

Regulatory Analysis Form

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(1) Agency: *Agriculture*

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

2-155

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INDEPENDENT REGULATORY
COMMISSION

(3) Short Title

Odor Management Certification Program

(4) PA Code Cite

7 Pa Code, Chapter 130f.

(5) Agency Contacts & 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 non-technical language.

The proposed regulations are provided to establish training, examination and certification criteria for odor management specialists. The proposed regulation defines the authority and duties of 'Commercial', 'Individual' and 'Public' odor management specialists and establishes education, training and certification requirements, fees, terms and conditions of certification consistent with the requirements of Act 38 of 2005 (3 Pa.C.S.A. §§311 - 522).

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

Section 508(a) of Act 38 of 2005 (3 Pa.C.S.A. § 508(a))

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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.

Yes. The regulation is mandated under Section 508(a) of Act 38 of 2005 (3 Pa.C.S.A. §508(a)) (relating to the nutrient management certification program and odor management certification program) setting forth the specific duties and the authority of the Department with regard to promulgation of these regulations.

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

The promulgation and implementation of these regulations is necessary to comply with the mandates of Act 38 of 2005 (3 Pa.C.S.A. § 508(a)). The regulations ensure that all persons seeking certification as an odor management specialist are properly trained and can demonstrate the competency necessary to develop and/or review odor management plans consistent with provisions and criteria to be established in regulation at 25 Pa. Code, Chapter 83 subchapter G, pertaining to facility odor management. This regulation is being promulgated by the State Conservation Commission and is currently in the regulatory review process.

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

There are no public health, safety, and environmental or general welfare risks associated with non-regulation related to the Odor Management Certification program.

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

Farmers (agricultural operations), local government (county conservation districts) and private sector consultants will benefit from the proposed regulations. The proposed regulations will establish education and certification standards and requirements for approximately 100 – 150 persons seeking certification as odor management specialists. The standards will enhance commercial consultant's and county conservation districts staff's knowledge of odor management principles and evaluation of odor impacts and best management practices that may be used to address potential odor impacts in the development of odor management plans. Farmers will benefit through the ability to develop odor management plans for their operations upon successfully completing the certification program. In addition, the certification of commercial and public odor management specialists will make this industry more accessible to farmers who must utilize a certified odor management specialists to meet odor management requirements under Act 38 of 2005. Approximately 1,300 agricultural operations regulated under Act 38 of 2005 and approximately 340 CAFO operations regulated under the federal Clean Water Act will benefit by having a certified odor management specialist available to develop odor management plans meeting the facility odor management criteria established under Act 38 of 2005.

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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.)

The proposed regulations will affect 'commercial' and 'public' Nutrient Management Specialists certified under the Department's Nutrient Management Certification Program (7 Pa Code, Chapter 130b) or private sector consultants intending to develop odor management plans for farmers, farmers seeking certification to develop an odor management plan for their operation or county conservation district staff employed to review odor management plans according to criteria established by regulations under Act 38 of 2005. Provisions of these proposed regulations will require certified Nutrient Management Specialists and other persons seeking status as certified odor management specialists to attend classes and pass an examination to become certified. The Department anticipates that approximately 30 farmers will seek an 'individual' license; 75 county conservation district or state employees will seek a 'public' license and 45 private sector consultants will seek a 'commercial' license under the proposed regulations. Odor management specialists will also be required to attend continuing education programs to obtain continuing education credits to maintain a valid certification under the proposed Odor Management Specialist program. Persons seeking certification will be subject to payment of fees for examination and licensure. Additionally, approximately 1,300 farms complying with the odor management provisions of Act 38 of 2005 and its regulations who intend to develop an odor management plan for their agricultural operation will be required to utilize an odor management specialist properly certified under the proposed regulations.

(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 initially affect approximately 40 of the currently certified Commercial, Individual and Public nutrient management specialists and approximately 75 - 100 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 Nutrient Management Advisory Board and the State Conservation Commission will be provided the proposed regulations for review and comment. Further public input will be solicited during the rulemaking and revision 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 fee schedule will be established through the proposed regulations based on expenses to administer the program and will impose new costs on the regulated community in the form of examination and license fees. New costs to the regulated community are estimated to be \$30 for examination fees for 'commercial' and 'public' categories and a \$15, \$25, \$200 triennial license fee (every 3 years) for 'individual', 'public' and 'commercial' categories, respectively.

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(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.

