

RULES AND REGULATIONS

Title 7—AGRICULTURE

DEPARTMENT OF AGRICULTURE

[7 PA. CODE CH. 138h]

Agricultural Land Conservation Assistance Grant Program

The Department of Agriculture (Department) adopts Chapter 138h (relating to agricultural land conservation assistance grant program).

Sections 7.1 and 7.3 of the act June 18, 1982 (P. L. 549, No. 159) (3 P. S. §§ 1207.1 and 1207.3) authorizes the Department to award grants to counties for designated purposes related to the conservation of agricultural land and empowers the Department to promulgate regulations necessary to support this grant program. It is under the this statutory authority that these regulations are adopted.

The act requires that the Department consult with the State Agricultural Land Preservation Board (State Board) in establishing eligibility criteria for grants and in promulgating regulations necessary to administer and enforce the act. The State Board approved the proposed version of these regulations at its July 13, 1995, meeting. In its review of the final version of these regulations, the State Board was provided a proposed response to comments, proposed revisions to Annex A and an explanation of substantive changes at its July 10, 1996, meeting. The State Board offered no changes to the draft documents, which form the core of this order.

Comments

Notice of proposed rulemaking was published at 26 Pa.B. 1555 (April 6, 1996), and provided for a 30-day public comment period.

Comments were received from the Pennsylvania Farmland Preservation Association (PFPA) and the Westmoreland County Farmland Preservation Program. The Independent Regulatory Review Commission (IRRC) also offered comments. These comments, and the Department's responses, follow.

IRRC commented that proposed § 138h.1(b) (relating to program objectives) was an unnecessary restatement of § 138h.8 (relating to review of application by State Board), and recommended § 138h.1(b) be deleted from the final regulations.

The Department accepts this comment, and has revised § 138h.1 accordingly.

The PFPA asked whether the definition of "applicant" in proposed § 138h.2 (relating to definitions) could be expanded to include organizations such as the PFPA. The PFPA made the observation that an organization such as the PFPA might be able to use grant funds to complete projects which might be of benefit to all county programs.

The Department believes it cannot expand the definition of "applicant" as the PFPA requests. Section 7.3(a) of the act (3 P. S. § 1207.3(a)) limits the State Board's authority by allowing it to award grants to counties only.

IRRC suggested several revisions to § 138h.4 (relating to uses of grant funds). In response, the Department has revised § 138h.4(c)(3) to more clearly state that the costs described in that paragraph must be directly linked to

achieving the objectives described in § 138h.4(c)(1) and (2). In addition, § 138h.4(d) has been added to clarify that grant funds may not be used for the purchase of general-use word processing and spreadsheet software.

IRRC, the Westmoreland County Farmland Preservation Program and the PFPA each expressed concern that proposed § 138h.5 (relating to eligibility criteria) might not allow the expenditure of grant funds for subsequent stages or upgrades of previously completed projects. For example, a county that had developed its own basic Geographical Information System (GIS) might not be able to obtain grant funds to add additional capabilities or layers of information necessary to its ranking of farmland being considered for agricultural conservation easement purchase.

In response, the Department has revised § 138h.5(a) to clarify that grant funds may be obtained to fund subsequent stages or upgrades of previously completed projects if the application documents that the stage or upgrade was not included in the funding plans for earlier stages of the project.

The PFPA expressed general concern that counties might compete against each other and not coordinate their efforts unless the regulations were more specific as to matters such as how much grant money would be awarded each year and how applications would be prioritized.

In response, the Department has added § 138h.5(b)(9), which requires the impact of the project on other county programs to be considered in the evaluation and ranking of grant applications.

IRRC suggested proposed § 138h.6 (relating to applications generally) be revised to establish a specific time period within which the Secretary will mail written notice to an applicant that additional documentation is necessary to complete the application.

The Department accepts this comment, and has added § 138h.6(d) to establish a 10-day period from receipt of an application within which the Secretary must mail the notice.

At IRRC's recommendation, the first sentence of § 138h.7(b) (relating to filing applications) has been reworded for greater clarity.

IRRC also suggested the term "will" replace the term "may" in § 138h.7(b) to clarify that the Department will request additional information necessary to process an application and will discontinue processing an incomplete or inaccurate application until the requested information is received.

The Department accepts this suggestion and has revised § 138h.7(b) accordingly.

The Department also implemented IRRC's recommendation that proposed §§ 138h.8 and 138h.9 (relating to review of application by State Board; and notice of disposition of application) be revised to consistently use the terms "approval" and "disapproval," rather than "acceptance" and "rejection," in describing actions to be taken with respect to an application.

After the close of the public comment period, the PFPA offered the suggestion that proposed § 138h.11(b) (relating to verification of use) be revised to clarify that unexpended grant funds are to be returned to the Department for deposit into the Agricultural Conservation Ease-

ment Purchase Fund (Fund). The Department accepts this suggestion and has revised § 138h.11(a) accordingly.

IRRC commented that proposed § 138h.11(c) should specifically provide that repayment of grant funds and interest be credited to the Fund. This provision appears in section 7.3(d) of the act.

The Department accepts this comment and has revised § 138h.11(c) accordingly.

IRRC also recommended that proposed § 138h.11(c) be revised to reference the statute that establishes the legal interest rate referenced in that subsection.

The Department has implemented this recommendation in the final regulations.

IRRC suggested that proposed §§ 138h.12(b) and 138h.13 (relating to grant cancellation; and deficits) be revised to reference the requirement of section 7.3(d) of the act that a grant recipient implement an Agricultural Conservation Easement Purchase Program.

The Department accepts this suggestion and has revised §§ 138h.12 and 138h.13 accordingly.

After the close of the public comment period, the PFPA suggested that proposed § 138h.12(b) be revised to require the establishment of a county program by a grant recipient within 2 years of the grant agreement instead of 3 years.

