

# RULES AND REGULATIONS

## Title 7—AGRICULTURE

### DEPARTMENT OF AGRICULTURE

#### [7 PA. CODE CH. 106]

#### Aquaculture Development Plan

The Department of Agriculture (Department), under the authority of 3 Pa.C.S. §§ 4201—4223 (relating to the Aquaculture Development Law) (act), adopts Chapter 106 (relating to aquaculture development plan).

#### *Authority*

The Department has the power and authority to adopt this final-form rulemaking under the following:

(1) The specific authority conferred by section 4215 of the act (relating to aquacultural plan), which confers upon the Department the power to promulgate regulations regarding aquaculture development. It states, "The department shall develop a plan to promote and develop aquacultural industry in this Commonwealth. Economic development and exportation of products from this Commonwealth shall be components of this plan. . . .The department shall, in the manner provided by law, promulgate the plan as regulations of the department."

(2) The general duty to implement the policy of the act set forth at section 4218 of the act (relating to Aquaculture Development Account), which establishes an Aquaculture Development Account and states, "Money in this account shall be used to stimulate the growth of the aquacultural industry. . .the account may be used to provide low-interest loans to aquacultural producers for development, expansion and modernization of facilities." The Department has the duty to establish an aquaculture loan program.

#### *Need for the Chapter*

The law was enacted to "create an atmosphere conducive to the further development and expansion of our aquacultural industry." The regulations implement a Departmental policy to encourage aquaculture production and marketing. The regulations are consistent with the Department's obligations under the act.

The Department is satisfied there is a need for the regulations, and that they are consistent with Executive Order 1996-1, "Regulatory Review and Promulgation."

#### *Comments*

Notice of proposed rulemaking was published at 32 Pa.B. 2468 (May 18, 2002), and provided for a 30-day public comment period. Comments were received from the Independent Regulatory Review Commission (IRRC) and the Pennsylvania Farm Bureau (Bureau). The Department has considered the comments and believes the final-form rulemaking addresses the commentators' concerns.

#### *General*

#### 1. *Program Costs.—Economic Impact.*

#### *Comment: IRRC*

The preamble to the proposed rulemaking stated that there is a separate account in the State Treasury called the Aquaculture Development Account. The preamble further stated that this account is funded by fees and charges generated under the act. However, the Depart-

ment also acknowledged that "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."

- When will these programs be funded?
- How is the program "revenue neutral" as stated in the regulatory analysis form?
- Will registration fees for aquaculture producers increase as a result of implementation of the Aquaculture Development Plan?

#### *Comment: Bureau*

The aquaculture industry in this Commonwealth is a very important one, with over 165 registered production facilities and over 100 suppliers. Many of these individual operations are members of the Bureau, and several of the aquaculture farmers actively participate in the Bureau's State Commodity Programs. Aquaculture is a key piece in the agricultural success of this Commonwealth and the Bureau.

Overall, the Bureau found the proposed regulations regarding the Aquaculture Development Plan to be an excellent basket of tools for promoting and preserving the aquaculture industry within this Commonwealth. The Bureau is especially enthused with Subchapters E and G (relating to aquaculture product identification program; and aquaculture export promotion program). The Bureau feels these two components of the overall aquaculture development plan will provide many benefits and incentives to Pennsylvania fish farmers.

#### *Response:*

The act establishes the Aquaculture Development Account and states the fund's usage: "After administrative costs are covered, the remainder of the account may be used to provide low-interest loans to aquacultural producers for development, expansion and modernization of facilities." The account may only be used to fund administrative costs and the loan program being established under Subchapter A. In reality, the small number of propagator and live aquatic animal dealer registrations does not generate enough funds to cover current costs for aquaculture program administration. Current aquaculture programming is being funded by the Department's general fund. The additional programming described in this regulation would require new appropriations to the Department's general fund. The Bureau anticipates the programs being considered for funding beginning with the 2003-2004 State fiscal year.

"Revenue neutral" was defined to us as "not placing additional mandated costs on the regulated community." Since all programming within the regulation is voluntary, it would meet this definition. It was never intended to suggest the current account revenues could support these programs.

Registration fees are set within the act itself and no fee increase is anticipated. We appreciate the support and validation the Bureau's comments provide as to the benefits being sought through these regulations.

2. *Issues Common to the Application and Review Processes for these Programs—Need; Reasonableness; Clarity.*

*Comment: IRRC*

*Payment of participation fees*

The programs this final-form rulemaking will establish require applicants to pay participation fees. However, it is unclear when these fees must be paid. Subchapters C—G appear to contain contradictory language. They require the participation fee to be submitted with the application in one subsection, and then, in a later subsection, require the fee to be paid after receiving notice of acceptance into a program (such as, §§ 106.104(b)(5) and 106.107(a)). The final-form rulemaking should clarify when the participation fees for each program are due.

*Return of Participation fees*

When a program requires a participation fee and the applicant is rejected, will the participation fee be refunded? If so, the final-form rulemaking should include provisions that prescribe how and when participation fees will be returned to the applicant.

