

# RULES AND REGULATIONS

## Title 7—AGRICULTURE

### DEPARTMENT OF AGRICULTURE

#### [7 PA. CODE CHS. 138g and 138k]

#### Farm Safety and Occupational Health Grant Program

The Department of Agriculture (Department) has established regulations authorized and required under the Farm Safety and Occupational Health Act (act) (3 P. S. §§ 1901—1915).

#### *Authority*

The Department has the power and authority to adopt these regulations. This authority includes:

(1) The general authority to adopt rules and regulations conferred by section 5 of the act (3 P. S. § 1905), which delineates the duties of the Secretary of Agriculture (Secretary) and directs the Secretary to “. . .adopt and promulgate any regulations which may be necessary to implement and administer the act.”

(2) The specific authority conferred by section 6(c)(2) of the act (3 P. S. § 1906(c)(2)) which authorizes the Secretary to establish a grant program for the purpose of awarding grants to Statewide farm organizations and volunteer fire companies, ambulance services and rescue squads for providing farm safety, occupational health and emergency response programs.

(3) The specific duty and authority as set forth in section 6(d) of the act, which requires the Secretary to adopt and promulgate regulations to govern the awarding of grants under section 6 of the act.

#### *Need for the Regulations*

The regulations delineate the objectives of the Farm Safety and Occupational Health Grant Program (FSOH) and establish the procedures governing the submission, processing and review of grant applications. In addition, the regulations set forth the documentation required to accompany the applications, eligibility criteria, criteria and verification, cancellation, notification and reporting requirements. The regulations assure fair and impartial review of FSOH grant applications. These regulations establish a grant program which will make funds available to Statewide farm organizations and volunteer fire companies, ambulance services and rescue squads for providing farm safety, occupational health and emergency response programs.

This Commonwealth's approximately 51,000 farms are the foundation of a \$35 billion industry, employing over 650,000 workers in farming and related services, food processing and food wholesale and retail sales. The National Safety Council reports agriculture as this Nation's most hazardous industry, with a work death rate 22% higher than the second most hazardous industry, mining and quarrying. Farming accounts for over 80% of agriculture's injury toll. From 1990 through 1995, at least 249 Commonwealth citizens have lost their lives to hazards associated with farming. The victims included 17 infants, toddlers and preschoolers—all under 5 years of age. Another 29 victims were at least 75 years of age. The oldest victim was 89 years old. In 1994, a Statewide survey showed one in every ten farm operations in this Commonwealth had at least one recordable work-related

injury. Even more startling was that approximately 5% of those injuries resulted in some type of permanent disability to the victim. The numbers evidence the need for farm safety and occupational health programs. In 1994 alone, there were a total of 5,100 injuries and 250 permanent disability injuries related to farming. Therefore, the regulations should ultimately benefit both the farming community and the general public.

In summary, the Department is satisfied there is a need for the regulations, and that they are otherwise consistent with Executive Order 1996-1, “Regulatory Review and Promulgation.”

#### *Comments*

Notice of proposed rulemaking was published at 30 Pa.B. 781 (February 12, 2000), and provided for a 30-day public comment period.

Comments were received from the Independent Regulatory Review Commission (IRRC).

*Comment:* IRRC commented on § 138k.1 (relating to Program objectives) of the proposed regulations. IRRC was concerned with the consistency of the section with the Farm Safety and Occupational Health Tuition Assistance Program (FSOHTAP), published at 30 Pa.B. 771, and the Farm Safety and Occupational Health Developmental and Instructional Program (FSOHDIP), published at 30 Pa.B. 776. IRRC was also concerned with the clarity of the section. IRRC commented that § 138k.1(b) of the proposed regulations stated, in part, that “Grant requests. . .will. . .be reviewed by the Board. . .” IRRC commented that giving the Farm Safety and Occupational Health Advisory Board (Board) this duty is inconsistent with similar provisions in the two simultaneously proposed regulations (FSOHTAP and FSOHDIP) submitted to IRRC for review. In addition, IRRC was concerned that the Board only met three times annually and the regulations require the Department to review and approve grant applications within 30 days. Therefore, IRRC stated it was not feasible to include the Board in the review of each application and the Department should revise the regulations to be consistent with the other two regulations (FSOHTAP and FSOHDIP).

*Response:* The Department agrees the language of § 138k.1(b) of the proposed regulations should be revised to be consistent with the other two regulations and because including the Board in the review of each application is not feasible. In addition, giving the Board that power is inconsistent with section 3(g) of the act (3 P. S. § 1903(g)), which establishes the duties of the Advisory Board. The Department has deleted the language regarding review by the Board and has replaced it with “reviewed by the Secretary or a designee.” This language is consistent with the language of the other two regulations.

*Comment:* IRRC commented that the term “Board” in the definitions section of the regulations and the term “Advisory Board” in the act both refer to the “Farm Safety and Occupational Health Advisory Board.” They suggested that for consistency with the statute, the Department should replace the term “Board” with the term “Advisory Board.”

*Response:* The Department agrees the terms in the regulations should be consistent with the terms in the act. The Department has changed the term “Board” to “Advisory Board” in § 138k.2 (relating to definitions) of

the final-form regulations. In addition, in the final-form regulations all references to "Board" have been changed to "Advisory Board."

*Comment:* IRRC had two comments with regard to the clarity of § 138k.4 (relating to general conditions) of the proposed regulations. First, IRRC commented that another part of the proposed regulations, § 138k.6(a) (relating to processing of applications), sets forth a list of attachments to an application. IRRC suggested that in order to improve clarity, the contents of § 138k.6(a) should be moved to § 138k.4 of the proposed regulations. Alternatively, IRRC suggested the contents could be placed in a new section captioned "application requirements" following § 138k.4 and preceding § 138k.5 (relating to applications generally) of the proposed regulations.

IRRC's second comment with regard to § 138k.4 concerned the fact that the proposed regulations require the applicant to complete and submit grant application forms, but does not list the basic information required on a grant application form. IRRC suggested the Department should include basic information on the contents of the application form in this section.

*Response:* With regard to IRRC's first comment on § 138k.4, the Department agrees that placing the contents of § 138k.6(a) of the proposed regulations into the section regarding "applications generally" would add clarity to the regulations. In the final-form regulations, the Department has placed a subsection entitled "grant application requirements" into § 138k.5(b) of the final-form regulations. In addition, the language of § 138k.5(b) has been revised to be consistent with the other two regulations (FSOHTAP and FSOHDIP) submitted to IRRC for review.

With regard to IRRC's second comment concerning § 138k.4, the Department believes that the revised language in § 138k.5 of the final-form regulations and specifically the language in subsection (b) addresses IRRC's concern. In addition, the Department believes it is not required to specifically define the contents of application forms in the regulations.

*Comment:* IRRC commented with regard to the reasonableness and clarity of § 138k.6(b) of the proposed regulations. Section 138k.6(b) of the proposed regulations sets forth the factors the Secretary would consider when reviewing a grant application. IRRC suggested the Department should include a reference to § 138k.3(c) (relating to limitations on grant) of the proposed regulations. Section 138k.3(c) of the proposed regulations sets forth the type of projects for which FSOH grants may be awarded.

*Response:* The Department agrees such a reference would add clarity to the regulations. Therefore, in the final-form regulations, the Department has added language to § 138k.7(d) (relating to review of applications) which references § 138k.3(c).

*Comment:* IRRC had three comments concerning reasonableness and clarity with regard to § 138k.7 of the proposed regulations. The first comment concerned the length of time it will take the Department to evaluate an application. The language of § 138k.7 of the proposed regulation states "Grant applicants will be notified by the Secretary within 30 days of a decision to reject or approve the grant." IRRC commented this language did not clarify the length of time it will take the Department to issue a decision once the application is received.

The second comment was with regard to the clarity of the last sentence of § 138k.7 of the proposed regulations.

IRRC commented that the sentence did not clearly define what constitutes use of the grant money. IRRC was confused as to whether the grant money had to actually be expended within a year, or if it could be merely committed but not actually spent.

