

RULES AND REGULATIONS

Title 25—ENVIRONMENTAL PROTECTION

STATE CONSERVATION COMMISSION

[25 PA. CODE CH. 83]

Nutrient Management

The State Conservation Commission (Commission) amends Chapter 83, Subchapter D (relating to nutrient management). This final-form rulemaking makes various changes to existing regulations to improve environmental protection at agricultural operations subject to 3 Pa.C.S. §§ 501—522 (relating to nutrient management and odor management) (act).

These amendments were adopted by the Commission at the meeting on January 19, 2006.

Effective Date

This final-form rulemaking will go into effect October 1, 2006.

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Statutory Authority

This final-form rulemaking is promulgated under the authority of sections 504 and 506(a) of the act (relating to powers and duties of commission; and nutrient management plans), which authorize the Commission to promulgate regulations to make appropriate changes to the criteria used to define a concentrated animal operation (CAO) and to establish minimum criteria for nutrient management plans (NMP) and other requirements necessary to implement the act. This final-form rulemaking is promulgated under section 4 of the Conservation District Law (3 P. S. § 852), which authorizes the Commission to promulgate rules and regulations as may be necessary to carry out its functions. This final-form rulemaking is promulgated under section 503(d) of the Conservation and Natural Resources Act (71 P. S. § 1340.503(d)), which modified the authority and responsibilities of the Commission, the Department of Environmental Protection (DEP) and the Department of Agriculture (Department).

Background and Summary

This final-form rulemaking is the culmination of several years' work administering the act across this Commonwealth, advances in the sciences of agronomics and manure management and revisions to the former Nutrient Management Act, as well as legislative hearings voicing public concerns with livestock agriculture and changes in the industry. Currently, 901 operations are subject to the existing nutrient management regulations in Chapter 83, Subchapter D and an additional 1,325 farms have voluntarily complied with the requirements.

The predecessor to the act, the Nutrient Management Act, was enacted in May 1993 to provide for the management of nutrients on certain agricultural operations to abate nonpoint source pollution. It required the Commission, in conjunction with the Department, the DEP, the Penn State Cooperative Extension, the Nutrient Management Advisory Board (Advisory Board) and county conservation districts to develop a program for the proper utilization and management of nutrients. The act did not change that basic approach. Accordingly, Commission staff has worked closely with these organizations in developing this final-form rulemaking.

Nitrogen is identified in section 504(1)(i) of the act as the nutrient of primary concern, but it allows for the Commission to address other nutrients under specific criteria established by the Commission. This final-form rulemaking adds another nutrient—phosphorus—to be considered within the development of NMPs under the act. This change, along with various provisions regarding the export of manure off of the farms governed by these regulations, were two central issues with the current program identified to the Commission by the House Committee on Agriculture and Rural Affairs, following public hearings in 2001.

The Commission is also required to provide education, technical assistance and financial assistance to the agricultural community regarding proper nutrient management. To date, the Commission has administered over \$12 million in financial assistance to farmers subject to these regulations.

The Commission developed this final-form rulemaking in conjunction with the Advisory Board, as required by the act. The Advisory Board, which represents a wide range of agricultural, academic, governmental, environmental and private interests, provided extensive assistance to the Commission over the past several years in an effort to develop workable and effective amendments to the existing regulations. The development of this final-form rulemaking was also done with regular assistance and guidance from county conservation districts, the Department, the DEP, United States Department of Agriculture (USDA) Natural Resources Conservation Service, the USDA Agricultural Research Service, and the Pennsylvania State University College of Agricultural Sciences.

This final-form rulemaking directly regulates CAOs that are required to develop and implement NMPs under the act, as well as agricultural operations that volunteer to meet the requirements under the act, referred to as volunteer agricultural operations (VAOs). In addition, the final-form rulemaking requirements for CAOs and VAOs also apply to agricultural operations found to be in violation of The Clean Streams Law (35 P. S. §§ 691.1—691.1001) if they are required to submit a plan that meets the requirements of the act. These operations will be collectively referred to as "NMP operations" in this preamble. Further, this final-form rulemaking affects operations that agree to import manure from NMP operations, and others involved in that export such as commercial haulers and brokers. Finally, the DEP's concentrated animal feeding operation (CAFO) regulations in Chapter 92 (relating to National pollutant discharge elimination system permitting, monitoring and compliance) requires permittees to meet the requirements of this final-form rulemaking.

The Commission has been successful in obtaining voluntary participation of VAOs in the nutrient management program, as envisioned by the act. The Commission believes that a strong voluntary program can operate simultaneously with the mandated regulatory program to further protect water quality in this Commonwealth.

Various nutrient management planning responsibilities are set forth in detail in this final-form rulemaking. These include requirements to prevent pollution from land application of manure and other nutrient sources, and minimum standards for the construction, location, storage capacity and operation of animal manure storage facilities.

NMPs are required by the act to be developed by nutrient management specialists who meet rigorous technical qualifications, and who are certified by the Department. Additionally, plans are to be submitted to the Commission or the delegated county conservation district for approval. The final actions by the Commission and delegated county conservation districts are subject to appeal to the Environmental Hearing Board.

Agricultural operations may apply for financial assistance to develop and to implement NMPs. In accordance with the act, Commission responsibilities for administering the act and regulations can be delegated to county conservation districts and this is being done in 60 of the 67 counties across this Commonwealth to ensure timely and effective implementation of the program.

Numerous public comments were received on the proposed rulemaking published at 34 Pa.B. 4361 (August 7, 2004). This final-form rulemaking contains revisions to the proposed rulemaking based on those comments, as well as interaction with the Advisory Board and various State and Federal agencies involved with implementation. The changes from the proposed rulemaking are described in the following section, followed by a description of comments and the Commission's responses to the comments.

E. Summary of Changes from the Proposed Rulemaking General

Clarifying and stylistic changes to the existing regulations are made throughout these revisions. Many changes are intended to address changes requested by the Independent Regulatory Review Commission (IRRC) to conform to the Regulatory Review Act (71 P. S. §§ 745.1—745.15). Some of these changes are described in the following sections.

Phosphorus management

Phosphorus is one of the two nutrients of concern in managing nutrients to protect water resources. The other is nitrogen, which was already expressly addressed in the prior regulations. A decision of the Environmental Hearing Board in April 2004 determined that the law requires NMPs to specifically address phosphorus as well as nitrogen. The proposed rulemaking contained a requirement in § 83.293(b) (relating to determination of nutrient application rates) to address phosphorus runoff by restricting land application of nutrients based on a "Phosphorus Index" methodology developed by Pennsylvania State University.

In the final-form rulemaking, several changes were made. First, the basic criteria required for phosphorus management, and a preferred approach, are now described in the final-form rulemaking. These reflect various source and transport factors which influence phosphorus runoff, and include phosphorus soil levels and

distance to surface waters. These criteria, factors and methodology are based on extensive study of phosphorus runoff from farms in this Commonwealth and elsewhere in the country.

Second, agricultural operations are given the option of following either the Phosphorus Index or other methods approved by the Commission to meet those criteria. The Phosphorus Index is preferred by the Commission due to the extensive work done in this Commonwealth by Pennsylvania State University, the USDA and others to develop it.

Third, a 5-year phase-in period for implementation of the full scope of the phosphorus management regimen is allowed. This will give the industry time to find alternative means of addressing the excess nutrients generated by NMP operations while still imposing new restrictions on phosphorus application that are protective of surface waters. The phase-in applies to existing NMP operations and importers that elect to use the Phosphorus Index methodology. The phase-in does not apply in certain circumstances, such as when fields drain into Special Protection waters. Importantly, the phase-in still requires that basic phosphorus control measures are taken by limiting land application to the phosphorus removal rate.

Finally, § 83.293 has been reorganized to better reflect the interaction between phosphorus and nitrogen considerations for determining proper nutrient application rates.

Phosphorus is also addressed at manure import sites, discussed next.

Manure export

Another significant concern with the prior Chapter 83 regulations was management of manure that is exported away from NMP operations, particularly CAOs. For instance, 28% of manure generated by CAOs is exported, while only 3% of manure from VAOs is exported.

The proposed rulemaking addressed this in two main ways—by requiring commercial manure haulers and brokers involved in manure export from NMP operations to meet certain qualifications and to require that phosphorus runoff be managed at the import sites through either a 150-foot manure application setback or use of the Phosphorus Index. The proposed rulemaking also required brokers to develop nutrient balance sheets (NBSs).

This final-form rulemaking addresses the qualifications of commercial haulers and brokers in § 83.301(d) and (h) (relating to excess manure utilization plans) by simply referring to the Commercial Manure Hauler and Broker Certification Act (Act 49) (3 P. S. §§ 2010.1—2010.12) instead of the criteria in the proposed rulemaking. The statute addresses the same issue targeted in the proposed rulemaking. Section 83.282(d) (relating to summary of plan) and § 83.301(c)(5), (d) and (e)(1) of the final-form rulemaking also requires that the name of the broker be listed in the plan, but names of haulers do not need to be listed.

Phosphorus management is addressed in the final-form rulemaking by giving importing operations several options, all of which address phosphorus risks more specifically than the 150-foot setback option in the proposed rulemaking. These options in § 83.301(c) require: (1) application of nutrients according to the phosphorus removal rate and using a 150-foot setback from streams, lakes and ponds; (2) application using the nitrogen removal rate as long as the application is outside a 150-foot setback and only if the soil test level for phosphorus is

below 200 parts per million; (3) use of the Commission-approved Phosphorus Index; or (4) use of an NMP approved under this final-form rulemaking. In addition, the exporter or broker must prepare an NBS for use by the importer which incorporates the restrictions in § 83.301.

The final-form rulemaking deletes the requirement for brokers to develop NBSs, but it does require in § 83.301(e)(2) that the broker ensure that an NBS, or alternatively an approved NMP, exists for all the lands where the exported manure will be applied. Finally, § 83.301(i) exempts from these requirements export of de minimis quantities manure.

Manure application setbacks

Proposed § 83.294(f) (relating to nutrient application procedures) contained a number of setbacks from vulnerable areas such as open sinkholes, drinking water sources and concentrated water flow areas, as well as from streams, springs, lakes and ponds. The setback distances varied depending on the slope of the field. Special setback provisions were proposed for land application during fall and winter.

The final-form rulemaking makes several changes to the proposed provisions. First, a general setback of 100 feet is required for all perennial and intermittent streams with a defined bed and bank, lakes and ponds. Instead of a setback, a 35-foot vegetated buffer may be used. This is the setback/buffer requirement in the act.

Second, setbacks from concentrated water flow areas were deleted, as were increased setbacks on steep slope fields. Third, details were added to the general setbacks for fall application when there is less than 25% plant cover or crop residue. Fourth, more specifics were added for land application during winter. For instance, § 83.294(g) includes a new setback from wetlands identified on the National Wetlands Inventory map that are in floodplains for Exceptional Value streams, and requires minimum plant cover or residue on fields where manure is applied during winter.

Plan development funding and other financial assistance

Under the proposed rulemaking, there was no funding program to address the new phosphorus planning requirement. Section 83.214 (relating to eligible costs) of the final-form rulemaking authorizes a new funding program to support farmers' efforts to maintain and update their NMPs annually, as may be necessary for phosphorus planning.

In addition, the final-form rulemaking adds a category of funding recipients by specifying that the Commission can support multi-partner manure processing facilities. The final-form rulemaking limits plan implementation funding to operations having over 8 AEUs.

Control of E & S from plowing and tilling

Erosion and sediment (E & S) control is an important component of addressing phosphorus impacts to surface waters because the main threat from phosphorus loss comes from surface runoff of phosphorus bound up with the sediment. The proposed rulemaking required that a certified planner verify that a current Erosion and Sediment Control Plan (E & S Plan) was developed for the operation, as required by Chapter 102 (relating to erosion and sediment control), which is administered by the DEP.

Section 83.361(f) (relating to initial plan review and approval) of the final-form rulemaking requires that this verification be done by either the delegated county conservation district or the DEP. This requirement is not effective until October 1, 2009, on existing operations, due to current efforts by the DEP to provide more detailed guidance to the industry on its E & S requirement. This provision does not affect the legal requirement to comply with Chapter 102; it only addresses verification during the NMP approval process under the act.

Field stacking

In certain circumstances it is important for farmers to temporarily stack dry manure in fields where it will be applied. The proposed rulemaking allowed field stacking as long as the stacks meet certain shaping, location and timing criteria. Section 83.294(h) of the final-form rulemaking includes a similar provision and adds more detail. It also more explicitly establishes the time period allowed for these stacks to meet those criteria, to 120 days, after which the manure must meet more stringent storage requirements. Finally, it clarifies that the temporary stacking requirements apply to importing operations.

Plan amendments

The final-form rulemaking includes several changes to former § 83.371 (relating to plan amendments), such as the need to possibly amend the plan during the triennial review to reflect consideration of phosphorus under § 83.293, and to reflect plan updates. See § 83.262(c)(2) (relating to identification of CAOs). It provides flexibility for minor changes and provides more clarity on what those are, although notice to the district is required. For instance, whenever adding new importers, the final-form rulemaking allows the operator to send certain documentation to the plan review authority (for example, a delegated county conservation district) prior to transport. Other clarifications to § 83.371 are included, such as an express prohibition on implementing any significant changes in the operation before the amendment is approved.

Nutrients to be addressed

The proposed rulemaking simply referred to "nutrients." Sections 83.201, 83.272(e) and 83.291(a) (relating to definitions; content of plans; and determination of available nutrients) of the final-form rulemaking clarify that nitrogen and phosphorus are the only two nutrients to be addressed by best management practices (BMPs) under the final-form rulemaking. This is based on the wealth of scientific opinion that these are the only two nutrients from agricultural operations affecting water quality. This is also consistent with the act, which authorizes the Commission to determine which nutrients must be considered under the act.

Use of outside reference documents

The proposed rulemaking continued the use of several reference documents developed by external sources, such as Pennsylvania State University, to meet the regulatory requirements that were contained in the original regulations. The final-form rulemaking changes this approach throughout by setting performance standards and then identifying reference documents that can be used to meet those standards. Alternative reference sources, data and methods may be used in plans if they are approved by the Commission. For example, see § 83.291(c)(3).

Special protection waters

The proposed rulemaking made no distinction in the level of protection to be given to surface waters potentially affected by NMP operations. Section 83.293(c)(4) of the final-form rulemaking contains additional requirements and protections for waters classified as Special Protection under Chapter 93 (relating to water quality standards). It also contains special protections for wetlands identified on the National Wetlands Inventory map that are in floodplains for exceptional value streams. For example, see § 83.294(g).

Signature requirements

The proposed rulemaking required that the plan be signed by the operator "which meets the signature requirements of the Commission." The final-form rulemaking details the requirements in § 83.261(9) (relating to general). For instance, if a plan is signed by a corporation, the signature must indicate what office the signatory holds in the corporation. Plans signed by a corporation must include a formal document from the corporation, as an appendix to the plan, indicating that the signatory has legal authority to sign the plan for the corporation.

Definitions

A number of the existing and proposed definitions were amended, new definitions were added and definitions were deleted.

(1) *Existing definitions amended.* The following existing definitions are amended in this final-form rulemaking: "AEU—animal equivalent unit," "fund" and "manure storage facility."

(2) *Proposed definitions amended.* The following proposed definitions are amended in this final-form rulemaking.

"Farming resources" was revised to clarify that horses are included in the scope of the final-form rulemaking.

"Nutrient" was revised to clarify that the final-form rulemaking only requires BMPs for nitrogen and phosphorus.

The following definitions are also amended in this final-form rulemaking: "in-field stacking," "manure group," "nutrient balance sheet," "Phosphorus Index," "plan" and "VAO—voluntary agricultural operation."

(3) New definitions.

The definition of "act" reflects the recently enacted act, which replaces the Nutrient Management Act.

"Act 49" defines the Commercial Manure Hauler and Broker Certification Act.

"Animal unit" was added, along with a revision to the definition of "AEU—animal equivalent unit," to clarify the difference between the two.

"Agricultural erosion and sediment control plan" clarifies the type of E & S Plan referred to in the final-form rulemaking and its relationship to a conservation plan.

"National Wetlands Inventory" describes a new term used in § 83.294(c)(4) regarding the scope of setbacks for land application during winter months and § 83.351 (relating to minimum standards for the design, construction, location, operation, maintenance and removal from service of manure storage facilities) regarding location of manure storage facilities.

"Manure" clarifies this important term used in the final-form rulemaking. Redundant language was also deleted. For example, see § 83.291(c)(2)(ii).

The following definitions were also added to the final-form rulemaking: "broker," "buffer or vegetated buffer," "commercial manure hauler," "intermittent stream," "soil test level" and "winter."

(4) Definitions deleted.

"Conservation Plan" and "Erosion and Sediment Control Plan" were deleted and replaced with the new definition of "agricultural erosion and sediment control plan."

The final-form rulemaking also deletes the following definitions: "Department," "existing agricultural operation," "surface water and groundwater" and "temporary manure stacking areas."

Other changes

One planning standard. The proposed rulemaking contained two virtually identical sets of provisions, one for CAOs and one for volunteers or VAOs. The final-form rulemaking merges the two. For example, see § 83.261.

Required plan format. The final-form rulemaking adds a requirement in § 83.272(b) to use a standard format developed by the Commission for plans submitted for approval under the act.

Manure storage setbacks. The scope of the setbacks for manure storage facilities is expanded from the proposed rulemaking to include intermittent streams and, similar to the setbacks for land application in § 83.294, wetlands identified on the National Wetlands Inventory map that are in floodplains for exceptional value streams. See § 83.351(a)(2)(v)(B) and (vi)(B).

Bare ground application restrictions in the fall. The proposed rulemaking allowed for fall application "according to standards contained in the Pennsylvania Technical Guide." Section 83.294(f)(5) of the final-form rulemaking requires control of runoff until the next growing season and specifies two BMPs which will be allowed instead of a cover crop—manure injection and manure incorporation—under certain specified circumstances.

Manure spreader calibration. The proposed rulemaking contained some ambiguity on the requirement for calibrating manure spreaders, which helps ensure proper application rates. Section 83.294(c) of the final-form rulemaking contains added details to clarify the requirement.

Pastures. The proposed rulemaking required that pastures meet the same phosphorus planning requirements as crop fields. Section 83.294(j) of the final-form rulemaking provides for additional alternative measures unique to pastures to protect against phosphorus runoff, in lieu of outright prohibition of their use.

Manure testing. Section 83.291(c)(3) of the final-form rulemaking creates an exception for the annual testing requirement in the proposed rulemaking for minor manure groups. It also allows combining similar manure groups, and use of book values for pastures.

Notification of owners of rented/leased land. The proposed rulemaking did not have any requirements regarding owners of rented and leased land. Section 83.261(10) of the final-form rulemaking requires a statement in the plan that indicates that the owner has been notified that a plan is being submitted which will allow for the application of manure on his land.

Temporary manure stacking areas. This terminology has been changed in the final-form rulemaking to “emergency manure stacking areas.” In addition, these stacks are limited to 60 days unless the district or the Commission authorizes a longer period of time for the operation, and the operator is required to inform the district when the emergency manure stacking allowance is to be used. For example, see § 83.311(e) (relating to manure management).

Soil tests. The proposed rulemaking required that soil test results be submitted for soil phosphorus levels. Section 83.281(e) (relating to identification of agricultural operations and acreage) of the final-form rulemaking clarifies that soil test results in summary form, not the actual laboratory reports, can be submitted. This is to be done as an appendix to the plan. The appendix will be in the form of a chart providing field number, P, K and pH soil levels, date of test and name of the lab that provided the analysis.

Scope of the final-form rulemaking. Several sections now clarify that the final-form rulemaking is directed at CAOs, volunteers and agricultural operations required to develop compliance plans as stated in section 506(j) of the act. For example, see § 83.202 (relating to scope). Collectively, these are called “NMP operations” in the final-form rulemaking because they develop and implement NMPs.

Potassium. The proposed rulemaking did not require reporting on soil levels of potassium even though most plans now contain that information. Several sections of the final-form rulemaking require the plan to list potassium crop needs and application rates, based on soil fertility issues. Potassium runoff does not affect water quality, but management of potassium is important to ensure that adequate soil fertility levels are addressed to meet crop production goals. For example, see § 83.272(e).

Plan summary information. Some new requirements are included in the final-form rulemaking, such as the names and addresses of the owners of leased and rented land, and details on BMPs. For example, see §§ 83.281(a)(6)(i) and 83.282(b).

Irrigation systems. Section 83.294(d) of the final-form rulemaking includes more detailed requirements, such as the need for computations for application rates and depth, and an additional restriction for irrigation.

Winter application. The proposed rulemaking had special requirements for winter application in different portions of the regulation. The final-form rulemaking consolidates them into § 83.294(g) and adds several new requirements, such as the need for additional details in the plan, setbacks from certain wetlands and minimum ground cover.

Animal concentration areas. The existing provisions in § 83.321 (relating to stormwater control) are now in § 83.311(c) and several changes were made, such as the addition of details for controlling access to surface waters. Alternatives for compliance are now included.

Emergency stacking areas. Formerly called “temporary stacking areas,” several new requirements are added to protect water quality in § 83.311(e), including a 60 day time limit. These are different from “in-field stacking areas” described in § 83.294(h).

Plan reviews. The process of plan reviews and approvals is clarified in § 83.361.

Summary of Comments and Responses on the Proposed Rulemaking

Phosphorus

Numerous comments were directed at the proposed amendment regarding phosphorus in § 83.293(b). There was significant support for the idea of phosphorus management, and a Phosphorus Index, but conflicting comments on how to implement it.

Some commentators stated that this requirement would impose a severe financial burden on farms in this Commonwealth because of the lack of options for use of the manure. Some commentators, including the Advisory Board and the House and Senate Agriculture and Rural Affairs Committees, requested additional flexibility in the provision for existing operations, such as a phase-in period. Other commentators asserted that the phosphorus provisions were not stringent enough to protect water quality and suggested use of “phosphorus balancing.”

Many commentators requested more details regarding the Phosphorus Index. Commentators who reviewed the current Phosphorus Index developed by Pennsylvania State University, and approved by the Commission, had various comments suggesting improvements which tracked the tenor of the general comments previously described.

IRRC requested that the rationale behind use of the Phosphorus Index be explained. IRRC also questioned the legality of requiring compliance with a methodology not prepared by the Commission or detailed in the regulations.

The final-form rulemaking contains new requirements for phosphorus management, as required by the act under the April 2004 decision of the Environmental Hearing Board. Based on the public comments, this final-form rulemaking contains several changes to the proposed rulemaking. These changes are reflected in current § 83.293, which has been revised and reorganized based on the comments.

First, the basic criteria required for phosphorus management, and a preferred approach, are now described in the final-form rulemaking. These reflect various source and transport factors which influence phosphorus runoff, and include phosphorus soil levels and distance to surface waters. These criteria, factors and methodology are based on extensive study of phosphorus runoff from farms in this Commonwealth and elsewhere in the country.

Second, agricultural operations are given the option of following either the Phosphorus Index or other methods approved by the Commission to meet those criteria. The Phosphorus Index is preferred by the Commission due to the extensive work done in this Commonwealth by Pennsylvania State University, the USDA and others to develop it.

Third, a 5-year phase-in period for implementation of the full scope of the phosphorus management regimen is allowed. This will give the industry time to find alternative means of addressing the excess nutrients generated by NMP operations, while still imposing new restrictions on phosphorus application that are protective of surface waters. The phase-in would apply to existing NMP operations, and importers that elect to use the Phosphorus Index methodology. The phase-in would not apply in certain circumstances, such as when fields drain into Special Protection waters. Importantly, the phase-in would still require that basic phosphorus control measures are taken by limiting land application to the phosphorus removal rate.

Phosphorus is also addressed in the following section regarding manure import sites.

Manure export

The export of manure from NMP operations was another source of many of the comments received on the proposed rulemaking. Some commentators recommended less restrictions on manure export so that the export market would not be disrupted. Others raised questions about the impact these new requirements would have on that market. Several recommended establishment of a minimum threshold for the increased requirements.

However, the majority of the comments supported the additional requirements, including the use of NBSs and setback requirements. Others recommended additional requirements, such as including phosphorus in the NBS. Among these commentators, there were varying opinions on how to address phosphorus at import sites. Some were satisfied with the proposed rulemaking, while others, including the Advisory Board, recommended giving import sites several options. The Advisory Board also recommended making changes which reflect the requirements of Act 49.

There were also a number of comments regarding haulers and brokers. The comments generally recommended that haulers not be named in the plan to allow for flexibility for the exporting farm. The comments generally favored the additional requirements on brokers.

Finally, several comments recommended various ways to facilitate the export market, such as dedicating staff for this purpose at county conservation districts.

This final-form rulemaking includes new requirements on manure export to help close "the manure export loophole" similar to the proposed rulemaking. However, a number of changes were made to the proposed rulemaking as a result of the comments.

First, the final-form rulemaking retains the basic approach of requiring NBSs (or NMPs) and signed agreements with importers. The Commission feels that these are essential components to addressing manure export issues, along with the new requirements under Act 49.

However, the final-form rulemaking provides flexibility for addressing phosphorus by giving importing operations several options. The options in § 83.301(c) require one of the following: (1) application of nutrients according to the phosphorus removal rate and using a 150-foot setback from streams, lakes and ponds; (2) application using the nitrogen removal rate as long as the application is outside a 150-foot setback and only if the soil test level for phosphorus is below 200 parts per million; (3) use of the Commission-approved Phosphorus Index; or (4) use of an NMP approved under this final-form rulemaking. These options address phosphorus risks more specifically than the 150-foot setback option in the proposed rulemaking.

In addition, the exporter or broker must prepare an NBS for use by the importer, which incorporates the restrictions in § 83.301. The final-form rulemaking adds some new provisions which clarify the requirements for NBSs and the responsibilities of brokers. Moreover, the final-form rulemaking requires that the same setbacks applicable to NMP operations apply to importers for the exported manure.

Further, the final-form rulemaking exempts from these requirements export of de minimis quantities of manure, and haulers do not need to be named in the plan, as suggested by several commentators.

Finally, the final-form rulemaking addresses the qualifications of commercial haulers and brokers by simply referring to Act 49. Act 49 addresses the same issue targeted in the proposed rulemaking.

Manure application setbacks

There were a number of comments on the issue of setbacks from water resources and land application of manure. First, however, it is important to note that the act added, for the first time, a specific statutory requirement for setbacks.

While some commentators opposed the regulatory setbacks because, for example, they do not take into account site-specific conditions, many others supported the proposed provisions on setbacks. Many of the commentators supporting the setbacks also recommended that they apply throughout the year, not just when the ground is snow-covered, frozen or saturated. There also were a number of comments and suggestions on the details and scope of the setbacks. For instance, several commentators suggested that the setbacks should be the same as those for CAFOs, and others recommended clarification of "wetlands." This latter issue was of particular concern to the Advisory Board.

The Commission agrees that setbacks are an important part of the regulations, so the final-form rulemaking contains many of the same setbacks as in the proposed rulemaking. However, some setbacks were deleted and others added and several other changes were made, as recommended in the comments. It is important to note that the phosphorus assessment required in § 83.293 also addresses surface runoff issues.

First, a general setback of 100 feet is required for all perennial and intermittent streams with a defined bed and bank, lakes and ponds. Instead of a setback, a 35-foot vegetated buffer may be used. This is the statutory setback/buffer requirement in the act.

Second, setbacks from concentrated water flow areas were deleted, as were increased setbacks on steep slope fields. Third, details were added to the general setbacks for fall application when there is less than 25% plant cover or crop residue.

Fourth, more specifics were added for land application during winter. For instance, § 83.294(g) clarifies that wetlands are those identified on the National Wetlands Inventory map that are in floodplains for exceptional value streams. In addition, the other requirements for winter application are contained in that subsection, including requirements for minimum plant cover or residue.