The Department agrees that the PFPA's recommendation is an improvement, and has made the suggested revision.

At IRRC's recommendation, the Department revised § 138h.14 (relating to records) to shorten the required record retention period for grant recipients from 7 years to 3 years.

IRRC also suggested several nonsubstantive stylistic or grammatical revisions that the Department has implemented in the final regulations. These revisions do not change the substance of the regulations, but enhance its readability.

Fiscal Impact

Commonwealth

The regulations will impose no costs and have no fiscal impact upon the Commonwealth. Although the act allows for up to \$750,000 to be awarded in grants, this grant money will originate from the Fund on a funds-available basis.

Political Subdivisions

These regulations will impose no costs and have no fiscal impact upon political subdivisions. If a county seeks grant funds for a project permitted under the act, though, it must pay at least 50% of the project's costs.

Private Sector

These regulations will impose no costs and have no fiscal impact on the private sector.

General Public

These regulations will impose no costs and have no fiscal impact upon the general public.

Paperwork Requirements

These regulations are not expected to result in an appreciable increase in paperwork. The Department will issue grant application forms to interested persons and review completed applications in consultation with the State Board. Paperwork will be minimal.

Contact Person

Further information is available by contacting the Department of Agriculture, Attention: Raymond Pickering, Bureau of Farmland Protection, 2301 North Cameron Street, Harrisburg, PA 17110-9408.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on March 27, 1996, the Department submitted a copy of the notice of proposed rulemaking published at 26 Pa.B. 1555 to IRRC and to the Chairpersons of the House and Senate Standing Committees on Agriculture and Rural Affairs for review and comment. In compliance with section 5(b.1) of the Regulatory Review Act, the Department also provided IRRC and the Committees with copies of the comments received as well as other documentation.

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 House Committee on October 7, 1996, were deemed approved by the Senate Committee on October 7, 1996, and were approved by IRRC on October 17, 1996, in accordance with section 5(c) of the Regulatory Review Act.

Findings

The Department finds that:

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

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

(3) The modifications that were made to these regulations in response to comments received do not enlarge the purpose of the proposed rulemaking published at 26 Pa.B. 1555.

(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, are amended by adding §§ 138h.1—138h.15 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 take effect 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. 5289 (November 2, 1996).)

Fiscal Note: Fiscal Note 2-100 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 7. AGRICULTURE

PART V-C. FARMLAND AND FOREST LAND

CHAPTER 138h. AGRICULTURAL LAND CONSERVATION ASSISTANCE GRANT PROGRAM

Sec.

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§ 138h.1. Grant Program objectives.

Through the awarding of grants and the placing of conditions upon how grant funds are to be spent, the Grant Program will fund projects which will increase the protection and preservation of agricultural land within this Commonwealth by encouraging the implementation and effectiveness of county programs in each eligible county. A grant will only be awarded to a county whose governing body has appointed an agricultural land preservation board, even though the county may not have a county program.

§ 138h.2. Definitions.

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

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

Applicant—An eligible county acting through and with the approval of its agricultural land preservation board.

County program—A county agricultural land preservation program for the purchase of agricultural conservation easements approved by the State Board under the act.

Department—The Department of Agriculture of the Commonwealth.

Eligible county—A county, not of the first class, whose governing body has passed a resolution forming a county agricultural land preservation board under the law and appointed members to the board by the date of application.

Grant Program—The Agricultural Land Conservation Assistance Grant Program.

Secretary—The Secretary of the Department.

State Board—The State Agricultural Land Preservation Board.

§ 138h.3. Limitations on grants.

- The maximum amount of a grant is \$10,000.
- For projects costing less than \$20,000, the maximum grant will be 50% of the project cost.

(c) A county is not eligible for more than a cumulative total of \$25,000 in grants under the Grant Program.

(d) The total amount of grant funds which may be awarded will not exceed \$750,000 of the funds deposited into the Agricultural Conservation Easement Purchase Fund under section 7.1(a) of the act of June 18, 1982 (P. L. 549, No. 159) (3 P. S. § 1207.1(a)). The amount of grant funds awarded in any particular year will be determined by the State Board, depending on the availability of the funds.

§ 138h.4. Uses of grant funds.

(a) *Conformity to application.* Grant funds awarded to an applicant shall be expended solely for specific projects described in the grant application in accordance with the project budget approved by the State Board and shall be expended within the time period specified in the grant agreement.

(b) *Pennsylvania projects.* Grant funds awarded to an applicant under the Grant Program shall be used only to fund projects within the geographic boundaries of this Commonwealth.

(c) *Allowable expenditures of grant funds.* Grant funds shall be used for one or more of the following purposes:

(1) To cover costs incurred by an applicant in creating a spatial mapping database. The database shall, at a minimum, contain county topographic data, property boundaries, soil boundaries, soil capability classes and soil productivity ratings.

(2) To cover costs incurred by an applicant to develop and implement agricultural zoning ordinances, including model ordinances for possible adoption by local government units.

(3) To cover costs incurred by an applicant to train staff, contract with consultants, and pay for computer software directly linked to achieving the purposes of paragraphs (1) and (2), or to reaching the objective of a fully approved and functioning county program.

(d) *Ineligible expenditures.* Grant funds may not be used for the purchase of general-use word processing and spreadsheet software.

§ 138h.5. Eligibility criteria.

(a) *General.* The following general criteria apply to applications for projects:

(1) The Grant Program will not accept applications for the following:

- Projects already completed.
- Stages of projects already in progress.

(iii) Stages of projects for which funding has been included in a county appropriation or where other funding has been approved.

