Regulatory Analysis Form

(Completed by Promulgating Agency)

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INDEPENDENT REGULATORY REVIEW COMMISSION

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IRRC

(1) Agency: Department of Agriculture

(2) Agency Number: 02
Identification Number: 159

IRRC Number: 3015

(3) PA Code Cite: 7 Pa. Code Chapter 137b

(4) Short Title: Preferential Assessment of Farmland and Forest Land under the Clean and Green Act

(5) Agency Contacts (List Telephone Number and Email Address):

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Secondary Contact: Stephanie Zimmerman: (717) 783-3167

(6) Type of Rulemaking (check applicable box):

- ☐ Proposed Regulation
- XXX☐ Final Regulation
- ☐ Final Omitted Regulation
- ☐ Emergency Certification Regulation;
  - ☐ Certification by the Governor
  - ☐ Certification by the Attorney General

(7) Briefly explain the regulation in clear and nontechnical language. (100 words or less)

The Clean and Green Act establishes a process by which owners of "agricultural use," "agricultural reserve" and "forest reserve" land can enroll that land for preferential tax assessment that is based on the farmland or forest value of the land, rather than its market value. The regulation: (a) adds and revises language to effectively implement six separate statutory amendments that occurred since the regulation was last revised; (b) adds language to resolve questions the Pennsylvania Department of Agriculture ("Department") has encountered in its administration of the Clean and Green Act; (c) defines several commonly-used terms to help avoid confusion and create a more uniform interpretation of the statute; (d) provides new language describing how "farmstead land" is to be enrolled and assessed; (e) addresses the types of recreational activities that can be conducted upon enrolled land without adverse consequences for the landowner; and (f) corrects an error in the regulatory provision describing the process by which to calculate roll-back taxes (taxes that are assessed against a landowner when certain violations of the Clean and Green Act or its attendant regulations occur).

(8) State the statutory authority for the regulation. Include specific statutory citation.

The regulation is authorized under § 11 of the Pennsylvania Farmland and Forest Land Assessment Act of 1974, commonly referred to as the Clean and Green Act (act of December 19, 1974)(P.L. 973, No. 319)(72 P.S. § 5490.11), which requires the Department to promulgate rules and regulations necessary to promote efficient, uniform, Statewide administration of that act.

(9) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as, any deadlines for action.

The regulation is not mandated by any federal or state law, court order or regulation.

To the extent the regulation is necessary to promote the uniform, efficient, Statewide administration of the Clean and Green Act, it is required under § 11 of that statute (72 P.S. § 5490.11).

(10) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

The regulation is required by statute only to the extent stated in Response No. 9.

There is a compelling public interest in having a regulation that tracks with the *current* Clean and Green Act. That statute has been amended six times since the regulation was last updated. The revisions to the regulation will help implement these amendments, and will provide county assessors and owners of land enrolled under the Clean and Green Act a uniform set of standards. The final-form regulation will help promote the uniform statewide application of the Clean and Green Act.

The regulation will benefit owners of enrolled land, prospective owners of enrolled land, county assessors and counties. It is consistent with statutory requirements and will result in less confusion among landowners and county assessors with respect to the preferential assessment of land in agricultural use, agricultural reserve or forest reserve.

As described in detail below in Response No. 15, approximately 183,000 separate tracts of land are currently receiving preferential assessment under the Clean and Green Act. Since it is not uncommon for a single landowner (a farmer, in particular) to own multiple enrolled tracts, the number "183,000" presents the *upper limit* of the number of landowners who will benefit from the regulation, and the actual number of impacted landowners is less than that number. The regulation will benefit these landowners by facilitating the preferential assessment of land that is entitled to this preferential assessment under the Clean and Green Act. This benefit is derived from the statute, rather than the regulation. To the extent the regulation adds clarity to the process, though, it is expected to decrease the number of appeals and save landowners and county assessors the costs these appeals entail. There is no way to quantify these benefits.

(11) 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 regulations.

No. There are no applicable/relevant federal standards.

(12) How does this regulation compare with those of the other states? How will this affect Pennsylvania's ability to compete with other states?

All 50 states currently have statutes that provide some form of property tax relief with respect to land that is involved in (or available for) agricultural production. In general, these statutes seek to: (a) reduce costs for the landowner; (b) stall development of the affected land; and (c) provide a mechanism by which the government can recapture some portion of the value of these tax benefits in the event the land is converted to a use that makes it ineligible for preferential assessment.

To the extent Pennsylvania's Clean and Green Act and its attendant regulations have the same general objectives described in the preceding paragraph, they are generally consistent with their counterparts in other states.

About half of the states do not have provisions allowing for the recapture of tax revenue when there is a change of use that makes the land ineligible for preferential assessment. The Clean and Green Act establishes roll-back tax liability that looks back as many as *seven years* in the event of such a change of use. Among the states that have similar recapture provisions, look-back periods range *between three and ten years*.

The regulation implements the Clean and Green Act and does nothing that is not required by that statute or necessary to the efficient, uniform Statewide implementation of that statute.

The regulation will not put Pennsylvania at a competitive disadvantage with other states.

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

No, the regulation is not expected to affect any other regulation of the Department or other state agencies.

The Clean and Green Act (at 72 P.S. § 5490.6(c.1)(3)) identifies the well production report required under the Department of Environmental Protection's (DEP's) regulation at 25 Pa. Code § 78.121 (relating to annual production report) as a document to be used in determining the amount of enrolled land that is being used for a well site or is otherwise incapable of being immediately used for agricultural use, agricultural reserve or forest reserve activities. This is restated in the final-form regulation, at § 137b.73a (relating to gas, oil and coal bed methane). Since this is simply a restatement of a statutory requirement, the referenced regulatory provision will have no new impact on the referenced DEP regulation.

(14) Describe the communications with and solicitation of input from the public, any advisory council/group, small businesses and groups representing small businesses in the development and drafting of the regulation. List the specific persons and/or groups who were involved. ("Small business" is defined in Section 3 of the Regulatory Review Act, Act 76 of 2012.)

Prior to the enactment of Act 88 of 2010, Act 109 of 2010, Act 34 of 2011, Act 35 of 2011 and Act 190 of 2012, the Department circulated a discussion draft of the proposed regulation among affected interests for review and comment. These affected interests included county assessors and the Pennsylvania Farm Bureau.

Numerous suggestions offered by these commentators were either incorporated into the proposed rulemaking and the final-form regulation or helped shape those documents.

(15) Identify the types and number of persons, businesses, small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012) and organizations which will be affected by the regulation. How are they affected?

The Department considered the extent to which the regulation will impact persons, businesses and small businesses. The impact of the Clean and Green Act and the regulation on these entities is a positive thing: preferential tax assessment of enrolled eligible land. In summary, of the persons who own preferentially-assessed land, *most* are likely to be small businesses.

The size standards presented in the United States Small Business Administration's Small Business Size Regulations under 13 CFR Ch. 1 Part 121 (relating to Small Business Size Regulations) are the size standards that determine whether a business is a "small business" for purposes of the Regulatory Review Act. The applicable standards are at 13 CFR § 121.201, in a chart titled *Small Business Size Standards by NAICS Industry*, under Sector 11 (relating to Agriculture, Forestry, Fishing and Hunting). According to that chart:

- A crop production operation is a small business if its annual receipts are $750,000 or less.
- A cattle feedlot operation is a small business if its annual receipts are $7,500,000 or less.
- An animal production operation (other than a feedlot) is a small business if its annual receipts are $750,000 or less.
- A timber tract operation or forest nursery operation is a small business if its annual receipts are $11,000,000 or less.
- A logging operation is a small business if it has 500 or fewer employees.
- Support activities for agriculture (such as businesses that plant, cultivate or harvest crops for others) are small business if – depending on the particular support activity involved – their annual receipts do not exceed caps ranging between $7,500,000 and $27,500,000.

The Department does not keep records reflecting the number of landowners receiving preferential assessment of their land. However, there are approximately 183,000 *separate tax parcels* that are currently receiving preferential tax assessment under the Clean and Green Act. These parcels total approximately 9.3 million acres. Since it is not uncommon for a person (particularly, a farmer) to own several separate tax parcels that receive this preferential assessment, this 183,000 figure *overstates* the actual number of owners of enrolled land (the persons who benefit from the referenced preferential tax assessment).

With respect to "agricultural use" land, the Department assumes that practically all of the persons who will be affected by the regulation own or lease that land and farm it. Approximately 40% of all enrolled land is enrolled as *agricultural use* land. By applying this percentage to the number of enrolled parcels (a number which, admittedly, overstates the number of impacted landowners) the Department estimates that there are no more than 73,200 (183,000 tract owners multiplied by 40%) farmers who own or lease enrolled agricultural use land and are affected by the regulation. The Department assumes that the *vast majority* of these farmers are "small businesses" for purposes of the small business size standards prescribed by the Regulatory Review Act and referenced above.

With respect to "agricultural reserve" and "forest reserve" land, the Department applies the same rough formula described in the preceding paragraph and estimates that there are no more than 25,620 owners of agricultural reserve land and no more than 84,180 owners of forest reserve land. It is difficult to estimate how many of these landowners are small businesses. As stated, the Department believes many of these landowners are farmers and that most of those farmers are small businesses. However, there are also many owners of enrolled agricultural reserve land or forest reserve land who are not

farmers. There are simply no existing records, numbers or statistics by which the Department can whittle-down these numbers to generate a good faith estimate of the number of *non-farmer* small businesses that own enrolled forest reserve or agricultural reserve land and might be affected by the regulation. The determination of whether any of these non-farmer owners is a "small business" would require the Department to know the type of business that owns a given tract and then apply the applicable United States Small Business Administration's Small Business Size Regulations as described above.

The second part of the question presented above asks the Department to relate how persons, businesses and small businesses are affected by the regulation. To the extent the regulation is simply a pass-through for requirements and benefits *originating in the Clean and Green Act*, these requirements are statutory and not regulatory. To the extent the regulation brings the regulation into step with the Clean and Green Act (which has been amended six times since the regulation was last amended), the regulation will affect the regulated community in a positive way. In addition, the regulation clarifies provisions that have been sources of confusion as the Department has administered the regulation over the years, includes additional user-friendly examples, and generally presents clearer, simpler guidance to the regulated community.

The regulation will not work to *deny* preferential assessment with respect to any land that is eligible for preferential assessment under the Clean and Green Act and will not work to *grant* preferential assessment with respect to any land that is not eligible for preferential assessment under the Clean and Green Act.

The regulation will also affect the 67 county assessors and recorders of deeds in the Commonwealth, but does not impose any duties on these entities beyond what the Clean and Green Act requires.

(16) List the persons, groups or entities, including small businesses, that will be required to comply with the regulation. Approximate the number that will be required to comply.

No landowner is *required* to comply with the regulation. The Clean and Green Act establishes a *voluntary process* by which owners of eligible land may apply for preferential tax assessment for their land and maintain that eligibility once preferential assessment is granted. The Clean and Green Act allows a landowner to remove land from preferential assessment, although that removal will (generally) trigger liability for roll-back taxes (the difference between preferentially-assessed and normally-assessed taxes in the current year and the 6 previous years, plus interest).

Although approximately 67 county assessors and recorders of deeds will be required to comply with the regulation, the regulation does not put any new obligations on these entities that are not prescribed by the Clean and Green Act.

The Department's estimate as to the types and numbers of persons, businesses, small businesses and organizations that might be impacted by the regulation is presented in Response No. 15, above.

(17) Identify the financial, economic and social impact of the regulation on individuals, small businesses, businesses and labor communities and other public and private organizations. Evaluate the benefits expected as a result of the regulation.

The regulation is not expected to have financial, economic or social impacts on individuals, small businesses, businesses and labor communities and other public and private organizations. The regulation accomplishes the objectives related in Response No. 7, above, but is not expected to create any of the impacts identified in Question No. 17, above.

The benefits expected as a result of the regulation are addressed in Response No. 18, below.

(18) Explain how the benefits of the regulation outweigh any cost and adverse effects.

It is difficult to quantify the benefits of the regulation.

The benefits of the regulation will outweigh any costs or adverse effects. The regulation is a pass-through for requirements imposed by the Clean and Green Act. It does not impose any new costs or adverse impacts on the regulated community.

The regulation will help bring about greater Statewide uniformity in interpretation and enforcement of the Clean and Green Act and will, presumably, result in some savings to county assessors (who handle enrollment and appraisal issues on the local level). The Clean and Green Act and the regulation may also result in a lowering of taxes for owners of enrolled agricultural use, agricultural reserve and forest reserve land. There may also be some increase in local tax revenue that would be attributable to the market value assessment of certain tracts of "farmstead land" on enrolled agricultural reserve and forest reserve tracts. Although these expected results are driven by the Clean and Green Act, to the extent the regulation will help deliver these results, the Department maintains that the benefits of the regulation outweigh its costs – even though these costs are not readily quantifiable.

(19) 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. Explain how the dollar estimates were derived.

In general terms, the Clean and Green Act results in a tax savings to owners of land enrolled for preferential assessment. These savings are attributable to the Clean and Green Act, and cannot be readily estimated.

Taxing bodies may realize an increase in tax revenue in those counties that (implementing the option created by Act 235 of 2004) elect to assess "farmstead land" on enrolled tracts of agricultural reserve or forest reserve land home at its market value, or from limited roll-back taxes imposed on areas used for oil and gas leasing and drilling activity, commercial wind production and small non-coal mining.

As stated, the regulation does not impose any requirement or cost, but restates and clarifies the requirements imposed by the Clean and Green Act.

(20) Provide a specific estimate of the costs and/or savings to the **local governments** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

The regulation is not expected to impose any costs on local government. To the extent any county incurs costs in recalculating preferential assessments, these costs are driven by the Clean and Green Act rather than by the regulation. These costs cannot be readily estimated, but are expected to be minimal.

To the extent the regulation helps clarify how the Clean and Green Act is to be administered by counties, it may result in some savings to counties and landowners by virtue of there being fewer appeals and legal challenges relating to preferential assessment. These savings cannot be readily estimated.

(21) Provide a specific estimate of the costs and/or savings to the **state government** associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required. Explain how the dollar estimates were derived.

The regulation is not expected to have an appreciable fiscal impact upon state government.

(22) For each of the groups and entities identified in items (19)-(21) above, submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

The regulation will not appreciably increase or alter legal, accounting or consulting procedures. It will not require additional reporting, recordkeeping or other paperwork.

(23) 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.

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

(23a) Provide the past three year expenditure history for programs affected by the regulation.

Not applicable. The preferential tax assessment process prescribed by the Clean and Green Act is administered by individual Counties and their Tax Assessors, rather than the Department. The Department does not administer a program that is affected by the regulation.

Program	FY -3	FY -2	FY -1	Current FY
* See Note Above.				

(24) For any regulation that may have an adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), provide an economic impact statement that includes the following:

(a) An identification and estimate of the number of small businesses subject to the regulation.

(b) The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed regulation, including the type of professional skills necessary for preparation of the report or record.

(c) A statement of probable effect on impacted small businesses.

(d) A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.

The regulation will not have an adverse impact on small businesses, so the referenced economic impact statement is not required.

The Clean and Green Act (and not the regulation) implements the provision of Article 8, Section 2 of the Pennsylvania Constitution. That provision establishes a narrow exception to the requirement of uniform taxation, allowing the General Assembly to, by law: "Establish standards and qualifications for private forest reserves, agricultural reserves, and land actively devoted to agricultural use, and make special provisions for the taxation thereof." The resulting law is the Clean and Green Act. To the extent this non-uniform taxation benefits small businesses or shifts a tax burden to small businesses, this is accomplished by the Clean and Green Act and not the regulation.

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

The preferential assessment of agricultural use, agricultural reserve and forest reserve land prescribed by the Clean and Green Act meets the particular needs of farmers who own or farm this land, and of non-farmers who own or use the land. Most of these farmers and non-farmers are also small businesses (see the Department's Response No. 15, above). The regulation does not contain provisions which expand this preferential tax assessment beyond the boundaries set by that statute, though.

To the extent an owner of land that is eligible for preferential assessment under the Clean and Green Act belongs to a minority, or is elderly, or is a small business, there are no special provisions to address that circumstance. It is *the land and the use to which it is put* - and not the identity, minority status, age or business organization type of the landowner - that determines eligibility for preferential assessment.

(26) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

No alternative regulatory provisions were considered. The revisions accomplished in the final-form regulation are very straightforward and are largely driven by: (a) the need to implement the six statutory amendments that occurred to the Clean and Green Act since the regulation was last amended; and (b) the need to refine or clarify provisions to reflect experience the Department has gained in administering the Clean and Green Act since the regulation was last amended.

The Department confirms that the least burdensome regulatory provisions have been selected.

(27) In conducting a regulatory flexibility analysis, explain whether regulatory methods were considered that will minimize any adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), including:

(a) The establishment of less stringent compliance or reporting requirements for small businesses;

The Department considered the compliance or reporting standards imposed by the regulation, and whether it would be appropriate to establish less-stringent compliance and reporting requirements for small businesses. Although the Pennsylvania Constitution (at Article 8, Section 1) requires that taxes be uniform, it carves out a very narrow exception (at Article 8, Section 2) allowing the General Assembly to, by law: "Establish standards and qualifications for private forest reserves, agricultural reserves, and land actively devoted to agricultural use, and make special provisions for the taxation thereof." The resulting law is the Clean and Green Act. The focus of this narrow exception to the Constitutional uniform taxation requirement relates to *the uses to which certain land is put* (i.e., agricultural use, agricultural reserve or forest reserve), and *not to who owns it.*

The regulation presents the least intrusive, least burdensome process by which a landowner can demonstrate that land is eligible for preferential assessment. The compliance and reporting requirements essentially require that a landowner maintain enrolled land in an eligible use or provide the county assessor advance notice when the use of some or all of that land is going to change. These requirements are as straightforward and simple as they can be under the Clean and Green Act and the Constitutional authority that underlies it. In light of the foregoing, the regulation does not establish less stringent reporting requirements for small businesses.

(b) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;

The Department considered the establishment of less-stringent schedules or deadlines for compliance or reporting requirements for small businesses, but believes the regulation, as written, presents the least-intrusive and least-burdensome process by which the Department can discharge its duty to administer the Clean and Green Act. This is described in greater detail in the Department's response in paragraph (a), above.

(c) The consolidation or simplification of compliance or reporting requirements for small businesses;

The Department considered the consolidation or simplification of compliance or reporting requirements for small businesses, but has determined that the regulation, as written, presents the simplest and least-intrusive regulatory requirements that are consistent with the Department's responsibilities under the Clean and Green Act. This is described in greater detail in the Department's response in paragraph (a), above.

(d) The establishment of performing standards for small businesses to replace design or operational standards required in the regulation; and

The Department considered establishing "performing standards for small businesses to replace design or operational standards required in the regulation." The regulation does not establish or present design standards. The regulation does not present operational standards, either, except to the extent it repeats the requirement of the Clean and Green Act that land be eligible for preferential assessment and remain in a use that is eligible for preferential assessment after preferential assessment is granted. The Department does not believe the referenced regulatory flexibility analysis consideration is applicable to the regulation.

(e) The exemption of small businesses from all or any part of the requirements contained in the regulation.

The Department considered whether to exempt small businesses from all or any part of the requirements contained in the regulation, and believes that exemption is not warranted. The basis for this conclusion is set forth in paragraph (a), above.

(28) If data is the basis for this regulation, please provide a description of the data, explain in detail how the data was obtained, and how it meets the acceptability standard for empirical, replicable and testable data that is supported by documentation, statistics, reports, studies or research. Please submit data or supporting materials with the regulatory package. If the material exceeds 50 pages, please provide it in a searchable electronic format or provide a list of citations and internet links that, where possible, can be accessed in a searchable format in lieu of the actual material. If other data was considered but not used, please explain why that data was determined not to be acceptable.

Data is not the basis for the regulation.

(29) Include a schedule for review of the regulation including:

A. The date by which the agency must receive public comments:	September 2, 2013
B. The date or dates on which public meetings or hearings will be held:	None will be held.
C. The expected date of promulgation of the proposed regulation as a final-form regulation:	March 1, 2015
D. The expected effective date of the final-form regulation:	March 1, 2015
E. The date by which compliance with the final-form regulation will be required:	March 1, 2015
F. The date by which required permits, licenses or other approvals must be obtained:	None required.

(30) Describe the plan developed for evaluating the continuing effectiveness of the regulations after its implementation.

The Department will review the efficacy of the subject regulation on an ongoing basis. The Department is frequently consulted on this regulation by county assessors, affected landowners, county recorders of deeds, legislators and others. This regular interaction will assist the Department in evaluating the efficacy of the regulation and identifying the need for (and the type of) refinements to pursue in the future.

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

By:
(Deputy Attorney General)

DATE OF APPROVAL

☐ Check if applicable
Copy not approved. Objections attached.

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

(AGENCY)

DOCUMENT/FISCAL NOTE NO. 2-159

DATE OF ADOPTION 11-7-14

BY
GEORGE D GREIG

TITLE
SECRETARY
Pennsylvania Department of Agriculture

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

BY

4/13/15
DATE OF APPROVAL

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

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

Notice of Final Rulemaking

Title 7 – AGRICULTURE
Chapter 137b

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

DEPARTMENT OF AGRICULTURE

[7 PA. CODE CH. 137b]

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

The Department of Agriculture (Department) amends Chapter 137b (relating to preferential assessment of farmland and forest land under the Clean and Green Act) to read as set forth in Annex "A."

Purpose of the Final-Form Regulation

The final-form regulation implements 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 use, agricultural reserve or forest reserve land to apply for preferential assessment of their land. If an application is approved, the subject land receives an assessment based upon its use value, rather than its market value.

Authority

The final-form regulation is offered under authority of section 11 of the Act (72 P.S. § 5490.11), which requires the Department to promulgate regulations necessary to promote the efficient, uniform, Statewide administration of that statute.

Need for the Regulation

The final-form regulation adds new definitions and makes revisions to implement the most recent amendments to the Act. These amendments are: the act of December 8, 2004 (P.L. 1785, No. 235) (Act 235 of 2004); the act of October 27, 2010 (P.L. 866, No. 88) (Act 88 of 2010); the act of November 23, 2010 (P.L. 1095, No. 109) (Act 109 of 2010); the act of July 7, 2011 (P.L. 212, No. 34) (Act 34 of 2011); the act of July 7, 2011 (P.L. 213, No. 35) (Act 35 of 2011); and the act of October 24, 2012 (P.L. 1499, No. 190) (Act 190 of 2012).

The final-form regulation adds language to resolve questions that the Department has encountered in its administration of the Act. It also defines several commonly-used terms to help avoid confusion and create a more uniform interpretation and application of the Act and its attendant regulations. In addition, the final-form regulation provides new language describing how "farmstead land" is to be enrolled and assessed, addresses the types of recreational activities that can be conducted upon enrolled land without adverse financial consequences for the landowner, and corrects the regulatory provision describing the process by which roll-back taxes are to be calculated.

In summary, the Department is satisfied there is a need for the final-form regulation and that it is otherwise consistent with Executive Order 1996-1, "Regulatory Review and Promulgation."

Description of the Regulation

In its comments to the proposed rulemaking, the Independent Regulatory Review Commission (IRRC) offered that the summary presented in the Preamble to that document did not provide IRRC adequate information to determine whether the regulation is in the public interest. IRRC asked that the Preamble to the final-form regulation provide an adequate description of all of the sections of the rulemaking and the rationale behind the language being added or deleted. The following section-by-section description is offered in response.

Section 137b.2. Definitions.

The term "agricultural commodity" is defined in the Act, and was most recently amended by Act 190 of 2012, which added "compost" to the list of items that constitute an agricultural commodity. The changes to this regulatory definition bring it into alignment with its statutory counterpart.

The terms "agricultural reserve," "agricultural use" and "forest reserve" are defined in the Act, and were most recently amended by Act 88 of 2010. The changes to these regulatory definitions bring them into alignment with their statutory counterparts.

The terms "agritainment" and "county commissioners" were added to the Act by Act 235 of 2004. The final-form regulation repeats these statutory definitions.

The terms "alternative energy system" and "tier I energy source" were added to the Act by Act 88 of 2010. The final-form regulation repeats these statutory definitions.

The terms "change of use" and "division by conveyance or other action of the owner" are used in the Act, but are not defined. The new regulatory definitions of these terms are interrelated. They also identify the types of actions that do *not* constitute either "change of use" or "division by conveyance or other action of the owner." The Department's objective is to clarify that the subdivision of land, the sale of land to a different landowner or the intention of the landowner with respect to the ultimate use of the land do not determine whether the use of the land has changed to something other than agricultural use, agricultural reserve or forest reserve or whether a separation or split-off has occurred on the enrolled land. These definitions address questions that have arisen as the Department has administered the Act over the years, and should serve to clarify that the terms refer to actual changes in the physical use to which the enrolled land is being put.

The term "compost" was added to the Act by Act 190 of 2012. The final-form regulation repeats this statutory definition.

The term "direct commercial sales" was added to the final-form regulation in response to a recommendation from IRRC that is described in greater detail at Comment No. 41 of the Comment-and-Response portion of this document.

The term "land use subcategory" is revised in the final-form regulation to make clear that county-specific average timber values provided to county assessors by the Department each year fall within that definition. This clarification is discussed in greater detail at Comment No. 35 of the Comment-and-Response portion of this document.

The final-form regulation adds a citation to the Noncoal Surface Mining Conservation and Reclamation Act, since a reference to that statute was added to the Act (at 72 P.S. § 5490.6(c.4)(1)) by Act 34 of 2011 and a reference also appears in § 137b.73c (relating to small noncoal surface mining).

The final-form regulation adds a citation to the Oil and Gas Act, since a reference to that statute was added to the Act (at 72 P.S. § 5490.6(c.1)(3)) by Act 88 of 2010 and references appear in the final-form regulation in § 137b.73a (relating to gas, oil and coal bed methane).

The term "outdoor recreation" is used in the statutory definition of "agricultural reserve" (at 72 P.S. § 5490.2). Land that is enrolled under the agricultural reserve land use category must be open to the public for outdoor recreation. The final-form regulation clarifies the definition of "outdoor recreation" by: (1) providing examples of various types of passive recreational uses that constitute outdoor recreation; and (2) placing the same limitations on the operation of motor vehicles that are found in the statutory definition of "recreational activity."

The definition of the term "recreational activity" was added to the Act by Act 235 of 2004, as were references to that term at 72 P.S. subsections 5490.3(f) and 5490.8(f). The final-form regulation repeats this statutory definition. In summary, Act 235 of 2004 made clear that preferential assessment of enrolled agricultural use land or forest reserve land is not breached, and roll-back tax liability is not triggered, if that land is used for recreational activity.

The term "rural enterprise incidental to the operational unit" is revised in the final-form regulation by reformatting it into numbered paragraphs for easier reading and adding the statutory requirement (from 72 P.S. § 5490.8(d)(1)(i)) that such enterprises be owned and operated by the landowner or persons who are class A beneficiaries for inheritance tax purposes. This revision establishes a definition that is more complete and consistent with the Act.

