

# Regulatory Analysis Form

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REGULATORY REVIEW COMMISSION



(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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(717) 783-3167

(6) Type of Rulemaking (check one)

Proposed Rulemaking  XXXXXXXX  
Final Order Adopting Regulation  
Final Order, Proposed Rulemaking Omitted

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

No  XXXXXXXX  
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 proposed regulations would establish a new chapter of regulations – 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 Code Chapter 137a, and replace and supplant both those interim regulations and the current outdated and inadequate regulations at 7 Pa.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 proposed regulations provide definitions, explanations and examples to help county assessors implement the Act efficiently and uniformly throughout this Commonwealth. The proposed 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 proposed 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 each of the preceding 7 years, plus interest thereon at the rate of 6% per year. The proposed regulations also describe situations in which a tract of enrolled land, or some portion thereof, must be removed from preferential assessment.

The proposed 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 proposed 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 in the proposed regulation 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.

### Regulatory Analysis Form

(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 proposed regulations supplant the current interim regulations at 7 Pa. Code Chapter 137a, the proposed 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 proposed regulations are to be promulgated by April 30, 2001.

To the extent the proposed 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 proposed 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 proposed regulations would expand upon and supplant outdated current regulations (at 7 Pa. Code Chapter 137).

The proposed regulations would be consistent with statutory requirements and would 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 land owners 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 proposed regulations.

The proposed 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 proposed regulations in the same way.

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

### Regulatory Analysis Form

(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 proposed regulations, it should be emphasized that many of the provisions of the proposed 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 proposed 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 proposed 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 proposed regulations.

County Assessors and Records 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 proposed regulations have already been through a comment period quite similar to the comment periods which will be triggered under the Regulatory Review Act with the publication of the proposed regulations in the *Pennsylvania Bulletin*.

(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 proposed 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.

### Regulatory Analysis Form

(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 proposed 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 interim regulations are not expected to have an appreciable fiscal impact upon state government.

### Regulatory Analysis Form

(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
<b>SAVINGS:</b>	\$	\$	\$	\$	\$	\$
<b>Regulated</b>						
<b>Local Government</b>	0	0	0	0	0	0
<b>State Government</b>	3,000	0	0	0	0	0
<b>Total Savings</b>						
<b>COSTS:</b>						
<b>Regulated</b>						
<b>Local Government</b>						
<b>State Government</b>	0	0	0	0	0	0
<b>Total Costs</b>						
<b>REVENUE LOSSES:</b>						
<b>Regulated</b>						
<b>Local Government</b>						
<b>State Government</b>	0	0	0	0	0	0
<b>Total Revenue Losses</b>						

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

Although the Department has incurred costs in developing these proposed regulations and implementing the changes required by Act 156 of 1998, it expects to be able to absorb these costs internally. It may be

necessary, though, to hire a consultant to assist in the development of new soil subcategories to which use values will be assigned. The Department's rough estimate of the cost of this consultant is \$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 proposed 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, as stated, became effective when they were published in the *Pennsylvania Bulletin* on June 19, 1999).

To the extent the Act or the proposed 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 proposed regulations, but believes that impact is more the result of the Act than of the proposed regulations.

### Regulatory Analysis Form

(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 proposed regulations. They will bring about greater Statewide uniformity in interpretation and enforcement of the Act. The Act and the proposed 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 these interim 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.

### Regulatory Analysis Form

(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 proposed 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 proposed 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 proposed regulations, the Department has already conducted an extensive outreach to affected interests (See Answer No. 16), and will also make an extensively-annotated copy of the proposed regulations available (by e-mail) to potential commentators.

## 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 proposed 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 proposed 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.



**FACE SHEET  
FOR FILING DOCUMENTS  
WITH THE LEGISLATIVE REFERENCE BUREAU  
(Pursuant to Commonwealth Documents Law)**

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2141

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

*Cristina J. Quinn*  
(Deputy Attorney General)

AUG 15 2000

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  
(AGENCY)

DOCUMENT/FISCAL NOTE NO. 2-133

DATE OF ADOPTION May 19, 2000

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

*Sandra W. Stoner*  
BY \_\_\_\_\_

7/18/00

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 Proposed 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 CH. 137b]**

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

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 regulations 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 regulations would *rescind* current regulations at 7 Pa. Code Chapter 137 (relating to preferential assessment of farmland and forest land) and current interim regulations at 7 Pa. Code Chapter 137a (relating to Clean and Green Act – statement of policy), and *replace* these chapters with a single chapter: 7 Pa. Code Chapter 137b (relating to Clean and Green Law – preferential assessment of land in agricultural use, agricultural reserve or forest reserve).

