberry, Mahonia and Mahoberberis, exclusive of Mahonia cuttings for decorative purposes, shall be designated as regulated products.]

[§ 125.8. Designation of rust-resistant plants.] Reserved.

[The Department shall designate, in administrative instructions supplemental to the regulations in this subchapter, the species or horticultural varieties within the genera *Berberis*, *Mahonia* and *Mahoberberis* that, on the basis of evidence satisfactory to it, are determined to be resistant to black stem rust. Information pertaining to such instructions may be obtained from the Bureau of Plant Industry, Department of Agriculture, Harrisburg, Pennsylvania 17120.]

CONDITIONS OF MOVEMENT

[§ 125.11. Barberry, Mahonia and Mahoberberis plants.] Reserved.

[(a) Movement shall be prohibited for Barberry, Mahonia and Mahoberberis plants other than those designated as rust-resistant.

(b) Parts of Mahonia plants without roots and intended for decorative purposes shall be exempt from the requirements of this subchapter.

(c) Rust-resistant Barberry and Mahoberberis of two seasons growth on their own roots, and 1-year-old rust-resistant Mahonia plants may be moved after certification.

(d) Nurserymen may move 1-year old Barberry and Mahoberberis plants to other nurserymen in this Commonwealth under § § 125.21—125.25 (relating to issuance of permits for the movement of seedlings).]

[§ 125.12. Barberry, Mahonia and Mahoberberis seeds and fruits.] Reserved.

[Seeds and fruits of Barberry, Mahonia and Mahoberberis obtained from rust-resistant plants may be moved intrastate when accompanied by a permit for the movement. Permits shall be issued by an inspector after determination that the seed source consists only of rust-resistant plants and that no rust susceptible plants are growing in the immediate environs.]

**ISSUANCE OF PERMITS FOR THE MOVEMENT
OF SEEDLINGS**

[§ 125.21. Barberry, Mahonia and Mahoberberis plants.] Reserved.

[Permits shall be issued to nurserymen to ship 1-year-old seedlings under conditions where no risk is involved in dispersal of immune varieties of Barberry, Mahonia and Mahoberberis plants.]

[§ 125.22. Intrastate movement.] Reserved.

[Applications for authority to receive 1-year-old rust-resistant Barberry or Mahoberberis by nurserymen in this Commonwealth from approved nurserymen shall be issued under the following conditions:

- (1) The receiving nurseryman shall agree to retain the 1-year-old seedlings for at least two growing seasons.
- (2) He shall keep the plants separate from plants eligible for movement.
- (3) He shall make the plants available for examination at any time during the two growing seasons by an inspector to determine trueness to species and variety.
- (4) He shall immediately destroy all plants determined untrue to species and variety.]

[§ 125.23. Interstate movement.] Reserved.

[Permits for interstate shipments or the securing of permits for the purchase of 1-year-old seedlings from points outside this Commonwealth should be procured from the Bureau of Entomology, ARS, USDA, Beltsville, Maryland 20705 or ARS, USDA, Hyattsville, Maryland 20705.]

[§ 125.24. Identification of species.] Reserved.

[Applicants for permits and permittees shall furnish the inspector with the specimens or other evidence, and the inspector may make such inspection as he shall deem

necessary, in order to identify the species, horticultural varieties or hybrids, of Barberry, Mahonia or Mahoberberis grown or moved by the applicants or permittees.]

[§ 125.25. Cancellation of permits.] [Reserved].

[Permits issued under this subchapter may be cancelled in writing by the inspector and further permits refused, for failure of compliance or any violation of the provisions of this subchapter.]

SHIPMENTS

[§ 125.31. Labeling shipments.] [Reserved].

(a) Each shipment of plants, seeds or fruits for which a permit is required by this subchapter shall be plainly marked with the name and address of the consigner.

(b) Each package, bundle or other unit of plants, seeds or fruits in shipment shall be plainly labeled as to the species or horticultural variety contained.]

[§ 125.32. Inspection.] [Reserved].

[Cars or vehicles, boxes or containers moved intrastate or received for intrastate movement by a common carrier, and which contain, or which an inspector has reason to believe contain, products the movement of which is prohibited by this subchapter shall be subject to inspection at any time or place.]

[§ 125.33. Experimental shipments.] [Reserved].

