

# PROPOSED RULEMAKING

## DEPARTMENT OF AGRICULTURE

[7 PA. CODE CH. 138h]

### Agricultural Land Conservation Assistance Grant Program

The Department of Agriculture (Department) proposes to adopt Chapter 138h (relating to agricultural land conservation assistance grant program) under the authority of sections 7.1 and 7.3 of the act of June 18, 1982 (P. L. 549, No. 159) (act) (3 P. S. §§ 1207.1 and 1207.3). The 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 such a grant program.

In summary, the act authorizes the Department to expend up to \$750,000 from the Agricultural Conservation Easement Purchase Fund in grants to individual counties to facilitate the implementation or improvement of agricultural conservation easement purchase programs. Grants may be awarded for costs incurred by counties in creating spatial mapping databases, training staff, contracting with consultants, purchasing computer software and developing and implementing agricultural zoning ordinances.

The act also requires the Department to consult with the State Agricultural Land Preservation Board (State Board) in expending grant funds, establishing grant eligibility requirements and developing regulations for the grant program. To this end, the Department presented the proposed regulations to the State Board for its review. The State Board voted its unanimous approval of the proposed regulations at its July 13, 1995, meeting.

The proposed regulations would establish a grant eligibility, application and review process that is procedurally similar, in many respects, to the Agricultural and Rural Youth Organization Grant Program Guidelines in Chapter 138f.

Proposed § 138h.1 (relating to program objectives) sets forth the goal of the Agricultural Land Conservation Assistance Grant Program (grant program): to encourage the implementation and effectiveness of agricultural conservation easement purchase programs in each eligible county.

Proposed § 138h.3 (relating to limitations on grants) clarifies that an individual county may not receive a cumulative total of more than \$25,000 in grants, and that individual grants may not exceed the lesser of \$10,000 or 50% of the costs of the county project for which the grant funds are sought. These restrictions appear in section 7.3(b) and (d) of the act.

Proposed § 138h.4 (relating to uses of grant funds) emphasizes the necessity of State Board approval of individual grant project budgets and is consistent with the emphasis which the act places upon State Board participation in the grant process. It also repeats the statutory purposes for which grants may be awarded.

Proposed § 138h.5 (relating to eligibility criteria) establishes the eligibility criteria called for under section 7.3(d) of the act. Projects will be evaluated and ranked using

criteria that measure the relative impact each project will have upon the preservation of agricultural land.

Proposed §§ 138h.6—138h.8 (relating to applications generally) filing applications; and review of application by State Board) set forth general grant application time-tables and procedures.

Proposed § 138h.10 (relating to grant agreement) requires that the terms and conditions under which a grant is to be awarded be the subject of a written grant agreement.

Proposed §§ 138h.11 and 138h.15 (relating to verification of use; and final report) require a grant recipient to submit written receipts accounting for the total amount of the project's costs within 3 months of project completion, and to submit a final report within that period.

Proposed § 138h.12 (relating to grant cancellation) allows the Department to cancel a grant if grant funds are not expended in accordance with the grant agreement. In addition, a county shall either establish a State Board-approved agricultural conservation easement purchase program within 3 years of the date of its first grant agreement with the Department or return all grant funds to the Department.

Proposed § 138h.14 (relating to records) requires a grant recipient to maintain financial records regarding the expenditure of grant funds for at least 7 years from the date final payment of grant funds is made by the Department.

The proposed regulations will make it easier for counties to accomplish certain projects that, although requisite to the development and ongoing effectiveness of agricultural conservation easement purchase programs, involve expenses that some counties have been unable or unwilling to incur in the absence of matching State funding.

#### *Fiscal Impact*

##### *Commonwealth*

The proposed regulations will impose no costs and have no fiscal impact upon the Commonwealth. Although the act allows for up to \$750,000 to be awarded in grants, this grant money will originate from the Agricultural Conservation Easement Purchase Fund on a funds-available basis.

