Regulatory Analysis Form

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(1) Agency

Department of Agriculture

(2) I.D. Number (Governor's Office Use)

2-133

IRRC Number: 2141

(3) Short Title

Clean and Green Law – Preferential Assessment of Land in Agricultural Use, Agricultural Reserve or Forest Reserve

(4) PA Code Cite

7 Pa. Code Chapter 137b

(5) Agency Contacts & Telephone Numbers

Primary Contact: Raymond C. Pickering
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(6) Type of Rulemaking (check one)

Proposed Rulemaking
Final Order Adopting Regulation – XXXXXX
Final Order, Proposed Rulemaking Omitted

(7) Is a 120-Day Emergency Certification Attached?

No XXXXXXX
Yes: By the Attorney General
Yes: By the Governor

(8) Briefly explain the regulation in clear and nontechnical language.

Act 156 of 1998 ("Act 156") made extensive revisions to the Pennsylvania Farmland and Forest Land Assessment Act of 1974 (72 P.S. §§ 5490.1-5490.13), commonly known as the "Clean and Green Law" ("Act"). Section 12 of Act 156 (72 P.S. § 5490.4a note) authorized the Pennsylvania Department of Agriculture ("Department") to use "interim regulations" to implement these revisions until April 30, 2001, by which time the Department is to supplant the interim regulations with formal regulations promulgated in accordance with the Regulatory Review Act and other applicable laws.

In summary, the regulations will establish a new chapter – at 7 Pa. Code Chapter 137b – which will formalize requirements established in the interim regulations at 7 Pa. Code Chapter 137a, and replace and supplant both those interim regulations and the current outdated and inadequate regulations at 7 Pa. Code Chapter 137. The regulations provide definitions, explanations and examples to help county assessors implement the Act efficiently and uniformly throughout this Commonwealth. The regulations describe the conditions under which an owner of a tract of land in agricultural use, agricultural reserve or forest reserve can apply to receive a preferential assessment of the land. If the application is

approved, the land is considered "enrolled land" and is assessed on the basis of its use value rather than its market value.

The regulations also describe various events that trigger liability for the payment of "roll-back" taxes with respect to enrolled land. In summary, roll-back taxes equal the difference between preferential assessment and normal assessment of the enrolled land at issue in the current tax year and each of the preceding 6 years, plus interest thereon at the rate of 6% per year. The regulations also describe situations in which a tract of enrolled land, or some portion thereof, must be removed from preferential assessment.

The regulations also address a number of specific provisions of the Act, including such topics as the use of enrolled land for cellular communications towers, pedestrian pathways, cemeteries, specific charitable uses and traditional rural activities.

(9) State the statutory authority for the regulation and any relevant state or federal court decisions.

The regulations are authorized under § 11 of Act 156 (act of December 21, 1998, P.L. 1225, No. 156)(72 P.S. § 5490.11), which requires the Department to promulgate rules and regulations necessary to promote efficient, uniform, Statewide administration of that act. The provisions of the regulations which supplant provisions of the interim regulations at 7 Pa. Code Chapter 137a are authorized under § 12 of Act 156 (72 P.S. § 5490.4a note), which requires that the interim regulations be supplanted by formal regulations no later than April 30, 2001.

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(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.

To the extent the regulations supplant the current interim regulations at 7 Pa. Code Chapter 137a, the regulations are required under § 12 of Act 156 (act of December 21, 1998, P.L. 1225, No. 156)(72 P.S. § 5490.4a note). Under that section, the regulations are to be promulgated by April 30, 2001.

To the extent the regulations are necessary to promote the uniform, efficient, Statewide administration of the Act, they are required under § 11 of the Act (72 P.S. § 5490.11).

(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

The regulations are required by statute, to the extent discussed in Answer No. 9.

The Act has not been applied consistently among counties in the Commonwealth. County assessors have taken varying approaches to determining the use value of enrolled land. A number of counties have required a portion of the enrolled land to be assessed at market value, rather than use value. Act 156 was intended to bring uniformity to the approach taken by counties in implementing the Act. Although the interim regulations required under Act 156 have helped to alleviate some confusion and encourage Statewide consistency in the administration of the Act, these interim regulations expire

no later than April 30, 2001 – by which time the Department is to replace them with regulations.

In addition to restating the substance of the interim regulations, though, the regulations expand upon and supplant outdated current regulations (at 7 Pa. Code Chapter 137).

The regulations will be consistent with statutory requirements and will result in less confusion among landowners and county assessors with respect to the preferential assessment of land in agricultural use, agricultural reserve or forest reserve.

(12) State the public health, safety, environmental or general welfare risks associated with nonregulation.

Nonregulation is not a viable alternative, since the Department is required to replace the interim regulations (at 7 Pa. Code Chapter 137a) with formal regulations by April 30, 2001. (See Answer No. 9).

In addition, the current regulations (at 7 Pa. Code § 137) are outdated and have not proven adequate to ensure the consistent, uniform Statewide application and interpretation of the Act. Nonregulation would perpetuate this situation. Nonregulation might result in counties continuing to take varying approaches with respect to the implementation of the Act. This has resulted in inconsistent assessment of enrolled land throughout the Commonwealth, and causes some landowners to pay more in taxes than they should.

(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

Owners of land that is in agricultural use, agricultural reserve or forest reserve and otherwise meets the eligibility requirements of the Act will benefit from the regulations.

The regulations will provide counties a better understanding of the requirements of that statute, and will help in implementing the recent amendments accomplished by Act 156. Owners of currently enrolled land will benefit from the regulations in the same way.

County assessors will benefit from the regulations in that they will provide guidance and create Statewide consistency in the implementation of the Act.

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(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effects as completely as possible and approximate the number of people who will be adversely affected.)

Although counties and county assessors may be adversely affected by the regulations, it should be emphasized that many of the provisions of the regulations restate provisions of the *existing* interim regulations, which counties and county assessors have been required to comply with since the interim regulations were published in the *Pennsylvania Bulletin* on June 19, 1999. It must also be emphasized that the regulations are prescribed by statute (See Answer Nos. 9 and 10), and are consistent with the statute that prescribes them.

Counties may have incurred – or are likely to incur – costs in recalculating preferential assessments of currently enrolled land. The consistency in assessment procedures required under the Act and

repeated in the regulations may result in some counties conducting a county-wide reassessment of enrolled land. There would be significant expense involved in such an endeavor. This expense cannot be readily quantified by the Department.

The "use values" to be provided by the Department in accordance with the Act may lower taxes for owners of enrolled land. To the extent this is true, counties and taxing authorities may experience revenue shortfalls.

Persons whose land does ***not*** receive preferential assessment may ultimately find their tax burdens increased to make up for tax revenue shortfalls caused by the implementation of the Act.

(15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)

Owners of enrolled land and persons seeking to enroll for preferential assessment of their agricultural, agricultural reserve or forest reserve land will be required to comply with the regulations.

County Assessors and Recorders of Deeds will also be required to comply.

(16) Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.

The Department circulated a discussion draft of the proposed regulations among affected interests for review and comment. The document was revised in response to a number of these comments. Among the commentators were the Pennsylvania Farm Bureau, legislative staff, private individuals and county assessors or county officials from the following counties: Bradford, Clinton, Dauphin, Lancaster, Lehigh, Mifflin, Montgomery, Northampton, Sullivan and Union.

Although there were disagreements among commentators, and between commentators and the Department, numerous suggestions offered by these commentators have either been incorporated into the proposed regulations or have helped shape that document.

In essence, the regulations have already been through two comment periods: the informal comment period described above and the formal comment process prescribed by the Regulatory Review Act. The Department is satisfied it has conducted an extensive outreach effort with respect to these regulations.

(17) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures which may be required.

In general terms, the Act (as revised by Act 156) and the regulations are expected to result in a tax savings to owners of land enrolled for preferential assessment under the Act. These savings cannot be readily estimated.

The referenced tax savings will ultimately be recouped from the remainder of the taxpaying community.

(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures which may be required.

Counties are likely to incur costs in recalculating preferential assessments in accordance with the Act. These costs cannot be readily estimated.

Counties are likely to realize some shortfall in tax revenues as a result of recalculating preferential assessments in accordance with the Act. The shortfall amount depends upon the "use values" which the Department is required to provide counties each year. These costs cannot be readily estimated. A county might recoup its shortfall by increasing taxes among the remainder of the taxpaying community.

It must be emphasized that the costs or savings to local governments are the result of the specific provisions of the Act, rather than of the regulations.

(19) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required.

The regulations are not expected to have an appreciable fiscal impact upon state government.

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(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years. SEE ANSWER NO. 20a, BELOW.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	$	$	$	$	$	$
Regulated						
Local Government	0	0	0	0	0	0
State Government	0	0	0	0	0	0
Total Savings						
COSTS:						
Regulated						
Local Government						
State Government	0	0	0	0	0	0
Total Costs						
REVENUE LOSSES:						
Regulated						
Local Government						
State Government	0	0	0	0	0	0
Total Revenue Losses						

(20a) Explain how the cost estimates listed above were derived.

Although the Department has incurred costs in developing these regulations and implementing the changes required by Act 156 of 1998, it expects to be able to absorb these costs internally. In FY 1999, though, the Department hired a consultant to assist in the development of new soil subcategories to which use values will be assigned. The cost of this consultant was $3,000.

The Department cannot offer a realistic estimate of the savings, costs and revenue losses the regulated

community and county governments will incur under the Act.

As stated, there is likely to be a substantial financial impact upon counties. There will be costs involved in implementing the changes to the Act wrought by Act 156 and these regulations (recalculating preferential assessments, applying the forthcoming new use values, etc...). It is believed that most – if not all – of *these costs should have been borne by counties as they implemented the interim regulations* (which became effective when they were published in the *Pennsylvania Bulletin* on June 19, 1999).

To the extent the Act or the regulations *lower* taxes for owners of agricultural, agricultural reserve or forest reserve land enrolled to receive a preferential assessment under the Act, this may result in a shifting of the tax burden to persons who do not own such enrolled land. To the extent this shifting does not occur, taxing authorities (counties, school districts and local governments) will have to absorb any shortfall in tax revenue.

PDA cannot offer a good faith estimate of the financial impact of the regulations, but believes that impact is more the result of the Act than of the regulations.

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(20b) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY -3	FY -2	FY -1	Current FY
Not Applicable.				

(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.

It is difficult to quantify the benefits of the regulations. They will bring about greater Statewide uniformity in interpretation and enforcement of the Act. The Act and the regulations may also result in a lowering of taxes for owners of enrolled agricultural, agricultural reserve and forest reserve land. These benefits will not come without significant costs, though. As described above, Act 156 of 1998 and the regulations are likely to result in implementation costs for counties, a redistribution of the tax burden and/or some shortfall in tax revenues for school districts, counties and local governments.

(22) Describe the nonregulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.

No nonregulatory alternatives were considered by the Department.

Section 12 of Act 156 (72 P.S. § 5490.4a note) requires the Department to promulgate regulations to supplant the current interim regulations by April 30, 2001.

In addition, the current regulations at 7 Pa. Code Chapter 137 are outdated and in need of revision. There is no alternative to revising or supplanting these regulations.

(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.

No alternative regulatory schemes were considered. See Answer No. 22.
The Department has no alternative but to regulate in this instance.

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(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulation.

No.

(25) How does this regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?

Although other states allow for preferential assessment of various types of farmland, the Department is not aware of whether the Act is more or less restrictive than similar statutes in other states.
The regulations will not put Pennsylvania at a competitive disadvantage with other states.

(26) Will the regulation affect existing or proposed regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

Yes. As stated, the regulations will supplant existing interim regulations at 7 Pa. Code Chapter 137a and existing regulations at 7 Pa. Code Chapter 137.

(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.

Although no public hearings or informational meetings are scheduled by the Department with respect to the regulations, the Department has already conducted an extensive outreach to affected interests (See Answer No. 16).

Regulatory Analysis Form

(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports which will be required as a result of implementation, if available.

The regulations will not appreciably increase paperwork, reporting or record keeping requirements.

(29) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

The preferential assessment of agricultural, agricultural reserve and forest reserve land prescribed by the Clean and Green Law meets the particular needs of farmers. The regulations do not contain provisions which expand this preferential treatment beyond the boundaries set by the Act, though.

(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

The Department expects to have the regulations take effect as of publication of the final-form regulation in the *Pennsylvania Bulletin.*

The Department will make every effort to have this regulation in effect no later than April 30, 2001.

(31) Provide the schedule for continual review of the regulation.

The Department will review the efficacy of the subject regulations on an ongoing basis.

CDL-1

FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU

(Pursuant to Commonwealth Documents Law)

2141

DO NOT WRITE IN THIS SPACE

Copy below is hereby approved as to form and legality.
Attorney General

By: _____
(Deputy Attorney General)

_____
DATE OF APPROVAL

☐ Check if applicable
Copy not approved. Objections attached.

Copy below is hereby certified to be true and correct copy of a document issued, prescribed or promulgated by:

Department of Agriculture

DOCUMENT/FISCAL NOTE NO. 2-133

DATE OF ADOPTION 2/14/01

BY Samuel E. Hayes, Jr.
Samuel E. Hayes, Jr.

TITLE Secretary of Agriculture

EXECUTIVE OFFICER CHAIRMAN OR SECRETARY

Copy below is hereby approved as to form and legality
Executive or Independent Agencies

BY: Sandra W. Stoner

2/14/01
DATE OF APPROVAL

(Deputy General Counsel)
(Chief Counsel - Independent Agency)
(Strike inapplicable title)

☐ Check if applicable. No Attorney General Approval or objection within 30 days after submission.

Notice of Final Rulemaking

Title 7 - AGRICULTURE
7 PA. CODE CH 137b

Preferential Assessment of Farmland
And Forest Land Under The
Clean and Green Act

Title 7 – AGRICULTURE

DEPARTMENT OF AGRICULTURE

[7 PA. CODE CHS. 137, 137a AND 137b]

Preferential Assessment of Farmland and Forest Land Under the Clean and Green Act

The Department of Agriculture (Department) hereby rescinds the regulations at 7 Pa. Code Chapter 137 (relating to preferential assessment of farmland and forest land), rescinds the interim regulations at 7 Pa. Code Chapter 137a (relating to clean and green act - statement of policy) and adopts the regulations at 7 Pa. Code Chapter 138b (relating to preferential assessment of farmland and forest land under the clean and green act) to read as set forth in Annex "A".

Authority

The Department has the power and authority to adopt these regulations. Section 11 of the Farmland and Forest Land Assessment Act of 1974 (72 P. S. § 5490.11), commonly referred to as the Clean and Green Act (Act) requires the Department promulgate regulations necessary to promote the efficient, uniform, Statewide administration of that statute. In addition, section 12 of Act 156 (72 P. S. § 5490.4a note) amended the Act to allow the Department to implement the interim regulations which are currently in Chapter 137a without proceeding through the regulatory promulgation process ordinarily required by law. It also required the Department to replace this statement of policy with formal regulations by April 30, 2001.

Need for the Regulations

There is an immediate need for the regulations. As stated, Act 156 requires the Department to replace the current statement of policy with formal regulations by April 30, 2001. In addition, the regulations replace current outdated and inadequate regulations and help bring about uniform interpretation and application of the Act throughout this Commonwealth.

In summary, the Department is satisfied there is a need for the regulations, and that they are otherwise consistent with Executive Order 1996-1, "Regulatory Review and Promulgation."

Comments

Notice of Proposed Rulemaking was published at 30 *Pennsylvania Bulletin* 4573 (September 2, 2000), and provided for a 30-day public comment period.

Comments were received from the Chairmen of the House and Senate Agriculture and Rural Affairs Committees (Legislative Committees), Representative Italo S. Cappabianca, Representative Robert W. Godshall, the Independent Regulatory Review Commission (IRRC), the Clean and Green Committee of the Assessors' Association of Pennsylvania (Assessors' Committee), the Chief Assessor for the County of Sullivan (Sullivan County), the Chief Assessor and Solicitor for the County of Montgomery (Montgomery County), the Director of Legislation for the Pennsylvania State Association of Township Supervisors (PSATS), the Pennsylvania Farm Bureau (PFB) and Attorney John S. Halsted from Chester County (Attorney Halsted). In addition, the Assessors' Association of Pennsylvania (Assessors' Association) met with representatives of IRRC after the close of the public comment period, and forwarded several comments to IRRC as a result of that meeting.

Both PFB and the Legislative Committees raised objections with respect to a version of the final-form regulation that was submitted to IRRC and the Legislative Committees in January 2001. As a result, the Department *withdrew* that version of the final-form regulation in order to consider the objections. Legislative Committee staff met with representatives of PFB and drafted revisions, the substance of which are incorporated into the final-form regulation.

The Department greatly appreciates the effort and analysis the commentators devoted to the comments they offered. The Department also acknowledges the assistance of many of these commentators in helping to review and draft earlier versions of the proposed regulations.

A summary of the comments received by the Department, and the Department's response to each, follows:

Comment: PSATS offered that the implementation of the revisions made to the Act by Act 156 "...has the potential to dramatically reduce the (tax) revenue stream to counties, school districts and townships." The commentator also noted the PSATS membership adopted a resolution at its April 2000 state convention calling for "...a delay in implementation of Act 156 of 1998, and further, to require an examination of Act 156 of 1998 to determine the financial effects of the Act on municipalities and make the necessary changes to relieve any financial strain inflicted upon them." The commentator also relayed the growing concern among townships regarding the "...potential loss of revenue from land that would qualify for exemption under Act 156, but will never be used for agricultural purposes."

Response: The Department is without authority to delay the final-form regulations. The Act requires they be promulgated by April 30, 2001. The Department appreciates the concerns of the various taxing bodies that must deal with the preferential assessment of enrolled land within their particular jurisdictions.

Comment: Sullivan County offered several specific comments, which are addressed below. In addition, it offered the general comment that the proposed regulations are an improvement over the prior regulations.

Response: The Department accepts the comment.

Comment: IRRC raised the general comment that the Department has not provided any estimate concerning the fiscal impact of this regulation on local government, and asked: "What will be the economic impact of this regulation on municipalities and school districts?"

Response: It must be emphasized that the final-form regulation implements the requirements of the Act and that any financial impacts are the result of the statute, rather than the final-form regulations. It is not the final-form regulation that establishes preferential assessment or requires recalculation of preferential assessment in accordance with the most recent revisions to the Act - *it is the Act itself that requires this.*

The Department simply cannot provide a good-faith estimate of the financial impact upon municipalities or school districts resulting from the implementation of the Act.

Comment: Several comments were received with respect to proposed § 137b.1(b) (relating to purpose). Sullivan County quoted the last sentence of that subsection, which states it is the"...intent of the act is to protect the owner of enrolled land from being forced to go out of agriculture, or sell part of the land to pay taxes." The commentator asked whether it was the intention of the Act to preserve open space, rather than preserve agricultural land.

The Legislative Committees, Representative Cappabianca and IRRC were also critical of this provision, and recommended the entire final sentence of proposed § 137b.1(b) be deleted.

Response: The Department accepts these comments and has deleted the final sentence of proposed § 137b.1(b). The Department believes the statement of purpose set forth in proposed § 137b.1 is consistent with Article 8, Section 2, of the Constitution of Pennsylvania. That Section authorizes the Legislature to make special provisions for the taxation of forest, agricultural reserve and agricultural lands. This Constitutional authority is restated, in part, in the formal title of the Act, which references the establishment of a procedure "...under which an owner may have land devoted to agricultural use, agricultural reserve use, or forest reserve use, valued for tax purposes at the value it has for such uses..."

Comment: Sullivan County also offered the following comment with respect to proposed § 137b.1 (relating to purpose): "...shouldn't those utilizing their properties as second or vacation homes be excluded from Clean and Green? Maybe there should be income guidelines for enrollment."

Response: Although the Department understands the Commentator's point, there is no statutory basis for the Department to discriminate against a person seeking to enroll that person's agricultural, agricultural reserve or forest reserve land on the basis that the residential structure on that land is a second home for the landowner, and for this reason declines to revise the regulations.

Similarly, the Department does not believe it could - in the absence of explicit statutory authority - establish a requirement that a tract of enrolled land generate a particular annual income from agricultural production as a prerequisite to enrollment.

Comment: PFB recommended the term "rate" in the first sentence of proposed § 137b.1(b) (relating to purpose) be replaced with the phrase "value for tax assessment purposes" or "tax assessment value." PFB offered that this term would help readers understand the term is not referring to "millage rate," but to the assessment value assigned by the county.

Response: The Department has implemented this recommendation in the final-form regulation, inserting the replacement phrase "value for tax assessment purposes."

Comment: IRRC offered a general comment with respect to terms that are defined in the Act (at 72 P.S. § 5490.2) and repeated in proposed § 137b.2 (relating to definitions). It suggested that rather than repeating definitions *verbatim* from the Act, the final-form regulation should simply replace the regulatory definition with a phrase such as "As defined in the Act."

Response: Although IRRC's point is well-taken, the Department declines to implement the suggestion. The Department prefers to have the statutory definitions repeated *verbatim* in the final-form regulation. This approach will spare persons referring to the final-form regulation from having to cross-reference the regulations with the Act to determine definitions of terms used throughout the final-form regulations.

Comment: The Assessors' Committee suggested the various terms used in paragraph (i) of the definition of "agricultural commodity" in proposed § 137b.2 (relating to definitions) be separately defined. These terms include "apicultural, aquacultural, horticultural, floricultural, silvicultural" and "viticultural."

Response: The Department declines to implement this suggestion in the final-form regulation.

Comment: The Assessors' Committee noted the use of the phrase "on farms" in paragraphs (vi) and (vii) of the definition of "agricultural commodity" in proposed § 137b.2 (relating to definitions), and suggested the phrase "on *the* farms" be inserted in its place. The Assessors' Committee offered that the recommended change would make clear that - for purposes of the regulations - the production of agricultural commodities would have to occur on *the* enrolled farm.

Response: Although the commentator's point is well-taken, the Department declines to implement commentator's suggestion since the referenced definition is *verbatim* from the Act (at 72 P.S. § 5490.2).

Comment: Sullivan County recommended the term "open space lands" be defined. The term is used in the statutory definition of "agricultural reserve" (at 72 P.S. § 5490.2). The commentator offered that - in the absence of a definition - the term might be interpreted as meaning wooded or field land that is free of any kind of improvement. The commentator further offered that in Sullivan County there are a number of private lake associations that own hundreds of wooded acres around their respective lakes "simply to keep away development." The commentator asked whether this type of land might fit within the definition of "agricultural reserve."

Response: The Department declines to include a definition of "open space lands" in the final-form regulation. The Department notes the absence of a definition of this term in the Act, and believes this suggests the term should be construed liberally.

As to the question of whether the referenced wooded acreage qualifies as "agricultural reserve" land, the Department is unable to provide an answer with the limited information before it, but notes the land might also qualify for preferential assessment as *forest* reserve land.

Comment: The Assessors' Committee reviewed the definitions of "capitalization rate" and "net return to land" at proposed § 137b.2 (relating to definitions), and suggested that if the effective tax rate is to be considered in calculating the "capitalization rate", then "real estate taxes" should be excluded from the calculation of operating expenses used in determining the "net return to land."

Response: The definitions of the terms "capitalization rate" and "net return to land" are repeated *verbatim* from the Act, at 72 P.S. § 5490.2. Although the commentator's point is well-taken, the Department cannot change statutory definitions by regulation.

Comment: The Legislative Committees recommended the proposed definition of "contributory value of farm building" be revised to mirror the definition of that term in the Act. It also suggested proposed paragraph (i) of that definition could be reworked into § 137b.54 (relating to calculating the contributory value of farm buildings).

Representative Cappabianca offered essentially the same comment as the Legislative Committees on this issue, and recommended the deletion of paragraphs (i) and (ii) under this definition.

IRRC offered its agreement with the Legislative Committees' recommendation.

Response: The Department has revised the definition to mirror the definition appearing in the Act, at 72 P.S. § 5490.2.

Comment: The Legislative Committees recommended the Department delete "a" from the definition of "enrolled land" at proposed § 137b.2 (relating to definitions).

Response: This recommendation is implemented in the final-form regulation.

Comment: The Legislative Committees recommended the definition of "forest reserve" at proposed § 137b.2 be made identical to the statutory definition of that term. The Commentators further suggested the subject matter set forth in paragraph (ii) of that proposed definition be moved to § 137b.14 (relating to forest reserve).

IRRC concurs with the Legislative Committees' recommendation in this regard.

Response: The recommendation is implemented in the final-form regulation.

Comment: The Legislative Committees, Representative Cappabianca and Representative Godshall took issue with the definition of "outdoor recreation" at proposed § 137b.2. The definition of "agricultural reserve" land set forth in the Act (at 72 P.S. § 5490.2) requires that such land be "...used for *outdoor recreation* or the enjoyment of scenic or natural beauty..."

In its administration of the current regulations, the Department has repeatedly been presented with the question of whether certain activities on agricultural reserve land would constitute "outdoor recreation" for purposes of the Act. The Department has consistently taken the position that "outdoor recreation" constitutes the *passive* use of the land, and should not entail the grading of the land, the establishment of athletic fields on the land, the erection of structures, parking areas or permanent facilities on the land or the taking of any other such action that effectively eliminates the possibility the land would - at some point - be used for agricultural production.

Although the Legislative Committees had not originally favored including a definition of "outdoor recreation" in the regulation, it has indicated it would agree to a revision of the proposed definition that would allow for athletic fields to be established on agricultural reserve land.

Representative Cappabianca took issue with paragraphs (i) and (ii) of the definition, and noted that the : "...examples provided by the department add further confusion and are more restrictive than the Act intended."

Along similar lines, the focus of the Representative Godshall's objection is the proposed language that would exclude "the use of the land for baseball, soccer fields, football fields, golf courses or similar uses" from being considered "outdoor recreation." Representative Godshall notes that many of the youth recreational baseball and soccer league fields in the district he serves are on enrolled agricultural reserve land. Representative Godshall further commented as follows:

> ...The owners of the land recognize the need of these youth leagues for fields and their financial inability to pay for such. As good citizens of the community, they are happy to allow such a use free of charge. Were the land to become ineligible for Clean and Green, I can assure you that these recreational areas would no longer be made available and literally thousands of kids would be thrown out into the streets.
>
> I request that changes be made to these proposed regulations which allow for this passive, and at-no-charge, use of Clean and Green property. To do otherwise would result in either removal of large tracts from Clean and Green, or the loss of

a large number of baseball and soccer fields used by volunteer recreation organizations. I do not believe either scenario is acceptable.

Response: Although the Department disagrees with the Commentators, it has revised the definition in accordance with the Commentators' suggestions. Ultimately, the Department accedes to the interpretation of Legislators as to the intent of the Act.

Comment: The Legislative Committees recommended the definition of "roll-back tax" at proposed § 137b.2 (relating to definitions) be revised to read exactly as it appears in the Act (at 72 P.S. § 5490.2). The Assessors' Committee noted this proposed definition did not include any reference to the requirement that a person liable for payment of roll-back taxes *also* pay interest on each year's roll-back taxes at the rate of 6% per annum. This language had appeared in earlier drafts of the proposed regulation that were circulated for review and comment.

IRRC concurs with the Legislative Committees' recommendation.

Response: The Department has implemented the Legislative Committees' recommendation.

In response to the comment offered by the Assessors' Committee, the Department agrees that it would be less cumbersome if the definition of "roll-back tax" included the required interest component. The definition, though, is repeated *verbatim* from the Act, at 72 P.S. § 5490.2. The provision adding the interest component to roll-back taxes is found elsewhere in the Act (at 72 P.S. § 5490.5a). Although the Department cannot change statutory definitions by regulation, the comment prompted a review of the document to ensure that the phrase "plus interest", or words to that effect, follow every reference to liability for roll-back taxes.

Comment: IRRC reviewed the definition of "rural enterprise incidental to the operational unit" at proposed § 137b.2 (relating to definitions). IRRC's entire comment follows:

> This phrase is defined as a "commercial enterprise or venture." Section 8(d) of the Act refers to this activity as "direct commercial sales of agriculturally related products and activities or for a rural enterprise incidental to the operational unit." The definition should be amended to incorporate the language of the Act.

Response: The Department declines to implement this recommendation. The Act does not define "rural enterprise incidental to the operational unit". The quoted statutory provision refers to "direct commercial sales of agriculturally related products and activities" and a "rural enterprise incidental to the operational unit" as two separate things, but defines neither. The Department believes its definition of "rural enterprise incidental to the operational unit" is not inconsistent with any provision of the Act. Significantly, the Department notes that the Legislative Committees - which offered extensive comments throughout the process of drafting the proposed regulation and with respect to the proposed regulation itself - have not objected to the proposed definition.

Comment: The Legislative Committees objected to the use of the term "enrolled land" in the definitions of "separation" and "split-off" at proposed § 137b.2 (relating to definitions). The Act uses the phrase "lands devoted to agricultural use, agricultural reserve or forest reserve and preferentially assessed under the provisions of this act" instead of "enrolled land."

IRRC recommended the referenced definitions mirror the definitions contained in the Act.

Response: The Department has revised these definitions in response to the Legislative Committees' objection.

Comment: The Legislative Committees recommended the definition of "transfer" at proposed § 137b.2 (relating to definitions) be revised by eliminating the second sentence and deleting the word "contiguous" from the first sentence. The Legislative Committees offered that § 6(a.3) of the Act requires this revision.

IRRC endorsed the Legislative Committees' recommendation.

The Assessors' Committee expressed its confusion with respect to this same definition, and requested an explanation.

Response: The recommendation has been implemented in the final-form regulation. The Department believes this revision makes the definition more clear.

Comment: The Legislative Committees and Representative Cappabianca recommended proposed §137b.3(a) (relating to responsibilities of the department) be revised to reflect that the department would provide the referenced forms and use values by May 1 of each year.

Response: The recommendation has been implemented in the final-form regulation.

Comment: The Assessors' Committee reviewed proposed § 137b.3(a) (relating to responsibilities of the department) and asked: "Is a statewide, uniform application anticipated or is every county on their own for its development?"

Response: The Department will develop and distribute the referenced forms, in accordance with § 137b.41 of the final-form regulation (relating to application forms and procedures).

Comment: The Legislative Committees recommended a new subsection - subsection (c) - be inserted in proposed §137b.3 (relating to responsibilities of the department) to provide that the Department would act as an educational and advisory resource on matters related to the administration and interpretation of the Act. Representative Cappabianca endorsed this recommendation, as well.

Response: The Department has added a subsection describing its educational outreach role. The Department conducts an active educational outreach effort and

answers questions posed by interested landowners, county assessors, legislators and others regarding the Act. The subsection does not require the Department to issue legal opinions or act as a court in resolving questions that arise under the Act or the final-form regulations, though.

Comment: IRRC suggested proposed § 137b.4 (relating to contacting the department) be revised to include an e-mail address for use in contacting the Department.

Response: Although the Department agrees this is a good suggestion, the Department's current e-mail system does not have an e-mail address for the Bureau of Farmland Protection - the Bureau to which questions relating to the Act or this chapter would be referred. Individual employees of the Department have e-mail addresses, though, and will make use of e-mail in responding to questions and requests.

Comment: The Legislative Committees suggested proposed § 137b.12 (relating to agricultural use) be revised to include the term "agricultural commodity" - a term defined in the Act, at 72 P.S. § 5490.2 - rather than the undefined term "agricultural production."

IRRC offered its endorsement of the Legislative Committees' suggestion.

The Legislative Committees also suggested reference be made to the fact that agricultural use land may be enrolled in Federal soil conservation programs. This is specifically provided-for in the definition of that term in the Act, at 72 P.S. § 5490.2.

Response: The Legislative Committees' suggestion has been implemented in the final-form regulation.

Comment: Several comments were received with respect to proposed § 137b.13 (relating to agricultural reserve).

The Legislative Committees and Representative Cappabianca suggested the requirement that at least 60% of the land be comprised of soils falling with USDA-NRCS land capability classes I through VI be deleted, offering that this requirement exceeded the authority of the Act. Both IRRC and Montgomery County offered essentially the same comment.