IRRC's third comment regarding this section also focused on the last sentence. IRRC commented that the regulations should also state what happens if the grant funds are not used within 1 year of their receipt. IRRC further commented that this section should indicate how a grant recipient could apply for an extension, what action the Department may take and if that action could include cancellation of the grant under § 138k.10 (relating to recordkeeping) of the proposed regulations.

*Response:* The Department agrees the language should be revised to further clarify the time period for review of grant applications, what constitutes "use" of the grant funds, and to define what actions the Department may take in the event the grant recipient does not comply with this section. With regard to IRRC's first comment, the Department has revised the language of § 138k.8 (relating to notice of disposition of applications) of the final-form regulations to clarify the Department's time period for review. This section and all subsections now state that the grant applicant will be notified ". . . within 30 days of receipt of a completed grant application of a decision to approve, approve with special conditions or reject the grant application."

With regard to IRRC's second comment, the Department has revised the language of § 138k.8(c) of the final-form regulations. This section states "Grant money shall be spent. . . within the time period specified in the grant agreement unless an extension is granted in writing by the Secretary." This language clearly states the grant funds must actually be spent and the grant recipient will have a definite time period, set forth in the grant agreement, within which to spend the funds.

The Department responded to IRRC's third comment by adding language to § 138k.8(c) of the final-form regulations. The language delineates how a grant applicant may request an extension of time and sets forth the actions the Department may take if grant funds are not spent within a specified time period. The section states that failure to spend the grant funds within the specified time period will constitute a default and the Secretary may cancel the grant and seek recovery of the grant funds. The language references § 138k.11 (relating to grant cancellation) and § 138k.12 (relating to right of recovery) of the final-form regulations.

In addition, the Department reorganized the section by dividing it into subsections. This adds clarity to the regulations and makes it consistent with the other two farm safety regulations (FSOHTAP and FSOHDIP) submitted to IRRC for review.

*Comment:* IRRC commented with regard to the reasonableness of the paperwork requirements in § 138k.8 of the proposed regulations. IRRC's comments concerned the fact that grant recipients are required to submit a final report with documentation, and are also required to retain copies of documents and records for 3 years after the grant agreement expires.

*Response:* The Department requires retention for audit purposes and in case the copies of the records, documents and receipts contained in the final report and the Department's records are ever questioned or challenged.

*Comment:* IRRC commented with regard to § 138k.9(a) (relating to conflict of interest) of the proposed regula-

tions. IRRC suggested the Department needed to clarify the language of the subsection with regard to the time period for submission of certain reports, receipts and documents. IRRC commented that language sets a definite time period for submission of documentation and receipts but does not delineate a definite time period for submission of the other two reports.

*Response:* The Department intended for one report containing a narrative and all necessary documentation of costs and receipts to be submitted to the Department within 3 months of the project completion date. In response to this comment and in response to IRRC's suggestion that the format of this regulation should be consistent with the format of the other two farm safety regulations (FSOHTAP and FSOHDIP) submitted to IRRC for review, the Department has made two revisions to the final-form regulations. First, the Department revised the language of the final-form regulations to reflect that only one report, a final report, was necessary, and to reflect that the final report must be submitted within 3 months of the project completion date specified in the grant agreement and must include written receipts, records and any other financial records or documents evidencing the project's costs. Secondly, the Department deleted the section on verification from the final-form regulations and made it into two subsections under § 138k.4 of the final-form regulations. This is consistent with the format of the other two farm safety regulations (FSOHTAP and FSOHDIP) submitted to IRRC for review.

*Comment:* IRRC commented on four miscellaneous issues. The comments pertained to the clarity of the regulations and their consistency with the other two farm safety regulations (FSOHTAP and FSOHDIP). The first comment regarded adding provisions to the regulations for requesting additional documentation from an applicant when an application is deficient. IRRC commented that the other two farm safety regulations (FSOHDIP and FSOHTAP) contain those provisions. IRRC suggested the Department should include identical provisions in these regulations.

IRRC commented that the other two farm safety regulations (FSOHTAP and FSOHDIP) include provisions suspending processing of an incomplete application until the Department receives the additional data requested. IRRC suggested the Department should include identical provisions in these regulations.

IRRC's third comment was a suggestion that the Department add language to these regulations stating that the Department will confirm in writing all requests for and submission of additional data.

The fourth comment made by IRRC concerned the conflict of interest provision contained in the other two farm safety regulations (FSOHTAP and FSOHDIP) being reviewed by IRRC. IRRC suggested an identical provision be included in these regulations.

*Response:* The Department agrees with all of IRRC's comments and suggestions regarding miscellaneous provisions. In response to IRRC's first comment, the Department has added language to the final-form regulations regarding the Department's ability to and the process for requesting additional data for incomplete or inaccurate applications. Section 138k.6(b)(3) of the final-form regulations sets forth these provisions.

With regard to IRRC's second comment, the Department has added § 138k.6(b)(3) to the final-form regulations. This section sets forth provisions for suspending

the processing of an incomplete or inaccurate application and delineates the time period for submission of requested data.

In response to IRRC's third comment, the Department included language in § 138k.6(b)(3) of the final-form regulations regarding the processing of an incomplete or inaccurate application.

The Department addressed IRRC's fourth comment by adding § 138k.9 to the final-form regulations.

To address IRRC's concerns regarding clarity and consistency among the three farm safety regulations, in addition to the changes noted previously, the Department reformatted these final-form regulations so that the format and language is consistent with the final-form of regulations #2-122 (FSOHDIP) and #2-123 (FSOHTAP).

#### *Fiscal Impact*

##### *Commonwealth*

The final-form regulations will impose minimal costs and have minimal fiscal impact upon the Commonwealth, including projected increases in program costs. The Department has an appropriation for use in developing the various FSOH Grant Programs allowed under section 6 of the act. The Secretary, with the advice of the Board, will determine the amount of funds to allocate to each grant program promulgated under section 6 of the act.

##### *Political Subdivisions*

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

##### *Private Sector*

The final-form regulations will impose minimal costs on those organizations or individuals who are interested in applying for FSOH grants. The costs that may be associated with the regulations would involve the time spent to develop and implement the programs for which grant funds are sought and obtain and fill out a grant application. Organizations and individuals receiving grants would benefit by receiving funds to cover costs associated with developing and implementing the FSOH emergency response programs. The private sector may also benefit through the realization of reduced health care and occupational costs resulting from the educational value, skills learned and technical information presented at the educational and preventative programs developed under and espoused by the act and these regulations.

##### *General Public*

The final-form regulations will impose no direct costs and have no fiscal impact upon the general public. The farm community and the general public should benefit through the reduction of health care and occupational costs which are likely to result from the emergency response programs developed and implemented under and espoused by the act and these regulations.

##### *Paperwork Requirements*

The final-form regulations will not result in an appreciable increase of paperwork. The Department will have a grant application form to administer the FSOH Grant Program. However, the administrative provisions of the FSOH Grant Program regulations are very similar to the administrative provisions of the FSOH Grant Program Statement of Policy. The Department has already developed a grant application form and grant agreement for use in administering the FSOH Grant Program and has administered that program, under a Statement of Policy, since 1996.

*Contact Person*

Further information is available by contacting the Department of Agriculture, Farm Safety and Occupation Health Grant Program, 2301 North Cameron Street, Harrisburg, PA 17110-9408, Attn: John Taceosky, (717) 772-5217.

*Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on January 31, 2000, the Department submitted a copy of the notice of proposed rulemaking published at 30 Pa.B. 781, to IRRC and to the Chairpersons of the House and Senate Standing Committees on Agriculture and Rural Affairs 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 these final-form regulations, the Department has considered the 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 February 13, 2001, these final-form regulations were deemed approved by the Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on February 15, 2001, and approved the final-form regulations.

*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 promulgated thereunder at 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 these regulations in response to comments received do not enlarge the purpose of the proposed regulation published at 30 Pa.B. 781.