The Act (at 72 P.S. § 5490.2) defines "agricultural commodity" as including silvicultural products, but does not define these products. The definition of "silvicultural products" in the final-form regulation seeks to distinguish between actively-cultivated tree or tree product operations and trees or tree-derived products from forest land. The significance of this distinction is that if land is used for the production of silvicultural products then: (1) it fits within the definition of agricultural use land and will be assessed as agricultural use land rather than as forest reserve land; and (2) farmstead land on agricultural use land automatically receives preferential assessment while farmstead land on forest reserve land might not.

The examples contained in the definition reflect factual situations the Department has encountered in its administration of the Act, and help clarify the line drawn by the definition.

Section 137b.12. Agricultural use.

Act 88 of 2010 revised the statutory definition of "agricultural use" land (at 72 P.S. § 5490.2) to include land devoted to the development and operation of an alternative energy system "if a majority of the energy annually generated is utilized on the tract." The final-form regulation adds a provision at § 137b.12(3) that restates the statutory language relating to alternative energy systems and makes the regulation more consistent with the Act. Section 137b.12 also includes eight new examples. The Department believes that the inclusion of examples – particularly ones that relate to new or recent revisions to the Act or that include fact situations the Department has encountered in its administration of the Act over the years – provides the regulated community helpful guidance in navigating the complex subject matter of the Act.

In its comments with respect to the proposed regulation, IRRC noted that the Department seeks to revise Sections 137b.12, 137b.13 and 137b.14 by adding language that includes the "if a majority of the energy annually generated is utilized on the tract" language referenced in the preceding paragraph. IRRC asked that this Preamble "... explain how this provision will be implemented."

Although several commentators made requests similar to IRRC's and the Department addresses these in its responses to Comment Nos. 3 and 15 in the Comment-and-Response portion of this document, the Department notes that none of these commentators was a county assessor or landowner who *actually encountered a problem* in navigating this standard in the nearly four years this standard has been in effect. At this point the Department does not believe it is necessary to attempt to establish specific standards of proof that must be met in order for a landowner to demonstrate that a majority of the energy annually generated from an alternative energy system is utilized on the same enrolled tract where that system is located. In some instances compliance with this standard will be self-apparent - such as where the lines carrying the energy do not connect to lines that extend off the tract. In some instances the utility bills received by the landowner may contain adequate information to discern the amount of energy generated on a tract and the amount of energy consumed on that same tract. In other instances there may be records or readouts that are generated or available at the location of the alternative energy system to show energy production, which can be compared to utility bills showing the amount of energy used on the tract. The Department believes that county assessors and landowners are employing flexibility and common sense in demonstrating or confirming compliance with the referenced standard. Going forward, the Department will monitor whether issues arise with respect to the referenced standard, and will revisit this subject and consider establishing formal standards of proof should that become necessary.

Section 137b.13. Agricultural reserve.

Act 88 of 2010 revised the statutory definition of "agricultural reserve" land (at 72 P.S. § 5490.2) to include land devoted to the development and operation of an alternative energy system "if a majority of the energy annually generated is utilized on the tract." The final-form regulation adds a provision at § 137b.13 that restates the statutory language relating to alternative energy systems and makes the regulation more consistent with the Act.

Section 137b.14. Forest reserve.

Act 88 of 2010 revised the statutory definition of "forest reserve" land (at 72 P.S. § 5490.2) to include land devoted to the development and operation of an alternative energy system "if a majority of the energy annually generated is utilized on the tract." The final-form regulation adds a provision at § 137b.14 that restates the statutory language relating to alternative energy systems and makes the regulation more consistent with the Act.

Section 137b.15. Inclusion of farmstead land.

The Act (at 72 P.S. § 5490.3(a)) makes clear that farmstead land on a tract of agricultural use, agricultural reserve or forest reserve land is to be counted toward the total acreage of that tract. The final-form regulation adds examples to subsection 137b.15(a) (relating to inclusion of farmstead land), to illustrate this point and show how this applies consistently among each of the three land use categories: agricultural use, agricultural reserve and forest reserve.

When the current version of subsection 137b.15(b) was promulgated in 2001, farmstead land was preferentially assessed without regard to whether it was located on enrolled agricultural use land, agricultural reserve land or forest reserve land. Subsequent amendments of the Act, including Act 235 of 2004, have changed that. Although farmstead land on enrolled agricultural use land continues to automatically receive preferential assessment, there are now only *limited circumstances* under which farmstead land on enrolled agricultural reserve or forest reserve land can be preferentially assessed. Subsections 137b.15(c) and (d) of the final-form regulation describe or identify these circumstances. This revision brings the regulation into alignment with the Act and provides clear guidance with respect to the circumstances under which farmstead land may/must be preferentially assessed.

Section 137b.51. Assessment procedures.

In its comments with respect to proposed § 137b.51 (relating to assessment procedures), IRRC summarized certain comments offered by the Pennsylvania Farm Bureau and requested that this Preamble explain how the provisions of the Act addressing farmstead land are to be implemented and how the final-form regulation is consistent with the Act. These comments are addressed in detail below, and at Comment Nos. 30 and 33 of the Comment-and-Response portion of this document.

Act 235 of 2004 made significant changes to the assessment of farmstead land on enrolled agricultural reserve or forest reserve land. The revisions to § 137b.51 of the final-form regulation (relating to assessment procedures) implement these changes.

Although farmstead land on enrolled agricultural use land retains preferential assessment, that same preferential assessment does not automatically occur if the farmstead land is located on enrolled agricultural reserve or forest reserve land. The revisions in § 137b.51 address each of the three circumstances under which farmstead land on enrolled agricultural reserve or forest reserve land may be preferentially-assessed. In summary, this preferential assessment may only occur where: (1) the county commissioners have adopted an ordinance including farmstead land in the total use value for land in agricultural reserve and/or forest reserve (in accordance with 72

P.S. § 5490.3(g)); (2) a majority of the land in the subject application for preferential assessment is enrolled as agricultural use land (in accordance with 72 P.S. § 5490.4b(d)(2)(i)); or (3) an application for preferential assessment contains noncontiguous tracts, and a majority of the land on the tract where the farmstead land is located is agricultural use land (in accordance with 72 P.S. § 5490.4b(d)(2)(ii)).

Section 137b.51 of the final-form regulation also contains a number of examples. These are intended to illustrate how the changes wrought by Act 235 of 2004 are to be implemented by county assessors. The provisions of the final-form regulation relating to farmstead land are entirely consistent with the Act.

Section 137b.52. Duration of preferential assessment.

Act 109 of 2010 revised the Act by adding a new section (at 72 P.S. § 5490.8a) identifying the circumstances under which land may be removed from preferential assessment by the landowner. Section 137b.52 of the final-form regulation repeats the substance of that statutory language. The Department's objectives in including this new language are to make the final-form regulation more complete and user-friendly, and to obviate the need for the reader to refer to the text of the Act for the information provided in this regulatory section.

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

The final-form regulation revises § 137b.53 (relating to calculation and recalculation of preferential assessment) to make that provision consistent with the Act.

The current version of § 137b.53 predates Act 235 of 2004. As described in greater detail in the paragraphs above addressing § 137b.51, Act 235 of 2004 effectively did away with the across-the-board preferential assessment of farmstead land on agricultural reserve and forest reserve land and prescribed specific circumstances under which this preferential assessment can occur. This necessitates the Department deleting language from § 137b.53 that was rendered inaccurate by Act 235 of 2004.

The final-form regulation also adds subsection 137b.53(g), which requires the recalculation of preferential assessment of a tract of forest reserve land if: (1) the county assessor calculated the assessment of that tract using a county-specific average timber value provided by the Department; and (2) the landowner provides the county assessor documentation that the actual value of the timber on the subject tract is less than the value that was estimated using the county-specific average timber value. This is discussed in depth at Comment No. 35 of the Comment-and-Response portion of this document.

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

Act 190 of 2012 amended the Act (at 72 P.S. § 5490.8(d)(3)) to allow for the direct commercial sale of agriculturally related products on enrolled land without triggering roll-back tax liability if: (1) the sales occur on one-half acre or less of land; (2) no utilities or new

buildings are required; and (3) the majority of these products are produced on the farm. Section 137b.72 of the final-form regulation (relating to direct commercial sales of agriculturally related products and activities; rural enterprises incidental to the operational unit) is revised to reflect this statutory change.

Section 137b.73a. Gas, oil and coal bed methane.

In summary, sections 137b.73a, 137b.73b (relating to temporary leases for pipe storage yards, 137b.73c and 137b.73d (relating to wind power generation systems) establish a regulatory beachhead addressing specific statutory revisions that have occurred since Chapter 137b was last amended. In each instance it is the intention of the Department to: (1) add the subject matter of each amendment to the regulation so the regulation is more user-friendly and the regulated community does not have to refer to the Act to find that subject matter; (2) rephrase or reorganize the subject matter of these amendments to make the regulation more understandable; and (3) add several examples to preemptively address questions the Department believes might reasonably arise as these amendments are implemented over time. The Department expects that as county assessors, landowners and the Department gain experience in administering and implementing these statutory amendments the Department will revisit these regulatory provisions to make refinements and add more examples based on that experience.

Act 88 of 2010 and Act 35 of 2011 amended the Act to address the impact of gas, oil and coal bed methane exploration and extraction on enrolled land. These amendments also added references to the appurtenant facilities – such as roads, bridges, pipelines, hydrofracturing retention ponds and the like – that are attendant to this exploration and extraction and the impacts of these structures or activities on preferential assessment and roll-back tax liability. Section 137b.73a of the final-form regulation restates the substance of these amendments and provides some examples to help landowners, county assessors and owners of gas, oil and coal bed methane rights better understand the impact of these amendments.

Section 137b.73a restates the statutory provisions found at 72 P.S. § 5490.6(c.1)(1) – (4). The examples presented in subsection 137b.73a(b) are offered to illustrate how important the *date of the grant* of some/all of the gas and oil extraction rights is to the determination as to whether roll-back tax liability is triggered, and that the grant of something less than 100% of these rights does not alter roll-back tax treatment.

Section 137b.73b. Temporary leases for pipe storage yards.

Section 137b.73b describes the circumstances under which enrolled land may be leased for up to two years for pipe storage yards – a use that facilitates coal bed methane extraction. This provision is almost a *verbatim* restatement of a provision of the Act (at 72 P.S. § 5490.6(c.3)) that was added by Act 88 of 2010.

Section 137b.73c. Small noncoal surface mining.

Act 34 of 2011 amended the Act (at 72 P.S. § 5490.6(c.4)) to allow an owner of enrolled land to lease or devote a portion of that land to "small noncoal surface mining" in accordance with the

Noncoal Surface Mining Conservation and Reclamation Act (52 P.S. § 3301 *et seq.*). Roll-back taxes are due with respect to land devoted to this use, but preferential assessment continues on the remainder. Section 137b.73c restates this statutory change.

Section 137b.73d. Wind power generation systems.

Act 109 of 2010 amended the Act (at 72 P.S. § 5490.6(c.5)) to allow for certain wind power generation systems on enrolled land and to impose adverse roll-back tax consequences that are limited only to the land that is actually devoted to wind power generation purposes. Subsections 137b.73d(a) and (b) of the final form regulation restate this statutory language.

The Department added subsection 137b.73d(c) to make clear that a wind power generation system is a "Tier I Energy Source" that can be established and operated on enrolled land without triggering adverse roll-back tax consequences if a majority of the energy annually generated is utilized on the enrolled tract on which the wind power generation system is located. Under these circumstances the land on which the system is located remains, by statutory definition (at 72 P.S. § 5490.2), agricultural use, agricultural reserve or forest reserve land entitled to preferential assessment.

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

Section 137b.74 of the final-form regulation (relating to option to accept of forgive roll-back taxes) corrects a provision that is not consistent with the Act.

The Act (at 72 P.S. § 5490.8(b)) affords a taxing district the discretion to decline to accept roll-back taxes if the roll-back tax liability was triggered by a change of use of the enrolled land caused by the granting or donating of some portion of that land to a school district, a municipality, a county, a volunteer fire company, a volunteer ambulance service or a charitable corporation organized under Section 501(c)(3) of the Internal Revenue Code.

The current regulation only provides a taxing district the discretion to forgive roll-back taxes "with respect to that portion of the enrolled land that is granted or donated..." In other words, if a landowner had a 50-acre enrolled tract and donated 11 acres to volunteer fire company and roll-back tax liability was triggered with respect to the entire 50-acre tract, the current regulation says that the taxing district could only forgive roll-back taxes with respect to the 11-acre donated tract, while the Act clearly would allow the taxing district to forgive roll-back taxes with respect to the entire 50 acres. The final-form regulation corrects that inconsistency.

Section 137b.77. Recreational activities on agricultural use or forest reserve land.

Act 235 of 2004 added a definition of "recreational activity" to the Act, and (at 72 P.S. § 5490.8(f)) clarified that recreational activity on enrolled agricultural use or forest reserve land does not breach preferential assessment as long as the recreational activity does not prevent the land from being immediately put to agricultural use (if the enrolled land is agricultural use land) or permanently render the land incapable of producing timber (if the enrolled land is forest reserve land). It also specified that this is the case regardless of whether a fee or charge is

attached to the recreational activity. Section 137b.77 of the final-form regulation (relating to recreational activities on agricultural use or forest reserve land) restates this statutory language. As is the case with many of the new regulatory sections described above, the Department's objective is to include the subject matter of this section to make the regulation more complete and user-friendly.

Section 137b.81. General.

In its comments with respect to proposed § 137b.81 (relating to general), IRRC summarized certain comments offered by the Pennsylvania Farm Bureau, agreed with the commentator and offered that the proposed addition of the phrase "in accordance with applicable sections of the Act" creates confusion. In response, the Department has deleted the referenced phrase from the final-form regulation.

IRRC also asked that this Preamble present the reason the Department is adding the other new language to this section, and an explanation of whether the new language is consistent with the Act and in the public interest. IRRC's concerns are addressed below, and at Comment Nos. 56 and 57 of the Comment-and-Response portion of this document.

The Department added language to § 137b.81 to make clear that the *transfer* of all of the land enrolled under a single application for preferential assessment does not, by itself, trigger roll-back tax liability or end preferential assessment. Should the successor landowner change the use of the land to something other than agricultural use, agricultural reserve or forest reserve, though, that successor landowner is liable for any roll-back taxes triggered by that change of use.

The new language that is being added to § 137b.81 originates in the Act (at 72 P.S. § 5490.6(a.3)), and makes the regulation more consistent with the Act. In addition, the Department has encountered several instances where a tract of enrolled land was transferred to a person (such as a developer) whose long-term intention was to convert the land to some use other than agricultural use, agricultural reserve or forest reserve. The new language helps make clear that the *transfer* does not trigger roll-back tax liability and/or impact preferential assessment but that a subsequent *change of use* would.

Section 137b.82. Split-off tract.

The addition of language to § 137b.82 of the final-form regulation (relating to split-off tract) affirmatively limits the total amount of acreage that can be split-off without triggering roll-back tax liability on the entire enrolled tract to the lesser of 10% or 10 acres of the enrolled tract.

The final-form regulation also reminds landowners to engage with the county assessor in advance of any planned split-off to determine the extent to which the split-off would be allowed without triggering adverse roll-back tax consequences with respect to the entire enrolled tract. This is particularly important where an enrolled tract has been separated into several tracts since it was originally enrolled or where there have been previous split-offs with respect to the enrolled tract. This reporting requirement is prescribed by the Act, at 72 P.S. § 5490.4(c).

An example has also been added to § 137b.82 of the final-form regulation. This example was driven by a comment from Senator Gene Yaw, a prime sponsor of Act 88 of 2010, who offered language to emphasize that *if* an owner of land that is enrolled and receiving preferential tax assessment splits-off a portion of that enrolled land, *and* that split-off complies with the requirements presented at 72 P.S. § 5490.6(a.1)(1)(i), *then* roll-back taxes are only due with respect to the split-off portion of the enrolled land – and *not* with respect to the entire tract of enrolled land. As detailed below in Comment No. 60 of the Comment-and-Response portion of this document, Senator Yaw acknowledges that Act 88 of 2010 was driven, in part, by a 2009 Commonwealth Court decision which suggested there was some ambiguity on this point.

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

Although the Department originally proposed to delete the final sentence of § 137b.87 (relating to change in use of separated land occurring within 7 years of separation), the final-form regulation makes no changes to this section. This is in response to a comment offered by the Pennsylvania Farm Bureau and discussed below in Comment No. 63 of the Comment-and-Response portion of this document.

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

Section 137b.89 of the final-form regulation (relating to calculation of roll-back taxes) is being revised to delete language in an example stating that – in calculating roll-back taxes with respect to the current tax year – a county assessor should *prorate* those taxes. This was an erroneous statement, and this error was noted by the Commonwealth Court in its 2002 opinion in *Moyer vs. Berks County Board of Assessment Appeals* (803 A.2d 833). In *Moyer*, the Commonwealth Court found that it could not conclude the Act was intended to allow the proration of roll-back taxes to one moment in the year of the breach.

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

Act 235 of 2004 added a provision to the Act (at 72 P.S. § 5490.5(a)(5)) detailing specific types of information a county assessor is required to report to the Department by January 31 each year. This information relates to acreage enrolled in each land use category, acreage enrolled in the previous year, acreage with respect to which preferential assessment was terminated within the previous year, and the roll-back taxes and interest received in the previous year. Section 137b.112 of the final-form regulation (relating to submission of information to the Department) is revised to include specific references to these statutory requirements. The revision provides a county assessor a clearer idea of the exact information that must be compiled and the date by which it must be submitted to the Department.

Comments

A notice of proposed rulemaking was published at 43 *Pennsylvania Bulletin* 4344 (August 3, 2013), affording the public, the Legislature and IRRC the opportunity to offer comments.

Comments were received from IRRC, Senator Gene Yaw, the County Commissioners Association of Pennsylvania (CCAP), the Pennsylvania Farm Bureau (PFB), the Lancaster County Assessment Office, the Sullivan County Assessment Office, the Tioga County Assessment Office and others. Although several commentators submitted their comments after the close of the public comment period, the Department elects to treat these late comments as if they were timely. The comments and the Department's responses follow:

Comment 1: A commentator offered that the preamble to the proposed regulation addresses the expected impact of the regulation on the private sector, and recommended that language also: "... recognize the tax relief of enrolled properties is a burden shifted to those properties not eligible or enrolled into the program." The commentator asked what cumulative fiscal impact the Act will have on properties that are not enrolled and receiving a preferential assessment, and asked what percentage of the tax burden is borne by properties that are not enrolled and receiving a preferential assessment.

Response: The Department disagrees with the commentator's premise that the preferential assessment of enrolled land shifts the tax burden such that properties that are not enrolled are somehow subsidizing those that *are* enrolled. The opposite is generally the case, even with respect to preferentially-assessed land.

In its research paper titled *Fiscal Impacts of Different Land Uses – The Pennsylvania Experience in 2006*, Pennsylvania State University (PSU) researchers studied a sample of Pennsylvania townships. The researchers noted that:

> The overall fiscal impact of a land use depends on both its revenue and its expenditure impacts. A land use may generate a lot of revenue for the local government, for example, but if the services it requires cost the municipality and school district even more, it will end up costing local taxpayers...

The PSU researchers found that: "... residential land on average contributed less to the local municipality and school district than it required back in expenditures." By contrast, the study found that farm and open space land received a return in dollar-value-of-services of between *$.02 and $.27* for every dollar of tax revenue it provided, supporting the PSU researchers' conclusion that:

> ... residential land generally costs taxpayers, while commercial, industrial, farm and open space lands help taxpayers by paying more than they require back in services. These results are consistent with other states' experiences and with other Cost of Community Service studies from across the country, including twelve similar studies conducted in Pennsylvania in the 1990s...

The Department agrees with the PSU researchers' conclusion with respect to enrolled land, which noted:

> Some farmland protection programs, such as Clean and Green, reduce the amount of real estate tax paid by farmers. This lessens the revenue that farmland contributes to the school district and municipality. The results in several townships, that had

land enrolled in Clean and Green, demonstrates that even when these programs are in use in a township, farmland still contributes more than it requires. Even with preferential assessments, farmland ends up subsidizing the educational costs of residential land and plays a positive economic role in the community.

The portion of this Preamble that follows this Comment-and-Response section contains additional information on the expected impacts of the regulation.

Comment 2: A commentator recommended that § 137b.1 (relating to purpose) be revised by adding an additional sentence at the end of subsection 137b.1(b). The sentence was originally included in an earlier proposed rulemaking that was published in the September 2, 2000 edition of the *Pennsylvania Bulletin* (at 30 Pa.B. 4573), and reads as follows:

> The intent of the act is to protect the owner of enrolled land from being forced to go out of agriculture, or sell part of the land to pay taxes.

The commentator suggested the addition of the referenced sentence would be more in-line with the original intent of the Act. The commentator also offered examples and argument in support of his assertion that every application for preferential assessment should be evaluated by a committee of farmers to determine whether granting preferential assessment would serve an agricultural purpose.

The commentator also recommended that there be coordination with conservation easement programs to identify and preserve parcels deemed valuable to the public.

Response: Subsection 137b.1(a) essentially restates the long title of the Act, which provides a general overview of the legislative intent and which does not reference preventing an owner of enrolled land from going out of agriculture or having to sell enrolled land. The Department believes the general statement as to the purpose of the Act accurately describes the stated intent of the General Assembly.

In addition, the Act does not provide for a review committee such as suggested by the commentator.

The commentator's suggestion that there be coordination with agricultural conservation easement programs to preserve valuable parcels is already in practice, to the extent that – in addition to affording preferential assessments in accordance with the Act - at least 57 counties participate in the agricultural conservation easement purchase program established under the Agricultural Area Security Law (3 P.S. §§ 901 – 915). Owners of agricultural land can apply to sell an agricultural conservation easement that restricts the use of the subject land to agricultural production in perpetuity. Applications are subjected to a competitive review process and are ranked according to factors such as soil quality, acreage, location, development pressure and other factors the participating county identifies.

Pennsylvania's laws work together in different ways to protect normal agricultural operations, preserve land for agricultural production and preserve forest land. Of these statutory protections, the preferential tax assessments afforded under the Act provide the broadest-based protection by lessening a landowner's incentive to convert agricultural use, agricultural reserve or forest reserve land to some other use. The greatest statutory protection is afforded by perpetual agricultural conservation easements such as those described in the preceding paragraph. The

Agricultural Area Security Law also establishes a process by which local government units can establish "agricultural security areas" that afford enrolled farmers limited protections against government ordinances and nuisance suits. That same statute requires that certain proposed eminent domain takings of farmland be reviewed and approved by an independent board – the Agricultural Lands Condemnation Approval Board – before a declaration of taking can be filed. In addition, "normal agricultural operations" receive certain protections from local ordinances and nuisance suits under the ACRE statute (3 Pa.C.S. §§ 313 – 318) and the statute commonly referred to as the Right-to-Farm Law (3 P.S. §§ 951 – 957). In summary, Pennsylvania takes a multiple-front approach to protecting farmland, forest land, open space and normal agricultural operations.

Comment 3: IRRC and another commentator reviewed proposed § 137b.2 (relating to definitions) and noted that the proposed definitions of "agricultural reserve" and "agricultural use" contain language addressing alternative energy systems where "a majority of the energy annually generated is utilized on the tract."

Against this backdrop, the commentators requested the Department explain how this provision will be implemented and monitored.

A commentator asked what the penalty will be for not reporting energy use, what the penalty would be for not administering this energy use provision, and whether the alternative energy system will ultimately have to be removed if "efficiencies decrease over time."

Response: An owner of enrolled land upon which an alternative energy system is located has the burden to demonstrate that a majority of the energy annually generated is utilized on the tract. This has been the case since 2010, and in the ensuing four years the Department has not encountered a single instance where a landowner or a county assessor were not able to resolve to their mutual satisfaction whether this standard has been met.

As related above, at this point the Department does not believe it is necessary to attempt to establish specific standards of proof that must be met in order for a landowner to demonstrate that a majority of the energy annually generated from an alternative energy system is utilized on the same enrolled tract where that system is located. In some instances compliance with this standard will be self-apparent - such as where the lines carrying the energy do not connect to lines that extend off the tract. In some instances the utility bills received by the landowner may contain adequate information to discern the amount of energy generated on a tract and the amount of energy consumed on that same tract. In other instances there may be records or readouts that are generated or available at the location of the alternative energy system to show energy production, which can be compared to utility bills showing the amount of energy used on the tract. The Department's experience in administering this provision suggests that county assessors and landowners are employing flexibility and common sense in demonstrating or confirming compliance with the referenced standard. Going forward, though, the Department will monitor whether issues arise with respect to the referenced standard, and will revisit this subject and consider establishing formal standards of proof should that become necessary.

With respect to the comment asking what penalties would apply if a landowner fails to demonstrate that a majority of the energy annually generated is utilized on the tract, the Department believes a county assessor might pursue a civil penalty (per 72 P.S. § 5490.5b) against such a person. If the landowner cannot ultimately demonstrate that a majority of the energy annually generated from an alternative energy system is utilized on the same enrolled

tract where that system is located, then the land would be subject to roll-back taxes in accordance with the Act (at 72 P.S. § 5490.5a).

The commentator's inquiry as to whether the energy generating efficiency of the alternative energy system has any impact on whether land on which the system is located can be agricultural use, agricultural reserve or forest reserve land must be answered in the negative. The Act does not require any particular efficiency level or generating capacity from such a system – only that a majority of the energy annually generated from that system be used on the tract where the system is located.

Comment 4: In a question that appears to relate to the definition of the term "agricultural reserve" in proposed § 137b.2, a commentator asked whether it was possible for a condominium or townhome development that has a large common area to enroll that common area as agricultural reserve land.

Response: In general, any land that meets the statutory definition of agricultural use, agricultural reserve or forest reserve land is eligible for preferential assessment. The determination as to whether a tract qualifies for preferential assessment focuses on the land, rather than the identity of the landowner. Against this backdrop, it is possible a condominium/townhome developer might own a tract of enrolled land.

Comment 5: IRRC reviewed the definition of "agritainment" in proposed § 137b.2 and recommended that "hay mazes" be added to the examples presented in that definition. The term "agritainment" is defined in the Act and identifies "hay mazes" as an example of an agritainment activity.

Response: The recommended change has been made in the final-form regulation.

Comment 6: A commentator reviewed the definition of "agritainment" in proposed § 137b.2 and asked whether this term relates to seasonal activities only. The commentator asked whether the term would include a year-round amusement park facility.

The commentator expressed concern over how parking facilities, additional buildings and similar uses related to an agritainment activity would be treated.

The commentator also asked whether there is some limit on the amount of enrolled land that can be used for agritainment.

In addition, the commentator noted that the proposed definition of the term "outdoor recreation" contains several examples and a cross-reference to § 137b.64 (relating to agricultural reserve land to be open to the public). The commentator asked: "If public access can be granted for profit at specific events, why would it not be possible to permit access at all times?"

Response: The definition of "agritainment" is substantively identical to the definition appearing in the Act (at 72 P.S. § 5490.2). Agritainment is listed among the activities that constitute a "recreational activity" in that same section. Recreational activities may occur on enrolled agricultural use or forest reserve land without triggering roll-back tax liability as long as they do not render the land incapable of being immediately converted to agricultural use (on

agricultural use land) or permanently render the land incapable of producing timber or other wood products (on forest reserve land). This is prescribed by the Act, at 72 P.S. § 5490.8(f).

