

# Regulatory Analysis Form

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(1) Agency Department of Agriculture

STATE REGULATORY REVIEW COMMISSION

(2) I.D. Number (Governor's Office Use)  
2-124

IRRC Number: 2087

(3) Short Title  
Agricultural Land Conservation Assistance Grant Program

(4) PA Code Cite

Agricultural Land Conservation Assistance Grant Program  
7 Pa. Code Chapter 138h

(5) Agency Contacts & Telephone Numbers

Primary Contact: Wayne Grube  
717/783-3167  
Secondary Contact: Sandra Robinson  
717/783-3167

(6) Type of Rulemaking (check one)  
Proposed Rulemaking  
Final Order Adopting Regulation X  
Final Order, Proposed Rulemaking Omitted

(7) Is a 120-Day Emergency Certification Attached?  
No X  
Yes: By the Attorney General  
Yes: By the Governor

(8) Briefly explain the regulation in clear and nontechnical language.  
The regulation will accomplish a revision of the current regulation at 7 Pa. Code Chapter 138(h) (relating to agricultural land conservation assistance grant program). In summary, the Agricultural Land Conservation Assistance Grant Program ("Grant Program") provides grants to certain counties to help fund the creation of spatial mapping databases, train personnel, implement zoning and accomplish other objectives in furtherance of farmland preservation. The current regulations were promulgated in November of 1996. The Department has since administered a complete round of grant applications - from the application process through completion of the grant projects. The Department gained experience in the course of its administration of this first round of grant applications, and identified several regulatory revisions that would facilitate future rounds of grant applications. In summary, the Department seeks to revise the current regulations to remove certain ambiguous or unnecessary language, clarify the criteria pursuant to which grants should be awarded and otherwise facilitate the distribution of grant funds to meet the underlying legislative intent.

(9) State the statutory authority for the regulation and any relevant state or federal court decisions.  
Section 7.3 of the act of June 18, 1982 (P.L. 549, No. 159) (3 P.S. § 1207.3) authorizes the Department to award grants to counties for designated purposes related to the conservation of agricultural land, and empowers the Department to promulgate regulations necessary to support the grant program. It is under this statutory authority these regulatory revisions are offered.

## Regulatory Analysis Form

(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.

No.

(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

The regulatory revisions are justifiable and serve the compelling public interest in developing a more workable, understandable, efficient Agricultural Land Conservation Assistance Grant Program.

(12) State the public health, safety, environmental or general welfare risks associated with nonregulation.

There are no appreciable public health or safety risks associated with nonregulation. In the long run, the general welfare and the environment might benefit from a Grant Program that efficiently works to fund projects that aid in the preservation of the Commonwealth's ever-dwindling farmland resource. The regulatory revisions serve to improve that Grant Program.

(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

"Eligible counties" – counties whose governing bodies have passed resolution to form agricultural land preservation program boards and who are qualified to apply for grant funds – will be the primary beneficiaries of the regulatory revisions. Farmland owners will be secondary beneficiaries, in that the refinements that will be accomplished by these revisions will facilitate the operation of the Grant Program and assist in the general effort to preserve the Commonwealth's remaining farmland.

## Regulatory Analysis Form

(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effects as completely as possible and approximate the number of people who will be adversely affected.)

These regulatory revisions are not expected to adversely affect any persons.

(15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)

No persons, groups or entities are required to comply with the regulations. Participation in the Grant Program is entirely voluntary.

(16) Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.

The regulation was reviewed by the State Agricultural Land Preservation Board ("State Board") at its November 5, 1998 meeting. Beyond that, the regulatory revisions were developed without assistance or input from outside the Department.

(17) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures which may be required.

The regulatory revisions will not increase or decrease costs to the regulated community. Under the current regulations, a grant applicant must provide matching funds for any grant which it seeks. The Department's contribution under any grant agreement is limited to \$10,000. The regulatory revisions do nothing to change this.

## Regulatory Analysis Form

(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures which may be required.

Grants awarded under the Agricultural Land Conservation Assistance Grant Program help eligible county governments defray up to \$10,000 of the cost of any qualified project related to the establishment or improvement of an agricultural conservation easement purchase program, or related to any other purpose permitted under 3 P.S. § 1207.3.

(19) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required.

The regulatory revisions will not result in the imposition of any appreciable costs on State government. The statute at 3 P.S. § 1207.3 authorizes the Department to utilize up to \$750,000 from the proceeds of the sale of the Department's land, assets and equipment deposited into the Agricultural Conservation Easement Purchase Fund for grants under the program. The first round of grants resulted in the expenditure of \$124,062.61 of this \$750,000 sum, leaving \$625,937.39 for future grants. Individual grants will not exceed \$10,000. No new appropriation of State funds will be required.