*Structure of Regulations*

The final-form rulemaking is structured so the review of applications sections comes before the processing of applications sections. Since the processing of applications sections of the regulation address items such as completeness of the application and requests for additional data, clarity may be improved by reversing the order of the review of applications and processing of applications sections.

*Review of Applications*

The Aquaculture Education Enhancement Program (AEPP), the Aquaculture Product Information Program (APIP), the Aquaculture Product Promotion Program (APPP) and the Aquaculture Export Promotion Program (AEP) each have sections relating to review of applications (such as §§ 106.53 and 106.105). Subsection (a), relating to evaluation, and subsection (b), relating to applicant eligibility, are not needed and should be deleted from the final-form regulation. Subsection (c), relating to application completeness, duplicates provisions found in the sections relating to processing of applications. Therefore, it should also be deleted.

The final-form rulemaking contains a list of factors that the Department will consider in selecting participants for the Aquaculture Education Enhancement Activity Program, the AEPP and the APIP. Included in the list of factors is the applicant's "ability to pay, or cost share, the . . . activity costs." (§§ 106.53(d)(5), 106.135(d)(6) and 106.165(d)(6)). Sections 106.52, 106.134 and 106.104 require payment of the participation fee with the application. It is unclear if the ability to pay/cost share provision has any relationship to the participation fee for the program. If the ability to pay/cost share is the same as the participation fee, then the ability to pay/cost share provision is duplicative and should be deleted.

*Approval of Applications*

In Subchapters A, C and E—G, in the processing of applications sections, the Department states that it may "approve, approve with special conditions or reject applications and issue participation approval. . . ." IRRC requested the Department explain how "participation approval" is different from approval.

*Release and hold harmless provisions*

For each program authorized by this regulation, there is a requirement that eligible participants release and hold harmless the Department and Commonwealth from liabilities and losses (such as § 106.53(c)). The regulation should specify if there are any forms or agreements that must be signed to comply with this requirement.

*Aquaculture Advisory Committee (Committee) member participation in programs*

The final-form rulemaking authorizes a Committee member to participate in the aquaculture development 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 Chapter 7, Subchapter K (relating to code of conduct for appointed officials and State employees)." (§§ 106.3(e)(3), 106.44, 106.109, 106.140 and 160.170). IRRC requested the Department explain how the determination will be made that a Committee member's participation meets these requirements.

*Response:*

The final-form rulemaking resolves the ambiguity in regard to payment of participation fees and return of participation fees by requiring all fees to be submitted at the time of application and providing a timeline and structure for return of participation fees from unsuccessful applicants.

The review of applications section sets forth the general evaluation criteria, applicant eligibility standards, application completeness standards and factors the Department will consider in reviewing the application. In other words it sets forth the base line criteria that must be met in any application. The processing of applications section sets forth details concerning the approval process including how an application will be reviewed, time period for review and how the Department will handle incomplete applications. The final-form rulemaking gains a logical flow by notifying the applicant of what must be contained in an application and the factors the Department will consider, notifying the applicant how that application will be processed, and delineating how and when the applicant will be notified of the disposition of the application. Therefore, the Department believes the regulation does have a logical flow and does not believe changing the order of these sections will add clarity to the regulation.

The final-form rulemaking removes the noted sections relating to review of applications (e.g. §§ 106.53 and 106.105, subsections (a)—(c)), and §§ 106.53(d)(5), 106.135(d)(6) and 106.165(d)(6).

The final form rulemaking clarifies the approval of applications by removing the term "participation approval" and replacing it with "approval" wherever it occurs.

The final-form rulemaking specifies that the applications shall contain release and hold harmless provisions which the applicants agree to when they sign the applications. Unsigned applications will be considered incomplete.

The final-form rulemaking resolves the issue of Committee member participation in programs by stating that members must sign a statement certifying that they have complied with the referenced codes and copies of the codes will be provided to members upon request.

*Subchapter A. Aquaculture Production Development Program*

3. *Section 106.1. Program objectives.—Clarity.*

*Comment: IRRC*

This section states that low-interest financing will be available to businesses “unable to fully finance these projects with equity, bank financing, or other private and public sources.” The final-form rulemaking should specify the documentation that the applicant must provide to demonstrate that this criteria has been met.

*Comment: Bureau*

Subchapter A sets forth the Aquaculture Production Development Program and provides for low-interest loan financing for a portion of the costs of land, building, machinery, equipment, working capital, and training to businesses unable to fully finance these projects with equity, bank financing or other private and public sources.

In regard to the low interest loans, the Bureau questioned whether the requirement that to qualify for a low-interest loan, the fish farmer must be turned down by a lending institution or other public/private source. IRRC feels this requirement would exclude most fish farmers in this Commonwealth and would contradict the purpose of the Aquaculture Production Development Program. The Bureau questioned whether this requirement was an act restriction.