##### *Political Subdivisions*

The proposed regulations 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 regulations will impose no costs and have no fiscal impact upon the private sector.

##### *General Public*

The proposed regulations will impose no costs upon the general public.

#### *Paperwork Requirements*

The proposed regulations will not result in an appreciable increase in paperwork. The Department will issue grant application forms to interested persons, and will review these forms with the assistance of the State Board. Paperwork will be minimal.

*Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the Department submitted a copy of the proposed regulations on March 27, 1996, 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 the proposed regulations, the Department provided IRRC and the Committees with a copy of a detailed regulatory analysis form prepared by the Department in compliance with Executive Order 1982-2, "Improving Government Regulations." A copy of this material is available to the public upon request.

If IRRC has an objection to any portion of the proposed regulations, it must notify the Department within 30 days of the close of the public comment period. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the proposed regulations, by the Department, the General Assembly and the Governor of the objections raised.

*Contact Person*

Interested persons are invited to submit written comments regarding the proposed regulations within 30 days following publication in the *Pennsylvania Bulletin*. Comments may be submitted to the Department of Agriculture, Bureau of Farmland Protection, 2301 North Cameron Street, Harrisburg, PA 17110-9408, Attention: Fred Wertz.

*Effective Date*

The proposed regulations will become effective upon final adoption.

CHARLES C. BROSIUS,  
*Secretary*

**Fiscal Note:** 2-100. (1) General Fund; (2) Implementing year is 1994-95 \$minor; (3) 1st succeeding year is 1995-96 \$minor; 2nd succeeding year is 1996-97 \$minor; 3rd succeeding year is 1997-98 \$minor; 4th succeeding year is 1998-99 \$minor; 5th succeeding year is 1999-00 \$minor; (4) Three year history of program costs: NA; (7) Agricultural Conservation Easement Administration; (8) recommends adoption.

**Annex****TITLE 7. AGRICULTURE****PART V-C. FARMLAND AND FOREST LAND****CHAPTER 138h. AGRICULTURAL LAND CONSERVATION ASSISTANCE GRANT PROGRAM**

## Sec.

- 138h.1. Program objectives.
- 138h.2. Definitions.
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- 138h.5. Eligibility criteria.
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- 138h.7. Filing applications.
- 138h.8. Review of application by State Board.
- 138h.9. Notice of disposition of application.
- 138h.10. Grant agreement.
- 138h.11. Verification of use.
- 138h.12. Grant cancellation.
- 138h.13. Deficits.
- 138h.14. Records.
- 138h.15. Final report.

**§ 138h.1. Program objectives.**

(a) Through the awarding of grants and the placing of conditions upon how grant funds are to be spent, the

Program will fund projects which will increase the protection and preservation of agricultural land within this Commonwealth by encouraging the implementation and effectiveness of agricultural conservation easement purchase 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 an easement purchase Program approved by the State Board under authority of the Agricultural Area Security Law (3 P. S. §§ 901—915).

(b) Grant requests and related documentation will be received by the Department and reviewed by the State Board, which will recommend approval, modification or rejection of each eligible grant request. If the State Board recommends approval of a particular eligible grant request as submitted or as modified, the Secretary will then have full authorization to execute a grant agreement.

**§ 138h.2. Definitions.**

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

*Applicant*—An eligible county acting through and with the approval of its agricultural land preservation board.

*Department*—The Department of Agriculture of the Commonwealth.

*Eligible county*—A county, not of the first class, whose governing body has passed a resolution forming a county agricultural land preservation board in accordance with the Agricultural Area Security law (3 P. S. §§ 901—915) and appointed members to the board by the date of application.

*Program*—The Agricultural Land Conservation Assistance Grant Program.

*Secretary*—The Secretary of the Department.

*State Board*—The State Agricultural Land Preservation Board.

**§ 138h.3. Limitations on grants.**

(a) The maximum amount of any grant is \$10,000.

(b) For projects costing less than \$20,000, the maximum grant will be 50% of the project cost.

