

# RULES AND REGULATIONS

## Title 7—AGRICULTURE

### DEPARTMENT OF AGRICULTURE

[7 PA. CODE CH. 130b]

#### Nutrient Management Certification Program

The Department of Agriculture (Department) under the specific authority conferred by section 7(a) of the Nutrient Management Act (act) (3 P. S. § 1707(a)) adopts Chapter 130b (relating to nutrient management certification program).

*Compliance with Executive Order 1996-1, "Regulatory Review and Promulgation"*

The Department reviewed this order and considered its purpose and likely impact in accordance with Executive Order 1996-1, "Regulatory Review and Promulgation." This order creates the regulatory scheme for the nutrient management certification program as required by the act. This order also addresses a compelling public interest and is otherwise in compliance with Executive Order 1996-1.

#### *Notice and Comments*

Notice of proposed rulemaking was published at 25 Pa.B. 4365 (October 14, 1995). These regulations are being adopted with changes to the proposed rulemaking.

The Department received comments from 17 individual commentators from the public, including comments from Representative Raymond Bunt, Jr., Chairperson of the House Committee on Agriculture and Rural Affairs and from Representative Sheila Miller of the same committee. In addition, the Department received comments from the Independent Regulatory Review Commission (IRRC).

The various comments will be addressed on a section by section basis. The Department notes that many of the commentators commented on the same sections of the proposed regulations. Those comments will be consolidated for the sake of convenience.

#### *Subchapter A. General Provisions*

##### *Section 130b.2. Definitions.*

IRRC questioned the need for the Department's definition of "competency" and "recertification training" and recommended changes to these definitions. The Department has incorporated IRRC's suggested changes and has modified those definitions accordingly. IRRC also suggested and the Department agreed to incorporate six additional definitions which have been taken verbatim from the act.

##### *Section 130b.3. Fees.*

IRRC, Representative Bunt and seven commentators questioned the Department's rationale for the difference in fees for commercial nutrient management specialists and public nutrient management specialists. IRRC also questioned the Department's examination fee structure specifically questioning why individual nutrient management specialists would not have to pay an examination fee, in light of the Department's administrative costs.

The Department, in concurrence with the Nutrient Management Advisory Board (Advisory Board), adopted the proposed fee structure for the various nutrient management certification categories by directly comparing surrounding states' fees. The Department also used a similar fee structure implemented by the Department

within its pesticide certification program (upon which the nutrient management specialists certification program was modeled) and found that the fees were reasonable. More importantly, however, the Department believes that since the three certification categories have very different duties and responsibilities, it is appropriate to have fees which reflect those duties and responsibilities within the certification program.

The Department, the Advisory Board and other agricultural representatives strongly support the notion of voluntary participation by individual nutrient management specialists (who are typically farmers) as a necessary component for the success of the certification program within this Commonwealth. Clearly, without individual specialists' full participation in the certification program, the success of the program would be in serious jeopardy. The Department has been informed by numerous agricultural representatives and organizations that if it were to raise the certification fee and charge an examination fee for individual specialists as suggested, significantly fewer individual specialists will participate in this Commonwealth-wide program. Thus, the fees for individual specialists must be kept minimal so as not to deter participation by individual specialists. Additionally, the Department believes the existing fee structure will provide the necessary funds to cover the administrative costs associated with the certification program.

##### *Section 130b.11(a). Determination of competence.*

Several commentators, including IRRC, Representative Bunt and Representative Miller questioned the appropriateness of the different competency requirements contained in the proposed regulations regarding commercial and public nutrient management specialists. Several members of the Advisory Board also raised the issue regarding the determination of competency between commercial and public specialists. The Advisory Board opined that anyone who prepared a nutrient management plan (plan) for others would have to demonstrate the very same skills and competence in plan preparation, regardless of their respective category of certification. Additionally, several commentators argued that every time a public nutrient management specialist prepared a plan, it would significantly compete with the commercial specialist's business opportunities. Therefore, the recommendation to the Department was to prevent public specialists from preparing plans.

However, commentators in support of public nutrient management specialists preparing plans argued that in order for farmers to have plans prepared by public nutrient management specialists, these specialists shall have to demonstrate their ability to prepare plans, not just to review plans. Accordingly, the Department was faced with two diametrically opposed sides with respect to the preparation of plans by public specialists. To develop a compromise position on this issue, the Department, through the Advisory Board, decided to address the issue by:

- 1) Revising the definition of a public specialist to only authorize these specialists to review plans, not develop them. If a public nutrient management specialist desires to prepare plans once he has been fully certified, he shall become certified as a commercial specialist, thereby requiring the public specialist to ultimately satisfy the same program requirements as a commercial specialist.

