

<h1>Regulatory Analysis Form</h1> <p>(Completed by Promulgating Agency)</p> <p>(All Comments submitted on this regulation will appear on IRRC's website)</p>		<p>INDEPENDENT REGULATORY REVIEW COMMISSION</p> <p>2013 JUL 19 AM 11:40</p>	
(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): Primary Contact: Douglas M. Wolfgang: (717) 783-3167 Secondary Contact: Stephanie Zimmerman: (717) 783-3167			
(6) Type of Rulemaking (check applicable box):			
<input checked="" type="checkbox"/> Proposed Regulation <input type="checkbox"/> Final Regulation <input type="checkbox"/> Final Omitted Regulation		<input type="checkbox"/> Emergency Certification Regulation; <input type="checkbox"/> Certification by the Governor <input type="checkbox"/> Certification by the Attorney General	
(7) Briefly explain the regulation in clear and nontechnical language. (100 words or less)			
<p>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 farmland or forest land value, rather than on market value. The regulation: (a) adds and revises language to implement the amendments to the Clean and Green Act accomplished by 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 several mistakes 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).</p>			
(8) State the statutory authority for the regulation. Include <u>specific</u> statutory citation.			
<p>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.</p>			

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(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 regulations are necessary to promote the uniform, efficient, Statewide administration of the Clean and Green Act, they are 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, to the extent stated in Answer No. 9.

The Clean and Green Act has been amended at least six times since the regulation was last updated. 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 from which to work. This will help promote the uniform statewide application of the Clean and Green Act.

The regulation 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.

(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.

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

Although other states allow for preferential assessment of various types of farmland, the Department is not aware of whether the Clean and Green Act is more or less restrictive than similar statutes in other states.

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 current 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 proposed 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. The document was revised in response to a number of these comments. Among the commentators were a number of county assessors and the Pennsylvania Farm Bureau.

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

(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?

Owners of enrolled land and persons seeking to enroll for preferential assessment of their agricultural, agricultural reserve or forest reserve land will be required to comply with the regulation. The Department estimates there are approximately 183,000 separate enrolled tax parcels comprising approximately 9.3 million acres of enrolled land that is receiving preferential tax assessment under the Clean and Green Act. Since it is not uncommon for a person to own several separate tax parcels that receive this preferential assessment, the 183,000 figure is likely to be considerably higher than the actual number of persons who benefit from the referenced preferential tax assessment.

Of the persons who own preferentially-assessed land, a number are small businesses. These small business landowners range from farmer businesses organizations that work the enrolled land to small businesses that are not agricultural in nature but that own land that qualified for preferential tax assessment. The Department cannot provide a good faith estimate of the number of small businesses affected by the regulation.

To the extent the regulation clarifies regulatory provisions and 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 deny preferential assessment with respect to any land that is eligible for preferential assessment under the Clean and Green Act and will not 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 approximately 67 county assessors and recorders of deeds in the Commonwealth, but does not impose any new duties on these entities.

(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.

(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 Answer No. 7, above, but is not expected to create any of the impacts identified above.

The benefits expected as a result of the regulation are addressed in Answer 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. They will bring about greater Statewide uniformity in interpretation and enforcement of the Clean and Green Act and will, presumably, result in some saving to county assessors (who handle enrollment and appraisal issues on the local level). The Act and the regulation may also result in a lowering of taxes for owners of enrolled agricultural, 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. For these reasons, 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.

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 Clean and Green Act, and not to the regulation.

(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 regulations 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 (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 (many of which are small businesses). 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 that determines eligibility for preferential assessment, and not the identity, minority status, age or business organization type of the landowner that determines this eligibility.

(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 schemes were considered. The Department has no alternative but to regulate in this instance – so the least burdensome alternative has 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;
- b) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
- c) The consolidation or simplification of compliance or reporting requirements for small businesses;
- d) The establishment of performing standards for small businesses to replace design or operational standards required in the regulation; and
- e) The exemption of small businesses from all or any part of the requirements contained in the

regulation.

(a) 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. Its 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 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 or burdensome process by which the Department can discharge its duty to administer the Clean and Green Act.

(c) 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 responses in paragraphs (a) and (b), above.

