

PROPOSED RULEMAKING

DEPARTMENT OF AGRICULTURE

[7 PA. CODE CHS. 3 AND 7]

Importation and Intrastate Transportation of Animals; Brucellosis

The Department of Agriculture (Department), under the specific authority conferred by the Domestic Animal Law (act), 3 Pa.C.S. §§ 2302, 2321, 2323 and 2325 proposes to amend §§ 3.103, 7.1, 7.47 and 7.72—7.74. These proposed amendments are intended to update the Department's policy on diagnostic testing techniques used to detect the presence of Equine Infectious Anemia (EIA) and the use of vaccines intended for the prevention of Brucellosis. Section 2302 of the act (relating to finding, policy and purpose) states that "animal health is a major economic interest in the Commonwealth." In addition, section 2302 of the act delineates the policy and purpose of the act. The policy of the act is to "assure the health and welfare of animals kept in captivity, to prevent and control diseases . . . and to provide desirable management practices for the production, keeping and use of domestic animals." The purpose of the act is to "give the department authority to implement this policy." Section 2321(a) of the act (relating to dangerous transmissible diseases) designates Brucellosis and EIA as dangerous transmissible diseases. Section 2321(e) of the act confers upon the Department the power to "establish regulations addressing the specific . . . prevention, . . . testing, control and eradication measures which it determines are necessary with respect to any dangerous transmissible disease." Section 2325 of the act (relating to use of biologicals, antibiotics, genetic material, chemicals, diagnostic agents and other substances) further defines the Department's authority to prescribe testing techniques and regulate the use of vaccines. Section 2323 of the act (relating to health requirements) sets forth the Department's authority to establish health standards for the importation or intrastate movement of domestic animals in this Commonwealth.

Background

EIA is an infectious disease of equines caused by a virus. The current regulation, in § 3.103 (relating to agar gel immunodiffusion blood test), require equidae imported into this Commonwealth to be negative to an agar gel immunodiffusion blood test (Coggins Test). While the Coggins Test is a proven and effective testing device for EIA, a new and reportedly as effective test has been developed. This new test is an enzyme linked immunosorbent assay test (commonly called the ELISA Test). The ELISA Test is a screening device that recognizes the presence of the virus responsible for EIA. The ELISA Test is widely used to test for the presence of viruses and foreign substances in equidae. It is a scientifically proven and accepted test and is used to screen equidae for EIA in surrounding states. The inability of the Commonwealth to accept the results of ELISA tests has placed it at a great disadvantage with regard to surrounding states. Horse owners who wish to transport their horses into this Commonwealth are required to have a Coggins Test administered and to wait for the results of that test even if they have proof of a negative ELISA Test for EIA. This delay discourages owners from breeding,

racing or carrying on other activities economically beneficial to the Commonwealth and the equine industry in this Commonwealth. Given the fact that the ELISA Test has been shown to be an effective screening device for EIA, additional testing and the delays caused by it are unnecessary to protect the health of the equine population in this Commonwealth and are economically inefficient. Therefore, the Department proposes to amend Chapter 3 (relating to health requirements for importation and intrastate transportation of animals) to allow for the use and acceptance of both the Coggins Test and the ELISA Test. In addition, language will be added to allow the Department more flexibility to respond to continuing advances in science and medical technology.

Brucellosis is an infectious disease of animals and man that can cause premature birthing or miscarriages in animals and undulating or remittent fevers and joint swelling in humans. A recent advance in vaccine technology has rendered the current vaccine—Strain 19 brucella abortus (Strain 19)—prescribed by regulation obsolete and relatively inefficient in the management of this disease. Until recently, Strain 19 vaccine was the standard vaccine used to vaccinate for Brucellosis in the United States. While Strain 19 vaccine has served the domestic animal industry well, it has two disadvantages. Its major disadvantage is causing a significant number of animals to react positively to the standard Brucellosis tests. This disadvantage has limited Strain 19 vaccine's usefulness and has slowed eradication and control efforts. The second disadvantage suffered by Strain 19 vaccine is that it limits the age at which domestic animals can be vaccinated. A newly developed vaccine—Strain RB 51—is now available and approved for use. Strain RB 51 vaccine is reportedly as effective as Strain 19 vaccine and does not cause a reaction, or false positive, with the standard Brucellosis tests. In addition, Strain RB 51 will allow the Department to broaden the age range for vaccination of calves from the current 4 to 8 months of age range to a 4 to 12 months of age range. A prompt and expedited application of this new technology will provide increased protection to this Commonwealth's extensive cattle population and will decrease the costs incurred by the Department to administer additional tests when false positives occur. Therefore, the Department proposes that the use of Strain 19 be discontinued and that Strain RB 51 be used for the routine vaccination of cattle and any other species of domestic animal for which the vaccine is approved. In addition, language will be added to allow the Department more flexibility to respond to continuing advances in science and medical technology.

In the interest of continuing to carry out the policy of the act, to assure the health and welfare of domestic animals and thereby secure the economic well being of the domestic animal industry, the Department proposes to amend §§ 3.103, 7.1, 7.47 and 7.72—7.74 to effectuate the changes previously discussed.

The major features of the proposed amendments are summarized as follows:

Summary of Major Features

Proposed § 3.1 (relating to definitions) adds the definition of "Pennsylvania State Veterinarian" and "Secretary." These terms are recurring terms in this chapter and needed to be defined in order to add clarity.

The proposal to § 3.103 (relating to Agar gel immunodiffusion blood test) changes the heading to read

"Test methods." This section sets forth the acceptable testing techniques and the documentation required for importing equine into this Commonwealth. The amendments to this section allow the Department to accept the results of tests other than the Coggins Test. Specifically, the proposed amendments allow the Department to accept the results of the ELISA Test. In addition, the amendments allow the Secretary to designate other tests as acceptable through publication of an order in the *Pennsylvania Bulletin*. The Department would be required to amend the regulations to bring them into conformity with the order, within 1 year of the effective date of the order. A subsection was added to address the procedures to be followed in case of inconsistent test results.

Proposed § 7.1. (relating to definitions) adds and defines various recurring terms such as "accredited veterinarian," "Pennsylvania State Veterinarian" and "Secretary."

Proposed § 7.47. (relating to herd additions) deletes the provision designating Strain 19 as the official vaccine to be used for Brucellosis vaccinations. In addition, it adds a sentence referencing Subchapter H (relating to vaccination), which designates a new vaccine, Strain RB 51, as the official vaccine to be used for Brucellosis vaccinations.

Proposed § 7.72. (relating to procedure) deletes the sentence in subsection (a) referencing Strain 19 and designates Strain RB 51 vaccine as the only Brucellosis vaccine authorized for use within this Commonwealth. In addition, the proposed amendments allow the Secretary to designate other vaccines as acceptable through publication of an order in the *Pennsylvania Bulletin*. The Department would be required to amend the regulations to bring them into conformity with the order, within 1 year of the effective date of the order. Subsection (b) is retitled and allows Strain 19 to be used with express written permission of the Pennsylvania State Veterinarian. Subsection (c) is retitled and expands the time period for an official vaccination. A subsection (d) was added and requires vaccinations to be administered by an accredited veterinarian. Subsection (e) is added and replaces existing subsection (c). This subsection was amended to allow veterinarians to charge for the cost of the vaccine as well as the cost of their services.

Proposed § 7.73. (relating to identification of calves) amendments to this section change and add to the identification requirements.

Proposed § 7.74. (relating to vaccination report) amendments to this section extend the time period in which reports must be submitted to the Department and reduces the number of copies of vaccination reports that are required to be sent to the Department.

Fiscal Impact

Commonwealth

The proposed amendments will impose minimal costs and have minimal fiscal impact upon the Commonwealth. The Commonwealth will realize a reduction in costs as a result of the use of Strain RB 51 vaccine. Strain 19 vaccine causes a number of cattle to test falsely positive each year. The cost of each false positive test is approximately \$400 for the Commonwealth and \$300 for the producer. These falsely positive tests will not occur in cattle vaccinated with Strain RB 51 vaccine. Savings relative to the ELISA Test are not easily quantified. However, acceptance of the ELISA test will eliminate the cost of performing a Coggins Test on animals which have already been screened for EIA through the use of an ELISA Test. The Department will benefit from not having

to conduct additional testing. In addition, it will result in a decreased regulatory workload, since there will be fewer import violations to investigate and manage.

Political Subdivisions

The proposed amendments will impose no costs and have no fiscal impact upon political subdivisions.

Private Sector

The proposed amendments will impose minimal costs on private sector organizations and individuals. There will not be an increased cost to the regulated community. Cost of vaccinations will be essentially the same. Approximately 30 cattle test falsely positive each year. Each false positive case costs the farmer approximately \$300 in special handling, early culling and reduced value of the animal. These costs will be eliminated with the use of Strain RB 51 vaccine. The proposed amendments will potentially affect approximately 1,800 accredited veterinarians who may be required to vaccinate calves for Brucellosis. However, these veterinarians, the Commonwealth and the industry would eventually be forced to use Strain RB 51 vaccine because the same company makes both the new and old vaccines and Strain 19 vaccine is being phased out of use throughout the United States. Adoption of the ELISA Test will not result in any increased cost. Pleasure horse and racehorse owners and trainers and equine veterinarians will be required to comply. However, the ELISA Test is accepted and used by a majority of states and therefore, the majority of owners, trainers and other persons in the equine industry already use and comply with ELISA testing. There is a potential savings in terms of the elimination of additional testing and reduced turnaround time for test results. In many cases, horse owners have been required to conduct the additional Coggins Test at their expense. Also, there have been instances when horses that were entered in a race were denied entrance to the track because of failure to meet the Commonwealth's rigid and unnecessary EIA requirements. These instances result in lost opportunities to race and to recoup training expenses.

General Public

The proposed amendments will impose no costs and have no fiscal impact on the general public. The farm community and the general public should benefit through reduced costs to the industry and the Commonwealth. The continued use of Strain 19 vaccine would result in continued low, but significant number, of false positive animals, which will continue to be a regulatory burden and expense to the cattle industry and the Department. Strain 19 vaccine can also cause infection in humans and is a health risk that veterinary practitioners have faced over the years. Delay in changing the EIA import requirements will perpetuate the ongoing problem of horses which are entered to race being turned away from the track, and will continue to impose an undue hardship on horse owners and the equine industry in this Commonwealth. The equine industry in this Commonwealth will benefit by coming into conformity with surrounding states with regard to accepted testing and screening techniques. Decreased costs and increased opportunities in both industries will benefit the general public.

