

PROPOSED RULEMAKING

DEPARTMENT OF AGRICULTURE

[7 PA. CODE CHS. 138, 138e AND 138l]

Agricultural Area Security Program; Agricultural Conservation Easement Purchase Program; Agricultural Security Area Program

The Department of Agriculture (Department) proposes to delete Chapter 138 (relating to agricultural area security program), amend Chapter 138e (relating to agricultural conservation easement purchase program) and add Chapter 138l (relating to agricultural security area program) to read as set forth in Annex A.

Statutory Authority

The Agricultural Area Security Law (act) (3 P. S. §§ 901—915) provides the legal authority for this proposed rulemaking. In particular, section 15 of the act (3 P. S. § 915) requires the Department to promulgate regulations necessary to promote the efficient, uniform and Statewide administration of the act.

Purpose

The proposed rulemaking would accomplish the following regulatory objectives:

1. Replace the outdated regulations in Chapter 138 with an entirely new regulatory chapter (Chapter 138l) that: (a) more accurately tracks with the act; (b) reflects the experience the Department has gained in administering the provisions of Chapter 138 over many years; (c) implements the numerous amendments that have been made to the act over the years; and (d) provides the regulated community with a more user-friendly set of standards and procedures with respect to agricultural security areas.
2. Revise the regulations in Chapter 138e to: (a) reflect various amendments of the act—most recently by the act of May 30 2001 (P. L. 103, No. 14) (Act 14); and (b) reflect the experience the Department has gained in administering the Agricultural Conservation Easement Purchase Program and Chapter 138e since that chapter was last revised.

Background

The act addresses two critical prongs of the Commonwealth's farmland preservation effort: agricultural security areas and agricultural conservation easements. The act provides definitions, standards and procedures for each, and makes it the responsibility of the Department to implement the act through regulations.

In summary, an agricultural security area is an area of 250 acres or more of farmland so designated by a local government unit. This designation affords landowners limited protections against nuisance suits based upon agricultural activities conducted on the land, limited protections against condemnation of the land and other limited benefits. It also makes an owner of farmland located in agricultural security areas comprised of 500 or more acres eligible to sell an agricultural conservation easement with respect to that farmland. An agricultural conservation easement restricts the subject land to agricultural production.

The Department's regulations relating to agricultural security areas have not been revised since 1982—the year in which they were originally promulgated. The provisions of the act relating to agricultural security areas have been revised numerous times since 1982—most recently by Act 14. Given the extensive regulatory revisions that would be necessary to bring the current agricultural security area regulations into conformity with the act, the Department proposes to delete Chapter 138 and replace that chapter with an entirely new Chapter 138l.

The Department's regulations relating to agricultural conservation easements also need to be revised to reflect amendments to the act. This proposed rulemaking would implement these necessary revisions. In addition, a number of the revisions offered in the proposed rulemaking would fine-tune current provisions to make for the more effective and efficient administration of the Commonwealth's agricultural conservation easement purchase program. More often than not, these revisions simply formalize informal procedures that have evolved over the course of the Department's administration of this program, or that appear in the technical guidebook the Department was required to develop under section 14.1(a)(3)(xv) of the act (3 P. S. § 914.1(a)(3)(xv)).

Need for the Proposed Rulemaking

The proposed rulemaking is driven by the need to implement various revisions to the act that have occurred since the agricultural security area and agricultural conservation easement regulations were last amended. In addition, the proposed rulemaking contains provisions intended to resolve questions and "gray areas" encountered by the Department in its administration of these regulations over the years. It would also formally implement a number of effective informal procedures that have evolved over the years.

The Department is satisfied of the need for the proposed rulemaking, and believes the document is consistent with the principles outlined in Executive Order 1996-1, "Regulatory Review and Promulgation."

Overview of the Major Provisions of the Proposed Rulemaking

Proposed § 138e.3 (relating to definitions) would revise the definitions of several terms to reflect statutory revisions.

The act was revised by the act of December 21, 1998 (P. L. 1056, No. 138) (Act 138) to allow for local government units to participate in the agricultural conservation easement purchase process. A number of the provisions of this proposed rulemaking would reflect and implement this statutory change. These include §§ 138e.11, 138e.67(g) and (i), 138e.201 and 138e.204.

Act 14 amended the act to describe a narrow set of circumstances under which an agricultural conservation easement may be purchased with respect to a parcel of farmland that straddles a county or local government unit boundary line, with part of the parcel being within an agricultural security area and the remainder outside of the agricultural security area. A number of the provisions of the proposed rulemaking would reflect and implement this statutory change. Proposed § 138e.16(a) (relating to minimum criteria for applications) would revise the eligibility criteria for agricultural conservation easement purchases to allow for this type of acquisition. Proposed

§ 138e.61(b) (relating to application) would revise the application form to require the basic information necessary to determine whether a proposed agricultural conservation easement purchase meets the revised eligibility criteria.

Proposed §§ 138e.65(b) and 138e.66 (relating to easement value and purchase price; and offer of purchase by county board) would reflect that the former \$10,000-per-acre cap on the expenditure of State funds in an agricultural conservation easement purchase transaction has been rescinded (by Act 14).

Proposed § 138e.73 (relating to survey requirements) would be an entirely new section. This section is not driven by revisions to the act but, instead, by the need to have a uniform Statewide set of minimum criteria for a survey of a proposed agricultural conservation easement purchase. This section would provide needed guidance to county agricultural conservation easement purchase programs, and would provide the Department the data it needs to maintain an accurate computerized record of the location and the metes and bounds of agricultural conservation easements purchased under authority of the act. The technical requirements of this section are consistent with modern survey practices and reflect the typical quality of surveys the Department has accepted over the years. Since this section would formalize an informal standard that has been in effect for some time, the Department believes it will have minimal impact on the regulated community.

Proposed § 138e.93 (relating to postsettlement recording and reporting procedures) would be an entirely new section. There was some initial inconsistency and confusion within both the regulated community and the Department as to the appropriate documentation and post settlement follow-through that should be attendant to each agricultural conservation easement purchase under the act. Over years of administering the Statewide agricultural conservation easement purchase program, though, the basic recordkeeping, recording and reporting procedure in this proposed section evolved. The proposed section would formalize this procedure and provide a step-by-step explanation of the necessary record retention, recording and reporting requirements.

Proposed § 138e.104 (relating to installment sales) would add new language to address long-term installment purchases of agricultural conservation easements that defer the payment of principal for up to 30 years. The Department is currently involved in an effort to encourage the purchase of agricultural conservation easements by a method that allows for the purchaser to leverage purchase funds and allows the seller to gain favorable tax consequences (such as, favorable capital gains tax treatment). The proposed language addresses this effort. This long-term installment purchase effort has been facilitated by an allocation of up to \$500,000 for this purpose by Act 14.

The proposed rulemaking would place increased emphasis on the importance of a conservation plan to the Statewide agricultural conservation easement purchase effort. In summary, a conservation plan is a written description of land management practices which, when implemented, will improve and maintain the soil, water and related plant and animal resources of the land. Although the current regulation requires that a conservation plan exist with respect to a parcel of farmland before an agricultural conservation easement is sold with respect to the parcel, the Department believes it necessary to place greater regulatory emphasis on the requirement

a landowner actually implement the conservation plan. To this end, proposed § 138e.222 (relating to conservation plan) would revise that section to require a landowner to execute a "conservation plan agreement" acknowledging the need to implement the conservation plan. The conservation plan agreement would also acknowledge that failure to implement and follow-through on the requirements of a conservation plan would constitute a violation of the terms of the deed of agricultural conservation easement.

The proposed rulemaking would add several new sections describing the Land Trust Reimbursement Grant Program. This program was originally authorized under section 1716 of The Administrative Code of 1929 (71 P. S. § 456(a)(3)), which took effect in 1999. The procedures and standards for the program were established by a notice published at 29 Pa.B. 6342 (December 18, 1999), and were revised by a notice published at 30 Pa.B. 5546 (October 28, 2000). Act 14 continued this program under its authority (3 P. S. § 914.5), and required the program be formalized through regulation. Proposed §§ 138e.251—138e.256 essentially restate the procedures and standards of this ongoing program.

Proposed § 138e.253 (relating to registration of eligible land trust) would describe the documentation and procedures necessary to the registration of a land trust with the Department. The application process described in subsequent sections is rather straightforward. One of the few substantive differences between the standards and procedures for the Land Trust Reimbursement Grant Program established earlier by notice and the standards and procedures that would be established by this proposed rulemaking is found in § 138e.255(b)(3)(i)(B) (relating to State Board review of applications). That provision would allow reimbursement with respect to an agricultural conservation easement purchase involving as few as 25 acres of land, when the previous standards required at least 50 acres of land.

Proposed Chapter 138l would supplant the current regulation in Chapter 138.

Proposed § 138l.1 (relating to definitions) would repeat definitions from the act and also repeats a number of definitions from § 138e.3 (relating to definitions) of the agricultural conservation easement purchase program regulations. This section would also allow for the use of "ASA" as an abbreviation for the term "agricultural security area."

Proposed § 138l.11 (relating to agricultural security area advisory committee) would provide guidance to a local government unit on the necessity of establishing an agricultural security area (ASA) advisory committee. Although the act does not require the formation of this committee until an application for the formation of an ASA is received by the local government unit, a local government unit is free to form an ASA advisory committee at any time.

Proposed § 138l.12 (relating to eligibility to propose the creation of an ASA) would set forth the eligibility criteria for the inclusion of land within an ASA. Paragraph (1) of that section would acknowledge that some portion of land within an ASA might not be farmland or viable farmland and should not have to be surveyed-out and excluded from the ASA. This is suggested in section 3 of the act (3 P. S. § 903), under the definition of "description of the proposed area."

Prior to Act 14, an ASA could not be located in more than one local government unit unless each affected local

government unit approved its participation in that ASA. Act 14 added three other scenarios under which land might be included in the ASA of another local government unit without the consent of the local government unit in which the land is located. Proposed § 1381.15 (relating to ASA located in more than one local government unit) would summarize all four scenarios under which an ASA might include land in more than one local government unit.

Proposed § 1381.16 (relating to submitting an ASA proposal form to the local government unit) would emphasize that the only acceptable way by which to deliver an ASA proposal form to a local government unit is by certified mail, with return receipt requested. The local government unit's receipt of this notice triggers the commencement of the 180-day period within which review of the ASA proposal must be completed. The "official date of receipt" used in this section is referenced in several other sections of the chapter.

Proposed §§ 1381.17 and 1381.18 (relating to local government unit action upon receipt of an ASA proposal; and public hearing by local government unit on ASA proposal) provide step-by-step explanations of the actions a local government unit must take after receiving an ASA proposal.

The effective date of an ASA or a modification to an ASA can vary—depending on the particular circumstances involved. Proposed § 1381.21 (relating to effective date of the creation or modification of an ASA) would identify each set of circumstances and the appropriate effective date. For example, if land is added to an ASA by virtue of its being part of an agricultural conservation easement purchase, the land becomes part of the ASA as of the sale of the agricultural conservation easement. If land becomes part of an ASA because of the failure of a local government unit to approve or reject the ASA proposal within 180 days of receipt, the ASA becomes effective as of the expiration of this 180-day period. Proposed § 1381.21 would address each set of circumstances under which an ASA can be formed or modified, and assign the appropriate effective date for each ASA creation or modification.

Proposed § 1381.22 (relating to filing of ASA description by governing body; recording of ASA description) would clarify the obligation of a governing body of a local government unit to file a description of an ASA, or any modification thereof, with the county recorder of deeds, the county planning commission and the planning commission of the local government unit. In addition, it would clarify the obligation of a county recorder of deeds to properly record this information.

Proposed §§ 1381.24 and 1381.25 (relating to planning commission action with respect to an ASA proposal; and advisory committee action with respect to an ASA proposal) would describe the roles of the entities referenced in their respective titles. In summary, each of these entities must record the date of receipt of an ASA proposal or proposed modification, review the proposal within a 45-day review period, apply the same review criteria as are applied by the local government unit and report its conclusions to the local government unit. Failure to act within this 45-day review period is deemed to be a recommendation the local government unit approve the ASA proposal or proposed modification.

Proposed § 1381.26 (relating to factors to be considered by the governing body of the local government unit, the planning commission and the advisory committee) would restate review criteria prescribed by the act.

Proposed Subchapter C (relating to adding land to an existing ASA) would describe all of the various circumstances under which land may be incorporated into an existing ASA. Act 14 added several new methods by which land can be automatically incorporated into an existing ASA, and these new methods are set forth in the referenced sections.

Proposed §§ 1381.41 and 1381.42 (relating to removing land that has been in an ASA for 7 years or more; and removing land in the course of the 7-year review or interim review) would describe the two procedures by which land can be removed from an ASA. The first allows an owner of land that has been in an ASA for 7 or more years to simply notify the governing body of the land to be withdrawn from the ASA. This notice would be by certified mail, return receipt requested. Although the withdrawal would be effective upon receipt of this notice, the governing body would have the option to wait until its next review of the ASA (whether a regular 7-year review or an interim review) to record the withdrawal.

Proposed § 1381.51 (relating to 7-year review) would describe the process by which the act requires an ASA be reviewed at regular intervals. Proposed § 1381.52 (relating to interim review) would describe the process to be exercised by a local government unit that opts to review an ASA before review would ordinarily be required.

Affected Individuals and Organizations

This proposed rulemaking would have some effect upon county agricultural conservation easement purchase programs, local government units, owners of land who have land in an ASA or who seek to include land in an ASA and owners of land who seek to sell agricultural conservation easements under authority of the act. Since many of the new provisions of this proposed rulemaking simply implement statutory requirements, though, the impact of these provisions is more the product of the underlying legislation than of the regulations itself.

Fiscal Impact

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

Political Subdivisions: The proposed rulemaking is not expected to impose appreciable costs upon political subdivisions. Although local government units are required to absorb the costs associated with the formation and recording of an ASA, this requirement is imposed by the act, rather than the proposed rulemaking.

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

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

Paperwork Requirements

The proposed rulemaking would not appreciably increase the paperwork burden of the Department, local government units, county agricultural land preservation programs or other affected entities.

Effective Date

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

Sunset Date

There is no sunset date for this proposed rulemaking. The Department will review the efficacy of these regulations on an ongoing basis.