(d) 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 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 paragraphs (a) and (b), 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: | July 1, 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: | November 1, 2013 |
| D. The expected effective date of the final-form regulation: | November 1, 2013 |
| E. The date by which compliance with the final-form regulation will be required: | November 1, 2013 |
| 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. This regulation is frequently consulted by (and draws questions and suggestions from) county treasurers, affected landowners, county recorders of deeds and others. This regular interaction will assist the Department in evaluating the efficacy of the regulation and identifying any provisions that could be improved.

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WITH THE LEGISLATIVE REFERENCE
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(Pursuant to Commonwealth Documents Law)

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



By: _____
(Deputy Attorney General)

JUL 09 2013

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)

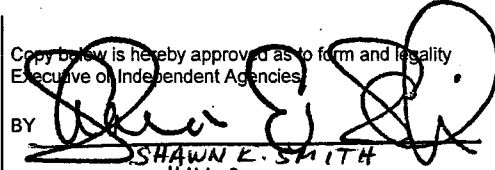
DOCUMENT/FISCAL NOTE NO. 2-159

DATE OF ADOPTION April 24, 2013

BY George D Greig
GEORGE D GREIG

TITLE
SECRETARY
Pennsylvania Department of Agriculture

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



BY _____
SHAWN E. SMITH
JUN 25 2013

DATE OF APPROVAL

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

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

Notice of Proposed Rulemaking

**Title 7 – AGRICULTURE
Chapter 137b**

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

Title 7 – AGRICULTURE

DEPARTMENT OF AGRICULTURE

[7 PA. CODE CH. 137b]

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

The Department of Agriculture (Department) proposes to amend Title 7 of the Pennsylvania Code, 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 shall 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 proposed regulations are 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 Proposed Regulations

The Department offers the proposed regulations to: (1) add new definitions and make revisions to implement the most recent amendments to the Act, which were 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; (2) add language to resolve questions that the Department has encountered in its administration of the Act and its attendant regulations; (3) define several commonly-used terms to help avoid confusion and create a more uniform interpretation and application of the Act and its regulations; (4) provide new language describing how “farmstead land” is to be enrolled and assessed; (5) address the types of recreational activities that can be conducted upon enrolled land without adverse financial consequences for the landowner; and (6) correct several mistakes in 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 proposed regulations, and that they are otherwise consistent with Executive Order 1996-1, “Regulatory Review and Promulgation.”

Summary of the Proposed Regulations

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

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

Proposed § 137b.13 (relating to agricultural reserve) and proposed § 137b.14 (relating to forest reserve) add language to reflect changes wrought by Act 88 of 2010, which addresses the operation and impact of certain alternative energy systems on enrolled agricultural reserve and forest reserve land.

Proposed § 137b.15 (relating to inclusion of farmstead land) adds 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. It also adds language implementing new statutory language (added by Act 235 of 2004) 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 § 137b.51 (relating to assessment procedures) adds new language to help implement the changes made to the Act by Act 235 of 2004 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 of 2010 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 reenrolled for preferential assessment by a successor landowner. Proposed § 137b.52 (relating to duration of preferential assessment) is revised to explain these new changes.

Act 190 of 2012 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 one-half acre or less of land, no utilities or new buildings are required and the majority of these products are produced on the farm. Proposed § 137b.72 (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.

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. 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 two years for pipe storage yards – a use that facilitates coal bed methane extraction. This provision tracks with a new provision added to the Act by Act 88 of 2010.

Act 34 of 2011 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 *et seq.*). 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 of 2010 also 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 of 2004 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) helps clarify this statutory language.

Proposed § 137b.89 (relating to calculation of roll-back taxes) corrects the mathematical charts pursuant to 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 Likely to be Affected

The proposed regulations promote the efficient, uniform, Statewide administration of the Act. They update and supplant outdated and inadequate provisions, and implement 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 these regulations, the provisions of the Act - rather than the provisions of the proposed regulations – drive these impacts.

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

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

Political Subdivisions

The proposed regulations 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 regulation. Local taxing bodies may realize an increase in tax revenue in those counties that (pursuant to Act 235 of 2004) assess "farmstead land" on enrolled tracts of agricultural reserve or forest reserve land at its market value.

Private Sector

The proposed regulations will have no 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 regulation will not result in an appreciable increase in the paperwork handled by the Department.

Effective Date

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

Sunset Date

There is no sunset date for the proposed rulemaking. The Department will review the efficacy of this regulation on an ongoing basis.

