RULES AND REGULATIONS

Title 7—AGRICULTURE

DEPARTMENT OF AGRICULTURE

[7 PA. CODE CH. 21]

Dog Shelters—Rest Boards and Vinyl Coated Wire

The Department of Agriculture (Department), under the Dog Law (act) (3 P. S. §§ 459-101—459-1202), amends § 21.24 (relating to shelters).

Authority

The Department has the power and authority to adopt this amendment. This authority includes:

(1) The general duty to implement the policy of the act in section 101 of the act (3 P. S. § 459-101) which states this in an act ". . . relating to dogs, regulating the keeping of dogs; providing for the licensing of . . .kennels. . ." and ". . . providing for the protection of dogs . . . ." The Department has a duty to assure the proper and humane care of dogs kept in captivity.

(2) The specific authority conferred by section 207(b) of the act (3 P. S. § 459-207(b)), which confers upon the Department the power to promulgate regulations regarding the maintenance of kennels. It states, "(A)ll kennels shall be maintained in a sanitary and humane condition in accordance with standards and sanitary codes promulgated by the secretary."

Need for the Amendment

Current § 21.24(d) became effective April 12, 1996. The current regulation requires kennels that house dogs in a primary enclosure with wire flooring to provide a solid draft free resting surface to allow the dogs to rest comfortably. The regulation was originally enacted to protect the health and safety of dogs, assure their humane treatment and to bring the Department into closer compliance with the Federal regulations regarding the sheltering of dogs in kennels.

The Department vigorously enforced the regulation and all kennels with wire or mesh flooring were brought into compliance with the rest board requirements. However, the Department soon began receiving complaints concerning the health of dogs deteriorating due to fecal matter and urine collecting on the rest boards. It was impossible for kennel owners to keep the rest boards sanitized at all times, thus creating unsanitary conditions for the dogs. Illness and disease were occurring at a higher rate with rest boards in place than had occurred prior to the enactment of the regulations requiring rest boards. In addition, the Federal regulations were changed, setting aside the rest board requirement.

This amendment will allow for the removal of rest boards, which will address the safety and health issues that have arisen subsequent to their use. At the same time, the amendment addresses the comfort, safety and humane treatment of the dogs by requiring that a dog may be sheltered in a primary enclosure having metal strand flooring provided the metal strand flooring is coated with a vinyl type coating. The coated metal strand flooring shall be kept in good repair and be made of mesh construction that does not allow the dog's feet to pass through any opening in the floor and does not otherwise cause injury to the dog. The coated metal strand flooring shall be of sufficient diameter (gauge) to provide a completely rigid floor area sufficient to support the weight of dog housed in the enclosure so that the metal strand floor does not bend or sag from the weight of the dog. The amendment requires a kennel owner to install vinyl coated metal strand flooring before removing any rest boards. Kennel owners may keep rest boards in place, but will still be required to install vinyl coated metal strand flooring meeting the standards of the regulation and will be required to keep the rest boards sanitized.

This amendment is intended to update the Department's policy regarding the sheltering of dogs in kennels. This amendment is consistent with the Department's duties under the act. In addition, the amendment is very similar, although slightly more stringent than, the Federal regulations regarding the sheltering of dogs in kennels, which are set forth in 9 CFR 3.6(a)(xii) (relating to primary enclosures). In the interest of continuing to carry out the policy of the act, to assure the health, safety and humane treatment of dogs, the Department adopts this amendment to effectuate the changes referred to in this Preamble. In summary, the Department is satisfied there is a need for the amendment, and that it is consistent with Executive Order 1996-1, "Regulatory Review and Promulgation."

Comments

Notice of proposed rulemaking was published at 30 Pa.B. 3660 (July 22, 2000), and provided for a 30-day public comment period. In accordance with section 902 of the act (3 P. S. § 459-902) the Department held a public hearing on October 12, 2000, with regard to the amendment. Notice of the public hearing was published at 30 Pa.B. 5152 (October 7, 2000). In addition, commentators, Dog Law Advisory Board (Board) members and other interested parties, such as those who normally attend the public meetings of the Board were notified of the public hearing by regular mail. An official record of the public hearing is available for public inspection.

Comments were received from the Independent Regulatory Review Commission (IRRC); the Honorable Stewart J. Greenleaf; the Honorable Noah W. Wenger; Johnna L. Seeton, Chairperson, Pennsylvania Legislative Animal Network; Dotsie Keith, Legislative Chairperson, Pennsylvania Federation of Dog Clubs and Anne Irwin, President, Federated Humane Societies of Pennsylvania.

Comment: IRRC commented regarding the minimum standards for wire flooring. IRRC had six concerns related to the reasonableness, clarity and consistency with existing regulations of the proposed requirements for wire flooring.

First, IRRC commented the proposed amendment requires the use of vinyl-coated flooring in primary enclosures if a kennel removes rest boards. IRRC noted that the Federal regulation in 9 CFR 3.6 allows for the removal of rest boards and requires that the flooring be "constructed of metal strands greater than 1/8 of an inch in diameter (9 gauge) or be coated with a material such as plastic or fiberglass." IRRC suggested that rather than write a different regulation, the Department should consider incorporating the Federal regulations by reference.

IRRC's second comment relating to the minimum standards for wire flooring concerned the recommendations of four commentators that the regulation should include a minimum standard of greater than 1/8 of an inch in

diameter for vinyl-coated metal strands. IRRC specifically commented that such a standard would exceed the Federal regulations, which does not require a coating for strands greater than 1/8 of an inch in diameter. IRRC questioned whether the Department had a compelling reason that justified exceeding the minimum standards of the Federal regulations.

IRRC's third comment with regard to the minimum standards for wire flooring concerned the clarity of the regulation. IRRC stated that § 21.24(d) is a long subsection (containing seven sentences) and that four of the sentences contain six requirements relating to minimum standards for metal strand flooring. IRRC suggested these requirements would be "... easier to understand if they were set forth clearly as a list in the proposed regulation."

IRRC's fourth comment concerning the minimum standards for wire flooring concerned clarity as well. Section 21.24(d) states that the metal strand flooring shall provide a "rigid floor area" that "does not bend or sag." IRRC questioned whether any deviation from a straight line would constitute a sag and whether the floor must be completely rigid, or if some degree of variation or flex is allowable. IRRC commented the Department should clarify this requirement.

IRRC's fifth comment related to clarifying the language regarding a draft free area. IRRC suggested the Department should clarify whether this provision applied to the entire primary enclosure or only part of the enclosure area or an attached area accessible to the dog.

IRRC's sixth comment with regard to the minimum standards for wire flooring was that the amendment should be consistent with the Federal regulations and use the words "metal strands" instead of "wire."

Response: With regard to IRRC's first comment related to the minimum standards for wire flooring, the Department believes that it cannot merely reference the Federal regulation in 9 CFR 3.6. The Department has been working for 3 years with the Board, members of the regulated community and other interested persons regarding the proposed amendment. The Department even established a special Rest Board Committee (Committee) to discuss the current proposed amendment. During those discussions the most heated debate was with regard to the removal of the rest boards. A compromise was eventually struck leading to an agreement to allow for the removal of rest boards, so long as all primary enclosures having wire flooring would be required to have coated wire flooring. The Department realizes the amended regulation would be more stringent than the current Federal regulation, which allows metal strand flooring to be uncoated, so long as it is 1/8 of an inch in diameter. However, given the compromise struck between the parties interested in and affected by the proposed amendment, the Department is unable to reference the Federal regulation in its entirety and feels it would be confusing to reference only part of the Federal regulation or attempt to explain an exception to the Federal regulation. In addition, the vinyl coating does add additional protection for the dog and thereby creates a more healthy and humane environment for the dog. As an additional point of clarity, as these regulations have progressed it has become apparent that the groups commenting on the proposed amendments would prefer that the words "wire flooring," which is in the current regulation, be replace with the words "metal strand" or "metal rod." The Department addresses this issue in its response to IRRC's second comment regarding minimum standards for wire flooring.

In response to IRRC's second comment regarding the minimum standards for wire flooring, after consideration of the official comments, a public meeting on the matter and consideration of testimony entered into the record at a public hearing held to discuss the proposed amendment, the Department finds no compelling reason to exceed the standards of the Federal regulation by requiring all coated metal strands to be greater than 1/8 inch in diameter. The Department holds this belief for the following reasons:

(1) The amendment requires the coated metal strand flooring "...must be constructed of sufficient diameter (gauge) to provide a completely rigid floor area sufficient to support the weight of dog(s) housed in the enclosure such that the metal strand floor does not bend or sag from the weight of the dog(s)." The commentators reason for requesting the use of the term "metal rod" was because "metal rod" denotes a metal strand that is greater than 1/8 of an inch. The commentators believe that by requiring the metal strands to be greater than 1/8 of an inch the coated metal strand flooring is guaranteed not to bend or sag, or will be less likely to bend or sag and therefore provide a more rigid surface for the dog. The language of the amended regulation addresses the commentators concerns regarding a completely rigid surface by stating the diameter of the metal strand must be of sufficient diameter (gauge) that it provides a rigid surface and does not allow the metal strand floor to bend or sag under the weight of the dog. There is a zero tolerance for bending or sagging no matter the size or number of dogs contained in the enclosure. In addition, for the Department to require both greater than 1/8 of an inch and a metal strand of sufficient diameter (gauge) to assure a rigid surface that does not bend or sag would be redundant and could lead to problems with enforcement (that is, the question which standard is it?).

(2) Requiring all coated metal strand flooring to be 1/8 inch or greater in diameter would lead to enforcement problems, greater expense and much more time spent inspecting each individual kennel and prosecuting each violation and would not add any benefit that the current language of the regulation does not already address. It would be impossible for the Department to determine, with a coated metal strand, whether the metal strand itself is 1/8 of an inch or greater in diameter without destroying the vinyl coating on the metal strand. The coating on the metal strand would then have to be replaced in order to be in compliance with the regulations. In addition, the Department, to enforce a violation, would have to test all of the enclosures having coated metal strands. The dog law wardens would have to carry metal gauges and those gauges would have to be calibrated and certified as accurate. The accuracy would have to be proven when prosecuting each violation.

(3) Metal strands of 1/8 inch or greater do not guarantee the strength of a metal strand floor. Many factors, such as the construction or pattern of the metal strand flooring, the tensile strength of the material used in the metal strand flooring and the number of welds, determines the actual strength and rigidity of a metal strand floor. The current language of the regulation is broad enough to allow the Department to require stronger metal strand flooring be used in any primary enclosure where the current metal strand flooring is not of sufficient strength to support the weight of the dog with out

bending or sagging. The Department, under the current language, does not have to prove diameter (gauge), tensil strength or improper metal strand floor construction in order to enforce a violation.

(4) The amendment would be much more stringent than the Federal regulation and would place an undue burden on the regulated community. The Department will however change the phrase "wire flooring" to "metal strand flooring" throughout the amendment. The Department does this in response to comments in the proposed stage, testimony at a public hearing and to make the Department's regulations more consistent with the Federal regulation.

In response to IRRC's third comment concerning the clarity of the amendment and suggesting the Department set forth the six requirements of the section in a list, the Department has reformatted the section and listed the requirements.