## Regulatory Analysis Form

(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
<b>SAVINGS:</b>	\$	\$	\$	\$	\$	\$
<b>Regulated</b>						
<b>Local Government</b>						
<b>State Government</b>						
<b>Total Savings</b>						
<b>COSTS:</b>						
<b>Regulated</b>						
<b>Local Government</b>						
<b>State Government</b>						
<b>Total Costs</b>						
<b>REVENUE LOSSES:</b>						
<b>Regulated</b>						
<b>Local Government</b>						
<b>State Government</b>						
<b>Total Revenue Losses</b>						

(20a) Explain how the cost estimates listed above were derived.

The Act authorizes (at 3 P.S. § 1207.3), but does not require, a total State expenditure of \$750,000 under the Grant Program. As stated in Answer 19, above, the amount of this total remaining available for expenditure is \$625,937.39. Since the Grant Program requires matching funds from a grant applicant, eligible county governments would incur expenses of at least \$750,000 over the life of the Grant Program.

## Regulatory Analysis Form

(20b) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY -3	FY -2	FY -1	Current FY
Agricultural Land Conservation Assistance Grant Program			\$124,062.61	\$625,937.39

(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.

The benefits of these regulatory revisions will outweigh their costs. The revisions will have the ultimate result of improving the Grant Program and increasing the number and effectiveness of agricultural conservation easement purchase programs Statewide. Successful grant applicants will still be required to provide at least half of the costs of projects with respect to which grant funds are awarded.

(22) Describe the nonregulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.

No nonregulatory alternatives were considered, since the objective of this rulemaking is to make necessary revisions to current regulations.

(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.

No alternative regulatory schemes were considered, since the objective of this rulemaking is to make necessary revisions to current regulations.

## Regulatory Analysis Form

(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulation.

No.

(25) How does this regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?

Not applicable. No.

(26) Will the regulation affect existing or proposed regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

No.

(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.

The Department does not plan any hearings or informational meetings with respect to the rulemaking, although the Independent Regulatory Review Commission will hold a public meeting at which the rulemaking will be considered.

## Regulatory Analysis Form

(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports which will be required as a result of implementation, if available.

Yes. The Department will have to make minor revisions to some of the forms it currently uses in administering the Grant Program. This is not expected to result in an appreciable increase in paperwork.

(29) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

No such special provisions have been made.

(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

This rulemaking will become effective on the earliest date consistent with the requirements of the Regulatory Review Act.

(31) Provide the schedule for continual review of the regulation.

The Grant Program is administered by the Department's Bureau of Farmland Protection. That Bureau regularly reviews the efficacy of the regulations it oversees by March 1 of each year.



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REGULATORY REVIEW COMMISSION

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FACE SHEET FOR FILING DOCUMENTS WITH THE LEGISLATIVE REFERENCE BUREAU (Pursuant to Commonwealth Documents Law)

Copy below is hereby approved as to form and legality. Attorney General

By: (Deputy Attorney General)

DATE OF APPROVAL

Check if applicable Copy not approved. Objections attached.

Copy below is hereby certified to be true and correct copy of a document issued, prescribed or promulgated by:

Department of Agriculture (AGENCY)

DOCUMENT/FISCAL NOTE NO.

DATE OF ADOPTION July 7, 2000

BY Samuel E. Hayes, Jr.

SAMUEL E. HAYES, JR. SECRETARY OF AGRICULTURE

EXECUTIVE OFFICER CHAIRMAN OR SECRETARY

Copy below is hereby approved as to form and legality. Executive or Independent Commission

BY

9/12/00 DATE OF APPROVAL

(Deputy General Counsel) (Chief Counsel - Independent Agency) (Strike inapplicable title)

Check if applicable. No Attorney General Approval or objection within 30 days after submission.

NOTICE OF FINAL RULEMAKING Title 7 - AGRICULTURE DEPARTMENT OF AGRICULTURE [7 PA. CODE CH. 138h] Agricultural Land Conservation Assistance Grant Program

# **Title 7 – AGRICULTURE**

## **DEPARTMENT OF AGRICULTURE**

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

### **Agricultural Land Conservation Assistance Grant Program**

The Department of Agriculture (Department) hereby amends the regulations at 7 Pa. Code Chapter 138h (relating to agricultural land conservation assistance grant program) to read as set forth in Annex "A".

#### ***Authority***

The Department has the power and authority to adopt these regulations. Section 7.3 of the act of June 18, 1982 (P. L. 549, No. 159) (3 P. S. § 1207.3) (act) authorizes the Department to award grants to counties for designated purposes related to the conservation of agricultural land, and empowers the Department to promulgate regulations necessary to support the grant program. It is under this statutory authority these regulatory revisions are made.