The Legislative Committees suggested the Department insert some reference to the fact that woodlots are considered part of agricultural reserve land. This reference is contained in the Act, in the definition of "woodlot" at 72 P.S. § 5490.2.

Response: The suggestions of the commentators have been implemented in the final-form regulation.

Comment: The Legislative Committees and IRRC question whether the Department has authority under the Act to impose the 25-cubic-foot-per-acre timber production capability requirement for forest reserve land in proposed § 137b.14 (relating to forest reserve).

Response: The Department has removed the referenced requirement from the final-form regulation.

Comment: IRRC suggested proposed § 137b.14 (relating to forest reserve) be revised by adding language from paragraph (ii) of the definition of "forest reserve" at proposed § 137b.2 (relating to definitions). That language addresses land that is rented to another for the purpose of producing timber products.

The Legislative Committees offered a similar recommendation.

Response: The recommendations have been implemented in the final-form regulation.

Comment: IRRC recommended proposed § 137b.22 (relating to landowner may include or exclude from the application tracts described in separate deeds) be revised by adding references to the fact that individual adjoining tracts may be combined to meet the minimum eligibility requirements, and that a tract that does not meet these minimum requirements may receive preferential assessment if it adjoins an enrolled tract owned by the same landowner.

Response: The Department declines to implement this recommendation. The suggested additions already appear in the final-form regulation, at §§ 137b.19(1)(i) (relating to multiple tracts on a single application) and 137b.23(a) (relating to land adjoining preferentially assessed land with common ownership is eligible).

Significantly, the Department notes that the Legislative Committees - which offered extensive comments throughout the process of drafting the proposed regulation and with respect to the proposed regulation itself - offered no objection to proposed § 137b.22.

Comment: PFB recommended proposed § 137b.22 (relating to landowner may include or exclude from the application tracts described in separate deeds) be revised by adding language affirming that a county assessor cannot deny an application for preferential assessment simply on the basis of the landowner's decision to exclude a separately-deeded contiguous tract from the application, or deny an application on the basis that one of two or more contiguous tracts does not, by itself, meet the eligibility requirements for preferential assessment.

Response: The Department declines to implement this recommendation, since the basic subject matter of the recommended language is addressed in §§ 137b.137b.19(1) (relating to multiple tracts on a single application), 137b.21 (relating to exclusion of noncontiguous tract described in a single deed) and 137b.22 (relating to landowner may include or exclude from the application tracts described in separate deeds).

Comment: The Legislative Committees recommended changing the title of proposed § 137b.24 (relating to ineligible land may appear on an application, although it cannot receive preferential assessment) to "ineligible land."

Response: The Department has implemented this recommendation in the final-form regulation.

Comment: The Legislative Committees and Representative Cappabianca recommended the Department delete the sentence preceding the example in proposed § 137b.24 (relating to ineligible land may appear on an application, although it cannot receive preferential assessment), since the "... General Assembly determined eligibility requirements as stated in the act."

Montgomery County offered a similar comment, stating that the now-deleted sentence was confusing.

IRRC also agreed with the commentators, noting that the ultimate determinants of eligibility for preferential assessment are the requirements and standards set forth in the Act.

Response: The Department has implemented the recommendation of the Legislative Committees', Representative Cappabianca and IRRC in the final-form regulation. This also provides Montgomery County the changes it requested.

Comment: The Legislative Committees suggested the language appearing in the example in proposed § 137b.24 (relating to ineligible land may appear on an application, although it cannot receive preferential assessment) prohibiting a county from requiring ineligible land to be surveyed-out or deeded as a prerequisite to consideration of the application be deleted and restated in the text of that section.

Montgomery County also found the referenced example confusing, and suggested the Department eliminate the reference to a tract being "surveyed-out" from the final-form regulation.

Response: The Department accepts these suggestions, and has implemented them in the final-form regulation.

Comment: The Legislative Committees offered several grammatical revisions to Examples "1" and "2" in proposed § 137b.26 (relating to land located in more than one tax district).

The Legislative Committees also suggested language in Example "2" indicating that an application would have to be filed in each county in which the land was located be deleted.

IRRC raised a similar concern with respect to Example (2), recommending it be made consistent with proposed § 137b.43 (relating to applications where subject land is located in more than one county).

Response: The requested revisions have been made in the final-form regulation.

Comment: The Legislative Committees "strongly recommended" proposed § 137b.27 (relating to assessment of ineligible land) be revised by deleting any reference to

"buildings" in that section. The Legislative Committees offered that the inclusion of this word would be irrelevant and may cause misinterpretation of the Act.

IRRC endorsed this recommendation.

Response: The recommendation has been implemented in the final-form regulation.

Comment: The Legislative Committees offered several comments with respect to proposed § 137b.41 (relating to application forms and procedures). Initially, the Legislative Committees suggested the "Clean and Green Valuation Application" and "Clean and Green Worksheet" (referenced in proposed § 137b.41 (a) and (b)) be attached to the final-form regulation.

IRRC offered an alternative to the inclusion of the referenced forms in an appendix to the regulation. IRRC suggested the final-form regulation set forth the type of information that will be requested on the referenced forms (rather than the forms themselves).

Response: The Department declines to implement the Legislative Committees' suggestion. The Department would prefer to be able to make necessary revisions or corrections to these forms outside the regulatory promulgation process. The Department will provide copies of the referenced forms to all county assessors, and will also provide them revised versions of these forms when/if revisions occur.

With respect to IRRC's alternative, the Department has revised the final-form regulation to indicate the type of information that will be required on the Clean and Green Valuation Application. The Department believes the Clean and Green Worksheet is self-explanatory, and has not summarized it in the final-form regulation.

Comment: The Legislative Committees had no specific revisions to offer with respect to proposed § 137b.41(d) (relating to application forms and procedures), but noted that the required language set forth in that subsection (which is prescribed by the Act, at 72 P.S. § 5490.4(c)) does not appear in the Department's most recent draft of the application form.

Response: The application form has been revised to set forth this required language.

Comment: The Legislative Committees suggested that proposed § 137b.41(e) (relating to application forms and procedures) should be revised to make clear the requirement of the Act, at 72 P.S. § 5490.3(e), which prohibits a county assessor from imposing conditions or requirements for eligibility for preferential assessment other than those prescribed by the Act.

IRRC also offered a comment with respect to this subsection. IRRC suggested the subsection be revised to include examples of the types of information a county assessor might request, and require the county assessor to conduct a "completeness review" of the application within 30 days of receipt.

PFB offered a comment that was similar to one offered by IRRC. PFB suggested this subsection be revised to designate various types of proof that would automatically be recognized as adequate proof for establishing eligibility for preferential assessment under each of the land use categories. PFB also provided recommended language to accomplish this revision.

Response: The Department believes the referenced subsection does not authorize a county assessor to impose new or different eligibility requirements for preferential assessment under the Act. The subsection *does*, though, afford a county assessor reasonable discretion to require that a landowner demonstrate that the land described in an application for preferential assessment meets the eligibility requirements prescribed by the Act.

With respect to the comments offered by IRRC and PFB, the Department declines to provide a list of examples of the type of information a county assessor might reasonably require. It has been the experience of the Department that when it provides such a list, a county assessor might either refuse to accept any documentation that is *not* contained on the list, or require a specific type of document on that list (such as a formal forestry management plan) in all instances.

The Department also declines to implement IRRC's suggestion that the final-form regulation require a county assessor to conduct a "completeness review" of an application within 30 days of receipt of the application. The Act imposes (at 72 P.S. § 5490.4) a general requirement that a county assessor process applications in a timely manner. The Department believes this is sufficient to require a county assessor to move an application along through the review process, and that further regulation is not necessary. In addition, the Department does not believe it has statutory authority to impose any sanction or adverse consequences upon a county assessor who failed to meet such a deadline.

Comment: PFB suggested that proposed § 137b.41(f) (relating to application forms and procedures) be revised by deleting the requirement that signatures on an application for preferential assessment be notarized:

> ...We feel the added protection that the requirement for notarization of signature may potentially bring is not worth the actual aggravation the requirement will cause for landowners.

Response: Although the Department acknowledges that it might be inconvenient for an applicant to affix a notarized signature to an application for preferential assessment, it is also aware that county recorders of deeds will not file approved applications unless the applicant's signature is notarized. For this reason, the commentator's suggestion has not been implemented.

Comment: The Legislative Committees suggested the Department be certain that proposed § 137b.43 (relating to applications where subject land is located in more than one county) be revised - if necessary - to be consistent with the final-form version of §

137b.26 (relating to land located in more than one tax district) in terms of whether an application must be filed in each taxing district.

Response: The Department accepts this suggestion. The final-form versions of each of these sections reflect the application need only be filed in the jurisdiction in which the landowner pays property taxes.

Comment: The Legislative Committees suggested the title of proposed § 137b.46 (relating to fees of the county board for assessment appeals) be revised to indicate the section also describes recording fees, and to indicate a distinction between recording fees and processing fees.

The Legislative Committees renewed its earlier-stated position that: "...the intent of the General Assembly is that no fees, other than the initial processing and necessary recording fees, are to be imposed on a landowner." The commentator recommended the Department delete language that would allow a county assessor to charge a $50 fee for processing changes other than those resulting from split-off, separation or transfer. The commentator also recommended a new subsection be added to state that a fee can not be charged if an application is denied.

IRRC recommended the final-form regulation make specific reference to those provisions of the Act relating to fees. These provisions are at 72 P.S. §§ 5490.4(d), (e) and (f).

Response: The Department has revised the title of this section in accordance with the Legislative Committees' recommendation, and has made the recommended deletions in the final-form regulation.

The Department has also added subsection (c), prohibiting the collection of a recording fee with respect to an application that is ultimately rejected. This is consistent with the Act, at 72 P.S. § 5490.4(d).

With regard to the comment offered by IRRC, the Department has included the recommended statutory references in the final-form regulation.

Comment: PFB also offered a comment with respect to proposed § 137b.46(a) (relating to fees of the county board for assessment appeals). It recommended the following sentence be added at the end of that subsection, to cross-reference the governing section on recording fees: "The amount of recording fee that may be charged is subject to the limitations prescribed in § 137.82."

Response: The Department believes the regulatory provision is sufficiently clear and declines to implement PFB's recommendation in the final-form regulation.

Comment: The Legislative Committees recommended several minor grammatical revisions to proposed § 137b.51(b)(1), (c)(1) and (c)(2).

Response: These recommendations have been implemented in the final-form regulation.

Comment: The Assessors' Committee reviewed proposed § 137b.51(d) (relating to assessment procedures), which describes the mathematical process by which preferential assessment is determined. The commentator recommended the provision be revised to reflect that the final number arrived at under the proposed formula should then be multiplied by the pre-determined ratio in effect for the particular county to arrive at the assessment, to which the millage rate is then applied.

IRRC offered substantially the same comment, suggesting the term "established predetermined ratio," as set forth in the General County Assessment Law (72 P.S. §§ 5020-102), be incorporated into the basic formula described in this section.

Response: The recommendations have been implemented in the final-form regulation.

Comment: PFB reviewed proposed § 137b.51(e) and (f) (relating to assessment procedures), which describe the option of county assessors to establish and use lower use values than those provided by the Department. PFB noted that subsection (e) allows county assessors to use lower land use values for land use *subcategories,* while subsection (f) allows county assessors to use lower land use values for land use *categories.* The commentator recommended subsection (f) be revised to consistently use the term "land use subcategory" rather than "land use category."

Response: The suggestion has been implemented in the final-form regulation.

Comment: The Assessors' Committee suggested proposed § 137b.52 (relating to duration of preferential assessment) be revised by deleting the final sentence of subsection (b) and deleting Examples (3) and (4). The commentator noted that there is no provision in the Act allowing for the unilateral withdrawal from preferential assessment by a landowner. In short, preferential assessment ends when the use of the enrolled land is changed to something other than agricultural, agricultural reserve or forest reserve. The commentator believes the inclusion of the referenced provisions is not appropriate. The Assessors' Association offered substantially the same comment.

The substance of this comment was restated by the Legislative Committees. In addition, the Legislative Committees recommended the deletion of the final sentence of proposed § 137b.52(b) and Examples (1) and (2).

IRRC recommended the deletion of the final sentence of proposed § 137b.52(b) and Examples (3) and (4).

Sullivan County also offered its general disagreement with proposed § 137b.52(b).

Representative Cappabianca recommended the deletion of the final sentence of subsection (b), and the deletion of examples (3) and (4) under that subsection.

Attorney Halsted noted that Example (3) under proposed § 137b.52(b) did not indicate which "landowner" is liable for the payment of roll-back taxes plus interest.

Montgomery County also suggested the final-form regulation delete the proposed language relating to voluntary payment of roll-back taxes plus interest in advance of change-of-use. Representative Cappabianca endorsed Montgomery County's suggestion.

Both Montgomery County and Attorney Halsted offered comments in favor of allowing a landowner to voluntarily end preferential assessment without changing the use of the enrolled land. Attorney Halsted referenced a situation where an owner of enrolled land seeks to convey the enrolled land for some use other than agricultural, agricultural reserve or forest reserve. Montgomery County offered the following:

> ...In any other covenant/contract, one party may voluntarily breach the covenant and bear the consequences. There should be a provision to allow the owner of a property enrolled in Act 319 to voluntarily request termination from Clean and Green. There is nothing in the Act to preclude this.

Response: The Department has deleted language describing the advance payment of roll-back taxes plus interest from the final-form regulation, in accordance with the suggestions offered by the Assessors' Committee, the Legislative Committees, IRRC, Montgomery County and Sullivan County. The Department notes that - as written - the proposed section did not allow a landowner to unilaterally terminate preferential assessment. Instead, it allowed a landowner to make advance payments toward the roll-back taxes and interest that would be due upon subsequent change to an ineligible use.

The Department has not implemented Attorney Halsted's suggestion or Montgomery County's suggestion that language be added to allow for the voluntary termination of preferential assessment without change of use of the enrolled land. The Department believes the Act requires (at 71 P.S. § 5490.4(b)) that preferential assessment continue until land use change takes place.

Comment: PFB also offered extensive comments with respect to proposed § 137b.52(c) and (d) (relating to duration of preferential assessment). In summary, PFB expressed concern that:

> ...the proposed regulations do not give sufficiently clear guidance on the effect of a change in use of one portion of enrolled land that triggers roll-back taxes, plus interest, on all of such land will have in terminating preferential assessment of the "remainder" that is not directly affected by the land use change.

PFB takes the position that preferential assessment of enrolled land must *end* when roll-back taxes, plus interest, are due with respect to that enrolled land. If the land or some portion thereof remains eligible for preferential assessment, the landowner may reapply for preferential assessment. PFB strongly recommended the proposed subsections be revised to state that preferential assessment of enrolled land is terminated when roll-back taxes plus interest, are triggered.

Following the Department's withdrawal of an earlier version of this final-form regulation, however, PFB and Legislative Committee staff met and reached agreement as to the substance of the revisions appearing in § 137b.52 (relating to duration of preferential assessment) of the final-form regulation.

Response: The Department has revised proposed § 137b.52(c) and (d) (relating to duration of preferential assessment) to clarify that - where a split-off occurs on some

portion of enrolled land and roll-back tax liability is triggered on the *entirety* of the enrolled land as a result - the landowner may terminate preferential assessment of the entirety of the enrolled land by providing the county assessor the written notice of termination required under § 3(d) of the Act (72 P.S. § 5490.3(d)). Where the landowner does not seek to terminate preferential assessment of the remaining land, and the remaining land continues to be eligible for preferential assessment, though, preferential assessment of the remaining land shall continue uninterrupted.

As stated, the revisions of the referenced subsections were drafted with the assistance of Legislative Committee staff and PFB.

Comment: The Legislative Committees offered several technical corrections to proposed § 137b.52(d) (relating to duration of preferential assessment), Examples (3) and (4).

IRRC also recommended these technical corrections.

Response: The technical corrections have been made in the final-form regulation.

Comment: Montgomery County reviewed proposed § 137b.52(e)(2) (relating to duration of preferential assessment), and suggested the provision was inconsistent with subsection (c) of this section and several provisions of the Act (at 71 P.S. §§ 5490.4(f)(2) and 5490.6). The commentator suggested this entire subsection be deleted.

Response: The Department believes subsection (e)(2) describes the "maximum area" with respect to which a county may terminate preferential assessment under certain conditions, and is not inconsistent with subsection (c), as that subsection has been revised.

Comment: The Legislative Committees offered several technical corrections to proposed §§ 137b.52(e)(2), (3), (4), (7), (8), (9) and (10) and 137b.52(f).

Response: The technical corrections have been made in the final-form regulation.

Comment: PFB recommended proposed § 137b.52(f) (relating to duration of preferential assessment) be revised by replacing the final sentence of that subsection. The commentator thought the final sentence was confusing, and recommended specific language for a replacement sentence.

Response: The Department declines to implement this recommendation in the final-form regulation. The Department believes the referenced sentence is clear and unambiguous, and that the recommended replacement sentence would not improve this subsection.

Comment: The Legislative Committees recommended the last sentence of proposed § 137b.52(g) (relating to duration of preferential assessment) be removed, as: "...there is no authority within the law to make a distinction between contiguous tracts and non-contiguous tracts in the same application (see § 6(a.3) of the act)".

IRRC also questioned whether the Act provided authority for this distinction.

IRRC also commented that the proposed subsection does not indicate who is responsible for roll-back taxes, and interest, if there is a change of use of the land. IRRC suggested a reference be made to the provision of the Act (at 72 P.S. § 5490.6(a.3)) which states that: "The landowner changing the use of the land ... shall be liable for the payment of roll-back taxes."

Response: The Department has not added the reference to responsibility for roll-back taxes as suggested by IRRC, and believes this subject is adequately addressed elsewhere in the final-form regulation. The Department has implemented the Legislative Committees' recommendation in the final-form regulation.

Comment: PFB recommended the phrase "without a change to an ineligible use" be deleted from proposed § 137b.52(g) (relating to duration of preferential assessment). The commentator was concerned that this qualifier might be construed as making the conveyor of the transferred land responsible for the payment of roll-back taxes plus interest, rather than the person who acquires the land and changes it to an ineligible use.

Response: The recommendation has been implemented in the final-form regulation.

Comment: The Legislative Committees offered several comments with respect to proposed § 137b.53 (relating to calculation and recalculation of preferential assessment). Several of these comments recommended minor technical revisions. The commentator also noted that an earlier proposed draft of this section had included a subsection specifying that a recalculation of preferential assessment in accordance with the methods described in this section would not constitute an illegal "spot assessment." The commentator suggested this language be reinserted into the final-form regulation.

Response: The commentator's recommended technical revisions have been implemented in the final-form regulation.

The Department declines to implement the recommendation it reinsert the conclusory statement that recalculation of preferential assessment is not "spot assessment." The Department deleted this provision from an earlier draft in response to a commentator who noted that the provision was conclusory in nature and would not carry appreciable weight with a reviewing court.

Comment: IRRC suggested proposed § 137b.53(b) (relating to calculation and recalculation of preferential assessment) be revised to contain a description of the process for calculating the "base year" referenced in that subsection.

Response: The Department declines to implement this suggestion.

Significantly, the Department notes that the Assessors' Committee - which offered extensive comments throughout the process of drafting the proposed regulation and with respect to the proposed regulation itself - offered no comment recommending the final-

form regulation contain an explanation of the process by which "base year" is to be calculated.

Comment: The Assessors' Association expressed to IRRC that there appeared to be a conflict between proposed § 137b.53 (relating to calculation and recalculation of preferential assessment) and § 137b.105 (relating to annual update of records). In particular, the commentator noted that proposed § 137b.53(b) affords a county assessor the option to recalculate preferential assessment each year or establish a base year. Proposed § 137b.105 requires an annual update of records.

The commentator also offered that the "options" afforded a county assessor under proposed § 137b.53(b) appear to be negated by subsections (c), (d), (e) and (f), which require recalculation of preferential assessments under certain circumstances.

Response: The Department disagrees with the commentator with respect to both comments. Proposed §§ 137b.53 and 137b.105 are not contradictory. The former affords a county assessor certain options. The latter requires that, if an option is exercised so as to make any of the information contained in the records referenced in that section inaccurate, the county assessor will correct those records at intervals of no greater than 1 year.

In addition, the provisions at § 137b.53(c), (d), (e) and (f) do not take away the options set forth in subsection (b) in the absence of the special circumstances described in each of those four subsections.

Comment: PFB suggested proposed § 137b.53(b)(2) (relating to calculation and recalculation of preferential assessment) be clarified by adding the phrase "unless recalculation is required under subsection (c), (d), (e) or (f)" to the end of that paragraph.

Response: The suggestion has been implemented in the final-form regulation.

Comment: IRRC raised several questions regarding proposed § 137b.53(g) (relating to calculation and recalculation of preferential assessment). IRRC requested the Department explain the statutory authority for this subsection, the reason it is "optional" and the reason for the Department's selection of the "June 1, 1998" cut-off date.

Response: The referenced subsection has been deleted from the final-form regulation.

Comment: The Legislative Committees provided specific language it recommended be added to proposed § 137b.54 (relating to calculating the contributory value of farm buildings), and offered the following comment in support of its recommendation:

> This is the section where the clarification of the proposed definition of the term "contributory value of farm buildings" would be appropriate. Any attempt to extend the term further would allow for willful circumvention of the intent of the statutory definition and for lack of uniformity in administration by counties...

IRRC offered its concurrence with the Legislative Committees' recommendation.

Response: The Department has added the recommended language to the final-form regulation.

Comment: PFB reviewed proposed § 137b.62 (relating to enrolled "agricultural use" land of less than 10 contiguous acres) and suggested the section be revised to designate specific documents that would automatically suffice to demonstrate eligibility of land for preferential assessment as "agricultural use" land. The suggested documents are consistent with those recommended by PFB in its comment with respect to proposed § 137b.41(e) (relating to application forms and procedures).

Response: The Department declines to implement this suggestion, for the same basic reasons as offered in response to PFB's comment regarding proposed § 137b.41(e) (relating to application forms and procedures).

Comment: The Legislative Committees recommended Example (3) in proposed § 137b.62(c) (relating to enrolled "agricultural use" land of less than 10 contiguous acres) be revised to refer to "production of an agricultural commodity" rather than the production of swine.

IRRC offered its concurrence with this recommendation.

Response: The Department agrees the recommended language is an improvement, and has added it to the final-form regulation.

Comment: Representative Cappabianca reviewed proposed § 137b.63 (relating to notice of change of application), and suggested the word "located" in subsection (a) be replaced with the phrase "preferentially assessed." The commentator believes this addresses the situation where a tract of enrolled land is located in more than one county.

Response: The suggestion has been implemented in the final-form regulation.

Comment: The Department revised proposed §§ 137b.52 (relating to duration of preferential assessment) and 137b.84 (relating to split-off that does not comply with section 6(a.1)(1)(i) of the act) in response to the recommendations of the Legislative Committees and PFB. Since these revisions reference the responsibility of an owner of enrolled land to provide the county a notice of termination of preferential assessment under certain circumstances and describe events that might alter the acreage receiving preferential assessment, the Legislative Committees (through Committee staff) recommended proposed § 137b.63 (relating to notice of change of application) be revised to more affirmatively state the obligations of the landowner with respect to terminating preferential assessment and cooperating with the county in keeping records current.

Response: In response to this recommendation, the Department has added a new subsection (c), and has redesignated proposed subsection (c) to be subsection (d).

Comment: PFB also offered a comment with respect to proposed § 137b.63 (relating to notice of change of application), suggesting paragraphs (b)(6) and (b)(7) be deleted. The commentator did not see that requiring the information described in these paragraphs would provide any tangible benefit.

Response: The referenced subparagraphs have been deleted from the final-form regulation.

Comment: IRRC reviewed proposed § 137b.64(c) (relating to agricultural reserve land to be open to the public), noted the subsection allows for an owner of enrolled land to place reasonable restrictions on public access to agricultural reserve land and asked the Department to explain the legal basis for affording the landowner this discretion.

Response: The Act does not specifically grant the landowner this discretion. Nor does it disallow it. The Department believes it reasonable to allow the landowner to place some practical restrictions on the uses to which agricultural reserve land may be put. For example, if agricultural reserve land adjoins residential structures, the landowner should be allowed to prohibit hunting within a reasonable distance of these residential structures. The Department is satisfied this subsection is a reasonable exercise of the Department's regulatory authority.

Significantly, the Department notes that the Legislative Committees - which offered extensive comments throughout the process of drafting the proposed regulation and with respect to the proposed regulation itself - offered no objection to the proposed subsection.

Comment: PFB also offered extensive comments with respect to proposed § 137b.64(c) (relating to agricultural reserve land to be open to the public). In summary, PFB believes the proposed subsection fails to provide any meaningful criteria for determining appropriate public uses of agricultural reserve land and fails to promote uniformity among counties. PFB also questioned the Department's use of the term "reasonable," and expressed that this term may encourage "discord, rather than uniformity" among counties. PFB had - in the drafting of the proposed regulation - provided the Department language that would establish more specific criteria with respect to outdoor recreational activities on agricultural reserve land. PFB renewed its request this language be incorporated into the final-form regulation.

Response: The Department appreciates the well-written language provided by PFB, but declines to include this recommended language in the final-form regulation.

The Department does not believe it is necessary to promulgate detailed regulations on the subject of the appropriate public uses of agricultural reserve land. The referenced subsection provides a number of examples of restrictions that a landowner might impose with respect to such uses. The Department believes that - given the infinite combinations of circumstances involved in this area (hazards on the land, danger to the soil, public safety, various potential public uses, etc...), the best approach is to simply

impose a broad standard of "reasonableness" and offer several examples of restrictions that might be reasonable.

The Department is mindful of the numerous comments made in opposition to the definition of "outdoor recreation" at proposed § 137b.2 (relating to definitions). That definition attempted to provide detailed guidance and examples as to the types of activities that could be considered "outdoor recreation." The definition was revised in the final-form regulation in response to these comments. Details and examples were removed from the definition - primarily at the behest of commentators from the Legislature.

The Department will continue to monitor this issue once the final-form regulations are promulgated. If there appears to be a need for more specific regulations in this area, the Department will revisit this subsection.

Comment: The Legislative Committees recommended a minor grammatical revision to proposed § 137b.64(d) (relating to agricultural reserve land to be open to the public).

Response: The recommendation has been implemented in the final-form regulation.

Comment: The Legislative Committees reviewed proposed § 137b.71 (relating to death of an owner of enrolled land) and suggested language be added to the Example in subsection (a) and Example (1) in subsection (b) to clarify that it would be necessary for successor landowners to file amended applications to reflect changes wrought by the death of a predecessor landowner.

IRRC offered its concurrence with this suggestion.

Response: The suggestion has been implemented in the final-form regulation.

Comment: Representative Cappabianca recommended proposed § 137b.71(a) (relating to death of an owner of enrolled land) be revised by adding language to clarify that preferential assessment ends on any portion of a tract of enrolled land that - through inheritance - no longer meets the minimum requirements for preferential assessment.

Response: The Department believes this subsection is clear, and does not need to be revised. The subsection contains specific languages indicating the circumstances under which "...preferential assessment shall terminate...". For this reason the Department declines to implement the recommended revision.

Comment: The Legislative Committees recommended proposed § 137b.72(a)(1) (relating to direct commercial sales of agriculturally related products and activities; rural enterprises incidental to the operational unit) be clarified by deleting the rather cumbersome phrase at the end of that paragraph and replacing it with "the land."

Response: Although the Department agrees this paragraph can be clarified, it also believes the phrase "the land" is too general. Instead, the Department has inserted

the phrase "the remaining land" into this paragraph. The Department's objective is to indicate that it is the land other that the land upon which the commercial enterprise is located that must remain capable of agricultural production - and *not* the land upon which the commercial enterprise itself is located.

Comment: The Assessors' Association contacted IRRC with its suggestion the final-form regulation clarify the meaning of "rural enterprise," as that term is used in proposed § 137b.72(a)(1) (relating to direct commercial sales of agriculturally related products and activities; rural enterprises incidental to the operational unit).

Response: The Department declines to implement this suggestion. The Department does not believe it necessary to establish a rigid definition of "rural enterprise." The Department believes the intention of the Act is to provide owners of enrolled land a *limited* (2-acre or less) opportunity to make commercial use of a portion of the enrolled land without subjecting the entirety of the land to roll-back taxes and interest or subjecting the entire tract to removal from preferential assessment. The referenced section makes clear that preferential assessment of the commercial use portion of the land ends and roll-back taxes and interest are due with respect to that rural enterprise.

The Department also notes the Legislative Committees did not request or suggest a definition of "rural enterprise."

Comment: The Legislative Committees offered minor technical revisions with respect to proposed § 137b.73(a) and (g) (relating to wireless or cellular telecommunications facilities).

Response: These revisions have been made in the final-form regulation.

Comment: The Legislative Committees suggested the text of paragraphs (6) of proposed § 137b.74(a) (relating to option to accept or forgive roll-back taxes in certain instances) be switched with the text of paragraph (7) in order to have these paragraphs in the same order as they appear in the Act, at 72 P.S. § 5490.8(b).

Response: The suggestion has been implemented in the final-form regulation.

Comment: The Legislative Committees considered proposed § 137b.75 (relating to transfer of enrolled land for use as a cemetery) and offered the following comment:

> Once land is transferred for use as a cemetery there is no provision in the act (see § 8(e)(1)(i)) for the use of the land to change back to agricultural use, agricultural reserve or forest reserve. Furthermore, that land is no longer subject to preferential assessment, so reversion to one of the three eligible uses would require re-application to the program.

Response: The revisions recommended by the commentator have been implemented in the final-form regulation.

Comment: IRRC noted that proposed §§ 137b.75 (relating to transfer of enrolled land for use as a cemetery) and 137b.76 (relating to transfer of enrolled land or transfer of an easement or right-of-way across enrolled land for use as a trail) make use of the term "transfer" that is not consistent with the definition of that term in proposed § 137b.2 (relating to definitions). IRRC suggested the Department replace "transfer" with "convey" in these two sections.

PFB offered substantially the same comment as IRRC

Response: The suggestion has been implemented in the final-form regulation.

Comment: The Legislative Committees offered several suggestions with respect to proposed § 137b.76 (relating to transfer of enrolled land or transfer of an easement or right-of-way across enrolled land for use as a trail). The commentator recommended paragraph (a)(1) be revised to include a reference to an easement or right-of-way in the land, as well as a sale of the land itself. The commentator recommended paragraph (a)(2) be revised by deleting the requirement a trail be "unpaved" and deleting the numerous examples provided in the proposed version of that paragraph. It also recommended several technical corrections to subsection (b).

Response: The commentator's recommendations have been implemented in the final-form regulation.

Comment: PFB also reviewed proposed § 137b.76 (relating to transfer of enrolled land or transfer of an easement or right-of-way across enrolled land for use as a trail), and recommended the last sentence of subsection (b) be deleted. The commentator believes this sentence is not necessary, in light of the provisions of the Act at 72 P.S. § 5490.8(e)(1) and (2). PFB expressed concern this sentence might: "... be misread as requiring preferential assessment of the remaining portion of the land originally enrolled in Clean and Green to be terminated when the owner of the trail changes the use."

Response: The recommendation has been implemented in the final-form regulation.

Comment: Several comments were received with respect to proposed § 137b.81 (relating to general).

The Assessors' Committee suggested a phrase be added to indicate that - where enrolled land no longer meets the criteria for preferential assessment and the landowner is liable for payment of roll-back taxes and interest - the property shall be removed from preferential assessment.

IRRC offered essentially the same comment.

The Legislative Committees offered general agreement with the comments raised by PFB. It also offered a minor technical revision, and suggested the phrase "or uses the land for something other than agricultural use, agricultural reserve or forest reserve" be deleted as repetitive.

Representative Cappabianca suggested language be added to state that if enrolled land is changed to an ineligible use it shall lose its preferential assessment.

Response: The suggestions of Representative Cappabianca, IRRC and the Assessors' Committee have been implemented in the final-form regulation.

PFB's suggestions have been implemented in the final-form regulation.

The Legislative Committees' suggestions have been implemented in the final-form regulation.