In response to IRRC's fourth comment questioning whether any deviation from a straight line would constitute a sag and whether the metal strand floor must be completely rigid, or if some degree of variation or flex is allowable, the Department's response is that the flooring shall be completely rigid and no bend or sag is allowed. Although the Department believes that the current language of the regulation does denote that no bending or sagging is allowed and the language is consistent with and at least as comprehensive as the Federal regulation in 9 CFR 3.6(a)(2)(xii), the Department will add the word "completely" before the word "rigid" to the language of the amendment.

IRRC's fifth comment related to clarifying the language regarding a draft free area. IRRC suggested the Department should clarify whether this provision applied to the entire primary enclosure or only part of the enclosure area or an attached area accessible to the dog. The draft free area does not apply to the entire primary enclosure. The draft free area provided must be large enough to house all of the occupants of the primary enclosure at the same time and its purpose is to protect the dogs from inclement weather. The Department has added the language ". . . draft free area that protects the dog(s) from inclement weather and is large enough to hold all occupants . . .". The Department believes this language along with the current language of the amendment is sufficiently clear.

IRRC's sixth comment with regard to the minimum standards for wire flooring was that the amendment should be consistent with the Federal regulation and use the words "metal strands" instead of "wire." The Department agrees and has changed the word "wire" to "metal strand" throughout the amendment.

Comment: IRRC commented regarding the optional rest board requirement in § 21.24(d). The requirement states ". . . the solid resting surface shall be constructed of impervious material." IRRC commented this provision lacks sufficient detail in two ways: (1) § 21.24(d) should require that rest boards, if used, shall be kept sanitized; and (2) The Department should clarify what types of material are considered to be "impervious." IRRC suggested the Department should state that rest boards, if used, shall be kept sanitary or should reference the sanitation requirements of § 21.29 (relating to sanitation). In addition, IRRC suggested the Department should include examples of impervious materials in the amendment or reference the definition of "impervious surface" in the Federal regulations in 9 CFR 1.1 (relating to definitions).

Response: The Department agrees with IRRC's comment and has added language that references the sanitary requirements in § 21.29. In addition, the Department has added language that explains that rest boards shall be constructed of a material that is impervious to ". . . water or moisture . . . ."

Comment: IRRC commented with regard to four commentators' suggestion that the amendment continue to require a rest board to ensure adequate protection for small dogs, puppies and toy breeds. The commentator's concerns were that the rest boards are a guarantee of a comfortable and safe place to walk or stand for small dogs. IRRC had the following three questions related to this concern:

(1) Is there a certain type of mesh construction for vinyl-coated metal strand flooring that will provide the same or similar protection as a rest board.

(2) If there is, should the regulation specifically require this type of metal strand flooring for enclosures that house small breeds or breeding dogs and their offspring.

(3) If not, should the regulation continue to require rest boards in the enclosures for these dogs?

Response: The Department considered the suggestions of the commentators and decided there should be no specific requirement to provide rest boards for small dogs, puppies and toy breeds. The Department reached this conclusion based on the following reasons:

(1) The language would be inconsistent with the Federal regulation and would be inconsistent with the very reason the United States Department of Agriculture (USDA) and this Department decided to rescind the rest board requirement. The USDA and the Department decided to rescind the rest board requirement based on information that rest boards were causing an increase in health problems and disease among dogs. Dogs were lying in or coming in contact with their own urine and feces, as well as that of other dogs. This exposure was causing health problems and exposing dogs to potentially fatal diseases such as parvo virus. To require rest boards for certain breeds or types of dogs would defeat the very purpose of the amendment.

(2) The language of the current regulation protects small dogs, puppies and toy breeds. The metal strand flooring shall be of construction ". . . that it does not allow the dog's feet to pass through any opening in the floor and does not otherwise cause injury to the dog." In addition, the dog shall be provided with a draft free area that protects them from inclement weather. These measures are intended to promote a healthy, safe, comfortable and humane environment for the dog.

(3) The mesh construction currently being used by kennels has shown itself to be protective of the dog's feet and does not otherwise cause injury to the dog.

(4) The kennel owners shall use the appropriately sized mesh construction metal strand flooring to assure the dog's feet do not pass through the openings and to assure the safety and health of the dog no matter what the size of the dog. A violation of this can lead to prosecution by the Department.

(5) There is no one construction pattern or sized opening that will assure the health and safety of all dogs, no matter their size or breed. Even the same breed of dog grows at different rates and grows to be different sizes. It is impossible to set a standard size opening or pattern of construction for each individual dog breed or type.

(6) The language of the amendment is broad enough to allow flexibility as new patterns or designs of metal strand flooring are introduced into the market place, but still allow for enforcement if metal strand flooring injures a dog in any manner.

(7) The size of the opening, the pattern or construction of the metal strand flooring shall account not only for the size of the dog and the dog's feet but shall also be of sufficient size or construction to allow the feces of the dog to pass through the openings. To require a small opening or tight mesh construction (to simulate a rest board) would lead to the same sanitation and health problems that were presented by the rest board requirement.

(8) To carve out the exception for small dogs, puppies and toy breeds, very specific definitions of breed, size of dog, paw size and age at which each individual breed of dog ceases to be a puppy would have to be formulated. This would lead to an increase in cost of enforcement and a decrease in the efficiency of enforcement. The requirement would add a myriad of extraneous factors which the Department would have to prove in order to successfully prosecute a violation. In addition, the requirement would be more stringent than the Federal regulations.

Given the reasons delineated, the Department believes that the requirement would not lead to an improvement in the health, safety or comfort of dogs sheltered in a primary enclosure having metal strand flooring and that there is no compelling reason to place an additional burden on the regulated community.

Comment: The Pennsylvania Legislative Animal Network (PLAN), the Pennsylvania Federation of Dog Clubs (PFDC), the Federated Humane Societies of Pennsylvania (FSHP) and the Honorable Senator Stewart J. Greenleaf all commented on and made suggestion regarding the following three issues:

(1) Change the word "wire" through out § 21.24(d) to "metal strand" or "metal rod." PLAN commented that this would be consistent with the Federal Animal Welfare Act and the coinciding regulations in 9 CFR 3.6(a)(2)(xii).

(2) Rest boards should be required for small puppies and toy breeds.

(3) The Department should set a minimum diameter (gauge) for the coated metal strand flooring. Three of these commentators suggested the minimum diameter (gauge) should be 1/8 inch or greater. The commentators required the metal strands to be vinyl coated no matter what the diameter (gauge) of the metal stands.

Response: In response to the first comment, the Department agrees with changing the word "wire" to "metal strand" to be consistent with the Federal regulation. The Department has changed the word "wire" to "metal strand" throughout the amendment.

In response to the second comment, the Department disagrees with carving out an exception for small dogs, puppies and toy breeds for the following reasons:

(1) The language would be inconsistent with the Federal regulation and would be inconsistent with the very reason the USDA and the Department decided to rescind the rest board requirement. The USDA and the Department decided to rescind the rest board requirement based on information that rest boards were causing an increase in health problems and disease among dogs. Dogs were lying in, or coming in contact with, their own urine and feces, as well as that of other dogs. This exposure was causing health problems and exposing dogs to potentially fatal diseases such as parvo virus. To require rest boards for certain breeds or types of dogs would defeat the very purpose of the amendment.

(2) The language of the current regulation protects small dogs, puppies and toy breeds. The metal strand flooring shall be of construction ". . . that it does not allow the dog's feet to pass through any opening in the floor and does not otherwise cause injury to the dog." In addition, the dog shall be provided with a draft free area that protects them from inclement weather. These measures are intended to promote a healthy, safe, comfortable and humane environment for the dog.

(3) The mesh construction currently being used by kennels has shown itself to be protective of the dog's feet and does not otherwise cause injury to the dog.

(4) The kennel owners shall use the appropriately sized mesh construction metal strand flooring to assure the dog's feet do not pass through the openings and to assure the safety and health of the dog no matter what the size of the dog. A violation of this can lead to prosecution by the Department.

(5) There is no one construction pattern or sized opening that will assure the health and safety of all dogs no matter their size or breed. Even the same breed of dog grows at different rates and grows to be different sizes. It is impossible to set a standard size opening or pattern of construction for each individual dog breed or type. (6) The language of the amendment is broad enough to allow flexibility as new patterns or designs of metal strand flooring are introduced into the market place, but still allow for enforcement if metal strand flooring injures a dog in any manner.

(7) The size of the opening, the pattern or construction of the metal strand flooring must account not only for the size of the dog and the dog's feet but shall also be of sufficient size or construction to allow the feces of the dog to pass through the openings. To require a small opening or tight mesh construction (to simulate a rest board) would lead to the same sanitation and health problems that were presented by the rest board requirement.

(8) To carve out the exception for small dogs, puppies and toy breeds very specific definitions of breed, size of dog, paw size and age at which each individual breed of dog ceases to be a puppy would have to be formulated. This would lead to an increase in cost of enforcement and a decrease in the efficiency of enforcement. That requirement would add a myriad of extraneous factors which the Department would have to prove to successfully prosecute a violation. In addition, that requirement would be more stringent than the Federal regulations.

Given the reasons delineated, the Department believes that that requirement would not lead to an improvement in the health, safety or comfort of dogs sheltered in a primary enclosure having metal strand flooring and that there is no compelling reason to place that additional burden on the regulated community.

In response to the third comment, after consideration of the official comments, a public meeting on the matter and consideration of testimony entered into the record at a public hearing held to discuss the proposed amendments, the Department finds no compelling reason to exceed the standards of the Federal regulation by requiring the coated metal strands to be greater than 1/8 inch in diameter. The Department holds this belief for the following reasons:

(1) The amendment requires the coated metal strand flooring to ". . . be constructed of sufficient diameter

(gauge) to provide a completely rigid floor area sufficient to support the weight of dog housed in the enclosure such that the metal strand flooring does not bend or sag for the weight of the dog." The commentators reason for requesting the use of the term "metal rod" was because metal rod denotes a metal strand that is greater than 1/8 of an inch. The commentators believe that by requiring the metal strands to be greater than 1/8 of an inch, the coated metal strand flooring is guaranteed not to bend or sag, or will be less likely to bend or sag and therefore provide a more rigid surface for the dog. The language of the amended regulation addresses the commentators concerns regarding a rigid surface by stating the diameter of the metal strand must be of sufficient diameter (gauge) that it provides a rigid surface and does not allow the metal strand floor to bend or sag under the weight of the dog. There is a zero tolerance for bending or sagging, no matter the size or number of dogs contained in the enclosure. In addition, for the Department to require both greater than 1/8 of an inch and a metal strand of sufficient diameter (gauge) to assure a rigid surface that does not bend or sag would be redundant and could lead to problems with enforcement (that is, the question which standard is it?).

(2) Requiring all coated metal strand flooring to be 1/8 inch or greater in diameter would lead to enforcement problems, greater expense and much more time spent inspecting each individual kennel and prosecuting each violation and would not add any benefit that the current language of the regulation does not already address. It would be impossible for the Department to determine, with a coated metal strand, whether the metal strand itself is 1/8 of an inch or greater in diameter without destroying the vinyl coating on the metal strand. The coating on the metal strand would then have to be replaced to be in compliance with the regulations. In addition, the Department to enforce a violation would have to test all of the enclosures having coated metal strands. The dog law wardens would have to carry metal gauges and those gauges would have to be calibrated and certified as accurate. The accuracy would have to be proven when prosecuting each violation.