2) Revising § 130b.11(a) to assure that public specialists demonstrate their ability to understand the complexity of plan preparation by requiring them to prepare one plan and review two plans during the provisional certification period. This modification would require a public specialist who wants to become a commercial specialist to prepare two additional plans and pay the commercial certification fee.

The Department made similar modifications to § 130b.11(f) in order to maintain consistency with § 130b.11(a).

*Section 130b.11(b). Precertification training.*

A commentator from the United States Department of Agriculture (USDA), Natural Resources Conservation Service (NRCS) expressed concern with the lack of information regarding the length of the minimum required precertification courses. Under the act, the Department is charged with the responsibility of developing the educational requirements and examinations it deems appropriate. Precertification training is needed to inform specialists about the act and how its provisions pertain to them as nutrient management planners. The precertification training is being developed with the assistance from the Interagency Education Committee. While the exact length of each training course has not yet been determined, the Department is making every effort to keep the length of training courses to a minimum to avoid the imposition of excessive costs to the specialists.

Furthermore, the Department believes that the determination of the length of courses offered for precertification, whether 1 day or 2 days, is strictly an internal administrative function which falls within the sound discretion of the Department. Clearly, if the Department were to implement the suggested change and add the length of courses to the regulations at this time, any subsequent modification would require formal rule-making. Therefore, the Department is not inclined to adopt the suggested change.

It should also be noted that the NRCS has representation on the Advisory Board and the Interagency Education Committee. The Department will consult with these groups on any decisions regarding the content of training courses and their length.

*Section 130b.11(b)(6). Precertification requirements.*

This subsection was modified to maintain uniformity with the change the Department has made to § 130b.11(a) regarding the determination of competency of public nutrient management specialists.

*Section 130b.11(c)(5) Written examination.*

Representative Miller suggested the Department add the term "storm" before each reference to water management. The Department has agreed to the suggestion and implemented the changes accordingly.

IRRC suggested the Department adopt a numeric grade for passing scores in the regulations so that there is no confusion as to successful completion. The examination is presently being developed with the aid of a professional educational consultant who has assisted Maryland, Virginia and this Commonwealth (Chesapeake Bay Tri-State Group) with the creation of testing materials and analysis. Among other matters, this consultant shall make recommendations regarding weighting competency areas, psychometric review, methodologies for selection of test questions (that is, a pool of 800 questions from the Chesapeake Bay Tri-State Group), passing scores and test performance evaluation. The Department has been ad-

vised by the consultant that since the standard for passing scores is dependent upon the validity of the test questions used for any particular test, it would be inappropriate to adopt a numeric grade at this time. The Department therefore is not inclined to adopt the suggested change.

IRRC also suggested that the regulations indicate how often the examination will be offered annually. The Department agrees with the suggested change, but to maintain some necessary administrative flexibility, the Department will modify this section to indicate that the examination will be offered at least twice per year. This would give the Department the appropriate flexibility to administer the examination more frequently depending upon the need and the location.

Several commentators, including IRRC expressed concern that the proposed precertification training topics be consistent with the ones listed under the competency categories for the examination. The Department believes a brief historical explanation regarding precertification training topics may be beneficial. Historically, the competency areas for examinations have been taken verbatim from the Chesapeake Bay Tri-State Agreement which offers reciprocity for the examination component of the certification program requirements. The reciprocity agreement was called for in Directive No. 94-2 of the Chesapeake Bay Executive Council, which was executed by the former Governors of the Chesapeake Bay Tri-State Group. The content of the precertification training has been developed by the Interagency Education Committee, which is made up of individuals from NRCS, Department of Environmental Protection (DEP), the Department of Agriculture, Penn State Extension, Penn State Agronomics Department, Conservation Districts and Vocational-Agriculture Education. Unlike the examination competency categories, which will generally evaluate the specialist's technical knowledge of nutrient management issues, precertification training will focus on the practices and laws specific to nutrient management regulations within this Commonwealth.