(4) The adoption of these regulations 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 §§ 138k.1—138k.13 and by deleting §§ 138g.1—138g.10 to read as set forth in Annex A.

(b) The Secretary 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 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*.

(*Editor's Note:* The adoption of §§ 138k.11—138k.13 was not included with the proposal at 30 Pa.B. 781).

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 31 Pa.B. 1291 (March 3, 2001).)

**Fiscal Note:** Fiscal Note 2-119 remains valid for the final adoption of the subject regulations.

**Annex A**

**TITLE 7. AGRICULTURE**

**PART V-C. FARMLAND AND FOREST LAND**

**CHAPTER 138g. (Reserved)**

**§§ 138g.1—138g.10. (Reserved).**

**CHAPTER 138k. FARM SAFETY AND OCCUPATIONAL HEALTH GRANT PROGRAM**

- Sec.
- 138k.1. Program objectives.
- 138k.2. Definitions.
- 138k.3. Limitations on grants.
- 138k.4. General conditions.
- 138k.5. Applications generally.
- 138k.6. Processing of applications.
- 138k.7. Review of applications.
- 138k.8. Notice of disposition of application.
- 138k.9. Conflict of interest.
- 138k.10. Recordkeeping.
- 138k.11. Grant cancellation.
- 138k.12. Right of recovery.
- 138k.13. Deficits.

**§ 138k.1. Program objectives.**

(a) *Purpose.* The purpose of the Program is to fund projects which will increase the knowledge and awareness of farm safety measures and occupational health issues in this Commonwealth, in particular, among the rural youth of this Commonwealth.

(b) *Competitive program.* The Program is competitive. Grant requests and related documentation will be collected by the Department and reviewed by the Secretary. Grants will be awarded annually.

(c) *Funds available basis.* Grants will not be awarded unless funds are available for this purpose.

**§ 138k.2. Definitions.**

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

*Act*—The Farm Safety and Occupational Health Act (3 P. S. §§ 1901—1915).

*Advisory Board*—The Farm Safety and Occupational Health Advisory Board.

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

*Designee*—A person chosen or appointed by the Secretary to carry out the Secretary's duties under this chapter.

*Eligible applicants*—Statewide farm organizations and volunteer fire companies, ambulance services and rescue squads providing farm safety, occupational health and emergency response programs.

*Person*—An individual, partnership, corporation, association or other form of business enterprise.

*Program*—The Farm Safety and Occupational Health Grant Program.

*Project*—The farm safety, occupational health or emergency response program delineated in the applicant's program application.

*Secretary*—The Secretary of Agriculture of the Commonwealth or a designee.

*Statewide farm organizations*—The term includes any of the following organizations located in this Commonwealth:

- (i) Farmers organizations.
- (ii) Dairy organizations.
- (iii) Livestock and poultry organizations.
- (iv) Veterinary associations.
- (v) Commodity organizations.
- (vi) Food industry organizations.
- (vii) Horticulture and agronomy organizations.
- (viii) Agricultural promotional organizations.
- (ix) Agricultural equipment organizations, including a local, county or regional chapter thereof.

*Volunteer ambulance services*—A nonprofit chartered corporation, association or organization located in this Commonwealth and which is regularly engaged in the services of providing emergency medical care and transportation of patients.

*Volunteer fire company*—A nonprofit chartered corporation, association or organization located in this Commonwealth which provides fire protection services and other voluntary emergency services within this Commonwealth.

*Volunteer rescue squad*—A nonprofit chartered corporation, association or organization located in this Commonwealth which provides rescue services in this Commonwealth.

### § 138k.3. Limitations on grants.

(a) *Financial assistance.* The Program will award financial assistance, of up to \$2,500, to Statewide farm organizations, volunteer fire companies, ambulance services and rescue squads within this Commonwealth that wish to develop and deliver farm safety, occupational health and emergency response programs.

(b) *Grant awards.* An eligible applicant may apply for more than one program grant per year. However, an eligible applicant may not be awarded more than \$2,500 in Program grants in a fiscal year.

(c) *Recipient's use of Program grant funds.* A recipient of a Program grant may only use the funds to cover the costs of the specific project/event/activity described in the recipient's approved grant application and signed grant agreement.

(d) *Eligible projects.* Program grants may be awarded for the following types of projects:

- (1) Projects related to methods of preventing or mitigating farm accidents.
- (2) Educational programs relating to agricultural equipment safety programs for farm youth.
- (3) Educational seminars or field demonstrations relating to first aid programs for farm youth.
- (4) Agriculture safety training programs at day camps and demonstration projects for farm youth.
- (5) Development and implementation of age-appropriate rural school curricula.
- (6) Fire/educational safety programs specific to farms.

(7) Development and implementation of age-appropriate adult farmer and farm worker safety training programs.

(8) Farm related emergency response training programs.

(e) *Addition limitations.*

(1) Program grant funds may only be used to provide financial assistance for projects administered within the geographic boundaries of this Commonwealth.

(2) Program grant funds may not be used for or applied to any training, programs, activities, certification or licensing requirements or events pertaining to the Pennsylvania Pesticide Control Act of 1973 (3 P. S. §§ 111.21—111.60) or the regulations pertaining to pesticides in Chapters 128 and 128b (relating to pesticides; and Chemsweep Pesticide Disposal Program) or the statement of policy regarding the Chemsweep Pesticide Disposal Program in Chapter 128a (relating to Chemsweep pesticide Disposal Program—statement of policy).

### § 138k.4. General conditions.

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

(b) *Default.* A recipient of a Program grant who fails to abide by the terms of the grant agreement or the act or this chapter shall be in default. In the event of a default, the Secretary may cancel the grant and seek recovery of the grant funds as set forth in § 138k.12 (relating to right of recovery). The Secretary may waive a default, after consultation with the Advisory Board, as a result of extenuating circumstances.

(c) *Verification.* Within 3 months of the project completion date specified in the grant agreement, the recipient shall submit to the Department a final report. The final report shall include:

- (1) Written receipts, records and any other financial records or documents evidencing the project's costs.
- (2) Pertinent documentation (such as course syllabi, schedules, attendance records and speaker profiles) evidencing the course's content.
- (3) A narrative report stating the project objectives and setting forth what objectives were accomplished, the experience gained and knowledge acquired and the methods used to accomplish the stated objectives.

(d) *Failure to verify.* If a fully completed final report containing the required receipts, records, documentation and narrative is not submitted within the 3-month period or a portion of the grant proceeds are not accounted for, the Secretary may demand the recipient repay the entire amount of the grant or a lesser amount, plus legal interest thereon. The demand will be made in writing and delineate the deficiencies in the verification documents. The recipient shall have 30 days, from the receipt of written notice, to remedy the stated deficiencies or payment shall be due within 60 days of the written demand.

### § 138k.5. Applications generally.

(a) *Eligible applicants.* Only eligible applicants may submit a grant application to the Department. Eligible applicants may submit grant applications to the Department at the address in subsection (c).

(b) *Grant application requirements.* An application for a Program grant will not be considered by the Secretary unless the following items are attached:

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

(2) 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, the materials portion of the cost, 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.

(3) A statement regarding the amount of tuition to be charged for the courses.

(4) A copy of the official organization board minutes when action was taken on the project or a signed statement attesting to the applicant's commitment to the project.

(5) Information regarding the breadth of the project, including the individuals or groups to be served by the project and the geographic area to be served by the project. Maps or other geographic aids may be attached.

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

(7) Documentation regarding the name and location of the applicant administering the project.

(8) A biographical sketch of primary persons involved in the project which indicates skills, knowledge, training and prior experience of the persons developing or administering, or both, the project.

(c) *Obtaining an application and assistance.* An application for a grant under this chapter shall be made on a form prepared by the Department. For applications and for assistance, contact the Farm Safety and Occupational Health Grant Program, Department of Agriculture, 2301 North Cameron Street, Harrisburg, Pennsylvania 17110.

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

(e) *Application deadline.* An application for a grant under this chapter shall be submitted to the Department by October 31 of each year.