Paperwork Requirements

The proposed amendments will not result in an appreciable increase of paperwork. The Department has already developed the appropriate forms and procedures to administer the EIA testing program and the Brucellosis vaccination program. Only small changes will be required.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on January 31, 2000, the Department submitted a copy of these proposed amendments to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Agriculture and Rural Affairs Committee and the Senate Agriculture and Rural Affairs Committee. In addition to submitting the proposed amendments, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the agency in compliance with Executive Order 1996-1 "Regulatory Review and Promulgation." A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, if IRRC has an objection to any portion of the proposed amendments, it will notify the Department within 10 days after the close of the Committees' review 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 regulations, by the Department, the General Assembly and the Governor of objections raised.

Contact Person

Further information is available by contacting the Department of Agriculture, Bureau of Animal Health and Diagnostic Services, 2301 North Cameron Street, Harrisburg, PA 17110-9408; Attn: Dr. Phillip Debok (717) 783-8555.

Effective Date

These proposed amendments would become effective upon publication in the *Pennsylvania Bulletin*.

SAMUEL E. HAYES, Jr.,
Secretary

Fiscal Note: 2-128. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 7. AGRICULTURE

PART I. BUREAU OF ANIMAL HEALTH AND DIAGNOSTIC SERVICES

CHAPTER 3. HEALTH REQUIREMENTS FOR IMPORTATION AND INTRASTATE TRANSPORTATION OF ANIMALS

Subchapter A. GENERAL PROVISIONS

§ 3.1. Definitions.

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

* * * * *

Pennsylvania State Veterinarian—The Director of the Bureau of Animal Health and Diagnostic Services of the Department.

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Secretary—The Secretary of the Department.

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Subchapter D. IMPORTATION OF HORSES, MULES, ASSES AND OTHER EQUIDAE
EQUINE INFECTIOUS ANEMIA

§ 3.103. [Agar gel immunodiffusion blood test] Test methods.

(a) **Testing required.** Equidae imported into this Commonwealth for other than immediate slaughter shall be negative to [an] either of the following:

(1) **An official agar gel immunodiffusion blood test** (commonly called [The] the Coggins Test), conducted by a Federally-approved laboratory within 12 months prior to date of entry.

(2) **An enzyme linked immuno sorbent assay test** (commonly called the ELISA Test), conducted by a Federally-approved laboratory within 12 months prior to date of entry.

(b) **Documentation required.** A copy of the official test shall accompany the animal to its final destination.

[(b)] (c) **Inconsistent results.** If an equid receives more than one of the tests described in subsection (a), and one test shows a negative result and another a positive result, the equid may not be imported into this Commonwealth unless permission is granted by the Pennsylvania State Veterinarian.

(d) **Designation of other tests as acceptable.** If the Secretary determines that a test other than the tests described in subsection (a) is adequate to detect equine infectious anemia and is appropriate for use in equidae imported into this Commonwealth, the Secretary may so designate that test by publishing an order to that effect in the *Pennsylvania Bulletin*. The order shall take effect upon publication and the Department will, within 1 year of the effective date of that order, amend this section to bring it into conformity with the published order.

(e) **Exception.** Foals under 6 months of age, accompanied by dam with negative agar gel immunodiffusion test, a negative enzyme linked immunosorbent assay test or some other test approved by the Secretary and published in the *Pennsylvania Bulletin*, do not require a negative test.

CHAPTER 7. BRUCELLOSIS REGULATIONS

Subchapter A. GENERAL PROVISIONS

§ 7.1. Definitions.

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

Accredited veterinarian—A licensed veterinarian jointly accredited by APHIS-USDA and the Department in the state the veterinarian is licensed to perform official duties on behalf of APHIS-USDA or the Department in the state the veterinarian is licensed to practice veterinary medicine. See accreditation standards established by 9 CFR Parts 160 and 161 (relating to definition of terms; and requirements and standards for accredited veterinarians; and suspension or revocation of such accreditation).

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Pennsylvania State Veterinarian—The Director of the Bureau of Animal Health and Diagnostic Services of the Department.

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Secretary—The Secretary of the Department.

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Subchapter E. INDIVIDUAL CERTIFIED BRUCELLOSIS HERD PLAN

§ 7.47. Herd additions.

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(c) Animals officially vaccinated [with brucella abortus vaccine, Strain 19] in accordance with Subchapter H (relating to vaccination), and under 18 months of age, may enter a herd without a blood test but shall be accompanied by a health certificate.

Subchapter H. [CALFHOOD] VACCINATION

§ 7.72. Procedure.

(a) [Only accredited veterinarians selected by the owner may vaccinate female calves with Strain 19 brucella abortus vaccine.] *Designation of vaccine.* Strain RB 51 vaccine is hereby designated the only brucellosis vaccine authorized for use within this Commonwealth. If the Secretary determines that some other brucellosis vaccine is appropriate for use in cattle in this Commonwealth, the Secretary may so designate that vaccine by publishing an order to that effect in the *Pennsylvania Bulletin*. The order shall take effect upon publication and the Department will, within 1 year of the effective date of that order, amend this section to bring it into conformity with the published order.

(b) *State veterinarian approval required.* Strain 19 vaccine may only be used with the express written permission of the Pennsylvania State Veterinarian.

[(b)] (c) *Official vaccination.* An official vaccination shall consist of [an approved] Strain RB 51 vaccine administered to female calves from 4 through [8] 12 months of age ([120—269] 120—365 days). A vaccination of cattle over the age of 12 months (365 days) will not be considered an official vaccination unless done with the guidance and express written permission of the Pennsylvania State Veterinarian.

(d) *Veterinarian to administer vaccine.* An official vaccination may only be administered by an accredited veterinarian.

[(c)] (e) *Veterinarian fees.* Accredited veterinarians shall be permitted to charge the herd owner for [the cost of the services] their services and the vaccine.

§ 7.73. Identification of calves.

(a) *Tattoo required.* Veterinarians vaccinating calves shall tattoo [with] in the right ear the letter “R”, followed by a United States Registered V Shield[, including “V,” in the right ear, preceded by the numeral of the quarter of the year and], followed by the last number of the year.

(b) *Official state vaccination tag or official breed registry tattoo required.* An orange official State vaccination tag shall be placed in the right ear. If

the calf has an official breed registry tattoo, an official State vaccination tag is not required.

(c) *Identification on vaccination report.* Calves shall be identified on the vaccination report by [the] date of birth, official [Pennsylvania ear tag in the right ear,] State vaccination tag number and, or when applicable, their breed registration number or registration number of the dam.

§ 7.74. Vaccination report.

Vaccinations shall be reported to the Department within [7] 30 days following vaccination of the calves. The reports shall be made on forms provided by the Department. The original and [two copies] one copy shall be forwarded to the Department, one copy given to the herd owner for [his] the owner’s records and one copy retained by the veterinarian.

[Pa.B. Doc. No. 00-240. Filed for public inspection February 11, 2000, 9:00 a.m.]

[7 PA. CODE CH. 138i]

Farm Safety and Occupational Health Tuition Assistance Program

The Department of Agriculture (Department), under the specific authority conferred by sections 5 and 6 of the Farm Safety and Occupational Health Act (act) (3 P.S. §§ 1905 and 1906), proposes to adopt Chapter 138i (relating to Farm Safety and Occupational Health Tuition Assistance Program (Program)). Section 5 of the act delineates the duties of the Secretary of Agriculture (Secretary) and directs the Secretary to “. . . adopt and promulgate any regulations which may be necessary to implement and administer the act.” Section 6(a) of the act allows the Secretary to establish a grant program to provide tuition assistance to rural emergency service providers, farmers, members of farm families, farm laborers and others involved in agricultural production to attend farm safety and occupational health training and emergency response programs. Section 6(d) of the act requires the Secretary to adopt and promulgate regulations to govern the awarding of grants under section 6 of the act.

The proposed regulations establish the procedures governing the submission, processing and review of grant applications. In addition, they set forth the documentation required to accompany applications, eligibility criteria, criteria for determining grant amounts and verification, cancellation, notification and reporting requirements.

Background

This Commonwealth’s approximately 51,000 farms are the foundation of a \$35 billion industry, employing over 650,000 workers in farming and related services, food processing and food wholesale and retail sales. The National Safety Council reports agriculture as this Nation’s most hazardous industry with a work death rate 22% higher than the second most hazardous industry, mining and quarrying. Farming accounts for over 80% of agriculture’s injury toll. From 1990 through 1995 at least 249 Commonwealth citizens have lost their life to hazards associated with farming. The victims included 17 infants, toddlers and preschoolers—all under 5 years of age. Another 29 victims were at least 75 years of age. The oldest was 89 years old. In 1994, a Statewide survey

showed one in every ten farm operations in the State had at least one recordable work-related injury. Even more startling was that approximately 5% of those injuries resulted in some type of permanent disability to the victim. The numbers evidence the need for farm safety and occupational health programs. In 1994 alone, there was a total of 5,100 injuries and 250 permanent disability injuries related to farming.

The purpose of the Program is to provide tuition assistance to rural emergency service providers and members of the farm community to assist them and encourage their attendance at farm safety and occupational health programs and seminars intended to facilitate avoidance and elimination of farming hazards. The Program will compliment the Farm Safety and Occupational Health Grant Program, which exists as a statement of policy in Chapter 138g, but will be supplanted by regulations that are currently in the proposal stage and the proposed Farm Safety and Occupational Health Developmental and Instructional Program intended to be established as Chapter 138j.

(Editor's Note: For the text of the proposed rulemaking concerning Chapter 138k (relating to Farm Safety Occupational Health Grant Program) see 30 Pa.B. 781 (February 12, 2000). For the text of the proposed rulemaking concerning Chapter 138j (relating to Farm Safety and Occupational Health Developmental and Instructional Program) see 30 Pa.B. 776 (February 12, 2000).)

In the interest of continuing to carry out its statutory duties and promoting the development and implementation of technical and educational farm safety programs that benefit the farming community, the Department has promulgated this proposed rulemaking. This proposed rulemaking is intended to establish reasonable guidelines, standards, criteria and procedures for the administration and implementation of grants under the Program.

Summary of Major Features

Proposed § 138i.1. (relating to authority) delineates the Secretary's authority to establish the Program and sets forth the Secretary's power and duty to adopt and promulgate regulations to govern the awarding of grants under section 6 of the act.

Proposed § 138i.2. (relating to program objectives) sets forth that the objective of the Program is to provide tuition assistance to rural emergency service providers, farmers, members of farm families, farm laborers and others involved in agricultural production, to allow them to attend farm safety and occupational health programs and emergency response programs. It stipulates that grants will be awarded on a funds available basis and through a competitive application process.