#### ***Authority***

The proposed regulations are offered 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, although 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 at 7 Pa. Code Chapter 137a without proceeding through the regulatory promulgation process ordinarily required by law, it *also* required the Department to replace these interim regulations with formal regulations by April 30, 2001.

#### ***Need for the Proposed Regulations***

There is an immediate need for the proposed regulation. As stated, Act 156 requires the Department replace the current interim regulations with formal regulations

no later than April 30, 2001. In addition, the proposed regulations would replace current outdated and inadequate regulations and help bring about uniform interpretation and application of the Act throughout the Commonwealth.

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

### *Summary of the Proposed Regulations*

As stated, the proposed regulations would replace outdated regulatory provisions, incorporate provisions to resolve 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 regulations would *rescind* current regulations at 7 Pa. Code Chapter 137 and current interim regulations at 7 Pa. Code Chapter 137a and *replace* these chapters.

The Department solicited comments from affected interests as it drafted the proposed regulations. 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 regulations or have helped shape this document.

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

Proposed § 137b.2 (relating to definitions) consolidates definitions found in the Act, its current attendant regulations at 7 Pa. Code Chapter 137 and Act 156. It also adds several new terms, such as "enrolled land" and "ineligible land."

Proposed § 137b.11 (relating to eligible land) 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.21 (relating to application forms and procedures) describes the general procedure by which a landowner may make application 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.22 (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.26 (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.31 (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. In order to provide a meaningful basis for comparing county-assessor-generated use values to those generated by the Department, though, this section requires a county assessor generate use values for the same land use subcategories with respect to which the Department generates its use values.

Proposed § 137b.32 (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.33 (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 must 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.42 (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.43 (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.44 (relating to agricultural reserve land to be open to the public) attempts to clarify the requirement of § 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 such 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.51 (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.52 (relating to direct commercial sales of agriculturally related products and activities; rural enterprises incidental to the operational unit) allows for up to 2 acres of enrolled land to be used for activities related to agriculture and supportive of agricultural production on the remaining enrolled land. Preferential assessment would end on this up-to-2-acre tract, and roll-back taxes would also be due with respect to that tract.

Proposed § 137b.53 (relating to wireless or cellular telecommunications facilities) allows for a small portion of enrolled land to be leased for the erection and operation of a cellular communications tower. Preferential assessment ends with respect to the leased tract and roll-back taxes are due with respect to that leased tract, as well.

Proposed § 137b.54 (relating to option to accept or 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.55 (relating to transfer of enrolled land for use as a cemetery) and 137b.56 (relating to 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 § Section 137b.61 (relating to liability for roll-back taxes) 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. Subsections (b), (c) and (d) address “split-offs” of enrolled land, and differentiate between split-offs that occur in accordance with the criteria set forth in § 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.62 (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.66 (relating to disposition of interest on roll-back taxes) describes requirements imposed by Act 156 (at 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.71 (relating to duties of a county assessor) provides an overview of the various responsibilities of a county assessor under the Act. These duties involve record keeping, recording approved applications, updating records on an annual basis, determining total use values, notifying landowners of changes in status, enforcement, evidence gathering and assessment of roll-back taxes.

Proposed § 137b.91 (relating to civil penalties) restates the penalty provisions set forth in § 5.2 of the Act, at 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.

Samples of various forms used in the enrollment of eligible agricultural, agricultural reserve and forest reserve land are included in Appendix “A” to the proposed regulation.