Initially, in the first two to three years of the implementation of the Odor Management Specialist Certification program, the costs to local government (county conservation districts) will be minimal. Examination and licensure fees for certified public odor management specialists who are primarily employees of county conservation districts will occur only as the State Conservation Commission delegates implementation and administration of Odor Management Program activities of Act 38 of 2005 to conservation districts. The State Conservation Commission does not anticipate delegation of Odor Management Program implementation activities to conservation districts until the third and subsequent years of the program. Therefore, any costs to those entities will most likely be incurred in the second or third year of the Odor Management Certification Program as persons employed by the conservation districts attain a 'public' odor management specialist license to carry out delegated activities.

(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 increased costs to the state to administer and enforce these regulations through additional administrative expenses. Those expenses include estimated costs of materials and supplies for the initial phase of program implementation of approximately \$4,400 in 'Current FY', decreasing to approximately \$3,200 in FY+1 and subsequently increasing approximately 5.0% annually for program years, thereafter. Additional administrative expenses related to training and educational activities provided by a contracted third party are estimated at approximately \$9,900 in 'Current FY', increasing to \$19,000 for FY+1 and increasing approximately 5% annually for program years, thereafter. There will be no additional state government staff resources necessary to implement these regulations.

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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 (2007-08)	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated	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	600	4,300	1,225	1,225	4,750	2,420
Local Government	600	1,050	550	550	1,175	750
State Government	14,250	21,200	22,260	23,400	24,600	25,800
Total Costs	15,450	26,550	24,035	25,175	30,525	28,970
REVENUE LOSSES:						
Regulated	NA	NA	NA	NA	NA	NA
Local Government	NA	NA	NA	NA	NA	NA
State Government	NA	NA	NA	NA	NA	NA

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

Regulated Community: The anticipated 70 - 80 persons (Individual and Commercial categories) that will be required to obtain a license over the next five-year period will incur new costs including an examination fee and a triennial license fee (every 3 years) depending on the category of certification sought. These same persons will be required to renew their license on a triennial basis depending on their certification category.

Costs for examinations are proposed at \$30 per individual for the 'commercial' certification category. An examination fee is not proposed for the 'individual' certification category. Costs for triennial licenses are proposed as \$15 for an 'individual' specialist certificate and \$200 for a 'commercial' specialist certificate. These fees are derived from estimated costs of administration and implementation of similar certification programs administered by the Department under Act 38 of 2005 with similar participant numbers.

Local Government Costs: There will be some costs to local government in the implementation of the regulations. Public specialists are employees of local government (county conservation district employees). The county employer of a public specialist will incur a costs pertaining to the examination and certification fees for a triennial certificate of \$30 and \$25, respectively. There will be an estimated 75 'Public' specialists seeking certification under the program over the next five-year period as the State Conservation Commission implements the Odor Management planning program. These fees are derived from estimated costs of administration and implementation of similar certification programs administered by the Department under Act 38 of 2005 with similar participant numbers.

State Government Costs: State government costs will increase to cover the administration and implementation costs of the certification program. There will be a need for additional administrative expenses to cover program education materials, supplies and contractual expenses for training and educational services provided by a third party. The cost for these administrative expenses is estimated to be approximately \$21,200 for Fiscal Year FY+1 and increase annually by approximately 5.0% beginning FY+2. State expenses do not include program staff resources. Current program staff in the Department will implement program activities.

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

This is a new program with no available expenditure history.

Program	FY -3	FY -2	FY -1	Current FY
NA	NA	NA	NA	NA

(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 odor management plans is a mandated provision of Act 38 of 2005, Section 508 (3 Pa.C.S.A. §508(a)). Persons seeking certification, as an odor management specialist must be knowledgeable and competent in the application of the criteria and provisions established under Act 38 of 2005 (3 Pa.C.S.A. §501-522) and Odor Management regulations and guidance established by the State Conservation Commission in order to be licensed to develop and review odor management plans.

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

There are no nonregulatory alternatives. These regulations are mandated by Section 508(a) of Act 38 of 2005 (3 Pa.C.S.A. §508(a)). The proposed regulations establish the education and certification criteria key to the certification program. The proposed regulations are necessary to insure an adequate certification program and maintain conformity with Act 38 regulatory provisions established at 25 Pa Code Chapter 83, Subchapter G, currently under promulgation by the State Conservation Commission and with advancements in industry education standards and 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. These regulations are mandated by Section 508(a) of Act 38 of 2005 (3 Pa.C.S.A. §508(a)) and are consistent with other certification program mandates, such as the Nutrient Management Specialist Certification regulations at 7 Pennsylvania Code, Chapter 130b.