Proposed § 138i.3. (relating to definitions) defines various recurring terms such as "Board," "farm," "farm laborers," "members of farm families," "project," "rural emergency service provider" and "Secretary."

Proposed § 138i.4. (relating to limitations on grants) defines who is an eligible applicant, describes the proper use of grant funds and sets forth the procedure for substitution of person or project. This section specifically delineates the total dollar amount an eligible applicant may be awarded in tuition assistance. Each applicant may receive up to \$100 in tuition assistance per calendar year. This section also sets forth restrictions on the use of grant funds.

Proposed § 138i.5. (relating to general conditions) provides that a grant recipient will be required to sign the

approved grant application form, which shall then constitute the grant agreement. Additionally, this section sets forth default, verification and failure to verify provisions.

Proposed § 138i.6. (relating to applications generally) provides that an eligible applicant shall submit an application prepared by the Department and provides information regarding how to obtain an application and who to contact for assistance. This section notifies the applicant that additional information may be requested by the Secretary and that the application shall be received prior to the date of the project the applicant wishes to attend.

Proposed § 138i.7. (relating to processing of applications) describes the procedure for processing applications and delineates review and approval powers of the Secretary and the Board. This section sets forth processing requirements for applications which are incomplete or contain inaccurate information.

Proposed § 138i.8. (relating to review of application) delineates the specific information that shall be included in a grant application, defines applicant eligibility criteria and sets forth the factors to be considered by the Secretary in selecting grant recipients.

Proposed § 138i.9. (relating to conflicts of interest) sets forth the legal provisions a Board member shall follow to avoid a conflict of interest, when the Board member or his agent or employe is a grant applicant.

Proposed § 138i.10. (relating to notice of disposition of applications) sets forth the type of notice required and the time periods for notification.

Proposed § 138i.11. (relating to recordkeeping) describes the type of records which shall be kept by the grant recipient and the time period for which those records shall be kept. This section also provides for inspection and audit of those records by the Department.

Proposed § 138i.12. (relating to grant cancellation) provides for the cancellation of a grant when funds have not been spent in accordance with the grant agreement or this chapter or upon failure of the recipient to satisfy the verification requirements of this chapter.

Proposed § 138i.13. (relating to right of recovery) sets forth the Department's right to make a claim for grant money not expended in accordance with the act, the grant agreement or the regulations.

These proposed regulations set forth the basic process by which the Department will exercise its administrative discretion with respect to the expenditure of the funds appropriated to it by the General Assembly for Farm Safety and Occupational Health Programs.

Fiscal Impact

Commonwealth

The proposed regulations will impose minimal costs and have minimal fiscal impact upon the Commonwealth, including projected increases in program costs. The Department has an appropriation for use in developing the various Farm Safety and Occupational Health Grant Programs allowed under section 6 of the act. The Secretary, with the advice of the Board, will determine the amount of funds to allocate to each grant program promulgated under section 6 of the act.

Political Subdivisions

The proposed regulations will impose no costs and have no fiscal impact upon political subdivisions.

Private Sector

The proposed regulations will impose minimal costs on those organizations or individuals who are interested in applying for Program grants. The costs that may be associated with the regulations would involve the time spent to obtain and fill out a grant application. Organizations and individuals receiving grants would benefit by receiving funds to cover tuition costs associated with attending some farm safety and occupational health programs. The private sector may also benefit through the realization of reduced health care and occupational costs resulting from increased attendance at the educational and preventative programs espoused by the act and these proposed regulations.

General Public

The proposed regulations will impose no costs and have no fiscal impact on the general public. The farm community and the general public should benefit through the reduction of health care and occupational costs which are likely to result from increased attendance at educational and preventative programs such as those espoused by the act and these regulations.

Paperwork Requirements

The proposed regulations will not result in an appreciable increase of paperwork. The Department will have to develop a grant application form to administer the Program. However, the administrative provisions of the Program are very similar to the administrative provisions of the Farm Safety and Occupational Program and the Department has already developed a grant application form and grant agreement for use in administering the Farm Safety and Occupational Program and has administered that Program, under Chapter 138g, since 1996.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on January 31, 2000, the Department submitted a copy of these proposed regulations to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Agriculture and Rural Affairs Committee and the Senate Agriculture and Rural Affairs Committee. In addition to submitting the proposed regulations, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the agency in compliance with Executive Order 1996-1. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, if IRRC has an objection to any portion of the proposed regulations, it will notify the Department within 10 days after the close of the Committees' 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 objections raised.

Contact Person

Further information is available by contacting the Department of Agriculture, Farm Safety and Occupation Health Grant Program, 2301 North Cameron Street, Harrisburg, PA 17110-9408; Attn: John Tacelosky (717) 772-5217.

Effective Date

These proposed regulations will become effective upon publication as final-form in the *Pennsylvania Bulletin*.

SAMUEL E. HAYES, Jr.,
Secretary

Fiscal Note: 2-123. (1) General Fund; (2) Implementing Year 1999-00 is \$20,000; (3) 1st Succeeding Year 2000-01 is \$20,000; 2nd Succeeding Year 2001-02 is \$20,000; 3rd Succeeding Year 2002-03 is \$20,000; 4th Succeeding Year 2003-04 is \$20,000; 5th Succeeding Year 2004-05 is \$20,000; (4) Fiscal Year 1998-99 \$N/A; Fiscal Year 1997-98 \$N/A; Fiscal Year 1996-97 \$N/A; (7) Farm Safety; (8) recommends adoption.

Annex A

TITLE 7. AGRICULTURE

PART V-C. FARMLAND AND FOREST LAND

CHAPTER 138i. FARM SAFETY AND OCCUPATIONAL HEALTH TUITION ASSISTANCE PROGRAM

- Sec.
- 138i.1. Authority.
- 138i.2. Program objectives.
- 138i.3. Definitions.
- 138i.4. Limitation on grants.
- 138i.5. General conditions.
- 138i.6. Applications.
- 138i.7. Processing of applications.
- 138i.8. Review of applications.
- 138i.9. Conflict of interest.
- 138i.10. Notice of disposition of application.
- 138i.11. Recordkeeping.
- 138i.12. Grant cancellation.
- 138i.13. Right of recovery.

§ 138i.1. Authority.

The act bestows upon the Secretary the power and duty to "... administer the provisions of this act and . . . adopt and promulgate any regulations which may be necessary to implement and administer this act" (3 P. S. § 1905). In addition, section 6(a) of the act (3 P. S. § 1906(a)) allows the Secretary to establish a grant program to provide tuition assistance to certain individuals and groups to attend farm safety and occupational health training and emergency response programs. Section 6(d) of the act directs the Secretary to adopt and promulgate regulations to govern the awarding of grants under section 6 of the act.

§ 138i.2. Program objectives.

(a) *Purpose.* The purpose of the Program is to provide tuition assistance to rural emergency service providers, farmers, members of farm families, farm laborers and others involved in agricultural production, to allow them to attend farm safety and occupational health projects and emergency response programs.

(b) *Competitive program.* The Program is competitive. Grant applications and related documents will be collected by the Department and reviewed by the Secretary or a designee. Grants will be awarded annually.

(c) *Funds available basis.* Grants will not be awarded unless funds are available.

§ 138i.3. Definitions.

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

Act—The Farm Safety and Occupational Health Act (3 P. S. §§ 1901—1915).

Agricultural production—The production for commercial purposes of crops, livestock and livestock products. The term includes the processing or retail marketing of these crops, livestock or livestock products if more than 50% of the processed or merchandised products are produced by the farmer.

Board—The Farm Safety and Occupational Health Advisory Board.

Department—The Department of Agriculture of the Commonwealth.

Farm—Land in this Commonwealth which is being used for agricultural production, including all farm structures, buildings, facilities and farm family residences situated on the land.

Farmer—A person who is engaged in agricultural production for commercial purposes.

Farm laborer—An individual employed by a farmer in raising, cultivating, fertilizing, seeding, planting, pruning, harvesting, gathering, washing, sorting, weighing or handling, drying, packing, packaging, grading, storing or delivering to market in its unmanufactured state, an agricultural commodity as defined in 3 Pa.C.S. Chapter 45 (relating to Agricultural Commodities Marketing) or a farm product as defined in 1 Pa.C.S. § 1991 (relating to definitions).

Members of farm families—Any son, daughter or spouse of a farmer or any lineal relation of the farmer who works on the farm or any collateral relation of the first degree who works on the farm.

Person—An individual, partnership, corporation, association or other form of business enterprise.

Program—The Farm Safety and Occupational Health Tuition Assistance Program.

Project—Any course, training, program, activity or event pertaining to farm safety and occupational health or emergency response programs.

Rural emergency services providers—An employe, agent member or officer of a paid or volunteer fire company, ambulance service or rescue squad located in or servicing a rural area of this Commonwealth which is regularly engaged in providing emergency medical care and transportation, fire protection services or rescue services.

Secretary—The Secretary of Agriculture of the Commonwealth.

Volunteer ambulance services—A nonprofit chartered corporation, association or organization located in this Commonwealth and which is regularly engaged in the services of providing emergency medical care and transportation of patients.

Volunteer fire company—A nonprofit chartered corporation, association or organization located in this Commonwealth which provides fire protection services and other voluntary emergency services within this Commonwealth.

Volunteer rescue squad—A nonprofit chartered corporation, association or organization located in this Commonwealth which provides rescue services within this Commonwealth.

§ 138i.4. Limitation on grants.

(a) *Tuition assistance.* The Program will award grants to provide tuition assistance to approved applicants under this chapter. The Program will provide grants of up to \$100 per calendar year to an approved applicant.

(b) *Eligible applicants.* An eligible applicant may apply for more than one Program grant per year. However, an eligible applicant may not be awarded more than \$100 in tuition assistance grants in any calendar year.

(c) *Recipient's use of Program grant funds.* A recipient of a Program grant may only use the funds to cover or supplement the cost of tuition for the specific project delineated in the recipient's grant application.

(d) *Substitution of person.* Once an applicant has been approved to receive tuition reimbursement for a specific project, no other person or project may be substituted. Any change in person or project shall require submission and review of a new application.

(e) *Eligible courses, programs, training, activities or events.* Program grants may be awarded to cover or supplement tuition for the types of projects delineated in section 4(b) of the act (3 P. S. § 1904(b)).

(f) *Additional limitations.*

(1) Program grant funds may only be used to provide tuition assistance for farm safety and occupational health projects or emergency response programs administered within the geographic boundaries of this Commonwealth.