Public Comment Period / Contact Person

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

Regulatory Review

The Department submitted a copy of the proposed regulation to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Standing Committees on Agriculture and Rural Affairs on July 19, 2013, in accordance with section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)). The Department also provided IRRC and the Committees a detailed Regulatory Analysis Form prepared by the Department in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available to the public upon request.

If IRRC has an objection to any portion of the proposed regulation, it must so notify the Department within 30 days of the close of the public comment period.

The notification shall specify the regulatory criteria that have not been met by that portion. The Regulatory Review Act sets forth detailed procedures for review of these objections by the Department, the General Assembly and the Governor prior to the final publication of the proposed regulation.

GEORGE D. GREIG, *Secretary*

Annex "A"

Title 7. Agriculture

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

GENERAL PROVISIONS

Sec.

- 137b.1. Purpose.
- 137b.2. Definitions.
- 137b.3. Responsibilities of the Department.
- 137b.4. Contacting the Department.

ELIGIBLE LAND

- 137b.11. General.
- 137b.12. Agricultural use.
- 137b.13. Agricultural reserve.
- 137b.14. Forest reserve.
- 137b.15. Inclusion of farmstead land.
- 137b.16. Residence not required.
- 137b.17. Common ownership required.
- 137b.18. County-imposed eligibility requirements.
- 137b.19. Multiple tracts on a single application.
- 137b.20. Inclusion of all contiguous land described in the deed to the tract with respect to which enrollment is sought.
- 137b.21. Exclusion of noncontiguous tract described in a single deed.
- 137b.22. Landowner may include or exclude from the application tracts described in separate deeds.
- 137b.23. Land adjoining preferentially assessed land with common ownership is eligible.
- 137b.24. Ineligible land.
- 137b.25. Multiple land use categories on a single application.
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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:

- (i) Agricultural, apicultural, aquacultural, horticultural, floricultural, silvicultural, viticultural and dairy products.
- (ii) Pasture.
- (iii) Livestock and the products thereof.
- (iv) Ranch-raised furbearing animals and the products thereof.
- (v) Poultry and the products of poultry.
- (vi) Products commonly raised or produced on farms which are intended for human consumption or are transported or intended to be transported in commerce.
- (vii) Processed or manufactured products of products commonly raised or produced on farms which are intended for human consumption or are transported or intended to be transported in commerce.
- (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 any 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.

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

(ii) The term includes a woodlot.

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

(iv) The term includes any 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 – 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. The term includes, but is not limited to, corn mazes, farm tours, and hay rides. 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.

* * *

Change of use—The alteration of enrolled land such that it is no longer agricultural use, agricultural reserve or forest reserve land. The term does not include the following:

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

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

(iii) 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.

* * *

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

* * *

County commissioners – The Board of County Commissioners or other similar body in home rule charter counties.

* * *

Division by conveyance or other action of the owner—When used in the context of a separation or a split-off, the term refers to a conveyance, a subdivision, a land development plan or comparable plan required by a local government unit, or any 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. The term does not include:

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

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

(iii) 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.

* * *

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 any 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.

* * *

Noncoal Surface Mining Conservation and Reclamation Act—The act of December 19, 1984 (P.L. 1093, No. 219)(52 P.S. § 3301 *et seq.*).

* * *

Oil and Gas Act--The act of December 19, 1984 (P.L. 1140, No. 223) (58 P.S. § 601.101 *et seq.*).

Outdoor recreation--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 described in § 137b.64 (relating to agricultural reserve land to be open to the public)). The term does not include the operation of motor vehicles, other than under either of the following circumstances:

(i) Where necessary to remove an animal which has been hunted.

(ii) Where 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.

* * *

Recreational activity – 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:

(A) Over an existing lane and incidental to an activity described in paragraphs (i) through (x); or

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

* * *

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.

* * *

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

* * *

Tier I energy source--A Tier I alternative energy source, as defined in section 2 of the act of November 30, 2004 (P.L. 1672, No. 213), known as the "Alternative Energy Portfolio Standards Act."

* * *

§ 137b.3. Responsibilities of the Department.

(a) *General.* The Department's responsibilities are to provide the use values described in section 4.1 of the act (72 P. S. § 5490.4a) by May 1 of each year and to provide the forms and regulations necessary to promote the efficient, uniform Statewide administration of the act.

(b) *Information gathering.* The Department will collect information from county assessors for each calendar year to [insure] 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 will include the information required in § 137b.112 (relating to submission of information to the department).