*Response:*

The language of the final-form rulemaking does not commit the Commonwealth to being the “lender of last resort” as this phrase implies. The act does not require this. Therefore, a fish farmer would not have to be turned down by another lender before he could apply. However, the final-form rulemaking includes a provision that applicants must provide verification of all financing sources, total project costs, and documentation of all financing requested and the results of the requests.

4. *Section 106.3. Eligibility.—Clarity.*

*Comment: IRRC*

*Subsection (b) Eligible activities*

Subsection (b)(2) states that, “the project adopts generally acceptable pollution prevention and environmental stewardship practices.” What are “generally acceptable pollution prevention and environmental stewardship practices?” These practices should be defined in the final-form rulemaking. Alternately, if these practices are defined elsewhere in existing regulations or guidance documents, these documents or regulations should be cross-referenced in the final-form rulemaking. Subsection (b)(3)(ii) states that the required certification can be obtained by an “environmental professional approved by the Department.” IRRC had three concerns.

First, the term “environmental professional” is vague. Adding a definition of this term or a citation to a definition would improve clarity.

Second, the regulation requires the “environmental professional” to be approved by the Department. IRRC requested the Department explain the approval process. Finally, how will the list of environmental professionals approved by the Department be provided to the public? The final-form rulemaking should identify where and how this information will be made available.

*Comment: Bureau*

Several fish farmers who are members of the Bureau questioned whether machinery, such as live-haul trucks, and land, such as ponds, are included in the list of acceptable projects for low-interest loan financing. Live-haul trucks and ponds are important pieces of many aquaculture operations and should be included as acceptable items for this program.

*Response:*

The final-form regulation defines “generally acceptable pollution prevention and environmental stewardship practices” as “Those best management practices (BMPs) for aquaculture categorized and explained in the Pennsylvania Aquaculture BMP Guide as approved by the Committee.” The Committee’s NPDES Subcommittee is currently working on development of a general aquaculture NPDES permit. One of the components of this task is to publish a Pennsylvania Aquaculture BMP Guide. IRRC expected this work to be completed by spring 2003.

The Department has removed the criteria regarding and all references to “environmental professional” in the final-form regulation. In considering a response to IRRC’s comment the Department became aware that the Department of Environmental Protection does not “certify” that a project will comply with environmental laws and regulations. In addition, the act provides no authority to the Department to “approve” or “certify” an environmental professional. Therefore, in the final-form rulemaking the Department amended the language in § 106.3(b)(2) to delete the reference to “certification” of the proposed project and deleted all of § 106.3(b)(3) which contained the reference to an “environmental professional

Eligible costs under this subchapter include land cost whether that land is being used for a hatchery building, production ponds, or other farm uses directly related to the project proposed for funding.

Machinery costs include all types of machinery except vehicles titled or registered for highway use. This would exclude live-haul trucks to be used offsite for deliveries. However, since the APDP may only finance up to 50% of a project’s total costs, this provision does not keep the commercial lender from financing such a purchase.

5. *Section 106.4. Ineligible activities.—Clarity.*

*Comment: IRRC*

Paragraph (2) addresses nonprejudicial approvals. However, the title of this section is “Ineligible activities.” Paragraph (2) should be removed from § 106.4 and either placed in a new section or moved to § 106.3, relating to eligibility.

*Response:*

The final-form rulemaking moves the referenced paragraph from § 106.4 to become § 106.3(g).

6. *Section 106.5. Program requirements.—Fiscal Impact; Reasonableness; Clarity.*

*Comment: IRRC*

*Subsection (c) Jobs*

This subsection requires that one full-time job be created or preserved when the project is funded under the APDP. What is the basis for this requirement? Given that loan amounts could be as small as \$10,000, is it reasonable to require the creation or preservation of one full-time equivalent job for each project funded under the APDP? If this requirement is not met within 3 years from

completion of the project, is the loan recipient required to immediately repay the entire loan amount?

*Subsection (d) Terms*

This subsection sets forth the terms for the loan agreements. Please explain the basis for the payment periods in subsection (d).

*Subsection (f) Fees*

Paragraph (2) states "reasonable loan processing fees may be charged." On what basis will the "reasonable" fees be determined?

Additionally, paragraph (2) states that the applicant "should" check with the local provider regarding fees. "Should" is nonregulatory language which is inappropriate in regulations. It would be clearer to simply state that the local service provider or area loan organization will set the fees.

*Subsection (i) Priority*

Subsection (h)(1) refers to "good credit rating containing no late payments or write-offs." It appears that the standard which must be met under this paragraph is "no late payments or write-offs." The use of the word "good" is superfluous and creates an undefined standard. The Department should either delete "good" or include criteria for determining what credit rating constitutes a "good" credit rating. Subsection (i)(4) refers to a "proven profit-making venture." What criteria will be used to determine if a venture meets the "proven profit-making" requirement?