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(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. There is no counterpart at the federal level.

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

There are no certification programs for odor management specialists in neighboring state jurisdictions of Delaware, Maryland, New York, Ohio or Virginia. These regulations will create a certification program that will allow the regulated community, which includes private sector consultants, to attain credentials and expand their knowledge to provide support services to the agricultural community that meet the odor management criteria under Act 38 of 2005 (3 Pa.C.S.A. §501- 522).

(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. The State Conservation Commission is currently promulgating regulations (25 Pa. Code, Chapter 83 Subchapter G) under Act 38 of 2005 (3 Pa.C.S.A. §§ 504 and 509) pertaining to odor management standards. These regulations will implement and follow those criteria and provisions in training odor management specialists thereby assuring odor management specialists follow the mandates of the Act and Commission regulations. These proposed regulations will complement and support the implementation of certain provisions of the Commission's regulation.

(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 meeting related to the publication of the proposed regulations. However, the proposed regulations will be discussed by the Nutrient Management Advisory Board and the State Conservation Commission at scheduled public meetings as required under Act 38 of 2005.

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.

There are no reporting or record keeping requirements of the regulated community under the proposed regulation.

(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 proposed regulations recognize the need to accommodate private sector consultants that are certified as nutrient management specialists under the Department's Nutrient Management Certification program (7 Pa Code, Chapter 130b). These persons may be available to assist the agricultural community in the implementation of the Odor Management Program. Provisions of the regulations provide the opportunity for certified nutrient management specialists to become certified as an Odor Management Specialist to develop odor management plans meeting requirements of Section 509 of Act 38 of 2005 (3 Pa. C.S.A. §509).

(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 effective date of the regulations is expected to coincide with the date of publication of the final-form regulations, which is anticipated to be April or May of 2008. The Department expects to be able to offer certification training and testing between the effective date of these regulations and the effective date of regulations promulgated by the State Conservation Commission under 25 Pa Code, Chapter 83, subchapter G. The State Conservation Commission anticipates an effective date of its regulation to be approximately July 31, 2008.

(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, changes in technology and changes or revisions to regulations promulgated under 25 Pa Code, Chapter 83, subchapter G.

FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE
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(Pursuant to Commonwealth Documents Law)

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INDEPENDENT REGULATORY
REVIEW COMMISSION

DO NOT WRITE IN THIS SPACE

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

Amy M. Elliott

By: _____
(Deputy Attorney General)

OCT 05 2007

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. 2-155

DATE OF ADOPTION 8-9-07

BY *Daway*

TITLE Secretary

EXECUTIVE OFFICER CHAIRMAN OR SECRETARY

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

Andrew C. Clark

BY: Andrew C. Clark

SEP 14 2007
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

Department of Agriculture
Bureau of Plant Industry
7 Pa. Code Chapter 130f.
Odor Management Certification Program

**TITLE 7 PENNSYLVANIA CODE– Agriculture
DEPARTMENT OF AGRICULTURE
PART V: BUREAU OF PLANT INDUSTRY
CHAPTER 130f. Odor Management Certification Program**

The Department of Agriculture ("Department"), under the specific authority conferred by section 508 of the act of July 6, 2005 (P.L. 112, No. 38) known as Act 38 of 2005 (3 Pa.C.S.A. § 508), hereby proposes regulations implementing the odor management certification program required by Act 38 of 2005 (Act). These regulations will appear at Title 7 of the *Pennsylvania Code*, Chapter 130f. (7 Pa. Code §§ 130f.1-130f.41), which pertains duties and programs administered by the Department's Bureau of Plant Industry. Section 508(a) of the Act (3 Pa.C.S.A. § 508(a)), directs the Department to "...establish, in consultation with the commission,...an odor management certification program for the purpose of certifying individuals who have demonstrated the competency necessary to develop odor management plans. The Department or its designee shall develop 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 and odor management plans for their own agricultural operations."

The Department hereby proposes to establish criteria through regulations which carry out the edict of the Act.

BACKGROUND

The Act requires the Department to promulgate regulations establishing certification categories and criteria. In addition section 508(d) requires a person to satisfy the applicable requirements of the regulations prior to certifying an odor management plan or plan amendment (3 Pa.C.S.A. § 508(d)). These regulations are therefore necessary to assure compliance with the edict of the Act and to allow Concentrated Animal Operations, Concentrated Animal Feeding Operations and volunteers to comply with the odor management plan requirements set forth at section 509 of the Act (3 Pa.C.S.A. § 509).