*Persons Likely to be Affected*

The proposed regulations promote the efficient, uniform, Statewide administration of the Act. They update and supplant outdated and inadequate regulations at 7 Pa. Code Chapter 137, supplant the Interim Regulations at 7 Pa. Code 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 these regulations, 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 regulations. 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 set forth in the Act will be impacted by the proposed regulations, in that they are the likely entity to be called upon to make-up 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 regulations, 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 regulations will have no appreciable fiscal impact upon the Commonwealth.

#### ***Political Subdivisions***

The proposed regulations 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 where 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 (i.e., 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 (i.e., 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 regulation will not result in an appreciable increase in the paperwork handled by the Department.

#### ***Regulatory Review***

The Department submitted a copy of the proposed regulation 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.

If IRRC has an objection to any portion of the proposed regulation, it must so 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 regulation.

#### ***Public Comment Period***

The Department invites public comment with respect to the proposed regulations. Written comments should be directed to the contact person identified below. The public comment period with respect to the proposed regulation shall expire after 30 days from publication of the proposed regulation in the *Pennsylvania Bulletin*.

#### ***Annotated Copies Available***

The Department will e-mail interested persons a copy of an annotated, *unofficial* version of the proposed regulations. The extensive annotations reference statutory authority for various provisions of the proposed regulations, cite related provisions from the current regulations at 7 Pa. Code Chapter 137 and the Interim Regulations at 7 Pa. Code Chapter 137a, and summarize comments received by the Department in the preliminary drafting process for the proposed regulations. Requests for e-mail copies of



the annotated, *unofficial* version of the proposed regulations should be directed to the contact person identified below.

***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 Telephone: (717) 783-3167.

***Sunset/Expiration Date***

Although no sunset or expiration date is set for the proposed regulations, the Department would review their efficacy on an ongoing basis.

***Effective Date***

The proposed regulations will take effect upon the date of final adoption.

SAMUEL E. HAYES, Jr.  
*Secretary*

## **Annex "A"**

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

#### **GENERAL PROVISIONS**

Sec.

- 137b.1. Purpose.
- 137b.2. Definitions.
- 137b.3. Responsibilities of the Department.
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#### **ELIGIBILITY**

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#### **APPLICATION PROCESS**

- 137b.21. Application forms and procedures.
- 137b.22. Deadline for submission of applications.
- 137b.23. Applications where subject land is located in more than one county.
- 137b.24. County processing of applications.
- 137b.25. Notice of qualification for preferential assessment.
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## **PREFERENTIAL ASSESSMENT**

- 137b.31. Assessment procedures.
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- 137b.33. Calculation and recalculation of preferential assessment.
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## **OBLIGATIONS OF THE OWNER OF ENROLLED LAND**

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## **IMPACT OF SPECIFIC EVENTS OR USES ON PREFERENTIAL ASSESSMENT**

- 137b.51. Death of an owner of enrolled land.
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## **ROLL-BACK TAXES**

- 137b.61. Liability for roll-back taxes.
- 137b.62. Calculation of roll-back taxes.
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137b.65. Time period within which roll-back taxes are to be calculated and notice mailed.

137b.66. Disposition of interest on roll-back taxes.

#### **COUNTY ASSESSOR**

137b.71. Duties of a county assessor.

#### **RECORDER OF DEEDS**

137b.81. Duty to record.

137b.82. Fees of the recorder of deeds.

#### **MISCELLANEOUS**

137b.91. Civil penalties.

137b.92. Distributing taxes and interest.

137b.93. Appealing a decision of the county assessor.

### ***General Provisions***

#### **§ 137b.1. Purpose.**

This chapter establishes procedures necessary for the uniform Statewide implementation of the Act — commonly known as the Clean and Green Law. 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.

The benefit to an owner of enrolled land is an assurance that the enrolled land will not be assessed at the same rate as land that is not enrolled land. In almost all cases, an owner of enrolled land will see a reduction in his or her 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 in order 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*—Noncommercial open space lands used for outdoor recreation or the enjoyment of scenic or natural beauty and open to the public for such use, without charge or fee, on a nondiscriminatory basis. 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 pursuant to 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*—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. 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, on-lot 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. Calculation of operating expenses shall 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 (72 P.S. § 5490.3).

*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 (72 P.S. § 5490.3).

*Tract*—A lot, piece or parcel of land. 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. Where a single application for preferential assessment includes *non-contiguous* land, the conveyance of the entirety of any contiguous land described in that application is also a transfer.