The act requires the Department to consult with the State Agricultural Land Preservation Board (State Board) in establishing eligibility criteria for grants and in promulgating regulations necessary to administer and enforce the act. The State Board reviewed and approved these proposed regulatory revisions at its November 5, 1998 meeting.

#### ***Need for the Regulations***

The Department is preparing to solicit a third round of grant applications under the Agricultural Land Conservation Assistance Grant Program (Grant Program). The regulations will help to remove certain ambiguous or unnecessary language, clarify the criteria pursuant to which grants will be awarded and otherwise facilitate the distribution of grant funds to meet the underlying Legislative intent.

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

#### ***Comments***

Notice of Proposed Rulemaking was published at 30 *Pennsylvania Bulletin* 638 (February 5, 2000), and provided for a 30-day public comment period.

Neither the public nor the Legislature offered comment with respect to the proposed regulation.

The Independent Regulatory Review Commission (IRRC) offered a single comment. It recommended that proposed § 138h.5 (relating to eligibility criteria) be revised so as *not* to delete “The availability of funding for the project from a source other than the Commonwealth” as one of the criteria to be considered by the Department in evaluating projects for funding under the Grant Program.

The Department accepts IRRC’s recommendation and has implemented it in the final-form regulation.

***Fiscal Impact***

***Commonwealth***

The regulation will impose no costs and have no fiscal impact upon the Commonwealth. The act, itself, allows for up to \$750,000 to be awarded in grants. The proposed amendments would not increase or decrease that sum, but would help ensure the grant funds are spent for the purposes described in the act. To date, the Department has awarded grants totaling \$124,062.61. As a result, there remains authority to award an additional \$625,937.39 in grants.

***Political Subdivisions***

The regulation will impose no costs and have no fiscal impact upon political subdivisions. If a county seeks grant funds for a project permitted under the act, though, it must pay at least 50% of the project's costs.

***Private Sector***

The regulation will impose no costs and have no fiscal impact on the private sector.

***General Public***

The regulation will impose no costs and have no fiscal impact upon the general public.

***Paperwork Requirements***

The regulation is not expected to result in an appreciable increase in paperwork. The Department has developed grant application forms which it will distribute to interested persons, and will review completed applications in consultation with the State Board. Paperwork will be minimal.

***Contact Person***

Further information is available by contacting the Department of Agriculture, Bureau of Farmland Protection, 2301 North Cameron Street, Harrisburg, Pa. 17110-9408, Attention: Sandra Robison, or by telephoning Ms. Robison at (717) 783-3167.

### ***Regulatory Review***

Under § 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a), the Department submitted a copy of the Notice of Proposed Rulemaking published at 30 *Pennsylvania Bulletin* 638 (February 5, 2000) on January 24, 2000 to IRRC and to the Chairpersons of the House and Senate Standing Committees on Agriculture and Rural Affairs for review and comment. As stated, no comments were received from either the Legislature or the public with respect to the proposed regulation.

In preparing this final-form regulation, the Department has considered all comments received (consisting of a single revision which was suggested by IRRC and implemented by the Department in the final-form regulation).

This final-form regulation was (deemed) approved by the House Agricultural and Rural Affairs Committee on \_\_\_\_\_, was (deemed) approved by the Senate Agriculture and Rural Affairs Committee on \_\_\_\_\_, and was (deemed) approved by the Commission on \_\_\_\_\_.

### ***Findings***

The Department of Agriculture finds the following:

- (1) Public notice of its intention to adopt the regulation encompassed by this Order has been given under §§ 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240)(45 P.S. §§ 1201 and 1202) and their attendant regulations 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 this regulation in response to comments received do not enlarge the purpose of the proposed regulation published at 30 *Pennsylvania Bulletin* 638 (February 5, 2000).
- (4) The adoption of the regulation in the manner provided in this Order is necessary and appropriate for the administration of the authorizing statute.

### ***Order***

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

- (1) The current regulations of the Department of Agriculture at 7 Pa. Code Chapter 138h (relating to the agricultural land conservation assistance grant program) are revised as set forth at Annex "A" hereto.
- (2) The Secretary of Agriculture shall submit this Order, 30 *Pennsylvania Bulletin* 638 (February 5, 2000) and Annex "A" hereto to the Office of General Counsel and to the Office of Attorney General for approval as required by law.

(3) The Secretary of Agriculture shall certify this Order, 30 *Pennsylvania Bulletin* 638 (February 5, 2000) and Annex "A" hereto and deposit them with the Legislative Reference Bureau as required by law.