The major features and amendments to the proposed regulations are summarized as follows:

SUMMARY OF MAJOR FEATURES

Section 130f.1. Scope.

This section sets forth the scope of the regulations. This section synthesizes the authority and duty set forth in section 508 of the Act (3 Pa.C.S.A. § 508)

Section 130f.2. Definitions.

Definitions necessary to understand the provisions set forth in the regulation are defined in this section. The definitions are based on definitions in the Act, the Nutrient Management Certification regulations at *7 Pennsylvania Code*, Chapter 130b.2. and the Nutrient Management regulations at *25 Pennsylvania Code*, Chapter 83.201.

Section 130f.3. Fees.

This section establishes the certification and examination fees for each category of certification, as required by section 8(a) of the Act (3 Pa.C.S.A. § 508(a)). The fees

are based on the anticipated costs associated with testing and administering each category of certification.

Section 130f.4. Certification authority.

The language of this section delineates the authority associated with each category of certification. It establishes what types of plans a person certified in a particular category can write or review and approve or both.

Section 130f.11. Determination of competence.

This section sets forth the provisional training, examination and final certification requirements for commercial and public odor management specialists. In addition, it details how the department will react to and change requirements when future advances in the field of odor management occur. Finally, it establishes the criteria which must be met in order for: (1) A fully certified public odor management specialist to attain a commercial odor management specialist certificate; (2) A fully certified commercial odor management specialist to attain a public odor management specialist certificate and (3) A fully certified nutrient management specialist to attain a commercial or public odor management specialist certificate.

Section 130f.12. Final certification.

This section details the eligibility criteria and application process for final certification as a commercial or public odor management specialist and sets forth the time period of filing a final certification application. In addition, it establishes the time period for which final certification is valid.

Section 130f.21. Determination of competence.

This section establishes the competency requirements for individual odor management specialists. Individual odor management specialists are exempt from the plan preparation requirements that are mandatory for commercial and some public odor management specialists. However, the requirements for an individual odor management specialist certification include an orientation training course and a competency evaluation consisting of the same criteria as the provisional certification training for a commercial or public odor management specialist. The competency evaluation for an individual odor management specialist will be developed or approved by the department and administered by the department or its designee. The evaluation will require knowledge of the same areas covered on the required examination for commercial and public odor management specialists.

Section 130f.22. Final certification.

These provisions delineate the application procedures and time period for filing an application for final certification as an individual odor management specialist with the department, as well as, the time period for which a certificate is valid.

Section 130f.31. Recertification.

This section sets forth the recertification process for commercial and public odor management specialists and for individual odor management specialists. At three year intervals, odor management specialists must certify to the Department, through written documentation, that they have received the required number of continuing education training credits in the appropriate areas of training. Commercial and public odor management specialists must receive six continuing education training credits and

individual odor management specialist must receive three continuing education training credits in order to maintain their certification. Credits accrue at the rate of one credit per hour of course work. In addition, this section sets forth the application process and standards for approval of entities that want to sponsor recertification training courses. Finally, this section addresses the procedure for certification if an odor management specialist allows his certification to lapse.

Section 130f.41. Denial, suspension and revocation of certificates.

The provisions in this section set forth the reasons, as delineated in the Act, that the department may deny, suspend or revoke an odor management specialist's certification. In addition, it provides the process (written notice, which must include the reasons for the department's action) that must be utilized by the department when denying, suspending or revoking odor management certification and provides for appeal rights.

FISCAL IMPACT

Commonwealth

The proposed regulations will not impose any appreciable additional fiscal impacts upon the Commonwealth. The regulations will require the Department to administer another certification training and recertification program and monitor and take appropriate state action where members of the regulated community are not complying with the statutory and regulatory mandates. The cost of administering the mandates of the Act and these regulations will be covered by general government operating funds annually appropriated to the Department and augmented with the certification and testing fees set forth in the regulation.

Political Subdivisions

The proposed regulations will impose additional work and costs and have a fiscal impact upon county conservation districts that agree to certify public odor management specialists to draft or review or both, odor management plans. The regulations will impose no additional burden of enforcement on political subdivisions.

Private Sector

The proposed regulations will impose additional costs on persons wishing to write or review and approve or both, odor management plans, as required by the Act. Those additional costs are in the form of the fees for certification, which are established in the regulation.