(c) A county is not eligible for more than a cumulative total of \$25,000 in grants under the Program.

(d) The total amount of grant funds which may be awarded will not exceed \$750,000 of the funds deposited into the Agricultural Conservation Easement Purchase Fund under section 7.1(a) of the act of June 18, 1982 (P. L. 549, No. 159) (3 P. S. § 1207.1(a)). The amount of grant funds awarded in any particular year will be determined by the State Board, depending on the availability of the funds.

**§ 138h.4. Uses of grant funds.**

(a) *Conformity to application.* Grant funds awarded to an applicant shall be expended solely for the specific projects described in the grant application in accordance with the project budget approved by the State Board and shall be expended within the time period specified in the grant agreement.

(b) *Pennsylvania projects.* Grant funds awarded to an applicant under the Program shall be used only to fund projects within the geographic boundaries of this Commonwealth.

(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 database. The database shall, at a minimum, contain county topographic data, property boundaries, soil boundaries, soil capability classes and soil productivity ratings.

(2) To cover costs incurred by an applicant to develop and implement agricultural zoning ordinances, including model ordinances for possible adoption by local government units.

(3) To cover costs incurred by an applicant to train staff, contract with consultants, and pay for computer software directly linked to reaching the objectives in paragraphs (1) and (2), or to reaching the objective of a fully approved and functioning county agricultural conservation easement purchase program. General-use word processing and spreadsheet software will not qualify.

#### **§ 138h.5. Eligibility criteria.**

(a) *General.* The Program will not accept applications for projects which are already in progress, or completed, for an eligible county.

(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 goal of preserving agricultural lands within this Commonwealth.

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

(5) The geographic scope of the project and the amount of agricultural land which will be affected by the project described in the application.

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

(7) The innovativeness of the project.

(8) The anticipated date of full implementation of an Agricultural Conservation Easement Purchase Program.

#### **§ 138h.6. Applications generally.**

(a) *Application required.* Applicants shall submit a written grant application to the Department through their county agricultural land preservation boards.

(b) *Obtaining an application.* Applications for grants under this chapter shall be made on forms prepared by the Department. The forms will be furnished, upon request, by the Department.

(c) *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 eligible county's agricultural land preservation board.

(2) Verify grant funds will be used for one or more of the purposes in § 138h.4 (relating to uses of grant funds).

(3) Confirm the applicant has secured funds from another source for the project for which the grant is requested.

(4) Obtain from a third party which is providing matching funds to a grant 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.

#### **§ 138h.7. Filing applications.**

(a) *Place and time.* An application for a grant under the 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*. 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 timely application and supporting documentation submitted therewith, for completeness and accuracy. If a timely application is found to be incomplete or inaccurate, the Department may request additional information and may 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).

#### **§ 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.

(b) *Factors.* The State Board will review and evaluate the application and supporting documentation and will consider the factors in § 138h.5(a) and (b) (relating to eligibility criteria) in deciding whether to recommend approval or rejection of the grant requests.

(c) *Decisions.* When the State Board has reviewed the grant application and supporting documentation, it will vote on whether to recommend approval or rejection of the grant application. The State Board will vote on these projects in accordance with its bylaws. The State Board may also recommend the grant be awarded in an amount less than that requested in the grant application. In addition, the State Board may vote to recommend the imposition of restrictions or special conditions upon the issuance of a grant. If the State Board recommends approval of a particular grant application, the Secretary will execute the grant agreement if funding is available and all other conditions have been met.

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

The Department will mail to the applicant written notice of the acceptance or rejection of a grant application within 30 days of a decision in this regard. This notice will be by regular mail to the address indicated by the applicant on the grant application form.

#### **§ 138h.10. Grant agreement.**

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. The 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.

**§ 138h.11. Verification of use.**

(a) *Verification.* Within 3 months of the earlier of the time period specified in the grant agreement or the completion of the project, the grant recipient shall submit to the Department written receipts accounting for the total amount of the project costs. The Department may also require that additional documentation be submitted by the grant recipient in order to document the expenditure of grant funds.