(4) This Order shall take effect upon publication in the *Pennsylvania Bulletin*.

*BY THE DEPARTMENT OF AGRICULTURE*

*Samuel E. Hayes, Jr., Secretary*

**Annex A**

**TITLE 7. AGRICULTURE**

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

**CHAPTER 138h. AGRICULTURAL LAND CONSERVATION  
ASSISTANCE GRANT PROGRAM**

**§ 138h.1. Grant Program objectives.**

Through the awarding of grants and the placing of conditions upon how grant funds are to be spent, the Grant Program will fund projects which will increase the protection and preservation of agricultural land within this Commonwealth by encouraging the implementation and effectiveness of county programs in each eligible county. **[A grant will only be awarded to a county whose governing body has appointed an agricultural land preservation board, even though the county may not have a county program.]**

**§ 138h.2. Definitions.**

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

\* \* \* \* \*

***Costs incurred*--Expenses that are permitted under a grant agreement and that have been paid by a grant recipient in expectation of reimbursement under the grant agreement and this chapter.**

\* \* \* \* \*

**§ 138h.4. Uses of grant funds.**

\* \* \* \* \*

(c) *Allowable expenditures of grant funds.* Grant funds shall be used for one or more of the following purposes:

(1) To cover costs incurred by an applicant in **[creating a spatial mapping] obtaining a Geographic Information Systems (GIS) database.** The database shall **[, at a**

minimum,] contain resource data such as: county topographic data, property boundaries, soil boundaries, soil capability classes **[and]**, soil productivity ratings **and** relative values for soils.

\* \* \* \* \*

(4) To cover costs up to \$2,000 incurred by an applicant in the purchase of computer hardware directly linked to achieving the purposes of paragraphs (1) and (2).

\* \* \* \* \*

(e) *Use of "in-kind" or "like-kind" funding.* The value of in-kind or like-kind contributions shall be considered in calculating an applicant's contribution of matching funds to a project. In-kind or like-kind contributions may be counted toward an applicant's matching contribution. In-kind or like-kind contributions used for this purpose may not exceed \$2,000 or 20% of an applicant's total matching contribution, whichever is less.

#### § 138h.5. Eligibility criteria.

(a) *General.* The following general criteria apply to applications for projects:

\* \* \* \* \*

(2) Subsequent stages or upgrades **[of previously completed projects for which funding has already been approved]** may be considered for funding if documentation is provided to the Department to demonstrate that the stage **[of the project]** or upgrade **[identified in the application]** was not included in funding plans for earlier stages of the project.

(b) *Specific.* The following specific criteria will be used to evaluate **[and rank]** applications for funding consideration:

- (1) The acceptability of costs within the proposed budget.
- (2) The availability of funding for the project from a source other than the Commonwealth.
- (3) The extent to which the project **[shall impact upon the]** contributes to the Commonwealth's goal of preserving agricultural **[lands within this Commonwealth] land.**
- [(4) The relevance of the project to encouraging the preservation of agricultural lands.**

(5)] (4) \* \* \*

[(6) **The value to the community of the project described in the application.**

(7) **The innovativeness of the project.**

(8)] (5) \* \* \*

[(9)] (6) \* \* \*

**§ 138h.6. Applications generally.**

\* \* \* \* \*

(c) *Authorization.* In addition to the application, applicants shall submit a written resolution passed by the county board authorizing the person submitting the grant application to execute the grant application on behalf of the county board.

[(c)] (d) *Additional documentation.* The State Board and the Secretary may require an applicant to submit additional documentation to complete or verify the application form. The additional documentation may include a letter, affidavit or other documentation, to:

(1) Verify [the legitimacy of the applicant's agricultural land preservation board] that the applicant is an eligible county.

\* \* \* \* \*

[(4) **Obtain from a third party which is providing matching funds to an applicant a recommendation that a grant under this chapter be awarded the applicant and verifying that its contribution of funds to the project would not be available without a grant from the Department.**

(d)] (e) *Request for additional documentation.* If additional documentation is necessary, the State Board or the Secretary will mail a written request for additional documentation to the applicant within [10] 30 days of receipt of the application.

**§ 138h.7. Filing applications.**

(a) *Place and time.* An application for a grant under the Grant Program shall be received by the program administrator at the Department of Agriculture, 2301 North Cameron Street, Harrisburg, Pennsylvania 17110-9408, during the specific 45-day annual application period as advertised in the *Pennsylvania Bulletin*. **Applications will not be accepted after 4 p.m. on the last day (day 45) of the application period.** The advertisement will be published at least 30 days prior to the commencement of the



application period.