General Public

The proposed regulations will impose no direct costs and have no fiscal impact on the general public. Farmers required to have or seeking a voluntary odor management plan, will be affected by the mandates of the Act, which requires such plans and the fees charged for attaining the required certification to write or review or both, those odor certification plans will most likely be a small part of the fee charged to the farmer for the development of odor management plans.

PAPERWORK REQUIREMENTS

The proposed regulations will not result in a substantial increase in paperwork. The Department will have to develop new application forms, but they will be based on current certification program forms. Review and administrative procedures will also be very similar to existing certification programs overseen by the department.

PUBLIC COMMENT PERIOD

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

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 this proposed regulation on October 15, 2007, 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). In addition to submitting the proposed regulation, the Department has provided the Commission 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 the Commission has any objections to any portion of the proposed regulation, it will notify the Department within 30 days after the close of the public comment period. Such 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 regulation, by the Department, the General Assembly and the Governor of objections raised.

CONTACT PERSON

Further information is available by contacting the Department of Agriculture, Bureau of Plant Industry, 2301 North Cameron Street, Harrisburg, Pennsylvania 17110-9408; Attn: Johan E. Berger (717) 772-4189.

EFFECTIVE DATE

This proposed regulation is effective upon publication in the *Pennsylvania Bulletin*.

By the Department of Agriculture

DENNIS C WOLFF, SECRETARY

Annex A

TITLE 7. AGRICULTURE

PART V. BUREAU OF PLANT INDUSTRY

CHAPTER 130f. ODOR MANAGEMENT CERTIFICATION

Subch.	Sec.
A. GENERAL PROVISIONS.....	130f.1
B. CERTIFICATION.....	130f.11
C. RECERTIFICATION.....	130.f.31
D. DENIAL, SUSPENSION, REVOCATION.....	130f.41

Subchapter A. GENERAL PROVISIONS

Sec.

130f.1. Scope.

130f.2. Definitions.

130f.3. Fees.

130f.4. Certification authority.

§ 130f.1. Scope.

This chapter prescribes the procedures and qualifications related to certification of odor management specialists. This chapter includes the establishment of fees, delineates the requirements for certification of odor management specialists, including recertification criteria

and sets forth the conditions of denial, suspension and revocation of odor management certification.

§ 130f.2. Definitions.

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

Act--Act 38 of 2005 (3 Pa. C.S.A §§ 311—522).

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

Certification--The completion of all requirements of an odor management specialist contained in this chapter.

Commission--The State Conservation Commission established by the act of May 15, 1945 (P.L. 547, No.217) (3 P. S. §§ 849--864), known as the Conservation District Law.

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

Conservation district--A county conservation district established under the act of May 15, 1945 (P.L. 547, No.217) (3 P. S. §§ 849--864), known as the Conservation District Law.

Department--The Department of Agriculture of the Commonwealth.

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

Impacts --Conflicts arising from the off-site migration of odors from agricultural facilities. Impacts do not include mental or physical health affects, or changes in property value.

Nutrient management specialist--A person satisfying the certification requirements of section 508 of the act (relating to nutrient management certification program and odor management certification) (3 Pa.C.S.A. § 508).

Odor BMP—*Odor best management practice*—A practice or combination of practices, technologies, standards and strategies to manage the potential for impacts from off-site migration of odors generated from animal housing facilities and manure management facilities that are subject to regulation under the act.

Odor management plan—*OMP*- A written site-specific plan identifying the practices, technologies, standards and strategies to be implemented to manage the impact of odors generated from animal housing or manure management facilities located or to be located on the site.

Odor management regulations--The regulations in 25 Pa. Code, Chapter 83, Subchapter G (relating to facility odor management).

Odor management specialist—A person satisfying the certification requirements of this chapter.

Individual odor management specialist --A person certified under this chapter to develop odor management plans for his agricultural operation.

Commercial odor management specialist -- A private sector person certified under this chapter to develop odor management plans for another person's agricultural operation.

Public odor management specialist --A State, Federal or other public employee certified under this chapter to review odor management plans and make recommendations for approval or denial of odor management plans to a conservation district or the State Conservation Commission, or both.

Odor Site Index- The field evaluation methodology developed specifically for this Commonwealth and approved by the Commission, which applies site-specific factors such as proximity to adjoining landowners, land use of the surrounding area, type of structures proposed, species of animals, local topography and direction of the prevailing winds, to determine the potential for impacts from the off-site migration of odors from agricultural operations.