Comment: The Legislative Committees recommended proposed § 137b.82 (relating to split-off tract) be revised to clarify that the "2-3" acre lot size referenced in Paragraph (1) refers to *residential* lots.

Response: The recommendation has been implemented in the final-form regulation.

Comment: The Legislative Committees suggested a minor technical revision to proposed § 137b.83 (relating to split-off that complies with section 6(a.1)(1)(i) of the Act).

Response: The suggestion has been implemented in the final-form regulation.

Comment: The Legislative Committees reviewed Example (2) in proposed § 137b.84 (relating to split-off that does not comply with section 6(a.1)(1)(i) of the act), and expressed concern that the example might be read as requiring the payment of roll-back taxes *twice* with respect to the three 2-acre tracts described in that example - once at the time each tract is split-off and again when roll-back taxes are triggered with respect to the remaining 44-acre tract. The commentator also suggested a reference be made to the necessity of filing an amended application when split-off occurs.

Response: The Department agrees the example could be clarified, and has inserted language offered by the commentator into the final-form regulation. Although the reference to the fact that roll-back taxes would be due with respect to the entire 50-acre tract is ultimately accurate, the proposed example does not make clear that the roll-back taxes plus interest due with respect to each of the three 2-acre tracts referenced in the example would have been triggered at the time each of those tracts was split-off.

Comment: PFB raised concerns regarding Examples (1) and (2) of proposed § 137b.84 (relating to split-off that does not comply with section 6(a.1)(1)(i) of the act). The Legislative Committees suggested revisions to Example (2). Specifically, PFB recommended each example be revised to reflect that where a split-off occurs, and the split-off does not comply with section 6(a.1)(1)(i) of the Act, that split-off triggers liability for roll-back taxes plus interest on all of the enrolled land and terminates preferential assessment on all the enrolled land. In such a situation, PFB suggests the landowner should submit an amended application for preferential assessment of the

remaining land which continues to meet the eligibility requirements for preferential assessment. PFB provided language to implement its recommended revision.

The Legislative Committees suggested the phrase "upon the submission of an amended application" be added to the end of Example (2). Apparently, the commentator believes preferential assessment ends with respect to the "remainder" tract and that it must again be the subject of an application for preferential assessment.

Legislative Committee staff and representatives of PFB subsequently met and assisted in drafting the language that appears in the referenced examples in the final-form regulation.

Response: This subject is addressed in detail earlier in this document, in the comments/responses relating to proposed § 137b.52 (relating to duration of preferential assessment). As stated, Legislative Committee staff and PFB assisted the Department in drafting the language that has been added to Examples (1) and (2) of § 137b.84 to address the commentators' concerns.

Comment: The Legislative Committees suggested a minor technical revision to proposed § 137b.85 (relating to split-off occurring through condemnation).

Response: The suggestion has been implemented in the final-form regulation.

Comment: The Legislative Committees recommended a minor technical revision to proposed § 137b.86 (relating to split-off occurring through voluntary sale in lieu of condemnation), and the use of the term "convey" rather than "transfer" in that section.

Response: The recommendations have been implemented in the final-form regulation.

Comment: The Legislative Committees suggested several minor technical corrections to proposed § 137b.87 (relating to change in use of separated land occurring within 7 years of separation).

Response: The suggestion has been implemented in the final-form regulation.

Comment: The Legislative Committees recommended several minor technical corrections to proposed § 137b.88 (relating to change of use of separated land occurring 7 years or more after separation).

Response: The recommendation has been implemented in the final-form regulation.

Comment: Several groups offered comment with respect to proposed § 137b.89 (relating to calculation of roll-back taxes). In particular, commentators voiced their opinions as to whether the interest to be paid on roll-back taxes should be *simple* interest or *compound* interest.

The Legislative Committees favor leaving the proposed provision unchanged, noting:

> ...We believe the way it appears in this proposed rule is correct (simple interest). While it might be interpreted either way, we believe the intent of the act at § 5.1 is to calculate simple interest, or compound interest would have been specifically indicated.

By contrast, the Assessors' Committee offered the following:

> The statute clearly states that interest is at the rate of 6% per annum which is compound interest, it is not simple interest on the compounding balance.

The Assessors' Committee recommended substituting "compound" for "simple" in paragraph (2) and reworking the chart contained in that paragraph to reflect compound interest, and reworking Example 1 under paragraph (3) to reflect compound interest.

The Assessors' Association indicated that it was ultimately less interested in whether interest is to be simple or compound than it is in there being a single method defined so as to maintain uniformity.

Response: The Department believes there are legitimate arguments to be made on either side of the question of whether the Act requires that the interest on roll-back taxes be simple interest or compound interest.

The Department notes that, in addition to the comments offered in the formal comment periods for the proposed regulation, it solicited and received comments on this same issue with respect to earlier drafts of the proposed regulation. These comments showed a similar divergence of opinion. Those favoring the *simple interest* side of the argument included Dr. Robert S. Barr (President, 21st Century Appraisals), John Becker (Professor of Agricultural Economics and Law, Director of Research at the Agricultural Law Research and Education Center of the Dickinson School of Law, Pennsylvania State University) and Commissioners and/or county assessors from Lehigh County, Mifflin County and Bradford County. Those favoring the *compound interest* side of the argument included following persons: members of Legislative Staff (offering informal comments, and not representing these comments as the final position of the Legislative Committees), a "Clean and Green" work group representing county assessors, and the Chief Assessor for Montgomery County.

The Department acknowledges that the resolution of this question is a "close call." On balance, though, the Department is inclined to afford the Legislative Committees' position the greatest deference. For this reason the proposed section has not been revised in the final-form regulation.

Comment: The Legislative Committees suggested paragraph (b)(2) of proposed § 137b.93 (relating to disposition of interest on roll-back taxes) be revised to include a reference to the "special roll-back account" described in the Act, at 72 P.S. § 5490.8(b.2).

Response: The suggestion has been implemented in the final-form regulation.

Comment: The Legislative Committees reviewed proposed § 137b.102 (relating to recordkeeping) and recommended "property record cards" be added as a reference to an appropriate location to record preferential assessment information, and that the final sentence of be deleted in order to "...conform with the specificity of the act ...".

IRRC offered its concurrence with the Legislative Committees' recommendation.

PFB also took issue with the phrase "it deems appropriate" in the second sentence of this section, and suggested it be deleted.

Response: The recommendations have been implemented in the final-form regulation.

Comment: The Assessors' Committee considered proposed § 137b.105 (relating to annual update of records), and asked for clarification of whether the provision mandates the annual reassessment of enrolled land and the annual calculation of new fair market values.

Response: The proposed section does not mandate the annual reassessment of enrolled land and the annual recalculation of fair market values. The section requires that records to be kept current.

Comment: The Legislative Committees suggested a minor technical correction to proposed § 137b.106 (relating to notification of change in preferential assessment status).

Response: The suggestion has been implemented in the final-form regulation.

Comment: Several comments were received with respect to proposed § 137b.131 (relating to civil penalties).

The Act (at 72 P.S. § 5490.5b(a)) allows for the imposition of a civil penalty upon a person for: "...each violation of this act or any regulation promulgated under this act." PFB raised the point that a civil penalty should not be imposed against a person who changes the use of enrolled land to some ineligible use. This change does not "violate" any provision of the Act or the final-form regulation. The Act does not prohibit the occurrence of such a change in use - it merely imposes roll-back tax consequences in the event certain land use changes occur. PFB suggested language be added to this section to prohibit the assessment of civil penalties solely on the basis that the landowner performed some act that triggers responsibility for payment of roll-back taxes and interest.

Sullivan County offered a similar comment.

The Legislative Committees offered their general support for the comments offered by PFB on this subject.

IRRC offered its concurrence with the comments of the Legislative Committees and PFB.

Response: The Department agrees with PFB and the other commentators on this subject, and has added appropriate language to the final-form regulation.

Comment: IRRC suggested proposed § 137b.131(d) (relating to civil penalties) be revised to replace the phrase "timely notification" with a specific reference to the 10-day deadline set forth in paragraph (b)(2).

Response: The suggestion has been implemented in the final-form regulation.

Comment: IRRC suggested proposed § 137b.131(c) (relating to civil penalties) be revised to replace the phrase "10 days" with "10 *calendar* days" in order to make the regulatory language track with the Act (at 72 P.S. § 5490.5b(b)).

Response: The suggestion has been implemented in the final-form regulation.

Comment: The Legislative Committees offered several general comments with respect to the proposed regulation.

The commentator noted that the Act (at 72 P.S. § 5490.10) allows for the renegotiation of certain "open space" agreements - at the option of the landowner - to make them conform to the preferential assessment requirements of the Act.

The commentator also noted that the Act (at 72 P.S. § 5490.5(c)) imposes certain requirements on the State Tax Equalization Board.

The commentator suggested the Department add new sections to the final-form regulation to address these subjects.

Response: The Department declines to implement the suggestion the final-form regulation address the renegotiation of "open space" agreements or the requirements imposed upon the State Tax Equalization Board. The sections of the Act which address these subjects (72 P.S. §§ 5490.10 and 5490.5(c), respectively) are self-executing and there is nothing helpful the Department could add through regulation.

Fiscal Impact

Commonwealth

The regulations will have no appreciable fiscal impact upon the Commonwealth.

Political Subdivisions

The regulations will impose costs upon county governments. Counties are likely to incur expenses in recalculating preferential assessments as required under the Act. There may also be costs involved as owners of currently-enrolled land seek recalculation of the preferential assessments of their land. In addition, the amendment to the Act accomplished by Act 156 may result in tax revenue shortfalls when collections from agricultural, agricultural reserve and forest reserve lands are lower than anticipated.

Private Sector

If the Act (as amended by Act 156) results in a county receiving less tax

revenue than anticipated from agricultural, agricultural reserve and forest reserve lands, other taxpayers from the private sector (that is, owners of lands that are not in agricultural use, agricultural reserve or forest reserve) may ultimately be called upon to make up this tax revenue shortfall.

General Public

If the Act (as amended by Act 156) results in a county receiving less tax revenue than anticipated from agricultural, agricultural reserve and forest reserve lands, other taxpayers (that is, owners of lands that are not in agricultural use, agricultural reserve or forest reserve) may ultimately be called upon to offset this tax revenue shortfall.

Paperwork Requirements

The regulation is not expected to result in an appreciable increase in paperwork.

Contact Person

Further information is available by contacting the Department of Agriculture, Bureau of Farmland Preservation, 2301 North Cameron Street, Harrisburg, Pa. 17110-9408, Attention: Raymond C. Pickering, (717) 783-3167.

Regulatory Review

Under § 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a), the Department submitted a copy of the Notice of Proposed Rulemaking published at 30 *Pennsylvania Bulletin* 4573 (September 2, 2000) on August 21, 2000 to IRRC and to the Chairpersons of the House and Senate Standing Committees on Agriculture and Rural Affairs for review and comment. As stated, no comments were received from either the Legislature or the public with respect to the proposed regulation.

In preparing this final-form regulation, the Department has considered all comments received.

This final-form regulation was (deemed) approved by the House Agricultural and Rural Affairs Committee on _____, was (deemed) approved by the Senate Agriculture and Rural Affairs Committee on _____, and was (deemed) approved by the Commission on _____.

Findings

The Department of Agriculture finds the following:

(1) Public notice of its intention to adopt the regulation encompassed by this Order has been given under §§ 201 and 202 of the act of July 31, 1968 (P.L.

769, No. 240)(45 P.S. §§ 1201 and 1202) and their attendant regulations at 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law and all comments received were considered.

(3) The modifications that were made to this regulation in response to comments received do not enlarge the purpose of the proposed regulation published at 30 *Pennsylvania Bulletin* 4573 (September 2, 2000).

(4) The adoption of the regulation in the manner provided in this Order is necessary and appropriate for the administration of the authorizing statute.

Order

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

(1) The current regulations of the Department of Agriculture at 7 Pa. Code Chapter 137 (relating to preferential assessment of farmland and forest land) are hereby rescinded.

(2) The current interim regulations of the Department of Agriculture at 7 Pa. Code Chapter 137a (relating to clean and green act - statement of policy) are hereby rescinded.

(3) New regulations of the Department of Agriculture are hereby established at 7 Pa. Code Chapter 137b (relating to preferential assessment of farmland and forest land under the clean and green act), as set forth at Annex "A" hereto.

(4) The Secretary of Agriculture shall submit this Order, 30 *Pennsylvania Bulletin* 4573 (September 2, 2000) and Annex "A" hereto to the Office of General Counsel and to the Office of Attorney General for approval as required by law.

(5) The Secretary of Agriculture shall certify this Order, 30 *Pennsylvania Bulletin* 4573 (September 2, 2000) and Annex "A" hereto and deposit them with the Legislative Reference Bureau as required by law.

(6) This Order shall take effect upon publication in the *Pennsylvania Bulletin.*

BY THE DEPARTMENT OF AGRICULTURE

Samuel E. Hayes, Jr., Secretary

Annex A

TITLE 7. AGRICULTURE

PART V-C. FARMLAND AND FOREST LAND

CHAPTER 137b. PREFERENTIAL ASSESSMENT OF FARMLAND AND FOREST LAND UNDER THE CLEAN AND GREEN ACT

GENERAL PROVISIONS

Sec.

ELIGIBLE LAND

APPLICATION PROCESS

GENERAL PROVISIONS

§ 137b.1. Purpose.

(a) This chapter establishes procedures necessary for the uniform Statewide implementation of the act. The act provides for land devoted to agricultural use, agricultural reserve use or forest reserve use to be assessed at the value it has for that use rather than at fair market value. The intent of the act is to encourage the keeping of land in one of these uses.

(b) The benefit to an owner of enrolled land is an assurance that the enrolled land will not be assessed at the same ~~rate~~ VALUE FOR TAX ASSESSMENT PURPOSES as land that is not enrolled land. In almost all cases, an owner of enrolled land will see a reduction in his property assessment compared to land assessed or valued at its fair market value. The difference between assessments of enrolled land and land that is not enrolled land will be most noticeable when a county is reassessed. ~~The intent of the act is to protect the owner of enrolled land from being forced to go out of agriculture, or sell part of the land to pay taxes.~~

§ 137b.2. Definitions.

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

Act--The Pennsylvania Farmland and Forest Land Assessment Act of 1974 (72 P. S.

§§ 5490.1--5490.13), commonly referred to as the Clean and Green Act.

Agricultural commodity--Any of the following:

(i) Agricultural, apicultural, aquacultural, horticultural, floricultural, silvicultural, viticultural and dairy products.

(ii) Pasture.

(iii) Livestock and the products thereof.

(iv) Ranch-raised furbearing animals and the products thereof.

(v) Poultry and the products of poultry.

(vi) Products commonly raised or produced on farms which are intended for human consumption or are transported or intended to be transported in commerce.

(vii) Processed or manufactured products of products commonly raised or produced on farms which are intended for human consumption or are transported or intended to be transported in commerce.

Agricultural reserve--

(i) Noncommercial open space lands used for outdoor recreation or the enjoyment of scenic or natural beauty and open to the public for that use, without charge or fee, on a nondiscriminatory basis.

(ii) The term includes any farmstead land on the tract.

Agricultural use--Land which is used for the purpose of producing an agricultural commodity or is devoted to and meets the requirements and qualifications for payments or other compensation under a soil conservation program under an agreement with an agency of the Federal government.

(i) The term includes any farmstead land on the tract.

(ii) The term includes a woodlot.

(iii) The term includes land which is rented to another person and used for the purpose of producing an agricultural commodity.

Assessment ratio or *county's established predetermined ratio*--The ratio established by a taxing body that determines on what portion of the assessed value the millage rate is to be levied, as prescribed by assessment law.

Capitalization rate--The percentage rate used to convert income to value, as determined by the most recent 5-year rolling average of 15-year fixed loan interest rates offered to landowners by the Federal Agricultural Mortgage Corporation or other similar Federal agricultural lending institution, adjusted to include the landowner's risk of investment

and the effective tax rate.

Class A beneficiaries for inheritance tax purposes--The following relations to a decedent: grandfather, grandmother, father, mother, husband, wife, lineal descendants, wife, widow, husband or widower of a child. Lineal descendants include all children of the natural parents and their descendants, whether or not they have been adopted by others, adopted descendants and their descendants and stepdescendants.

Contiguous tract--

(i) All portions of one operational unit as described in the deed or deeds, whether or not the portions are divided by streams, public roads or bridges and whether or not the portions are described as multiple tax parcels, tracts, purparts or other property identifiers.

(ii) The term includes supportive lands, such as unpaved field access roads, drainage areas, border strips, hedgerows, submerged lands, marshes, ponds and streams.

Contributory value of farm building--The value of the farm building as an allocated portion of the total fair market value assigned to the tract, irrespective of replacement cost of the building.

~~(i) The preferred method of calculating the contributory value of a farm building shall be a method based upon fair market comparison and the extraction of the value of the farm building from the total fair market value of the parcel.~~

~~(ii) Alternate methods of calculating this value may be used when the contributory value of a farm building using the preferred approach would not accurately reflect this contributory value.~~

County--The county assessor, the county board of assessment or other county entity responsible to perform or administer a specific function under the act.

Curtilage--The land surrounding a residential structure and farm building used for a yard, driveway, onlot sewage system or access to any building on the tract.

Department--The Department of Agriculture of the Commonwealth.

Enrolled land--Land eligible for a preferential assessment under an approved application for preferential assessment filed in accordance with the act.

Fair market value--The price as of the valuation date for the highest and best use of the property which a willing and informed seller who is not obligated to sell would accept for the property, and which a willing and informed buyer who is under no obligation to buy would pay for the property.

Farm building--A structure utilized to store, maintain or house farm implements, agricultural commodities or crops, livestock and livestock products, as defined in the

Agricultural Area Security Law (3 P. S. §§ 901--915).

Farmstead land--Any curtilage and land situated under a residence, farm building or other building which supports a residence, including a residential garage or workshop.

Forest reserve--Land, 10 acres or more, stocked by forest trees of any size and capable of producing timber or other wood products.

~~(i)~~ The term includes farmstead land on the tract.

~~(ii) The term includes land which is rented to another person and used for the purpose of producing timber or other wood products.~~

Income approach--The method of valuation which uses a capitalization rate to convert annual net income to an estimate of present value. Present value is equal to the net annual return to land divided by the capitalization rate.

Ineligible land--Land which is not used for any of the three eligible uses (agricultural use, agricultural reserve or forest reserve) and therefore cannot receive use value assessment.

Land use category--Agricultural use, agricultural reserve or forest reserve.

Land use subcategory--A category of land in agricultural use, agricultural reserve or forest reserve, established by the Department and assigned a particular use value in accordance with sections 3 and 4.1 of the act (72 P. S. §§ 5490.3 and 5490.4a). A land use subcategory may be based upon soil type, forest type, soil group or any other recognized subcategorization of agricultural or forest land.

Net return to land--Annual net income per acre after operating expenses are subtracted from gross income. The calculation of operating expenses does not include interest or principal payments.

Normal assessment--The total fair market value of buildings and ineligible land, as of the base year of assessment, on a tract multiplied by the assessment ratio.

Outdoor recreation--Passive recreational use of land that does not entail the erection of permanent structures~~, grading of the land, the disturbance or removal of topsoil~~ or any change to the land which would render it incapable of being immediately converted to agricultural use.

~~(i) The term includes hiking, hunting, horseback riding and similar passive recreational uses of the land.~~

~~(ii) The term does not include the use of land for baseball, soccer fields, football fields, golf courses or similar uses.~~

Pasture--Land, other than land enrolled in the USDA Conservation Reserve Program, used primarily for the growing of grasses and legumes for consumption by livestock.

Person--A corporation, partnership, limited liability company, business trust, other

association, government entity (other than the Commonwealth), estate, trust, foundation or natural person.

Preferential assessment--The total use value of land qualifying for assessment under the act.

Roll-back tax--The amount equal to the difference between the taxes paid or payable on the basis of the valuation AND THE ASSESSMENT AUTHORIZED UNDER THE ACT and the taxes that would have been paid or payable had that land ~~not~~ been valued, assessed and taxed as other land in the taxing district in the current tax year, the year of change, and in 6 of the previous tax years or the number of years of preferential assessment up to 7.

Rural enterprise incidental to the operational unit--A commercial enterprise or venture that is conducted within 2 acres or less of enrolled land and, when conducted, does not permanently impede or otherwise interfere with the production of an agricultural commodity on that portion of the enrolled land that is not subject to roll-back taxes under section 8(d) of the act (72 P. S. § 5490.8(d)) as a result of that commercial enterprise or venture.

Separation--A division, by conveyance or other action of the owner, of ~~enrolled land~~ LANDS DEVOTED TO AGRICULTURAL USE, AGRICULTURAL RESERVE OR FOREST RESERVE AND PREFERENTIALLY ASSESSED UNDER THE PROVISIONS OF THE ACT, into two or more tracts of land, the use of which continues to be agricultural use, agricultural reserve or forest reserve and all tracts so formed meet the requirements of section 3 of the act.

Split-off--A division, by conveyance or other action of the owner, of ~~enrolled land~~ LANDS DEVOTED TO AGRICULTURAL USE, AGRICULTURAL RESERVE OR FOREST RESERVE AND PREFERENTIALLY ASSESSED UNDER THE PROVISIONS OF THE ACT, into two or more tracts of land, the use of which on one or more of the tracts does not meet the requirements of section 3 of the act.

Tract--

(i) A lot, piece or parcel of land.

(ii) The term does not refer to any precise dimension of land.

Transfer--A conveyance of all of the ~~contiguous~~ enrolled land described in a single application for preferential assessment under the act. ~~When a single application for preferential assessment includes noncontiguous land, the conveyance of the entirety of any contiguous land described in that application is also a transfer.~~

USDA--The United States Department of Agriculture.

USDA-ERS--The United States Department of Agriculture-Economic Research Service.

USDA-NRCS--The United States Department of Agriculture-Natural Resources

Conservation Service.

Woodlot--An area of less than 10 acres, stocked by trees of any size and contiguous to or part of land in agricultural use or agricultural reserve.

§ 137b.3. Responsibilities of the Department.

(a) *General.* The Department's responsibilities are to provide the use values described in section 4.1 of the act (72 P. S. § 5490.4a) BY MAY 1 OF EACH YEAR and TO provide the forms and regulations necessary to promote the efficient, uniform Statewide administration of the act.

(b) *Information gathering.* The Department will collect information from county assessors for each calendar year to insure that the act and this chapter are being implemented fairly and uniformly throughout this Commonwealth. This information will be collected through a survey form to be provided to county assessors by the Department no later than December 15 each year, and which county assessors shall complete and submit to the Department by January 31 of the following year.

(C) *EDUCATIONAL OUTREACH.* THE DEPARTMENT WILL CONDUCT AN EDUCATIONAL OUTREACH EFFORT ON MATTERS RELATED TO THE ADMINISTRATION AND INTERPRETATION OF THE ACT AND THIS CHAPTER.

§ 137b.4. Contacting the Department.

For purposes of this chapter, communications to the Department shall be directed to the following address:

Pennsylvania Department of Agriculture
Bureau of Farmland Protection
2301 North Cameron Street
Harrisburg, PA 17110-9408
Telephone: (717) 783-3167
Facsimile: (717) 772-8798

ELIGIBLE LAND

§ 137b.11. General.

Three types of land are eligible for preferential assessment under the act.

(1) Land in agricultural use.

(2) Land in agricultural reserve.

(3) Land in forest reserve.

§ 137b.12. Agricultural use.

Land that is in agricultural use is eligible for preferential assessment under the act if it has been ~~in agricultural production~~ PRODUCING AN AGRICULTURAL COMMODITY OR HAS BEEN DEVOTED TO A SOIL CONSERVATION PROGRAM UNDER AN AGREEMENT WITH THE FEDERAL GOVERNMENT for at least 3 years preceding the application for preferential assessment, and is one of the following:

(1) Comprised of 10 or more contiguous acres (including any farmstead land and woodlot).

(2) Has an anticipated yearly gross ~~agricultural production~~ income of at least $2,000 from the production of an agricultural commodity.

§ 137b.13. Agricultural reserve.

Land that is in agricultural reserve is eligible for preferential assessment under the act if ~~at least 60% of the land is in USDA-NRCS land capability classifications I through VI, excluding water areas and wetland areas, and~~ the land is comprised of 10 or more contiguous acres (including any farmstead land AND ANY WOODLOT).

§ 137b.14. Forest reserve.

Land that is in forest reserve is eligible for preferential assessment under the act if it is presently stocked with trees ~~so that it is capable of producing annual growth of 25 cubic feet per acre,~~ and the land is comprised of 10 or more contiguous acres (including any farmstead land). FOREST RESERVE LAND INCLUDES LAND THAT IS RENTED TO ANOTHER PERSON FOR THE PURPOSE OF PRODUCING TIMBER OR OTHER WOOD PRODUCTS.

§ 137b.15. Inclusion of farmstead land.

(a) Farmstead land is an integral part of land in agricultural use, agricultural reserve or forest reserve. In considering whether land is in agricultural use, agricultural reserve or forest reserve, a county shall include any portion of that land that is farmstead land.

(b) Farmstead land shall be considered to be land that qualifies for preferential

assessment under the act and this chapter.

§ 137b.16. Residence not required.

A county may not require that an applicant for preferential assessment under the act be a resident of the county or reside on the land with respect to which preferential assessment is sought.

§ 137b.17. Common ownership required.

A landowner seeking preferential assessment under the act shall be the owner of every tract of land listed on the application.

Example 1: Husband and wife are joint owners of two contiguous 100-acre tracts of farmland. They have common ownership of both tracts and may include these tracts in a single application for preferential assessment.

Example 2: Husband and wife are joint owners of a 100-acre tract of farmland. Husband and son are joint owners of a contiguous 100-acre tract of farmland. These two tracts may not be combined in a single application for preferential assessment.

§ 137b.18. County-imposed eligibility requirements.

A county assessor may not impose eligibility requirements or conditions other than those prescribed in section 3 of the act (72 P. S. § 5490.3).

Example: A county may not require an owner of contiguous--but separately deeded--tracts of land to consolidate the tracts in a single deed or require any alteration of existing deeds as a condition of eligibility for preferential assessment.

§ 137b.19. Multiple tracts on a single application.

A landowner seeking preferential assessment under the act may include more than one tract in a single application for preferential assessment, regardless of whether the tracts on the application have separate deeds, are identified by separate tax parcel numbers or are otherwise distinct from each other.

(1) *Contiguous tracts.*

(i) A landowner seeking preferential assessment under the act may include in the application individual contiguous tracts that would not--if considered individually--qualify for preferential assessment.

(ii) If two or more tracts on a single application for preferential assessment are contiguous, the entire contiguous area shall meet the use and minimum size requirements for eligibility.

(2) *Noncontiguous tracts.* If any tract on a single application for preferential assessment is not contiguous to another tract described on that application, that individual tract shall--by itself--meet the use and minimum size requirements for eligibility.

§ 137b.20. Inclusion of all contiguous land described in the deed to the tract with respect to which enrollment is sought.

A landowner may not apply for preferential assessment for less than the entire contiguous portion of land described in the deed applicable to a tract with respect to which preferential assessment is sought.

Example 1: A landowner owns a single, 100-acre tract of farmland described in a single deed, and wishes to apply for preferential assessment under the act. The application may not be for less than the entire 100 acres.

Example 2: A landowner owns 150 acres of farmland described in a single deed, and wishes to apply for preferential assessment under the act. The deed to this land describes three separate tracts: two contiguous 50-acre tracts and a noncontiguous 50-acre tract. The landowner's options are as follows:

(1) Enroll the contiguous 50-acre tracts.

(2) Enroll the noncontiguous 50-acre tract.

(3) Enroll both the contiguous 50-acre tracts and the noncontiguous 50-acre tract.

The landowner does not have the option to enroll only one of the contiguous 50-acre tracts.

§ 137b.21. Exclusion of noncontiguous tract described in a single deed.

If two or more tracts of land are described in a single deed, a landowner seeking preferential assessment under the act may exclude from the application for preferential assessment any separately-described tract that is not contiguous to the tracts for which preferential assessment is sought.

Example: A landowner owns 150 acres of farmland described in a single deed, and wishes to apply for preferential assessment under the act. The deed to this land describes three separate tracts: two contiguous 50-acre tracts and a noncontiguous 50-acre tract. The landowner has the option to seek to enroll the noncontiguous 50-acre tract.

§ 137b.22. Landowner may include or exclude from the application tracts described in separate deeds.

If the landowner seeking preferential assessment under the act owns contiguous tracts that are described in separate deeds, the landowner may include or exclude any of the contiguous tracts from the application for preferential assessment.

§ 137b.23. Land adjoining preferentially assessed land with common ownership is eligible.

(a) *General.* A tract of land in agricultural use, agricultural reserve or forest reserve shall receive a preferential assessment under the act regardless of whether the tract meets the 10-contiguous-acres minimum acreage requirement or the $2,000-per-year minimum anticipated gross income requirement, or both, established in section 3 of the act (72 P. S. § 5490.3) if the following occur:

(1) The landowner owns both the tract for which preferential assessment is sought and a contiguous tract of enrolled land.

(2) The landowner files an amended application for preferential assessment, describing both the tract for which preferential assessment is sought and the contiguous tract of enrolled land. The amended application shall be in accordance with the act and this chapter.

(b) *Roll-back taxes.* A violation of the provisions of preferential assessment on a tract added under subsection (a) shall trigger liability for roll-back taxes, plus interest, on that tract and all other contiguous tracts identified in the amended application.

§ 137b.24. Ineligible land ~~may appear on an application, although it cannot receive preferential assessment~~.

A landowner seeking preferential assessment under the act shall include ineligible land on the application if the ineligible land is part of a larger contiguous tract of eligible land, and the use of the land which causes it to be ineligible exists at the time the application is filed. Although this ineligible land may not receive preferential assessment, the applicant shall specify the boundaries and acreage of the ineligible land, AND MAY NOT EXPAND

THE BOUNDARIES BEYOND THOSE IDENTIFIED IN THE INITIAL APPLICATION. A LANDOWNER SHALL NOT BE REQUIRED, AS A CONDITION OF COUNTY ACCEPTANCE OR APPROVAL OF THE APPLICATION, TO SURVEY OR RE-DEED THE TRACT SO AS TO EXCLUDE THE INELIGIBLE LAND. ~~The ultimate determination of whether land is eligible or ineligible shall be made by the county assessor.~~

> *Example:* A landowner owns a 100-acre tract of land, 90 acres of which is productive farmland and 10 acres of which is occupied by an auto salvage yard. If the landowner seeks preferential assessment of the 90 acres of farmland, the application shall describe the entire 100-acre tract ~~and the county will not require the 10-acre tract be surveyed out or deeded as a prerequisite to the application being considered~~. If preferential assessment is granted, it will apply to the 90 acres of farmland. The 10-acre tract would continue to be assigned its fair market value and assessed accordingly.

§ 137b.25. Multiple land use categories on a single application.

An applicant for preferential assessment under the act may include land in more than one land use category in the application. A county assessor shall allow the applicant to submit an application that designates those portions of the tract to be assessed under each of the different land use categories.

> *Example:* A landowner owns 100 acres of land. The landowner may submit an application that designates 75 acres in agricultural use, 13 acres in agricultural reserve and 12 acres in forest reserve, if the acreage identified by the landowner for the particular land use category meets the minimum criteria in section 3 of the act (72 P. S. § 5490.3) for that land use category.

§ 137b.26. Land located in more than one tax district.

If land for which preferential assessment is sought lies in more than one taxing district, the county's determination as to whether the land meets applicable minimum acreage requirements for eligible land shall be made on the basis of the total contiguous acreage--without regard to the boundaries of the taxing districts in which the land is located.

> *Example 1:* A landowner has a 100-acre tract of farmland--94 acres of which ~~lies~~ LIE in Township A and 6 acres of which ~~lies~~ LIE in Township B. The landowner files an application seeking preferential assessment of this land. The fact that the tract lies in two separate townships shall be immaterial to the determination of whether the 100-acre tract meets the requirements for preferential assessment under the act.

