

PROPOSED RULEMAKING

DEPARTMENT OF AGRICULTURE

[7 PA. CODE CH. 106]

Aquaculture Development Plan

The Department of Agriculture (Department), under sections 15 and 18(c) of the Aquaculture Development Law (act), 3 Pa.C.S. §§ 4215 and 4218(c) (relating to aquacultural plan; and aquaculture development account), proposes to establish Chapter 106 (relating to aquaculture development plan). Section 15 of the act requires the Department to "develop a plan to promote and develop the aquaculture industry in this Commonwealth." Section 15 of the act further states that the economic development and exportation of products shall be components of the plan. Section 18(c) of the act allows the Department to use funds in the Aquaculture Development Account for administration of aquaculture programs in the Department, aquaculture research and to provide low interest loans to aquacultural producers for development, expansion and modernization of aquaculture facilities.

The proposed regulations establish various programs that comprise the overall aquacultural plan required by the act. The programs will promote and encourage development of the aquaculture industry in this Commonwealth. The programs delineate the procedures governing the submission, processing and review of applications. In addition, they set forth the documentation required to accompany the applications, eligibility criteria, criteria for the various programs and verification, cancellation, notification and reporting requirements.

Background

The aquaculture industry in this Commonwealth currently has over 165 registered production facilities, over 100 suppliers and several institutions conducting valuable research. At this time, no other state has regulations for aquaculture promotion and development. States supporting aquaculture development generally do so through statements of policy and specific marketing programs supported by general legislation and not requiring regulations. Full funding and the implementation of this proposed rulemaking will give this Commonwealth a competitive advantage by providing low interest loans and marketing programs not available in many other states. In addition, this proposed rulemaking will encourage further development of the aquacultural industry by including aquaculture in all promotional and economic development programs that are currently made available to other agriculture industry sectors. The proposed rulemaking is designed to increase the amount of aquaculture production in this Commonwealth from the current \$8.5 million in annual farmgate sales to \$30 million with an increase in employment of at least 250 jobs. The marketing programs in this proposed rulemaking is designed to extend benefits and programs to the aquaculture community that are similar to those available to other small businesses within this Commonwealth.

The act gives the Department the authority to establish a loan program to provide low-interest loans to aquaculture producers for the development, expansion and modernization of facilities. In addition, the act allows

the Department to develop aquacultural promotion programs. Under this authority, the Department created this proposed rulemaking that will provide for the collection and promulgation of valuable information, marketing tools, aquaculture education and the promotion of Commonwealth aquaculture.

Therefore, in the interest of continuing to carry out its statutory duties and promoting the development and implementation of programs that benefit the aquaculture community, the Department has promulgated this proposed rulemaking. This proposed rulemaking is intended to establish reasonable standards, criteria and procedures for the administration and implementation of loan and promotional programs under the Aquacultural Development Plan.

Summary of Major Features

Subchapter A (relating to aquaculture production development program) sets forth the Aquaculture Production Development Program (APDP). The APDP is designed to stimulate the expansion and assist in the retention of fish farms for the purpose of creating new businesses and jobs and retaining existing business within this Commonwealth. The APDP provides low-interest loan financing for a portion of the costs of land, building, machinery and equipment, working capital and training to businesses unable to fully finance these projects with equity, bank financing or other private and public sources. The APDP may be used in conjunction with other State financing programs or with programs operated by local and regional economic development providers.

Subchapter B (relating to aquaculture producer resource program) sets forth the Aquaculture Producer Resource Program (APRP). The APRP provides potential aquaculture producers with information on a variety of aquaculture subjects. The APRP will provide a clearinghouse through which production information will be gathered and made available to producers and other interested parties.

Subchapter C (relating to aquaculture education enhancement program) sets forth the Aquaculture Education Enhancement Program (AEEP). The purpose of the AEEP is to increase the educational opportunities related to aquaculture available to Commonwealth residents. The AEEP will provide opportunities for elementary, high school and college students, current and prospective aquaculture producers and other citizens to learn about aquaculture either through direct programming or through AEEP grants. The AEEP will encourage schools and universities to integrate aquaculture education into their curriculums by providing educational materials and grants for program development. The AEEP provides for the organization of workshops on aquaculture issues of interest to producers and educators. The AEEP will provide new information on production techniques and marketing strategies. The AEEP will develop, publish and distribute educational materials for consumers, educators and propagators.

Subchapter D (relating to aquaculture market information program) establishes the Aquaculture Market Information Program (AMIP). The purpose of the AMIP is to increase producer access to timely, verifiable information on market prices. The AMIP will provide a voluntary mechanism through which market information will be gathered and made available to producers and other interested parties.

Subchapter E (relating to aquaculture product identification program) establishes and delineates criteria for the Aquaculture Product Identification Program (APIP). The purpose of the APIP is to increase sales of Commonwealth produced aquaculture products by increasing consumer demand through improved awareness and labeling. The APIP will provide a voluntary mechanism through which Commonwealth produced aquaculture products may be identified.

Subchapter F (relating to aquaculture product promotion program) sets forth the Aquaculture Products Promotion Program (APPP). The purpose of the APPP is to increase sales of aquaculture products through public awareness of aquaculture product availability and attributes. To the extent possible, the APPP will provide opportunities for industry representatives to participate in a variety of events such as food shows, recreational sports shows, pet and water gardening related trade shows, aquaculture industry shows and other related commercial trade shows where buyers of aquaculture products are expected to attend. The APPP will also attempt to provide opportunities for aquaculture industry representatives to participate in a wide range of events such as the Pennsylvania Farm Show, fairs, community festivals, farm-city activities, instore product promotions and other events at which a large number of consumers would be exposed to product information. The APPP will coordinate and facilitate contact between aquaculture propagators, suppliers and buyers by arranging meetings with purchasers such as wholesalers, grocery store and restaurant buyers and consumers.

Subchapter G (relating to aquaculture export promotion program) establishes the Aquaculture Export Promotion Program (AEPP). The purpose of the AEPP is to increase export sales of aquaculture products and aquaculture supplies through buyer awareness of aquaculture product and supply availability and attributes. The AEPP will provide opportunities for industry representatives to participate in a variety of events such as food shows, recreational sports shows, pet and water gardening related trade shows, aquaculture industry shows and other related commercial trade shows where international buyers of aquaculture products are expected to attend. The AEPP will facilitate contact between aquaculture propagators, suppliers and international buyers. The AEPP will increase international awareness of Commonwealth aquaculture products and services by organizing product awareness events.

This proposed rulemaking establishes the aquacultural plan required by section 15 of the act and sets forth the basic process by which the Department may exercise its administrative discretion with respect to the expenditure of the funds in the aquaculture development account and those funds as may be appropriated to it by the General Assembly for aquaculture development and promotion programs.

Fiscal Impact

Commonwealth

The proposed rulemaking will impose additional costs and may have a fiscal impact upon the Commonwealth, including an initial allocation of funds and projected increases in program costs. Section 18 of the act creates a separate account in the State Treasury known as the Aquaculture Development Account. The sources of the funds in the account are the fees and charges generated under the act. The moneys in the Aquaculture Development Account may be used for the administration of

aquaculture programs developed by the Department. Up to 10% of the funds in the account may be used for aquaculture research. The act also provides that after administrative costs are covered, the remainder of the funds may be used to provide low interest loans to aquaculture producers for development, expansion and modernization of facilities. Moneys for use in the development and administration of the grant and loan programs established by this proposed rulemaking will need to be provided through future appropriations to the Aquaculture Development Account. Annual operating and implementation costs of the loan program will be approximately \$150,000 per year. The marketing and grant programs will cost \$150,000 to \$500,000 per year depending on implementation.

Political Subdivisions

The proposed rulemaking will impose no costs and have no fiscal impact upon political subdivisions.

Private Sector

The proposed rulemaking will impose minimal costs on those individuals and organizations that are interested in applying for loan or grant moneys. The costs that may be associated with the proposed rulemaking would involve the time spent to obtain and fill out a loan or grant application. Organizations and individuals receiving loans or grants would benefit by receiving funds to cover all or part of the costs associated with developing or developing and implementing the projects in their loan or grant application. The private sector will also benefit through the realization of growth and modernization of the industry through the low interest loan, educational and promotional programs established by this proposed rulemaking.

General Public

The proposed rulemaking will impose no costs and have no fiscal impact on the general public. The farm community and the general public will benefit through the new jobs, opportunities and industry growth, which will likely result from the programs established by this proposed rulemaking.

Paperwork Requirements

The proposed rulemaking will result in an increase in paperwork. The Department will have to develop loan and grant application forms and loan and grant agreements to administer the program. However, the administrative provisions of the Aquaculture Development Plan are similar to the administrative provisions of other programs and the Department has already developed loan and grant application forms and loan and grant agreements for use in administering the programs.

Public Comment Period

Interested persons are invited to submit written comments regarding the proposed rulemaking within 30 days following publication in the *Pennsylvania Bulletin*.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on May 3, 2002, the Department submitted a copy of this proposed rulemaking to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House and Senate Agriculture and Rural Affairs Committees. In addition to submitting the proposed rulemaking, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available to the public upon request.

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

Contact Person

Further information is available by contacting the Department of Agriculture, Bureau of Market Development, Aquaculture, 2301 North Cameron Street, Harrisburg, PA 17110-9408; Attn: Leo Dunn, (717) 783-8462.

Effective Date

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

SAMUEL E. HAYES, Jr.,
Secretary

Fiscal Note: 2-140. (1) Aquaculture Development Account; (2) Implementing Year 2001-02 is \$71,660; (3) 1st Succeeding Year 2002-03 is \$108,260; 2nd Succeeding Year 2003-04 is \$275,000; 3rd Succeeding Year 2004-05 is \$280,500; 4th Succeeding Year 2005-06 is \$286,110; 5th Succeeding Year 2006-07 is \$291,832; (4) Fiscal Year—2000-01 —\$53,921; Fiscal Year—1999-00—\$15,000; Fiscal Year—1998-99—\$10,000; (7) General Government Operations; (8) recommends adoption.

Annex A

TITLE 7. AGRICULTURE

PART IV. BUREAU OF MARKET DEVELOPMENT

CHAPTER 106. AQUACULTURE DEVELOPMENT PLAN

Subchap.

- A. AQUACULTURE PRODUCTION DEVELOPMENT PROGRAM
- B. AQUACULTURE PRODUCER RESOURCE PROGRAM
- C. AQUACULTURE EDUCATION ENHANCEMENT PROGRAM
- D. AQUACULTURE MARKET INFORMATION PROGRAM
- E. AQUACULTURE PRODUCT IDENTIFICATION PROGRAM
- F. AQUACULTURE PRODUCT PROMOTION PROGRAM
- G. AQUACULTURE EXPORT PROMOTION PROGRAM

Subchapter A. AQUACULTURE PRODUCTION DEVELOPMENT PROGRAM

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§ 106.1. Program objectives.

The APDP is designed to stimulate the expansion and assist in the retention of fish farms for the purpose of creating new businesses and jobs and retaining existing business within this Commonwealth. The APDP provides low-interest loan financing for a portion of the costs of land, building, machinery and equipment, working capital and training to businesses unable to fully finance these projects with equity, bank financing, or other private and public sources. The APDP may be used in conjunction

with other State financing programs or with programs operated by local and regional economic development providers.

§ 106.2. Definitions.