**§ 138k.6. Processing of applications.**

(a) *Approval or denial.* The Secretary will approve, approve with special conditions or reject grant applications and issue grants in accordance with the general considerations and criteria of the act and this chapter. The Secretary may exercise judgment in approving grant applications and in determining the distribution of grants so that the widest possible audience becomes acquainted with farm safety and occupational health practices and techniques espoused by the act and this chapter. The Secretary may impose restrictions or special conditions upon the issuance of a grant.

(b) *Processing.* An application for a Program grant shall be processed in the following manner:

(1) *Completeness and accuracy.* Upon receipt of an application for a Program grant and the required supporting documentation, the Secretary will review this information for completeness and accuracy.

(2) *Complete and accurate applications.* Applications containing the required information and supporting documentation will be reviewed in accordance with the criteria in the act and this chapter and accepted, accepted with special conditions or rejected. Grant applicants will

be notified in writing as set forth in § 138k.8(a) (relating to notice of disposition of application).

(3) *Incomplete or inaccurate applications.* If the Secretary determines an application 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 as set forth in § 138k.8(b) and will be sent to the address listed on the grant application. The processing of the application will cease until the applicant supplies the requested data. The Secretary will terminate the processing of an incomplete application when the additional data requested is not supplied within 10 days of the request for the data.

(c) *Advisory Board.* The Advisory Board, as required under sections 3(g)(2) and 4(c) of the act (3 P. S. §§ 1903(g)(2) and 1904(c)), shall recommend overall priorities for each grant program to the Secretary. Additionally, the Advisory Board, as required by section 3(g)(3) of the act, shall recommend the amount of funds to be allocated to each grant program. The Advisory Board has no authority to and will not review individual grant applications and shall have no input into individual grant awards.

**§ 138k.7. Review of applications.**

(a) *Evaluation.* The Secretary will evaluate an application based on the applicant's eligibility and grant application requirements, as well as the factors set forth in the act and this chapter.

(b) *Grant application completeness.* An application for a Program grant will not be considered by the Secretary unless it contains the required information and items in § 138k.5(b) (relating to applications generally).

(c) *Factors.* Factors to be considered by the Secretary in selecting grant recipients include the following:

(1) The relevance of the project to farm safety or rural health issues.

(2) The innovativeness of the project.

(3) The scope and duration of the project, the number of people who will be affected by the project as described in the application and how it relates to program components in section 4(b) of the act (3 P. S. § 1904(b)).

(4) The value to the agricultural community of the project described in the application.

(5) The willingness of the applicant to make in-kind or financial, or both, contributions to the project.

(6) The availability of funding for the project from a source other than the Program.

(7) The impact the project will have upon rural youth or farmers, growers or producers within this Commonwealth.

(8) The value to those who work directly with farm accident victims.

(9) Whether the applicant has been, in whole or in part, the recipient of a program grant within the same fiscal year.

(10) Whether a local, county or regional farm organization is affiliated with a Statewide farm organization.

(11) The amount of tuition the applicant intends to charge for the courses administered under the project.

(12) The priorities the Secretary, in consultation with the Advisory Board, sets in accordance with section 4(c) of the act.

**§ 138k.8. Notice of disposition of application.**

(a) *Applications deemed complete.* The Secretary will notify grant applicants within 30 days of receipt of their completed grant application of a decision to approve, approve with special conditions or reject the grant application. This notice will be sent by regular mail to the address indicated by the applicant on the grant application.

(b) *Applications deemed incomplete or inaccurate.* Within 30 days of receipt of a grant application, the Secretary will notify the applicant of a decision to reject the grant application or notify the applicant of a deficiency in the grant application and request additional data. If additional data is requested, notification shall be in writing and detail the additional data needed. The Secretary will follow the action prescribed in § 138k.6(b)(3) (relating to processing of applications).

(c) *Approved applications.* Applicants approved for a Program grant will receive a grant agreement which shall be executed by the recipient and the Department prior to the release of funds. Grant money shall be spent by the grant recipient within the time period specified in the grant agreement unless an extension is granted in writing by the Secretary. A request for an extension shall be in writing, state the reason the extension is needed and shall be sent to the address in § 138k.5(c) (relating to applications generally). Failure to spend the grant funds within the specified time period shall constitute a default on the part of the grant recipient. The Secretary may cancel the grant and seek recovery of the grant funds as set forth in §§ 138k.11 and 138k.12 (relating to grant cancellation; and right of recovery).

**§ 138k.9. Conflict of interest.**

A member of the Advisory Board may apply for a grant provided all decisions regarding the grant 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).

**§ 138k.10. Recordkeeping.**

A Program grant recipient shall maintain all books, records, receipts, supporting documents, financial statements, final reports and other documents pertaining to the project, the project costs and the Program grant. These records shall be retained for 3 years beginning at the end of the grant year. The books, records, receipts, supporting documents, financial statements, final reports and other documents shall be maintained according to generally accepted accounting principles. The records shall be made available to the Department or its agent upon request.

**§ 138k.11. Grant cancellation.**

A Program grant may be canceled by the Secretary upon a determination that the grant recipient has violated the act, this chapter or the grant agreement, the grant funds or any portion thereof were not utilized or spent in the manner delineated in the grantee's approved grant application or were not used to implement the project set forth in the grantee's approved grant application. In addition, a Program grant may be canceled upon failure of the recipient to satisfy the verification requirements of this chapter. Upon cancellation, the Secretary

may seek recovery of the grant funds or any portion thereof as set forth in § 138j.12 (relating to right of recovery).

**§ 138k.12. Right of recovery.**

The Department has the right to make a claim for and receive from the grant recipient grant funds not expended in accordance with the act, the grant agreement or this chapter, and may demand the return of the grant sum, or a portion thereof, plus legal interest thereon.

**§ 138k.13. Deficits.**

The Department's financial obligation is limited to the amount of the grant. The Department is not responsible for funding any cost overruns incurred by the grant recipient.

[Pa.B. Doc. No. 01-677. Filed for public inspection April 20, 2001, 9:00 a.m.]

**[7 PA. CODE CH. 138j]**

**Farm Safety and Occupational Health Developmental and Instructional Program**

The Department of Agriculture (Department), has established regulations authorized and required under the Farm Safety and Occupational Health Act (act) (3 P.S. §§ 1901—1915).

*Authority*

The Department has the power and authority to adopt these regulations. This authority includes:

(1) The general authority to adopt rules and regulations conferred by section 5 of the act (3 P.S. § 1905), which delineates the duties of the Secretary of Agriculture (Secretary) and directs the Secretary to "...adopt and promulgate any regulations which may be necessary to implement and administer the act."

(2) The specific authority conferred by section 6(c)(1) of the act (3 P.S. § 1906(c)(1)) which authorizes the Secretary to establish a grant program for the purpose of awarding grants to the Pennsylvania Fire Academy, public and private colleges and universities, community colleges and vocational and technical schools which provide technical courses of instruction in farm safety and occupational health to emergency service providers and the farm community or which develop farm safety and occupational health training programs for implementation by the Department.

(3) The specific duty and authority as in section 6(d) of the act, which requires the Secretary to adopt and promulgate regulations to govern the awarding of grants under section 6 of the act.

*Need for the Regulations*

The regulations delineate the objectives of the Farm Safety and Occupational Health Developmental and Instructional Program (FSDIP) and establish the procedures governing the submission, processing and review of grant applications. In addition, the regulations set forth the documentation required to accompany the applications, eligibility criteria, criteria and verification, cancellation, notification and reporting requirements. The regulations assure fair and impartial review of FSDIP grant applications. These regulations establish a grant program which will make funds available for development and implementation of programs that provide technical

courses of instruction on farm safety and occupational health to emergency service providers and the farm community. The grant program is intended to facilitate avoidance and elimination of farming hazards.

