

PROPOSED RULEMAKING

DEPARTMENT OF AGRICULTURE

[7 PA. CODE CH. 130e]

Commercial Manure Hauler and Broker Certification; Advance Notice of Final Rulemaking

The Department of Agriculture (Department) is publishing an advance notice of final rulemaking (ANFR) regarding Commercial Manure Hauler and Broker Certification. Proposed rulemaking was published at 35 Pa.B. 6751 (December 17, 2005).

Statutory Authority

The Commercial Manure Hauler and Broker Certification Act (act) (3 P. S. §§ 2010.1—2010.12), sets forth the proposed Commercial Manure Hauler and Broker Certification Program (Program). Under section 3 of the act (3 P. S. § 2010.3), regarding the Program, the Department proposes to add Chapter 130e (relating to commercial manure hauler and broker certification) to its regulations.

Background

The Department entertained public comment for 60 days during which time the Department received comments from the State Conservation Commission (Commission), Nutrient Management Advisory Board (Board), various farm groups such as the Farm Bureau and Penn Ag Industries, members of the regulated community, agricultural operators and an environmental group. In addition, the Department received extensive comments from the Independent Regulatory Review Commission and members of the House and Senate Agriculture and Rural Affairs Committees. The Department has continued to consult with the Commission and Board. The revisions represent the Department's response to the numerous comments received and to the input received from the consultations with the Commission and the Board. In addition, the Department has had conversations with at least one executive level official of the House Agriculture and Rural Affairs Committee. The Commission and the Board have reviewed the suggested revisions and approved those revisions the Department felt it could make within the scope of the act.

Summary of Changes from the Proposed Rulemaking

The following provides a general synopsis of the changes made after receiving and reviewing comments made during the respective comment periods and after various meetings with the Commission and the Board. These changes have been incorporated into the proposed final form rulemaking.

Definitions

A number of the existing and proposed definitions were amended, new definitions were added and definitions were deleted in the final-form regulation.

1) *Existing definitions amended.* The following existing definitions are amended in this final-form rulemaking: "Act 38," "BMP—Best Management Practice," "concentrated animal feeding operation," "concentrated animal operation," "nutrient balance sheet" and "nutrient management specialist" to insure consistency with other regulations promulgated by the State Conservation Commission and the Department of Environmental Protection.

2) *New definitions.* The definitions—"commerce," "commercial" and "manure" were added in the proposed final-form rulemaking to clarify provisions of the regulations in regards to prohibitions and certification requirements

Fees

The final-form rulemaking has eliminated the necessity for examination fees and has maintained the use of distinct fees for each certification level in § 130e.3, considering the reduction of those fees to be commensurate with the authority and duties of the proposed levels of certification and reflective of the necessary revenue to appropriately cover the cost of administration of the program.

Clarity of the regulated community

The act does not address farmers applying manure to their own land with their own equipment or a neighbor's equipment. This was a concern that was strongly expressed from the agricultural community. Proposed § 130e.4(a) of the proposed regulation set forth the requirements a person commercially transporting or land applying manure in the Commonwealth must satisfy in order to operate in a commercial capacity. Section 130e.4(b) of the final-form regulations was modified to address and clarify the exclusion of an agricultural operator from certification requirements of the act by citing specific examples of "noncommercial" activities that would not require an agricultural operator to obtain certification.

Supervision

Language throughout the final-form regulations was modified to address concerns regarding the term "onsite supervision" as it was used in the delineation of authority, duties and prohibitions for certification levels in the originally proposed regulation. Considering that certain circumstances require some degree of training, oversight and supervision for certain levels of certification and recognizing that "onsite supervision" is not a practical management tool for the industry, the term "onsite supervision" has been modified to facilitate the supervision of land-application activities of manure by a certified hauler, where applicable under the provisions of these regulations through electronic or other means of direct communication.

Display of certification

The proposal required that all persons display the issued certification number on any equipment the certified operator utilizes in the transport or land-application of manure (§ 130e.6(a)). Recognizing that the display of a certification number on all equipment operated by an individual is not practical, the final-form regulation was modified to remove this provision and maintain the requirement that certified individuals shall carry on their person or in the vehicle of operation a copy of their current certificate.

Nutrient Management Specialist eligibility

The act of July 6, 2005 (P. L. 112, No. 38) (Act 38) provides for the certification of individuals involved in the commercial development of nutrient management plans and nutrient balance sheets for agricultural operations through the Nutrient Management Certification Program (7 Pa. Code Chapter 130b). Current courses required to become a certified commercial nutrient management plan writer cover all of the elements required to become

certified as a Level 1 or Level 2 Commercial Manure Broker or a Level 3 Commercial Manure Hauler and therefore, currently certified commercial nutrient management plan writers would meet the qualifications required for certification at those levels under the act. The final form regulations include specific provisions which allow those persons who have met the certification requirements as a commercial or public dual nutrient management specialist to be eligible for certain levels of certification under the Program.

Application for certification

Considering various comments and concerns regarding the complexity of the certification and application process, the final form regulations reflect a simplified application process for all certification levels. When an examination is required as part of the certification process, the examination will constitute the application for certification. The Department will issue a temporary certificate to the applicant when the Department has determined that the applicant has successfully satisfied all coursework and examination requirements. The temporary certificate will remain valid for 30 days by which time an applicant must submit the appropriate certification fees to receive final certification from the Department.