*USDA*—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) and 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 shall be collected through a survey form to be provided 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.

### **§ 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

## ***Eligibility***

### **§ 137b.11. Eligible land.**

(a) *General.* Three types of land are eligible for preferential assessment under the Act: land in agricultural use, land in agricultural reserve and land in forest

reserve.

(b) *Agricultural use.* Land that is in agricultural use is eligible for preferential assessment under the Act if it has been in agricultural production for at least 3 years preceding the application for preferential assessment, and is *either*:

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

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

(c) *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).

(d) *Forest reserve.* Land that is in forest reserve is eligible for preferential assessment under the Act if it is presently stocked with trees such 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).

(e) *Inclusion of farmstead land.* 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. Farmstead land shall be considered to be land that qualifies for preferential assessment under the Act and this chapter.

(f) *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.

(g) *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 2 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.

(h) *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.

(i) *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.* 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. 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.

(j) *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 3 separate tracts: 2 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; or (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.

(k) *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 tract or 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 3 separate tracts: 2 contiguous 50-acre tracts and a noncontiguous 50-acre tract. The landowner has the option to seek to enroll the noncontiguous 50-acre tract.

(l) *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.

(m) *Land adjoining preferentially assessed land with common ownership is eligible.*

(1) *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 all of the following occur:

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

(ii) 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.

(2) *Roll-back taxes.* A violation of the provisions of preferential assessment on a tract added under paragraph (1) shall trigger liability for roll-back taxes, plus interest, on that tract and all other contiguous tracts identified in the amended application.

(n) *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.

(o) *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.

(p) *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 2 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 2 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.

(q) *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.21. 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 shall 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.22. 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.23. 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.24. 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 such 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.25. 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.26. 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 any 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.31. 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.34 (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.34 (relating to calculating the contributory value of farm buildings), 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.33

(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.* Where 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.32. 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 were 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 acres 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 a period *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 shall 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 shall 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 (72 P.S. § 5490.3):

(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.53 (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.54 (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 (72 P.S. § 5490.8(d)), and § 137b.52 (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 (72 P.S. § 5490.8(e)) and § 137b.55 (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 (72 P.S. § 5490.8(e)) and § 137b.56 (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 (72 P.S. § 5490.6(d)) and § 137b.51 (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 (72 P.S. § 5490.6(a.1)(1)(i)) 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 (72 P.S. § 5490.6(a.1)(1)(i)). 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 – 72 P.S. § 5490.6(a.1)). 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 (72 P.S. § 5490.3), 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 – 72 P.S. § 5490.6(a.2)). 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 – 72 P.S. § 5490.6(a.2)). 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 (72 P.S. § 5490.3), 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 (72 P.S. § 5490.6(a.1)(1)(i)), 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 (72 P.S. § 5490.6(a.1)(1)(i)), 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 (72 P.S. § 5490.3), 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 (72 P.S. § 5490.6(b.1)), and § 137b.53 (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 (72 P.S. § 5490.8(b)(1)-(7)) 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 (72 P.S. § 5490.8(d)) and § 137b.52 (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 (72 P.S. § 5490.8(e)) and § 137b.55 (relating to transfer 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 (72 P.S. § 5490.8(e)) and § 137b.56 (relating to transfer of enrolled land or transfer 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 (72 P.S. § 5490.6(d)) and § 137b.51 (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 (72 P.S. § 5490.3).

(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 (72 P.S. § 5490.3(d)(2)), 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 shall not trigger the imposition of roll-back taxes. Where 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 shall not trigger the imposition of roll-back taxes.

### **§ 137b.33. Calculation and recalculation of preferential assessment.**

(a) *New values each year.* As described in § 137b.31 (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 *either* 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.31 (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.31 (relating to assessment procedures).

(f) *Required recalculation of preferential assessment in county-wide reassessment.* If a county undertakes a county-wide reassessment, or a county-wide 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 subsections (c), (d), (e) or (f).

### **§ 137b.34. 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.41. 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 acknowledgements required under section 4(c) of the Act (72 P. S. § 5490.4(c)).