(3) Metal strands of 1/8 inch or greater do not guarantee the strength of a metal strand floor. Many factors, such as the construction or pattern of the metal strand flooring, the tensile strength of the material used in the metal strand flooring and the number of welds, determines the actual strength and rigidity of a metal strand floor. The current language of the regulation is broad enough to allow the Department to require stronger metal strand flooring be used in any primary enclosure where the current metal strand flooring is not of sufficient strength to support the weight of the dog with out bending or sagging. The Department, under the current language, does not have to prove diameter (gauge), tensil strength or improper metal strand structure to enforce a violation.

(4) The amendment would be much more stringent than the Federal regulation and would place an undue burden on the regulated community.

The Department will however change the phrase "wire flooring" to "metal strand flooring" throughout the amendment. The Department does this in response to comments in the proposed stage, testimony at a public hearing and to make the Department's regulation more consistent with the Federal regulation.

Comment: PLAN and PFDC both expressed concern that neither the Committee nor the Board had been given an opportunity to review the final-form regulation before it was printed in the *Pennsylvania Bulletin*.

Response: This amendment has been under review and discussion for 3 years. The Department formed the Committee to find a solution to the problems caused by the use of rest boards and to try to forge a compromise on the issue of rescinding the rest board requirement. The topic was discussed at numerous meetings of the Board and the Committee. During an August 1999, meeting of the Board, the proposed language of the amendment was read and the Department believed the language was agreed to by members of the Board and Committee. The Department then published notice of the proposed rulemaking at 30 Pa.B. 3660. At the time of publication, the Department was unaware of the disagreement with regard to using the word "metal strand" or "metal rod" instead of "wire" and with regard to the demand to specify a specific diameter (gauge) of the metal strand. The Department, subsequent to publication of the proposed rulemaking, held another public meeting on the proposed rulemaking and a public hearing on the matter. The Department has considered the input received in the official comments to the proposed rulemaking and at the public meeting and hearing on the proposed rulemaking.

Comment: The FSHP commented that except for the issues of changing the word "wire" to "metal strand" or "metal rod," delineating a specific diameter (gauge) for the "metal strand" and continuing to require rest boards for small dogs, puppies and toy breeds, that the other language in the proposed amendment seemed to reflect the concerns of the Committee, particularly the requirement that the wire or rod be coated and that the floors be strong enough so they do not sag.

Response: The Department appreciates the support of the FSHP with regard to the other language contained in the amendment. The Department has changed the word "wire" to "metal strand" throughout the final-form regulation. In addition, the Department has already set forth and responded to the FSHP's comments regarding delineating a specific diameter (gauge) for the metal strand flooring and its concerns regarding continuing to require rest boards for small dogs, puppies and toy breeds.

Comment: The PFDC had the following comments with regard to the proposed amendment.

The PFDC's first comment was that mandated use of rest boards was to be eliminated.

The PFDC's second comment relates to the minimum standards for kennels using raised flooring in pens. The PFDC stated, "(A) dog may be sheltered in a primary enclosure on a rod floor where metal strands have a diameter greater than 1/8. All metal flooring shall be of a rod mesh or slatted construction and must be plastic coated, and constructed so the dog's feet shall not be allowed to pass through any opening in the floor and may not otherwise cause injury to the dog. It shall be kept in good repair and shall not sag or bend. The spaces between rods must be either round, square or rectangular in configuration. Support members under a raised kennel floor must be constructed of a material that is impervious to moisture and of a shape that will not impede the passage of feces or urine. Flat support surfaces under a raised floor are not permitted." This comment went on to state a definition of "wire" and a definition of "rod." Wire was defined as, "(A) metal strand that has a diameter equal to or less than 1/8." Rod was defined as, "(A) metal strand that has a diameter greater than 1/8 inch." The

comment states, "1/8 is the demarcation that the metal working industry uses between welded wire and welded rod."

The PFDC's third comment was that the Committee was shown samples of coated rod material and felt that requiring this would greatly improve living conditions for the dogs housed on this sturdy and easily cleaned flooring. The PFDC goes on to state the use of this type of flooring was the only reason they agreed to the removal of the current mandated rest boards.

The fourth comment relates to the PFDC's concerns for small puppies and toy breeds of dogs. The PFDC states these dogs would have difficulty balancing on this surface (it is presumed they mean a wire surface) and could be easily injured. The PFDC therefore believes rest boards should continue to be mandated for small puppies and toy breeds. They further comment that the rest boards provided ". . .should be large enough for all of the dogs in the pen to lay on, made of a material that is easily cleaned and kept free of urine and feces."

Along with these comments, the PFDC included a glossary of terms that is too large to include in this document. The PFDC did not reference the source of this glossary.

Response: The Department has already set forth and responded to the parts of the PFDC's comments related to changing the term "wire" to "metal rod," requiring all metal rod to be 1/8 inch or greater in diameter (gauge) and continuing to require rest boards for small puppies and toy breeds.

With regard to the PFDC's first comment that the amendment was supposed to eliminate the mandated use of rest boards, the Department agrees. The amendment does eliminate the mandated use of rest boards. However, the amendment does not make the continued use of rest boards unlawful. Kennels may continue to use rest boards so long as those rest boards are kept in a sanitary condition in accordance with § 21.29.

In response to the PFDC's comment that ". . . the spaces between rods must be either round, square or rectangular in configuration," the Department disagrees with this language because it is unnecessary, does not allow flexibility for future developments in metal strand floor construction, creates possible enforcement barriers and, without presenting any evidence, excludes all other designs or patterns which may or may not cause harm to a dog's paws or otherwise cause injury to the dog. The current language of the regulation does not allow a construction that would hurt the paws of a dog or otherwise cause injury to a dog. This language allows the Department to take enforcement action with regard to any pattern of metal strand flooring that causes injury to the dog. The Department only has to prove the flooring caused actual injury or harm. The Department has no compelling reason or evidence to suggest that all patterns of flooring other than round, square or rectangular cause injury or harm to dogs and therefore should be excluded from use.

The Department does not agree with adding the PFDC's language regarding support members under a raised kennel floor. This section of the kennel regulations should not be looked at in a vacuum. Section 21.29 requires that primary enclosures shall be kept in a sanitary condition and cleaned as often as is necessary to prevent an accumulation of debris, excreta or a disease hazard. Urine or feces accumulating on a support surface shall be cleaned at least once daily or as often as necessary to prevent accumulation of the excreta or a disease hazard. Flat support surfaces under a raised floor do provide for the most rigid and comfortable surface for the dogs. In addition, round support surfaces would create a rounded uneven floor surface on which the dog would have to stand or walk. Requiring the regulated industry to change all the supports under primary enclosures to meet the requirements espoused by the PFDC would impose a huge cost on the industry and may or may not lead to a more comfortable and healthy environment for the dogs.

In response to the PFDC's comment regarding mandating use of a certain type of flooring which was presented to them at a meeting, the Department disagrees with mandating a specific metal strand flooring. Some kennels will use the type of flooring shown, however there are situations where that type of flooring would not be needed or warranted. The amendment addresses the commentators' concern that the floor be rigid and in addition, allows the necessary flexibility for a kennel owner to use the type of metal strand floor that best fits the size and weight of the dog or dogs in the enclosure. Because dogs come in all different sizes and weights, requiring one type of flooring could lead to less humane and safe conditions for dogs.

Comment: The Honorable Senator Stewart J. Greenleaf commented the proposed amendment appears to represent a step backward in the Department's effort to protect animals from inhumane living conditions. The Honorable Senator Greenleaf further commented that he had spoken to members of the Committee and that they had indicated there was a compromise struck between members representing animal welfare interests and members of the Amish community engaged in dog breeding. Under the compromise, rest boards would no longer be mandated so long as wire were eliminated. The Honorable Senator Greenleaf goes on to note the proposed amendment retains wire but eliminates rest boards. The Honorable Senator Greenleaf questioned whether this is a drafting error or misunderstanding and states he sincerely hopes this is corrected to reflect the Department's commitment to the protection of dogs. The Honorable Senator Greenleaf suggested that ". . . wire bottom cages should be eliminated in favor of coated metal rod flooring of a diameter (greater than 1/8 inch) that will provide comfort for standing dogs of all sizes, and that rest boards should be retained for small dogs and toy breeds." The Honorable Senator Greenleaf further suggested that if wire continues to be allowed, rest boards should remain mandated for dogs of all sizes.

Response: The Department agrees with the Honorable Senator Greenleaf's suggestion that the word "wire" should be replaced. The Department has replace the word "wire" with "metal strand" and the amendment does require all metal strand flooring to be coated. However, for the reasons stated previously, the Department does not agree with the Honorable Senator Greenleaf's suggestions that a minimum diameter (gauge) for the metal strand flooring should be set forth in the amendment or that rest boards should be retained for small dogs and toy breeds.

Comment: The Honorable Senator Noah W. Wenger commented that the proposed amendment would ". . . make Pennsylvania's regulations consistent with the same changes recently made in Federal regulations." He further commented that the amendment were originally enacted to protect the health and safety of dogs and assure their humane treatment and that it has become

apparent that rest boards are difficult to keep sanitized at all times, thereby creating a health hazard for dogs. The Honorable Senator Wenger stated he agreed with the Department's proposal to require all metal strand flooring to be vinyl coated and of sufficient diameter so that the floor will not sag or bend. The Honorable Senator Wenger acknowledged the many concerns expressed over this regulation, but, stated he knows the Department will consider them. Therefore, after evaluating the proposed changes, the Honorable Senator Wenger had no objections to them and encouraged IRRC to review the rulemaking favorably.

Response: The Department appreciates the support of the Honorable Senator Wenger. The Department has taken the comments into consideration and has made a number of changes to the proposed amendment based on those comments.

Comment: As noted previously, the Department, in accordance with section 902 of the act (3 P. S. § 459-902), held a public hearing on October 12, 2000, with regard to the amendment. Testimony was taken and written comments were accepted and made part of the record. Following is a list of commentators, their affiliations and a brief synopsis of their testimony.

1. A representative of the American Boarding Kennel Association (ABKA) expressed her concerns that the amended regulation required all kennels to install coated metal strand flooring. Later in the hearing, she added testimony regarding the structure (size) of the metal strand flooring. In her testimony, she stated that the size of a dogs feces does not normally exceed the diameter of their leg or their foot. She suggested the Department put wording in the regulation stating the diameter of the metal strand flooring (meaning the spacing of the metal strands and the mesh construction) must be consistent with the breed of the dog.

2. A representative of the Humane Society of Harrisburg expressed her concurrence with the written testimony submitted by a representative of the FHSP. The FHSP was also an official commentator with regard to the proposed amendment. The FHSP's written testimony asserted that the regulation should be consistent with the Federal regulation and specifically stated the term "metal strand" should be used throughout the regulation. In addition, the FHSP stated the regulation ". . .needs to be understandable and enforceable in the field, so that inclusion of a diameter for the metal strand could be a problem." The FHSP's major concern was that the language of the regulation be clear with regard to the mesh and construction of the metal strand flooring in order to assure the size and type of construction is such that it will not cause injury to dogs or puppies of any size or allow their feet to pass through the openings.

3. A representative for PLAN, who is also a member of the Board, offered testimony on the amendment. PLAN was an official commentator with regard to the proposed amendment. Their comments regarding the proposed amendment are listed in this Preamble. PLAN's testimony expressed their concerns regarding the construction of the metal strand flooring. PLAN was concerned that metal strand flooring which was constructed in a manner to prevent the paws of small toy breeds from passing through the metal strand flooring, would also prevent feces and urine from passing through the metal strand flooring. PLAN was concerned this would result in the same health problems caused by rest boards. In addition, the PLAN representative read the written testimony submitted by the PFDC into the record.