(b) *Extension of time.* The 3-month period described in subsection (a) may only be extended by the written permission of the Secretary. An extension shall be for a specific period of time.

(c) *Failure to verify use.* If required receipts or documentation are not submitted to the Department as described in subsections (a) and (b), or if the grant funds or a portion thereof are unaccounted for, the Secretary may demand, in writing, the return by the grant recipient of the entire grant sum or a lesser amount, plus appropriate legal interest. The grant recipient shall repay a sum demanded by the Department within 60 days of the written demand.

**§ 138h.12. Grant cancellation.**

(a) *Misuse of funds.* A grant may be canceled by the Department if the Secretary determines grant funds are not being spent in accordance with the terms and conditions of the grant agreement. In the event of cancellation, the Department may demand the return of the entire grant sum, or a portion thereof, and the grant recipient shall repay the sum in the manner described in § 138h.11(c) (relating to verification of use).

(b) *Failure to meet Program goal.* If, within 3 calendar years of the date of the first grant agreement to that county, the eligible county does not have a State-approved Program in place at the county level, the grant funds provided to the eligible county under this chapter shall be returned to the Department in full in the manner described in § 138h.11(c).

**§ 138h.13. Deficits.**

The Department's financial obligation or liability is limited to the amount of the grant. The Department will not be financially responsible for program cost overruns incurred by grant recipients, or any other costs involved in meeting the Program goal.

**§ 138h.14. Records.**

(a) The applicant shall maintain books, records and other evidence pertinent to costs incurred in connection with the project. The books and records shall be maintained according to generally-accepted accounting principles.

(b) Financial records, supporting documents, statistical records and other records pertaining to the grant shall be retained by the applicant for 7 years following the date final payment is made. The records and documents shall be available for inspection or audit by the Commonwealth, its agencies and instrumentalities during this time period.

**§ 138h.15. Final report.**

Within 3 months of the date of completion of the project, the grant recipient shall submit a final report delineating the progress made towards meeting the objectives set forth in the initial grant application.

[Pa.B. Doc. No. 96-532. Filed for public inspection April 5, 1996, 9:00 a.m.]

**[7 PA. CODE CH. 110]**

**Noxious Weeds**

The Department of Agriculture proposes to amend § 110.1 (relating to noxious weed control list). The amendment is proposed under the authority of sections 3(b)(8) and 9 of the Noxious Weed Control Law (act) (3 P. S. §§ 255.3(b)(8) and 255.9) which, respectively, require the Department to establish by regulation a noxious weed control list, prescribe certain plants to be included on that list and empower the Department to adopt regulations necessary to implement the act.

This proposed amendment would delete *Cichorium intybus* (commonly known as chicory or succory or blue daisy) from that list and add *Lythrum salicaria* (commonly known as Purple Loosestrife).

The Noxious Weed Control Committee (Committee) was established under the act as an administrative board of the Department. The act vested the Committee with the responsibility to establish by regulation a noxious weed control list, and to add plants to that list or delete plants from that list following public hearing.

*Deletion of Cichorium intybus from the list*

Initially, it should be noted that the current regulation at § 110.1 misspells "*Cichorium*."

On March 6, 1986, the Committee held a public hearing at which it considered the question of whether *Cichorium intybus* should remain on the noxious weed control list.

*Cichorium intybus* has great potential value as a forage crop. In addition, farmers have shown an increasing interest in growing *Cichorium intybus*. At the public meeting on this subject, the Committee recommended that *Cichorium intybus* be deleted from the noxious weed control list and that the Department pursue the amendment to section 8 of the act (3 P. S. § 255.8) that would be a necessary prerequisite to deleting that plant from the noxious weed control list.

Act 71 of 1994 (effective July 7, 1994) amended section 8 of the act and deleted the requirement that *Cichorium intybus* appear on the noxious weed control list.