[Plants, seeds and fruits subject to this subchapter may be moved intrastate for experimental or scientific purposes on the conditions and under the safeguards prescribed by the Department.]

Subchapter B. QUARANTINE No. 28—OAK WILT DISEASE

GENERAL PROVISIONS

[§ 125.41. Definitions.] [Reserved].

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

Department—The Department of Agriculture of the Commonwealth.

Infected—Infected with the Oak Wilt disease fungus.

Infection areas—Infection areas for eradication or control practices as designated by political subdivisions, for example, a township or county.

Oak Wilt disease—The disease caused by the fungus *ceratocystis fagacearum* (Bretz) Hunt, in all of its biological stages.]

[§ 125.42. Duration.] [Reserved].

[This subchapter became effective June 1, 1958, and continues until revoked by the Department.]

[§ 125.43. Susceptibility to disease.] [Reserved].

[A disease of all species of oak trees, known as Oak Wilt disease (*Certocystis fagacearum* (Bretz) Hunt), is in existence within this Commonwealth and is a potentially serious threat to all oaks (*Quercus* species).]

[§ 125.44. Regulated area.] Reserved.

[The quarantine is effective throughout this Commonwealth.]

[§ 125.45. Quarantine.] Reserved.

[A quarantine throughout this Commonwealth is established by this subchapter applying to all species of oaks (*Quercus* species).]

[§ 125.46. Public nuisance.] Reserved.

[(a) Oak Wilt disease shall be a public nuisance throughout this Commonwealth. It shall be unlawful for any person knowingly to permit this plant disease to exist in or on his premises.

(b) The provisions of subsection (a) does not apply to research areas established by the Department of Agriculture, Department of Forests and Waters, Agricultural Experiment Station or the United States Department of Agriculture.]

[§ 125.47. Control and eradication.] Reserved.

[(a) In any portion of this Commonwealth where Oak Wilt disease is known to exist, the Department will, insofar as funds are available, undertake control or eradication measures.

(b) Notice of the control in infection areas shall be given to property owners either privately or through the public press.]

**Subchapter C. QUARANTINE No. 29—VEGETABLE PLANT
QUARANTINE**

GENERAL PROVISIONS

[§ 125.51. Definitions.] Reserved.

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

Certificate—An approved document, issued by proper State authority, as evidence of the apparent freedom of vegetable plants from plant pests listed in the quarantine of this Subchapter.

Department—The Department of Agriculture of the Commonwealth.

Vegetable plants—Young plants (originating from seed, roots, stems, cuttings, tubers, bulbs or corms) intended for transplanting.]

[§ 125.52. Duration.] Reserved.

[This subchapter became effective April 1, 1959, and continues until revoked by the Department.]

[§ 125.53. Susceptibility to disease.] Reserved.

[Living vegetable plants transported into this Commonwealth serve as a source of introduction of certain plant pests, including bacterial leaf spots, bacterial wilts, early and late blights, viruses, nematodes, insects and mites, which may cause great loss in crop production.]

[§ 125.54. Quarantine.] [Reserved].

[A quarantine throughout this Commonwealth is established by this subchapter effective against plants of eggplant, tomatoes, peppers, cabbage, onion and sweet potatoes originating in areas outside this Commonwealth.]

[§ 125.55. Condition of entry.] [Reserved].

[(a) Any of the quarantined articles enumerated, free from soil, or in soil freed from plant pests by methods acceptable to the certifying agency, may be moved into this Commonwealth when accompanied by a certificate issued by the proper authorities of the state of origin.

(b) The certificate shall state that the plants are apparently free from the plant pests enumerated in this quarantine, and that the said plants were properly treated during their growing season to prevent the establishment of these pests.]

[§ 125.56. Inspection at destination.] [Reserved].

[(a) Vegetable plants entering this Commonwealth, regardless of means of transportation, shall be subject to inspection, and if found to be infested with plant pests may be immediately destroyed or ordered to be removed from this Commonwealth.

(b) Shipments without valid certificates may be destroyed or ordered removed from this Commonwealth.

(c) Shipments shall be plainly marked to show the name and address of the grower and shipper.]

Subchapter D. QUARANTINE No. 30—EUROPEAN CHAFER

GENERAL PROVISIONS

[§ 125.61. Definitions.] [Reserved].