Agritainment may be a year-round activity as long as it meets the statutory requirements summarized in the preceding paragraph.

With respect to agritainment-related parking facilities, additional buildings and the like, these are allowed only to the extent they do not violate the Act as described above.

There are no limits to the amounts or percentages of enrolled agricultural use or forest reserve acreage that may be used for agritainment.

With respect to the commentator's inquiry as to the reason agricultural use and forest reserve land is not open to the public without charge, the Department offers that the Act clearly requires this free public access only with respect to "agricultural reserve" land. The Act defines "agricultural reserve" land (at 72 P.S. § 5490.2) as being open to the public "... 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." By contrast, in describing the preferential assessment of agricultural use and forest reserve land, the Act (at 72 P.S. § 5490.8(f)) allows a fee to be imposed for recreational activities that occur on these categories of enrolled land.

Comment 7: PFB noted a typographical error in the proposed definition of "change of use" in § 137b.2. The commentator noted that the word "subdivide" in that definition should be replaced with "subdivided."

Response: The Department agrees with the commentator, and has made this correction in the final-form regulation.

Comment 8: An individual commentator (an owner of multiple tracts of enrolled land) reviewed the definitions of "change of use" and "division by conveyance or other action of owner" in proposed § 137b.2. The commentator asked:

> What is meant when it stated: "the term does not include (A) The act of subdividing enrolled land if the subdivided land is not sold and (B) The act of conveying subdivided enrolled land to the same landowner who owned it immediately prior to subdivision?"
>
> Please make clear whether or not the act of recording a subdivision map, without selling any property, would require the assessment office to be given a 30 day notice.

Response: The proposed additions of parts (ii)(A) and (ii)(B) to the definition of "change of use" reflect actual events the Department has encountered in administering the Act over the years.

In at least one instance an owner of enrolled land subdivided that land into smaller lots and the county assessor threatened adverse roll-back tax consequences even though the landowner did not change the use of the land or sell any of the subdivided lots. Part (ii)(A) clarifies that subdivision does not, by itself, constitute a change of use.

In another instance a landowner subdivided a tract of enrolled land and then conveyed each of the newly-subdivided tracts to himself, without changing the use of the land. This subdivision and transfer were done as part of a plan to transition ownership and operation of

a farm to the landowner's sons. Part (ii)(B) clarifies that subdivision and transfer of subdivided land do not, by themselves, constitute a change of use.

Although the Department has not yet encountered the situation presented in proposed part (ii)(C), that provision sought to emphasize that it is *the actual change of use* to something other than agricultural use, agricultural reserve or forest reserve – and not the division of land by subdivision, or the sale of parcels created through subdivision, or the ultimate intention of the landowner with respect to the use of the enrolled land – that constitutes change of use. As discussed in the Department's response to Comment No. 10, below, though, the Department has elected to *delete* part (ii)(C) from the definitions of "change of use" and "division by conveyance or other action of the owner" in the final-form regulation.

In response to the commentator's question regarding whether it would be necessary to provide a county assessor thirty days' advance notice of the recording of a subdivision map, the Department offers that such notice would be required. This advance notice requirement is imposed by the Act (at 72 P.S. § 5490.4(c) and (c.1)), and requires that such notice be provided with respect to "any type of division" of the enrolled land.

Comment 9: PFB and IRRC reviewed the proposed definition of "change of use" in § 137b.2 and expressed concern that the use of the term "sold" in part (ii)(A) of that definition is too narrow and would not include conveyances *other* than sales. PFB noted:

> ... When read literally, physical conveyances of subdivided parcels other than sales would not fall within the exception of a change in use. We do not believe the intended effect of this exception was to distinguish between conveyances made pursuant to sale and conveyances made through gift or other non-sale transaction by the landowner.

Both commentators noted that similar language is found in the proposed definition of "division by conveyance or other action of the owner." In addition, IRRC asked for an explanation of how these provisions are to be implemented.

PFB also offered its appreciation of the Department's effort to clarify that actions by landowners to file plans for subdivision or to issue deeds for subdivision of enrolled lands pursuant to a subdivision plan approval are not events that trigger roll-back taxes or cause termination of preferential assessment. Although these events are administrative changes they are not changes in the use of the land.

Response: The Department agrees with the commentators, and has revised the definitions of the terms "change of use" and "division by conveyance or other action of the owner" in the final-form regulation to consistently use the broader word "conveyed" in place of the narrower word "sold."

IRRC also asked for an explanation of how these terms will be administered. The provision at § 137b.63 (relating to notice of change of application) requires an owner of enrolled land to provide a county assessor at least 30 days' advance written notice of a change of use or of activities that constitute a division of enrolled land. This provides the county assessor an opportunity to evaluate the proposed change or activity to determine whether roll-back tax liability is triggered.

Comment 10: In their respective reviews of the proposed definition of "change of use" in § 137b.2, both PFB and IRRC expressed concern that the qualifying phrase "as long as the land continues in an eligible use" in part (ii)(C) of that proposed definition was confusing. PFB recommended a revision to make clear that "... the exception applies to any conveyance of enrolled land, notwithstanding any 'change in use' by the grantee subsequent to conveyance." PFB also recommended this exception more clearly identify the type of land with respect to which this exception would apply.

Both commentators noted that similar language is found in the proposed definition of "division by conveyance or other action of the owner." In addition, IRRC asked for an explanation of how these provisions are to be implemented.

Response: The Department accepts the commentators' position that part (ii)(C) in the definitions of "change of use" and "division by conveyance or other action of the owner" is confusing, and has deleted it from these definitions in the final-form regulation.

In response to IRRC's request for an explanation of how these provisions will be implemented, the Department expects that these definitions will be referred to by county assessors and landowners and will clarify that – where used in the Act or its attendant regulation - these terms refer to *actual changes* in the physical use to which the enrolled land is being put.

Comment 11: A commentator raised several questions with respect to the proposed definition of "compost" in § 137b.2.

The commentator asked who is charged with determining whether compost is comprised of "at least 50% by volume" of products commonly produced on farms, and how this would be determined.

The commentator noted that the proposed definition "... seems to imply that 50% can be transported onto the site" and asked: "Does this make this a transfer station? (An unpermitted dump?) How do you control this type of activity?"

Response: The referenced definition is statutory, and was added to the Act (at 72 P.S. § 5490.2) by Act 190 of 2012.

The Department shares some of the commentator's concerns with respect to how this "50% by volume" standard will be monitored and enforced. These concerns are allayed to some extent by three considerations:

First, the Department expects that, in practice, the "50% by volume" standard established in the Act will prove to be something of a "low bar" and that in the typical case the substantial majority of the component parts of mulch will be comprised of products commonly produced on farms.

Second, the Department has some experience with similar "50%" component part standards in other statutes it administers. For example, the Agricultural Area Security Law (at 3 P.S. § 903) requires that at least 50% of certain products be produced by the farm operator in order to be considered "agricultural production," and the statute commonly known as the Right-to-Farm Law (at 3 P.S. § 953(b)) requires that at least 50% of the commodities sold at an on-farm market be produced by the landowner in order for that farm market to receive the protections of that statute. In each of these instances there are no regulations clarifying how these standards are to be applied, yet common-sense has ruled

the day and there have been rather few problems administering these standards.

Third, the Department's experience has been that county assessors have, as a group, been reasonable in performing their responsibilities under the Act and that owners of enrolled land have been diligent in providing county assessors answers and information when questions arise. The Department has reason to believe this will continue with respect to the new "50% by volume" standard referenced by the commentator.

The Department will remain mindful of the commentator's concerns, though. If the need for clarification becomes apparent as the Department gains experience in administering this provision it will consider revisiting this provision and providing regulatory guidance.

As to the commentator's question regarding whether a compost operation would be a "transfer station" or unpermitted dump, the Department can only offer that within the four corners of the Act the production of compost is the production of an agricultural commodity.

Comment 12: PFB reviewed the definition of the phrase "division by conveyance or other action of the owner" in proposed § 137b.2, noted the similarities in language between that definition and the proposed definition of "change in use," and recommended the Department implement the same changes to part (ii)(A) and part (ii)(C) of that definition that PFB recommended in Comment Nos. 9 and 10. IRRC also noted the common language between these two defined terms.

Response: The Department refers to the responses it offered to Comment Nos. 9 and 10, above, and has made the same changes to the term "division by conveyance or other action of the owner" in the final-form regulation that it has made to the definition of "change of use."

Comment 13: A commentator offered a number of observations and questions regarding the definition of the term "forest reserve" in proposed § 137b.2.

The commentator noted the phrase "stocked by forest trees" in that definition, and recommended that a timber management plan be required of any person enrolling forest reserve land for preferential assessment, and that a minimum value of timber be established.

The commentator asked for definitions of the following words or terms that are used in the referenced definition: "stocked," "forest trees," "timber" and "wood products." With respect to the word "stocked," the commentator asked whether this means the trees must have been placed by human activity.

The commentator presented the following:

> Forest reserve is a category that can be and is abused. In my discussion with forestry industry representatives, I was told that they would not be interested in harvesting a parcel of less than 12 acres and only if it contained almost 100% hardwood. What is the "intent" of this law?
>
> What species qualify? (I would suggest a list) I would suggest a requirement of a forest management program and on-going management. And a written harvest plan.
>
> With the inevitable decimation of our timber industry by the Ash Borer, (projected

to be within 20 years) the value of this protected category will be greatly diminished. Re-evaluation and re-categorization should be on-going in regards to forest reserve status.

Response: Although the Department declines to strictly require that a timber management plan be provided to the county assessor by any person seeking to enroll land as forest reserve land, it acknowledges that such a plan is good evidence of the quantity and timber types on a given tract. Since the county assessors have typically been receptive to various other forms of proof of quantity and timber types the Department is reluctant to impose the expense of a regulatory requirement that a timber management plan be produced with respect to each tract of forest reserve land.

In its administration of the Act the Department has not perceived there to be confusion over the meaning of the statutory terms "forest trees" or "timber." For this reason the Department declines to implement the commentator's suggestion that these terms be defined.

With respect to the term "stocked," the Department notes that this word appears in the statutory definitions of "forest reserve" and "woodlot" (at 72 P.S. § 5490.2). Forest reserve land must be "... stocked by trees of any size and capable of producing wood products" and a woodlot must be "... stocked by trees of any size and contiguous to a part of land in agricultural use or agricultural reserve." The Department does not believe that in order for land to be "stocked by trees" the trees must have been established on the land by the hand of man, or that it is necessary to define the term "stocked" to make this clear. In general, "stock" is the supply of goods available on the premises and the premises are "stocked" if goods are present on those premises. In the context of timber production, trees are the stock and a tract is stocked with trees if they are present on the tract.

Comment 14: A commentator referenced the proposed definition of "forest reserve" in § 137b.2 and asked why the public is not entitled to use land that is enrolled under this land use category for outdoor recreation when such public use can be made of land that is enrolled under the "agricultural reserve" land use category. The commentator added:

> It is understandable to restrict access during harvesting of timber. However, given the fact that this activity occurs in cycles in excess of 20 years, it is unreasonable to restrict public access during a majority of the time it takes to grow a timber crop.

Response: Although the commentator's point is well taken, the answer to the question presented is that among the three land use categories, the Act (at 72 P.S. § 5490.2) only requires that *agricultural reserve* land (and not agricultural use or forest reserve land) be open to the public for outdoor recreation or the enjoyment of scenic or natural beauty. The Department does not have authority to extend this requirement to other land use categories by regulation.

Comment 15: A commentator noted the proposed addition of language to the definition of "forest reserve" in § 137b.2, relating to alternative energy systems and the use of energy from those systems, and asked:

> ... how energy use will be monitored, who will monitor this energy use, what the penalty will be for not reporting energy use, what the penalty would be for not administering this energy use provision, how it will be determined if "a majority" of the energy is being used on the tract and whether the system will ultimately have to be removed if "efficiencies decrease over time."

Response: The Department's response to Comment No. 3, above, addresses the commentator's questions.

Comment 16: Both PFB and IRRC offered comments with respect to the proposed definition of "outdoor recreation" in § 137b.2.

In summary, PFB offers that the type of activities that fall within the definition of "outdoor recreation" should be at least as broad or inclusive as the activities identified in the definition of "recreational activity." PFB recommends that the definition be revised to make clear that "outdoor recreation" activities are at least a complete subset of "recreational activities."

IRRC asks whether it is the intent of the Department for the definitions of "outdoor recreation" and "recreational activity" to be consistent with each other. If so, IRRC recommends that the definition of "outdoor recreation" be amended to track with the definition of "recreational activity" or that the definition of "outdoor recreation" be amended to include a specific reference to "recreational activity."

Response: The Department believes the Act makes clear that "outdoor recreation" and "recreational activity" are two different things, does not believe the General Assembly intended these terms to be interchangeable or related, and does not believe the final-form regulation needs to merge or reconcile these terms.

In summary, all statutory references to "outdoor recreation" pertain only to agricultural reserve land and all references to "recreational activity" pertain only to agricultural use land and forest reserve land. The term "outdoor recreation" is used *only once* in the Act – in the definition of "agricultural reserve," at 72 P.S. § 5490.2. By statutory definition, agricultural reserve land may be used for outdoor recreation. The only uses of the term "recreational activity" in the Act (at 72 P.S. §§ 5490.3(f) and 5490.8(f)) pertain to agricultural use or forest reserve land.

Comment 17: A commentator offered that the definition of "outdoor recreation" in proposed § 137b.2 does not address situations that might relate to The Americans With Disabilities Act (28 CFR § 35.101 *et seq.*) and recommended the Department consider incorporating language from the Pennsylvania Game Commission's *Hunting & Trapping Digest*.

Response: The Department does not believe that enrolled land would constitute a place of public accommodation with respect to which the requirements of The Americans With Disabilities Act would be applicable. For this reason the Department declines to implement this recommendation in the final-form regulation.

Comment 18: In a comment relating to the definition of "roll-back tax" in proposed § 137b.2, a commentator observed that the seven-year period with respect to which roll-back

taxes are assessed is "not enough to stop a determined developer" and recommended that this seven-year period be extended.

Response: The Department cannot implement the commentator's recommendation. The statutory definition of the term "roll-back tax" (at 72 P.S. § 5490.2) establishes the seven-year period referenced by the commentator, and the Department does not have the discretion to change this by regulation. A statutory amendment would be required in order to implement the commentator's suggestion.

Comment 19: PFB reviewed the proposed definition of "silvicultural products" in § 137b.2 and recommended that language be added to that definition to make clear that cut trees marketed for ornamental purposes (i.e., Christmas trees) are silvicultural products.

Response: The Department does not believe the recommended revision is necessary. The proposed definition achieves the commentator's objective by specifically including "trees and tree products produced from Christmas tree farms."

Comment 20: With respect to the proposed definition of "silvicultural products" in § 137b.2, PFB noted that the term "silvicultural products" is but *one* of the types of products that comprise "agricultural commodities" under the Act (at 72 P.S. § 5490.2). PFB noted that none of these other types of products (agricultural, apicultural, aquacultural, horticultural, floricultural, viticultural and dairy) are defined in the regulation. Against this backdrop the commentator recommended that language be added to the definition to "more explicitly recognize that the action taken to include and define is not intended to exclude land used for production of other ornamental products from enrollment in clean and green."

Response: The Department does not believe it is necessary to add the language suggested by the commentator, given the broad range of products that constitute agricultural commodities under the Act. As the commentator relates, "agricultural, apicultural, aquacultural, horticultural, floricultural, silvicultural, viticultural and dairy products" are included in the definition of an "agricultural commodity" (at 72 P.S. § 5490.2). The Department believes this presents so broad a range of products that the final-form regulation's definition of "silvicultural products" could not reasonably be construed as limiting or restricting other agricultural products – including ornamental plants – from being considered agricultural commodities.

The Department is adding this definition to the regulation in order to address situations where owners of forest reserve land have argued that their enrolled land should be considered "agricultural use" land when timber is actually being harvested from that land, and that county assessors should reassess that land as agricultural use land when that timber harvesting is occurring. The definition establishes a distinction between actively-cultivated tree farms and raw forest land. The former involves the production of an agricultural commodity that makes the land on which that production occurs "agricultural use" land, while the latter should be assessed as forest reserve land without regard to whether timber harvesting is underway.

Comment 21: PFB's third comment on the proposed definition of "silvicultural products" in § 137b.2 is prospective in nature. PFB recommends that:

> ... any further attempt in final rulemaking to clarify by definition the type of ornamental tree, shrub and plant products whose land would qualify for enrollment in clean and green more explicitly recognize that the production of ornamental shrubs, plants or flowers intended to be marketed in cut or partial form falls within the scope of "agricultural use," as would production of those intended to be marketed in live form.

Response: The Department has not undertaken the clarification recommended by the commentator. As referenced in its response to the preceding comment, the Department only pursued the definition of "silvicultural products" in the final-form regulation to address a specific problem it has encountered in administering the Act. The Department is reluctant to venture further into defining the agricultural, apicultural, aquacultural, horticultural, floricultural, silvicultural, viticultural and dairy products referenced in the definition of an "agricultural commodity" (at 72 P.S. § 5490.2). The Department believes it is self-apparent that the ornamental trees, shrubs and plant products referenced by the commentator would be considered agricultural commodities under this broad and inclusive statutory language.

Comment 22: A commentator reviewed proposed § 137b.3 (relating to responsibilities of the Department) and asked:

> In General, What are the consequences/penalties associated with failure to report or administer this law in part or in its entirety? Or administer it correctly, or completely, without prejudice or selective enforcement? If a violation is reported, what action is required? Can an assessor choose to ignore a violation? Can a solicitor choose to not pursue the violation? Can the county manage or commissioners over ride either the Assessor or the Solicitor?

Response: A violation of the reporting requirements set forth in the regulation can result in the county board for assessment appeals imposing a civil penalty of not more than $100 per violation. This is prescribed by the Act, at 72 P.S. § 5490.5b.

The Act does not prescribe a civil penalty or other adverse consequence for an entity that fails to administer the Act correctly or under the circumstances related in the commentator's remaining questions.

Without regard to formal financial penalties as referenced by the commentator, a county has a financial interest in administering the Act and its attendant regulations correctly because that activity tends to: (a) maximize the tax revenue a county assessor may lawfully collect under the Act; and (b) avoid costs of assessment appeals and litigation.

In the review of proposed § 137b.3 prompted by this comment, the Department reconsidered the need for the sentence it had proposed to add to subsection 137b.3(b) and has deleted that from the final-form regulation.

Comment 23: In a comment that relates to § 137b.3 and the responsibilities of the Department under the Act, a commentator recommended that the Department establish a centralized, easily accessible record of all tracts that are receiving preferential assessment as agricultural reserve land. The commentator noted that he has difficulty retrieving this information from individual counties.

Response: The Department declines to implement this recommendation. Section 137b.3 restates the responsibilities imposed on the Department under the Act (at 72 P.S. § 5490.4a), and the Department does not have the discretion to expand these responsibilities to the extent suggested by the commentator.

Comment 24: A commentator reviewed proposed § 137b.12 (relating to agricultural use), noted that land can be considered in "agricultural use" if it has an anticipated yearly gross income of at least $2,000 from the production of an agricultural commodity and raised several comments on this subject.

The commentator observed that this $2,000 minimum figure was established in 1985 and that if this $2,000 amount was adjusted for inflation, the "... U.S. Inflation Calculator now converts the amount to $4,341.03 in 2013 dollars."

The commentator also offered that since agricultural production is affected by certain factors (such as disease and weather) that may be completely outside of the producer's control, the reference to this income requirement should be eliminated. At a minimum, the commentator suggested that income be averaged over a number of years in order to show compliance with this minimum production requirement.

The commentator also asked: "... what are the reporting requirements and penalties applied for non-compliance?"

Response: The commentator makes a fair point. The referenced $2,000 production requirement has not changed in many years, and has become a rather low threshold for determining whether land is in "agricultural use." By contrast, the statute commonly known as the Right-to-Farm Law defines a "normal agricultural operation" (at 3 P.S. § 952) as being at least 10 contiguous acres or having "an anticipated yearly gross income from agricultural production of at least $10,000."

The $2,000 figure referenced by the commentator is established in the Act (at 72 P.S. § 5490.3(a)(1)). The Department does not have the discretion to change this dollar figure by regulation.

With respect to the commentator's question regarding applicable reporting requirements, § 137b.62 (relating to enrolled "agricultural use" land of less than 10 contiguous acres) describes the process by which a county assessor may obtain confirmation of gross income from the production of agricultural commodities.

With respect to the commentator's question regarding penalties for noncompliance, a violation of the reporting requirements set forth in the regulation can result in the county board for assessment appeals imposing a civil penalty of not more than $100 per violation. This is prescribed by the Act, at 72 P.S. § 5490.5b. Also, if the use of the land changes to something other than an eligible use, the adverse roll-back tax consequences described in the Act (at 72 P.S. § 5490.5a) might apply.

Comment 25: IRRC reviewed proposed § 137b.12 (relating to agricultural use) and noted that Example 1 includes the following sentence: "The horses are occasionally pastured, bred and sold." IRRC offered that the use of the word "occasionally" makes the example unclear and difficult to administer in a consistent manner. IRRC recommended that the example be deleted and replaced with a more definitive threshold.

Response: The Department accepts IRRC's recommendation, and has revised the referenced example to delete the word "occasionally."

The objective of the proposed example is to make clear that the commercial production of horses on a tract of greater than 10 acres is enough, by itself, to make that acreage "agricultural use" land. The requirement that there be an anticipated yearly gross income of at least $2,000 from this activity would not apply, since the commercial production of horses was occurring on greater than 10 acres.

Comment 26: PFB objected to Example 4 in proposed § 137b.12, offering that horse boarding should be considered to be agricultural production and that land upon which only horse boarding occurs should be considered land that is in "agricultural use." Two other individual commentators offered the same argument. PFB makes the following point:

> ... We do not see the role and function of the horse boarding operator as materially different from the role and function of persons commercially engaged in "contract" production of livestock or poultry. The "contract" livestock or poultry grower is not the owner of the animals he or she is raising and maintaining, and compensation provided pursuant to the "contract' is for the performance of raising and maintenance activities upon livestock and poultry.

All three commentators strongly encouraged the Department to rethink its position on this example.

Response: The Department finds the commentators' arguments persuasive, and has revised the referenced example to reflect that land used for horse boarding *is* in "agricultural use."

Comment 27: As part of its review of proposed § 137b.12, PFB offered the following in support of proposed Example 8:

> Farm Bureau commends and supports the analysis and conclusion stated in Example 8. The Act establishes a clear statutory theme that matters of interpretation and application of the Act and its legislative purposes should focus on the entire area of enrolled land utilized by the landowner, rather than the individual components of parceled land that may exist under separately created deeds or other legal documents. The example correctly concludes that land used for Tier I generation by a "multi-parceled" farm operation should retain preferential status as "agricultural use" if the majority of the energy generated is used by any "parcel" of that farm operation, regardless of whether the "parcel" of the farm where the energy is used may differ from the "parcel" of the farm where the energy is generated.

Response: The Department appreciates the comment, and agrees with the commentator on all points.

Comment 28: PFB reviewed proposed § 137b.13 (relating to agricultural reserve) and

recommended the Department add examples to that section as it has done in § 137b.12. In particular, the commentator suggested inclusion of an example that incorporates the spirit and intended effect of continuation of preferential assessment captured in Example 8 of § 137b.12. PFB's comment with respect to that particular example appears in Comment No. 27, above.

Response: The Department accepts the commentator's recommendation and has implemented it in the final-form regulation. Section 137b.13 of the final-form regulation now contains the requested examples.

Comment 29: PFB reviewed proposed § 137b.14 (relating to forest reserve) and offered essentially the same comment it offered with respect to § 137b.13 (See Comment No. 28, above).

Response: The Department accepts the commentator's recommendation and has implemented it in the final-form regulation. Section 137b.14 of the final-form regulation now contains the requested examples.

Comment 30: PFB expressed concern with respect to a provision of proposed § 137b.15 (relating to inclusion of farmstead land). The commentator thought that subsection 137b.15(b) might be read as effectively prohibiting the preferential assessment of farmstead land on agricultural reserve of forest reserve land *unless* the county commissioners first adopted an ordinance to allow that inclusion.

The commentator noted that there are actually *three different circumstances* under which farmstead land on agricultural reserve or forest reserve land might be preferentially-assessed, and that these circumstances are presented in proposed § 137b.51(g) (relating to assessment procedures). These include situations where the referenced ordinance is in place, or where the majority of the land in the subject application for preferential assessment is agricultural use land, or where noncontiguous tracts are enrolled under a single application and a majority of the land on the tract where the farmstead land is located is agricultural use land. PFB's recommendation is that:

> ... language be added to this Subsection to make it more explicitly clear that the requirements for preferential assessment of farmstead land prescribed in Section 137b.51(g) apply, whether or not the county passes an ordinance to authorize preferential assessment of farmstead land within "agricultural reserve" or "forest reserve" portions of enrolled land.

Response: The Department accepts the commentator's recommendation, and has revised § 137b.15 in the final-form regulation to have separate subsections addressing the preferential assessment of farmstead land on agricultural use land, agricultural reserve land and forest reserve land.

The Department notes that in Comment No. 33, below, PFB and IRRC expressed concern with respect to the consistency among proposed § 137b.15, subsection 137b.51(c) and subsection 137b.51(g). The Department agrees with the commentators on this point and has revised §§ 137b.15 and subsection 137b.51(c) by inserting general cross-references to

subsection 137b.51(g), which presents a comprehensive description of the circumstances under which farmstead land is to receive preferential assessment.

Comment 31: A commentator noted that § 137b.41 (relating to application forms and procedures) allows a county assessor to require an applicant for preferential assessment to provide additional information or documentation to support that the land is eligible for preferential assessment. This language appears at subsections 137b.41(a) and (e).

The commentator suggested that precise standards be established as to the type of documentation that should be required in support of an application for preferential assessment. In support of his suggestion, the commentator also referenced comments that were offered with respect to subsection 137b.41(e) in an earlier rulemaking and that were presented and addressed in the March 31, 2001 edition of the *Pennsylvania Bulletin* (at 31 Pa.B. 1701).

Response: The Department declines to establish precise documentation requirements or a list of examples of the type of documentation a county assessor might reasonably require. As was the case when this question was raised in the context of the earlier rulemaking referenced by the commentator, it has been the experience of the Department that when it provides such a regulatory list, a county assessor might either refuse to accept any documentation that is *not* on the list or require a specific document on that list in all instances. The Department is reluctant to offer a one-size-fits-all list of acceptable documentation.

Comment 32: The Lancaster County Assessment Office reviewed proposed § 137b.42 (relating to deadline for submission of applications) and offered the following:

> Example 2 in the current Regulations infers a "second" application period, between June 2nd and December 31st. That is an administrative nightmare. By the time the preferential assessment would begin, the nature of that parcel can be entirely changed. Why include that example at all?

Response: The Department believes that, in context, the referenced example clearly shows the consequences of submitting an application for preferential assessment before or after the June 1 deadline established in the Act (at 72 P.S. § 5490.4(b)). The example does not establish a new application window.