*Comment: Bureau*

Under § 106.5(e), the Bureau recommended that, under terms of agreement for low-interest loans, loans used for real estate have a repayment period of up to 15 years. A repayment period of only 10 years would have negative effects on the early cash flow needed for most fish farms in this Commonwealth. The Bureau would also recommend that loans for working capital have a repayment period of up to 5 years. Also under § 106.5(h)(1), we believe the requirement that a borrower of the low-interest loans not be allowed to relocate from one area of the Commonwealth to another without at least a 25% increase in net employment to be excessively burdensome on the farmer. The Bureau feels that if a fish farmer were to receive a low-interest loan, and then move his operation outside of this Commonwealth, he should be required to repay the loan in full to the Commonwealth. However, if a fish farmer finds that he must move to another part of this Commonwealth to keep his operation economically healthy, the farmer should have the right to do so without the requirement of a 25% increase in net employment.

*Response:*

The final-form rulemaking does not have a jobs requirement.

The Small Business First Program (SBFP) was used as the model from which the APDP was crafted. The loan terms in this chapter were set to be the same as that program. However, the final-form rulemaking sets the real estate repayment period at 15 years and the working capital repayment period at 5 years. The other provisions remain the same.

Likewise, the fees for processing are to mirror similar fees charged for the SBFP. The final-form rulemaking states, "The local service provider or area loan organization will set the fees."

The final-form rulemaking's subsection (i)(1) reads "Applicants with credit ratings containing no late payment or write-offs."

The final-form rulemaking's subsection (i)(4) adds the following phrase to the requirement, "as documented by state and Federal tax returns showing taxes paid on business profits."

The final-form rulemaking keeps the relocation provisions as originally written. These provisions are valid in order to discourage local communities within the State from competing to encourage employers to move to other localities. Since aquaculture facilities are generally located because of specific site water availability it is highly unlikely that this provision will cause harm to any current or future fish farmer.

*7. Section 106.6. Application submission and approval procedure.—Clarity.*

*Comment: IRRC*

Subsection (d)(14) states, "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." Under what circumstances would the Department accept a collateral position less than a second lien on the assets?

*Response:*

The Department would consider accepting less than a second lien position on assets when the appraisal of assets shows sufficient value to cover all liens if the assets were to be sold at bankruptcy sale (75-80% of appraised market value).

*8. Section 106.12. Contact information.—Clarity.*

*Comment: IRRC*

Subsection (a) lists methods to contact the Department, but does not include an e-mail address. If the Department is available by e-mail, that information should be included in the final form rulemaking.

*Response:*

The final-form rulemaking provides a generic e-mail address for the Bureau. The Department believes the generic e-mail address will better serve the regulated community since specific e-mail addresses are individual specific and do not take changes in employee responsibility or employment status into consideration.

*Subchapter B. Aquaculture Producer Resource Program*

*9. Section 106.22. Limitations.—Clarity.*

*Comment: IRRC*

Subsection (a) references the Department's Internet site but does not list the address. Has the Department considered including the Internet site in the final-form rulemaking?

*Response:*

The final-form rulemaking provides the Department's website address.

*Subchapter C. Aquaculture Education Enhancement Program*

*10. Section 106.43. Notice of activities.—Implementation procedures.*

*Comment: IRRC*

Subsection (a) states that the Department will use one of the three methods to notify eligible applicants of AEPP activities. The three methods include publication in the

*Pennsylvania Bulletin*, direct mailing and advertisements. If the Department uses only one method of notification, such as the *Pennsylvania Bulletin*, many eligible applicants may not be aware of upcoming activities. Is it the Department's intent to use only one method of notification, or will the Department use a combination of the methods in subsection (a)(1)–(3)? If the Department intends to use a combination of methods, subsection (a) should be modified to clearly reflect this intent.

Additionally, has the Department considered posting AEEP activities on its website?

*Response:*

The final-form rulemaking states that the Department may use one or more of the listed methods in any combination and adds the Department's website as a potential method.

11. *Section 106.54. Processing of application.—Reasonableness.*

*Comment: IRRC*

Subsection (b) addresses how the Department will process applications. IRRC has two concerns.

First, under subsection (b)(5), relating to incomplete and inaccurate applications from eligible applicants, will 5 days be sufficient for the applicant to obtain the additional information? IRRC noted that the comparable provision in § 106.65(b)(5) gives applicants 10 days to respond.

Second, under subsection (b)(6)(iv), relating to order of participation availability, will 7 days be sufficient time for the applicant to respond? Is the notification date the same as the date of mailing?

*Response:*

The Department feels these time periods are appropriate since the projects expected to be undertaken through this program are short-range, simple activities with quick turnaround periods. Section 106.65 pertains to the grant program which is structured to facilitate larger, more complex projects—therefore it has a longer response period. The notification date will be the date of mailing.

12. *Section 106.55. Notice of disposition of application.—Reasonableness; Clarity.*

*Comment: IRRC*

Subsection (a), relating to applications deemed complete, states the Department will notify applicants within 15 days of its decision to approve, approve with special conditions or reject the application. Subsection (b), relating to applications deemed incomplete or ineligible, states the Department will notify the applicants of its decision to reject the application or request additional information within 10 days. IRRC has three concerns.