Public Comment Period/Contact Person

Interested persons are invited to submit written comments regarding this proposed rulemaking within 30 days following publication in the *Pennsylvania Bulletin*. Comments are to be submitted to the Department of Agriculture, Bureau of Farmland Preservation, 2301 North Cameron Street, Harrisburg, PA 17110-9408, Attention: Sandra Robison.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on January 29, 2002, the Department submitted a copy of this proposed rulemaking to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House and Senate Committees on Agriculture and Rural Affairs. In addition to submitting the proposed rulemaking, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, if IRRC has objections to any portion of the proposed rulemaking, it will notify the Department within 10 days of the close of the Committees' review period. The notification shall specify the regulatory review criteria that have not been met by the portion of the proposed rulemaking to which an objection is made. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Department, the General Assembly and the Governor of objections raised.

SAMUEL E. HAYES, Jr.,
Secretary

Fiscal Note: 2-138. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 7. AGRICULTURE

PART V-C. FARMLAND AND FOREST LAND

CHAPTER 138. AGRICULTURAL AREA SECURITY PROGRAM

(Editor's Note: As part of this proposed rulemaking, the Department is proposing to delete the text of §§ 138.1—138.14 and Appendix A which currently appears in 7 Pa. Code pages 138-1—138-7, serial pages (276945)—(276951).)

§§ 138.1—138.14. (Reserved).

CHAPTER 138e. AGRICULTURAL CONSERVATION EASEMENT PURCHASE PROGRAM

GENERAL

§ 138e.3. Definitions.

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

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Agricultural conservation easement or easement—An interest in land, less than fee simple, which interest represents the right to prevent the development or im-

provement of [the land] a parcel for a purpose other than agricultural production. The easement may be granted by the owner of the fee simple to a third party or to the Commonwealth, to a county governing body or to a unit of local government. It shall be granted in perpetuity, as the equivalent of covenants running with the land. The exercise or failure to exercise any right granted by the easement will not be deemed to be management or control of activities at the site for purposes of enforcement of the Hazardous Sites Cleanup Act (35 P. S. §§ 6020.101—6020.1305).

Agricultural production—The production for commercial purposes of crops, livestock and livestock products, including the processing or retail marketing of the crops, livestock or livestock products if more than 50% of the processed or merchandised products are produced by the farm operator. **The term includes use of land which is devoted to and meets the requirements of and qualifications for payments or other compensation under a soil conservation program under an agreement with an agency of the Federal government.**

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County planning commission—A planning commission or agency which has been designated by the county governing body to establish and foster a comprehensive plan for land management and development within the county.

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Local government unit—Any city, borough, township or town or any home rule municipality, optional plan municipality, optional charter municipality or similar general purpose unit of government which may be created or authorized by statute.

Mansion house—The primary residential structure located upon a parcel.

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Parcel—A tract of land in its entirety which is assessed for tax purposes by one county, including any portion of that tract that may be located in a neighboring county. The county responsible for assessing an entire tract, on its own or in conjunction with the Commonwealth or a local government unit, or both, shall be eligible to purchase agricultural conservation easements covering the entire tract.

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REQUIREMENTS FOR CERTIFICATION OF COUNTY PROGRAM

§ 138e.11. General requirements.

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(d) A county program shall contain provisions for the participation of local government units in the preservation of farmland through the purchase of agricultural conservation easements. These provisions shall address the following:

- (1) Local government unit recommendations for joint county-local government unit purchases.
- (2) Local government unit recommendations for joint Commonwealth-local government unit purchases.

(3) Local government unit recommendations for joint Commonwealth-county-local government unit purchases.

(4) Local government unit agricultural conservation easement purchases authorized under section 14.1(b.1)(4) of the act (3 P. S. § 914.1(b.1)(4)).

§ 138e.16. Minimum criteria for applications.

(a) The county program shall consider the quality of the farmland tract, including the USDA soil classification and productivity. The farmland tract shall:

(1) Be [located] one or more of the following:

(i) Located in an agricultural security area consisting of 500 acres or more.

(ii) Bisected by the dividing line between two local government units, having the majority of its viable agricultural land within an agricultural security area of 500 acres or more and the remainder in another local government unit outside of an agricultural security area.

(iii) Bisected by the dividing line between the purchasing county and an adjoining county, having the land located in the purchasing county within an agricultural security area of 500 acres or more and the remainder in another county outside of an agricultural security area, and with respect to which one of the following applies:

(A) A mansion house is on the tract and located within the purchasing county.

(B) When the mansion house on the tract is bisected by the dividing line between the two counties, the landowner has chosen the purchasing county as the situs of assessment for tax purposes.

(C) When there is no mansion house on the farmland tract, the majority of the tract's viable agricultural land is located within the purchasing county.

(2) Be [contiguous] one or more of the following:

(i) Contiguous acreage of at least 50 acres in size [unless the tract is].

(ii) Contiguous acreage of at least 10 acres in size and [is either] utilized for a crop unique to the area [or is].

(iii) Contiguous acreage of at least 10 acres in size and contiguous to a property which has a perpetual conservation easement in place which is held by a "qualified conservation organization," as that term is defined in section 170(h)(3) of the Internal Revenue Code (26 U.S.C.A. § 170(h)(3)).

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STATE BOARD REVIEW OF COUNTY PROGRAM

§ 138e.41. Application for review of county program.

A county board seeking State Board review, certification and approval of its county program shall submit one copy of its county program and its bylaws to the State Board at the following address: Director, Bureau of Farmland [Protection] Preservation, Department of Agriculture, 2301 North Cameron Street, Harrisburg, Pennsylvania 17110-9408.

§ 138e.42. Review, certification and approval of a county program.

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(c) A decision of the State Board to disapprove a county program shall be an adjudication subject to 2 Pa.C.S. §§ 501—508 and 701—704 (relating to the Administrative Agency Law). An appeal from a decision of the State Board to disapprove a county program may be made by the county board to the Secretary [of Agriculture] and shall be filed in writing with the Secretary within 30 days of the State Board's action. An appeal from a decision of the State Board [will] will be governed by 1 Pa. Code Part II (relating to general rules of administrative practice and procedure).

§ 138e.43. Revision of county program.

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(b) A county board seeking review of a proposed revision to its county program shall submit one copy of the proposed revision to the State Board at the following address: Director, Bureau of Farmland [Protection] Preservation, Department of Agriculture, 2301 North Cameron Street, Harrisburg, Pennsylvania 17110-9408.

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PROCEDURE FOR PURCHASING AN EASEMENT

§ 138e.61. Application.

(a) A separate application shall be required for each farmland tract offered for easement purchase. The application shall consist of a completed application form, locational maps and a soils report form. A copy of a soils report form is in Appendix B (relating to Form C Soils Report). If the county program contains minimum criteria for easement purchase that vary from those in § 138e.16 (relating to minimum criteria for applications), the application shall also include documentation [(such as a production report form contained in a guidebook authorized by the State Board under section 14.1(a)(3)(xv) of the act (3 P. S. § 914.1(a)(3)(xv))] to demonstrate the farmland tract meets these minimum criteria.

(b) The county board shall develop and make available to a county resident an application form which requires the following information:

* * * * *

(2) [The] One of the following, as applicable:

(i) If the farmland tract is eligible to be considered for easement purchase under § 138e.16(a)(1)(i), the county, [municipality] local government unit and agricultural security area in which the farmland tract is located.

(ii) If the farmland tract is bisected by a dividing line between two units of local government and is eligible to be considered for easement purchase under § 138e.16(a)(1)(ii), the county and local government units in which the farmland tract is located, the agricultural security area in which a portion of that farmland tract is located, a breakdown of the acreage proposed for easement purchase in each local government unit and a breakdown of the number of acres of viable agricultural land in the acreage proposed for easement purchase in each local government unit.

(iii) If the farmland tract is bisected by the dividing line between two or more counties and is eligible to be considered for easement purchase under § 138e.16(a)(1)(iii), the counties and local government units in which the farmland tract is located, the agricultural security area in which a portion of that farmland tract is located, and one of the following:

(A) If there is a mansion house on the farmland tract, an acknowledgement of this fact and a designation of the county in which the mansion house is located.

(B) If there is a mansion house on the farmland tract, and the mansion house is bisected by the dividing line between two or more counties, an acknowledgement of this fact and a designation of the county the landowner has chosen as the situs of assessment for tax purposes.

(C) If there is no mansion house on the farmland tract, an acknowledgement of this fact and a breakdown of the acreage proposed for easement purchase in each county and a breakdown of the number of acres of viable agricultural land in the acreage proposed for easement purchase in each county.

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§ 138e.65. Easement value and purchase price.

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(b) *Maximum purchase price.* The purchase price offered for the purchase of an easement under § 138e.66(b) may not exceed, but may be less than, the value of the easement. [Regardless of the easement value, the State funds paid toward the purchase price of an easement will not exceed \$10,000 per acre.]

§ 138e.66. Offer of purchase by county board.

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(c) Within 30 days of receipt of the written offer from the county board, an applicant may do one of the following:

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(3) Advise the county board that the applicant is retaining, at the applicant's expense, an independent State-certified general real estate appraiser to determine the easement value. The appraiser shall be qualified, and the appraisal shall be completed in accordance with the procedure in § 138e.64 (relating to appraisal). The appraisal shall be submitted to the county board within 120 days of receipt of the county board's offer to purchase. The county board may extend the time within which this appraisal shall be submitted. This extension shall be in writing and shall extend the 120-day deadline by no more than 60 days. Upon completion, three copies of the applicant's appraisal shall be submitted to the county board. The applicant's decision to obtain an independent appraisal under this paragraph does not constitute a rejection of the county board's offer. The county board's offer shall remain open unless increased by the county board under subparagraph [(ii)] (iv) or rejected by the applicant under subparagraph [(iii) or (iv)] (v).

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(iii) Regardless of the easement value, the purchase price may not exceed [**\$10,000 per acre of State**

funds] any overall purchase price limits established by the county in its county program.

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(v) The applicant shall, within 15 days of receipt of the county board's written offer under subparagraph [(ii)(A)] (iv)(A) or receipt of the county board's written notice under subparagraph [(ii)(B)] (iv)(B), notify the county board in writing that the applicant does one of the following:

* * * * *

§ 138e.67. Requirements of the agricultural conservation easement deed.

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(d) The farmland tract on which an easement is to be purchased shall be surveyed unless the legal description contained in the deed recorded in the land records of the county in which the farmland tract is located satisfies the requirements of subsections (b) and (c). A survey required by this paragraph shall [comply with the boundary survey measurement standards for a Class A-2 survey as published by the Pennsylvania Society of Land Surveyors] meet the requirements of § 138e.73 (relating to survey requirements).

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(g) [A copy of the proposed deed shall be submitted to the State Board for approval prior to execution and delivery.] For purchases made using a combination of State, county and local municipality funds, the grantees shall be the Commonwealth, the county and the local municipality providing the funds under joint ownership as defined in the act.

(h) For purchases made entirely with county funds, the county shall be the sole grantee.

(i) For purchases made entirely with local municipal funds, the municipality shall be the sole grantee.

§ 138e.68. Title insurance.

(a) The county board shall provide [a title report] the following to the State Board upon submission of its recommendation for the purchase of an easement [.]:

(1) A title insurance commitment.

(2) Copies of all recorded or unrecorded documents listed on the title insurance commitment as exceptions to the title insurance policy.

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§ 138e.71. Notification of owners of land adjoining proposed easement purchase.

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(d) *Correction of notice.* If the date or time of the meeting at which an easement purchase recommendation is to be considered changes after the adjoining landowners receive the notice described in this section, the county board shall provide these landowners a corrective notice, providing notice of the changes, in the manner described in subsection (b) or (c).

§ 138e.73. Survey requirements.

(a) *General requirement.* If a survey of land being considered for agricultural conservation easement purchase is required under § 138e.67(d) (relating to

requirements of the agricultural conservation easement deed) or is otherwise required to determine metes and bounds of any right-of-way or other interests in the land, the survey shall indicate that it has a closure error of not greater than 1 foot per 10,000 linear feet in the survey, and shall otherwise comply with the most current boundary survey measurement standards published by the Pennsylvania Society of Land Surveyors.

(b) *Other requirements.* A survey described in subsection (a) shall also contain the following:

(1) A recordable legal description setting forth the metes and bounds of the farmland tract or other subject of the survey.

(2) A copy of the survey for each traverse in digital electronic format that complies with the conservation easement Geographic Information System (GIS) technical standards maintained in the guidebook prepared by the Department in accordance with section 14.1(a)(3)(xv) of the act (3 P. S. § 914.1(a)(3)(xv)).

(3) Geographic coordinates of at least two ground control points located sequentially along a traverse, with latitude and longitude expressed in decimal degrees. These geographic coordinates shall be based on the North American Datum of 1983 and shall be accurate to within 2 meters horizontally.

(4) A hardcopy of the plotted survey map from the digital file showing the course bearings and distances and other annotations and symbols as maintained in the guidebook prepared by the Department in accordance with section 14.1(a)(3)(xv) of the act.

(c) *Monumentation.* If a survey of land being considered for agricultural conservation easement purchase is required under § 138e.67(d) or is otherwise required to determine metes and bounds of any right-of-way or other interests in the land, the surveyor shall establish monumentation for at least the two ground control points referenced in subsection (b)(3). One point shall be a permanent, unmovable monument established with a concrete shaft, 5/8 inch steel reinforcing bar as a core with an alloy disk embedded with a stamped identification number. The second ground control point shall be a standard 5/8 inch rebar or similar concrete monument.

STATE BOARD REVIEW OF A PURCHASE RECOMMENDATION

§ 138e.91. Recommendation for purchase.

A county board shall make its recommendation for purchase of an easement by submitting the following documents to the Director, Bureau of Farmland [Protection] Preservation, Department of Agriculture, 2301 North Cameron Street, Harrisburg, Pennsylvania 17110-9408:

(1) [Twenty-two] Twenty-five copies of the summary report prepared in accordance with § 138e.70 (relating to summary report), including the following items:

* * * * *

(x) The [22] 25 copies submitted shall be individually collated and three-hole punched, but not stapled.