4. As noted previously, the PFDC submitted written testimony for the hearing. The PFDC was an official commentator with regard to the proposed regulation. Their comments regarding the proposed amendment are listed in this Preamble. The PFDC's written testimony presented essentially the same comments and concerns expressed in their official comments. The written testimony expressed concern that if rest boards were removed the dogs would have no solid surface, outside the dog boxes or buildings on which to rest. In addition, the PFDC testified the configuration of the floor was a concern to them. The PFDC believes the configuration of the floor for each size of dog, from 1 and 2 pound puppies and small breeds to Great Danes, should be set forth and defined in the regulation. The PFDC testified that it now believes the Department should, ". . . consider the needs of dogs kept in dog boxes and write rules as to how to best protect them from the elements in all seasons and every kind of weather, especially if now we are going to remove the outside rest boards." The PFDC asked the Department to delay any further action on this amendment and to reconvene Committee, ". . . in order to give all interested parties the opportunity to address their concerns before these rules become final."

5. Dr. Knauff, a member of the Board and Chairperson of the Committee, representing the research facilities, testified with regard to the regulation. Dr. Knauff testified the rest board requirement was originally added to the amendment to be consistent with the Federal regulation in this area. He went on to state that the USDA, eventually repealed the rest board requirement because they found the rest boards were detrimental to the animals. The dogs would defecate and urinate on the rest boards. The rest boards would not allow the fecal matter or urine to pass through the bottom of the cage and therefore the dogs were laying and standing in the urine and fecal matter, which led to numerous health problems. In addition, many rest boards were made of rubber (because it is impervious to moisture) and kennel owners found that the dogs were eating the rest boards. This led to various health and safety problems. He testified that coated metal strand flooring can be easily cleaned and sanitized with a power sprayer and that his experience indicated dogs have no aversion to resting on a rigid metal strand floor that is properly coated and maintained. Dr. Knauff further testified that the passage of the dog's feet through the coated metal strand flooring has nothing to do with the rest board issue and that the amendment already stated the animal's feet may not pass through the opening in the metal strand flooring, regardless of the material from which it is made. Dr. Knauff testified the Committee had been discussing these issues for 2 years and that given the evidence regarding the health and safety problems presented by the use of rest boards he would not advise the Department to continue to require the mandatory use of rest boards. He stated this was the recommendation of the Committee. Dr. Knauff added testimony later stating that he believed concerns with regard to the size of the spacing between the metal strands or the mesh construction had already been addressed by the amendment.

6. A kennel owner and board member of the Professional Pet Breeders Association testified. He testified that he was at all the meetings (Board and Committee) and thought there was an agreement that rest boards could be removed so long as they were replaced with vinyl or plastic coated strands. He further testified the use of rest boards at his kennel has resulted in dogs resting in their own urine and feces and causes health concerns for the

dogs and people handling the dogs. He agreed with the current language of the regulation, which allows the use of rest boards (because he would like to leave them in for some of his dogs) but does not mandate their use.

7. A representative for the Commercial Breeders, who is a kennel owner and also served on the Committee, testified with regard to the regulation. The representative testified the Committee had been discussing this matter for 2 to 3 years and he believed the paramount issue is the health of the dogs and puppies in the pet shops and kennels. He testified dogs in his kennel often seem to prefer the vinyl coated flooring to a solid surface and that many of the dogs use the vinyl coated flooring as a rest area and the solid resting surface as a toilet. With regard to the health of the dogs he testified it is nearly impossible to keep the solid surface (rest board) clean and sanitized at all times. To do so would require people watching the dogs 24 hours-a-day. This leads to various health problems, such as skin problems and sore feet because of the acidity of the urine. In addition, he testified the State's mandatory rest board requirement has created an inconsistency between the State's regulations and the Federal regulations. This inconsistency creates problems for the kennel owners because they shall disregard Federal regulations and recommendations to comply with the State's current regulations. The representative recommended the removal of the mandatory rest board requirement and the addition of the language which provides for a better surface for the animals (that is, vinyl coated metal strand flooring that is rigid and does not sag or bend).

8. A kennel owner commented the rest boards do create a sanitation problem and result in the dogs sitting or resting in their own urine and feces. She testified she is concerned for her dogs and that is why the regulation is important to her.

9. A representative for pet shops, who is also a member of the Dog Law Board and the Committee, testified with regard to the regulation. He testified the rest board requirement should be removed from the Dog Law regulations and agreed with the language mandating vinyl coated metal strand flooring. He emphasized that installing the flooring would be costly to the kennel industry and that it represented a compromise the industry was willing to make, so long as the mandatory rest board requirement currently in place was repealed. He stated it is his experience that dogs sometimes prefer to rest on the coated metal strand flooring as opposed to the rest board. In addition, he opined the regulation as written presents a necessary compromise in some cases between feces or the feet of a dog passing through the metal strand flooring. His conclusion was that the rigid metal strand flooring requirement represented a healthier and safer alternative to rest boards. The representative operates a pet shop and his primary enclosures have metal strand flooring in them. He contended there are no current health or safety problems related to the raising of dogs on metal strand flooring. The representative read a letter from a licensed veterinarian of this Commonwealth stating that in the last 25 years, the veterinarian had not seen or treated one case of injury to a dogs paws at his pet shop. The letter went on to state that since the pet shop had started using the mandated rest boards, the cleanliness and sanitation of the animals and the facility had been compromised. Even with near constant care, the feces and urine of the dogs accumulate on the rest boards. The letter stated this enhances the chances for spreading intestinal parasitic disease and severe life threatening contagious diseases such as parvo virus. In addition, the representative stated the USDA had studied the health and safety problems presented by rest boards and had removed the rest board requirement from their regulations. The representative testified, "(I)n my experience I have learned that it (the rest board requirement) is putting dogs in danger and the resting boards should be removed as soon as possible." The representative also commented with regard to the the PFDC's testimony that the regulation should be delayed. He stated that as a member of the Committee, he had been discussing the issues raised by this regulatory change since 1997, and that during that time the health of dogs has continued to be jeopardized by the rest board requirement and that he believed the regulation had to be put on a "fast track."

10. The Board member representing the Pennsylvania Veterinary Medical Association (PVMA) offered written testimony regarding the regulation. In its written testimony, the PVMA stated it supported the regulation as proposed so long as the Department substitutes the words "metal strand" for the word "wire" throughout the regulation. The written testimony went on to state, "(R)esting boards promote unsanitary conditions which promote the spread of infectious disease . . . . and . . . coated metal strand material available for cages . . . is appropriate and acceptable for the health of dogs."

Response: Following is the Department's response to the testimony of each commentator at the public hearing:

1. The Department does not intend, and the language of the amendment does not require, kennels to install coated metal strand flooring. The amendment is intended to address only those kennels that currently have or subsequently install metal strand flooring in the primary enclosure sheltering the dog. The amendment sets the standard for shelters using metal strand flooring in their primary enclosures. With regard to the suggestion, the Department should develop language which states the size of the opening in the metal strand flooring should be consistent with the breed of dog, the Department believes the amendment already addresses that issue and that to add the language "consistent with the breed of dog" would only add ambiguity and confusion to the regulation and make it more difficult to enforce.

2. The Department agrees with this testimony. The Department has replaced all references to "wire flooring" with the term "coated metal strand flooring." In addition, the Department believes the language of the final-form regulation does protect dogs (including puppies) of all size with regard to the type and construction of the metal strand flooring required. The amendment states, "(T)he metal strand flooring must be made of mesh construction that does not allow the dog's feet to pass through any opening in the floor and does not otherwise cause injury to the dog." Section 2 of the act defines the word "dog" in such a manner as to include puppies.

3 and 4. With regard to the testimony offered by commentators 3 and 4 (PLAN and PFDC), the Department has considered this testimony and the official comments previously offered by these commentators and for reasons expressed in the Department's previous response to PLAN's and PFDC's official comments on the proposed rulemaking, the Department believes the final-form regulation addresses their concerns. In addition, the Department disagrees with PFDC's suggestion that the Department delay further action on the amendment. The Department has worked on this amendment for 3 years. During that time the Department established the Committee and held numerous public meetings of both the Committee and the Board to discuss this amendment.

Over that 3-year period, the Department has received advise and input from the regulated community, industry members, dog clubs, humane society groups and other interested parties. The Department has considered all of the input and believes this amendment addresses the primary concerns of the groups and more importantly carries out the duty of the Department to provide for the safe, healthy and humane care of dogs in this Commonwealth. In addition, the language of the final-form regulation is consistent with the language of the Federal regulations.

5 through 10. With regard to the testimony offered by commentators 5 through 10, the Department has considered the testimony and believes the final-form regulation addresses the commentator's concerns.

Fiscal impact

Commonwealth

The final-form regulation will impose minimal costs and have minimal fiscal impact upon the Commonwealth. The final-form regulation will not require any additional paperwork or impose any additional workload on the Department.

Political Subdivisions

The final-form regulation will impose no costs and have no fiscal impact upon political subdivisions.

Private Sector

The final-form regulation will impose additional costs on the segment of the regulated community that houses dogs in primary enclosures that have metal strand flooring. That segment of the regulated community will be required to install coated metal stand flooring which complies with the provisions of the amended regulation. Approximately 450 State licensed kennels will be required to comply with this regulatory change. The majority of kennel owners that house dogs in primary enclosures with metal strand flooring, already have a coated metal strand floor of such a diameter and gauge as to bring them into compliance with this regulation. In addition, they will benefit through the lower cost of operation associated with lower rates of disease and morbidity and the removal of the rest boards will lower the cost and time associated with sanitizing the rest boards and the primary enclosures. It should be noted that the regulated community requested amendments be made to this final-form regulation and is supportive of the final-form regulation as amended.

General Public

The final-form regulation will impose no costs and have no fiscal impact on the general public. The general public should benefit from the final-form regulation because animals will be healthier and safer and there should be a reduced cost to the industry.

Paperwork Requirements

The final-form regulation will not result in an appreciable increase of paperwork. The Department has already developed the appropriate forms and procedures to administer the final-form regulation.

Contact Person

Further information is available by contacting the Department of Agriculture, Bureau of Dog Law Enforcement, 2301 North Cameron Street, Harrisburg, PA 17110-9408; Attn: Richard Hess (717) 787-4833.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on July 10, 2000, the Department submitted a copy of the notice of proposed rulemaking published at 30 Pa.B. 3660, to IRRC and to the Chairpersons of the House Agriculture and Rural Affairs Committee and the Senate Agriculture and Rural affairs Committee for review and comment.

Under section 5(c) of the Regulatory Review Act, the Department also provided IRRC and the Committees with copies of the comments received, as well as other documentation. In preparing this final-form regulation, the Department has considered the comments received from IRRC, the Committees and the public.

Under section 5.1(d) of the Regulatory Review Act (71 P. S. § 745.5a(d)), the final-form regulation was deemed approved by the House and Senate Committees on February 20, 2001. Under section 5.1(e) of the Regulatory Review Act, IRRC met on March 8, 2001, and approved the final-form regulation.

Findings

The Department finds that:

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

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

(3) The modifications that were made to the regulation in response to comments received do not enlarge the purpose of the proposed amendment published at 30 Pa.B. 3660.