IRRC also was concerned that the written examination for public and commercial nutrient management specialists is different than the examination for the individual specialist. IRRC questioned how the Department would be able to assure that individual nutrient management specialists will be equally qualified to develop a nutrient management plan. The Department believes since individual specialists would only be preparing plans for their own operation, an examination which focuses on the application of nutrient management principles would be more appropriate as individual specialists will not be required to submit three plans to obtain final certification. The Department will use the criteria and analysis developed by the educational consultant, as described in this Preamble, regarding the evaluation of the examination questions to ensure that individual nutrient management specialists will have the requisite knowledge for their respective certification category. Moreover, the Department anticipates the conservation districts will be directed to assist individual specialists with some technical aspects of the individual's plan.

*Section 130b.11(e). Three-year provisional certification.*

IRRC and Representative Bunt questioned the Department's rationale for setting 3 years as the length for provisional certification. First, it must be noted this period is a one-time period for specialists. The Department wants to allow ample time for specialists to complete their certification requirements, taking into account

it may take some specialists the full 3 years to complete all of the program requirements. Also, the 3-year period is consistent with and tracks a similar time period in the pesticide certification program with which the regulated community is familiar. Therefore, the Department is not inclined to modify the 3-year period as suggested.

*Section 130b.11(f). Provisional certification.*

As addressed previously (see § 130b.11(a) of this Preamble) commentators have objected to the fact that public nutrient management specialists can receive certification by merely reviewing three plans without having to actually prepare or develop any plan. Other commentators believed the Department should prevent public specialists from developing any plans for others altogether, since this would in essence compete with the commercial specialist's business opportunities. IRRC did not agree with those commentators who believed public specialists should only be able to review plans and be prohibited from developing nutrient management plans. The Department, in an effort to compromise between the various diametrically opposed parties, has agreed to adopt in final rulemaking the requirement that public nutrient management specialists prepare one plan and review two plans during the provisional certification period. The requirement will demonstrate their ability to understand the complexity of plan preparation.

However, IRRC voiced its concern with the Department's compromise arguing that there was no legitimate policy reason for prohibiting public nutrient management specialists from developing (preparing) nutrient management plans. There appears to be some confusion with regard to this issue. To obtain final certification, a public nutrient management specialist must prepare one plan and review two plans. Assuming the specialist complies with this requirement, he will become fully certified as a public specialist. Nutrient management specialists may develop plans as long as they have commercial certification, regardless of whether they are publicly or commercially employed. In its final-form regulations, the Department revised the definition of a "public" specialist to be a person who "reviews" plans for approval. A commercial specialist "develops" plans for another, whether employed in the public or private sector. Thus, the Department believes this will eliminate the competitive advantage of public specialists preparing plans without having to complete the same requirements as the commercial specialist and does not prohibit someone who is publicly employed from preparing plans, as long as they have satisfied the requirements for commercial certification.

The DEP and IRRC questioned the appropriateness of plans that are deemed approved under subsection (f). These commentators believed the regulations would be less ambiguous and the program would be more beneficial if the final certification of commercial and public specialists is obtained through the development or review of plans that have been actually approved, rather than deemed. The Department agrees and has adopted the suggested change accordingly.

*Section 130b.12. Eligibility.*

A commentator suggested clarification to the language in § 130b.12 regarding the time frame within which an applicant for certification must file the application with the Department. The Department agrees with the suggestion and will modify this provision to require that an application for certification shall be filed with the Department within 180-calendar days of notification by the Department of third plan approval. Additionally, the

Department as a matter of policy will adopt a procedure for determining when the third plan has been approved. For purposes of uniformity, the Department is modifying the same language contained in § 130b.22(b) (relating to eligibility of individual nutrient management specialists).

IRRC believed the wording proposed by the Department that it may authorize an extension when the certificate is issued during the last 2 months of the initial year is vague. IRRC believed the Department should make the language more affirmative (that is, "it will") in subsection (c) relating to certification extension for commercial and public specialists and § 130b.22(c) relating to certification extension for individual specialists. The Department concurs with IRRC and has modified those provisions accordingly.

*Section 130b.31. Recertification.*

Representative Bunt requested the Department explain its rationale and legal authority for recertification provisions and continuing education requirements. Specifically, section 7 of the act (3 P. S. § 1707) states the Department will develop written testing procedures, educational requirements and examinations as it deems appropriate to carryout its responsibilities under this section. The Department's responsibility is to create the certification program including the fees and terms and conditions of certification as it deems appropriate. The Department firmly believes, and IRRC agrees, that the Department has been granted broad statutory authority for the establishment of the certification program regulations. Nutrient management is a field which is still developing in technology and research. Specialists will need to be exposed to this new information to better serve their respective clients and the environment. Thus it would necessarily follow that once persons have been certified as nutrient management specialists, they would have to receive continuing education and become recertified.