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

AEEP—The Aquaculture Education Enhancement Program.

AEPP—The Aquaculture Export Promotion Program.

ALO—*Area loan organization*—A local development district, industrial development agency organized and existing under the Pennsylvania Industrial Development Authority Act (73 P. S. §§ 301—314) or another nonprofit economic development organization approved by the Department to evaluate and administer loans under this chapter.

AMIP—The Aquaculture Marketing Information Program.

APDP—The Aquaculture Production Development Program.

APIP—The Aquaculture Product Identification Program.

APPP—The Aquaculture Products Promotion Program.

APRP—The Aquaculture Producer Resource Program.

Act—The Aquaculture Development Law, 3 Pa.C.S. §§ 4201—4223.

Advisory Committee—The Aquaculture Advisory Committee.

Department—The Department of Agriculture of the Commonwealth.

Local service provider—An organization not meeting the definition of an "ALO," but approved by the Department to evaluate and administer loans under this chapter. The term includes a commercial lending institution.

Secretary—The Secretary of the Department.

§ 106.3. Eligibility.

(a) *Eligible applicants.*

(1) Borrowers shall be aquaculture enterprises whose project is located within this Commonwealth.

(2) Each applicant approved for participation shall comply with the criteria established by the act and this chapter, including the general program requirements and all licensing and governmental permitting requirements.

(3) Projects whose applicants, principals, primary consultants or senior employees, or both, have criminal indictments or convictions or have been directly associated with two or more aquaculture ventures which have not been successful in the opinion of the Department, as set forth in subsection (e)(4), may be deemed ineligible.

(b) *Eligible activities.*

(1) The APDP will provide loan or loan guarantees to approved applicants for development or improvement of aquaculture production facilities. Projects may consist of land, buildings, machinery and equipment, construction or renovation costs, working capital, environmental stewardship and compliance and training which needs to be acquired, or used as part of a for-profit project or venture by an aquaculture enterprise.

(2) For a project to be eligible for environmental stewardship and compliance funds, the Department must receive a certification that the proposed project is required to, and will be successful in, bringing the borrower into compliance with the environmental laws or regulations that are sought to be addressed by the project, or that the project adopts generally acceptable pollution prevention and environmental stewardship practices.

(3) The required certification shall be obtained from one of the following:

(i) The Department of Environmental Protection (DEP).

(ii) If DEP does not issue certifications for projects of that general description (for example, for wastewater discharge projects or bird exclusion projects), an environmental professional approved by the Department.

(4) Projects shall have a direct relationship to increasing the breadth and profitability of aquaculture production within this Commonwealth.

(c) *Eligible costs.*

(1) *Land costs.* Land costs may include acquisition, site preparation and testing, utilities, site mapping, legal and other related costs. To be eligible, land costs shall be directly associated with the purchase, renovation, or new construction of a building or production facility to be used for aquaculture.

(2) *Building costs.* Building costs may include, building acquisition, construction, rehabilitation and engineering, architectural, legal and other related costs.

(3) *Machinery and equipment costs.* Machinery and equipment costs may include costs of acquisition, delivery and installation. These costs are eligible if associated with acquisition of machinery and equipment that the borrower has newly purchased, even if the machinery had previously been in service with an unrelated user. Costs of mobile equipment are eligible only if, the equipment is not titled or registered for highway use.

(4) *Working capital.* Capital used by an aquaculture enterprise for operations, including personnel, marketing and training costs.

(d) *Limitations.* The following limitations apply to eligible costs:

(1) Eligible costs of land, buildings and machinery and equipment is limited to actual costs incurred by the borrower. Unrealized appreciation in value may not be considered in determining eligible costs.

(2) Fees charged to the borrower by brokers, finders, financing consultants and economic agencies are not eligible project costs, except that fees payable to the Department, if any, and fees and expenses charged to the borrower by an ALO or local service provider may be included as part of the eligible project cost.

(3) Costs of a borrower's own employees are treated as working capital expenditures and are subject to the program's limitations on working capital financing even if the costs are incurred in connection with land acquisition or preparation, building acquisition or construction, or machinery and equipment acquisition and installation.

(e) *Restrictions.*

(1) *No delinquencies.* The borrower and its principals may not be delinquent in or in default of an existing private or public loan relating to the borrower, unless they have entered into a refinancing/payback agreement satisfactory to the respective creditors and are fully in compliance with the terms of that agreement. The bor-

rower and its principals shall be required to execute an affidavit to that effect. For the purposes of this program, a "principal" of a borrower is a record or beneficial owner of 20% or more of an ownership interest in the borrower.

(2) *Taxes current.* The borrower and its principals must be current in payment of all applicable Federal, State and local taxes unless they have entered into a workout agreement satisfactory to the respective taxing authority and are fully in compliance with the terms of that agreement. The borrower and its principals will be required to execute an affidavit to that effect.

(3) *Conflicts of interest.* The borrower and its principals and managerial officers shall disclose any potential conflicts of interest with any officials or employees of the Commonwealth or with any officials or employees of the ALO or local service provider involved in submission of the borrower's application. A member of the Aquaculture Advisory Committee may apply for a loan under this chapter provided all decisions regarding the loan application are subject to 65 Pa.C.S. § 1103(j) (relating to restricted activities) and the action does not violate the State Adverse Interest Act (71 P. S. §§ 776.1—776.9), or Pa. Code Chapter 7, Subchapter K (relating to code of conduct for appointed officials and state employees).

(4) *Nonsuccessful aquaculture ventures.* The borrower, its principals, primary consultants or senior employees may not have been directly associated—such as being Executive Officers, Board members, senior management, partners, principals, consultants or senior employees—with aquaculture ventures which did any of the following:

(i) On two or more occasions resulted in financial losses for the principal investors, shareholders or clients.

(ii) On two or more occasions declared bankruptcy.

(iii) Have existing violations of local, State, Federal or international law.

(iv) Had a license denied, suspended or revoked or were forced to suspend or cease operations because of past violations of local, State, Federal or international law.

§ 106.4. Ineligible activities.

(a) Projects are not eligible if they relate to any of the following activities:

(1) Refinancing any portion of the total project cost, except for short-term "bridge" financing when the bridge financing is being promptly replaced by the proceeds of the loan and the bridge financing has been disclosed to the Department and the ALO in connection with its review of the loan and approved by the ALO or local service provider.

(2) Speculation in any type of property, real or personal.

(3) Providing funds, directly or indirectly, for payment, whether as loan repayment, dividend distribution, return of capital, loans, or otherwise, to owners, partners or shareholders of the aquaculture enterprise, except as ordinary compensation for services rendered.

(4) Related party transactions, that is, costs associated with a transaction when the buyer and the seller are one and the same or are related to each other by blood, marriage or law.

(5) Projects that have commenced, or to which the borrower has committed, before receiving approval of the APDP loan, unless the borrower has received nonprejudicial approval to commence.

(6) Loans may not be made for the purpose of investing in interest bearing accounts, certificates of deposit or other investments not related to the objectives of the APDP funds.

(7) Loans may not be used to acquire an equity position in a private business.

(8) Loans may not be used to subsidize interest payments on an existing loan.

(9) Loans may not be used to provide the equity contribution required of borrowers under other State or Federal programs.

(10) Loans may not be used to enable the borrower to acquire an interest in a business, either through purchase of stock or assets.

(b) *Nonprejudicial approvals.*

(1) The borrower, with the approval of the ALO or local service provider, may request nonprejudicial approval from the Department. If the Department grants nonprejudicial approval, the borrower may continue with the project while its loan is under review. In these instances, the borrower is continuing at its own risk in the event the ALO, local service provider or the Department does not approve the loan.

(2) Prior to receiving nonprejudicial approval, the borrower may place orders, sign sales agreements and make security deposits on machinery and equipment and land and buildings prior to approval by the local service provider, ALO or the Department without making its project ineligible. However, unless there is a nonprejudicial approval in place, the borrower may not, prior to accepting the commitment letter and returning it to the Department do any of the following:

(i) Occupy the land or buildings to be financed with the loan.

(ii) Install or use the machinery and equipment except under a short-term lease or similar arrangement subject to cancellation by the borrower without substantial penalties.

(iii) Finance any working capital needs.

(3) When the local service provider or ALO has approved the borrower's request for a nonprejudicial approval, the Department may also grant nonprejudicial approval to allow the total aquaculture operation to be considered as the total eligible project cost if the renovations or expansion being considered will allow the farm to meet new environmental standards or economic efficiencies that allow the farm to sustain economic viability undercurrent markets.

(4) *Funds available basis.* Program activities will not be undertaken unless funds are available.

(5) *Use of funds.* Funds received through an APDP loan may be used for land and building acquisition, land and building improvements, building/facility renovation and new construction, machinery and equipment acquisition and installation, environmental stewardship and compliance, working capital and training. The project shall be directly related to production aquaculture. Processing of aquaculture products is eligible only if part of a total project for an integrated aquaculture production operation and at least 80% of the aquacultural product processed is produced within this Commonwealth.

§ 106.5. Program requirements.

(a) *Loan size.* The maximum loan amount for land, buildings, machinery and equipment is \$750,000 or 50%

of the total eligible project cost, whichever is less. The maximum loan amount for working capital is \$100,000 or 50% of the total eligible project cost whichever is less. The minimum loan amount is \$10,000.

(b) *Other required investment.* Loans will be made in conjunction with another source of financing for the eligible costs incurred, such as another lender or equity from the owners or investors. Matching lending sources shall have either equivalent or longer terms than the APDP loan.

(c) *Jobs.* One full-time equivalent job shall be demonstrated to be created or preserved within 3 years from completion of the project funded under the APDP.

(d) *Loan security.*

(1) Loans shall be secured at the highest lien position available on one or more of the following assets:

(i) Land.

(ii) Buildings

(iii) Machinery.

(iv) Equipment.

(v) Accounts receivable.

(vi) Inventory.

(2) The Department may require personal or corporate guarantees or may require other types of collateral as circumstances allow. The Department must have a collateral position of no less than a second lien on the assets being funded by the APDP unless specifically waived in writing by the Department.

(e) *Terms.* Loans used for real estate will have a repayment period of up to 10 years. Loans used for machinery and equipment will have a repayment period of up to 7 years. Loans used for working capital will have a repayment period of up to 3 years. In projects where two or more uses of APDP funds are planned, loan terms may be blended. The Department may approve a loan package containing an "interest only" payment period not to exceed 24 months at the beginning of the project term with the regular payments starting at the end of this period. When an "interest only" payment period is approved the repayment period of the loan will be extended. The repayment periods noted in this subsection will begin at the end of the interest only period, that is, a loan approved with a 10-year repayment period and a 12-month interest only period would be repaid over an effective loan period of 11 years.

(f) *Interest rates.* An annual fixed rate of 2%.

(g) *Fees.*

(1) Fees charged to the borrower by brokers, finders, financing consultants and economic agencies are not eligible project costs, except the fees payable to the Department, if any, and fees and expenses charged to the borrower by the local service provider or ALO may be included as part of the eligible project cost.

(2) Reasonable loan processing fees may be charged to the borrower by the service provider or ALO, if they are set forth in the commitment letter for the loan. The applicant should check with the local service provider or ALO regarding the fees that will be charged to the applicant for processing a loan application or in closing a loan, or both, under the APDP program.

(h) *Aggregate limits on APDP financing.* A borrower may not receive more than \$750,000 in new financing under the APDP program in any 12-month period.