Plan development funding and other financial assistance

Many comments were received on the expected financial impacts of the final-form rulemaking. Commentators recommended that additional funding be made available to CAOs to meet the new requirements of the final-form rulemaking, both for planning and for plan implementation. Some commentators opposed this new funding. A number of commentators suggested that the Commission develop new programs to address alternative uses of manure.

The Advisory Board recommended that the Plan Development Incentives Program provide for an annual payment to support maintenance and recordkeeping efforts.

Section 83.214 of the final-form rulemaking authorizes a new funding program to support farmers' efforts to maintain and update their NMPs annually, as may be necessary for phosphorus planning.

In addition, the final-form rulemaking authorizes the funding of alternative manure technology projects to address phosphorus imbalances on farms. The Commission has added a category of funding recipients for alternative projects and specified that the Commission can support multi-partner manure processing facilities.

The final-form rulemaking authorizes funding of a cover crop implementation program to assist farms in meeting the fall manure application restrictions in § 83.294(f).

Control of E & S from plowing and tilling

Several comments were received which raised questions and made recommendations regarding the requirement to verify that a current E & S Plan is being implemented on the NMP operation. Many of the comments focused on the question of what is an acceptable E & S Plan and how a conservation plan could be used to meet the requirement.

A number of commentators questioned whether planners were qualified to do the verification since the E & S requirement is administered by the DEP and not the Department, which certifies those planners. Some commentators expressed concern that there is not enough technical support being made available to farmers to even develop E & S Plans and that districts will need additional resources to do these reviews. One commentator asked what happens if the farm does not have an E & S Plan and is therefore out of compliance with DEP regulations in Chapter 102.

The Commission has retained the requirement to verify that an E & S Plan is being implemented, but it has also made several changes in light of the comments. The fundamental concepts behind this approach are: (1) because control of E & S is so important to phosphorus management it is useful to utilize the existing legal requirement administered by the DEP instead of developing a new one; and (2) the final-form rulemaking is not creating a new requirement, nor does the Commission intend to enforce the DEP's regulations in Chapter 102.

The final-form rulemaking now requires that this verification be done by either the delegated county conservation district or the DEP, not the planner. In addition, this requirement is not effective for existing operations until October 1, 2009, due to current efforts by the DEP to provide more detailed guidance to the industry on its E & S requirement. This effective date provision does not affect the legal requirement to comply with Chapter 102; it only addresses verification during the NMP approval process under the act.

Field stacking

A number of commentators discussed in-field stacking of manure. Most commentators felt that the time allowed for this in the proposed rulemaking was too long and offered various maximum time periods. Several commentators pointed out that the United States Environmental Protection Agency takes the position that any operation that stacks dry manure in a field uncovered for longer than 2 weeks may be a CAFO if it meets certain animal number thresholds (for example, 30,000 chickens). The Advisory Board recommended deferring action until Pennsylvania-specific data could be compiled and studied. The Advisory Board also voiced concern over a possible conflict between this final-form rulemaking and the DEP CAFO regulations on this issue.

The Commission feels that in certain circumstances it is important for farmers to temporarily stack dry manure in fields where it will be applied, although the Commission agrees that more details are needed in the regulations. Therefore, the final-form rulemaking clarifies the requirement by describing the types of BMPs needed. It allows stacking for longer than 2 weeks, but it more explicitly establishes the time period allowed for these stacks to meet those criteria, to 120 days, after which the manure must meet more stringent storage requirements. Finally, it clarifies that the temporary stacking requirements apply to importing operations.

Manure storage

Most of the comments on manure storage focused on setbacks for storage facilities. The comments uniformly recommended stricter requirements than those proposed by the Commission, although there was disagreement on the ability of county conservation districts to grant waivers.

The Commission considers the existing manure storage requirements to be protective of the environment for the most part. Some changes were made to the manure storage provisions to improve that protection. For instance, the scope of the setbacks for manure storage facilities is expanded from the proposed rulemaking to include intermittent streams and, similar to the setbacks for land application in § 83.294, wetlands identified on the National Wetlands Inventory map that are in floodplains for exceptional value streams. In addition, the waiver provision was narrowed.

Plan amendments

Virtually all of the comments on the plan amendment provisions recommended providing more flexibility to the operator, and the district, when relatively minor changes are made.

In response to comments, the final-form rulemaking clarifies the circumstances under which a plan amendment is required. The final-form rulemaking provides flexibility for minor changes and provides more clarity on what are minor changes, although notice to the district is required. For instance, whenever adding new importers, the final-form rulemaking allows the operator to send certain documentation to the plan review authority (for example, a delegated county conservation district) prior to transport. The documentation becomes a part of the plan and the additional importers are formally approved during the 3-year plan review.

Section 83.293 requires a possible plan amendment during the triennial review to reflect consideration of phosphorus, consistent with this important issue in the final-form rulemaking. The final-form rulemaking also contains an express prohibition on implementing any significant changes in the operation before a required plan amendment is approved.

Recordkeeping

Commentators expressed opposing views on the level of recordkeeping that should be required. Some offered that the existing recordkeeping is either adequate or excessive, while others argued for more records and more public access to those records.

The Commission believes that sufficient recordkeeping is already in place, so the final-form rulemaking does not differ substantially from the proposed rulemaking. The changes involve pastures and manure export.

Public involvement

There were conflicting comments about the ability of the public to be involved oversight of the nutrient management program under the act. For instance, some commentators wanted more information published in the *Pennsylvania Bulletin*, such as receipt of NMPs by the districts, while others wanted less information available to the public, such as the records of manure export.

The issues addressed by the comments are outside the scope of the final-form rulemaking. Publication of various stages of the NMP development is a matter of policy for the Commission. The Commission is continuing to evaluate this policy. The accessibility of records is a matter of State law under the act of June 21, 1957 (P. L. 390, No. 212), known as the Right-to-Know Law (65 P. S. §§ 66.1—66.4).

Special protection and impaired waters

There were several comments regarding sensitive surface waters. First, these commentators pointed out the special protections required under Chapter 93 for High Quality and Exceptional Value surface waters, and asserted that the proposed rulemaking did not recognize this. Second, the commentators recommended that special consideration be given to NMPs for farms draining into surface waters determined by the DEP to be "impaired" from agriculture.

Section 83.293(c)(4) of this final-form rulemaking contains additional requirements and protections for waters classified as "Special Protection" under Chapter 93. Section 83.294(g) contains special protections for wetlands identified on the National Wetlands Inventory map that are in floodplains for exceptional value streams. However, there are no special provisions for impaired waters because the actions which need to be taken in these situations are very location-specific, are developed by the DEP under its Total Maximum Daily Load program, and therefore do not lend themselves to general requirements in the Commission's regulation.

General

There were a number of comments about the nutrient management program under the act generally. They reflected the differing views described in the other comments listed here, and their responses. These comments are not described here where they do not address the proposed rulemaking. These include issues such as enforcement, staffing in districts and various Commission guidance issues.

Other Categories of Comments and Responses

Manure testing. Some comments addressed the annual testing requirement and other details. The final-form rulemaking retains the annual testing, clarifies certain aspects of the requirement, adds some flexibility for test analyses, pastures and similar animal types and excludes small manure groups.

Livestock management. A number of commentators supported the proposed provision restricting animal access to streams in animal concentration areas, and most supported the restrictions on animal concentration areas. The final-form rulemaking contains provisions similar to the proposed rulemaking, with some clarifications.

Soil testing. Several commentators agreed with the proposed requirement that soil tests be submitted with the NMP. One commentator requested that the tests also include nitrogen. The final-form rulemaking contains the

proposed soil test provision, with some modifications as suggested by some of the commentators. The final-form rulemaking does not require testing for nitrogen, because it is not generally useful due to soil types and climate conditions in this Commonwealth.

Horses. The commentators discussing the proposed rulemaking's new provisions on horses endorsed this change. The definition of "farming resources" was revised in the final-form rulemaking to ensure clarity in the Commission's intent to include horses.

Maps. Several suggestions were made concerning the requirement to submit maps with the proposed NMP. The final-form rulemaking contains several changes, such as inclusion of road names. Topographic maps are still required and no scale is specified.

Nutrients of concern. Several commentators recommended clarifying that phosphorus and nitrogen are the two nutrients being addressed in the regulations. The Commission, in consultation with various water quality experts, agrees and the final-form rulemaking makes this clarification.

Definitions. Concerns were raised in the comments about several definitions. A number of definitions were changed from the proposed rulemaking, as described previously in this preamble.

Plan review/approval. Commentators requested some more flexibility, and clarity, in this area. The final-form rulemaking retains the flexibility in the proposed rulemaking, and clarifies the process of review and approval of NMPs.

Fertilizers. Several commentators recommended that application of commercial fertilizer be subject to the same setbacks as manure. One commentator requested no restrictions on starter fertilizer. The final-form rulemaking does not adopt these approaches.

Volunteers. Several commentators recommended consolidating the CAO and VAO provisions. Other commentators stated concerns over loss of volunteers due to the new requirements. The final-form rulemaking consolidates the two separate sets of provisions.

Pastures. Several commentators requested flexibility on phosphorus management in pastures. The final-form rulemaking contains added flexibility.

Liquid manure. Several comments expressed concern over consideration of infiltration rates and holding capacity of soils, requesting more detailed requirements. The final-form rulemaking contains added clarity in this area, such as the factors to be considered, the need for records with computations and an express reference to both infiltration rates and water holding capacity.

Calibration. Several commentators requested clarification on calibration of manure spreading equipment. The final-form rulemaking contains more clarity on the requirements, such as a compliance statement by the operator and records to support it and a clear provision requiring commercial applicators to meet the requirements.

Benefits, Costs and Paperwork

Benefits

The intended result of the final-form rulemaking is to strengthen the Commonwealth's current efforts to oversee NMP operations to protect this Commonwealth's water quality. The final-form rulemaking is necessary to address

the Commission's evolving understanding of nutrient management issues discussed in recent scientific research, as well as over 8 years of experience implementing the nutrient management laws.

It also is a key component of the Commonwealth's efforts to ensure the industry trend toward higher intensity animal operations does not negatively impact this Commonwealth's water quality. The current program addresses approximately 13.3 million tons of manure, which is approximately 51% of all the manure generated in this Commonwealth. This equates to over 174 million pounds of nitrogen and 158 million pounds of phosphorus. The final-form rulemaking will help ensure that these manure nutrients are stored, handled and applied in an environmentally sound manner to protect water quality.

The final-form rulemaking will provide for much of the increased protection of water quality through specific provisions addressing potential phosphorus losses to surface waters from land application of manure and other nutrient sources and through a set of restrictions on the application of manure on importing sites. These are the two major issues of concern that have been expressed to the Commission in the implementation of the current program.

The Commission has developed the final-form rulemaking in close coordination with various Federal, State and local agencies and institutions. These include: the Advisory Board, the Pennsylvania State University College of Agriculture, the Department, the DEP, the USDA's Natural Resources Conservation Service and Agricultural Research Service, various county conservation districts and the Penn State Extension. The final-form rulemaking also applies the results of current scientific information about water quality impacts from agriculture. At the same time, the Commission was very careful to minimize possible negative impact on the regulated community when possible.

Farmers will benefit from this coordination. The final-form rulemaking will assist the current 901 CAO operations and the approximately 500 additional CAOs that will be brought into the program through this final-form rulemaking in enhancing their water quality protection efforts. At the same time, their compliance with the final-form rulemaking should increase local community acceptance of their operations by giving further credibility to their actions to protect local and regional water resources. The additional 1,325 farmers who have voluntarily participated under the prior regulations to protect water quality will capitalize from the similar water quality and environmental credibility benefits afforded to CAOs under this final-form rulemaking. These refined regulations will assist farmers in their efforts to effectively utilize nutrient resources on their operations. The final-form rulemaking also provides for enhanced financial assistance efforts to further assist the farm community in addressing manure management concerns.

Citizens in this Commonwealth will benefit from the increased environmental protection this final-form rulemaking will provide. Water resources potentially affected by NMP operations will be protected. Tourism is a major industry in this Commonwealth and many elements of tourism are dependent upon high quality water resources. The cost of purification of surface and groundwater by water users and suppliers should decrease as these increased water protection efforts are implemented.

The Commonwealth has worked hard over the past 8 years to ensure that the nutrient management planning program developed through the act (and its predecessor statute, the Nutrient Management Act) can be used as the singular planning process to meet both Federal and State nutrient management planning requirements. In so doing, the final-form rulemaking has the added benefit of allowing our state program for CAFOs to meet new Federal regulations.

Costs

Existing CAOs

Plan updates. This final-form rulemaking will affect the current regulated community (901 CAOs) by requiring them to update their current NMPs (consistent with their current plan update timeframe) to incorporate the new criteria included in this final-form rulemaking.

These updates are expected to result in an increase in the cost for developing an NMP. The average cost of a CAO plan prior to implementing the Phosphorus Index and NBS requirements was \$938. Incorporating the new criteria into the updated CAO plans is estimated to cost an additional \$850 per CAO.

The Commission is planning to provide cost share assistance to these CAOs to offset the additional cost. With the standard 75% State cost share, the additional cost to a farmer to update a current CAO plan would be \$212 per CAO (\$850 total cost, \$638 State cost share, \$212 farmer cost). There are currently 901 CAOs in this Commonwealth; therefore, this would calculate to a net increased cost of \$191,000 for the existing 901 CAOs to develop their required plan updates over a 3-year time frame.

Plan maintenance. The criteria some included in the final-form rulemaking will necessitate some operators to make annual adjustments to their approved plan due to the shift to phosphorus management. This will add an additional plan maintenance cost to the operators, which is expected to cost approximately \$400 a farm annually. The Commission will begin implementing the Plan Maintenance Program to assist operators in keeping their plans current. Assuming that 1,000 plans will be written on an annual basis and that this effort will be 75% cost shared, this will cost existing CAOs \$100,000 a year. This requirement is expected to begin to affect existing CAOs in the second year after the final-form rulemaking goes into effect and take until the fourth year following the effective date to become fully implemented.

Commercial fertilizer. The final-form rulemaking will require an estimated 60% of existing CAOs (540 CAOs) to export some increased portion of their generated manure due to the phosphorus element of the final-form rulemaking and due to revised setback requirements as required in the act. They will likely need to purchase nitrogen chemical fertilizer to replace the nitrogen that used to be supplied by the manure that they are now required to ship off site because of the phosphorus limitations in their plans. Based on program records, the average CAO farm size is 94 acres. Based on a compilation of the data from the last 4 years' Pennsylvania Agricultural Statistics books, 115 bushels of corn per acre is a reasonable average for corn grown across this Commonwealth. Assuming that 60% of the land on a CAO is corn ground and seeing that CAOs exporting all their manure will need to purchase chemical nitrogen to meet this corn need, a CAO exporting all of their manure will need to purchase 7,000 pounds of nitrogen to meet the nitrogen need of the corn crop on their individual farm.

At the current price of 37¢ a pound for nitrogen, it will cost these CAOs approximately \$2,600 per farm to purchase this nitrogen. This means a total cost to the industry of \$1.4 million. That cost is likely to be reduced to \$920,000, as described in the next subsection.

Manure export. The 540 existing CAOs will also need to find additional land to export their manure, or other alternative uses for the manure they produce, due to the phosphorus considerations in the final-form rulemaking.

Approximately 30% of these CAOs (162 CAOs) will be able to recoup the cost of transportation of the manure from those operators receiving the manure. The remaining farmers needing to transport additional manure from their farm sites (378 CAOs) will have to pay manure transportation costs to export the additional excess manure to appropriate sites.

The cost per operation needing to export additional excess manure is estimated to be \$1,500 annually, with a total annual cost to the regulated community of \$567,000. This expense will be phased in over the next 3 years due to the 3-year lifespan of existing NMPs (FY +1—\$189,000; FY +2—\$378,000; FY +3—\$567,000).

The Commission is proposing to assist the existing regulated community to meet this financial burden by supporting alternative manure processing or utilization technologies which will economically utilize the manure onsite or at a manure processing facility in an environmentally sound manner. Therefore, starting in FY +4, the Commission would expect operators to begin to implement alternative technologies reducing this farmer expense at the rate of an additional 10% each year (that is, 10% reduction in FY +4, 20% in FY +5, and the like).

Fall and winter application; field stacking. The final-form rulemaking also includes additional restrictions on fall and winter application restrictions and field stacking criteria. To address these issues, some poultry farmers will find it necessary to construct manure storage facilities onsite to properly store their manure until it can be applied to fields consistent with the final-form criteria. Dry manure storage facilities are expected to be constructed on 250 farms at the cost of \$40,000 per farm. Of this total cost, 50% is expected to be funded through the Nutrient Management Grants program, 25% from Federal funding programs, leaving 25% to be funded by the regulated CAOs. This equates to a total of \$2.5 million to be spent by the CAO operators, spread out over the next 6 years.

E & S control. The final-form rulemaking will induce farmers to install conservation practices at a faster rate to reduce their Phosphorus Index values for their farm fields and to address the manure management controls required for animal concentration areas (barnyards and feedlots). This conservation work will be consistent with those practices in their current E & S Plans and the Pennsylvania Manure Management Manual, as required by existing DEP regulations. Therefore, no additional costs over what is currently required under existing regulations are anticipated for these efforts.

Newly-regulated CAOs

The final-form rulemaking will bring additional farms into the CAO category. These newly regulated farms will primarily be larger-scale horse operations. These new CAOs will be required to develop and implement NMPs. These operations are commonly less cropland extensive in nature and generally have less complexity relating to the

management of manure on the farm; therefore, their planning costs are expected to be less than the cost of an average NMP.

Based on past program experience, the estimated cost of developing a plan for these newly defined operations will be approximately \$800. This would translate into a total cost of \$400,000 to develop NMPs for the 500 newly defined CAOs. This final-form rulemaking continues to provide a cost share program to offset the planning cost for CAOs. With 75% State cost share, the final cost per new CAO would be \$200 (\$800 total cost, \$600 cost share, \$200 farmer cost). This would calculate to a total cost of \$100,000 for the 500 newly defined CAOs to develop their required plans over a 2-year time frame.

Paperwork Requirements

The final-form rulemaking has been written to minimize paperwork to the maximum extent while maintaining program integrity and tracking. Farmers are required to keep records, BMP designs, emergency response plans and E & S Plans on their farms, but are not required to submit those documents for Commission or conservation district filing.

The program relies on the conservation district onsite plan review visits and annual status reviews to confirm proper documentation and to ensure that proper application and export efforts are implemented on farms with approved plans. The final-form rulemaking reduces the amount of paperwork required by the operator to be submitted for program files by eliminating the need for the CAOs to submit exporting records for the program files where they are exporting for other than agricultural land application.

The program does recognize the importance of good recordkeeping for the protection of water quality and the implementation of the limited liability clause of the act. The program requires these necessary records but does not require them to be submitted for inclusion in the program files, but they are reviewed annually with the operator during the program's annual onsite status review.

Sunset Review

The Commission will evaluate the effectiveness of this final-form rulemaking, as it has done for the existing regulations, on an ongoing basis. Therefore, no sunset date is being established for the regulations.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on July 28, 2004, the Commission submitted a copy of the notice of proposed rulemaking, published at 34 Pa.B. 4361, to IRRC and the Chairpersons of the House and Senate Environmental Resources and Energy Committees for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Department has considered all comments from IRRC, the House and Senate Committees and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on March 20, 2006, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on March 21, 2006, and approved the final-form rulemaking.

Findings

The Commission finds that:

- (1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.
- (2) A public comment period was provided as required by law, and all comments were considered.
- (3) These regulations do not enlarge the purpose of the proposal published at 34 Pa.B. 4361.
- (4) These regulations are necessary and appropriate for administration and enforcement of the authorizing laws.

Order

The Commission, acting under the authorizing statutes, orders that:

(a) The regulations of the Commission, 25 Pa. Code Chapter 83, are amended by amending §§ 83.201—83.203, 83.205, 83.206, 83.211—83.216, 83.221, 83.222, 83.224—83.226, 83.229, 83.231, 83.232, 83.241, 83.251, 83.261, 83.262, 83.272, 83.281, 83.282, 83.291—83.294, 83.301, 83.311, 83.321, 83.331, 83.341—83.344, 83.351, 83.361, 83.362, 83.371, 83.373 and 83.381; by deleting § 83.204; and by adding § 83.312 to read as set forth in Annex A.

(Editor's Note: The Commission has withdrawn the proposal to amend §§ 83.391, 83.392, 83.401—83.404, 83.411, 83.421, 83.431, 83.451—83.453, 83.461, 83.471, 83.472, 83.481 and 83.491 and to add §§ 83.422 and 83.454, included in the proposal at 34 Pa.B. 4361.)

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

(c) The Chairperson of the Commission shall submit this order and Annex A to IRRC and the Senate and House Environmental Resources and Energy Committees as required by the Regulatory Review Act.

(d) The Chairperson of the Commission shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(e) This order shall take effect October 1, 2006.

DENNIS C WOLFF,
Chairperson

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 36 Pa.B. 1555 (April 1, 2006).)

Fiscal Note: 7-390. (1) Nutrient Management Fund;

	<i>Education, Research and Technical Assistance</i>	<i>Planning, Loans, Grants and Technical Assistance</i>	<i>Nutrient Management Administration</i>
(2) Implementing Year 2005-06 is	\$0	\$0	\$0
(3) 1st Succeeding Year 2006-07 is	\$200,000	\$1,175,000	\$120,000
2nd Succeeding Year 2007-08 is	\$200,000	\$1,425,000	\$120,000
3rd Succeeding Year 2008-09 is	\$200,000	\$1,375,000	\$120,000
4th Succeeding Year 2009-10 is	\$200,000	\$1,283,000	\$120,000
5th Succeeding Year 2010-11 is	\$200,000	\$1,283,000	\$120,000
(4) 2004-05 Program—	\$2,201,000	\$2,645,000	\$231,000
2003-04 Program—	\$1,788,000	\$4,852,000	\$254,000
2002-03 Program—	\$1,245,000	\$4,136,000	\$248,000

(8) recommends adoption. The distribution of funding for the grant programs will be provided to the extent funds are available.

Annex A

**TITLE 25. ENVIRONMENTAL PROTECTION
PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION**

Subpart C. PROTECTION OF NATURAL RESOURCES

ARTICLE I. LAND RESOURCES

CHAPTER 83. STATE CONSERVATION COMMISSION

**Subchapter D. NUTRIENT MANAGEMENT
GENERAL PROVISIONS**

§ 83.201. Definitions.

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

AEU—Animal equivalent unit—One thousand pounds live weight of livestock or poultry animals, on an annualized basis, regardless of the actual number of individual animals comprising the unit.

AEU per acre—An animal equivalent unit per acre of cropland or acre of land suitable for application of animal manure.

Act—3 Pa.C.S. §§ 501—522 (relating to nutrient management and odor management).

Act 49—Commercial Manure Hauler and Broker Certification Act (3 P. S. §§ 2010.1—2010.12).

Agent—An entity delegated Commission powers and duties under the authority of section 4(3) of the Conservation District Law (3 P. S. § 852(3)), including a partnership, association, corporation, municipality, municipal authority, political subdivision of this Commonwealth and an agency, department, commission or authority of the Commonwealth.

Agricultural erosion and sediment control plan—A site-specific plan identifying BMPs to minimize accelerated erosion and sedimentation from agricultural runoff, required by Chapter 102 (relating to erosion and sediment control). The agricultural erosion and sediment control components of a conservation plan may meet this requirement, if allowed under Chapter 102.

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

Animal concentration areas—

(i) Barnyards, feedlots, loafing areas, exercise lots or other similar animal confinement areas that will not maintain a growing crop, or where deposited manure nitrogen is in excess of crop needs.

(ii) The term excludes areas managed as pastures or other cropland.

(iii) The term excludes pasture access ways, if they do not cause direct flow of nutrients to surface water or groundwater.

Animal unit—One thousand pounds live weight of livestock or poultry animals, regardless of the actual number of individual animals comprising the unit.

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

Broker—A person that is not working for or under the control of an agricultural operation and that assumes temporary control or ownership of manure from an NMP operation and arranges for transport to and utilization at an importing operation or other location.

Buffer or vegetated buffer—

(i) A permanent strip of dense perennial vegetation established parallel to the contours of, and perpendicular to, the dominant slope of the field.

(ii) There is no mechanical application of manure within the buffer area.

(iii) The purposes include slowing water runoff, enhancing water infiltration and minimizing the risk of any potential nutrients from leaving the field and reaching surface waters.

CAO—Concentrated animal operation—Agricultural operations with eight or more animal equivalent units where the animal density exceeds two AEUs per acre on an annualized basis.

Commercial manure hauler—A person that transports or land-applies manure as a contract agent for an NMP operation or a broker under the direction of the operation or broker.

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

Concentrated water flow areas—

(i) Natural or manmade areas where stormwater runoff is channeled and conveyed directly to surface water or groundwater.

(ii) The term includes, but is not limited to, ditches, waterways, gullies and swales.

Conservation district—A county conservation district established under the Conservation District Law.

Cooperative Extension—The Penn State Cooperative Extension.

Critical runoff problem areas—

(i) Nonvegetated concentrated water flow areas directly discharging into surface water or groundwater, and areas where runoff containing nutrients that were applied after the growing season discharge directly into surface water or groundwater.

(ii) The term includes gullies and unprotected ditches.

Crop management unit—The portion of cropland, hayland and pasture, including a field, a portion of a field, or group of fields, on an agricultural operation that has a unique management history (same rotation and manure history), similar production capability, and that will be managed uniformly as a distinct unit.

Emergency manure stacking areas—Unimproved areas that are authorized to be used for the storage of solid manure to be applied to the land as plant nutrients, except that these areas are only used as a contingency measure to address situations where the approved manure handling practice as described in the plan is not able to address the manure generated on the operation due to unforeseen circumstances.

Farming resources—The animals, facilities and lands used for the production or raising of crops, livestock or poultry. The lands are limited to those located at the animal facility which are owned by the operator of the facility, and other owned, rented or leased lands under the management control of the operator of the facility that are used for the application, treatment or storage of manure generated at the facility.

Fund—The Nutrient Management Fund established under section 512 of the act (relating to nutrient management fund).

In-field stacking—The practice of stacking solid manure on unimproved cropland, hayland and pasture areas to be applied to the land as plant nutrients.

Intermittent stream—A body of water flowing in a channel or bed composed primarily of substrates associated with flowing water which, during periods of the year, is below the water table and obtains its flow from both surface runoff and groundwater discharges.

Livestock—

(i) Animals raised, stabled, fed or maintained on an agricultural operation with the purpose of generating income or providing work, recreation or transportation.

(ii) Examples include: dairy cows, beef cattle, goats, sheep, swine and horses.

(iii) The term does not include aquatic species.

Manure—

(i) Animal excrement, including poultry litter, which is produced at an agricultural operation.

(ii) The term includes materials such as bedding, washwater and other materials which are commingled with that excrement.

Manure group—A portion of the manure generated on the operation that is distinct due to factors including species, handling practices, manure consistency, anticipated nutrient content or application season.

Manure Management Manual—The guidance manual published by the Department of Environmental Protection that is entitled *Manure Management Manual for Environmental Protection*, including its supplements and amendments. The manual describes approved manure management practices for all agricultural operations as required by § 91.36 (relating to pollution control and prevention at agricultural operations).

Manure storage facility—

(i) A permanent structure or facility, or portion of a structure or facility, utilized for the primary purpose of containing manure.

(ii) Examples include: liquid manure structures, manure storage ponds, component reception pits and transfer pipes, containment structures built under a confinement building, permanent stacking and composting facilities and manure treatment facilities.

(iii) The term does not include the animal confinement areas of poultry houses, horse stalls, freestall barns or bedded pack animal housing systems.

Mechanically incorporated—The combination of manure with the soil by means of farm tillage or manure injection equipment, including disks and twisted shank chisel plows, to minimize the potential of overland runoff of the manure.