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

Department—The Department of Agriculture of the Commonwealth.

European Chafer—The insect known as the European Chafer, *Amphimallon majalis Razoumowsky*, in any stage of development.

Infestation—The presence of the European Chafer.

Inspector—An inspector of the Department or the United States Department of Agriculture, when authorized to act in this capacity.

Permit—An approved document, issued by an inspector, evidencing the apparent freedom of quarantined materials from infestation.

Quarantined area—The area or areas specified in § 125.65 (relating to quarantined areas), and any adjacent areas in which there is likelihood of presence or early future infestation.]

[§ 125.62. Duration.] [Reserved].

[This subchapter became effective September 1, 1964, and continues in effect until revoked by the Department.]

[§ 125.63. Basis of subchapter.] [Reserved].

[The European Chafer exists in a limited portion of this Commonwealth, and is destructive to agriculture.]

[§ 125.64. Quarantine.] [Reserved].

[A quarantine throughout the area specified in § 125.65 (relating to quarantined areas) is established by this subchapter effective against the following:

- (1) European Chafer.
- (2) Forest, field or nursery-grown woody or herbaceous plants or plant parts intended for planting.
- (3) Material such as sod, sand, soil, gravel, humus, compost and decomposed manure, whether moved independently or in connection with nursery stock or other products or articles.]

[§ 125.65. Quarantined areas.] [Reserved].

[The following areas shall be quarantined:

- (1) *Bradford County*. The Township of Athens, and the Boroughs of Athens, Sayre and South Waverly.
- (2) *Carbon County*. The Boroughs of Lehighton and Weisport and that portion of Mahoning Township bounded on the north by the Borough of Jim Thorpe, on the east by the Lehigh River, on the south by the Borough of Lehighton, and on the west by State Route 209.
- (3) *Erie County*. The Townships of Harborcreek, Lawrence Park, Millcreek and Northeast and the Boroughs of Lake City, Northeast and Wesleyville and the City of Erie.
- (4) *Lackawanna County*. The City of Scranton and the Borough of Taylor.
- (5) *Lehigh County*. The Townships of Hanover and Whitehall, the Boroughs of Catasauqua, Coplay, and Emmaus, and the City of Allentown, and a section bounded on the North edge by I-78 (US 22) from the point where the West Whitehall Township line crosses I-78 Westward to where I-78 and Route 309 intersect and South along Route 309 to that point where Route 309 and the Western Allentown city line intersect.
- (6) *Luzerne County*. The Borough of Duryea.
- (7) *Lycoming County*. The City of Williamsport.
- (8) *Northampton County*. The Borough of North Catasauqua.]

MOVEMENT OF QUARANTINED MATERIALS

[§ 125.71. Requirement.] [Reserved].

[Quarantined materials, specified in § 125.64 (relating to quarantine) may not be moved to points outside the quarantine area unless accompanied by a valid permit issued by an inspector.]

[§ 125.72. Issuance of permits.] Reserved.

[Permits may be issued for the movement of quarantined materials from the quarantine area under any one of the following conditions:

(1) When, in the judgment of the inspector, the materials have not been exposed to infestation.

(2) When the subjects have been examined by an inspector and found to be free of infestation.

(3) When the materials have been treated under the observation and supervision of an inspector in accordance with methods selected by him from authorized procedures.]

[§ 125.73. Labeling.] Reserved.

(a) Lots or containers of quarantined materials moved to points outside the quarantine area shall have a securely attached, accompanying permit issued in compliance with § § 125.71 and 125.72 (relating to requirement; and issuance of permits).

(b) Permits shall be plainly marked with the name and address of the consignor, and the name and address of the consignee.]

[§ 125.74. Material from outside quarantine area.] Reserved.

(a) Permits may not be necessary for movement of materials designated in § 129.64 (relating to quarantine) which originate outside the quarantine area and are moved through or are reshipped from within the area if the point of origin is clearly indicated and the material is safeguarded against infestation while in the quarantined area.

(b) If subsection (a) is not met, the material shall be subject to the quarantine imposed by this subchapter.]

[§ 125.75. Cancellation of permits.] Reserved.

[Permits issued under the provisions of this subchapter may be cancelled, and further permits refused, when, in the judgment of the Department, conditions exist which might result in further dissemination of the insect.]