This Commonwealth's approximately 51,000 farms are the foundation of a \$35 billion industry, employing over 650,000 workers in farming and related services, food processing and food wholesale and retail sales. The National Safety Council reports agriculture as this Nation's most hazardous industry with a work death rate 22% higher than the second most hazardous industry, mining and quarrying. Farming accounts for over 80% of agriculture's injury toll. From 1990 through 1995, at least 249 Commonwealth citizens have lost their lives to hazards associated with farming. The victims included 17 infants, toddlers and preschoolers—all under 5 years of age. Another 29 victims were at least 75 years of age. The oldest victim was 89 years old. In 1994, a Statewide survey showed one in every ten farm operations in this Commonwealth had at least one recordable work-related injury. Even more startling was that approximately 5% of those injuries resulted in some type of permanent disability to the victim. The numbers evidence the need for farm safety and occupational health programs. In 1994 alone, there were a total of 5,100 injuries and 250 permanent disability injuries related to farming. Therefore, the regulations should ultimately benefit both the farming community and the general public.

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

#### Comments

Notice of proposed rulemaking was published at 30 Pa.B. 776 (February 12, 2000), and provided for a 30-day public comment period.

Comments were received from the Independent Regulatory Review Commission (IRRC).

*Comment:* IRRC commented on § 138j.2(a) (relating to definitions) of the proposed regulations. IRRC commented that this section listed four types of institutions that qualify for FSDIP grants and that this list is repeated in §§ 138j.4(a), 138.6(a) and 138j.9(b) of the proposed regulations. In addition, IRRC noted that according to section 6(c)(1) of the act, these four institutions are the only types of institutions that are eligible for FSDIP grants. IRRC suggested the Department could clarify the regulations by defining "eligible applicant" in § 138j.2 of the final-form regulations and replacing the lists of institutions in the four sections previously listed with the term "eligible applicant."

*Response:* The Department agrees that defining the term "eligible applicant" may add some clarity to the final-form regulations with regard to §§ 138j.4(a) and 138.6(a) of the proposed regulations. Therefore, the Department has defined "eligible applicant" in the final-form regulations. In addition, the Department has replaced the listing of eligible institutions with the term "eligible applicant" in all sections of the final-form regulations, except in § 138j.1(a) (relating to program objectives) and § 138j.7(b) (relating to review of applications). The Department kept the list of eligible institutions in § 138j.1(a) because that section comes before § 138j.2, where "eligible applicant" is defined. The Department believes referring to "eligible applicant" before it is defined would not add clarity to the regulations. With regard to § 138j.7(b) of the final-form regulations, the

Department has deleted that section. Section 138j.7(a) requires the Secretary to evaluate applicant eligibility. The Secretary will use the standards in the definition of "eligible applicant" to make such a determination. As IRRC has suggested, there is no need to repeat the criteria. The letters associated with the subsequent subsections of § 138j.7 have been changed to reflect the deletion of § 138j.7(b).

*Comment:* IRRC commented on § 138j.2(b) of the proposed regulations. IRRC commented that the phrase "the Secretary or a designee" had been used in various portions of the text of the rulemaking (§§ 138j.2 and 138j.5—138j.9) and suggested the term "designee" should be defined.

*Response:* The Department made three changes to the final-form regulations with regard to this comment. First, the Department defined "designee" in § 138j.2. Second, the Department, in § 138i.2, redefined the term "Secretary" by adding "... or a designee" to the definition. Under those changes, the third change was to delete the phrase "or a designee" from all references to the Secretary, throughout the text of the final-form regulations. The result of the three changes is that the final-form regulations are easier to read and more concise and all references to the Secretary are now interpreted to mean the Secretary or whomever the Secretary appoints or assigns to carry out the duties under the regulations.

*Comment:* IRRC commented that the term "Board" in § 138j.2 and the term "Advisory Board" in the act both refer to the "Farm Safety and Occupational Health Advisory Board." They suggested that for consistency with the statute, the Department should replace the term "Board" with the term "Advisory Board."

*Response:* The Department agrees the terms in the regulations should be consistent with the terms in the act. The Department has changed the term "Board" to "Advisory Board" in § 138j.2 of the final-form regulations. In addition, in the final-form regulations, all references to "Board" have been changed to "Advisory Board."

*Comment:* IRRC commented that the term "farm laborers" in § 138j.2 was not consistent with the definition which read, in part: "An individual employed by a farmer in raising, cultivating. . ." IRRC commented that the term should be changed to "farm laborer."

*Response:* The Department agrees with this comment. The Department has changed the term to "farm labor" in the final-form regulations.

*Comment:* IRRC commented that the definition of "members of farm families," in § 138j.3 (relating to limitations on grants) of the proposed regulations, now § 138j.2 of the final-form regulations was confusing and that there was a conflict between plural and singular nouns in the definition. The definition included a phrase "... collateral relation of the first degree. . ." IRRC found this confusing and suggested the Department replace the phrase with "nieces, nephews and grandchildren" and any others the Department would want included in the definition. In addition, IRRC commented that there was a conflict between plural and singular nouns in the term "members of farm families" and the first phrase of the definition which read: "Any son, daughter or spouse of a farmer. . ."

*Response:* The Department believes the phrase "collateral relation of the first degree" is specific and should remain in the definition. However, in response to IRRC's concern for clarity the Department has added: "... (such as nieces, nephews and grandchildren). . ." to the defini-



tion. We believe this should address the clarity issue, while at the same time keeping the definition specific and narrow. In response to IRRC's concern regarding a conflict between plural and singular nouns in the definition of "members of farm families," the Department changed the phrase "members of farm families" to "members of farm family" and retained the singular form of the words ". . .son, daughter or spouse of a farmer. . ." in the definition. The Department believes this change is less confusing than amending the words in the definition to read ". . .sons, daughters and spouses of a farmer. . ."

*Comment:* IRRC commented that the term "FSDIP" was used in the proposed regulations, but was not defined. The term "Program" was defined in the proposed regulations as the "Farm Safety and Occupational Health Developmental and Instructional Program." IRRC suggested the term "Program" should replace the term "FSDIP" throughout the final-form regulations.

*Response:* The Department agrees with IRRC's comment and has replaced the term "FSDIP" with the term "Program" throughout the final-form regulations.

*Comment:* IRRC expressed two concerns regarding what was § 138j.5(c) under the proposed regulations (§ 138j.4(c) (relating to general conditions) of the final-form regulations). The first concern related to the final reports mentioned in subsection (c). IRRC felt the language was unclear as to whether the Department was requesting one or two final reports. In addition, IRRC commented that if only one final report was necessary, the Department should include a list of the type of financial information and project data required to be included in the report. IRRC's second concern pertained to the phrase "pertinent documentation." IRRC suggested the Department should provide examples of "pertinent documentation" in the final-form regulations.

*Response:* The Department has changed the language to make it clear that only one final report is required. In addition, the Department has modified the language of the subsection to specify that the financial information needed is any financial information evidencing the costs associated with the approved Program project and has included examples of what constitutes "pertinent documentation."

*Comment:* IRRC commented that for clarity the contents of former § 138j.9(c) under the proposed regulations, should be moved to former § 138j.6 under the proposed regulations. IRRC commented that alternatively the Department could create a new section captioned "application requirements" following what was § 138j.6 under the proposed regulations.

*Response:* The Department agrees with this recommendation and has implemented the suggestion by moving former § 138j.9(c) under the proposed regulations, to what is now § 138j.5(b) (relating to applications) in the final-form regulations. It should be noted that § 138j.5 in the final-form regulations still relates to applications and is the same as § 138j.6 under the proposed regulations. The section number was changed as a result of another suggestion by IRRC, which required the Department to delete § 138j.1 in the proposed regulations.

*Comment:* IRRC commented that § 138j.6(a) and (b) (relating to processing of applications) requires the applicants to complete and submit application forms provided by the Department; however, the regulations do not list the basic information that will be required on the application form. IRRC suggested the Department should include basic information on the contents of the application form in this section.