(2) Program grant funds may not be used to cover the cost of travel, lodging or any other expenses incurred by the grant recipient other than the cost of tuition.

(3) Program grant funds may not be used for or applied to any training, programs, activities, certification or licensing requirement or events pertaining to the Pennsylvania Pesticide Control Act of 1973 (3 P. S. §§ 111.21—111.60) or Chapters 128 and 128a (relating to pesticides; and chemsweep pesticide disposal program—statement of policy).

(4) Program grant funds shall be awarded to reimburse the tuition expenses of an approved applicant who submits the documentation required by this chapter.

§ 138i.5. General conditions.

(a) *Grant agreement.* The approved, signed application for a Program grant shall constitute the grant agreement. The recipient of a Program grant shall sign the application which shall set forth the amount of the grant and other terms and conditions as the Department may reasonably require. Upon completion of all the terms of the agreement, a reimbursement check will be issued in the name of the recipient and mailed to the address indicated on the recipient's approved and signed application.

(b) *Default.* Any recipient of a Program grant who fails to abide by the terms of the grant agreement or the provisions of the act or this chapter shall be in default. The Secretary may waive a default after consultation with the Board in the event of a physical disability suffered by the recipient or as a result of other extenuating circumstances.

(c) *Verification.* To receive a Program reimbursement payment, a recipient shall, within 2 weeks of the completion of the specific project delineated in the recipient's grant application, submit to the Department a final report which includes a written receipt evidencing the cost of tuition and records or any other pertinent documentation evidencing the grant recipient's attendance and the program agenda. At the same time, the applicant shall also submit a narrative report of at least one page but not more than two pages, describing the effectiveness of the project and the experience gained and personal knowledge acquired.

(d) *Failure to verify.* If the required receipts, records and documentation are not submitted within the 2 week period, the Program grant recipient shall be deemed to have defaulted. The Secretary may direct that no Program grant funds be paid to the defaulting recipient. The Secretary may extend the verification deadline if the Secretary determines the grant recipient has made a reasonable effort to verify, but the verification was incomplete, or for extenuating circumstances.

§ 138i.6. Applications.

(a) *Application required.* An interested rural emergency service provider, farmer, member of a farm family, farm laborer or anyone else involved in agricultural production within this Commonwealth, may submit a grant application to the Department.

(b) *Obtaining an application and assistance.* An application for a grant under this chapter shall be made on a form prepared by the Department. For applications and for assistance, contact the Farm Safety and Occupational Health Grant Program, Department of Agriculture, 2301 North Cameron Street, Harrisburg, Pennsylvania 17110.

(c) *Additional information.* The Secretary or a designee may require an applicant to submit additional documentation to complete, verify or clarify the application.

(d) *Application deadline.* Applications for grants under this chapter shall be received by the Department prior to the date of the project the applicant wishes to attend.

§ 138i.7. Processing of applications.

(a) *Review by the Secretary.* Upon receipt of an application for a Program grant and the required supporting documentation, the Secretary or a designee will review this information for completeness and accuracy. The Secretary or a designee has the power to approve, approve with special conditions or reject applications and issue grants in accordance with the general considerations and criteria of the act and this chapter. If the Secretary or a designee determines the application is incomplete or inaccurate, final processing of the application may be discontinued or additional data may be requested. If additional data is requested, processing of the application will cease until the applicant supplies the requested data. The Secretary or a designee will terminate the processing of an incomplete application when the additional data requested is not supplied within 10 days of the request for such data. The Secretary or a designee may exercise judgement in approving applications and in determining the distribution of grants so that the widest possible audience becomes acquainted with farm safety and occupational health practices and techniques espoused by the act and this chapter. The Secretary or a designee may impose restrictions or special conditions upon the issuance of a grant.

(b) *Board.* The Board shall recommend program priorities to the Secretary. Additionally, the Board shall recommend the amount of funds to be allocated for Program grants.

§ 138i.8. Review of applications.

(a) *Evaluation.* The Secretary or a designee will evaluate an application based on the applicant eligibility and grant application requirements, as well as the factors in the act and this chapter.

(b) *Applicant eligibility.* To be eligible for a Program grant, the applicant shall be a rural emergency service provider, farmer, member of a farm family or farm laborer or be otherwise involved in agricultural production. An

emergency service provider shall submit an application for each individual member for which it wishes to receive a Program grant. Each member for which it receives a Program grant shall comply with the criteria established by the act and this chapter, including the verification criteria.

(c) *Grant application requirements.* An application for a Program grant will not be considered by the Secretary or a designee unless the following items are attached:

(1) A detailed description of the farm safety project to be attended by the applicant, including documentation delineating the focus of the project.

(2) A reasonable and accurate statement of the estimated or actual cost of tuition.

(3) Information regarding the skills, knowledge or experience to be gained from the project.

(4) Documentation regarding the name and location of the person administering the project.

(d) *Factors.* Factors to be considered by the Secretary or a designee in selecting grant recipients include the following:

(1) The relevance of the project to farm safety or rural health issues.

(2) The innovativeness of the project.

(3) The effect the project will have on hazard elimination.

(4) The scope of the project and how it relates to program components delineated in section 4(b) of the act (3 P. S. § 1904(b)).

(5) The number and type of people or groups who will be affected by the project as described in the application.

(6) The impact upon and the value and benefits to the agricultural community of the project described in the application.

(7) The continual and progressive nature of the project and the benefits and knowledge gained therefrom.

(8) The value to those who work directly with farm accident victims.

(9) Whether the applicant has been the recipient of a Program grant within the same year.

(10) The availability of funding to the applicant from a source other than the Program.

(11) The priorities as the Secretary, in consultation with the Board, set in accordance with section 4(c) of the act.

§ 138i.9. Conflict of interest.

A member of the Board may apply for a grant if all decisions regarding the grant application are subject to 65 Pa.C.S. § 1103(j) (relating to restricted activities) and the action does not violate the State Adverse Interest Act (71 P. S. §§ 776.1—776.9) or 4 Pa. Code Chapter 7, Subchapter K (relating to code of conduct for appointed officials and State employees).

§ 138i.10. Notice of disposition of application.

(a) *Applications deemed complete.* The Secretary will notify grant applicants within 30 days of receipt of their completed grant application of a decision to approve, approve with special conditions or reject the grant. This notice will be sent by regular mail to the address indicated by the applicant on the grant application.

(b) *Applications deemed incomplete.* Within 30 days of receipt of a grant application, the Secretary or a designee will notify the applicant of a decision to reject the grant application or notify the applicant of a deficiency in the grant application and request additional data. If additional data is requested, notification shall be in writing and detail the additional data needed. The Secretary will follow the action prescribed in § 138i.7(a) (relating to processing of applications).

§ 138i.11. Recordkeeping.

A Program grant recipient shall maintain all receipts, supporting documents, final reports and other documents pertaining to the project and the Program grant. These records shall be retained for 1 year beginning at the conclusion of the project. The records shall be made available to the Department upon request.

§ 138i.12. Grant cancellation.

A Program grant may be canceled by the Secretary upon a determination that the funds were not properly used, or upon failure of the recipient to satisfy the verification requirements of this chapter.

§ 138i.13. Right of recovery.

The Department has the right to make a claim for and receive from the grant recipient moneys not expended in accordance with the act, the grant agreement of this chapter.

[Pa.B. Doc. No. 00-241. Filed for public inspection February 11, 2000, 9:00 a.m.]

[7 PA. CODE CH. 138j]

Farm Safety and Occupational Health Developmental and Instructional Program

The Department of Agriculture (Department), under the specific authority conferred by sections 5 and 6 of the Farm Safety and Occupational Health Act (act) (3 P. S. §§ 1905 and 1906) proposes to adopt Chapter 138j (relating to Farm Safety and Occupational Health Developmental and Instructional Program) (Program). Section 5 of the act delineates the duties of the Secretary of Agriculture (Secretary) and directs the Secretary to "... adopt and promulgate any regulations which may be necessary to implement and administer the act." Section 6(c)(1) of the act allows the Secretary to establish a grant program for the purpose of awarding grants to the Pennsylvania Fire Academy, public and private colleges and universities, community colleges and vocational and technical schools which provide technical courses of instruction in farm safety and occupational health to emergency service providers and the farm community or which develop farm safety and occupational health training programs for implementation by the Department. Section 6(d) of the act requires the Secretary to adopt and promulgate regulations to govern the awarding of grants under section 6 of the act.

The proposed regulations establish the procedures governing the submission, processing and review of grant applications. In addition, this proposed chapter sets forth the documentation required to accompany the applications, eligibility criteria, criteria for determining grant amounts and verification, cancellation, notification and reporting requirements.

Background

This Commonwealth's approximately 51,000 farms are the foundation of a \$35 billion industry, employing over 650,000 workers in farming and related services, food processing and food wholesale and retail sales. The National Safety Council reports agriculture as this Nation's most hazardous industry with a work death rate 22% higher than the second most hazardous industry, mining and quarrying. Farming accounts for over 80% of agriculture's injury toll. From 1990 through 1995, at least 249 Commonwealth citizens have lost their lives to hazards associated with farming. The victims included 17 infants, toddlers and preschoolers—all under 5 years of age. Another 29 victims were at least 75 years of age. The oldest was 89 years of age. In 1994, a Statewide survey showed one in every ten farm operations in the State had at least one recordable work-related injury. Even more startling was that approximately 5% of those injuries resulted in some type of permanent disability to the victim. The numbers evidence the need for farm safety and occupational health programs. In 1994 alone, there was a total of 5,100 injuries and 250 permanent disability injuries related to farming.

The act bestows upon the Secretary the authority to establish a grant program to provide grants of up to \$30,000 to organizations, colleges, universities and vocational and technical schools which provide technical courses in farm safety and occupational health. The purpose of this Program is to provide funding for technical and educational programs, directed toward the farm community, which will increase awareness of potential farm hazards and provide information and technical support intended to facilitate avoidance and elimination of these hazards. This Program will compliment the Farm Safety and Occupational Health Grant Program, which exists as a statement of policy in Chapter 138g, but will be supplanted by regulations that are currently in the proposal stage. (*Editor's Note:* For text of the proposed rulemaking concerning Chapter 138k (relating to Farm Safety and Occupational Health Grant Program, see 30 Pa.B. 781 (February 12, 2000).)

Therefore, in the interest of continuing to carry out its statutory duties and promoting the development and implementation of technical and educational farm safety programs that benefit the farming community, the Department has promulgated this proposed rulemaking. This proposed rulemaking is intended to establish reasonable guidelines, standards, criteria and procedures for the administration and implementation of grants under the Program.