[§ 125.76. Conditions.] Reserved.

[Subsequent to the issuance of a permit quarantine materials shall be loaded, handled and shipped under the protection and safeguards against infestation as may be required by the inspector.]

[§ 125.77. Inspection in transit.] Reserved.

[Vehicles, ships, boats or other conveyances or containers which an inspector has cause to believe carry or contain materials subject to this quarantine, shall be subject to inspection by an inspector at any time or place within this Commonwealth.]

[§ 125.78. Experimental shipments.] Reserved.

[Quarantine materials subject to this subchapter, may be moved for experimental or other scientific purposes by the Department or the United States Department of Agriculture, under safeguards prescribed by the Department or the Director of the Plant Protection Division of the United States Department of Agriculture, when accompanied by an identifying tag showing compliance with the conditions of this section.]

Subchapter E. [Reserved]

§ 125.111. [Reserved].

§ 125.112. [Reserved].

§ 125.113. [Reserved].

§ 125.114. [Reserved].

§ 125.115. [Reserved].

§ 125.116. [Reserved].

§ 125.121. [Reserved].

Subchapter F. PEACH ROSETTE MOSAIC
VIRUS QUARANTINE

[§ 125.131. Definitions.] [Reserved].

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

Certificate—A document issued by proper State authority as evidence of the freedom of Peach Rosette Mosaic Virus (PRMV).

Department—The Department of Agriculture of the Commonwealth.

Host—A plant or plant part which is susceptible to PRMV.

Peach Rosette Mosaic Virus (PRMV)—A virus as described by H. F. Dias in "Descriptions of Plant Viruses No. 150," published by the Commonwealth Mycological Institute and Association of Applied Biologists.]

[§ 125.132. Duration.] [Reserved].

[This subchapter shall continue in effect until revoked by the Department.]

[§ 125.133. Susceptibility to disease.] [Reserved].

[Grape (*Vitis* spp.) and *Prunus* spp. are declared to be hosts or possible carriers of PRMV.]

[§ 125.134. Regulated articles.] [Reserved].

[*Vitis* spp. or *Prunus* spp. plants and plant parts except the fruit are considered as regulated articles.]

[§ 125.135. Quarantined area.] [Reserved].

[The entire geographical area of the State of Michigan will be the quarantined area.]

[§ 125.136. Conditions of entry.] [Reserved].

[A certificate from the Michigan Department of Agriculture shall accompany each shipment stating the regulated articles are not infected with or carrying PRMV.]

[§ 125.137. Control and eradication.] [Reserved].

[A regulated article suspected of being infected with or carrying PRMV shipped into the Commonwealth will be destroyed.]

* * * * *

**CHAPTER 128a. CHEMSWEEP PESTICIDE DISPOSAL
PROGRAM—STATEMENT OF POLICY**

[§ 128a.1. Authority and purpose.] [Reserved].

[(a) Under the authority of the act, the Department has established a pilot pesticide disposal program to be designated as Chemsweep.

(1) This pilot program allows the Department to identify and quantify canceled, unused or suspended pesticides held, owned or possessed by a representative cross section of this Commonwealth's agricultural community.

(2) This cross section will be obtained by selecting several counties, representing a broad variety of the agricultural activities conducted within this Commonwealth, to participate in the program.

(3) The information derived from this inventory will be used to develop and refine bid specifications for the Department's use in contracting with hazardous waste disposers for the safe collection, transportation and disposal of the pesticides.

(b) The Chemsweep pilot program will provide the Department with better knowledge of the quantities and types of pesticides which it is likely to encounter if the program is eventually expanded, through the promulgation of regulations, to include all counties within this Commonwealth. The success of the Chemsweep pilot program will determine whether it is expanded in this manner.

(c) By addressing the pesticide disposal needs of the agricultural community, the Chemsweep pilot program addresses the needs of farmers who have accumulated and stored chemicals with the potential to have an impact upon the environment and human safety. The agricultural community currently lacks an available and effective means of disposing of large quantities of potentially hazardous pesticides.]

[§ 128a.2. Definitions.] [Reserved].

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

Act—The Pennsylvania Pesticide Control Act of 1973 (3 P. S. § § 111.21—111.60).