(1) *Relocation.* The borrower may not relocate from one area of this Commonwealth to another without at least a 25% increase in net employment. For purposes of this paragraph, no relocation will be deemed to be a relocation from one area of this Commonwealth to another that is either of the following:

- (i) Within the same county.
 - (ii) Within the same labor market as determined by the United States Department of Labor.
- (2) If the recipient of an APDP loan relocates outside of this Commonwealth, the balance of the APDP loan remaining shall be immediately payable to the Department.

(i) *Priority.* Projects containing any of the following factors will receive priority in the approval and funding process for a loan:

- (1) Applicants with good credit ratings containing no late payments or write-offs.
- (2) Current aquaculture facilities that have been in business 5 years or more and are doing environmental stewardship enhancements or facility upgrades.
- (3) Facilities that currently have environmental stewardship enhancements such as bird and animal enclosures, secondary escapement prevention and discharge treatment structures such as settling basins and artificial wetlands.
- (4) Principals having commercial aquaculture experience in a proven profit-making venture.
- (5) Farmers of some other agricultural product wishing to transition to, or integrate, aquaculture in their farm operation.
- (6) Equipment or management practices that improve the production efficiency of an operation.
- (7) Applications that include environmental stewardship enhancements.
- (8) Projects whose principals are Commonwealth residents will receive first consideration for funding.

(j) *Participation agreement.* The approved, signed contract for an APDP activity will constitute the participation agreement. An approved APDP loan program applicant shall enter into a contract. The contract will set forth the amount of funds and other terms and conditions as the Department may require. To be considered for an APDP loan, an applicant shall submit an application on a form provided by the Department. Upon receipt of a completed, signed application, the Department will review and process the application as set forth in §§ 106.6—106.8 (relating to application submission and approval procedure; application evaluation criteria; and processing of applications) and issue an approval or denial of the application. Approved applicants will be required to execute a contract before funding is released.

(k) *Default.* A participant who fails to abide by the terms of the contract or the act or this chapter shall be in default.

(l) *Determination of fees.* The participation fees for loans and loan guarantees may be set by the Department at rates not to exceed 2.5% of the total project amount requested.

§ 106.6. Application submission and approval procedure.

(a) The Department will review each application in the order it is received. Applications shall be submitted through an ALO or local service provider. The applicant is

responsible for updating the application if changes occur during the review. Failure to do so may result in the application being declared ineligible or, if approved, the loan approval may be withdrawn.

(b) The Department will formally notify the ALO or local service provider of its decision to approve or reject a loan application within 30 business days of receipt of the completed loan application from the ALO or local service provider.

(c) Approved projects will receive a loan approval memorandum. The ALO or local service provider shall sign and return the loan approval memorandum within 30 days. Once accepted by the ALO or local service provider, the loan approval memorandum is valid for 90 days.

(d) *Loan approval criteria.* Before the Department will authorize disbursement of loan funds, the ALO or local service provider shall confirm:

- (1) All other sources of funding will be in place at the time of closing.
- (2) The use of the funds remains as presented in the project application.
- (3) There are no material changes to collateral or other terms and conditions of the loan as previously approved by the Department.
- (4) The loan will close into an escrow account.
- (5) The conditions of the ALO or local service provider's commitment letter with the applicant have been satisfied.
- (6) The Federal Employee Identification Number (FEIN) and Social Security numbers of the applicant, occupant and all guarantors.
- (7) The principals are residents of this Commonwealth.
- (8) The project will have expected sales of \$1,000 or more per year.
- (9) The APDP applicant has applied to be registered as an artificial propagator.
- (10) The total number of jobs created or preserved by the proposed project.
- (11) The number of jobs to be created or retained per APDP dollar invested.
- (12) The dollar amount of private investment to be leveraged as a result of the APDP investment.

(13) The strategic importance to the Commonwealth of the business and the borrower being assisted or the area being served, or both.

(14) The collateral position of the Department will not be less than a second lien on the assets being funded unless specifically approved in writing by the Department.

(e) Material changes in project application, collateral or terms shall be reviewed by the ALO or local service provider, and recommended to and approved by the Department.

(f) The ALO or local service provider will make arrangements to close the APDP loan within 7 business days of the selected closing date. If the APDP loan does not close within that time period, the ALO or local service provider shall return the APDP funds to the Department.

(g) APDP loan funds will be disbursed at the loan closing between the ALO or local service provider and the borrower. APDP loan proceeds may be disbursed to the borrower or into an escrow account with a commercial

lending institution. Interest will accrue on the APDP loan from the date of closing. Unless otherwise agreed to by the ALO or local service provider, with the approval of the Department, regular amortization payments of principal and accrued interest on the APDP loan will begin at time of closing whether or not the loan is disbursed in whole or in part into escrow. The first payment of principal and interest will be due the first day of the second calendar month following the calendar month in which closing occurs.

§ 106.7. Application evaluation criteria.

(a) *Evaluation.* The ALO or local service provider will evaluate an application based on the ALO or local service provider's standard loan eligibility criteria as well as the factors in the act, this chapter and the APDP application

(b) *Applicant eligibility.* The Department will review applications to determine applicant eligibility according to the criteria in this chapter. Only eligible applicants will be considered for participation in the APDP.

(c) *Application completeness.* The Department will not consider an application for an APDP loan unless it contains the required information and items in this chapter.

(d) *Release and hold harmless.* Eligible participants will release and hold harmless the Commonwealth and the Department and their agents and officers from any liabilities for any losses as a result of participation in the APDP.

§ 106.8. Processing of applications.

(a) *Approval or denial.* The Department may approve, approve with special conditions or reject applications and issue participation approval in accordance with the general considerations and criteria of the act and this chapter.

(b) *Processing.* An application for participation in the APDP will be processed in the following manner:

(1) *Dating.* The applications will have the initial date of the postmark or initial date of receipt, whichever is earlier, noted on the application by Department staff. If the application is determined to be incomplete, the effective date of the application is the date on which all additional information is received and the application is determined by the Department to be complete. This date will be noted on the application.

(2) *Completeness and accuracy.* Upon receipt of an APDP application and the required supporting documentation, the Department will review the information for completeness and accuracy.

(3) *Eligibility.* Upon receipt of an APDP application and the required supporting documentation, the Department will review the information to verify applicant eligibility.

(4) *Applications from ineligible applicants.* An application from an ineligible applicant will be returned to the applicant through the ALO or local service provider with a written explanation of why the applicant is considered ineligible.

(5) *Incomplete or inaccurate application from eligible applicants.* If the Department determines an application from an eligible applicant is incomplete or inaccurate, final processing of the application may be discontinued or additional data may be requested. If additional data is requested, the request shall be in writing and will be sent to the applicant through the ALO or local service provider. The processing of the application will cease until

the ALO or local service provider supplies the requested data. The Department may terminate the processing of an incomplete application when the additional data is not supplied within 10 business days of the request for the data.

§ 106.9. Cancellation/default.

The Department, upon a determination that the recipient has violated the act, this chapter or the participation agreement may cancel an APDP loan approval. An APDP loan recipient will be considered to be in default if the recipient moves the funded business to a site not within this Commonwealth. Upon cancellation, the Department will seek recovery of all APDP loan funds.

§ 106.10. Right of recovery.

The Department has the right to make a claim for and receive from the applicant moneys not expended in accordance with the act, this chapter, or the loan agreement and any interest thereon.

§ 106.11. Deficits.

The Department's financial obligation or liability is limited to the amount approved in the terms of a loan. The Department is not responsible for cost overruns or other expenses incurred by loan recipients.

§ 106.12. Contact information.

(a) Program inquiries and applications shall be directed to:

Aquaculture Production Development Program
Bureau of Market Development
Department of Agriculture
2301 North Cameron Street
Harrisburg, Pennsylvania 17110
Telephone Number: (717) 783-8462
Facsimile Number: (717) 787-5643

(b) The Department may require an applicant to submit additional documentation as may be necessary to complete, verify or clarify the application.

Subchapter B. AQUACULTURE PRODUCER RESOURCE PROGRAM

Sec.	
106.21.	Program objectives.
106.22.	Limitations.
106.23.	Notice of program availability.
106.24.	Recordkeeping.

§ 106.21. Program objectives.

The purpose of the APRP is to provide potential aquaculture producers with information on a variety of aquaculture subjects. The APRP will provide a clearinghouse through which production information will be gathered and made available to producers and other interested parties.

§ 106.22. Limitations.

(a) *Extent of program activities.* The APRP will organize a system to collect information on aquaculture into a centralized source. This information will include: species information, culture techniques, facility permitting requirements, supply sources, production planning information, business plan formats, environmental issues, food safety practices and a central directory of aquaculture producers by county and product. Distribution will be made through the Department's Internet site and through fax or mail to any individual upon request.

(b) *Use of funds.* Funds allocated for the APRP will be used solely for the purposes set forth in this chapter.

(c) *Funds available basis.* Program activities will not be undertaken unless funds are available.

§ 106.23. Notice of program availability.

(a) The public will be notified of the availability of APRP materials in any of the following manners:

(1) *Direct mailing.* A mailing targeted to individuals whom have requested inclusion on the mailing list from the APRP administrator at the date of mailing.

(2) *Internet access.* Individuals may access APRP materials and information through the Department's website.

(b) *Information to be included in notice.* The notice will include the type and description of materials to be available, the fee for copies (if appropriate), the date materials will be available, the address and contact information where the materials may be requested.

§ 106.24. Recordkeeping.

APRP materials will be maintained by the Department for 5 years from the date of publication or entry into the APRP system.

Subchapter C. AQUACULTURE EDUCATION ENHANCEMENT PROGRAM

GENERAL PROVISIONS

- Sec.
- 106.41. Program objectives.
- 106.42. Limitations.
- 106.43. Notice of activities.
- 106.44. Conflict of interest.
- 106.45. Recordkeeping.
- 106.46. Cancellation/default.
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AQUACULTURE EDUCATION ENHANCEMENT ACTIVITY PROGRAM

- 106.51. General conditions.
- 106.52. Application.
- 106.53. Review of applications.
- 106.54. Processing of applications.
- 106.55. Notice of disposition of application.
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AQUACULTURE EDUCATION ENHANCEMENT GRANT PROGRAM

- 106.61. Grant amount.
- 106.62. General conditions.
- 106.63. Application.
- 106.64. Review of applications.
- 106.65. Processing of applications.
- 106.66. Notice of disposition of application.

GENERAL PROVISIONS

§ 106.41. Program objectives.

The purpose of the AEEP is to increase the educational opportunities related to aquaculture available to citizens of this Commonwealth. The AEEP will provide opportunities for elementary, high school and college students, current and prospective aquaculture producers and other citizens to learn about aquaculture either through direct programming or through AEEP grants. The AEEP will encourage schools and universities to integrate aquaculture education into their curriculums by providing educational materials and grants for program development. The AEEP will organize workshops on aquaculture issues of interest to producers or educators, or both, to increase information dissemination. The AEEP will provide new information on production techniques and marketing strategies. The AEEP will develop, publish and distribute educational materials for consumers, educators and propagators.

§ 106.42. Limitations.