Comment 33: PFB reviewed proposed § 137b.51 (relating to assessment procedures) and presented essentially the same comment it offered with respect to proposed subsection 137b.15(b) (See Comment No. 30, above). IRRC joined in this comment.

The commentators are concerned that proposed subsection 137b.51(c) will be read as requiring an authorizing ordinance from the county commissioners in order for farmstead land on agricultural reserve or forest reserve land to be preferentially-assessed. As described in greater detail in Comment No. 30, above, there are actually *three different circumstances* under which farmstead land on agricultural reserve or forest reserve land might be preferentially-assessed. These circumstances are presented in proposed Subsection 137b.51(g).

PFB recommended this section be revised to more clearly state the requirements for preferential assessment of farmstead land as presented in proposed subsection 137b.51(g) apply.

PFB also offered a general comment with respect to proposed subsection 137b.51(g). The commentator noted that although the proposed language and examples presented in that subsection accurately reflect the law, it remained concerned that this language is not consistent with proposed § 137b.15 and proposed subsection 137b.51(c). PFB recommended that a "... more detailed effort be made in final rulemaking to clarify and reconcile these provisions" consistent with its comments. Similarly, IRRC asked that in the Preamble to the final-form regulation, the Department explain how the referenced provisions will be implemented and how these provisions are consistent with the Act.

Response: The Department refers the commentators to its response to Comment No. 30, above.

The Department accepts these comments, has revised the final-form regulation accordingly and has added the clarifications to the Preamble as recommended by IRRC.

Comment 34: A commentator asked whether Example 2 under proposed paragraph 137b.51(g)(4) should conclude that the farmstead "shall not" be assessed at agricultural use value rather than that it "shall" be so assessed.

Response: The example is correct as proposed, since the majority of the land in the subject application for preferential assessment is agricultural use land.

This is also the result called for under the Act, at § 5490.4b(d)(2)(i).

Comment 35: A commentator offered a detailed comment that relates to the assessment of forest reserve land under § 137b.51 and to proposed § 137b.53 (relating to calculation and recalculation of preferential assessment).

The commentator requested that there be an investigation of the manner in which the Department is implementing the Act with respect to the assessment of forest reserve land.

The commentator also recommended the Department write the final-form regulation to specifically require that, when assessing a tract of forest reserve land, a county assessor accept certain documentation as proof of the timber types that are present on that land. The commentator further recommended that a county be "... required to do an appraisal for each and every forest reserve property delineating each property's Forest subcategories (timber types)."

The commentator noted that each enrolled tract of agricultural use and agricultural reserve land is assessed based upon the specific soil types present on that individual tract. By contrast, the use values provided by the Department for forest reserve land are not specific to the particular tract being assessed, but are either: (1) use values for six different defined timber types which must then be applied by the county assessor to the tract being assessed; or (2) a county-specific average timber value that the county assessor applies county-wide. The commentator questioned whether the Department has the authority to issue a county-specific average timber value to each county, arguing that this value: (1) is, itself, an "assessment;" and (2) does not fit within the definition of a "land use subcategory" as presented in § 137b.3.

The commentator offered the following:

> ... For forest reserve enrollees the Department gives use values by subcategories BUT in addition, is also giving an average county value which is not a legally defined subcategory as outlined in regulations above. It should be noted that nowhere in the forestry literature, CG Act nor in regulation is an average use value a "recognized subcategory of forest land" or a "forest type" and thus does not meet the letter or intent of the law to utilize subcategories ... Average values given by the Department are assessments, which the Department is not allowed to give by law or regulation, and is the responsibility of the county assessor within the law ... and the Department is only allowed to give the use values BASED ON "recognized subcategorizations of forest land" (i.e. forest type). Forest reserve needs to be treated as agricultural reserve by the Department, immaterial of the capability of the county assessors or cost, in developing subcategories specific to each and every enrollee's property enrolled in the forest reserve category. This is being required for those properties under the Agricultural Reserve section of CG (soil types are utilized for agricultural reserves enrolled for their specific properties not average values by county which an average value is not stated in regulation or law).
>
> In addition the Department is allowing, with no oversight, the counties to utilize this non-subcategory average value that may be of higher value, of specific individual enrolled forest reserve properties, than what the Department has given as subcategories (forest types). There is listed no where an average use value as a legally defined subcategory and use values need to be tied into the specific property being assessed and not a general average of all properties that includes public lands and non-Clean and Green enrolled properties.

Response: The commentator makes some fair points.

Since detailed soils maps exist for virtually every acre of land that is the subject of an application for preferential assessment as "agricultural use" or "agricultural reserve" land, it is a comparatively more simple process for a county assessor to know the soils that are present on a given tract and to assign the appropriate Department-issued use values in calculating the preferential assessment of that land.

There is nothing akin to the detailed soil maps referenced in the preceding paragraph to assist county assessors in calculating the preferential assessment of forest reserve land. Against this backdrop the Department coordinates with the Bureau of Forestry of the Department of Conservation and Natural Resources each year to generate for each county assessor: (1) use values that apply to six different timber types (Softwood Stand, Select Oak Stand, Oak Stand, Northern Hardwood Stand, Black Cherry stand and Miscellaneous Hardwood Stand); and (2) a county-specific average timber value. This county-specific average timber value is only an *average* reflecting the value of timber in a given county, rather than on a given parcel of forest reserve land in that county. For this reason, the Department has long taken the position that a county assessor who employs a county-specific average timber value in assessing forest reserve land must disregard that value if the landowner can demonstrate that *the actual timber types that are present on the tract* are such that the assessment would be *lower* if the county assessor employed the Department-

provided use values for these timber types in calculating the assessment for that tract, rather than employing the county-specific average timber value.

County assessors have generally followed the Department's position, but in recent years a single county took issue with this practice and took the position that it did not have the discretion to recalculate/lower an assessment of a forest reserve tract that had been assessed using the county-specific average timber value, even where the landowner could demonstrate that the quantity and type of timber on the tract was below this county-specific average timber value. The Department believes this approach fails to meet the requirement of the Act (at 72 P.S. § 5490.4b(b)) that:

> For *each* application for preferential assessment, the county assessor *shall* establish a total use value for land in forest reserve *by considering available evidence of capability of the land for its particular use*... (Emphasis added).

Clearly, a landowner's timber management plan or other evidence of the quantity and type of timber on a particular tract of forest reserve land is "evidence of capability of the land" for its forest reserve use and the county assessor does not have the discretion to ignore it.

In response to this comment, the Department has modified the final-form regulation by: (1) revising the definition of the term "land use subcategory" in § 137b.2 to make clear that the county-specific average timber values *are* values for a land use subcategory of land in forest reserve; and (2) adding a new subsection - subsection 137b.53(g) - to specifically require a county assessor to recalculate the assessment of a tract of forest reserve land that was initially assessed using the county-specific average timber value where the landowner provides evidence that the value of the timber on the tract is lower than the value that was determined using that county-specific average timber value.

Comment 36: The same commentator who offered the preceding comment presented related comments with respect to proposed § 137b.53.

The commentator questions the Department's authority to provide county-specific average timber values, offering that these values do not represent a "recognized subcategorization" of forest land that would constitute a "land use subcategory" as that term is defined in § 137b.2.

The commentator offered that the use of county-specific average timber values amounts to the Department:

> ... knowingly allowing in many cases the counties to develop a use value that is higher than forest type (sub-categorization) by turning a blind eye and encouraging assessors to utilize this average value. The Department does not do this for Agricultural Reserve and thus is implementing the Clean & Green as a double standard system and not doing their due diligence in enforcing the law.

The commentator also suggested that the Department had changed its stance to allow a county assessor to use only the county-specific average timber value in assessing forest reserve land and ignore any evidence the landowner provides as to the specific quantity, type and value of the timber on a given tract of forest reserve land. The commentator believes the Department is "... turning a blind eye to the enforcement of the law and regulation without any other reason than to

appease county assessors who want to circumvent the law and collect as much in revenues as possible without doing their due diligence required by law."

The commentator recommended that counties should be required to compile and maintain a mapping system showing exact quantities and types of timber throughout the county. Presumably, this would be akin to the soils maps that are available for use by counties in calculating assessments for agricultural use and agricultural reserve land.

The commentator also opined that:

> ... it is the legal responsibility of the county assessor to do an on-site appraisal of each property to assess the correct tax liability to that property based on the law and sub-categories developed by the Department. There is a double standard of how the Department has chosen to implement the Clean & Green Law for agricultural reserve and for forest reserve.

Response: The Department's response to Comment No. 35, above, addresses some of the commentators concerns.

As detailed in the preceding response, the commentator's belief that the Department has changed its stance with respect to whether county assessors must consider available evidence of timber type and quantity if that would result in a lower assessment than if a county-specific average timber value is used is not correct, although the absence of regulatory language clearly addressing this subject has likely created or contributed to the confusion on this point. As stated above, the final-form regulation remedies this by: (1) revising the definition of the term "land use subcategory" in § 137b.2 to make clear that county-specific average timber values *are* values for a land use subcategory of land in forest reserve; and (2) adding subsection 137b.53(g) to specifically require a county assessor to recalculate the assessment of a tract of forest reserve land that was initially assessed using the county-specific average timber value where the landowner provides evidence that the value of the timber on the tract is lower than if calculated using that county-specific average timber value.

The Department declines to require county assessors to compile and maintain a mapping system showing exact quantities and types of timber throughout the county. The Act does not require this, nor does it require counties to compile the soils maps county assessors use in calculating assessments of agricultural use land or agricultural reserve land. Although these soils maps are excellent tools for county assessors, they are not required or established under authority of the Act.

Comment 37: The Sullivan County Assessment Office reviewed proposed § 137b.53 and offered the following comment:

> This section should contain a provision for acreage corrections. With the oil & gas industry, many surveys have been done resulting in additional acreage to the property owner. New deeds are recorded or surveys recorded with no amendment to the Clean & Green application. This creates a missing link when looking into the history of a property's acreage. The end result is a clean and green application with acreage B, and a deed with acreage A. However, there are acreage corrections for other reasons as so it should not be tied into a new survey; it should be tied into any acreage correction.

Response: The Department believes that matters relating to acreage corrections are typically handled between the county assessor, the county recorder of deeds and/or the impacted landowner, and that these relationships and interactions occur outside of the context of the Department's administration of the Act. For this reason the Department has not made any changes to the final-form regulation in response to this comment.

Comment 38: PFB reviewed proposed § 137b.53(f) and noted that the subsection would require that in recalculating preferential assessment the county assessor use "...either the current use values and land use subcategories provided by the Department" without providing the alternative that is suggested by the word "either." PFB also offered that subsection 137b.53*(c)* suggests that this alternative should be that a county assessor may also use "lower use values established by the county assessor" in recalculating preferential assessment.

Response: The commentator spotted a publishing error that has apparently been in place since the current regulation was published in 2000. Subsection 137b.53(f) read as follows when it was originally promulgated by publication in the *Pennsylvania Bulletin* on September 2, 2000 (at 30 Pa.B. 4573):

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

Apparently, the phrase ", or lower use values established by the county assessor and land use subcategories provided by the Department" was inadvertently omitted from the regulation when the referenced provision was first printed in the Pennsylvania Code. The final-form regulation corrects this publishing error by reprinting the text of this subsection as it was originally promulgated in 2000.

Comment 39: A commentator provided a detailed explanation of the process by which he divided his 1,020 acres of enrolled land into 31 separate tracts. According to the commentator, each tract meets the minimum criteria for preferential assessment. The commentator related that he was notified by the county assessor that he was in violation of the Act because he had not provided the county assessor 30 days advance notice prior to recording the subdivision that created these 31 tracts. Against this backdrop the commentator asked: "Was there by your new definitions a failure to provide notice?"

Response: The commentator's question appears to seek an opinion from the Department as to the applicability of § 137b.63 (relating to notice of change of application) – a provision that paraphrases the statutory requirement (at 72 P.S. 5490.4(c)) that a landowner provide the county assessor at least 30 days' advance notice with respect to any type of division of a tract of enrolled land.

Comment 40: Section § 137b.64 (relating to agricultural reserve land to be open to the public) requires that land that is enrolled as agricultural reserve land must be open to the public for outdoor recreation or the enjoyment of scenic or natural beauty without charge or fee, on a nondiscriminatory basis. It also allows a landowner to place "reasonable restrictions" on this public access and provides several examples. A commentator suggested that landowners are taking advantage of this by establishing access restrictions that are not reasonable. The commentator recommends that a "reasonable restriction" be defined and that landowners be subject to some sanction if the restrictions they put on public access to their enrolled agricultural reserve land are not reasonable.

The commentator also presented several hypotheticals where a landowner would strategically enroll strips of land as agricultural use or forest reserve land to block public access to agricultural reserve land, and asked what could be done to address this.

Response: Subsection 137b.64(a) essentially restates the language from the statutory definition of "agricultural reserve" land (at 72 P.S. § 5490.2) with respect to the use of that type of land for outdoor recreation or the enjoyment of scenic or natural beauty.

With respect to the hypotheticals presented by the commentator, the Department has not encountered any situations akin to those presented in the hypotheticals, and considers it quite unlikely such a situation would occur.

As the Department considered its response to this comment, though, it noted a publishing error that may be contributing to the commentator's concerns. Section 137b.64 has *three additional subsections* (subsections (c), (d) and (e)) that are part of the current regulation as promulgated, and that appear in the Pennsylvania Code's on-line version of the regulation (at http://www.pacode.com/secure/data/007/chapter137b/s137b.64.html), but that do not appear in the current published edition of the Pennsylvania Code. These subsections were established when the regulation was originally promulgated by publication in the *Pennsylvania Bulletin* on September 2, 2000 (at 30 Pa.B. 4573), and read as follows:

> (c) *Reasonable restrictions on use allowed.* A landowner may place reasonable restrictions on public access to enrolled land that is enrolled as agricultural reserve land. These restrictions might include limiting access to the land to pedestrians only, prohibiting hunting or the carrying or discharge of firearms on the land, prohibiting entry where damage to the land might result or where hazardous conditions exist, or other reasonable restrictions.
>
> (d) *Entry upon the agricultural reserve land.* A person shall, whenever possible, notify the landowner before entering upon enrolled land that is enrolled as agricultural reserve land. The landowner may deny entry when damage to the property might result. The landowner can prohibit entry to areas of the agricultural reserve land upon prior notification to the county assessor of the existence of a hazardous condition on that land. The landowner's reasons to deny entry to the land shall be based upon fact and be acceptable to the county assessor.
>
> (e) *County assessor's discretion.* A county assessor may establish reasonable guidelines by which an owner of enrolled agricultural reserve land may identify the conditions under which the land shall be open to the public for outdoor recreation or the enjoyment of

scenic or natural beauty, and by which the county assessor may maintain an up-to-date summary of the locations of agricultural reserve land within the county and the public uses to which these agricultural reserve lands may be put. A county assessor may disseminate this information to the public.

These subsections provide a county assessor authority by which to help make sure owners of enrolled "agricultural reserve" land meet the statutory requirements relating to public access. The final-form regulation corrects this publishing error.

Comment 41: CCAP and the Tioga County Assessment Office reviewed proposed § 137b.72(b)(2), which describes the circumstances under which up to ½-acre of enrolled land may be used for direct commercial sales of agriculturally related products without breaching preferential assessment or triggering roll-back tax liability, and asked whether this ½-acre would include acreage devoted to ingress, egress and parking area, or just the footprint of the building from which direct commercial sales occur.

The Tioga County Assessment Office noted that it is the practice in Tioga County to include acreage devoted to ingress, egress and parking in determining total acreage for purposes of the "2-acres-or-less" standard described in paragraph 137b.72(b)(1), and recommended that this same approach be taken with respect to the "1/2 acre or less" standard referenced in in paragraph 137b.72(b)(2).

IRRC made note of these comments and asked for clarification of: (1) what is meant by the phrase "direct commercial sales;" and (2) how the referenced ½-acre is to be calculated.

Response: Although the referenced provision essentially repeats language that was added to the Act (at 72 P.S. § 5490.8(d)(3)) by Act 190 of 2012, the Department agrees that acreage used for ingress, egress and parking should be counted toward the ½-acre standard. Paragraph 137b.72(b)(2) of the final-form regulation has been revised to make this clear.

The Department believes that the phrase "direct commercial sales" refers to sales such as where a customer stops at a roadside stand and purchases agriculturally related products on-site. Although the Department does not perceive that there is confusion in the regulated community on this point, it has added a definition of "direct commercial sales" at § 137b.2.

Comment 42: A commentator noted the standard set forth in proposed Subparagraph 137b.72(b)(2)(i) and asked who is charged with determining compliance with that standard, how compliance would be determined and whether there are penalties if this standard is not met.

The referenced provision repeats the statutory requirement (from 72 P.S. § 5490.8(d)(3)) that, in order for a portion of an enrolled tract to be used for direct commercial sales of agriculturally-related products without triggering some type of roll-back tax liability, the acreage used for these sales must be ½-acre-or-less and at least 50% of these agriculturally-related products must be produced on the enrolled land.

Response: The Department's Response to Comment No. 11 addresses the Department's experience and perspective with respect to the referenced "50%" standard. The Department will remain mindful of the commentator's concerns. If the need for clarification becomes apparent as the Department gains experience in administering this provision it will consider revisiting this provision and providing regulatory guidance.

The county assessor is ultimately charged with determining compliance with the referenced "50%" standard, since the Act (at 72 P.S. § 5490.5(b)) assigns county assessors the responsibility to calculate roll-back taxes.

As far as the commentator's question regarding penalties for noncompliance with proposed § 137b.72(b)(2) is concerned, the consequence of failing to meet that standard is roll-back tax liability. This roll-back tax liability would apply to the total enrolled acreage unless the acreage and operation meets the requirements described in paragraph 137b.72(b)(1) – in which case the roll-back tax liability would apply to as much as two acres of the enrolled tract.

Comment 43: Proposed subsection 137b.72(c) provides that a county assessor "may" inventory the goods sold at an on-farm operation engaged in the direct commercial sale of agriculturally related products to determine ownership of the goods. A commentator offered that this requirement should be mandatory and not discretionary.

Response: The Department declines to require by regulation that a county assessor inventory the agriculturally-related products at an operation that is engaged in the direct commercial sale of these products. A county assessor certainly has discretion to conduct such an inventory, but the Department believes that there are many instances where an inventory is not necessary and would serve no purpose. This is particularly so when the operation is a small roadside farm stand selling just a few agriculturally-related products of a type visibly grown on the farm. By contrast, where an operation sells a large variety of agriculturally-related products and the source or ownership of those products is less apparent, then a county assessor might choose to exercise its discretion and conduct an inventory.

Comment 44: PFB reviewed proposed § 137b.73a (relating to gas, oil and coal bed methane) and recommended that subsections (a) and (b) be revised to make clear that the mere execution of a lease authorizing the mineral exploration or development described in that section does not trigger liability for roll-back taxes, and that it is the actual exploration or development authorized by that lease that triggers this roll-back tax liability.

Response: The Department believes that paragraph 137b.73a(b)(1) makes clear that roll-back tax liability is only imposed on those portions of a tract of enrolled land that are "actually devoted" to gas/oil exploration and removal or the development of appurtenant facilities related to these activities. For this reason the Department declines to implement the commentator's suggestion.

The Department will consider revisiting this provision if experience subsequently shows that county assessors seek to impose roll-back tax liability on the basis of a signed leased document rather than the actual activity taking place on the leased land.

Comment 45: PFB reviewed the four examples presented in proposed § 137b.73a(b)(1) and offered that the use of the term "third party" in those comments was confusing since only *two* persons – the surface owner and the person that acquires subsurface mineral extraction rights – are involved in the situations presented in these examples. The commentator suggested this term be replaced in these examples with simpler, clearer designations.

Response: Although the Department believes the regulated community has an understanding of what a "third person" is, it has implemented the commentator's suggestion in the final-form regulation by replacing that term with a generic reference.

Comment 46: The Tioga County Assessment Office noted that searching deeds of enrolled land to determine when and if mineral rights were severed is time-consuming. This comment apparently relates to proposed § 137b.73a(b)(1)(ii), which hinges roll-back tax liability on a determination as to whether a conveyance of oil, gas or coal bed methane rights to a third party occurred before enrollment and before December 26, 2010.

Response: The Department appreciates that this requirement imposes some burdens on county assessors, but emphasizes that these requirements are imposed by the Act (at 72 P.S. § 5490.6(c.1)(4)) and that the final-form regulation simply restates them. There is no revision the Department could make to the final-form regulation to relieve a county assessor from having to verify the date-of-transfer of the stated mineral rights as a prudent initial step in determining the extent of roll-back tax liability relating to oil and gas exploration/extraction activities on enrolled land.

Comment 47: Proposed § 137b.73a(b)(1)(ii) essentially restates the statutory language (from 72 P.S. § 5490.6(c.1)(4)) providing that no roll-back taxes are due with respect to surface activities relating to the exploration for or removal of oil or gas, including coal bed methane, where the referenced exploration/extraction rights were transferred to a third party before December 26, 2010. CCAP requested that the final-form regulation be revised to make clear that the transfer of these exploration/extraction rights must include the right to engage in these surface activities. The commentator offered that:

> There may be situations wherein a property owner has severed the oil and gas rights from the surface property prior to the December 26, 2010, cutoff date, but did not also authorize exploration or drilling on their surface property prior to that date. In that case, the construction of an appurtenant facility on that landowner's property after December 26, 2010, would be outside the rights that were granted for exploration and other activity, and should therefore be subject to roll-back taxes.

Response: The Department believes it is the *transfer* of the referenced exploration/extraction rights that must have occurred before December 26, 2010 in order for the roll-back tax exemption to apply. It is not essential for that transfer to have addressed or granted permission for a particular method of extraction before that date in order for the roll-back tax exemption to apply. For this reason the Department declines to revise the final-form regulation to address the situation presented by the commentator.

Comment 48: CCAP and the Tioga County Assessment Office reviewed Examples 3 and 4 in proposed paragraph 137b.73a(b)(1) and asked whether the "50% interest" language in those two examples is meant to establish a line that creates different roll-back tax consequences for a landowner who sells *more* than a 50% interest in coal bed methane exploration and extraction rights to a third party than it does for a landowner who sells *less* than a 50% interest in those same rights.

CCAP also offered the alternative thought that the examples might be read as saying that roll-back taxes would not be imposed in any situation wherein any proportion of exploration and extraction rights were sold. The commentator recommended that this be clarified in the final-form regulation.

IRRC joined the commentators in asking for clarification in the final-form regulation.

Response: The referenced examples use a "50%" interest as an *example* and are not intended to suggest that there are different roll-back tax consequences for a landowner who sells *more* than a 50% interest in coal bed methane exploration and extraction rights to a third party than there are for a landowner who sells *less* than a 50% interest in those same rights.

The Department understands the commentators' point, and has changed the references to a "50% (as opposed to 100%)" interest in the referenced examples to "something less than a 100%" interest.

Comment 49: The Tioga County Assessment Office noted that measuring portions of the total acreage of a tract of enrolled land is difficult, and also opined that using a "reclamation permit" (presumably, rather than the well production report referenced in proposed § 137b.73a(b)(2)) would have been "more efficient."

Response: The Department appreciates the commentator's insight into the administrative responsibilities the Act imposes on county assessors, and seeks to avoid adding to these responsibilities by regulation.

As far as the commentator's suggestion that a "reclamation permit" would be preferable to requiring a well production report goes, the Department notes that the requirements relating to well production report are imposed by the Act (at 72 P.S. § 5490.6(c.1)(3)). The Department will remain mindful of the commentator's suggestion as it administers this provision and – if experience ultimately shows that the commentator is right and the Act should be amended to implement the commentator's suggestion – will consider seeking such a statutory amendment.

Comment 50: In another comment that relates to proposed § 137b.73a(b)(2), the Tioga County Assessment Office noted that it is not receiving the required well production reports from the Department of Environmental Protection and that "it is a time consuming task to access the reports online and determine which well sites are new."

CCAP apparently agrees with the Tioga County Assessment Office on this point, and extended an offer to "... work with the Department and the Department of Environmental Protection (DEP) to streamline the process by which DEP provides a copy of the well production report to the county assessor to determine rollback taxes." CCAP related that DEP has taken the position that it is meeting the statutory requirement (set forth at 72 P.S. § 5490.6(c.1)(3)) that it provide the county assessor a copy of the well production report when it makes these reports available on its agency website. CCAP recommended that:

> ... there be some sort of notification to counties to alert them when the new reports are posted every six months and if possible to make it clear which wells in the reports are new wells that came online just within the previous six month reporting period.

Response: The Department believes this is a good idea, and can assist the commentator on this project outside of the instant regulatory promulgation effort.

The Act (at 72 P.S. § 5490.6(c.1)(3)) requires that a copy of the well production report be: "... provided by the Department of Environmental Protection to the county assessor within ten days of its submission."

The Department agrees that the current process being employed by the Department of Environmental Protection could be improved along the lines described in the comment, and is willing to engage with that agency and the commentator to try to implement that change.

Comment 51: CCAP referenced three instances where new statutory or regulatory language requires an owner of enrolled land to report specific changes in the use of the enrolled land. Specifically, reference was made to the requirement that an owner of enrolled land report: (1) facilities that are "appurtenant facilities" with respect to the extraction of oil and gas, as required at proposed § 137b.73a(b)(2); (2) leases of enrolled land for pipe storage yards, as required at 72 P.S. § 5490.6(c.3); and (3) the commencement of energy generation from a wind power generation system, as required at 72 P.S. § 5490.6(c.5)(2). Against this backdrop CCAP offered the following general comment:

> ... a public education effort will be needed to better inform property owners of these changes (particularly insofar as the new statutory and regulatory changes apply to those enrolled in the program prior to the changes) and their obligations to report relevant changes in their use of their land to the county assessment office.

Response: The Department agrees with the commentator on this point. The Department believes the typical owner of enrolled land does not stay abreast of amendments to the Act and is not generally aware of new statutory requirements. The Department will attempt to do more direct outreach to the public, whether through the media or by attending local meetings.

The Department notes that this response is similar to the response offered with respect to Comment No. 54, below.

Comment 52: In a comment that relates to proposed § 137b.73a, the Tioga County Assessment Office observed that it: "... took months to develop" the retroactive tax bill referenced in proposed § 137b.73a(c) and "the tax amount on many of them is minimal."

Response: Since the retroactive adjustment of fair market value described in the referenced subsection is imposed by the Act (at 72 P.S. § 5490.6(c.1)(3)), the Department cannot alter this requirement by regulation.

Comment 53: IRRC and PFB offered comments with respect to proposed § 137b.73b (relating to temporary leases for pipe storage yards). This section allows the owner of enrolled land to temporarily lease a portion of that land for pipe storage.

IRRC and PFB asked for guidance on the treatment of the land after the lease expires and the land is returned to its original use. IRRC asked: "Would the land that was leased continue to be assessed at fair market value after the expiration of the lease, or would it automatically revert to use value for taxing purposes?" IRRC asked the Department to include language in the final-form regulation to address this situation. PFB suggested that the landowner will typically need

to do "nothing or next-to-nothing" to restore the land to its original use, and that return to preferential assessment should be *automatic* unless a county assessor visits the site and determines that the required restoration has not occurred.