(2) Subsequent stages or upgrades of previously completed projects for which funding has already been approved may be considered for funding if documentation is provided to the Department to demonstrate that the stage of the project or upgrade identified in the application was not included in funding plans for earlier stages of the project.

(b) *Specific.* The following specific criteria will be used to evaluate and rank applications for funding consideration:

(1) The acceptability of costs within the proposed budget.

(2) The availability of funding for the project from a source other than the Commonwealth.

(3) The extent to which the project shall impact upon the goal of preserving agricultural lands within this Commonwealth.

(4) The relevance of the project to encouraging the preservation of agricultural lands.

(5) The geographic scope of the project and the amount of agricultural land which will be affected by the project described in the application.

(6) The value to the community of the project described in the application.

(7) The innovativeness of the project.

(8) The anticipated date of full implementation of a county program.

(9) The impact the project would have on other county programs.

§ 138h.6. Applications generally.

(a) *Application required.* Applicants shall submit a written grant application to the Department through their county agricultural land preservation boards.

(b) *Obtaining an application.* Applications for grants under this chapter shall be made on forms prepared by the Department. The forms will be furnished, upon request, by the Department.

(c) *Additional documentation.* The State Board and the Secretary may require an applicant to submit additional documentation to complete or verify the application form. The additional documentation may include a letter, affidavit or other documentation, to:

(1) Verify the legitimacy of the applicant's agricultural land preservation board.

(2) Verify that grant funds will be used for one or more of the purposes in § 138h.4 (relating to uses of grant funds).

(3) Confirm the applicant has secured funds from another source for the project for which the grant is requested.

(4) Obtain from a third party which is providing matching funds to an applicant a recommendation that a grant under this chapter be awarded the applicant and verifying that its contribution of funds to the project would not be available without a grant from the Department.

(d) *Request for additional documentation.* If additional documentation is necessary, the State Board or the Secretary will mail a written request for additional documentation to the applicant within 10 days of receipt of the application.

§ 138h.7. Filing applications.

(a) *Place and time.* An application for a grant under the Grant Program shall be received by the program administrator at the Department of Agriculture, 2301 North Cameron Street, Harrisburg, Pennsylvania 17110-9408, during the specific 45-day annual application period as advertised in the *Pennsylvania Bulletin*. The advertisement will be published at least 30 days prior to the commencement of the application period.

(b) *Incomplete or inaccurate applications.* The Department will review each application and any supporting documentation that is received within the 45-day application period. If an application is found to be incomplete or

inaccurate, the Department will request additional information and will discontinue further processing of the application if the documentation is not received by the Department within the 45-day application period described in subsection (a).

§ 138h.8. Review of application by State Board.

(a) *Transmittal of application to State Board.* When the Department determines a grant application is complete and accurate, it will forward this application, together with supporting documentation submitted therewith, to the State Board for review at its next regularly scheduled meeting. Since all applications are to be submitted and completed within the same time period, all applications for funding will be transmitted to the State Board at the same time.

(b) *Factors.* The State Board will review and evaluate the application and supporting documentation and will consider the factors in § 138h.5 (relating to eligibility criteria) in deciding whether to recommend approval or disapproval of the grant request.

(c) *Decisions.* When the State Board has reviewed the grant application and supporting documentation, it will vote on whether to recommend approval or disapproval of the grant application. The State Board will vote on these projects in accordance with its bylaws. The State Board may also recommend the grant be awarded in an amount less than that requested in the grant application. In addition, the State Board may vote to recommend the imposition of restrictions or special conditions upon the issuance of a grant. If the State Board recommends approval of a particular grant application, the Secretary will execute the grant agreement if funding is available and all other conditions have been met.

§ 138h.9. Notice of disposition of application.

The Department will mail to the applicant written notice of the approval or disapproval of a grant application within 30 days of a decision. This notice will be by regular mail to the address indicated by the applicant on the grant application form.

§ 138h.10. Grant agreement.

After the State Board approves a grant application, and as a precondition to the Department's release of grant funds to a successful applicant, the Department and the applicant shall execute a written grant agreement which describes the terms and conditions subject to which the grant is made. This grant agreement shall contain and conform to the requirements of this chapter and applicable State laws. It shall also contain any special terms and conditions required by the State Board and the Secretary.

§ 138h.11. Verification of use.

(a) *Verification.* Within 3 months of the time period specified in the grant agreement, or the completion of the project, whichever is earlier, the grant recipient shall submit to the Department written receipts accounting for the project costs. If the total of the written receipts demonstrates that some portion of the grant amount was not spent, the grant recipient shall also submit payment in the full amount of this unspent sum to the Department. The repayment shall be credited to the Agricultural Conservation Easement Purchase Fund, and may be used to fund this Grant Program. The Department may also require that additional documentation be submitted by the grant recipient to document the expenditure of grant funds.

(b) *Extension of time.* The 3-month period described in subsection (a) may only be extended by the written permission of the Secretary. An extension will be for a specific period of time.

(c) *Failure to verify use.* If required receipts or documentation are not submitted to the Department as described in subsections (a) and (b), or if the grant funds or a portion thereof are unaccounted for, the Secretary may demand, in writing, the return by the grant recipient of the entire grant sum or a lesser amount, plus appropriate legal interest as prescribed in section 202 of the act of January 30, 1974 (P.L. 13, No. 6) (41 P.S. § 202). The grant recipient shall repay a sum of grant funds and interest demanded by the Department within 60 days of the mailing of the written demand. The repayment shall be credited to the Agricultural Conservation Easement Purchase Fund, and may be used to fund this Grant Program.

§ 138h.12. Grant cancellation.

(a) *Misuse of funds.* A grant may be canceled by the Department if the Secretary determines grant funds are not being spent in accordance with the terms and conditions of the grant agreement. In the event of cancellation, the Department may demand the return of the entire grant sum, or a portion thereof, and the grant recipient shall repay the sum in the manner described in § 138h.11(c) (relating to verification of use).