(a) *Applicant eligibility.* Only eligible applicants will be considered for the AEEP. To be eligible to participate in activities under the AEEP, applicants shall be associations, companies of this Commonwealth, or educational institutions that are located in this Commonwealth or serve citizens of this Commonwealth through a partnership arrangement with a Commonwealth-based organization. To be eligible to receive AEEP materials or participate in AEEP activities, applicants shall be citizens of this Commonwealth, members of a Commonwealth-based organization or pay a fee determined by the Department. To be eligible to participate in AEEP grant programs, applicants shall be citizens of this Commonwealth or organizations incorporated in this Commonwealth with experience and expertise in aquaculture. Each applicant approved for participation shall comply with the criteria established by the act and this chapter.

(b) *Extent of program activities.* The AEEP will organize educational activities and provide educational materials for eligible applicants. The AEEP may also develop grant programs for eligible applicants to further the purpose of § 106.41 (relating to program objectives).

(c) *Use of funds.* Funds allocated for the AEEP shall be used solely for the purposes in this chapter.

(d) *Funds available basis.* AEEP program activities, program grants and the biennial conference will not be undertaken unless funds are available.

§ 106.43. Notice of activities.

(a) *Eligible applicants.* Eligible applicants will be notified of AEEP activities and grant programs in one of the following manners:

(1) *Pennsylvania Bulletin.* Availability of upcoming AEEP activities and grant programs will be printed in the *Pennsylvania Bulletin*.

(2) *Direct mailing.* A mailing targeted to each educational organization, aquacultural propagator or aquaculture-related business registered with the AEEP administrator at the date of mailing.

(3) *Advertisements.* Advertisements may be published in newspapers and magazines that the Department determines to be effective in letting the targeted audience know of an activity's availability.

(b) *Information to be included in activity notice.* The notice and mailing will include the activity name, dates, location, participation fee, activity package description, number of participation slots available and how an application may be requested.

§ 106.44. Conflict of interest.

A member of the Advisory Committee may apply for participation in AEEP activities and grant programs if all decisions regarding the application are subject to 65 Pa.C.S. § 1103(j) (relating to restricted activities) and the action does not violate the State Adverse Interest Act (71 P. S. §§ 776.1—776.9) or 4 Pa. Code Chapter 7, Subchapter K (relating to code of conduct for appointed officials and State employees).

§ 106.45. Recordkeeping.

An AEEP participant or grant recipient shall maintain all receipts, supporting documents, exit reports and other documents pertaining to the AEEP activity or grant. These records shall be retained for 3 years beginning at the conclusion of the activity. The records shall be made available to the Department upon request.

§ 106.46. Cancellation/default.

An activity, grant or participant approval may be canceled by the Department upon a determination that the approved participant has violated the act, this chapter or the participation agreement, the approved participant violated the activity's rules, or upon failure of the approved participant to satisfy the verification requirements of this chapter. Upon cancellation, the Department may seek recovery of program or grant funds expended by the participant.

§ 106.47. Right of recovery.

The Department has the right to make a claim for and receive from the approved participant any funds not expended in accordance with the act, this chapter or participation or grant agreement.

§ 106.48. Deficits.

The Department is not responsible for cost overruns incurred by an AEEP participant.

**AQUACULTURE EDUCATION ENHANCEMENT
ACTIVITY PROGRAM**

§ 106.51. General conditions.

(a) *Activity participation agreement.* The approved, signed application for an AEEP activity shall constitute the participation agreement. The participant desiring to take part in an AEEP sponsored activity shall sign the application which shall set forth the amount of the participation fee and other terms and conditions as the Department may reasonably require. Upon receipt of a completed, signed application, the Department will review and process the application as set forth in this chapter. The Department will then issue an approval or denial of the application. Approved applicants will be registered for the AEEP activity upon receipt of the participation fee in the AEEP application.

(b) *Default.* A participant who fails to abide by the terms of the participation agreement or the act or this chapter shall be in default.

(c) *Exit survey.* The Department may require an AEEP participant to submit a completed exit survey form.

(1) The requirement will be set forth in the AEEP application.

(2) The Department will develop an activity survey form.

(3) The exit survey form will include questions relating to the participant's involvement in the relevant activity to determine the degree to which the activity contributes to the program's goals.

(4) Information requested will relate to things such as the educational quality and timeliness of the information provided.

(5) When the Department requires the completion of an exit survey, within 4 weeks of completion of participation in an AEEP activity, the participant shall submit to the Department a completed activity survey form.

(d) *Failure to submit exit survey.* When an exit survey is required by the Department, failure to submit the exit survey within the 4-week period will result in a default on the part of the AEEP participant. The Department may direct that the defaulting participant is not eligible for further AEEP participation for 2 years. The Department may extend the verification deadline if it is deter-

mined the participant has made a reasonable effort to verify, but the verification was incomplete, or for extenuating circumstances.

§ 106.52. Application.

(a) *Application required.* Applicants shall submit applications to participate in AEEP activities on forms provided by the Department at the address set forth on the application.

(b) *Application requirements.* An application for an AEEP activity will not be considered by the Department unless the following items are included:

(1) The name, address and contact information (to include telephone, facsimile and Internet, as available) of the participating organization, or individual.

(2) The name and direct contact information for the designated activity contact.

(3) A signature by the individual or authorized organizational representative, attesting to compliance with the provisions of the terms and conditions for participation in the AEEP activity.

(4) Payment in full of the participation fee in the application and payable to the Department.

(c) *Obtaining an application and assistance.* An application for participation under this chapter shall be made on a form prepared by the Department. For applications and assistance, contact the Aquaculture Program, Bureau of Market Development, Department of Agriculture, 2301 North Cameron Street, Harrisburg, Pennsylvania 17110, telephone (717) 783-8462, facsimile (717) 787-5643.

(d) *Additional information.* The Department may require an applicant to submit additional documentation as may be necessary to complete, verify or clarify the application.

(e) *Application deadlines.* Applications for participation under this chapter shall be received by the Department 30 days prior to the date of the AEEP activity the applicant wishes to attend. The Department may approve an application submitted after this deadline if it determines there is adequate time for a thorough review of the application and to issue a written approval to the applicant.

§ 106.53. Review of applications.

(a) *Evaluation.* The Department will evaluate an application based on the applicant eligibility as well as the factors in the act and this chapter.

(b) *Applicant eligibility.* The Department will review applications to determine applicant eligibility according to the criteria in this chapter. Only eligible applicants will be considered for participation in the AEEP activity.

(c) *Application completeness.* An application for an AEEP activity will not be considered by the Department unless it contains the required information and items in this chapter.

(d) *Factors.* Factors to be considered by the Department in selecting AEEP participants include the following:

(1) Participation in previous AEEP and other Department activities.

(2) Appropriateness of the applicant's participation in the specific AEEP activity.

(3) Ability of the applicant to provide a qualified representative during the entire AEEP activity.

(4) Amount of space available for the particular activity.

(5) Ability to pay, or cost-share, the activity costs.

(e) *Release and hold harmless.* Eligible participants will release and hold harmless the Commonwealth and the Department and their agents and officers from liabilities for losses as a result of participation in the specific AEEP activity. This includes damage or loss and unauthorized removal of equipment or supplies at the AEEP activity.

§ 106.54. Processing of applications.

(a) *Approval or denial.* The Department may approve, approve with special considerations or reject applications and issue participation approval in accordance with the general considerations and criteria of the act and this chapter. The Department may impose reasonable restrictions or special conditions upon the issuance of an approval.

(b) *Processing.* An application for participation in an AEEP activity will be processed in the following manner:

(1) *Dating.* The applications shall have the initial date of the postmark or initial date of receipt, whichever is earlier, noted on the application by Department staff. If the application is determined to be incomplete, the effective date of the application is the date on which all additional information is received and the application is determined by the Department to be complete. This date will be noted on the application.

(2) *Completeness and accuracy.* Upon receipt of an AEEP application and the required supporting documentation, the Department will review the information for completeness and accuracy.

(3) *Eligibility.* Upon receipt of an AEEP application and the required supporting documentation, the Department will review the information to verify applicant eligibility.

(4) *Applications from ineligible applicants.* An application from an ineligible applicant will be returned to the applicant with an explanation of why the applicant is considered ineligible.

(5) *Incomplete and inaccurate application from eligible applicants.* If the Department determines an application from an eligible applicant to be incomplete or inaccurate, final processing of the application may be discontinued or additional data may be requested. If additional data is requested, the request shall be in writing and will be sent to the applicant address listed on the AEEP application. The processing of the application shall cease until the applicant supplies the requested data. The Department may terminate the processing of an incomplete application when the additional data is not supplied within 5 business days of the request for the data.

(6) *Order of participation availability.* Availability of participation will be reserved in order of receipt of completed and approved applications and full payment by an approved applicant.

(i) If an activity has more applicants than available slots the Department may increase the number of slots available, or place applicants on a waiting list for space in the event of a cancellation or default.

(ii) The waiting list will be set up in order of receipt of a completed and approved application.

(iii) Slots that become available due to cancellation or default will be assigned in order of the waiting list.

(iv) Applicants on the waiting list will be notified in writing of a cancellation or default. Wait-listed persons will have 7 days from date of notification to respond in writing—either accepting or rejecting—the available slot.

(v) Payment in full shall accompany a letter of acceptance.

(vi) Failure to respond in 7 days from date of notification will be considered a rejection by the wait-listed applicant and the Department will notify the next applicant on the wait list.

(7) *Advisory Committee.* The Advisory Committee has no authority to and will not review or have input into individual AEEP applications. The Advisory Committee shall recommend overall program priorities for each program to the Secretary. Additionally, the Advisory Committee shall recommend the amount of funds to be allocated to each program.

§ 106.55. Notice of disposition of application.

(a) *Applications deemed complete.* The Department will notify applicants within 15 days of receipt of their completed application of a decision to approve, approve with special conditions or reject the application. Approved applicants shall submit the participation fee in the AEEP application, in full, within 5 days of receipt of the Department's approval letter.

(b) *Applications deemed incomplete or ineligible.* Within 10 days of receipt of an application, the Department will notify the applicant of a decision to reject the application or notify the applicant of a deficiency in the application and request additional data. If additional data is requested, notification shall be in writing and detail the additional data needed. The Department will follow the procedures in § 106.54(b)(5) (relating to processing of applications).

§ 106.56. Cancellation policy.

(a) *Deadline.* Approved participants shall submit cancellations in writing to the Department at least 15 days prior to the beginning date of the specific AEEP activity.

(b) *Reimbursement.* In the event of cancellation by an approved applicant, the Department will attempt to reallocate the AEEP slot. If successful, 75% of the AEEP participation fee for the activity will be returned to the canceling approved participant. Otherwise, the fee is forfeited to the Department in its entirety.

AQUACULTURE EDUCATION ENHANCEMENT GRANT PROGRAM

§ 106.61. Grant amount.

Grants may not exceed not exceed \$10,000 except as provided in this subchapter. An additional amount of up to \$10,000 may be granted if the applicant matches that additional amount dollar for dollar so that a single grant may not exceed \$20,000 in 1 calendar year.

§ 106.62. General conditions.

(a) *Grant agreement.* The applicant shall sign a grant agreement setting forth the term and amount of the grant and other terms and conditions as the Department may reasonably require.

(b) *Verification.* Within 3 months of the project completion date specified in the grant agreement, the applicant shall submit to the Department a final report that includes written receipts, records and any other pertinent documentation evidencing the total amount of the costs incurred and expenditures associated with the project. The final report shall also include a narrative report

describing the effectiveness of the project, the results obtained, the experience gained and the personal knowledge acquired. The applicant shall submit a final report.