Certification requirements and course work

Recognizing the transient nature of the industry and the need to facilitate expedient certification of individuals in certain sectors of the industry, primarily those businesses or individual that only "transport" manure or "new", "part-time" or "seasonal" hires, the final-form regulations have modified the certification requirements for Manure Hauler Level 1 and Level 2. Competency requirements for the type of activities authorized for these certification levels and subsequently the course work format have been modified to allow certification of individuals at the site of business. Certification course work for the Manure Hauler Level 1 consists of a worksheet and a Level 2 certification requires review of a workbook and a proctored, but open book test which may be taken at numerous sites around this Commonwealth. The worksheets, workbooks and tests were developed by the Department and delineate and test key issues and provide the knowledge base necessary to support appropriate activities performed and authorized for the respective certification level. Certification requirements for classroom coursework and examination have been maintained as originally proposed for Manure Hauler Level 3 and Manure Broker Level 1 and Level 2.

Additionally, the final form regulations have been modified to include the provision for 'conditional' certification of a Level 2 Commercial Manure Hauler. This occurs in a case where an individual needs to be hired by the commercial manure hauler or broker to cover an unforeseeable circumstance that leaves that owner of the hauling or broker business without personnel during a critical time of the year and in order to prevent an environmental harm. The individual may be certified in an expedient manner through cooperative efforts between the Department and the employer. Provisions have been added to the final form regulation which will allow an employer seeking to obtain "conditional" certification for a newly hired employee do so through notification to the Department. The conditional certification is good for 5 business days, after which the conditionally certified employee shall meet the full certification requirements for a Level 2 Commercial Manure Hauler.

Certification time frames and recertification requirements

Language in the final-form regulations have been consolidated and modified to clarify the certification time frames and the continuing education requirements for each category and certification level. Certification time frames for all levels (manure hauler and broker) have been standardized to 3 years, requiring an individual to obtain the necessary continuing education credits in competency areas prescribed for the particular levels of certification. Retesting requirements for recertification have been deleted from the final form regulations. Individuals holding a Manure Hauler Level 1 certification will be required to complete an updated worksheet, developed by the Department, in lieu of accumulating continuing education credits.

Recordkeeping

The act specifically requires all certified commercial manure haulers and brokers maintain records of all manure transport and brokering activities. The recordkeeping requirements of the proposed regulations were developed to satisfy the requirements of the act while maintaining consistency with the recordkeeping requirements of the Act 38 and its regulations, in particular recordkeeping requirements of concentrated animal operations, concentrated animal feeding operations and other agricultural operations volunteering to meet requirements of Act 38. The final-form regulations have been modified to delete the requirement for annual submission of records by the certified manure hauler or broker to the Department. Recordkeeping provisions require all certified haulers and brokers to maintain specified records for inspection by the Department.

Under this notice, the Department will accept additional comments to the proposed final-form rulemaking for 15 days. The extended comment period will commence on August 12, 2006, through and including August 28, 2006.

Contact Person, Availability of Draft Final Regulations and Submission of Comments

The Department will accept written comments as well as comments transmitted by means of e-mail on the draft final-form rulemaking regarding the Program. Comments will not be accepted by facsimile, telephone or voice mail. Commentators shall set forth the specific section of the proposed final-form rulemaking they are addressing. Comments sent by means of e-mail must include the following in the subject heading of the transmission: "Comments on Commercial Manure Hauler & Broker Certification ANFR." E-mail transmissions as well as written comments must include the commentator's name and address. Written comments must be received by the Department on or before August 28, 2006.

The draft final-form amendments are available electronically through the Department's website www.agriculture.state.pa.us. To request a copy of the draft final-form rulemaking, contact Johan Berger, Department of Agriculture, Commercial Manure Broker and Hauler Program, 2301 North Cameron Street, Harrisburg, PA 17110-9408, (717) 772-4189, joberger@state.pa.us.

DENNIS C WOLFF,
Secretary

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DEPARTMENT OF LABOR AND INDUSTRY

[34 PA. CODE CH. 127]

Medical Treatment Review; Notice of Correction; Comment Period Extension

Notice of the Department of Labor and Industry's (Department's) proposal to amend 34 Pa. Code Chapter 127, including Subchapter C (relating to medical treatment review) was published at 36 Pa.B. 2913 (June 10, 2006).

Two errors appeared in the document proposing new regulations at 36 Pa.B. 2913 (June 10, 2006). The errors were in Subchapter C, 34 Pa. Code §§ 127.401—127.670 (relating to Medical Treatment Review), and in the preamble at 36 Pa.B. 2913, 2915.

Due to a typographical error, the proposal did not accurately reflect the Department's intent to rescind Subchapter C and replace it with Subchapter E. The correct preamble should read as follows:

Subchapter E. Medical Treatment Review

The Department proposes rescinding §§ 127.401—127.670 and adding Subchapter E (relating to Medical Treatment Review).

The correct version of the proposal appears in Annex A, with ellipses referring to the existing text of the proposal.

In light of the potential for confusion relating to this error, the Department will now accept comments relating to the rescission of the existing Subchapter C until September 18, 2006.

Contact Person

Interested persons may submit written comments relating to this correction to Eileen Wunsch, Chief, Health Care Services Review Division, Bureau of Workers' Compensation, Department of Labor and Industry, Chapter 127 Regulations—Comments, P. O. Box 15121, Harrisburg, PA 17105, ra-li-bwc-administra@state.pa.us. Written comments must be received within 30 days of the publication of this notice in the *Pennsylvania Bulletin*. Written comments received by the Department may be made available to the public.

Annex A

TITLE 34. LABOR AND INDUSTRY

PART VIII. BUREAU OF WORKERS' COMPENSATION

**CHAPTER 127. WORKERS' COMPENSATION
MEDICAL COST CONTAINMENT**

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Subchapter C. [**MEDICAL TREATMENT REVIEW**]
(Reserved)

§§ 127.401—127.407. [Reserved].

§§ 127.451—127.479. [Reserved].

§§ 127.551—127.556. [Reserved].

§§ 127.601—127.627. [Reserved].

§§ 127.651—127.670. [Reserved].

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