Provisional certification--The level of certification obtained by an odor management specialist applicant who has successfully completed the required training and passed the written examination, but has not yet developed or reviewed the required number of odor management plans.

Recertification training--The completion of continuing education and training requirements in § 130b.31 (relating to recertification).

§ 130f.3. Fees.

(a) *Certification fees.* Certification fees are nonrefundable. The Department establishes the following certification fees for each level of odor management specialist:

- (1) Individual odor management specialist--\$15.
- (2) Commercial odor management specialist--\$200.
- (3) Public odor management specialist--\$25.

(b) *Examination fees.* Examination fees are nonrefundable. The Department establishes the following examination fees for each level of odor management specialist:

- (1) Individual odor management specialist--No charge
- (2) Commercial odor management specialist--\$30
- (3) Public odor management specialist--\$30:

§ 130f.4. Certification authority.

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

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

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

Subchapter B. CERTIFICATION

COMMERCIAL AND PUBLIC ODOR

MANAGEMENT SPECIALISTS

§ 130f.11. Determination of competence.

(a) *Commercial odor management specialist.* Determination of competence for a commercial odor management specialist shall be based on the successful completion of provisional certification training and examinations as set forth in this section and the successful completion of the final certification requirements established by this chapter.

(1) Provisional certification requirements for a commercial odor management specialist include an orientation training course, an odor management plan writing course and a written examination approved by the Department.

(2) Final certification of a commercial odor management specialist requires the development of two approved odor management plans as set forth in subsection (h)(1) of this section. Odor management plans developed under this subsection will be determined to be adequate by the Department or its designee.

(b) *Public odor management specialist.* Determination of competence for a public odor management specialist shall be based on the successful completion of provisional certification training and examinations as set forth in this section and the successful completion of the final certification requirements established by this chapter.

(1) Provisional certification requirements for a public odor management specialist include an orientation training course, an odor management plan review course, an

odor management plan writing course and a written examination approved by the Department. Odor management plan reviews completed and odor management plans developed under this subsection will be determined to be adequate by the Department or its designee.

(2) Final certification of a public odor management specialist requires the approved review of one odor management plan and the development of one approved odor management plan as set forth in subsection (h)(2) of this section.

(c) *Future advancements.* As advancements in science and technology make new odor management techniques and BMPs available and after these techniques and BMPs are approved by the State Conservation Commission, the certification requirements may include other course work related to those techniques and best management requirements, as well as, any new requirements set forth in the odor management regulations, as part of the certification course and training requirements. The new techniques and BMPs will not become part of the 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 BMPs.

(d) *Provisional certification training.* The provisional certification training courses must, at a minimum, consist of the following areas of odor management planning:

(1) Understanding the Odor Site Index.

(i) Completion and application of the Odor Site Index.

(ii) Mapping principles and requirements.

(2) Understanding odor generation and transmission principles

- (3) Understanding environmental and economic impacts associated with odor management.
 - (4) Understanding and awareness of land use issues related to odor impact and management.
 - (5) Understanding OMP components & content.
 - (6) Understanding the technology, application and implementation of Odor BMPs.
 - (7) Understanding regulatory requirements of agricultural operations
 - (i) Types of agricultural operations or activities/technologies that may require OMPs.
 - (ii) How to submit an OMP.
 - (iii) Other applicable laws and regulations related to or conjoined with odor management.
 - (8) Record keeping requirements.
 - (9) Proper odor management plan review procedures (public odor management specialists only).
 - (10) Proper odor management plan writing procedures (commercial and public odor management specialists only).
 - (11) Other areas and course work related to requirements set forth in the odor management regulations, as determined appropriate by the Department.
- (e) *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 odor management planning and odor management plan development in the following areas:

- (1) Application of the Odor Site Index.
 - (2) Odor generation and transmission principles.
 - (3) Environmental and economic impacts associated with odor management.
 - (4) Land use issues related to odor impacts and management.
 - (5) OMP components & content.
 - (6) Technology, application and implementation of Odor BMPs.
 - (7) Odor management regulatory requirements of agricultural operations.
 - (8) Record keeping requirements.
 - (9) Other applicable laws and regulations related to or conjoined with odor management.
 - (10) Other areas related to new technology and BMPs that become available and are approved by the State Conservation Commission, as well as, new requirements set forth in the odor management regulations. 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 BMPs.
- (f) *Other examinations.* The Department may approve the use of written examinations other than the Pennsylvania odor management examination, if the written examinations meet the requirements in subsection (e).
- (g) *Provisional certification.* Upon the successful completion of the requirements in subsections (d) and (e), the applicant for certification as a commercial or public odor

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, odor management plans for the purpose of satisfying the requirements of this section regarding final certification. Provisional certification is valid for 2 years ending on the last day of the month from the date of issuance.

