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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 #2-122 (#2090)
Department of Agriculture
Farm Safety and Occupational Health Developmental and Instructional 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

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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. 2-122

Farm Safety and Occupational Health Developmental and Instructional 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 If the final-form regulation is not delivered by March 13, 2002, the regulation will be deemed withdrawn.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 138j.2. Program objectives. - Reasonableness and Clarity.

Subsection (a) Purpose.

This subsection lists the four types of institutions that qualify for the program: the Pennsylvania Fire Academy; a public or private college or university; a community college; or a vocational or technical school. This list is repeated in Sections 138j.4(a), 138j.6(a) and 138j.9(b) of the regulation. According to Subsection 6(c)(1) of the Farm Safety and Occupational Health Act (Act) (3 P.S. § 1906(c)(1)), these are the *only* types of institutions that are eligible for the grants covered by this regulation. Is it necessary to repeat this list? **For example**, the four types of institutions could be listed once in the definition of a new term “**eligible applicant**” or “**eligible recipient**.” The new term could be added to the Definitions section and replace the lists in the four sections.

Subsection (b) Competitive program.

The phrase “the Secretary or a designee” is used in this subsection and in Sections 138j.5 - 138j.9 in the regulation. However, the term “designee” is not defined. The regulation should include a definition of “designee.”

2. Section 138j.3. Definitions. – Consistency with statute and Clarity.

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.”

Farm laborers

The first sentence of this definition reads, in part: "An individual employed by a farmer in raising, cultivating..." Hence, the term should be "*farm laborer*" not "*farm laborers*."

Members of farm families

The definition of "members of farm families" includes the phrase "collateral relation of the first degree." This phrase is unclear. **It is our understanding that it applies to nieces, nephews and grandchildren. To improve clarity, the phrase "collateral relation of the first degree" should be replaced with "nieces, nephews and grandchildren" and any others that the Department decides to include in this definition. In addition, there is a conflict between plural and singular nouns in the term "members of farm families" and the first phrase of its definition: "Any son, daughter or spouse of a farmer...."**

3. Section 138j.4. Limitation on grants. - Clarity.

Subsection (c) Recipient's use of FSDIP grant funds.

The term "FSDIP" is not defined by this regulation. The term "program" is defined by this Section 138j.3 as the "Farm Safety and Occupational Health Developmental and Instructional Program." Therefore, the term "program" should replace "FSDIP" in this rulemaking.

4. Section 138j.5. General conditions. - Clarity.

Subsection (c) Verification.

Subsection (c) requires a grant recipient to submit a final report to the Department that includes documentation of the projects costs. Additionally, a grant recipient must submit another final report that includes "pertinent documentation and a narrative report describing the project documentation and objectives." We have two concerns regarding this subsection.

First, are the final reports mentioned in this subsection one document, or two? If one document is required, the regulation should include a list of the content requirements that specifically identifies the types of financial information and other project data to be included in the report.

Second, the phrase "pertinent documentation" is unclear. The Department should provide examples of "pertinent documentation" in Subsection (c).

5. Section 138j.6. Applications. - Clarity.

Another part of the regulation, Subsection 138j.9(c), is entitled "Grant application requirements." It sets forth a list of required attachments to an application. To improve clarity, the contents of Subsection 138j.9(c) should be moved to Section 138j.6 (relating to applications). Alternatively, it could be a new section captioned "Application requirements" following Section 138j.6.

Section 138j.6 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.**

6. Section 138j.7. Processing of applications. - Clarity.

Subsection (b) Approval power.

Subsection (b) is closely related to Section 138j.8 (relating to notice of disposition of application). It should be moved to Section 138j.8.

Subsection (c) Board.

This subsection states “the Board shall recommend program priorities to the Secretary.” It adds, “the Board shall recommend the amount of funds to be allocated for Program grants.” It is our understanding that the Board meets 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, it is not practical to include this language in provisions involving the review of applications. The Department should clarify the Board’s role in the grant process.** One alternative would be to place language similar to that in Subsection (c) in Section 138j.4 (relating to limitation on grants).

7. Section 138j.8. Notice of disposition of application. - Clarity.

Subsection (a) Applications deemed complete.

To improve the clarity of the sequence of steps involved with review and approval of applications, we recommend that this section follow, rather than precede, Section 138j.9 (relating to review of applications) and immediately precede Section 138j.10 (relating to conflict of interest).

Subsection (b) Applications deemed incomplete.

This provision follows other subsections related to the approval of applications. Any notice concerning the “completeness” of an application should occur before a final decision. Hence, this subsection should precede provisions concerning the final disposition of applications.

8. Section 138j.11. Recordkeeping. - Paperwork requirements and Reasonableness.

Grant recipients must submit a final report with documentation as required under Subsection 138j.5(c). Why must they also retain copies of documents and records for three years after the grant year?

9. Section 138j.12. Grant cancellation. - Reasonableness and Clarity.

This section states that a “grant may be canceled by the Secretary upon a determination that the funds are not being or were not properly used.” What is meant by the term “used”?

10. Miscellaneous Clarity Issues.

Section 138j.1 is entitled “Authority” and includes a discussion of three different subsections from the Act. However, the section does not establish or clarify the Department’s procedures and requirements for implementing the Act. The section is unnecessary, and should be deleted.