(4) A public hearing was held as required by section 902 of the Dog Law.

(5) The modifications that were made to this amendment in response to testimony presented at the public hearing do not enlarge the purpose of the proposed regulations published at 30 Pa.B. 3660.

(6) The adoption of the amendment in the manner provided in this order is necessary and appropriate for the administration of the authorizing statute.

Order

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

(a) The regulations of the Department, 7 Pa. Code Chapter 21, are amended by amending § 21.24 to read as set forth in Annex A.

(b) The Secretary shall submit this order and Annex A to the Office of General Counsel and to the Office of Attorney General for review and approval as to legality and form, as required by law.

(c) The Secretary shall certify this order and Annex A and deposit them with the Legislative Reference Bureau, as required by law.

(4) This order shall take effect upon publication in the *Pennsylvania Bulletin*.

SAMUEL E. HAYES, JR.,
Secretary

(*Editor's Note:* For the text of the order of the Independent Regulatory Review Commission relating to this document, see 31 Pa.B. 1647 (March 24, 2001).)

Fiscal Note: Fiscal Note 2-132 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 7. AGRICULTURE

PART II. DOG LAW ENFORCEMENT BUREAU

CHAPTER 21. GENERAL PROVISIONS; KENNELS; LICENSURE; DOG-CAUSED DAMAGES

KENNELS—PRIMARY ENCLOSURES

§ 21.24. Shelters.

(a) Dogs shall be provided access to shelter which protects them against inclement weather, preserves their body heat and keeps them dry. Housing facilities for dogs shall be constructed to provide for the health and comfort of the animals.

(b) Shelter shall be provided for dogs kept outdoors. Sufficient clean bedding material or other means of protection from the weather shall be provided.

(c) If dog houses with tethers are used as primary enclosures for dogs kept outdoors, the tethers used shall be placed or attached so that they cannot become entangled with other objects or come into physical contact with other dogs in the housing facility, and to allow the dog to roam to the full range of the tether. The tether shall be of a type commonly used for the size dog involved and shall be attached to the dog by means of a well-fitted collar that will not cause trauma or injury to the dog. The tether shall be at least three times the length of the dog as measured from the tip of its nose to the base of its tail and allow the dog convenient access to the dog house and food or water container.

(d) A dog may be sheltered in a primary enclosure having metal strand flooring provided the following conditions are met:

(1) The metal strand flooring is coated with a vinyl type coating.

(2) The coated metal strand flooring shall be kept in good repair.

(3) The coated metal strand flooring shall be made of mesh construction that does not allow the dog's feet to pass through any opening in the floor and does not otherwise cause injury to the dog.

(4) The coated metal strand flooring shall be constructed of sufficient diameter (gauge) to provide a completely rigid floor area sufficient to support the weight of dogs housed in the enclosure so that the metal strand floor does not bend or sag from the weight of the dogs.

(5) The dogs shall be provided with a draft free area that protects the dogs from inclement weather and is large enough to hold all the occupants of the primary enclosure at the same time comfortably.

(e) Coated metal strand flooring shall be installed by June 29, 2001. Coated metal strand flooring shall be installed prior to the removal of a solid resting surface. If a solid resting surface is provided, the solid resting surface shall be constructed of material that is impervious to water or moisture and shall be kept in a sanitary condition in accordance with § 21.29 (relating to sanitation).

(f) A dog may not be housed on a temporary or permanent basis in a drum or barrel dog house, regardless of the material of which the drum or barrel is constructed.

[Pa.B. Doc. No. 01-542. Filed for public inspection March 30, 2001, 9:00 a.m.]

DEPARTMENT OF AGRICULTURE

[7 PA. CODE CH. 130c]

Sustainable Agriculture Loan and Grant Programs

The Department of Agriculture (Department) adopts Chapter 130c (relating to sustainable agriculture programs) required or authorized under the the Sustainable Agriculture Act (act) (3 P. S. §§ 2101—2117).

Authority

The Department has the power and authority to adopt these regulations. This authority includes:

(1) General authority to adopt rules and regulations under the act and upon expiration of the 2 year period in which the act can be administered through guidelines, to promulgate, adopt and publish regulations, as necessary for the implementation of the act as set forth in section 15 of the act (3 P. S. § 2115).

(2) The general duty to establish a program to promote the practice of sustainable agriculture under section 4(a) of the act (3 P. S. § 2104(a)).

(3) The specific duties in section 4(b)(3) and (6) of the act, to distribute funds appropriated by the General Assembly and received from other sources for loan and grant programs and to administer loan and grant programs and issue loans and grants from the funds appropriated by the General Assembly and awarded by the Board of Sustainable Agriculture (Board).

(4) The duty and authority to establish a sustainable agriculture loan program under section 8 of the act (3 P. S. § 2108).

(5) The duty to establish a sustainable agriculture grant program and an alternative crop grant program under section 12 of the act (3 P. S. § 2112).

Need for the Regulations

The regulations delineate the objectives of the loan and grant programs and the general conditions for obtaining a sustainable agriculture loan or grant. In addition, the regulations establish submission, processing and review procedures, eligibility and evaluation criteria, notification and recordkeeping requirements and enforcement mechanisms for the sustainable agriculture loan program, the sustainable agriculture grant program and the alternative crop grant program. These regulations notify the regulated community of the expectations of the Board, the review criteria utilized and the requirements for a loan or grant application. In addition, they assure fair and impartial review of all loan and grant applications.

The regulations are specifically required by section 15 of the act (3 P. S. § 2115). This requirement is referenced in this Preamble, under the "Authority" heading.

These regulations and the programs established under them will make money and resources available to farmers who practice sustainable agriculture techniques. Sustainable agriculture emphasizes farm practices which are ecologically beneficial, ensure and improve the quality of the soil and water for future generations and make the best use of on-farm resources thereby eliminating or

reducing the need for off-farm inputs, such as fertilizers and pesticides. The techniques allow for more profitable farming and conserve valuable resources and open space for future generations. Therefore, the regulations should ultimately benefit both the farming community and the general public.

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

Comments

Notice of proposed rulemaking was published at 29 Pa.B. 1496 (March 20, 1999), and provided for a 30-day public comment period.

Comments were received from the Independent Regulatory Review Commission (IRRC) and the Chesapeake Bay Foundation.

Comment: IRRC suggested changes regarding several definitions in § 130c.2. (relating to definitions). The first suggestion concerned the definition of "Executive Director" and noted that the regulatory definition was inconsistent with the definition in section 5 of the act (3 P. S. § 2105). IRRC stated, "Section 5(1) (3 P. S. § 2105(1)) of the Act states that the Executive Director will evaluate loan and grant applications submitted to the board (Board of Sustainable Agriculture)." The definition in the regulation limited the Executive Director to evaluating loan applications only.

Response: The Department agrees with this comment and has implemented the suggested revision in the final-form regulations in § 130c.5 (relating to duties of the Executive Director).

Comment: IRRC suggested that the substantive provisions contained in the regulation's definition of "Executive Director" would more appropriately be placed in a new section, in the substantive portion of the regulations, after § 130c.4 (relating to conflict of interest).

Response: The Department agrees that placing the duties of the Executive Director in a substantive portion of the regulations is more appropriate than delineating those duties in the definitions section of the regulations. The change will add clarity to the regulations. Therefore, the Department has added a new § 130c.5, and renumbered the subsequent sections to reflect this change.

Comment: IRRC suggested that because the statutory and regulatory definitions of "nonprofit educational institution" and "sustainable agriculture" are virtually identical there is no need to repeat or include the entire definition of each phrase in the regulations. IRRC suggested that the regulation should reference the statutory definition.

Response: The Department believes these definitions are important definitions for the regulated community and the interested public. Placing these definitions in the regulations promote clarity for the regulated community by enhancing the ease of understanding and compliance with the regulations. Requiring the regulated community or the interested public to return to the act to find the definitions to understand the meaning of these two terms is unnecessary. Printing the definitions in the regulations as opposed to referencing the statutory definitions adds clarity to the regulations and is not inconsistent with the statutory provisions.

Comment: IRRC noted that the Department had included a definition of "pesticide" in the regulations, but then had used the terms "herbicide" and "insecticide" throughout the substantive provisions of the regulations. In addition, IRRC noted, the terms "herbicide" and "insecticide," not "pesticide" are used in section 10(b)(6) of the act (3 P. S. § 2110(b)(6)). IRRC suggested the term "pesticide" should be deleted or the terms "herbicide" and "insecticide" should be replaced by "pesticide."

Response: The Department agrees the terms "herbicide" and "insecticide" should be replaced by the term "pesticide." As IRRC noted in its comment, the definition of "pesticide" includes herbicide and insecticide. The Department added the definition of "pesticide" to the regulations, because "herbicide" and "insecticide"—while used in section 10 (b)(6) of the act—were not defined. The Department felt the addition of the term "pesticide" would enhance the clarity of the regulations. However, the Department had not replaced the terms "herbicide" and "insecticide" in the regulations. References to "herbicide" or "insecticide" have been changed to "pesticide." In addition, because the definition of "pesticide" includes the terms "defoliant," "desiccant" and "plant regulator" definitions of each of these terms have been added to the regulations.

Comment: IRRC pointed out an error in § 130c.5. The section contained references to §§ 130.16 and 130.36. The references should have been to §§ 130c.16 and 130c.36.

Response: The Department agrees with this comment. The Legislative Reference Bureau caught this typographical error as well and it has been corrected. It should be noted that § 130c.5 has been changed to § 130c.6. This change was necessitated by the addition of a new § 130c.5.

Comment: IRRC commented that while §§ 130c.15 and 130c.35 (relating to submission of grant application) require loan and grant applications to be submitted on forms prepared by the Board, neither these sections nor the regulation informed applicants where and how to obtain the appropriate forms.

Response: The Department agrees that the information would add clarity to the regulations. The Department has revised §§ 130c.15 and 130c.35 to include an address and phone number from which forms and information can be obtained.

Comment: IRRC provided two comments with regard to §§ 130c.16 and 130c.36 (relating to processing of grant application). The first comment concerns the filing deadlines set forth in the previously referenced sections. IRRC opined that while §§ 130c.16 and 130c.36 delineated filing deadlines, they failed to reference the 90-day period for Board action on applications as prescribed by § 130c.5 (now § 130c.6). IRRC suggested a reference be included for purposes of clarity. The second comment regarding §§ 130c.16 and 130c.36 was related to assuring proper notice be given to applicants, whose applications were determined to be incomplete or inaccurate by the Executive Director. IRRC suggested the Department add language clarifying that the notice will be in writing to the applicants and inform the applicant of the deficiencies in the application and that the applicant has 30 days to respond to the request for additional information.

Response: With regard to the first comment, the Department agrees that referencing the 90-day period for Board review in § 130c.5 (now § 130c.6) will add clarity to the regulations. The Department has added language to both sections which reference § 130c.5 (now § 130c.6). With regard to the second comment, the Department believes that the previous language was sufficient regard-

ing notice. However, in an attempt to further clarify the notice provision and the actions the Executive Director may take upon determining an application is incomplete or contains inaccurate information, the Department has added language which states that this notice will be in writing and inform the applicant of the additional data needed and the 30 day time limit for response.