NMP operation—Nutrient management plan operation—CAOs, VAOs and operations required to develop compliance plans under section 506(j) of the act (relating to nutrient management plans).

NRCS—Natural Resources Conservation Service—The Natural Resources Conservation Service of the United States Department of Agriculture, formerly known as the Soil Conservation Service.

National Wetlands Inventory—The inventory of known wetlands prepared by the United States Fish and Wildlife Service and readily available on maps in digital format on the Internet.

Nutrient—A substance or recognized plant nutrient, element or compound which is used or sold for its plant nutritive content or its claimed nutritive value. The term includes, but is not limited to, livestock and poultry manures, compost as fertilizer, commercially manufactured chemical fertilizers, biosolids or combinations thereof. The only nutrient elements of concern under this subchapter, based on their potential to impact the quality of surface waters or groundwater, are nitrogen and phosphorus. Unless the context clearly indicates otherwise, “nutrients” as used in this subchapter means nitrogen and phosphorus.

Nutrient balance sheet—A crop management BMP developed to protect surface and groundwater quality by providing the calculations for determining the appropriate rate, method and timing of manure that can be applied to cropland, hayland and pasture, to meet the purposes of this subchapter.

Nutrient management specialist or specialist—A person satisfying the requirements of the Department of Agriculture’s Nutrient Management Certification Program in 7 Pa. Code §§ 130b.1—130b.51 (relating to nutrient management certification).

Pastures—Crop areas managed for forage production that are harvested by livestock, or a combination of livestock and mechanical harvesting.

Pennsylvania Agronomy Guide—The reference book published by Cooperative Extension and updated periodically, used as a practical guide to grain and forage production, soil fertility management, pest management and erosion control, with special reference to Pennsylvania conditions.

Pennsylvania Technical Guide—A primary reference document published by the United States Department of Agriculture’s NRCS, entitled *The Pennsylvania Soil and Water Conservation Technical Guide*, which is used by technically trained persons to plan and apply appropriate BMPs.

Perennial stream—A body of water flowing in a channel or bed composed primarily of substrates associated with flowing waters and capable, in the absence of pollution or other manmade stream disturbances, of supporting bottom dwelling aquatic animals.

Permanent manure stacking areas—Designated, improved storage areas that are used for the long term or recurring storage of solid manure.

Phosphorus Index—

(i) The field evaluation methodology developed specifically for this Commonwealth and approved by the Commission, which combines indicators of phosphorus sources and phosphorus transport, to identify areas that have a high vulnerability or risk of phosphorus loss to surface waters.

(ii) This evaluation methodology provides direction on BMPs to address the land application of phosphorus-containing nutrient sources, to protect water quality.

Plan—Nutrient management plan—

(i) A written site-specific plan which meets the requirements in the act, and in §§ 83.271, 83.272 and 83.281—83.381.

(ii) Except when otherwise stated, the term includes plan amendments required under this subchapter.

Soil test level—The level of soil characteristics such as phosphorus, potassium and pH, analyzed using standard industry methods such as those described in the current *Pennsylvania Agronomy Guide*.

Spring—A place where groundwater flows naturally from rock or soil onto the land surface for a total of 183 days or more per year.

Stormwater—Runoff from the surface of the land resulting from rain, snow or ice melt.

VAO—Voluntary agricultural operation—

(i) Any operation that voluntarily agrees to meet the requirements of this subchapter even though it is not otherwise required under the act or this chapter to submit a nutrient management plan.

(ii) The term includes agricultural operations applying for financial assistance under the act.

Winter—December 15 to February 28, or any time the ground is frozen at least 4 inches deep or is snow covered.

§ 83.202. Scope.

This subchapter specifies criteria and requirements for:

(1) Nutrient management plans required under the act for CAOs, VAOs and operations required to develop compliance plans under section 506(j) of the act (relating to nutrient management plans).

(2) The construction, location, design, installation and operation of animal manure storage facilities on NMP operations.

(3) Manure handling in emergency situations when there is an outbreak of a contagious disease that poses a threat to animal or human health.

(4) The awarding of financial assistance under the act for the implementation of plans for existing agricultural operations.

(5) The awarding of incentives for the development of plans under the Plan Development Incentives Program in §§ 83.211—83.216.

§ 83.203. Purpose.

The purposes of this subchapter are to:

(1) Assure the proper utilization and management of nutrients on CAOs, VAOs and operations required to develop compliance plans under section 506(j) of the act (relating to nutrient management plans).

(2) Assure the proper utilization and management of nutrients when manure is exported off of the operations described in paragraph (1).

(3) Protect the quality of surface water and groundwater.

§ 83.204. (Reserved).

§ 83.205. Preemption of local ordinances.

(a) The act and this subchapter are of Statewide concern and occupy the whole field of regulation regarding nutrient management to the exclusion of all local regulations.

(b) After October 1, 1997, no ordinance or regulation of any political subdivision or home rule municipality may prohibit or in any way regulate practices related to the storage, handling or land application of animal manure or nutrients or to the construction, location or operation of facilities used for storage of animal manure or nutrients or practices otherwise regulated by the act or this subchapter if the municipal ordinance is in conflict with the act and this subchapter.

(c) Nothing in the act or this subchapter prevents a political subdivision or home rule municipality from adopting and enforcing ordinances or regulations which are consistent with and no more stringent than the requirements of the act and this subchapter.

(d) No penalty will be assessed under any valid local ordinance or regulation for any violation for which a penalty has been assessed under the act or this subchapter.

§ 83.206. Limitation of liability.

If an operator is fully and properly implementing a plan approved by a delegated county conservation district or the Commission and maintained under the act and this subchapter, the implementation shall be given appropriate consideration as a mitigating factor in any civil action for penalties or damages alleged to have been caused by the management or utilization of nutrients under the implementation.

PLAN DEVELOPMENT AND PLAN MAINTENANCE INCENTIVES PROGRAMS

§ 83.211. Applicant eligibility.

(a) To be eligible to apply for financial assistance for nutrient management plan development or plan maintenance, a person shall meet the following criteria.

(1) In addition to seeking financial assistance for the implementation of a nutrient management plan under §§ 83.221—83.233 (relating to financial assistance), an NMP operation seeking to submit a nutrient management plan for the first time under the act, may apply for funding under the Plan Development Incentives Program for the development of a nutrient management plan by a certified plan writer.

(2) In addition to seeking financial assistance for the implementation of a nutrient management plan under §§ 83.221—83.233, an NMP operation seeking to amend an existing nutrient management plan approved prior to October 1, 2006, may apply for funding under the Plan Development Incentives Program for the development of the amendment to the existing approved plan by a certified nutrient management plan writer.

(3) In addition to seeking financial assistance for the implementation of a nutrient management plan under §§ 83.221—83.233, an NMP operation seeking to update or amend an approved nutrient management plan meeting the requirements of this revised subchapter, may apply for funding under the Plan Maintenance Incentives Program for the development of a nutrient management plan update or amendment by a certified nutrient management plan writer.

(b) Agricultural operations existing as of October 1, 2006, and are or will be producing or utilizing livestock or poultry manure or both on their operation, are eligible to receive funding under this subchapter.

(c) NMP operations that are in violation of the nutrient management plan submission requirements, or any other requirements of an existing nutrient management plan, the act, or this chapter, will not be eligible for funding under the Plan Development Incentives Program or the Plan Maintenance Incentives Program.

(d) NMP operations having an approved plan prior to October 1, 2006, that are in compliance with that plan and the act are eligible to receive funding under the Plan Development Incentives Program to amend the plan to meet the requirements of this revised subchapter.

(e) Only those agricultural operations having an approved nutrient management plan meeting the requirements of this revised subchapter shall be eligible to receive funding under the Plan Maintenance Incentives Program.

§ 83.212. Application procedure.

(a) An application for funding from the Plan Development Incentives Program or Plan Maintenance Incentives Program shall be made on forms developed by the Commission and shall be addressed to the Commission or delegated conservation district.

(b) An application received by the Commission or delegated conservation district will be reviewed for completeness, eligibility and the appropriate level of funding.

(c) If the application is determined to be incomplete, the Commission, or delegated conservation district, will provide the applicant with a written explanation of the reason for the determination, and request the additional information needed to complete the application process.

(d) The Commission or delegated conservation district will approve or disapprove each application submitted. Within 45 days of receipt of the required information, applicants will be notified in writing of actions taken on their applications and their rights to appeal the actions.

(e) If the approval of applications for funding from the Plan Development Incentives Program or Plan Maintenance Incentives Program is delegated to a county conservation district under § 83.241 (relating to delegation to local agencies), actions of conservation districts shall be deemed actions of the Commission unless an applicant aggrieved by an action of a conservation district seeks Commission review of the action within 30 days from actual or constructive notice of the action.

(f) The applicant may appeal a decision of the Commission to the EHB as provided for in section 517 of the act (relating to appealable actions).

§ 83.213. Application prioritization criteria.

(a) The distribution of funding under the Plan Development Incentives Program shall be provided to the extent funds are available based on the following prioritization:

(1) Agricultural operations newly classified as CAOs due to the revised criteria established in this amended subchapter.

(2) CAOs amending a plan approved prior to October 1, 2006, to conform with the revised program criteria.

(3) CAOs coming into existence after October 1, 2006, due to loss of rented acres.

(4) VAOs amending a plan approved prior to October 1, 2006, to conform with the revised program criteria.

(5) VAOs submitting a plan under the act.

(6) Other CAOs coming into existence after October 1, 2006.

(b) The distribution of funding under the Plan Maintenance Incentives Program will be provided to the extent funds are available based on the following prioritization:

(1) CAOs developing plan updates or amendments.

(2) VAOs developing plan updates or amendments.

(3) Other NMP operations developing plan updates or amendments.

§ 83.214. Eligible costs.

(a) Eligible costs considered by the Commission under the Plan Development Incentives Program are those fees incurred for the development of the initial nutrient management plan or the amendment of a nutrient management plan approved prior to October 1, 2006, to conform with the revised program criteria.

(b) Eligible costs considered by the Commission under the Plan Maintenance Incentives Program are those fees incurred for the development of an update or amendment to a nutrient management plan meeting the requirements of this revised subchapter.

(c) Costs of soil and manure tests (not including labor costs) for initial plan development, or for developing the amended or updated plan as described in subsections (a) and (b), are eligible for reimbursement.

§ 83.215. Funding limitations.

(a) The Commission will limit individual awards in the amounts it deems appropriate for the particular classification of operation.

(b) Funding under the Plan Development Incentives Program will be limited to a one-time reimbursement payment for initial plan development costs incurred after the eligible agricultural operator's application has been approved, and as a one-time reimbursement payment for

a nutrient management plan amendment of a plan approved prior to October 1, 2006, to conform with the revised program criteria.

(c) Funding under the Plan Maintenance Incentives Program will be limited to one payment annually for updating or amending an approved nutrient management plan meeting the requirements of this revised subchapter.

(d) Funding under both the Plan Development Incentives Program and the Plan Maintenance Incentives Program will not be available for planning efforts initiated prior to approval of the request for participation in the program.

§ 83.216. Implementation and reporting.

(a) The Commission will develop implementation and reporting documents defining the terms and conditions under which funding under each program will be provided and other documents determined to be necessary by the Commission.

(b) Only plans or plan updates and amendments meeting the requirements of this revised subchapter will be eligible for reimbursement under this program.

(c) The recipient of a Plan Development Incentives Program or a Plan Maintenance Incentives Program award shall maintain financial records for 3 years to substantiate reimbursement expenditures covered by this subchapter.

FINANCIAL ASSISTANCE

§ 83.221. Applicant eligibility.

(a) An owner of an agricultural operation existing as of October 1, 2006, may apply for financial assistance for the implementation of plans developed under the act. The owner shall have legal and financial responsibility for the agricultural operation during the term of the financial assistance provided by the Commission.

(b) Existing CAOs required to implement BMPs to conform with the revised criteria of this subchapter are eligible for financial assistance for the implementation of the BMPs.

(c) New agricultural operations coming into existence after October 1, 2006, are not eligible for financial assistance for the implementation of their approved plan, including the BMPs in the plan.

(d) Existing NMP operations having an approved nutrient management plan that are currently or were in violation of the plan submission requirements or any other requirements of this act prior to October 1, 2006, are not eligible for funding under this program.

(e) Existing agricultural operations expanding to become a CAO after October 1, 2006, are not eligible for financial assistance for the implementation of their approved plan, including the BMPs in the plan.

(f) Only those agricultural operations having over eight AEU's are eligible to receive financial assistance for the implementation of their approved plan, including the BMPs in the plan.

§ 83.222. Condition for receipt of financial assistance.

(a) An agricultural operation approved to receive financial assistance under the Chesapeake Bay Nonpoint Source Pollution Abatement Program after October 1, 2006, or otherwise receiving financial assistance under the act for plans, shall agree to develop and implement a plan as a condition for receiving the financial assistance.

(b) A recipient of financial assistance under this subchapter shall be obligated to maintain the BMPs funded by the financial assistance and continue to implement and adhere to the provisions of the plan, the act and this chapter for 10 years following receipt of the funds.

§ 83.224. Project evaluation and prioritization criteria.

(a) Applications for financial assistance will be evaluated in accordance with project evaluation criteria guidelines developed by the Commission.

(b) Applications for financial assistance will be prioritized for consideration as follows:

(1) CAOs in compliance with the act and properly implementing a plan approved prior to October 1, 2006, which, due to the revisions to the regulations, are required to implement additional practices to meet the new criteria.

(2) Existing agricultural operations newly classified as CAOs due to the revised criteria established in this amended subchapter.

(3) Existing agricultural operations that become CAOs after October 1, 2006, due to loss of rented acres.

(4) VAOs having an approved plan as of October 1, 2006.

(5) Other agricultural operations in existence as of October 1, 2006.

§ 83.225. Application procedure.

(a) An application for financial assistance shall be made on forms approved by the Commission and shall be addressed to the Commission or a delegated agent.

(b) An application received by the Commission or delegated agent will be reviewed for completeness and eligibility. An application must include a copy of the approved plan which identifies the proposed BMPs for which financial assistance is being requested.

(c) If the application is determined to be incomplete, the Commission or a delegated agent will provide the applicant with a written explanation of the reasons for the determination, and request the additional information needed to complete the application process.

(d) Within 60 days of receipt of all required information, applicants will be notified in writing of actions taken on their applications and any right to appeal the actions.

(e) The applicant may appeal a decision of the Commission to the EHB as provided for in section 517 of the act (relating to appealable actions).

§ 83.226. Eligible costs for the implementation of an approved plan.

(a) Eligible project costs considered by the Commission shall be the costs necessary to implement the plan and may include the following:

(1) Project design and engineering including plans, specifications, cost estimates, certifications and surveys.

(2) Costs associated with obtaining the financial assistance and may include loan origination or loan application fees, or both, title fees and filing fees.

(3) Project construction, including labor, materials, machinery, equipment and site preparation associated with the project.

(4) Costs associated with the implementation of a cover cropping BMP, in response to the requirement contained under § 83.294(f)(5)(i) (relating to nutrient application procedures).

(5) Other costs the Commission has determined to be necessary.

(b) Funds encumbered or advanced for the project which are not used for eligible costs in the project shall be returned to the fund or account from which they originated for reallocation and use in the implementation of other plans.

(c) The Commission may consider alternative manure technology practices and equipment eligible to receive financial assistance under this subchapter if these practices or equipment are considered to be effective in addressing nutrient management issues on the agricultural operation. Financial assistance funding levels and limitations for these alternative practices and equipment will be established by the Commission. These eligible practices may be approved to service an individual operation or may service more than one operation if approved by the Commission. For multi-partnered projects, all farms providing manure for the project must agree to amend an existing plan or develop and implement a new approved nutrient management plan meeting the provisions of this subchapter.

§ 83.229. Grants.

(a) A grant will be considered when funds have been made available to the Commission and the Commission determines that the financial condition of the recipient is such that the repayment of a loan is unlikely and that the recipient will be financially distressed by the implementation of BMPs without a grant.

(b) The Commission may limit individual grant awards to whatever amount it deems appropriate. The maximum amount of a grant may not exceed those maximum grant limits established by the Commission. An agricultural operation that has received or is approved to receive financial assistance under any local, State, Federal or other financial assistance program may also be eligible for grants under the Nutrient Management Plan Implementation Grant Program up to the grant limit established by the Commission in grants from those combined sources and the Nutrient Management Plan Implementation Grant Program.

(c) A grant will be made subject to the terms and conditions the Commission establishes.

§ 83.231. Funding limitations.

(a) *Total funding limits.* Total assistance provided under loans, grants and loan guarantees for the implementation of a single plan may not exceed those funding limits established by the Commission.

(b) *Partial funding.* The Commission reserves the right to provide funding for only a portion of the total costs of the project or only a portion of the amount requested in a financial assistance application.

(c) *Least cost alternative.* Financial assistance provided may not exceed that amount necessary for the least-cost alternative for each BMP included.

(d) *Limitation.*

(1) Financial assistance will not be made available that might jeopardize or compromise the fund.

(2) Financial assistance will not be available for refinancing.

(3) Financial assistance will not be available for BMPs if construction is initiated prior to submission of an application for financial assistance, unless a letter of no prejudice has been issued by the Commission as provided in subsection (e).

(e) *Letters of no prejudice.* Exceptions to the general prohibition against initiation of construction prior to consideration by the Commission may be made when circumstances require immediate plan implementation to proceed before an application for financial assistance can be submitted to the Commission. Circumstances that would require immediate plan implementation and therefore appropriate for consideration by the Commission for a letter of no prejudice, must relate to acute failures or malfunctions of practices where immediate implementation is necessary to address significant environmental degradation. In this case, a potential applicant may apply to the Commission for a letter of no prejudice wherein the Commission agrees to consider a future application for financial assistance without limitation or prejudice even if project construction has begun at the time of the future application for financial assistance. The application for a letter of no prejudice must set forth, in detail, the exact reason or reasons a letter of no prejudice is necessary and should be granted. The application for and approval of a letter of no prejudice must occur prior to the start of project construction. If the Commission issues a letter of no prejudice, project construction can begin without jeopardizing or benefiting a future application.

§ 83.232. Implementation and reporting.

(a) The Commission will develop financial assistance documents which will define the terms and conditions under which the financial assistance is offered and specify other documents determined to be necessary by the Commission.

(b) Unless otherwise approved by the Commission, the recipient of financial assistance under this subchapter shall begin construction of the project, in accordance with its approved application within 9 months of the Commission sending notice of approval of a grant or loan application. If the applicant does not begin implementation within the specified time period, does not continue work without unreasonable interruption or does not complete the project within the specified time period in the grant agreement, the financial assistance may be withdrawn by the Commission.

(c) Design and construction of BMPs must conform to the standards found in the *Pennsylvania Technical Guide*. The applicant may not significantly deviate from the scope, design or time schedule for a project unless prior written approval is given by the Commission or delegated agent. The term "scope," as used in this subsection, means the extent of project activities determined by the Commission to be eligible for financial assistance.

(1) A request for significant changes in scope shall be submitted in writing to the Commission for approval. When changes in scope require a plan amendment under the criteria of § 83.371 (relating to plan amendments), the applicant shall provide a copy of the approved plan amendment.

(2) Funding eligibility for a change in scope will be based on the criteria described in § 83.223 (relating to financial assistance eligibility criteria). Consent of the Commission to a change in scope will not be deemed to increase the amount of financial assistance provided without the express approval of the Commission. Funding for changes in the scope of an assistance project will be approved only in the following circumstances:

(i) The change in scope is a result of new or revised requirements, Federal legislation, or a Federal regulation thereunder, State legislation or State regulation thereunder, the act, this subchapter, The Clean Streams Law (35 P. S. §§ 691.1—691.1001) or regulations thereunder.

(ii) The change in scope is necessary to protect the structural or process integrity of the facilities.

(iii) Adverse conditions are identified during the construction of the facilities which could not have been foreseen by the design engineer prior to encountering the condition.

(iv) The change is necessary to relieve emergency conditions occurring during construction of the facilities.

(d) A request for a disbursement of financial assistance must be on forms approved by the Commission, include a statement certifying the project was completed as planned, and be submitted on a schedule approved by the Commission.

(e) The applicant shall maintain project progress and financial records to substantiate expenditures, as well as plan implementation records as outlined in §§ 83.341—83.344 (relating to recordkeeping and informational requirements).

(f) If the applicant fails to comply with this section, the Commission may withdraw the remaining funds allocated to the project, as well as take other action which it is legally entitled to take.

DELEGATION TO LOCAL AGENCIES

§ 83.241. Delegation to local agencies.

(a) The Commission may by written agreement delegate to a conservation district one or more of its administrative or enforcement authorities under the act.

(b) The delegation of administrative or enforcement authority may be made to a conservation district when the district demonstrates it has or will have an adequate program and sufficient resources to accept and implement the delegation.

(c) To the extent delegated by the agreement, the delegations may include the authority to enforce the act and this subchapter and to exercise other powers and duties otherwise vested in the Commission to implement the act.

(d) A delegation agreement will:

(1) Specify the powers and duties to be performed by the delegated district.

(2) Provide for the commitment of sufficient trained staff and resources to perform the powers and duties to be delegated.

(3) Require the delegated conservation district to maintain records of activities performed under the delegation.

(4) Provide for the monitoring and supervision by the Commission of performance by the delegated conservation district of the functions delegated under the agreement.

(e) When the Commission delegates one or more of its powers and duties to a delegated conservation district, the Commission will retain the concurrent power to administer and enforce the act and this subchapter.

COMPLIANCE PLANS**§ 83.251. Compliance plans.**

An agricultural operation found to be in violation of The Clean Streams Law (35 P.S. §§ 691.1—691.1001) may be required to submit a plan that meets the requirements of the act and this subchapter within 3 months or notification thereof and to implement the plan in accordance with the schedule as approved.

NUTRIENT MANAGEMENT PLANS**§ 83.261. General.**

NMP operations shall meet the plan requirements of §§ 83.251—83.381 according to the following:

(1) *Operations defined as a CAO prior to October 1, 2006.*

(i) For operations defined as CAOs operating as of October 1, 1997, a plan shall have been submitted prior to October 1, 1998.

(ii) For operations which were newly defined as a CAO due to expansion of operations prior to October 1, 2006, a plan shall have been submitted within 3 months of the change in operations which classified them as a CAO.

(iii) For new operations defined as CAOs and commencing before October 1, 2006, a plan shall have been submitted prior to commencement of operations.

(2) *Operations defined as a CAO after October 1, 2006, that were not defined as CAOs prior to that date.* An existing agricultural operation as of October 1, 2006, which did not meet the CAO definition prior to October 1, 2006, but which is defined as a CAO under this subchapter as amended, shall submit a plan by October 1, 2008.

(3) *Operations that become defined as CAOs after October 1, 2006, due to expansion of an existing operation or loss of rented or leased land.* Existing operations that make changes to their operations that result in becoming defined as CAOs for the first time after October 1, 2006, shall meet the following:

(i) An agricultural operation which becomes a CAO after October 1, 2006, due to loss of land suitable for manure application, shall submit a plan within 6 months after the date which the operation becomes a CAO.

(ii) An agricultural operation which will become a CAO due to expansion of operations by the addition of animals shall obtain approval of the plan prior to the expansion.

(4) *New operations.* A new operation which will commence after October 1, 2006, and which will be a CAO, shall obtain approval of a plan meeting the requirements of this subchapter prior to the commencement of the operation.

(5) *Non-CAO operations.* An agricultural operation other than a CAO may voluntarily submit a plan at any time after October 1, 1997.

(6) *Revision of plans approved prior to October 1, 2006.* Operations having an approved plan prior to October 1, 2006, shall comply with the following:

(i) CAOs and operations required to develop compliance plans under section 506(j) of the act (relating to nutrient management plans), shall submit an amended plan to address all of the requirements of this subchapter, including management of phosphorus and exported manure, under the 3-year review requirement of § 83.362 (relating to plan implementation), or by October 1, 2007, whichever is later.

(ii) VAOs shall submit an amended plan on the same schedule as CAOs in subparagraph (i) if they desire to maintain their status as a VAO.

(iii) VAOs that received funding under this subchapter shall implement the plan approved prior to October 1, 2006, and maintain the BMPs installed using that funding for 10 years following implementation of the BMP.

(7) The plan shall be submitted to the Commission or delegated conservation district by the operator who shall sign the plan.

(8) *Qualifications.* Plans shall be developed by nutrient management specialists certified in accordance with the Department of Agriculture's Nutrient Management Specialist Certification requirements in 7 Pa. Code §§ 130b.1—130b.51 (relating to nutrient management certification). The specialists shall certify, by signature, that the plans are in accordance with the act and this subchapter.

(9) *Signature requirements.* Plans shall be signed by the operator of the agricultural operation indicating concurrence with the information in the plan and acceptance of responsibilities under the plan. The following signature requirements apply:

(i) For sole proprietorships, the proprietor.

(ii) For partnerships, a general partner.

(iii) For corporations, a vice president, president or authorized representative. The plan must contain an attachment executed by the secretary of the corporation which states that the person signing on behalf of the corporation is authorized to do so.

(10) *Operations that include rented or leased lands.* For operations that include rented or leased lands, the operator shall sign a statement in the plan indicating the following:

(i) The owners of these lands have been provided notice that a nutrient management plan has been developed which included the owner's lands.

(ii) None of the owners indicated any objection to the application of nutrients to their own lands.

(11) *Penalties.* Operators and specialists who sign plans may be subject to penalties for any false information contained in the plans.

§ 83.262. Identification of CAOs.

(a) *Procedure.* To determine if a particular agricultural operation is a CAO, the number of AEUs per acre on the agricultural operation shall be calculated using the following procedure:

(1) The number of AEUs on the agricultural operation shall be calculated by using the following steps:

(i) Compute the animal weight for the agricultural operation by multiplying the average number of animals on the agricultural operation by the standard animal weight used by the livestock industry in this Commonwealth. The standard weights contained in guidance published by the Commission may be used to meet this requirement. Other animal weights may be used in place of those in the Commission guidance, if there is sufficient documentation to support their use. For those animal types not included in the Commission guidance, the average animal weight for the operation shall be used for this calculation, taking into account, if applicable, the range of animal weights throughout the time the animals are on the operation.

(ii) Annualize the average animal weight per day by multiplying the animal weight derived in subparagraph (i) by the number of days per year that the animals are on the operation, then divide by 365 days.

(iii) Compute the number of AEU's for the particular animal type by dividing the number derived in subparagraph (ii) by 1,000.

(iv) Compute the AEU's for the operation by adding together the number of AEU's for each type of animal to equal the total number of AEU's on the agricultural operation.

(v) Operations having less than eight AEU's are not classified as CAOs regardless of the animal density.

(2) Compute the number of AEU's per acre by dividing the total number of AEU's by the total number of acres of land suitable for the application of manure.

(i) For the sole purpose of determining whether an agricultural operation is a CAO, "land suitable for the application of manure" is land that meets all of the following:

(A) The land is under the management control of the operator.

(B) The land is cropland, hayland or pastureland.

(C) The land is an integral part of the agricultural operation, as demonstrated by title, rental or lease agreements, crop records or information on a form provided by the Commission.

(D) The land is or will be any of the following:

(I) Used for the application of manure generated by the agricultural operation.

(II) Included within the areas where manure may not be applied under § 83.293(c) (relating to determination of nutrient application rates).

(III) Included within the areas where manure may not be mechanically applied under section § 83.294(f) and (g) (relating to nutrient application procedures).

(ii) The term "land suitable for application of manure" does not include farmstead areas or forest land.

(b) *Example of AEU per acre calculation.* An operation has an average number of 10,000 medium broilers with an average weight of 2.3 pounds. During the year there are six flocks with a production period of 43 days per flock. This amounts to 258 days per year that the birds are on the operation. During the remaining down time, no manure is produced. The farmstead is 2 acres. There are 3 acres of woodlands and 7 acres of cropland. The following is the AEU per acre calculation for this operation:

Step 1. 10,000 med. broilers × 2.3 lb. avg. wt. = 23,000 lb. total weight

Step 2. 23,000 lb. total weight × 258 days per year divided by 365 days = 16,257 lbs.