Response: The referenced provision restates the Act, at 72 P.S. § 5490.6(c.3). The Department has revised the final-form regulation to clarify that following the expiration of a lease and the restoration of the land to its original eligible use, preferential assessment shall resume unless the county assessor determines upon inspection that the land has not been restored to its original use.

Comment 54: In a comment that relates to proposed § 137b.73b, the Tioga County Assessment Office noted that owners of enrolled land do not typically notify that office when they lease a portion of the enrolled land for pipe storage yards.

Response: Although the regulation restates the statutory requirement (from 72 P.S. § 5490.6(c.3)) that an owner of enrolled land who leases a portion of that land for a pipe storage yard provide the county assessor a copy of that lease within ten days after it is signed, the Department appreciates that there needs to be some effort to educate owners of enrolled land with respect to this requirement. The Department will attempt to do more direct outreach to the public, whether through the media or by attending local meetings.

The Department notes that this response is similar to the response offered with respect to Comment No. 51, above.

Comment 55: A commentator referenced the language in proposed § 137b.77 (relating to recreational activities of agricultural use or forest reserve land) and noted that subsections 137b.77(c) and (d) would allow an owner of enrolled land to assess a fee or charge in connection with the recreational use of enrolled agricultural use or forest reserve land without adversely impacting the preferential assessment of that land. The commentator stated that these fees should not be allowed. The commentator presented the following:

> Allowing fees for recreation? How is this different on Ag Use and Forest Reserve? The focus of "use" now could potentially change based upon market demand. A municipality or private enterprise could create ball fields and charge fees, etc. And building a "permanent" structure could be circumvented by mobile structures. IE an RV. Or a whole campground of them. (No taxes and lucrative income). Golf course example: Subdivide the structures off of the parcel and enroll the course. No fees should be permitted. What other unintended consequences might arise from the implementation of this item?

In support of his position the commentator also referenced a comment and response from the March 31, 2001 edition of the *Pennsylvania Bulletin* (at 31 Pa.B. 1701), by which Chapter 137b was established.

Response: A statutory amendment would be needed to implement the commentator's recommendations. The Act (at 72 P.S. § 5490.8(f)) allows a landowner to assess fees and charges with respect to agricultural use land and forest reserve land.

Comment 56: IRRC and PFB noted that proposed § 137b.81 (relating to general) would add a reference to "applicable sections of the act," as follows:

> ... The owner of enrolled land will not be liable for any roll-back tax triggered as a result of a change to an ineligible use by the owner of the split-off tract in accordance with the applicable sections of the act.

Both commentators believe the phrase "in accordance with the applicable sections of the act" is confusing. PFB suggested the phrase be deleted from the final-form regulation.

Response: The Department agrees with the commentators and has deleted the referenced phrase in the final-form regulation.

Comment 57: PFB reviewed proposed § 137b.81 (relating to general) and offered that the final sentence of that section is inconsistent with Section 6(a.3) of the Act (72 P.S. § 5490.6 (a.3)). The referenced statutory provision describes circumstances under which the transfer of "land subject to a single application for preferential assessment" does not trigger roll-back tax liability. The proposed rulemaking references a "transfer of enrolled land under a single application." The commentator offered that the referenced statutory language "provides for a broader scope of conveyances to be deemed to be relieved of roll-back tax liability than what is suggested in the rulemaking's proposed language," and adds:

> We believe that the Department's proposed provision, which fails to recognize the outright conveyance of contiguous area of a land unit that is part of a multi-unit application for clean and green, is unduly restrictive, and is inconsistent with the principles of logic and administration that are consistently established through numerous provisions of the Act.
>
> Farm Bureau recommends further amendments to the sentence proposed in this Section to also recognize that "units" of contiguous area identified in a single application that are conveyed in entirely to another fall within the scope of "transfers" relieved of roll-back tax.

IRRC noted PFB's comment and asked the Department to provide an explanation of the reason for the proposed language and an explanation of how it is consistent with the intent of the General Assembly and in the public interest.

IRRC also offered that the Preamble to the proposed regulation does not explain why the Department is adding language to this section or the effect it will have on the regulated community, and asked the Department to provide a detailed explanation of why this language is being added and how it is consistent with the intent of the General Assembly and in the public interest.

Response: The language that is being added to § 137b.81 is clearly consistent with the intention of the General Assembly. The language comes from the Act, itself (at 72 P.S. § 5490.6(a.3)) and makes the regulation more consistent with the Act. IRRC's concerns are

also addressed in the portion of this Preamble titled *Description of the Regulation*, above.

In addition, the Department has encountered several instances where a tract of enrolled land was transferred to a person (such as a developer) whose long-term intention was to convert the land to some use other than agricultural use, agricultural reserve or forest reserve. The new language helps make clear that the *transfer* does not trigger roll-back tax liability and/or impact preferential assessment but that a subsequent *change of use* would.

The Department declines to include the further amendments recommended by PFB, and disagrees that the language that is being added to § 137b.81 – which practically restates statutory language from 72 P.S. § 5490.6(a.3) *verbatim* – is somehow inconsistent with the Act.

Comment 58: PFB offered several comments with respect to proposed § 137b.82 (relating to split-off tract). With respect to the initial sentence of this section, PFB suggested the word "accurate" be replaced by "met."

Response: This comment suggests the commentator was reviewing the proposed regulation as submitted by the Department to the *Pennsylvania Bulletin* for publication, rather than the proposed regulation as it was actually published in the *Pennsylvania Bulletin* (at 43 Pa.B. 4353, August 3, 2013). The publisher made format and style changes to the document that effectively address the commentator's concern.

In addition, the Department has deleted the phrase "if all the following are true" from the final-form regulation because the initial phrase of that sentence essentially says the same thing.

Comment 59: PFB expressed concern with respect to the language the Department proposed to add to § 137b.82(3), which reads: "In calculating the total tract split-off, the total shall include the acreage of all tracts that have been split-off from the enrolled tract since enrollment." PFB feels this language:

> ... provides no greater insight or resolution of the ambiguity, confusion and hardship that current landowners ... can often face in in trying to determine whether a particular split-off would meet or violate the 10-acre/10-percent rule, especially in situations where the enrolled land has been enrolled in clean and green for decades, has had multiple owners during its enrollment, or has had additional separations within originally separated tracts. The proposed provision does nothing to simplify the real challenges that landowners of enrolled land can face in identifying split-offs on portions of enrolled land that the landowner does not own, nor does the proposed provision provide any insight or resolution for the host of unanswered legal questions that can arise from the timing and degree of split-offs on separated land. The legal and practical situations surrounding the 10-acre/10-percent rule become even more unwieldy in situations where separated land to originally enrolled land are subject to further separations.
>
> Instead of the proposed provision, Farm Bureau believes the Department should consider development of regulations that establish safe-harbor principles that provide landowners of enrolled land with simpler and more straightforward means to identify whether a contemplated split-off of enrolled land will comply with or will violate the 10-acre/10-percent rule.

Response: The Department believes the Act establishes a bright-line standard as to the maximum amount of acreage that can be split-off without triggering roll-back tax liability with respect to the entire enrolled tract. That standard is set forth in the Act at 72 P.S. § 5490.6(a.1)(1)(i), and is the lesser of: (a) 10% of the entire tract that is subject to preferential assessment; or (b) 10 acres. In other words, there can never be more than 10 acres split-off from an enrolled 100-acre tract without triggering roll-back tax liability on the entire 100-acre tract.

The commentator's concern is understandable. In the 100-acre example provided above, if 10 acres had already been split-off and the land was later separated into several tracts and conveyed to new owners, those owners might not be aware that no further split-offs could occur without triggering roll-back tax liability on the entire 100-acre tract.

Owners of enrolled land are required (under § 137b.63) to provide county assessors 30 days' advance written notice of any split-off. This presents an opportunity to avoid adverse roll-back tax consequences. The county assessor is the repository of records relating to split-offs, and can provide a landowner the split-off history with respect to the land enrolled under any single application for preferential assessment.

Although this is not the extensive revision requested by the commentator, in response to this comment the Department has added a new subsection – subsection 137b.82(b) – to advise landowners to confer with county assessors regarding any planned split-offs.

Comment 60: In the context of its review of proposed § 137b.82, PFB offered that the 2010 amendments to the Act relating to split-offs were largely prompted by the Commonwealth Court's opinion in *Donnelly v. York County Board of Assessment* (976 A.2d 1226, Pa. Commw. 2009). PFB recommended that:

> ... the Department consider the inclusion of an illustrative example that includes the same set of facts as the actual facts in the *Donnelly* case and expressly states the correct conclusions that: (i) roll-back taxes for split-offs done in accordance with the Act's prescribed standards are limited to the area split-off; (ii) the landowner who originally conveys the split-off tract is solely responsible for payment of any roll-back tax due from the conveyance; and (iii) the owner of the split-off is solely responsible for payment of any roll-back tax triggered through use of his or her split-off tract.

Senator Gene Yaw offered a comment that confirmed some of PFB's thinking on this subject. Senator Yaw was a prime sponsor of Act 88 of 2010, and offered the following:

> One of the objectives of Act 88 of 2010 was to clarify that *if* an owner of land that is enrolled and receiving preferential tax assessment splits-off a portion of that enrolled land, *and* that split-off complies with the requirements presented at 72 P.S. § 5490.6(a.1)(1)(i), *then* roll-back taxes are only due with respect to the split-off portion of the enrolled land – and *not* with respect to the entire tract of enrolled land. This clarification was, in part, in response to a 2009 Commonwealth Court case (*Donnelly v. York County Board of Assessment* (976 A.2d 1226)), which suggested there was ambiguity on this point.
>
> Act 88 of 2010 made substantial revisions to the provision at 72 P.S. § 5490.6(a.1)(2), clarifying that under the circumstances presented in the preceding paragraph roll-back

> taxes are "... only due with respect to the split-off portion of the land." I recommend Agriculture revise its final-form regulation to include one or more examples to underscore this clarification...

Senator Yaw's comment included recommended language for an example and encouraged the Department to consider additional examples, as well.

Response: The Department has implemented Senator Yaw's recommendation in the final-form regulation by adding the substance of his proposed example in subsection 137b.82(a), and believes this example will add clarity to the final-form regulation.

This example also implements PFB's request for an example that identifies *the landowner who conducts the split-off* as the person liable for payment of roll-back taxes under the facts presented in that example.

The Department declines to add PFB's third recommended example. While the Department agrees that it is true that if a tract of enrolled land is *separated* (rather than split-off) and the owner of a separated tract changes the use of the separated tract to an ineligible use, that landowner owes roll-back taxes in accordance with the Act, at 72 P.S. § 5490.6(a.2), it does not believe this same roll-back tax liability would be triggered by a change-of-use to a tract that has been split-off.

Comment 61: PFB reviewed proposed § 137b.84 (relating to split-off that does not comply with section 6(a.1)(1)(i) of the act), offered that the proposed sentence at the end of the initial paragraph was "very vague and unclear" and suggested the following:

> ... much more specific language or illustrative examples are needed to better identify what this language means and how it is to be applied in the context of split-offs that fail to meet the requirements of Section 6(9a.1)(1)(i) of the Act. In absence of more specific language or illustrative examples, Farm Bureau would recommend deletion of this sentence.

Response: The Department has deleted the referenced sentence from the final-form regulation.

Comment 62: The Lancaster County Assessment Office reviewed proposed § 137b.84, requested an explanation of the reason for the proposed changes to this section and asked: "Is this so it is understood that a conveyance of any amount of land, be it .25 of an acre or 25 acres, is a violation and subject to total rollback?"

The commentator also asked for "... an expression of the State's position regarding lot add-ons."

Response: In its response to Comment No. 61, above, the Department elected to no longer pursue the changes it presented in proposed § 137b.84.

With respect to the commentator's request for the Department's position on "lot add-ons," if the term refers to routine property line adjustments that correct survey errors or that otherwise adjust property lines without the land that is being added or deleted having a separate legal existence, then the Department does not believe these add-ons have an adverse impact on preferential assessment under the Act.

Comment 63: PFB reviewed proposed § 137b.87 (relating to change in use of separated land occurring within 7 years of separation) and recommended the Department either *not delete* the sentence it proposed for deletion or *replace* it with a sentence such as the following:

> Conversion in use of one of the tracts created through separation to a use that renders the tract ineligible for preferential assessment shall not terminate or otherwise affect preferential assessment of the other tracts created through the separation.

Response: The Department accepts the commentator's recommendation that the referenced sentence not be deleted. The final-form regulation has been revised accordingly.

Comment 64: In a comment that appears to relate to § 137b.131 (relating to civil penalties), a commentator offered that the $100 penalty amount is no deterrent to violators and that counties are unwilling to pursue violations for such low penalty amounts. The commentator recommended that "meaningful penalties be established to gain compliance" with the Act.

Response: The referenced civil penalties are established in the Act (at 72 P.S. § 5490.5b), and the Department does not have the discretion to change them by regulation.

Persons Likely to be Affected

The final-form regulation promotes the efficient, uniform, Statewide administration of the Act. It updates and supplants outdated and inadequate provisions. It also implements changes to the Act accomplished by Act 235 of 2004, Act 88 of 2010, Act 109 of 2010, Act 34 of 2011, Act 35 of 2011 and Act 190 of 2012. Although a number of persons and entities are likely to be impacted by the subject matter of this regulation, the provisions of the Act – rather than the provisions of the final-form regulation – drive these impacts.

The regulation is not expected to have significant adverse impact on any group or entity.

The regulation will provide counties and county assessors a better understanding of the requirements of the Act, and will help in implementing the statutory amendments described above. Owners of currently-enrolled land will benefit from more consistent and uniform interpretation and enforcement of the Act.

To the extent that the regulation simply implements requirements of the Act, any adverse impact is attributable to that statute, and not the underlying regulation.

Fiscal Impact

Commonwealth

The final-form regulation will have no appreciable fiscal impact upon the Commonwealth.

Political Subdivisions

The regulation is not expected to impose any costs on political subdivisions. To the extent any county incurs costs in recalculating preferential assessments, those costs would be driven by the Act rather than by the regulation. These statutory costs cannot be readily estimated.

To the extent the regulation helps clarify how the Act is to be administered by counties, it may result in some savings to counties by virtue of there being fewer appeals and legal challenges relating to preferential assessment. These savings cannot be readily estimated.

Private Sector

The final-form regulation will have no appreciable fiscal impact upon the private sector. The *Act* affords the owners of agricultural use, agricultural reserve and forest reserve land the opportunity for tax savings through the use value (rather than market value) assessment of that land. These tax savings are attributable to the Act rather than the regulation, and cannot be readily estimated.

To the extent the regulation helps clarify how the Act is to be administered by counties, it may result in some savings to private sector entities that own enrolled land or that seek to enroll land for preferential assessment, by virtue of there being fewer appeals and legal challenges relating to preferential assessment. These savings cannot be readily estimated.

General Public

The Act and the regulations are expected to result in tax savings to owners of land enrolled for preferential assessment under the Act. These savings cannot be readily estimated.

To the extent the regulation helps clarify how the Act is to be administered by counties, it may result in some savings to members of the general public who own enrolled land or who seek to enroll land for preferential assessment, by virtue of there being fewer appeals and legal challenges relating to preferential assessment. These savings cannot be readily estimated.

Paperwork Requirements

The final-form regulation will not result in an appreciable increase in the paperwork handled by the Department.

Effective Date

The final-form regulation will be effective as of the date of publication in the *Pennsylvania Bulletin.*

Regulatory Review Act

The Department submitted a copy of the proposed regulation to IRRC to the Chairpersons of the House and Senate Standing Committees on Agriculture and Rural Affairs on July 19, 2013, for review and comment. This was done in accordance with section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)).

In accordance with section 5(c) of the Regulatory Review Act (71 P.S. § 745.5(c)), the Department provided IRRC and the House and Senate Committees copies of the comments received during the public comment period, as well as any other documents when requested. In preparing the final-form regulation, the Department has considered all comments from IRRC, the House and Senate Committees and the public.

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

Findings

The Department finds that:

(a) Public notice of its intention to adopt the regulation encompassed by this Order has been given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240)(45 P.S. §§ 1201 and 1202) and their attendant regulations at 1 Pa. Code §§ 7.1 and 7.2.

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

(c) The modifications that were made to this regulation in response to comments received do not enlarge the purpose of the proposed regulation published at 43 *Pennsylvania Bulletin* 4344 (August 3, 2013).

(d) The adoption of the regulation in the manner provided in this Order is necessary and appropriate for the administration of the Pennsylvania Farmland and Forest Land Assessment Act of 1974.

Order

The Department, acting under authority of the Pennsylvania Farmland and Forest Land Assessment Act of 1974, orders the following:

(a) The regulations of the Department at 7 Pa. Code Chapter 137b are amended to read as set forth in Annex A.

(b) The Secretary of the Department shall submit this Order, 43 *Pennsylvania Bulletin* 4344 (August 3, 2013) and Annex "A" to the Office of General Counsel and to the Office of Attorney General for approval as required by law.

(c) The Secretary of the Department shall certify and deposit this Order, 43 *Pennsylvania Bulletin* 4344 (August 3, 2013) and Annex A with the Legislative Reference Bureau as required by law.

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

GEORGE D. GREIG,
Secretary

Annex A

TITLE 7. AGRICULTURE

PART V-C. FARMLAND AND FOREST LAND

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

GENERAL PROVISIONS

§ 137b.2. Definitions.

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

* * * * *

Agricultural commodity—Any of the following:

* * * * *

(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.

(viii) Compost.

Agricultural reserve—

[(i)] Noncommercial open space lands used for outdoor recreation or the enjoyment of scenic or natural beauty and open to the public for that use, without charge or fee, on a nondiscriminatory basis. The term includes land devoted to the development and operation of an alternative energy system, if a majority of the energy annually generated is utilized on the tract.

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

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

* * * * *

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

(iv) The term includes land devoted to the development and operation of an alternative energy system, if a majority of the energy annually generated is utilized on the tract.

Agritainment—

(i) Farm-related tourism or farm-related entertainment activities which are permitted or authorized by a landowner in return for a fee on agricultural land for recreational or educational purposes.

(ii) The term includes corn mazes, HAY MAZES, farm tours and hay rides.

(iii) The term does not include activities authorized under section 8(d) of the act (72 P. S. § 5490.8(d)).

Alternative energy system—A facility or energy system that utilizes a Tier I energy source to generate alternative energy. The term includes a facility or system that generates alternative energy for utilization onsite or for delivery of the energy generated to an energy distribution company or to an energy transmission system operated by a regional transmission organization.

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.

Change of use—

(i) The alteration of enrolled land so that it is no longer agricultural use, agricultural reserve or forest reserve land.

(ii) The term does not include:

(A) The act of subdividing enrolled land if the ~~subdivide~~ SUBDIVIDED land is not ~~sold~~ CONVEYED.

(B) The act of conveying subdivided enrolled land to the same landowner who owned it immediately prior to subdivision.

~~(C) Conveyance of the land to a person who intends to use the land for ineligible purposes, as long as the land continues in an eligible use.~~

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.

Compost—Material resulting from the biological digestion of dead animals, animal waste or other biodegradable materials, at least 50% by volume of which is comprised of products commonly produced on farms.

* * * * *

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

County commissioners—The board of county commissioners or other similar body in home rule charter counties.

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

Department—The Department of Agriculture of the Commonwealth.

DIRECT COMMERCIAL SALES – RETAIL OR WHOLESALE SALES OF AGRICULATURALLY RELATED COMMODITIES TO CUSTOMERS WHO ARE PHYSICALLY PRESENT ON-SITE TO MAKE THEIR PURCHASES.

Division by conveyance or other action of the owner—

(i) When used in the context of a separation or a split-off, the term refers to either:

(A) A conveyance, a subdivision, a land development plan or comparable plan required by a local government unit.

(B) An owner-initiated process that produces a metes and bounds description of the separated or split-off land and a calculation of the acreage of that separated or split-off land.

(ii) The term does not include:

(A) The act of subdividing enrolled land if the subdivided land is not ~~sold~~ CONVEYED.

(B) The act of conveying subdivided enrolled land to the same landowner who owned it immediately prior to subdivision.

~~(C) Conveyance of the land to a person who intends to use the land for ineligible purposes, as long as the land continues in an eligible use.~~

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

* * * * *

Forest reserve—Land, 10 acres or more, stocked by forest trees of any size and capable of producing timber or other wood products. [The term includes farmstead land on the tract.] The term includes land devoted to the development and operation of an alternative energy system if a majority of the energy annually generated is utilized on the tract.

* * * * *

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 OF AGRICULTURAL USE OR AGRICULTURAL RESERVE LAND may be based upon soil type, ~~forest type,~~ soil group or any other recognized subcategorization of agricultural ~~or forest~~ land. A LAND USE SUBCATEGORY OF FOREST RESERVE LAND MAY BE BASED UPON FOREST TYPE OR ANY OTHER RECOGNIZED SUBCATEGORIZATION OF FOREST LAND, AND MAY BE A COUNTY-SPECIFIC AVERAGE TIMBER VALUE.

* * * * *

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

Noncoal Surface Mining Conservation and Reclamation Act—52 P. S. §§ 3301—3326.

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.

Oil and Gas Act—58 Pa.C.S. §§ 3211—3274.

Outdoor recreation—

(i) Passive recreational use of land that does not entail the erection of permanent structures or any change to the land which would render it incapable of being immediately converted to agricultural use. Examples include picnicking, hiking, wildlife watching and hunting, subject to the restrictions in § 137b.64 (relating to agricultural reserve land to be open to the public).

(ii) The term does not include the operation of motor vehicles other than under either of the following circumstances:

(A) When necessary to remove an animal which has been hunted.

(B) When the motor vehicle is operated over an existing lane and is incidental to hunting, fishing, swimming, access for boating, animal riding, camping, picnicking, hiking, agritainment activities or the operation of nonmotorized vehicles.

* * * * *

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

Recreational activity—The term includes, BUT IS NOT LIMITED TO:

(i) Hunting.

(ii) Fishing.

(iii) Swimming.

(iv) Access for boating.

(v) Animal riding.

(vi) Camping.

(vii) Picnicking.

(viii) Hiking.

(ix) Agritainment activities.

(x) Operation of nonmotorized vehicles.

(xi) Viewing or exploring a site for aesthetic or historical benefit or for entertainment.

(xii) Operation of motorized vehicles if the operation is either of the following:

(A) Over an existing lane and incidental to an activity in subparagraphs (i)—(x).

(B) Necessary to remove an animal which has been hunted under subparagraph (i).

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

Rural enterprise incidental to the operational unit—A commercial enterprise or venture that is [conducted] all of the following:

(i) Owned and operated by the landowner or by the landowner's beneficiaries who are Class A beneficiaries for inheritance tax purposes.

(ii) Conducted within 2 acres or less of enrolled land [and, when]

(iii) 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))] (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 lands devoted to agricultural use, agricultural reserve or forest reserve and preferentially assessed under the act, into two or more tracts of land, the use of which continues to be agricultural use, agricultural reserve or forest reserve and all tracts so formed meet the requirements of section 3 of the act.

Silvicultural products—

(i) Trees and tree products produced from Christmas tree farms, tree nurseries, tree greenhouses, orchards and similar actively-cultivated tree or tree product production operations.

(ii) The term does not include trees and tree-derived products produced from forest land regardless of whether the trees or tree-derived products are harvested from forest land in accordance with a timber management plan.

Split-off—A division, by conveyance or other action of the owner, of lands devoted to agricultural use, agricultural reserve or forest reserve and preferentially assessed under the act, into two or more tracts of land, the use of which on one or more of the tracts does not meet the requirements of section 3 of the act.

Tier I energy source—A Tier I alternative energy source as defined in section 2 of the Alternative Energy Portfolio Standards Act (73 P. S. § 1648.2).

Tract—

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

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

* * * * *

§ 137b.3. Responsibilities of the Department.

* * * * *

(b) *Information gathering.* The Department will collect information from county assessors for each calendar year to [insure] ensure that the act and this chapter are being implemented fairly and uniformly throughout this Commonwealth. This information will be collected through a survey form to be provided to county assessors by the Department no later than December 15 each year, and which county assessors shall complete and submit to the Department by January 31 of the following year. ~~This information must include the information required under § 137b.112 (relating to submission of information to the Department).~~

* * * * *

§ 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 Preservation

2301 North Cameron Street

[Street] Harrisburg, PA 17110-9408

Telephone: (717) 783-3167

Facsimile: (717) 772-8798

ELIGIBLE LAND

§ 137b.12. Agricultural use.

Land that is in agricultural use is eligible for preferential assessment under the act if it has been producing an agricultural commodity or has been devoted to a soil conservation program under an agreement with the Federal [Government] government for at least 3 years preceding the application for preferential assessment, and is one of the following:

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

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

(3) Devoted to the development and operation of an alternative energy system, if a majority of the energy generated annually is utilized on the tract.

Example 1: Landowner owns 50 acres of pasture upon which horses are kept. The horses are ~~occasionally~~ pastured, bred and sold. The land is in agricultural use.

Example 2: Same facts as Example 1, except 20 acres are pasture land and 30 acres are wooded. Twenty acres of land are in agricultural use and 30 acres are in forest reserve.

Example 3: Landowner owns 7 acres of pasture land upon which there is a small horse breeding operation from which there is at least $2,000 of anticipated yearly gross income. The land is in agricultural use.

Example 4: Same facts as Example 3, except that horses are neither bred nor sold and there is at least $2,000 of anticipated ~~gross yearly~~ YEARLY GROSS income from a horse boarding operation. The land is ~~not~~ in agricultural use, SINCE IT IS BEING USED FOR THE PURPOSE OF PRODUCING AN AGRICULTURAL COMMODITY.

Example 5: Landowner owns 10 acres of land that is a combination of wooded and open space land from which tomatoes and sweet corn are produced for sale. The land is in agricultural use.

Example 6: Landowner owns 10 acres of land that is a combination of wooded and open space land from which beef cattle are produced and sold. The land is in agricultural use.

Example 7: Landowner owns a parcel of land that is used for the production of agricultural commodities. Landowner erects solar panels (or some other alternative energy system) on the land and a majority of the electricity generated by the alternative energy system is used on the land. The land is in agricultural use.

Example 8: Landowner owns two separate parcels of land, Parcel A and Parcel B. These parcels are used for the production of agricultural commodities. They are enrolled under a single application for preferential assessment. Landowner erects solar panels (or some other alternative energy system) on Parcel A. The majority of the electricity generated by the alternative energy system on Parcel A is used by a large dairy operation on Parcel B. Both Parcel A and Parcel B are in agricultural use.

§ 137b.13. Agricultural reserve.

Land that is in agricultural reserve is eligible for preferential assessment under the act if the land is comprised of 10 or more contiguous acres (including any farmstead land and any woodlot). This includes land devoted to the development and operation of an alternative energy system if a majority of the energy annually generated is utilized on the tract.

EXAMPLE 1: LANDOWNER OWNS 30 ACRES OF LAND. THE LAND IS CLEARED LAND THAT WAS FARMED AT ONE TIME BUT THAT IS NO LONGER FARMED. THE LAND IS OPEN TO THE PUBLIC FOR OUTDOOR RECREATION OR THE ENJOYMENT OF SCENIC OR NATURAL BEAUTY, WITHOUT CHARGE OR FEE, ON A NONDISCRIMINATORY BASIS. THE LAND QUALIFIES TO BE

ENROLLED AS AGRICULTURAL RESERVE LAND.