(b) *Incomplete or inaccurate applications.* The Department will review each application and any supporting documentation that is received within the 45-day application period. If an application is found to be incomplete or inaccurate, the Department will request additional information and will discontinue further processing of the application if the documentation is not received by the Department within **[the 45-day application period described in subsection (a)] 15 days from the date of the request or the close of the 45-day application period, whichever is longer.**

### **§ 138h.8. Review of application by State Board.**

(a) *Transmittal of application to State Board.* When the Department determines a grant application is complete and accurate, it will forward this application, together with supporting documentation submitted therewith, to the State Board for review at its next regularly scheduled meeting. **[Since all applications are to be submitted and completed within the same time period, all applications for funding will be transmitted to the State Board at the same time.]**

\* \* \* \* \*

### **§ 138h.9. Notice of disposition of application.**

The Department will mail to the applicant written notice of the approval or disapproval of a grant application within 30 days of **[a] the State Board's** decision. This notice will be by regular mail to the address indicated by the applicant on the grant application form.

### **§ 138h.10. Grant agreement.**

(a) *General.* After the State Board approves a grant application, and as a precondition to the Department's release of grant funds to a successful applicant, the Department and the applicant shall execute a written grant agreement which describes the terms and conditions subject to which the grant is made. This grant agreement shall contain and conform to the requirements of this chapter and applicable State laws. It shall also contain any special terms and conditions required by the State Board and the Secretary.

(b) *Extension of project completion date.* **Although the project completion date set forth in the grant agreement may be extended by mutual written agreement of the Department and the grant recipient, the project completion date will not be extended more than 6 months.**

**§ 138h.12. Grant cancellation.**

\* \* \* \* \*

(b) *Failure to [establish a] obtain State Board approval of a county program.* If, within 2 calendar years of the date of the first grant agreement to that county, the grant recipient does not have a county program in place, the grant funds provided to the eligible county under this chapter shall be returned to the Department in full as described in § 138h.11(c).

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# PROPOSED RULEMAKING

[7 PA. CODE CH. 138h]

## Agricultural Land Conservation Assistance Grant Program

[30 Pa.B. 638]

The Department of Agriculture (Department) proposes to amend Chapter 138h (relating to agricultural land conservation assistance grant program).

### *Authority*

Section 7.3 of the act of June 18, 1982 (P. L. 549, No. 159) (3 P. S. § 1207.3) (act) authorizes the Department to award grants to counties for designated purposes related to the conservation of agricultural land, and empowers the Department to promulgate regulations necessary to support the grant program. It is under this statutory authority these regulatory revisions are offered.

The act requires the Department to consult with the State Agricultural Land Preservation Board (State Board) in establishing eligibility criteria for grants and in promulgating regulations necessary to administer and enforce the act. The State Board reviewed and approved these proposed regulatory revisions at its November 5, 1998 meeting.

### *Need for the Proposed Amendments*

The Department is preparing to solicit a second round of grant applications under the Agricultural Land Conservation Assistance Grant Program (Grant Program). The proposed regulations would help to remove certain ambiguous or unnecessary language, clarify the criteria pursuant to which grants will be awarded and otherwise facilitate the distribution of grant funds to meet the underlying Legislative intent.

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

### *Summary of the Proposed Amendments*

The proposed revisions reflect the experience the Department gained in administering the Grant Program through its first round of grant applications. The revisions are intended to remove certain ambiguous or unnecessary language, clarify the criteria pursuant to which grants will be awarded and otherwise make the Grant Program more workable.

Proposed § 138h.1 (relating to grant program objectives) would emphasize the primary purpose of the Grant Program: the protection and preservation of agricultural land. The

final sentence of this section would be deleted, since the substance of that sentence is set forth in the definitions of "applicant" and "eligible county," in § 138h.2 (relating to definitions).

A new term "costs incurred" would be added in proposed § 138h.2. This term is used repeatedly in § 138h.4(c) (relating to uses of grant funds). The definition would help to clarify that costs incurred by an applicant in the absence of a grant agreement specifically addressing those costs will not be reimbursed under the Grant Program.

Proposed § 138h.4 would accomplish several revisions:

Proposed § 138h.4(c)(1) would replace the term "spatial mapping database" with "Geographic Information Systems (GIS) database." This would make use of the most widely used and accepted term for the type of database described in that paragraph. In addition, the paragraph would reflect that a GIS database is generally available for purchase and need not be "created." The paragraph would also allow greater flexibility in terms of the resource data a GIS database would contain.

Proposed § 138h.4(c)(4) would be added to allow for up to \$2,000 of a grant to be used for the purchase of computer hardware necessary for a GIS database or to develop ordinances described elsewhere in subsection (c). The Department believes the objectives of the grant program are served when a successful applicant has the full benefit of current computer technology to implement its project.