> *Example 2:* A landowner has a 100-acre tract of farmland--94 acres of which ~~lies~~ LIE in County A and 6 acres of which ~~lies~~ LIE in County B. The landowner files

an application ~~in each county,~~ seeking preferential assessment ~~of that portion of the 100-acre tract lying within the respective counties~~. The fact that the tract lies in two separate counties shall be immaterial to the determination of whether the land described in the application meets the requirements for preferential assessment under the act.

§ 137b.27. Assessment of ineligible land.

Land ~~and buildings~~ that ~~are~~ IS included in an application for preferential assessment under the act but ~~are~~ IS ineligible for preferential assessment shall be appraised at fair market value and shall be assessed accordingly.

APPLICATION PROCESS

§ 137b.41. Application forms and procedures.

(a) *Standardized application form required.* A county shall require a landowner seeking to apply for preferential assessment under the act to make that application on a current "Clean and Green Valuation Application" form--a uniform preferential assessment application form developed by the Department. The Department will provide an initial supply of these forms to a county upon request. The county assessor shall maintain an adequate supply of these forms. THE FOLLOWING SHALL BE REQUIRED OF AN APPLICANT ON THE CLEAN AND GREEN VALUATION APPLICATION FORM:

(1) NAME, ADDRESS AND TELEPHONE NUMBER OF EACH LANDOWNER.

(2) A STATEMENT AS TO THE FORM OF OWNERSHIP OF THE LAND (WHETHER BY AN INDIVIDUAL, PARTNERSHIP, CORPORATION, ETC...).

(3) A STATEMENT OF WHETHER THE LAND IS CURRENTLY SUBJECT TO A COVENANT FOR PRESERVATION OF "OPEN SPACE" LAND IN ACCORDANCE WITH ACT NO. 515 OF 1965 (16 P.S. § 11941 *ET SEQ.*).

(4) A DESCRIPTION OF THE LOCATION OF THE LAND, INCLUDING THE SCHOOL DISTRICT(S) IN WHICH IT IS LOCATED.

(5) A DESIGNATION OF THE LAND USE CATEGORY OR CATEGORIES (AGRICULTURAL USE, AGRICULTURAL RESERVE AND FOREST RESERVE) WITH RESPECT TO WHICH PREFERENTIAL ASSESSMENT IS SOUGHT, AND SUCH INFORMATION AS MIGHT REASONABLY BE REQUIRED TO CONFIRM THAT THE LAND FALLS WITHIN THE LAND USE CATEGORY WITH RESPECT TO WHICH PREFERENTIAL ASSESSMENT IS SOUGHT.

(6) SUCH OTHER INFORMATION AS MIGHT BE REASONABLY REQUIRED ON THE APPLICATION FORM IN ORDER TO CONFIRM THE LOCATION AND OWNERSHIP OF THE LAND, THE LAND USE CATEGORY OR CATEGORIES OF THE LAND AND WHETHER THE LAND IS, IN FACT, ELIGIBLE FOR PREFERENTIAL ASSESSMENT.

(7) THE SIGNATURE OF ALL OF THE OWNERS OF THE LAND.

(b) *Application form and worksheets.* A landowner seeking to apply for preferential assessment under the act shall complete a Clean and Green Valuation Application. The county assessor shall complete the appropriate sections of the current "Clean and Green Valuation Worksheet" form for each category of eligible land described in the application. The Department will provide an initial supply of these forms to a county upon request.

(c) *Obtaining an application and reviewing this chapter.* A landowner seeking preferential assessment under the act may obtain an application form and required worksheets from the county board of assessment office. A county assessor shall retain a copy of this chapter at the county board of assessment office, and shall make this copy available for inspection by any applicant or prospective applicant.

(d) *Required language.* An application for preferential assessment shall contain the following statement:

> The applicant for preferential assessment hereby agrees, if the application is approved for preferential assessment, to submit 30 days notice to the county assessor of a proposed change in use of the land, a change in ownership of a portion of the land or of any type of division or conveyance of the land. The applicant for preferential assessment hereby acknowledges that, if the application is approved for preferential assessment, roll-back taxes AND INTEREST under the act in 72 P. S. § 5490.5a may be due for a change in use of the land, a change in ownership of a portion of the land, or any type of division or conveyance of the land.

(e) *Additional information.* A county assessor may require an applicant to provide additional information or documentation necessary to substantiate that the land is eligible for preferential assessment. A county assessor requiring additional information shall notify the applicant in writing and shall clearly state in the notice the reasons why the application or other information or documentation submitted by the applicant is insufficient to substantiate eligibility, and shall identify the particular information the county assessor requests to substantiate eligibility.

(f) *Signature of all landowners required.* An application for preferential assessment may not be accepted by a county if it does not bear the notarized signature of all of the owners of the land described in the application.

§ 137b.42. Deadline for submission of applications.

(a) *General.* A landowner seeking preferential assessment under the act shall apply to the county by June 1. If the application is approved by the county assessor, preferential assessment shall be effective as of the commencement of the tax year of each taxing body commencing in the calendar year immediately following the application deadline.

> *Example 1:* A landowner applies for preferential assessment on or before June 1, 2001. The application is subsequently approved. Preferential assessment shall be effective as of the commencement of the tax year for each taxing body in calendar year 2002.
>
> *Example 2:* A landowner applies for preferential assessment on or after June 2, 2001, but not later than June 1, 2002. The application is subsequently approved. The application deadline is June 1, 2002. Preferential assessment shall be effective as of the commencement of the tax year for each taxing body in calendar year 2003.

(b) *Exception: years in which a county implements countywide reassessment.* In those years when a county implements a countywide reassessment, or a countywide reassessment of enrolled land, the application deadline shall be extended to either a date 30 days after the final order of the county board for assessment appeals or by October 15 of the same year, whichever date is sooner. This deadline is applicable regardless of whether judicial review of the order is sought.

§ 137b.43. Applications where subject land is located in more than one county.

If a landowner seeks to enroll a tract of land for preferential assessment under the act, and the tract is located in more than one county, the landowner shall file the application with the county assessor in the county to which the landowner pays property taxes.

§ 137b.44. County processing of applications.

A county shall accept and process in a timely manner all complete and accurate applications for preferential assessment so that, if the application is accepted, preferential assessment is effective as of the tax year of each taxing body commencing in the calendar year immediately following the application deadline.

> *Example 1:* An application for preferential assessment is filed on or before June 1, 2001. The county must review and process the application so that--if the application is approved--preferential assessment can take effect as of the commencement of the tax year of each taxing body commencing in 2002 (the calendar year immediately following the application deadline).

Example 2: An application for preferential assessment is filed at some point from June 2, 2001 through June 1, 2002. The county must review and process the application so that--if the application is approved--preferential assessment can take effect as of the commencement of the tax year of each taxing body commencing in 2003 (the calendar year immediately following the application deadline).

§ 137b.45. Notice of qualification for preferential assessment.

A county assessor shall provide an applicant for preferential assessment under the act with written notification of whether the land described in that application qualifies for that preferential assessment or fails to meet the qualifications for preferential assessment.

§ 137b.46. Fees of the county board for assessment appeals; RECORDING FEES; PROCESSING FEES.

(a) *Application processing fee.* A county board for assessment appeals may impose a fee of no more than $50 for processing an application for preferential assessment under the act~~, or for processing changes other than those described in subsection (b)~~. This fee may be charged regardless of whether the application is ultimately approved or rejected. This fee is exclusive of any fee which may be charged by the recorder of deeds for recording the application.

(b) *Circumstances under which initial application shall be amended without charge.* A county board for assessment appeals may not charge a fee for amending an initial application for preferential assessment ~~to reflect changes resulting from one or more of the following:~~

~~(1) Split-off.~~

~~(2) Separation.~~

~~(3) Transfer or change of ownership.~~

(C) *RECORDING FEES.* A RECORDING FEE MAY NOT BE ASSESSED IF AN APPLICATION FOR PREFERENTIAL ASSESSMENT IS NOT APPROVED.

PREFERENTIAL ASSESSMENT

§ 137b.51. Assessment procedures.

(a) *Use values and land use subcategories to be provided by the Department.* The Department will determine the land use subcategories and provide county assessors use

values for each land use subcategory. The Department will provide these land use subcategories and use values to each county assessor by May 1 of each year.

(b) *Determining use values and land use subcategories.*

(1) *Agricultural use and agricultural reserve.* In calculating appropriate county-specific agricultural use values and agricultural reserve use values, and land use subcategories, the Department will consult with the Department of Agricultural Economics and Rural Sociology of the College of Agricultural Sciences at ~~the~~ THE Pennsylvania State University, the Pennsylvania Agricultural Statistics Service, USDA-ERS, USDA-NRCS and other sources the Department deems appropriate. In determining county-specific agricultural use and agricultural reserve use values, the Department will use the income approach for asset valuation.

(2) *Forest reserve.* In calculating appropriate county-specific forest reserve use values and land use subcategories, the Department will consult with the Bureau of Forestry of the Department of Conservation and Natural Resources.

(c) *County assessor to determine total use value.*

(1) For each application for preferential assessment, the county assessor shall establish a total use value for land in agricultural use and agricultural reserve, including farmstead land, by considering available evidence of the capability of the land for its particular use utilizing the USDA-NRCS Agricultural Land Capability Classification system and other information available from USDA-ERS, ~~the~~ THE Pennsylvania State University and the Pennsylvania Agricultural Statistics Service. Contributory value of farm buildings, as calculated in accordance with § 137b.54 (relating to calculating the contributory value of farm buildings), shall be used.

(2) For each application for preferential assessment, the county assessor shall establish a total use value for land in forest reserve, including farmstead land, by considering available evidence of THE capability of the land for its particular use. Contributory value of farm buildings, as calculated in accordance with § 137b.54 shall be used.

(d) *Determining preferential assessment.* The preferential assessment of land is determined by multiplying the number of acres in each land use subcategory by the use value for that particular land use subcategory, ~~and then~~ adding these products AND MULTIPLYING THE TOTAL BY THE COUNTY'S ESTABLISHED PREDETERMINED RATIO. The Department will establish land use subcategories as part of the procedure to establish use values.

(e) *Option of county assessors to establish and use lower use values.* A county assessor may establish use values for land use subcategories that are less than the use values established by the Department for those same land use subcategories. A county assessor may use these lower use values in determining preferential assessments under the act. Regardless of whether the county assessor applies use values established by the Department or lower use values established by the county assessor, the county assessor shall apply the use values

uniformly when calculating or recalculating preferential assessments, and shall apply these use values to the same land use subcategories as established by the Department. Calculation and recalculation of preferential assessments shall be made in accordance with § 137b.53 (relating to calculation and recalculation of preferential assessment). A county assessor may not, under any circumstances, establish or apply use values that are higher than those use values established by the Department.

(f) *Option of county assessors to select between county-established use values and use values provided by the Department.* When a county assessor has established use values for ~~the three land use categories (agricultural use, agricultural reserve and forest reserve)~~ LAND USE SUBCATEGORIES, and the use values for some--but not all--of these land use ~~categories~~ SUBCATEGORIES are lower than those provided by the Department, the county assessor has the option to apply the lower use value with respect to each individual land use ~~category~~ SUBCATEGORY, without regard to whether it was provided by the Department or established by the county assessor.

§ 137b.52. Duration of preferential assessment.

(a) *General.* Enrolled land shall remain under preferential assessment for as long as it continues to meet the minimum qualifications for preferential assessment. Land that is in agricultural use, agricultural reserve or forest reserve shall remain under preferential assessment even if its use changes to either of the other two ~~uses~~ LAND USE CATEGORIES.

> *Example:* A landowner owns a 100-acre tract of enrolled land, consisting of 85 acres in agricultural use and 15 acres in forest reserve. If the landowner later amends his application to one in which 60 acres are in agricultural use, 30 acres are in agricultural reserve and 10 acres are in forest reserve, the entire 100-acre tract continues to receive preferential assessment (although different use values and land use subcategories may apply in recalculating the preferential assessment).

(b) *No termination of preferential assessment without change of use.* An owner of enrolled land may not unilaterally terminate or waive the preferential assessment of enrolled land. Preferential assessment terminates as of the change of use of the land to something other than agricultural use, agricultural reserve or forest reserve. It is this event--the change of use of the enrolled land to something other than agricultural use, agricultural reserve or forest reserve--that terminates preferential assessment and triggers liability for roll-back taxes and interest. ~~Although an owner of enrolled land may not unilaterally terminate or waive the preferential assessment of enrolled land, the landowner may minimize roll-back tax liability by voluntarily paying taxes in the amount the landowner would be obligated to pay if the land not preferentially assessed.~~

> ~~*Example 1:* An owner of 60 acres of enrolled land no longer wishes to have the enrolled land receive a preferential assessment under the act. The landowner~~

~~writes the county assessor and notifies the county assessor of this desire. The landowner does not change the use of the land from one of the land use categories. The preferential assessment of the land shall continue.~~

~~*Example 2:* Same facts as Example 1, except the landowner changes the use of the 60 aces of enrolled land to something other than agricultural use, agricultural reserve or forest reserve, and the change of use occurs on July 1. Preferential assessment ends as of that change of use, and roll-back taxes and interest are due as of the date of the change of use.~~

~~*Example 3:* Same facts as Example 1, except that the landowner began to receive preferential assessment in the 1998 tax year. Beginning with the 2000 tax year and each tax year thereafter, the landowner elects to voluntarily pay--and the county assessor agrees to accept--property taxes on the basis of the enrolled land's fair market assessed value, rather than the enrolled land's preferential assessment value. On September 1, 2004, the landowner changes the use of all of the land to something other than agricultural use, agricultural reserve or forest reserve. Preferential assessment ends as of the change of use, and the landowner is liable for the payment of roll-back taxes. Assuming the landowner paid all of the taxes due for tax years 2000, 2001, 2002, 2003 and 2004 based upon the normal assessed value of the enrolled land, the landowner would only be liable for roll-back taxes and interest for tax years 1998 and 1999--the only tax years of the 7-year period for roll-back tax liability in which the landowner paid taxes based upon preferential assessment, rather than the enrolled land's normal assessed value.~~

~~*Example 4:* Same facts as Example 3, except that on September 1, 2007, the landowner changes the use of all of the land to something other than agricultural use, agricultural reserve or forest reserve. Preferential assessment ends as of the change of use, and the landowner is liable for the payment of roll-back taxes. Since the landowner had been voluntarily paying taxes on the basis of the normal assessed value of the enrolled land for longer than the 7-year period for roll-back tax liability, though, the landowner's roll-back tax liability would be zero.~~

(c) *Split-offs, separations, transfers and other events.* Split-offs THAT MEET THE SIZE, USE AND AGGREGATE ACREAGE REQUIREMENTS IN SECTION 6(a.1)(1)(i) OF THE ACT (72 P.S. § 5490.6(a.1)(1)(i)), separations and transfers under the act or this chapter will not result in termination of preferential assessment on the land which is retained by the landowner and which continues to meet the requirements of section 3 of the act (72 P. S. § 5490.3). In addition, the following events will not result in termination of preferential assessment on that portion of enrolled land which continues to meet the requirements of section 3 of the act:

(1) The lease of a portion of the enrolled land to be used for a wireless or cellular communication tower in accordance with section 6(b.1) of the act (72 P. S. § 5490.6(b.1)) and § 137b.73 (relating to wireless or cellular telecommunications facilities).

(2) The change of use of a portion of the enrolled land to another land use category (agricultural use, agricultural reserve or forest reserve).

(3) Condemnation of a portion of the land.

(4) The sale or donation of a portion of the enrolled land to any of the entities described in section 8(b)(1)--(7) of the act (72 P. S. § 5490.8(b)(1)--(7)), for the purposes described in that section, and § 137b.74 (relating to option to accept or forgive roll-back taxes in certain instances).

(5) The use of up to 2 acres of the enrolled land for direct commercial sales of agriculturally related products or for a rural enterprise incidental to the operational unit, in accordance with section 8(d) of the act and § 137b.72 (relating to direct commercial sales of agriculturally related products and activities; rural enterprises incidental to the operational unit).

(6) The conveyance of a portion of the enrolled land to a nonprofit corporation for use as a cemetery, in accordance with section 8(e) of the act and § 137b.75 (relating to ~~transfer~~ CONVEYANCE of enrolled land for use as a cemetery).

(7) The conveyance of a portion of the enrolled land to a nonprofit corporation for use as a trail, in accordance with section 8(e) of the act and § 137b.76 (relating to ~~transfer~~ CONVEYANCE of enrolled land or ~~transfer~~ CONVEYANCE of an easement or right-of-way across enrolled land for use as a trail).

(8) The distribution, upon the death of the owner of the enrolled land, of the enrolled land among the beneficiaries designated as Class A for inheritance tax purposes, in accordance with section 6(d) of the act and § 137b.71 (relating to death of an owner of enrolled land).

(d) *Payment of roll-back taxes does not affect preferential assessment of remaining land.* The payment of roll-back taxes and interest under the act and this chapter may not result in termination of preferential assessment on the remainder of the land covered by preferential assessment. THE LANDOWNER MAY TERMINATE PREFERENTIAL ASSESSMENT ON ENROLLED LAND SUBJECT TO ROLL-BACK TAXES BY SUBMITTING WRITTEN NOTICE PURSUANT TO SECTION 3(d) OF THE ACT (72 P.S. § 5490.3(d)).

Example 1: A landowner owns a 100-acre tract of enrolled land, which is in agricultural use. The landowner splits off a tract of no more than 2 acres and that 2-acre tract is used for a residential dwelling as described in section 6(a.1)(1)(i) of the act and meets the other criteria in that paragraph. Although the 2-acre tract is no longer entitled to receive preferential assessment, the 98-acre tract shall continue to receive preferential assessment. Also, roll-back taxes AND INTEREST would be due with respect to the 2-acre tract.

Example 2: Landowner A owns a 100-acre tract of enrolled land, which is in agricultural use. Landowner A splits off a 2-acre tract and sells it to Landowner B,

with the understanding that Landowner B will use the land for a residential dwelling permitted under section 6(a.1)(1)(i) of the act. Roll-back taxes AND INTEREST are due with respect to the 2-acre tract. Landowner B does not erect the permitted residential dwelling, but converts the 2-acre tract to commercial use. Landowner B owes roll-back taxes AND INTEREST with respect to the entire 100-acre tract (under section 6(a.1) of the act). Landowner A has no liability for any of the roll-back taxes AND INTEREST which were triggered and are owed by Landowner B as a result of the conversion of the 2-acre tract to commercial use. If the 98-acre tract owned by Landowner A continues in agricultural use, agricultural reserve or forest reserve, and continues to meet the requirements of section 3 of the act, it shall continue to receive preferential assessment.

Example 3: Landowner A owns a 100-acre tract of enrolled land, which is in agricultural use. Landowner A separates the land into a 50-acre tract and two 25-acre tracts, and sells a 25-acre tract to Landowner B. All 100 acres continue in agricultural use and continue to meet the requirements of section ~~2~~ 3 of the act. No roll-back taxes are due. The entire 100-acre tract shall continue to receive preferential assessment.

Example 4: Same facts as Example 3, except that within 7 years of the separation, Landowner B changes the use of his 25-acre tract to something other than agricultural use, agricultural reserve or forest reserve. Landowner B shall pay roll-back taxes AND INTEREST with respect to the entire 100-acre tract (under section 6(a.2) of the act). If the 75 acres owned by Landowner A continues in agricultural use, agricultural reserve or forest reserve, and continues to meet the requirements of section ~~2~~ 3 of the act, it shall continue to receive preferential assessment under the act.

Example 5: Same facts as Example 3, except that more than 7 years after the date of separation, Landowner B changes the use of his 25-acre tract to something other than agricultural use, agricultural reserve or forest reserve. Landowner B shall pay roll-back taxes on his 25-acre tract (under section 6(a.2) of the act). If the 75 acres owned by Landowner A continues in agricultural use, agricultural reserve or forest reserve, and continues to meet the requirements of section 3 of the act, it shall continue to receive preferential assessment under the act.

(e) *Termination of preferential assessment by county.* The maximum area with respect to which a county may terminate preferential assessment may not exceed:

(1) In the case of a split-off that is not a condemnation and that meets the maximum size, use and aggregate acreage requirements in section 6(a.1)(1)(i) of the act, the land so split-off.

(2) In the case of a split-off that is not a condemnation and that does not meet the maximum size, use and aggregate acreage requirements in section 6(a.1)(1)(i) of the act, all ~~contiguous~~ land enrolled under the application for preferential assessment.

(3) In the case when the owner of enrolled land changes the use of the land so that it no longer meets the requirements in section 3 of the act, all ~~contiguous~~ land enrolled under the application for preferential assessment.

(4) In the case when the owner of enrolled land leases a portion of that land for wireless or cellular telecommunications in accordance with section 6(b.1) of the act and ~~§ 137b.74~~ § 137b.73 (RELATING TO WIRELESS OR CELLULAR TELECOMMUNICATIONS FACILITIES), the land so leased.

(5) In the case of condemnation, the land so condemned.

(6) In the case when enrolled land is sold or donated to an entity described in section 8(b)(1)--(7) of the act in accordance with the requirements in those paragraphs, the land so sold or conveyed.

(7) In the case when not more than 2 acres of enrolled land is used for direct commercial sales of agriculturally related products and activities or for A rural ~~enterprises~~ ENTERPRISE incidental to the operational unit, in accordance with section 8(d) of the act and § 137b.72 (RELATING TO DIRECT COMMERCIAL SALES OF AGRICULTURALLY RELATED PRODUCTS AND ACTIVITIES; RURAL ENTERPRISES INCIDENTAL TO THE OPERATIONAL UNIT), the land so used for those purposes.

(8) In the case when a portion of enrolled land is conveyed to a nonprofit corporation for use as a cemetery in accordance with section 8(e) of the act and § 137b.75 (RELATING TO CONVEYANCE OF ENROLLED LAND FOR USE AS A CEMETERY), the land so transferred.

(9) In the case when a portion of the enrolled land is conveyed to a nonprofit corporation for use as a trail in accordance with section 8(e) of the act and § 137b.76 (RELATING TO CONVEYANCE OF ENROLLED LAND OR CONVEYANCE OF AN EASEMENT OR RIGHT-OF-WAY ACROSS ENROLLED LAND FOR USE AS A TRAIL), the land so transferred.

(10) In the case when enrolled land is distributed upon the death of the landowner among the beneficiaries designated as Class A for inheritance tax purposes in accordance with section 6(d) of the act and § 137b.71 (RELATING TO DEATH OF AN OWNER OF ENROLLED LAND), the portion that fails to meet the requirements for preferential assessment in section 3 of the act.

(f) *Termination of preferential assessment on erroneously-enrolled land.* If a county assessor erroneously ~~allows~~ ALLOWED the enrollment of land that did not, at the time of enrollment, meet the minimum qualifications for preferential assessment, the county assessor shall, in accordance with section 3(d)(2) of the act provide the landowner written notice that preferential assessment is to be terminated. The notice shall state the reasons for termination and afford the landowner the opportunity for a hearing. If the use of the land was not an eligible use at the time it was enrolled, and preferential assessment is terminated for that reason, no roll-back taxes shall be due from the landowner as a result.

(g) *Transfer does not trigger roll-back taxes.* The transfer of all of the enrolled land described in a single application for preferential assessment to a new owner ~~without a change to an ineligible use~~ does not trigger the imposition of roll-back taxes. ~~When the enrolled land consists of several noncontiguous tracts enrolled under a single application for preferential assessment, the transfer of all of the contiguous acreage within such a noncontiguous tract will not trigger the imposition of roll-back taxes.~~

§ 137b.53. Calculation and recalculation of preferential assessment.

(a) *New values each year.* As described in § 137b.51 (relating to assessment procedures), the Department will determine the land use subcategories and provide TO a county use values for each land use subcategory. The Department will provide these land use subcategories and use values to each county assessor by May 1 of each year.

(b) *Option of county assessor in calculation of preferential assessment.* A county assessor shall calculate the preferential assessment of enrolled land using one of the following methods:

(1) Calculate the preferential assessment of all of the enrolled land in the county each year.

(2) Establish a base year for preferential assessment of enrolled land in the county, and use this base year in calculating the preferential assessment of enrolled land in the county, UNLESS RECALCULATION IS REQUIRED UNDER SUBSECTIONS (C), (D), (E) OR (F).

(c) *Required recalculation of preferential assessment if current assessment is based upon use values higher than those provided by the Department.* A county assessor shall calculate the preferential assessment of all enrolled land in the county using either the current use values and land use subcategories provided by the Department or lower use values established by the county assessor.

Example 1: All of the enrolled land in a particular county receives a preferential assessment under the act that is calculated with use values that are lower than the use values provided by the Department. The county has the option of either continuing to assess all enrolled land using its lower use values or recalculating the preferential assessment of all enrolled land using the use values provided by the Department.

Example 2: All of the enrolled land in a particular county receives a preferential assessment under the act that is calculated with use values that are higher than the use values provided by the Department. The county shall recalculate the preferential assessment of all enrolled land using either the use values provided by the Department or lower use values determined by the county assessor.

(d) *Required recalculation of preferential assessment if farmstead land has not been*

preferentially assessed as agricultural use, agricultural reserve or forest reserve. A county assessor shall recalculate the preferential assessment on any tract of enrolled land which contains farmstead land if the earlier calculation did not value and assess the farmstead land as agricultural use, agricultural reserve or forest reserve. This recalculation shall be accomplished in accordance with § 137b.51 (RELATING TO ASSESSMENT PROCEDURES).

> *Example:* In calculating the preferential assessment of enrolled land, a county has assessed farmstead land at its fair market value, rather than as part of the land that is in agricultural use, agricultural reserve or forest reserve. The county shall recalculate these assessments so that the farmstead land receives preferential assessment, rather than assessment based on fair market value.

(e) *Required recalculation of preferential assessment if contributory value of farm buildings has not been used in determining preferential assessment of land in agricultural use, agricultural reserve or forest reserve.* A county assessor shall recalculate the preferential assessment on any tract of enrolled land if the earlier calculation did not consider the contributory value of any farm buildings on that land. This recalculation shall be accomplished in accordance with § 137b.51 (RELATING TO ASSESSMENT PROCEDURES).

(f) *Required recalculation of preferential assessment in countywide reassessment.* If a county undertakes a countywide reassessment, or a countywide reassessment of enrolled land, the county assessor shall recalculate the preferential assessment of all of the enrolled land in the county, using either the current use values and land use subcategories provided by the Department, or lower use values established by the county assessor and land use subcategories provided by the Department.

~~(g) *Land enrolled prior to June 2, 1998.* A county assessor is not obligated under the act or this chapter to recalculate the preferential assessment of land that is the subject of applications for preferential assessment filed on or before June 1, 1998, unless recalculation is required under subsection (c), (d), (e) or (f).~~

§ 137b.54. Calculating the contributory value of farm buildings.

A county assessor shall be responsible to calculate the contributory value of farm buildings on enrolled land. THE METHOD OF CALCULATING THE CONTRIBUTORY VALUE OF A FARM BUILDING SHALL BE A METHOD BASED UPON THE FAIR MARKET COMPARISON AND THE EXTRACTION OF THE VALUE OF THE FARM BUILDING FROM THE TOTAL FAIR MARKET VALUE OF THE PARCEL.

OBLIGATIONS OF THE OWNER OF ENROLLED LAND

§ 137b.61. Transfer of enrolled land.

When enrolled land is transferred to a new owner, the new owner shall file an amendment to the original application for the purposes of providing the county assessor with current information and to sign the acknowledgments required under section 4(c) of the act (72 P. S. § 5490.4(c)).

§ 137b.62. Enrolled "agricultural use" land of less than 10 contiguous acres.

(a) *Demonstration of anticipated yearly gross income from agricultural production.* If a landowner has a contiguous tract of less than 10 acres of enrolled agricultural use land, the county assessor may require the landowner to demonstrate each year that the anticipated yearly gross income from the production of agricultural commodities on the enrolled land is at least $2,000. A landowner may not be required to demonstrate more than once per year that the enrolled land has sufficient anticipated yearly gross income from the production of agricultural commodities to continue to receive preferential assessment. A county assessor requiring additional information shall notify the landowner in writing and shall clearly state in the notice the reasons why the information or documentation submitted by the landowner fails to demonstrate sufficiency of income, and shall identify the particular information the county assessor requests to demonstrate sufficiency of income.

(b) *Annual requirement; circumstances beyond the landowner's control.* The $2,000 anticipated annual gross income requirement referenced in this section shall be met each year, unless circumstances beyond the landowner's control are the cause of the requirement not being met.

(c) *Examples.*

Example 1: A landowner owns 9 acres of enrolled land. The land contains a 9-acre orchard, and is enrolled as agricultural use land. Although the landowner reasonably anticipated production well above the $2,000 minimum production requirement in a particular year, and represented that to the county assessor, a drought, hailstorm or blight causes the orchard's production to drop below $2,000 that year. Preferential assessment of the orchard shall continue.

Example 2: A landowner owns 9 acres of enrolled land. The land contains a 9-acre orchard, and is enrolled as agricultural use land. A plant disease destroys the fruit trees. Although the landowner replants the orchard, it will take several years for gross income from agricultural production from that orchard to meet the $2,000 requirement. Preferential assessment of the orchard shall continue.

Example 3: A landowner owns 8 acres of enrolled land. The tract generates over $2,000 in gross annual income from ~~swine~~ production OF AN AGRICULTURAL

COMMODITY. The landowner ~~sells the swine herd~~ CEASES THE PRODUCTION OF THAT PARTICULAR AGRICULTURAL COMMODITY and does not begin ~~another agricultural production operation~~ PRODUCING ANOTHER AGRICULTURAL COMMODITY on the land. The land is no longer in agricultural use. The landowner's failure to continue the land in an agricultural use capable of producing income constitutes a change to an ineligible use. The landowner is liable for roll-back taxes and interest, and preferential assessment shall terminate.

§ 137b.63. Notice of change of application.

(a) *Landowner's responsibility to provide advance notice of changes.* An owner of enrolled land shall provide the county assessor of the county in which the land is ~~located~~ PREFERENTIALLY ASSESSED at least 30 days' advance written notice of any of the following:

(1) A change in use of the enrolled land to some use other than agricultural use, agricultural reserve or forest reserve.

(2) A change in ownership with respect to the enrolled land or any portion of the land.

(3) Any type of division, conveyance, transfer, separation or split-off of the enrolled land.

(b) *Contents of notice.* The notice described in subsection (a) shall include the following information:

(1) The name and address of any person to whom the land is being conveyed, granted or donated.

(2) The date of the proposed transfer, separation or split-off.

(3) The amount of land to be transferred, separated or split-off.

(4) The present use of the land to be transferred, separated or split-off.

(5) The date of the original application for preferential assessment under the act.

(6) ~~A description of previous transfers, separations or split-offs of that enrolled land from the date of preferential assessment, of which the landowner is aware.~~

~~(7) The intended use to which the land will be put when transferred, separated or split-off, if known.~~

~~(8)~~ The tax parcel number.

(C) *LANDOWNER'S RESPONSIBILITY TO PROVIDE NOTICE OF TERMINATION*

OF PREFERENTIAL ASSESSMENT. AN OWNER OF ENROLLED LAND SHALL PROVIDE THE COUNTY ASSESSOR OF THE COUNTY IN WHICH THE LAND IS PREFERENTIALLY ASSESSED WITH ADVANCE WRITTEN NOTICE OF TERMINATION OF PREFERENTIAL ASSESSMENT, PURSUANT TO § 137b.52(d) (RELATING TO DURATION OF PREFERENTIAL ASSESSMENT) OR § 137b.84 (RELATING TO SPLIT-OFF THAT DOES NOT COMPLY WITH SECTION 6(a.1)(1)(i) OF THE ACT). THE NOTICE SHALL INCLUDE THE FOLLOWING INFORMATION:

(1) THE NAME AND ADDRESS OF THE LANDOWNER.

(2) INFORMATION SUFFICIENT TO IDENTIFY THE PROPERTY WITH RESPECT TO WHICH PREFERENTIAL ASSESSMENT IS TO BE TERMINATED. THIS MAY INCLUDE TAX PARCEL NUMBERS, DEED DESCRIPTIONS, REFERENCES TO THE PLACE OF RECORDING OF THE INITIAL APPLICATION FOR PREFERENTIAL ASSESSMENT OR SIMILAR INFORMATION.