* * * * *

(8) A copy of the approved soil conservation plan that is required to be in place with respect to the land under § 138e.241(2) (relating to deed clauses), and a fully-executed conservation plan agreement form as described in § 138e.222(a) (relating to conservation plan).

* * * * *

§ 138e.93. Postsettlement recording and reporting procedures.

(a) *Retaining copies of essential documents.* The county board shall make and retain photocopies of the following documents after settlement is held with respect to an agricultural conservation easement purchase, and prior to the recording of the deed of agricultural conservation easement in the appropriate recorder of deeds' office:

(1) The complete and fully-executed deed of agricultural conservation easement, including the complete legal description of the land subject to the agricultural conservation easement.

(2) A marked-up title insurance commitment document, reflecting that all listed title insurance exceptions have been addressed and resolved prior to the purchase of the agricultural conservation easement.

(3) Mortgage satisfaction pieces, subordination agreements and other documents to be recorded in connection with the agricultural conservation easement purchase.

(b) *Prompt recording of the deed of agricultural conservation easement and other documents.* The county board shall record the deed of agricultural conservation easement and any other documents (such as subordination documents, satisfaction pieces and releases) at the appropriate recorder of deeds' office promptly after settlement is held with respect to the easement purchase.

(c) *Prompt recording of agricultural security area; reporting to the State Board.* If the settlement triggers the automatic inclusion into an agricultural security area of some portion of the land subject to the agricultural conservation easement under section 14.1(b)(2)(i)(B) or (C) of the act (3 P. S. § 914.1(b)(2)(i)(B) or (C)), the governing body that created the agricultural security area into which the land is automatically included shall promptly record the addition of this land into the agricultural security area in accordance with the filing, recording and notification procedures in section 8(d) and (g) of the act (3 P. S. § 914.8(d) and (g)). The governing body shall then promptly transmit to the county board written confirmation that this recording, filing and notification has been accomplished. The county board shall mail or deliver a copy of that written confirmation to the State Board within 10 days of receipt.

(d) *Reporting the agricultural conservation easement purchase to the State Board.*

(1) *General.* The county board shall mail or deliver the following documents to the Department within 10 days following the date upon which settlement is held with respect to an agricultural conservation easement purchase:

(i) A complete notification of settlement, on a form available from the Department upon request, containing the following:

- (A) The name of the landowners.
- (B) The county in which the land is located.
- (C) The date of settlement.
- (D) A statement identifying any additional incidental costs.
- (E) An indication (by check-off or other designation) of the other documents the county board is submitting to the Department along with the Notification of Settlement Form.
- (F) The signature of the administrator or chief executive of the county board.
- (ii) Copies of all of the documents described in subsection (b).
- (iii) A copy of the settlement sheet.
- (iv) A marked-up title insurance commitment document, reflecting that all listed title insurance exceptions have been addressed and resolved prior to the purchase of the agricultural conservation easement.
- (v) A complete verification, executed by the settlement agent at settlement, on a form available from the Department upon request, containing the following:

(A) A statement reading substantively as follows:

As Settlement Agent for _____ County, I hereby verify that I have submitted (or will take responsibility for submitting) the appropriate IRS 1099-S form(s) for the agricultural conservation easement identified below in accordance with the Internal Revenue Code, section 6045. I further verify that I have reported (or will report) the gross proceeds in the case of a joint purchase by the Commonwealth and the county. If this verification is not submitted to the Commonwealth within 30 days of closing, I further verify that the 1099-S form(s) will be sent to the IRS and the transferor by the deadline established by the IRS.

(B) The name and Federal taxpayer I.D. number of each person who sold an interest in the agricultural conservation easement.

(vi) An invoice from the county for any additional incidental costs related to the agricultural conservation easement purchase, on a form available from the Department upon request, containing the following:

(A) The name, address and Federal taxpayer I.D. number of the county.

(B) The date of the application.

(C) The name, address and telephone number of the person designated by the county to act as a contact person if the Department requires further information.

(D) The name of the farm owner, address of the farm and the number of acres under agricultural conservation easement.

(E) A breakdown of the purposes for which reimbursement of additional incidental expenses is requested, and the amount of each expense.

(vii) A revised statement of costs, as described in § 138e.69 (relating to statement of costs), if the incidental costs are higher or lower than originally reported.

(2) *Exception for agricultural conservation easements purchased by a local government unit solely.* Paragraph (1) notwithstanding, if an agricultural conservation easement is purchased by a local government unit solely, the county board shall mail or deliver the following documents to the Department within 30 days after recording the deed of agricultural conservation easement:

(i) A copy of the complete and fully-executed deed of agricultural conservation easement, including the complete legal description of the land subject to the agricultural conservation easement.

(ii) A current United States Geological Survey (USGS) topographical map that clearly and legibly shows the subject property location and boundaries, location of neighboring easements and exclusions withheld from the subject property.

(iii) An invoice as described in paragraph (1)(vi).

(e) *Certified copies of filed documents.* The county board shall mail or deliver certified copies of the recorded documents described in subsection (b) to the Department within 30 days following the date upon which these documents are recorded at the appropriate recorder of deeds' office. The appropriate recorder of deeds' office shall issue this certification.

(f) *Title insurance policy.* The title insurance policy should be mailed or delivered to the State Board within a reasonable time after settlement—preferably within 60 days of settlement.

ALLOCATION OF FUNDS

§ 138e.102. Allocation of funds to counties.

* * * * *

(h) If an eligible county seeks to encumber State matching funds for an agricultural conservation easement purchase to be made by the county alone, the State matching funds shall be considered encumbered when the county board has submitted to the Department a signed agreement of sale and the written certification of the county governing body that the specific amount of county matching funds necessary for the purchase of the agricultural conservation easement by the county is available and intended for this purchase.

(i) * * *

[(i)] (j) * * *

§ 138e.103. Expenditure of matching funds.

* * * * *

(d) An easement purchased using solely county funds will be considered an expenditure of county matching funds under [sections] section 14.1(h)(3), (4) and (5)(i) of the act (3 P. S. [§]§ 914.1(h)(3), (4) and (5)(i)) if:

* * * * *

(2) Upon settlement of the purchase of an easement, the county board submits the following to the State Board:

(i) A copy of the [signed] complete and fully-executed deed of agricultural conservation easement, including the complete legal description of the land subject to the agricultural conservation easement.

* * * * *

(iv) The date of approval of the conservation plan, a copy of the conservation plan and a copy of the executed conservation plan agreement as described in § 138e.222 (relating to conservation plan).

(v) A completed Soil Report Form "C" (a form provided by the Department), both pages. See Appendix B (relating to Form C Soils Report).

(vi) A current United States Geological Survey (USGS) topographical map that clearly and legibly shows the subject property location and boundaries, location of neighboring easements and exclusions withheld from the subject property.

(vii) A statement of costs, as described in § 138e.69 (relating to statement of costs).

(viii) An invoice as described in § 138e.93(d)(1) (vi) (relating to postsettlement recording and reporting procedures).

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§ 138e.104. Installment sales.

* * * * *

(c) *Installment sales with a payment period of more than 5 years.* Installment sales, other than those installment sales described in subsection (d), in which the final payment for the easement purchase is to be made more than 5 years from the date the contract of sale is fully executed are subject to the following provisions:

* * * * *

(d) *Installment sales deferring the payment of principal for up to 30 years.* Installment sales in which payment of principal is deferred to the end of a specific period of up to 30 years from the date the contract of sale is fully executed are subject to the following provisions:

(1) Purchases may be made in the name of the Commonwealth, an eligible county or jointly by the Commonwealth and an eligible county.

(2) Notwithstanding the requirement of § 138e.66(d), the county board may, subject to approval by the Department, provide the agreement of sale for purchases made under this subsection.

(3) The agreement of sale and the deed of easement shall meet the same requirements and be subject to the same conditions as set forth in §§ 138e.66(c) and 138e.67.

(4) The installment payment terms shall be negotiated between the landowner and the county board. These terms shall include the amount of cash (if any) to be received at closing, the interest rate, the period over which interest is to be paid and the point at which principal is to be paid.

(5) If landowner is responsible for the transaction costs associated with the type of purchase described in this subsection unless the county program provides otherwise.

PROCEDURE FOR INSPECTING AND ENFORCING AN EASEMENT

§ 138e.201. Responsibility.

(a) The county board shall have the primary responsibility for inspecting restricted land and enforcing [an easement] the following [.]:

(1) Agricultural conservation easements within the county.

(2) Agricultural conservation easements which were acquired under authority of section 14.1(b)(2) (i) of the act (3 P. S. § 914.1(b)(2)(i)), including any portion extending into an adjoining county.

* * * * *

§ 138e.202. Inspections.

(a) The county board shall inspect all restricted land within the county at least annually to determine compliance with the applicable deed of easement. The first inspection shall be completed within 1 year of the date of easement sale, and in sufficient time to be included in the annual report described in § 138e.203 (relating to annual report).

* * * * *

(d) Within 10 days of conducting an inspection under subsection (a), the county board shall prepare a written inspection report setting forth the following information:

* * * * *

(6) A statement indicating whether a structure permitted under section 14.1(c)(6)(iv) of the act (3 P. S. § 914.1(c)(6)(iv)) has been constructed on the restricted land and, if such a structure has been constructed, the month and year construction was completed and a description of the structure and its location on the land.

* * * * *

§ 138e.203. Annual report.

The county board shall file the following with the State [board a] Board by March 1 of each year:

(1) A copy of inspection reports for inspections conducted during the prior year[, and compile an] .

(2) An annual report which summarizes the number of inspections, violations detected, violations resolved and the circumstances surrounding unresolved violations.

§ 138e.204. Enforcement.

(a) The county board shall enforce the terms of each easement purchased within the county under the act, whether it be a local government unit, county, State or joint purchase.

* * * * *

RESPONSIBILITY OF OWNER

§ 138e.222. Conservation plan.

(a) [To preserve the agricultural viability of the restricted land, the county board shall require, and the owner of the restricted land shall implement, a conservation plan approved by the county conservation district or the county board.] The county board shall require the owner of land being considered for agricultural conservation easement purchase to do the following before the county board recommends approval of the easement purchase to the State Board:

(1) Obtain a conservation plan approved by the county conservation district or the county board for the land that would be subject to the agricultural conservation easement.

(2) Execute a conservation plan agreement containing the following:

(i) The name, address and telephone number of the landowners.

- (ii) The location of the land.
- (iii) The acreage of the land.
- (iv) An acknowledgement that the deed of agricultural conservation easement requires that all agricultural production on the subject land be conducted in accordance with the conservation plan.
- (v) An acknowledgement that a conservation plan exists with respect to the land, together with the following:
 - (A) The source of the conservation plan (typically, the county conservation district).
 - (B) An identifying number given the conservation plan.
 - (C) The date of the conservation plan.
- (vi) An acknowledgement that the landowners agree to comply with the conservation practices and implementation schedule in the conservation plan, and an acknowledgement that failure to so comply would be a violation of the terms of the deed of agricultural conservation easement.
- (vii) The signature of the landowners.

* * * * *

LAND TRUST REIMBURSEMENT GRANT PROGRAM

§ 138e.251. Program in general.

Section 14.5(a)(3) of the act (3 P. S. § 914.5(a)(3)) authorizes the expenditure of up to \$500,000 from the Supplemental Agricultural Conservation Easement Purchase Account to reimburse eligible land trusts for expenses incurred in the acquisition of agricultural conservation easements in this Commonwealth. Sections 138e.252—138e.256 describe the procedures and standards under which this reimbursement shall occur under the Land Trust Reimbursement Grant Program.

§ 138e.252. Eligibility of a land trust to register for reimbursement grants.

To be eligible to register with the State Board in accordance with § 138e.253 (relating to registration of eligible land trust) and to receive reimbursement grants under the Land Trust Reimbursement Grant Program, a land trust shall be a tax-exempt institution under section 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C.A. § 501(c)(3)) and include the acquisition of agricultural conservation easements or other conservation easements in its stated purpose.

§ 138e.253. Registration of eligible land trust.

(a) *Registration required.* An eligible land trust seeking reimbursement grants under the Land Trust Reimbursement Grant Program shall register with the State Board. Registration shall be accomplished by delivering a registration letter to the following address: Pennsylvania Department of Agriculture, ATTN: Bureau of Farmland Preservation, 2301 North Cameron Street, Harrisburg, Pennsylvania 17110-9408.

(b) *Contents of registration letter.* A registration letter shall:

(1) Set forth a request that the eligible land trust be registered with the State Board for the purpose

of receiving reimbursement grants under the Land Trust Reimbursement Grant Program.

(2) Be signed by the president or other appropriate authorized officer of the eligible land trust.

(3) Have the following documentation enclosed:

(i) A copy of the section 501(c)(3) tax-exempt certification issued to the land trust by the Internal Revenue Service, or any other documentation demonstrating the section 501(c)(3) tax-exempt status of the land trust.

(ii) Documentation, such as a certified copy of the corporate bylaws, demonstrating that the land trust has the acquisition of agricultural conservation easements or other conservation easements as its stated purpose.

(4) If the eligible land trust seeks to be registered to receive reimbursement grants with respect to agricultural conservation easements it acquires in a county that is an eligible county (as that term is defined in § 138e.3 (relating to definitions)), have enclosed a letter from either the director or the chairperson of the county board of the eligible county, verifying that the land trust coordinates its farmland preservation activities with the farmland preservation activities of the county.

(5) If an eligible land trust seeks to be registered to receive reimbursement grants with respect to agricultural conservation easements it acquires in a county that is not an eligible county (as that term is defined in § 138e.3), have enclosed a written explanation of the procedures it will follow to coordinate with the State Board on the easement acquisitions.

(c) *Acknowledgement of registration.* The Department will promptly provide an eligible land trust that delivers a complete registration letter as described in subsection (b) with written confirmation that the eligible land trust is registered to receive reimbursement grants under the Land Trust Reimbursement Grant Program, together with an application for reimbursement grant form as described in § 138e.254 (relating to applying for a reimbursement grant).

§ 138e.254. Applying for a reimbursement grant.

(a) *Application for reimbursement grant; timing.* If an eligible land trust is registered in accordance with § 138e.253 (relating to registration of eligible land trust), and seeks a reimbursement grant with respect to the acquisition of an agricultural conservation easement, it shall do the following:

(1) Complete an application for reimbursement grant form as described in subsection (b).