Proposed § 138h.4(e) would allow "in-kind" or "like-kind" contributions to constitute the lesser of 20% or \$2,000 of an applicant's contribution of matching funds toward its project.

Proposed § 138h.5(b) (relating to eligibility criteria) would streamline the criteria pursuant to which grants are awarded. Applications would be evaluated but not "ranked." The "innovativeness" of a project and the availability of funds from other sources would no longer be criteria in evaluating an application. Separate criteria addressing the impact and relevance of the project would be combined. The Department believes these revisions would facilitate the evaluation process.

The proposed amendments would add a new subsection (c) to § 138h.6 (relating to applications generally). This subsection would help to facilitate the grant process by reminding an applicant to document that it is an eligible county and reminding persons acting on behalf of an eligible county to confirm their authority in this regard. The proposed revision of this section would also delete the unnecessary requirement that an applicant document it could not borrow matching funds without the grant it seeks from the Department. Subsection (e) would extend the time within which the State Board or the Secretary can request additional documentation by 20 days. This would afford a full 30 days from receipt of application materials within which to request additional documentation. This extension will be more workable--particularly in light of the meeting schedule of the State Board.

Proposed § 138h.7 (relating to filing applications) would clarify that applications must be received by the Department by 4 p.m. on the last day of the 45-day application window. This revision is prompted by the large number of eligible counties that submitted their application materials late during the Grant Program's first round of applications. The final phrase in proposed § 138h.7(b) would also address applications submitted at the end of the 45-day application window by allowing for the receipt and consideration of additional necessary documentation beyond the date the application window closes.

Proposed § 138h.8 (relating to review of applications by the State Board) would delete the requirement that all applications received within the 45-day application window be reviewed by the State Board at the same meeting. This addresses situations when additional necessary documentation for an application is not received until after the scheduled meeting of the State Board at which all other applications are considered.

Proposed § 138h.10 (relating to grant agreement) would clarify that it is possible to extend the termination date of a grant agreement if the Department and the grant recipient agree in writing, but would limit any extension to no more than 6 months. This revision is proposed in light of the experience gained by the Department in administering the first round of grant applications. Several worthy grant projects took longer to complete than the grant recipients had, in apparent good faith, anticipated. The proposed revision balances the occasional need for an extension of the grant agreement termination date with the need to administer the grants efficiently and avoid a backlog of uncompleted projects.

#### *Persons Likely to be Affected*

The proposed amendments will affect any county agricultural land preservation program seeking a grant for purposes consistent with the act.

#### *Fiscal Impact*

### ***Commonwealth***

The proposed amendments will impose no costs and have no fiscal impact upon the Commonwealth. The act, itself, allows for up to \$750,000 to be awarded in grants. The proposed amendments would not increase or decrease that sum, but would help ensure the grant funds are spent for the purposes described in the act. To date, the Department has awarded grants totaling \$145,351.84. As a result, there remains authority to award an additional \$604,648.16 in grants.

### ***Political Subdivisions***

The proposed amendments will impose no costs and have no fiscal impact upon political subdivisions. If a county seeks grant funds for a project permitted under the act, though, it must pay at least 50% of the project's costs.

### ***Private Sector***

The proposed amendments will impose no costs and have no fiscal impact on the private sector.

### ***General Public***

The proposed amendments will impose no costs and have no fiscal impact upon the general public.

#### *Paperwork Requirements*

The proposed amendments are not expected to result in an appreciable increase in paperwork. The Department has developed grant application forms which it will

distribute to interested persons, and will review completed applications in consultation with the State Board. Paperwork will be minimal.

#### *Public Comment Period*

The public comment period with respect to the proposed amendments is for 30 days from the date of publication in the *Pennsylvania Bulletin*.

#### *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on January 24, 2000, the Department submitted a copy of the proposed amendments to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Standing Committees on Agriculture and Rural Affairs. In addition to submitting the proposed amendments, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available to the public upon request.

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

#### *Contact Person*

Further information is available by contacting the Department of Agriculture, Bureau of Farmland Protection, 2301 North Cameron Street, Harrisburg, Pa. 17110-9408, Attention: Raymond C. Pickering, Director.

#### *Sunset/Expiration Date*

Although the proposed amendments would have no sunset date, their efficacy would be reviewed on an ongoing basis.

#### *Effective Date*

The proposed amendments would take effect on the date of final adoption.

