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

April 13, 2000

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

Re: IRRC Regulation #2-119 (#2089)
Department of Agriculture
Farm Safety and Occupational Health Grant Program

Dear Secretary Hayes:

Enclosed are our Comments on the subject regulation. They are also available on our website at <http://www.irrc.state.pa.us>.

Our Comments list objections and suggestions for 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 would like to discuss these Comments, please contact Chris Markham at 772-3455.

Sincerely,

Robert E. Nyce
Executive Director

wbg

Enclosure

cc: John Tacelosky
Phillip Pitzer
Office of General Counsel
Office of Attorney General
Lee Ann Labecki

Comments of the Independent Regulatory Review Commission

on

Department of Agriculture Regulation No. 2-119

Farm Safety and Occupational Health Grant Program

April 13, 2000

We submit for your consideration the following objections and recommendations regarding this regulation. Subsections 5.1(h) and 5.1(i) of the Regulatory Review Act (71 P.S. § 745.5a(h) and (i)) list the criteria the Commission must use to determine if the regulation is in the public interest. The Department of Agriculture (Department) must respond to these Comments when it submits the final-form regulation. If the final-form regulation is not delivered by March 13, 2002, the regulation will be deemed withdrawn.

1. Section 138k.1. Program objectives. - Consistency with other regulations and Clarity.

Subsection (b) Competitive program.

The second sentence of this subsection states: "Grant requests and related documentation will be collected by the Department and reviewed by the Board [Farm Safety and Occupational Health Advisory Board] and Secretary." Similar phrasing occurs in Sections 138k.4(c) and 138k.6(a) – (c) of this regulation. These sections indicate that the Board will participate in the review of grants and applications.

Giving the Board this duty is inconsistent with similar provisions in two simultaneously submitted proposed regulations (#2-122 and #2-123). All three proposed regulations, currently under review, are designed to implement Section 6 of the Farm Safety and Occupational Health Act (Act) (3 P.S. § 1906).

In the other two regulations, this provision states that the grants will be "reviewed by the Secretary or a designee." The Board is not included. It is our understanding that the Board meets only three times per year. Since the Department plans to review and approve grant applications within 30 days, it is not feasible to include the Board in the review of each application. Therefore, this proposed regulation should be revised to be consistent with the other two regulations.

2. Section 138k.2. Definitions. - Consistency with statute.

Board

The definitions of the term "Board" in the regulation and the term "Advisory Board" in the Act are identical. Both refer to the "Farm Safety and Occupational Health Advisory Board."

Therefore, for consistency with the statute, the Department should replace “Board” with “Advisory Board.”

3. Section 138k.4. Applications generally. - Clarity.

Another part of the regulation, Subsection 138k.6(a), is entitled “Grant application requirements.” It sets forth a list of required attachments to an application. To improve clarity, the contents of Subsection 138k.6(a) should be moved to Section 138k.4 (relating to applications generally). Alternatively, the contents could be placed in a new section captioned “Application requirements” following Section 138k.4 and preceding Section 138k.5 (relating to application deadline).

Section 138k.4 requires applicants to complete and submit application forms provided by the Department. However, the regulation does not list the basic information that is required on an application form. **The Department should include basic information on the contents of the application form in this section.**

4. Section 138k.6. Review of application. - Reasonableness and Clarity.

Subsection (b) Factors.

This section should include a reference to Subsection 138k.3(c) (relating to the use of grant funds), or list the types of projects that will qualify for grant funding.

5. Section 138k.7. Notice of disposition of application. - Reasonableness and Clarity.

This section states, “[G]rant applicants will be notified by the Secretary within 30 days of a decision to reject or approve the grant.” How long will it take the Department to issue a decision once the application is received? The Department should clarify the length of time it will take to evaluate an application.

The last sentence of this section provides that grant money shall be used within one year of the date of the grant agreement unless the Secretary allows an extension. There are two concerns. First, what constitutes use of the grant money? **Must the grant money be actually expended within a year, or can it also be committed but not actually spent?**

Second, this regulation should also state what happens if the grant funds are not used within one year of their receipt. There are two parts to this concern. **First, this section should indicate how a grant recipient could apply for an extension. Second, it should indicate what action the Department may take and whether these actions could include cancellation of the grant pursuant to Section 138k.10 of this regulation.**

6. Section 138k.8. Recordkeeping. - Paperwork requirements and Reasonableness.

Grant recipients must submit a final report with documentation as required under Section 138k.9. Why must they also retain copies of documents and records for three years after the grant year?

7. Section 138k.9. Verification of use. - Clarity.

Subsection (a) Verification.

Subsection (a) requires applicants to submit to the Department written receipts for the project costs, a final report and a narrative report. While the written receipts are due to the Department within three months of the project completion date, there are no due dates for submission of the other two reports. The Department should provide a time limit for submission of the final and narrative reports in this subsection.

8. Miscellaneous Issues. - Consistency with other regulations and statute and Clarity.

Proposed Regulations (#2-122 and #2-123) include provisions for requesting additional documentation from an applicant when an application is deficient (§§ 138j.6(c) and 138i.6(c)). They also suspend processing of an incomplete application until the Department receives the data. The applicant must submit the requested data within 10 days (§§ 138j.7(a) and 138i.7(a)).

The Department should consider adding similar provisions to this regulation (#2-119). In addition, it should also state that the Department will confirm in writing all requests for, and submission of, additional data.

Proposed Regulations #2-122 and #2-123 also contain conflict of interest provisions (§§ 138j.12 and 138i.9). These provisions allow a member of the Board to apply for a grant, subject to the cited statutory and regulatory requirements relating to conflict of interest. Similar conflict of interest provisions should be added to this rulemaking.