IRRC suggested for consistency the Department should properly reference the topic areas to be covered under the provisions for determination of competency as well as for recertification. The Department agrees and has modified § 130b.31(a) accordingly.

IRRC and Representative Bunt believed the language in § 130b.31(b) is unclear regarding the Department's ability to require specific training if necessary. IRRC also questioned the need for specific training as deemed necessary by the Department. The State Conservation Commission's (Commission) regulations are not in place to date and the nutrient management precertification training program consists in large part of the components of the finalized planning regulations of the Commission. Therefore, the Department must have some flexibility in requiring, if needed, additional training if the Commission's final regulations substantially differ regarding when the nutrient management specialist received the precertification training. Furthermore, if the Department, after implementation of the certification program identifies some training deficiencies within the certification population, it is the Department's responsibility to address those deficiencies in a timely manner by way of providing specific training. Clearly the Department will provide adequate notice to the appropriate persons.

IRRC questioned the length of time specified in § 130b.31(d) (15 days) as being too short and suggested a 3-month period for course approval or disapproval. The Department believes the requirement of having all course materials, logistical arrangements and other administrative factors available for the Department's review 3

months prior to the course date is far too lengthy and unworkable for course sponsors. The Department is comfortable with a 15-day deadline for course materials, since the Department already implements a 15-day deadline in its pesticide certification regulations in § 128.45 (relating to recertification). The Department however, clarified the language to provide that a request shall be submitted to the Department no less than 15 working days prior to the training date.

IRRC commented on § 130b.31(f) relating to falsification of required information by a course sponsor. IRRC questioned whether the Department intended to disallow credits earned by a person who had taken a course from a sponsor who provided false information. The Department does not intend to disallow credits to persons who have taken a course from a sponsor who provides false information to the Department. This is the reason the Department requires prior approval of courses. It must be noted that within the pesticide certification program, which has been fully implemented since 1972, there has never been a case in which a course sponsor provided false information to the Department or when credits were disallowed. Finally, the Department disagrees with IRRC's suggestion the Department include in the final regulations a provision for notification to course participants who have taken a course from a sponsor who has provided false information. The Department is not inclined to adopt this change since it believes this type of notification provision is best dealt with as an internal administrative policy matter, if needed.

IRRC questioned the Department's determination that 10 credit hours of continuing education is appropriate for recertification of commercial and public nutrient management specialists and 6 credit hours for individual specialists. The Department does not believe that the number of hours required for continuing education is too demanding in light of the 3-year time frame. Additionally, the Department was advised by the educational professionals that the number of credits for continuing education is appropriate to keep specialists updated with the technological advances within the nutrient management field. Furthermore, the number of credit hours is in keeping with the continuing education credits in surrounding states and other similar programs within this Commonwealth. Accordingly, the Department is not inclined to adopt the suggested change.

*Section 130b.51. Receipt of notice of denial, suspension or revocation.*

The USDA and IRRC suggested the Department add the words "or its resulting regulations" between the the words "act" and "or." The Department agrees and has modified the provision accordingly.

For purposes of requesting a hearing, IRRC questioned how the Department would know the date a specialist receives notice from the Department, and suggested changing the language to "within 20 days of mailing by the Department." The Department as a matter of administrative course provides notices by certified mail with return receipt requested. Thus, the Department is not inclined to adopt the suggested change.

#### *Miscellaneous Comments*

IRRC suggested the Department provide a section for interim certification which is governed by section 7(b) of the act. Interim certification is a temporary designation by the Department issued to persons who meet the qualifications set forth in section 7(b) of the act. IRRC believed that there must be a separate regulatory provi-

sion for this classification. The Department does not agree with IRRC's interpretation of the need for regulations for interim certification status since the General Assembly clearly designated the interim certification program as temporary. The act specifically states that "until the Department of Agriculture develops and implements a certification program, persons having the following qualifications shall, upon request, receive interim certification...". The Department believes that once the certification program regulations have been approved and implemented there is no need for the interim certification status. So, in an effort to explain clearly this provision, the Department has agreed to add a definition of interim certification in § 130b.2 and a provision in § 130b.4 (relating to interim certification).