SAMUEL E. HAYES, Jr.,  
Secretary

**Fiscal Note:** 2-124. No fiscal impact; (8) recommends adoption.

### **Annex A**

## **TITLE 7. AGRICULTURE**

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

**CHAPTER 138h. AGRICULTURAL LAND CONSERVATION ASSISTANCE GRANT PROGRAM**

**§ 138h.1. Grant Program objectives.**

Through the awarding of grants and the placing of conditions upon how grant funds are to be spent, the Grant Program will fund projects which will increase the protection and preservation of agricultural land within this Commonwealth by encouraging the implementation and effectiveness of county programs in each eligible county. **[A grant will only be awarded to a county whose governing body has appointed an agricultural land preservation board, even though the county may not have a county program.]**

**§ 138h.2. Definitions.**

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

\* \* \* \* \*

***Costs incurred*--Expenses that are permitted under a grant agreement and that have been paid by a grant recipient in expectation of reimbursement under the grant agreement and this chapter.**

\* \* \* \* \*

**§ 138h.4. Uses of grant funds.**

\* \* \* \* \*

(c) *Allowable expenditures of grant funds.* Grant funds shall be used for one or more of the following purposes:

(1) To cover costs incurred by an applicant in **[creating a spatial mapping] obtaining a Geographic Information Systems (GIS) database.** The database shall, **at a minimum,** contain **resource data such as:** county topographic data, property boundaries, soil boundaries, soil capability classes **[and],** soil productivity ratings **and** relative values for soils.

\* \* \* \* \*

(4) To cover costs up to \$2,000 incurred by an applicant in the purchase of computer hardware directly linked to achieving the purposes of paragraphs (1) and (2).

\* \* \* \* \*

(e) *Use of "in-kind" or "like-kind" funding.* The value of in-kind or like-kind contributions shall be considered in calculating an applicant's contribution of matching funds to a project. In-kind or like-kind contributions may be counted toward an applicant's matching contribution. In-kind or like-kind contributions

used for this purpose may not exceed \$2,000 or 20% of an applicant's total matching contribution, whichever is less.

**§ 138h.5. Eligibility criteria.**

(a) *General.* The following general criteria apply to applications for projects:

\* \* \* \* \*

(2) Subsequent stages or upgrades **[of previously completed projects for which funding has already been approved]** may be considered for funding if documentation is provided to the Department to demonstrate that the stage **[of the project]** or upgrade **[identified in the application]** was not included in funding plans for earlier stages of the project.

(b) *Specific.* The following specific criteria will be used to evaluate **[and rank]** applications for funding consideration:

(1) The acceptability of costs within the proposed budget.

(2) **[The availability of funding for the project from a source other than the Commonwealth.**

(3) The extent to which the project **[shall impact upon the]** contributes to the Commonwealth's goal of preserving agricultural **[lands within this Commonwealth]** land.

**[(4) The relevance of the project to encouraging the preservation of agricultural lands.**

(5) (3) \* \* \*

**[(6) The value to the community of the project described in the application.**

(7) The innovativeness of the project.

(8) (4) \* \* \*

**[(9) (5) \* \* \***

**§ 138h.6. Applications generally.**

\* \* \* \* \*

(c) *Authorization.* In addition to the application, applicants shall submit a written resolution passed by the county board authorizing the person submitting the grant application to execute the grant application on behalf of the county board.

**[(c)] (d) Additional documentation.** The State Board and the Secretary may require an applicant to submit additional documentation to complete or verify the application form. The additional documentation may include a letter, affidavit or other documentation, to:



(1) Verify [the legitimacy of the applicant's agricultural land preservation board] that the applicant is an eligible county.

\* \* \* \* \*

[(4) Obtain from a third party which is providing matching funds to an applicant a recommendation that a grant under this chapter be awarded the applicant and verifying that its contribution of funds to the project would not be available without a grant from the Department.

(d) (e) *Request for additional documentation.* If additional documentation is necessary, the State Board or the Secretary will mail a written request for additional documentation to the applicant within [10] 30 days of receipt of the application.

### § 138h.7. Filing applications.

(a) *Place and time.* An application for a grant under the Grant Program shall be received by the program administrator at the Department of Agriculture, 2301 North Cameron Street, Harrisburg, Pennsylvania 17110-9408, during the specific 45-day annual application period as advertised in the *Pennsylvania Bulletin*. **Applications will not be accepted after 4 p.m. on the last day (day 45) of the application period.** The advertisement will be published at least 30 days prior to the commencement of the application period.

(b) *Incomplete or inaccurate applications.* The Department will review each application and any supporting documentation that is received within the 45-day application period. If an application is found to be incomplete or inaccurate, the Department will request additional information and will discontinue further processing of the application if the documentation is not received by the Department within [the 45-day application period described in subsection (a)] 15 days from the date of the request or the close of the 45-day application period, whichever is longer.