Agricultural commodities—The term includes agricultural, horticultural, viticultural and dairy products, livestock and the products thereof, ranch raised furbearing animals and the products thereof, the products of poultry and bee raising, forestry and forestry products, and products raised or produced on farms intended for human consumption and the processed or manufactured products thereof intended for human consumption, transported or intended to be transported in commerce.

Applicant—A farmer who owns, holds or possesses pesticides within a participating

county and who has filed a Chemsweep pilot program preregistration application form with the Department.

Central-site pesticide collection—The collection by a contractor of a portion of the pesticide inventory of a participating county from a site to which two or more participating farmers have transported their pesticides for collection.

Certified applicator—An individual who is certified by the Department under section 16.1, 17 or 17.1 of the act (3 P. S. § § 111.36a, 111.37 and 111.37a) as being competent to use or supervise the use or application of a pesticide.

Commercial applicator—

(i) A certified applicator, whether or not the applicator is a private applicator with respect to some uses, who uses or supervises the use of a pesticide on the property or premises of another, or on easements granted under State law.

(ii) The term includes an applicator who uses or supervises the use of a restricted use pesticide on property owned or rented by the applicator or the applicator's employer, when not for purposes of producing an agricultural commodity. The Secretary may deem certain types of applicators using a pesticide on their own property or that of their employers as commercial applicators.

Contractor—A person engaged in the business of packing, transporting and disposing of hazardous waste, who is contractually obligated, through the Chemsweep pilot program, to pack, transport and dispose of the pesticide inventory of a participating county.

Department—The Department of Agriculture of the Commonwealth.

EPA—The United States Environmental Protection Agency.

Farmer—A person who engages, but who need not engage exclusively, or has engaged in the production and preparation for market of agricultural commodities.

On-farm pesticide collection—The collection by a contractor of a portion of the pesticide inventory of a participating county from the site, usually a farm, at which it is stored by a participating farmer.

Participating county—A county designated by the Department to participate in the Chemsweep pilot program.

Participating farmer—An applicant whose application has been accepted by the Department and whose pesticides are the subject of a disposal contract between the Department and a contractor.

Person—An individual, a firm, a corporation, an association or other form of business entity.

Pesticide—

(i) A substance or mixture of substances intended for preventing, destroying, repelling or mitigating a pest.

(ii) The term includes a substance or mixture of substances intended for use as a plant regulator, defoliant or desiccant.

Pesticide dealer—A person who sells or offers for sale pesticides which are classified for restricted use under the act.

Pesticide inventory—The compilation of information with respect to the identification, quantification and safety of pesticides held by a participating farmer within a particular participating county.

Private applicator—A certified applicator who uses or supervises the use of a

pesticide which is classified for restricted use for purposes of producing an agricultural commodity on property owned or rented by the applicator or the applicator's employer or, if applied without compensation other than trading of personal services between producers of agricultural commodities, on the property of another person.

Secretary—The Secretary of the Department.

USDA—The United States Department of Agriculture.]

[§ 128a.3. Participating counties.] [Reserved].

[The Department has designated the following counties to participate in the Chemsweep pilot program:

- (1) Bedford County.
- (2) Fulton County.
- (3) Lebanon County.
- (4) Lehigh County.
- (5) Snyder County.
- (6) Union County.]

[§ 128a.4. Limitation of the number of participating counties.] [Reserved].

[If, after having accepted a particular county to participate in the Chemsweep pilot program, the Department determines that there is insufficient funding available to fund the packing, transport and disposal of the pesticide inventory of that county, the Department may exclude that county from participation in the Chemsweep pilot program.]

[§ 128a.5. Funding.] [Reserved].

[(a) *Principal source.* A portion of the annual fees collected by the Department with respect to the registration of pesticides distributed within this Commonwealth, as described at section 5.1(a) of the act (3 P. S. § 111.25a) and § 128.3(i) (relating to fees), will be the principal source of funding for the Chemsweep pilot program.

(b) *Additional sources.* Funds from sources other than the pesticide product registration fee described in this section may be used to defray the costs of the Chemsweep pilot program.]

[§ 128a.6. Eligibility of persons to participate.] [Reserved].

[(a) *Requirements.* To be eligible to be considered for participation in the Chemsweep pilot program, a person shall:

- (1) Be a farmer.
- (2) Hold, own or possess pesticides that are registered as having agricultural applications.
- (3) Hold, own or possess the pesticides within a participating county.