### **§ 137b.42. 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.43. 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.21(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.44. 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) in order to continue to receive a preferential assessment. It must, 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.51. 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.52. 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, 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)); and

(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.53. 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 all of 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.54. 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. § 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) through (a)(7). That interest shall be distributed in accordance with section 8(b.1) of the Act (72 P.S. § 5490.8(b.1)).

### **§ 137b.55. 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.56. 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 (72 P.S. § 5490.8(e)), 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 (72 P.S. § 5490.8(e)). 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 (72 P.S. § 5490.8(e)). 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.

## ***Roll-Back Taxes***

### **§ 137b.61. Liability for roll-back taxes.**

(a) *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.

(b) *Split-off tract.* Where a split-off tract meets all of 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.

(c) *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 (72 P.S. § 5490.6(a.1)(1)(i)). 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).

(d) *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 (72 P.S. § 5490.6(a.1)(1)(i)). 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 (72 P.S. § 5490.3), though, 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 (72 P.S. § 5490.6(a.1)(1)(i)). 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 (72 P.S. § 5490.3), though, preferential assessment would continue with respect to that 44-acre tract.

(e) *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.

(f) *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.

(g) *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.

(h) *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.62. 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:

<i>Year</i>	<i>Factor</i>
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.

<i>Year</i>	<i>Amount Multiplied by Factor</i>
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.63. 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.64. 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.65. 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.43 (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.66. 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.

## *County Assessors*

### **§ 137b.71. Duties of a county assessor.**

(a) *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.

(b) *Record keeping.* 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 such of the foregoing information as it deems appropriate for the performance of its duties under the act and this chapter.

(c) *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.

(d) *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.

(e) *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.

(f) *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. § 5490.9). 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.

(g) *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.

(h) *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.32 (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.

(i) *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.

(j) *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.

(k) *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.

(l) *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 responsibility of the department).

## *Recorder of Deeds*

### **§ 137b.81. 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.82. 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.91. 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.92. 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 (i.e., political subdivision) and the proper distribution of interest in accordance with § 137b.66 (relating to disposition of interest on roll-back taxes).

**§ 137b.93. 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.



COMMONWEALTH OF PENNSYLVANIA  
**DEPARTMENT OF AGRICULTURE**  
LEGAL OFFICE

August 21, 2000

The Independent Regulatory Review Commission  
14<sup>th</sup> Floor  
333 Market Street  
Harristown #2  
Harrisburg, PA 17120

**Re: NOTICE OF PROPOSED RULEMAKING**  
**Department of Agriculture, Bureau of Farmland Protection**  
**7 Pa. Code Chapter 137b: Preferential Assessment of Farmland and**  
**Forest Land under the Clean and Green Act**  
**I.D. No. 2-133**

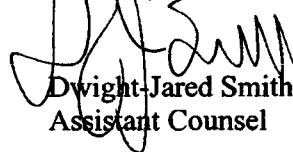
Dear Sirs:

Please find enclosed copies of the Face Sheet, Preamble, Annex "A" and Regulatory Analysis Form with respect to the above proposed regulation.

Copies of these documents have been submitted to the majority and minority chairpersons of the House and Senate Agriculture and Rural Affairs Committees and to the Legislative Reference Bureau on this date.

The proposed regulation will be published in the September 2, 2000 edition of the *Pennsylvania Bulletin*. If I may be of further information, please advise.

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

RECEIVED

I.D. NUMBER: 2-133  
2000 AUG 21 AM 10:38  
SUBJECT: Preferential Assessment of Farmland and Forest Land Under The Clean and Green Act  
REVIEW COMMISSION  
AGENCY: DEPARTMENT OF AGRICULTURE

TYPE OF REGULATION

- X Proposed Regulation  
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
8/21/00	C. Bailey	HOUSE COMMITTEE ON AGRICULTURE & RURAL AFFAIRS
8/21/00	S. Kaufman	
8/21/00	N. Bailey	SENATE COMMITTEE ON AGRICULTURE & RURAL AFFAIRS
8-21-00	Vaillancourt	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL
8/21/00	C. Bras	LEGISLATIVE REFERENCE BUREAU

August 17, 2000