(h) *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 odor management specialist.* To attain final certification, a provisionally certified commercial odor management specialist shall develop two odor management plans which meet the requirements of section 509 of the act (relating to odor management plans). One of the required odor management plans may be developed based on a scenario developed or approved by the Department. Odor management plans developed by the applicant shall be submitted to the Department or its designee for approval.

(2) *Public odor management specialist.* To attain final certification, a provisionally certified public odor management specialist shall successfully review one odor management plan and develop one odor management plan which meets the requirements of section 509 of the act. The developed odor management plan may be based on a scenario developed or approved by the Department. Odor management plan reviews completed and odor management plans developed by the applicant shall be submitted to the Department or its designee for approval.

(i) *Public odor management specialist to commercial odor management specialist.* A certified public odor management specialist may obtain certification as a commercial odor management specialist. To attain this certification, a certified public odor management review specialist shall develop one additional odor management plan in accordance with section 509 of the act. The certified public odor management specialist seeking this certification shall submit the odor management plan to the Department or its designee for review and approval.

(j) *Commercial odor management specialist to public odor management specialist.* A certified commercial odor management specialist who wishes to obtain certification as a public odor management specialist shall complete an odor management plan review course covering proper odor management plan review procedures and shall successfully review one odor management plan in accordance with section 509 of the act. The applicant seeking to attain this certification shall submit the odor management plan review to the Department or its designee for review and approval.

(k) *Nutrient management specialist to odor management specialist.* A person certified and in good standing as a commercial nutrient management specialist or a public nutrient management specialist under the Department's nutrient management certification regulations (7 Pa. Code § 130b.1 *et seq.*), may obtain certification as a commercial or public odor management specialist upon meeting the requirements of this chapter for the level of certification sought.

§ 130(f).12. Final certification.

(a) *Application for final certification.* Upon completion of all the Provisional Certification requirements of this chapter, a provisionally certified commercial odor management specialist or public odor management specialist may submit an application to the Department for final certification. The appropriate certification fee, as set forth in § 130(f).3(a) (relating to fees) 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 odor management specialist upon fulfilling the applicable requirements established under § 130(f).11 (relating to determination of competence). An application for final certification may be obtained from the Department.

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

(d) *Time period final certification is valid.* Final 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 certification is issued during the last 2 months of the initial certificate year.

INDIVIDUAL ODOR MANAGEMENT SPECIALISTS

§ 130(f).21. Determination of competence.

(a) Determination of competence for an individual odor management specialist shall be based on the completion of required training which includes an orientation training course and a competency evaluation developed or approved by the Department.

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

(c) The competency evaluation will be administered by the Department or its designee. The Department or its designee will administer the competency evaluation in association with the orientation training course on an as needed basis, which will be determined by the number of requests for the training. At a minimum, the successful completion of the competency evaluation will demonstrate an examinee's technical knowledge relating to odor management planning and odor management plan development in the following areas:

- (1) Application of the Odor Site Index
- (2) Odor generation and transmission principles
- (3) Environmental and economic impacts associated with odor management.
- (4) Land use issues related to odor impacts and management.
- (5) Odor management plan components & content
- (6) Technology, application and implementation of Odor BMPs
- (7) Odor management regulatory requirements of agricultural operations

(8) Record keeping requirements

(9) Other applicable laws and regulations.

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

(e) Individual odor management specialists are exempt from the odor management plan preparation requirements.

§ 130(f).22. Final certification.

(a) A person is eligible to apply for final certification as an individual odor management specialist upon fulfilling the requirements under § 130(f).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 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 120-calendar days, that person shall again satisfy the competency requirements as provided in § 130(f).21.

(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 is issued during the last 2 months of the initial certificate year.

RECERTIFICATION

§ 130(f).31. Recertification.

