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

April 11, 2002

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

Re: Regulation #2-138 (IRRC #2248)  
Department of Agriculture  
Agricultural Area Security Program; Agricultural Conservation  
Easement Purchase Program; Agricultural Security Area Program

Dear Secretary Hayes:

Enclosed are our Comments. They will soon be available on our website at [www.irrc.state.pa.us](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 my office at 783-5417.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert E. Nyce".

Robert E. Nyce  
Executive Director  
evp  
Enclosure

cc: Honorable Raymond Bunt, Jr., Majority Chairman, House Agriculture and Rural Affairs Committee  
Honorable Peter J. Daley, II, Democratic Chairman, House Agriculture and Rural Affairs Committee  
Honorable Mike Waugh, Chairman, Senate Agriculture and Rural Affairs Committee  
Honorable Michael A. O'Pake, Minority Chairman, Senate Agriculture and Rural Affairs Committee

# Comments of the Independent Regulatory Review Commission

on

## Department of Agriculture Regulation No. 2-138

### Agricultural Area Security Program; Agricultural Conservation Easement Purchase Program; Agricultural Security Area Program

April 11, 2002

We submit for your consideration the following objections and recommendations regarding this regulation. Each objection or recommendation includes a reference to the criteria in the Regulatory Review Act (71 P.S. § 745.5a(h) and (i)) which have not been met. 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 If the final-form regulation is not delivered by March 11, 2004, the regulation will be deemed withdrawn.

#### **1. Section 138e.16. Minimum criteria for application. - Reasonableness; Clarity.**

Subparagraph (a)(2)(i) requires a farmland tract to be at least 50 acres in size. A similar requirement proposed in Section 138e.255(b)(3)(i)(B) contains a lesser standard of at least 25 acres. The Department should either make both of these requirements 25 acres or explain why different standards are appropriate.

#### **2. Section 138e.73. Survey requirements. - Fiscal impact; Reasonableness.**

In the Preamble, the Department states this rulemaking is not expected to impose appreciable costs on political subdivisions. However, commentators state that it will cost more to meet the new survey requirements and are concerned that these costs could be prohibitive. We have three questions.

First, what is the cost of a typical land survey that meets the proposed requirements in the regulation? How does this cost compare to the cost of land surveys the Department has accepted for properties that are already in the Agricultural Conservation Easement Program?

Second, what are the benefits of the proposed survey requirements?

Finally, do the benefits of the requirements outweigh the costs?

#### *Subsection (a) General requirement.*

This subsection requires a survey to “comply with the most current boundary survey measurement standards published by the Pennsylvania Society of Land Surveyors.” There are three concerns.

First, where are the Pennsylvania Society of Land Surveyors standards published?

Second, how can a person determine whether the standards they have are the most current standards?

Third, there may be a time delay between when a property survey was performed and the application for an easement. If the Pennsylvania Society of Land Surveyors changes their standards in that time period, would a survey still be acceptable if it met the Pennsylvania Society of Land Surveyors standards at the time the survey was conducted?

*Subsection (c) Monumentation.*

What qualifies as an “unmovable monument”?

Also, the last sentence of this subsection requires use of 5/8 inch “rebar.” To be consistent with the prior sentence, it should require use of 5/8 inch “reinforcing bar.”

**3. Section 138e.91. Recommendation for purchase. - Fiscal impact; Reasonableness; Clarity.**

*Subsection (1)*

Subsection (1) and Paragraph (1)(x) require the filing of 25 copies of documents and specify the copies “shall be individually collated and three-hole punched, but not stapled.” This provision constitutes a significant paper burden, and in some instances may already be outdated. If the Department can accommodate electronic filing of documents, an alternative should be added to allow a county board to submit one copy of this document electronically.

*Subsection (8)*

This subsection references a “conservation plan agreement form as described in § 138e.222(a) ....” Section 138e.222(a) describes an agreement, but does not mention a form. These provisions should be consistent with each other.

One commentator expressed concern that a fully-executed conservation plan agreement may not be available prior to State Board review. The Department should explain the need for a fully-executed conservation plan agreement at this point in the process.

**4. Section 138e.93. Postsettlement recording and reporting procedures. - Reasonableness; Need; Clarity.**

*Subsection (b) Prompt recording of the deed of agricultural conservation easement and other documents and Subsection (c) Prompt recording of agricultural security area; reporting to the State Board.*

The body of Subsections (b) and (c) require actions “promptly.” These requirements are vague. The regulation should provide specific timeframes.

Also, what happens if a local government unit fails to record these documents?

*Subsection (d) Reporting the agricultural conservation easement purchase to the State Board.*

Paragraph (1)(iii) requires the county board to file a copy of the settlement sheet. One commentator stated a settlement sheet is not used for all settlements. Unless the Department can establish a need for a settlement sheet in all settlements, Paragraph (1)(iii) should only require a copy of the settlement sheet if one was used in the settlement.

Paragraph (1)(iv) requires the county board to file “a marked-up title insurance commitment document....” The county board is allowed 10 days after settlement to file this document. If a title insurance policy has been issued, the county board should be allowed to file this document in lieu of a marked-up title insurance commitment document.

**5. Section 138e.102. Allocation of funds to counties. - Reasonableness; Fiscal impact.**

This provision requires “the written certification of the county governing body that the specific amount of county matching funds...is available and intended for the purchase.” One commentator believes it would be more appropriate for this certification to come from a County Executive or Chief Fiscal Officer. If certification from a county official is sufficient, the regulation should allow it.

**6. Section 138e.104. Installment sales. - Clarity.**

It is not clear what provision Paragraph (d)(5) describes. This provision should be reworded to clearly state the intent.

**7. Section 138e.202. Inspections. - Reasonableness.**

Existing Subsection (a) requires the county board to complete the first inspection within one year from the date of the easement sale. The proposed language requires an inspection to be completed “within 1 year of the date of easement sale and in sufficient time to be included in the annual report.” For sales that occur later in a year, such as in December, there would only be a few months to complete the first inspection in order to meet the annual report deadline of March 1. Is it practical for a county board to complete an inspection in sufficient time to include the land in the annual report rather than allowing a full year?

**8. Section 138l.1. Definitions. – Consistency with statute; Clarity.**

*General*

This section defines three terms that are also defined in 3 P.S. § 903. The definitions of the following terms differ from the definitions contained in the statute: “eligible counties,” “planning commission,” and “Secretary.” The Department should use the statutory definitions in the final-form regulation, or justify any changes.

*Economic viability of farmland for agricultural production*

Clarity would be improved if the last phrase of this definition that references the criteria in Section 138e.16(a) was moved to the beginning of the definition.

*Interim review*

The phrase “interim review” is used in the definition of “interim review.” A term should not be used to define itself.

**9. Section 138l.18. Public hearing by local government unit on ASA proposal. – Consistency with statute; Clarity.**

Subsection (b)(ii)(A) states that “any person who proposed a modification to the ASA” should be provided a written hearing notice. In 3 P.S. § 906(c) of the statute, the term “landowner” is used. The term “person” should be changed to “landowner” in the regulation.

**10. Section 138l.19. Decision of local government unit. – Consistency with statute.**

Subsection (b) lists the factors that are to be considered for an ASA proposal or proposed modifications, as does 3 P.S. § 908(a) of the Act. Absent from Subsection (b) of the regulation is a reference to existing utilities found in the Act. To be consistent with the statute, the regulation should include this provision regarding utilities.