(b) *Exclusions.* Commercial applicators of pesticides and holders of pesticides registered exclusively for residential or industrial applications are not eligible to participate in the Chemsweep pilot program. The inventory of a pesticide dealer may not be accepted for disposal. Empty pesticide containers may not be accepted for disposal.]

[§ 128a.7. Preregistration application.] [Reserved].

(a) *Application required.* A person who seeks to participate in the Chemsweep pilot program shall complete and file with the Department a preregistration application form.

(b) *Mandatory information.* The Department will develop a Chemsweep pilot program preregistration application form, and will provide prospective applicants with the form upon request. The form will require that an applicant provide the following information, if known and applicable, with respect to each pesticide for which disposal is sought:

- (1) The compound or trade name of the pesticide.
- (2) The active ingredient or common name of the pesticide.
- (3) The EPA registration number of the pesticide.
- (4) The USDA registration number of the pesticide.
- (5) The type of formulation of the pesticide.
- (6) The type of container of the pesticide.
- (7) The number of containers of the pesticide.
- (8) The condition of the containers holding the pesticide.
- (9) The total quantity of the pesticide.
- (10) The location of the pesticide.
- (11) The name, address and telephone number of the applicant.
- (12) Verification that the applicant is a farmer.

(c) *Incomplete information.* If an applicant cannot ascertain the identity of a particular pesticide in its possession, or provide other applicable information required by subsection (b) the applicant shall state on the preregistration application form as much information relating to the particular pesticide as is known to the applicant. The Department will then try to obtain the information which the applicant was unable to provide. If the applicable information required by subsection (b) cannot be readily obtained with respect to a particular pesticide, the pesticide may not be accepted for disposal.

(d) *Additional information.* The Department may require that an applicant provide additional information which the Department deems relevant to its evaluation of a preregistration application.]

[§ 128a.8. Preregistration process.] [Reserved].

(a) *Application period.* The Department will fix a 60-day period within which it will accept preregistration application forms within a particular participating county.

(b) *Dissemination of notice.* Prior to the commencement of the preregistration application period, the Department will cause notice of the Chemsweep pilot program and the preregistration period to be published in either a newspaper of general circulation within the participating county or a newspaper or publication circulated primarily among the agricultural community of a participating county. If practicable, the Department may enlist the assistance of entities such as the County Extension Service of the United States Department of Agriculture, the Pennsylvania Farmers' Union, the Pennsylvania Grange Association, the Pennsylvania Farmers' Association, County Conservation Districts and county and local governments in disseminating the notice and information.

(c) *Discretionary extension of application period.* In furtherance of the intent of the Chemsweep pilot program to arrange for the safe disposal of pesticides within a participating county, the Department will have the discretion to accept a preregistration application form submitted to it beyond the 60-day preregistration application period.]

[§ 128a.9. Inspection and verification.] [Reserved].

[(a) *Department.* The Department may physically inspect the premises at which a pesticide listed on a preregistration application is stored. The inspection will be conducted at a time agreeable to both the Department and the applicant. The purpose of the inspection is to:

- (1) Verify information contained on the preregistration application form.
- (2) Draw samples of unidentified pesticides for analysis at the Department's laboratories.
- (3) Ascertain the condition of pesticide containers and assess other factors relevant to the safe packing, transport or disposal of the pesticides.

(b) *Contractor.* A contractor or prospective contractor may physically inspect the premises at which a pesticide listed on a preregistration application is stored. The inspection shall be conducted at a time agreeable to both the contractor, or prospective contractor, and the applicant. The purpose of the inspection is to verify bid specification information and to otherwise assist the contractor or prospective contractor in its planning for the safe disposal of the pesticide.]

[§ 128a.10. Responsibilities of applicant or participating farmer.] [Reserved].

[(a) *Generally.*

(1) An applicant or participating farmer is responsible for the safe storage of pesticides held, owned or possessed by the applicant or participating farmer. This exclusive responsibility does not lapse with the filing of a preregistration application, with an inspection of the pesticide or pesticide storage area or with the notice of acceptance of the pesticide for disposal through the Chemsweep pilot program as described in § 128a.15 (relating to notification of participants).