(c) *Educational outreach.* The Department will conduct an educational outreach effort on matters related to the administration and interpretation of the act and this chapter.

§ 137b.4. Contacting the Department.

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

Pennsylvania Department of Agriculture

Bureau of Farmland 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 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) Is 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 only 20 acres are pasture land and 30 acres are wooded. Twenty acres of land is in agricultural use, and 30 acres is 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, and 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, and 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 any 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 any 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. 1 acre of that 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. 1 acre of that 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. 1 acre of that 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. 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.

(a) *General.* A landowner seeking preferential assessment under the act shall apply to the county by June 1. If the application is approved by the county assessor, preferential

assessment shall be effective as of the commencement of the tax year of each taxing body commencing in the calendar year immediately following the application deadline.

Example 1: A landowner applies for preferential assessment on or before June 1, 2001.

The application is subsequently approved. Preferential assessment shall be effective as of the commencement of the tax year for each taxing body in calendar year 2002.

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

(b) *Exception: years in which a county implements countywide reassessment.* In those years when a county implements a countywide reassessment, or a countywide reassessment of enrolled land, the application deadline shall be extended to either a date 30 days after the [final] 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.

(a) *Use values and land use subcategories to be provided by the Department.* The Department will determine the land use subcategories and provide county assessors use values for each land use subcategory. The Department will provide these land use subcategories and use values to each county assessor by May 1 of each year.

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

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

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

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

(1) For each application for preferential assessment, the county assessor shall establish a total use value for land in agricultural use [and agricultural reserve], including farmstead land, 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, this total use value shall include 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. This total use value shall include 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 (72 P.S. § 5490.3(g)(2)).

(d) *Determining preferential assessment.* The preferential assessment of land is determined by multiplying the number of acres in each land use subcategory by the use value for that particular land use subcategory, adding these products and multiplying the total by the county's established predetermined ratio. The Department will establish land use subcategories as part of the procedure to establish use values.

(e) *Option of county assessors to establish and use lower use values.* A county assessor may establish use values for land use subcategories that are less than the use values established by the Department for those same land use subcategories. A county assessor may use these lower use values in determining preferential assessments under the act. Regardless of whether the county assessor applies use values established by the Department or lower use values established by the county assessor, the county assessor shall apply the use values uniformly when calculating or recalculating preferential assessments, and shall apply these use values to the same land use subcategories as established by the Department. Calculation and recalculation of preferential assessments shall be made in accordance with § 137b.53

(relating to calculation and recalculation of preferential assessment). A county assessor may not, under any circumstances, establish or apply use values that are higher than those use values established by the Department.

(f) *Option of county assessors to select between county-established use values and use values provided by the Department.* When a county assessor has established use values for 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 accurate:

(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 (72 P.S. § 5490.3(g)(1)).

(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 accurate:

(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 (72 P.S. § 5490.3(g)(2)).

(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. 51 acres (a majority of the land in the application for preferential assessment) is enrolled as agricultural use land. 49 acres is enrolled as agricultural reserve land, or forest reserve land, or some 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. 51 acres (a majority of the land in the application for preferential assessment) is enrolled as agricultural reserve land, or forest reserve land, or some combination of the two. 49 acres is 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 shall not receive preferential (agricultural use value) assessment.

Example 5: Landowner has 100 acres enrolled for preferential assessment. The acreage consists of two non-contiguous parcels of 50 acres each. One 50-acre tract is enrolled as forest reserve land, agricultural use land, agricultural reserve land, or any 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 some 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 some 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 shall not receive preferential (agricultural use value) assessment.

Example 7: Any of the six fact situations described in Examples 1 through 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 (72 P.S. § 5490.3(g)(1)). 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 set forth 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.

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

(b) *[No termination of preferential assessment without change of use.* An owner of enrolled land may not unilaterally terminate or waive the preferential assessment of enrolled land. Preferential assessment terminates as of the change of use of the land to something other than agricultural use, agricultural reserve or forest reserve. It is this event--the change of use of the enrolled land to something other than agricultural use, agricultural reserve or forest reserve--that terminates preferential assessment and triggers liability for roll-back taxes and interest.] Removal of land from preferential assessment.

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

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

(ii) the entire tract or tracts enrolled on a single application for preferential assessment is removed from preferential assessment; and

(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) shall not be eligible to be subsequently reenrolled in preferential assessment by the same landowner.

