

RULES AND REGULATIONS

Title 7—AGRICULTURE

DEPARTMENT OF AGRICULTURE

[7 PA. CODE CH. 138h]

Agricultural Land Conservation Assistance Grant Program

The Department of Agriculture (Department) hereby amends Chapter 138h (relating to agricultural and land conservation assistance grant program) to read as set forth in 30 Pa.B. 638 (February 5, 2000) and Annex A.

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 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 Amendments

The Department is preparing to solicit a third round of grant applications under the Agricultural Land Conservation Assistance Grant Program (Grant Program). This rulemaking will help to remove certain ambiguous or unnecessary language, clarify the criteria under 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 amendments, and that the amendments are otherwise consistent with Executive Order 1996-1, "Regulatory Review and Promulgation."

Comments

Notice of proposed rulemaking was published at 30 Pa.B. 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 amendments.

The Independent Regulatory Review Commission (IRRC) offered a single comment. It recommended that the proposal 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 regulations.

Fiscal Impact

Commonwealth

The 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

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

General Public

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

Paperwork Requirements

The 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.

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, telephone (717) 783-3167.

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 notice of proposed rulemaking published at 30 Pa.B. 638, 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 amendments.

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

Under section 5.1(d) of the Regulatory Review Act (71 P. S. § 745.5a(d)), these final-form regulations were deemed approved by the House and Senate Agricultural and Rural Affairs Committees on October 4, 2000. Under section 5.1(e) of the Regulatory Review Act, IRRC met on October 5, 2000, and approved the final-form regulations.

Findings

The Department finds that:

(1) Public notice of its intention to adopt the final-form regulations encompassed by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations thereunder in 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 the final-form regulations in response to comments received do not enlarge the purpose of the proposal published at 30 Pa.B. 638. The adoption of the final-form regulations in the manner provided in this order is necessary and appropriate for the administration of the authorizing statute.

Order

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

(1) The regulations of the Department, 7 Pa. Code Chapter 138h, are amended by amending §§ 138h.1, 138h.2, 138h.4, 138h.6—138h.10 and 138h.12 to read as set forth at 30 Pa.B. 638 and by amending § 138h.5 to read as set forth in Annex A.

(2) The Secretary of Agriculture shall submit this order, 30 Pa.B. 638 and Annex A 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 Pa.B. 638 and Annex A and deposit them with the Legislative Reference Bureau as required by law.

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

SAMUEL E. HAYES, Jr.,
Secretary

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 30 Pa.B. 5499 (October 21, 2000).)

Fiscal Note: Fiscal Note 2-124 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 7. AGRICULTURE

PART V-C. FARMLAND AND FOREST LAND

CHAPTER 138h. AGRICULTURAL LAND CONSERVATION ASSISTANCE GRANT PROGRAM

§ 138h.5. Eligibility criteria.

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

(1) The Grant Program will not accept applications for the following:

- (i) Projects already completed.
- (ii) Stages of projects already in progress.
- (iii) Stages of projects for which funding has been included in a county appropriation or when other funding has been approved.

(2) Subsequent stages or upgrades may be considered for funding if documentation is provided to the Department to demonstrate that the stage or upgrade was not included in funding plans for earlier stages of the project.

(b) *Specific.* The following specific criteria will be used to evaluate 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 contributes to the Commonwealth's goal of preserving agricultural land.

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

(5) The anticipated date of full implementation of a county program.

(6) The impact the project would have on other county programs.

[Pa.B. Doc. No. 00-1855. Filed for public inspection October 27, 2000, 9:00 a.m.]

Title 58—RECREATION

FISH AND BOAT COMMISSION

[58 PA. CODE CH. 51]

Civil Penalty Forfeiture Process

The Fish and Boat Commission (Commission) by this order adopts Chapter 51, Subchapter K (relating to civil penalty forfeiture process). The Commission is publishing these regulations under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code). The regulations relate to the forfeiture of civil penalties for failure to comply with section 3510 of the code (relating to marking of dams).

A. Effective Date

The regulations will go into effect upon publication of an order adopting the regulations in the *Pennsylvania Bulletin*.

B. Contact Person

For further information on the regulations, contact Laurie E. Shepler, Assistant Counsel, (717) 705-7815, P. O. Box 67000, Harrisburg, PA 17106-7000. This final rulemaking is available electronically through the Commission's Web site (<http://www.fish.state.pa.us>).

C. Statutory Authority

The regulations are published under the statutory authority of section 3510 of the code.

D. Purpose and Background

The act of June 18, 1998 (P. L. 702, No. 91), effective January 1, 1999, amended the code by adding section 3510. This section applies to owners of existing run-of-the-river dams and permittees for the construction or installation of new run-of-the-river dams. Specifically, it requires the owners of dams identified by the Department of Environmental Protection (DEP) as meeting the statutory definition of a "run-of-the-river" dam to mark the areas above and below the dams and on the banks immediately adjacent to the dams with signs and buoys. The design and content of these signs and buoys were determined by the Commission after consultation with DEP. The signs are intended to warn the swimming, fishing and boating public of the hazards posed by the dam.

E. Summary of Regulations

Section 3510 of the code provides that any person who fails to comply with the marking requirements shall forfeit and pay a civil penalty of not less than \$500 nor more than \$5,000. This section further provides that any person who fails to comply with the maintenance requirements shall forfeit and pay a civil penalty of not less than

\$250 nor more than \$5,000. In order to recover civil penalties, the Commission must have an administrative process for forfeiture of civil penalties in place. Accordingly, the Commission has adopted the new regulations as proposed.

F. *Paperwork*

The regulations will not increase paperwork and will create no new paperwork requirements.

G. *Fiscal Impact*

The regulations will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The regulations will impose no new costs on the private sector or the general public.

H. *Public Involvement*

A notice of proposed rulemaking was published at 30 Pa.B. 4619 (September 2, 2000). The Commission did not receive any public comments regarding the proposed regulations.

Findings

The Commission finds that:

(1) Public notice of intention to adopt the amendments adopted by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201, 1202) and the regulations promulgated thereunder (1 Pa. Code §§ 7.1 and 7.2).

(2) A public comment period was provided, and no comments were received.

(3) The adoption of the amendments of the Commission in the manner provided in this order is necessary and appropriate for administration and enforcement of the authorizing statutes.

Order

The Commission, acting under the authorizing statutes, orders that:

(a) The regulations of the Commission, 58 Pa. Code Chapter 51, are amended by adding §§ 51.101—51.109 to read as set forth at 30 Pa.B. 4619 (September 2, 2000).

(b) The Executive Director will submit this order and 30 Pa.B. 4619 to the Office of Attorney General for approval as to legality as required by law.

(c) The Executive Director shall certify this order and 30 Pa.B. 4619 and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall take effect immediately upon publication in the *Pennsylvania Bulletin*.

PETER A. COLANGELO,
Executive Director

Fiscal Note: Fiscal Note 48A-108 remains valid for the final adoption of the subject regulations.

[Pa.B. Doc. No. 00-1856. Filed for public inspection October 27, 2000, 9:00 a.m.]