(2) Action by the Department does not relieve the applicant or participating farmer of the responsibility to store pesticides in a safe and lawful manner.

(3) With respect to central-site pesticide collection, the participating farmer shall retain sole responsibility for the safe transport of pesticides and for the cleanup, if necessary, of the on-farm site at which the pesticide was stored.

(4) With respect to on-farm pesticide collection, the participating farmer shall retain sole responsibility for the cleanup, if necessary, of the on-farm site at which the pesticide was stored, to the extent that the cleanup is not necessitated by spills or other contamination caused by the contractor.

(5) The contractor is responsible for the cleanup of spills or other contamination which it causes.

(b) *Right to withdraw.* An applicant or participating farmer may withdraw from the Chemsweep pilot program at any time.]

[§ 128a.11. Unidentified pesticides.] [Reserved].

[The Department will obtain a sample of an unidentified pesticide with respect to which disposal is sought through the Chemsweep pilot program. The sample will be analyzed by the laboratories of the Department. If the Department is subsequently able to identify the previously unidentified pesticide, it will then determine whether that particular pesticide container will be placed on the pesticide inventory for the

participating county in which the pesticide is located. An unidentified pesticide will not be accepted for disposal through the Chemsweep pilot program.]

[§ 128a.12. Pesticide labeling.] [Reserved].

[A pesticide will not be accepted for disposal through the Chemsweep pilot program unless it bears a legible, prominent label identifying the pesticide by active ingredient or common name and by the EPA or USDA registration number. Unidentified pesticides which are subsequently identified by the Department will be labeled by the Department in accordance with this chapter prior to being accepted for disposal.]

[§ 128a.13. Pesticide inventory.] [Reserved].

[Following the expiration of the 60-day preregistration application period described in § 128a.8(a) (relating to preregistration process) the Department will compile an inventory of the pesticides which are located within a particular participating county and which are intended for disposal under the Chemsweep pilot program.

(1) The sources of information for this pesticide inventory will include preregistration application forms, additional information requested from an applicant under § 128a.7(d) (relating to preregistration application), information obtained through interviews with applicants or physical inspection of pesticides, the results of laboratory tests conducted by the Department and other sources of which the Department avails itself.

(2) The pesticide inventory will include the information listed in § 128a.7(b) and other information that the Department deems relevant to the bidding and contracting process described in § 128a.14 (relating to bid specifications).]

[§ 128a.14. Bid specifications.] [Reserved].

[(a) *General.* After the Department completes its compilation of the pesticide inventory for a particular participating county, it will develop bid specifications for use in contracting for the disposal of pesticide inventory. The Department may make the pesticide inventories of two or more participating counties the subject of a single disposal contract.

(b) *Contractor qualifications.*

(1) The bid specifications for the disposal of a pesticide inventory will require that:

(i) A contractor be approved by the EPA to handle, transport and dispose of hazardous materials.

(ii) A contractor be approved by the Department of Environmental Resources to handle, transport and dispose of hazardous materials.

(iii) A contractor provide a written, detailed description of the procedures which it would use in disposing of the pesticide inventory, including packing procedures, transportation methods, selection of pesticide collection sites, disposal sites and methods of disposal, including a description of required State and Federal permits and documentation necessary to accomplish disposal.

(iv) A contractor handle, transport and dispose of pesticides, whether classified as hazardous materials or as materials other than hazardous, in accordance with applicable State and Federal law, and in compliance with the written description provided the Department.

(v) A contractor provide a specific time within which it shall complete its work under the contract.

(2) The bid specifications set forth in paragraph (1) shall contain other requirements the Department deems appropriate.

(c) *Pesticide collection options.* The Department may solicit bids for several different pesticide collection options.

(1) The Department may require that participating farmers arrange for the safe transportation of their pesticides to a central site from which the contractor shall collect and dispose of the pesticides.

(2) The Department may require that the contractor collect pesticides from the individual farms or storage locations throughout the participating county.

(3) The Department may require that a contractor employ a combination of on-farm pesticide collection and central-site pesticide collection.]

[§ 128a.15. Notification of participants.] [Reserved].

(a) After the Department awards a pesticide disposal contract with respect to a participating county, it will notify each selected applicant holding, owning or possessing pesticides to be disposed of under the disposal contract that the preregistration application has been accepted and that the applicant is a participating farmer.