Two commentators suggested that the Department establish a certification category for nutrient management educator/advisor for agency personnel (NRCS) or agricultural extension agents who would be educating the certified nutrient management specialists. The commentators reasoned that for purposes of credibility the educator should also be certified in his special category. The Department reviewed section 7 of the act and determined that there is no statutory authority for the creation and promulgation of a new certification category. Section 7 of the act specifically limits the establishment of certification categories to three: "individual, commercial and public" certification categories. Thus, the Department is not inclined to adopt the suggested change.

#### *Fiscal Impact*

##### *Commonwealth*

The regulations will generate revenue from commercial, public and individual certification fees and examination fees. Under section 7 of the act, those fees will be placed into Department accounts that will be used solely to administer the program. Other administrative program expenses and costs, such as personnel salaries, will be born by the Department. The regulations otherwise do not impose any costs on the Commonwealth.

##### *Political Subdivisions*

The regulations will not have any direct fiscal impact on political subdivisions.

##### *Private Sector*

The regulations will have minimal impact on the private sector. Minimal impact will arise from certification fees of \$100/3 years for commercial nutrient management specialists and \$10/3 years for public and individual specialists. An examination fee of \$50 will be charged commercial and public specialists. Individual specialists will be given the examination free of charge.

##### *General Public*

The regulations will not have any direct fiscal impact on the general public.

##### *Paperwork Requirements*

Increased paperwork requirements will be the responsibility of the Department through tracking of certified specialists and recordkeeping relating to continuing education credits.

##### *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the Department submitted a copy of the notice of proposed rulemaking published at 25 Pa.B. 4365 (October 14, 1995) to IRRC and to the Chairpersons of the House Agriculture and Rural Affairs Committee and

the Senate Agriculture and Rural Affairs Committee. In compliance with section 5(b.1) of the Regulatory Review Act, the Department provided IRRC and the Committees with copies of the comments received.

In preparing these final-form regulations, the Department has considered the comments received from IRRC, the Committees and the public. These final-form regulations were deemed approved by the Committees on August 22, 1996, and were approved by IRRC on August 22, 1996, in accordance with section 5(c) of the Regulatory Review Act.

*Contact Person*

Further information is available from Lyle Forer, Director, Bureau of Plant Industry, Department of Agriculture, 2301 North Cameron Street, Harrisburg, PA 1711-9408, telephone (717) 772-5203.

*Findings*

The Department finds that:

(1) Public notice of intention to adopt these regulations encompassed by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law and that the comments received were considered.

(3) The modifications that were made to these regulations in response to comments received do not enlarge the purpose of the proposed regulations published at 25 Pa.B. 4365.

(4) The regulations meet the requirements of Executive Order 1996-1, "Regulatory Review and Promulgation."

(5) The adoption of the regulations in the manner provided by this order is necessary and appropriate for the administration of the authorizing statute.

*Order*

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

(a) The regulations of the Department, 7 Pa. Code Chapter 130b, are amended by adding §§ 130b.1—130b.4, 130b.11, 130b.12, 130b.21, 130b.22, 130b.31, 130b.41, 130b.42 and 130b.51 to read as set forth in Annex A.

(b) The Secretary of Agriculture shall submit this order and Annex A to the Office of General Counsel and to the Office of Attorney General for approval as required by law.

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

(d) This order shall be effective upon publication in the *Pennsylvania Bulletin*.

CHARLES C. BROSIUS,  
*Secretary*

*(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 26 Pa.B. 4371 (September 7, 1996).)*

**Fiscal Note:** 2-93. (1) General Fund; (2) Implementing Year 1994-95 is \$116,000; (3) 1st Succeeding Year 1995-96 is \$116,000; 2nd Succeeding Year 1996-97 is \$116,000; 3rd Succeeding Year 1997-98 is \$116,000; 4th Succeeding Year 1998-99 is \$116,000; 5th Succeeding Year 1999-00 is \$116,000; (4) FY \$New Program; FY \$New Program; FY \$New program; (7) General Government Operations; (8)

recommends adoption. The fees established for the Nutrient Management Program would generate sufficient revenue to offset costs.