(2) Deliver the completed application to the State Board, at the address in § 138e.253(a), within 60 days of closing on the acquisition of the agricultural conservation easement with respect to which the reimbursement grant is sought.

(b) *Obtaining an application for reimbursement grant form.* Reimbursement grant application forms may be downloaded from the Department's website address: www.pda.state.pa.us. The Department will also provide reimbursement grant application forms upon written request to the address in § 138e.253(a), or upon requests telephoned to the Department, at (717) 783-3167. The Department will

also enclose a reimbursement grant application form with any acknowledgement of registration it issues under § 138e.253(c).

(c) *Content of a complete application for a reimbursement grant.* A complete application for a reimbursement grant shall contain the following:

(1) A request for reimbursement of costs incidental to the acquisition of an agricultural conservation easement.

(2) A statement of the costs (such as, costs of appraisals, legal services, title searches, document preparation, title insurance, closing fees and surveys) incidental to the acquisition of the agricultural conservation easement.

(3) A true and correct copy of the recorded deed of agricultural conservation easement.

(4) The Soil Report Form "C" (a form provided by the Department), both pages. See Appendix B (relating to Form C Soils Report).

§ 138e.255. State Board review of applications.

(a) *Department's responsibility.* The Department will stamp or otherwise identify every complete reimbursement grant application form to record the date it is received and the relative order in which these applications are received.

(b) *State Board review.* The State Board will consider reimbursement grant applications in the order in which the Department received them. The State Board will review any complete, timely application within 60 days of receipt. The State Board may not approve a reimbursement grant application unless all of the following criteria are met:

(1) The application meets the requirements of section 14.5(a)(3) of the act (3 P. S. § 914.5(a)(3)).

(2) The land use restrictions imposed under the deed of agricultural conservation easement are comparable to restrictions imposed under a deed of agricultural conservation easement acquired in accordance with the act, as described in § 138e.241 (relating to deed clauses).

(3) One of the following applies:

(i) The land subject to the agricultural conservation easement meets the following criteria:

(A) The land is in an agricultural security area consisting of 500 acres or more.

(B) The land is contiguous acreage of at least 25 acres in size unless the tract is at least 10 acres in size and is either utilized for a crop unique to the area or is contiguous to a property which has a perpetual conservation easement in place which is held by a "qualified conservation organization," as that term is defined in section 170(h)(3) of the Internal Revenue Code (26 U.S.C.A. § 170(h)(3)).

(C) The land contains at least 50% of soils which are both available for agricultural production and of land capability classes I-IV, as defined by the USDA-NRCS.

(D) The land contains the greater of 50% or 10 acres of harvested cropland, pasture or grazing land.

(ii) The land subject to the agricultural conservation easement meets the following criteria:

(A) The land is in an agricultural security area consisting of 500 acres or more.

(B) The land is of any acreage but adjoins land that is either currently subject to an agricultural conservation easement purchased under authority of the act or adjoins land that has been approved by the State Board for agricultural conservation easement purchase under authority of the act, so that—in the aggregate—the land and the restricted land it adjoins comprise at least 50 contiguous acres.

(4) There are sufficient unencumbered funds available to fund the reimbursement grant amount sought in the reimbursement grant application.

§ 138e.256. Decision of the State Board.

The State Board will, within 10 days of completing its review, mail a reimbursement grant applicant written notice as to whether the reimbursement grant application is approved. If the application is not approved, the written notice will specify the basis for disapproval.

(*Editor's Note:* The following chapter is new. It has been printed in regular type to enhance readability.)

CHAPTER 138I. AGRICULTURAL SECURITY AREA PROGRAM

Subchap.

- A. PRELIMINARY PROVISIONS
- B. FORMATION OF AN AGRICULTURAL SECURITY AREA
- C. ADDING LAND TO AN EXISTING ASA
- D. REMOVING LAND FROM AN EXISTING ASA
- E. SEVEN-YEAR REVIEW AND INTERIM REVIEW

Subchapter A. PRELIMINARY PROVISIONS

Sec.

- 138I.1. Definitions.
- 138I.2. Purpose.
- 138I.3. Contacting the Department.

§ 138I.1. Definitions.

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

ALCAB—The Agricultural Lands Condemnation Approval Board of the Commonwealth.

ASA—*Agricultural security area*—A unit of 250 or more acres used for the agricultural production of crops, livestock or livestock products under the ownership of one or more persons and one of the following applies:

(i) The land has been designated as such by the procedures in the act.

(ii) The land has been designated as such under the act of January 19, 1968 (1967 P. L. 992, No. 442) (32 P. S. §§ 5001—5012), entitled "An act authorizing the Commonwealth of Pennsylvania and the counties thereof to preserve, acquire or hold land for open space uses," prior to February 12, 1989, by the governing body of the county or governing body of the municipality in which the agricultural land is located on the basis of criteria and procedures which predate February 12, 1989, and which was not withdrawn from the ASA by August 10, 1989, by the owner providing written notice of withdrawal to the county governing body or governing body of the municipality in which the land is located.

ASA landowner—An owner of land located within an ASA.

ASA proposal form—A Proposal for the Creation or Modification of an Agricultural Security Area form created by the Department.

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

Advisory committee—An Agricultural Security Area Advisory Committee.

Agricultural conservation easement—An interest in land, less than fee simple, which interest represents the right to prevent the development or improvement of a parcel for any purpose other than agricultural production.

(i) The easement may be granted by the owner of the fee simple to any third party or to the Commonwealth, to a county governing body or a unit of local government.

(ii) It shall be granted in perpetuity as the equivalent of covenants running with the land.

(iii) The exercise or failure to exercise any right granted by the easement will not be deemed to be management or control of activities at the site for purposes of enforcement of the Hazardous Sites Cleanup Act (35 P. S. § 6020.101—6020.1305).

Agricultural production—

(i) The production for commercial purposes of crops, livestock and livestock products, including the processing or retail marketing of the crops, livestock or livestock products if more than 50% of the processed or merchandised products are produced by the farm operator.

(ii) The term includes use of land which is devoted to and meets the requirements of and qualifications for payments or other compensation under a soil conservation program under an agreement with an agency of the Federal government.

Applicant—A landowner proposing the establishment or modification of an ASA in accordance with the requirements of the act and this chapter.

Contiguous acreage—

(i) All portions of one operational unit as described in the deed whether or not the portions are divided by streams, public roads, bridges, and whether or not described as multiple tax parcels, tracts, purparts, or other property identifiers.

(ii) The term includes supportive lands such as unpaved field access roads, drainage areas, border strips, hedgerows, submerged lands, marshes, ponds and streams, or as otherwise defined in § 138e.3 (relating to definitions).

County board—The county agricultural land preservation board as appointed by the county governing body under the act.

County fiscal year—The period from January 1 through December 31 of a particular calendar year.

County governing body—The county board of commissioners or, under home rule charters, another designated council of representatives.

County planning commission—A planning commission or agency which has been designated by the county governing body to establish and foster a comprehensive plan for land management and development within the county.

Crops, livestock and livestock products—The term includes:

(i) Field crops, including corn, wheat, oats, rye, barley, hay, potatoes and dry-beans.

(ii) Fruits, including apples, peaches, grapes, cherries and berries.

(iii) Vegetables, including tomatoes, snap beans, cabbage, carrots, beets, onions and mushrooms.

(iv) Horticultural specialties, including nursery stock and ornamental shrubs, ornamental trees and flowers.

(v) Livestock and livestock products, including cattle, sheep, hogs, goats, horses, poultry, furbearing animals, milk, eggs and furs.

(vi) Timber, wood and other wood products derived from trees.

(vii) Aquatic plants and animals and their byproducts.

Curtilage—The area surrounding a residential structure used for a yard, driveway, onlot sewerage system or other nonagricultural purposes.

Department—The Department of Agriculture of the Commonwealth.

Description of the proposed area—A complete and accurate list of the names of the owners of each parcel of land to be included in the proposed ASA, the tax parcel number or account number of each parcel and the number or account number of acres (including partial acres, to the nearest thousandth) contained in each parcel. The description shall use county tax map references for determining boundaries of each parcel, and no survey of parcels shall be required, except that an individual parcel included in the ASA shall represent less than the entire amount of contiguous land contained in the property of an owner.

Economic viability of farmland for agricultural production—The capability of a particular tract of restricted land, other than a tract of 2 acres or less upon which construction and use of the landowner's principal residence or housing for seasonal or full-time farm employees is permitted under section 14.1(c)(6)(iv) of the act (3 P. S. § 914.1(c)(6)(iv)), to meet the criteria in § 138e.16(a) (relating to minimum criteria for applications).

Eligible counties—Counties whose county programs have been approved by the State Board. For the purpose of annual allocations, an eligible county shall have its county program approved by the State Board by January 1 of the year in which the annual allocation is made. Counties of the first class are not eligible under any circumstances.

Farm—Land in this Commonwealth which is being used for agricultural production as defined in the act.

Farmland tract or tract—Land constituting all or part of a farm with respect to which easement purchase is proposed. A farmland tract may consist of multiple tracts of land that are identifiable by separate tax parcel numbers, separate deeds or other methods of property identification.

Governing body—The governing body of a local government unit.

Grazing or pasture land—Land, other than land enrolled in the USDA Conservation Reserve Program, used primarily for the growing of grasses and legumes which are consumed by livestock in the field and at least 90% of which is clear of trees, shrubs, vines or other woody growth not consumed by livestock.

Harm the economic viability of the farmland for agricultural production—To cause a particular tract of restricted land to fail to meet the criteria in § 138e.16(a) or to create, through subdivision, a tract of restricted land, other than a tract of 2 acres or less upon which construction and use of the landowner's principal residence or housing for seasonal or full-time farm employees is permitted under section 14.1(c)(6)(iv) of the act, that would fail to meet the criteria in § 138e.16(a).

Harvested cropland—

(i) Land, other than land enrolled in the USDA Conservation Reserve Program, used for the commercial production of field crops, fruit crops, vegetables and horticultural specialties, such as Christmas trees, flowers, nursery stock, ornamentals, greenhouse products and sod.

(ii) The term does not include land devoted to production of timber and wood products.

Interim review—The interim review of an existing ASA in accordance with the requirements of section 9(b) of the act (3 P. S. § 909(b)).

Land Capability Class—A group of soils designated by either the county soil survey, as published by USDA-NRCS in cooperation with the Pennsylvania State University and the Department, or the *Soil and Water Conservation Technical Guide* maintained and updated by USDA-NRCS.

Landowner—The person holding legal title to a particular farmland tract.

Land which has been devoted primarily to agricultural use—

(i) Acreage which is a part of restricted land and is harvested cropland, grazing or pasture land, land used for the production of timber and wood products, land containing nonresidential structures used for agricultural production, or other acreage immediately available for agricultural production.

(ii) The term does not include: any acreage upon which immediate agricultural production is impracticable due to residential structures and their curtilages, wetlands, soil quality, topography or other natural or manmade features.

(iii) The term does not include: any tract of 2 acres or less designated as the site upon which the landowner's principal residence or housing for seasonal or full-time employees is permitted under section 14.1(c)(6)(iv) of the act.

Local government unit—A city, borough, township or town or any home rule municipality, optional plan municipality, optional charter municipality or similar general purpose unit of government which may be created or authorized by statute.

Mansion house—The primary residential structure located upon a parcel.

Nonprofit land conservation organization—A nonprofit organization dedicated to land conservation purposes recognized by the Internal Revenue Service as a tax-exempt organization under the Internal Revenue Code of 1986 (26 U.S.C. §§ 1—7872).

Normal farming operation—

(i) The customary and generally accepted activities, practices and procedures that farmers engage in year after year in the production and preparation for market of crops, livestock and livestock products and in the produc-

tion and harvesting of agricultural, agronomic, horticultural, silvicultural, and aquacultural crops and commodities.

(ii) The term includes the storage and utilization of agricultural and food processing wastes for animal feed and the disposal of manure, other agricultural waste and food processing waste on land where the materials will improve the condition of the soil or the growth of crops or will aid in the restoration of the land for the same purposes.

Nutrient management plan—A written site-specific plan which incorporates best management practices to manage the use of plant nutrients for crop production and water quality protection consistent with the Nutrient Management Act (3 P. S. §§ 1701—1718).

Parcel—A tract of land in its entirety which is assessed for tax purposes by one county, including any portion of that tract that may be located in a neighboring county. The county responsible for assessing an entire tract, on its own or in conjunction with either the Commonwealth or a local government unit, or both, shall be eligible to purchase agricultural conservation easements covering the entire tract.

Pennsylvania Municipalities Planning Code—53 P. S. §§ 10101—11201.

Person—A corporation, partnership, business trust, other association, government entity (other than the Commonwealth), estate, trust, foundation or natural person.

Planning commission—A local government planning commission or agency which has been designated by the governing body to establish and foster a comprehensive plan for land management and development within the local government unit.

Restricted land—Land which is subject to the terms of an agricultural conservation easement acquired under the act.

Secretary—The Secretary of Agriculture.

7-year review—The periodic review of an existing ASA in accordance with the requirements of section 9(a) of the act (3 P. S. § 909(a)).

Soils available for agricultural production—Soils on land that is harvested cropland, pasture or grazing land, or land upon which no structure, easement, roadway, curtilage or natural or manmade feature would impede the use of that soil for agricultural production.

Soils report—A report which identifies and sets forth the amount of each land capability class found on a farm land tract.

State Board—The State Agricultural Land Preservation Board.

State-certified general real estate appraiser—A person who holds a current general appraiser's certificate issued under the Real Estate Appraisers Certification Act (63 P. S. §§ 457.1—457.19).

Subdivision—The division or redivision of a lot, tract or parcel of land by any means into two or more lots, tracts, parcels or other divisions of land including changes in existing lot lines for the purpose, whether immediate or future, of lease, partition by the court for distribution to heirs or devisees, transfer of ownership or building or lot development, or as otherwise defined in § 138e.3.

Title report—

(i) A report prepared by a person authorized by the Insurance Department to engage in the sale of title insurance or an attorney setting forth the existence of any liens, restrictions or other encumbrances on a farmland tract.

(ii) The term does not include the title search, but does include the title binder or the title commitment, or both.