Summary of Major Features

Proposed § 138j.1 (relating to authority) delineates the Secretary's authority to establish this Program and sets forth the Secretary's power and duty to adopt and promulgate regulations to govern the awarding of grants under section 6 of the act.

Proposed § 138j.2 (relating to program objectives) sets forth that the objective of this grant Program is to fund the development and implementation of programs which will increase the awareness of farm safety and occupational health issues among the farm community. The awarding of the grant moneys are on a funds available basis and through a competitive application process.

Proposed § 138j.3 (relating to definitions) defines various recurring terms such as "farm," "farm laborers," "members of farm families," "emergency service provider" and "project."

Proposed § 138j.4 (relating to limitations on grants) describes the type of organization and project which is eligible for a grant award. This section specifically delineates that eligible applicants may be awarded financial assistance in amounts of up to \$30,000. This section also sets forth restrictions on the use of grant funds.

Proposed § 138j.5 (relating to general conditions) provides that a grant recipient is required to sign a grant agreement and sets forth default, verification and failure to verify provisions.

Proposed § 138j.6 (relating to applications generally) provides that an eligible applicant shall submit an application prepared by the Department and provides information regarding how to obtain an application and who to contact for assistance. This section notifies the applicant that additional information may be requested by the Secretary and that the application deadline will be October 31, of the year preceding the fiscal year in which the grant funds are sought.

Proposed § 138j.7 (relating to processing of applications) describes the procedure for processing applications and delineates review and approval powers of the Secretary and the Board. This section sets forth processing requirements for applications which are incomplete or contain inaccurate information.

Proposed § 138j.8 (relating to review of application) delineates the specific information that must be included in a grant application, defines applicant eligibility requirements and sets forth the factors to be considered by the Secretary in selecting grant recipients.

Proposed § 138j.9 (relating to conflicts of interest) sets forth the legal provisions a Board member shall follow to avoid a conflict of interest, when the Board member or his agent or employe is a grant applicant.

Proposed § 138j.10 (relating to notice of disposition of applications) sets forth type of notice required and the time periods for notification.

Proposed § 138j.11 (relating to recordkeeping) describes the type of records which shall be kept by the grant recipient and the time period for which those records shall be kept. This section also provides for inspection and audit of those records by the Department.

Proposed § 138j.12 (relating to grant cancellation) provides for the cancellation of a grant when funds are not being or have not been spent in accordance with the grant agreement or these regulations.

Proposed § 138j.13 (relating to right of recovery) sets forth the Department's right to make a claim for grant money not expended in accordance with the act, the grant agreement or the regulations.

Proposed § 138j.14 (relating to deficits) provides that the Department's financial obligation is limited to the amount of the grant.

These proposed regulations set forth the basic process by which the Department may exercise its administrative discretion with respect to the expenditure of the funds appropriated to it by the General Assembly for Farm Safety and Occupational Health Programs.

Fiscal Impact

Commonwealth

The proposed regulations will impose minimal costs and have minimal fiscal impact upon the Commonwealth, including projected increases in program costs. The Department has an appropriation for use in developing the

various farm safety and occupational health grant programs allowed under section 6 of the act. The Secretary with the advice of the Board will determine the amount of funds to allocate to each grant program promulgated under section 6 of the act.

Political Subdivisions

The proposed regulations will impose no costs and have no fiscal impact upon political subdivisions.

Private Sector

The proposed regulations will impose minimal costs on those organizations who are interested in applying for grant moneys. The costs which may be associated with the regulations would involve the time spent to obtain and fill out a grant application. Organizations receiving grants would benefit by receiving funds to cover all or part of the costs associated with developing or developing and implementing the projects set forth in their grant application. The private sector will also benefit through the realization of reduced health care and occupational costs associated with educational and preventative programs such as those espoused by the act and these proposed regulations.

General Public

The proposed regulations will impose no costs and have no fiscal impact on the general public. The farm community and the general public should benefit through the reduction of health care and occupational costs which are likely to be associated with educational and preventative programs such as those espoused by the act and these proposed regulations.

Paperwork Requirements

The proposed regulations will not result in an appreciable increase of paperwork. The Department will have to develop a grant application form and a grant agreement to administer the Program. However, the administrative provisions of the Program are very similar to the administrative provisions of the Farm Safety and Occupational Health Grant Program and the Department has already developed a grant application form and grant agreement for use in administering the Farm Safety and Occupational Health Grant Program and has administered that program, under Chapter 138g, since 1996.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on January 31, 2000, the Department submitted a copy of these proposed regulations to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Agriculture and Rural Affairs Committee and the Senate Agriculture and Rural Affairs Committee. In addition to submitting the proposed regulations, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the agency in compliance with Executive Order 1996-1 (Regulatory Review and Promulgation). A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, if IRRC has an objection to any portion of the proposed regulations, it will notify the Department within 10 days after the close of the Committees' review 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 regulations, by the Department, the General Assembly and the Governor of objections raised.

Contact Person

Further information is available by contacting the Department of Agriculture, Farm Safety and Occupation Health Grant Program, 2301 North Cameron Street, Harrisburg, PA 17110-9408; Attn: John Tacelosky (717) 772-5217.

Effective Date

These proposed regulations will be effective upon final publication in the *Pennsylvania Bulletin*.

SAMUEL E. HAYES, Jr.,
Secretary

Fiscal Note: 2-122. (1) General Fund; (2) Implementing Year 1999-00 is \$40,000; (3) 1st Succeeding Year 2000-01 is \$40,000; 2nd Succeeding Year 2001-02 is \$40,000; 3rd Succeeding Year 2002-03 is \$40,000; 4th Succeeding Year 2003-04 is \$40,000; 5th Succeeding Year 2004-05 is \$40,000; (4) Fiscal Year 1998-99 \$N/A; Fiscal Year 1997-98 \$N/A; Fiscal Year 1996-97 \$N/A; (7) Farm Safety; (8) recommends adoption.

Annex A**TITLE 7. AGRICULTURE****PART V-C. FARMLAND AND FOREST LAND****CHAPTER 138j. FARM SAFETY AND OCCUPATIONAL HEALTH DEVELOPMENTAL AND INSTRUCTIONAL PROGRAM GRANTS**

Sec.	
138j.1.	Authority.
138j.2.	Program objectives.
138j.3.	Definitions.
138j.4.	Limitation on grants.
138j.5.	General conditions.
138j.6.	Applications.
138j.7.	Processing of applications.
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138j.10.	Conflict of interest.
138j.11.	Recordkeeping.
138j.12.	Grant cancellation.
138j.13.	Right of recovery.
138j.14.	Deficits.

§ 138j.1. Authority.

The act bestows upon the Secretary of Agriculture of the Commonwealth, the power and duty to "... administer the provisions of this act and ... adopt and promulgate any regulations which may be necessary to implement and administer this act" (3 P.S. § 1905). In addition, section 6(c)(1) of the act (3 P.S. § 1906(c)(1)) allows the Secretary to establish a grant program to provide financial assistance to certain groups, academies, institutions, colleges and schools which implement or develop farm safety projects that comply with the criteria delineated in the act. Section 6(d) of the act directs the Secretary to adopt and promulgate regulations to govern the awarding of grants.

§ 138j.2. Program objectives.

(a) *Purpose.* The purpose of the Program is to provide financial assistance to the Pennsylvania Fire Academy, public or private colleges or universities, community colleges, or vocational or technical schools within this Commonwealth, that provide technical courses of instruction in farm safety and occupational health to emergency service providers, farmers, members of farm families, farm laborers and others involved in agricultural production or which develop farm safety and occupational health training programs for implementation by the Department.

(b) *Competitive program.* The Program is competitive. Grant applications and related documents will be col-

lected by the Department and reviewed by the Secretary or a designee. Grants will be awarded annually.

(c) *Funds available basis.* Grants will not be awarded unless funds are available.

§ 138j.3. Definitions.

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

Act—The Farm Safety and Occupational Health Act (3 P.S. §§ 1901—1915).

Agricultural production—The production for commercial purposes of crops, livestock and livestock products. The term includes the processing or retail marketing of the crops, livestock or livestock products if more than 50% of the processed or merchandised products are produced by the farmer.

Board—The Farm Safety and Occupational Health Advisory Board.

Department—The Department of Agriculture of the Commonwealth.

Emergency service provider—An employe, agent, member or officer of a paid or volunteer fire company, ambulance service or rescue squad located in this Commonwealth which is regularly engaged in providing emergency medical care and transportation, fire protection services or rescue services.

Farm—Land in this Commonwealth which is being used for agricultural production, including all farm structures, buildings, facilities and farm family residences situated on the land.

Farmer—A person who is engaged in agricultural production for commercial purposes.

Farm laborers—An individual employed by a farmer in raising, cultivating, fertilizing, seeding, planting, pruning, harvesting, gathering, washing, sorting, weighing or handling, drying, packing, packaging, grading, storing or delivering to market in its unmanufactured state, any agricultural commodity as defined in 3 Pa.C.S. Chapter 45 (relating to Agricultural Commodities Marketing) or any farm product as defined in 1 Pa.C.S. § 1991 (relating to definitions).

Members of farm families—Any son, daughter or spouse of a farmer or any lineal relation of the farmer who works on the farm or any collateral relation of the first degree who works on the farm.

Person—An individual, partnership, corporation, association or other form of business enterprise.

Program—The Farm Safety and Occupational Health Developmental and Instructional Program.

Project—A course, training, program, activity or event or the development of such, pertaining to farm safety and occupational health programs delineated in the act and this chapter.

Secretary—The Secretary of Agriculture of the Commonwealth.

Volunteer ambulance services—A nonprofit chartered corporation, association or organization located in this Commonwealth and which is regularly engaged in the services of providing emergency medical care and transportation of patients.

Volunteer fire company—A nonprofit chartered corporation, association or organization located in this Common-

wealth which provides fire protection services and other voluntary emergency services within this Commonwealth.

Volunteer rescue squad—A nonprofit chartered corporation, association or organization located in this Commonwealth which provides fire protection services and other voluntary emergency services within this Commonwealth.

§ 138j.4. Limitation on grants.

(a) *Financial assistance.* The Program will award grants to provide financial assistance of up to \$30,000 to the Pennsylvania Fire Academy, public or private colleges or universities, community colleges, or vocational or technical schools within this Commonwealth, that provide technical courses of instruction in farm safety and occupational health to emergency service providers, farmers, members of farm families, farm laborers and others involved in agricultural production, or which develop farm safety and occupational health training programs for implementation by the Department.