Step 3. 16,257 lbs. divided by 1,000 lbs. per AEU = 16.25 AEU's

Step 4. Total number of AEU's on the agricultural operation is 16.25

Step 5. 16.25 AEU's divided by 7 acres of land suitable = 2.32 AEU's per acre

CONTENT REQUIREMENTS FOR ALL PLANS

§ 83.272. Content of plans.

(a) Plans developed for CAOs, VAOs and operations required to develop compliance plans under section 506(j) of the act (relating to nutrient management plans) must comply with §§ 83.261 and 83.271—83.381.

(b) A plan must follow the standardized plan format provided by the Commission, unless otherwise approved by the Commission.

(c) The operator shall be involved in the development of the plan.

(d) The BMPs listed in the plan must be consistent with the management practices listed in other relevant plans, such as the agricultural erosion and sediment control plan developed for the operation, unless otherwise approved by the Commission or delegated conservation district.

(e) The only nutrient elements of concern to be addressed by BMPs in the plan, based on their potential to impact the quality of surface water or groundwater, are nitrogen and phosphorus. Unless the context clearly indicates otherwise, "nutrients" as used in this subchapter means nitrogen and phosphorus.

(f) The plan must list potassium crop needs, and potassium application rates, from all nutrient sources, to ensure that adequate soil fertility levels are addressed to meet crop production goals.

PLAN SUMMARY INFORMATION

§ 83.281. Identification of agricultural operations and acreage.

(a) *Agricultural operation identification sheet.* The plan must include an agricultural operation identification sheet which includes the following information:

(1) The operator name, address and telephone number.

(2) A brief description of the operation including:

(i) Animal types and numbers included on the operation.

(ii) The crop rotation planned to be used on the operation.

(iii) The dimensions, capacity and freeboard of any existing manure storage facilities on the operation.

(3) The signatures and documentation as required by § 83.261 (relating to general).

(4) The counties where land included in the plan is located.

(5) The watersheds in which the land included in the plan is located. The existence of any special protection waters, as identified in Chapter 93 (relating to water quality standards), shall also be noted.

(6) The total acreage of the agricultural operation included in the plan. This acreage includes:

(i) Lands located at or adjacent to the animal facility, which are owned by the operator of the facility.

(ii) Other owned, rented or leased lands, under the management control of the operator of the facility, that are used for the application, treatment or storage of manure generated at the facility. The plan must include the names and addresses of owners of the rented and leased lands.

(7) The total acreage of land of the agricultural operation on which nutrients shall be applied. The total acreage shall be separated into acres of owned land and acres of rented or leased land.

(8) The total number of AEUs on the operation, and the number of AEUs per acre on the agricultural operation.

(9) The name, nutrient management certification program identification number and signature of the nutrient management specialist that prepared the plan and the date of plan preparation.

(b) *Maps and aerial photographs.* The plan must include a topographic map drawn to scale identifying the lands included in the agricultural operation, including the land described in subsection (a)(6), and must also contain maps or aerial photographs of sufficient scale which clearly identify:

(1) The location and boundaries of the agricultural operation.

(2) Individual field boundaries under the plan.

(3) Field number and acreage of each field.

(4) The identification of all soil types and slopes on the agricultural operation. An NRCS soil survey map with the soil identification legend will be sufficient to satisfy this requirement. These soil survey maps may be available at the county NRCS office or conservation district office.

(5) The location of areas where manure application is restricted under § 83.294(f) and (g) (relating to nutrient application procedures).

(6) The location of proposed or existing structural BMPs, including manure storage facilities, on the operation.

(7) The location of proposed or existing emergency manure stacking areas or in-field stacking locations.

(8) The names of the roads adjacent to or within the agricultural operation.

(c) *Phosphorus.* The plan must include an appendix containing information and calculations used to comply with § 83.293(c) (relating to determination of nutrient application rates). If the Phosphorus Index is used, the information must include the completed Phosphorus Index spreadsheet or other similar information summary which lists the individual source and transport factor values, as appropriate, and the final Phosphorus Index result, for each individual area evaluated on the operation, as developed under the Phosphorus Index.

(d) *Agreements with importers and brokers.* The plan must include an appendix containing signed exporter/importer and exporter/broker agreements, and nutrient balance sheets and associated maps, for operations where these documents are required under this subchapter.

(e) *Soil test results.* The plan must include an appendix containing a summary of the results of all soil test analyses performed on the operation. The summary must meet the requirements of § 83.292(e)(3) (relating to determination of nutrients needed for crop production).

§ 83.282. Summary of plan.

(a) The plan must contain a summary that includes:

(1) A manure summary table listing:

(i) The total amount of manure planned to be generated on the operation annually.

(ii) The total amount of manure planned to be used on the operation annually.

(iii) The total amount of manure planned to be exported from the operation annually.

(2) A nutrient application summary documenting the planned nutrient applications for each crop management unit listing:

(i) Acres.

(ii) Expected yield.

(iii) Nutrients applied as starter chemical fertilizer.

(iv) Planned manure application period.

(v) Planned manure application rate and type of manure to be applied.

(vi) Planned manure incorporation time.

(vii) Rate of other organic nutrient sources planned to be applied.

(viii) Other nutrients applied through chemical fertilizer.

(ix) Other comments or notes.

(3) General procedures and provisions for the utilization or proper disposal of excess manure.

(b) The summary must include the following information on planned BMPs:

(1) Planned manure management and storage practices, stormwater runoff control practices and other appropriate BMPs necessary to protect the quality of surface water and groundwater.

(2) The schedule for implementation of the planned BMPs.

(3) The locations of planned BMPs on the agricultural operation.

NUTRIENT APPLICATION

§ 83.291. Determination of available nutrients.

(a) The plan must address each type of nutrient source generated or planned to be used on the agricultural operation, including: manure, biosolids, compost, commercial fertilizers and other nutrient sources. Nitrogen and phosphorus are the only nutrient elements of concern to be addressed by BMPs in the plan.

(b) The plan must list potassium crop needs, and potassium application rates, from all nutrient sources, to ensure that adequate soil fertility levels are addressed to meet crop production goals.

(c) The amount and nutrient content of each manure group generated on the agricultural operation shall be documented in the plan as follows:

(1) List the average number of animals for each manure group, on the agricultural operation.

(2) List the amount of manure generated and when it is available for land application on the agricultural operation or for other planned uses.

(i) If actual manure production records are available for the operation, these records shall be used for determining the manure produced on the operation.

(ii) If actual records of manure production do not exist for the operation, the amount of manure produced shall be calculated based on the average number of animal units on the agricultural operation, and the storage capacity of manure storage facilities, if present. The plan must include the calculations or variables used for determining the amount of manure produced on the operation.

(3) Test the nutrient content of manure as follows:

(i) Analytical manure testing results shall be used in the development of the plan. These manure tests must include an analysis of the percent solids, total nitrogen (as N), ammonium nitrogen (as $\text{NH}_4\text{-N}$), total phosphate (as P_2O_5) and total potash (as K_2O), for each manure group generated on the operation, and these analytical results shall be recorded in the plan.

(ii) These manure analyses shall be performed using manure sampling and chemical analysis methods which accurately represent the contents of the manure. Methods described in the *Pennsylvania Agronomy Guide* may be used to meet this requirement. Other methods shall be approved by the Commission.

(iii) For newly proposed operations, and for manure groups on existing operations where sampling and analysis are not possible prior to initial plan development, the following applies:

(A) The plan must use either standard book values, or analytical results from a similar facility as approved by the Commission or delegated conservation district.

(B) Standard book values contained in the *Pennsylvania Agronomy Guide* may be used to meet this requirement. Other values shall be approved by the Commission.

(C) A similar facility is one that uses similar animal housing, animal groups, feeding practices and wastewater management.

(D) The nutrient content of the manure, as determined in clauses (A)—(C), shall be recorded in the plan.

(E) Samples and chemical analysis of the manure generated on the operation shall be obtained within 1 year of implementation of the approved plan, and the requirements of § 83.371 (relating to plan amendments) shall be followed as applicable.

(iv) The nutrient content of manure deposited on pastures by grazing animals shall be determined using the methods contained in subparagraph (vi).

(v) After approval of the initial plan, manure tests are required to be taken annually for each manure group generated on the operation.

(vi) The testing described in this subsection will not be required for manure groups associated with less than five AEU's of livestock or poultry at an operation. For these small quantity manure groups, the nutrient content of the manure may be determined using standard book values which represent the contents of the manure for the operation. Standard book values contained in the *Pennsylvania Agronomy Guide* may be used to meet this requirement. Other values shall be approved by the Commission or delegated conservation district.

(vii) Testing of manure groups may be consolidated when two or more manure groups on the same operation are produced by the same animal type and are managed in a similar manner.

(d) The nitrogen available from manure shall be based on availability factors which accurately represent the characteristics of the manure. Factors described in the *Pennsylvania Agronomy Guide* may be used to meet this requirement. Other methods shall be approved by the Commission. The plan must include the amount of nitrogen available in the manure, and the planned manure incorporation time used to determine the nitrogen available.

(e) The residual nitrogen from legume crops and previous applications of manure shall be determined using values which represent the common nitrogen residuals from the past crops and manure applications at the operation. Standard book values contained in the *Pennsylvania Agronomy Guide* may be used to meet this requirement. Other values shall be approved by the Commission. The values shall be recorded in the plan and credited when determining nutrient application rates.

§ 83.292. Determination of nutrients needed for crop production.

(a) The plan must include the acreage and realistic expected crop yields for each crop management unit.

(b) For the development of the initial plan, expected crop yields may not exceed those considered realistic for the soil type and climatic conditions, as set by the operator and the specialist, and approved by the Commission or delegated conservation district. If actual yield records are available during the development of the initial plan, the expected crop yields shall be based on these records.

(c) If after the first 3 years of implementing the plan, the yields do not average at least 80% of the planned expected yield, the plan shall be amended to be consistent with the documented yield levels unless sufficient justification for the use of the higher yields is approved by the Commission or delegated conservation district. The amendment shall be submitted as required under § 83.371 (relating to plan amendments).

(d) When determining expected crop yields for plan amendments, expected crop yields shall be based on documented yield levels achieved for the operation. Expected crop yields higher than historically achieved may be used if sufficient justification is approved by the Commission or delegated conservation district for the use of the higher yields.

(e) When developing the initial plan, soil tests shall be conducted for each crop management unit on the operation, to determine the level of phosphorus (as P), potassium (as K), and soil pH, as follows:

(1) The soil test procedures used must provide accurate test results. The procedures recommended by the Pennsylvania State University and published in *Recommended Soil Testing Procedures for the Northeastern United States*, Bulletin #493, published by the University of Delaware, may be used to meet this requirement. Other procedures shall be approved by the Commission.

(2) Soil tests conducted within the previous 3 years prior to submitting the initial plan are acceptable.

(3) The plan must include an appendix containing a summary of the results of the soil test analyses for each crop management unit showing the following:

(i) Soil test levels for phosphorus and potassium as reported by the laboratory.

(ii) Soil test levels for phosphorus (as P) in parts-per-million (PPM) and potassium (as K) in PPM, after conversion from the test results from the laboratory, as needed.

(iii) Soil test levels for pH.

(iv) The date of the soil tests and the name of the lab performing the tests.

(4) After the approval of the initial plan, soil tests are required for each crop management unit at least every 3 years from the date of the last test.

(f) Based on the soil tests in subsection (e), the plan must include recommendations for the amount of nitrogen (as total N), phosphorus (as P₂O₅) and potassium (as K₂O) necessary for realistic expected crop yields.

(g) If necessary based on the type of crops planned, the recommendations from the initial soil test shall be adjusted to determine the appropriate amount of nutrients necessary to achieve realistic expected crop yields. This adjustment may be satisfied by using the methodologies in the *Soil Test Recommendations Handbook for Agronomic Crops* published by the Pennsylvania State University Agricultural Analytical Services Laboratory. Other methodologies for this adjustment shall be approved by the Commission.

§ 83.293. Determination of nutrient application rates.

(a) *Application rate.* Application rates shall be developed to protect surface water and groundwater using BMPs as described in the plan. The manure application rate shall be the lesser of the following:

(1) A rate equal to or less than the balanced manure application rate based on nitrogen as determined under subsection (b).

(2) The rate as determined under subsection (c).

(b) *Nitrogen.* Land application of manure and other nutrient sources on cropland, hayland and pastures shall be managed to minimize the affects of nitrogen losses from fields. The rate may not exceed the amount of nitrogen necessary to achieve realistic expected crop yields or the amount of nitrogen the crop will utilize for an individual crop year.

(1) The balanced manure application rate based on nitrogen shall be determined by first subtracting the amount of available residual nitrogen and any applied nitrogen, such as nitrogen applied in starter fertilizer, from the amount of nitrogen necessary for realistic expected crop yields, and then dividing that amount by the available nitrogen content of the manure as determined under § 83.291 (relating to determination of available nutrients).

(2) The calculations and variables used for determining the balanced manure application rates based on nitrogen shall be recorded in the plan.

(c) *Phosphorus.* Land application of manure and other nutrient sources on cropland, hayland and pastures shall be managed to minimize the affects of phosphorus losses from fields. Methods for determining and managing the risk of phosphorus loss, and related water quality impacts, must comply with the following:

(1) Determine the risk of phosphorus loss and related water quality impacts based on relevant factors including the following:

- (i) Soil phosphorus levels.
- (ii) The method, rate and timing of phosphorus application.
- (iii) Runoff and soil loss potential for the application area.
- (iv) Distance to surface water.
- (v) The type of phosphorus source being used.

(2) Based on the risks and impacts determined as described in paragraph (1), establish appropriate BMPs such as methods, rates and timing of application designed to minimize the affects of phosphorus losses from fields. These may be addressed by a range of options, including:

(i) Manure application is limited to nitrogen requirements of the crop, if the application of phosphorus to the soil is not expected to pose an immediate risk of impacts to surface water.

(ii) Phosphorus application is limited to the level of phosphorus removal from the soil by the crop, if the application of phosphorus to the soil would be expected to pose an immediate risk of impacts to a surface water unless the risk is managed by limiting the application based on phosphorus.

(iii) Phosphorus application is completely restricted, if the application of phosphorus to the soil would be expected to pose an immediate risk of impacts to a surface water which cannot be managed by limiting the nutrients based on phosphorus.

(3) For CAOs and VAOs existing on October 1, 2006, the Commission will allow a phase-in period until December 31, 2010, to fully meet the requirements of paragraph (2).

(i) The phase-in shall allow flexibility in controlling phosphorus loss, as long as the phosphorus application rates on any crop management unit where the phase-in is used do not exceed the levels of phosphorus removal from the soil by the crops.

(ii) The phase-in in this paragraph also applies to operations that import manure from NMP operations existing on October 1, 2006.

(4) The phase-in period in paragraph (3) does not apply to the following:

- (i) An operation that commences after October 1, 2006.
- (ii) An operation that becomes defined as a CAO, due to an increase in animal numbers, after October 1, 2006.
- (iii) An operation that increases the total AEUs on the operation by 20% or more after October 1, 2006.
- (iv) An operation that adds a new animal type after October 1, 2006.

(v) Fields where the nearest downgradient stream segment which receives runoff from the fields is classified as a special protection water under Chapter 93 (relating to water quality standards).

(5) The criteria and procedures in the current phosphorus application guidance issued by the Commission may be used to comply with paragraphs (1)–(4), including the use of a Phosphorus Index contained in the guidance.

(6) If the criteria and procedures in the phosphorus application guidance issued by the Commission are not followed, an alternative method of meeting paragraphs (1)–(4) will be approved by the Commission.

(7) For pastures which require complete restrictions on phosphorus application as determined under this section, § 83.294(j) (relating to nutrient application procedures) applies.

(d) *General nutrient calculation.* The plan must include calculations for each crop management unit indicating the difference between the amount of nitrogen, phosphorus and potassium necessary for realistic expected crop yields under § 83.292 (relating to determination of nutrients needed for crop production) and the nitrogen, phosphorus

and potassium applied through all planned nutrient sources, including, but not limited to, manure, biosolids, starter fertilizer and other fertilizers and residual nitrogen. A nitrogen availability test may be used to determine supplemental nitrogen needs.

§ 83.294. Nutrient application procedures.

(a) *General.* Nutrients shall be applied to fields during times and conditions that will hold the nutrients in place for crop growth, and protect surface water and groundwater using BMPs as described in the plan.

(b) *Timing.* Intended target spreading periods for the application of manure shall be included in the plan.

(c) *Equipment capabilities.* Manure application rates and procedures must be consistent with the capabilities, including capacity and calibration range, of available application equipment.

(1) For existing operations using their own application equipment, the plan must include a statement indicating that the existing equipment has been calibrated to ensure implementation of the application rates described in the plan, and that the equipment has the capacity to meet those application rates. The supporting documentation for this statement shall be available at the operation for inspection by the county conservation district and the Commission.

(2) For proposed operations, or when it is not feasible to calibrate the equipment or verify its capacity at planning time, the operator shall perform this application equipment calibration and capability verification prior to the first application of manure. The statement described in paragraph (1) shall be included in any necessary amendments to the plan. The supporting documentation of this statement shall be available at the operation for inspection by the Commission and delegated county conservation district.

(3) If a commercial manure hauler is used, the hauler shall be responsible for ensuring that the equipment is capable of complying with the application rate contained in the plan.

(d) *Irrigation systems.* If manure will be applied using an irrigation system, the following applies:

(1) Application rates for irrigated liquid manure shall be based on the lesser of the following:

(i) The planned application rates in gallons per acre determined in accordance with § 83.293(a) (relating to determination of nutrient application rates).

(ii) The combination of the following:

(A) The liquid application rate in inches per hour determined to be within infiltration capabilities of the soil.

(B) The liquid application depth in inches not to exceed the soil's water holding capacity within the root zone or any restricting feature at the time of application.

(2) The allowable liquid application rate and application depth shall be based on appropriate factors such as available water holding capacity of the soil, depth of the root zone, depth to a shallow impervious soil layer, soil infiltration rate, soil texture and drainage, vegetation and ground slope. Application BMPs that are consistent with the current versions of Penn State Fact Sheets F254 through F257, as applicable to the type of irrigation

system planned to be used on the operation, and the *NRAES-89 Liquid Manure Application System Design Manual*, may be used to comply with this subsection. Other BMPs shall be approved by the Commission.

(3) The plan must include the computations for the application rate (in inches per hour) and application depth (in total inches) of the various application rates, and these applications may not exceed either the infiltration rate or the water holding capacity of the application sites, as listed in the plan.

(e) *Manure application at rates greater than 9,000 gallons per acre.* If liquid or semisolid manure is planned to be applied at rates greater than 9,000 gallons per acre at any one application time, the rates and amounts shall be limited based on the infiltration rate and water holding capacity of the application areas as described in subsection (d). In those instances, the plan must include the computations for the application rates in inches per hour, and in total inches, for the various application areas, and these applications may not be allowed to exceed either the infiltration rate or the water holding capacity of the application sites, as listed in the plan.

(f) *Setbacks and buffers.* Manure may not be mechanically applied in the following situations:

(1) Within 100 feet of the top of the bank of a perennial or intermittent stream with a defined bed and bank, a lake or a pond, unless a permanent vegetated buffer of at least 35 feet in width is used, to prevent manure runoff into the stream, lake or pond.

(2) Within 100 feet of an existing open sinkhole unless a permanent vegetated buffer of at least 35 feet in width is used.

(3) Within 100 feet of active private drinking water sources such as wells and springs.

(4) Within 100 feet of an active public drinking water source, unless other State or Federal laws or regulations require a greater isolation distance.

(5) On crop management units having less than 25% plant cover or crop residue at the time of manure application, unless:

(i) For fall applications, the crop management unit is planted to a cover crop in time to allow for appropriate growth to control runoff until the next growing season, or the manure is injected or mechanically incorporated within 5 days using minimal soil disturbance techniques consistent with no-till farming practices. The *Pennsylvania Technical Guide* contains practices which may be used to satisfy this requirement. Other practices shall be approved by the Commission. The practices must be consistent with those in the agricultural erosion and sediment control plan.

(ii) For applications in the spring or summer, the crop management unit is planted to a crop that growing season.

(iii) For winter applications, the crop management unit is addressed under subsection (g).

(g) *Winter application.* For winter application of manure, the following apply:

(1) The application procedures shall be described in the plan.

(2) The plan must list the following:

(i) The crop management units where winter application is planned or restricted.

(ii) The application procedures that will be utilized at those crop management units.

(iii) The field conditions that must exist for winter application.

(3) Setbacks listed in subsection (f) shall be implemented. In addition, during winter manure may not be mechanically applied in the following situations:

(i) Within 100 feet of an above-ground inlet to an agricultural drainage system, if surface flow is toward the aboveground inlet.

(ii) Within 100 feet of a wetland that is identified on the National Wetlands Inventory Maps, if the following are met:

(A) The wetland is within the 100-year floodplain of an Exceptional Value stream segment.

(B) Surface flow is toward the wetland.

(4) Fields where manure will be applied in winter must have at least 25% residue, or an established cover crop. The BMPs contained in the *Pennsylvania Technical Guide* may be used to satisfy this requirement. Other practices shall be approved by the Commission.

(h) *In-field stacking.* In-field stacking of dry manure as a part of manure application is permissible on an NMP operation, and any importing lands governed by § 83.301 (relating to excess manure utilization plans), if the following requirements are met:

(1) The manure shall be land applied on the crop management unit within 120 days of stacking, or prior to the beginning of the next growing season, whichever is sooner.

(2) The stacks shall be constructed using appropriate BMPs such as:

(i) Placement on appropriate soils.

(ii) Proper consideration of slopes where stacks will be placed.

(iii) Shaping that minimizes absorption of rainfall.

(iv) Proper consideration of the size of the stack.

(v) Use of setbacks

(vi) Rotation of stack locations.

(3) If stacking occurs for a longer period than that described in paragraph (1), the stacks shall either be covered to keep rainwater from entering the stacks, or a waste stacking and handling pad shall be used. The BMPs contained in the *Pennsylvania Technical Guide* may be used to meet this requirement. Other BMPs shall be approved by the Commission.

(4) Locations for in-field stacking of dry manure shall be shown on the farm maps and the nutrient balance sheet maps required by this subchapter.

(i) *Commercial manure haulers.* If a commercial manure hauler will be used for the application of the manure on the agricultural operation, the commercial manure hauler shall meet the requirements of Act 49.

(j) *Pastures requiring phosphorus restrictions.* If a pasture has been determined to require total restriction of phosphorus application under § 83.293(c) (relating to determination of nutrient application rates), the risk of phosphorus loss shall be addressed by the following BMPs in lieu of total restriction of phosphorus application:

(1) Grazing may not be conducted within 50 feet of a perennial or intermittent stream, a lake or a pond.

(2) A prescribed grazing system shall be used to maintain an established stand of forage on the pasture area.

(3) The stocking rate shall be limited to ensure that the level of phosphorus deposited by the animals does not exceed the level of phosphorus removal from the soil by vegetation in the pasture.

(4) BMPs contained in the *Pennsylvania Technical Guide* may be used to meet the requirements in paragraphs (1) and (2). Other BMPs shall be approved by the Commission.

ALTERNATIVE USES FOR EXCESS MANURE

§ 83.301. Excess manure utilization plans.

(a) *General.* If manure will be exported for use off the NMP operation at known agricultural operations for agricultural land application, the following applies:

(1) The plan must include signed agreements, on a form acceptable to the Commission, between the NMP operation and each importing operator agreeing to accept the manure from the exporting operation. If the importing operator will be applying manure on lands rented or leased to that importing operator, the agreement must state that the importing operator has the authority to apply manure on the leased or rented lands.

(2) The importing operator is responsible for the proper handling and application of the imported manure accepted from an exporter, in accordance with subsection (b).

(3) An NMP operation exporting manure shall also be responsible for the proper handling and application of the exported manure if the NMP operation, or an employee or contractor of the operation, applies manure at the importing operation.

(4) The plan must demonstrate how the exported manure will be properly managed. This must be done by use of either nutrient balance sheets or approved nutrient management plans, and signed agreements with importers, under this subchapter.

(b) *Restrictions on land application of exported manure.* The land application of manure exported from an NMP operation must address the risk and impacts of nitrogen and phosphorus loss to waters.

(1) Nitrogen shall be addressed under § 83.293(b) (relating to determination of nutrient application rates).

(2) Phosphorus shall be addressed by one of the following, as selected by the operator:

(i) The rate at which phosphorus is applied may not exceed the level of phosphorus removal from the soil by the planned crop as determined under § 83.293(c), and the manure may not be applied within 150 feet from the top of the bank of an intermittent or perennial stream, a lake or a pond.

(ii) For crop management units with documented soil test levels of phosphorus less than 200 PPM, manure may not be applied within 150 feet from the top of the bank of an intermittent or perennial stream, a lake or a pond.

(iii) Manure application shall be determined in accordance with § 83.293(c).

(iv) Manure application shall follow a nutrient management plan approved by the Commission or delegated conservation district under this subchapter.

(3) The setbacks in § 83.294 (relating to nutrient application procedures) apply to land application of manure exported from an NMP operation.

(c) *Nutrient balance sheets.* The method, rate and timing for any land application under subsection (b)(2)(i)—(iii) shall be described in a nutrient balance sheet. Nutrient balance sheets must include the following:

(1) A map which identifies the crop management units where the manure is planned to be applied, location for field stacking and applicable setbacks under § 83.294 and this section.

(2) Documentation of the selected method used to address nitrogen and phosphorus on the crop management units receiving the imported manure. Acceptable methods are those described in this section.

(3) If options in subsection (b)(2)(i)—(iii) are used, the calculations associated with determining the manure application rate appropriate to the selected nitrogen and phosphorus management option used.

(4) The date when the nutrient balance sheet was developed.

(5) The name and signature of the certified planner or broker that developed the nutrient balance sheet.

(d) *Commercial manure haulers.* If the NMP operation will utilize a commercial manure hauler for the hauling or application of the exported manure, only those haulers that hold a valid and current certification under Act 49 may be used. The plan must include a statement indicating that any commercial manure haulers used for implementation of the plan shall hold a valid and current certification under Act 49.

(e) *Brokers.* If manure will be exported for use off of the NMP operation through a manure broker, the following apply:

(1) The plan must include a signed agreement, on a form acceptable by the Commission, between the operation exporting the manure and each broker agreeing to accept manure from the exporting operation. Brokers are responsible for the proper handling and storage (where applicable) of the manure accepted from the NMP operation. Only brokers that meet the requirements of Act 49 shall be acceptable in the plan.

(2) If the manure accepted by a broker shall be land applied to agricultural operations for crop production, the broker shall be responsible for the following:

(i) Ensuring that nutrient balance sheets exist for the relevant crop management units on the importing operations, and that the importing operator is provided with nutrient balance sheets with respect to that manure.

(ii) Implementing manure application rates and applicable setbacks described in § 83.294, and any nutrient balance sheet and approved nutrient management plans, if the broker will be responsible for land application of the manure.

(iii) Retaining copies of all nutrient balance sheets.

(f) *Other uses of manure away from the operation.* If manure will be exported for use off of the NMP operation for use other than agricultural land application, the plan must include the following information:

(1) The name and general location of the importing agricultural operation.

(2) A brief description of the planned use for the imported manure.

(3) The amount of manure the operator plans to export to the importer annually.

(4) The planned season for the manure export.

(5) A signed agreement between the NMP operation and each importing operation agreeing to accept the manure for this use, on a form acceptable to the Commission.

(g) *Other uses of manure on the operation.* If manure is to be processed or utilized on the NMP operation in a manner other than for agricultural land application, the plan must briefly describe the planned use of the manure, including the amount planned to be processed or utilized annually.