(3) THE DATE UPON WHICH PREFERENTIAL ASSESSMENT IS TO BE TERMINATED.

~~(c)~~ (D) *Landowner's duty to notify.* As stated in § 137b.41(d) (relating to application forms and procedures), a person applying for preferential assessment of land under the act shall acknowledge on the application form the obligation described in subsection (a).

§ 137b.64. Agricultural reserve land to be open to the public.

(a) *General.* An owner of enrolled land that is enrolled as agricultural reserve land shall allow the land to be open to the public for outdoor recreation or the enjoyment of scenic or natural beauty without charge or fee, on a nondiscriminatory basis. Enrolled land that is in agricultural use or forest reserve is excluded from this requirement.

(b) *Actual use by public not required.* Enrolled land that is enrolled as agricultural reserve land need not actually be used by the public for the purposes described in subsection (a) to continue to receive a preferential assessment. It shall, however, be available for use for those purposes.

(c) *Reasonable restrictions on use allowed.* A landowner may place reasonable restrictions on public access to enrolled land that is enrolled as agricultural reserve land. These restrictions might include limiting access to the land to pedestrians only, prohibiting hunting or the carrying or discharge of firearms on the land, prohibiting entry where damage to the land might result or where hazardous conditions exist, or other reasonable restrictions.

(d) *Entry upon the agricultural reserve land.* A person shall, whenever possible, notify the landowner before entering upon enrolled land that is enrolled as agricultural reserve land. The landowner may deny entry when damage to the property might result. The landowner can prohibit entry to areas of the agricultural reserve land upon prior notification

to the county assessor of the existence of a hazardous condition on that land. The landowner's reasons to deny entry to the land shall be based upon fact and BE acceptable to the county assessor.

(e) *County assessor's discretion.* A county assessor may establish reasonable guidelines by which an owner of enrolled agricultural reserve land may identify the conditions under which the land shall be open to the public for outdoor recreation or the enjoyment of scenic or natural beauty, and by which the county assessor may maintain an up-to-date summary of the locations of agricultural reserve land within the county and the public uses to which these agricultural reserve lands may be put. A county assessor may disseminate this information to the public.

IMPACT OF SPECIFIC EVENTS OR USES ON PREFERENTIAL ASSESSMENT

§ 137b.71. Death of an owner of enrolled land.

(a) *Inheriting a tract that does not meet minimum requirements for preferential assessment.* Upon the death of an owner of enrolled land, if any of the enrolled land that is divided among the beneficiaries designated as Class A for inheritance tax purposes no longer meets the minimum qualifications for preferential assessment, preferential assessment shall terminate with respect to the portion of the enrolled land that no longer meets the minimum requirements for preferential assessment, and no roll-back tax may be charged on any of the land that no longer meets the requirements for preferential assessment.

> *Example:* Landowner A owns 100 acres of enrolled land, which is in agricultural use. Landowner A dies, and the land is divided among several Class A beneficiaries, as follows: Landowner B-75 acres. Landowner C-2 acres. Landowner D-23 acres. The tracts owned by Landowners B and D continue in agricultural use. The 2-acre tract owned by Landowner C no longer meets the size or income requirements in section 3 of the act (72 P. S. § 5490.3). Under these facts, preferential assessment of the 2-acre tract ends. Landowner C does not owe roll-back taxes with respect to this tract. Landowners B and D continue to receive preferential assessment. LANDOWNERS B AND D MUST FILE AMENDED APPLICATONS.

(b) *Inheriting a tract that meets the minimum requirements for preferential assessment.* If a person designated a Class A beneficiary inherits a tract that meets the minimum requirements for preferential assessment, and the tract continues in agricultural use, agricultural reserve or forest reserve, preferential assessment shall continue. If a person designated a Class A beneficiary inherits a tract that meets the minimum requirements for preferential assessment, and subsequently changes the use of that tract so that it does not qualify for preferential assessment, that beneficiary shall owe roll-back taxes AND INTEREST with respect to the portion of the enrolled land he inherited, but no roll-back taxes are due with respect to any other portion of the enrolled land inherited by another

beneficiary.

Example 1: Landowner A owns 100 acres of enrolled land, which is in agricultural use. Landowner A dies, and Landowners B and C each inherit a 50-acre tract, as Class A beneficiaries. The tracts owned by Landowners B and C continue in agricultural use. Preferential assessment continues ON EACH TRACT, AND THE LANDOWNERS MUST FILE AMENDED APPLICATIONS.

Example 2: Same facts as Example 1, except Landowner B converts the 50-acre tract of agricultural land to industrial use. Landowner B owes roll-back taxes AND INTEREST with respect to the 50-acre tract. Landowner A does not owe roll-back taxes. Preferential assessment continues with respect to Landowner A's tract.

§ 137b.72. Direct commercial sales of agriculturally related products and activities; rural enterprises incidental to the operational unit.

(a) *General.* An owner of enrolled land may apply up to 2 acres of enrolled land toward direct commercial sales of agriculturally related products and activities, or toward a rural enterprise incidental to the operational unit, without subjecting the entirety of the enrolled land to roll-back taxes AND INTEREST, if both of the following apply to the commercial activity or rural enterprise:

(1) The commercial ACTIVITY OR RURAL enterprise does not permanently impede or otherwise interfere with the production of an agricultural commodity on ~~that portion of the enrolled land which is not subject to roll-back taxes under section 8(d)(2) of the act (72 P. S. § 5490.8(d)(2))~~ THE REMAINDER OF THE ENROLLED LAND.

(2) The commercial activity is owned and operated by the landowner or persons who are Class A beneficiaries of the landowner for inheritance tax purposes, or by a legal entity owned or controlled by the landowner or persons who are Class A beneficiaries of the landowner for inheritance tax purposes.

(b) *Roll-back taxes and status of preferential assessment.* If a tract of 2-acres-or-less of enrolled land is used for direct commercial sales of agriculturally related products and activities, or toward a rural enterprise incidental to the operational unit, the 2-acre-or-less tract shall be subject to roll-back taxes AND INTEREST, and preferential assessment of that 2-acre-or-less tract shall end. The remainder of the enrolled land shall continue under preferential assessment as long as that remainder continues to meet the requirements for eligibility in section 3 of the act (72 P. S. § 5490.3).

(c) *Inventory by county assessor to determine ownership of goods.* A county assessor may inventory the goods sold at the business to assure that they are owned by the landowner or persons who are class A beneficiaries of the landowner for inheritance tax purposes, or by

a legal entity owned or controlled by the landowner or persons who are Class A beneficiaries of the landowner for inheritance tax purposes, and that the goods meet the requirements of this section.

§ 137b.73. Wireless or cellular telecommunications facilities.

(a) *Permitted use.* A landowner may lease a tract of enrolled land to be used for wireless or cellular telecommunications, if the following conditions are satisfied:

(1) The tract so leased does not exceed 1/2 acre.

(2) The tract does not have more than one communication tower located upon it.

(3) The tract is accessible.

(4) The tract is neither conveyed nor subdivided. A lease ~~may~~ SHALL not be considered a subdivision.

(b) *Roll-back taxes imposed with respect to leased land.* A county assessor shall assess and impose roll-back taxes AND INTEREST upon the tract of land leased by an owner of enrolled land for wireless or cellular telecommunications purposes.

(c) *Preferential assessment ends and fair market value assessment commences with respect to leased land.* A county assessor shall assess land leased in accordance with subsection (a) based upon its fair market value.

(d) *Preferential assessment continues on unleased land.* The lease of enrolled land in accordance with subsection (a) does not invalidate the preferential assessment of the remaining enrolled land that is not so leased, and that enrolled land shall continue to receive a preferential assessment, if it continues to meet the minimum requirements for eligibility in section 3 of the act (72 P. S. § 5490.3).

(e) *Wireless services other than wireless telecommunications.* Wireless services other than wireless telecommunications may be conducted on land leased in accordance with subsection (a) if the wireless services share a tower with a wireless telecommunications provider.

(f) *Responsibility for obtaining required permits.* The wireless or cellular telecommunications provider shall be solely responsible for obtaining required permits in connection with any construction on a tract of land which it leases for telecommunications purposes under subsection (a).

(g) *Responsibility of municipality for issuing required permits.* A municipality may not deny a permit necessary for wireless or cellular ~~communications~~ TELECOMMUNICATIONS use for any reason other than the applicant's failure to strictly comply with permit application procedures.

§ 137b.74. Option to accept or forgive roll-back taxes in certain instances.

(a) *Option to accept or forgive principal on roll-back taxes.* The taxing body of the taxing district within which a tract of enrolled land is located may accept or forgive roll-back taxes with respect to that portion of the enrolled land that is granted or donated to any one of the following:

(1) A school district.

(2) A municipality.

(3) A county.

(4) A volunteer fire company.

(5) A volunteer ambulance service.

(6) ~~A religious organization, if the religious organization uses the land only for construction or regular use as a church, synagogue or other place of worship, including meeting facilities, parking facilities, housing facilities and other facilities which further the religious purposes of the organization.~~ A NOT-FOR-PROFIT CORPORATION THAT QUALIFIES AS TAX-EXEMPT UNDER SECTION 501(C)(3) OF THE INTERNAL REVENUE CODE OF 1954 (26 U.S.C.A. § 501(C)(3)), IF PRIOR TO ACCEPTING OWNERSHIP OF THE LAND, THE CORPORATION ENTERS INTO AN AGREEMENT WITH THE MUNICIPALITY WHEREIN THE SUBJECT LAND IS LOCATED GUARANTEEING THAT THE LAND WILL BE USED EXCLUSIVELY FOR RECREATIONAL PURPOSES, ALL OF WHICH SHALL BE AVAILABLE TO THE GENERAL PUBLIC FREE OF CHARGE. IF THE CORPORATION CHANGES THE USE OF ALL OR A PORTION OF THE LAND OR CHARGES ADMISSION OR ANY OTHER FEE FOR THE USE OR ENJOYMENT OF THE FACILITIES, THE CORPORATION SHALL IMMEDIATELY BECOME LIABLE FOR ALL ROLL-BACK TAXES AND ACCRUED INTEREST PREVIOUSLY FORGIVEN.

(7) ~~A not-for-profit corporation that qualifies as tax-exempt under section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C.A. § 501(c)(3)), if prior to accepting ownership of the land, the corporation enters into an agreement with the municipality wherein the subject land is located guaranteeing that the land will be used exclusively for recreational purposes, all of which shall be available to the general public free of charge. If the corporation changes the use of all or a portion of the land or charges admission or any other fee for the use or enjoyment of the facilities, the corporation shall immediately become liable for all roll-back taxes and accrued interest previously forgiven.~~ A RELIGIOUS ORGANIZATION, IF THE RELIGIOUS ORGANIZATION USES THE LAND ONLY FOR CONSTRUCTION OR REGULAR USE AS A CHURCH, SYNAGOGUE OR OTHER PLACE OF WORSHIP, INCLUDING MEETING FACILITIES, PARKING FACILITIES,

HOUSING FACILITIES AND OTHER FACILITIES WHICH FURTHER THE RELIGIOUS PURPOSES OF THE ORGANIZATION.

(b) *No option to forgive interest on roll-back taxes.* The taxing body of the taxing district within which a tract of enrolled land is located may not forgive interest due on roll-back taxes with respect to that portion of the enrolled land that is granted or donated to any one of the entities or for any of the uses described in subsection (a)(1)--(7). That interest shall be distributed in accordance with section 8(b.1) of the act (72 P. S. § 5490.8(b.1)).

§ 137b.75. ~~Transfer~~ CONVEYANCE of enrolled land for use as a cemetery.

(a) ~~*Transfers*~~ *CONVEYANCES.* If an owner of enrolled land sells, donates or otherwise ~~transfers~~ CONVEYS any portion of the enrolled land to a nonprofit corporation for use as a cemetery, and at least 10 acres of the remainder of the enrolled land remain in agricultural use, agricultural reserve or forest reserve after the ~~transfer~~ CONVEYANCE, no violation of preferential assessment will be deemed to have occurred and roll-back taxes may not be assessed with respect to either the ~~transferred~~ CONVEYED portion of the enrolled land or the remainder of the enrolled land.

Example: A landowner owns 50 acres of enrolled land. The land is in agricultural use. The landowner sells 20 acres of the enrolled land to a nonprofit corporation for use as a cemetery. The remaining 30-acre tract continues in agricultural use. Under these facts, no roll-back taxes are due with respect to either tract. The 30-acre tract continues to receive preferential assessment. The 20-acre tract receives an assessment based on fair market value.

(b) *Exception.* If a nonprofit corporation acquires enrolled land as described in subsection (a), and subsequently changes the use of the land to some use other than as a cemetery or ~~transfers~~ CONVEYS the land for use other than as a cemetery, ~~or uses the land for something other than agricultural use, agricultural reserve or forest reserve,~~ the nonprofit corporation shall be required to pay roll-back taxes AND INTEREST on that land.

Example: Same facts as the example under subsection (a), but 2 years after it acquired the 20-acre tract, the nonprofit corporation changes the use to something other than cemetery use~~, agricultural use, agricultural reserve or forest reserve~~. The nonprofit corporation owes roll-back taxes AND INTEREST with respect to the 20-acre tract. The owner of the 30-acre tract is not liable for the payment of any roll-back taxes triggered by the nonprofit corporation's change of use.

§ 137b.76. ~~Transfer~~ CONVEYANCE of enrolled land or ~~transfer~~ CONVEYANCE of an easement or right-of-way across enrolled land for use as a trail.

(a) *~~Transfers~~ CONVEYANCES.* If an owner of enrolled land sells, donates or otherwise ~~transfers~~ CONVEYS any portion of the enrolled land, or ~~transfers~~ CONVEYS an easement or right-of-way with respect to any portion of the enrolled land, no violation of preferential assessment will be deemed to have occurred and roll-back taxes ~~may~~ SHALL not be assessed with respect to either the ~~transferred~~ CONVEYED portion of the enrolled land or the remainder of the enrolled land if all of the following occur:

(1) The land, OR AN EASEMENT OR RIGHT-OF-WAY IN THE LAND, is ~~transferred~~ CONVEYED to a nonprofit corporation.

(2) The ~~transferred~~ CONVEYED land is used as ~~an unpaved~~ A trail for nonmotorized passive recreational use. ~~Walking, jogging, running, roller skating, in-line skating, pedacycling, horseback riding and the use of animal-drawn vehicles are examples of passive recreational use, as are all other forms of man-powered or animal-powered conveyance.~~

(3) The ~~transferred~~ CONVEYED land does not exceed 20 feet in width.

(4) The ~~transferred~~ CONVEYED land is available to the public for use without charge.

(5) At least 10 acres of the remainder of the enrolled land remain in agricultural use, agricultural reserve or forest reserve.

Example: A landowner owns 50 acres of enrolled land. The land is in agricultural use. The landowner conveys a 20-foot-wide pathway across the land to a nonprofit corporation for use as a trail, and otherwise complies with paragraphs (1)--(5) and section 8(e) of the act (72 P. S. § 5490.8(e)). Under these facts, no roll-back taxes are due with respect to either tract. The trail receives an assessment based upon fair market value. The remainder of the landowner's 50-acre tract continues to receive a preferential assessment.

(b) *Exception.* If a nonprofit corporation acquires enrolled land or an easement or right of way with respect to enrolled land as described in subsection (a), and the use of the land is subsequently changed to a use other than the use described in subsection ~~(a)(1)--(5)~~ (a)(1)-(4) or section 8(e) of the act (72 P.S. § 5490.8(e)), the nonprofit corporation shall be required to pay roll-back taxes AND INTEREST on that land. ~~The land is no longer entitled to preferential assessment.~~

Example: A landowner owns 50 acres of enrolled land. The land is in agricultural use. The landowner conveys a 15-foot-wide pathway across the land to a nonprofit corporation for use as a trail. The conveyance is for a use described in subsection ~~(a)(1)--(5)~~ (a)(1)-(4) or section 8(e) of the act. The nonprofit

corporation subsequently changes the use of the trail to a motorcycle trail, a snowmobile trail or some other use not allowed under subsection ~~(a)(1)-(5)~~ (a)(1)-(4) or section 8(e) of the act. Under these facts, roll-back taxes AND INTEREST are due with respect to the 15-foot-wide tract. The remainder of the 50-acre tract continues to receive ~~a~~ preferential assessment. The owner of the remainder continuing to receive preferential assessment is not liable for any roll-back taxes triggered by the nonprofit corporation's change of use.

LIABILITY FOR ROLL-BACK TAXES

§ 137b.81. General.

If an owner of enrolled land changes the use of the land to something other than agricultural use, agricultural reserve or forest reserve or changes the use of the enrolled land so that it otherwise fails to meet the requirements of section 3 of the act (72 P. S. § 5490.3), ~~or uses the land for something other than agricultural use, agricultural reserve or forest reserve,~~ that landowner shall be responsible for the payment of roll-back taxes AND INTEREST, AND PREFERENTIAL ASSESMENT SHALL END ON THAT PORTION OF THE ENROLLED LAND WHICH FAILS TO MEET THE REQUIREMENTS OF SECTION 3 OF THE ACT (72 p.s. § 5490.3). The owner of enrolled land ~~may~~ SHALL not be liable for any roll-back tax triggered as a result of a change to an ineligible use by the owner of a split-off tract.

§ 137b.82. Split-off tract.

When a split-off tract meets the following criteria, which are set forth in section 6(a.1)(1) of the act (72 P. S. § 5490.6(a.1)(1)), roll-back taxes AND INTEREST are only due with respect to the split-off tract, and are not due with respect to the remainder:

(1) The tract split off does not exceed 2 acres annually, except that a maximum of the minimum residential lot size requirement annually may be split off if the property is situated in a local government unit which requires a minimum RESIDENTIAL lot size of 2-3 acres.

(2) The tract is used for agricultural use, agricultural reserve or forest reserve or for the construction of a residential dwelling to be occupied by the person to whom the land is conveyed.

(3) The total tract split off does not exceed the lesser of 10 acres or 10% of the entire tract of enrolled land.

§ 137b.83. Split-off that complies with section 6(a.1)(1)(i) of the act.

If enrolled land undergoes split-off and the tract that is split-off meets the size, use and aggregate acreage requirements in section 6(a.1)(1)(i) of the act (72 P. S. § 5490.6(a.1)(1)(i)), the landowner who conducted the split-off shall owe roll-back taxes AND INTEREST with respect to the split-off tract. The preferential assessment of that split-off tract shall be terminated. If the remainder of the enrolled land is in agricultural use, agricultural reserve or forest reserve, and continues to meet the requirements of section 3 of the act (72 P. S. § 5490.3), no roll-back taxes are due with respect to that remainder, and preferential assessment shall continue with respect to that tract.

Example: Landowner owns 50 acres of enrolled land. Landowner splits off 2 acres for a residential dwelling, in compliance with section 6(a.1)(1)(i) of the act. The landowner owes roll-back taxes AND INTEREST on the 2-acre tract, and the preferential assessment of that tract shall be terminated. The remaining 48-acre tract would continue to receive a preferential assessment, assuming it remains in agricultural use, agricultural reserve or forest reserve and otherwise continues to meet the requirements of section 3 of the act (72 P. S. § 5490.3).

§ 137b.84. Split-off that does not comply with section 6(a.1)(1)(i) of the act.

If enrolled land undergoes split off and the tract that is split-off does not meet the size, use and aggregate acreage requirements in section 6(a.1)(1)(i) of the act (72 P. S. § 5490.6(a.1)(1)(i)), the landowner who conducted the split-off shall owe roll-back taxes AND INTEREST with respect to all of the enrolled land.

Example 1: Landowner owns 50 acres of enrolled land. Landowner splits off 4 acres in a single year. This split-off would not meet the size requirements in section 6(a.1)(1)(i) of the act. The landowner owes roll-back taxes AND INTEREST on the entire 50-acre tract. The 4-acre tract no longer receives preferential assessment. If the 46-acre tract remains in agricultural use, agricultural reserve or forest reserve and continues to meet the requirements of section 3 of the act, preferential assessment would continue with respect to that tract, UNLESS THE LANDOWNER TERMINATES PREFERENTIAL ASSESSMENT PURSUANT TO SECTION 3(d) OF THE ACT (72 P.S. § 5490.3(d)).

Example 2: Landowner owns 50 acres of enrolled land. Landowner splits off 2-acre tracts in 3 different years. The aggregate amount of land split-off (6 acres) exceeds the 10% cap in section 6(c.1)(1)(i) of the act. Under these facts, the aggregate total of split-off land could not exceed 5 acres. The landowner owes roll-back taxes AND INTEREST on the ~~entire 50-acre~~ REMAINING 44-ACRE tract. The three 2-acre tracts no longer receive preferential assessment. If the remaining 44-acre tract remains in agricultural use, agricultural reserve or forest reserve and continues to meet the requirements of section 3 of the act, preferential

assessment would continue with respect to that 44-acre tract, UNLESS THE LANDOWNER TERMINATES PREFERENTIAL ASSESSMENT PURSUANT TO SECTION 3(d) OF THE ACT (72 P.S. § 5490.3(d)).

§ 137b.85. Split-off occurring through condemnation.

If any portion of a tract of enrolled land is condemned, the condemnation ~~may~~ SHALL not trigger liability for roll-back taxes on either the condemned portion of the enrolled land or the remainder. If the condemned portion or the remainder of the enrolled land remains in agricultural use, agricultural reserve or forest reserve, and meets the criteria in section 3 of the act (72 P. S. § 5490.3), preferential assessment shall continue with respect to that condemned portion or remainder.

§ 137b.86. Split-off occurring through voluntary sale in lieu of condemnation.

If any portion of a tract of enrolled land is--in lieu of requiring the condemnation process to proceed--voluntarily ~~sold~~ CONVEYED by a landowner to an entity that possesses the lawful authority to acquire that portion through condemnation, the ~~transfer may~~ CONVEYANCE SHALL not trigger liability for roll-back taxes on either the split-off portion of the enrolled land or the remainder. If the split-off portion or the remainder of the enrolled land remains in agricultural use, agricultural reserve or forest reserve, and meets the criteria in section 3 of the act (72 P. S. § 5490.3), preferential assessment shall continue with respect to that split-off portion or remainder.

§ 137b.87. Change in use of separated land occurring within 7 years of separation.

If enrolled land undergoes separation, and one of the tracts created through separation is converted to A USE other than agricultural use, agricultural reserve or forest reserve within 7 years of the date of the separation, or is converted so that it no longer meets the requirements of section 3 of the act (72 P. S. § 5490.3), the owner of the ineligible tract owes roll-back taxes AND INTEREST with respect to all of the enrolled land. The ineligible tract may no longer receive preferential assessment under the act. The remaining enrolled land shall continue to receive ~~a~~ preferential assessment.

Example: Landowner A owns 100 acres of enrolled land, which is in agricultural use. Landowner A sells Landowner B a 50-acre portion of this enrolled land. Both 50-acre tracts continue in agricultural use, and preferential assessment continues with respect to both tracts. Six years after the original 100-acre tract of enrolled land was separated, Landowner B converts his 50-acre tract to industrial use.

Landowner B owes roll-back taxes AND INTEREST with respect to the entire 100-acre tract. Landowner A's 50-acre tract continues to receive preferential assessment, and ~~the~~ preferential assessment of Landowner B's 50-acre tract ends.

§ 137b.88. Change in use of separated land occurring 7 years or more after separation.

If enrolled land undergoes separation, and one of the tracts created through separation is converted to other than agricultural use, agricultural reserve or forest reserve 7 years or more after the date of the separation, the owner of the separated tract owes roll-back taxes AND INTEREST with respect to that separated tract, but does not owe roll-back taxes with respect to the remainder of the enrolled land. The separated tract may no longer receive preferential assessment under the act. The remaining enrolled land shall continue to receive ~~a~~ preferential assessment.

Example: Landowner A owns 100 acres of enrolled land, which is in agricultural use. Landowner A sells Landowner B a 50-acre portion of this enrolled land. Both 50-acre tracts continue in agricultural use, and preferential assessment continues with respect to both tracts. Eight years after the original 100-acre tract of enrolled land was separated, Landowner B converts his 50-acre tract to industrial use. Landowner B owes roll-back taxes AND INTEREST with respect to the 50-acre tract which he has converted to ineligible use. Landowner A's 50-acre tract continues to receive preferential assessment, and ~~the~~ preferential assessment of Landowner B's 50-acre tract ends.

§ 137b.89. Calculation of roll-back taxes.

A county assessor shall calculate roll-back taxes using the following formula:

(1) If preferential assessment has been in effect for 7 tax years or more, calculate the difference between preferential assessment and normal assessment in the current tax year, and in each of the 6 tax years immediately preceding the current tax year. If preferential assessment has been in effect for less than 7 tax years, calculate the difference between preferential assessment and normal assessment in the current tax year, and in each of the tax years in which the enrolled land was preferentially assessed.

(2) With respect to each of these sums, multiply that sum by the corresponding factor, which reflects simple interest at the rate of 6% per annum from that particular tax year to the present:

Year	Factor
Current Tax Year	1.00
1 Tax Year Prior	1.06
2 Tax Years Prior	1.12

3 Tax Years Prior	1.18
4 Tax Years Prior	1.24
5 Tax Years Prior	1.30
6 Tax Years Prior	1.36

(3) Add the individual products obtained under Step (2). The sum equals total roll-back taxes, including simple interest at 6% per annum on each year's roll-back taxes.

Example 1: Landowner's liability for roll-back taxes is triggered on July 1, 7 or more tax years after preferential assessment began. The county assessor calculates the difference between the preferential assessment and normal assessment in the current tax year and in each of the 6 tax years preceding the current tax year, in accordance with this section. The county assessor determines the appropriate sum to be $2,000 in each full year, and prorates this sum with respect to the current tax year.

Year	**Amount Multiplied by Factor**
Current Tax Year	$1,000 x 1.00 = $1,000
1 Tax Year Prior	$2,000 x 1.06 = $2,120
2 Tax Years Prior	$2,000 x 1.12 = $2,240
3 Tax Years Prior	$2,000 x 1.18 = $2,360
4 Tax Years Prior	$2,000 x 1.24 = $2,480
5 Tax Years Prior	$2,000 x 1.30 = $2,600
6 Tax Years Prior	$2,000 x 1.36 = $2,720
TOTAL ROLL-BACK TAXES, WITH INTEREST:	$15,520

Example 2: Landowner's liability for roll-back taxes is triggered on July 1, less than 7 tax years after preferential assessment began. The county assessor calculates the difference between the preferential assessment and normal assessment in the current tax year and each of the tax years since preferential assessment began, in accordance with this section. The county assessor determines the appropriate sum to be $2,000 in each of these years. The county assessor would calculate roll-back taxes and interest in accordance with the chart set forth in Example 1, calculating for only those tax years in which preferential assessment occurred.

§ 137b.90. Due date for roll-back taxes.

If roll-back taxes AND INTEREST are owed, they are due on the day of the change in use or other event triggering liability for those roll-back taxes.

§ 137b.91. Liens for nonpayment of roll-back taxes.

The county can refer a claim for unpaid roll-back taxes and interest to the county's

Tax Claim Bureau, and take other actions necessary to cause a lien to be placed on the land for the value of the roll-back taxes and interest and other administrative and local court costs. The lien can be collected in the same manner as other lien-debts on real estate.

§ 137b.92. Time period within which roll-back taxes are to be calculated and notice mailed.

(a) *General.* A county assessor shall calculate the roll-back taxes AND INTEREST, and mail notice of these roll-back taxes to the affected landowner, within 5 days of learning of a change in status triggering liability for roll-back taxes. The county assessor shall also mail a copy of the notice to the other taxing bodies of the district in which the land is located.

(b) *Notice of change of application.* If a county assessor receives a "notice of change of application" described in § 137b.63 (relating to notice of change of application), and that notice triggers liability for roll-back taxes, the 5-day period described in subsection (a) shall commence as of receipt of that notice.

§ 137b.93. Disposition of interest on roll-back taxes.

(a) *"Eligible county" explained.* A county is an "eligible county" under the Agricultural Area Security Law (3 P. S. §§ 901--915), and for purposes of this chapter, if it has an agricultural conservation easement purchase program that has been approved by the State Agricultural Land Preservation Board in accordance with that statute.

(b) *Disposition in an eligible county.*

(1) *County treasurer.* If a county is an eligible county, the county treasurer shall make proper distribution of the interest portion of the roll-back taxes it collects to the county commissioners or the county comptroller, as the case may be. The county commissioners or comptroller shall designate all of this interest for use by the county agricultural land preservation board. This interest shall be in addition to other local money appropriated by the eligible county for the purchase of agricultural conservation easements under section 14.1(h) of the Agricultural Area Security Law (3 P. S. § 914.1(h)).

(2) *County agricultural land preservation board.* A county agricultural land preservation board that receives interest on roll-back taxes in accordance with paragraph (1) shall segregate that money in a special roll-back account. Notwithstanding any other provisions of the Agricultural Area Security Law, the eligible county board under the Agricultural Area Security Law shall, ~~in~~ AT its discretion and in accordance with its approved county agricultural conservation easement purchase program, give priority to the purchase of agricultural conservation easements from agricultural security areas located within the municipality in which the land subject to the roll-back tax is located, WHEN USING THE FUNDING

FROM THE SPECIAL ROLL-BACK ACCOUNT.

(c) *Disposition in a county that is not an eligible county.* If a county is not an eligible county, the county treasurer shall forward the interest portion of the roll-back taxes it collects to the Agricultural Conservation Easement Purchase Fund. The county treasurer shall coordinate with the Department's Bureau of Farmland Protection, at the address in § 137b.4 (relating to contacting the Department) to accomplish this transfer.

DUTIES OF COUNTY ASSESSORS

§ 137b.101. General.

A county assessor shall perform all the duties prescribed by the act and this chapter. The county assessor has the major responsibility for administration of the act.

§ 137b.102. Recordkeeping.

A county assessor shall indicate on PROPERTY RECORD CARDS, assessment rolls and any other appropriate records the base year fair market value, the use value, the normal assessment and the preferential assessment of all tracts of enrolled land. ~~A county assessor shall indicate on property record cards as much of the information in this section it deems appropriate for the performance of its duties under the act and this chapter.~~

§ 137b.103. Recording approved applications.

A county assessor shall record any approved application in the office of the recorder of deeds in the county where the land is preferentially assessed.

§ 137b.104. Determining total use value.

A county assessor shall determine the total use value for all enrolled land. The contributory value of farm buildings shall be used in determining the total use value.

§ 137b.105. Annual update of records.

A county assessor shall, at least on an annual basis, update property record cards, assessment rolls and any other appropriate records to reflect all changes in the fair market value, the use value, the normal assessment and the preferential assessment of all tracts of enrolled land. This subsection does not require that a county assessor recalculate the

preferential assessment of all enrolled land each year, but instead requires the county assessor to maintain reasonably current records reflecting any changes in preferential assessment.

§ 137b.106. Notification of change in preferential assessment status.

A county assessor shall provide the owner of enrolled land and the taxing bodies of the district in which the land is situated with written notice of an approval, termination or change with respect to ~~the~~ preferential assessment status. This written notice shall apprise the landowner and the taxing body of the right to appeal the action in accordance with section 9 of the act (72 P. S. § 490.9). The written notice shall be mailed within 5 days of the change of status. If the written notice terminates or changes preferential assessment status it shall set forth the reasons for the change or termination.

§ 137b.107. Notification of change in factors affecting total assessment.

A county assessor shall provide the owner of enrolled land and the taxing bodies of the district in which the land is situated with written notice of any change in the base year fair market value, the normal assessment, the use value or the preferential assessment. This written notice shall apprise the landowner and the taxing body of the right to appeal the action in accordance with section 9 of the act (72 P. S. § 5490.9). The written notice shall be mailed within 5 days of the change.

§ 137b.108. Adjusting records to reflect split-off, separation or transfer.

A county assessor shall adjust an approved and recorded application for preferential assessment under the act to reflect a change when an owner of enrolled land changes enrollment status as a result of a split-off, separation, transfer or change of ownership. These changes may include those actions described in § 137b.52 (relating to duration of preferential assessment). A county assessor may require the preparation, execution and filing of a new application for preferential assessment (without charging the landowner an application fee) to accomplish such an adjustment.