(b) *Failure to establish a county program.* If, within 2 calendar years of the date of the first grant agreement to that county, the grant recipient does not have a county program in place, the grant funds provided to the eligible county under this chapter shall be returned to the Department in full as described in § 138h.11(c).

§ 138h.13. Deficits.

The Department's financial obligation or liability is limited to the amount of the grant. The Department will not be financially responsible for cost overruns incurred by grant recipients, or any other costs resulting from establishment of a county program.

§ 138h.14. Records.

(a) The grant recipient shall maintain books, records and other evidence pertinent to costs incurred in connection with the project. The books and records shall be maintained according to generally-accepted accounting principles.

(b) Financial records, supporting documents, statistical records and other records pertaining to the grant shall be retained by the grant recipient for 3 years following the date final payment is made. The records and documents shall be available for inspection or audit by the Commonwealth, its agencies and instrumentalities during this time period.

§ 138h.15. Final report.

Within 3 months of the date of completion of the project, the grant recipient shall submit a final report delineating the progress made towards meeting the objectives in the initial grant application.

[Pa.B. Doc. No. 96-1928. Filed for public inspection November 15, 1996, 9:00 a.m.]

Title 22—EDUCATION

HIGHER EDUCATION ASSISTANCE AGENCY

[22 PA. CODE CH. 121]

Corrective Amendment to 22 Pa. Code § 121.123

The Higher Education Assistance Agency has discovered a discrepancy between the agency text of 22 Pa. Code § 121.123 (relating to determination of institutional assistance grants) as deposited with the Legislative Reference Bureau and as published at 26 Pa.B. 3321, 3332 (July 13, 1996) and the official text as published in the *Pennsylvania Code Reporter* (Master Transmittal Sheet No. 262) and as currently appearing in the *Pennsylvania Code*. Two words were inadvertently omitted from the text of the section.

Therefore, under 45 Pa.C.S. § 901: The Higher Education Assistance Agency has deposited with the Legislative Reference Bureau a corrective amendment to 22 Pa. Code § 121.123. The corrective amendment to 22 Pa. Code § 121.123 is effective as of July 13, 1996, the date the defective text was printed in the *Pennsylvania Bulletin*.

The correct version of 22 Pa. Code § 121.123 appears in Annex A, with ellipses referring to the existing text of the regulation.

MICHAEL H. HERSHOCK,
President and Chief Executive Officer

Annex A

TITLE 22. EDUCATION

PART VIII. HIGHER EDUCATION ASSISTANCE AGENCY

CHAPTER 121. STUDENT FINANCIAL ASSISTANCE

Subchapter G. INSTITUTIONAL ASSISTANCE GRANTS PROGRAM

§ 121.123. Determination of institutional assistance grants.

(a) Institutional assistance grants, established by dividing the total funds available for institutional grants in this program by the number of Pennsylvania State grant recipients certified to the Agency by the participating institutions, will be paid to an eligible institution in either a lump sum or in installments at the discretion of the Agency. The institutional assistance grants shall be in a number equal to the number of full-time equivalent students receiving assistance from the Pennsylvania Higher Education Grant Program or the POW/MIA's Education Program certified as enrolled during the academic year except those intra-year transfer students from any other eligible institution. The following are examples:

* * * * *

(b) For purposes of this section, an Eligibility Certification Listing is defined as a listing created by the Agency for the institution to use in certifying the enrollment of students for the purpose of determining the institution's entitlement to institutional assistance grants.

[Pa.B. Doc. No. 96-1929. Filed for public inspection November 15, 1996, 9:00 a.m.]

Title 49—PROFESSIONAL AND VOCATIONAL STANDARDS

STATE BOARD OF MEDICINE AND STATE BOARD OF OSTEOPATHIC MEDICINE [49 PA. CODE CHS. 18 AND 25] Respiratory Care Practitioners

The State Board of Medicine and State Board of Osteopathic Medicine (Boards) amend Chapters 18 and 25 (relating to State Board of Medicine—practitioners, other than medical doctors; and State Board of Osteopathic Medicine) to read as set forth in Annex A. The amendments add new subchapters pertaining to the certification and practice of respiratory care practitioners in this Commonwealth. The Boards' notice of proposed rule-making was published at 26 Pa.B. 757 (February 24, 1996).

Statutory Authority

The regulations are adopted under the authority of sections 13.1(c) and 36.1 of the Medical Practice Act of 1985 (MPA) (63 P.S. §§ 422.13a(c) and 422.36a) and sections 10.1(c) and 10.2 of the Osteopathic Medical Practice Act (OMPA) (63 P.S. §§ 271.10a(c) and 271.10b), added by the act of July 2, 1993 (P.L. 424, No. 60) and the act of July 2, 1993 (P.L. 418, No. 519) respectively. These sections require that the Boards issue certificates and temporary permits to individuals meeting the qualifications in the MPA and the OMPA to practice or offer to practice respiratory care in this Commonwealth. Under section 13.1(a) of the MPA and section 10.1(a) of the OMPA, on and after June 30, 1995, no person may practice, hold himself out to the public to practice or offer to practice as a respiratory care practitioner unless the individual holds a valid, current temporary permit or certificate issued by either Board. See section 3 of the act of July 2, 1993, section 13.1(a) of the MPA, section 3 of the act of July 2, 1993 and section 10.1(a) of the OMPA.

Under section 13.1(c) of the MPA and section 10.1(c) of the OMPA, the Boards are authorized to promulgate regulations to establish procedures for application, credentials, verification, examination, certification and fees.