First, what is the reason for the different time frame in subsection (a) and (b)?

Second, if the Department does not render a decision within the allotted time for complete applications, is the applicant deemed approved?

Third, subsection (a) requires an approved applicant to submit the application fee within 5 days of receipt of the approval letter. The APPP and the AEPP allow 10 days for the applicant to submit the fee. Why is the Department allowing only 5 days for the submittal of the fee for the AEPP?

*Response:*

The final-form rulemaking sets the time frame within each paragraph to 15 days and notes that applications upon which the Department does not render a decision within the allotted period are deemed approved as long as participation space is available within a given activity.

The final-form rulemaking deletes the reference to participation fee receipt within the AEPP, the APPP and the AEPP since each program requires that the participation fee be submitted as part of the application. In place of this reference, the final-form rulemaking delineates how reimbursement of fees submitted by unaccepted applicants are to be processed and returned.

13. *General.—Sections 106.61–106.66—Clarity.*

*Comment: IRRC*

Must an applicant return the unused portion of a grant? If so, when?

*Response:*

The final-form rulemaking delineates that unused funds are to be returned to the Department within 90 days after the project's completion date as stated in the grant contract or the date upon which a grant is terminated by either the Department or the recipient.

14. *Section 106.65. Processing of application.—Reasonableness.*

*Comment: IRRC*

Under subsection (b)(5), relating to incomplete and inaccurate applications from eligible applicants, is 10 days sufficient to obtain the additional information?

*Response:*

The Department deems this to be a reasonable and sufficient time frame. However, to increase consistency between programs, the final-form rulemaking states this period to be 15 days for each.

*Subchapter D. Aquaculture Market Information Program*

15. *General.—Feasibility.*

*Comment: Bureau:*

Several Bureau members have also voiced concerns about the feasibility of Subchapter D (relating to Aquaculture Market Information Program). Their argument is that this aspect of the program does not seem feasible because fish farmers already know the pricing of their product in the different markets that exist. They state that the pricing system in the aquaculture industry is totally distinct from other ag-related pricing systems such as those for hogs and soybeans and that this program may not work for the aquaculture industry.

*Response:*

The Department respectfully disagrees with the noted sentiments for several reasons.

First, the Committee's industry representatives voiced strong support for this program at their October 9, 2001, meeting.

Second, an aquaculture price reporting system was developed by Maryland's Department of Agriculture several years ago and was very successful.

Third, the main reason for any price reporting system is to keep the market pricing fair and open by letting all sellers and buyers know the prices being paid for particular types of products.

Fourth, one of the main reasons behind the act is to encourage new farmers to enter aquaculture production. A price reporting system allows them to make their startup decisions based on fair and accurate price information.

*Subchapter E. Aquaculture Product Identification Program*

16. *Section 106.102. Limitations.—Clarity.*

*Comment: IRRC*

Subsection (a) addresses applicant eligibility. The final-form rulemaking requires the aquaculture propagator or aquaculture-related company to be “in good standing.” The final-form regulation should specify under what standards “in good standing” will be judged.

*Response:*

The final-form rulemaking defines “in good standing” to be propagators or companies which “are registered or licensed in accordance with all applicable State and Federal laws and current with all debts owed to the Commonwealth and other government entities.”

17. *Section 106.103. General conditions.—Clarity.*

*Comment: IRRC*

Subsection (b) addresses renewal of APIP participation. Will renewal applications require a participation fee? If so, this subsection should be revised to state that renewal applications require payment of a participation fee.

*Response:*

The final-form rulemaking clarifies that renewal applications do require a participation fee at the time of renewal.

18. *Section 106.104. Application.—Clarity.*

*Comment: IRRC*

The phrase “non-profit entity” is vague. The Internal Revenue Code and the Pennsylvania Tax Reform Code commonly use the phrase “not-for-profit.” A specific citation to the Internal Revenue Code of 1986 (26 U.S.C.A.) describing the types of businesses at issue would add clarity to the regulation.

*Response:*

The final-form rulemaking subsection (b)(6) clarifies this phrase with the following language, “Verification that the applicant is subject to the tax laws of the Commonwealth and is not a “not-for-profit” as defined by the Internal Revenue Code of 1986 (26 U.S.C.A.).

19. *Section 106.105. Review of application.—Clarity.*

*Comment: IRRC*

Subsection (d) addresses factors to be considered by the Department in selecting APIP participants. Under subsection (d)(2), what documentation must an applicant provide to verify that all products are produced in this Commonwealth?

*Response:*

All applicants must sign a certification statement as part of the application verifying that all products to be covered by the APIP logos and promotional effects are produced in this Commonwealth and that their participation will terminate if this provision is violated.

20. *Section 106.106. Processing of applications.—Reasonableness.*

*Comment: IRRC*

Subsection (b)(5) gives an applicant 10 business days to submit additional information at the Department’s request. Is this enough time to provide the additional information?