**Annex A**

**TITLE 7. AGRICULTURE**

**PART V. BUREAU OF PLANT INDUSTRY**

**CHAPTER 130b. NUTRIENT MANAGEMENT CERTIFICATION**

**Subchap.**

**A. GENERAL PROVISIONS**

**B. CERTIFICATION**

**Subchapter A. GENERAL PROVISIONS**

**Sec.**

- 130b.1. Scope.
- 130b.2. Definitions.
- 130b.3. Fees.
- 130b.4. Interim certification.

**§ 130b.1. Scope.**

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

**§ 130b.2. Definitions.**

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

*Act*—The Nutrient Management Act (3 P. S. §§ 1701—1718).

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

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

- (i) Conservation tillage.
- (ii) Crop rotation.
- (iii) Soil testing.
- (iv) Manure testing.
- (v) Diversions.
- (vi) Manure storage facilities.
- (vii) Stormwater management practices.
- (viii) Nutrient application.

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

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

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

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

*Conservation district*—A county conservation district established under the conservation district law.

*Department*—The Department of Agriculture of the Commonwealth.

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

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

*Nutrient management plan*—A written site-specific plan which incorporates BMPs to manage the use of plant nutrients for crop production and water quality protection consistent with the criteria in sections 4 and 6 of the act (3 P. S. §§ 1704 and 1706).

*Nutrient management specialist*—

(i) *Commercial*—A person who develops nutrient management plans for another whether employed in the private or public sector.

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

(iii) *Public*—A State or Federal employe, or other public employe who reviews nutrient management plans, or recommends approval to a conservation district or the Commission, or both.

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

*Provisional certification*—An applicant for commercial or public nutrient management specialist has successfully completed precertification training and has passed the written examination, but has yet to prepare, or review three nutrient management plans.

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

#### § 130b.3. Fees.

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

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

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

(d) *Examination fee*. Examination fees are nonrefundable. The following examination fees, with payment made in advance, will be charged:

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

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

#### § 130b.4. Interim certification.

A person who has interim certification as of September 28, 1996, will be provided written notice, within 30 days, by first class mail, that the Department has completed development of finalized regulations and is beginning to implement the official nutrient management certification program. This notice shall also inform recipients that

upon receipt, their interim status shall cease and is no longer valid. An application and instructions to apply for certification will accompany the notification.

### Subchapter B. CERTIFICATION

#### COMMERCIAL AND PUBLIC NUTRIENT MANAGEMENT SPECIALISTS

Sec.

130b.11. Determination of competence.

130b.12. Eligibility.

#### INDIVIDUAL NUTRIENT MANAGEMENT SPECIALISTS

130b.21. Determination of competence.

130b.22. Eligibility.

#### RECERTIFICATION

130b.31. Recertification.

#### RECIPROCITY

130b.41. General.

130b.42. Procedure.

#### DENIAL, SUSPENSION AND REVOCATION OF CERTIFICATES

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

#### COMMERCIAL AND PUBLIC NUTRIENT MANAGEMENT SPECIALISTS

#### § 130b.11. Determination of competence.

(a) Determination of competence for commercial nutrient management specialists shall be based on a precertification training course, a written examination approved by the Department and the development of three nutrient management plans. Determination of competence for public nutrient management specialists shall be based on a precertification training course, a written examination approved by the Department and the development of one plan and review of two plans. All prepared plans and plan reviews completed under this subsection shall be determined to be adequate by the Commission or its designee.

(b) The precertification training course shall, at a minimum, consist of the following areas of nutrient management planning:

(1) Nutrient application including:

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

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

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

(iv) Application records.

(2) Manure management.

(3) Excess manure alternatives.

(4) Stormwater runoff control.

(5) Applicable laws and regulations.

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

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

(1) Competency in soil science and soil fertility.

(2) Competency in nutrient application and management.

- (3) Competency in crop production.
  - (4) Competency in soil and manure testing and interpretation.
  - (5) Understanding in determining needed BMPs related to proper utilization of nutrients and stormwater management.
  - (6) Competency in fertilizer materials and their characteristics.
  - (7) Understanding of environmental and economic impacts associated with nutrient management.
  - (8) Understanding of the act and other applicable laws and regulations.
- (d) The Department may approve the use of written examinations other than the Pennsylvania nutrient management examination, if the written examinations meet the requirements in subsection (c).

(e) Upon the successful completion of the requirements in subsections (b) and (c), the applicant for certification as a commercial or public nutrient management specialist will be issued provisional certification. The holder of provisional certification is qualified to develop or review nutrient management plans as provided in subsection (f). Provisional certification is valid for 3 years from the date of issuance.