Public Comments

Written comment, suggestions and objections were solicited within a 30-day period after publication. The Boards received reports from the House Professional Licensure Committee (House Committee) on March 19, 1996, and the Independent Regulatory Review Commission (IRRC) on April 24, 1996. The Boards received comments from the Pennsylvania Society for Respiratory Care, Inc. (PSRC), the Hospital Association of Pennsylvania (HAP), and from Paoli Memorial Hospital, Bryn Mawr Rehabilitation, Thomas Jefferson University Hospital and Main Line Health System and their staff members. As a result of the reports and the comments, numerous revisions have been made to these final-form regulations to include language to clarify language of various sections.

Summary of Changes

The House Committee and IRRC questioned part of the proposed §§ 18.310(c) and 25.510(c) (relating to inactive status). The Boards had proposed that a certificateholder

who wished to return his certificate from inactive to active status submit, inter alia, a resume of professional activities since the most recent registration and a letter of good standing from another jurisdiction where the certificateholder was currently licensed or registered to practice. The House Committee and IRRC pointed out that the Boards' language presumed that while a certificateholder was inactive in this Commonwealth, he was practicing in another jurisdiction. The House Committee questioned the presumption and the statutory basis for the requirement of the resume and letter of good standing. The House Committee recommended that the Boards adopt the reactivation requirements found in § 16.15 (relating to biennial registration; inactive status and unregistered status). The Boards have done this. At IRRC's request, the Boards clarified §§ 18.310(d) and 25.510(d) to show that an applicant for reactivation will be required to pay only the current biennial fee.

The House Committee and IRRC also questioned the proposed §§ 18.306(a)(3) and 25.506(a)(3) (relating to temporary permits). The Boards had proposed, under section 36a(b)(4) of the MPA and section 10.2(b)(2) of the OMPA, that a temporary permit be issued to an applicant who has provided respiratory care services for at least 12-consecutive months prior to December 28, 1993. The House Committee and IRRC questioned the proposed regulatory language which appeared to authorize the grant of a temporary permit even for experience gained long before December 28, 1993, while requiring that the experience be gained in consecutive months. On final rulemaking, the Boards tracked the statutory language more closely and authorized the issuance of a temporary permit to an applicant who has continuously provided respiratory care services for a minimum of 12 months immediately preceding December 28, 1993. The Boards also made this change to §§ 18.307(a)(4) and 25.507(1)(iv) (relating to criteria for certification as a respiratory care practitioner).

IRRC questioned the definition of "CRTT" in §§ 18.302 and 25.502 (relating to definitions). IRRC noted that the definitions do not delineate what "CRTT" stands for. In the *NBRC Licensure Guide*, "CRTT" is defined as the Certification Examination For Entry Level Respiratory Practitioners without an explanation of what the letters CRTT delineate. On final rulemaking, the Boards adopted the definition found in the *Licensure Guide*. IRRC also suggested that the Boards replace the word "technician" with "practitioner," the word favored in both the MPA and OMPA. The Boards have adopted this suggestion.

IRRC and the PSRC were concerned that the list of functions in §§ 18.305 and 25.505 (relating to functions of respiratory care practitioner) which a respiratory care practitioner may perform did not include reference to "indirect services, such as consultation or evaluation of an individual . . ." as provided for in section 13.1(d) of the MPA and section 10.1(d) of the OMPA. On final rulemaking, the Boards included indirect services such as consultation or evaluation of an individual.

IRRC raised concerns regarding §§ 18.306 and 25.506. IRRC noted that subsection (a)(1) of the proposed rule-making departed from section 36.1(b)(1) of the MPA and section 10.1(b)(1) of the OMPA by authorizing the issuance of a temporary permit to an applicant who had graduated from an approved respiratory care program and is awaiting results of the CRTT. IRRC correctly noted that the section section 36.1(b)(1) of the MPA and section 10.1(b)(1) of the OMPA authorize the issuance of a temporary permit to an applicant who has simply gradu-

ated from an approved respiratory care program. Section 36.1(c) of the MPA and section 10.1(b)(1) of the OMPA require the applicant to apply for the next scheduled examination. The Boards' final rulemaking tracks the statute.

IRRC made a similar observation regarding language in §§ 18.306(a)(2) and 25.506(a)(2) that the applicant "is awaiting results of the CRTT." The Board adopted the suggestion in final rulemaking and eliminated the quoted language. The Boards also adopted the suggestion that subsection (a)(2) specify that the application is to the relevant board for a temporary permit.

IRRC noted that the Boards' proposed rulemaking in §§ 18.306(b) and 25.506(b) did not make provision for extensions of the temporary permit beyond 12 months in specific cases, as do the statutes at section 36.1(c) of the MPA and section 10.1(c) of the OMPA. In final rulemaking, the Boards have made provision for extensions. In final rulemaking, the Boards, at the suggestion of IRRC and HAP, specified that an applicant who failed the examination may apply to take it again. The Boards also adopted the suggestion of IRRC to identify the examination being referred to in this provision as the CRTT.

The PSRC expressed approval for the proposed rulemaking while raising one concern. The PSRC observed that under the MPA and OMPA the Boards are authorized to issue a temporary permit to anyone who has made continuous provision of respiratory care services for a minimum of 12 months immediately preceding the effective date of the acts. PSRC is concerned that the applicant under these provisions might not apply or practice for several years after December 28, 1993, the effective date of the acts. The PSRC would like to terminate this window for application on December 31, 1997. The Boards, however, lack the statutory authority to impose this termination date.