*Response:*

The Department deems this to be a reasonable and sufficient time frame. However, to increase consistency between programs, the final-form regulation states this period to be 15 days for each.

*Subchapter G. Aquaculture Export Promotion Program*

21. *Section 106.162. Limitations.—Clarity.*

*Comment: IRRC*

Subsection (b) requires a “majority” of the displayed products at an AEPP to be grown or manufactured in this Commonwealth. The term “majority” is vague and open to interpretation. We note that the corresponding provision in Subchapter F (relating to the APPP) (§ 106.132(b)) establishes a threshold of 60%. The final-form rulemaking should include a specific threshold as a percentage of production.

*Response:*

The final-form rulemaking clarifies this by changing the sentence in which “majority” appears to be the same as the noted sentence in § 106.132 (b), “At least 60% of the displayed products in an AEPP activity shall be grown or manufactured in this Commonwealth.”

22. *Miscellaneous Clarity Issues.*

*Comment: IRRC*

*Section 106.2.*

- There are two typographical errors in this section. In the *Pennsylvania Bulletin* version of this regulation the word “aquaculture” is misspelled in the definitions of “AEEP” and “AEPP.”

*Section 106.3.*

- There is a grammatical error in the first sentence of subsection (d)(1). The word “is” should be changed to “are.”

*Section 106.10.*

- The last sentence in this section includes the word, “thereon.” This word is unnecessary and should be deleted.

*Section 106.163.*

- In subsection (e)(1), it appears that the words “more than” before “80%” are extraneous and should be deleted.

*Section 106.165.*

- There is a typographical error in subsection (a). The word “the” before “applicant” should be deleted.

*Response:*

These corrections have been noted and rectified in the final-form rulemaking.

*Comment: IRRC*

*Section 106.166.*

- Subsection (b)(1) is unclear. Clarity would be improved if this subsection was rewritten.

*Response:*

The noted subsection now appears as follows, "The application will have the initial date of the postmark or the 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."

*Fiscal Impact*

*Commonwealth*

The final-form rulemaking will impose moderate costs and have minimal fiscal impact upon the Commonwealth over time. The final-form rulemaking will require additional paperwork and impose an additional workload on the Department. A full-time clerical position will be needed to support the new programs.

*Political Subdivisions*

The final-form regulations will impose no costs and have no fiscal impact upon political subdivisions.

*Private Sector*

The final-form rulemaking will impose no additional costs on the regulated community since all programs are voluntary. The private sector participants who participate will benefit through lower cost marketing and loan options. It should be noted that the regulated community participated in the development of the final-form rulemaking and that the Committee voted to approve each section as it was written.

*General Public*

The final-form rulemaking will impose no costs and have no fiscal impact on the general public.

*Paperwork Requirements*

The final-form rulemaking will result in a moderate increase of paperwork. The Department will need to develop the appropriate forms and procedures to administer the final-form rulemaking.

*Contact Person*

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

*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 the notice of proposed rulemaking, published at 32 Pa.B. 2468 (May 18, 2002), to IRRC and to the Chairpersons of the House Agriculture and Rural Affairs Committee and the Senate Agriculture and Rural Affairs Committee for review and comment

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

Under section 5.1(d) of the Regulatory Review Act (71 P. S. § 745.5a(d)), on November 25, 2002, the final-form rulemaking was deemed approved by the House Agriculture and Rural Affairs Committee and the Senate Agriculture

and Rural Affairs Committee. Under section 5.1(e) of the Regulatory Review Act, IRRC met on December 12, 2002, and approved the final-form rulemaking.

*Findings*

The Department finds that:

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

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

(3) The modifications that were made to the final-form rulemaking in response to comments received do not enlarge the purpose of the proposed regulations published at 32 Pa.B. 2468.

(4) The adoption of the final-form rulemaking in the manner provided in this order is necessary and appropriate for the administration of the authorizing statute.

*Order*

The Department, acting under authority of the authorizing statute, orders that:

(a) The regulations of the Department, 7 Pa. Code, are amended by adding §§ 106.1—106.12, 106.21—106.24, 106.41—106.48, 106.51—106.56, 106.61—106.66, 106.81—106.86, 106.101—101.112, 106.131—106.143 and 106.161—106.174 to read as set forth in Annex A.

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

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

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

SAMUEL E. HAYES, JR.,  
*Secretary*

*(Editor's Note:* For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 32 Pa.B. 6428 (December 28, 2002).)

**Fiscal Note:** Fiscal Note 2-140 remains valid for the final adoption of the subject regulations.

**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**

- Sec. 106.1. Program objectives.
- 106.2. Definitions.

- 106.3. Eligibility.
- 106.4. Ineligible activities.
- 106.5. Program requirements.
- 106.6. Application submission and approval procedure.
- 106.7. Application evaluation criteria.
- 106.8. Processing of applications.
- 106.9. Cancellation/default.
- 106.10. Right of recovery.
- 106.11. Deficits.
- 106.12. Contact information.