(h) *Use of open advertising systems.* If manure is to be exported for use off of an NMP operation existing on October 1, 1997, by using an open advertising system and the importers cannot be identified at planning time, the following apply:

(1) The plan must describe the proposed marketing scheme, including the estimated amount of manure planned to be marketed annually using an open advertising system.

(2) An operator may only utilize this method of exporting manure if the operator meets the manure broker requirements for certification under Act 49.

(3) Where the marketed manure will be utilized for application to crop fields, the exporting operation shall ensure that nutrient balance sheets exist for the relevant crop management units on the importing operations, and the importing operator is provided with the nutrient balance sheets. These nutrient balance sheets shall be retained by the exporting operation, the importing operation and any commercial manure hauler involved in the exporting of the manure. Nutrient management plans implemented at the importing operations may be used instead of nutrient balance sheets.

(4) The setbacks in § 83.294 apply to land application of manure exported from an NMP operation under this paragraph.

(i) *Exceptions.* The plan is not required to provide the specific exported manure details as provided in subsections (a)—(h) if an importer receives less than the following amounts of manure from the NMP operation on an annual basis:

(1) 5 tons of solid poultry manure.

(2) 25 tons of solid nonpoultry manure.

(3) 10,000 gallons of liquid manure.

MANURE MANAGEMENT

§ 83.311. Manure management.

(a) *Review existing practices.* In the preparation of a plan, the nutrient management specialist shall perform a site visit to conduct a review of the adequacy of existing manure management practices to prevent surface water or groundwater pollution from storm events up to and including a 25-year, 24-hour storm intensity. The specialist may confer with NRCS, conservation district staff or others with expertise with nutrient runoff control. This review shall be documented in the plan by identification of those conditions and areas where there is a potential for stormwater commingled with manure to directly runoff into surface water as a result of a storm event up to and including a 25-year, 24-hour storm intensity, without sufficient filtration or other appropriate treatment or handling BMPs, such as vegetated buffers. Practices to be evaluated in this review include manure handling, manure collection, barnyard runoff control and manure storage practices. Examples of inadequate manure management practices include the following:

(1) Manure, contaminated water or nutrients leaving manure storage or animal concentration areas, and directly discharging into surface water or groundwater.

(2) The uncontrolled flow of storm water into, or across, manure storage facilities, emergency manure stacking areas or animal concentration areas.

(3) Manure storage facilities overflowing or maintained at levels above design full levels.

(4) Manure storage facilities that are sized for less than the projected manure accumulation based on the expected application periods used in the plan.

(5) Leaking or unstable manure storage facilities.

(6) Manure storage facilities which otherwise do not comply with § 91.36 (relating to pollution control and prevention at agricultural operations).

(b) *Address inadequate practices.* The plan must address any existing inadequate manure management practices as follows:

(1) As part of a plan certification under § 83.261(8) (relating to general), the nutrient management specialist shall ensure that the review required under subsection (a) was undertaken in the preparation of the plan.

(2) The plan must contain a listing of inadequate manure management practices and related conditions and problem areas, and the BMPs planned to correct them to protect surface water and groundwater.

(3) The BMPs shall be selected, designed, constructed and maintained to meet the requirements of this subchapter. When this subchapter does not specifically address an inadequate manure management practice, the BMPs contained in the *Pennsylvania Technical Guide* may be used to comply with this section. Other BMPs shall be approved by the Commission.

(4) The plan submitted for approval is not required to include BMP designs. During the implementation of the approved plan, the operator is responsible for obtaining the necessary BMP designs and associated operation and maintenance plans to implement the BMPs listed in the approved plan. The BMP designs and associated operation and maintenance plans shall be kept on record by the operator as a supplement to the plan.

(c) *Animal concentration areas.* The following applies to animal concentration areas:

(1) These areas shall be sized, located, implemented and managed using BMPs to eliminate the direct discharge of storm water runoff commingled with manure from these areas to surface water and groundwater.

(2) These areas must meet the following requirements which shall be addressed in the plan:

(i) Animal concentration areas shall be sized appropriately to minimize environmental impacts that may be associated with the areas.

(ii) These areas shall be located and managed to eliminate the direct discharge of storm water runoff commingled with manure from a storm event of up to and including a 25-year 24-hour storm intensity, except as allowed in paragraph (5).

(3) Accumulated manure on nonvegetated animal concentration areas shall be collected and land-applied to cropland, or exported from the operation, as described in the plan.

(4) These areas shall be designed, implemented and managed to minimize the amount of clean water entering the animal concentration area.

(5) Storm water runoff commingled with manure from these areas shall be either treated or stored through an appropriate vegetative or other suitable treatment or storage method, which meets the requirements of this subchapter. BMPs for vegetated buffers and other treatment or storage methods contained in the *Pennsylvania Technical Guide* may be used to satisfy this requirement. Other BMPs shall be approved by the Commission.

(6) Animal access to surface water in these areas shall be limited to properly installed stream crossings. BMPs contained in the *Pennsylvania Technical Guide* may be used to meet this requirement. Other BMPs shall be approved by the Commission.

(d) *BMPs.* The following BMPs, as appropriate, shall be used if necessary, and shall be described in the plan, to protect water quality by controlling storm water in the farmstead, including the manure storage and animal concentration areas:

(1) Manure storage facilities including permanent manure stacking areas. The construction of manure storage facilities is not required unless necessary to protect surface water and groundwater. Nutrient management plans that require the construction of a manure storage facility must describe the planned type, dimensions and capacity of the proposed facility, and the location of the proposed facility shall be identified on a plan map.

(2) Diversion of clean water from manure storage facilities and animal concentration areas, unless required for proper operation of the BMP.

(3) Treatment or storage of storm water commingled with manure in the manure storage or animal concentration areas.

(4) Emergency manure stacking areas must be located outside of concentrated water flow areas and areas where manure application is restricted or prohibited based on § 83.294 (f) and (g) (relating to nutrient application procedures).

(5) Other appropriate BMPs acceptable to the Commission, including those described in the *Pennsylvania Technical Guide*.

(e) When emergency manure stacking areas may be necessary for the implementation of the plan, the plan must identify those areas available for the storage of manure due to unforeseen circumstances such as adverse weather conditions. The stacks shall be managed using appropriate BMPs such as placement on appropriate soils, proper consideration of slopes where stacks will be placed and shaping that minimizes absorption of rainfall. The operator shall notify the county conservation district at least 24 hours in advance of the use of an emergency manure stacking area. Manure shall be removed from emergency stacking areas for utilization on cropland or other acceptable uses within 60 days, unless extended by the Commission or a delegated conservation district.

(f) Information contained in other sections of the plan may be used by the specialist when addressing this section.

(g) The siting, design and installation of manure storage facilities shall meet the requirements in § 83.351 (relating to minimum standards for the design, construction, location, operation, maintenance and removal from service of manure storage facilities). The BMPs contained

in the *Pennsylvania Technical Guide*, as they relate to water quality protection, may be used to comply with this subsection. Other measures shall be approved by the Commission.

(h) If alternative manure technology practices and equipment are planned to address nutrient management issues related to the operation, the rationale for and expected benefit of the planned alternative practices and equipment shall be described in the plan.

SITE SPECIFIC EMERGENCY RESPONSE PLANS

§ 83.312. Site specific emergency response plans.

(a) NMP operations shall develop and implement a written site-specific emergency response plan addressing actions to be taken in the event of a discharge, leak or spill of materials containing manure. A copy of the plan shall be kept onsite at the operation. The emergency response plan must contain information necessary to meet the notification requirements for reporting discharge, leak or spill events which would result in pollution or create a danger of pollution to surface water or groundwater contained in § 91.33 (relating to incidents causing or threatening pollution).

(b) In the case of a discharge, leak or spill of materials containing manure related to the operation, the operator shall implement the emergency response plan developed for the operation. The operator shall comply with all notification and reporting requirements.

(c) The nutrient management plan must contain a verification from a certified planner that an adequate written site-specific emergency response plan meeting the requirements of this section exists for the operation.

(d) The operator shall provide a copy of the emergency response plan to the local emergency management agency that would assist during a major discharge, leak or spill event.

(e) A BMP-specific contingency plan as required by § 83.351 (relating to the minimum standards for the design, construction, location, operation, maintenance and removal from service of manure storage facilities) shall be included as an addendum to the emergency response plan.

STORMWATER CONTROL

§ 83.321. Stormwater control.

(a) In the preparation of a nutrient management plan under this subchapter, the nutrient management specialist shall conduct a review of the adequacy of existing stormwater control practices on croplands, haylands and pastures included in the plan to prevent nutrient pollution of surface water and groundwater. The specialist may confer with NRCS, conservation district staff or others with expertise with nutrient runoff control. Based on this review, the plan must identify critical runoff problem areas.

(b) The nutrient management plan shall contain a list of specific stormwater control BMPs to address those critical runoff problem areas identified in the review required under subsection (a). This list of stormwater control BMPs may not be in conflict with other relevant plans developed for the operation, such as the agricultural erosion and sediment control plan, unless otherwise approved by the Commission or delegated conservation district.

(c) The plan submitted for approval is not required to include BMP designs. During the implementation of the approved plan, the operator is responsible for obtaining

the necessary BMP designs and associated operation and maintenance plans to implement the BMPs listed in the approved plan, and these BMP designs and associated operation and maintenance plans shall be kept on record by the operator as a supplement to the nutrient management plan.

(d) BMPs listed in the plan to address critical runoff problem areas shall be selected, designed, installed, operated and maintained to prevent nutrient pollution of surface water and groundwater. The BMPs contained in the *Pennsylvania Technical Guide* may be used to meet this requirement. Other BMPs shall be approved by the Commission.

(e) For areas on land rented or leased by the operator that have been identified as critical runoff problem areas which will require the installation of BMPs requiring construction activities, the operator shall do one of the following:

(i) Implement the listed BMP.

(ii) Enter into an agreement with the landowner requiring the landowner to implement the BMP.

IMPLEMENTATION SCHEDULE

§ 83.331. Implementation schedule.

A plan must contain a schedule that identifies when the necessary capital improvements and management changes will be made, consistent with the time frames in § 83.362 (relating to plan implementation).

RECORDKEEPING AND INFORMATIONAL REQUIREMENTS

§ 83.341. General recordkeeping requirements.

(a) Unless otherwise specified, records required under this subchapter are not required to be submitted to the Commission or delegated conservation district, but shall be retained by the agricultural operation for at least 3 years.

(b) Records required under this subchapter shall be maintained on forms provided by the Commission, unless otherwise allowed by the Commission.

§ 83.342. Recordkeeping relating to application of nutrients.

(a) Plans must be supported by the information required in this section and §§ 83.343 and 83.344 (relating to alternative manure utilization recordkeeping; and exported manure information packets).

(b) The NMP operation shall keep the following accurate records of the land application of nutrients, crop yields and soil tests on the NMP operation:

(1) Records of soil testing results shall be maintained consistent with § 83.292(e) (relating to determination of nutrients needed for crop production). Soil testing is required once every 3 years for each crop management unit.

(2) Records of manure testing results and testing of other nutrient sources shall be maintained consistent with § 83.291 (relating to determination of available nutrients). Manure testing is required once every year for each manure group, except manure groups associated with less than five AEUs and manure groups representing grazing consistent with § 83.291(c)(3)(iv) and (vi).

(3) Land application of nutrients on NMP operations shall be documented on an annual basis by recording the following information for each source of nutrients:

(i) The locations and number of acres of nutrient application.

(ii) The dates of nutrient application.

(iii) The rate of nutrient application for each crop management unit.

(iv) The number of animals on pasture, the number of days on pasture and the average number of hours per day on pasture.

(4) Approximate annual crop yield levels for each crop management unit.

(5) Annual manure production figures for each manure group.

§ 83.343. Alternative manure utilization record-keeping.

(a) *Recordkeeping for manure exports.* The following recordkeeping requirements apply to manure exported off of the NMP operation:

(1) A manure export sheet shall be used for all manure transfers from the operation.

(2) The Commission or delegated conservation district will make copies of the manure export sheet forms available to the operation.

(3) Computer-generated forms other than the manure export sheet forms provided by the Commission may be used if they contain the same information as, and are reasonably similar in format to, the forms provided by the Commission.

(4) Recordkeeping related to the application of exported manure must comply with the following:

(i) The exporter is responsible for the completion of the manure export sheet, providing a copy to the importer and retaining a copy at the exporting operation.

(ii) When the exporter, or person working under the direction of the exporter, such as an employee or a commercial manure hauler, applies the manure to the land, the exporter is responsible for maintaining records of the actual application dates, application areas (including the observation of any relevant setback restrictions), application methods, and application rates for the exported manure.

(iii) When the manure is exported through a broker, the exporting operation is not responsible for obtaining records of actual application information for importing operations, unless the exporting operator manages the application of the manure. If the broker is responsible for applying the manure, the broker shall retain records of the application of all manure (including date, areas, methods and rates applied) and shall provide a copy of these application records to the importing operation for its records.

(b) *Recordkeeping for alternative manure utilization by means other than manure export.* Operators shall keep annual records of the amount and use of manure utilized in any manner other than through manure transfers.

§ 83.344. Exported manure informational packets.

(a) If manure is exported from an NMP operation, the exporter will provide the importer and any relevant manure hauler or brokers with a completed manure export sheet.

(b) If the manure is to be land applied at an importing operation, the exporter is required, except as provided in subsection (c), to provide the following information to the importer, as supplied by the Commission or its delegated agent:

(1) The relevant sections of the *Manure Management Manual*.

(2) A concise educational publication describing the key concepts of nutrient management.

(3) Additional informational items as supplied by the Commission for this purpose.

(c) If a broker will be responsible for applying the manure at the operation, the broker shall meet the requirements of subsection (b).

(d) The Commission or its delegated agent will provide the materials in subsection (b) for distribution by the exporter. The exporter is only required to provide those items in subsection (b) that have been made available to the exporter by the Commission or its delegated agent.

(e) The exporter is responsible for providing the informational materials described in subsection (b) only if the importer or commercial manure hauler does not already have a current copy of the informational materials.

MINIMUM STANDARDS FOR MANURE STORAGE FACILITIES

§ 83.351. Minimum standards for the design, construction, location, operation, maintenance and removal from service of manure storage facilities.

(a) The minimum standards contained in this section apply to new manure storage facilities and the expansion of existing manure storage facilities, as part of a plan developed for an NMP operation.

(1) Manure storage facilities shall be designed, constructed, located, operated, maintained, and, if no longer used for the storage of manure, removed from service, in a manner that protects surface water and groundwater quality, and prevents the offsite migration of nutrients. Implementation of BMPs contained in the *Pennsylvania Technical Guide* may be used to satisfy this requirement, except if these standards conflict with this subchapter. Other BMPs shall be approved by the Commission.

(2) In addition to complying with paragraph (1), manure storage facilities shall be designed and located in accordance with the following criteria:

(i) Facilities shall comply with the applicable criteria in § 91.36 (relating to pollution control and prevention at agricultural operations).

(ii) Facilities shall comply with the applicable criteria in Chapter 105 (relating to dam safety and waterway management).

(iii) The location and construction of facilities to be placed within a floodplain shall be consistent with local ordinances developed under the Pennsylvania Flood Plain Management Act (32 P. S. §§ 679.101—679.601), which relates to the dangers and damage of floodwaters.

(iv) The sides of facilities located in a floodplain shall be protected from erosion and scouring from a 25 year flood event.

(v) For operations that were producing livestock or poultry on or before October 1, 1997, facilities, except reception pits and transfer pipes, may not be constructed:

(A) Within 100 feet of an intermittent or perennial stream, river, spring, lake, pond or reservoir.

(B) Within 100 feet of a wetland that is identified on the National Wetlands Inventory maps, if the following apply:

(I) The wetland is within the 100-year floodplain of an Exceptional Value stream segment.

(II) Surface flow is toward the wetland.

(C) Within 100 feet of a private water well, or open sinkhole.

(D) Within 100 feet of an active public drinking water well, unless other State or Federal laws or regulations require a greater isolation distance.

(E) Within 100 feet of an active public drinking water source surface intake, unless other State or Federal laws or regulations require a greater isolation distance.

(F) Within 100 feet of a property line, unless the landowners within the 100 foot distance from the facility otherwise agree and execute a waiver in a form acceptable to the Commission.

(G) Within 200 feet of an intermittent or perennial stream, river, spring, lake, pond or reservoir, or any water well, or wetland described in clause (B), if a facility (except permanent stacking and compost facilities) is located on slopes exceeding 8% or a facility has a capacity of 1.5 million gallons or greater.

(H) Within 200 feet of a property line, if a facility (except permanent stacking and compost facilities) is located on slopes exceeding 8% and if the slope is toward the property line, or a facility has a capacity of 1.5 million gallons or greater, unless the landowners within the 200 foot distance from the facility otherwise agree and execute a waiver in a form acceptable to the Commission.

(vi) For NMP operations that come into existence after October 1, 1997, facilities, except reception pits and transfer pipes, may not be constructed:

(A) Within 100 feet of an intermittent or perennial stream, river, spring, lake, pond or reservoir.

(B) Within 100 feet of a wetland that is identified on the National Wetlands Inventory maps, if the following apply:

(I) The wetland is within the 100-year floodplain of an Exceptional Value stream segment.

(II) Surface flow is toward the wetland.

(C) Within 100 feet of a private water well, or open sinkhole.

(D) Within 100 feet of an active public drinking water well, unless other State or Federal laws or regulations require a greater isolation distance.

(E) Within 100 feet of an active public drinking water source surface intake, unless other State or Federal laws or regulations require a greater isolation distance.

(F) Within 200 feet of a property line, unless the landowners within the 200 foot distance from the facility otherwise agree and execute a waiver in a form acceptable to the Commission.

(G) Within 200 feet of an intermittent or perennial stream, river, spring, lake, pond, reservoir or any water well, or wetland described in clause (B), if a facility (except permanent stacking and compost facilities) is located on slopes exceeding 8% or has a capacity of 1.5 million gallons or greater.

(H) Within 300 feet of a property line, if a facility (except permanent stacking and compost facilities) is located on slopes exceeding 8%, and if the slope is toward the property line, or a facility has a capacity of 1.5 million gallons or greater, unless the landowners within the 300 foot distance from the facility otherwise agree and execute a waiver in a form acceptable to the Commission.

(vii) The Commission or a delegated conservation district may waive the distance restrictions in subparagraph (v)(A)—(C) and (G), if the following can be demonstrated to the satisfaction of the Commission or a delegated conservation district:

(A) The siting restrictions contained in subparagraph (v) would make the placement economically unreasonable or physically impractical.

(B) A site investigation has been conducted which demonstrates that the proposed system will protect water quality and protect against offsite migration of nutrients.

(C) The type, design and contingency plan developed for the facilities meet additional criteria the Commission or delegated conservation district, in consultation with the NRCS, may require to protect water quality, and protect against offsite migration of nutrients.

(D) In the case of a private water well, the well construction meets the criteria that the Commission, in consultation with the NRCS, deems necessary to protect water quality. There will be no waivers granted from the setback requirements for public water wells or sources.

(viii) Manure storage facilities constructed after October 1, 1997, on CAOs that were in existence prior to October 1, 1997, shall meet the applicable criteria established under this section.

(3) The designer of the manure storage facility described in the plan shall address the following:

(i) Verification of the minimum manure storage period and minimum manure storage volume documented in the current plan.

(ii) Determination of the type and dimensions of facilities considering the environmental and space limitations of the site, as well as the operator's preference.

(iii) An onsite investigation to evaluate the site suitability for a facility. The criteria contained in the *Pennsylvania Technical Guide* may be used to satisfy this requirement. Other criteria shall be approved by the Commission.

(b) The repair of an existing manure storage facility that is part of a plan developed for an NMP operation shall be done in a manner that protects surface water and groundwater quality, and prevents the offsite migration of nutrients. Applicable standards in the *Pennsylvania Technical Guide* may be used to meet this requirement. Other standards shall be approved by the Commission. The location standards do not apply to these facility repairs.

(c) The site specific design for the construction, expansion or major repair of a liquid or semisolid manure storage facility covered under the act shall be done or approved by an engineer registered in this Commonwealth. The engineer shall certify that the design protects surface water and groundwater quality, and prevents the offsite migration of nutrients. Compliance with the applicable design standards described in the *Pennsylvania Technical Guide* may be used to meet this requirement. Other standards shall be approved by the Commission.

(d) At least 2 weeks prior to installation of the facility or the repair, the registered engineer shall submit a verification (including a quality assurance inspection plan for construction) to the Commission or delegated conservation district documenting that the design, meeting the requirements of this subsection including applicable setbacks, has been completed. Following completion of the installation or repair, the responsible engineer and construction contractor shall certify to the Commission or delegated conservation district that construction of the manure storage facility was completed according to the design, construction and location standards.

(e) A written site specific contingency plan, addressing actions to be taken in the event of a manure leak or spill from a manure storage facility covered under the act to protect surface water and groundwater quality, and prevent the offsite migration of nutrients, shall be developed and kept onsite at the operation. The standards contained in the *Pennsylvania Technical Guide* may be used to meet this requirement. Other standards shall be approved by the Commission. In the case of a leak or spill of manure from a manure storage facility covered under the act, the operator is responsible for implementation of the site specific contingency plan developed for the operation. The contingency plan must contain information necessary to meet the notification requirements for reporting leak or spill events which would result in pollution or create a danger of pollution to surface water or groundwater contained in § 91.33 (relating to incidents causing or threatening pollution).

PLAN REVIEW AND IMPLEMENTATION

§ 83.361. Initial plan review and approval.

(a) Plans for NMP operations shall be submitted for initial review and approval to delegated conservation districts, or alternatively to the Commission for NMP operations located in counties not delegated administrative authority under § 83.241 (relating to delegation to local agencies). A person performing the plan review shall be certified in accordance with the Department of Agriculture's nutrient management specialist certification requirements in 7 Pa. Code §§ 130b.1—130b.51 (relating to nutrient management certification).

(b) The Commission or a delegated conservation district will, within 10 days from the date of receipt of the plan, provide notice to the operator indicating whether all of the required plan elements have been received.

(c) The Commission or a delegated conservation district will approve or disapprove the plan or plan amendment within 90 days of receipt of a complete plan or plan amendment.

(d) If the Commission or delegated conservation district does not act on the plan within the 90-day period, the agricultural operation that submitted the plan is authorized to implement the plan. The Commission or delegated conservation district will thereafter have another 90 days to complete review of the plan, beginning on the expiration of the initial 90-day review period. If the Commission or delegated conservation district fails to act within the second 90-day period, it will be deemed approved.

(e) The notice of determination to disapprove a plan will be provided in writing to the operator submitting the plan, and include an explanation specifically stating the reasons for disapproval. If a plan for a CAO is disapproved, the operator submitting the plan for the first time shall have 90 days after receipt of the notice of disapproval to resubmit a revised plan.

(f) Approvals will be granted only for those plans that satisfy the requirements of this subchapter, including verification by the delegated conservation district or the Department of Environmental Protection that the operation has a current agricultural erosion and sediment control plan. For CAOs and VAOs existing on October 1, 2006, this agricultural erosion and sediment control plan verification is not required until October 1, 2009.

§ 83.362. Plan implementation.

(a) An NMP operation shall fully implement the plan consistent with the implementation schedule included as part of the approved plan. Implementation schedules may not extend past 3 years of the date the plan is approved or deemed approved, or for which implementation is otherwise authorized under § 83.361(d) (relating to initial plan review and approval), unless the implementation schedule is extended upon approval of the Commission or delegated conservation district.

(b) Nutrient application rates shall be developed as described in § 83.293 (relating to determination of nutrient application rates) and shall be implemented upon approval of the plan. The operator shall review the approved plan at least annually to ensure that this condition is met.

(c) At least every 3 years, the plan, records and the status of the operation's compliance, shall be reviewed by a nutrient management specialist to determine whether a plan amendment is required, according to the following:

(1) Unless otherwise required by § 83.371 (relating to plan amendments), if the approved plan continues to adequately represent the agricultural operation, including the manure nutrient content and soil test values in the plan, and if the book values used in the approved plan have not changed to the extent that it would affect the application rates used in the plan, no amendment is required. The specialist shall provide notice of this to the reviewing agency.

(2) The phosphorus application determination, including the procedures and criteria for addressing phosphorus contained in § 83.293(c) such as the Phosphorus Index, shall be reevaluated for each crop management unit once every 3 years after initial approval of the plan. A plan amendment is required if there is a change in manure application as a result of this reevaluation.

(3) A plan amendment shall be submitted to the reviewing agency in accordance with § 83.361(a), if the agricultural operation has changed from that described in the approved plan, as required by § 83.371 (relating to plan amendments).

(d) Limited liability protection, as described in § 83.206 (relating to limitation of liability), is afforded to those operators properly implementing an approved plan under this subchapter.

PLAN AMENDMENTS AND TRANSFERS

§ 83.371. Plan amendments.

(a) A plan amendment is required if the operator expects to make significant changes in the management of nutrients from those contained in the approved plan, prior to those changes being implemented. Those significant changes in the management of nutrients which would require a plan amendment are any one of the following:

(1) A net increase of greater than 10% occurs in AEU's per acre.

(2) A change in crop management that results in a reduction of greater than 20% in nitrogen necessary for realistic expected crop yields or the amount the crops will utilize for an individual crop year.

(3) A change in excess manure utilization arrangements as described in the approved plan.

(i) No amendment is required to address the loss of an importer if the loss does not impair the operator's ability to properly manage the manure generated on the operation.

(ii) No amendment is required to address the addition of a new importer if the operator submits the nutrient balance sheet and signed agreement required by this subchapter to the delegated conservation district overseeing the exporting farm, prior to transport. The district shall verify the adequacy of the documentation update the plan file with the new documentation and require formal approval of the new importer through a plan amendment when the plan is subject to the triennial review under § 83.362(c) (relating to plan implementation).

(4) If calculations in the plan as originally submitted are in error, or if figures used in the plan are inconsistent with the requirements of this subchapter, and adequate justification has not been given in writing for the inconsistency.

(5) If a BMP different than that called for in the approved plan, is proposed to address a manure management or stormwater management concern.

(6) If, after the first 3 years of implementing the plan, actual yields are less than 80% of the expected crop yields used in the development of the plan.

(7) If alternative organic nutrient sources will replace or augment nutrient sources described in the plan.

(8) If additional lands are brought into the operation through purchase, lease or renting.

(9) If there is a change in the manure management system that is expected to result in a different nutrient content that requires a change in manure application rates under § 83.293 (relating to determination of nutrient application rates).

(10) If a change in manure application is necessary based on the reevaluation of potential phosphorus loss as part of the triennial review under § 83.362(c) (relating to plan implementation), or a change in manure application is necessary due to the end of the phase-in period under § 83.293(c)(3).

(b) A plan amendment under subsection (a) shall be developed and certified by a nutrient management specialist and shall be submitted to the reviewing agency under subsection (a).

(c) Plan updates to address operational or computation changes other than those described in subsection (a) shall be developed and certified by a commercial or individual nutrient management specialist, retained at the operation

and submitted to the district for inclusion in the approved nutrient management plan. A plan amendment shall be submitted under this section to obtain approval of these changes, when the plan is subject to the triennial review under § 83.362(c).

§ 83.373. Plan transfers.

(a) An approved nutrient management plan may be transferred to a subsequent owner or operator of an agricultural operation by notification of the transfer to the Commission or delegated conservation district, unless the transfer results in operational changes requiring a plan amendment under § 83.371 (relating to plan amendments).

(b) If the transfer of the approved plan results in operational changes requiring a plan amendment under § 83.371, the plan amendment shall be submitted for approval of the Commission or a delegated conservation district along with, or before, the notification required under subsection (a).

CONTAGIOUS DISEASE EMERGENCIES

§ 83.381. Manure management in emergency situations.

(a) If there is an outbreak of a contagious disease as regulated by the Department of Agriculture, manure management shall be consistent with requirements in the Department of Agriculture's order of quarantine issued under the Domestic Animal Act (3 P. S. §§ 311—354) and regulations thereunder.