(3) Nothing in this subsection, or in section 8.1 of the act (72 P.S. § 5490.8a), prohibits a landowner whose land was terminated from preferential assessment under authority other than this subsection or section 8.1 of the act from reenrolling the land in preferential assessment.

* * *

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

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

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

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

(2) Establish a base year for preferential assessment of enrolled land in the county, and use this base year in calculating the preferential assessment of enrolled land in the county, unless recalculation is required under subsection (c), (d), (e) or (f).

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

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

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

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

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] farmstead land has not been assessed as required under § 137b.51.

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

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

* * *

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:

(1) The commercial activity or rural enterprise does not permanently impede or otherwise interfere with the production of an agricultural commodity on the remainder of the enrolled land.

(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 one half acre or less of enrolled land is used for direct commercial sales of agriculturally related products, no roll-back taxes or interest shall be due and no breach of preferential assessment shall be deemed to have occurred on that tract if:

(i) at least 50% of the agriculturally related products are produced on the enrolled land; and

(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 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:

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

(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:

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

(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 paragraph (a)(2), except for the following:

(i) land devoted to subsurface transmission or gathering lines shall not be subject to roll-back tax; and

(ii) notwithstanding any other provision in this section, no roll-back tax shall 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 such activities pursuant to an instrument, conveyance or other vesting of the rights if the transfer of the rights occurred:

(A) before the land was enrolled for preferential assessment under this act; and

(B) before December 26, 2010.

Example 1: A 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. No roll-back taxes shall 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. No roll-back taxes shall 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 shall be 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 212 of the Oil and Gas Act (58 P.S. § 601.212) and 25 Pa. Code § 78.121 (relating to annual production report) or its subsequent version, 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 this well production report within ten

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, by writing, report the circumstances (activities and structures) that render some 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. Such appurtenant facilities might include a pond used to support hydrofracturing, a compressor station, above-ground 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 201 of the Oil and Gas Act (58 P.S. § 601.201).

(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 set forth in paragraph (a)(2) shall 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 subparagraph (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 would not be 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, however, 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 shall 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 subsection is permitted to a landowner, and a copy of the lease shall be provided to the county assessor within ten days of its signing by the landowner. The lease shall not exceed two years and shall 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 shall 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.

(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.

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

(2) 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 shall include the foundation of the wind turbine and the area of the surface covered by the appurtenant structures, including, but not limited to, 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 shall not invalidate the preferential assessment of land which is not so utilized, and such land shall continue to receive preferential assessment if it continues to meet the requirements of section 3 of the act. 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 no later than thirty days following the commencement 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.

(3) This section does not apply to land devoted to the development and operation of an alternative energy system where 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 (relating to agricultural use), § 137b.13 (relating to agricultural reserve) and § 137b.14 (relating to 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] 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 any one of the following:

- (1) A school district.
- (2) A municipality.
- (3) A county.
- (4) A volunteer fire company.
- (5) A volunteer ambulance service.
- (6) A not-for-profit corporation that qualifies as tax-exempt under section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C.A. § 501(c)(3)), if prior to accepting ownership of the land, the corporation enters into an agreement with the municipality wherein the subject land is located guaranteeing that the land will be used exclusively for recreational purposes, all of which shall be available to the general public free of charge. If the corporation changes the use of all or a portion of the land or charges admission or any other fee for the use or enjoyment of the facilities, the corporation shall immediately become liable for all roll-back taxes and accrued interest previously forgiven.
- (7) A religious organization, if the religious organization uses the land only for construction or regular use as a church, synagogue or other place of worship, including

meeting facilities, parking facilities, housing facilities and other facilities which further the religious purposes of the organization.

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

* * *

§ 137b.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 shall not be 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 shall not be 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.* The provisions of 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. The provisions of 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 all 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 (72 P.S. § 5490.3), in which case the landowner changing the use shall be liable for payment of roll-back taxes on all 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 accurate:

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

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

(3) The total tract (or tracts) split off does not exceed the lesser of 10 acres or 10% of the entire tract of enrolled land. In calculating the total tract or tracts split off, the total shall include the acreage of all tracts that have been 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. Nothing contained herein shall affect any liability for roll-back taxes which may become due under section 6(a.2) of the act (72 P.S. § 5490.6 (a.2)) for changed use within seven years of a separation.