(b) *Eligible applicants.* Eligible applicants may apply for more than one Program grant per year. However, an eligible applicant may not be awarded more than \$30,000 dollars in Program grants in any fiscal year.

(c) *Recipient's use of FSDIP grant funds.* A recipient of a Program grant may only use the funds to cover the costs of the specific project delineated in the recipient's approved grant application and signed grant agreement.

(d) *Eligible projects.* Program grants may be awarded to provide financial assistance for implementation or development of the types of projects in section 4(b) of the act (3 P. S. § 1904(b)) and in this chapter.

(e) *Additional limitations.*

(1) Program grant funds may only be used to provide financial assistance for projects administered within the geographic boundaries of this Commonwealth.

(2) Program grant funds may not be used for or applied to any training, programs, activities, certification or licensing requirements or events pertaining to the Pennsylvania Pesticide Control Act of 1973 (3 P. S. §§ 111.21—111.60) or its attendant regulations. See Chapters 128 and 128a (relating to pesticides; and chemsweep pesticide disposal program—statement of policy).

§ 138j.5. General conditions.

(a) *Grant agreement.* The recipient of a Program grant shall sign a grant agreement setting forth the amount of the grant and other terms and conditions the Department may reasonably require.

(b) *Default.* A recipient of a Program grant who fails to abide by the terms of the grant agreement or the act or this chapter shall be in default. In the event of a default, the Secretary may cancel the grant and seek recovery of the grant funds as set forth in § 138j.13 (relating to right of recovery). The Secretary may waive a default, after consultation with the Board, in the event of a physical disability suffered by the recipient or as a result of other extenuating circumstances.

(c) *Verification.* Within 3 months of the project completion date specified in the grant agreement, the recipient shall submit to the Department a final report which shall include written receipts, records and other pertinent documentation evidencing the project's costs. In addition, a grant recipient shall submit to the Department a final report including pertinent documentation and a narrative report describing the project objectives and accomplishments.

(d) *Failure to verify.* If the required receipts, records and documentation are not submitted within the 3 month period or a portion of the grant proceeds are not accounted for, the Secretary or a designee may demand the recipient repay the entire amount of the grant or a lesser amount. The demand will be made in writing and delineate the deficiencies in the verification documents. The recipient shall have 30 days, from the receipt of written notice, to remedy the stated deficiencies or payment shall be due within 60 days of the written demand.

§ 138j.6. Applications.

(a) *Eligible applicants.* The Pennsylvania Fire Academy or an interested public or private college or university, a community college, or a vocational or technical school within this Commonwealth may submit a grant application to the Department.

(b) *Obtaining an application and assistance.* An application for a grant under this chapter shall be made on a form prepared by the Department. For applications and for assistance, contact the Farm Safety and Occupational Health Grant Program, Department of Agriculture, 2301 North Cameron Street, Harrisburg, Pennsylvania 17110.

(c) *Additional information.* The Secretary or a designee may require an applicant to submit additional documentation to complete, verify or clarify the application.

(d) *Application deadline.* Applications for grants under this chapter shall be submitted to the Department by October 31 of each year.

§ 138j.7. Processing of applications.

(a) *Review by the Secretary.* Upon receipt of an application for a Program grant and the required supporting documentation, the Secretary or a designee will review this information for completeness and accuracy. The Secretary or a designee has the power to approve, approve with special conditions or reject applications and issue grants in accordance with the general considerations and criteria of the act and this chapter. If the Secretary or a designee determines the application is incomplete or inaccurate, final processing of the application may be discontinued or additional data may be requested. If additional data is requested, processing of the application will cease until the applicant supplies the requested data. The Secretary or a designee will terminate the processing of an incomplete application when the additional data requested is not supplied within 10 days of the request for the data.

(b) *Approval power.* The Secretary or a designee may exercise his judgement in approving applications and in determining the distribution of grants so that the widest possible audience becomes acquainted with farm safety and occupational health practices and techniques espoused by the act and this chapter. The Secretary or a designee may impose restrictions or special conditions upon the issuance of a grant.

(c) *Board.* The Board shall recommend program priorities to the Secretary. Additionally, the Board shall recommend the amount of funds to be allocated for Program grants.

§ 138j.8. Notice of disposition of application.

(a) *Applications deemed complete.* The Secretary will notify grant applicants within 30 days of receipt of their completed grant application of a decision to approve, approve with special conditions or reject the grant. This notice will be sent by regular mail to the address indicated by the applicant on the grant application.

Recipients will receive a grant agreement which shall be executed by the recipient and the Department prior to the release of funds.

(b) *Applications deemed incomplete.* Within 30 days of receipt of a grant application, the Secretary or a designee will notify the applicant of a decision to reject the grant application or notify the applicant of a deficiency in the grant application and request additional data. If additional data is requested, notification shall be in writing and detail the additional data needed. The Secretary will follow the action prescribed in § 138i.7(a) (relating to processing of applications).

§ 138j.9. Review of applications.

(a) *Evaluation.* The Secretary or a designee will evaluate an application based on the applicant's eligibility and grant application requirements, as well as the factors set forth in the act and this chapter.

(b) *Eligible applicants.* To be eligible for a Program grant, the applicant shall provide technical courses of instruction in farm safety and occupational health to emergency service providers, farmers, members of farm families, farm laborers and others involved in agricultural production or the applicant shall develop a farm safety and occupational health training program for implementation by the Department. Only the following groups, organizations and institutions are eligible to apply for a Program grant:

- (1) The Pennsylvania Fire Academy.
- (2) A public or private college or university.
- (3) A community college.
- (4) A vocational or technical school.

(c) *Grant application requirements.* An application for a Program grant will not be considered by the Secretary or a designee unless the following items are attached:

(1) A detailed description of the project, including objectives and goals to be funded by the grant.

(2) A reasonable and accurate statement of the estimated cost of the project. The statement shall include a separate breakdown of the personnel portion of the costs, the materials portion of the costs and any other necessary or anticipated costs associated with the project. The applicant shall provide any documentation or financial statements available to support the estimated project costs.

(3) A statement regarding the amount of tuition to be charged for the courses.

(4) Information regarding the breadth of the project, including the individuals or groups to be served by the project and the geographic area to be served by the project.

(5) Information regarding the skills, knowledge or experience to be gained from the project.

(6) Documentation regarding the name and location of the applicant administering the project.

(7) A copy of the official organization board minutes when action was taken on the project or a signed statement attesting to the applicant's commitment to the project.

(8) A biographical sketch of the primary persons involved in the project which indicates skills, knowledge, training and prior experience of the persons developing or administering, or both, the project.

(d) *Factors.* Factors to be considered by the Secretary or a designee in selecting grant recipients include the following:

(1) The relevance of the project to farm safety or rural health issues.

(2) The innovativeness of the project.

(3) The effect the project will have on hazard elimination.

(4) The scope and duration of the project and how it relates to program components in section 4(b) of the act (3 P. S. § 1904(b)).

(5) The number and type of people or groups who will be affected by the project. A project which involves a wide range of age groups, encourages cooperation between existing community groups and organizations and provides incentives for new groups or organizations to become involved in farm safety and occupational health programs and training will be given priority.

(6) The impact of and the value and benefits bestowed upon the agricultural community by the project.

(7) The continual and progressive nature of the project and the benefits and knowledge to be gained therefrom.

(8) The value to the emergency providers.

(9) Whether the applicant has been the recipient of a Program grant within the same year.

(10) The availability of funding to the applicant from a source other than the Program.

(11) The amount of tuition the applicant intends to charge for the courses.

(12) The priorities as the Secretary, in consultation with the Board, set in accordance with section 4(c) of the act.

§ 138j.10. Conflict of interest.

A member of the Board may apply for a grant provided all decisions regarding the grant application are subject to 65 Pa.C.S. § 1103(j) (relating to restricted activities) and the action does not violate the State Adverse Interest Act (71 P. S. §§ 776.1—776.9), or 4 Pa. Code Chapter 7, Subchapter K (relating to code of conduct for appointed officials and state employees).

§ 138j.11. Recordkeeping.

A Program grant recipient shall maintain all books, records, receipts, supporting documents, financial statements, final reports and other documents pertaining to the project, the project costs and the Program grant. These records shall be retained for 3 years beginning at the end of the grant year. The books, records, receipts, supporting documents, financial statements, final reports and other documents shall be maintained according to generally accepted accounting principles. The records shall be made available to the Department or its agent upon request.

§ 138j.12. Grant cancellation.

A Program grant may be canceled by the Secretary upon a determination that the funds are not being or were not properly used. Upon cancellation, the Secretary may seek recovery of the grant funds as delineated in § 138j.13 (relating to right of recovery).

§ 138j.13. Right of recovery.

The Department has the right to make a claim for and receive from the grant recipient money not expended in accordance with the act, the grant agreement or this

chapter, and may demand the return of the grant sum, or a portion thereof, plus legal interest thereon.

§ 138j.14. Deficits.

The Department's financial obligation is limited to the amount of the grant. The Department is not responsible for funding any cost overruns incurred by the grant recipient.

[Pa.B. Doc. No. 00-242. Filed for public inspection February 11, 2000, 9:00 a.m.]

[7 PA. CODE CH. 138k]

Farm Safety and Occupational Health Grant Program

The Department of Agriculture (Department), under the specific authority conferred by sections 5 and 6 of the Farm Safety and Occupational Health Act (act) (3 P. S. §§ 1905 and 1906) proposes to adopt Chapter 138k (relating to Farm Safety and Occupational Health Grant Program). Section 5 of the act delineates the duties of the Secretary of Agriculture (Secretary) and directs the Secretary to "... adopt and promulgate any regulations which may be necessary to implement and administer the act." Section 6(c)(2) of the act allows the Secretary to establish a grant program for the purpose of awarding grants to Statewide farm organizations and volunteer fire companies, ambulance services and rescue squads for providing farm safety, occupational health and emergency response programs. Section 6(d) of the act requires the Secretary to adopt and promulgate regulations to govern the awarding of grants under section 6 of the act.

The proposed regulations establish the procedures governing the submission, processing and review of grant applications. In addition, it sets forth the documentation required to accompany the applications, eligibility criteria, criteria for determining grant amounts and notification and reporting requirements.