EXAMPLE 2: SAME FACTS AS EXAMPLE 1, EXCEPT THE LANDOWNER CHARGES A FEE FOR ALLOWING PUBLIC ACCESS FOR HUNTING AND RECREATION. THIS LAND IS NOT ELIGIBLE TO BE ENROLLED AS AGRICULTURAL RESERVE LAND.

EXAMPLE 3: SAME FACTS AS EXAMPLE 1, EXCEPT THE LANDOWNER PLACES REASONABLE RESTRICTIONS ON PUBLIC ACCESS TO THE ENROLLED LAND THAT ARE ACCEPTABLE TO THE COUNTY ASSESSOR IN ACCORDANCE WITH § 137B.64 (RELATING TO AGRICULTURAL RESERVE LAND TO BE OPEN TO THE PUBLIC). THE LAND QUALIFIES TO BE ENROLLED AS AGRICULTURAL RESERVE LAND.

EXAMPLE 4: LANDOWNER OWNS 9 ACRES OF LAND. THE LAND IS CLEARED LAND THAT WAS FARMED AT ONE TIME BUT THAT IS NO LONGER FARMED. THE LAND IS NOT ELIGIBLE TO BE ENROLLED AS AGRICULTURAL RESERVE LAND BECAUSE IT IS NOT LESS THAN TEN CONTIGUOUS ACRES IN AREA.

EXAMPLE 5: LANDOWNER OWNS A PARCEL OF ENROLLED AGRICULTURAL RESERVE LAND. LANDOWNER ERECTS SOLAR PANELS (OR SOME OTHER ALTERNATIVE ENERGY SYSTEM) ON THE LAND AND A MAJORITY OF THE ELECTRICITY GENERATED BY THE ALTERNATIVE ENERGY SYSTEM IS USED ON THE LAND. THE LAND REMAINS IN AGRICULTURAL RESERVE.

EXAMPLE 6: LANDOWNER OWNS TWO SEPARATE PARCELS OF ENROLLED LAND – AT LEAST ONE OF WHICH IS AGRICULTURAL RESERVE LAND. THE PARCELS ARE ENROLLED UNDER A SINGLE APPLICATION FOR PREFERENTIAL

ASSESSMENT. LANDOWNER ERECTS SOLAR PANELS (OR SOME OTHER ALTERNATIVE ENERGY SYSTEM) ON AN AGRICULTURAL RESERVE PARCEL. THE MAJORITY OF THE ELECTRICITY GENERATED BY THE ALTERNATIVE ENERGY SYSTEM IS USED ON THE OTHER ENROLLED PARCEL. THE PARCEL UPON WHICH THE ALTERNATIVE ENERGY SYSTEM IS LOCATED REMAINS AGRICULTURAL RESERVE LAND.

§ 137b.14. Forest reserve.

Land that is in forest reserve is eligible for preferential assessment under the act if presently stocked with trees and the land is comprised of 10 or more contiguous acres (including any farmstead land). Forest reserve land includes land that is rented to another person for the purpose of producing timber or other wood products. <u>This includes land devoted to the development and operation of an alternative energy system if a majority of the energy annually generated is utilized on the tract.</u>

EXAMPLE 1: LANDOWNER OWNS 60 ACRES OF FORESTED LAND WITH TREES OF ALL SIZES. THE LANDOWNER INTENDS TO HARVEST TIMBER PERIODICALLY. THE LAND QUALIFIES TO BE ENROLLED AS FOREST RESERVE LAND.

EXAMPLE 2: LANDOWNER OWNS 100 ACRES OF LAND THAT WAS RECENTLY CLEARED AND REPLANTED WITH SEEDLINGS. THE LAND QUALIFIES TO BE ENROLLED AS FOREST RESERVE LAND.

EXAMPLE 3: LANDOWNER OWNS 100 ACRES OF LAND THAT WAS RECENTLY HARVESTED FOR TIMBER AND SEEDLINGS REMAIN. THE LAND WAS NOT

REPLANTED. THE LAND QUALIFIES TO BE ENROLLED AS FOREST RESERVE LAND.

EXAMPLE 4: LANDOWNER OWNS 50 ACRES OF LAND THAT WAS CLEARED AND NOT REPLANTED. THERE ARE NO TREES OF ANY SIZE REMAINING ON THIS PROPERTY AND NO INTENTION OF PLANTING. THE LAND DOES NOT QUALIFY TO BE ENROLLED AS FOREST RESERVE LAND.

EXAMPLE 5:. LANDOWNER OWNS AN 8 ACRE WOODLOT AND WANTS TO ENROLL. THE LAND IS NOT ELIGIBLE TO BE ENROLLED AS FOREST RESERVE LAND BECAUSE IT IS NOT LESS THAN TEN CONTIGUOUS ACRES IN AREA.

EXAMPLE 6: LANDOWNER OWNS A PARCEL OF ENROLLED FOREST RESERVE LAND. LANDOWNER ERECTS SOLAR PANELS (OR SOME OTHER ALTERNATIVE ENERGY SYSTEM) ON THE LAND AND A MAJORITY OF THE ELECTRICITY GENERATED BY THE ALTERNATIVE ENERGY SYSTEM IS USED ON THE LAND. THE LAND REMAINS IN FOREST RESERVE.

E*XAMPLE 7*: LANDOWNER OWNS TWO SEPARATE PARCELS OF ENROLLED LAND – AT LEAST ONE OF WHICH IS FOREST RESERVE LAND. THE PARCELS ARE ENROLLED UNDER A SINGLE APPLICATION FOR PREFERENTIAL ASSESSMENT. LANDOWNER ERECTS SOLAR PANELS (OR SOME OTHER ALTERNATIVE ENERGY SYSTEM) ON A FOREST RESERVE PARCEL. THE MAJORITY OF THE ELECTRICITY GENERATED BY THE ALTERNATIVE ENERGY SYSTEM IS USED ON THE OTHER ENROLLED PARCEL. THE PARCEL UPON WHICH THE ALTERNATIVE ENERGY SYSTEM IS LOCATED REMAINS FOREST RESERVE LAND.

§ 137b.15. Inclusion of farmstead land.

(a) Farmstead land is an integral part of land in agricultural use, agricultural reserve or forest reserve. In considering whether land is in agricultural use, agricultural reserve or forest reserve, a county shall include any portion of that land that is farmstead land regardless of whether the farmstead land is entitled to preferential assessment under the act or this chapter.

Example 1: A landowner seeks to enroll a 10-acre tract of land as agricultural use land. One acre of the 10-acre tract is comprised of farmstead land. All 10 acres of land shall be considered in determining whether the tract meets the 10 contiguous acres minimum acreage requirement for agricultural use land established in section 3(a)(1) of the act (72 P. S. § 5490.3(a)(1)).

Example 2: A landowner seeks to enroll a 10-acre tract of land as agricultural reserve land. One acre of the 10-acre tract is comprised of farmstead land. All 10 acres of land shall be considered in determining whether the tract meets the minimum acreage requirement for agricultural reserve land established in section 3(a)(2) of the act (72 P. S. § 5490.3(a)(2)).

Example 3: A landowner seeks to enroll a 10-acre tract of land as forest reserve land. One acre of the 10-acre tract is comprised of farmstead land. All 10 acres of land shall be considered in determining whether the tract meets the minimum acreage requirement for "forest reserve" land established in section 3(a)(3) of the act (72 P. S. § 5490.3(a)(3)).

(b) Farmstead land on agricultural use land shall be considered to be land that qualifies for preferential assessment under the act and this chapter.

(C) Farmstead land on agricultural reserve land shall only be considered to be land that qualifies for preferential assessment under the act and this chapter if ~~the county commissioners have adopted an ordinance to include farmstead land in the total use value for land in agricultural~~

~~reserve~~ AT LEAST ONE OF THE QUALIFICATIONS FOR PREFERENTIAL ASSESSMENT SET FORTH IN § SUBPARAGRAPHS 137b.51(g)(2)(i) THROUGH (iii) HAS BEEN MET.

(D) Farmstead land on forest reserve land shall only be considered to be land that qualifies for preferential assessment under the act and this chapter if ~~the county commissioners have adopted an ordinance to include farmstead land in the total use value for land in forest reserve~~ AT LEAST ONE OF THE QUALIFICATIONS FOR PREFERENTIAL ASSESSMENT SET FORTH IN § SUBPARAGRAPHS 137b.51(g)(3)(i) THROUGH (iii) HAS BEEN MET.

APPLICATION PROCESS

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

* * * * *

(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 [finall] 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.

PREFERENTIAL ASSESSMENT

§ 137b.51. Assessment procedures.

* * * * *

(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, and for land in agricultural reserve, by considering available evidence of the capability of the land for its particular use utilizing the USDA-NRCS Agricultural Land Capability Classification system and other information available from USDA-ERS, the Pennsylvania State University and the Pennsylvania Agricultural Statistics Service. Contributory value of farm buildings, as calculated in accordance with § 137b.54 (relating to calculating the contributory value of farm buildings), shall be used. With respect to agricultural reserve land, the total use value includes farmstead land if ~~the county commissioners have adopted an ordinance to include farmstead land in the total use value for land in agricultural reserve, as described in section 3(g)(1) of the act~~ AT LEAST ONE OF THE QUALIFICATIONS FOR PREFERENTIAL ASSESSMENT SET FORTH IN PARAGRAPH (g)(2) OF THIS SECTION HAS BEEN MET.

(2) For each application for preferential assessment, the county assessor shall establish a total use value for land in forest reserve[, including farmstead land,] by considering available evidence of the capability of the land for its particular use. Contributory value of farm buildings, as calculated in accordance with § 137b.54 shall be used. The total use value includes farmstead land if ~~the county commissioners have adopted an ordinance to include farmstead land in the total use value for land in forest reserve, as described in section 3(g)(2) of the act~~ AT LEAST ONE OF THE QUALIFICATIONS FOR PREFERENTIAL ASSESSMENT SET FORTH IN PARAGRAPH (g)(3) OF THIS SECTION HAS BEEN MET.

* * * * *

(f) *Option of county assessors to select between county-established use values and use values provided by the Department.* When a county assessor has established use values for land use subcategories, and the use values for some—but not all—of these land use subcategories are lower than those provided by the Department, the county assessor has the option to apply the lower use value with respect to each individual land use subcategory, without regard to whether it was provided by the Department or established by the county assessor.

(g) *Valuation of farmstead land.*

(1) *Farmstead land on agricultural use land.* Farmstead land that is located on land enrolled as ~~enrolled~~ agricultural use land shall be assessed at agricultural use value.

Example: Landowner has a 100-acre contiguous property that is enrolled for preferential assessment. Some of this land is enrolled as agricultural use land and the remainder is enrolled as forest reserve land. The farmstead land is located on the agricultural use land. The farmstead land shall be assessed at agricultural use value.

(2) *Farmstead land on agricultural reserve land.* Farmstead land that is located on land enrolled as agricultural reserve land shall receive normal (fair market value) assessment, rather than assessment at agricultural use value, unless one of the following is true:

(i) The county commissioners have adopted an ordinance to include farmstead land in the total use value for land in agricultural reserve, as permitted in section 3(g)(1) of the act.

(ii) A majority of the land in the application for preferential assessment applicable to that farmstead land is agricultural use land.

(iii) Noncontiguous tracts of land are included in the application for preferential assessment applicable to that farmstead land and a majority of the land on the contiguous tract where the farmstead land is located is enrolled as agricultural use land.

(3) *Farmstead land on forest reserve land.* Farmstead land that is located on land enrolled as forest reserve land shall receive normal (fair market value) assessment, rather than assessment at forest reserve use value, unless one of the following is true:

(i) The county commissioners have adopted an ordinance to include farmstead land in the total use value for land in forest reserve, as permitted in section 3(g)(2) of the act.

(ii) A majority of the land in the application for preferential assessment applicable to that farmstead land is agricultural use land.

(iii) Noncontiguous tracts of land are included in the application for preferential assessment applicable to that farmstead land and a majority of the land on the contiguous tract where the farmstead land is located is enrolled as agricultural use land.

(4) *Examples.*

Example 1: Landowner has a 100-acre contiguous property that is enrolled for preferential assessment. Fifty-one acres (a majority of the land in the application for preferential assessment) are enrolled as agricultural use land. Forty-nine acres are enrolled as agricultural reserve land or forest reserve land, or a combination of the two. The farmstead land is located on the agricultural use land. The farmstead shall be assessed at agricultural use value.

Example 2: Same facts as Example 1, except that the farmstead land is located on agricultural reserve land or forest reserve land. The farmstead shall be assessed at agricultural use value.

Example 3: Landowner has a 100-acre contiguous property that is enrolled for preferential assessment. Fifty-one acres (a majority of the land in the application for preferential assessment) are enrolled as agricultural reserve land or forest reserve land, or a combination of the two. Forty-nine acres are enrolled as agricultural use land. The farmstead land is located on the agricultural use land. The farmstead shall be assessed at agricultural use value.

Example 4: Same facts as Example 3, except that the farmstead land is located on agricultural reserve land or forest reserve land. The farmstead land may not receive preferential (agricultural use value) assessment.

Example 5: Landowner has 100 acres enrolled for preferential assessment. The acreage consists of two noncontiguous parcels of 50 acres each. One 50-acre tract is enrolled as forest reserve land, agricultural use land, agricultural reserve land or a combination of the three. The other 50-acre tract contains farmstead land and consists of 26 acres of enrolled agricultural use land and 24 acres of enrolled agricultural reserve land, forest reserve land or a combination of the two. Since the majority of the land on the tract where the farmstead tract is located is enrolled as agricultural use, the farmstead shall be assessed at agricultural use value, regardless of whether it is located on the agricultural use land, agricultural reserve land or forest reserve land.

Example 6: Same facts as Example 5, except the 50-acre tract that contains the farmstead land consists of 24 acres of enrolled agricultural use land and 26 acres of agricultural reserve land, forest reserve land or a combination of the two. If the farmstead land is located on that portion of the 50-acre tract that is enrolled as agricultural use land, the farmstead shall be assessed at agricultural use value. If the farmstead land is located on that portion of the 50-acre tract that is enrolled as agricultural reserve land or forest reserve land, the farmstead may not receive preferential (agricultural use value) assessment.

Example 7: One of the six fact situations described in Examples 1—6 except that the county commissioners have adopted an ordinance to include farmstead land in the total use value for land in agricultural reserve or forest reserve in accordance with section 3(g)(1) of the act. The farmstead shall be assessed at agricultural use value.

§ 137b.52. Duration of preferential assessment.

(a) *General.* Enrolled land shall remain under preferential assessment for as long as it continues to meet the minimum qualifications for preferential assessment or until removed from preferential assessment in accordance with the procedure in subsection (b). 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 land use categories.

* * * * *

(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.]

Removal of land from preferential assessment.

(1) A landowner receiving preferential assessment under the act may remove land from preferential assessment if:

(i) The landowner provides the county assessor written notice of this removal by June 1 of the year immediately preceding the tax year for which the removal is sought.

(ii) The entire tract or tracts enrolled on a single application for preferential assessment is removed from preferential assessment.

(iii) The landowner pays rollback taxes on the entire tract or tracts as provided for in section 5.1 of the act (72 P. S. § 5490.5a).

(2) Land removed from preferential assessment under this subsection or under section 8.1 of the act (72 P. S. § 5490.8a) is not eligible to be subsequently re-enrolled in preferential assessment by the same landowner.

(3) Nothing in this subsection or section 8.1 of the act prohibits a landowner whose land was terminated from preferential assessment under authority other than this subsection or section 8.1 of the act from re-enrolling the land in preferential assessment.

(c) *Split-offs, separations, transfers and other events.* Split-offs that meet the size, use and aggregate acreage requirements in section 6(a.1)(1)(i) of the act (72 P. S. § 5490.6(a.1)(1)(i)), separations and transfers under the act or this chapter will not result in termination of preferential assessment on the land which is retained by the landowner and which continues to meet the requirements of section 3 of the act (72 P. S. § 5490.3). In addition, the following events will not result in termination of preferential assessment on that portion of enrolled land which continues to meet the requirements of section 3 of the act:

* * * * *

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

* * * * *

(d) *Required recalculation of preferential assessment if farmstead land has not been preferentially assessed as agricultural use, agricultural reserve or forest reserve.* A county assessor shall recalculate the preferential assessment on any tract of enrolled land which contains farmstead land if the [earlier calculation did not value and assess the farmstead land as agricultural use, agricultural reserve or forest reserve. This recalculation shall be accomplished in accordance with § 137b.51] farmstead land has not been assessed as required under § 137b.51.

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

* * * * *

(f) *Required recalculation of preferential assessment in countywide reassessment.* If a county undertakes a countywide reassessment, or a countywide reassessment of enrolled land, the county assessor shall recalculate the preferential assessment of all of the enrolled land in the county, using either the current use values and land use subcategories provided by the Department, OR LOWER USE VALUES ESTABLISHED BY THE COUNTY ASSESSOR AND LAND USE SUBCATEGORIES PROVIDED BY THE DEPARTMENT.

(G) *REQUIRED RECALCULATION OF PREFERENTIAL ASSESSMENT OF FOREST RESERVE LAND WHERE INITIAL ASSESSMENT WAS CALCULATED USING COUNTY-SPECIFIC AVERAGE TIMBER VALUE.* A COUNTY ASSESSOR SHALL RECALCULATE THE PREFERENTIAL ASSESSMENT OF ANY TRACT OF ENROLLED FOREST RESERVE LAND IF THE CURRENT ASSESSMENT WAS CALCULATED USING A COUNTY-SPECIFIC AVERAGE TIMBER VALUE PROVIDED BY THE DEPARTMENT AND THE LANDOWNER PROVIDES DOCUMENTATION TO THE COUNTY ASSESSOR VERIFYING THAT THE VALUE OF THE TIMBER ON THE ENROLLED TRACT IS LOWER THAN THE TIMBER VALUE THAT WAS ESTIMATED USING THAT COUNTY-SPECIFIC AVERAGE TIMBER VALUE.

* * * * *

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

* * * * *

(C) *REASONABLE RESTRICTIONS ON USE ALLOWED.* A LANDOWNER MAY PLACE REASONABLE RESTRICTIONS ON PUBLIC ACCESS TO ENROLLED LAND THAT IS ENROLLED AS AGRICULTURAL RESERVE LAND. THESE RESTRICTIONS MIGHT INCLUDE LIMITING ACCESS TO THE LAND TO PEDESTRIANS ONLY, PROHIBITING HUNTING OR THE CARRYING OR DISCHARGE OF FIREARMS ON THE LAND, PROHIBITING ENTRY WHERE DAMAGE TO THE LAND MIGHT RESULT OR WHERE HAZARDOUS CONDITIONS EXIST, OR OTHER REASONABLE RESTRICTIONS.

(D) *ENTRY UPON THE AGRICULTURAL RESERVE LAND.* A PERSON SHALL, WHENEVER POSSIBLE, NOTIFY THE LANDOWNER BEFORE ENTERING UPON ENROLLED LAND THAT IS ENROLLED AS AGRICULTURAL RESERVE LAND. THE LANDOWNER MAY DENY ENTRY WHEN DAMAGE TO THE PROPERTY MIGHT RESULT. THE LANDOWNER CAN PROHIBIT ENTRY TO AREAS OF THE AGRICULTURAL RESERVE LAND UPON PRIOR NOTIFICATION TO THE COUNTY ASSESSOR OF THE EXISTENCE OF A HAZARDOUS CONDITION ON THAT LAND. THE LANDOWNER'S REASONS TO DENY ENTRY TO THE LAND SHALL BE BASED UPON FACT AND BE ACCEPTABLE TO THE COUNTY ASSESSOR.

(E) *COUNTY ASSESSOR'S DISCRETION.* A COUNTY ASSESSOR MAY ESTABLISH REASONABLE GUIDELINES BY WHICH AN OWNER OF ENROLLED AGRICULTURAL RESERVE LAND MAY IDENTIFY THE CONDITIONS UNDER WHICH THE LAND SHALL BE OPEN TO THE PUBLIC FOR OUTDOOR RECREATION OR THE ENJOYMENT OF SCENIC OR NATURAL BEAUTY, AND BY WHICH THE COUNTY

ASSESSOR MAY MAINTAIN AN UP-TO-DATE SUMMARY OF THE LOCATIONS OF AGRICULTURAL RESERVE LAND WITHIN THE COUNTY AND THE PUBLIC USES TO WHICH THESE AGRICULTURAL RESERVE LANDS MAY BE PUT. A COUNTY ASSESSOR MAY DISSEMINATE THIS INFORMATION TO THE PUBLIC.

IMPACT OF SPECIFIC EVENTS OR USES ON PREFERENTIAL ASSESSMENT

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

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

* * * * *

(2) The commercial activity or rural enterprise 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.*

(1) 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, and paragraph (2) is not applicable, the 2-acre-or-less tract shall be subject to roll-back taxes and interest, and preferential assessment of that 2-acre-or-less tract shall end. The

remainder of the enrolled land shall continue under preferential assessment as long as that remainder continues to meet the requirements for eligibility in section 3 of the act (72 P. S. § 5490.3).

(2) If a tract of 1/2 acre or less of enrolled land is used for direct commercial sales of agriculturally related products, roll-back taxes or interest are not due and breach of preferential assessment will not be deemed to have occurred on that tract if:

(i) At least 50% of the agriculturally related products are produced on the enrolled land.

(ii) The direct commercial sales of agriculturally related products do not require new utilities or buildings.

(3) ENROLLED LAND THAT IS USED FOR INGRESS, EGRESS AND PARKING WITH RESPECT TO THE DIRECT COMMERCIAL SALES AND AGRICULTURALLY RELATED ACTIVITIES DESCRIBED IN PARAGRAPHS (1) AND (2) SHALL BE COUNTED TOWARD THE ACREAGE TOTALS REFERENCED IN THOSE PARAGRAPHS.

(c) *Inventory by county assessor to determine ownership of goods.* A county assessor may inventory the goods sold at the business to [assure] ensure that they are owned by the landowner or persons who are [class] 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.73a. Gas, oil and coal bed methane.

(a) *General.*

(1) Land subject to preferential assessment may be leased or otherwise devoted to both of the following:

(i) The exploration for and removal of gas and oil, including the extraction of coal bed methane.

(ii) The development of appurtenant facilities, including new roads and bridges, pipelines and other buildings or structures, related to exploration for and removal of gas and oil and the extraction of coal bed methane.

(2) Portions of land subject to preferential assessment may be used for both of the following:

(i) The exploration for and removal of gas and oil, including the extraction of coal bed methane.

(ii) The development of appurtenant facilities, including new roads and bridges, pipelines and other buildings or structures, related to those activities.

(b) *Roll-back tax liability.*

(1) Roll-back taxes shall be imposed upon those portions of land actually devoted to activities set forth in subsection (a)(2), except for the following:

(i) Land devoted to subsurface transmission or gathering lines is not subject to roll-back tax.

(ii) Notwithstanding any other provision in this section, a roll-back tax may not be imposed upon a landowner for activities related to the exploration for or removal of oil or gas, including the extraction of coal bed methane, conducted by parties other than the landowner that hold the rights to conduct these activities pursuant to an instrument, conveyance or other vesting of the rights if the transfer of the rights occurred before:

(A) The ~~the~~ land was enrolled for preferential assessment under this act.

(B) December 26, 2010.

Example 1: Landowner sold coal bed methane exploration and extraction rights with respect to a tract to ~~a third party~~ ANOTHER PERSON in 2008 and enrolled that tract for preferential assessment under the act in 2009. ~~The third party~~ THAT OTHER PERSON erects a well, a pond used to support hydrofracturing and other appurtenant facilities related to the removal of coal bed methane on the enrolled land. Roll-back taxes may not be imposed with respect to the enrolled land on which these appurtenant facilities are located.

Example 2: Same facts as Example 1, except the landowner sold coal bed methane rights with respect to the tract to ~~a third party~~ ANOTHER PERSON after the tract was enrolled for preferential assessment under the act. Roll-back taxes are due with respect to the enrolled land on which the appurtenant facilities are located.

Example 3: Same facts as Example 1, except the landowner sold ~~a 50% (as opposed to 100%)~~ SOMETHING LESS THAN A 100% interest in coal bed methane exploration and extraction rights to ~~a third party~~ ANOTHER PERSON. Roll-back taxes may not be imposed with respect to the enrolled land on which these appurtenant facilities are located.

Example 4: Same facts as Example 2, except the landowner sold ~~a 50% (as opposed to 100%)~~ SOMETHING LESS THAN A 100% interest in coal bed methane exploration and extraction rights to ~~a third party~~ ANOTHER PERSON. Roll-back taxes are due with respect to the enrolled land on which the appurtenant facilities are located.

(2) The portion of land that is subject to roll-back tax is the well site and land which is incapable of being immediately used for the agricultural use, agricultural reserve or forest reserve activities required under section 3 of the act (72 P. S. § 5490.3). The portion of land that is subject to roll-back tax under this paragraph shall be determined as follows:

(i) If a well production report is required to be submitted to the Department of Environmental Protection in accordance with ~~section 3222~~ THE PROVISION of the Oil and Gas Act AT 58 Pa.C.S. § 3222 (relating to well reporting requirements) and 25 Pa. Code § 78.121 (relating to production reporting), the determination shall be made when that well production report is first due to the Department of Environmental Protection. Section 6(c.1)(3) of the act (72 P. S. § 5490.6(c.1)(3)) requires the Department of Environmental Protection to provide the county assessor a copy of the well production report within 10 days of its submission by the well operator.

(ii) If a well production report as described in subparagraph (i) is not required to be submitted to the Department of Environmental Protection, the landowner shall, in writing, report the circumstances (activities and structures) that render a portion of the land incapable of being immediately used for the agricultural use, agricultural reserve or forest reserve activities required under section 3 of the act, and the area of the affected land, to the county assessor within 10 days of the occurrence of those circumstances. The county assessor shall determine the portion of the land that is subject to roll-back taxes under this subsection.

Example: A tract of enrolled land does not contain a well site and is not required to submit the well production report described in subparagraph (i) but contains one or more appurtenant facilities related to exploration for and removal of gas and oil (including the extraction of coal bed methane) on other land. These appurtenant facilities include a pond used to support hydrofracturing, a compressor station, aboveground pipeline facilities, or other structures or facilities. The landowner shall report these appurtenant facilities and the acreage to the county assessor who will determine the portion of the land that is subject to roll-back taxes.

(c) *Retroactive application.* The fair market value of the well site and land which is incapable of being immediately used for the agricultural use, agricultural reserve or forest reserve activities required under section 3 of the act shall be adjusted retroactively to the date a permit was approved under ~~section 3211~~ THE PROVISION of the Oil and Gas Act AT 58 Pa.C.S. § 3211 (relating to well permits).

(d) *Due date.* The tax calculated based on the adjusted fair market value shall be due and payable in the tax year immediately following the year in which a production report is provided to the county assessor. Roll-back taxes shall become due upon the receipt of a well production report by the county assessor.