HAP and the individual hospitals, hospital employees and staff members raised concerns that certification of respiratory care practitioners will increase costs of delivering health care services. These commentators also asked that the following be removed from the lists of functions of respiratory care practitioners in §§ 18.305 and 25.505: administration of medical gases, humidity and aerosol therapy, incentive spirometry and bronchopulmonary hygiene. The Boards observed in their notice of proposed rulemaking at 26 Pa.B. 759 that certification of respiratory care practitioners might increase costs. Certification, however, is mandated by law. See, 26 Pa.B. 757—758. The list of functions of respiratory care practitioner derives directly from the lists contained in section 13.1(d) of the MPA and section 10.1(d) of the OMPA. Since the lists of functions have their basis in statute the Boards cannot remove them.

Persons Affected

Persons who practice or who seek to practice respiratory care in this Commonwealth on and after June 30, 1995, shall obtain a permit or a certificate.

Fiscal Impact

Commonwealth

These new subchapters establish fees for the issuance of temporary permits, certifications and biennial renewal for respiratory care practitioners. Revenue generated from these fees will be used to cover the costs of administration of the certification program. The regulations will not otherwise impose additional costs on the Commonwealth.

Political Subdivisions

The new subchapters should not have any direct fiscal impact upon political subdivisions in this Commonwealth.

Private Sector

The new subchapters may impose additional costs upon the private sector. In particular, entities who provide respiratory care services may incur additional costs in bringing their facilities into compliance by employing or utilizing certified practitioners. Persons wishing to obtain certification from the Boards will incur those costs associated with the administration of the certification program, as well as costs associated with the qualifying examination.

General Public

The regulations should impose no additional costs upon the general public.

Paperwork Requirements

Persons seeking temporary permits or certifications will be required to obtain application forms from the Boards in order to obtain certification.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the Boards submitted a copy of the notice of proposed rulemaking, published at 26 Pa.B. 757, to IRRC and the Chairpersons of the House Committee and the Senate Committee on Consumer Protection and Professional Licensure.

In compliance with section 5(b.1) of the Regulatory Review Act, the Boards provided IRRC and the Committees with a copy of comments received as well as other documentation.

These final-form regulations were approved by the House Committee on October 1, 1996, and approved by the Senate Committee on September 25, 1996. IRRC met on October 3, 1996, and approved the regulations in accordance with section 5(c) of the Regulatory Review Act.

Contact Persons

Interested persons are invited to submit questions regarding these regulations to Cindy Warner, Administrative Assistant for the State Board of Medicine, at (717) 783-1400, or Gina Bittner, Administrative Assistant for the State Board of Osteopathic Medicine, at (717) 783-4858.

Findings

The Boards find that:

(1) Public notice of intention to adopt regulations was given under section 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations promulgated under those sections at 1 Pa. Code §§ 7.1—7.2.

(2) The regulations of the State Boards are necessary for the administration of the MPA (63 P. S. §§ 422.1—422.45) and the OMPA (63 P. S. §§ 271.1—271.18).

Order

The Boards order that:

(a) The regulations of the State Boards, 49 Pa. Code Chapters 18 and 25, are amended by adding §§ 18.301—18.310 and §§ 25.501—25.510 to read as set forth in Annex A (*Editor's Note*: Sections 25.501—25.510 were proposed as §§ 25.292—25.301 at 26 Pa.B. 757 (February 24, 1996)).

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

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

(d) The regulations shall take effect immediately upon publication in the *Pennsylvania Bulletin*.

CHARLES J. BANNON, M.D.,
Chairperson
 SILVIA M. FERRETTI, D.O.,
Chairperson

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 26 Pa.B. 3180 (October 26, 1999).)

Fiscal Note: Fiscal Note 16A-532 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 18. STATE BOARD OF MEDICINE—PRACTITIONERS OTHER THAN MEDICAL DOCTORS

Subchapter F. RESPIRATORY CARE PRACTITIONERS

Sec.	
18.301.	Purpose.
18.302.	Definitions.
18.303.	Fees.
18.304.	Certification of respiratory care practitioners; practice; exceptions.
18.305.	Functions of respiratory care practitioners.
18.306.	Temporary permits.
18.307.	Criteria for certification as a respiratory care practitioner.
18.308.	Change of name or address.
18.309.	Renewal of certification.
18.310.	Inactive status.

§ 18.301. Purpose.

This subchapter implements sections 13.1 and 36.1 of the act (63 P. S. §§ 422.13a and 422.36a), which were added by section 3 of the act of July 2, 1993 (P. L. 424, No. 60) to provide for the certification of respiratory care practitioners.

§ 18.302. Definitions.

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

Act—The Medical Practice Act of 1985 (63 P. S. §§ 422.1—422.45.)

CRTT—The Certification Examination For Entry Level Respiratory Therapy Practitioners, a National uniform examination developed and administered by the NBRC for certified respiratory care therapy practitioners.

JRCRTE—The Joint Review Committee on Respiratory Therapy Education, which accredits respiratory care programs.

NBRC—The National Board for Respiratory Care, the agency recognized by the Board to credential respiratory care practitioners.

Respiratory care practitioner—A person who has been certified in accordance with the act and this subchapter.

§ 18.303. Fees.

The following is the schedule of fees charged by the Board:

- (1) Temporary permit \$15
- (2) Initial certification \$15
- (3) Certification examination \$90
 (Effective 7-96) \$100
- (4) Reexamination \$60
- (5) Biennial renewal of certification \$25

§ 18.304. Certification of respiratory care practitioners; practice; exceptions.

(a) A person may not practice or hold himself out as being able to practice as a respiratory care practitioner in this Commonwealth unless the person holds a valid, current temporary permit or certificate issued by the Board, or the State Board of Osteopathic Medicine under Chapter 25 (relating to State Board of Osteopathic Medicine), or is exempted under section 13.1(e) of the act (63 P. S. § 422.13a(e)) or section 10.1(e) of the Osteopathic Medical Practice Act (63 P. S. § 271.10a(e)).