§ 137b.109. Enforcement and evidence gathering.

The evidentiary burden shall be on a county assessor to produce evidence demonstrating that a split-off tract is actively being used in a manner which is inconsistent with residential use, agricultural use, agricultural reserve or forest reserve.

§ 137b.110. Assessment of roll-back taxes.

A county assessor shall calculate, assess and file claims with the county's Tax Claim Bureau for roll-back taxes AND INTEREST owed under the act.

§ 137b.111. Record of tax millage.

A county assessor shall maintain a permanent record of the tax millage levied by each of the taxing authorities in the county for each tax year.

§ 137b.112. Submission of information to the Department.

A county assessor will compile and submit the information required by the Department under § 137b.3(b) (relating to responsibilities of the Department).

RECORDER OF DEEDS

§ 137b.121. Duty to record.

A recorder of deeds shall record approved applications for preferential assessment in a preferential assessment docket, and record changes of land use triggering the imposition of roll-back taxes.

§ 137b.122. Fees of the recorder of deeds.

A recorder of deeds may charge a landowner whose application for preferential assessment is approved a fee for filing the approved application in a preferential assessment docket. This fee may also be charged with respect to the filing of an amendment to a previously-approved application. A recording fee may not be charged unless the application or amendment has been approved by the county board for assessment appeals. The maximum fee for recording approved preferential assessment applications and amendments thereto shall be in accordance with laws relating to the imposition of fees by recorders of deeds.

MISCELLANEOUS

§ 137b.131. Civil penalties.

(a) *General.* A county board for assessment appeals may assess a civil penalty of not more than $100 against a person for each violation of the act or this chapter. AN ACTION

THAT TRIGGERS LIABILITY FOR ROLL-BACK TAXES AND INTEREST DOES NOT, BY ITSELF, CONSTITUTE A VIOLATION OF THE ACT OR THIS CHAPTER.

(b) *Written notice of civil penalty.* A county board for assessment appeals shall assess a civil penalty against a person by providing that person written notice of the penalty. This notice shall be served by certified mail or personal service. The notice shall set forth the following:

(1) A description of the nature of the violation and of the amount of the civil penalty.

(2) A statement that the person against whom the civil penalty is being assessed may appeal the penalty by delivering written notice of the appeal to the county board for assessment appeals within 10 calendar days of receipt of the written notice of penalty.

(c) *Appeal hearing.* If ~~timely~~ notification of the intent to contest the civil penalty is given WITHIN THE TIME FRAME DESCRIBED IN PARAGRAPH (b)(2), the person contesting the civil penalty shall be provided with a hearing in accordance with 2 Pa.C.S. Chapter 5, Subchapter B and Chapter 7, Subchapter B (relating to local agency law).

(d) *Final civil penalty.* If, within 10 CALENDAR days from the receipt of the notification described in subsection (b), the person against whom the civil penalty is assessed fails to notify the county board for assessment appeals of intent to contest the assessed penalty, the civil penalty shall become final.

§ 137b.132. Distributing taxes and interest.

The county treasurer or tax claim bureau shall be responsible for the proper distribution of the taxes to the proper taxing authority (that is, political subdivision) and the proper distribution of interest in accordance with § 137b.93 (relating to disposition of interest on roll-back taxes).

§ 137b.133. Appealing a decision of the county assessor.

A landowner whose land is the subject of an application for preferential assessment under the act, or a political subdivision affected by the preferential assessment of that land may appeal a decision of the county assessor regarding the application and the method used to determine preferential assessments under the act. The landowner shall first appeal to the county board of assessment. After this board has made a decision, the landowner then has a right to appeal to the court of common pleas.

PROPOSED RULEMAKING

DEPARTMENT OF AGRICULTURE

[7 PA. CODE CHS. 137, 137a AND 137b]

Preferential Assessment of Farmland and Forest Land Under the Clean and Green Act

The Department of Agriculture (Department) proposes to establish regulations for implementing the Pennsylvania Farmland and Forest Land Assessment Act of 1974 (72 P. S. §§ 5490.1—5490.13), commonly referred to as the Clean and Green Act (act).

In summary, the act allows owners of agricultural, agricultural reserve or forest reserve land to apply for preferential assessment of their land. If the application is approved, the land receives an assessment based upon its use value, rather than its market value.

The Department offers the proposed amendments to replace outdated provisions, incorporate provisions that reflect various issues which have arisen under the act, provide examples to guide the regulated community and address the revisions to the act accomplished by the act of December 21, 1998 (P. L. 1225, No. 156) (Act 156). The proposed amendments will delete current regulations in Chapter 137 (relating to preferential assessment of farmland and forest land) and the current statement of policy in Chapter 137a (relating to Clean and Green Act—statement of policy), and replace these chapters with a single chapter, Chapter 137b (relating to preferential assessment of farmland and forest land under the Clean and Green Act).

Authority

The amendments are proposed under authority of section 11 of the act (72 P. S. § 5490.11), which requires the Department promulgate regulations necessary to promote the efficient, uniform, Statewide administration of that statute. In addition, section 12 of Act 156 (72 P. S. § 5490.4a note) amended the act to allow the Department to implement the interim regulations which are currently in Chapter 137a without proceeding through the regulatory promulgation process ordinarily required by law. It also required the Department to replace this statement of policy with formal regulations by April 30, 2001.

Need for the Proposed Amendments

There is an immediate need for the proposed amendments. As stated, Act 156 requires the Department to replace the current statement of policy with formal regulations by April 30, 2001. In addition, the proposed amendments will replace current outdated and inadequate regulations and help bring about uniform interpretation and application of the act throughout this Commonwealth.

In summary, the Department is satisfied there is a need for the proposed amendments, and that they are otherwise consistent with Executive Order 1996-1, "Regulatory Review and Promulgation."

Summary of the Proposed Amendments

As stated, the proposed amendments will replace outdated regulatory provisions, incorporate provisions to address questions that have arisen under the act, provide examples to guide the regulated community and address the revisions to that act accomplished by Act 156. The proposed amendments will delete current regulations in Chapter 137 and the current statement of policy in Chapter 137a and replace these chapters.

The Department solicited comments from affected parties as it drafted the proposed amendments. Among those offering comments were the Pennsylvania Farm Bureau, legislative staff, private individuals and county assessors or county officials from Bradford, Clinton, Dauphin, Lancaster, Lehigh, Mifflin, Montgomery, Northampton, Sullivan and Union Counties. Although there were disagreements among commentators, and between commentators and the Department, numerous suggestions offered by these commentators have either been incorporated into the proposed amendments or have helped shape this document.

A summary of some of the more significant provisions of the proposed amendments follows.

Proposed § 137b.2 (relating to definitions) consolidates definitions found in the act, Chapter 137 and Act 156. It also adds several new terms, such as "enrolled land" and "ineligible land."

Proposed § 137b.11 (relating to general) provides an explanation of what constitutes agricultural land, agricultural reserve land and forest reserve land—the three types of land eligible for preferential assessment under the act. It also clarifies the circumstances under which land may be enrolled to receive a preferential tax assessment. This section emphasizes that "farmstead land" is to be included in the eligible land, and that ineligible land may be included in an application for preferential assessment, but may not be preferentially assessed. The section contains a number of examples to help illustrate its provisions.

Proposed § 137b.41 (relating to application forms and procedures) describes the general procedure by which a landowner may apply for preferential assessment under the act. It also addresses the types of proof which a county assessor might reasonably require of a landowner to demonstrate that land is in an eligible use, with particular emphasis on the types of documentation that can establish "agricultural use" or "forest reserve."

Proposed § 137b.42 (relating to deadline for submission of applications) describes the application window for persons seeking preferential assessment of their land under the act. A landowner who applies for preferential assessment by June 1 of a particular year, and whose application is subsequently approved, will begin to receive the preferential assessment as of the commencement of the tax year of each taxing body in the following calendar year.

Proposed § 137b.46 (relating to fees of the county board for assessment appeals) describes the fees which may be charged by a county board for assessment appeals for processing or amending applications for preferential assessment. Subsection (b) lists the circumstances where an application should be amended without charge.

Proposed § 137b.51 (relating to assessment procedures) describes the assessment process. In summary, the Department will provide a county assessor with use values for various land use categories and land use subcategories. The county assessor will use these values—or county-assessor-generated use values that are lower than those provided by the Department—in determining a

"total use value" for a tract of enrolled land. This total use value is used in calculating the preferential assessment for the enrolled land. To provide a meaningful basis for comparing county-assessor-generated use values to those generated by the Department, this section requires that a county assessor generate use values for the same land use subcategories with respect to which the Department generates its use values.

Proposed § 137b.52 (relating to duration of preferential assessment) describes various circumstances that would alter or end preferential assessment of enrolled land. It also clarifies that the payment of roll-back taxes with respect to some portion of a tract of enrolled land does not automatically trigger the removal of the entire tract from preferential assessment. Subsection (d) sets forth a number of examples to illustrate this point. Subsection (e) lists some of the circumstances under which a county should terminate the preferential assessment of a tract of enrolled land.

Proposed § 137b.53 (relating to calculation and recalculation of preferential assessment) requires a county assessor to recalculate the preferential assessment of currently-enrolled land if farmstead land on the currently-enrolled land is not also preferentially assessed, or if the current assessment was calculated with use values that are higher than those provided by the Department. Also, if a county conducts a county-wide reassessment, it shall recalculate the preferential assessment of all enrolled land. This section does not limit a landowner's right to seek recalculation of the preferential assessment.

Proposed § 137b.62 (relating to enrolled "agricultural use" land of less than 10 contiguous acres) contains a description of the types of evidence that will suffice to demonstrate that a particular tract of less-than-10 acres of "agricultural use" land generates at least $2,000 in income from agricultural production each year.

Proposed § 137b.63 (relating to notice of change of application) requires an owner of enrolled land to provide a county assessor at least 30 days' advance written notice of a change in use of the land to something other than agricultural, agricultural reserve or forest reserve, or if there is a change in ownership of the enrolled land, or if there is a division or conveyance of the land.

Proposed § 137b.64 (relating to agricultural reserve land to be open to the public) attempts to clarify the requirement of section 2 of the act (72 P. S. § 5490.2) that "agricultural reserve" land be ". . . used for outdoor recreation of the enjoyment of scenic or natural beauty and open to the public for this use, without charge or fee, on a nondiscriminatory basis." The section allows a landowner to place reasonable restrictions on the uses to which the enrolled land may be put, and affords county assessors the option to establish procedures by which to identify the specific uses to which enrolled land may be put and disseminate that information to the public.

Proposed § 137b.71 (relating to death of an owner of enrolled land) provides that a "Class A" beneficiary who inherits enrolled land is not liable for roll-back taxes if the tract the beneficiary inherits does not meet the minimum requirements for preferential assessment. If the beneficiary subsequently changes the character or use of the land so that it no longer meets the minimum requirements for preferential assessment, though, preferential assessment shall cease and roll-back taxes shall be due.

Proposed § 137b.72 (relating to direct commercial sales of agriculturally related products and activities; rural enterprises incidental to the operational unit) allows fo up to 2 acres of enrolled land to be used for activitie related to agriculture and supportive of agricultural pro duction on the remaining enrolled land. Preferentia assessment would end on this up-to-2-acre tract, an roll-back taxes would also be due with respect to tha tract.

Proposed § 137b.73 (relating to wireless or cellula telecommunications facilities) allows for a small portion o enrolled land to be leased for the erection and operatio of a cellular communications tower. Preferential assess ment ends with respect to the leased tract and roll-back taxes are due with respect to that leased tract, as well.

Proposed § 137b.74 (relating to option to accept o forgive roll-back taxes in certain instances) affords a county assessor the option to waive roll-back taxes with respect to certain enrolled land that is transferred to specific charitable organizations for charitable purposes.

Proposed §§ 137b.75 and 137b.76 (relating to transfer of enrolled land for use as a cemetery; and transfer of enrolled land or transfer of an easement or right-of-way across enrolled land for use as a trail) address situations where transfers of enrolled land to specific entities for specific uses are allowed without triggering liability for roll-back taxes or ending preferential assessment of that portion of the enrolled land that is not transferred.

Proposed § 137b.81 (relating to general) addresses the situations in which a landowner may be liable for roll-back taxes with respect to enrolled land. In general, a change in use of enrolled land to something other than agricultural use, agricultural reserve or forest reserve triggers liability for roll-back taxes.

Proposed §§ 137b.82—137b.84 (relating to split-off tract; split-off that complies with section 6(a.1)(1)(i) of the act; and split-off that does not comply with section 6(a.1)(1)(i) of the act) address "split-offs" of enrolled land, and differentiate between split-offs that occur in accordance with the criteria in section 6(a.1)(1)(i) of the act and those that do not. The former triggers liability for roll-back taxes on the split-off tract only, while the latter triggers liability for roll-back taxes on the entire tract of enrolled land.

Proposed § 137b.89 (relating to calculation of roll-back taxes) provides a formula by which a county assessor can calculate the roll-back tax amount, plus simple interest thereon at the rate of 6% per annum.

Proposed § 137b.93 (relating to disposition of interest on roll-back taxes) describes requirements imposed by section 8(b.1) of Act 156 (72 P. S. § 5490.8(b.1)) with respect to the disposition of interest on roll-back taxes. Prior to Act 156, this interest belonged to the various affected taxing authorities. Act 156 requires this interest be provided to the county agricultural land preservation board for use under the Agricultural Area Security Law (3 P. S. §§ 901—915), which pertains to the purchase of agricultural conservation easements. If the county does not have such a board, the county assessor is to coordinate with the Department to arrange the transfer of the interest to the Agricultural Conservation Easement Purchase Fund, to be used in the Statewide agricultural conservation easement purchase effort.

Proposed §§ 137b.101—137b.112 (relating to duties of a county assessor) provide an overview of the various responsibilities of a county assessor under the act. These duties involve recordkeeping, recording approved applications, updating records on an annual basis, determining

otal use values, notifying landowners of changes in tatus, enforcement, evidence gathering and assessment f roll-back taxes.

Proposed § 137b.131 (relating to civil penalties) restates the penalty provisions in section 5.2 of the act (72 P. S. § 5490.5b). That provision allows for the imposition of a $100 civil penalty against a landowner who violates any provision of the act or its attendant regulations.

Persons Likely to be Affected

The proposed amendments promote the efficient, uniform, Statewide administration of the act. They update and supplant outdated and inadequate regulations in Chapter 137, supplant the statement of policy in Chapter 137a and implement changes to the act accomplished by Act 156. Although a number of persons and entities are likely to be impacted by the subject matter of this proposed rulemaking, the provisions of the act, rather than the provisions of the proposed regulations, drive these impacts.

Owners of agricultural, agricultural reserve and forest reserve land meeting the minimum requirements for preferential assessment set forth in the act will be affected by the proposed amendments. The use values prescribed by the act are likely to decrease taxes for these owners of enrolled land, or maintain these taxes at a comparatively lower level than those imposed upon owners of land that is not enrolled under the act to receive preferential assessment.

Taxpayers who do not own agricultural, agricultural reserve and forest reserve land meeting the minimum requirements for preferential assessment in the act will be impacted by the proposed amendments, in that they are the likely entity to be called upon to makeup any tax revenue shortfalls caused by a decrease in the taxes of those persons described in the preceding paragraph.

County governments will be affected by the proposed amendments, in that there is likely to be expense involved in recalculating preferential assessments as required under the act. There may also be costs involved as owners of currently-enrolled land seek recalculation of the preferential assessments of their land. In addition, the amendment to the act accomplished by Act 156 may result in tax revenue shortfalls where collections from agricultural, agricultural reserve and forest reserve lands are lower than anticipated.

Fiscal Impact

Commonwealth

The proposed amendments will have no appreciable fiscal impact upon the Commonwealth.

Political Subdivisions

The proposed amendments will impose costs upon county governments. As stated previously, counties are likely to incur expenses in recalculating preferential assessments as required under the act. There may also be costs involved as owners of currently-enrolled land seek recalculation of the preferential assessments of their land. In addition, the amendment to the act accomplished by Act 156 may result in tax revenue shortfalls when collections from agricultural, agricultural reserve and forest reserve lands are lower than anticipated.

Private Sector

The act (as amended by Act 156) results in a county receiving less tax revenue than anticipated from agricultural, agricultural reserve and forest reserve lands, other taxpayers from the private sector (that is, owners of lands that are not in agricultural use, agricultural reserve or forest reserve) may ultimately be called upon to make up this tax revenue shortfall.

General Public

If the act (as amended by Act 156) results in a county receiving less tax revenue than anticipated from agricultural, agricultural reserve and forest reserve lands, other taxpayers (that is, owners of lands that are not in agricultural use, agricultural reserve or forest reserve) may ultimately be called upon to make up this tax revenue shortfall.

Paperwork Requirements

The proposed amendments will not result in an appreciable increase in the paperwork handled by the Department.

Regulatory Review

The Department submitted a copy of the proposed amendments to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Standing Committees on Agriculture and Rural Affairs on August 21, 2000, in accordance with section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)). The Department also provided IRRC and the Committees 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 an objection to any portion of the proposed amendments, it must 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 sets forth detailed procedures for review of these objections by the Department, the General Assembly and the Governor prior to the publication of the proposed amendments.

Public Comment Period

The Department invites public comment with respect to the proposed amendments. Written comments should be directed to the contact person. The public comment period with respect to the proposed amendments shall expire after 30 days from publication of the proposed amendments in the *Pennsylvania Bulletin*.

Annotated Copies Available

The Department will e-mail interested persons a copy of an annotated, unofficial version of the proposed amendments. The extensive annotations reference statutory authority for various provisions of the proposed amendments, cite related provisions from the current regulations in Chapters 137 and 137a, and summarize comments received by the Department in the preliminary drafting process for the proposed amendments. Requests for E-mail copies of the annotated, unofficial version of the proposed amendments should be directed to the contact person identified in this Preamble.

Contact Person

Further information is available by contacting the Department of Agriculture, Bureau of Farmland Protection, 2301 North Cameron Street, Harrisburg, PA 17110-9408, Attention: Raymond C. Pickering, (717) 783-3167.

Sunset/Expiration Date

Although no sunset or expiration date is set for the regulations, the Department would review their efficacy on an ongoing basis.

Effective Date

The proposed amendments will take effect upon the date of final adoption.

SAMUEL E. HAYES, Jr.,
Secretary

Fiscal Note: 2-133. No fiscal impact; (8) recommends adoption.

(*Editor's Note*: As part of this proposed rulemaking, the Department is proposing to delete the text of Chapters 137 and 137a, which appear at 7 Pa. Code pages 137-1—137-35, serial pages (257043)—(257077) and pages 137a-1—137a-27, serial pages (257079)—(257105). The following chapter is new and is printed in regular type to enhance readability.)

Annex A

TITLE 7. AGRICULTURE

PART V-C. FARMLAND AND FOREST LAND

CHAPTER 137b. PREFERENTIAL ASSESSMENT OF FARMLAND AND FOREST LAND UNDER THE CLEAN AND GREEN ACT

GENERAL PROVISIONS

ELIGIBLE LAND

APPLICATION PROCESS

PREFERENTIAL ASSESSMENT

OBLIGATIONS OF THE OWNER OF ENROLLED LAND

IMPACT OF SPECIFIC EVENTS OR USES ON PREFERENTIA ASSESSMENT

LIABILITY FOR ROLL-BACK TAXES

DUTIES OF COUNTY ASSESSOR

RECORDER OF DEEDS

MISCELLANEOUS

GENERAL PROVISIONS

§ 137b.1. Purpose.

(a) This chapter establishes procedures necessary f the uniform Statewide implementation of the act. The a provides for land devoted to agricultural use, agricultur reserve use or forest reserve use to be assessed at th value it has for that use rather than at fair market valu The intent of the act is to encourage the keeping of lan in one of these uses.

(b) The benefit to an owner of enrolled land is a assurance that the enrolled land will not be assessed a the same rate as land that is not enrolled land. In almos all cases, an owner of enrolled land will see a reduction i his property assessment compared to land assessed c valued at its fair market value. The difference betwee assessments of enrolled land and land that is not enrolle land will be most noticeable when a county is reassessed The intent of the act is to protect the owner of enrolle land from being forced to go out of agriculture, or se part of the land to pay taxes.

§ 137b.2. Definitions.

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

Act—The Pennsylvania Farmland and Forest Land Assessment Act of 1974 (72 P. S. §§ 5490.1—5490.13), commonly referred to as the Clean and Green Act.

Agricultural commodity—Any of the following:

(i) Agricultural, apicultural, aquacultural, horticultural, floricultural, silvicultural, viticultural and dairy products.

(ii) Pasture.

(iii) Livestock and the products thereof.

(iv) Ranch-raised furbearing animals and the products thereof.

(v) Poultry and the products of poultry.

(vi) Products commonly raised or produced on farms which are intended for human consumption or are transported or intended to be transported in commerce.

(vii) Processed or manufactured products of products commonly raised or produced on farms which are intended for human consumption or are transported or intended to be transported in commerce.

Agricultural reserve—

(i) Noncommercial open space lands used for outdoor recreation or the enjoyment of scenic or natural beauty and open to the public for that use, without charge or fee, on a nondiscriminatory basis.

(ii) The term includes any farmstead land on the tract.

Agricultural use—Land which is used for the purpose of producing an agricultural commodity or is devoted to and meets the requirements and qualifications for payments or other compensation under a soil conservation program under an agreement with an agency of the Federal government.

(i) The term includes any farmstead land on the tract.

(ii) The term includes a woodlot.

(iii) The term includes land which is rented to another person and used for the purpose of producing an agricultural commodity.

Assessment ratio or *county's established predetermined ratio*—The ratio established by a taxing body that determines on what portion of the assessed value the millage rate is to be levied, as prescribed by assessment law.

Capitalization rate—The percentage rate used to convert income to value, as determined by the most recent 5-year rolling average of 15-year fixed loan interest rates offered to landowners by the Federal Agricultural Mortgage Corporation or other similar Federal agricultural lending institution, adjusted to include the landowner's cost of investment and the effective tax rate.

Class A beneficiaries for inheritance tax purposes—The following relations to a decedent: grandfather, grandmother, father, mother, husband, wife, lineal descendants, surviving widow, husband or widower of a child. Lineal descendants include all children of the natural parents and their descendants, whether or not they have been adopted by others, adopted descendants and their descendants and stepdescendants.

Contiguous tract—

(i) All portions of one operational unit as described in the deed or deeds, whether or not the portions are divided by streams, public roads or bridges and whether or not the portions are described as multiple tax parcels, tracts, purparts or other property identifiers.

(ii) The term includes supportive lands, such as unpaved field access roads, drainage areas, border strips, hedgerows, submerged lands, marshes, ponds and streams.

Contributory value of farm building—The value of the farm building as an allocated portion of the total fair market value assigned to the tract, irrespective of replacement cost of the building.

(i) The preferred method of calculating the contributory value of a farm building shall be a method based upon fair market comparison and the extraction of the value of the farm building from the total fair market value of the parcel.

(ii) Alternate methods of calculating this value may be used when the contributory value of a farm building using the preferred approach would not accurately reflect this contributory value.

County—The county assessor, the county board of assessment or other county entity responsible to perform or administer a specific function under the act.

Curtilage—The land surrounding a residential structure and farm building used for a yard, driveway, onlot sewage system or access to any building on the tract.

Department—The Department of Agriculture of the Commonwealth.

Enrolled land—Land eligible for a preferential assessment under an approved application for preferential assessment filed in accordance with the act.

Fair market value—The price as of the valuation date for the highest and best use of the property which a willing and informed seller who is not obligated to sell would accept for the property, and which a willing and informed buyer who is under no obligation to buy would pay for the property.

Farm building—A structure utilized to store, maintain or house farm implements, agricultural commodities or crops, livestock and livestock products, as defined in the Agricultural Area Security Law (3 P. S. §§ 901—915).

Farmstead land—Any curtilage and land situated under a residence, farm building or other building which supports a residence, including a residential garage or workshop.

Forest reserve—Land, 10 acres or more, stocked by forest trees of any size and capable of producing timber or other wood products.

(i) The term includes farmstead land on the tract.

(ii) The term includes land which is rented to another person and used for the purpose of producing timber or other wood products.

Income approach—The method of valuation which uses a capitalization rate to convert annual net income to an estimate of present value. Present value is equal to the net annual return to land divided by the capitalization rate.

Ineligible land—Land which is not used for any of the three eligible uses (agricultural use, agricultural reserve or forest reserve) and therefore cannot receive use value assessment.

Land use category—Agricultural use, agricultural reserve or forest reserve.

Land use subcategory—A category of land in agricultural use, agricultural reserve or forest reserve, established by the Department and assigned a particular use value in accordance with sections 3 and 4.1 of the act (72 P. S. §§ 5490.3 and 5490.4a). A land use subcategory may be based upon soil type, forest type, soil group or any other recognized subcategorization of agricultural or forest land.

Net return to land—Annual net income per acre after operating expenses are subtracted from gross income. The calculation of operating expenses does not include interest or principal payments.

Normal assessment—The total fair market value of buildings and ineligible land, as of the base year of assessment, on a tract multiplied by the assessment ratio.

Outdoor recreation—Passive recreational use of land that does not entail the erection of permanent structures, grading of the land, the disturbance or removal of topsoil or any change to the land which would render it incapable of being immediately converted to agricultural use.

(i) The term includes hiking, hunting, horseback riding and similar passive recreational uses of the land.

(ii) The term does not include the use of land for baseball, soccer fields, football fields, golf courses or similar uses.

Pasture—Land, other than land enrolled in the USDA Conservation Reserve Program, used primarily for the growing of grasses and legumes for consumption by livestock.

Person—A corporation, partnership, limited liability company, business trust, other association, government entity (other than the Commonwealth), estate, trust, foundation or natural person.

Preferential assessment—The total use value of land qualifying for assessment under the act.

Roll-back tax—The amount equal to the difference between the taxes paid or payable on the basis of the valuation and the taxes that would have been paid or payable had that land not been valued, assessed and taxed as other land in the taxing district in the current tax year, the year of change, and in 6 of the previous tax years or the number of years of preferential assessment up to 7.

Rural enterprise incidental to the operational unit—A commercial enterprise or venture that is conducted within 2 acres or less of enrolled land and, when conducted, does not permanently impede or otherwise interfere with the production of an agricultural commodity on that portion of the enrolled land that is not subject to roll-back taxes under section 8(d) of the act (72 P. S. § 5490.8(d)) as a result of that commercial enterprise or venture.

Separation—A division, by conveyance or other action of the owner, of enrolled land into two or more tracts of land, the use of which continues to be agricultural use, agricultural reserve or forest reserve and all tracts so formed meet the requirements of section 3 of the act.

Split-off—A division, by conveyance or other action of the owner, of enrolled land into two or more tracts of land, the use of which on one or more of the tracts does not meet the requirements of section 3 of the act.

Tract—

(i) A lot, piece or parcel of land.

(ii) The term does not refer to any precise dimensio land.

Transfer—A conveyance of all of the contiguous enro land described in a single application for preferen assessment under the act. When a single application preferential assessment includes noncontiguous land, conveyance of the entirety of any contiguous land scribed in that application is also a transfer.

USDA—The United States Department of Agricult

USDA-ERS—The United States Department Agriculture-Economic Research Service.

USDA-NRCS—The United States Department Agriculture-Natural Resources Conservation Service.

Woodlot—An area of less than 10 acres, stocked trees of any size and contiguous to or part of land agricultural use or agricultural reserve.

§ 137b.3. Responsibilities of the Department.

(a) *General.* The Department's responsibilities are provide the use values described in section 4.1 of the (72 P. S. § 5490.4a) and provide the forms and regu tions necessary to promote the efficient, uniform Sta wide administration of the act.

(b) *Information gathering.* The Department will coll information from county assessors for each calendar y to insure that the act and this chapter are being imp mented fairly and uniformly throughout this Comm wealth. This information will be collected through survey form to be provided to county assessors by t Department no later than December 15 each year, a which county assessors shall complete and submit to t Department by January 31 of the following year.

§ 137b.4. Contacting the Department.

For purposes of this chapter, communications to t Department shall be directed to the following addre

Pennsylvania Department of Agriculture
Bureau of Farmland Protection
2301 North Cameron Street
Harrisburg, PA 17110-9408
Telephone: (717) 783-3167
Facsimile: (717) 772-8798

ELIGIBLE LAND

§ 137b.11. General.

Three types of land are eligible for preferential asse ment under the act.

(1) Land in agricultural use.

(2) Land in agricultural reserve.

(3) Land in forest reserve.

§ 137b.12. Agricultural use.

Land that is in agricultural use is eligible for prefere tial assessment under the act if it has been in agricu tural production for at least 3 years preceding t application for preferential assessment, and is one of t following:

(1) Comprised of 10 or more contiguous acres (inclu ing any farmstead land and woodlot).

(2) Has an anticipated yearly gross agricultural produ tion income of at least $2,000 from the production of agricultural commodity.

§ 137b.13. Agricultural reserve.

Land that is in agricultural reserve is eligible for preferential assessment under the act if at least 60% of the land is in USDA-NRCS land capability classifications I through VI, excluding water areas and wetland areas, and the land is comprised of 10 or more contiguous acres (including any farmstead land).

§ 137b.14. Forest reserve.

Land that is in forest reserve is eligible for preferential assessment under the act if it is presently stocked with trees so that it is capable of producing annual growth of 25 cubic feet per-acre, and the land is comprised of 10 or more contiguous acres (including any farmstead land).

§ 137b.15. Inclusion of farmstead land.

(a) Farmstead land is an integral part of land in agricultural use, agricultural reserve or forest reserve. In considering whether land is in agricultural use, agricultural reserve or forest reserve, a county shall include any portion of that land that is farmstead land.

(b) Farmstead land shall be considered to be land that qualifies for preferential assessment under the act and this chapter.

§ 137b.16. Residence not required.

A county may not require that an applicant for preferential assessment under the act be a resident of the county or reside on the land with respect to which preferential assessment is sought.

§ 137b.17. Common ownership required.

A landowner seeking preferential assessment under the act shall be the owner of every tract of land listed on the application.

Example 1: Husband and wife are joint owners of two contiguous 100-acre tracts of farmland. They have common ownership of both tracts and may include these tracts in a single application for preferential assessment.

Example 2: Husband and wife are joint owners of a 100-acre tract of farmland. Husband and son are joint owners of a contiguous 100-acre tract of farmland. These two tracts may not be combined in a single application for preferential assessment.

§ 137b.18. County-imposed eligibility requirements.

A county assessor may not impose eligibility requirements or conditions other than those prescribed in section 3 of the act (72 P. S. § 5490.3).

Example: A county may not require an owner of contiguous—but separately deeded—tracts of land to consolidate the tracts in a single deed or require any alteration of existing deeds as a condition of eligibility for preferential assessment.

§ 137b.19. Multiple tracts on a single application.

A landowner seeking preferential assessment under the act may include more than one tract in a single application for preferential assessment, regardless of whether the tracts on the application have separate deeds, are identified by separate tax parcel numbers or are otherwise distinct from each other.

(1) *Contiguous tracts.*

(i) A landowner seeking preferential assessment under the act may include in the application individual contiguous tracts that would not—if considered individually—qualify for preferential assessment.

(ii) If two or more tracts on a single application for preferential assessment are contiguous, the entire contiguous area shall meet the use and minimum size requirements for eligibility.

(2) *Noncontiguous tracts.* If any tract on a single application for preferential assessment is not contiguous to another tract described on that application, that individual tract shall—by itself—meet the use and minimum size requirements for eligibility.

§ 137b.20. Inclusion of all contiguous land described in the deed to the tract with respect to which enrollment is sought.

A landowner may not apply for preferential assessment for less than the entire contiguous portion of land described in the deed applicable to a tract with respect to which preferential assessment is sought.

Example 1: A landowner owns a single, 100-acre tract of farmland described in a single deed, and wishes to apply for preferential assessment under the act. The application may not be for less than the entire 100 acres.