(b) The Department of Agriculture will notify the Commission when a quarantine is imposed on an agricultural operation covered by the act. The Department of Agriculture will supply the Commission and delegated conservation district with a copy of the quarantine document.

(c) Unless otherwise directed by the quarantine, an amended plan shall be developed addressing the management of manure under the quarantine. This plan shall be certified by a nutrient management specialist prior to implementation and submitted to the reviewing agency within 30 days of implementation.

(d) If nutrients are applied in excess of crop need due to the quarantine restrictions placed on the manure, and the cropping sequence permits, cover crops shall be planted to the site to minimize the loss of these nutrients. The harvesting of these cover crops is encouraged to facilitate the removal of excess nutrients.

(e) The temporary storage of manure during the quarantine shall be done under § 83.311 (relating to manure management).

(f) The application of manure during the quarantine shall be done under § 83.294(f) (relating to nutrient application procedures).

(g) Standard soil tests will be required each year for crop management units where the implementation of the quarantine required that nutrients be applied in excess of the amount the crop can use, and shall continue for 3 successive years thereafter. In addition to the standard test, an appropriate test indicating the amount of nitrogen available for crop uptake will be required for 1 year beyond the cessation of excess manure application.

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Title 49—PROFESSIONAL AND VOCATIONAL STANDARDS

STATE BOARD OF NURSING

[49 PA. CODE CH. 21]

Certified Registered Nurse Practitioner Program Approval

The State Board of Nursing (Board) adopts §§ 21.361—21.377 (relating to approval of certified registered nurse practitioner programs) to read as set forth in Annex A. *Statutory Authority*

The final-form rulemaking is authorized under sections 6.1 and 8.1 of the Professional Nursing Law (act) (63 P. S. §§ 216.1 and 218.1).

Background and Purpose

Notice of proposed rulemaking was published at 34 Pa.B. 4890 (September 4, 2004). Publication was followed by a 30-day public comment period. The Board did not receive comments from the general public. On October 5, 2004, the House Professional Licensure Committee (HPLC) submitted a comment for a typographical correction which has been made. On November 3, 2004, the Independent Regulatory Review Commission (IRRC) submitted comments and suggestions to the Board.

Summary of Comments and Responses to Proposed Rulemaking

§ 21.361. General criteria for approval of programs.

IRRC commented that the phrase “experimental or accelerated programs” in § 21.361(b) should be defined. The Board has changed the phrase to “pilot or accelerated programs,” but has not added a definition. The Board intends to permit nontraditional programs, such as those operating at Drexel University and the University of Pittsburgh, to submit applications for approval without regulatory impediment. A statutory change was required to permit a diploma professional nursing program in transition to degree-granting nursing education program to apply to the Board for approval. The act of June 29, 2002 (P. L. 651, No. 99), effective September 29, 2002, amended section 6 of the act (63 P. S. § 216) to authorize the Board to approve nursing education “programs in transition from approved diploma to degree granting programs.”

IRRC commented that § 21.361(c) was unwieldy. The Board has shortened subsection (c) by moving some information into subsection (b). The Board added a subsection (d), which includes information formerly in subsection (b).

§ 21.362. Annual reports and compliance reviews; list of approved programs.

IRRC suggested that the final-form rulemaking should specify how long a certified registered nurse practitioner (CRNP) program would be given to comply with recommendations of the Board under § 21.362(c). The Board has amended § 21.362(c) to provide that the Board will include compliance deadlines with its recommendations. The Board also amended subsection (d) to accurately reflect that the Board’s list of approved programs will include programs on initial as well as full and provisional approval status.

§ 21.363. Approval process.

IRRC asked what “other information” the Board could consider when determining whether to place a program on provisional approval status under § 21.363(b). The Board declines to specify acceptable information in the final-form rulemaking because doing so has the potential to limit the information that might be useful to the Board in considering whether to place a program on provisional status.

IRRC also asked when and how often a program on provisional approval status would be required to submit progress reports to the Board. The time frame varies depending on each individual school’s situation and the type and extent of changes needed to come into compliance with the Board’s regulations. The Board has added language to § 21.363(b) to notify schools that the Board will require progress reports at its discretion.

§ 21.364. Removal from approved list; discontinuance of CRNP program.

The Board changed the word “wishing” to “planning” in § 21.364(b).

§ 21.365. Establishment.

IRRC questioned whether it was necessary to include both regional accreditation and National accreditation in § 21.365(a). Regional accreditation is awarded to the college or university by entities approved by the United States Department of Education. National accreditation is awarded to the nursing education program by one of several accreditation services. The Board has amended the final-form rulemaking to specifically name the National accrediting bodies. IRRC also suggested that the Board amend § 21.51 (relating to establishment). The Board finds that this amendment is beyond the scope of the proposed rulemaking. Because medical schools are situated within accredited colleges or universities, a medical school could apply to the Board for approval to institute a CRNP educational program.

IRRC asked whether § 21.365(b) required the CRNP program director to hold a doctoral degree in a specific area or field. It does not. IRRC also asked for clarification on the language “a specific plan for completing doctoral preparation.” The Board has amended the language to clarify that the program director must have both a specific plan to complete the doctoral degree within 5 years and evidence effort toward completion of the degree. Most universities require doctoral candidates to complete their degrees within 7 years. The 5-year time frame assumes the program director has already enrolled in a doctoral degree program. The Board has adopted IRRC’s suggestion of the term “degree” rather than “preparation.”

§ 21.367. Faculty requirements for CRNP programs.

Regarding § 21.367(b)(1), IRRC asked about the phrases “evidence of expertise” and “when appropriate.” Evidence of expertise may be shown in many ways, through National certification, independent research and writing or work experience. Certification is only required “when appropriate” because it is common for some CRNP courses to be taught by individuals who hold credentials other than CRNP certification. For example, individuals who hold doctorate degrees in pharmacy, rather than a master’s degree in nursing, teach many advanced pharmacology courses. Other courses are taught by medical or osteopathic doctors rather than by CRNPs.

The Board also deleted the requirement in § 21.367(b)(2) that faculty members have at least 2 years of clinical nurse practitioner experience. There is a short-

age of individuals that meet the requirements to become faculty members and the Board believes that eliminating this requirement will allow more qualified individuals who are qualified to teach to become faculty members. Subsequent paragraphs were renumbered accordingly.

§ 21.369. General curriculum requirements.

IRRC questioned whether it was necessary to mention advanced pharmacology in both § 21.369(c)(2) and (4). The three pillars of advanced practice nursing are advanced health and physical assessment, advanced physiology and pathophysiology and advanced pharmacology. For this reason, advanced pharmacology must be listed in § 21.369(c)(2). The Board provides for specific regulation of the advanced pharmacology curriculum in § 21.369(c)(4). The Board does not believe that this minor duplication will provoke any confusion.

IRRC also noted that § 21.369(g) should reference § 21.373(c)(3)(ii) (relating to facility and resource requirements) to specify student to faculty ratios. The Board has added the cross-reference.

§ 21.376. Program records.

The Board amended § 21.376(b)(2)(i) to account for faculty members, such as medical doctors, who have licenses or certifications other than a nursing license or CRNP certification.

Miscellaneous Comments

Finally, IRRC raised two typographical concerns, which have been corrected. In addition, IRRC questioned whether the word "nationally" should be capitalized. The Legislative Reference Bureau capitalized this word prior to publication. The Board defers to the Legislative Reference Bureau's knowledge of proper regulatory style.

Fiscal Impact and Paperwork Requirements

The final-form rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The final-form rulemaking will impose no additional paperwork requirements upon the Commonwealth, political subdivisions or the private sector. CRNP programs already apply to the Board for approval and submit information as set forth in this final-form rulemaking. The Board did not previously promulgate the regulations because CRNP educational programs were jointly regulated with the State Board of Medicine and a joint rulemaking was not feasible. A program seeking Board approval pays an application fee under § 21.5 (relating to fees). The Board intends to promulgate regulations to update its fees and will provide a separate fee for CRNP program approval at that time.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on September 4, 2004, the Board submitted a copy of the notice of proposed rulemaking, published at 34 Pa.B. 4890, to IRRC and the Chairpersons of the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) and the HPLC for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC, the SCP/PLC and the HPLC were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Department has considered all comments from IRRC, the SCP/PLC and the HPLC and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on March 14, 2006, the final-form

rulemaking was approved by the HPLC and was deemed approved by the SCP/PLC on April 18, 2006. Under section 5.1(e) of the Regulatory Review Act, IRRC met on April 19, 2006, and approved the final-form rulemaking.

Additional Information

Further information may be obtained by contacting Ann Steffanic, Administrative Assistant, State Board of Nursing, P. O. Box 2649, Harrisburg, PA 17105-2649 or from the Department of State's website: www.dos.state.pa.us.

Findings

The Board finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.

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

(3) The amendments to the final-form rulemaking do not enlarge the purpose of proposed rulemaking published at 34 Pa.B. 4890.

(4) This final-form rulemaking is necessary and appropriate for administering and enforcing the authorizing acts identified in this preamble.

Order

The Board, acting under its authorizing statutes, orders that:

(a) The regulations of the Board, 49 Pa. Code Chapter 21, are amended by adding §§ 21.361—21.377 to read as set forth in Annex A.

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

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

(d) This order shall take effect immediately upon publication in the *Pennsylvania Bulletin*.

JOANNE L. SORENSON, RN, MS,
Chairperson

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 36 Pa.B. 2251 (May 6, 2006).)

Fiscal Note: Fiscal Note 16A-5119 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 21. STATE BOARD OF NURSING

Subchapter C. CERTIFIED REGISTERED NURSE PRACTITIONERS

APPROVAL OF CERTIFIED REGISTERED NURSE PRACTITIONER PROGRAMS

§ 21.361. General criteria for approval of programs.

(a) A CRNP program must require, at a minimum, a baccalaureate degree in nursing for admission and must culminate with a master's degree in nursing or postmaster's certificate.

(b) A CRNP program must prepare the registered nurse (RN) to function as a nurse practitioner in an expanded role in a particular specialty.

(c) A CRNP program must prepare the registered nurse to perform acts of medical diagnosis and prescription of medical, therapeutic or corrective measures in collaboration with a physician licensed to practice medicine in this Commonwealth.

(d) A CRNP program may be formed as a master's program, an RN to master's program, an RN to nursing doctorate program or a pilot or accelerated program that culminates with at least a master's degree in nursing.

§ 21.362. Annual reports and compliance reviews; list of approved programs.

(a) Approved programs must complete an annual report to the Board on a form provided by the Board. The annual report must update information regarding the program's administration, faculty, curriculum and student enrollment.

(b) Approved programs must conduct a compliance review of CRNP programs at least once every 3 years. The compliance review shall be submitted to the Board on a form provided by the Board. The compliance review must include information regarding accreditation, administration, clinical sites, faculty, curriculum, testing, educational resources and student body of the program.

(c) The Board will send a written report of recommendations or requirements, or both, including compliance deadlines, based on the CRNP program's compliance review, to the CRNP program. The Board will conduct an announced or unannounced site compliance visit at its discretion.

(d) Lists of approved CRNP programs will be compiled and published annually (the approved list) and will be made available for distribution. The approved list will consist of programs on initial, full and provisional approval status.

§ 21.363. Approval process.

(a) A program that meets and maintains the requirements of §§ 21.361, 21.365—21.369 and 21.372—21.375 will be granted full approval status.

(b) The Board will place a CRNP program on provisional approval status if, as evidenced by the compliance review or other information, the program is not in compliance with the Board's regulations. At its discretion, the Board will require progress reports or other information deemed necessary for the evaluation of a program on provisional approval status. Two years will be the maximum time allowed for the correction of the deficiencies that resulted in the program being placed on provisional approval status. If the program on provisional approval status is not in compliance within this designated time, the CRNP program will be removed from the approved list.

(c) The Board may return a CRNP program on provisional approval status to full approval status if the program attains and maintains the acceptable standards in §§ 21.365—21.377, and adheres to the policies and regulations of the Board.

§ 21.364. Removal from approved list; discontinuance of CRNP program.

(a) The Board will give at least 30 days notice of intent to remove a CRNP program from full approval status to provisional approval status or from provisional approval status to removal from the approved list and will provide

an opportunity for the program's officials to present documentation, within 10 days of notification of intent to remove, to show why approval should not be withdrawn. The Board will hold a hearing, within 30 days of the submission of documentation, at which the program official may appear and present additional evidence to show cause as to why approval should not be withdrawn. The 30 day period for holding a hearing may be waived by consent of the parties. Failure to hold a hearing within 30 days will not be cause to withdraw the notice of intent to remove.

(b) Programs planning to discontinue must follow the procedures in § 21.41 (relating to discontinuance of a program of nursing).

§ 21.365. Establishment.

(a) A CRNP program must be developed and maintained under the authority of a regionally accredited university or college or have current accreditation by the Credentialing Commission for Nurse Education or the National League of Nursing.

(b) A CRNP program must be under the direction of a faculty member who holds an active certification as a Pennsylvania CRNP and an earned doctorate degree or a specific plan for and evidence toward completion of the doctoral degree within 5 years. The length of appointment of temporary and acting directors of CRNP programs may not exceed 1 year.

(c) A university or college may conduct CRNP programs within the graduate program of the university or college where it resides, if the college or university has a professional nurse program and the philosophy of the parent institution encompasses dual programs of education. A college or university desiring to establish a program of nursing is required to:

(1) Submit a proposal to the Board, at least 12 months prior to the first intended admission of students, which includes the following:

(i) Sufficient statistical data to support the need for a CRNP program within the community and to assure availability of an adequate number of interested candidates.

(ii) Letters of intent from the cooperating agencies indicating positive commitment to the CRNP program and the availability of sufficient clinical resources to meet the educational requirements of the CRNP program.

(iii) The projected cost of the CRNP program including costs for faculty, clinical teaching resources, educational supplies, office supplies, and the like, and sufficient evidence of stable financial support.

(2) Employ the director of the CRNP program prior to the intended admission date of students.

(d) The planned CRNP educational program proposal must include:

(1) A statement of the organization and administrative policies of the college or university.

(2) A statement of the administrative structure and functions of the nursing school.

(3) A statement of the educational preparation and nursing experience of faculty members employed, which conforms to § 21.367(b) (relating to faculty requirements for CRNP programs).

(4) A statement of the philosophy, purposes and objectives of the program, which are congruent with the philosophy of the university or college.

(5) A statement of the curriculum, based on sound educational concepts, and including detailed course descriptions, objectives and descriptions of the relevant clinical practice related to the specialty area.

(6) A statement of admissions policies.

(7) A statement identifying the National educational standards and guidelines used in the development of the nursing practitioner program.

(8) Statements of financial viability for 5 years.

(9) A description of the clinical facilities.

(e) Following the review of the CRNP program proposal and before final Board action is taken to grant permission to recruit students, an initial facility survey may be made by the designee of the Board.

§ 21.366. Organizational requirements.

(a) The CRNP program must be a definable entity distinguishable from other educational programs and services within the institution.

(b) Relationships with central administrative officers, interrelationships among other disciplines and services of the college or university, and representation on college or university councils and committees for faculty in a CRNP program must be consistent with the interaction and responsibilities accorded to other faculty members of the college or university.

(c) Adequate funds shall be allocated and properly budgeted for the sound and effective operation of the CRNP program.

(d) Policies in effect for faculty members of the CRNP program must be those in effect for faculty members throughout the college or university.

(e) The resources, facilities and services of the college or university must be available to and used by the CRNP program and be adequate to meet the needs of the faculty and students.

§ 21.367. Faculty requirements for CRNP programs.

(a) The minimum faculty requirements submitted under § 21.365(d)(3) (relating to establishment) for the program are:

(1) Qualified faculty members teaching in their areas of specialized practice encompassed within the curriculum.

(2) Additional faculty members as needed to insure an educationally effective student-faculty ratio.

(b) Faculty qualifications for clinical courses in the CRNP program are as follows:

(1) Faculty members shall provide evidence of expertise in their subject areas, and when appropriate, be currently licensed and certified in this Commonwealth and hold and maintain National certification. Faculty members already employed in a CRNP program who do not hold National certification in their area of specialization shall obtain National certification, if available, by June 3, 2008.

(2) Faculty members shall give evidence of maintaining expertise in their clinical or functional areas of specialization.

(3) Faculty members shall maintain currency in clinical practice through ongoing clinical practice.

(4) Faculty members shall meet specialty requirements for continuing competency in accordance with their educational program responsibilities.

§ 21.368. Faculty policies.

(a) The faculty shall be employed by and be responsible to the college or university.

(b) Policies, including personnel policies in effect for CRNP program faculty, must be those in effect for faculty members throughout the college or university.

(c) Functions and responsibilities of each faculty member shall be defined in writing.

(d) Teaching hours of CRNP faculty must be consistent with the policies of the college or university.

§ 21.369. General curriculum requirements.

(a) The curriculum shall be developed, implemented and evaluated by the faculty and be based on the philosophy and objectives of the school.

(b) The curriculum must be organized and developed to include the knowledge, attitudes, skills and abilities necessary for practice as a CRNP and in accordance with this chapter as related to CRNP practice.

(c) The curriculum must provide for both clinical and theoretical experiences. The curriculum must have the following components incorporated into each CRNP program:

(1) *Graduate nursing core.* The graduate nursing core must include the following content:

(i) Research.

(ii) Health care policy and organization.

(iii) Ethics.

(iv) Professional role development.

(v) Theoretical foundations of nursing practice.

(vi) Human diversity and social issues.

(vii) Health promotion and disease prevention.

(2) *Advanced nursing practice core.* The advanced nursing practice core must include the following content:

(i) Advanced health/physical assessment.

(ii) Advanced physiology and pathophysiology.

(iii) Advanced pharmacology.

(3) *Specialty content.* The CRNP student shall receive sufficient clinical experience to provide depth and breadth in a given specialty or with designated populations, geared to nurse practitioner practice. Clinical hours must meet at least National certification requirements with a minimum of 500. Additional hours must be provided for specialties that provide care to multiple age groups (for example, family CRNPs) or for those who will practice in multiple care settings. When defining additional clinical hours, the complexity of the specialty content, as well as the need for clinical experience to enhance retention and skills, shall be considered. The expected graduate competencies must be the key determinant of the clinical component.

(4) *Advanced pharmacology.*

(i) CRNP program graduates shall have a well-grounded understanding of pharmacologic principles, which includes the cellular response level. This area of core content must also include both pharmacotherapeutics and pharmacokinetics of broad categories of pharmacologic agents. Advanced pharmacology shall be taught in a separate or dedicated 3-credit or 45-hour course. Pharmacology content shall also be integrated into the other content areas identified in the advanced

practice nursing core. Additional application of this content shall also be presented within the specialty course content and clinical experiences of the program to prepare the CRNP to practice within a specialty scope of practice.

(ii) The purpose of this content is to provide the graduate with the knowledge and skills to assess, diagnose and manage (including the prescription of pharmacologic agents) a patient's common health problems in a safe, high quality, manner.

(iii) The course work must provide graduates with the knowledge and skills to:

(A) Comprehend the pharmacotherapeutics of broad categories of drugs.

(B) Analyze the relationship between pharmacologic agents and physiologic/pathologic responses.

(C) Understand the pharmacokinetics and pharmacodynamics of broad categories of drugs.

(D) Understand the motivations of clients in seeking prescriptions and the willingness to adhere to prescribed regimens.

(E) Safely and appropriately select pharmacologic agents for the management of client health problems based on client variations, the problem being managed, and cost effectiveness.

(F) Provide comprehensive and appropriate client education in relation to prescribed pharmacologic agents.

(G) Analyze the effects of single and multiple drug regimens on the client's health and functioning.

(H) Understand the variety of State legal requirements for CRNP prescriptive authority.

(I) Fulfill legal requirements for writing prescriptions as a CRNP in this Commonwealth in accordance with §§ 21.283—21.387.

(5) *Professional role content.* The course work must provide graduates with curriculum in:

- (i) Management of client health/illness status.
- (ii) The nurse-client relationship.
- (iii) The teaching-mentoring function.
- (iv) Professional role.
- (v) Managing and negotiating health care delivery systems.
- (vi) Monitoring and ensuring the quality of health care practice.

(d) The instructional strategies must be appropriate and consistent with the program's philosophy, mission and objectives.

(e) The clinical facilities of the CRNP program must provide a variety of experiences with sufficient quality and quantity. Clinical experiences must be consistent with the scope of practice.

(f) CRNP courses and curriculum must be organized to continue the development of values, understandings, knowledge and skills needed in all aspects of practice as a CRNP and emphasize specialty areas.

(g) The ratio of students to faculty must insure optimal learning opportunities in clinical laboratory sessions, be consistent with the objectives of the CRNP courses, and comply with § 21.373(c)(3)(ii) (relating to facility and resource requirements).

(h) The curriculum for CRNP programs must give evidence of providing learning experiences which will prepare graduates for CRNP practice. The standards of practice are defined and delineated by the profession and §§ 21.18 and 21.284 (relating to standards of nursing conduct; and prescribing and dispensing parameters).

(i) Course syllabi that identify all aspects of each course must be developed and readily available.

§ 21.370. Evaluation.

(a) As part of the CRNP program approval process, the CRNP program shall submit an outline of, and appropriate time line for, its planned evaluative process. The evaluative process must include, at a minimum, the following:

(1) A self-evaluation process completed by faculty, administrators and students of the CRNP program evidencing input into the CRNP program by faculty, administrators and students. The self-evaluative process must include:

- (i) Peer evaluation of teacher effectiveness.
- (ii) Student evaluation of teaching and program effectiveness.
- (iii) Periodic evaluation of the program by faculty, students and graduates of the program.

(iv) Periodic evaluation of the program's human and fiscal resources, program policies, facilities and services.

(2) Provisions for the program's curriculum evaluation process, completed by faculty, students and graduates of the program. The curriculum must:

- (i) Assess the program's effectiveness relative to current standards of practice.
- (ii) Assess the program's effectiveness relative to current trends in education and health care.
- (iii) Assess the program's effectiveness in attaining program objectives.

(iv) Demonstrate that curriculum changes have been evaluated by the CRNP program faculty and are consistent with core competencies in the CRNP specialties.

(3) Provision for ongoing student evaluative process that assesses the student's progress toward and ultimate achievement of program objectives. The student evaluative process must:

- (i) Be evident in the course outlines provided to students at the beginning of each course.
- (ii) Include documentation of faculty-supervised performance evaluation of students.
- (iii) Utilize evaluation tools that reflect nurse practitioner National competencies in the specialty areas.

(iv) Include student evaluation of the quality of clinical experiences.

(b) Programs must measure outcomes of graduates at 1-year and 3-year intervals postgraduation.

§ 21.371. Curriculum changes requiring Board approval.

Curriculum changes that require Board approval include changes in:

(1) Program objectives, course content or instruction that affect the integration of material into the total curriculum.

(2) An approved program which deems a new or different certification specialty title for graduates of that program requires approval as a new CRNP education program.

§ 21.372. CRNP program philosophy; purposes and objectives.

(a) A clear statement of philosophy and purposes of the CRNP program, consistent with the philosophy and purposes of the college or university, shall be formulated and adopted.

(b) The philosophy, purposes and objectives of the CRNP program shall be developed and clearly stated by the faculty and be reviewed and revised at stated time intervals by this group.

(c) The philosophy and purposes of the CRNP program must be consistent with currently accepted social, educational and CRNP standards.

§ 21.373. Facility and resource requirements.

(a) The support of the college or university must be adequate to meet CRNP program needs and include the following:

- (1) Faculty and staff offices.
 - (2) Classrooms, conference rooms and laboratories.
 - (3) Administrative and secretarial support.
 - (4) Interactive information systems (computer/technical support) sufficient to develop, manage and evaluate the program.
- (b) There must be current, appropriate, adequate and available learning resources to include audio/visual equipment, computers and library materials.

(c) The CRNP program must provide appropriate clinical resources and experience for students, including:

- (1) Space for faculty's and students' needs.
- (2) Exposure of appropriate duration to a patient population sufficient in number to insure that the student will meet program goals.
- (3) Faculty to provide adequate supervision and evaluation.
 - (i) Supervision of all students in the clinical areas is the responsibility of the CRNP program faculty.
 - (ii) One program faculty member shall supervise no more than six students in a clinical course. If faculty are providing onsite preceptorship, the maximum ratio is two students per faculty member. If faculty are managing their own caseload of patients, the maximum ratio is one student per faculty member.
 - (iii) Onsite clinical preceptors may include:
 - (A) Advanced practice nurses who are currently licensed.
 - (B) Physicians who are currently licensed.
 - (C) CRNPs who are currently licensed and certified.

§ 21.374. Selection and admission standards.

(a) Policies and procedures related to the selection and admission of students are the responsibility of the individual program. Consideration must be given to scholastic aptitude, academic achievement, personal qualities and physical and emotional health necessary to fulfill the objectives of the program.

(b) Students admitted to CRNP programs shall meet the requirements for admission to the university or college for a master's degree in nursing program and additional requirements that may be established for the CRNP program.

(c) Students admitted to CRNP programs shall have successfully completed the equivalent of a baccalaureate degree in nursing from an accredited institution of higher learning in a nursing program.

(d) Students admitted to CRNP programs shall be currently licensed as a registered nurse (RN) or, if enrolled in an RN to Master of Science in Nursing (MSN) or RN to Nursing Doctorate (ND) program, shall complete all competencies for undergraduate requirements prior to taking graduate courses.

§ 21.375. Advanced standing.

The school shall have a written policy consistent with its philosophy and objectives concerning criteria for granting advanced standing. The policy of master's degree programs must be consistent with that of the college or university.

§ 21.376. Program records.

(a) The program shall employ a record system that ensures the operation of the program. Records shall be maintained in locked files which assure their safe keeping.

(b) Each nursing faculty shall select record forms specifically for the CRNP program that include the following:

(1) Student records, including the permanent record, containing both clinical and theoretical experience and achievement, shall be kept for 50 years.

(2) Faculty records, including the following:

- (i) "Display portion" of current Pennsylvania licenses and certifications.
 - (ii) Records of preparation and experience, including official college transcripts.
 - (iii) Current records of continuing education activities.
 - (iv) Records of National certification, if applicable.
- (3) Administrative records, including the following:
- (i) Affiliation agreements with cooperating agencies.
 - (ii) Minutes of meetings.
 - (iii) Annual reports.
 - (iv) Follow-up studies of graduates.
 - (v) Budgets.
 - (vi) Current written policies.

(4) School bulletins, including the following:

- (i) Comprehensive and current information.
- (ii) Clearly defined refund policies governing fees and tuition paid by the students.
- (iii) Clearly defined policies relating to admission, promotion, retention, transfer, advanced placement and dismissal.

§ 21.377. Custody of records.

(a) When a program closes, the college or university is responsible for the safekeeping of the records of students for at least 50 years after graduation of the last class.

(b) If the college or university also closes, advice should be obtained from the Board concerning the permanent safekeeping and availability of the records of the school of nursing.

(c) The Board shall be informed in writing concerning the permanent placement of these records.

[Pa.B. Doc. No. 06-973. Filed for public inspection June 2, 2006, 9:00 a.m.]

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STATE BOARD OF NURSING
[49 PA. CODE CH. 21]

Fees for Approval of Nursing Education Programs

The State Board of Nursing (Board) amends §§ 21.5, 21.147 and 21.253 (relating to fees).

Notice of proposed rulemaking was published at 35 Pa.B. 5522 (October 8, 2005). Publication was followed by a 30-day public comment period during which the Board did not receive any comments from the public. On November 22, 2005, the House Professional Licensure Committee (HPLC) submitted one comment. The Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) made no comments. On December 7, 2005, the Independent Regulatory Review Commission (IRRC) issued a letter stating that it had no objections, comments or recommendations to offer on the proposed rulemaking and noted that if the final-form rulemaking was submitted without revisions and the SCP/PLC and the HPLC did not take action, it would be deemed approved.