USDA—The United States Department of Agriculture.

USDA-NRCS—The Natural Resources Conservation Service of the USDA. This entity was formerly known as the Soil Conservation Service.

Viable agricultural land—Land suitable for agricultural production and which will continue to be economically feasible for that use if real estate taxes, farm use restrictions and speculative activities are limited to levels approximating those in commercial agricultural areas not influenced by the proximity of urban and related nonagricultural development.

§ 1381.2. Purpose.

This chapter provides regulatory guidance with respect to the benefits of having land in an ASA, the application and review process under which an ASA is formed, the procedures involved in recording an ASA, the addition of land to an existing ASA and the removal of land from an existing ASA, and to otherwise further the purposes of the act.

§ 1381.3. Contacting the Department.

(a) The forms referenced in this chapter may be obtained from the Department, by contacting the following: Director, Bureau of Farmland Preservation, Department of Agriculture, 2301 North Cameron Street, Harrisburg, Pennsylvania 17110-9408, (717) 783-3167.

(b) These forms shall also be available and may be downloaded from the Department's website, at the following internet website address: www.pda.state.pa.us.

Subchapter B. FORMATION OF AN AGRICULTURAL SECURITY AREA

Sec.

- 1381.11. Agricultural security area advisory committee.
- 1381.12. Eligibility to propose the creation of an ASA.
- 1381.13. ASA proposal form.
- 1381.14. Fees.
- 1381.15. ASA located in more than one local government unit.
- 1381.16. Submitting an ASA proposal form to the local government unit.
- 1381.17. Local government unit action upon receipt of an ASA proposal.
- 1381.18. Public hearing by local government unit on ASA proposal.
- 1381.19. Decision of local government unit.
- 1381.20. Notice of decision of the local government unit.
- 1381.21. Effective date of the creation or modification of an ASA.
- 1381.22. Filing of ASA description by governing body; recording of the ASA description.
- 1381.23. Notification of Secretary by governing body.
- 1381.24. Planning commission action with respect to an ASA proposal.
- 1381.25. Advisory committee action with respect to an ASA proposal.
- 1381.26. Factors to be considered by the governing body of the local government unit, the planning commission and the advisory committee.

§ 1381.11. Agricultural security area advisory committee.

(a) *Time for formation of an advisory committee.* A governing body may establish an advisory committee at any time. When a proposal for the creation of an ASA is received by a governing body, though, the governing body shall establish an advisory committee if it has not already done so.

(b) *Appointment and composition of an advisory committee.* An advisory committee shall be appointed by the

chairperson of the governing body of the local government unit in which the ASA is located, or is to be located. The members of the advisory committee shall serve at the pleasure of that chairperson. An advisory committee shall be composed of five members, as follows:

(1) A member of the governing body of the local government unit, who shall be chairperson of the advisory committee.

(2) One citizen residing within the local government unit.

(3) Three active farmers, each representing a different private or corporate farm situated, at least in part, within the local government unit.

(c) *Functions of an advisory committee.* An advisory committee shall advise the governing body and work with the planning commission in relation to the proposed establishment, modification, review and termination of an ASA. An advisory committee shall render expert advice as to the nature and desirability of these actions, including advice as to the nature of farming and farm resources within the proposed or existing ASA and the relationship of farming in the ASA to the local government unit as a whole.

§ 1381.12. Eligibility to propose the creation of an ASA.

An owner or a group of owners of land are eligible to propose the creation of an ASA if the following conditions are met:

(1) The land described in the proposal is used for agricultural production (although a reasonable amount of nonviable farm land and nonfarm land may be included if it is not feasible to exclude it).

(2) Some portion of the land described in the proposal lies within the local government unit to which the proposal is submitted.

(3) The total acreage described within the proposal comprises at least 250 acres of viable agricultural land.

(4) If tax parcel numbers or accounts reflect that a parcel is not contiguous to other land included in the proposal, that tax parcel or account is at least one of the following:

(i) Comprised of 10 or more acres.

(ii) Has anticipated yearly gross income of at least \$2,000 from agricultural production.

§ 1381.13. ASA proposal form.

(a) *Governing body has discretion.* The governing body may prescribe the manner and form of the process under which it will receive and consider proposals for the formation of an ASA, to the extent the exercise of that discretion does not violate any provision of the act or this chapter. A governing body may require the use of its own ASA proposal form meeting the requirements of subsection (b), or may use the Department's ASA proposal form as described in subsection (c).

(b) *Minimum requirements for a proposal.* An ASA proposal shall, at a minimum, contain the following:

(1) The name of the township, borough, city or other local government unit to which the ASA proposal is submitted.

(2) The county of the local government unit to which the ASA proposal is submitted.

(3) A description of the boundaries of the proposed ASA.

(4) With respect to each farmland parcel listed on the ASA proposal:

(i) The printed name and address of each person owning land proposed for inclusion in the ASA.

(ii) The signature of each person described in subparagraph (i).

(iii) The county tax parcel number or account number identifying the parcel.

(iv) The acreage of the parcel.

(5) Other information as might be reasonably required to establish the boundaries of the proposed ASA, the owners of the parcels of farmland described in the ASA and compliance with the act and this chapter.

(c) *ASA proposal form available from the Department.* The Department will provide any person or local government unit, upon request, copies of an ASA proposal form created by the Department. A request for an ASA proposal form may be directed to the Department in accordance with § 1381.3 (relating to contacting the Department) or the local government unit in which the ASA proposal form would be filed.

§ 1381.14. Fees.

(a) *General prohibition.* Except as provided in subsection (b), the governing body may not charge a landowner any fee for the filing of an ASA proposal or for any action the governing body is required to take under the act or this chapter.

(b) *Exception.* A governing body may, by resolution, impose reasonable filing fees for the administration and review of an ASA proposal if all of the following apply:

(1) The proposal includes substantially the same lands as proposed in a previously-submitted application.

(2) The governing body had rejected that previously-submitted application within 36 months preceding the date the proposal was submitted.

(3) The previous rejection was based upon the recommendations of the advisory committee and the planning commission.

§ 1381.15. ASA located in more than one local government unit.

There are four ways in which an ASA may be created or modified to contain land located in more than one local government unit as follows:

(1) The ASA proposal may be directed to the governing bodies of each of the affected local government units and approved in accordance with the process described in § 1381.31(b) and (c) (relating to adding land to an existing ASA).

(2) A parcel of farmland that straddles the boundary line between two local government units shall be automatically included in the ASA of one of those local government units if the other local government unit has not approved an ASA and the majority of the parcel's viable agricultural land is within the local government unit seeking to create an ASA or add the parcel to an existing ASA, as described in § 1381.32 (relating to automatic inclusion of certain parcels bisected by the dividing line between local government units).

(3) A parcel of farmland that straddles the boundary line between two local government units shall be auto-

matically included in the ASA if the majority of the parcel's viable agricultural land is already in the ASA and an agricultural conservation easement is purchased with respect to the parcel, as described in § 1381.33 (relating to automatic inclusion of certain parcels bisected by the dividing line between local government units upon purchase of an agricultural conservation easement by certain entities).

(4) A parcel of farmland that straddles the boundary line between two counties shall be automatically included in the ASA of one of those counties if an agricultural conservation easement is purchased with respect to the parcel, as described in § 1381.34 (relating to automatic inclusion of certain parcels bisected by the dividing line between counties upon the purchase of an agricultural conservation easement by certain entities).

§ 1381.16. Submitting an ASA proposal form to the local government unit.

(a) *Form submitted by certified mail, return receipt requested.* A person shall submit an ASA proposal form to the governing body of the local government unit in which the ASA is situated. The form shall only be submitted by certified mail, with return receipt requested.

(b) *Date of receipt.* The return receipt shall be official notice that the local government unit has received the ASA proposal form, and the date reflected on that receipt shall constitute the official date of receipt for purposes of calculating the period within which review must occur.

§ 1381.17. Local government unit action upon receipt of an ASA proposal.

(a) *Acknowledgement of receipt.* If a local government unit receives an ASA proposal form by certified mail with return receipt requested, the governing body shall acknowledge receipt of the ASA proposal at its next regular or special meeting. The acknowledgement shall be reflected in the minutes of that meeting.

(b) *Providing notice.* Within 15 days of the date of receipt of an ASA proposal, the local government unit shall provide notice of the ASA proposal by doing both of the following:

(1) Publishing a notice that meets the requirements of subsection (c) in a newspaper having general circulation within the proposed ASA.

(2) Posting a notice that meets the requirements of subsection (c) in at least five conspicuous places within, adjacent to or near the proposed ASA.

(c) *Contents of notice.* The notices described in subsection (b) shall contain the following information:

(1) A statement that an ASA proposal has been filed with the governing body under the act.

(2) A statement that the ASA proposal will be on file for public inspection in the office of the local government unit.

(3) A statement that the following persons or entities may propose modifications of the proposed ASA:

(i) Any local government unit having land within or adjacent to the proposed ASA.

(ii) Any landowner who owns land proposed to be included within the ASA.

(iii) Any landowner with lands adjacent to or near the proposed ASA.

(4) A statement that objections to the proposed ASA or proposed modifications to the proposed ASA shall be filed

with the governing body and the planning commission within 15 days of the date of publication of the notice, with an explanation of the filing procedure prescribed by the governing body.

(5) A statement that at the termination of the 15-day period described in paragraph (4), the ASA proposal and all proposed modifications will be submitted to the planning commission and the advisory committee, and that thereafter a public hearing will be held on the proposal, proposed modifications and the recommendations of the planning commission and advisory committee.

(d) *Window for receipt of objections or proposed modifications.* The governing body shall receive and consider any proposed modifications of a proposed ASA from the entities described in subsection (c)(3) until no more than 7 days prior to the advertisement of the public hearing described in § 1381.18 (relating to public hearing by local government unit on ASA proposal).

(e) *Submitting documents to the planning commission and the advisory committee.* Upon the termination of the 15-day period described in subsection (c)(4) and (5), the governing body shall submit the ASA proposal and all proposed modifications to the planning commission and the advisory committee for review. The governing body shall retain a record of the date upon which the referenced materials are submitted to these reviewing bodies.

§ 1381.18. Public hearing by local government unit on ASA proposal.

(a) *Public hearing required.* The governing body shall hold a public hearing on an ASA proposal or proposed modification of an ASA. The public hearing shall be scheduled promptly after the earlier of the following:

(1) Receipt of both the report of the planning commission, as described in § 1381.24 (relating to relating to planning commission action with respect to an ASA proposal) and the report of the advisory committee, as described in § 1381.25 (relating to advisory committee action with respect to an ASA proposal).

(2) The expiration of the 45-day review periods afforded the planning commission under § 1381.24(b) and the advisory committee under § 1381.25(b).

(b) *Hearing notice required.* The governing body shall provide notice of the public hearing described in subsection (a) by doing the following:

(i) Publishing a hearing notice in a newspaper having general circulation in the proposed ASA.

(ii) Providing a written hearing notice to the following:

(A) Any person who proposed a modification to the ASA.

(B) Any person owning land included in the proposed modifications to an existing ASA.

(C) Any person owning land included within the proposed ASA.

(iii) Posting a written hearing notice in at least five conspicuous places within, adjacent to or near the proposed ASA or the proposed modifications.

(c) *Contents of hearing notice.* The hearing notice described in subsection (b) shall contain the following:

(i) A statement of the time, date and location of the public hearing.

(ii) A description of the proposed ASA, and any proposed additions or deletions.

(iii) A summary of the recommendations contained in the reports of the planning commission and the advisory committee. If the planning commission did not render its report within the 45-day period described in § 1381.24(b), or the advisory committee did not render its report within the 45-day period described in § 1381.25(b), the notice shall report this fact and indicate that the reviewing body is deemed to have given its approval to the proposed ASA or proposed modifications.

(iv) A statement that the public hearing will be held concerning the following:

(A) The original ASA proposal.

(B) Any written amendments proposed during the review period.

(C) Any recommendations proposed by the planning commission or the advisory committee.

(d) *Location of public hearing.* The public hearing described in subsection (a) shall be held at a place either within the proposed ASA or at a location readily accessible to the proposed ASA—such as a nearby municipal building.

§ 1381.19. Decision of local government unit.

(a) *180-day deadline.* A governing body shall act to adopt or reject an ASA proposal, or any modification of a proposal, within 180 days of the official date of receipt of the ASA proposal, as this date is described in § 1381.16(b) (relating to submitting an ASA proposal form to the local government unit). If the governing body fails to act within this 180-day period, the ASA proposal shall be deemed adopted by the governing body, and any proposed modifications to the ASA proposal shall be deemed rejected by the governing body.

(b) *Factors to be considered in reaching decision.* The governing body shall consider the following in reaching its decision with respect to an ASA proposal or proposed modifications:

(1) The factors in § 1381.26(a) (relating to factors to be considered by the governing body of the local government unit, the planning commission and the advisory committee).

(2) The inclusion, to the extent feasible, of adjacent viable farmland where the landowner has applied to have the land included.

(3) The exclusion, to the extent feasible, of nonviable farmland and nonfarm land. It is not ordinarily feasible to require the exclusion or surveying-out of the incidental nonviable farm land and nonfarm land that is typically present on a parcel of viable agricultural land.

(i) This nonviable farm land or nonfarm land might include hedgerows, driveways and farm roads, lands containing soils in Land Capability Classes V–VIII, and land upon which farm buildings or residential structures and their curtilages are located.

(ii) The exclusion of nonviable farm land and nonfarm land becomes more feasible as the percentage of these types of land—as a proportion of a parcel's total acreage—increases and the percentage of viable agricultural land within the parcel decreases.

§ 1381.20. Notice of decision of the local government unit.

(a) *Rejection or modification.* If a governing body rejects or modifies an ASA proposal, it shall provide each landowner affected by the rejection or modification with a written decision as described in subsection (c). This

decision shall be provided by mail, and shall be mailed to each affected landowner within 10 days of the decision.

(b) *Approval.* If a governing body approves an ASA proposal, it shall provide each landowner affected by the approval with written notification of this approval and the effective date of the ASA or ASA modifications. This notification shall be provided by mail, and shall be mailed to each affected landowner within 10 days of the decision.

(c) *Contents of written decision.* The written decision described in subsection (a) shall contain the following:

(1) Findings of fact.