### § 138h.8. Review of application by State Board.

(a) *Transmittal of application to State Board.* When the Department determines a grant application is complete and accurate, it will forward this application, together with supporting documentation submitted therewith, to the State Board for review at its next regularly scheduled meeting. **[Since all applications are to be submitted and completed within the same time period, all applications for funding will be transmitted to the State Board at the same time.]**

\* \* \* \* \*

### § 138h.9. Notice of disposition of application.

The Department will mail to the applicant written notice of the approval or disapproval of a grant application within 30 days of [a] the State Board's decision. This notice will be by regular mail to the address indicated by the applicant on the grant application form.

### § 138h.10. Grant agreement.

(a) **General.** After the State Board approves a grant application, and as a precondition to the Department's release of grant funds to a successful applicant, the Department and the applicant shall execute a written grant agreement which describes the terms and conditions subject to which the grant is made. This grant agreement shall contain and conform to the requirements of this chapter and applicable State laws. It shall also contain any special terms and conditions required by the State Board and the Secretary.

(b) **Extension of project completion date.** Although the project completion date set forth in the grant agreement may be extended by mutual written agreement of the Department and the grant recipient, the project completion date will not be extended more than 6 months.

**§ 138h.12. Grant cancellation.**

\* \* \* \* \*

(b) **Failure to [establish a] obtain State Board approval of a county program.** If, within 2 calendar years of the date of the first grant agreement to that county, the grant recipient does not have a county program in place, the grant funds provided to the eligible county under this chapter shall be returned to the Department in full as described in § 138h.11(c).

[Pa.B. Doc. No. 00-215. Filed for public inspection February 4, 2000, 9:00 a.m.]

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COMMONWEALTH OF PENNSYLVANIA  
**DEPARTMENT OF AGRICULTURE**  
LEGAL OFFICE  
September 14, 2000

Independent Regulatory Review Commission  
333 Market Street  
14<sup>th</sup> Floor  
Harrisburg, PA 17120

**Re: FINAL-FORM REGULATION**  
**Department of Agriculture**  
**Bureau of Farmland Protection**  
**7 Pa. Code Chapter 138h**  
**I.D. No. 2-124**  
**Proposed Rulemaking: 30 *Pennsylvania Bulletin***  
**638 (February 5, 2000)**  
**Final-Form Regulation Approved by**  
**Office of General Counsel: September 12, 2000**

Dear Sirs:

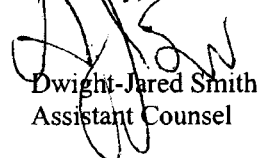
Please find enclosed a copy of the above-referenced final-form regulation. This material includes copies of the Preamble and Annex "A". A copy of the proposed regulation, as it appeared in the above-referenced edition of the *Pennsylvania Bulletin*, is also enclosed.

I respectfully request the Independent Regulatory Review Commission review and approve the above-referenced final-form regulation in accordance with the requirements and procedures of the Regulatory Review Act.

This Department's responses to the comments received from the public, the Legislature and the Independent Regulatory Review Commission with respect to the proposed regulation are set forth in the Preamble to the final-form regulation. Copies of this final-form regulation have been delivered to applicable Legislative Committees (the House and Senate Committees for Agriculture and Rural Affairs), and have been mailed or delivered to each commentator on this date.

The Department will provide you with any assistance you may require to facilitate a thorough review of this final-form regulation. Thank you for your attention to this matter.

Sincerely,

  
Dwight-Jared Smith  
Assistant Counsel

Enclosures  
2301 NORTH CAMERON STREET  
HARRISBURG, PA 17110-9408  
717-787-8744  
FAX 717-787-1270

TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE  
REGULATORY REVIEW ACT

RECEIVED

2000 SEP 14 PM 3:31

INDEPENDENT REGULATORY  
REVIEW COMMISSION

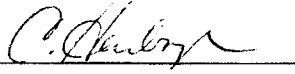

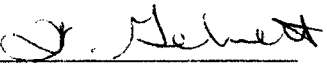
(11)

I.D. NUMBER: 2-124  
SUBJECT: Agricultural Land Conservation Assistance Grant Program  
AGENCY: DEPARTMENT OF AGRICULTURE

TYPE OF REGULATION

- Proposed Regulation
- X Final Regulation
- Final Regulation with Notice of Proposed Rulemaking Omitted
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor
- Delivery of Tolled Regulation
- a. With Revisions                      b. Without Revisions

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
9/14/00		HOUSE COMMITTEE ON AGRICULTURE & RURAL AFFAIRS
9/14/00		SENATE COMMITTEE ON AGRICULTURE & RURAL AFFAIRS
9/14/00		INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL
		LEGISLATIVE REFERENCE BUREAU

September 12, 2000