(c) *Failure to verify.* If the final report containing all receipts, records, the narrative report and other required documentation is not submitted within the 3-month period, a portion of the grant proceeds are unaccounted for, or the applicant violates another provision of this chapter, the Department may demand the applicant repay the entire principal balance of the grant or a lesser amount and interest incurred to date. The interest rate will be calculated using simple interest at the percentage rate equal to the Federal Reserve discount rate at the time the grant was made. Payment shall be due within 60 days of the written demand.

(d) *Default.* A recipient who fails to abide by the terms of the act, the grant agreement or this chapter shall be in default. When a grant recipient defaults the Department may seek recovery of the grant funds as delineated in § 106.47 (relating to right of recovery). A default may be waived by the Department for extenuating circumstances the Department considers to be no fault of the recipient.

(e) *Availability and use of grant results.* The technical information, experience gained and personal knowledge resulting from an AEEP grant are public information.

§ 106.63. Application.

(a) *Application required.* Applicants shall submit applications to participate in an AEEP grant on forms provided by the Department at the address set forth on the application.

(b) *Application requirements.* An application for an AEEP grant will not be considered by the Department unless the following items are included:

(1) The name, address and contact information (to include telephone, facsimile and Internet, as available) of the participating organization, or individual.

(2) The name and direct contact information for the designated grant contact.

(3) A signature by the individual, or an authorized organizational representative, attesting to compliance with the terms and conditions for participation in the AEEP grant.

(4) A detailed description of the project, including objectives, goals and materials to be funded by the grant.

(5) A reasonable and accurate statement of the estimated cost of the project. The statement shall include a separate breakdown of the personnel portion of the costs based on a verifiable hourly rate per person, the materials portion of the costs and any other necessary or anticipated costs associated with the project. The applicant shall provide any documentation or financial statements available to support the estimated project costs including a statement of the portion of the principal investigators' salaries being funded from grant funds. Applications that charge a general overhead fee will not be accepted. All cost components shall be listed.

(6) A statement regarding the amount of tuition to be charged for courses or workshops held as a part of the AEEP grant project.

(7) Information regarding the breadth of the AEEP grant project, including individuals or groups taking part as partners, individuals or groups to be served by the AEEP grant project and the geographic area to be served by the AEEP grant project.

(8) Information regarding the skills, knowledge or experience to be gained from the AEEP grant project.

(9) A copy of the official organization board minutes when action was taken on the project or an authorized, signed statement attesting to the applicant's commitment to the AEEP grant project.

(10) A biographical sketch of the principal investigator involved in the project that indicates the skills, knowledge, training and prior experience of the person developing and administering the AEEP grant project.

(c) *Obtaining an application and assistance.* An application for an AEEP grant under this subchapter shall be made on a form prepared by the Department. For AEEP grant applications and assistance, contact the Aquaculture Program, Bureau of Market Development, Department of Agriculture, 2301 North Cameron Street, Harrisburg, Pennsylvania 17110, telephone (717) 783-8462, facsimile (717) 787-5643.

(d) *Additional information.* The Department may require an applicant to submit additional documentation as may be necessary to complete, verify or clarify the AEEP grant application.

(e) *Application deadlines.* AEEP applications for participation under this subchapter shall be postmarked by June 30 of the fiscal year prior to the fiscal year for which the funds are to be spent.

§ 106.64. Review of applications.

(a) *Evaluation.* The Department will evaluate an AEEP grant application based on the applicant eligibility as well as the factors in the act and this chapter. The Department will begin review of applications in July of each year.

(b) *Applicant eligibility.* The Department will review applications to determine applicant eligibility according to the criteria in this chapter. Only eligible applicants will be considered for an AEEP grant.

(c) *Application completeness.* An application for an AEEP grant will not be considered by the Department unless it contains the required information and items in this chapter under § 106.63(b) (relating to application).

(d) *Ranking criteria.* Factors to be considered by the Department in selecting AEEP grant recipients include the following:

(1) Participation in previous AEEP and other Department activities.

(2) Appropriateness of the applicant's participation in the specific AEEP grant solicitation.

(3) Ability of the applicant to provide qualified personnel during the entire AEEP grant project.

(4) Amount of funds available for the particular grant solicitation.

(5) The willingness and ability of the applicant to make in kind or financial, or both, contributions to match grant funds.

(6) The relevance of the project to aquaculture development plan priorities set forth by the Advisory Committee.

(7) The innovativeness of the project.

(8) The effect the project will have on aquaculture development or aquaculture marketing activities.

(9) The scope and duration of the project and how it relates to other projects and state aquaculture program components.

(10) The type and number of groups who will be affected by the project. A project which involves a wide range of partners and project beneficiaries will be given priority.

(11) The impact of and the benefits bestowed upon the agricultural community by the project.

(12) The continual and progressive nature of the project and the benefits and knowledge to be gained by the applicant and the public at large.

(13) The commitment to long-term aquaculture education and research by the applicant. Applicants that have demonstrated a commitment to aquaculture will be given priority.

(14) Whether the applicant has been the recipient of an AEEP grant within the same year.

(15) The availability of funding to the applicant from sources other than the AEEP program.

(16) The willingness of the applicant to share information derived from the project with others.

(e) *Release and hold harmless.* Eligible participants will release and hold harmless the Commonwealth and the Department and their agents and officers from liabilities for losses as a result of participation in the specific AEEP grant. This includes losses associated with salary or other project cost increases during the AEEP grant period.

§ 106.65. Processing of applications.

(a) *Approval or denial.* The Department may approve, approve with special considerations or reject applications and issue participation approval in accordance with the general considerations and criteria of the act and this chapter. The Department may impose reasonable restrictions or special conditions upon the issuance of an approval.

(b) *Processing.* An application for an AEEP grant will be processed in the following manner:

(1) *Dating.* The applications shall have the initial date of the postmark or initial date. The date will be noted on the application.

(2) *Completeness and accuracy.* Beginning in July of each year, the Department will review each AEEP grant application and the required supporting documentation for completeness and accuracy

(3) *Eligibility.* Beginning in July of each year, the Department will review each AEEP grant application and the required supporting documentation to verify applicant eligibility.

(4) *Applications from ineligible applicants.* An application from an ineligible applicant will be returned to the applicant with an explanation of why the applicant is considered ineligible.

(5) *Incomplete and inaccurate application from eligible applicants.* If the Department determines an application from an eligible applicant to be incomplete or inaccurate, final processing of the application may be discontinued or additional data may be requested. If additional data is requested, the request will be in writing and will be sent to the applicant address listed on the AEEP application. The processing of the application will cease until the applicant supplies the requested data. The Department may terminate the processing of an incomplete application when the additional data is not supplied within 10 business days of the request for the data.

(6) *Approval or denial.* The Department may exercise discretion in approving applications and in determining the distribution of grants so that the widest possible audience becomes acquainted with aquaculture and benefits from the projects funded through the AEEP grant program. The Department may impose reasonable restrictions or special conditions upon the issuance of a grant.

(7) *Advisory Committee.* The Advisory Committee has no authority to and will not review or have input into individual AEEP applications. The Advisory Committee will recommend overall program priorities for each program to the Secretary. Additionally, the Advisory Committee will recommend the amount of funds to be allocated to each program.

§ 106.66. Notice of disposition of application.

(a) *Applications deemed complete.* The Department will notify applicants by September 30 of each year of a decision to approve, approve with special conditions or reject the application.

(b) *Applications deemed incomplete or ineligible.* Within 45 days of beginning of the review process of an application, the Department will notify the applicant of a decision to reject the application or notify the applicant of a deficiency in the application and request additional data. If additional data is requested, notification will be in writing and detail the additional data needed. The Department will follow the procedures in § 106.65(b)(5) (relating to processing of applications).

Subchapter D. AQUACULTURE MARKET INFORMATION PROGRAM

Sec.	
106.81.	Program objectives.
106.82.	Limitations.
106.83.	Notice of program activity.
106.84.	Information to be solicited.
106.85.	Recordkeeping.
106.86.	Limitation of liability.

§ 106.81. Program objectives.

(a) *Purpose.* The purpose of the AMIP is to increase producer access to timely, verifiable information on market prices. The AMIP will provide a voluntary mechanism through which market information will be gathered and made available to producers and other interested parties. Price information will be requested for each species of fish grown in this Commonwealth or sold in this Commonwealth in a live form.

(b) *Market area.* The defined market for the AMIP consists of the states of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Ohio, Rhode Island, Vermont, Virginia and West Virginia along with Washington, D.C. and the Canadian provinces of Quebec and Ontario.

§ 106.82. Limitations.

(a) *Extent of program activities.* The AMIP will organize a voluntary market reporting system to collect price information for aquaculture and seafood products sold within our regional market on prices received by farmers/suppliers at the wholesale level. The AMIP is a voluntary program. The system will be based on obtaining information from the largest fish markets in the market area along with information provided by a sampling of dealers and aquaculture propagators. The Department will contact each identified participant and request information on average prices paid for aquaculture and seafood products twice per month. The information received will be averaged and summarized according to the market

area from which it was received. A summary of the average mean price, volume purchased and the range of prices for each aquaculture product sold will be published bimonthly following the collection of data (Example: The average mean price received for rainbow trout at the Fulton Fish Market the week of March 26-30, 2001 was \$2.50 in a whole, 8-12 ounce form, price range \$1.35-1.60, volume 1,500 pounds.). Distribution will be made through the Department's Internet site and through fax or mail to any individual upon request.

(b) *Use of funds.* Funds allocated for the AMIP shall be used solely for the purposes in this chapter.

(c) *Funds available basis.* Program activities will not be undertaken unless funds are available.

§ 106.83. Notice of program activity.

(a) Solicitation of information for the AMIP reporting survey will be made in any of the following manners, however, reporting entities may be added throughout the year to maximize number of reporting entities:

(1) *Pennsylvania Bulletin.* An initial notice of the AMIP and the opportunity to become a reporting entity will be printed in the *Pennsylvania Bulletin* once per year.

(2) *Direct mailing.* An annual mailing to solicit initial participation will be targeted known to the AMIP administrator at the date of mailing.

(3) *Telephone.* Personal telephone calls to each identified fish dealer and fish market manager and other identified candidates for participation (such as large volume producers).

(b) *Information to be solicited in activity notice.* The notice will include the purpose of the activity, an explanation that the activity is voluntary, what information is being requested from a participant and how the information will be used.

§ 106.84. Information to be solicited.

Information will be requested for each species of fish approved by the Department for propagation and sale in this Commonwealth. Information will be gathered using a form designed by the Department. The form will contain the following information:

(1) *Product species and variety.* Persons reporting information will be asked to identify the species and variety of aquaculture or seafood products, or both, purchased/sold.

(2) *Product form and weight.* Persons reporting information will be asked to identify the forms and weights purchased/sold.

(3) *Point of origin.* Persons reporting information will be asked to identify the products' point of origin where the product was produced and whether the product was farm-raised or wild-caught.

(4) *Price paid.* Persons reporting information will be asked to identify the prices paid for each species, variety, product form and weight, place of origin and amount of product purchased.

(5) *Market area.* Persons reporting information will be asked to identify their location so that the information may be reported by market area using the following categories:

- (i) Commonwealth markets.
- (ii) Maryland markets.
- (iii) New Jersey markets.
- (iv) New York markets.