(e) *Continued preferential assessment.* The utilization of a portion of land for activities in subsection (a)(2) does not invalidate the preferential assessment of the land which is not so utilized and the land shall continue to receive preferential assessment if it continues to meet the requirements of section 3 of the act.

(f) *Land use category of land used for subsurface transmission or gathering lines.* The land use category of a portion of enrolled land beneath which subsurface transmission or gathering lines as described in subsection (b)(1)(i) are installed does not have to change.

Example: Subsurface transmission or gathering lines are installed beneath enrolled land that is enrolled as forest reserve land. Trees are cleared from the surface of the land along the route of the subsurface line. It is not necessary for that cleared portion of the land to be reclassified as agricultural reserve land rather than forest reserve land.

§ 137b.73b. Temporary leases for pipe storage yards.

The owner of enrolled land may temporarily lease a portion of the land for pipe storage yards provided that roll-back taxes shall be imposed upon those portions of land subject to preferential assessment that are temporarily leased or otherwise devoted for pipe storage yards and the fair market value of those portions of land shall be adjusted accordingly. The imposition of roll-back taxes ~~of~~ ON portions of land temporarily leased or devoted for pipe storage yards does not invalidate the preferential assessment of land which is not SO leased or devoted and that land shall continue to be eligible for preferential assessment if it continues to meet the requirements of section 3 of the act. Only one lease under this section is permitted to a landowner and a copy of the lease shall be provided to the county assessor within 10 days of its signing by the landowner. The lease may not exceed 2 years and may not be extended or renewed. Following the expiration of the lease, the land shall be restored to the original use which qualified it for preferential assessment, AND PREFERENTIAL ASSESSMENT SHALL RESUME UNLESS THE COUNTY ASSESSOR DETERMINES UPON INSPECTION THAT THIS RESTORATION REQUIREMENT HAS NOT BEEN MET.

§ 137b.73c. Small noncoal surface mining.

(a) The owner of property subject to preferential assessment may lease or otherwise devote land subject to preferential assessment to small noncoal surface mining as provided for under the Noncoal Surface Mining Conservation and Reclamation Act.

(b) Roll-back taxes shall be imposed upon those portions of land leased or otherwise devoted to small noncoal surface mining and the fair market value of those portions of the land shall be adjusted accordingly. Roll-back taxes on those portions of the land do not invalidate the preferential assessment of the land which is not leased or devoted to small noncoal surface

mining and the land shall continue to be eligible for preferential assessment if it continues to meet the requirements of section 3 of the act (72 P. S. § 5490.3).

(c) Only one small noncoal surface mining permit may be active at any time on land subject to a single application for preferential assessment.

(d) Land that is no longer actively mined may be re-enrolled if the land is reclaimed and it continues to meet the requirements of section 3 of the act.

§ 137b.73d. Wind power generation systems.

(a) Portions of land subject to preferential assessment may be leased or otherwise devoted to a wind power generation system.

(b) Roll-back taxes shall be imposed upon those portions of the land actually devoted by the landowner for wind power generation system purposes and the fair market value of those portions of the land shall be adjusted accordingly. The wind power generation system must include the foundation of the wind turbine and the area of the surface covered by the appurtenant structures including new roads and bridges, transmission lines, substations and other buildings or structures related to the wind power generation system. The utilization of a portion of the land for a wind power generation system does not invalidate the preferential assessment of land which is not utilized and the land shall continue to receive preferential assessment if it continues to meet the requirements of section 3 of the act (72 P. S. § 5490.3). An owner who is subject to roll-back taxes under this subsection shall submit a notice of installation of a wind power generation system to the county assessor within 30 days following the beginning of electricity generation at the wind power generation system. Roll-back taxes shall become due on the date the notice of installation of a wind power generation system is received by the county assessor.

(c) This section does not apply to land devoted to the development and operation of an alternative energy system when a majority of the energy annually generated from that system is used on the tract. The impact of this type of alternative energy system is addressed in §§ 137b.12—137b.14 (relating to agricultural use; agricultural reserve; and forest reserve).

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

(a) *Option to accept or forgive principal on roll-back taxes.* The taxing body of the taxing district within which a tract of enrolled land is located may accept or forgive roll-back taxes [with respect to that portion of the enrolled land that is granted or donated to any] that are otherwise due and payable if the use of some portion of the land is changed for the purpose of granting or donating some portion of the land to one of the following:

* * * * *

§ 137b.77. Recreational activities on agricultural use or forest reserve land.

(a) *Agricultural use land.* An owner of enrolled agricultural use land who performs recreational activities on that land, or who permits or authorizes others to perform these activities, does not violate the requirements for preferential assessment and is not responsible to pay roll-back taxes if the recreational activity does not render the land incapable of being immediately converted to agricultural use.

(b) *Forest reserve land.* An owner of enrolled forest reserve land who performs recreational activities on that land, or who permits or authorizes others to perform these activities, does not violate the requirements for preferential assessment and is not responsible to pay roll-back taxes

if the recreational activity does not render the land incapable of producing timber or other wood products.

(c) *Assessment of fees or charges by a landowner.* Subsections (a) and (b) apply regardless of whether the landowner assesses fees or charges with respect to the recreational activity or allows another to assess these fees or charges.

(d) *Recreational leases.* Subsections (a) and (b) apply regardless of whether the landowner leases enrolled land to another person for hunting or other recreational activities and receives fees or charges in return.

LIABILITY FOR ROLL-BACK TAXES

§ 137b.81. General.

If an owner of enrolled land changes the use of the land to something other than agricultural use, agricultural reserve or forest reserve or changes the use of the enrolled land so that it otherwise fails to meet the requirements of section 3 of the act (72 P. S. § 5490.3), that landowner shall be responsible for the payment of roll-back taxes and interest, and preferential assessment shall end on that portion of the enrolled land which fails to meet the requirements of section 3 of the act. The owner of enrolled land will 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 ~~in accordance with the applicable sections of the act~~. A transfer of enrolled land under a single application will not trigger liability for roll-back taxes unless there is a subsequent change of use so that it fails to

meet the requirements of section 3 of the act, in which case the landowner changing the use shall be liable for payment of roll-back taxes on the enrolled land under that single application.

§ 137b.82. Split-off tract.

(A) *CRITERIA.* When a split-off tract meets the following criteria, which are set forth in section 6(a.1)(1) of the act (72 P. S. § 5490.6(a.1)(1)), roll-back taxes and interest are only due with respect to the split-off tract[;] and are not due with respect to the remainder ~~if all of the following are true~~:

* * * * *

(3) The total tract split off does not exceed the lesser of 10 acres or 10% of the entire tract of enrolled land. In calculating the total tract split off, the total includes the acreage of the tract that was split-off from the enrolled tract since enrollment.

EXAMPLE: A LANDOWNER OWNS A 60-ACRE TRACT OF LAND THAT IS ENROLLED AND RECEIVING PREFERENTIAL ASSESSMENT. THE LANDOWNER SPLITS-OFF TWO ACRES FOR ONE OR MORE OF THE USES DESCRIBED IN PARAGRAPH (2) OF THIS SUBSECTION AND THE SPLIT-OFF OTHERWISE MEETS THE REQUIREMENTS OF THIS SUBSECTION. ROLL-BACK TAXES ARE DUE WITH RESPECT TO THE TWO-ACRE SPLIT-OFF TRACT, BUT NOT WITH RESPECT TO THE REMAINING 58 ACRES. THE OWNER OF THE 60-ACRE TRACT WHO SPLIT-OFF THE TWO-ACRE TRACT IS RESPONSIBLE TO PAY THESE ROLL-BACK TAXES.

(B) *RESPONSIBILITY OF LANDOWNER.* THE CRITERIA DESCRIBED IN SUBSECTION (A) SHALL BE APPLIED TO THE ENTIRE TRACT THAT WAS THE SUBJECT OF THE APPLICATION FOR PREFERENTIAL ASSESSMENT. FOR THIS REASON, A

LANDOWNER SHOULD ENGAGE WITH THE COUNTY ASSESSOR IN ADVANCE OF ANY PLANNED SPLIT-OFF TO DETERMINE THE EXTENT TO WHICH THE CRITERIA SET FORTH IN SUBSECTION (A) APPLY, OR WHETHER THE PLANNED SPLIT-OFF WOULD TRIGGER LIABILITY FOR PAYMENT OF ROLL-BACK TAXES AND INTEREST WITH RESPECT TO THE ENTIRE ENROLLED TRACT. IN ADDITION, SECTION 137b.63 (RELATING TO NOTICE OF CHANGE OF APPLICATION) REQUIRES A LANDOWNER TO PROVIDE THE COUNTY ASSESSOR AT LEAST 30 DAYS' ADVANCE WRITTEN NOTICE OF ANY PLANNED SPLIT-OFF.

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

If enrolled land undergoes split off and the tract that is split-off does not meet the size, use and aggregate acreage requirements in section 6(a.1)(1)(i) of the act (72 P. S. § 5490.6(a.1)(1)(i)), the landowner who conducted the split-off shall owe roll-back taxes and interest with respect to all of the enrolled land. ~~This section does not affect liability for roll-back taxes which may become due under section 6(a.2) of the act for changed use within 7 years of a separation.~~

* * * * *

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

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

preferential assessment under the act. [The remaining enrolled land shall continue to receive a preferential assessment.]

* * * * *

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

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

* * * * *

(2) With respect to each of these sums, multiply [that sum] the tax difference determined under Step (1) by the corresponding factor, which reflects simple interest at the rate of 6% per annum from that particular tax year to the present:

* * * * *

(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].

* * * * *

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

* * * * *

(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,] Preservation at the address in § 137b.4 (relating to contacting the Department) to accomplish this transfer.

DUTIES OF COUNTY ASSESSOR

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

A county assessor [will] shall, by January 31 of each year, compile and submit the information required by the Department under § 137b.3(b) (relating to responsibilities of the Department). This includes the following information:

(1) The cumulative number of acres of enrolled land in the county, by land use category, at the end of the previous year.

(2) The number of acres enrolled in each land use category during the previous year.

(3) The number of acres of land, by land use category, with respect to which preferential assessment was terminated within the previous year.

(4) The dollar amount received as roll-back taxes within the previous year.

(5) The dollar amount received as interest on roll-back taxes within the previous year.

PROPOSED RULEMAKING

DEPARTMENT OF AGRICULTURE

[7 PA. CODE CH. 137b]

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

The Department of Agriculture (Department) proposes to amend Chapter 137b (relating to preferential assessment of farmland and forest land under the Clean and Green Act) to read as set forth in Annex A.

The regulations implement 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.

Authority

The rulemaking is proposed under the authority of section 11 of the act (72 P. S. § 5490.11), which requires the Department to promulgate regulations necessary to promote the efficient, uniform, Statewide administration of the act.

Need for the Proposed Rulemaking

This proposed rulemaking adds new definitions and make revisions to implement the most recent amendments to the act: the act of December 8, 2004 (P. L. 1785, No. 235) (Act 235); the act of October 27, 2010 (P. L. 866, No. 88) (Act 88); the act of November 23, 2010 (P. L. 1095, No. 109) (Act 109); the act of July 7, 2011 (P. L. 212, No. 34) (Act 34); the act of July 7, 2011 (P. L. 213, No. 35) (Act 35); and the act of October 24, 2012 (P. L. 1499, No. 190) (Act 190). The proposed rulemaking adds language to resolve questions that the Department has encountered in its administration of the act and its attendant regulations. The proposed rulemaking defines several commonly used terms to help avoid confusion and create a more uniform interpretation and application of the act and its regulations. The proposed rulemaking proposes language describing how "farmstead land" is to be enrolled and assessed. The proposed rulemaking address the types of recreational activities that can be conducted upon enrolled land without adverse financial consequences for the landowner. The proposed rulemaking corrects several mistakes describing the process by which roll-back taxes are to be calculated.

Summary of the Proposed Rulemaking

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

Proposed amendments to § 137b.2 (relating to definitions) add several defined terms from the act, including "agritainment," "alternative energy system," "compost," "recreational activity" and "Tier I energy source." Proposed amendments also define "division by conveyance or other action of the owner," a phrase that is used in the definitions of "separation" and "split-off" that has been a source of confusion among county assessors, who are charged with substantial enforcement responsibilities under the act.

Proposed amendments to §§ 137b.13 and 137b.14 (relating to agricultural reserve; and forest reserve) add language to reflect changes produced by Act 88, which addresses the operation and impact of certain alternative energy systems on enrolled agricultural reserve and forest reserve land.

Proposed amendments to § 137b.15 (relating to inclusion of farmstead land) add examples to illustrate that farmstead land is to be included in determining whether a particular tract of land meets the minimum acreage requirements for agricultural use, agricultural reserve and forest reserve land. The proposed amendments also add language implementing statutory language added by Act 235 that allows county commissioners to adopt an ordinance to allow farmstead land that is located on agricultural reserve or forest reserve land to receive preferential assessment.

Proposed amendments to § 137b.51 (relating to assessment procedures) add language to help implement the changes made to the act by Act 235 with respect to farmstead land. Subsection (g) provides a detailed explanation, as well as examples, to help clarify how farmstead land is to be treated under the act.

Act 109 amended the act to establish conditions under which an owner of enrolled land might remove land from preferential assessment and pay roll-back taxes on the land so removed. It also allows for this land to be re-enrolled for preferential assessment by a successor landowner. Proposed amendments to § 137b.52 (relating to duration of preferential assessment) explain these changes.

Act 190 amended the act to allow for the direct commercial sale of agriculturally related products on enrolled land without triggering roll-back tax liability if the sales occur on 1/2 acre or less of land, utilities or new buildings are not required and the majority of these products are produced on the farm. Proposed amendments to § 137b.72 (relating to direct commercial sales of agriculturally related products and activities; rural enterprises incidental to the operational unit) reflect this statutory change.

Acts 35 and 88 amended the act to address the impact of gas, oil and coal bed methane exploration and extraction on enrolled land. This included references to the appurtenant facilities, such as roads, bridges, pipelines, hydrofracturing retention ponds, and the like, that are attendant to this exploration and extraction. Proposed § 137b.73a (relating to gas, oil and coal bed methane) addresses this statutory amendment and provides a number of examples to assist the regulated community in interpreting this new provision.

Proposed § 137b.73b (relating to temporary leases for pipe storage yards) describes the circumstances under which enrolled land may be leased for up to 2 years for pipe storage yards, a use that facilitates coal bed methane extraction. This provision tracks with a provision added to the act by Act 88.

Act 34 amended the act to allow an owner of enrolled land to lease or devote a portion of that land to "small noncoal surface mining" in accordance with the Noncoal Surface Mining Conservation and Reclamation Act (52 P. S. §§ 3301—3326). Roll-back taxes are due with respect to land devoted to this use, but preferential assessment

continues on the remainder. Proposed § 137b.73c (relating to small noncoal surface mining) explains this statutory change.

Act 109 amended the act to allow for certain wind power generation systems on enrolled land and limited adverse roll-back tax consequences to only the land that is actually devoted to wind power generation purposes. Proposed § 137b.73d (relating to wind power generation systems) addresses this statutory change.

Act 235 added a definition of "recreational activity" to the act and specified that conducting these recreational activities on enrolled agricultural use and forest reserve land would not render that land ineligible for preferential assessment. Proposed § 137b.77 (relating to recreational activities on agricultural use or forest reserve land) clarifies this statutory language.

Proposed amendments to § 137b.89 (relating to calculation of roll-back taxes) corrects the mathematical charts under which roll-back tax amounts are to be calculated. This corrects an error noted by the Commonwealth Court in its 2002 opinion in *Moyer vs. Berks County Board of Assessment Appeals*, 803 A.2d 833.

Persons Affected

The proposed rulemaking promotes the efficient, uniform, Statewide administration of the act. The proposed rulemaking updates and supplants outdated and inadequate provisions and implements changes to the act by Acts 34, 35, 88, 109, 190 and 235. 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 regulations, drive these impacts.

The proposed rulemaking is not expected to have significant adverse impact on any group or entity.

The proposed rulemaking will provide counties a better understanding of the requirements of the act and will help in implementing the statutory amendments. Owners of currently-enrolled land will benefit from more consistent and uniform interpretation and enforcement of the act.

To the extent that the proposed rulemaking simply implements requirements of the act, adverse impact is attributable to the act, not the underlying regulations.

Fiscal Impact

Commonwealth

The proposed rulemaking will not have appreciable fiscal impact upon the Commonwealth.

Political subdivisions

The proposed rulemaking will impose costs upon county governments. Counties are likely to incur costs in recalculating preferential assessments in accordance with the act. These costs cannot be readily estimated, but are expected to be minimal. In addition, these costs are attributable to the act and not to the regulations. Local taxing bodies may realize an increase in tax revenue in those counties that, under Act 235, assess "farmstead land" on enrolled tracts of agricultural reserve or forest reserve land at its market value.

Private sector

The proposed rulemaking will not have appreciable fiscal impact upon the private sector.

General public

In general terms, the act and the regulations are expected to result in a tax savings to owners of land enrolled for preferential assessment under the act. These savings cannot be readily estimated.

Paperwork Requirements

The proposed rulemaking will not result in an appreciable increase in the paperwork handled by the Department.

Effective Date

The proposed rulemaking will be effective upon final-form publication in the *Pennsylvania Bulletin*.

Sunset Date

There is not a sunset date for the proposed rulemaking. The Department will review the efficacy of the regulations on an ongoing basis.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on July 19, 2013, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Agriculture and Rural Affairs Committees. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Department, the General Assembly and the Governor of comments, recommendations or objections raised.

Public Comment Period and Contact Person

Interested persons are invited to submit written comments regarding the proposed rulemaking within 30 days following publication in the *Pennsylvania Bulletin*. Comments shall be submitted to the Department of Agriculture, Bureau of Farmland Preservation, 2301 North Cameron Street, Harrisburg, PA 17110-9408, Attention: Douglas M. Wolfgang, Director.

GEORGE D. GREIG,
Secretary

Fiscal Note: 2-159. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 7. AGRICULTURE

PART V-C. FARMLAND AND FOREST LAND

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

GENERAL PROVISIONS

§ 137b.2. Definitions.

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

* * * * *

Agricultural commodity—Any of the following:

* * * * *

(vii) Processed or manufactured products of products commonly raised or produced on farms which are in-

tended for human consumption or are transported or intended to be transported in commerce.

(viii) Compost.

Agricultural reserve—

[(i)] Noncommercial open space lands used for outdoor recreation or the enjoyment of scenic or natural beauty and open to the public for that use, without charge or fee, on a nondiscriminatory basis. **The term includes land devoted to the development and operation of an alternative energy system, if a majority of the energy annually generated is utilized on the tract.**

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

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

* * * * *

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

(iv) The term includes land devoted to the development and operation of an alternative energy system, if a majority of the energy annually generated is utilized on the tract.

***Agritainment*—**

(i) Farm-related tourism or farm-related entertainment activities which are permitted or authorized by a landowner in return for a fee on agricultural land for recreational or educational purposes.

(ii) The term includes corn mazes, farm tours and hay rides.

(iii) The term does not include activities authorized under section 8(d) of the act (72 P.S. § 5490.8(d)).

***Alternative energy system*—A facility or energy system that utilizes a Tier I energy source to generate alternative energy. The term includes a facility or system that generates alternative energy for utilization onsite or for delivery of the energy generated to an energy distribution company or to an energy transmission system operated by a regional transmission organization.**

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.

***Change of use*—**

(i) The alteration of enrolled land so that it is no longer agricultural use, agricultural reserve or forest reserve land.

(ii) The term does not include:

(A) The act of subdividing enrolled land if the subdivide land is not sold.

(B) The act of conveying subdivided enrolled land to the same landowner who owned it immediately prior to subdivision.

(C) Conveyance of the land to a person who intends to use the land for ineligible purposes, as long as the land continues in an eligible use.

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.

***Compost*—Material resulting from the biological digestion of dead animals, animal waste or other biodegradable materials, at least 50% by volume of which is comprised of products commonly produced on farms.**

* * * * *

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

***County commissioners*—The board of county commissioners or other similar body in home rule charter counties.**

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

Department—The Department of Agriculture of the Commonwealth.

***Division by conveyance or other action of the owner*—**

(i) When used in the context of a separation or a split-off, the term refers to either:

(A) A conveyance, a subdivision, a land development plan or comparable plan required by a local government unit.

(B) An owner-initiated process that produces a metes and bounds description of the separated or split-off land and a calculation of the acreage of that separated or split-off land.

(ii) The term does not include:

(A) The act of subdividing enrolled land if the subdivided land is not sold.

(B) The act of conveying subdivided enrolled land to the same landowner who owned it immediately prior to subdivision.

(C) Conveyance of the land to a person who intends to use the land for ineligible purposes, as long as the land continues in an eligible use.

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

* * * * *

Forest reserve—Land, 10 acres or more, stocked by forest trees of any size and capable of producing timber or other wood products. **[The term includes farmstead land on the tract.] The term includes land devoted**

to the development and operation of an alternative energy system if a majority of the energy annually generated is utilized on the tract.

* * * * *

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

***Noncoal Surface Mining Conservation and Reclamation Act*—52 P. S. §§ 3301—3326.**

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.

***Oil and Gas Act*—58 Pa.C.S. §§ 3211—3274.**

Outdoor recreation—

(i) Passive recreational use of land that does not entail the erection of permanent structures or any change to the land which would render it incapable of being immediately converted to agricultural use. Examples include picnicking, hiking, wildlife watching and hunting, subject to the restrictions in § 137b.64 (relating to agricultural reserve land to be open to the public).

(ii) The term does not include the operation of motor vehicles other than under either of the following circumstances:

(A) When necessary to remove an animal which has been hunted.

(B) When the motor vehicle is operated over an existing lane and is incidental to hunting, fishing, swimming, access for boating, animal riding, camping, picnicking, hiking, agritainment activities or the operation of nonmotorized vehicles.

* * * * *

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

***Recreational activity*—The term includes:**

(i) Hunting.

(ii) Fishing.

(iii) Swimming.

(iv) Access for boating.

(v) Animal riding.

(vi) Camping.

(vii) Picnicking.

(viii) Hiking.

(ix) Agritainment activities.

(x) Operation of nonmotorized vehicles.

(xi) Viewing or exploring a site for aesthetic or historical benefit or for entertainment.

(xii) Operation of motorized vehicles if the operation is either of the following:

(A) Over an existing lane and incidental to an activity in subparagraphs (i)—(x).

(B) Necessary to remove an animal which has been hunted under subparagraph (i).

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

Rural enterprise incidental to the operational unit—A commercial enterprise or venture that is **[conducted] all of the following:**

(i) Owned and operated by the landowner or by the landowner's beneficiaries who are Class A beneficiaries for inheritance tax purposes.

(ii) Conducted within 2 acres or less of enrolled land **[and, when]**

(iii) 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 lands devoted to agricultural use, agricultural reserve or forest reserve and preferentially assessed under the act, into two or more tracts of land, the use of which continues to be agricultural use, agricultural reserve or forest reserve and all tracts so formed meet the requirements of section 3 of the act.

***Silvicultural products*—**

(i) Trees and tree products produced from Christmas tree farms, tree nurseries, tree greenhouses, orchards and similar actively-cultivated tree or tree product production operations.

(ii) The term does not include trees and tree-derived products produced from forest land regardless of whether the trees or tree-derived products are harvested from forest land in accordance with a timber management plan.

Split-off—A division, by conveyance or other action of the owner, of lands devoted to agricultural use, agricultural reserve or forest reserve and preferentially assessed under the act, into two or more tracts of land, the use of which on one or more of the tracts does not meet the requirements of section 3 of the act.

***Tier I energy source*—A Tier I alternative energy source as defined in section 2 of the Alternative Energy Portfolio Standards Act (73 P. S. § 1648.2).**

Tract—

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

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

* * * * *

§ 137b.3. Responsibilities of the Department.

* * * * *

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

information must include the information required under § 137b.112 (relating to submission of information to the Department).

* * * * *

§ 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 Preservation
2301 North Cameron Street
[Street] Harrisburg, PA 17110-9408
Telephone: (717) 783-3167
Facsimile: (717) 772-8798

ELIGIBLE LAND

§ 137b.12. Agricultural use.

Land that is in agricultural use is eligible for preferential assessment under the act if it has been producing an agricultural commodity or has been devoted to a soil conservation program under an agreement with the Federal [Government] **government** for at least 3 years preceding the application for preferential assessment, and is one of the following:

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

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

(3) Devoted to the development and operation of an alternative energy system, if a majority of the energy generated annually is utilized on the tract.

***Example 1*: Landowner owns 50 acres of pasture upon which horses are kept. The horses are occasionally pastured, bred and sold. The land is in agricultural use.**

***Example 2*: Same facts as Example 1, except 20 acres are pasture land and 30 acres are wooded. Twenty acres of land are in agricultural use and 30 acres are in forest reserve.**

***Example 3*: Landowner owns 7 acres of pasture land upon which there is a small horse breeding operation from which there is at least $2,000 of anticipated yearly gross income. The land is in agricultural use.**

***Example 4*: Same facts as Example 3, except that horses are neither bred nor sold and there is at least $2,000 of anticipated gross yearly income from a horse boarding operation. The land is not in agricultural use.**

***Example 5*: Landowner owns 10 acres of land that is a combination of wooded and open space land from which tomatoes and sweet corn are produced for sale. The land is in agricultural use.**

***Example 6*: Landowner owns 10 acres of land that is a combination of wooded and open space land from which beef cattle are produced and sold. The land is in agricultural use.**

***Example 7*: Landowner owns a parcel of land that is used for the production of agricultural commodities. Landowner erects solar panels (or some other alternative energy system) on the land and a majority of the electricity generated by the alternative energy system is used on the land. The land is in agricultural use.**

***Example 8*: Landowner owns two separate parcels of land, Parcel A and Parcel B. These parcels are used for the production of agricultural commodities. They are enrolled under a single application for preferential assessment. Landowner erects solar panels (or some other alternative energy system) on Parcel A. The majority of the electricity generated by the alternative energy system on Parcel A is used by a large dairy operation on Parcel B. Both Parcel A and Parcel B are in agricultural use.**

§ 137b.13. Agricultural reserve.

Land that is in agricultural reserve is eligible for preferential assessment under the act if the land is comprised of 10 or more contiguous acres (including any farmstead land and any woodlot). **This includes land devoted to the development and operation of an alternative energy system if a majority of the energy annually generated is utilized on the tract.**

§ 137b.14. Forest reserve.

Land that is in forest reserve is eligible for preferential assessment under the act if presently stocked with trees and the land is comprised of 10 or more contiguous acres (including any farmstead land). Forest reserve land includes land that is rented to another person for the purpose of producing timber or other wood products. **This includes land devoted to the development and operation of an alternative energy system if a majority of the energy annually generated is utilized on the tract.**

§ 137b.15. Inclusion of farmstead land.