(2) A review of the evaluation criteria in § 1381.26 (relating to factors to be considered by the governing body of the local government unit, the planning commission and the advisory committee).

(3) A discussion of the reasons for rejection or modification of the proposal.

§ 1381.21. Effective date of the creation or modification of an ASA.

(a) *ASA proposal or modification covering land in a single local government unit.* If an ASA proposal or proposed modification involves land located entirely within a single local government unit, the ASA shall become effective upon the date the governing body of the local government unit approves the ASA. If proposed modifications to an ASA proposal are made, and the modifications involve land located entirely within the same single local government unit as the proposed ASA, the modifications shall become effective as of the date the governing body of the local government unit approves the modifications.

(b) *ASA proposal or modification covering land in more than one local government unit.* If an ASA proposal or proposed modification involves land located in more than one local government unit, the ASA shall become effective upon the date a local government unit, or a combination of local government units, approves a portion of the ASA proposal that meets the minimum acreage and other requirements for an ASA in § 1381.12 (relating to eligibility to propose the creation of an ASA), or as otherwise prescribed by the act. The remaining portions of the ASA proposal shall become effective upon the date of local government unit approval.

(c) *Deemed approval date.* If a governing body fails to approve, reject or modify an ASA proposal within 180-days of the official date of receipt of the ASA proposal, as described in §§ 1381.16(b) and 1381.19(a) (relating to submitting an ASA proposal form to the local government unit; and decision of local government unit), the ASA proposal shall be deemed to have been adopted without modification, and the ASA shall become effective as of the expiration of that 180-day period.

(d) *Automatic inclusion: certain parcels transected by the dividing line between local government units.* If a portion of a parcel is located within a local government unit that does not have an ASA established within its borders, that portion may—without the approval of the governing body of that local government unit—be included in the ASA of an adjoining local government unit in accordance with the procedure described in § 1381.32 (relating to automatic inclusion of certain parcels transected by the dividing line between local government units). The ASA shall become effective upon the date the governing body of the adjoining local government unit approves the ASA.

(e) *Automatic inclusion: certain agricultural conservation easement purchases involving land in more than one local government unit.* If a portion of a parcel is not located within an ASA, but an agricultural conservation easement is purchased with respect to the parcel in accordance with § 1381.33 (relating to automatic inclusion of portions of certain parcels bisected by the dividing line between local government units upon the purchase of an agricultural conservation easement), the portion shall become part of an ASA upon the purchase of the agricultural conservation easement.

(f) *Automatic inclusion: cross-county agricultural conservation easement purchases.* If a portion of a parcel is not located within an ASA, but an agricultural conservation easement is purchased with respect to the parcel in accordance with § 1381.34 (relating to automatic inclusion of portions of certain parcels bisected by the dividing line between counties upon the purchase of an agricultural conservation easement), the portion shall become part of an ASA upon the purchase of the agricultural conservation easement.

§ 1381.22. Filing of ASA description by governing body; recording of the ASA description.

(a) *Responsibility of governing body.* Within 10 days of the effective date of the creation of an ASA, as described in § 1381.21 (relating to effective date of the creation or modification of an ASA), the governing body shall file a description of the ASA with the following:

(1) The recorder of deeds of any county within which the ASA is located.

(2) The county planning commission.

(3) The planning commission of the local government unit.

(b) *Responsibility of the recorder.* A recorder of deeds receiving an ASA description from a governing body as described in subsection (a) shall record the description in a manner sufficient to give notice to all persons who have an interest in land within the ASA or in lands adjoining the ASA.

§ 1381.23. Notification of secretary by governing body.

(a) *Responsibility of the governing body.* Within 10 days of the recording of the ASA, as described in § 1381.22 (relating to filing of ASA description by governing body; recording of the ASA description), the governing body shall notify the Secretary that the ASA has been approved, modified or terminated. This notification shall be accomplished by mailing written notification to the address in § 1381.3 (relating to contacting the Department).

(b) *Contents of notice.* The written notice described in subsection (a) shall include the following information:

(1) The number of landowners whose land is in the ASA. The notification shall include only one landowner when land is under multiple ownership or is comprised of multiple parcels or accounts.

(2) The total acreage of the ASA.

(3) The effective date of the approval, modification or termination.

(4) The date upon which the approval, modification or termination was recorded in accordance with § 1381.22.

§ 1381.24. Planning commission action with respect to an ASA proposal.

(a) *Record of the date of receipt.* If a governing body submits an ASA proposal and all proposed modifications

to a planning commission in accordance with § 138l.17(e) (relating to local government unit action upon receipt of an ASA proposal), the planning commission shall retain a record of the date upon which the referenced materials are received. This may be accomplished by time-stamping the documents, providing the governing body written confirmation of the date of receipt or other reasonable means of creating a record of the date upon which the documents were received.

(b) *45-day review period.* A planning commission shall have up to 45 days from receipt of an ASA proposal and any proposed modifications from the governing body within which to submit a report to that governing body. If the planning commission fails to submit this report to the governing body within the 45-day review period, this failure to act shall be deemed to constitute the planning commission's approval of the ASA proposal. A report is considered "submitted" when it is delivered to the governing body.

(c) *Factors to be considered.* The planning commission shall consider the factors in § 138l.26 (relating to factors to be considered by the governing body of the local government unit, the planning commission and the advisory committee) in reaching its recommendation concerning the ASA proposal and proposed modifications.

(d) *Contents of report.*

(1) *Report by a county planning commission.* If the planning commission described in subsection (b) is a county planning commission, its report shall contain that body's recommendations concerning the proposal and proposed modifications.

(2) *Report by a planning commission that is not a county planning commission.* If the planning commission described in subsection (b) is not a county planning commission, its report shall relate the potential effect of the proposal and proposed modifications upon the local government's planning policies and objectives.

§ 138l.25. Advisory committee action with respect to an ASA proposal.

(a) *Record of the date of receipt.* If a governing body submits an ASA proposal and all proposed modifications to an advisory committee in accordance with § 138l.17(e) (relating to local government unit action upon receipt of an ASA proposal), the advisory committee shall retain a record of the date upon which the referenced materials are received. This may be accomplished by time-stamping the documents, providing the governing body written confirmation of the date of receipt or other reasonable means of creating a record of the date upon which the documents were received.

(b) *45-day review period.* An advisory committee shall have up to 45 days from receipt of an ASA proposal and any proposed modifications from the governing body within which to submit a report to that governing body. If the advisory committee fails to submit this report to the governing body within the 45-day review period, this failure to act shall be deemed to constitute the advisory committee's approval of the ASA proposal. A report is considered "submitted" when it is delivered to the governing body.

(c) *Factors to be considered.* The planning commission shall consider the factors in § 138l.26 (relating to factors to be considered by the governing body of the local government unit, the planning commission and the advisory committee) in reaching its recommendation concerning the ASA proposal and proposed modifications.

(d) *Contents of report.* The report of an advisory committee shall contain that body's recommendations concerning the proposal and proposed modifications.

§ 138l.26. Factors to be considered by the governing body of the local government unit, the planning commission and the advisory committee.

(a) *Factors.* The governing body of the local government unit, the planning commission and the advisory committee shall consider the following factors in their respective reviews of an ASA proposal and proposed modifications:

(1) *Soil quality.* Land proposed for inclusion in an ASA shall have soils which are conducive to agriculture. This factor will have been satisfied without further consideration if the land to be included in the ASA meets one or more of the following standards:

(i) At least 50% of the land contains soils classified in Land Capability Classes I—IV.

(ii) At least 50% of the land falls within the Land Capability Class for "unique farmland."

(iii) At least 50% of the land contains soils that do not meet Land Capability Classes I—IV, but the land is in current active farm use and is being maintained in accordance with a soil erosion and sedimentation plan applicable to that land.

(2) *Consistency with comprehensive plans.* The use of land proposed for inclusion in an ASA shall be compatible with local government unit comprehensive plans.

(3) *Zoning.* If the land is subject to zoning requirements, it shall be zoned so as to permit agricultural use. The land need not be zoned to exclude other uses. A landowner may propose to include any land in an ASA, but the land must meet the zoning requirements of this paragraph.

(4) *Viable agricultural land.* Land proposed for inclusion in an ASA shall be viable agricultural land.

(5) *Extent and nature of farm improvements.* The extent and nature of farm improvements shall be considered.

(6) *Trends in agricultural economics.* Anticipated trends in agricultural conditions shall be considered.

(7) *Trends in agricultural technology.* Anticipated trends in agricultural technology shall be considered.

(8) *Other factors.* The governing body of the local government unit, the planning commission and the advisory committee may consider any other matter that may be relevant to its review and decision.

(b) *Resource materials.* The following are among the resource materials that may be used in reviewing an ASA proposal and proposed modifications:

(1) Soil surveys of the Pennsylvania State University.

(2) Soil surveys and other information provided by the National Cooperative Soil Survey.

(3) Soil survey maps prepared by USDA-NRCS.

(4) The United States census of agricultural categories of land use classes.

(5) Any other relevant published data, maps, charts, or results of soil or land use surveys made by any county, State or Federal agency.

Subchapter C. ADDING LAND TO AN EXISTING ASA

Sec.

- 138L.31. Adding land to an existing ASA.
- 138L.32. Automatic inclusion of certain parcels bisected by the dividing line between local government units.
- 138L.33. Automatic inclusion of certain parcels bisected by the dividing line between local government units upon the purchase of an agricultural conservation easement by certain entities.
- 138L.34. Automatic inclusion of portions of certain parcels bisected by the dividing line between counties upon the purchase of an agricultural conservation easement by certain parties.

§ 138L.31. Adding land to an existing ASA.

(a) *Adding land to an ASA located entirely within the same local government unit as the land proposed for inclusion.* If an ASA is entirely contained within a single local government unit, land that is located within that same local government unit may be added to the ASA at any time, using the same process and procedure that is followed for the initial creation of an ASA, as set forth in this chapter.

(b) *Adding land to an ASA located within two or more local government units, where the land proposed for inclusion lies entirely within the local government units in which the existing ASA is located.* If an ASA is contained within two or more local government units, land that is located entirely within the local government units in which the ASA is located may be added to the ASA at any time, using the same process and procedure that is followed for the initial creation of an ASA, as set forth in this chapter.

(c) *Adding land to an ASA where the land proposed for inclusion lies entirely outside the local government units in which the ASA is located.* If an ASA is contained within one or more local government units, land that is located in a local government unit outside of a local government unit within which the ASA is located may be added to an ASA at any time, if the following apply:

(1) Prior to the submission of the proposal, the local government unit in which the land proposed for inclusion is located and each local government unit in which the existing ASA is located have adopted an ordinance or resolution allowing all of the land (including, at a minimum, both the land in the existing ASA and the land proposed for inclusion) to be part of a single ASA located within all of the local government units.

(2) The addition is made using the same process and procedure that is followed for the initial creation of an ASA, as set forth in this chapter.

(d) *Minimum acreage requirement is inapplicable.* Where land is proposed for inclusion into an existing ASA, it need not meet the minimum 250-acres-of-viable-agricultural-land requirement that is applicable to the initial formation of an ASA.

Example: Three parcels of farmland, totaling 120 acres of viable agricultural land, are proposed for inclusion into an existing ASA. The total acreage of the parcels proposed for inclusion does not have to meet the same 250-acres-of-viable-agricultural-land standard that was applicable to the initial formation of the ASA.

(e) *Effect of addition of land to an existing ASA on the required 7-year review of the ASA.* If land is added to an existing ASA, the added land shall be reviewed at the same time the original land undergoes its 7-year review as described in § 138L.51 (relating to 7-year review) or an interim review as described in § 138L.52 (relating to interim review).

§ 138L.32. Automatic inclusion of certain parcels bisected by the dividing line between local government units.

If a parcel of farmland is bisected by the dividing line between two local government units, the entire parcel shall be automatically included in an ASA—whether in the initial creation of the ASA or by modification of an existing ASA—if the following apply:

(1) The two local government units are in the same county.

(2) The parcel meets the eligibility requirements for inclusion in an ASA.

(3) A proposal for creation or modification of an ASA has been submitted to the governing body of one of the local government units in which the parcel is located, as set forth in this chapter seeking the following:

(i) In the case of a proposal for the creation of an ASA: the inclusion of the entire parcel in the ASA.

(ii) In the case of a proposal for the modification of an existing ASA, where no portion of the parcel is within that existing ASA: the inclusion of the entire parcel within the ASA.

(iii) In the case of a proposal for the modification of an existing ASA, where a portion of the parcel is part of the existing ASA: the inclusion of the remainder of the parcel within the ASA.

(4) A majority of the parcel's viable agricultural land lies within the local government unit to which the proposal for creation or modification of an ASA has been submitted.

(5) The local government unit in which the minority of the parcel's viable agricultural land is located has not approved the creation of an ASA within its borders.

(6) The governing body of the local government unit adopts a proposal for creation or modification of an ASA that includes—at a minimum—that portion of the parcel located within that government unit.

§ 138L.33. Automatic inclusion of certain parcels bisected by the dividing line between local government units upon the purchase of an agricultural conservation easement by certain entities.

(a) *General.* If a parcel of farmland is bisected by the dividing line between two local government units, and the portion of the parcel in one local government unit is within an ASA and the portion of the parcel in the other local government unit is not, the portion of the parcel that is not within an ASA shall be automatically included in the ASA if the following apply:

(1) A majority of the parcel's viable agricultural land lies within the local government unit in which the ASA is located.

(2) An agricultural conservation easement is purchased by any of the following with respect to the parcel:

(i) The county.

(ii) The county and the Commonwealth, jointly.

(iii) The county and a local government unit, jointly.

(iv) The county, the Commonwealth and a local government unit, jointly.

Example 1: A 100-acre parcel of farmland is comprised of 80 acres in Township A and 20 acres in Township B. The 80-acre portion of the parcel is within an ASA established by Township A. The

majority of the parcel's viable agricultural land is in Township A. The county purchases an agricultural conservation easement with respect to the parcel. Under these facts, as of the purchase of the agricultural conservation easement the 20-acre portion of the parcel located in Township B becomes part of the ASA covering the 80-acre portion of the parcel.

(b) *Exception.* Subsection (a) does not apply with respect to agricultural conservation easement purchases made solely by the Commonwealth.