(v) Other Northeast markets.

(vi) Other Mid-Atlantic markets.

(vii) Canadian markets.

§ 106.85. Recordkeeping.

AMIP market reports and data will be maintained by the Department for 5 years from the date of the market price report being compiled.

§ 106.86. Limitation of liability.

The Department's financial obligation or liability is limited to the costs necessary to administer the program. The Department will not guarantee the accuracy of the information and will not be responsible for any decisions made based on the information reported.

Subchapter E. AQUACULTURE PRODUCT IDENTIFICATION PROGRAM

Sec.

106.101. Program objectives.

106.102. Limitations.

106.103. General conditions.

106.104. Application.

106.105. Review of applications.

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§ 106.101. Program objectives.

The purpose of the APIP is to increase sales of Commonwealth-produced aquaculture products by increasing consumer demand through improved awareness and labeling. The APIP will provide a voluntary mechanism through which Commonwealth-produced aquaculture products may be identified.

§ 106.102. Limitations.

(a) *Applicant eligibility.* Only eligible applicants will be considered for the APIP. To be eligible to participate under the APIP, applicants shall be registered Commonwealth aquaculture propagators or aquaculture-related companies in good standing that, are headquartered or have at least one manufacturing or production facility located in this Commonwealth and are subject to tax laws of the Commonwealth. Each applicant approved for participation shall comply with the criteria established by the act and this chapter, including the verification criteria and all licensing and governmental permitting requirements.

(b) *Product/service eligibility.* An applicant approved to participate in the APIP shall use the APIP logo only on Commonwealth-produced aquaculture products and APIP promotional materials may only be used to promote and market Commonwealth-produced aquaculture products. All of the products using APIP materials shall be grown or manufactured in this Commonwealth. The products shall comply with applicable State and Federal laws and requirements for the specific product.

(c) *Extent of program activities.* The APIP will establish a voluntary product identification system to easily identify Commonwealth-produced aquaculture products. The system will be based on trade marking and licensing the Pennsylvania Aquaculture Logo. The program will allow producers to incorporate the trademark logo into their package labeling, use the trademark logo decal to label and advertise their product, and use point of purchase materials incorporating the logo.

(d) *Use of funds.* Funds allocated for the APIP shall be used solely for the purposes in this chapter.

(e) *Funds available basis.* Program activities will not be undertaken unless funds are available.

§ 106.103. General conditions.

(a) *Participation agreement.* The approved, signed application for the APIP shall constitute the participation agreement. The participant desiring to take part in the APIP shall sign the application. The application will set forth the amount of the participation fee and other terms and conditions the Department may reasonably require. Upon receipt of a completed, signed application, the Department will review and process the application as set forth in this chapter and issue an approval or denial of the application. Upon receipt of the APIP participation fee set forth in the application, approved applicants will be registered for the APIP for 5 years from the July 1 or January 1 application deadline under which they submitted their APIP application. Participant approval automatically terminates if the Commonwealth artificial propagation license is not in good standing or lapses or the approved participant violates another provision of the act or this chapter.

(b) *Renewal of APIP participation.* To continue to use the trademark logo and marketing materials, an approved APIP participant shall renew the registration every 5 years by submitting a new APIP application by the application deadlines established in § 106.104(e) (relating to application).

(c) *Default.* A participant who fails to abide by the terms of the participation agreement or the provisions of the act or this chapter shall be in default.

(d) *Survey.* The Department may require an APIP participant to submit a completed survey form.

(1) The requirement will be set forth in the APIP application.

(2) The Department will develop the survey form.

(3) The survey form will include questions relating to the participant's involvement in the APIP to determine the degree to which the program contributes to industry and Department goals.

(4) Information requested will relate to things such as how the APIP materials were used, frequency of use, trade leads received from APIP logo recognition, sales made resulting from logo recognition and number of consumers reached.

(5) Surveys will not contain a request for any proprietary business information.

(6) When the Department requires the completion of a survey, an APIP participant shall submit the completed survey form to the Department within 30 days of the receipt of the request.

(e) *Failure to submit survey.* When a survey is required by the Department, failure to submit a completed survey form within the 30-day period will result in a default on the part of the APIP participant. The Department may extend the verification deadline if it is determined the participant has made a reasonable effort to verify, but the verification was incomplete, or for extenuating circumstances.

§ 106.104. Application.

(a) *Application required.* Applicants shall submit applications to participate in APIP activities on forms provided by the Department at the address set forth on the application.

(b) *Application requirements.* An application for the APIP will not be considered by the Department unless the following items are included:

(1) The name, address and contact information (to include telephone, facsimile and Internet, as available) of the participating company, or individual.

(2) The name and direct contact information for the designated program contact.

(3) A detailed description of the company and products or services to be promoted.

(4) A signature by an authorized representative attesting to compliance with all provisions of the terms and conditions for participation in the APIP.

(5) Payment in full of the participation fee in the application and payable to the Department.

(6) Verification the applicant is subject to tax laws of the Commonwealth and is not a nonprofit entity.

(c) *Obtaining an application and assistance.* An application for participation under this chapter shall be made on a form provided by the Department. For applications and assistance, contact the Aquaculture Program, Bureau of Market Development, Pennsylvania Department of Agriculture, 2301 North Cameron Street, Harrisburg, Pennsylvania 17110, telephone (717) 783-8462, facsimile (717) 787-5643, or the Department's website.

(d) *Additional information.* The Department may require an applicant to submit additional documentation as may be necessary to complete, verify or clarify the application.

(e) *Application deadlines.* Applications for participation under this chapter may be submitted to the Department on January 1 and July 1 of each calendar year.

§ 106.105. Review of applications.

(a) *Evaluation.* The Department will evaluate an application based on the applicant's eligibility as well as the factors in the act and this chapter.

(b) *Applicant eligibility.* The Department will review applications to determine applicant eligibility according to the criteria in this chapter. Only eligible applicants will be considered for participation in the APIP.

(c) *Application completeness.* An application for an APIP activity will not be considered by the Department unless it contains the required information and items in this chapter under § 106.104(b) (relating to application).

(d) *Factors.* Factors to be considered by the Department in selecting APIP participants include the following:

(1) Current registration as an artificial propagator under the act or other verification that the applicant is an eligible participant.

(2) Verification that all of the products to be promoted using APIP materials and logo are produced or manufactured in this Commonwealth.

(e) *Release and hold harmless.* Eligible participants will release and hold harmless the Commonwealth and the Department and their agents and officers from any liabilities for any losses as a result of participation in the APIP.

§ 106.106. Processing of applications.

(a) *Approval or denial.* The Department may approve, approve with special conditions or reject applications and

issue participation approval in accordance with the general considerations and criteria of the act and this chapter.

(b) *Processing.* An application for participation in the APIP will be processed in the following manner:

(1) *Dating.* The applications will have the initial date of the postmark or initial date of receipt, whichever is earlier, noted on the application by Department staff. If the application is determined to be incomplete, the effective date of the application is the date on which the additional information is received and the application is determined by the Department to be complete. The date will be noted on the application.

(2) *Completeness and accuracy.* Upon receipt of an APIP application and the required supporting documentation, the Department will review the information for completeness and accuracy.

(3) *Eligibility.* Upon receipt of an APIP application and the required supporting documentation, the Department will review the information to verify applicant eligibility.

(4) *Applications from ineligible applicants.* An application from an ineligible applicant will be returned to the applicant with an explanation of why the applicant is considered ineligible.

(5) *Incomplete or inaccurate application from eligible applicants.* If the Department determines an application from an eligible applicant is incomplete or inaccurate, final processing of the application may be discontinued or additional data may be requested. If additional data is requested, the request will be in writing and will be sent to the applicant address listed on the APIP application. The processing of the application will cease until the applicant supplies the requested data. The Department may terminate the processing of an incomplete application when the additional data is not supplied within 10 business days of the request for the data.

(6) *Advisory Committee.* The Advisory Committee has no authority to and will not review or have input into individual APIP applications. The Advisory Committee will recommend overall program priorities for each program to the Department. Additionally, the Advisory Committee will recommend the amount of funds to be allocated to each program.

§ 106.107. Notice of disposition of application.

(a) *Applications deemed complete.* The Department will notify applicants in writing of a decision to approve, approve with special conditions or reject the application. Approved applicants shall submit the participation fee in the APIP application, in full, within 10 days of receipt of the Department's approval letter.

(b) *Applications deemed incomplete or ineligible.* The Department will notify the applicant in writing of a decision to reject the application or notify the applicant of a deficiency in the application and request additional data. If additional data is requested, notification will be in writing and detail the additional data needed. The Department will follow the procedure in § 106.106(b)(5) (relating to processing of applications).

§ 106.108. Approved participant withdrawal policy.

(a) *Deadline.* Approved participants shall submit a withdrawal request in writing to the Department at least 30 days prior to the date their withdrawal becomes effective.

(b) *Reimbursement.* In the event of withdrawal by an approved participant, the participation fee is forfeited to the Department in its entirety.

§ 106.109. Conflict of interest.

A member of the Advisory Committee may apply for participation in APIP activities if all decisions regarding the application are subject to 65 Pa.C.S. § 1103(j) (relating to restricted activities) and the action does not violate the State Adverse Interest Act (71 P. S. §§ 776.1—776.9) or 4 Pa. Code Chapter 7, Subchapter K (relating to code of conduct for appointed officials and State employees).

§ 106.110. Notice of program activity.

(a) Persons who want to identify their product through the APIP program will be notified of program availability and restrictions in any of the following manners:

(1) *Pennsylvania Bulletin.* Notice of APIP availability will be printed in the *Pennsylvania Bulletin* once per year.

(2) *Direct mailing.* An annual mailing to registered aquaculture propagators known to the APIP administrator at the date of mailing.

(3) *Internet access.* Individuals may access APIP information through the Department's website.

(b) *Information to be included in program notice.* The notice will include the purpose of the program, an explanation that the program is voluntary, what program participation entails, what information a potential participant shall submit to be considered for participation.

§ 106.111. Recordkeeping.

APIP data shall be maintained by the participant for 5 years from the termination date of approval to participate in the APIP.

§ 106.112. Cancellation/modification.

An APIP participant approval may be canceled by the Department upon a determination that the approved participant has violated any provision of the act, this chapter or the participation agreement, the approved participant violated the APIP rules, or upon failure of the approved participant to satisfy the verification requirements of this chapter. Upon cancellation the Department may seek recovery of any funds expended for the approved participant's advantage or a portion thereof.

Subchapter F. AQUACULTURE PRODUCT PROMOTION PROGRAM

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§ 106.131. Program objectives.

The purpose of the APPP is to increase sales of aquaculture products through public awareness of aquaculture product availability and attributes.

(1) To the extent possible, the APPP will provide opportunities for industry representatives to participate in a variety of events such as food shows, recreational sports shows, pet and water gardening related trade

shows, aquaculture industry shows and other related commercial trade shows where buyers of aquaculture products are expected to attend.

(2) The APPP will also attempt to provide opportunities for aquaculture industry representatives to participate in a wide range of events such as the Pennsylvania Farm Show, fairs, community festivals, farm-city activities, in-store product promotions and other events at which a large number of consumers would be exposed to product information.

(3) The APPP will endeavor to facilitate contact and relations between aquaculture propagators, suppliers and buyers by arranging meetings with purchasers such as wholesalers, grocery/restaurant buyers and consumers.