Example 2: A landowner owns 150 acres of farmland described in a single deed, and wishes to apply for preferential assessment under the act. The deed to this land describes three separate tracts: two contiguous 50-acre tracts and a noncontiguous 50-acre tract. The landowner's options are as follows:

(1) Enroll the contiguous 50-acre tracts.

(2) Enroll the noncontiguous 50-acre tract.

(3) Enroll both the contiguous 50-acre tracts and the noncontiguous 50-acre tract.

The landowner does not have the option to enroll only one of the contiguous 50-acre tracts.

§ 137b.21. Exclusion of noncontiguous tract described in a single deed.

If two or more tracts of land are described in a single deed, a landowner seeking preferential assessment under the act may exclude from the application for preferential assessment any separately-described tract that is not contiguous to the tracts for which preferential assessment is sought.

Example: A landowner owns 150 acres of farmland described in a single deed, and wishes to apply for preferential assessment under the act. The deed to this land describes three separate tracts: two contiguous 50-acre tracts and a noncontiguous 50-acre tract. The landowner has the option to seek to enroll the noncontiguous 50-acre tract.

§ 137b.22. Landowner may include or exclude from the application tracts described in separate deeds.

If the landowner seeking preferential assessment under the act owns contiguous tracts that are described in separate deeds, the landowner may include or exclude any of the contiguous tracts from the application for preferential assessment.

§ 137b.23. Land adjoining preferentially assessed land with common ownership is eligible.

(a) *General.* A tract of land in agricultural use, agricultural reserve or forest reserve shall receive a preferential assessment under the act regardless of whether the tract meets the 10-contiguous-acres minimum acreage requirement or the $2,000-per-year minimum anticipated gross

income requirement, or both, established in section 3 of the act (72 P. S. § 5490.3) if the following occur:

(1) The landowner owns both the tract for which preferential assessment is sought and a contiguous tract of enrolled land.

(2) The landowner files an amended application for preferential assessment, describing both the tract for which preferential assessment is sought and the contiguous tract of enrolled land. The amended application shall be in accordance with the act and this chapter.

(b) *Roll-back taxes.* A violation of the provisions of preferential assessment on a tract added under subsection (a) shall trigger liability for roll-back taxes, plus interest, on that tract and all other contiguous tracts identified in the amended application.

§ 137b.24. Ineligible land may appear on an application, although it cannot receive preferential assessment.

A landowner seeking preferential assessment under the act shall include ineligible land on the application if the ineligible land is part of a larger contiguous tract of eligible land, and the use of the land which causes it to be ineligible exists at the time the application is filed. Although this ineligible land may not receive preferential assessment, the applicant shall specify the boundaries and acreage of the ineligible land. The ultimate determination of whether land is eligible or ineligible shall be made by the county assessor.

Example: A landowner owns a 100-acre tract of land, 90 acres of which is productive farmland and 10 acres of which is occupied by an auto salvage yard. If the landowner seeks preferential assessment of the 90 acres of farmland, the application shall describe the entire 100-acre tract and the county will not require the 10-acre tract be surveyed-out or deeded as a prerequisite to the application being considered. If preferential assessment is granted, it will apply to the 90 acres of farmland. The 10-acre tract would continue to be assigned its fair market value and assessed accordingly.

§ 137b.25. Multiple land use categories on a single application.

An applicant for preferential assessment under the act may include land in more than one land use category in the application. A county assessor shall allow the applicant to submit an application that designates those portions of the tract to be assessed under each of the different land use categories.

Example: A landowner owns 100 acres of land. The landowner may submit an application that designates 75 acres in agricultural use, 13 acres in agricultural reserve and 12 acres in forest reserve, if the acreage identified by the landowner for the particular land use category meets the minimum criteria in section 3 of the act (72 P. S. § 5490.3) for that land use category.

§ 137b.26. Land located in more than one tax district.

If land for which preferential assessment is sought lies in more than one taxing district, the county's determination as to whether the land meets applicable minimum acreage requirements for eligible land shall be made on the basis of the total contiguous acreage—without regard to the boundaries of the taxing districts in which the land is located.

Example 1: A landowner has a 100-acre tract of farmland—94 acres of which lies in Township A and 6 acres of which lies in Township B. The landowner files an application seeking preferential assessment of this land. The fact that the tract lies in two separate townships shall be immaterial to the determination of whether the 100-acre tract meets the requirements for preferential assessment under the act.

Example 2: A landowner has a 100-acre tract of farmland—94 acres of which lies in County A and 6 acres of which lies in County B. The landowner files an application in each county, seeking preferential assessment of that portion of the 100-acre tract lying within the respective counties. The fact that the tract lies in two separate counties shall be immaterial to the determination of whether the land described in the application meets the requirements for preferential assessment under the act.

§ 137b.27. Assessment of ineligible land.

Land and buildings that are included in an application for preferential assessment under the act but are ineligible for preferential assessment shall be appraised at fair market value and shall be assessed accordingly.

APPLICATION PROCESS

§ 137b.41. Application forms and procedures.

(a) *Standardized application form required.* A county shall require a landowner seeking to apply for preferential assessment under the act to make that application on a current "Clean and Green Valuation Application" form—a uniform preferential assessment application form developed by the Department. The Department will provide an initial supply of these forms to a county upon request. The county assessor shall maintain an adequate supply of these forms.

(b) *Application form and worksheets.* A landowner seeking to apply for preferential assessment under the act shall complete a Clean and Green Valuation Application. The county assessor shall complete the appropriate sections of the current "Clean and Green Valuation Worksheet" form for each category of eligible land described in the application. The Department will provide an initial supply of these forms to a county upon request.

(c) *Obtaining an application and reviewing this chapter.* A landowner seeking preferential assessment under the act may obtain an application form and required worksheets from the county board of assessment office. A county assessor shall retain a copy of this chapter at the county board of assessment office, and shall make this copy available for inspection by any applicant or prospective applicant.

(d) *Required language.* An application for preferential assessment shall contain the following statement:

The applicant for preferential assessment hereby agrees, if the application is approved for preferential assessment, to submit 30 days notice to the county assessor of a proposed change in use of the land, a change in ownership of a portion of the land or of any type of division or conveyance of the land. The applicant for preferential assessment hereby acknowledges that, if the application is approved for preferential assessment, roll-back taxes under the act in 72 P. S. § 5490.5a may be due for a change in use of the land, a change in ownership of a portion of the land, or any type of division or conveyance of the land.

(e) *Additional information.* A county assessor may require an applicant to provide additional information or documentation necessary to substantiate that the land is eligible for preferential assessment. A county assessor requiring additional information shall notify the applicant in writing and shall clearly state in the notice the reasons why the application or other information or documentation submitted by the applicant is insufficient to substantiate eligibility, and shall identify the particular information the county assessor requests to substantiate eligibility.

(f) *Signature of all landowners required.* An application for preferential assessment may not be accepted by a county if it does not bear the notarized signature of all of the owners of the land described in the application.

§ 137b.42. Deadline for submission of applications.

(a) *General.* A landowner seeking preferential assessment under the act shall apply to the county by June 1. If the application is approved by the county assessor, preferential assessment shall be effective as of the commencement of the tax year of each taxing body commencing in the calendar year immediately following the application deadline.

Example 1: A landowner applies for preferential assessment on or before June 1, 2001. The application is subsequently approved. Preferential assessment shall be effective as of the commencement of the tax year for each taxing body in calendar year 2002.

Example 2: A landowner applies for preferential assessment on or after June 2, 2001, but not later than June 1, 2002. The application is subsequently approved. The application deadline is June 1, 2002. Preferential assessment shall be effective as of the commencement of the tax year for each taxing body in calendar year 2003.

(b) *Exception: years in which a county implements countywide reassessment.* In those years when a county implements a countywide reassessment, or a countywide reassessment of enrolled land, the application deadline shall be extended to either a date 30 days after the final order of the county board for assessment appeals or by October 15 of the same year, whichever date is sooner. This deadline is applicable regardless of whether judicial review of the order is sought.

§ 137b.43. Applications where subject land is located in more than one county.

If a landowner seeks to enroll a tract of land for preferential assessment under the act, and the tract is located in more than one county, the landowner shall file the application with the county assessor in the county to which the landowner pays property taxes.

§ 137b.44. County processing of applications.

A county shall accept and process in a timely manner all complete and accurate applications for preferential assessment so that, if the application is accepted, preferential assessment is effective as of the tax year of each taxing body commencing in the calendar year immediately following the application deadline.

Example 1: An application for preferential assessment is filed on or before June 1, 2001. The county must review and process the application so that—if the application is approved—preferential assessment can take effect as of the commencement of the tax year of each taxing body commencing in 2002 (the calendar year immediately following the application deadline).

Example 2: An application for preferential assessment is filed at some point from June 2, 2001 through June 1, 2002. The county must review and process the application so that—if the application is approved—preferential assessment can take effect as of the commencement of the tax year of each taxing body commencing in 2003 (the calendar year immediately following the application deadline).

§ 137b.45. Notice of qualification for preferential assessment.

A county assessor shall provide an applicant for preferential assessment under the act with written notification of whether the land described in that application qualifies for that preferential assessment or fails to meet the qualifications for preferential assessment.

§ 137b.46. Fees of the county board for assessment appeals.

(a) *Application processing fee.* A county board for assessment appeals may impose a fee of no more than $50 for processing an application for preferential assessment under the act, or for processing changes other than those described in subsection (b). This fee may be charged regardless of whether the application is ultimately approved or rejected. This fee is exclusive of any fee which may be charged by the recorder of deeds for recording the application.

(b) *Circumstances under which initial application shall be amended without charge.* A county board for assessment appeals may not charge a fee for amending an initial application for preferential assessment to reflect changes resulting from one or more of the following:

(1) Split-off.

(2) Separation.

(3) Transfer or change of ownership.

PREFERENTIAL ASSESSMENT

§ 137b.51. Assessment procedures.

(a) *Use values and land use subcategories to be provided by the Department.* The Department will determine the land use subcategories and provide county assessors use values for each land use subcategory. The Department will provide these land use subcategories and use values to each county assessor by May 1 of each year.

(b) *Determining use values and land use subcategories.*

(1) *Agricultural use and agricultural reserve.* In calculating appropriate county-specific agricultural use values and agricultural reserve use values, and land use subcategories, the Department will consult with the Department of Agricultural Economics and Rural Sociology of the College of Agricultural Sciences at the Pennsylvania State University, the Pennsylvania Agricultural Statistics Service, USDA-ERS, USDA-NRCS and other sources the Department deems appropriate. In determining county-specific agricultural use and agricultural reserve use values, the Department will use the income approach for asset valuation.

(2) *Forest reserve.* In calculating appropriate county-specific forest reserve use values and land use subcategories, the Department will consult with the Bureau of Forestry of the Department of Conservation and Natural Resources.

(c) *County assessor to determine total use value.*

(1) For each application for preferential assessment, the county assessor shall establish a total use value for land in agricultural use and agricultural reserve, including farmstead land, by considering available evidence of the capability of the land for its particular use utilizing the USDA-NRCS Agricultural Land Capability Classification system and other information available from USDA-ERS, the Pennsylvania State University and the Pennsylvania Agricultural Statistics Service. Contributory value of farm buildings, as calculated in accordance with § 137b.54 (relating to calculating the contributory value of farm buildings), shall be used.

(2) For each application for preferential assessment, the county assessor shall establish a total use value for land in forest reserve, including farmstead land, by considering available evidence of capability of the land for its particular use. Contributory value of farm buildings, as calculated in accordance with § 137b.54 shall be used.

(d) *Determining preferential assessment.* The preferential assessment of land is determined by multiplying the number of acres in each land use subcategory by the use value for that particular land use subcategory, and then adding these products. The Department will establish land use subcategories as part of the procedure to establish use values.

(e) *Option of county assessors to establish and use lower use values.* A county assessor may establish use values for land use subcategories that are less than the use values established by the Department for those same land use subcategories. A county assessor may use these lower use values in determining preferential assessments under the act. Regardless of whether the county assessor applies use values established by the Department or lower use values established by the county assessor, the county assessor shall apply the use values uniformly when calculating or recalculating preferential assessments, and shall apply these use values to the same land use subcategories as established by the Department. Calculation and recalculation of preferential assessments shall be made in accordance with § 137b.53 (relating to calculation and recalculation of preferential assessment). A county assessor may not, under any circumstances, establish or apply use values that are higher than those use values established by the Department.

(f) *Option of county assessors to select between county-established use values and use values provided by the Department.* When a county assessor has established use values for the three land use categories (agricultural use, agricultural reserve and forest reserve), and the use values for some—but not all—of these land use categories are lower than those provided by the Department, the county assessor has the option to apply the lower use value with respect to each individual land use category, without regard to whether it was provided by the Department or established by the county assessor.

§ 137b.52. Duration of preferential assessment.

(a) *General.* Enrolled land shall remain under preferential assessment for as long as it continues to meet the minimum qualifications for preferential assessment. Land that is in agricultural use, agricultural reserve or forest reserve shall remain under preferential assessment even if its use changes to either of the other two uses.

Example: A landowner owns a 100-acre tract of enrolled land, consisting of 85 acres in agricultural use and 15 acres in forest reserve. If the landowner later amends his application to one in which 60 acres are in agricultural use, 30 acres are in agricultural reserve and 10 acres are in forest reserve, the entire 100-acre tract continues to receive preferential assessment (although different use values and land use subcategories may apply in recalculating the preferential assessment).

(b) *No termination of preferential assessment without change of use.* An owner of enrolled land may not unilaterally terminate or waive the preferential assessment of enrolled land. Preferential assessment terminates as of the change of use of the land to something other than agricultural use, agricultural reserve or forest reserve. It is this event—the change of use of the enrolled land to something other than agricultural use, agricultural reserve or forest reserve—that terminates preferential assessment and triggers liability for roll-back taxes and interest. Although an owner of enrolled land may not unilaterally terminate or waive the preferential assessment of enrolled land, the landowner may minimize roll-back tax liability by voluntarily paying taxes in the amount the landowner would be obligated to pay if the land not preferentially assessed.

Example 1: An owner of 60 acres of enrolled land no longer wishes to have the enrolled land receive a preferential assessment under the act. The landowner writes the county assessor and notifies the county assessor of this desire. The landowner does not change the use of the land from one of the land use categories. The preferential assessment of the land shall continue.

Example 2: Same facts as Example 1, except the landowner changes the use of the 60 aces of enrolled land to something other than agricultural use, agricultural reserve or forest reserve, and the change of use occurs on July 1. Preferential assessment ends as of that change of use, and roll-back taxes and interest are due as of the date of the change of use.

Example 3: Same facts as Example 1, except that the landowner began to receive preferential assessment in the 1998 tax year. Beginning with the 2000 tax year and each tax year thereafter, the landowner elects to voluntarily pay—and the county assessor agrees to accept—property taxes on the basis of the enrolled land's fair market assessed value, rather than the enrolled land's preferential assessment value. On September 1, 2004, the landowner changes the use of all of the land to something other than agricultural use, agricultural reserve or forest reserve. Preferential assessment ends as of the change of use, and the landowner is liable for the payment of roll-back taxes. Assuming the landowner paid all of the taxes due for tax years 2000, 2001, 2002, 2003 and 2004 based upon the normal assessed value of the enrolled land, the landowner would only be liable for roll-back taxes and interest for tax years 1998 and 1999—the only tax years of the 7-year period for roll-back tax liability in which the landowner paid taxes based upon preferential assessment, rather than the enrolled land's normal assessed value.

Example 4: Same facts as Example 3, except that on September 1, 2007, the landowner changes the use of all of the land to something other than agricultural use, agricultural reserve or forest reserve. Preferential assessment ends as of the change of use, and the landowner is liable for the payment of roll-back taxes. Since the landowner had been voluntarily paying taxes on the basis of the normal assessed value of the enrolled land for longer than the 7-year period for

roll-back tax liability, though, the landowner's roll-back tax liability would be zero.

(c) *Split-offs, separations, transfers and other events.* Split-offs, separations and transfers under the act or this chapter will not result in termination of preferential assessment on the land which is retained by the landowner and which continues to meet the requirements of section 3 of the act (72 P. S. § 5490.3). In addition, the following events will not result in termination of preferential assessment on that portion of enrolled land which continues to meet the requirements of section 3 of the act:

(1) The lease of a portion of the enrolled land to be used for a wireless or cellular communication tower in accordance with section 6(b.1) of the act (72 P. S. § 5490.6(b.1)) and § 137b.73 (relating to wireless or cellular telecommunications facilities).

(2) The change of use of a portion of the enrolled land to another land use category (agricultural use, agricultural reserve or forest reserve).

(3) Condemnation of a portion of the land.

(4) The sale or donation of a portion of the enrolled land to any of the entities described in section 8(b)(1)—(7) of the act (72 P. S. § 5490.8(b)(1)—(7)), for the purposes described in that section, and § 137b.74 (relating to option to accept or forgive roll-back taxes in certain instances).

(5) The use of up to 2 acres of the enrolled land for direct commercial sales of agriculturally related products or for a rural enterprise incidental to the operational unit, in accordance with section 8(d) of the act and § 137b.72 (relating to direct commercial sales of agriculturally related products and activities; rural enterprises incidental to the operational unit).

(6) The conveyance of a portion of the enrolled land to a nonprofit corporation for use as a cemetery, in accordance with section 8(e) of the act and § 137b.75 (relating to transfer of enrolled land for use as a cemetery).

(7) The conveyance of a portion of the enrolled land to a nonprofit corporation for use as a trail, in accordance with section 8(e) of the act and § 137b.76 (relating to transfer of enrolled land or transfer of an easement or right-of-way across enrolled land for use as a trail).

(8) The distribution, upon the death of the owner of the enrolled land, of the enrolled land among the beneficiaries designated as Class A for inheritance tax purposes, in accordance with section 6(d) of the act and § 137b.71 (relating to death of an owner of enrolled land).

(d) *Payment of roll-back taxes does not affect preferential assessment of remaining land.* The payment of roll-back taxes and interest under the act and this chapter may not result in termination of preferential assessment on the remainder of the land covered by preferential assessment.

Example 1: A landowner owns a 100-acre tract of enrolled land, which is in agricultural use. The landowner splits off a tract of no more than 2 acres and that 2-acre tract is used for a residential dwelling as described in section 6(a.1)(1)(i) of the act and meets the other criteria in that paragraph. Although the 2-acre tract is no longer entitled to receive preferential assessment, the 98-acre tract shall continue to receive preferential assessment. Also, roll-back taxes would be due with respect to the 2-acre tract.

Example 2: Landowner A owns a 100-acre tract of enrolled land, which is in agricultural use. Landowner A splits off a 2-acre tract and sells it to Landowner B, with the understanding that Landowner B will use the land for a residential dwelling permitted under section 6(a.1)(1)(i) of the act. Roll-back taxes are due with respect to the 2-acre tract. Landowner B does not erect the permitted residential dwelling, but converts the 2-acre tract to commercial use. Landowner B owes roll-back taxes with respect to the entire 100-acre tract (under section 6(a.1) of the act). Landowner A has no liability for any of the roll-back taxes which were triggered and are owed by Landowner B as a result of the conversion of the 2-acre tract to commercial use. If the 98-acre tract owned by Landowner A continues in agricultural use, agricultural reserve or forest reserve, and continues to meet the requirements of section 3 of the act, it shall continue to receive preferential assessment.

Example 3: Landowner A owns a 100-acre tract of enrolled land, which is in agricultural use. Landowner A separates the land into a 50-acre tract and two 25-acre tracts, and sells a 25-acre tract to Landowner B. All 100 acres continue in agricultural use and continue to meet the requirements of section 2 of the act. No roll-back taxes are due. The entire 100-acre tract shall continue to receive preferential assessment.

Example 4: Same facts as Example 3, except that within 7 years of the separation, Landowner B changes the use of his 25-acre tract to something other than agricultural use, agricultural reserve or forest reserve. Landowner B shall pay roll-back taxes with respect to the entire 100-acre tract (under section 6(a.2) of the act). If the 75 acres owned by Landowner A continues in agricultural use, agricultural reserve or forest reserve, and continues to meet the requirements of section 2 of the act, it shall continue to receive preferential assessment under the act.

Example 5: Same facts as Example 3, except that more than 7 years after the date of separation, Landowner B changes the use of his 25-acre tract to something other than agricultural use, agricultural reserve or forest reserve. Landowner B shall pay roll-back taxes on his 25-acre tract (under section 6(a.2) of the act). If the 75 acres owned by Landowner A continues in agricultural use, agricultural reserve or forest reserve, and continues to meet the requirements of section 3 of the act, it shall continue to receive preferential assessment under the act.

(e) *Termination of preferential assessment by county.* The maximum area with respect to which a county may terminate preferential assessment may not exceed:

(1) In the case of a split-off that is not a condemnation and that meets the maximum size, use and aggregate acreage requirements in section 6(a.1)(1)(i) of the act, the land so split-off.

(2) In the case of a split-off that is not a condemnation and that does not meet the maximum size, use and aggregate acreage requirements in section 6(a.1)(1)(i) of the act, all contiguous land enrolled under the application for preferential assessment.

(3) In the case when the owner of enrolled land changes the use of the land so that it no longer meets the requirements in section 3 of the act, all contiguous land enrolled under the application for preferential assessment.

(4) In the case when the owner of enrolled land leases a portion of that land for wireless or cellular telecommunications in accordance with section 6(b.1) of the act and § 137b.74, the land so leased.

(5) In the case of condemnation, the land so condemned.

(6) In the case when enrolled land is sold or donated to an entity described in section 8(b)(1)—(7) of the act in accordance with the requirements in those paragraphs, the land so sold or conveyed.

(7) In the case when not more than 2 acres of enrolled land is used for direct commercial sales of agriculturally related products and activities or for rural enterprises incidental to the operational unit, in accordance with section 8(d) of the act and § 137b.72, the land so used for those purposes.

(8) In the case when a portion of enrolled land is conveyed to a nonprofit corporation for use as a cemetery in accordance with section 8(e) of the act and § 137b.75, the land so transferred.

(9) In the case when a portion of the enrolled land is conveyed to a nonprofit corporation for use as a trail in accordance with section 8(e) of the act and § 137b.76, the land so transferred.

(10) In the case when enrolled land is distributed upon the death of the landowner among the beneficiaries designated as Class A for inheritance tax purposes in accordance with section 6(d) of the act and § 137b.71 the portion that fails to meet the requirements for preferential assessment in section 3 of the act.

(f) *Termination of preferential assessment on erroneously-enrolled land.* If a county assessor erroneously allows the enrollment of land that did not, at the time of enrollment, meet the minimum qualifications for preferential assessment, the county assessor shall, in accordance with section 3(d)(2) of the act provide the landowner written notice that preferential assessment is to be terminated. The notice shall state the reasons for termination and afford the landowner the opportunity for a hearing. If the use of the land was not an eligible use at the time it was enrolled, and preferential assessment is terminated for that reason, no roll-back taxes shall be due from the landowner as a result.

(g) *Transfer does not trigger roll-back taxes.* The transfer of all of the enrolled land described in a single application for preferential assessment to a new owner without a change to an ineligible use does not trigger the imposition of roll-back taxes. When the enrolled land consists of several noncontiguous tracts enrolled under a single application for preferential assessment, the transfer of all of the contiguous acreage within such a noncontiguous tract will not trigger the imposition of roll-back taxes.

§ 137b.53. Calculation and recalculation of preferential assessment.

(a) *New values each year.* As described in § 137b.51 (relating to assessment procedures), the Department will determine the land use subcategories and provide a county use values for each land use subcategory. The Department will provide these land use subcategories and use values to each county assessor by May 1 of each year.

(b) *Option of county assessor in calculation of preferential assessment.* A county assessor shall calculate the preferential assessment of enrolled land using one of the following methods:

(1) Calculate the preferential assessment of all of the enrolled land in the county each year.

(2) Establish a base year for preferential assessment of enrolled land in the county, and use this base year in calculating the preferential assessment of enrolled land in the county.

(c) *Required recalculation of preferential assessment if current assessment is based upon use values higher than those provided by the Department.* A county assessor shall calculate the preferential assessment of all enrolled land in the county using either the current use values and land use subcategories provided by the Department or lower use values established by the county assessor.

Example 1: All of the enrolled land in a particular county receives a preferential assessment under the act that is calculated with use values that are lower than the use values provided by the Department. The county has the option of either continuing to assess all enrolled land using its lower use values or recalculating the preferential assessment of all enrolled land using the use values provided by the Department.

Example 2: All of the enrolled land in a particular county receives a preferential assessment under the act that is calculated with use values that are higher than the use values provided by the Department. The county shall recalculate the preferential assessment of all enrolled land using either the use values provided by the Department or lower use values determined by the county assessor.

(d) *Required recalculation of preferential assessment if farmstead land has not been preferentially assessed as agricultural use, agricultural reserve or forest reserve.* A county assessor shall recalculate the preferential assessment on any tract of enrolled land which contains farmstead land if the earlier calculation did not value and assess the farmstead land as agricultural use, agricultural reserve or forest reserve. This recalculation shall be accomplished in accordance with § 137b.51.

Example: In calculating the preferential assessment of enrolled land, a county has assessed farmstead land at its fair market value, rather than as part of the land that is in agricultural use, agricultural reserve or forest reserve. The county shall recalculate these assessments so that the farmstead land receives preferential assessment, rather than assessment based on fair market value.

(e) *Required recalculation of preferential assessment if contributory value of farm buildings has not been used in determining preferential assessment of land in agricultural use, agricultural reserve or forest reserve.* A county assessor shall recalculate the preferential assessment on any tract of enrolled land if the earlier calculation did not consider the contributory value of any farm buildings on that land. This recalculation shall be accomplished in accordance with § 137b.51.

(f) *Required recalculation of preferential assessment in countywide reassessment.* If a county undertakes a countywide reassessment, or a countywide reassessment of enrolled land, the county assessor shall recalculate the preferential assessment of all of the enrolled land in the county, using either the current use values and land use subcategories provided by the Department, or lower use values established by the county assessor and land use subcategories provided by the Department.

(g) *Land enrolled prior to June 2, 1998.* A county assessor is not obligated under the act or this chapter to

recalculate the preferential assessment of land that is the subject of applications for preferential assessment filed on or before June 1, 1998, unless recalculation is required under subsection (c), (d), (e) or (f).

§ 137b.54. Calculating the contributory value of farm buildings.

A county assessor shall be responsible to calculate the contributory value of farm buildings on enrolled land.

OBLIGATIONS OF THE OWNER OF ENROLLED LAND

§ 137b.61. Transfer of enrolled land.

When enrolled land is transferred to a new owner, the new owner shall file an amendment to the original application for the purposes of providing the county assessor with current information and to sign the acknowledgments required under section 4(c) of the act (72 P. S. § 5490.4(c)).

§ 137b.62. Enrolled "agricultural use" land of less than 10 contiguous acres.

(a) *Demonstration of anticipated yearly gross income from agricultural production.* If a landowner has a contiguous tract of less than 10 acres of enrolled agricultural use land, the county assessor may require the landowner to demonstrate each year that the anticipated yearly gross income from the production of agricultural commodities on the enrolled land is at least $2,000. A landowner may not be required to demonstrate more than once per year that the enrolled land has sufficient anticipated yearly gross income from the production of agricultural commodities to continue to receive preferential assessment. A county assessor requiring additional information shall notify the landowner in writing and shall clearly state in the notice the reasons why the information or documentation submitted by the landowner fails to demonstrate sufficiency of income, and shall identify the particular information the county assessor requests to demonstrate sufficiency of income.

(b) *Annual requirement; circumstances beyond the landowner's control.* The $2,000 anticipated annual gross income requirement referenced in this section shall be met each year, unless circumstances beyond the landowner's control are the cause of the requirement not being met.

(c) *Examples.*

Example 1: A landowner owns 9 acres of enrolled land. The land contains a 9-acre orchard, and is enrolled as agricultural use land. Although the landowner reasonably anticipated production well above the $2,000 minimum production requirement in a particular year, and represented that to the county assessor, a drought, hailstorm or blight causes the orchard's production to drop below $2,000 that year. Preferential assessment of the orchard shall continue.

Example 2: A landowner owns 9 acres of enrolled land. The land contains a 9-acre orchard, and is enrolled as agricultural use land. A plant disease destroys the fruit trees. Although the landowner replants the orchard, it will take several years for gross income from agricultural production from that orchard to meet the $2,000 requirement. Preferential assessment of the orchard shall continue.

Example 3: A landowner owns 8 acres of enrolled land. The tract generates over $2,000 in gross annual income from swine production. The landowner sells the swine herd and does not begin another agricultural production operation on the land. The land is no longer in agricultural use. The landowner's failure to continue the land in an agricultural use capable of producing income constitutes a change to an ineligible use. The landowner is liable for roll-back taxes and interest, and preferential assessment shall terminate.

§ 137b.63. Notice of change of application.

(a) *Landowner's responsibility to provide advance notice of changes.* An owner of enrolled land shall provide the county assessor of the county in which the land is located at least 30 days' advance written notice of any of the following:

(1) A change in use of the enrolled land to some use other than agricultural use, agricultural reserve or forest reserve.

(2) A change in ownership with respect to the enrolled land or any portion of the land.

(3) Any type of division, conveyance, transfer, separation or split-off of the enrolled land.

(b) *Contents of notice.* The notice described in subsection (a) shall include the following information:

(1) The name and address of any person to whom the land is being conveyed, granted or donated.

(2) The date of the proposed transfer, separation or split-off.

(3) The amount of land to be transferred, separated or split-off.

(4) The present use of the land to be transferred, separated or split-off.

(5) The date of the original application for preferential assessment under the act.

(6) A description of previous transfers, separations or split-offs of that enrolled land from the date of preferential assessment, of which the landowner is aware.

(7) The intended use to which the land will be put when transferred, separated or split-off, if known.

(8) The tax parcel number.

(c) *Landowner's duty to notify.* As stated in § 137b.41(d) (relating to application forms and procedures), a person applying for preferential assessment of land under the act shall acknowledge on the application form the obligation described in subsection (a).

§ 137b.64. Agricultural reserve land to be open to the public.

(a) *General.* An owner of enrolled land that is enrolled as agricultural reserve land shall allow the land to be open to the public for outdoor recreation or the enjoyment of scenic or natural beauty without charge or fee, on a nondiscriminatory basis. Enrolled land that is in agricultural use or forest reserve is excluded from this requirement.

(b) *Actual use by public not required.* Enrolled land that is enrolled as agricultural reserve land need not actually be used by the public for the purposes described in subsection (a) to continue to receive a preferential assessment. It shall, however, be available for use for those purposes.

(c) *Reasonable restrictions on use allowed.* A landowner may place reasonable restrictions on public access to enrolled land that is enrolled as agricultural reserve land. These restrictions might include limiting access to the

land to pedestrians only, prohibiting hunting or the carrying or discharge of firearms on the land, prohibiting entry where damage to the land might result or where hazardous conditions exist, or other reasonable restrictions.

(d) *Entry upon the agricultural reserve land.* A person shall, whenever possible, notify the landowner before entering upon enrolled land that is enrolled as agricultural reserve land. The landowner may deny entry when damage to the property might result. The landowner can prohibit entry to areas of the agricultural reserve land upon prior notification to the county assessor of the existence of a hazardous condition on that land. The landowner's reasons to deny entry to the land shall be based upon fact and acceptable to the county assessor.

(e) *County assessor's discretion.* A county assessor may establish reasonable guidelines by which an owner of enrolled agricultural reserve land may identify the conditions under which the land shall be open to the public for outdoor recreation or the enjoyment of scenic or natural beauty, and by which the county assessor may maintain an up-to-date summary of the locations of agricultural reserve land within the county and the public uses to which these agricultural reserve lands may be put. A county assessor may disseminate this information to the public.

IMPACT OF SPECIFIC EVENTS OR USES ON PREFERENTIAL ASSESSMENT

§ 137b.71. Death of an owner of enrolled land.