(b) A person may not use the words "respiratory care practitioner," the letters "R.C.P." or similar words and related abbreviations to imply that respiratory care services are being provided, unless the services are provided by a respiratory care practitioner who holds a valid, current temporary permit or certificate issued by the Board or the State Board of Osteopathic Medicine and only while working under the supervision of a licensed physician.

§ 18.305. Functions of respiratory care practitioners.

(a) Under section 13.1(d) of the act (63 P. S. § 422.13a(d)), a respiratory care practitioner may implement direct respiratory care to an individual being treated by either a licensed medical doctor or a licensed doctor of osteopathic medicine, upon physician prescription or referral, or under medical direction and approval consistent with standing orders or protocols of an institution or health care facility. This care may constitute indirect services such as consultation or evaluation of an individual and also includes, but is not limited to, the following services:

- (1) Administration of medical gases.
- (2) Humidity and aerosol therapy.
- (3) Administration of aerosolized medications.
- (4) Intermittent positive pressure breathing.
- (5) Incentive spirometry.
- (6) Bronchopulmonary hygiene.
- (7) Management and maintenance of natural airways.
- (8) Maintenance and insertion of artificial airways.
- (9) Cardiopulmonary rehabilitation.
- (10) Management and maintenance of mechanical ventilation.
- (11) Measurement of ventilatory flows, volumes and pressures.
- (12) Analysis of ventilatory gases and blood gases.

(b) Under section 13.1(d) of the act, a respiratory care practitioner may perform the activities listed in subsection (a) only upon physician prescription or referral or while under medical direction consistent with standing orders or protocols in an institution or health care facility.

§ 18.306. Temporary permits.

(a) A temporary permit will be issued to an applicant who submits evidence satisfactory to the Board, on forms supplied by the Board, that the applicant has met one or more of the following criteria:

(1) Has graduated from a respiratory care program approved by the JRCRTE.

(2) Is enrolled in a respiratory care program approved by the JRCRTE and expects to graduate within 30 days of the date of application to the Board for a temporary permit.

(3) Has continuously provided respiratory care services for a minimum of 12 months immediately preceding December 28, 1993.

(b) A temporary permit is valid for 12 months and for an additional period as the Board may, in each case, specially determine except that a temporary permit expires if the holder fails the CRTT. An applicant who fails the CRTT may apply to retake it.

§ 18.307. Criteria for certification as a respiratory care practitioner.

The Board will approve for certification as a respiratory care practitioner an applicant who:

(1) Submits evidence satisfactory to the Board, on forms supplied by the Board, that the applicant has met one or more of the following criteria:

(i) Has graduated from a respiratory care program approved by the JRCRTE and passed the CRTT as determined by the NBRC.

(ii) Has been credentialed as a Certified Respiratory Therapy Technician or Registered Respiratory Therapist by the NBRC.

(iii) Holds a valid license, certificate or registration as a respiratory care practitioner in another state, territory or the District of Columbia which has been issued based on requirements substantially the same as those required by the Commonwealth, including the examination requirement.

(iv) Has continuously provided respiratory care services for a minimum of 12 months immediately preceding December 28, 1993, and has passed the CRTT as determined by the NBRC.

(2) Has paid the appropriate fee in the form of a check or money order.

§ 18.308. Change of name or address.

A certificateholder shall inform the Board in writing within 10 days of a change of name or mailing address.

§ 18.309. Renewal of certification.

(a) A certification issued under this subchapter expires on December 31 of every even-numbered year unless renewed for the next biennium.

(b) Biennial renewal forms and other forms and literature to be distributed by the Board will be forwarded to the last mailing address given to the Board.

(c) To retain the right to engage in practice, the certificateholder shall renew certification in the manner

prescribed by the Board and pay the required fee prior to the expiration of the next biennium.

(d) When a certification is renewed after December 31 of an even-numbered year, a penalty fee of \$5 for each month or part of a month of practice beyond the renewal date will be charged in addition to the renewal fee.

§ 18.310. Inactive status.

(a) A certificateholder who does not intend to practice in this Commonwealth and who does not desire to renew certification shall inform the Board in writing. Written confirmation of inactive status will be forwarded to the certificateholder.

(b) A certificateholder shall notify the Board, in writing, of his desire to reactivate the registration.

(c) A certificateholder who is applying to return to active status is required to pay fees which are due for the current biennium and submit a sworn statement stating the period of time during which the certificateholder was not engaged in practice in this Commonwealth.

(d) The applicant for reactivation will not be assessed a fee or penalty for preceding biennial periods in which the applicant did not engage in practice in this Commonwealth.

**CHAPTER 25. STATE BOARD OF
OSTEOPATHIC MEDICINE**

**Subchapter K. RESPIRATORY CARE
PRACTITIONERS**

Sec.	Purpose.
25.501.	Purpose.
25.502.	Definitions.
25.503.	Fees.
25.504.	Certification of respiratory care practitioners; practice; exceptions.
25.505.	Functions of respiratory care practitioners.
25.506.	Temporary permits.
25.507.	Criteria for certification as a respiratory care practitioner.
25.508.	Change of name or address.
25.509.	Renewal of certification.
25.510.	Inactive status.

§ 25.501. Purpose.

This subchapter implements sections 10.1 and 10.2 of the act (63 P. S. §§ 271.10a and 271.10b), which were added by section 3 of the act of July 2, 1993 (P. L. 418, No. 59) to provide for the certification of respiratory care practitioners.

§ 25.502. Definitions.

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

Act—The Osteopathic Medical Practice Act (63 P. S. §§ 271.1—271.18).

CRTT—The Certification Examination For Entry Level Respiratory Therapy Practitioners, a National uniform examination developed and administered by the NBRC for certified respiratory care therapy practitioners.

JRCRTE—The Joint Review Committee on Respiratory Therapy Education, which accredits respiratory care programs.