§ 106.132. Limitations.

(a) *Applicant eligibility* Only eligible applicants will be considered for the APPP. To be eligible to participate in activities under the APPP, applicants shall be registered Commonwealth aquaculture propagators or aquaculture-related companies in good standing that are headquartered or have at least one manufacturing or production facility located in this Commonwealth and is subject to tax laws of the Commonwealth. Each applicant approved for participation shall comply with the criteria established by the act and this chapter, including the verification criteria and licensing and governmental permitting requirements.

(b) *Product/service eligibility*. An applicant approved to participate in an APPP activity may only promote and display aquaculture related products and services at that APPP activity. At least 60% of the displayed products in an APPP activity shall be grown or manufactured in this Commonwealth. The products displayed shall comply with applicable State and Federal laws and requirements for the specific product.

(c) *Extent of program activities*. The APPP will organize participation in domestic trade shows and promotional activities for eligible applicants.

(d) *Use of funds*. Funds allocated for the APPP shall be used solely for the purposes in this chapter.

(e) *Funds available basis*. Program activities will not be undertaken unless funds are available.

§ 106.133. General conditions.

(a) *Participation agreement*. The approved, signed application for an APPP activity will constitute the participation agreement. The participant desiring to take part in an APPP sponsored activity shall sign the application which shall set forth the amount of the participation fee and other terms and conditions as the Department may reasonably require. Upon receipt of a completed, signed application, the Department will review and process the application in §§ 106.135 and 106.36 (relating to review of applications; and processing of applications) and issue an approval or denial of the application. Approved applicants will be registered for the APPP activity upon receipt of the APPP participation fee in the application.

(b) *Default*. A participant who fails to abide by the terms of the participation agreement or the provisions of the act or this chapter shall be in default.

(c) *Exit survey*. The Department may require an APPP participant to submit a completed exit survey form. The requirement will be set forth in the APPP application. The Department will develop an exit survey form.

(1) The exit survey form will include questions relating to the participant's involvement in the relevant activity to determine the degree to which the activity contributes to the programs goals.

(2) Information requested will relate to things such as the number of trade leads received, sales made and number of consumers reached.

(3) Exit surveys will not contain a request for any proprietary business information.

(4) When the Department requires the completion of an exit survey, an APPP participant shall submit the completed exit survey form to the Department within 4 weeks of completion of participation in the APPP activity.

(d) *Failure to submit exit survey*. When an exit survey is required by the Department, failure to submit a completed exit survey form within the 4-week period will result in a default on the part of the APPP participant. The Department may direct that the defaulting participant is not eligible for further APPP participation for 2 years. The Department may extend the verification deadline if it is determined the participant has made a reasonable effort to verify, but the verification was incomplete, or for extenuating circumstances.

(e) *Determination of participation fees*. Participation fees for approved participants for APPP activities not organized and controlled by the Department will be based on the Commonwealth recovering at least 50% of the activity's direct, nonstaff cost. Participation fees will not exceed more than 80% of the activity's standard fee to a normal commercial participant. Participation fees for approved participants for APPP activities organized and controlled by the Department will be based on the Commonwealth recovering not more than 50% of the activity's total direct cost.

§ 106.134. Application.

(a) *Application required*. Applicants shall submit applications to participate in APPP activities on forms provided by the Department at the address on the application.

(b) *Application requirements*. An application for an APPP activity will not be considered by the Department unless the following items are included:

(1) The name, address and contact information (to include telephone, facsimile and Internet, as available) of the participating company, or individual.

(2) The name and direct contact information for the designated activity contact.

(3) A detailed description of the company and products or services to be promoted.

(4) A signature by an authorized representative attesting to compliance with all provisions of the terms and conditions for participation in the APPP activity.

(5) Payment in full of the participation fee in the application and payable to the Department.

(c) *Obtaining an application and assistance*. An application for participation under this chapter shall be made on a form prepared by the Department. For applications and assistance, contact the Aquaculture Program, Bureau of Market Development, Department of Agriculture, 2301 North Cameron Street, Harrisburg, Pennsylvania 17110, telephone (717) 783-8462, facsimile (717) 787-5643.

(d) *Additional information*. The Department may require an applicant to submit additional documentation as necessary to complete, verify or clarify the application.

(e) *Application deadlines.* Applications for participation under this chapter shall be received by the Department 90 days prior to the date of the APPP activity the applicant wishes to attend. The Department may approve an application submitted after this deadline if it determines there is adequate time for a thorough review of the application and to issue a written approval to the applicant.

§ 106.135. Review of applications.

(a) *Evaluation.* The Department will evaluate an application based on the applicant's eligibility as well as the factors in the act and this chapter.

(b) *Applicant eligibility.* The Department will review applications to determine applicant eligibility according to the criteria in this chapter. Only eligible applicants will be considered for participation in the APPP activity.

(c) *Application completeness.* An application for an APPP activity will not be considered by the Department unless it contains the required information and items in this chapter under § 106.134(b) (relating to application).

(d) *Factors.* Factors to be considered by the Department in selecting APPP participants include the following:

(1) Participation in previous APPP and other Department activities.

(2) Appropriateness of the applicant's particular product or service to the specific APPP activity.

(3) Ability of the applicant to provide a qualified sales representative during the entire APPP activity who will be able to negotiate sales and quantify terms.

(4) Ability of the applicant to be responsible for shipping all products used for display or sales and for all promotional materials to be used at the APPP activity.

(5) Amount of space required for the particular promotion.

(6) Ability to pay, or cost-share, the booth and or activity costs.

(e) *Release and hold harmless.* Eligible participants will release and hold harmless the Commonwealth and the Department and their agents and officers from any liabilities for any losses as a result of participation in the specific APPP activity. This includes late shipment, in transit damage or loss and unauthorized removal of equipment or supplies at the APPP activity.

§ 106.136. Processing of applications.

(a) *Approval or denial.* The Department may approve, approve with special conditions or reject applications and issue participation approval in accordance with the general considerations and criteria of the act and this chapter.

(b) *Processing.* An application for participation in an APPP activity will be processed in the following manner:

(1) *Dating.* The application will have the initial date of the postmark or initial date of receipt, whichever is earlier, noted on the application by Department staff. If the application is determined to be incomplete, the effective date of the application is the date on which all additional information is received and the application is determined by the Department to be complete. The date will be noted on the application.

(2) *Completeness and accuracy.* Upon receipt of an APPP application and the required supporting documentation, the Department will review the information for completeness and accuracy.

(3) *Eligibility.* Upon receipt of an APPP application and the required supporting documentation, the Department will review the information to verify applicant eligibility.

(4) *Applications from ineligible applicants.* An application from an ineligible applicant will be returned to the applicant with an explanation of why the applicant is considered ineligible.

(5) *Incomplete or inaccurate application from eligible applicants.* If the Department determines an application from an eligible applicant is incomplete or inaccurate, final processing of the application may be discontinued or additional data may be requested. If additional data is requested, the request will be in writing and will be sent to the applicant address listed on the APPP application. The processing of the application will cease until the applicant supplies the requested data. The Department may terminate the processing of an incomplete application when the additional data is not supplied within 10 business days of the request for the data.

(6) *Order of participation availability.* Availability of participation will be reserved in order of receipt of a completed application and full payment by the approved applicant.

(i) If an activity has more applicants than available slots, the Department may increase the number of slots available, or place applicants on a waiting list for space in the event of a cancellation or default.

(ii) The waiting list will be setup in order of receipt of a completed and approved application.

(iii) Slots that become available due to cancellation or default will be assigned in order of the waiting list.

(iv) The applicant on the waiting list will be notified in writing of a cancellation or default. The applicant will have 7 days from date of mailing of notification to respond in writing—either accepting or rejecting—the available slot.

(v) Payment in full shall accompany a letter of acceptance.

(vi) Failure to respond in 7 days from date of mailing of notification will be considered a rejection by the wait-listed applicant and the Department will notify the next applicant on the wait list.

(7) *Advisory Committee.* The Advisory Committee has no authority to and will not review or have input into individual APPP applications. The Advisory Committee will recommend overall program priorities for each program to the Department. Additionally, the Advisory Committee shall recommend the amount of funds to be allocated to each program.

§ 106.137. Notice of disposition of application.

(a) *Applications deemed complete.* The Department will notify applicants within 30 days of receipt of their completed application of a decision to approve, approve with special conditions or reject the application. Approved applicants shall submit the participation fee in the APPP application, in full, within 10 days of receipt of the Department's approval letter.

(b) *Applications deemed incomplete or ineligible.* Within 30 days of receipt of an application, the Department will notify the applicant of a decision to reject the application or notify the applicant of a deficiency in the application and request additional data. If additional data is requested, notification shall be in writing and detail the

additional data needed. The Department will follow the procedure in § 106.136(b)(5) (relating to processing of applications).

§ 106.138. Approved participant cancellation policy.

(a) *Deadline.* Approved participants shall submit any cancellations in writing to the Department at least 30 days prior to the beginning date of the specific APPP activity.

(b) *Reimbursement.* In the event of cancellation by an approved participant, the Department will attempt to reallocate the APPP slot. If successful, 75% of the APPP participation fee for the activity will be returned to the canceling approved participant. Otherwise, the fee is forfeited to the Department in its entirety.

§ 106.139. Notice of program activity.

(a) Eligible applicants will be notified of APPP activities in any of the following manners:

(1) *Pennsylvania Bulletin.* Availability of upcoming APPP activities will be printed in the *Pennsylvania Bulletin*.

(2) *Direct mailing.* A mailing targeted to each aquaculture propagator or aquaculture-related business, or both, registered with the APPP administrator at the date of mailing.

(b) *Information to be included in notice.* The notice and mailing will include the activity name, dates (show and set-up), location, participation fee, activity package description, number of participation slots available and how an application may be requested.

§ 106.140. Conflict of interest.

A member of the Advisory Committee may apply for participation in APPP activities if all decisions regarding the application are subject to 65 Pa.C.S. § 1103(j) (relating to restricted activities) and the action does not violate the State Adverse Interest Act (71 P. S. §§ 776.1—776.9) or 4 Pa. Code Chapter 7, Subchapter K (relating to code of conduct for appointed officials and State employees).

§ 106.141. Recordkeeping.

An APPP participant shall maintain all receipts, supporting documents, exit reports and other documents pertaining to the APPP activity. These records shall be retained for 1 year beginning at the conclusion of the APPP activity. The records shall be made available to the Department upon request.

§ 106.142. Right of recovery.

The Department has the right to make claim for and receive from the approved participant any funds not expended in accordance with the act, this chapter or the participation agreement.

§ 106.143. Deficits.

The Department's financial obligation is limited to the participation fee for the specific activity.

Subchapter G. AQUACULTURE EXPORT PROMOTION PROGRAM

- Sec. 106.161. Program objections.
- 106.162. Limitations.
- 106.163. General conditions.
- 106.164. Application.
- 106.165. Review of applications.
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- 106.170. Conflict of interest.

- 106.171. Recordkeeping.
- 106.172. Cancellation/default.
- 106.173. Right of recovery.
- 106.174. Deficits.

§ 106.161. Program objectives.

The purpose of the AEPP is to increase export sales of aquaculture products and aquaculture supplies through buyer awareness of aquaculture product and supply availability and attributes.