Comment: The Chesapeake Bay Foundation commented that the Sustainable Agriculture Program must have adequate funding to be successful. They suggested that producers cannot afford loan programs and that the Department should provide funding by way of grant programs instead. In addition, the Chesapeake Bay Foundation opined that, "(R)eliance on a revolving fund makes monies uncertain form year to year and indicates a lack of commitment by the Department."

Response: Section 7 of the act (3 P. S. § 2107) creates the Sustainable Agriculture Fund (Fund). Section 7 states, "(T)he fund shall receive all revenues and appropriations and pay all costs, except administrative expenses, related to the sustainable agriculture program." The Department can only use moneys appropriated to and revenues deposited in the Fund to pay for loan and grant programs under the act. Appropriations to the Fund will be determined by the Legislature, not by the Department. The Department will determine the most appropriate use of Fund moneys for sustainable agriculture programs. Regarding the "revolving fund" referred to in the comment, section 9 of the act (3 P. S. § 2109) creates a Revolving Loan Account (Account). The Account is to be funded by appropriations made by the General Assembly and interest earned on the account and from loan repayments. The Department cannot create or do through regulations that which the Legislature does not give it power to do under the act. In addition, section 7 of the act states that, "(S)ustainable agriculture loans and grants and alternative crop grants shall be made to the extent funds are made available" and it goes on to set forth sources from which funds may be obtained. The Department will work to obtain funding for the Sustainable Agriculture Loan and Grants programs from the appropriate sources.

Fiscal Impact

Commonwealth

The final-form regulations will not have a fiscal impact upon the Commonwealth. The act requires that any moneys appropriated to the Fund be used solely for the cost of administering the loan and grants programs. The Department may not use any moneys appropriated to the Fund for administrative expenses. The Department has personnel in place to assist in administering the sustainable agriculture grant and alternative crop grant programs and to enforce provisions of the act. Administration of a loan program under the act may create a need for additional employees. This need will be driven by the act and funding provided under the act, rather than by the final-form regulations.

Political Subdivisions

The final-form regulations will not impose any direct fiscal impact upon political subdivisions.

Private Sector

The final-form regulations will not have any direct fiscal impact on the private sector except for possible positive effects with regard to their fiscal impact on the Commonwealth. The act and these regulations are intended to have a positive fiscal impact on the Commonwealth, through increased return on investment to the producer/farmer, increased soil and water quality and other ecological benefits, which accrue from reducing or eliminating the need for fertilizers and pesticides.

General Public

The final-form regulations will impose no costs and have no fiscal impact upon the general public. The general public may benefit from the decreased use of pesticides and fertilizers and the increased soil and water quality these regulations seek to promote.

Paperwork Requirements

The final-form regulations will result in increased paperwork requirements of the recipients of sustainable agriculture loans and grants and alternative crop grants. The recipients of the loans and grants will be required to keep detailed records of all sustainable agriculture activities and projects undertaken using the loan or grant moneys. The Department will incur increased paperwork requirements through tracking and recordkeeping requirements and review of applications related to the sustainable agriculture loan program, the sustainable agriculture grant program and the alternative crop grant program.

Contact Person

Further information is available by contacting the Department of Agriculture, Bureau of Plant Industry, 2301 North Cameron Street, Harrisburg, PA 17110-9408, Attention: Lyle Forer, Director, (717) 772-5203.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on March 5, 1999, the Department submitted a copy of the notice of proposed rulemaking published at 29 Pa.B. 1496, to IRRC and to the Chairpersons of the House and Senate Standing Committees on Agriculture and Rural Affairs for review and comment.

In compliance with section 5(c) of the Regulatory Review Act, the Department also provided IRRC and the Committees with copies of comments received, as well as other documentation. In preparing these final-form regulations, the Department has considered the comments received from IRRC, the Committees and the public.

Under section 5.1(d) of the Regulatory Review Act (71 P. S. 745.5a(d)), these final-form regulations were deemed approved by the House and Senate Committees on February 20, 2001. Under section 5.1(e) of the Regulatory Review Act, IRRC met on March 8, 2001, and approved the final-form regulations.

Findings

The Department finds that:

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

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

(3) The modifications that were made to these final-form regulations in response to comments received do not enlarge the purpose of the proposed regulation published at 29 Pa.B. 1496.

(4) The adoption of the final-form regulations in the manner provided in this order is necessary and appropriate for the administration of the authorizing statute.

Order

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

(a) The new regulations of the Department, 7 Pa. Code, are amended by adding §§ 130c.1—130c.9, 130c.11—130c.19 and 130c.39 to read as set forth in Annex A.

(b) The Secretary shall submit this order and Annex A to the Office of General Counsel and to the Office of Attorney General for review and approval as to legality and form, as required by law.

(c) The Secretary shall certify this order and Annex A and deposit them with the Legislative Reference Bureau, as required by law.

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

SAMUEL E. HAYES, Jr.,
Secretary

(*Editor's note:* For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 31 Pa.B. 1647 (March 24, 2001).)

Fiscal Note: Fiscal Note 2-115 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 7. AGRICULTURE

PART V. BUREAU OF PLANT INDUSTRY

CHAPTER 130c. SUSTAINABLE AGRICULTURE PROGRAMS

Subchapter A. GENERAL PROVISIONS

§ 130c.1. Objectives.

The purpose of the act is to:

(1) Establish a program for sustainable agriculture practices and to create the Board.

(2) Define the powers and duties of the Department and the Board.

(3) Provide for sustainable agriculture loan and grant programs and an alternative crop grant program.

(4) Provide for funding.

§ 130c.2. Definitions.

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

Act—The Sustainable Agriculture Act (3 P. S. §§ 2101—2117).

Agricultural activity or farming—The commercial production of agricultural crops, livestock or livestock products, poultry products, milk or dairy products or fruits and other horticultural products.

Alternative crop—Crops not normally grown on an annual or rotational basis in this Commonwealth. The term may include crops used to replenish soil nutrients, crops used for animal or human consumption or crops used to reduce reliance on fuel, agricultural chemicals or synthetic fertilizer.

Applicant—A farm enterprise applying for a loan or grant.

Beneficial insects—Insects which, during their life cycle, are effective pollinators of plants, are parasites or predators of pests, or are otherwise beneficial to farming.

Board—The Board of Sustainable Agriculture.

Corporate farm—A corporation formed for the purpose of engaging in agricultural activity or farming which is not a family farm corporation.

Creditworthy—The ability to pay debts as they become due, to offer sufficient security and collateral and having no history of any previous default on loans specified in § 130c.14(g) (relating to general conditions).

Defoliant—A substance or mixture of substances intended for causing the leaves or foliage to drop from a plant, with or without causing abscission.

Department—The Department of Agriculture of the Commonwealth.

Desiccant—Any substance or mixture of substances intended for artificially accelerating the drying of plant tissue.

Executive Director—The person appointed by the Secretary to advise the Board.

Family farm corporation—A corporation formed for the purpose of farming in which the majority of the voting stock is held by and the majority of the stockholders are natural persons or their spouses or other persons related to the natural persons or their spouses and at least one of the majority stockholders is residing on or actively operating or managing the farm and none of the stockholders of which are corporations.

Family farm partnership—A general partnership entered into for the purpose of farming, having no more than three unrelated members and having at least one member residing on or actively operating or managing the farm.

Farm enterprise—A natural person, family farm corporation, family farm partnership engaged in farming or a corporate farm or nonprofit educational institution.

Farmland—Land in this Commonwealth that is capable of supporting the commercial production of agricultural crops, livestock or livestock products, poultry products, milk or dairy products, fruit or other horticultural products.

Fund—A fund created by section 7 of the act (3 P. S. § 2107) and established by the Department which shall receive all revenues and appropriations, allowed under the act. The Fund shall pay all costs, except administrative expenses, related to the Program. The Funds shall also contain the revolving loan account created by section 9 of the act (3 P. S. § 2109).

Individual—A natural person, meaning a single person as distinguished from a group or class, and as distinguished from a partnership, corporation or association.

Nonprofit educational institution—A State-owned or State-related college or university in this Commonwealth or a nonprofit organization, association or group in this Commonwealth which:

(i) Has demonstrated a capacity to conduct agricultural research or education programs.

(ii) Has experience in research or education in sustainable agricultural practices.

(iii) Qualifies as a nonprofit organization under section 501(c) of the Internal Revenue Code of 1986 (26 U.S.C.A. § 501(c)).

Pest—An insect, rodent, nematode, fungus, weed or any other form of terrestrial or aquatic plant or animal life or virus, bacteria or other microorganism (except viruses, bacteria, or other microorganisms on or in living man or other living animals) which the Administrator of the Environmental Protection Agency declares to be a pest under section 25(c)(1) of the Federal, Fungicide and Rodenticide Act of 1947 (7 U.S.C.A. § 136w(1)).

Pesticide—An insecticide or herbicide having the following characteristics:

(i) A substance or mixture of substances intended for preventing, destroying, repelling or mitigating a pest.

(ii) A substance or mixture of substances intended for use as a plant regulator, defoliant or desiccant.

Plant regulator—A substance or mixture of substances intended, through physiological action, for accelerating or altering the behavior of plants or the produce thereof. The term does not include substances to the extent that they are intended as plant soil amendments. The term does not include nutrient mixtures or soil amendments that are commonly known as vitamin-hormone horticultural products, intended for improvement, maintenance, survival, health, and propagation of plants, and as are not for pest destruction and are nontoxic, nonpoisonous in the undiluted packaged concentration.

Program—The Sustainable Agriculture Loan or Grant Program or the Alternative Crop Grant Program.

Project—A specific plan set forth on a loan or grant application submitted under the act and this chapter, describing sustainable agriculture or alternative crop practices to be implemented using loan or grant funds received under that application.

Secretary—The Secretary of Agriculture of the Commonwealth or a designee.

Sustainable agriculture—An integrated system of plant and animal production practices having a site-specific application that will over the long term:

(i) Satisfy human food and fiber needs.

(ii) Enhance environmental quality and the natural resource base upon which the agricultural economy depends.

(iii) Make the most efficient use of nonrenewable resources and on-farm resources and integrate, where appropriate, natural biological cycles and controls.

(iv) Sustain the economic viability of farm operations.

(v) Enhance the quality of life for farmers and society as a whole.

§ 130c.3. Records.

(a) A recipient of grant or loan funds under the act and this chapter shall maintain books, records and other evidence pertinent to expenditures and costs incurred in connection with the sustainable agriculture project to which those funds are applied. The books and records shall be maintained according to generally accepted accounting principles.

(b) Financial records, supporting documents, statistical records and other records pertaining to any loan or grant made under the act shall be retained by the recipient for 3 years following the year in which the loan or grant expires.

(c) The records and documents shall be available for inspection or audit at reasonable times by the Department or its authorized agents.

§ 130c.4. Conflict of interest.

A member of the Board may apply for a sustainable agriculture loan or grant or an alternative crop grant provided all decisions regarding the loan or grant application are subject to section 3(j) of the Public Official and Employee Ethics Act, 65 Pa.C.S. § 1103(j) and if the action does not violate the State Adverse Interest Act (71 P. S. §§ 776.1—776.9) or 4 Pa. Code Chapter 7, Subchapter K (relating to code of conduct for appointed officials and State employees).

§ 130c.5. Duties of the Executive Director.

The Executive Director's duties shall include:

(1) *Review and evaluation.* The Executive Director will review and evaluate loan and grant applications submitted to the Board.