### § 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 to enable them to fully finance these projects by leveraging 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 subchapter, 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 not-for-profit economic development organization approved by the Department to evaluate and administer loans under this subchapter.

*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.

*DEP*—The Department of Environmental Protection of the Commonwealth.

*Department*—The Department of Agriculture of the Commonwealth.

*Generally acceptable pollution prevention and environmental stewardship practices*—Those best management practices (BMPs) for aquaculture categorized and explained in the *Pennsylvania Aquaculture BMP Guide* as approved by the Advisory Committee.

*In good standing*—Entities registered or licensed in accordance with applicable State and Federal laws and current with all debts owed to the Commonwealth and other government entities.

*Local service provider*—An organization not meeting the definition of an “ALO,” but approved by the Department to evaluate and administer loans under this subchapter. 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 project shall bring the borrower into compliance with the environmental laws or regulations that are sought to be addressed by the project or the project shall adopt generally acceptable pollution prevention and environmental stewardship practices.

(3) 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 are 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 borrower 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 shall 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 Advisory Committee may apply for a loan under this subchapter 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 4 Pa. Code Chapter 7, Subchapter K (relating to code of conduct for appointed officials and State employees). Members of the Advisory Committee shall supply a signed statement with their application certifying they have complied with the referenced codes. Copies of the codes will be made available to members upon request.

(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.

(f) *Verification of funding sources and uses.* The borrower shall provide documentation verifying the project costs and sources of funds being used for the project under consideration. Each projected source of funds shall show what the funds will be used for and provide proof that the funds are available and committed to the project. The borrower shall also provide copies of any applications for project funds from other sources and whether those requests were approved or denied.

(g) *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.

(3) A project will be ineligible unless there is a nonprejudicial approval in place, if the borrower, prior to accepting the commitment letter and returning it to the Department does any of the following:

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

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

(iii) Finances any working capital needs.

(4) 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 under current markets.

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

(i) *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. An APDP loan for 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.

**§ 106.4. Ineligible activities.**

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 non-prejudicial 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.

**§ 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) *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.

(d) *Terms.* Loans used for real estate will have a repayment period of up to 15 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 5 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 15-year repayment period and a 12-month interest only period would be repaid over an effective loan period of 16 years.

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

(f) *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 local service provider or ALO will set the fees.

(g) *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) 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.

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

(1) Applicants with 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 as documented by state and Federal tax returns showing taxes paid on business profits.

(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.

(i) *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.

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

(k) *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) 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. The approval shall only be considered when the appraisal of assets shows sufficient value to cover all liens of the Department if the assets were to be sold at a bankruptcy sale.

(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) The APDP loan funds will be disbursed at the loan closing between the ALO or local service provider and the borrower. The 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 subchapter and the APDP application

(b) *Applicant eligibility.* The Department will review applications to determine applicant eligibility according to the criteria in this subchapter. 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 subchapter.

(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. Each application shall contain a release and hold harmless statement which the applicants agree to when they sign the application. Unsigned applications will be considered incomplete.

#### § 106.8. Processing of applications.

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

(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. When the processing of the application is terminated, the Department will notify the applicant in writing, stating the reason for the termination, and refund the participation fee.

#### § 106.9. Cancellation/default.

The Department, upon a determination that the recipient has violated the act, this subchapter 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 subchapter, or the loan agreement and any interest.

#### § 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  
E-mail address: agmarkets@state.pa.us  
Website: www.pda.state.pa.us

(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. The information will be made available through the Department's website ([www.pda.state.pa.us](http://www.pda.state.pa.us)) 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 in this subchapter.

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

#### § 106.23. Notice of program availability.

(a) *Public notification.* 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.
- 106.47. Right of recovery.
- 106.48. Deficits.

**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.
- 106.56. Cancellation policy.

**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 subchapter.

(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 subchapter.

(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 through one or more of the following methods in any combination:

(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.

(4) *Website.* The Department's website.

(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). Members of the Advisory Committee shall supply a signed statement with their application certifying they have complied with the referenced codes. Copies of the codes will be made available to members upon request.

**§ 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 subchapter 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 subchapter. 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 subchapter 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 subchapter. 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 subchapter 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 determined 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 subchapter 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 subchapter 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) *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.

(b) *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. Each application shall contain a release and hold harmless statement which the applicants agree to when they sign the application. Unsigned applications will be considered incomplete.

**§ 106.54. Processing of applications.**

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

subchapter. 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. When the processing of the application is terminated, the Department will notify the applicant in writing, stating the reason for the termination, and refund the participation fee.

(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. When the application is rejected, the Department will set forth in writing the reason for the rejection and refund the participation fee.

(b) *Applications deemed incomplete or ineligible.* Within 15 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).

(c) *Applications not processed within the time period.* When the Department does not render a decision within the allotted time period the application will be deemed approved so long as participation space is available within the given activity. Priority will be determined by postmark date 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 \$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 pe-

riod, a portion of the grant proceeds are unaccounted for, or the applicant violates another provision of this subchapter, 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 subchapter 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. Any funds which remain unused after the project's completion date or the date upon which a grant is terminated by either the Department or the recipient shall be returned to the Department within 90 days of that date.