(1) The AEPP will provide opportunities for industry representatives to participate in a variety of events such as food shows, recreational sports shows, pet and water gardening related trade shows, aquaculture industry shows and other related commercial trade shows or missions where international buyers of aquaculture products are expected to attend.

(2) The AEPP will facilitate contact between aquaculture propagators, suppliers and international buyers by arranging meetings with purchasers such as overseas importers, multinational corporations and United States based buyers for foreign companies and governments.

(3) The AEPP will increase international awareness of Commonwealth aquaculture products and services by organizing product awareness events.

§ 106.162. Limitations.

(a) *Applicant eligibility.* Only eligible applicants will be considered for the AEPP. To be eligible to participate in activities under the AEPP, applicants shall be registered Commonwealth aquaculture propagators or aquaculture-related companies in good standing, which are headquartered or have at least one manufacturing or production facility located in this Commonwealth and are subject to tax laws of the Commonwealth. Each applicant approved for participation shall comply with the criteria established by the act and this chapter, including the verification criteria and the licensing and governmental permitting requirements.

(b) *Product/service eligibility.* An applicant approved to participate in an AEPP activity may only promote and display aquaculture related products and services at that AEPP activity. A majority of the displayed products in an AEPP activity shall be grown or manufactured in this Commonwealth. The products shall meet State and Federal requirements for the specific product.

(c) *Extent of program activities.* The AEPP will organize participation in international trade shows and promotional activities for eligible applicants.

(d) *Use of funds.* Funds allocated for the AEPP shall be used solely for the purposes in this chapter.

(e) *Funds available basis.* Program activities will not be undertaken unless funds are available.

§ 106.163. General conditions.

(a) *Participation agreement.* The approved, signed application for an AEPP activity will constitute the participation agreement.

(1) The participant desiring to take part in an AEPP sponsored activity shall sign the application.

(2) The application will set forth the amount of the participation fee and other terms and conditions as the Department may reasonably require.

(3) Upon receipt of a completed, signed application, the Department will review and process the application set forth in this chapter.

(4) The Department will then issue an approval or denial of the application.

(5) Approved applicants will be registered for the AEPP activity upon receipt of the participation fee in the AEPP application.

(b) *Default.* A participant who fails to abide by the terms of the participation agreement or the provisions of the act or this chapter shall be in default.

(c) *Exit survey.* The Department may require an AEPP participant to submit a completed exit survey form.

(1) The requirement will be set forth in the AEPP application. The Department will develop an exit survey form.

(2) The exit survey form will include questions relating to the participant's involvement in the relevant activity to determine the degree to which the activity contributes to the programs goals.

(3) Information requested will relate to things such as the number of trade leads received, sales made and number of consumers reached.

(4) Exit surveys will not contain a request for any proprietary business information.

(5) When the Department requires the completion of an exit survey, within 4 weeks of completion of participation in an AEPP activity, the participant shall submit to the Department a completed exit survey form.

(d) *Failure to submit exit survey.* When an exit survey is required by the Department, failure to submit the exit survey within the 4-week period will result in a default on the part of the AEPP participant.

(1) The Department may direct that the defaulting participant is not eligible for further AEPP participation for 2 years.

(2) The Department may extend the verification deadline if it is determined the participant has made a reasonable effort to verify, but the verification was incomplete, or for extenuating circumstances.

(e) *Determination of participation fees.* Participation fees for approved participants for AEPP activities not organized and controlled by the Department will be based on the Commonwealth recovering at least 50% of the activity's direct, nonstaff cost.

(1) Participation fees will not exceed more than 80% of the activity's standard fee to a normal participant.

(2) Participation fees for approved participants for AEPP activities organized and controlled by the Department will be based on the Commonwealth recovering not more than 50% of the activity's total direct cost.

§ 106.164. Application.

(a) *Application required.* Applicants shall submit applications to participate in AEPP activities on forms provided by the Department at the address set forth on the application.

(b) *Application requirements.* An application for an AEPP activity will not be considered by the Department unless the following items are included:

(1) The name, address and contact information (to include telephone, facsimile and Internet, as available) of the participating company, or individual.

(2) The name and direct contact information for the designated activity contact.

(3) A detailed description of the company and products or services to be promoted.

(4) A signature by an authorized representative attesting to compliance with the provisions of the terms and conditions for participation in the AEPP activity.

(5) Payment in full of the participation fee in the application and payable to the Department of Agriculture.

(c) *Obtaining an application and assistance.* An application for participation under this chapter shall be made on a form prepared by the Department. For applications and assistance, contact the Aquaculture Program, Bureau of Market Development, Department of Agriculture, 2301 North Cameron Street, Harrisburg, Pennsylvania 17110, telephone (717) 783-8462, facsimile (717) 787-5643.

(d) *Additional information.* The Department may require an applicant to submit additional documentation as may be necessary to complete, verify or clarify the application.

(e) *Application deadlines.* Applications for participation under this chapter shall be received by the Department 90 days prior to the date of the AEPP activity the applicant wishes to attend. The Department may approve an application submitted after this deadline if it determines there is adequate time for a thorough review of the application and to issue a written approval to the applicant.

§ 106.165. Review of applications.

(a) *Evaluation.* The Department will evaluate an application based on the applicant eligibility as well as the factors in the act and this chapter.

(b) *Applicant eligibility.* The Department will review applications to determine applicant eligibility according to the criteria in this chapter. Only eligible applicants will be considered for participation in the AEPP activity.

(c) *Application completeness.* An application for an AEPP activity will not be considered by the Department unless it contains the required information and items in this chapter under § 106.164(b) (relating to application).

(d) *Factors.* Factors to be considered by the Department in selecting AEPP participants include the following:

(1) Participation in previous AEPP and other Department activities.

(2) Appropriateness of the applicant's particular product or service to the specific AEPP activity.

(3) Ability of the applicant to provide a qualified sales representative during the entire AEPP activity who will be able to negotiate sales and quantify terms.

(4) Ability of the applicant to be responsible for shipping the products used for display or sales and for the promotional materials to be used at the AEPP activity.

(5) Amount of space required for the particular promotion.

(6) Ability to pay, or cost-share, the booth and or activity costs.

(e) *Release and hold harmless.* Eligible participants will release and hold harmless the Commonwealth and the Department and their agents and officers from any liabilities for any losses as a result of participation in the specific AEPP activity. This includes late shipment, in-transit damage or loss and unauthorized removal of equipment or supplies at the AEPP activity.

§ 106.166. Processing of applications.

(a) *Approval or denial.* The Department may approve, approve with special conditions or reject applications and issue participation approval in accordance with the general considerations and criteria of the act and this chapter.

(b) *Processing.* An application for participation in an AEPP activity will be processed in the following manner:

(1) *Dating.* The application will have the initial date of the postmark will be the date on which all additional information is received and the application is determined by the Department be complete. The date will be noted on the application.

(2) *Completeness and accuracy.* Upon receipt of an AEPP application and the required supporting documentation, the Department will review the information for completeness and accuracy.

(3) *Eligibility.* Upon receipt of an AEPP application and the required supporting documentation, the Department will review the information to verify applicant eligibility.

(4) *Applications from ineligible applicants.* An application from an ineligible applicant will be returned to the applicant with an explanation of why the applicant is considered ineligible.

(5) *Incomplete and inaccurate application from eligible applicants.* If the Department determines an application from an eligible applicant to be incomplete or inaccurate, final processing of the application may be discontinued or additional data may be requested. If additional data is requested, the request will be in writing and will be sent to the applicant address listed on the AEPP application. The processing of the application will cease until the applicant supplies the requested data. The Department may terminate the processing of an incomplete application when the additional data is not supplied within 10 business days of the request for the data.

(6) *Order of participation availability.* Availability of participation will be reserved in order of receipt of a completed application and full payment by an approved applicant. If an activity has more applicants than available slots the Department may increase the number of slots available, or place applicants on a waiting list for space in the event of a cancellation or default.

(i) The waiting list will be setup in order of receipt of a completed and approved application.

(ii) Slots, which become available due to cancellation or default, will be assigned in order of the waiting list.

(iii) Applicants on the waiting list will be notified in writing of a cancellation or default. That person will have 7 days from date of notification to respond in writing—either accepting or rejecting—the available slot.

(iv) Payment in full must accompany a letter of acceptance.

(v) Failure to respond in 7 days from date of notification will be considered a rejection by the wait-listed applicant and the Department will notify the next applicant on the wait list.

(7) *Advisory Committee.* The Advisory Committee has no authority to and will not review or have input into individual AEPP applications. The Advisory Committee will recommend overall program priorities for each program to the Secretary. Additionally, the Advisory Committee will recommend the amount of funds to be allocated to each program.

§ 106.167. Notice of disposition of application.

(a) *Applications deemed complete.* The Department will notify applicants within 30 days of receipt of their completed application of a decision to approve, approve with special conditions or reject the application. Approved applicants shall submit the participation fee in the AEPP application, in full, within 10 days of receipt of the Department's approval letter.

(b) *Applications deemed incomplete or ineligible.* Within 30 days of receipt of an application, the Department will notify the applicant of a decision to reject the application or notify the applicant of a deficiency in the application and request additional data. If additional data is requested, notification will be in writing and detail the additional data needed. The Department will follow the procedures in § 106.166(b)(5) (relating to processing of applications).

§ 106.168. Approved participant cancellation policy.

(a) *Deadline.* Approved participants shall submit any cancellations in writing to the Department at least 30 days prior to the beginning date of the specific AEPP activity.

(b) *Reimbursement.* In the event of cancellation by an approved applicant, the Department will attempt to reallocate the AEPP slot. If successful, 75% of the AEPP participation fee for the activity will be returned to the canceling approved participant. Otherwise, the fee is forfeited to the Department in its entirety.

§ 106.169. Notice of program activity.

(a) Eligible applicants will be notified of AEPP activities in any of the following manners:

(1) *Pennsylvania Bulletin.* Availability of upcoming AEPP activities will be printed in the *Pennsylvania Bulletin*.

(2) *Direct mailing.* A mailing targeted to each aquaculture propagator or aquaculture-related business, or both, registered with the AEPP administrator at the date of mailing.

(b) *Information to be included in notice.* The notice and mailing will include the activity name, dates (show and set-up), location, participation fee, activity package description, number of participation slots available and how an application may be requested.

§ 106.170. Conflict of interest.

A member of the Advisory Committee may apply for participation in AEPP activities if all decisions regarding the application are subject to 65 Pa.C.S. § 1103(j) (relating to restricted activities) and the action does not violate the State Adverse Interest Act (71 P. S. §§ 776.1—776.9) or 4 Pa. Code Chapter 7, Subchapter K (relating to code of conduct for appointed officials and State employees).

§ 106.171. Recordkeeping.

An AEPP participant shall maintain all receipts, supporting documents, exit reports and other documents pertaining to the AEPP activity. These records shall be retained for 1 year beginning at the conclusion of the activity. The records shall be made available to the Department upon request.

§ 106.172. Cancellation/default.

An activity or participant approval may be canceled by the Department upon a determination that the approved participant has violated any provision of the act, this chapter or the participation agreement, the approved

participant violated the activity's rules, or upon failure of the approved participant to satisfy the verification requirements of this chapter.

§ 106.173. Right of recovery.

The Department has the right to make claim for and receive from the approved participant any funds not expended in accordance with the act, this chapter or the participation agreement.

§ 106.174. Deficits.

The Department's financial obligation is limited to the participation fee for the specific activity.

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