(2) *Research.* The Executive Director will identify sustainable agriculture practices.

(3) *Integration and coordination.* The Executive Director will integrate and coordinate sustainable agriculture activities and education.

(4) *Development.* The Executive Secretary will develop information systems which integrate and utilize the experience and expertise farmers, agribusiness and specialists.

(5) *Promotion.* The Executive Secretary will promote sustainable agriculture practices.

§ 130c.6. Notice of disposition of application.

The Board will provide an applicant written notice of the acceptance or rejection of the application by mailing a notice within 90 days of receipt of the application. If the application is incomplete, the Board will follow the action prescribed by § 130c.16 or § 130c.36 (relating to processing of loan application).

§ 130c.7. Loan or grant cancellation.

A sustainable agriculture loan or grant or an alternative crop grant may be canceled by the Secretary upon a determination that the funds are not being spent or utilized in accordance with the act, the loan or grant agreement or this chapter.

§ 130c.8. Right of recovery.

The Department has the right to make a claim for and receive from the loan or grant recipient monies not expended in accordance with the act, the loan or grant agreement or this chapter. When a loan or grant recipient defaults, the Department has the right to make a claim for and receive from the loan or grant recipient the principal balance of the loan and interest incurred to date. Payment shall be due within 60 days of the written demand.

§ 130c.9. Deficits.

The Department's financial obligation is limited to the amount of the sustainable agriculture loan or grant or the

alternative crop grant. The Department is not responsible for funding cost overruns incurred by loan or grant recipients.

Subchapter B. SUSTAINABLE AGRICULTURE LOAN PROGRAM

Sec.
130c.11. Objective.
130c.12. Funding.
130c.13. Amount of loan.
130c.14. General conditions.
130c.15. Submission of application.
130c.16. Processing of applications.
130c.17. Applicant eligibility.
130c.18. Review of a loan application.
130c.19. Eligible uses.

§ 130c.11. Objective.

This subchapter establishes the requirements and procedures of the Program, under which an applicant may receive a loan to implement farming practices that emphasize sustainable agriculture in this Commonwealth.

§ 130c.12. Funding.

Sustainable agriculture loans shall be made to the extent funds are made available in the revolving loan account. The revolving loan account, created under section 9 of the act (3 P. S. § 2109), shall be used to fund all sustainable agriculture loans. The revolving loan account shall be funded by appropriations made by the General Assembly and interest earned on the account and interest from loan repayment.

§ 130c.13. Amount of loan.

The maximum amount of a loan is $15,000 for farm enterprises which are not corporate farms and $25,000 for corporate farms.

§ 130c.14. General conditions.

(a) *Interest rates.* The interest rate on any loan will be calculated using simple interest at the percentage rate equal to the Federal Reserve discount rate at the time the loan was made.

(b) *Term of loan and rate of payment.* The term of the loan may not be greater than the useful life of the project, which shall be defined in the loan agreement. The term of the loan may not exceed 7 years. Payments shall be made monthly, quarterly or semiannually, as determined by the Board.

(c) *Security.*

(1) *Requirement.* The Board will secure each loan before distributing the loan proceeds and its lien position may not be less than a second position as to liens on real estate and equipment connected with the farm operation. A loan shall be fully secured and no part of the loan may be unsecured.

(2) *Valuation of collateral.* Real estate security shall be valued on the basis of resale value, taking into account any liens or encumbrances on the land.

(3) *Additional security.* The Board may require other and additional security as it deems just and reasonable, including personal liability promissory notes with confessions of judgment, judgment notes, additional collateral, insurance and guarantees.

(d) *Sale of real or personal property.* If the recipient sells real or personal property connected with the project which is subject to a lien in favor of the Department or Board the principal balance of the loan and interest incurred to date shall immediately become due and payable.

(e) *Verification.* Within 3 months of the project completion date specified in the loan agreement, the recipient shall submit to the Department a final report which includes written receipts, records and any other pertinent documentation evidencing the total amount of the costs incurred and expenditures associated with the project. At the same time, the recipient shall also submit a narrative report describing the effectiveness of the project, the results obtained, the experience gained and the personal knowledge acquired.

(f) *Failure to verify.* If the required receipts, records and documentation are not submitted within the 3-month period or a portion of loan proceeds are unaccounted for, the Secretary may demand the recipient repay the entire principal balance of the loan or a lesser amount and interest incurred to date. Payment shall be due within 60 days of the written demand.

(g) *Loan agreement.* A recipient shall sign a loan agreement setting forth the term and amount of the loan, a repayment schedule and other terms or conditions as the Department may reasonably require.

(h) *Previous default.* A loan will not be made under this chapter to an applicant who has previously defaulted on a loan made, guaranteed or insured by the Commonwealth, the Federal Government or by the government of another state.

(i) *Default.* A recipient who fails to abide by the terms of the act, the loan agreement or the rules in this chapter shall be in default. Additionally, a loan will be declared in default if the loan recipient fails to make the required payment within 30 days of the due date. When a loan recipient defaults, the Department may seek recovery of the loan funds as delineated in § 130c.8 (relating to right of recovery). A default may be waived by the Secretary, after consultation with the Board, in the event of a physical disability suffered by the recipient or other extenuating circumstances.

§ 130c.15. Submission of application.

An applicant desiring to be considered for a loan under this chapter shall submit to the Board, on a form prepared by the Board, an application for a loan. The completed application shall contain the information requested by the Board. Applications shall be postmarked by July 31 of each year. Loan applications may be obtained from:

Pennsylvania Department of Agriculture
Bureau of Plant Industry
2301 North Cameron Street
Harrisburg, PA 17110-9408
Telephone number: (717) 787-4843

§ 130c.16. Processing of applications.

(a) *Executive Director.* Upon receipt of an application for a sustainable agriculture loan and any required supporting documentation, the Executive Director will review this information for completeness and accuracy and submit it to the Board. As set forth in § 130c.6 (relating to notice of disposition of application) the Board will have 90 days to review and take action on an application. If the Executive Director determines the application is incomplete or inaccurate, final processing of the application may be discontinued and the Board will send a letter of rejection to the applicant or additional data may be requested. If additional data is requested, the Executive Director will notify the applicant of the additional data needed and the 30-day time period for response. Processing of the application will cease and the

90-day review period, in § 130c.6, will be tolled during the 30-day response period until the applicant supplies the requested data. If additional data has been requested, the Executive Director may terminate the processing of the application when the additional data is not supplied within 30 days of a written request.

(b) *Board.* The Board will review all complete applications and supporting documentation and have the power to accept, accept with special conditions or reject applications and issue loans in accordance with the general considerations and eligibility criteria of the act and this chapter.

§ 130c.17. Applicant eligibility.

(a) *Individuals.* To be eligible for a loan under this chapter, the applicant, if an individual, shall be:

(1) A resident of this Commonwealth or show sufficient evidence that he intends to become a resident.

(2) An active resident operator or resident manager of the farm.

(3) Sufficiently educated, trained or experienced to carry out the project and shall certify that he will participate in the project for the duration of the loan period.

(4) Able to prove and document that the farmland or farm enterprise for which the loan is acquired is located in this Commonwealth.

(5) Able to demonstrate the proceeds of the loan will be used for eligible sustainable agriculture purposes as defined in the act and this chapter and that all loan proceeds will be used exclusively for sustainable agriculture purposes in Commonwealth farming operations only.

(6) Creditworthy.

(b) *Family farm partnership.* To be eligible for a loan under this chapter, if a family farm partnership, the applicant's principal operating or managing partners shall:

(1) Be residents of this Commonwealth or demonstrate they intend to become residents.

(2) Have no more than three unrelated members.

(3) Have at least one member residing on or actively operating or managing the farm.

(4) Demonstrate the applicant or the principal operating or managing partners thereof have sufficient education, training or experience to carry out the sustainable agriculture project proposed in the loan application and shall certify he will participate in the project for the duration of the loan period.

(5) Be able to prove and document that the farmland or farm enterprise for which the loan is acquired is located in this Commonwealth.

(6) Be able to demonstrate the proceeds of the loan will be used for eligible sustainable agriculture purposes as defined in the act and this chapter and that all loan proceeds will be used exclusively for sustainable agriculture purposes in Commonwealth farming operations only.

(7) Be creditworthy.

(c) *Family farm corporation.* To be eligible for a loan under this chapter, the applicant, if a family farm corporation, shall meet the following requirements:

(1) The family farm corporation shall be incorporated or registered to do business in this Commonwealth.

(2) The principal operating or managing members or shareholders of the family farm corporation shall be residents of this Commonwealth or show sufficient evidence that they intend to become residents.

(3) At least one of the majority stockholders of the family farm corporation shall reside on or actively operate or manage the farm.

(4) None of the shareholders of the family farm corporation may be corporations.

(5) The applicant or the principal operating or managing members or shareholders of the family farm corporation shall have sufficient education, training or experience to carry out the sustainable agriculture project proposed in the loan application and shall guarantee he or they will participate in the project for the duration of the loan period.

(6) The family farm corporation shall demonstrate that the farmland or farm enterprise for which the loan is acquired is located in this Commonwealth.

(7) The family farm corporation shall be able to demonstrate the proceeds of the loan will be used for eligible sustainable agriculture purposes as defined in the act and this chapter and that all loan proceeds will be used exclusively for sustainable agriculture purposes in Commonwealth farming operations only.

(8) The family farm corporation shall be creditworthy.

(d) *Corporate farm.* To be eligible for a loan under this chapter, the applicant, if a corporate farm, shall meet the following requirements:

(1) The corporate farm shall be incorporated or registered to do business in this Commonwealth.

(2) The principal operating or managing members or shareholders of the corporate farm shall have sufficient education, training or experience to carry out the sustainable agriculture project proposed in the loan application and shall guarantee the corporation will participate in the project for the duration of the loan agreement.

(3) The corporate farm shall demonstrate that the farm enterprise owns or leases farmland in this Commonwealth.

(4) The corporate farm shall be able to demonstrate the proceeds of the loan will be used for eligible sustainable agriculture purposes as defined in the act and this chapter and that all loan proceeds will be used exclusively for sustainable agriculture purposes in Commonwealth farming operations only.

(5) The corporate farm shall be creditworthy.

(e) *Nonprofit educational institution.* A nonprofit educational institution is not eligible for a loan.

§ 130c.18. Review of a loan application.

(a) *Evaluation.* The Board will evaluate the application based on the applicant's eligibility as set forth in § 130c.17 (relating to applicant eligibility).

(b) *Ranking.* No single factor will be paramount. In rendering a decision, the Board will rank the application based on the following criteria:

(1) *Financial responsibility.* Financial responsibility reflecting the ability of the applicant to meet and satisfy all debt service as it becomes due and payable, continue farm operations and protect the Department against undue risk. The applicant's cash flow history, total assets con-

trolled, equity owned, contingent liabilities and history of earnings to date are significant measures of financial responsibility.

(2) *Collateral offered on available security.* The requirement of collateral and collateral taken shall reasonably protect the Department, provide the necessary control of equity and repayment and leave the applicant in a position to reasonably manage the farm operation. The applicant's ability to give the Department a first position in terms of a lien on collateral or to share a first position, will be given great weight.

(3) *Repayment capacity.* The relevant criminal and credit history and ratings of the applicant as determined from credit reporting services and other sources.

(4) *Tax obligations.* The payment to date of all tax obligations due and owing by the applicant to the Commonwealth or any political subdivisions thereof.