Background

The Commonwealth's approximately 51,000 farms are the foundation of a \$35 billion industry, employing over 650,000 workers in farming and related services, food processing and food wholesale and retail sales. The National Safety Council reports agriculture as this Nation's most hazardous industry with a work death rate 22% higher than the second most hazardous industry, mining and quarrying. Farming accounts for over 80% of agriculture's injury toll. From 1990 through 1995, at least 249 Commonwealth citizens have lost their life to hazards associated with farming. The victims included 17 infants, toddlers and preschoolers—all under 5 years of age. Another 29 victims were at least 75 years of age. The oldest was 89 years of age. In 1994, a Statewide survey showed one in every ten farm operations in the State had at least one recordable work-related injury. Even more startling was that approximately 5% of those injuries resulted in some type of permanent disability to the victim. The numbers evidence the need for farm safety and occupational health programs. In 1994 alone, there was a total of 5,100 injuries and 250 permanent disability injuries related to farming.

The Farm Safety and Occupational Health (FSOH) Program was first developed and implemented by the Department in 1996. The Department administered the Program under a statement of policy in Chapter 138g,

authorized under section 13 of the act (3 P. S. § 1913). The Program has proven to be an effective program.

The core concept of the FSOH Program was to provide the maximum educational outreach to the farm community, as well as, quick medical responses to farm emergencies at the minimum costs. The FSOH Program has been successful in providing educational and technical assistance to the agriculture community and in disseminating information regarding best management farm safety practices to those engaged in production agriculture. As such, the FSOH Program has become a very important component in assuring the success of the act.

Therefore, in the interest of continuing to carry out its statutory duties and promoting the development and implementation of best management farm safety practices and quick medical responses to farm emergencies, the Department has promulgated these proposed regulations. These regulations are intended to establish reasonable guidelines, standards, criteria and procedures for the continued administration and implementation of the FSOH Program. Given the success of the FSOH Program to date, the language of the proposed regulations is virtually unchanged from that of the statement of policy in Chapter 138g.

The only changes appear in §§ 138k.5 and 138k.6(a)(3) and (b)(11) (relating to application deadline; and review of application). The changes require applications to be submitted by October 31 of the year preceding the fiscal year in which grant funds are sought and require an applicant to disclose the amount of tuition it intends to charge for courses which would be administered under the programs delineated in the grant application.

Summary of Major Features

Proposed § 138k.1 (relating to program objectives) sets forth that the objective of the grant program is to fund projects which will increase the awareness of farm safety and occupational health issues and other issues specific to emergency response programs. The awarding of the grant moneys are on a funds available basis and through a competitive application process.

Proposed § 138k.2 (relating to definitions) defines various recurring terms such as "Statewide farm organizations," "volunteer fire company," "volunteer ambulance services" and "volunteer rescue squad."

Proposed § 138k.3 (relating to limitations on grants) describes the type of organization which is eligible for the grant awards. This section specifically delineates that eligible applicants may be awarded financial assistance in amounts of up to \$2,500.

Proposed § 138k.4 (relating to applications generally) provides that an application is required and from whom organizations may request applications.

Proposed § 138k.5 (relating to application deadline) provides that the application deadline will be October 31 of the year proceeding the fiscal year in which grant funds are sought.

Proposed § 138k.6 (relating to review of application) sets forth the grant application requirements and the factors which the Board or the Secretary may consider in reviewing grant applications.

Proposed § 138k.7 (relating to disposition of application) describes the time frame for notification of rejection or approval of the application and the procedure by which the Secretary will notify the applicant.

Proposed § 138k.8 (relating to recordkeeping) describes what type of records shall be kept by the grant recipient and for how long those records shall be kept. This section also provides for inspection and audit of those records by the Department.

Proposed § 138k.9 (relating to verification of use) requires a grant recipient to document the expenditures of grant funds within 3 months of project completion. This section also specifically delineates the ramifications of failure to provide the documentation.

Proposed § 138k.10 (relating to grant cancellation) provides for the cancellation of a grant which is not being spent in accordance with the grant agreement and the repayment thereof.

These proposed regulations set forth the basic process by which the Department may exercise its administrative discretion with respect to the expenditure of the funds appropriated to it by the General Assembly for farm safety and occupational health programs.

These proposed regulations are intended to supplant the current statement of policy in Chapter 138g under which the FSOH Program is being administered.

Fiscal Impact

Commonwealth

The proposed regulations will impose minimal costs and have minimal fiscal impact upon the Commonwealth, including projected increases in program costs. The Department has an appropriation for use in developing the FSOH Program.

Political Subdivisions

The proposed regulations will impose no costs and have no fiscal impact upon political subdivisions.

Private Sector

The proposed regulations will impose minimal costs on those organizations that are interested in applying for grant moneys. The costs most likely will be associated with attending and participating in farm safety training programs.

General Public

The proposed regulations will impose no costs and have no fiscal impact on the general public.

Paperwork Requirements

The proposed regulations will not result in an appreciable increase of paperwork. The Department has developed a grant application form for use in administering the FSOH Program and has administered the program, under a statement of policy, since 1996.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on January 31, 2000, the Department submitted a copy of these proposed regulations to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Agriculture and Rural Affairs Committee and the Senate Agriculture and Rural Affairs Committee. In addition to submitting the proposed regulations, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the agency in compliance with Executive Order 1996-1 (Regulatory Review and Promulgation). A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, if IRRC has objections to any portion of the proposed regulations, it will notify the Department within 10 days after the close of the Committees' 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 regulations, by the Department, the General Assembly and the Governor of objections raised.

Contact Person

Further information is available by contacting the Department of Agriculture, Farm Safety and Occupation Health Grant Program, 2301 North Cameron Street, Harrisburg, PA 17110-9408; Attn: John Tacosky (717) 772-5217.

Effective Date

These proposed regulations will be effective upon final publication as final-form in the *Pennsylvania Bulletin*.

SAMUEL E. HAYES, Jr.,
Secretary

Fiscal Note: 2-119. No fiscal impact; (8) recommends adoption. Funds are included in the 1999-00 budget for these grants. Grants are limited to the amount of money available for these grants.

Annex A

TITLE 7. AGRICULTURE

PART V-C. FARMLAND AND FOREST LAND

(Editor's Note: As part of this proposal the Department intends to delete the statement of policy in Chapter 138g which appears at 7 Pa. Code pages 138g-1—138g-5, serial pages (222551) to (222555).)

CHAPTER 138g. (Reserved)

§§ 138g.1—138g.10. (Reserved).

CHAPTER 138k. FARM SAFETY AND OCCUPATIONAL HEALTH GRANT PROGRAM

Sec.	
138k.1.	Program objectives.
138k.2.	Definitions.
138k.3.	Limitations on grants.
138k.4.	Applications generally.
138k.5.	Application deadline.
138k.6.	Review of application.
138k.7.	Notice of disposition of application.
138k.8.	Recordkeeping.
138k.9.	Verification of use.
138k.10.	Grant cancellation.

§ 138k.1. Program objectives.

(a) *Purpose.* The purpose of the FSOH Grant Program is to fund projects which will increase the knowledge and awareness of farm safety measures and occupational health issues in this Commonwealth, in particular, among the rural youth of this Commonwealth.

(b) *Competitive program.* The FSOH Grant Program is competitive. Grant requests and related documentation will be collected by the Department and reviewed by the Board and Secretary. Grants will be awarded annually.

(c) *Funds available basis.* Grants will not be awarded unless funds are available for this purpose.

§ 138k.2. Definitions.

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

Act—The Farm Safety and Occupational Health Act (3 P. S. §§ 1901—1915).

Board—The Farm Safety and Occupational Health Advisory Board.

Department—The Department of Agriculture of the Commonwealth.

FSOH Grant Program—The Farm Safety and Occupational Health Grant Program.

Secretary—The Secretary of Agriculture of the Commonwealth.

Statewide farm organizations—The term includes any of the following organizations located in this Commonwealth:

- (i) Farmers organizations.
- (ii) Dairy organizations.
- (iii) Livestock and poultry organizations.
- (iv) Veterinary associations.
- (v) Commodity organizations.
- (vi) Food industry organizations.
- (vii) Horticulture and agronomy organizations.
- (viii) Agricultural promotional organizations.
- (ix) Agricultural equipment organizations, including a local, county or regional chapter thereof.

Volunteer ambulance services—A nonprofit chartered corporation, association or organization located in this Commonwealth and which is regularly engaged in the services of providing emergency medical care and transportation of patients.

Volunteer fire company—A nonprofit chartered corporation, association or organization located in this Commonwealth which provides fire protection services and other voluntary emergency services within this Commonwealth.

Volunteer rescue squad—A nonprofit chartered corporation, association or organization located in this Commonwealth which provides rescue services in this Commonwealth.

§ 138k.3. Limitations on grants.

(a) *Financial assistance.* The FSOH Grant Program will award financial assistance, of up to \$2,500, to Statewide farm organizations, volunteer fire companies, ambulance services and rescue squads within this Commonwealth that wish to develop and deliver farm safety, occupational health and emergency response programs.

(b) *Eligible applicants.* Eligible applicants will not be awarded more than one \$2,500 grant per State fiscal year. An applicant may submit more than one type of grant application.

(c) *Recipient's use of FSOH grant funds.* Grants awarded to an organization may be used only for the specific project/event/activity described in the grant application. Grants shall only be used to fund projects within the geographic boundaries of this Commonwealth and may be awarded for the following types of projects:

- (1) Projects related to methods of preventing or mitigating farm accidents.
- (2) Educational programs relating to agricultural equipment safety programs for farm youth.
- (3) Educational seminars or field demonstrations relating to first aid programs for farm youth.
- (4) Agriculture safety training programs at day camps and demonstration projects for farm youth.

(5) Development and implementation of age-appropriate rural school curricula.

(6) Fire/educational safety programs specific to farms.

(7) Development and implementation of age-appropriate adult farmer and farm worker safety training programs.

(8) Farm related emergency response training programs.

§ 138k.4. Applications generally.

(a) *Application required.* Interested Statewide farm organizations, volunteer fire companies, ambulance services and rescue squads within this Commonwealth may submit grant applications to the Department at the address in subsection (b).

(b) *Obtaining an application and technical assistance.* Application for grants under this chapter shall be made on forms prepared by the Department. For applications and for assistance, contact the Farm Safety and Occupational Health Grant Program, Department of Agriculture, 2301 North Cameron Street, Harrisburg, Pennsylvania 17110, (717) 787-4843.

(c) *Additional information.* The Board and the Secretary may require that an applicant submit additional documentation to complete, verify or clarify the application.

§ 138k.5. Application deadline.

An application for a grant under this chapter shall be received by the Department at the address in § 138k.4(b) (relating to applications generally) by October 31 of the year preceding the fiscal year in which the grant funds are sought.

§ 138k.6. Review of application.