NBRC—The National Board for Respiratory Care, the agency recognized by the Board to certify respiratory care practitioners.

Respiratory care practitioner—A person who has been certified in accordance with the act and this subchapter.

§ 25.503. Fees.

The following is the schedule of fees charged by the Board:

- (1) Temporary permit \$15
- (2) Initial certification \$15
- (3) Certification examination \$90
(Effective 7-96) \$100
- (4) Reexamination \$60
- (5) Biennial renewal of certification. \$25

§ 25.504. Certification of respiratory care practitioners; practice; exceptions.

(a) A person may not practice or hold himself out as being able to practice as a respiratory care practitioner in this Commonwealth unless the person holds a valid, current temporary permit or certificate issued by the Board, or the State Board of Medicine under Chapter 18 (relating to State Board of Medicine—practitioners other than medical doctors) or is exempted under section 10.1(e) of the act (63 P. S. §§ 271.10a(e) or section 13.1(e) of the Medical Practice Act of 1985 (63 P. S. § 422.13a(e)).

(b) A person may not use the words “respiratory care practitioner,” the letters “R.C.P.” or similar words and related abbreviations to imply that respiratory care services are being provided, unless the services are provided by a respiratory care practitioner who holds a valid, current temporary permit or certificate issued by the Board or the State Board of Medicine and only while working under the supervision of a licensed physician.

§ 25.505. Functions of respiratory care practitioners.

(a) Under section 10.1(d) of the act (63 P. S. § 271.10a(d)), a respiratory care practitioner may implement direct respiratory care to an individual being treated by either a licensed medical doctor or a licensed doctor of osteopathic medicine, upon physician prescription or referral, or under medical direction and approval consistent with standing orders or protocols of an institution or health care facility. This care may constitute indirect services such as consultation or evaluation of an individual and also includes, but is not limited to, the following services:

- (1) Administration of medical gases.
- (2) Humidity and aerosol therapy.
- (3) Administration of aerosolized medications.
- (4) Intermittent positive pressure breathing.
- (5) Incentive spirometry.
- (6) Bronchopulmonary hygiene.
- (7) Management and maintenance of natural airways.
- (8) Maintenance and insertion of artificial airways.
- (9) Cardiopulmonary rehabilitation.
- (10) Management and maintenance of mechanical ventilation.
- (11) Measurement of ventilatory flows, volumes and pressures.
- (12) Analysis of ventilatory gases and blood gases.

(b) Under section 10.1(d) of the act, a respiratory care practitioner may perform the activities listed in subsection (a) only upon physician prescription or referral or

while under medical direction consistent with standing orders or protocols in an institution or health care facility.

§ 25.506. Temporary permits.

(a) A temporary permit will be issued to an applicant who submits evidence satisfactory to the Board, on forms supplied by the Board, that the applicant has met one or more of the following criteria:

- (1) Has graduated from a respiratory care program approved by the JRCRTE.
- (2) Is enrolled in a respiratory care program approved by the JRCRTE and expects to graduate within 30 days of the date of application to the Board for a temporary permit.
- (3) Has continuously provided respiratory care services for a minimum of 12 months immediately preceding December 28, 1993.

(b) A temporary permit is valid for 12 months and for an additional period as the Board may, in each case, specially determine except that a temporary permit expires if the holder fails the CRTT. An applicant who fails the CRTT may apply to retake it.

§ 25.507. Criteria for certification as a respiratory care practitioner.

The Board will approve for certification as a respiratory care practitioner an applicant who:

- (1) Submits evidence satisfactory to the Board, on forms supplied by the Board, that the applicant has met one or more of the following criteria:
 - (i) Has graduated from a respiratory care program approved by the JRCRTE and passed the CRTT as determined by the NBRC.
 - (ii) Has been credentialed as a Certified Respiratory Therapy Technician or Registered Respiratory Therapist by the NBRC.
 - (iii) Holds a valid license, certificate or registration as a respiratory care practitioner in another state, territory or the District of Columbia which has been issued based on requirements substantially the same as those required by the Commonwealth, including the examination requirement.
 - (iv) Has continuously provided respiratory care services for a minimum of 12 months immediately preceding December 28, 1993, and has passed the CRTT as determined by the NBRC.

(2) Has paid the appropriate fee in the form of a check or money order.

§ 25.508. Change of name or address.

A certificateholder shall inform the Board in writing within 10 days of a change of name or mailing address.

§ 25.509. Renewal of certification.

(a) A certification issued under this subchapter expires on December 31 of every even-numbered year unless renewed for the next biennium.

(b) Biennial renewal forms and other forms and literature to be distributed by the Board will be forwarded to the last mailing address given to the Board.

(c) To retain the right to engage in practice, the certificateholder shall renew certification in the manner prescribed by the Board and pay the required fee prior to the expiration of the next biennium.

(d) When a certification is renewed after December 31 of an even-numbered year, a penalty fee of \$5 for each month or part of a month of practice beyond the renewal date will be charged in addition to the renewal fee.

§ 25.510. Inactive status.

(a) A certificateholder who does not intend to practice in this Commonwealth and who does not desire to renew certification shall inform the Board in writing. Written confirmation of inactive status will be forwarded to the certificateholder.

(b) A certificateholder shall notify the Board, in writing, of his desire to reactivate the registration.

(c) A certificateholder who is applying to return to active status is required to pay fees which are due for the current biennium and submit a sworn statement stating the period of time during which the certificateholder was not engaged in practice in this Commonwealth.

(d) The applicant for reactivation will not be assessed a fee or penalty for preceding biennial periods in which the applicant did not engage in practice in this Commonwealth.

[Pa.B. Doc. No. 96-1930. Filed for public inspection November 15, 1996, 9:00 a.m.]