#### § 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 website, 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) *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.

(b) *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. Applications shall contain a release and hold harmless statement which the applicants agree to when they sign the application. Unsigned applications will be considered incomplete.

**§ 106.65. Processing of applications.**

(a) *Approval or denial.* The Department may approve, approve with special considerations or reject applications. The Department will issue approvals in accordance with the general considerations and criteria of the act and this subchapter. 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 15 business days of the request for the data. When the processing of the application is terminated, the Department will notify the applicant in writing, stating the reason for the termination, and refund the participation fee.

(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. When the application is rejected, the Department will set forth in writing the reason for the rejection and refund the participation fee.

(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 website 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 subchapter.

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

#### § 106.83. Notice of program activity.

(a) *Solicitation of information.* 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 to entities 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.
106.106.	Processing of applications.
106.107.	Notice of disposition of application.
106.108.	Approved participant withdrawal policy.
106.109.	Conflict of interest.
106.110.	Notice of program activity.
106.111.	Recordkeeping.
106.112.	Cancellation/modification.

#### § 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 subchapter, 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 subchapter.

(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 subchapter 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 subchapter.

(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 and a renewal fee (consistent with the participation fee) 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 subchapter 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 website, 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 "not-for-profit" as defined by the Internal Revenue Code of 1986 (26 U.S.C.A.).

(c) *Obtaining an application and assistance.* An application for participation under this subchapter shall be made on a form provided 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, 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 subchapter may be submitted to the Department on January 1 and July 1 of each calendar year.

**§ 106.105. Review of applications.**

(a) *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. An applicant shall sign a certification statement as part of the application stating that all products with which the APIP logos and materials will be used are produced in this Commonwealth.

(b) *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. Each application shall contain a release and hold harmless statement which the applicants agree to when they sign the application. Unsigned applications will be considered incomplete.

**§ 106.106. Processing of applications.**

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

(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 15 business days of the request for the data. When the processing of the application is terminated, the Department will notify the applicant in writing, stating the reason for the termination, and refund the participation fee.

(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. When the application is rejected, the Department will set forth in writing the reason for the rejection and refund the participation fee.

(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). Members of the Advisory Committee shall supply a signed statement with their application certifying they have complied with the referenced codes. Copies of the codes will be made available to members upon request.

#### § 106.110. Notice of program activity.

(a) *Identification of product.* 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 subchapter 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 subchapter. 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

Sec.

- 106.131. Program objectives.
- 106.132. Limitations.
- 106.133. General conditions.
- 106.134. Application.
- 106.135. Review of applications.
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- 106.137. Notice of disposition of application.
- 106.138. Approved participant cancellation policy.
- 106.139. Notice of program activity.
- 106.140. Conflict of interest.
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- 106.142. Right of recovery.
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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 are subject to tax laws of the Commonwealth. Each applicant approved for participation shall comply with the criteria established by the act and this subchapter, 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 subchapter.

(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 as set forth 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 subchapter 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 website, 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 subchapter 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 subchapter 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) *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.

(b) *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. Each application shall contain a release and hold harmless statement which the applicants agree to when they sign the application. Unsigned applications will be considered incomplete.

**§ 106.136. Processing of applications.**

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

(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. When the processing of the application is terminated, the Department will notify the applicant in writing, stating the reason for the termination, and refund the participation fee.

(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. When the application is rejected, the Department will set forth, in writing, the reasons for the rejection and refund the participation fee.

(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). Members of the Advisory Committee shall supply a signed statement with their application certifying they have complied with the referenced codes. Copies of the codes will be made available to members upon request.

**§ 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 subchapter 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 objectives.

106.162. Limitations.

106.163. General conditions.

106.164. Application.

106.165. Review of applications.

106.166. Processing of applications.

106.167. Notice of disposition of application.

106.168. Approved participant cancellation policy.

106.169. Notice of program activity.

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 subchapter, 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. At least 60% 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 subchapter.

(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 subchapter.

(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 subchapter 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 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 website, 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 subchapter 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 subchapter 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) *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.

(b) *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. Each application shall contain a release and hold harmless statement which the applicants agree to when they sign the application. Unsigned applications will be considered incomplete.

#### § 106.166. Processing of applications.

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

(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 or the initial date of receipt, whichever is earlier, noted on the application by Department staff. If the application is determined to be incomplete, the effec-

tive 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 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. When the processing of the application is terminated, the Department will notify the applicant in writing, stating the reason for the termination, and refund the participation fee.

(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 shall 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. When the

application is rejected, the Department will set forth in writing the reason for the rejection and refund the participation fee.

(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) *Manner of notification.* 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). Members of the Advisory Committee shall supply a signed statement with their application certifying they have complied with the referenced codes. Copies of the codes will be made available to members upon request.

**§ 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 subchapter 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 subchapter.

**§ 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 subchapter 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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