(a) At intervals of 3 years, final certified commercial, public or individual odor management specialists shall provide written documentation of having received continuing education and training in Department-approved training courses in odor management planning and odor management plan development. Training must address the specific areas in § 130(f).11 (relating to determination of competence) for commercial and public odor management specialists and § 130 (f).21 (relating to determination of competence) for individual odor management 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 odor management specialists are required to obtain 6 credits during the recertification interval. Individual odor management specialists are required to obtain 3 credits during the recertification interval. The Department may, if deemed necessary, require specific training for certified odor management specialists, in addition to the required training in §§ 130(f).11 and 130(f).21. The Department will provide written notification to the certified odor management specialists of specifically required 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 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 list 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 § 130(f).11(d) and (e) and is conducted or sponsored by an educational institution, an association, a business, a governmental agency or other qualified source. Pre-approval 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 include the name of each person attending and their certification number.

(h) If an odor management specialist allows his final certification to expire and does not obtain recertification 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 an odor 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, then his final certification shall be revoked and that person shall again satisfy the requirements of § 130(f).11 (relating to determination of competence) and § 130(f).12 (relating to final certification) for commercial and public specialists, or § 130(f).21 (relating to determination of competence) and § 130(f).22 (relating to final certification) for individual specialists, whichever is applicable.

DENIAL, SUSPENSION AND REVOCATION OF CERTIFICATES

§ 130(f).41 Denial, suspension and revocation of certificates.

(a) The Department may, after notice, including a statement of the reason therefore, deny, suspend or revoke a commercial, public or individual odor management specialist certification for any of the following:

- (1) A violation of the act or this chapter.
- (2) Failure to obtain the required recertification credits.
- (3) Inconsistency or demonstration of a lack of knowledge of odor management plan writing and review skills.
- (4) Three or more occurrences within a 3-year period of delay or non-communication with a landowner or review agency during plan development or review.
- (5) Falsifying information.
- (6) Misrepresentation associated with the Odor Management Act or its attendant regulations.
- (7) A violation of program policy established by the Department, its designee or the State Conservation Commission.

(b) An applicant or odor management specialist may request a hearing, in writing, within 15 days of receipt of a notice of 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.

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

October 15, 2007

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

RE: NOTICE OF PROPOSED REGULATION
Department of Agriculture
Bureau of Plant Industry
7 Pa. Code Chapter 130f.
Odor Management Certification Program
I.D. No. 2-155

Dear Sir or Madam:

Please find enclosed a copy of the above-referenced notice of proposed rulemaking (Preamble and Annex "A"), together with a copy of the appropriate Regulatory Analysis Form. This material was delivered to the Legislative Reference Bureau on this date, and the notice of proposed rulemaking will be published in the **October 27, 2007** edition of the *Pennsylvania Bulletin*. The public comment period with respect to this notice of proposed rulemaking will close on **November 26, 2007**.

The enclosed material is submitted to you in accordance with the requirements of § 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)). Section 5(d) of the Regulatory Review Act (71 P.S. § 745.5(d)) provides that the standing committees may at any time prior to the submittal of the regulation in final form, convey to the Department of Agriculture and the Independent Regulatory Review Commission their comments, recommendations and objections to the proposed regulation and a copy of any staff reports deemed pertinent.

The Department of Agriculture will provide you with any assistance you require to facilitate a thorough review of this proposed regulation.

Sincerely,

David C. Kennedy (LMS)
David C. Kennedy
Assistant Counsel

Enclosures

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

I.D. NUMBER: 2-155
 SUBJECT: ODOR MANAGEMENT CERTIFICATION 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

RECEIVED
 2007 OCT 15 PM 2:55
 INDEPENDENT REGULATORY
 REVIEW COMMISSION

FILING OF REGULATION

DATE	SIGNATURE		DESIGNATION
10-15-07	<u>Maryem Jones</u>	HANNA	HOUSE COMMITTEE ON AGRICULTURE & RURAL AFFAIRS
10-15-07	<u>Cindy Zim</u>	HERSHEY	MAJORITY CHAIRMAN <u>HANNA</u>
10-15-07	<u>R. Brueaker</u>	BRUEAKER	SENATE COMMITTEE ON AGRICULTURE & RURAL AFFAIRS
10-15-07	<u>Judy Metz Cagle</u>	O'PAKE	MAJORITY CHAIRMAN <u>BRUEAKER</u>
10-15-07	<u>Kathy Cooper</u>	IRRC	INDEPENDENT REGULATORY REVIEW COMMISSION
			ATTORNEY GENERAL (for Final Omitted only)
10-15-07	<u>Lee Brown</u>	IRB	LEGISLATIVE REFERENCE BUREAU (for Proposed only)

October 10, 2007