§ 138L.34. Automatic inclusion of portions of certain parcels bisected by the dividing line between counties upon the purchase of an agricultural conservation easement by certain parties.

(a) *General.* If a parcel of farmland is bisected by the dividing line between two counties, and the portion of the parcel in one county is within an ASA and the portion of the parcel in the other county is not, the portion of the parcel that is not within an ASA shall be automatically included in the ASA if the following apply:

(1) One of the following applies:

(i) There is a mansion house on the parcel of farmland, and it is located in the county within which the existing ASA is located.

(ii) There is a mansion house on the parcel of farmland, and the mansion house is bisected by the dividing line between the two counties. The landowner has designated the county within which the ASA is located as the situs of assessment for tax purposes.

(iii) There is no mansion house on the parcel of farmland, but the majority of the parcel's viable agricultural land lies within the existing ASA.

(2) An agricultural conservation easement is purchased by any of the following with respect to the parcel:

(i) The county.

(ii) The county and the Commonwealth, jointly.

(iii) The county and a local government unit, jointly.

(iv) The county, the Commonwealth and a local government unit, jointly.

Example 1: A parcel of farmland straddles the boundary line between County A and County B. The portion of the parcel in County A is in an ASA. There is no mansion house on the parcel. The majority of the parcel's viable agricultural land is in County A. County A purchases an agricultural conservation easement with respect to the entire parcel. Under these facts, as of the purchase of the agricultural conservation easement the portion of the parcel in County B becomes part of the ASA in which the remainder of the parcel is located.

Example 2: A parcel of farmland straddles the boundary line between County A and County B. There is a mansion house on the parcel, and it is located in County A. County A purchases an agricultural conservation easement with respect to the entire parcel. Under these facts, as of the purchase of the agricultural conservation easement the portion of the parcel in County B becomes part of the ASA in which the remainder of the parcel is located.

Example 3: A parcel of farmland straddles the boundary line between County A and County B. There is a mansion house on the parcel, and it straddles the dividing line between County A and County B. County A is the situs of the mansion house for tax

purposes. County A purchases an agricultural conservation easement with respect to the entire parcel. Under these facts, as of the purchase of the agricultural conservation easement the portion of the parcel in County B becomes part of the ASA in which the remainder of the parcel is located.

(b) *Exception.* Subsection (a) does not apply with respect to agricultural conservation easement purchases made solely by the Commonwealth.

Subchapter D. REMOVING LAND FROM AN EXISTING ASA

Sec.

138L.41. Removing land that has been in an ASA for 7 years or more.

138L.42. Removing land in the course of the 7-year review or an interim review.

§ 138L.41. Removing land that has been in an ASA for 7 years or more.

(a) *Removal permitted.* If land has been in an ASA for seven years or more, it may be removed from the ASA at the landowner's discretion, if both of the following apply:

(1) The landowner submits to the governing body of the local government unit in which the ASA is situated a written notification to have the land deleted from the ASA. The written notification shall contain information sufficient to identify the land to be removed, and shall include the acreage of the land to be removed.

(2) The written notification is submitted by certified mail, with return receipt requested.

(b) *Limitation on authority.* The governing body does not have the authority to deny a landowner's notification to remove land from an ASA.

(c) *Effective date of removal.* The removal of land from an ASA shall take effect upon receipt of this written notification by the governing body in accordance with subsection (a)(2).

(d) *Recording the removal of land from an ASA.* The governing body may wait until the next 7-year review or interim review to record deletions of land from the ASA accomplished by the written notification described in this section.

(e) *Failure of remaining land to meet ASA eligibility requirements.* If the removal of land from an ASA in response to a landowner's written notification causes the remaining lands of the ASA to fail to meet the minimum standards for an ASA, as set forth in § 138L.12 (relating to eligibility to propose the creation of an ASA), the ASA shall terminate. The governing body shall be responsible to record this termination with the offices or entities described in § 138L.22(a)(1)–(3) (relating to filing of ASA description by governing body; recording of the ASA description).

§ 138L.42. Removing land in the course of the 7-year review or an interim review.

(a) *Removal permitted.* The landowner shall have the discretion to remove the land from the ASA in which it is located, if this removal is done in the course of the 7-year review process described in § 138L.51 (relating to 7-year review), or the interim review process described in § 138L.52 (relating to interim review), and the following apply:

(1) The landowner submits to the governing body of the local government unit in which the ASA is situated a written notification to have the land deleted from the ASA. The written notification shall contain information

sufficient to identify the land to be removed, and shall include the acreage of the land to be removed.

(2) The written notification is submitted by certified mail, with return receipt requested.

(b) *Limitation on authority.* The governing body does not have the authority to deny a landowner's notification to remove land from an ASA.

(c) *Effective date of removal.* The removal of land from an ASA shall take effect upon receipt of this written notification by the governing body in accordance with subsection (a)(2).

(d) *Recording the removal of land from an ASA.* The governing body shall record the removal of land from an ASA under this section as it would any other addition or deletion of land in the course of the 7-year review or interim review.

(e) *Failure of remaining land to meet ASA eligibility requirements.* If the removal of land from an ASA in response to a landowner's written notification causes the remaining lands of the ASA to fail to meet the minimum standards for an ASA, as set forth in § 1381.12 (relating to eligibility to propose the creation of an ASA), the ASA shall terminate. The governing body shall be responsible to record this termination with the offices or entities described in § 1381.22(a)(1)—(3) (relating to filing of ASA description by governing body; recording of the ASA description).

Subchapter E. SEVEN-YEAR REVIEW AND INTERIM REVIEW

Sec.
1381.51. Seven-year review.
1381.52. Interim review.

§ 1381.51. Seven-year review.

(a) *General.* The governing body of the local government unit shall review an ASA 7 years from the date of its creation and every 7 years thereafter, in accordance with the procedure in this section.

(b) *Advisory bodies to be consulted.* The governing body conducting a 7-year review shall request the recommendations of the planning commission, the county planning commission and the advisory committee with respect to the ASA that is being reviewed. The governing body shall seek and obtain these recommendations on its own timetable, but sufficiently in advance of the end of the 7th year to allow a summary of the recommendations of these advisory bodies to be included in the notice described in subsections (c)—(e).

(c) *Notice required 210 days or more before the end of the 7th year.* The governing body conducting a 7-year review shall, at least 210 days prior to the end of the 7th year, provide notice of the 7-year review of the ASA and the public hearing to be held as part of that review.

(d) *Notice procedure.* The notice described in subsection (c) shall be accomplished by doing the following:

- (1) Publishing a hearing notice in a newspaper having general circulation in the area in which the ASA is located.
 - (2) Providing a written hearing notice to any person owning land within the ASA.
 - (3) Posting a written hearing notice in at least five conspicuous places within, adjacent to or near the ASA.
- (e) *Contents of hearing notice.* The hearing notice described in subsection (d) shall contain the following:

(1) A statement of the time, date and location of the public hearing.

(2) A general description of the ASA being reviewed.

(3) A general description of the recommendations of the planning commission, the county planning commission and the advisory committee.

(4) Notification that interested persons may, within 30 days of the date of the notice, submit proposed modifications to the ASA to the governing body.

(f) *Public hearing required between 120 and 180 days before the end of the 7th year.* The governing body conducting a 7-year review shall, at least 120 days prior to the end of the 7th year and no more than 180 days prior to the end of the 7th year, conduct a public hearing to review the ASA.

(g) *Location of public hearing.* The public hearing described in subsection (e) shall be held at a place either within the ASA or at a location readily accessible to the ASA—such as a nearby municipal building.

(h) *Factors to be considered by governing body.* The governing body shall consider the factors in § 1381.19(b) (relating to decision of local government unit) in reaching its decision to approve the ASA without change, modify the ASA or terminate the ASA.

(i) *Decision of governing body.* The governing body conducting a 7-year review shall, following the public hearing, approve the ASA without change, modify the ASA or terminate the ASA.

(j) *Notice of decision.* The governing body conducting a 7-year review shall provide notice of its decision in accordance with § 1381.20 (relating to notice of decision of local government unit).

(k) *Failure to act is deemed to be approval of the ASA without modification.* If the governing body fails to complete the steps set forth in subsections (a)—(i) prior to the end of the 7th year, or if a proposed modification to the ASA is rejected, the ASA shall be deemed to be readopted without modification for another 7 years.

(l) *Recording a modification of an ASA or a termination of an ASA.* If the governing body modifies an ASA or terminates an ASA it shall, within 10 days of its decision, file a notice of termination or modification with the following:

- (1) The recorder of deeds of any county within which the ASA is located.
- (2) The county planning commission.
- (3) The planning commission of the local government unit.

(m) *Responsibility of the recorder.* A recorder of deeds receiving a notice of termination or modification of an ASA from a governing body as described in subsection (l) shall record the description in a manner sufficient to give notice to all persons who have an interest in land within the ASA or in lands adjoining the ASA.

§ 1381.52. Interim review.

(a) *Discretion.* If 10% or more of the land within an ASA is diverted to residential or nonagricultural commercial development at any time prior to a 7-year review of the ASA, the governing body may review the ASA and consider modifying or terminating the ASA, in accordance with the procedure in this section.

(b) *Advisory bodies to be consulted.* If the governing body elects to pursue the interim review described in

subsection (a), it shall request, in writing, that the planning commission, the county planning commission and the advisory committee review the ASA and make recommendations with respect to modification or termination of the ASA within 30 days of receiving the written request.

(c) *Responsibility of advisory bodies.* The advisory bodies referenced in subsection (b) shall issue written recommendations within 30 days of receiving a request for recommendations from the governing body.

(d) *Public hearing requirements.* If the governing body elects to pursue the interim review described in subsection (a), it shall conduct a public hearing no sooner than 45 days after it submits its request for recommendations to the planning commission, the county planning commission and the advisory committee. The governing body shall provide the same notice for the public hearing as is described in § 1381.18(b) and (c) (relating to public hearing by local government unit on ASA proposal).

(e) *Location of public hearing.* The public hearing described in subsection (d) shall be held at a place either within the proposed ASA or at a location readily accessible to the proposed ASA—such as a nearby municipal building.

[Pa.B. Doc. No. 02-213. Filed for public inspection February 8, 2002, 9:00 a.m.]

DEPARTMENT OF HEALTH

[28 PA. CODE CH. 6]

Drugs Which May be Used by Certain Optometrists

The Secretary of Health (Secretary) proposes to amend the list of drugs which may be used by certain optometrists in § 6.1 (relating to approved drugs), to read as set forth in Annex A.

A. Purpose of the Amendment

Under section 2 of the Optometric Practice and Licensure Act (act) (63 P.S. § 244.2), optometrists may use pharmaceutical agents for diagnostic purposes, and for certain therapeutic purposes, only as approved by the Secretary. The pharmaceutical agents, and the purposes for which they may be used by optometrists are in § 6.1. The drugs included on the list must be approved by the Secretary. The State Board of Optometry (Board) requested that the Secretary approve certain additional therapeutic drugs. In its request to the Secretary, the Board identified the drugs by brand name and generic name, which are listed in this paragraph with the generic name in parentheses. Currently, the regulations identify drugs only by the generic name. It is proposed that any added drugs will also be listed by the generic name only. The Secretary has approved a request from the Board to add antibacterial agent Quixin (levofloxacin); oral analgesic Ultram (tramadol); and topical analgesics Alamast (pemirolast potassium), Emadine (emedastine difumarate), Optivar (azelastine hydrochloride) and Zaditor (ketotifen fumerate) to the list of approved drugs. Antibacterial agents destroy bacteria. Analgesic drugs are used as pain relievers.

The Board also requested that certain oral antibiotics [Cipro (ciprofloxacin), Lenzolid (zyvox) and Levaquin (levofloxacin)] be added to the list. The Secretary declined the request to add these agents. As broad-spectrum oral

antibiotics, Cipro, zyvox and Levaquin should be limited to treating resistant or serious infections only. Further, the Federal Food and Drug Administration (FDA) has expressed concerns about inappropriate use of antibiotics leading to increase in resistant organisms; thereby recommending that alternatives should be considered before initiating treatment with antibiotics such as zyvox in the outpatient setting.

Using broad-spectrum antibiotics also creates a higher risk of certain side effects, such as the development of pseudomembranous colitis and superinfections. Also, due to the pharmacological profile of these antibiotics, periodic assessment of organ system functions, including renal, hepatic and hematopoietic functions, is advisable during prolonged therapy.

For these reasons, the antibiotic drugs rejected for inclusion in the list of drugs that optometrists may use in their practice should only be prescribed by a licensed health professional with extended pharmacological, diagnostic and treatment education.

B. Requirements of the Amendment

The Secretary proposes to add the following pharmaceutical agents to the approved drug products listed in § 6.1(b):

1. Levofloxacin
2. Tramadol
3. Pemirolast potassium
4. Emedastine difumarate
5. Azelastine hydrochloride
6. Ketotifen fumerate

C. Affected Persons

Optometrists will be able to use, administer and prescribe additional pharmaceutical agents and their patients will be able to receive them for therapeutic purposes. The patients would potentially benefit in that they would have a wider range of agents available to them, thus potentially enhancing their care and treatment.

D. Fiscal Impact

This proposed rulemaking will have no measurable fiscal impact on the Commonwealth, local government, the private sector or the general public. This proposed rulemaking merely enhances the availability of therapeutic agents to patients of certain optometrists.

E. Paperwork Requirements

The addition of these agents to the list of approved drugs will not result in additional costs or paperwork.

F. Effective Date/Sunset Date

This proposed rulemaking will become effective immediately upon publication as a final-form regulation. This regulation is continually monitored and updated as needed. There is no sunset date.

G. Statutory Authority

The proposed amendment to the list of drugs which optometrists may use in the course of their practice is made under section 2 of the act which defines the "practice of optometry" to include the administration and prescription of legend and nonlegend drugs as approved by the Secretary for treatment. Treatment may include the prescription or administration of pharmaceutical agents for therapeutic purposes. The proposed amendment is also authorized under section 2101 of The

Administrative Code of 1929 (71 P. S. § 532(g)), which provides the Department with general authority to adopt its regulations.

H. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on January 31, 2002, the Department submitted a copy of the proposed rulemaking to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Committee on Health and Human Services and the Senate Committee on Public Health and Welfare. In addition to submitting the proposed rulemaking, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, if IRRC has any objections to any portion of the proposed rulemaking, it will notify the Department by March 11, 2002. The notification shall specify the regulatory review criteria which have not been met by the portion. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the amendment, by the Department, the General Assembly and the Governor, of objections raised.

I. Contact Person

Interested persons are invited to submit all questions, comments, suggestions or objections regarding the proposal to John C. Hair, Director, Bureau of Community Program Licensure and Certification, Department of Health, 132 Kline Plaza, Suite A, Harrisburg, PA 17104, (717) 783-8665, within 30 days after publication of this notice in the Pennsylvania Bulletin. Persons with a disability who wish to submit comments, suggestions or objections regarding the proposed rulemaking may do so by using V/TT (717) 783-6514 for speech and/or hearing impaired persons or the Pennsylvania AT&T Relay Service at (800) 654-5984 [TT]. Persons who require an alternative format of this document may contact John Hair so that necessary arrangements may be made.

ROBERT S. ZIMMERMAN, Jr., Secretary

Fiscal Note: 10-167. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 28. HEALTH AND SAFETY

PART I. GENERAL HEALTH

CHAPTER 6. DRUGS WHICH MAY BE USED BY CERTAIN OPTOMETRISTS

§ 6.1. Approved drugs.

* * * * *

(b) Allowable pharmaceutical products. Optometrists may prescribe and administer the following pharmaceutical products or the A-rated generic therapeutically equivalent drug:

* * * * *

(7) Antimicrobial agents.

(i) Antibacterial—topical use only.

* * * * *

(D) DNA synthesis inhibitors.

* * * * *

(IV) Levofloxacin.

* * * * *

(8) Analgesic drugs—oral and topical.

(i) Analgesic drugs—oral.

* * * * *

(E) Tramadol.

(ii) Antihistamines and mast cell stabilizers—topical only.

* * * * *

(I) Pemirolast potassium.

(J) Emedastine difumarate.

(K) Azelastine hydrochloride.

(L) Ketotifen fumarate.

[Pa.B. Doc. No. 02-214. Filed for public inspection February 8, 2002, 9:00 a.m.]

PENNSYLVANIA PUBLIC UTILITY COMMISSION

[52 PA. CODE CH. 35]

[L-00010154]

Street Railway Transportation

The Pennsylvania Public Utility Commission (Commission) on November 30, 2001, adopted a proposed rulemaking order which proposes to delete railway transportation regulations which have become obsolete. The contact person is David A. Salapa, (717) 783-2841 in the Bureau of Transportation and Safety, Legal Division.

The Commission proposes to delete the existing regulations governing street railway transportation in this Commonwealth. The existing regulations are outdated in light of changes in street railway operations in this Commonwealth.

At one time, street railway companies provided passenger service to many areas of this Commonwealth. Over the years, many of these street railway companies went out of business due to the widespread use of automobiles. In order to preserve street railway passenger service in the Pittsburgh and Philadelphia metropolitan areas, the General Assembly passed legislation authorizing the creation of transportation authorities and empowered those transportation authorities to purchase the assets of the street railway companies operating in those metropolitan areas. These transportation authorities, Southeastern Pennsylvania Transportation Authority (SEPTA) and Port Authority of Allegheny County (PAT) purchased the assets of the street railway companies and began operating street railway systems in the Philadelphia and Pittsburgh metropolitan areas. The Philadelphia and Pittsburgh metropolitan areas are the only places in this Commonwealth where street railway systems still operate.

Both SEPTA's and PAT's enabling legislation provides that those agencies shall determine the facilities they will operate, the services they will provide and the rates they will charge. The Commission is thus precluded from regulating SEPTA or PAT in these areas. In addition, SEPTA and PAT receive Federal funds for their operations. Receipt of the Federal funds is conditioned upon

the authorities having safety programs in place that are monitored by the Department of Transportation (Department). Since the Department monitors the safety programs initiated by SEPTA and PAT, the Commission's regulations in Chapter 35 (relating to street railway transportation) are unnecessary.

Commissioners Present: Glen R. Thomas, Chairperson; Robert K. Bloom, Vice-Chairperson; Aaron Wilson, Jr.; Terrance J. Fitzpatrick

Public Meeting held
November 30, 2001

Order

By the Commission:

The Commission proposes to delete existing regulations governing street railway transportation in this Commonwealth. The current regulations are outdated in light of changes in street railway operations in this Commonwealth.

At one time street railway companies provided passenger service to many areas of this Commonwealth. When automobiles came into widespread use, many street railway companies began to lose money. Over the years many of these street railway companies abandoned service, discontinued operations and liquidated their assets. Finally, the only areas in this Commonwealth where street railway companies continued to operate were in the Pittsburgh and Philadelphia metropolitan areas. As more people used automobiles to commute to work and large numbers of people moved to suburbs, even the street railway companies operating in the Pittsburgh and Philadelphia metropolitan areas began losing money. In order to preserve street railway passenger service in the Philadelphia and Pittsburgh metropolitan areas, the General Assembly passed legislation authorizing creation of transit authorities and empowered those transit authorities to purchase the assets of the street railway companies. These transit authorities, SEPTA and PAT, purchased the assets of the street railway companies and began operating street railway systems in the Philadelphia and Pittsburgh metropolitan areas. See *Pittsburgh Railways Company v. Pa PUC*, 427 Pa. 562, 237 A.2d 602 (1967) and *PA PUC v. SEPTA*, 343 A.2d 371 (Pa. Cmwlth. 1975). Thus the era of privately owned street railway companies in this Commonwealth came to an end.

At the same time that SEPTA and PAT took over the operations of street railway companies in the Philadelphia and Pittsburgh metropolitan areas, the Federal government became involved in funding urban mass transit. See 49 U.S.C.A. §§ 5301—5338. Congress began providing Federal funds for the operations of transit authorities throughout the United States, including SEPTA and PAT. With Federal funds came conditions for their use. These conditions required not only that the Federal money be spent on certain items, but also required the transit authorities to operate in a certain manner in order to continue receiving Federal funds. For instance, the Federal Department of Transportation recently began requiring that local transit agencies operating street railways develop system safety program plans as a condition for receiving Federal funds. See 49 CFR 659.1—659.49. Increased Federal funds and the conditions imposed on the use of those funds have greatly enlarged the Federal oversight of street railway operations by local transit authorities.

In contrast to this increased Federal role in the operation of street railways by local transit authorities, the Commission's authority over SEPTA and PAT is limited.

PAT's enabling legislation divests the Commission of jurisdiction over the transportation of passengers for hire in Allegheny County except for taxicabs and school buses. See *Port Authority of Allegheny County v. Pa. PUC*, 494 Pa. 250, 431 A.2d 243 (1981). The Commission is not aware of any PAT street railway operations outside Allegheny County.

SEPTA's enabling legislation provides that SEPTA by itself shall determine the facilities it will operate, services it will make available and the rates it will charge. See 74 Pa.C.S. § 1741(15) (relating to general powers). The only exception to this in SEPTA's enabling legislation is when SEPTA provides services outside the five county Philadelphia metropolitan area. See 74 Pa.C.S. § 1711 (relating to creation of metropolitan transportation authorities) and § 1741(26). The Commission is not aware of any SEPTA street railway operations outside the five county metropolitan area.

In addition, the Commission has recently held that the Public Utility Code does not grant the Commission authority over crossings between SEPTA's street railway facilities and public highways. See *Application of SEPTA*, Docket No. A-00116200 (December 17, 1999); *Application of SEPTA*, Docket No. A-00116334 (March 17, 2000); and *Application of SEPTA*, Docket No. A-00116121 (March 17, 2000). In those decisions, the Commission held that it only had jurisdiction over SEPTA as a public utility when SEPTA operated regional rail lines formerly owned by certain railroads. See 66 Pa.C.S. § 102 (relating to definitions). That rationale applies not only to crossings involving street railways but also to Commission jurisdiction pursuant to 66 Pa.C.S. §§ 1501, 1505 and 1508 (relating to character of service and facilities; proper service established on complaint; authority to order conservation and load management programs; and reports of accidents), governing safety of services, facilities and accident reports. SEPTA's street railway facilities are not regional rail lines formerly owned or operated by the designated railroads.

Commission staff conferred with Department staff and confirmed that PAT and SEPTA receive Federal funds from the Federal Transit Administration (FTA) through the Department. The Department acts as the conduit for Federal funds to PAT, SEPTA and other local transportation agencies. The FTA regulations at 49 CFR 659.1—659.49 require the Department, as the oversight agency, to develop a safety program for street railways operated by local transit authorities. The Department's safety program for local transit authorities is administered by that agency's Bureau of Public Transportation.

The Department, Bureau of Public Transportation is the oversight agency of PAT and SEPTA pursuant to 49 CFR 659.1—659.49. The regulations at 49 CFR 659.31 and 659.32 require SEPTA and PAT to implement system safety program plans consistent with the Department's system safety program standards. Commission staff conferred with Department's staff in the Bureau of Public Transportation and ascertained that SEPTA and PAT have implemented these safety plans. Department staff also reports that the Bureau of Public Transportation receives annual safety audit reports from PAT and SEPTA and performs safety reviews of PAT and SEPTA pursuant to 49 CFR 659.35 and 659.36. In addition, PAT and SEPTA provide accident reports to the Department as required by 49 CFR 659.39. Since the Department, Bureau of Public Transportation, acts as oversight agency of SEPTA and PAT pursuant to 49 CFR 659.1—659.49, the Commission's regulations in Chapter 35 are unnecessary.

Section 35.1 (relating to definitions) is deleted since it is superseded by the definitions set forth at 49 CFR 659.5. Definition of "rail fixed guide way system" defines the same functions as the definition of "street railway" in § 35.1.

Section 35.2 (relating to applicability) is deleted as not necessary in light of the Federal regulations at 49 CFR 659.1—659.49.

Section 35.3 (relating to compliance) is deleted due to the lack of Commission authority over SEPTA and PAT's street railway operations.

Section 35.11 (relating to accounts) is deleted as unnecessary due to Federal regulations at 49 CFR 630.1—630.12 that set forth standards of accounting and reporting for transit agencies receiving Federal funds from the FTA. Since only SEPTA and PAT operate street railways in this Commonwealth, they are already governed by the reporting regulations at 49 CFR 630.1—630.12 and the Statute at 49 U.S.C. § 5335.

Section 35.12 (relating to records) is deleted as outdated. The reference in this section to 49 CFR 1221 is obsolete. That section of the CFR no longer exists. The regulations at 49 CFR 630.1—630.12 set forth the standards of accounting and reporting for transit agencies receiving Federal funds from FTA.

Section 35.13 (relating to accident reports) is deleted as unnecessary. The Federal regulations at 49 CFR 659.39 set forth accident reporting requirements for transit agencies receiving Federal funds.

Section 35.21 (relating to equipment and facilities) is deleted as unnecessary. The Federal regulations at 49 CFR 659.1—659.49 set forth the requirements for transit authorities to develop a system safety program plan.

Sections 35.22 and 35.31—35.36 are deleted as unnecessary. Prior Commission and Pennsylvania appellate court decisions have held that the Commission has no jurisdiction over street railway crossings of either PAT or SEPTA.

Section 35.23 (relating to interference with operators) is deleted as unnecessary. The Federal regulations at 49 CFR 659.1—659.49 set forth the requirements for transit authorities to develop a system safety program plan.

Sections 35.24—35.26, 35.31—35.36, 35.43 and 35.44 are deleted as unnecessary. Prior Commission and Pennsylvania appellate court decisions have held that the Commission has no jurisdiction over the street railway facilities and operations of PAT or SEPTA.

Section 35.41 (relating to rate schedules) is deleted as unnecessary. Both SEPTA's and PAT's enabling legislation provide that the Commission has no authority to govern rate making with regard to street railway operations.

Section 35.42 (relating to interruptions of service) is deleted as unnecessary. Both SEPTA's and PAT's enabling legislation provide that the Commission has no authority over level of service provided on street railway operations.

Accordingly, under sections 501 and 1501 of the Public Utility Code, 66 Pa.C.S. §§ 501 and 1501 and the Com-

monwealth Documents Law (45 P. S. §§ 1201 and 1202) and regulations promulgated thereunder at 1 Pa. Code §§ 7.1, 7.2 and 7.5, we propose to delete the regulations in Chapter 35 as noted and as set forth in Annex A. *Therefore, It Is Ordered That:*

1. A proposed rulemaking docket shall be opened to delete the regulations in Chapter 35 as set forth in Annex A of this order.

2. The Secretary shall submit this order and Annex A to the office of Attorney General for preliminary review as to form and legality.

3. The Secretary shall serve a copy of this order, together with Annex A, to the Governor's Budget Office for review of fiscal impact.

4. The Secretary shall submit this order and Annex A for review by the designated standing committees of both Houses of the General Assembly, and for review and comments by the Independent Regulatory Review Commission.

5. The Secretary shall duly certify this order and Annex A and deposit them with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

6. Within 30 days of this order's publication in the *Pennsylvania Bulletin*, an original and 15 copies of any comments concerning this order should be submitted to the Pennsylvania Public Utility Commission, Attn: Secretary, P. O. Box 3265, Harrisburg, PA 17105-3265.

7. Alternate formats of this document are available to persons with disabilities and may be obtained by contacting Sherri DelBiondo, Regulatory Coordinator, Law Bureau, (717) 772-4597.

JAMES J. MCNULTY,
Secretary

Fiscal Note: 57-225. No fiscal impact; (8) recommends adoption.

Annex A
TITLE 52. PUBLIC UTILITIES
PART I. PUBLIC UTILITY COMMISSION
Subpart B. CARRIERS OF PASSENGERS OR PROPERTY
CHAPTER 35. (Reserved)

(Editor's Note: As part of this proposal, the Commission is proposing to delete the existing text of Chapter 35, which appears at 52 Pa. Code pages 35-1—35-8, serial pages (239199)—(239206), in its entirety.)

- §§ 35.1—35.3. **(Reserved).**
- §§ 35.11—35.13. **(Reserved).**
- §§ 35.21—35.26. **(Reserved).**
- §§ 35.31—35.36. **(Reserved).**
- §§ 35.41—35.44. **(Reserved).**

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