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INDEPENDENT REGULATORY REVIEW COMMISSION
333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

May 20, 1999

Honorable Samuel E. Hayes, Jr., Secretary
Department of Agriculture
211 Agriculture Building
2301 North Cameron Street
Harrisburg, PA 17110

Re: IRRC Regulation #2-115 (#2012)
Department of Agriculture
Sustainable Agriculture Programs

Dear Secretary Hayes:

Enclosed are our Comments on your proposed regulation #2-115. They are also available on our website at <http://www.irrc.state.pa.us>.

The Comments list our objections and suggestions for your consideration when you prepare the final version of this regulation. We have also specified the regulatory criteria which have not been met. These Comments are not a formal approval or disapproval of the proposed version of this regulation.

If you want to meet with us to discuss these Comments, please contact John Jewett at 783-5475.

Sincerely,

A handwritten signature in black ink that reads "Robert E. Nyce".

Robert E. Nyce
Executive Director

REN:cae
Enclosure
cc: Lyle B. Forer
David Bingaman
Office of General Counsel
Office of Attorney General
Pete Tartline

COMMENTS OF THE INDEPENDENT REGULATORY REVIEW COMMISSION

ON

DEPARTMENT OF AGRICULTURE REGULATION NO. 2-115

SUSTAINABLE AGRICULTURE PROGRAMS

MAY 20, 1999

We have reviewed this proposed regulation from the Department of Agriculture (Agriculture) and submit for your consideration the following objections and recommendations. Subsections 5.1(h) and 5.1(i) of the Regulatory Review Act (71 P.S. § 745.5a(h) and (i)) specify the criteria the Commission must employ to determine whether a regulation is in the public interest. In applying these criteria, our Comments address issues that relate to consistency, reasonableness, need and clarity. We recommend that these Comments be carefully considered as you prepare the final-form regulation.

1. Section 130c.2. Definitions. - Consistency, Need and Clarity

Executive Director

The regulation's definition of the term "Executive Director" paraphrases the duties of the Executive Director set forth in Section 5 of the Sustainable Agriculture Act, Act 129 of 1994 (Act 129) (3 P.S. § 2105). However, the regulatory definition is inconsistent with Act 129. Section 5(1) of Act 129 states that the Executive Director will "evaluate loan and grant applications submitted to the board (Board of Sustainable Agriculture)." The definition in Section 130c.2 limits the Executive Director to evaluating loan applications and fails to mention grant applications. This inconsistency with Act 129 should be corrected.

Additionally, substantive provisions of Section 5 of Act 129 pertaining to the Executive Director are included in the definitions section of the regulation. The duties of the Executive Director would be more appropriately placed in a new section after Section 130c.4 in the substantive portions of the regulation.

Nonprofit Educational Institution

The statutory and regulatory definitions of "nonprofit educational institution" are virtually identical. In addition, the definition's provisions are reiterated as eligibility qualifications in Subsection 130c.37(e). There is no need to repeat statutory provisions in two different places in the regulation. The regulation should reference the statutory definition.

Pesticide

Section 130c.2 contains a definition of "pesticide" which includes herbicides and insecticides. However, the substantive provisions of the regulation use the terms herbicides and insecticides, not the term "pesticide." The terms herbicides and insecticides are also used in Act 129 (3 P.S. § 2110(b)(6)). Why has Agriculture included a definition of a term not used in the regulation and Act 129? The term "pesticide" should be deleted or the terms herbicides and insecticides in the regulation should be replaced by "pesticide."

Sustainable Agriculture

The statutory and regulatory definitions for “sustainable agriculture” are also practically identical. Hence, there is no need to include the entire definition verbatim in the regulation. Again, a reference to the statutory definition is sufficient.

2. Section 130c.5. Notice of disposition of application. - Clarity

This section contains references to Sections 130.16 and 130.36. The references should be to Sections 130c.16 and 130c.36.

3. Sections 130c.15 and 130c.35. Submission of application. - Implementation Procedures, Reasonableness and Clarity

Although applications for loans or grants are to be submitted on forms prepared by the Board, the regulation does not inform potential applicants how to obtain the appropriate forms. These two sections should contain this information.

4. Sections 130c.16 and 130c.36. Processing of application. - Reasonableness and Clarity

Sections 130c.16 and 130c.36 contain filing deadlines for applicants. However, they fail to reference the 90-day period for Board action on applications as prescribed by Section 130c.5. Both sections should include a reference to Section 130c.5.

In addition, Sections 130c.16 and 130c.36 contain the following language:

If the Executive Director determines the application is incomplete or inaccurate, final processing of the application may be discontinued or additional data may be requested.

These sections do not provide clear direction as to whether applicants will be notified when their applications are incomplete or inaccurate. However, the same sections require applicants to respond to requests for additional data within thirty days. These sections should state that the Executive Director will notify applicants when their applications are determined to be incomplete or inaccurate. The notice should list the application’s deficiencies and inform the applicant that he or she has thirty days to respond.