(f) Once provisional certification has been granted, a commercial nutrient management specialist shall develop three nutrient management plans which meet the requirements of section 6(e) of the act (3 P. S. § 1706(e)). A public nutrient management specialist shall develop one plan and review two nutrient management plans in accordance with section 6(e) of the act. Commercial specialists shall submit, to the Department, evidence that the Commission or its designee has actually reviewed and approved the three plans. Public specialists shall submit to the Department, evidence that the Commission or its designee has actually reviewed and approved one prepared plan and determined the public specialist's review of two plans to be adequate.

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

(h) A currently certified public nutrient management specialist who wishes to obtain a commercial nutrient management specialist certification shall develop two nutrient management plans in accordance with section 6(e) of the act. The public nutrient management specialist shall submit to the Department, evidence that the Commission or its designee has actually reviewed and approved the plans.

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

**§ 130b.12. Eligibility.**

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

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

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

**INDIVIDUAL NUTRIENT MANAGEMENT SPECIALISTS**

**§ 130b.21. Determination of competence.**

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

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

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

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

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

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

**§ 130b.22. Eligibility.**

(a) A person is eligible to apply for certification as an individual nutrient management specialist upon fulfilling the requirements under § 130b.21 (relating to determina-

tion of competence). An application for certification may be obtained from the Department. The appropriate fee shall accompany the specialist's application for certification.

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

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

### RECERTIFICATION

#### § 130b.31. Recertification.

(a) At intervals of 3 years, provisionally certified or certified commercial, public or individual nutrient management specialists shall provide written documentation of having received continuing education and training in Department-approved training courses in nutrient management planning and plan development. Training shall address the specific areas in § 130b.11(b) and (c) (relating to determination of competence) for commercial and public specialists and § 130b.21(b) and (c) (relating to determination of competence) for individual specialists.

(b) Recertification credits approved by the Department will be given on the basis of attendance at approved training sessions, as provided in subsection (a). The Department will evaluate the training and assign the appropriate credits. Commercial and public specialists are required to obtain ten credits and individual specialists are required to obtain six credits during the recertification interval. The Department may, if deemed necessary, require specific training for certified nutrient management specialists, in addition to the required training in §§ 131.11 and 131.21. The Department will provide written notification to the certified nutrient management specialists of required specific training.

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

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

- (1) The name and phone number of the contact person who is coordinating the training.
- (2) The specific location of the training.
- (3) The date of the training.
- (4) A listing of the speakers, subject matter and time allotted to each subject.
- (5) A statement whether the training is open to the public and if there is a charge to attend.

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

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

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

(h) If the certification of a nutrient management specialist is allowed to expire and recertification credits are due, recertification of that specialist shall first require the completion of delinquent recertification credits as described in subsection (b).

(i) If a nutrient management specialist fails to complete delinquent recertification credits within 1 year from the certification expiration date, that person shall again satisfy the requirements of § 130b.11 and § 130b.12 (relating to eligibility) for commercial and public specialists, and § 130b.21 and § 130b.22 (relating to eligibility) for individual specialist.

### RECIPROCITY

#### § 130b.41. General.

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

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

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

(b) Upon the successful completion of the requirements in subsection (a), the applicant for certification as a commercial or public nutrient management specialist will be issued provisional certification and shall complete the requirements in § 130b.11(f). Provisional certification is valid for 3 years from the date of issuance.

(c) In addition to the requirements in subsection (a), if the applicant is a commercial nutrient management specialist that person shall submit written evidence to the Department, that the Commission or its designee has reviewed and approved three plans as provided in section 6(e) of the act (3 P. S. § 1706(e)). If the applicant is a public nutrient management specialist, that person shall submit to the Department, evidence that the Commission or its designee has reviewed and approved one prepared plan and determined the public specialist's review of two plans to be adequate.

#### § 130b.42. Procedure.

A person desiring a certificate under § 130b.41(a)(1) and (2) (relating to reciprocity) shall submit to the Department a properly completed application and appropriate fee, as set forth in § 131.3 (relating to fees) along with a copy of the person's out-of-State certificate.



**DENIAL, SUSPENSION AND REVOCATION OF  
CERTIFICATES**

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

(a) The Department may, after notice, including a statement of the reasons therefore, and opportunity for a hearing, deny, suspend or revoke a commercial, public or individual nutrient management specialist's certification for a violation of the act or its resulting regulations.

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

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