In light of the facts that: (1) the recent amendment to the act allows *Cichorium intybus* to be deleted from the noxious weed control list; (2) the Committee held a public hearing on this subject as required by the act; and (3) the Committee and the Department agree that there is no agricultural or commercial reason to leave *Cichorium intybus* on the noxious weed control list, and the Department proposes to delete that plant from § 110.1.

*Addition of Lythrum salicaria to the list*

On June 13, 1994, the Committee held a public hearing on the question of whether *Lythrum salicaria* should be added to the noxious weed control list. *Lythrum salicaria* is a wetland plant indigenous to Europe and Asia, but has found its way into wetlands in the United States. This plant thrives in the absence of the insects and diseases that controlled it in Europe and Asia. It clogs waterways,

crowds-out native plant species and decreases the population of animals that are dependent upon native plant species for survival.

As a result of the June 13, 1994, public hearing, the Committee directed that *Lythrum salicaria* be added to the noxious weed control list.

The proposed amendment would update the noxious weed control list to reflect the recently-discovered benefits of *Cichorium intybus* and the increasing potential for harm to property caused by *Lythrum salicaria*.

*Fiscal Impact*

*Commonwealth*

The proposed amendment would impose no costs and have no fiscal impact upon the Commonwealth.

*Political Subdivisions*

The proposed amendment would impose no costs and have no fiscal impact upon political subdivisions.

*Private Sector*

The proposed amendment would impose no costs and have no fiscal impact upon the private sector.

*General Public*

The proposed amendment may impose some costs upon the owner of land infested with *Lythrum salicaria* if the Secretary, under authority of section 5 of the act (3 P. S. § 255.5), declares that land to be in a weed control area and orders weed control measures on the landowner's part.

*Paperwork Requirements*

The proposed amendment would not result in an appreciable increase in paperwork.

*Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the Department submitted a copy of the proposed amendment on March 27, 1996, 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 the proposed amendment, the Department provided IRRC and the Committees with a copy of a detailed regulatory analysis form prepared by the Department in compliance with Executive Order 1982-2, "Improving Government Regulations." A copy of this material is available to the public upon request.

If IRRC has an objection to any portion of the proposed amendment, it must notify the Department within 30 days of the close of the public comment period. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory

Review Act specifies detailed procedures for review, prior to final publication of the proposed amendment, by the Department, the General Assembly and the Governor of the objections raised.

*Contact Person*

Interested persons are invited to submit written comments regarding the proposed amendment within 30 days following publication in the *Pennsylvania Bulletin*. Comments may be submitted to the Department of Agriculture, Bureau of Plant Industry, 2301 North Cameron Street, Harrisburg, PA 17110-9408, Attention Lyle B. Forer.

*Effective Date*

The proposed amendment will become effective upon final adoption.

CHARLES C. BROSIUS,  
*Secretary*

**Fiscal Note:** 2-95. No fiscal impact; (8) recommends adoption.

**Annex A**

**TITLE 7. AGRICULTURE**

**PART V. BUREAU OF PLANT INDUSTRY**

**CHAPTER 110. NOXIOUS WEEDS**

**§ 110.1. Noxious weed control list.**

Under section 3(b) of the Noxious Weed Control Law (3 P. S. § 255.3(b)), the Noxious Weed Control Committee establishes the following noxious weed control list:

\* \* \* \* \*

(2) [ *Chichorium intybus*, commonly known as chicory or succory or blue daisy. ]

*Lythrum salicaria*, commonly known as purple loosestrife.

(3) *Cirsium arvense*, commonly known as [ Canadian ] Canada thistle.

\* \* \* \* \*

(5) [ *Sorghum* ] *Sorghum halepense*, commonly known as Johnson grass.

\* \* \* \* \*

(10) [ *Puerria* ] *Pueraria lobata*, commonly known as kudzuvine.

\* \* \* \* \*

[Pa.B. Doc. No. 96-533. Filed for public inspection April 5, 1996, 9:00 a.m.]