*Response:* The Department knows of no requirement that an agency include a sample of an application form in the regulations. In addition, the Department will formulate and provide the application form to the applicant. The application form will notify the applicant of the information required. The Department also believes that the basic information needed on an application form is outlined in § 138j.5(b) of the final-form regulations and that further information as to content is supplied throughout the regulations, as in § 138j.3 and § 138j.7(d). Section 138j.7(b)(3) of the final-form regulations also sets forth a procedure for notifying applicants when a grant application is incomplete and provides additional time for the applicant to supply any missing information. Therefore, the Department believes the final-form regulations are sufficiently specific and the applicant has sufficient notice with regard to the content of the application.

*Comment:* IRRC had two comments with regard to what was § 138j.7 in the proposed regulations. The first concern regarded § 138j.7(b). IRRC commented that the subsection is closely related to § 138j.8 (relating to notice of disposition of application) of the proposed regulations and suggested it should be moved to that section. The second comment pertained to § 138j.7(c). IRRC interpreted the language of the subsection to mean that the Advisory Board would have an active role in reviewing each individual grant application. Under that interpretation and the fact the Department plans to review and approve or deny grant applications within 30 days, IRRC was concerned that it would not be feasible to include the Advisory Board in the review of each application. IRRC suggested the Department clarify the language of this section or move this subsection to subsection (c) in what was § 138j.4 of the proposed regulations.

*Response:* With regard to IRRC's first concern, the Department believes that § 138j.7(b) of the proposed regulations (§ 138j.6(a) and (b) of the final-form regulations) is not duplicative. Section 138j.7 of the proposed regulations deals with the processing of a grant application and is intended to notify the applicant of who will review the grant applications, the time period of the review and the process for incomplete or inaccurate applications. Section 138j.8 of the proposed regulations is intended to inform the applicant of how and in what time period the applicant will be notified of approval or denial of the applicant's grant application. It should be noted that § 138j.8 of the final-form regulations follows sections relating to processing and review of applications. Therefore, the regulations gain a logical flow by notifying the applicant: (1) how applications will be processed; (2) how an application will be reviewed and ranked; and (3) how and when an applicant will be notified.

With regard to IRRC's concern relating to the function of the Advisory Board, the Department did not intend the language of this subsection to include the Advisory Board in the review of each individual grant application. Such an interpretation of the language of this subsection is in direct conflict with the powers of the Advisory Board enumerated in section 3(g) of the act (3 P. S. § 1903(g)). The Department has changed the language in the final-form regulations to remove all doubt as to the function of the Advisory Board. The revised language makes it clear that the Advisory Board does not, and will not, review individual grants. The Advisory Board will only carry out those functions set forth in the act, such as recommending overall farm safety and occupational health program priorities and recommending priorities for expenditure of funds for development and implementation of farm safety

and occupational health programs. The Department does not agree with moving this language to the section related to limitations on grant funds. While the Advisory Board's recommendations on funding may effect the number of grants that can be given out under any of the various farm safety and occupational health programs and the overall factors considered when reviewing a grant application, the Advisory Board's function does not directly affect or limit each individual grant application. Therefore, the Department has elected to keep this language in the section related to processing of applications.

In addition, it should be noted that IRRC commented with regard to the related section of the regulations delineating the Farm Safety and Occupational Health Tuition Assistance Program. Section 138i.7(a) included three different topics, was long and potentially confusing and should be broken down into outline form. The Department agreed with that comment and changed the structure of that section. For the sake of consistency and clarity, the Department has followed the same structure or format in the final-form regulations.

*Comment:* IRRC had two comments concerning § 138j.8 of the proposed regulations. Both pertained to clarity. The first comment regarded § 138j.8(a). IRRC commented that to improve the clarity of the sequence of steps involved with review and approval of applications, the Department should move various sections of the proposed regulations. IRRC recommended that § 138j.8 should follow rather than precede what was § 138j.9 of the proposed regulations and immediately precede what was § 138j.10 of the proposed regulations. IRRC's second comment pertained to § 138j.8(b). IRRC commented that this provision followed other sections and subsections related to the approval of applications. IRRC suggested any notice concerning the "completeness" of an application should occur before a final decision and therefore, recommended the subsection should precede provisions concerning the final disposition of applications.

*Response:* The Department agrees with IRRC's first concern regarding the overall placement of § 138j.8 of the proposed regulations. In response, the Department has moved this section in the final-form regulations. Although it remains § 138j.8 in the final-form regulations, it now follows the section relating to review of applications and immediately precedes the section relating to conflict of interest. With regard to IRRC's second comment, the Department does not agree with moving § 138j.8(b). The regulation follows a logical sequence of "process," "review" and "disposition." Section 138j.8(b) sets forth the details regarding how and when a grant applicant will be notified of a denial or a need for additional information. This section and subsection relate to notice. In addition, the Department added § 138j.8(c) to enhance the clarity of the regulations. Section 138j.8(c) sets forth the "notice" provisions with regard to approved grant program applications. This new section contains language establishing the fact that a grant agreement will be mailed to an approved grant program applicant and must be executed by the approved applicant and the Department before grant funds will be released. Therefore, similar language to that effect has been deleted from § 138j.8(a).

*Comment:* IRRC commented with regard to § 138j.11 of the proposed regulations. IRRC commented that grant recipients must submit a final report with documentation of costs, program expenditures and other criteria set forth in § 138j.5(c) of the proposed regulations, § 138j.4(c) of the final-form regulations). IRRC questioned why a recipi-

ent of a grant must retain copies of documents and records for 3 years after the expiration of the grant.

*Response:* The Department requires the retention for audit purposes and in case the copies of the records, documents and receipts contained in the final report and the Department's records are ever questioned or challenged.

*Comment:* IRRC commented with regard to § 138j.12 (relating to right of recovery) of the proposed regulations that the term "used" in the phrase "...grant may be canceled by the Secretary upon a determination that the funds are not being or were not properly used" was not defined and it was unclear as to what the term meant.

*Response:* The Department added language to this section, now § 138j.11 in the final-form regulations, that narrows the scope of what the term "used" could mean. The language of this section now refers to violations of the act, the regulations or the grant agreement and implementation of the project set forth in the grant application.

*Comment:* IRRC commented that § 138j.1 entitled "authority" was unnecessary and should be deleted.

*Response:* The Department agrees with this comment and has deleted § 138j.1 from the final-form regulations.

*Fiscal Impact*

*Commonwealth*

The final-form regulations will impose minimal costs and have minimal fiscal impact upon the Commonwealth, including projected increases in program costs. The Department has an appropriation for use in developing the various Farm Safety and Occupational Health Grant Programs allowed under section 6 of the act. The Secretary, with the advice of the Advisory Board, will determine the amount of funds to allocate to each grant program promulgated under section 6 of the act.

*Political Subdivisions*

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

*Private Sector*

The final-form regulations will impose minimal costs on those organizations or individuals who are interested in applying for FSDIP grants. The costs that may be associated with the regulations would involve the time spent to develop and implement the programs for which grant funds are sought and obtain and fill out a grant application. Organizations and individuals receiving grants would benefit by receiving funds to cover costs associated with developing and implementing the farm safety and occupational health programs. The private sector may also benefit through the realization of reduced health care and occupational costs resulting from the educational value, skills learned and technical information presented at the educational and preventative programs developed under and espoused by the act and these regulations.

*General Public*

The final-form regulations will impose no direct costs and have no fiscal impact upon the general public. The farm community and the general public should benefit through the reduction of health care and occupational costs which are likely to result from educational value, skills learned and technical information presented at the educational and preventative programs developed under and espoused by the act and these regulations.

*Paperwork Requirements*

The final-form regulations will not result in an appreciable increase of paperwork. The Department will have to develop a grant application form to administer the FSDIP. However, the administrative provisions of the FSDIP are very similar to the administrative provisions of the FSOH program and the Department has already developed a grant application form and grant agreement for use in administering the FSOH program and has administered that program, under a statement of policy, since 1996.

*Contact Person*

Further information is available by contacting the Department of Agriculture, Farm Safety and Occupation Health Grant Program, 2301 North Cameron Street, Harrisburg, PA 17110-9408, Attn: John Tancelosky, (717) 772-5217.

*Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on January 31, 2000, the Department submitted a copy of the notice of proposed rulemaking, published at 30 Pa.B. 776 (February 12, 2000), to IRRC and to the Chairpersons of the House and Senate Standing Committees on Agriculture and Rural Affairs for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the Committees were provided with copies of all comments received, as well as other documentation. In preparing these final-form regulations, the Department has considered all comments received from IRRC, the Committees and the public.

Under section 5.1(d) of the Regulatory Review Act (71 P. S. § 745.5a(d)), on February 13, 2001, these final-form regulations were deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on February 15, 2001, and approved the final-form regulations.

*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 these regulations in response to comments received do not enlarge the purpose of the proposed regulations published at 30 Pa.B. 776.

(4) The adoption of these regulations 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 §§ 138j.1—138j.13 to read as set forth in Annex A.

(b) The Secretary 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 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*.

(*Editor's Note:* The proposal to add § 138j.14 included at the proposal at 30 Pa.B. 776 has been withdrawn by the Department.)

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 31 Pa.B. 1291 (March 3, 2001).)

**Fiscal Note:** 2-122. (1) General Fund; (2) Implementing Year 1999-00 is \$40,000; (3) 1st Succeeding Year 2000-01 is \$40,000; 2nd Succeeding Year 2001-02 is \$40,000; 3rd Succeeding Year 2002-03 is \$40,000; 4th Succeeding Year 2003-04 is \$40,000; 5th Succeeding Year 2004-05 is \$40,000; (4) Fiscal Year 1998-99 \$N/A; Fiscal Year 1997-98 \$N/A; Fiscal Year 1996-97 \$N/A; (7) Farm Safety; (8) recommends adoption.

**Annex A****TITLE 7. AGRICULTURE****PART V-C. FARMLAND AND FOREST LAND****CHAPTER 138j. FARM SAFETY AND OCCUPATIONAL HEALTH DEVELOPMENTAL AND INSTRUCTIONAL PROGRAM GRANTS**

| Sec.     |                                       |
|----------|---------------------------------------|
| 138j.1.  | Program objectives.                   |
| 138j.2.  | Definitions.                          |
| 138j.3.  | Limitation on grants.                 |
| 138j.4.  | General conditions.                   |
| 138j.5.  | Applications.                         |
| 138j.6.  | Processing of applications.           |
| 138j.7.  | Review of applications.               |
| 138j.8.  | Notice of disposition of application. |
| 138j.9.  | Conflict of interest.                 |
| 138j.10. | Recordkeeping.                        |
| 138j.11. | Grant cancellation.                   |
| 138j.12. | Right of recovery.                    |
| 138j.13. | Deficits.                             |

**§ 138j.1. Program objectives.**

(a) *Purpose.* The purpose of the Program is to provide financial assistance to the Pennsylvania Fire Academy, public or private colleges or universities, community colleges, or vocational or technical schools within this Commonwealth, that provide technical courses of instruction in farm safety and occupational health to emergency service providers, farmers, members of farm families, farm laborers and others involved in agricultural production or which develop farm safety and occupational health training programs for implementation by the Department.

(b) *Competitive program.* The Program is competitive. Grant applications and related documents will be collected by the Department and reviewed by the Secretary. Grants will be awarded annually.

(c) *Funds available basis.* Grants will not be awarded unless funds are available.

**§ 138j.2. Definitions.**

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

*Act*—The Farm Safety and Occupational Health Act (3 P. S. §§ 1901—1915).

*Advisory Board*—The Farm Safety and Occupational Health Advisory Board.

*Agricultural production*—The production for commercial purposes of crops, livestock and livestock products. The term includes the processing or retail marketing of the crops, livestock or livestock products if more than 50% of the processed or merchandised products are produced by the farmer.

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

*Designee*—A person chosen or appointed by the Secretary to carry out the Secretary's duties under this chapter.

*Eligible applicants*—The Pennsylvania Fire Academy, public or private colleges or universities, community colleges or vocational or technical schools within this Commonwealth, that provide technical courses of instruction in farm safety and occupational health to emergency service providers, farmers, members of farm families, farm laborers and others involved in agricultural production or which develop farm safety and occupational health training programs for implementation by the Department.

*Emergency service provider*—An employe, agent, member or officer of a paid or volunteer fire company, ambulance service or rescue squad located in this Commonwealth which is regularly engaged in providing emergency medical care and transportation, fire protection services or rescue services.

*Farm*—Land in this Commonwealth which is being used for agricultural production, including all farm structures, buildings, facilities and farm family residences situated on the land.

*Farmer*—A person who is engaged in agricultural production for commercial purposes.

*Farm laborer*—An individual employed by a farmer in raising, cultivating, fertilizing, seeding, planting, pruning, harvesting, gathering, washing, sorting, weighing or handling, drying, packing, packaging, grading, storing or delivering to market in its unmanufactured state, any agricultural commodity as defined in 3 Pa.C.S. Chapter 45 (relating to agricultural commodities marketing) or a farm product as defined in 1 Pa.C.S. § 1991 (relating to definitions).

*Members of farm family*—Any son, daughter or spouse of a farmer or any lineal relation of the farmer who works on the farm or any collateral relation of the first degree (such as nieces, nephews or grandchildren) who work on the farm.

*Person*—An individual, partnership, corporation, association or other form of business enterprise.

*Program*—The Farm Safety and Occupational Health Developmental and Instructional Program.

*Project*—A course, training, program, activity or event or the development of such, pertaining to farm safety and occupational health programs delineated in the act and this chapter.

*Secretary*—The Secretary of Agriculture of the Commonwealth or a designee.

*Volunteer ambulance services*—A nonprofit chartered corporation, association or organization located in this Commonwealth and which is regularly engaged in the services of providing emergency medical care and transportation of patients.

*Volunteer fire company*—A nonprofit chartered corporation, association or organization located in this Commonwealth which provides fire protection services and other voluntary emergency services within this Commonwealth.

*Volunteer rescue squad*—A nonprofit chartered corporation, association or organization located in this Commonwealth which provides fire protection services and other voluntary emergency services within this Commonwealth.

**§ 138j.3. Limitation on grants.**

(a) *Financial assistance.* The Program will award grants to provide financial assistance of up to \$30,000 to eligible applicants.

(b) *Grant awards.* Eligible applicants may apply for more than one Program grant per year. However, an eligible applicant may not be awarded more than \$30,000 in Program grants in a fiscal year.

(c) *Recipient's use of Program grant funds.* A recipient of a Program grant may only use the funds to cover the costs of the specific project delineated in the recipient's approved grant application and signed grant agreement.

(d) *Eligible projects.* Program grants may be awarded to provide financial assistance for implementation or development of the types of projects in section 4(b) of the act (3 P. S. § 1904(b)) and in this chapter.

(e) *Additional limitations.*

(1) Program grant funds may only be used to provide financial assistance for projects administered within the geographic boundaries of this Commonwealth.

(2) Program grant funds may not be used for or applied to any training, programs, activities, certification or licensing requirements or events pertaining to the Pennsylvania Pesticide Control Act of 1973 (3 P. S. §§ 111.21—111.60) or the regulations pertaining to pesticides in Chapters 128 and 128b (relating to pesticides; and Chemsweep Pesticide Disposal Program) or the statement of policy regarding the Chemsweep Pesticide Disposal Program in Chapter 128a (relating to Chemsweep Pesticide Disposal Program—statement of policy).

**§ 138j.4. General conditions.**

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

(b) *Default.* A recipient of a Program grant who fails to abide by the terms of the grant agreement or the act or this chapter shall be in default. In the event of a default, the Secretary may cancel the grant and seek recovery of the grant funds as set forth in § 138j.12 (relating to right of recovery). The Secretary may waive a default, after consultation with the Advisory Board, in the event of a physical disability suffered by the recipient or as a result of other extenuating circumstances.