Example 1: Landowner owns 50 acres of enrolled land. Landowner splits off 4 acres in a single year. This split-off would not meet the size requirements in section 6(a.1)(1)(i) of the act. The landowner owes roll-back taxes and interest on the entire 50-acre tract. The

4-acre tract no longer receives preferential assessment. If the 46-acre tract remains in agricultural use, agricultural reserve or forest reserve and continues to meet the requirements of section 3 of the act, preferential assessment would continue with respect to that tract, unless the landowner terminates preferential assessment under section 3(d) of the act (72 P. S. § 5490.3(d)).

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

* * *

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

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

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

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

* * *

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

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

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

(2) With respect to each of these sums, multiply [that sum] 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:

<i>Year</i>	<i>Factor</i>
Current Tax Year	1.00
1 Tax Year Prior	1.06
2 Tax Years Prior	1.12
3 Tax Years Prior	1.18
4 Tax Years Prior	1.24
5 Tax Years Prior	1.30
6 Tax Years Prior	1.36

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

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

<i>Year</i>	<i>Amount Multiplied by Factor</i>
Current Tax Year	\$1,000 x 1.00 = \$1,000
1 Tax Year Prior	\$2,000 x 1.06 = \$2,120
2 Tax Years Prior	\$2,000 x 1.12 = \$2,240

3 Tax Years Prior	$\$2,000 \times 1.18 = \$2,360$
4 Tax Years Prior	$\$2,000 \times 1.24 = \$2,480$
5 Tax Years Prior	$\$2,000 \times 1.30 = \$2,600$
6 Tax Years Prior	$\$2,000 \times 1.36 = \$2,720$

TOTAL ROLL-BACK

TAXES, WITH INTEREST: \$15,520

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

* * *

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

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

(b) *Disposition in an eligible county.*

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

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

(c) *Disposition in a county that is not an eligible county.* If a county is not an eligible county, the county treasurer shall forward the interest portion of the roll-back taxes it collects to the Agricultural Conservation Easement Purchase Fund. The county treasurer shall coordinate with the Department's Bureau of Farmland [Protection] 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, 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 shall include the following information:

(1) The cumulative number of acres of enrolled land in the county, by land use category, as of 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.

* * *



COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE OF GENERAL COUNSEL

July 19, 2013

Independent Regulatory Review Commission
333 Market Street, 14th Floor
Harrisburg, PA 17101

RE: NOTICE OF PROPOSED 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

Dear Sir or Madam:

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

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

The proposed regulation will be published in the August 3, 2013 edition of the *Pennsylvania Bulletin*. If I may be of further information, please advise.

Sincerely,

Dwight Jared Smith
Assistant Counsel

Enclosures

**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


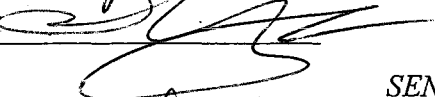
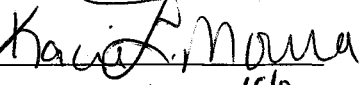
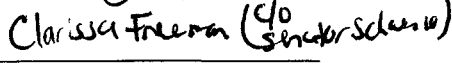

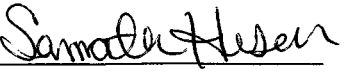
TYPE OF REGULATION

- X Proposed Regulation
- Final Regulation
- Final Regulation with Notice of Proposed Rulemaking Omitted
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor
- Delivery of Tolled Regulation
 - a. With Revisions
 - b. Without Revisions

2013 JUL 19 AM 11:40

**RECEIVED
IRRC**

FILING OF REGULATION

<u>DATE</u>	<u>SIGNATURE</u>	<u>DESIGNATION</u>
		<i>HOUSE COMMITTEE ON AGRICULTURE & RURAL AFFAIRS</i>
7-19-13		MAJORITY CHAIR <u>John Maher</u>
7-19-13		MINORITY CHAIR <u>Joseph Petrarca</u>
		<i>SENATE COMMITTEE ON AGRICULTURE & RURAL AFFAIRS</i>
7-19-13		MAJORITY CHAIR <u>Elder Vogel, Jr.</u>
7-19-13	 (C/O Senator Schaefer)	MINORITY CHAIR <u>Judith Schwank</u>
7-19-13		<i>INDEPENDENT REGULATORY REVIEW COMMISSION</i>
		<i>ATTORNEY GENERAL (for Final Omitted only)</i>
7-19-13		<i>LEGISLATIVE REFERENCE BUREAU (for Proposed only)</i>

July 10, 2013