Comment and Response

The HPLC requested detailed information regarding the process for approving new education programs and the fiscal process used for determining the new fees.

As noted in the Board's proposed rulemaking, the Board reviews nursing educational programs with the assistance of its nursing education advisors, who are individuals with a minimum of a master's degree in nursing under section 2.1(i) of the Professional Nursing Law (RN Act) (63 P.S. § 212.1(i)). The procedure for reviewing an application for approval of a new nursing education program requires that the Board staff conduct an in-depth review and analysis of the application, including review of the budget, curriculum, faculty and clinical experiences.

Representatives of controlling institutions proposing development of a new nursing education program are required to submit a feasibility study addressing their intent. The feasibility study may be submitted in one or two phases. Most institutions choose to submit the study in two phases. The program must gather data to prepare Phase I of the feasibility study and submit the data in an organized format to the Board staff.

Board staff reviews the study to determine compliance with the Board's regulations. This review is extensive and requires Board staff to determine if the program is in compliance with the controlling institution's policies and procedures, if any other regulatory or accrediting bodies (such as the Department of Education, financial aid providers and institutional and programmatic accrediting bodies) have standards and whether the proposal meets these standards.

Board staff reviews the study to determine if the program has provided compelling regional labor statistics regarding the need for the type of licensee in the projected geographic area and potential local and regional employment opportunities for graduates.

Board staff reviews the study to determine whether the proposal has adequately addressed the potential impact on other nursing education programs within the geographic area (generally considered a 50-mile radius from the proposed program). This determination involves assessment of the locale, region, state or states from which the proposed and existing programs draw students to determine whether there are waiting lists or more applicants than the existing programs can admit annually. In addition, Board staff must consider whether the existing programs utilize the clinical sites the proposed program is proposing to use, and if so, analyze the possible effects on clinical experiences for the students of both the existing and proposed programs.

Board staff also review the projected student enrollment for the first and subsequent classes, the number of classes to be admitted annually and the projected time frame for planning and initiating the program, including the submission of the Phase II feasibility study, hiring of the program administrator and faculty and so forth.

Board staff reviews the controlling institution's accreditation status and date of next scheduled review. In addition, Board staff reviews the education mission of the controlling institution and the types of programs and degrees offered. Board staff considers whether the controlling institution operates satellite programs where the presence of this technologic capability impacts the proposed new nursing education program. Board staff reviews the organizational chart to determine whether the relationship of the proposed new program to the controlling institution complies with Board regulations.

Board staff reviews the job descriptions and suggested teaching/administrative hours of proposed faculty and staff for compliance with Board regulations. If faculty/staff have already been hired, Board staff determines whether the faculty/staff qualifications are consistent with the Board's regulations.

Board staff reviews the new program's philosophy and mission statement to determine congruence with that of the controlling institution. Board staff reviews the suggested curriculum and course descriptions. For practical nursing programs, Board staff reviews the hours required for program completion.

Board staff reviews the proposed physical location to be committed to the program, including staff and faculty office space, classrooms, laboratory, library and storage areas. Board staff determines if the proposed physical location is adequate to support the number of students the program has anticipated. Board staff reviews any submitted environmental or safety compliance documents submitted. Finally, Board staff carefully reviews the Agency Data Forms that must be submitted for each clinical site the program intends to use to determine whether sufficient and meaningful clinical experiences will be available for the proposed and existing programs.

Board staff also reviews the submitted budget to determine whether it is consistent with other nursing education programs of the same type operating in a similar geographic area within this Commonwealth.

Board staff offers feedback to the program within 3 to 4 weeks of receipt of the Phase I feasibility study. The program then responds to the feedback and may need to

submit a revised proposal. The program may also request additional feedback or assistance from the Board staff. When the Phase I study is ready for submission to the Board, Board staff provides the Board with a written review of the proposal's strengths and weaknesses, impact on existing programs and recommendation to accept the proposal or request additional information.

Once the Board has reviewed the Phase I study and the staff's report, the Board discusses the proposal at a Board meeting and votes on the acceptance of the study. This vote authorizes the program to prepare and submit the Phase II feasibility study. Board staff provides written verification of the Board's action to the program.

The program then prepares its Phase II study and submits it to Board staff for review. Board staff again reviews the Phase II study on behalf of the Board. The Phase II study is more focused. Staff reviews the qualifications of the proposed director and nursing faculty and academic policies. In addition, staff reviews the master plan of the curriculum proposed, including detailed course descriptions and sample of the student clinical evaluation tool. This review includes a determination of whether the program evidences an adequate number of suitably scheduled core courses that prepare the students to enter the practice of nursing at the level proposed.

Board staff reviews the construction or renovation of the proposed physical facilities and the list of educational resources, equipment, supplies and library resources that have been purchased or will be purchased for the program. Board staff conducts a site survey and reviews the physical facilities, such as classroom space, library holdings and nursing equipment.

Board staff reviews the admission policies and criteria to determine congruence with the controlling institution. Board staff reviews the proposed progression and graduation criteria, grading policies and advanced placement policies. Recordkeeping is also examined to ensure compliance with Board regulations.

Board staff offers feedback to the program within 3 to 4 weeks of receipt of the Phase II feasibility study. The program then responds to the feedback and may need to submit a revised proposal. The program may also request additional feedback or assistance from the Board staff. When the Phase II study is ready for submission to the Board, Board staff provides the Board with a written review of the proposal's strengths and weaknesses, impact on existing programs and recommendation to accept the proposal or request additional information.

Once the Board has reviewed the Phase II study and the staff's report, the Board discusses the proposal at a Board meeting and votes on the acceptance of the study. This vote authorizes the program to admit students and begin operation of the new nursing education program.

The HPLC also requested a more detailed description of the fiscal process used to arrive at the new fees. Fees that are based on services provided are calculated to offset the identifiable costs incurred by the Board and to defray a portion of the Board's administrative overhead. The Department of State Revenue Office identified the following cost categories for provision of the service of approving a nursing education program: staff time to review and prepare the application, Board administrator time to prepare the application for the Board, Board counsel time to review the application for legal issues, Board meeting time for the Board to review and discuss the application, nursing education advisor time to evaluate the application and draft a proposal to the Board, executive secre-

tary time per application and a portion of administrative overhead. When the fee is related to time spent by an individual or individuals, the fee is based on the average wage of the individual performing the task, with an added 31% to account for nonwage benefits.

For each of the three types of nursing education programs, staff time to review and prepare the application was estimated at 15 minutes, or \$4.27. Staff at this level would open the package sent by the program seeking approval, ensure that the proper number of copies had been provided, make any additional copies needed and forward the application through interoffice mail to other appropriate staff. The staff is also responsible for date stamping the application and logging its submission.

The time estimated for the Board's nursing education advisor to review the application is 21 hours for registered nurse (RN) and licensed practical nurse (LPN) programs and 15 hours for certified registered nurse practitioner (CRNP) programs, or \$695.31 and \$496.65, respectively. The review process was outlined in response to the HPLC's first comment. The review time varies widely depending on the knowledge and skill of the individuals preparing the application. The Board's nursing education advisors have spent over 100 hours on a single application. Other applications take less than 21 hours to review. CRNP program applications are more polished and are always prepared by professional-level university staff. Therefore, the average time to review these applications is less than the average time to review applications for RN and LPN programs.

For each of the three types of nursing education programs, Board counsel time to review legal issues was estimated at 30 minutes, or \$18.90. The Board's counsel works with the Board's nursing education advisors to review compliance with the Board's regulations. Because the Board counsel's review is limited to legal issues, the time involved is substantially less than the time required by the nursing education advisor.

For each of the three types of nursing education programs, the Board meeting time is estimated at 30 minutes, or \$196.14. Board meeting costs are calculated by adding per diem and travel expenses for Board members and dividing the result by the total hours the Board meets within a fiscal year to calculate an hourly cost. The figure for this final-form rulemaking was based on 12 Board members being compensated at the statutorily authorized rate of \$60 per diem, or \$720. In 2005, the Board met 18 days, so the total per diem paid to Board members was \$720 times 18, or \$12,960. Board meeting costs also include the annual expense for Board members to travel to Board meetings. The estimated travel expenses for the year, submitted for budget approval, are \$40,000. The total cost, \$12,960 + \$40,000, is \$52,960. The total cost is then divided by the number of hours (7 1/2 hours per day times 18 meeting days, or 135 hours), to obtain a per hour cost of \$392.29. Because the Board meeting time is estimated at 30 minutes, the fee for this part of the service was estimated at \$196.14.

For each of the three types of nursing education programs, Board administrator time to prepare the application was estimated at 4.8 minutes, or \$2.03. The Board administrator is responsible for drafting the formal correspondence to the program when the program has been approved.

For each of the three types of nursing education programs, an administrative overhead charge of \$11.50 was estimated.

Statutory Authority

The final-form rulemaking is authorized under section 11.2 of the RN Act (63 P. S. § 221.2) and section 17.5 of the Practical Nurse Law (PN Act) (63 P. S. § 667.5).

Fiscal Impact and Paperwork Requirements

The final-form rulemaking will increase the fee for approval of professional and practical nursing education programs by \$460. From 1993 to 2004, the Board has approved approximately 13 new professional nursing programs and 12 new practical nursing programs. If the numbers are consistent for the next 11-year time period, the overall increase will be \$11,500 or \$1,045 per year. The final-form rulemaking increases the fee for CRNP nursing education programs by \$260. The Board has approved 30 CRNP nursing education programs since 1993 and anticipates only a handful of new CRNP programs over the next 11 years. The Board will realize savings to its general operating budget by having the fee for the service of approving nursing education programs accurately reflect the cost of the service provided. There is no fiscal impact on the Commonwealth from the final-form rulemaking.

The final-form rulemaking will not create or reduce paperwork requirements for nursing education programs seeking approval or for the Board. There are no paperwork requirements on the Commonwealth regarding the approval of nursing education programs.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on September 26, 2005, the Board submitted a copy of the notice of proposed rulemaking, published at 35 Pa.B. 5522, to IRRC and the Chairpersons of the HPLC and the SCP/PLC for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC, the HPLC and the SCP/PLC were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Department has considered all comments from IRRC, the HPLC and the SCP/PLC and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on April 4, 2006, the final-form rulemaking was approved by the HPLC and was deemed approved by the SCP/PLC on April 18, 2006. Under section 5(g) of the Regulatory Review Act, the final-form rulemaking was deemed approved, effective April 18, 2006.

Additional Information

Additional information may be obtained by writing to Ann Steffanic, Board Administrator, State Board of Nursing, P. O. Box 2649, Harrisburg, PA 17105-2649.

Findings

The Board finds that:

- (1) Public notice of intention to adopt these amendments has been given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.
- (2) A public comment period was provided as required by law and no comments were received.
- (3) This final-form rulemaking is necessary and appropriate for the administration of the RN Act and the PN Act.

Order

The Board therefore orders that:

(a) The regulations of the Board, 49 Pa. Code Chapter 21, are amended by amending §§ 21.5, 21.147 and 21.253 to read as set forth at 35 Pa.B. 5522.

(b) The Board shall submit a copy of this order and 35 Pa.B. 5522 to the Office of the Attorney General and the Office of General Counsel for approval as required by law.

(c) The Board shall certify this order and 35 Pa.B. 5522 and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall take effect immediately upon publication in the *Pennsylvania Bulletin*.

JOANNE L. SORENSEN, RN, MS,
Chairperson

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 36 Pa.B. 2251 (May 6, 2006).)

Fiscal Note: Fiscal Note 16A-5127 remains valid for the final adoption of the subject regulations.

[Pa.B. Doc. No. 06-974. Filed for public inspection June 2, 2006, 9:00 a.m.]

STATE BOARD OF PODIATRY
[49 PA. CODE CH. 29]
Professional Liability Insurance

The State Board of Podiatry (Board) amends §§ 29.51—29.54 (relating to licensure applications) to read as set forth in Annex A.

Effective Date

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

Statutory Authority

The final-form rulemaking is authorized under section 15 of the Podiatry Practice Act (63 P. S. § 42.15) and the Medical Care Availability and Reduction of Error (MCARE) Act (MCARE Act) (40 P. S. §§ 1303.101—1303.910).

Background and Purpose

The Health Care Services Malpractice Act (40 P. S. §§ 1301.101—1301.1004), including provisions that relate to requirements for the maintenance of professional liability insurance by podiatrists, has been repealed and replaced by the MCARE Act. This final-form rulemaking amends the Board's current regulations by eliminating references to the Health Care Services Malpractice Act and replacing them with references to the MCARE Act. In addition, the final-form rulemaking more clearly notifies the Board's licensees that they must carry liability insurance as set forth in the MCARE Act.

Description of Amendments

Section 303 of the MCARE Act (40 P. S. § 1303.303) lists "podiatrist" as a health care provider. Section 702 of the MCARE Act (40 P. S. § 1303.702) defines "participating health care provider" as "[a] health care provider as defined in section 103 that conducts more than 20% of its health care business or practice within this Commonwealth." In compliance with these provisions of the MCARE Act, § 29.51 (relating to applicants) is amended

to require an applicant for licensure to inform the Board as to what percentage of the applicant's practice is conducted in this Commonwealth.

Section 29.52 (relating to requirements for applicants) is amended to require applicants for licensure or licensees applying for biennial renewal who practice in this Commonwealth to furnish satisfactory proof to the Board that they are complying with the MCARE Act. The final-form rulemaking also deletes references to minimum amounts of liability insurance that were required by the repealed Health Care Services Malpractice Act. A technical correction was made to § 29.52(a) to provide parallel construction within the subsection.

Section 29.52(c) is amended to add a statement requiring the Board's licensees to carry liability insurance or an approved self-insurance plan as required by the MCARE Act. In addition, a statement was added to clarify that licensees must be insured for all professional services the licensee performs. For example, a licensee may only perform surgery if the licensee carries surgical liability insurance.

Section 29.53 (relating to original license) requires podiatrists applying for original licensure to furnish the Board with proof of professional liability insurance. The Board deleted outdated references to the Arbitration Panels and the CAT fund.

Section 29.54 (relating to penalty), which provides the podiatrist with notice that failure to comply with liability insurance requirements will result in discipline, was amended to replace the reference to the repealed Health Care Services Malpractice Act with the MCARE Act.

Comment and Regulatory Review of Proposed Rulemaking

Publication of the proposed rulemaking at 34 Pa.B. 4902 (September 4, 2004), was followed by a 30-day public comment period. The Board received no public comments.

Following the close of the public comment period, the Board received comments from the House Professional Licensure Committee (HPLC) and the Independent Regulatory Review Commission (IRRC). The Board did not receive comments from the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC).

Existing § 29.52(b) provides that licensees practicing solely as Federal employees are not required to participate in the professional liability insurance program or to comply with the Health Care Services Malpractice Act. As proposed, § 29.52(b) would be amended to replace Health Care Services Malpractice Act with the MCARE Act. The HPLC asked the Board to confirm that the MCARE Act did not apply to Federal employees. IRRC commented that subsection (b) should be deleted in its entirety unless the Board could justify the statutory authority for its position.

The definition of "government" in section 702 (40 P.S. § 1303.702) of the MCARE Act is the same as the definition of "government" in section 103 of the Health Care Services Malpractice Act (40 P.S. § 1301.103). Similarly, section 711(i) of the MCARE Act (40 P.S. § 1303.711(i)), which states that governmental entities may satisfy their obligations under the MCARE Act, and the obligations of their employees, by purchasing insurance or self insuring is a restatement of section 701(c) of

the Health Care Services Malpractice Act (40 P.S. § 1301.701(c)). Section 711(i) of the MCARE Act also requires government entities to pay assessments to the Commonwealth Medical Care Availability and Reduction of Error Fund. In interpreting the relevant provisions of the Health Care Services Malpractice Act, a Pennsylvania Attorney General Opinion ruled that that "[h]ealth care providers employed by the Federal government do not have to comply with the fee and insurance provisions of [the Health Care Services Malpractice Act]." 1976 Op. Atty. Gen. No. 4. The Opinion relied upon the Federal Tort Claims Act (28 U.S.C.A. § 2679(d)(1)) which provides that "[u]pon certification by the [United States] Attorney General that the defendant employee was acting within the scope of his office or employment at the time of the incident out of which the claim arose . . . the United States shall be substituted as the party defendant." The purpose of this amendment to the Federal Tort Claims Act was to "remove the potential personal liability of Federal employees for common law torts committed within the scope of their employment, and . . . instead provide that the exclusive remedy for such torts is through an action against the United States under the FTCA." H.R. Rep. No. 700, 100th Cong., 2d Sess. 4 (1988).

Inasmuch as there is no substantive difference between the language of the two acts, the Board believes that the MCARE Act insurance provisions were not intended to reverse the Attorney General's ruling and that the existing language of § 25.52(b) should not be deleted.

The HPLC also suggested that if the Board found that licensees employed by the Federal government do not have to comply with the MCARE Act, the Board should rewrite § 29.52(b) so that, if the Federal government changes its policy, licensees employed by the Federal government may comply with the MCARE Act. Section 29.52(b) does not prohibit licensees who are employed by the Federal government from complying with the MCARE Act. Rather, § 29.52(b) provides that these licensees are not required to comply with the MCARE Act. For this reason, the Board believes that § 29.52(b) will apply whether or not the Federal government changes its policy.

IRRC recommended that the Board amend § 29.53 to mirror section 711(b) of the MCARE Act, which requires health care providers to "submit proof of insurance or self-insurance to the department within 60 days of the policy being issued." The Board has complied with IRRC's recommendation by changing its original 90-day requirement to 60 days.

IRRC further recommended that the citations to the MCARE Act in §§ 29.52(a) and 29.54 be specific to the subjects in these sections. The Board believes that it is incumbent upon the licensee to be familiar with the relevant provisions of the MCARE Act regarding podiatrists. For this reason, the Board respectfully declines IRRC's recommendation.

Fiscal Impact and Paperwork Requirements

The final-form rulemaking should have no fiscal impact on the Commonwealth or its political subdivisions. Likewise, the final-form rulemaking should not necessitate any legal, accounting, reporting or other paperwork requirements.

Sunset Date

The Board continuously monitors the effectiveness of its regulations. Therefore, no sunset date has been assigned.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on August 23, 2004, the Board submitted a copy of the notice of proposed rulemaking, published at 34 Pa.B. 4902, to IRRC and the Chairpersons of the HPLC and the SCP/PLC for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC, the HPLC and the SCP/PLC were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Department has considered all comments from IRRC, the HPLC and the SCP/PLC and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on April 4, 2006, the final-form rulemaking was approved by the HPLC. On April 18, 2006, the final-form rulemaking was deemed approved by the SCP/PLC. Under section 5.1(e) of the Regulatory Review Act, IRRC met on April 19, 2006, and approved the final-form rulemaking.

Contact Person

Further information may be obtained by contacting Gina Bittner, Board Administrator, State Board of Podiatry, Post Office Box 2649, Harrisburg, PA 17105-2649, gbittnerstate.pa.us.

Findings

The Board finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.

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

(3) This final-form rulemaking does not enlarge the purpose of proposed rulemaking published at 34 Pa.B. 4902.

(4) This final-form rulemaking is necessary and appropriate for administering and enforcing the act.

Order

The Board, acting under its authorizing statutes, orders that:

(a) The regulations of the Board, 49 Pa. Code Chapter 29, are amended by amending §§ 29.51—29.54 to read as set forth in Annex A.

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

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

(d) This order shall take effect on publication in the *Pennsylvania Bulletin*.

S. RONALD MILLER, D.P.M.,
Chairperson

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 36 Pa.B. 2251 (May 6, 2006).)

Fiscal Note: Fiscal Note 16A-447 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 29. STATE BOARD OF PODIATRY

LICENSURE APPLICATIONS

§ 29.51. Applicants.

On applications for licensure or the biennial renewal of a license, the applicant shall answer the following three questions:

(1) Using as a base the number of patients served in an annual period, what percentage of your practice is in Pennsylvania?

0% _____ 1—20% _____ 21% or more _____ .

(If the answer to question (1) is 0%, or if practicing only as a Federal employee, (2) and (3) need not be answered.)

(2) Name of professional liability insurance carrier:

(3) Policy No.

§ 29.52. Requirements for applicants.

(a) Applicants for licensure or licensees applying for biennial renewal, who practice in this Commonwealth, shall furnish satisfactory proof to the Board that they are complying with the Medical Care Availability and Reduction of Error (MCARE) Act (40 P. S. §§ 1303.101—1303.910), in that the applicant or licensee, if required by the act and the rules and regulations pertaining thereto, is maintaining the required amount of professional liability insurance or an approved self-insurance plan, and has paid the required fees and surcharges.

(b) Licensees practicing solely as Federal employees are not required to participate in the professional liability insurance program, nor are they required to comply with the MCARE Act.

(c) Licensees practicing podiatry in this Commonwealth shall carry at least the minimum amount of professional liability insurance or an approved self-insurance plan as set forth in the MCARE Act. The licensee shall carry liability insurance or an approved self-insurance plan to cover all professional services performed by the licensee. Licensees who do not practice in this Commonwealth are not required to comply with the MCARE Act.

§ 29.53. Original license.

A podiatrist applying for an original license to practice podiatry shall, within 60 days after receipt of the podiatrist's original license, furnish the Board with the information required in § 29.51 (relating to applicants), and proof of professional liability insurance as required by § 29.52(a) (relating to requirements for applicants).

§ 29.54. Penalty.

Failure to comply with the Medical Care Availability and Reduction of Error (MCARE) Act (40 P. S. §§ 1303.101—1303.910), the regulations issued thereunder, and this subchapter will result in a suspension or revocation of the licensee's license after a formal hearing before the Board.

[Pa.B. Doc. No. 06-975. Filed for public inspection June 2, 2006, 9:00 a.m.]

**STATE BOARD OF EXAMINERS OF
NURSING HOME ADMINISTRATORS**

[49 PA. CODE CH. 39]

Biennial Renewal Fees

The State Board of Examiners of Nursing Home Administrators (Board) amends § 39.72 (relating to fees) to read as set forth in Annex A. The final-form rulemaking increases the biennial license renewal fee for nursing home administrators from \$108 to \$297.

Effective Date

The final-form rulemaking will be effective upon publication in the *Pennsylvania Bulletin*. The new fee will apply to the biennial renewal period beginning July 1, 2006.

Statutory Authority

Section 7.1(a) of the Nursing Home Administrators License Act (act) (63 P. S. § 1107.1(a)) requires the Board to increase fees by regulation to meet or exceed projected expenditures if the revenues raised by fees, fines and civil penalties are not sufficient to meet Board expenditures.

Background and Need for Amendments

The Board's current biennial license renewal fee for nursing home administrators was established by regulation at 24 Pa.B. 6564 (December 31, 1994). Under section 7.1(a) of the act, the Board is required by law to support its operations from the revenue it generates from fees, fines and civil penalties. In addition, the act provides that the Board must increase fees if the revenue raised by fees, fines and civil penalties is not sufficient to meet expenditures over a 2-year period. The biennial renewal fees fund nearly all of the Board's costs.

At Board meetings in July and December 2004, the Department of State's Bureau of Finance and Operations (BFO) presented a summary of the Board's revenue and expenses for Fiscal Years (FY) 2001-2002 through FY 2010-2011. The summary, presented in the following table, demonstrates that the Board must raise fees to meet or exceed projected expenditures to comply with section 7.1(a) of the act. The BFO projected a deficit of \$128,711.53 in FY 2004-2005, a deficit of \$125,711.53 in FY 2005-2006, a deficit of \$319,711.53 in FY 2006-2007, a deficit of \$331,711.53 in FY 2007-2008, a deficit of \$541,711.53 in FY 2008-2009, a deficit of \$569,711.53 in FY 2009-2010 and a deficit of \$795,711.53 in FY 2010-2011. Therefore, the BFO recommended that the Board raise fees to meet or exceed projected expenditures, in compliance with section 7.1(a) of the act.

2001-2002 beginning balance	178,883.59
FY 01-02 revenue	44,149.67
Adjust. for prior year expenses	4,265.43
FY 01-02 expenses	164,000.00
Remaining balance	54,767.83
2002-2003 beginning balance	54,767.83
FY 02-03 revenue	249,850.03
Prior year returned funds	0.00
FY 02-03 expenses	182,000.00
Remaining balance	122,617.86
2003-2004 beginning balance	122,617.86
FY 03-04 revenue	229,599.72
Prior year returned funds	0.00
FY 03-04 expenses	235,000.00
Remaining balance	117,217.58
2004-2005 beginning balance	117,217.58
FY 04-05 projected revenue	60,000.00
Prior year returned funds (estimated)	20,000.00
Adjust. for prior year expenses (estimated)	85,929.11
FY 04-05 projected expenses	240,000.00
Remaining balance	(128,711.53)
2005-2006 beginning balance	(128,711.53)
FY 05-06 projected revenue	250,000.00
FY 05-06 projected expenses	247,000.00
Remaining balance	(125,711.53)
2006-2007 beginning balance	(125,711.53)
FY 06-07 projected revenue	60,000.00
FY 06-07 projected expenses	254,000.00
Remaining balance	(319,711.53)
2007-2008 beginning balance	(319,711.53)
FY 07-08 projected revenue	250,000.00
FY 07-08 projected expenses	262,000.00
Remaining balance	(331,711.53)
2008-2009 beginning balance	(331,711.53)
FY 08-09 projected revenue	60,000.00
FY 08-09 projected expenses	270,000.00
Remaining balance	(541,711.53)
2009-2010 beginning balance	(541,711.53)
FY 09-10 projected revenue	250,000.00
FY 09-10 projected expenses	278,000.00
Remaining balance	(569,711.53)
2010-2011 beginning balance	(569,711.53)
FY 10-11 projected revenue	60,000.00
FY 10-11 projected expenses	286,000.00
Remaining balance	(795,711.53)

As the previous table indicates, the BFO estimates that at the close of FY 2004-2005, the Board's expenses will exceed its revenues by \$128,711.53. The BFO anticipates that in subsequent fiscal years, the Board's expenses will continue to exceed its revenues. Without an increase, the projected deficit in FY 2010-2011 would be \$795,711.53.

The Board's review of its actual and projected expenses for the past 5 years revealed significant shortfalls in the areas of enforcement and investigation, legal office expenses and legislative and regulatory analysis. For example, despite annual increases in projected expenses, actual enforcement and investigation costs increased \$13,242.21 from FY 2002-2003 to FY 2003-2004. The

actual expenses for the legal office and legislative and regulatory analysis increased \$18,879.37 and \$7,975.38, respectively, from FY 2002-2003 to FY 2003-2004. Overall increased expenditures in these program areas have resulted from a steady increase in the number of complaints opened each year regarding nursing home administrators and therefore greater investigative, enforcement and legal activity. At the same time, the Board's licensee population has declined by 400 licensees over the past 5 years, decreasing the Board's biennial revenue. The BFO anticipates that the proposed new biennial renewal fees will enable the Board to recapture the current deficit and meet its estimated expenditures for the next 10 years. Biennial renewal fees were last raised from \$85 to \$108 in the final-form rulemaking published at 24 Pa.B. 6564. This increase was first applied to the 1996 biennial renewal.

In determining the fee, the Board also considered the renewal fees charged to nursing home administrators in the six surrounding states. The Board found that the proposed increase to \$297 would be lower than two fees and higher than four fees charged by contiguous states, and therefore consistent with the renewal fees charged in the surrounding states.

Comment and Review of Proposed Rulemaking

Publication of proposed rulemaking at 35 Pa.B. 2402 (April 23, 2005) was followed by a 30-day public comment period during which the Board received 17 comments. The Pennsylvania Health Care Association (PHCA) and The Pennsylvania Association of County Affiliated Homes were among those who commented. The rest of the comments were from individual licensees. In accordance with the Regulatory Review Act (71 P.S. §§ 745.1—745.15), the Independent Regulatory Review Commission (IRRC), the House Professional Licensure Committee (HPLC) and the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) reviewed the proposed rulemaking. The HPLC and SCP/PLC had no objections, suggestions or comments. The following is the Board's response to IRRC's comments and the public comments.