(a) Farmstead land is an integral part of land in agricultural use, agricultural reserve or forest reserve. In considering whether land is in agricultural use, agricultural reserve or forest reserve, a county shall include any portion of that land that is farmstead land **regardless of whether the farmstead land is entitled to preferential assessment under the act or this chapter.**

***Example 1*: A landowner seeks to enroll a 10-acre tract of land as agricultural use land. One acre of the 10-acre tract is comprised of farmstead land. All 10 acres of land shall be considered in determining whether the tract meets the 10 contiguous acres minimum acreage requirement for agricultural use land established in section 3(a)(1) of the act (72 P. S. § 5490.3(a)(1)).**

***Example 2*: A landowner seeks to enroll a 10-acre tract of land as agricultural reserve land. One acre of the 10-acre tract is comprised of farmstead land. All 10 acres of land shall be considered in determining whether the tract meets the minimum acreage requirement for agricultural reserve land established in section 3(a)(2) of the act.**

***Example 3*: A landowner seeks to enroll a 10-acre tract of land as forest reserve land. One acre of the 10-acre tract is comprised of farmstead land. All 10 acres of land shall be considered in determining whether the tract meets the minimum acreage requirement for "forest reserve" land established in section 3(a)(3) of the act.**

(b) Farmstead land on agricultural use land shall be considered to be land that qualifies for preferential assessment under the act and this chapter. **Farmstead land on agricultural reserve land shall only be considered to be land that qualifies for preferential assessment under the act and this chapter if the county commissioners have adopted an ordinance**

to include farmstead land in the total use value for land in agricultural reserve. Farmstead land on forest reserve land shall only be considered to be land that qualifies for preferential assessment under the act and this chapter if the county commissioners have adopted an ordinance to include farmstead land in the total use value for land in forest reserve.

APPLICATION PROCESS

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

* * * * *

(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 **[finall] 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.

PREFERENTIAL ASSESSMENT

§ 137b.51. Assessment procedures.

* * * * *

(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, **and for land in agricultural reserve,** by considering available evidence of the capability of the land for its particular use utilizing the USDA-NRCS Agricultural Land Capability Classification system and other information available from USDA-ERS, the Pennsylvania State University and the Pennsylvania Agricultural Statistics Service. Contributory value of farm buildings, as calculated in accordance with § 137b.54 (relating to calculating the contributory value of farm buildings), shall be used. **With respect to agricultural reserve land, the total use value includes farmstead land if the county commissioners have adopted an ordinance to include farmstead land in the total use value for land in agricultural reserve, as described in section 3(g)(1) of the act (72 P. S. § 5490.3(g)(1)).**

(2) For each application for preferential assessment, the county assessor shall establish a total use value for land in forest reserve**[, including farmstead land,]** by considering available evidence of the capability of the land for its particular use. Contributory value of farm buildings, as calculated in accordance with § 137b.54 shall be used. **The total use value includes farmstead land if the county commissioners have adopted an ordinance to include farmstead land in the total use value for land in forest reserve, as described in section 3(g)(2) of the act.**

* * * * *

(f) *Option of county assessors to select between county-established use values and use values provided by the Department.* When a county assessor has established use values for land use subcategories, and the use values for some—but not all—of these land use subcategories are lower than those provided by the Department, the county assessor has the option to apply the lower use value with respect to each individual land use subcategory, without regard to whether it was provided by the Department or established by the county assessor.

(g) *Valuation of farmstead land.*

(1) *Farmstead land on agricultural use land.* Farmstead land that is located on land enrolled as enrolled agricultural use land shall be assessed at agricultural use value.

***Example*: Landowner has a 100-acre contiguous property that is enrolled for preferential assessment. Some of this land is enrolled as agricultural use land and the remainder is enrolled as forest reserve land. The farmstead land is located on the agricultural use land, The farmstead land shall be assessed at agricultural use value.**

(2) *Farmstead land on agricultural reserve land.* Farmstead land that is located on land enrolled as agricultural reserve land shall receive normal (fair market value) assessment, rather than assessment at agricultural use value, unless one of the following is true:

(i) The county commissioners have adopted an ordinance to include farmstead land in the total use value for land in agricultural reserve, as permitted in section 3(g)(1) of the act.

(ii) A majority of the land in the application for preferential assessment applicable to that farmstead land is agricultural use land.

(iii) Noncontiguous tracts of land are included in the application for preferential assessment applicable to that farmstead land and a majority of the land on the contiguous tract where the farmstead land is located is enrolled as agricultural use land.

(3) *Farmstead land on forest reserve land.* Farmstead land that is located on land enrolled as forest reserve land shall receive normal (fair market value) assessment, rather than assessment at forest reserve use value, unless one of the following is true:

(i) The county commissioners have adopted an ordinance to include farmstead land in the total use value for land in forest reserve, as permitted in section 3(g)(2) of the act.

(ii) A majority of the land in the application for preferential assessment applicable to that farmstead land is agricultural use land.

(iii) Noncontiguous tracts of land are included in the application for preferential assessment applicable to that farmstead land and a majority of the land on the contiguous tract where the farmstead land is located is enrolled as agricultural use land.

(4) *Examples.*

***Example 1*: Landowner has a 100-acre contiguous property that is enrolled for preferential assessment. Fifty-one acres (a majority of the land in the application for preferential assessment) are enrolled as agricultural use land. Forty-nine acres are enrolled as agricultural reserve land or forest reserve land, or a combination of the two. The farmstead land is located on the agricultural use land. The farmstead shall be assessed at agricultural use value.**

***Example 2*: Same facts as Example 1 except that the farmstead land is located on agricultural re-**

serve land or forest reserve land. The farmstead shall be assessed at agricultural use value.

Example 3: Landowner has a 100-acre contiguous property that is enrolled for preferential assessment. Fifty-one acres (a majority of the land in the application for preferential assessment) are enrolled as agricultural reserve land or forest reserve land, or a combination of the two. Forty-nine acres are enrolled as agricultural use land. The farmstead land is located on the agricultural use land. The farmstead shall be assessed at agricultural use value.

Example 4: Same facts as Example 3 except that the farmstead land is located on agricultural reserve land or forest reserve land. The farmstead land may not receive preferential (agricultural use value) assessment.

Example 5: Landowner has 100 acres enrolled for preferential assessment. The acreage consists of two noncontiguous parcels of 50 acres each. One 50-acre tract is enrolled as forest reserve land, agricultural use land, agricultural reserve land or a combination of the three. The other 50-acre tract contains farmstead land and consists of 26 acres of enrolled agricultural use land and 24 acres of enrolled agricultural reserve land, forest reserve land or a combination of the two. Since the majority of the land on the tract where the farmstead tract is located is enrolled as agricultural use, the farmstead shall be assessed at agricultural use value, regardless of whether it is located on the agricultural use land, agricultural reserve land or forest reserve land.

Example 6: Same facts as Example 5 except the 50-acre tract that contains the farmstead land consists of 24 acres of enrolled agricultural use land and 26 acres of agricultural reserve land, forest reserve land or a combination of the two. If the farmstead land is located on that portion of the 50-acre tract that is enrolled as agricultural use land, the farmstead shall be assessed at agricultural use value. If the farmstead land is located on that portion of the 50-acre tract that is enrolled as agricultural reserve land or forest reserve land, the farmstead may not receive preferential (agricultural use value) assessment.

Example 7: One of the six fact situations described in Examples 1—6 except that the county commissioners have adopted an ordinance to include farmstead land in the total use value for land in agricultural reserve or forest reserve in accordance with section 3(g)(1) of the act. The farmstead shall be assessed at agricultural use value.

§ 137b.52. Duration of preferential assessment.

(a) *General.* Enrolled land shall remain under preferential assessment for as long as it continues to meet the minimum qualifications for preferential assessment or until removed from preferential assessment in accordance with the procedure in subsection (b). 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 land use categories.

* * * * *

(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.]

Removal of land from preferential assessment.

(1) A landowner receiving preferential assessment under the act may remove land from preferential assessment if:

(i) The landowner provides the county assessor written notice of this removal by June 1 of the year immediately preceding the tax year for which the removal is sought.

(ii) The entire tract or tracts enrolled on a single application for preferential assessment is removed from preferential assessment.

(iii) The landowner pays rollback taxes on the entire tract or tracts as provided for in section 5 of the act (72 P. S. § 5490.5a).

(2) Land removed from preferential assessment under this subsection or under section 8.1 of the act (72 P. S. § 5490.8a) is not eligible to be subsequently re-enrolled in preferential assessment by the same landowner.

(3) Nothing in this subsection or section 8.1 of the act prohibits a landowner whose land was terminated from preferential assessment under authority other than this subsection or section 8.1 of the act from re-enrolling the land in preferential assessment.

(c) *Split-offs, separations, transfers and other events.* Split-offs that meet the size, use and aggregate acreage requirements in section 6(a.1)(1)(i) of the act (72 P. S. § 5490.6(a.1)(1)(i)), separations and transfers under the act or this chapter will not result in termination of preferential assessment on the land which is retained by the landowner and which continues to meet the requirements of section 3 of the act (72 P. S. § 5490.3). In addition, the following events will not result in termination of preferential assessment on that portion of enrolled land which continues to meet the requirements of section 3 of the act:

* * * * *

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

* * * * *

(d) *Required recalculation of preferential assessment if farmstead land has not been preferentially assessed as agricultural use, agricultural reserve or forest reserve.* A county assessor shall recalculate the preferential assessment on any tract of enrolled land which contains farmstead land if the [earlier calculation did not value and assess the farmstead land as agricultural use, agricultural reserve or forest reserve. This recalculation shall be accomplished in accordance with § 137b.51] farmstead land has not been assessed as required under § 137b.51.

[*Example*: In calculating the preferential assessment of enrolled land, a county has assessed farm-

stead 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.]

* * * * *

IMPACT OF SPECIFIC EVENTS OR USES ON PREFERENTIAL ASSESSMENT

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

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

* * * * *

(2) The commercial activity **or rural enterprise** 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.*

(1) 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, **and paragraph (2) is not applicable,** the 2-acre-or-less tract shall be subject to roll-back taxes and interest, and preferential assessment of that 2-acre-or-less tract shall end. The remainder of the enrolled land shall continue under preferential assessment as long as that remainder continues to meet the requirements for eligibility in section 3 of the act (72 P. S. § 5490.3).

(2) If a tract of 1/2 acre or less of enrolled land is used for direct commercial sales of agriculturally related products, roll-back taxes or interest are not due and breach of preferential assessment will not be deemed to have occurred on that tract if:

(i) At least 50% of the agriculturally related products are produced on the enrolled land.

(ii) The direct commercial sales of agriculturally related products do not require new utilities or buildings.

(c) *Inventory by county assessor to determine ownership of goods.* A county assessor may inventory the goods sold at the business to **[assure] ensure** that they are owned by the landowner or persons who are **[class] 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.

(*Editor's Note*: Sections 137b.73a—137b.73d are new and printed in regular type to enhance readability.)

§ 137b.73a. Gas, oil and coal bed methane.

(a) *General.*

(1) Land subject to preferential assessment may be leased or otherwise devoted to both of the following:

(i) The exploration for and removal of gas and oil, including the extraction of coal bed methane.

(ii) The development of appurtenant facilities, including new roads and bridges, pipelines and other buildings or structures, related to exploration for and removal of gas and oil and the extraction of coal bed methane.

(2) Portions of land subject to preferential assessment may be used for both of the following:

(i) The exploration for and removal of gas and oil, including the extraction of coal bed methane.

(ii) The development of appurtenant facilities, including new roads and bridges, pipelines and other buildings or structures, related to those activities.

(b) *Roll-back tax liability.*

(1) Roll-back taxes shall be imposed upon those portions of land actually devoted to activities set forth in subsection (a)(2), except for the following:

(i) Land devoted to subsurface transmission or gathering lines is not subject to roll-back tax.

(ii) Notwithstanding any other provision in this section, a roll-back tax may not be imposed upon a landowner for activities related to the exploration for or removal of oil or gas, including the extraction of coal bed methane, conducted by parties other than the landowner that hold the rights to conduct these activities pursuant to an instrument, conveyance or other vesting of the rights if the transfer of the rights occurred before:

(A) The the land was enrolled for preferential assessment under this act.

(B) December 26, 2010.

Example 1: Landowner sold coal bed methane exploration and extraction rights with respect to a tract to a third party in 2008 and enrolled that tract for preferential assessment under the act in 2009. The third party erects a well, a pond used to support hydrofracturing and other appurtenant facilities related to the removal of coal bed methane on the enrolled land. Roll-back taxes may not be imposed with respect to the enrolled land on which these appurtenant facilities are located.

Example 2: Same facts as Example 1, except the landowner sold coal bed methane rights with respect to the tract to a third party after the tract was enrolled for preferential assessment under the act. Roll-back taxes are due with respect to the enrolled land on which the appurtenant facilities are located.

Example 3: Same facts as Example 1, except the landowner sold a 50% (as opposed to 100%) interest in coal bed methane exploration and extraction rights to a third party. Roll-back taxes may not be imposed with respect to the enrolled land on which these appurtenant facilities are located.

Example 4: Same facts as Example 2, except the landowner sold a 50% (as opposed to 100%) interest in coal bed methane exploration and extraction rights to a third party. Roll-back taxes are due with respect to the enrolled land on which the appurtenant facilities are located.

(2) The portion of land that is subject to roll-back tax is the well site and land which is incapable of being immediately used for the agricultural use, agricultural reserve or forest reserve activities required under section 3 of the act (72 P. S. § 5490.3). The portion of land that is subject to roll-back tax under this paragraph shall be determined as follows:

(i) If a well production report is required to be submitted to the Department of Environmental Protection in accordance with section 3222 of the Oil and Gas Act (relating to well reporting requirements) and 25 Pa. Code § 78.121 (relating to production reporting), the determination shall be made when that well production report is first due to the Department of Environmental Protection. Section 6(c.1)(3) of the act (72 P. S. § 5490.6(c.1)(3)) requires the Department of Environmental Protection to provide the county assessor a copy of the well production report within 10 days of its submission by the well operator.

(ii) If a well production report as described in subparagraph (i) is not required to be submitted to the Department of Environmental Protection, the landowner shall, in writing, report the circumstances (activities and structures) that render a portion of the land incapable of being immediately used for the agricultural use, agricultural reserve or forest reserve activities required under section 3 of the act, and the area of the affected land, to the county assessor within 10 days of the occurrence of those circumstances. The county assessor shall determine the portion of the land that is subject to roll-back taxes under this subsection.

Example: A tract of enrolled land does not contain a well site and is not required to submit the well production report described in subparagraph (i) but contains one or more appurtenant facilities related to exploration for and removal of gas and oil (including the extraction of coal bed methane) on other land. These appurtenant facilities include a pond used to support hydrofracturing, a compressor station, aboveground pipeline facilities, or other structures or facilities. The landowner shall report these appurtenant facilities and the acreage to the county assessor who will determine the portion of the land that is subject to roll-back taxes.

(c) *Retroactive application.* The fair market value of the well site and land which is incapable of being immediately used for the agricultural use, agricultural reserve or forest reserve activities required under section 3 of the act shall be adjusted retroactively to the date a permit was approved under section 3211 of the Oil and Gas Act (relating to well permits).

(d) *Due date.* The tax calculated based on the adjusted fair market value shall be due and payable in the tax year immediately following the year in which a production report is provided to the county assessor. Roll-back taxes shall become due upon the receipt of a well production report by the county assessor.

(e) *Continued preferential assessment.* The utilization of a portion of land for activities in subsection (a)(2) does not invalidate the preferential assessment of the land which is not so utilized and the land shall continue to receive preferential assessment if it continues to meet the requirements of section 3 of the act.

(f) *Land use category of land used for subsurface transmission or gathering lines.* The land use category of a portion of enrolled land beneath which subsurface transmission or gathering lines as described in subsection (b)(1)(i) are installed does not have to change.

Example: Subsurface transmission or gathering lines are installed beneath enrolled land that is enrolled as forest reserve land. Trees are cleared from the surface of the land along the route of the subsurface line. It is not necessary for that cleared portion of the land to be reclassified as agricultural reserve land rather than forest reserve land.

§ 137b.73b. Temporary leases for pipe storage yards.

The owner of enrolled land may temporarily lease a portion of the land for pipe storage yards provided that roll-back taxes shall be imposed upon those portions of land subject to preferential assessment that are temporarily leased or otherwise devoted for pipe storage yards and the fair market value of those portions of land shall be adjusted accordingly. The imposition of roll-back taxes of portions of land temporarily leased or devoted for pipe storage yards does not invalidate the preferential assessment of land which is not leased or devoted and that land shall continue to be eligible for preferential assessment if it continues to meet the requirements of section 3 of the act. Only one lease under this section is permitted to a landowner and a copy of the lease shall be provided to the county assessor within 10 days of its signing by the landowner. The lease may not exceed 2 years and may not be extended or renewed. Following the expiration of the lease, the land shall be restored to the original use which qualified it for preferential assessment.

§ 137b.73c. Small noncoal surface mining.

(a) The owner of property subject to preferential assessment may lease or otherwise devote land subject to preferential assessment to small noncoal surface mining as provided for under the Noncoal Surface Mining Conservation and Reclamation Act.

(b) Roll-back taxes shall be imposed upon those portions of land leased or otherwise devoted to small noncoal surface mining and the fair market value of those portions of the land shall be adjusted accordingly. Roll-back taxes on those portions of the land do not invalidate the preferential assessment of the land which is not leased or devoted to small noncoal surface mining and the land shall continue to be eligible for preferential assessment if it continues to meet the requirements of section 3 of the act (72 P. S. § 5490.3).

(c) Only one small noncoal surface mining permit may be active at any time on land subject to a single application for preferential assessment.

(d) Land that is no longer actively mined may be re-enrolled if the land is reclaimed and it continues to meet the requirements of section 3 of the act.

§ 137b.73d. Wind power generation systems.

(a) Portions of land subject to preferential assessment may be leased or otherwise devoted to a wind power generation system.

(b) Roll-back taxes shall be imposed upon those portions of the land actually devoted by the landowner for wind power generation system purposes and the fair market value of those portions of the land shall be adjusted accordingly. The wind power generation system must include the foundation of the wind turbine and the area of the surface covered by the appurtenant structures including new roads and bridges, transmission lines, substations and other buildings or structures related to the wind power generation system. The utilization of a portion of the land for a wind power generation system does not invalidate the preferential assessment of land

which is not utilized and the land shall continue to receive preferential assessment if it continues to meet the requirements of section 3 of the act (72 P. S. § 5490.3). An owner who is subject to roll-back taxes under this subsection shall submit a notice of installation of a wind power generation system to the county assessor within 30 days following the beginning of electricity generation at the wind power generation system. Roll-back taxes shall become due on the date the notice of installation of a wind power generation system is received by the county assessor.

(c) This section does not apply to land devoted to the development and operation of an alternative energy system when a majority of the energy annually generated from that system is used on the tract. The impact of this type of alternative energy system is addressed in §§ 137b.12—137b.14 (relating to agricultural use; agricultural reserve; and forest reserve).

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

(a) *Option to accept or forgive principal on roll-back taxes.* The taxing body of the taxing district within which a tract of enrolled land is located may accept or forgive roll-back taxes **[with respect to that portion of the enrolled land that is granted or donated to any] that are otherwise due and payable if the use of some portion of the land is changed for the purpose of granting or donating some portion of the land to** one of the following:

* * * * *

(*Editor's Note*: The following section is new and printed in regular type to enhance readability.)

§ 137b.77. Recreational activities on agricultural use or forest reserve land.

(a) *Agricultural use land.* An owner of enrolled agricultural use land who performs recreational activities on that land, or who permits or authorizes others to perform these activities, does not violate the requirements for preferential assessment and is not responsible to pay roll-back taxes if the recreational activity does not render the land incapable of being immediately converted to agricultural use.

(b) *Forest reserve land.* An owner of enrolled forest reserve land who performs recreational activities on that land, or who permits or authorizes others to perform these activities, does not violate the requirements for preferential assessment and is not responsible to pay roll-back taxes if the recreational activity does not render the land incapable of producing timber or other wood products.

(c) *Assessment of fees or charges by a landowner.* Subsections (a) and (b) apply regardless of whether the landowner assesses fees or charges with respect to the recreational activity or allows another to assess these fees or charges.

(d) *Recreational leases.* Subsections (a) and (b) apply regardless of whether the landowner leases enrolled land to another person for hunting or other recreational activities and receives fees or charges in return.

LIABILITY FOR ROLL-BACK TAXES

§ 137b.81. General.

If an owner of enrolled land changes the use of the land to something other than agricultural use, agricultural reserve or forest reserve or changes the use of the enrolled land so that it otherwise fails to meet the requirements of section 3 of the act (72 P. S. § 5490.3), that landowner shall be responsible for the payment of roll-back taxes and interest, and preferential assessment shall end on that portion of the enrolled land which fails to meet the requirements of section 3 of the act. The owner of enrolled land will 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 **in accordance with the applicable sections of the act. A transfer of enrolled land under a single application will not trigger liability for roll-back taxes unless there is a subsequent change of use so that it fails to meet the requirements of section 3 of the act, in which case the landowner changing the use shall be liable for payment of roll-back taxes on the enrolled land under that single application.**

§ 137b.82. Split-off tract.

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

* * * * *

(3) The total tract split off does not exceed the lesser of 10 acres or 10% of the entire tract of enrolled land. **In calculating the total tract split off, the total includes the acreage of the tract that was split-off from the enrolled tract since enrollment.**

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

If enrolled land undergoes split off and the tract that is split-off does not meet the size, use and aggregate acreage requirements in section 6(a.1)(1)(i) of the act (72 P. S. § 5490.6(a.1)(1)(i)), the landowner who conducted the split-off shall owe roll-back taxes and interest with respect to all of the enrolled land. **This section does not affect liability for roll-back taxes which may become due under section 6(a.2) of the act for changed use within 7 years of a separation.**

* * * * *

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

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

* * * * *

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

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

* * * * *

(2) With respect to each of these sums, multiply **[that sum] the tax difference determined under Step (1)**

by the corresponding factor, which reflects simple interest at the rate of 6% per annum from that particular tax year to the present:

* * * * *

(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**].

* * * * *

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

* * * * *

(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,**] **Preservation** at the address in § 137b.4 (relating to contacting the Department) to accomplish this transfer.

DUTIES OF COUNTY ASSESSOR

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

A county assessor [**will**] **shall, by January 31 of each year,** compile and submit the information required by the Department under § 137b.3(b) (relating to responsibilities of the Department). **This includes the following information:**

(1) The cumulative number of acres of enrolled land in the county, by land use category, at the end of the previous year.

(2) The number of acres enrolled in each land use category during the previous year.

(3) The number of acres of land, by land use category, with respect to which preferential assessment was terminated within the previous year.

(4) The dollar amount received as roll-back taxes within the previous year.

(5) The dollar amount received as interest on roll-back taxes within the previous year.

[Pa.B. Doc. No. 13-1441. Filed for public inspection August 2, 2013, 9:00 a.m.]

Pennsylvania Department of Agriculture

Title 7 – AGRICULTURE
7 Pa. Code Chapter 137b

Preferential Assessment of Farmland and Forest Land under the Clean and Green Act
I.D. No. 2-159

LIST OF COMMENTATORS WHO REQUESTED INFORMATION UNDER THE REGULATORY REVIEW ACT, AT 71 P.S. § 745.5a(a)

The persons identified below: (1) offered comments with respect to the Notice of Proposed Rulemaking in this matter (which was published in the August 3, 2013 edition of the *Pennsylvania Bulletin*, at 43 Pa.B. 4344); and (2) requested that they be provided notice of submission of the final-form regulation in this matter to the Independent Regulatory Review Commission and the appropriate legislative standing committees (in this instance, the House and Senate Agriculture and Rural Affairs Committees).

The notice described in the preceding paragraph is required under the Regulatory Review Act, at 71 P.S. § 745.5a(a) and (b).

The referenced notice was mailed to each person identified below on April 16, 2015, and consisted of: (1) a notice of submission of the final-form regulation to the Independent Regulatory Review Commission and the appropriate Legislative Committees; and (2) "… a copy of the text of the final-form regulation … " as required under the Regulatory Review Act (at 71 P.S. § 745.5a(b)).

The requesters/recipients of the referenced notice are five in number, and are identified as follows:

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Sullivan County Assessment Office
P.O. Box 157
Laporte, PA 18626
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kmontgomery@sullivancounty-pa.us

Randy Duncan
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COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE OF GENERAL COUNSEL

April 16, 2015

Independent Regulatory Review Commission
333 Market Street, 14th Floor
Harrisburg, PA 17120

RE: NOTICE OF FINAL RULEMAKING
Department of Agriculture
7 Pa. Code Chapter 137b
Preferential Assessment of Farmland and Forest Land
Under the Clean and Green Act
I.D. No. 2-159
Proposed Rulemaking: 43 *Pa. Bulletin* 4344 (August 3, 2013)
Approved by Office of General Counsel: April 13, 2015

Dear Sir or Madam:

A copy of the above-referenced final-form regulation (Preamble and Annex "A") is enclosed, as are copies of the Regulatory Analysis Form and Notice of Proposed Rulemaking.

This material is submitted to you in accordance with the Regulatory Review Act (at 71 P.S. § 745.5a(a)). This Department's responses to the comments received with respect to the proposed version of this regulation are set forth in the Preamble and - to the extent these comments prompted changes to the text of the final-form regulation - in the text of the final-form regulation as set forth in Annex "A."

Pursuant to 71 P.S. § 745.5a(b), this Department has, on this same date, sent a copy of the text of the final-form regulation to each commentator who requested such information pursuant to 71 P.S. § 745.5a(a). As required by 71 P.S. § 745.5a(a), also enclosed with this submission is the list of commentators who requested additional information.

I respectfully request the Commission's approval of this final-form regulation. The Department will provide any assistance you may require to facilitate a thorough review of this final-form regulation. Thank you for your consideration of this document.

Sincerely,

Dwight-Jared Smith
Assistant Counsel

Enclosures

OFFICE OF CHIEF COUNSEL | PENNSYLVANIA DEPARTMENT OF AGRICULTURE
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pennsylvania
DEPARTMENT OF AGRICULTURE

TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE REGULATORY REVIEW ACT

I.D. NUMBER: 2-159

SUBJECT: PREFERENTIAL ASSESSMENT OF FARMLAND AND FOREST LAND UNDER THE CLEAN AND GREEN ACT

AGENCY: DEPARTMENT OF AGRICULTURE

TYPE OF REGULATION

Proposed Regulation

X Final Regulation

Final Regulation with Notice of Proposed Rulemaking Omitted

120-day Emergency Certification of the Attorney General

120-day Emergency Certification of the Governor

Delivery of Tolled Regulation
a. With Revisions b. Without Revisions

RECEIVED
2015 APR 16 PM 12: 03
IRRC

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
		HOUSE COMMITTEE ON AGRICULTURE & RURAL AFFAIRS
4-16-15	Nicole Mongrave	CAUSER MAJORITY CHAIR MARTIN T. CAUSER
4-16-15	Kira Zickler	SABATINA MINORITY CHAIR
		SENATE COMMITTEE ON AGRICULTURE & RURAL AFFAIRS
4-16-15	Jill Bitterlich	VOGEL MAJORITY CHAIR ELDER A. VOGEL JR.
4-16-15	Mindy	SCHWANK MINORITY CHAIR
4-16-15	K Cooper	*INDEPENDENT REGULATORY REVIEW COMMISSION*
		ATTORNEY GENERAL (for Final Omitted only)
		LEGISLATIVE REFERENCE BUREAU (for Proposed only)

April 14, 2015