(a) *Inheriting a tract that does not meet minimum requirements for preferential assessment.* Upon the death of an owner of enrolled land, if any of the enrolled land that is divided among the beneficiaries designated as Class A for inheritance tax purposes no longer meets the minimum qualifications for preferential assessment, preferential assessment shall terminate with respect to the portion of the enrolled land that no longer meets the minimum requirements for preferential assessment, and no roll-back tax may be charged on any of the land that no longer meets the requirements for preferential assessment.

Example: Landowner A owns 100 acres of enrolled land, which is in agricultural use. Landowner A dies, and the land is divided among several Class A beneficiaries, as follows: Landowner B-75 acres. Landowner C-2 acres. Landowner D-23 acres. The tracts owned by Landowners B and D continue in agricultural use. The 2-acre tract owned by Landowner C no longer meets the size or income requirements in section 3 of the act (72 P. S. § 5490.3). Under these facts, preferential assessment of the 2-acre tract ends. Landowner C does not owe roll-back taxes with respect to this tract. Landowners B and D continue to receive preferential assessment.

(b) *Inheriting a tract that meets the minimum requirements for preferential assessment.* If a person designated a Class A beneficiary inherits a tract that meets the minimum requirements for preferential assessment, and the tract continues in agricultural use, agricultural reserve or forest reserve, preferential assessment shall continue. If a person designated a Class A beneficiary inherits a tract that meets the minimum requirements for preferential assessment, and subsequently changes the use of that tract so that it does not qualify for preferential assessment, that beneficiary shall owe roll-back taxes with respect to the portion of the enrolled land he inherited, but no roll-back taxes are due with respect to any other portion of the enrolled land inherited by another beneficiary.

Example 1: Landowner A owns 100 acres of enrolled land, which is in agricultural use. Landowner A dies, and Landowners B and C each inherit a 50-acre tract, as Class A beneficiaries. The tracts owned by Landowners B and C continue in agricultural use. Preferential assessment continues.

Example 2: Same facts as Example 1, except Landowner B converts the 50-acre tract of agricultural land to industrial use. Landowner B owes roll-back taxes with respect to the 50-acre tract. Landowner A does not owe roll-back taxes. Preferential assessment continues with respect to Landowner A's tract.

§ 137b.72. Direct commercial sales of agricultural related products and activities; rural enterprise incidental to the operational unit.

(a) *General.* An owner of enrolled land may apply up to 2 acres of enrolled land toward direct commercial sales of agriculturally related products and activities, or toward a rural enterprise incidental to the operational unit, without subjecting the entirety of the enrolled land to roll-back taxes, if both of the following apply to the commercial activity or rural enterprise:

(1) The commercial enterprise does not permanently impede or otherwise interfere with the production of an agricultural commodity on that portion of the enrolled land which is not subject to roll-back taxes under section 8(d)(2) of the act (72 P. S. § 5490.8(d)(2)).

(2) The commercial activity is owned and operated by the landowner or persons who are Class A beneficiaries of the landowner for inheritance tax purposes, or by a legal entity owned or controlled by the landowner or persons who are Class A beneficiaries of the landowner for inheritance tax purposes.

(b) *Roll-back taxes and status of preferential assessment.* If a tract of 2-acres-or-less of enrolled land is used for direct commercial sales of agriculturally related products and activities, or toward a rural enterprise incidental to the operational unit, the 2-acre-or-less tract shall be subject to roll-back taxes, and preferential assessment of that 2-acre-or-less tract shall end. The remainder of the enrolled land shall continue under preferential assessment as long as that remainder continues to meet the requirements for eligibility in section 3 of the act (72 P. S. § 5490.3).

(c) *Inventory by county assessor to determine ownership of goods.* A county assessor may inventory the goods sold at the business to assure that they are owned by the landowner or persons who are class A beneficiaries of the landowner for inheritance tax purposes, or by a legal entity owned or controlled by the landowner or persons who are Class A beneficiaries of the landowner for inheritance tax purposes, and that the goods meet the requirements of this section.

§ 137b.73. Wireless or cellular telecommunication facilities.

(a) *Permitted use.* A landowner may lease a tract of enrolled land to be used for wireless or cellular telecommunications, if the following conditions are satisfied:

(1) The tract so leased does not exceed 1/2 acre.

(2) The tract does not have more than one communication tower located upon it.

(3) The tract is accessible.

(4) The tract is neither conveyed nor subdivided. A lease may not be considered a subdivision.

(b) *Roll-back taxes imposed with respect to leased land.* A county assessor shall assess and impose roll-back taxes upon the tract of land leased by an owner of enrolled land for wireless or cellular telecommunications purposes.

(c) *Preferential assessment ends and fair market value assessment commences with respect to leased land.* A county assessor shall assess land leased in accordance with subsection (a) based upon its fair market value.

(d) *Preferential assessment continues on unleased land.* The lease of enrolled land in accordance with subsection (a) does not invalidate the preferential assessment of the remaining enrolled land that is not so leased, and that enrolled land shall continue to receive a preferential assessment, if it continues to meet the minimum requirements for eligibility in section 3 of the act (72 P. S. § 5490.3).

(e) *Wireless services other than wireless telecommunications.* Wireless services other than wireless telecommunications may be conducted on land leased in accordance with subsection (a) if the wireless services share a tower with a wireless telecommunications provider.

(f) *Responsibility for obtaining required permits.* The wireless or cellular telecommunications provider shall be solely responsible for obtaining required permits in connection with any construction on a tract of land which it leases for telecommunications purposes under subsection (a).

(g) *Responsibility of municipality for issuing required permits.* A municipality may not deny a permit necessary for wireless or cellular communications use for any reason other than the applicant's failure to strictly comply with permit application procedures.

§ 137b.74. Option to accept or forgive roll-back taxes in certain instances.

(a) *Option to accept or forgive principal on roll-back taxes.* The taxing body of the taxing district within which a tract of enrolled land is located may accept or forgive roll-back taxes with respect to that portion of the enrolled land that is granted or donated to any one of the following:

(1) A school district.

(2) A municipality.

(3) A county.

(4) A volunteer fire company.

(5) A volunteer ambulance service.

(6) A religious organization, if the religious organization uses the land only for construction or regular use as a church, synagogue or other place of worship, including meeting facilities, parking facilities, housing facilities and other facilities which further the religious purposes of the organization.

(7) A not-for-profit corporation that qualifies as tax-exempt under section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C.A. § 501(c)(3)), if prior to accepting ownership of the land, the corporation enters into an agreement with the municipality wherein the subject land is located guaranteeing that the land will be used exclusively for recreational purposes, all of which shall be available to the general public free of charge. If the corporation changes the use of all or a portion of the land or charges admission or any other fee for the use or enjoyment of the facilities, the corporation shall immediately become liable for all roll-back taxes and accrued interest previously forgiven.

(b) *No option to forgive interest on roll-back taxes.* The taxing body of the taxing district within which a tract of enrolled land is located may not forgive interest due on roll-back taxes with respect to that portion of the enrolled land that is granted or donated to any one of the entities or for any of the uses described in subsection (a)(1)—(7). That interest shall be distributed in accordance with section 8(b.1) of the act (72 P. S. § 5490.8(b.1)).

§ 137b.75. Transfer of enrolled land for use as a cemetery.

(a) *Transfers.* If an owner of enrolled land sells, donates or otherwise transfers any portion of the enrolled land to a nonprofit corporation for use as a cemetery, and at least 10 acres of the remainder ~~of the enrolled land~~ remain in ~~agricultural use,~~ agricultural reserve or forest reserve after the transfer, no violation of preferential assessment will be deemed to have occurred and roll-back taxes may not be assessed with respect to either the transferred portion of the enrolled land or the remainder of the enrolled land.

Example: A landowner owns 50 acres of enrolled land. The land is in agricultural use. The landowner sells 20 acres of the enrolled land to a nonprofit corporation for use as a cemetery. The remaining 30-acre tract continues in agricultural use. Under these facts, no roll-back taxes are due with respect to either tract. The 30-acre tract continues to receive preferential assessment. The 20-acre tract receives an assessment based on fair market value.

(b) *Exception.* If a nonprofit corporation acquires enrolled land as described in subsection (a), and subsequently changes the use of the land to some use other than as a cemetery or transfers the land for use other than as a cemetery, or uses the land for something other than agricultural use, agricultural reserve or forest reserve, the nonprofit corporation shall be required to pay roll-back taxes on that land.

Example: Same facts as the example under subsection (a), but 2 years after it acquired the 20-acre tract, the nonprofit corporation changes the use to something other than cemetery use, agricultural use, agricultural reserve or forest reserve. The nonprofit corporation owes roll-back taxes with respect to the 20-acre tract. The owner of the 30-acre tract is not liable for the payment of any roll-back taxes triggered by the nonprofit corporation's change of use.

§ 137b.76. Transfer of enrolled land or transfer of an easement or right-of-way across enrolled land for use as a trail.

(a) *Transfers.* If an owner of enrolled land sells, donates or otherwise transfers any portion of the enrolled land, or transfers an easement or right-of-way with respect to any portion of the enrolled land, no violation of preferential assessment will be deemed to have occurred and roll-back taxes may not be assessed with respect to either the transferred portion of the enrolled land or the remainder of the enrolled land if all of the following occur:

(1) The land is transferred to a nonprofit corporation.

(2) The transferred land is used as an unpaved trail for nonmotorized passive recreational use. Walking, jogging, running, roller skating, in-line skating, pedacycling, horseback riding and the use of animal-drawn vehicles

are examples of passive recreational use, as are all other forms of man-powered or animal-powered conveyance.

(3) The transferred land does not exceed 20 feet in width.

(4) The transferred land is available to the public for use without charge.

(5) At least 10 acres of the remainder of the enrolled land remain in agricultural use, agricultural reserve or forest reserve.

Example: A landowner owns 50 acres of enrolled land. The land is in agricultural use. The landowner conveys a 20-foot-wide pathway across the land to a nonprofit corporation for use as a trail, and otherwise complies with paragraphs (1)—(5) and section 8(e) of the act (72 P. S. § 5490.8(e)). Under these facts, no roll-back taxes are due with respect to either tract. The trail receives an assessment based upon fair market value. The remainder of the landowner's 50-acre tract continues to receive a preferential assessment.

(b) *Exception.* If a nonprofit corporation acquires enrolled land or an easement or right of way with respect to enrolled land as described in subsection (a), and the use of the land is subsequently changed to a use other than the use described in subsection (a)(1)—(5) or section 8(e) of the act, the nonprofit corporation shall be required to pay roll-back taxes on that land. The land is no longer entitled to preferential assessment.

Example: A landowner owns 50 acres of enrolled land. The land is in agricultural use. The landowner conveys a 15-foot-wide pathway across the land to a nonprofit corporation for use as a trail. The conveyance is for a use described in subsection (a)(1)—(5) or section 8(e) of the act. The nonprofit corporation subsequently changes the use of the trail to a motorcycle trail, a snowmobile trail or some other use not allowed under subsection (a)(1)—(5) or section 8(e) of the act. Under these facts, roll-back taxes are due with respect to the 15-foot-wide tract. The remainder of the 50-acre tract continues to receive a preferential assessment. The owner of the remainder continuing to receive preferential assessment is not liable for any roll-back taxes triggered by the nonprofit corporation's change of use.

LIABILITY FOR ROLL-BACK TAXES

§ 137b.81. General.

If an owner of enrolled land changes the use of the land to something other than agricultural use, agricultural reserve or forest reserve or changes the use of the enrolled land so that it otherwise fails to meet the requirements of section 3 of the act (72 P. S. § 5490.3), or uses the land for something other than agricultural use, agricultural reserve or forest reserve, that landowner shall be responsible for the payment of roll-back taxes. The owner of enrolled land may not be liable for any roll-back tax triggered as a result of a change to an ineligible use by the owner of a split-off tract.

§ 137b.82. Split-off tract.

When a split-off tract meets the following criteria, which are set forth in section 6(a.1)(1) of the act (72 P. S. § 5490.6(a.1)(1)), roll-back taxes are only due with respect to the split-off tract, and are not due with respect to the remainder:

(1) The tract split off does not exceed 2 acres annually, except that a maximum of the minimum residential lot size requirement annually may be split off if the property is situated in a local government unit which requires a minimum lot size of 2-3 acres.

(2) The tract is used for agricultural use, agricultural reserve or forest reserve or for the construction of a residential dwelling to be occupied by the person to whom the land is conveyed.

(3) The total tract split off does not exceed the lesser of 10 acres or 10% of the entire tract of enrolled land.

§ 137b.83. Split-off that complies with section 6(a.1)(1)(i) of the act.

If enrolled land undergoes split-off and the tract that is split-off meets the size, use and aggregate acreage requirements in section 6(a.1)(1)(i) of the act (72 P. S. § 5490.6(a.1)(1)(i)), the landowner who conducted the split-off shall owe roll-back taxes with respect to the split-off tract. The preferential assessment of that split-off tract shall be terminated. If the remainder of the enrolled land is in agricultural use, agricultural reserve or forest reserve, and continues to meet the requirements of section 3 of the act (72 P. S. § 5490.3), no roll-back taxes are due with respect to that remainder, and preferential assessment shall continue with respect to that tract.

Example: Landowner owns 50 acres of enrolled land. Landowner splits off 2 acres for a residential dwelling, in compliance with section 6(a.1)(1)(i) of the act. The landowner owes roll-back taxes on the 2-acre tract, and the preferential assessment of that tract shall be terminated. The remaining 48-acre tract would continue to receive a preferential assessment, assuming it remains in agricultural use, agricultural reserve or forest reserve and otherwise continues to meet the requirements of section 3 of the act (72 P. S. § 5490.3).

§ 137b.84. Split-off that does not comply with section 6(a.1)(1)(i) of the act.

If enrolled land undergoes split off and the tract that is split-off does not meet the size, use and aggregate acreage requirements in section 6(a.1)(1)(i) of the act (72 P. S. § 5490.6(a.1)(1)(i)), the landowner who conducted the split-off shall owe roll-back taxes with respect to all of the enrolled land.

Example 1: Landowner owns 50 acres of enrolled land. Landowner splits off 4 acres in a single year. This split-off would not meet the size requirements in section 6(a.1)(1)(i) of the act. The landowner owes roll-back taxes on the entire 50-acre tract. The 4-acre tract no longer receives preferential assessment. If the 46-acre tract remains in agricultural use, agricultural reserve or forest reserve and continues to meet the requirements of section 3 of the act, preferential assessment would continue with respect to that tract.

Example 2: Landowner owns 50 acres of enrolled land. Landowner splits off 2-acre tracts in 3 different years. The aggregate amount of land split-off (6 acres) exceeds the 10% cap in section 6(c.1)(1)(i) of the act. Under these facts, the aggregate total of split-off land could not exceed 5 acres. The landowner owes roll-back taxes on the entire 50-acre tract. The three 2-acre tracts no longer receive preferential assessment. If the remaining 44-acre tract remains in agricultural use, agricultural reserve or forest reserve and continues to meet the requirements of section 3 of the act, preferential assessment would continue with respect to that 44-acre tract.

§ 137b.85. Split-off occurring through condemnation.

If any portion of a tract of enrolled land is condemned, the condemnation may not trigger liability for roll-back taxes on either the condemned portion of the enrolled land or the remainder. If the condemned portion or the remainder of the enrolled land remains in agricultural use, agricultural reserve or forest reserve, and meets the criteria in section 3 of the act (72 P. S. § 5490.3), preferential assessment shall continue with respect to that condemned portion or remainder.

§ 137b.86. Split-off occurring through voluntary sale in lieu of condemnation.

If any portion of a tract of enrolled land is—in lieu of requiring the condemnation process to proceed—voluntarily sold by a landowner to an entity that possesses the lawful authority to acquire that portion through condemnation, the transfer may not trigger liability for roll-back taxes on either the split-off portion of the enrolled land or the remainder. If the split-off portion or the remainder of the enrolled land remains in agricultural use, agricultural reserve or forest reserve, and meets the criteria in section 3 of the act (72 P. S. § 5490.3), preferential assessment shall continue with respect to that split-off portion or remainder.

§ 137b.87. Change in use of separated land occurring within 7 years of separation.

If enrolled land undergoes separation, and one of the tracts created through separation is converted to other than agricultural use, agricultural reserve or forest reserve within 7 years of the date of the separation, or is converted so that it no longer meets the requirements of section 3 of the act (72 P. S. § 5490.3), the owner of the ineligible tract owes roll-back taxes with respect to all of the enrolled land. The ineligible tract may no longer receive preferential assessment under the act. The remaining enrolled land shall continue to receive a preferential assessment.

Example: Landowner A owns 100 acres of enrolled land, which is in agricultural use. Landowner A sells Landowner B a 50-acre portion of this enrolled land. Both 50-acre tracts continue in agricultural use, and preferential assessment continues with respect to both tracts. Six years after the original 100-acre tract of enrolled land was separated, Landowner B converts his 50-acre tract to industrial use. Landowner B owes roll-back taxes with respect to the entire 100-acre tract. Landowner A's 50-acre tract continues to receive preferential assessment, and the preferential assessment of Landowner B's 50-acre tract ends.

§ 137b.88. Change in use of separated land occurring 7 years or more after separation.

If enrolled land undergoes separation, and one of the tracts created through separation is converted to other than agricultural use, agricultural reserve or forest reserve 7 years or more after the date of the separation, the owner of the separated tract owes roll-back taxes with respect to that separated tract, but does not owe roll-back taxes with respect to the remainder of the enrolled land. The separated tract may no longer receive preferential assessment under the act. The remaining enrolled land shall continue to receive a preferential assessment.

Example: Landowner A owns 100 acres of enrolled land, which is in agricultural use. Landowner A sells Landowner B a 50-acre portion of this enrolled land. Both 50-acre tracts continue in agricultural use, and preferential assessment continues with respect to both tracts. Eight years after the original 100-acre tract of enrolled land was separated, Landowner B converts his 50-acre tract to industrial use. Landowner B owes roll-back taxes with respect to the 50-acre tract which he has converted to ineligible use. Landowner A's 50-acre tract continues to receive preferential assessment, and the preferential assessment of Landowner B's 50-acre tract ends.

§ 137b.89. Calculation of roll-back taxes.

A county assessor shall calculate roll-back taxes using the following formula:

(1) If preferential assessment has been in effect for 7 tax years or more, calculate the difference between preferential assessment and normal assessment in the current tax year, and in each of the 6 tax years immediately preceding the current tax year. If preferential assessment has been in effect for less than 7 tax years, calculate the difference between preferential assessment and normal assessment in the current tax year, and in each of the tax years in which the enrolled land was preferentially assessed.

(2) With respect to each of these sums, multiply that sum by the corresponding factor, which reflects simple interest at the rate of 6% per annum from that particular tax year to the present:

Year	*Factor*
Current Tax Year	1.00
1 Tax Year Prior	1.06
2 Tax Years Prior	1.12
3 Tax Years Prior	1.18
4 Tax Years Prior	1.24
5 Tax Years Prior	1.30
6 Tax Years Prior	1.36

(3) Add the individual products obtained under Step (2). The sum equals total roll-back taxes, including simple interest at 6% per annum on each year's roll-back taxes.

Example 1: Landowner's liability for roll-back taxes is triggered on July 1, 7 or more tax years after preferential assessment began. The county assessor calculates the difference between the preferential assessment and normal assessment in the current tax year and in each of the 6 tax years preceding the current tax year, in accordance with this section. The county assessor determines the appropriate sum to be $2,000 in each full year, and prorates this sum with respect to the current tax year.

Year	*Amount Multiplied by Factor*
Current Tax Year	$1,000 x 1.00 = $1,000
1 Tax Year Prior	$2,000 x 1.06 = $2,120
2 Tax Years Prior	$2,000 x 1.12 = $2,240
3 Tax Years Prior	$2,000 x 1.18 = $2,360
4 Tax Years Prior	$2,000 x 1.24 = $2,480
5 Tax Years Prior	$2,000 x 1.30 = $2,600
6 Tax Years Prior	$2,000 x 1.36 = $2,720
TOTAL ROLL-BACK TAXES, WITH INTEREST:	$15,520

Example 2: Landowner's liability for roll-back taxes is triggered on July 1, less than 7 tax years after preferential assessment began. The county assessor calculates the difference between the preferential assessment and normal assessment in the current tax year and each of the tax years since preferential assessment began, in accordance with this section. The county assessor determines the appropriate sum

to be $2,000 in each of these years. The county assessor would calculate roll-back taxes and interest in accordance with the chart set forth in Example 1, calculating for only those tax years in which preferential assessment occurred.

§ 137b.90. Due date for roll-back taxes.

If roll-back taxes are owed, they are due on the day of the change in use or other event triggering liability for those roll-back taxes.

§ 137b.91. Liens for nonpayment of roll-back taxes.

The county can refer a claim for unpaid roll-back taxes and interest to the county's Tax Claim Bureau, and take other actions necessary to cause a lien to be placed on the land for the value of the roll-back taxes and interest and other administrative and local court costs. The lien can be collected in the same manner as other lien-debts on real estate.

§ 137b.92. Time period within which roll-back taxes are to be calculated and notice mailed.

(a) *General.* A county assessor shall calculate the roll-back taxes, and mail notice of these roll-back taxes to the affected landowner, within 5 days of learning of a change in status triggering liability for roll-back taxes. The county assessor shall also mail a copy of the notice to the other taxing bodies of the district in which the land is located.

(b) *Notice of change of application.* If a county assessor receives a "notice of change of application" described in § 137b.63 (relating to notice of change of application), and that notice triggers liability for roll-back taxes, the 5-day period described in subsection (a) shall commence as of receipt of that notice.

§ 137b.93. Disposition of interest on roll-back taxes.

(a) *"Eligible county" explained.* A county is an "eligible county" under the Agricultural Area Security Law (3 P. S. §§ 901—915), and for purposes of this chapter, if it has an agricultural conservation easement purchase program that has been approved by the State Agricultural Land Preservation Board in accordance with that statute.

(b) *Disposition in an eligible county.*

(1) *County treasurer.* If a county is an eligible county, the county treasurer shall make proper distribution of the interest portion of the roll-back taxes it collects to the county commissioners or the county comptroller, as the case may be. The county commissioners or comptroller shall designate all of this interest for use by the county agricultural land preservation board. This interest shall be in addition to other local money appropriated by the eligible county for the purchase of agricultural conservation easements under section 14.1(h) of the Agricultural Area Security Law (3 P. S. § 914.1(h)).

(2) *County agricultural land preservation board.* A county agricultural land preservation board that receives interest on roll-back taxes in accordance with paragraph (1) shall segregate that money in a special roll-back account. Notwithstanding any other provisions of the Agricultural Area Security Law, the eligible county board under the Agricultural Area Security Law shall, in its discretion and in accordance with its approved county agricultural conservation easement purchase program, give priority to the purchase of agricultural conservation easements from agricultural security areas located within the municipality in which the land subject to the roll-back tax is located.

(c) *Disposition in a county that is not an eligible county.* If a county is not an eligible county, the county treasurer shall forward the interest portion of the roll-back taxes it collects to the Agricultural Conservation Easement Purchase Fund. The county treasurer shall coordinate with the Department's Bureau of Farmland Protection, at the address in § 137b.4 (relating to contacting the Department) to accomplish this transfer.

DUTIES OF COUNTY ASSESSORS

§ 137b.101. General.

A county assessor shall perform all the duties prescribed by the act and this chapter. The county assessor has the major responsibility for administration of the act.

§ 137b.102. Recordkeeping.

A county assessor shall indicate on assessment rolls and any other appropriate records the base year fair market value, the use value, the normal assessment and the preferential assessment of all tracts of enrolled land. A county assessor shall indicate on property record cards as much of the information in this section it deems appropriate for the performance of its duties under the act and this chapter.

§ 137b.103. Recording approved applications.

A county assessor shall record any approved application in the office of the recorder of deeds in the county where the land is preferentially assessed.

§ 137b.104. Determining total use value.

A county assessor shall determine the total use value for all enrolled land. The contributory value of farm buildings shall be used in determining the total use value.

§ 137b.105. Annual update of records.

A county assessor shall, at least on an annual basis, update property record cards, assessment rolls and any other appropriate records to reflect all changes in the fair market value, the use value, the normal assessment and the preferential assessment of all tracts of enrolled land. This subsection does not require that a county assessor recalculate the preferential assessment of all enrolled land each year, but instead requires the county assessor to maintain reasonably current records reflecting any changes in preferential assessment.

§ 137b.106. Notification of change in preferential assessment status.

A county assessor shall provide the owner of enrolled land and the taxing bodies of the district in which the land is situated with written notice of an approval, termination or change with respect to the preferential assessment status. This written notice shall apprise the landowner and the taxing body of the right to appeal the action in accordance with section 9 of the act (72 P. S. § 490.9). The written notice shall be mailed within 5 days of the change of status. If the written notice terminates or changes preferential assessment status it shall set forth the reasons for the change or termination.

§ 137b.107. Notification of change in factors affecting total assessment.

A county assessor shall provide the owner of enrolled land and the taxing bodies of the district in which the land is situated with written notice of any change in the base year fair market value, the normal assessment, the use value or the preferential assessment. This written notice shall apprise the landowner and the taxing body of the right to appeal the action in accordance with section

of the act (72 P. S. § 5490.9). The written notice shall be mailed within 5 days of the change.

§ 137b.108. Adjusting records to reflect split-off, separation or transfer.

A county assessor shall adjust an approved and recorded application for preferential assessment under the act to reflect a change when an owner of enrolled land changes enrollment status as a result of a split-off, separation, transfer or change of ownership. These changes may include those actions described in § 137b.52 (relating to duration of preferential assessment). A county assessor may require the preparation, execution and filing of a new application for preferential assessment (without charging the landowner an application fee) to accomplish such an adjustment.

§ 137b.109. Enforcement and evidence gathering.

The evidentiary burden shall be on a county assessor to produce evidence demonstrating that a split-off tract is actively being used in a manner which is inconsistent with residential use, agricultural use, agricultural reserve or forest reserve.

§ 137b.110. Assessment of roll-back taxes.

A county assessor shall calculate, assess and file claims with the county's Tax Claim Bureau for roll-back taxes owed under the act.

§ 137b.111. Record of tax millage.

A county assessor shall maintain a permanent record of the tax millage levied by each of the taxing authorities in the county for each tax year.

§ 137b.112. Submission of information to the Department.

A county assessor will compile and submit the information required by the Department under § 137b.3(b) (relating to responsibilities of the Department).

RECORDER OF DEEDS

§ 137b.121. Duty to record.

A recorder of deeds shall record approved applications for preferential assessment in a preferential assessment docket, and record changes of land use triggering the imposition of roll-back taxes.

§ 137b.122. Fees of the recorder of deeds.

A recorder of deeds may charge a landowner whose application for preferential assessment is approved a fee for filing the approved application in a preferential assessment docket. This fee may also be charged with respect to the filing of an amendment to a previously-approved application. A recording fee may not be charged unless the application or amendment has been approved by the county board for assessment appeals. The maximum fee for recording approved preferential assessment applications and amendments thereto shall be in accordance with laws relating to the imposition of fees by recorders of deeds.

MISCELLANEOUS

§ 137b.131. Civil penalties.

(a) *General.* A county board for assessment appeals may assess a civil penalty of not more than $100 against a person for each violation of the act or this chapter.

(b) *Written notice of civil penalty.* A county board for assessment appeals shall assess a civil penalty against a person by providing that person written notice of the penalty. This notice shall be served by certified mail or personal service. The notice shall set forth the following:

(1) A description of the nature of the violation and of the amount of the civil penalty.

(2) A statement that the person against whom the civil penalty is being assessed may appeal the penalty by delivering written notice of the appeal to the county board for assessment appeals within 10 calendar days of receipt of the written notice of penalty.

(c) *Appeal hearing.* If timely notification of the intent to contest the civil penalty is given, the person contesting the civil penalty shall be provided with a hearing in accordance with 2 Pa.C.S. Chapter 5, Subchapter B and Chapter 7, Subchapter B (relating to local agency law).

(d) *Final civil penalty.* If, within 10 days from the receipt of the notification described in subsection (b), the person against whom the civil penalty is assessed fails to notify the county board for assessment appeals of intent to contest the assessed penalty, the civil penalty shall become final.

§ 137b.132. Distributing taxes and interest.

The county treasurer or tax claim bureau shall be responsible for the proper distribution of the taxes to the proper taxing authority (that is, political subdivision) and the proper distribution of interest in accordance with § 137b.93 (relating to disposition of interest on roll-back taxes).

§ 137b.133. Appealing a decision of the county assessor.

A landowner whose land is the subject of an application for preferential assessment under the act, or a political subdivision affected by the preferential assessment of that land may appeal a decision of the county assessor regarding the application and the method used to determine preferential assessments under the act. The landowner shall first appeal to the county board of assessment. After this board has made a decision, the landowner then has a right to appeal to the court of common pleas.

[Pa.B. Doc. No. 00-1501. Filed for public inspection September 1, 2000, 9:00 a.m.]

DEPARTMENT OF HEALTH

[28 PA. CODE CH. 23]
School Immunization

The Department of Health (Department), with the approval of the State Advisory Health Board (Board), proposes to amend § 23.83 (relating to immunization requirements). The proposed amendment is set forth in Annex A.

A. *Purpose of the Proposed Amendment*

The proposed amendment sets out immunization requirements that children seeking to enter and attend school in this Commonwealth must meet. The proposed amendment is based upon recommendations of the Advisory Committee on Immunization Practices (ACIP), an advisory committee of the Federal Centers for Disease Control and Prevention (CDC). The proposed amendment would reverse the order of subsections and add explanatory language to the current regulation for the sake of

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF AGRICULTURE
LEGAL OFFICE
February 15, 2001

Independent Regulatory Review Commission
333 Market Street
14th Floor
Harrisburg, PA 17120

Re: FINAL-FORM REGULATION
Department of Agriculture
Bureau of Farmland Preservation
7 Pa. Code Chapter 137b
I.D. No. 2-133
Proposed Rulemaking: 30 *Pennsylvania Bulletin*
4573 (September 2, 2000)
Final-Form Regulation Approved by
Office of General Counsel: February 14, 2001

Dear Sirs:

Please find enclosed a copy of the above-referenced final-form regulation. This material includes copies of the Preamble and Annex "A". Copies of the Notice of Proposed Rulemaking and Regulatory Analysis Form are also enclosed.

I respectfully request the Independent Regulatory Review Commission review and approve the above-referenced final-form regulation in accordance with the requirements and procedures of the Regulatory Review Act.

This Department's responses to the comments received from the public, the Legislature and the Independent Regulatory Review Commission with respect to the proposed regulation are set forth in the Preamble to the final-form regulation. Copies of this final-form regulation have been delivered to the appropriate Legislative Committees (the House and Senate Committees for Agriculture and Rural Affairs), and have been mailed or delivered to each commentator on this date. In response to the requirement (at 71 P.S. § 745.5a(b) and 1 Pa. Code § 307.2(c)(7)) that this Department provide the names and addresses of commentators who requested additional information on the final-form regulation, the Department relates that no commentators have made this request.

The Department will provide you with any assistance you may require to facilitate a thorough review of this final-form regulation. Thank you for your attention to this matter.

Sincerely,

Dwight-Jared Smith
Assistant Counsel

Enclosures

2301 NORTH CAMERON STREET
HARRISBURG, PA 17110-9408
717-787-8744
FAX 717-787-1270

TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE REGULATORY REVIEW ACT

I.D. NUMBER:	2-133
SUBJECT:	Preferential Assessment of Farmland and Forest Land under the Clean & Green Act
AGENCY:	DEPARTMENT OF AGRICULTURE

TYPE OF REGULATION

Proposed Regulation

X Final Regulation

Final Regulation with Notice of Proposed Rulemaking Omitted

120-day Emergency Certification of the Attorney General

120-day Emergency Certification of the Governor

Delivery of Tolled Regulation
a. With Revisions b. Without Revisions

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
2/15/01	Lori Hoffman Representative Bunt's office	HOUSE COMMITTEE ON AGRICULTURE & RURAL AFFAIRS
2/15/01	W. Kostoff Senator Waugh's office	SENATE COMMITTEE ON AGRICULTURE & RURAL AFFAIRS
2/15/01	E. Pagán	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL
		LEGISLATIVE REFERENCE BUREAU

February 15, 2001