(a) *Grant application requirements.* The Board or the Secretary will not consider an application for a grant unless the following items are attached:

- (1) A detailed description of the project to be funded by the grant.
- (2) A reasonable and accurate statement of the estimated cost of the project. A separate breakdown on the labor portion of the cost, on the materials portion of the cost, and on any other type of expense anticipated shall be provided.
- (3) A statement regarding the amount of tuition to be charged for the courses.
- (4) A copy of the official organization board minutes when action was taken on this project.
- (5) Information of the project or area to be served by the proposed project. Maps or other geographic aids may be attached.
- (6) A biographical sketch of primary persons involved in the project which indicates skills, knowledge and prior experience required for the completion of the project.

(b) *Factors.* Factors to be considered by the Board or the Secretary in selecting grant recipients include the following:

- (1) The relevance of the project to farm safety or rural health issues.
- (2) The innovativeness of the project.
- (3) The scope of the project and the number of people who will be affected by the project as described in the application.

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

(5) The willingness of the applicant to make in kind or financial contributions, or both, to the project.

(6) The availability of funding for the project from a source other than the FSOH Grant Program.

(7) The impact the project will have upon rural youth or farmers, growers or producers within this Commonwealth.

(8) The value to those who work directly with farm accident victims.

(9) Whether the applicant has been, in whole or in part, the recipient of another grant under the act within the same State fiscal year.

(10) Whether a local, county or regional farm organization is affiliated with a Statewide farm organization.

(11) The amount of tuition the applicant intends to charge for the courses administered under the project.

(c) *Approval power.* The Secretary may impose restrictions or special conditions upon the issuance of a grant. The Secretary will review the recommendations of the Board, but will have final authority to accept or reject these recommendations.

§ 138k.7. Notice of disposition of application.

Grant applicants will be notified by the Secretary within 30 days of a decision to reject or approve the grant. This notice will be sent by regular mail to the address indicated by the applicant on the grant application. Recipients will receive a grant agreement which shall be executed by the recipient and the Department prior to the release of funds. Grant money shall be used within 1 year of the date of the grant agreement unless an extension is granted by the Secretary.

§ 138k.8. Recordkeeping.

Financial records, supporting documents, statistical records and other records pertaining to the project shall be retained for 3 years beginning at the end of the grant year. The records and documents shall be available for inspection or audit at all reasonable times by the Department or its authorized representative.

§ 138k.9. Verification of use.

(a) *Verification.* An organization receiving a grant shall maintain books, records and other evidence pertaining to costs incurred for expenditures associated with the project funded by the grant. The books and records shall be maintained according to generally accepted accounting principles. Within 3 months of the project completion date specified in the grant agreement, the recipient shall submit to the Department written receipts for the project costs. Grant recipients shall provide to the Department a final report, which includes pertinent documentation, as well as a narrative report describing the effectiveness of the project, experience gained and knowledge acquired.

(b) *Failure to verify use.* If required receipts or documentation, or both, are not submitted to the Department as described in subsection (a), 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 a written demand.

§ 138k.10. Grant cancellation.

The Department may cancel a grant if the Secretary determines that 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 grant sum, or a portion thereof, plus legal interest thereon.

[Pa.B. Doc. No. 00-243. Filed for public inspection February 11, 2000, 9:00 a.m.]

DEPARTMENT OF REVENUE

[61 PA. CODE CH. 31]

Sales and Use Tax; Computer Software, Hardware and Related Transactions

The Department of Revenue (Department), under authority contained in section 270 of the Tax Reform Code of 1971 (TRC) (72 P. S. § 7270), proposes to adopt § 31.33 (relating to computer software, hardware and related transactions) to read as set forth in Annex A.

Purpose of Regulation

Under the act of May 7, 1997 (P. L. 85, No. 7), various types of computer services are no longer subject to Sales and Use Tax on or after July 1, 1997. However, certain computer software, hardware and related transactions remain subject to tax. The purpose of this proposed regulation is to provide guidance concerning these transactions.

Explanation of Regulatory Requirements

Subsection (a) sets forth definitions of various terms utilized in the section. The application of tax as it relates to computer hardware is addressed in subsection (b)(1). The application of tax as it relates to computer software, including canned and custom software, is addressed in subsection (b)(2). Exemptions from taxation are addressed in subsection (c).

Affected Parties

Taxpayers obligated to collect or remit Sales and Use Tax relating to computer software and hardware transactions could be affected by the regulation.

Fiscal Impact

The Department has determined that the proposed regulation will have no fiscal impact on the Commonwealth.

Paperwork

The proposed regulation will not generate additional paperwork for the public or the Commonwealth.

Effectiveness/Sunset Date

The proposed regulation will become effective upon final publication in the *Pennsylvania Bulletin*. The regulation is scheduled for review within 5 years of final publication. No sunset date has been assigned.

Contact Person

Interested persons are invited to submit in writing comments, suggestions or objections regarding the proposed regulation to Anita M. Doucette, Office of Chief Counsel, PA Department of Revenue, Dept. 281061, Harrisburg, PA 17128-1061, within 30 days after the date of the publication of this notice in the *Pennsylvania Bulletin*.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on February 1, 2000, the Department submitted a copy of this proposed regulation to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House Committee on Finance and the Senate Committee on Finance. In addition to submitting the proposal, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, if IRRC has objections to any portion of the proposed rulemaking, it will notify the Department within 10 days of the close of the Committees' review 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 of objections raised, prior to final publication of the regulation, by the Department, the General Assembly and the Governor.

ROBERT A. JUDGE, Sr.,
Secretary

Fiscal Note: 15-392. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 61. REVENUE

PART I. DEPARTMENT OF REVENUE

Subpart B. GENERAL FUND REVENUES

Article II. SALES AND USE TAX

CHAPTER 31. IMPOSITION

§ 31.33. Computer software, hardware and related transactions.

(a) *Definitions.* The following words and terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise:

Canned software—All computer software that does not qualify as custom software.

Computer hardware—

(i) Any assembly of physical equipment that is united and regulated by interaction or interdependence to accomplish a set of specific computer system functions.

(ii) The term includes any connected equipment which enables the computer to store, retrieve or communicate to or from a person, another computer or another device, the results of computer operations, computer programs or computer data.

(iii) The term also includes associated parts, which encompass any component of computer system hardware that is used in connection with and that is necessary to the performance of the hardware's operation.

(iv) Examples of computer hardware are: microcomputers; minicomputers; main-frame computers; personal computers; external hard drives; portable disk drives; memory chip; compact disc read only memory (CD-ROM) drives; external modems; printers; scanners; servers; monitors; keyboards; mice; microphone; network interfaces; network hubs; network routers; motherboards; daughterboards; central processing units; controller cards;

internal hard drives; digitizer; internal modems; network interface cards; sound cards; video cards; and network wiring and cables.

Custom software—Computer software designed, created and developed for and to the specifications of an original purchaser.

Original purchaser—The first person for whom the custom software was designed, created and developed, and to whom it was transferred in a sale at retail.

Storage media—The term includes hard disks, compact disks, floppy disks, magnetic tape, cards and another tangible medium used for the storage of computer readable information.

(b) *Application.*

(1) *Computer hardware.*

(i) The sale at retail or use of computer hardware is subject to tax.

(ii) The sale at retail or use of the services of repairing, altering or cleaning computer hardware is subject to tax.

(iii) The sale at retail or use of maintenance, service and warranty contracts for computer hardware constitutes prepayment for services to tangible personal property and is subject to tax.

(2) *Computer software.*

(i) *Canned software.* The sale at retail or use of canned software, including updates, enhancements and upgrades is subject to tax.

(A) Canned software includes custom software that is transferred pursuant to a sale at retail to any person other than the original purchaser.

(B) Computer software designed, created and developed to adapt or modify canned software to the specific needs of a particular customer does not convert the canned software to custom software. Charges for the custom software or modifications must be reasonable and shall be separately stated on the sales invoice or statement to the customer in order to be exempt from tax.

(C) A vendor's transfer for consideration to a purchaser of the temporary ownership, possession or custody of a storage medium containing canned software for the purpose of being used or recorded by either the purchaser or vendor on the purchaser's computer hardware is subject to tax.

(D) The sale at retail or use of a canned software maintenance contract constitutes a prepayment for services to tangible personal property and is subject to tax. If a canned software maintenance agreement provides that the purchaser is entitled to receive both taxable components, such as canned software updates, enhancements, upgrades, or error corrections, and nontaxable components, such as consultation, support or training services, the charge for the nontaxable component is not subject to tax if that charge is separately stated on the sales invoice.

(ii) *Custom software.* The sale at retail or use of custom software is not subject to tax. The sale at retail or use of custom software constitutes a purchase of a nontaxable computer programming service.

(A) The sale at retail or use of multiple copies or licenses of custom software to the original purchaser is not subject to tax.

(B) The sale at retail or use of custom software installation, custom software repair and maintenance, custom

software updates, enhancements and upgrades that constitute custom software is not subject to tax.

(C) A custom software vendor's purchase of storage media used to transfer custom software to its customers, and the vendor's purchase of any related materials, including documentation and training manuals that are transferred to the customer as part of the sale at retail of custom software, are subject to tax when purchased by the custom software vendor.

(c) *Exemptions from tax.*

(1) The sale at retail or use of canned software and computer hardware is exempt if purchased by qualified charitable organizations, volunteer fire companies, religious organizations and nonprofit educational institutions, unless the software is used in an unrelated trade or business; by the Federal government; or by the Commonwealth, its instrumentalities or political subdivisions, including public school districts.

(2) The manufacturing, research, mining, processing, public utility, farming, dairying, agriculture, horticulture or floriculture exemptions from tax apply to the purchase of canned computer software and computer hardware predominantly and directly used in these operations.

(3) In accordance with section 201(c)(5) of the TRC (72 P. S. § 7201(c)(5)), the manufacturing and research ex-

emption from tax applies to the sale at retail or use of tangible personal property or taxable services by a person engaged in the business of manufacturing or researching canned software, if the property is predominately and directly used by the purchaser in the manufacture or research of canned software.

(i) The creation of custom software does not qualify as manufacturing or research.

(ii) When a purchaser of tangible personal property uses the property to both manufacture canned software and create custom software, the purchaser has the burden of establishing that the tangible personal property is predominately used in the manufacturing or research of canned software.

(4) The sale at retail of canned software and computer hardware to a vendor who will transfer ownership, custody or possession of the canned software or computer hardware for a consideration in the ordinary course of its business is exempt from tax as a sale for resale. Canned software or computer hardware used by a vendor in producing a separate computer product for resale or in providing a service does not qualify as a sale for resale.

[Pa.B. Doc. No. 00-244. Filed for public inspection February 11, 2000, 9:00 a.m.]