(c) *Verification.* Within 3 months of the project completion date specified in the grant agreement, the recipient shall submit to the Department a final report. The final report shall include:

(1) Written receipts, records and any other financial records or documents evidencing the project's costs.

(2) Pertinent documentation (such as course syllabi, schedules, attendance records and speaker profiles) evidencing the course's content.

(3) A narrative report stating the project objectives and setting forth what objectives were accomplished and the methods used to accomplish the stated objectives.

(d) *Failure to verify.* If a fully completed final report containing the required receipts, records, documentation and narrative is not submitted within the 3-month period or a portion of the grant proceeds are not accounted for, the Secretary may demand the recipient repay the entire amount of the grant or a lesser amount. The demand will be made in writing and delineate the deficiencies in the verification documents. The recipient shall have 30 days, from the receipt of written notice, to remedy the stated deficiencies or payment shall be due within 60 days of the written demand.

#### § 138j.5. Applications.

(a) *Eligible applicants.* Only eligible applicants may submit a grant application to the Department.

(b) *Grant application requirements.* An application for a Program grant will not be considered by the Secretary unless the following items are attached:

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

(2) 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, 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.

(3) A statement regarding the amount of tuition to be charged for the courses.

(4) Information regarding the breadth of the project, including the individuals or groups to be served by the project and the geographic area to be served by the project.

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

(6) Documentation regarding the name and location of the applicant administering the project.

(7) A copy of the official organization board minutes when action was taken on the project or a signed statement attesting to the applicant's commitment to the project.

(8) A biographical sketch of the primary persons involved in the project which indicates skills, knowledge, training and prior experience of the persons developing or administering, or both, the project.

(c) *Obtaining an application and assistance.* An application for a grant under this chapter shall be made on a form prepared by the Department. For applications and for assistance, contact the Farm Safety and Occupational Health Grant Program, Department of Agriculture, 2301 North Cameron Street, Harrisburg, Pennsylvania 17110.

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

(e) *Application deadline.* Applications for grants under this chapter shall be submitted to the Department by October 31 of each year.

#### § 138j.6. Processing of applications.

(a) *Approval or denial.* The Secretary will approve, approve with special conditions or reject grant applications and issue grants in accordance with the general considerations and criteria of the act and this chapter.

The Secretary may exercise judgment in approving grant applications and in determining the distribution of grants so that the widest possible audience becomes acquainted with farm safety and occupational health practices and techniques espoused by the act and this chapter. The Secretary may impose restrictions or special conditions upon the issuance of a grant.

(b) *Processing.* An application for a Program grant shall be processed in the following manner:

(1) *Completeness and accuracy.* Upon receipt of an application for a Program grant and the required supporting documentation, the Secretary will review this information for completeness and accuracy.

(2) *Complete and accurate applications.* Applications containing the required information and supporting documentation will be reviewed in accordance with the criteria in the act and this chapter and accepted, accepted with special conditions or rejected. Grant applicants will be notified in writing as set forth in § 138j.8(a) (relating to notice of disposition of applications).

(3) *Incomplete or inaccurate applications.* If the Secretary determines an application 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 as set forth in § 138j.8(b) and will be sent to the address listed on the grant application. The processing of the application will cease until the applicant supplies the requested data. The Secretary will terminate the processing of an incomplete application when the additional data requested is not supplied within 10 days of the request for the data.

(c) *Advisory Board.* The Advisory Board, as required under sections 3(g)(2) and 4(c) of the act (3 P. S. §§ 1903(g)(2) and 1904(c)), shall recommend overall priorities for each grant program to the Secretary. Additionally, the Advisory Board, as required by section 3(g)(3) of the act, shall recommend the amount of funds to be allocated to each grant program. The Advisory Board has no authority to and will not review individual grant applications or have input into individual grant awards.

#### § 138j.7. Review of applications.

(a) *Evaluation.* The Secretary will evaluate an application based on the applicant's eligibility and grant application requirements, as well as the factors set forth in the act and this chapter.

(b) *Grant application completeness.* An application for a Program grant will not be considered by the Secretary unless it contains the required information and items as set forth in § 138j.5(b) (relating to applications).

(c) *Factors.* Factors to be considered by the Secretary in selecting grant recipients include the following:

(1) The relevance of the project to farm safety or rural health issues.

(2) The innovativeness of the project.

(3) The effect the project will have on hazard elimination.

(4) The scope and duration of the project and how it relates to program components in section 4(b) of the act (3 P. S. § 1904(b)).

(5) The number and type of people or groups who will be affected by the project. A project which involves a wide range of age groups, encourages cooperation between existing community groups and organizations and pro-

vides incentives for new groups or organizations to become involved in farm safety and occupational health programs and training will be given priority.

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

(7) The continual and progressive nature of the project and the benefits and knowledge to be gained therefrom.

(8) The value to the emergency providers.

(9) Whether the applicant has been the recipient of a Program grant within the same year.

(10) The availability of funding to the applicant from a source other than the Program.

(11) The willingness of the applicant to make in-kind or financial, or both, contributions to the project.

(12) The amount of tuition the applicant intends to charge for the courses.

(13) The priorities as the Secretary, in consultation with the Advisory Board, sets in accordance with section 4(c) of the act (3 P. S. § 1904(c)).

**§ 138j.8. Notice of disposition of application.**

(a) *Applications deemed complete.* The Secretary will notify grant applicants within 30 days of receipt of their completed grant application of a decision to approve, approve with special conditions or reject the grant application. This notice will be sent by regular mail to the address indicated by the applicant on the grant application.

(b) *Applications deemed incomplete or inaccurate.* Within 30 days of receipt of a grant application, the Secretary will notify the applicant of a decision to reject the grant application or notify the applicant of a deficiency in the grant application and request additional data. If additional data is requested, notification shall be in writing and detail the additional data needed. The Secretary will follow the action prescribed in § 138j.6(b)(3) (relating to processing of applications).

(c) *Approved applications.* Applicants approved for a Program grant will receive a grant agreement which shall be executed by the recipient and the Department prior to the release of funds. Grant money shall be spent by the grant recipient within the time period specified in the grant agreement unless an extension is granted, in writing, by the Secretary. A request for an extension shall be in writing, state the reason the extension is needed and shall be sent to the address in § 138j.5(c) (relating to applications). Failure to spend the grant funds within the specified time period shall constitute a default on the part of the grant recipient. The Secretary may cancel the grant and seek recovery of the grant funds as set forth in §§ 138j.11 and 138j.12 (relating to grant cancellation; and right of recovery).

**§ 138j.9. Conflict of interest.**

A member of the Advisory Board may apply for a grant provided all decisions regarding the grant 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).

**§ 138j.10. Recordkeeping.**

A Program grant recipient shall maintain all books, records, receipts, supporting documents, financial statements, final reports and other documents pertaining to the project, the project costs and the Program grant. These records shall be retained for 3 years beginning at the end of the grant year. The books, records, receipts, supporting documents, financial statements, final reports and other documents shall be maintained according to generally accepted accounting principles. The records shall be made available to the Department or its agent upon request.

**§ 138j.11. Grant cancellation.**

A Program grant may be canceled by the Secretary upon a determination that the grant recipient has violated the act, this chapter or the grant agreement, the grant funds or any portion thereof are not being or were not utilized or spent in the manner delineated in the grantee's approved grant application or were not used to implement the project set forth in the grantee's approved grant application. In addition, a Program grant may be canceled upon failure of the recipient to satisfy the verification requirements of this chapter. Upon cancellation the Secretary may seek recovery of the grant funds or any portion thereof as delineated in § 138j.12 (relating to right of recovery).

**§ 138j.12. Right of recovery.**

The Department has the right to make a claim for and receive from the grant recipient grant funds not expended in accordance with the act, the grant agreement or this chapter, and may demand the return of the grant sum, or a portion thereof, plus legal interest thereon.

**§ 138j.13. Deficits.**

The Department's financial obligation is limited to the amount of the grant. The Department is not responsible for funding any cost overruns incurred by the grant recipient.

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