(b) The notice will be in writing, by regular United States mail, addressed to the same address that appears on the preregistration application.

(c) The notice will also inform the participating farmer of the obligations with respect to either transporting the pesticides to a central site for collection or otherwise making pesticides available for on-farm collection by the contractor.]

[§ 128a.16. Central site.] [Reserved].

(a) Although the Department will assist the contractor in obtaining a central site for pesticide collection prior to disposal, the decision as to whether to use a particular site for pesticide collection is exclusively the contractor's. The contractor is responsible to establish, insure and operate the site in compliance with applicable laws, and is responsible in the event of a pesticide spill or other environmentally-impacting incident which gives rise to legal liability.]

[§ 128a.17. Conditions requiring on-farm pesticide collection.] [Reserved].

[A leaking, deteriorated or otherwise unsafe container of pesticide may not be transported by a participating farmer to a central site for collection by a contractor, but shall instead be overpacked and collected on-farm by the contractor.

(1) Quantities of pesticide that are too large, too heavy, too unwieldy, in excess of allowable quantities for waste transport or otherwise incapable of being safely transported by a participating farmer to a central site for collection shall be collected on-farm by a contractor.

(2) The contractor or the participating farmer may make the determination that a pesticide container is leaking, deteriorated or otherwise unsafe, or that a pesticide container is too large, heavy, unwieldy or otherwise incapable of being safely transported by a participating farmer to a central site for collection.]

[§ 128a.18. State and Federal regulations.] Reserved.

[If a conflict is subsequently found to exist, the regulations of the Commonwealth and the United States pertaining to the packing, transport, storage or disposal of hazardous waste, or pertaining to the qualification, authorization or licensure of persons to perform these activities, or pertaining to insurance or other surety requirements of persons performing these activities supersede this chapter.]

* * * * *

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

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

INDEPENDENT REGULATORY
REVIEW COMMISSION

2007 FEB 13 PM 2:44

RECEIVED

Re: NOTICE OF PROPOSED RULEMAKING
Department of Agriculture
7 Pa. Code Chapters 11, 95, 123, 125 and 128a
Johne's Disease; Certified Apple Program; Fiscal Aid for Stem Rust
Control; Quarantine Provisions; Chemsweep Pesticide Disposal Program –
Statement of Policy
I.D. No. 2-154

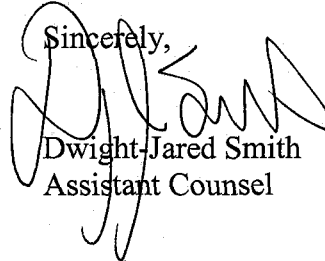
Dear Sirs:

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

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

The proposed regulation will be published in the February 24, 2007 edition of the *Pennsylvania Bulletin*. If I may be of further information, please advise.

Sincerely,



Dwight-Jared Smith
Assistant Counsel

Enclosures

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

I.D. NUMBER: 2-154

SUBJECT: JOHNE'S DISEASE; CERTIFIED APPLE PROGRAM; FISCAL AID FOR STEM RUST CONTROL; QUARANTINE PROVISIONS; CHEMSWEEP PESTICIDE DISPOSAL PROGRAM


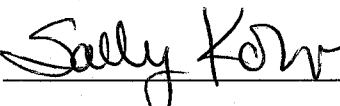
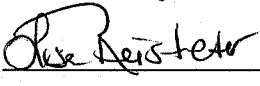
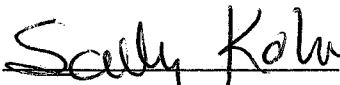
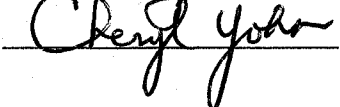

AGENCY: DEPARTMENT OF AGRICULTURE

TYPE OF REGULATION

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

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 REVIEW COMMISSION

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
2-13-07		HANNA HOUSE COMMITTEE ON AGRICULTURE & RURAL AFFAIRS
2-13-07		HERSHEY
2-13-07		BRUBAKER SENATE COMMITTEE ON AGRICULTURE & RURAL AFFAIRS
2-13-07		O'PAKE
2-13-07		IRRC INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL (for Final Omitted only)
2-13-07		LRB LEGISLATIVE REFERENCE BUREAU (for Proposed only)