In general, all of the public commentators believe the biennial increase is excessive. Specifically, IRRC questioned why it was necessary to increase the fee to a level that goes beyond erasing the current deficit to meet projected expenditures over a decade and urged the Board to consider raising fees only in the amount needed to resolve deficits in the short term. The reason for developing a renewal fee to erase the current deficit and meet projected expenditures over a decade is because the process to obtain a fee increase is labor intensive, costly and can take up to 2 years to get approved. The Board considered several fee increase options to ensure that the most reasonable fee increase would erase the current deficit and carry a modest balance to cover any unplanned expenses such as a large legal case that could have the potential to deplete funds quickly. Based on the options presented, it was determined that the 175% fee increase would generate the revenue needed to erase the current deficit and meet the Board's estimated expenditures in the near future.

IRRC also suggested that, as an alternative to the proposed rulemaking, fee increases could be phased in over a specific time frame. IRRC noted that this approach would have a less drastic economic impact on licensees and would allow the Board to adapt to changes in the number of licensees and enforcement activity. The PHCA also suggested phasing in the increase over a period of 8

to 10 years. However, section 7.1(a) of the act specifically states that "[i]f the revenues generated by fees, fines and civil penalties imposed pursuant to this act are not sufficient to match expenditures over a two-year period, the board shall increase those fees by regulation, subject to review in accordance with the Regulatory Review Act, such that the projected revenues will meet or exceed projected expenditures." The 175% fee increase will meet this mandate and the Board's operations will not be interrupted. If a graduated fee increase was implemented, it would take several years for the Board to recover the projected deficit and generate sufficient revenue to meet estimated expenditures in the future. This could cause the Board to cease operations and therefore would pose a threat to the public's health, safety and welfare.

IRRC also commented that the Board should identify the financial and economic impacts of the final-form rulemaking on individual licensees. In this regard, IRRC urged the Board to consider the potential impacts on the profession and the facilities that licensees administer, given the recent decline in the number of licensees and also urged the Board to consider whether, if the decline continues, a steep fee increase will have a negative impact on long-term care facilities and their ability to maintain and protect the health, safety and welfare of their residents. As IRRC recognized in its comments, a number of licensees who commented contend that the increase will be a significant deterrent for licensees to renew and stay in the profession and will dissuade newcomers from seeking licensure and entry into the profession. The only financial and economic impact that the Board can identify with certainty is that nursing home administrators will be required to pay \$189 more than they currently pay to renew their licenses. The Board cannot speculate on whether the fee increase will have a deterrent effect on licensees and potential licensees that it will ultimately have a negative impact on long-term care facilities and their ability to maintain and protect the health, safety and welfare of their residents. Nevertheless, the Board believes that the residents of long-term care facilities are at greater risk of harm if the Board ceases to operate than they are by the potential ramifications of the fee increase.

A licensee who commented noted that the proposed fee is higher than four contiguous states and lower than two others. This commentator questioned whether the average nursing home administrator wage have been reviewed and compared in the two lower states and whether the number of nursing homes in those states has been compared with this Commonwealth. The Board has not performed a review or comparison because these considerations are not relevant to the fee increase. Under section 7.1(a) of the act, the only consideration relevant to the fee increase is whether the revenue raised by fees, fines and civil penalties is sufficient to meet expenditures over a 2-year period.

Description of Amendments

Based upon the previous expense and revenue estimates provided to the Board, the Board is amending § 39.72 to increase the fee for biennial renewal of licenses for nursing home administrators from \$108 to \$297.

Fiscal Impact

The final-form rulemaking will increase the biennial renewal fee for nursing home administrators. The final-form rulemaking should have no other fiscal impact on the private sector, the general public or political subdivisions.

Paperwork Requirements

The final-form rulemaking will require the Board to alter some of its forms to reflect the new biennial renewal fee. However, it should not create additional paperwork for the private sector.

Sunset Date

The act requires that the Board monitor its revenue and costs on a fiscal year and biennial basis. Therefore, no sunset date has been assigned.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on April 23, 2005, the Board submitted a copy of the notice of proposed rulemaking, published at 35 Pa.B. 2402, to IRRC and the Chairpersons of the HPLC and the SCP/PLC for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC, the HPLC and the SCP/PLC were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Department has considered all comments from IRRC, the HPLC and the SCP/PLC and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on March 14, 2006, the final-form rulemaking was approved by the HPLC. On April 18, 2006, the final-form rulemaking was deemed approved by the SCP/PLC. Under section 5.1(e) of the Regulatory Review Act, IRRC met on April 19, 2006, and approved the final-form rulemaking.

Contact Person

Further information may be obtained by contacting Christina Stuckey, Administrative Assistant, State Board of Examiners of Nursing Home Administrators, P. O. Box 2649, Harrisburg, PA 17105-2649, cstuckey@state.pa.us.

Findings

The Board finds that:

- (1) Public notice of the proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.
- (2) A public comment period was provided as required by law and all comments were considered.
- (3) This final rulemaking does not enlarge the purpose of the proposed rulemaking published at 35 Pa.B. 2402.
- (4) This final-form rulemaking is necessary and appropriate for administration and enforcement of the act.

Order

The Board, acting under its authorizing statutes, orders that:

- (a) The regulations of the Board, 49 Pa. Code Chapter 39, are amended by amending § 39.72 to read as set forth in Annex A.
- (b) The Board shall submit this order and Annex A to the Office of General Counsel and to the Office of Attorney General as required by law.
- (c) The Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall take effect on publication in the *Pennsylvania Bulletin*.

BARRY S. RAMPER, II,
Chairperson

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 36 Pa.B. 2251 (May 6, 2006).)

Fiscal Note: Fiscal Note 16A-6210 remains valid for the final adoption of the subject regulation.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 39. STATE BOARD OF EXAMINERS OF NURSING HOME ADMINISTRATORS

RENEWAL

§ 39.72. Fees.

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

Biennial renewal of nursing home administrators license	\$297
License application fee	\$40
Temporary permit fee	\$145
Certification of examination scores	\$25
Verification of licensure or temporary permit	\$15
Continuing education provider application fee	\$40
Continuing education program application fee per clock hour	\$15
Continuing education individual program application fee	\$20

[Pa.B. Doc. No. 06-976. Filed for public inspection June 2, 2006, 9:00 a.m.]

STATE BOARD OF PSYCHOLOGY

[49 PA. CODE CH. 41]

Education Requirements

The State Board of Psychology (Board) amends §§ 41.1 and 41.31 (relating to definitions; and qualifications for taking licensure examination) to read as set forth in Annex A.

Statutory Authority

The final-form rulemaking is made under the authority of sections 3.2(1) and 6(a)(2) of the Professional Psychologists Practice Act (act) (63 P. S. §§ 1203.2(1) and 1206(a)(2)).

Response to Public Comments and Regulatory Review

The proposed rulemaking was published at 34 Pa.B. 4903 (September 4, 2004). Publication was followed by a 30-day public comment period during which the Board received comments from the Pennsylvania Psychological Association (PPA), the Vice President of Academic Affairs of Chestnut Hill College and, upon request from the House Professional Licensure Committee (HPLC), Judy Hall, the Executive Director of the Council for the

National Register of Health Service Providers (National Register). Following the close of the public comment period, the Board received comments from the HPLC and the Independent Regulatory Review Commission (IRRC). The Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) did not comment.

The following part provides an analysis of the Board's response to those comments.

General comments

In both the definition of "doctoral degree in a field related to psychology" and "doctoral degree in psychology," the Board referred to designation by the Joint Designation Committee of the Association of State and Provincial Psychology Boards (ASPPB). The HPLC noted that the current name is the ASPPB/National Register Designation Project (ASPPB/National Register). In this final-form rulemaking, the Board has changed the name. Also, for ease of reference, the Board has added definitions for "APA," "ASPPB," "CPA" and "National Register."

IRRC questioned whether the Board's accreditation requirement would negatively affect the development of new programs. The PPA commented that new programs would be stifled as a result of the final-form rulemaking. The Board acknowledges that this final-form rulemaking imposes additional requirements on nonaccredited/designated programs. However, the Board believes that this final-form rulemaking is necessary for two reasons. First, it provides a bright-line standard for applicants for licensure—if an individual graduate from a program that is or becomes accredited or designated within 1 year of when the degree is awarded, the individual has satisfied the educational requirements for licensure. The Board has learned through applications and testimony provided by applicants from nonaccredited/designated programs that many erroneously believed that they too would not have any impediments to licensure. By removing this pathway, the Board has eliminated this uncertainty for applicants who have spent thousands of dollars to obtain their degree.

Second, this final-form rulemaking sets minimum standards for graduate degree programs in psychology. When the rulemaking was initially promulgated, many programs in this Commonwealth were neither accredited nor designated. Therefore, there was a need for the third pathway. Given the number of programs currently accredited and designated, this stopgap measure is no longer necessary. A list of APA accredited programs in this Commonwealth is available at www.apa.org/ed/accreditation/doctoral.html. A list of ASPPB/National Register designated programs in this Commonwealth is available at www.nationalregister.org/designate_PA.htm.

Despite the additional requirements on nonaccredited/designated programs, the Board does not believe that the development of new programs will be negatively affected. By accepting designation in addition to accreditation, the Board has, in many instances, reduced the timeframe for acceptance. Unlike the APA/Canadian Psychological Association (CPA) accreditation process, which requires a site visit and, as a prerequisite, a graduation class to apply, the ASPPB/National Register designation process is a paper review that permits application each spring once a program has been fully developed (including standards for enrollees and the selection of instructors and curriculum). Additionally, unlike the APA and the CPA that limit accreditation to the specific specialties of clinical psychology, school psychology, counseling psychology and combined professional-scientific psychology, the ASPPB/

National Register designate additional specialties in psychology. Once a designated program has graduated a class and met the other accreditation requirements, it can obtain APA/CPA accreditation. APA/CPA accredited programs receive automatic designation by the ASPPB/National Register.

The HPLC questioned whether the Board has communicated its new education requirements to doctoral degree programs that do not meet the new requirements. Prior to publication of the proposed rulemaking, the Board solicited predraft input from stakeholders, including doctoral degree programs that currently do not meet the new requirements. In addition, after publication in the *Pennsylvania Bulletin*, the Board will post the new requirements on its website. This additional notice should alert programs and applicants that the new educational requirements will apply to all students who enroll 2 years from the publication date of this proposed rulemaking.

§ 41.1. Definitions.

Subparagraph (iii) of the definitions of "doctoral degree in a field related to psychology" and "doctoral degree in psychology" set out the standards for a doctoral degree from foreign colleges or universities. The Executive Officer of the National Register suggested that the Board incorporate the designation criteria required by the ASPPB/National Register by reference rather than insert a partial list of the requirements if the Board intends to accept the ASPPB/National Register criteria. Because it is the Board's intent to impose the same requirements on all doctoral degree programs regardless of the country where the program is being offered, the Board has amended the definitions to require that foreign degree programs satisfy standards equivalent to the ASPPB/National Register standards. These doctoral degree standards are available at www.nationalregister.org/doctoraldegrees.html.

The Board has removed provisions in subparagraph (iii) dealing with foreign accrediting bodies, individual differences in behavior courses, dissertations and appropriate standard for practicum and internship, which were the subject of inquiry by the HPLC, IRRC and the PPA. The Board will not address these comments. Like provisions in many other jurisdictions, these provisions require compliance with the ASPPB/National Register criteria rather than Board-developed requirements.

The Executive Officer of the National Register also suggested that the Board clarify that the doctoral degree standards must be met at the time of graduation and not some later date when the program obtains accreditation or designation. The proposed rulemaking imposed an "at graduation" standard. However, upon further consideration, the Board determined that that timeframe was too narrow.

During the Board's September 13, 2005, meeting, the Board contacted the Director of Accreditation at the APA and the Executive Officer of the National Register. Regarding APA/CPA accreditation, the Board learned that the accreditation date is not the date when the decision is made to award accreditation, but rather the date when the site visit was conducted, often months earlier. The Board also learned that accreditation reviews and awards occur year round.

Regarding ASPPB/National Register designation, the Board learned: (1) the designation date is the date that the decision is made; (2) designation reviews and awards occur one time a year; (3) applications are accepted until February 1; (4) the Designation Committee reviews those applications from April 1 through early summer and,

when there are no deficiencies, awards designation; (5) where there are easily curable deficiencies, the Designation Committee permits programs to cure the deficiencies within several months, and, when applicable, awards designation; and (6) many state psychology boards accept after the fact designation for a set period of time.

When these time frames were considered in light of the customary award of doctoral degrees in December and May, the Board determined that the "at graduation" date originally proposed would severely disadvantage recent graduates of newly accredited/designated programs. The Board believes that to include those graduates and, at the same time, achieve the Board's goal of assuring minimum standards for education, the Board should allow a 1-year time frame. This additional 1 year will also be advantageous for newly emerging programs as it will provide them with additional time to obtain accreditation or designation. Therefore, the Board has amended this provision in this final-form rulemaking to clarify that the program must be either accredited or designated within 1 year of the applicant's award of the doctoral degree.

§ 41.31. Qualifications for taking licensing examination.

Proposed § 41.31(b)(1) required the clinical training director to submit a Verification of Doctoral Program Approval Status. The Executive Director of the National Register suggested that the Board remove the reference to "clinical" as programs are designated in clinical, counseling and school psychology. The Board found this suggestion reasonable and amended this provision by replacing "clinical training director" with "program director."

Proposed § 41.31(b)(2) required that the foreign credential evaluator be acceptable to the Board. IRRC questioned what criteria the Board was going to apply to make this determination. The Board has learned from the National Register that it reviews foreign education to determine equivalency with education deemed acceptable to the ASPPB/National Register. The equivalency standards are available at www.nationalregister.org/foreigndegrees.htm. The Maryland Board of Examiners in Psychology is currently using this method. Because the National Register's review is psychology-specific, as opposed to that of the Department of Education approved foreign credential evaluators who review doctoral programs generally, the Board amended this section. The final-form section specifies that the National Register will make the initial equivalency determination and then the Board will assess the applicant's compliance.

Section 41.31(b)(3) addresses an applicant from a foreign college or university's ability to cure a deficiency in subsection (b)(2). In the proposed rulemaking, the Board required the applicant to complete an APA/CPA/ASPPB respecialization program. The Executive Director for the National Register commented that specialization programs are typically 2-year programs, one of which is an internship and that some applicants may not require that extensive of a sequence of education and training. In its place, it was recommended that the Board permit the accredited/designated doctoral program to evaluate the deficiency, require supplemental education or experience, or both, and following completion of the deficiency certify that the supplemental education/experience makes the applicant equivalent to a graduate of the program. The Board found this recommendation reasonable and has amended this section accordingly.

Several comments were raised about § 41.31(b)(4) in connection with the effective date of the final-form rulemaking. The HPLC and IRRC asked the Board to clarify this date in the final-form rulemaking. The PPA questioned how the effective date would be applied to applicants who have obtained a degree but have not yet applied for a license. Additionally, the Vice President of Academic Affairs for Chestnut Hill College suggested that the Board grandfather programs that are in the process of attaining APA accreditation when the final-form rulemaking is published. He also recommended that the Board provide a 5-year to 7-year window for emerging programs to obtain accreditation.

The Board has revised the subsection as follows. Applicants for licensure who were enrolled in a doctoral degree program in psychology before, at the time of, or up to 2 years after publication of this final-form rulemaking will have their education evaluated under the regulations in effect at the time of enrollment. Applicants who enroll on or after the effective date of this final-form rulemaking will have their education evaluated under these new requirements. Enrollment, as has been interpreted by the Board, is the date when the applicant has been accepted into the doctoral degree program and is registered for courses. This standard was applied by the Board when it grandfathered masters degree holders under former section 20 of the act (63 P. S. § 1220).

In the proposed rulemaking, the Board established the effective date as 2 years after publication of the final-form rulemaking. However, upon consideration of the designation time frame previously mentioned, the Board determined that the effective date should be extended until on or after July 1, 2 years following final-form publication in the *Pennsylvania Bulletin*. The Executive Director of the National Register advised that designation awards are only made in the late spring and early summer. Extending this date provides nonaccredited/designated programs with two full opportunities to avail themselves of the designation process prior to the effective date of the final-form rulemaking.

Because APA awards accreditation to programs on the date of the site visit, the Board declined to implement the recommendation that programs in the process of APA accreditation be automatically grandfathered. The Board believes that as written the regulation provides nonaccredited/designated programs at least 3 years to comply with the new requirements—2 years for the regulations to become effective plus 1 year after graduation. Based on the Board's understanding of APA and National Register processes, the Board believes that doctoral degree programs will be able to comply with the Board's requirements.

Fiscal Impact and Paperwork Requirements

The final-form rulemaking has no fiscal impact on the Commonwealth. Board members would no longer be required to review transcripts, courses, residencies and internships for applicants who attended non-APA and non-ASPPB/National Register programs in the United States, Canada and territories, and Board staff would simply confirm that the doctoral degree program was accredited by the APA or the CPA or designated by the ASPPB/National Register within 1 year of graduation. However, there were no costs associated with Board member review as that review was conducted following monthly Board meetings. Therefore, the change should not result in any discernible fiscal impact on the Board or

the Commonwealth. The Board would continue to conduct its review for applicants with doctoral degrees from foreign colleges and universities.

The final-form rulemaking decreases paperwork requirements for applicants from programs in the United States, Canada and United States territories. These applicants would be required to submit only a Verification of Doctoral Program Approval Status completed by the program's director reflecting accreditation by the APA or the CPA or designation by the ASPPB/National Register and an official transcript from the registrar. Applicants from foreign colleges and universities would continue to submit an evaluation from the ASPPB/National Register to the Board evidencing compliance with the educational requirements for degree holders from foreign colleges or universities in § 41.1.

Sunset Date

The Board continually monitors the effectiveness of its regulations through communication with the regulated population. Therefore, no sunset date has been set.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on August 23, 2004, the Board submitted a copy of the notice of proposed rulemaking, published at 34 Pa.B. 4903, to IRRC and the Chairpersons of the HPLC and the SCP/PLC for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC, the HPLC and the SCP/PLC were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Department has considered all comments from IRRC, the HPLC and the SCP/PLC and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on March 14, 2006, the final-form rulemaking was approved by the HPLC. On April 18, 2006, the final-form rulemaking was deemed approved by SCP/PLC. Under section 5.1(e) of the Regulatory Review Act, IRRC met on April 19, 2006, and approved the final-form rulemaking.

Contact Person

Further information can be obtained by contacting Christina Stuckey, Administrative Assistant, State Board of Psychology, P. O. Box 2649, Harrisburg, PA 17105-2649, www.state.pa.us/bpoa.

Findings

The Commission finds that:

- (1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.
- (2) A public comment period was provided as required by law and all comments were considered.
- (3) This final-form rulemaking does not enlarge the purpose of proposed rulemaking published at 34 Pa.B. 4903.
- (4) The final-form rulemaking is necessary and appropriate for administering and enforcing the act.

Order

The Board, acting under its authorizing statute, orders that:

(a) The regulations of the Board, 49 Pa. Code Chapter 41, are amended by amending §§ 41.1 and 41.3 to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

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

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

(d) This order shall take effect on publication in the *Pennsylvania Bulletin*.

ALEX M. SIEGEL, J.D., Ph.D.,
Chairperson

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 36 Pa.B. 2251 (May 6, 2006).)

Fiscal Note: Fiscal Note 16A-6313 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 41. STATE BOARD OF PSYCHOLOGY GENERAL

§ 41.1 Definitions.

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

APA—American Psychological Association.

ASPPB—Association of State and Provincial Psychology Boards.

* * * * *

CPA—Canadian Psychological Association.

* * * * *

Doctoral degree in a field related to psychology—A degree awarded upon successful completion of a program which, within 1 year from the award of the doctoral degree, meets one of the following:

- (i) Is accredited by the APA or the CPA.
- (ii) Is designated by the ASPPB/National Register Designation Project.
- (iii) Is offered by a foreign college or university whose standards are equivalent to the ASPPB/National Register Designation Project criteria.

Doctoral degree in psychology—A degree awarded upon successful completion of a program in psychology which, within 1 year from the award of the doctoral degree, meets one of the following criteria:

- (i) Is accredited by the APA or the CPA.
- (ii) Is designated by the ASPPB/ National Register Designation Project.
- (iii) Is offered by a foreign college or university whose standards are equivalent to the ASPPB/National Register Designation Project Criteria.

* * * * *

National Register—The Council for the National Register of Health Service Providers.

* * * * *

§ 41.31. Qualifications for taking licensing examination.

* * * * *

(b) *Education.* Before an applicant seeking licensure under section 6 of the act (63 P.S. § 1206) shall be permitted to take the licensing examination, the Board must be satisfied that the applicant has complied with the requirements for a doctoral degree in psychology or a field related to psychology as defined in § 41.1 (relating to definitions). The following documentation evidences compliance:

(1) For degree holders from a program in the United States, Canada or United States territories, a Verification of Doctoral Program Approval Status completed by the program's director reflecting accreditation by the CPA or designation by the ASPPB/National Register Designation Project within 1 year from the award of the doctoral degree, and an official transcript from the registrar.

(2) For degree holders from a foreign college or university, an evaluation completed by the National Register evidencing compliance with the educational requirements for degree holders from foreign colleges or universities in § 41.1 (relating to definitions). The Board will make a determination regarding the applicant's compliance based upon the evaluation.

(3) An applicant who does not meet the criteria in paragraph (2) shall complete supplemental education or training, or both, from a program accredited by the APA or the CPA or designated by ASPPB/National Register Designation Project based upon an evaluation of the deficiency by the program. The program director shall certify that the supplemental coursework or experience, or both, makes the applicant equivalent to a graduate of that program.

(4) First-time applicants who enroll in a graduate degree program in psychology on or after July 1, 2008, will be evaluated under this chapter. Applicants enrolled prior to July 1, 2008, will be evaluated under regulations in effect at the time of enrollment. Reapplicants under subsection (a)(1) or § 41.42(b) (relating to reexamination) will be evaluated under regulations in effect at the time of reapplication.

* * * * *

[Pa.B. Doc. No. 06-977. Filed for public inspection June 2, 2006, 9:00 a.m.]

Title 67—TRANSPORTATION

DEPARTMENT OF TRANSPORTATION

[67 PA. CODE CH. 63]

Proportional Registration of Fleet Vehicles

The Department of Transportation, Bureau of Motor Vehicles (Bureau), under 75 Pa.C.S. §§ 6103 and 7501—7506, amends Chapter 63 (relating to proportional registration of fleet vehicles) to read as set forth in Annex A.

Purpose of this Chapter

The purpose of this chapter is to establish rules and procedures to implement bilateral agreements and the International Registration Plan entered into with other jurisdictions for the registration of fleets of vehicles on an apportioned basis as authorized by 75 Pa.C.S. §§ 6142 and 6145 (relating to reciprocity agreements, arrangements and declarations authorized; and proportional registration of fleet vehicles).

Purpose of this Final-Form Rulemaking

The purpose of this final-form rulemaking is to extend the term of the temporary permits under this chapter and to update the chapter with the current fees for registration and titling in 75 Pa.C.S. Chapter 19 (relating to fees).

Persons and Entities Affected

Extension of the temporary registration period from 30 to 60 days potentially may affect approximately 15,000 apportioned carriers. The additional time will have a positive effect in allowing the Bureau to complete the title and registration work in a more reasonable period. It eliminates the need for carriers to request additional temporary registration because the application has not been processed.

Fiscal Impact

This final-form rulemaking will not require additional expenditure by the Bureau or temporary issuing agents. Apportioned carriers may realize a cost savings by not having to request additional temporary registration.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on September 8, 2004, the Department submitted a copy of the notice of proposed rulemaking, published at 34 Pa.B. 5159 (September 18, 2004), to Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Transportation Committees for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the House and Senate Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. No comments were received from the public, IRRC or the House and Senate Committees.

Under section 5.1(j.2) of the Regulatory Review Act (71 P.S. § 745.5a(j.2)), on March 15, 2006, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5(g) of the Regulatory Review Act, this final-form rulemaking was deemed approved by IRRC effective April 18, 2006, confirmed at the meeting of IRRC on April 19, 2006.

Sunset Date

The Department is not establishing a sunset date for these regulations, as these regulations are needed to administer provisions of 75 Pa.C.S. (relating to the Vehicle Code). The Department, however, will continue to closely monitor these regulations for their effectiveness.

Contact Person

The contact person for this final-form rulemaking is Joseph Centurione, Manager, Customer Service Division, Bureau of Motor Vehicles, 1101 S. Front Street, Harrisburg, PA 17104, (717) 787-2304.

Order

The Department orders that:

(a) The regulations of the Department, 67 Pa. Code Chapter 65, are amended by amending §§ 63.4, 63.51, 63.52, 63.116—63.118 and 63.122 to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

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

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

(d) This order shall become effect upon publication in the *Pennsylvania Bulletin*.

ALLEN D. BIEHLER, P.E.,
Secretary

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 36 Pa.B. 2251 (May 6, 2006).)

Fiscal Note: Fiscal Note 18-396 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 67. TRANSPORTATION

PART I. DEPARTMENT OF TRANSPORTATION

Subpart A. VEHICLE CODE PROVISIONS

ARTICLE III. REGISTRATION

CHAPTER 63. PROPORTIONAL REGISTRATION OF FLEET VEHICLES

Subchapter A. GENERAL PROVISIONS

§ 63.4. Definitions.

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

* * * * *

Telegram of authority—A temporary registration transmitted by a wire service authorizing the operation of a Commonwealth-based vehicle for 60 days while application for a change in fleet registration is being processed by the Bureau.

Temporary authorization certificate—A temporary registration authorizing the operation of a Commonwealth-based vehicle for 60 days while application for a change in fleet registration is being processed by the Bureau.

* * * * *

Subchapter D. TEMPORARY REGISTRATION

§ 63.51. Pennsylvania temporary authorization certificates.

(a) *General rule.* Temporary authorization certificates may be obtained from the Commercial Registration Section in bulk, by registrants with five or more apportionable vehicles, for use on an additional vehicle or when it is necessary to increase a vehicle's registered weight. The registrant's fees on its original apportioned registration application shall be paid prior to approval of the request for temporary authorization certificates. Temporary authorization certificates are not transferable and may not be used by another carrier. A temporary authorization certificate is valid for 60 days from the date of its first use. A temporary authorization certificate may not be used in conjunction with 75 Pa.C.S. § 1311(c) (relating to registration card to be signed and exhibited on demand) to avoid prosecution under 75 Pa.C.S. § 1301 (relating to registration and certificate of title required).

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§ 63.52. Telegrams of authority.

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(d) *Effect of telegram.* A telegram of authority issued by the Department is valid for 60 days. An extension of a telegram of authority may be granted if, in the judgment of the Department, the supplemental application for proportional registration was submitted and fees were paid on a timely basis but there was insufficient time to process the application and forward the credentials to the carrier.

* * * * *

Subchapter G. FEES

§ 63.116. Cab cards.

The fee for a cab card issued in connection with the filing of an application requiring no Pennsylvania registration fees, is \$4.50.

§ 63.117. Duplicate cab cards.

The fee for each duplicate cab card shall be \$1.50 when ordered at the time of vehicle registration or transfer, or renewal of registration. The fee for each duplicate cab card ordered at any other time is \$4.50.

§ 63.118. Transfer of registration.

The fee for transfer of registration from a vehicle within an apportioned fleet to another vehicle within the same fleet or another apportioned fleet of the same carrier is \$6.

§ 63.122. Nontitled fleet registration.

The fee for establishing a registration record for an apportioned vehicle not titled in this Commonwealth is \$22.50.

[Pa.B. Doc. No. 06-978. Filed for public inspection June 2, 2006, 9:00 a.m.]