(5) *Projected use.* The manner in which loan proceeds will be utilized in furthering sustainable agriculture in this Commonwealth. This encompasses the goals of the project, its impact on agriculture, the environment and society, its ability to increase farm profitability and productivity, and the potential for success of the project.

(6) *Capital needs (amount of the loan).* The Board will look at the capital needs of the applicant in light of available funds.

(7) *Farming practices.* The intent to use practices that would improve soil fertility, lower the cost of production, cause the optimum and environmentally compatible use of off-farm inputs, such as chemical or synthetic fertilizers or pesticides, or otherwise promote sustainable agriculture. These practices are further explained and defined in § 130c.19 (relating to eligible uses).

(c) *Discretion.* The Board may exercise its judgment in reviewing applications and in determining the amount of each loan so that, where possible, the widest audience becomes acquainted with the principles of sustainable agriculture. This discretion may be exercised to assure loan funds are distributed to the maximum number of applicants and dispersed throughout this Commonwealth.

§ 130c.19. Eligible uses.

(a) *Loan proceeds.* Proceeds from a loan made under this chapter shall be used by the loan recipient solely for eligible sustainable agriculture practices. Sustainable agriculture practices include agricultural practices which:

(1) Are ecologically beneficial.

(2) Improve and ensure the soil and water quality for future generations.

(3) Enhance environmental quality and the natural resource base upon which the agricultural economy depends.

(4) Make the most efficient use of nonrenewable resources.

(5) Integrate natural biological cycles and controls, such as planting cover crops to defend against insects and weeds, using mechanical tillage to control weeds and relying on natural systems, such as biological controls and natural predators.

(6) Ensure the optimum and environmentally compatible use of or eliminate the need for the purchase of off-farm inputs such as chemical or synthetic fertilizers and pesticides.

(7) Make the best use of on-farm labor and resources, such as using animal and plant manure to enrich soil.

(8) Sustain the economic viability of farm operations, by implementing practices which lower production costs.

(9) Enhance the quality of life for farmers and society.

(10) Satisfy human food and fiber needs.

(11) Emphasize planting a diverse array of crops and the production of alternative crops.

(b) *Ineligible use of proceeds.* Loan proceeds may not be used for any of the following purposes:

(1) To refinance a portion of the total project cost or any other existing loans or debts.

(2) To finance, fund or to use in a project outside the geographic boundaries of this Commonwealth.

(3) To purchase off-farm inputs, such as chemical or synthetic fertilizers and pesticides.

(4) To fund any educational or promotional program.

Subchapter C. SUSTAINABLE AGRICULTURE GRANT PROGRAMS AND ALTERNATIVE CROP GRANT PROGRAMS

Sec.

§ 130c.31. Objectives.

This subchapter establishes the requirements and procedures of the Program and the Alternative Crop Grant Program, under which an applicant may receive grants that enable it to implement practices and develop programs which emphasize sustainable agriculture and the use of alternative crops to promote sustainable agriculture in this Commonwealth.

§ 130c.32. Funding.

Sustainable agriculture grants and alternative crop grants will be made to the extent funds are made available. The revenues and appropriations will be deposited in the Fund. All costs, except administrative expenses, related to the sustainable agriculture program will be paid from the Fund.

§ 130c.33. Amount of grant.

Grants may not exceed $25,000 except as provided in this subchapter. An additional amount of up to $25,000 may be granted if the applicant matches that additional amount dollar for dollar so that a single grant may not exceed $50,000 in 1 calendar year.

§ 130c.34. General conditions.

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

(b) *Verification.* Within 3 months of the project completion date specified in the grant agreement, the applicant shall submit to the Department a final report which includes written receipts, records and any other pertinent documentation evidencing the total amount of the costs incurred and expenditures associated with the project. At the same time, the applicant shall also submit a narrative

report describing the effectiveness of the project, the results obtained, the experience gained and the personal knowledge acquired.

(c) *Failure to verify.* If the required receipts, records and documentation are not submitted within the 3-month period or a portion of grant proceeds are unaccounted for, the Secretary may demand the applicant repay the entire principal balance of the grant or a lesser amount and interest incurred to date. The interest rate will be calculated using simple interest at the percentage rate equal to the Federal Reserve discount rate at the time the grant was made. Payment shall be due within 60 days of the written demand.

(d) *Default.* A recipient who fails to abide by the terms of the act, the grant agreement or this chapter shall be in default. When a grant recipient defaults, the Department may seek recovery of the grant funds as delineated in § 130c.8 (relating to right of recovery). A default may be waived by the Secretary, after consultation with the Board, in the event of a physical disability suffered by the recipient or other extenuating circumstances.

§ 130c.35. Submission of application.

(a) *Obtaining an application/deadline.* An applicant desiring to be considered for a grant under this chapter shall submit to the Board, on a form prepared by the Board, an application for a grant. The completed application shall contain the information requested by the Board. Applications shall be postmarked by July 31 of each year. Grant applications may be obtained from:

Pennsylvania Department of Agriculture
Bureau of Plant Industry
2301 North Cameron Street
Harrisburg, PA 17110-9408
Telephone number: (717) 787-4843

(b) *Limitations.* An applicant may submit applications, in the same year, under both the Sustainable Agriculture Grant Program and the Alternative Crop Grant Program. An applicant will not be awarded more than one grant in each calendar year and an applicant already possessing a grant will not be eligible to apply for any other grant under this chapter until the applicant's current grant is completed and the proper verification has been provided to the Board.

§ 130c.36. Processing of application.

(a) *Executive Director.* Upon receipt of an application for a sustainable agriculture grant or alternative crop grant and the required supporting documentation, the Executive Director will review this information for completeness and accuracy and submit it to the Board. As set forth in § 130c.6 (relating to notice of disposition of application), the Board has 90 days to review and take action on an application. If the Executive Director determines the application is incomplete or inaccurate, final processing of the application may be discontinued and the Board will send a letter of rejection to the applicant or additional data may be requested. If additional data is requested, the Executive Director will notify the applicant of the additional data needed and the 30-day time period for response. Processing of the application will cease and the 90-day review period, set forth in § 130c.6, will be tolled during the 30-day response period until the applicant supplies the requested data. If additional data has been requested, the Executive Director may terminate the processing of the application when the additional data is not supplied within 30 days of a written request.

(b) *Board.* The Board will review all complete applications and supporting documentation and will have the power to accept, accept with special conditions or reject applications and issue grants in accordance with the general considerations and eligibility criteria of the act and this chapter.

§ 130c.37. Applicant eligibility.

(a) *Individuals.* To be eligible for a grant under this chapter, the applicant, if an individual, shall be:

(1) A resident of this Commonwealth or show sufficient evidence that he intends to become a resident.

(2) An active resident operator or resident manager of the farm.

(3) Sufficiently educated, trained or experienced to carry out the sustainable agriculture or alternative crop project proposed in the grant application and guarantee he will participate in the project for the duration of the grant period.

(4) Able to prove and document that the farmland or farm enterprise for which the grant is acquired is located in this Commonwealth.

(5) Able to demonstrate the proceeds of the grant will be used for eligible sustainable agriculture or alternative crop purposes as defined in the act and this chapter and that all grant proceeds will be used exclusively for sustainable agriculture or alternative crop purposes in Commonwealth farming operations only.

(b) *Family farm partnership.* To be eligible for a grant under this chapter, the applicant, if a family farm partnership, the applicant's principle operating or managing partners shall:

(1) Be residents of this Commonwealth or demonstrate they intend to become residents.

(2) Have no more than three unrelated members.

(3) Have at least one member residing on or actively operating or managing the farm.

(4) Demonstrate the applicant or the principal operating or managing partners thereof have sufficient education, training or experience to carry out the sustainable agriculture or alternative crop project proposed in the grant application and guarantee he will participate in the project for the duration of the grant period.

(5) Be able to prove and document that the farmland or farm enterprise for which the grant is acquired is located in this Commonwealth.

(6) Be able to demonstrate the proceeds of the grant will be used for eligible sustainable agriculture or alternative crop purposes as defined in the act and this chapter and that all grant proceeds will be used exclusively for sustainable agriculture or alternative crop purposes in Commonwealth farming operations only.

(c) *Family farm corporation.* To be eligible for a grant under this chapter, the applicant, if a family farm corporation, shall meet the following requirements:

(1) The family farm corporation shall be incorporated or registered to do business in this Commonwealth.

(2) The principal operating or managing members or shareholders of the family farm corporation shall be residents of this Commonwealth or show sufficient evidence that they intend to become residents.

(3) At least one of the majority stockholders of the family farm corporation shall reside on or actively operate or manage the farm.

(4) None of the shareholders of the family farm corporation may be corporations.

(5) The applicant or the principal operating or managing members or shareholders of the family farm corporation shall have sufficient education, training or experience to carry out the sustainable agriculture or alternative crop project proposed in the grant application and shall guarantee the family farm corporation will participate in the project for the duration of the grant period.

(6) The family farm corporation shall demonstrate that the farmland or farm enterprise for which the grant is acquired, is located in this Commonwealth.

(7) The family farm corporation shall be able to demonstrate the proceeds of the grant will be used for eligible sustainable agriculture or alternative crop purposes as defined in the act and this chapter and that all grant proceeds will be used exclusively for sustainable agriculture or alternative crop purposes in Commonwealth farming operations only.

(d) *Corporate farm*. To be eligible for a grant under this chapter, the applicant, if a corporate farm, shall meet the following requirements:

(1) The corporate farm shall be incorporated or registered to do business in this Commonwealth.

(2) The principal operating or managing members or shareholders of the corporate farm shall have sufficient education, training or experience to carry out the sustainable agriculture or alternative crop project proposed in the grant application and shall guarantee the corporation will participate in the project for the duration of the grant agreement.

(3) The corporate farm shall demonstrate that the farm enterprise owns or leases farmland in this Commonwealth.

(4) The corporate farm shall be able to demonstrate the proceeds of the grant will be used for eligible sustainable agriculture or alternative crop purposes as defined in the act and this chapter and that all grant proceeds will be used exclusively for sustainable agriculture or alternative crop purposes in Commonwealth farming operations only.

(e) *Nonprofit educational institution*. To be eligible for a grant under this chapter, the applicant, if a nonprofit educational institution, shall:

(1) Qualify as a nonprofit organization under section 501(c) of the Internal Revenue Code of 1986 (26 U.S.C.A. § 501(c)).

(2) Be a State-owned or State-related college or university in this Commonwealth or any nonprofit organization, association or group in this Commonwealth.

(3) Have experience in research or education in sustainable agriculture practices.

(4) Have demonstrated a capacity to conduct agricultural research or education programs.

§ 130c.38. Review of a grant application.

(a) *Evaluation*. The Board will evaluate the application based on the applicant's eligibility as set forth in § 130c.37 (relating to applicant eligibility).

(b) *Ranking*. No single factor will be paramount. In rendering a decision, the Board will rank the application based on the following criteria:

(1) *Financial responsibility*. Financial responsibility reflecting the ability of the applicant to meet and satisfy all debt service as it becomes due and payable, continue farm operations and protect the Department against undue risk. The applicant's cash flow history, total assets controlled, equity owned, contingent liabilities and history of earnings to date are significant measures of financial responsibility.

(2) *Applicant background*. The relevant criminal and credit history and ratings of the applicant as determined from credit reporting services and other sources.

(3) *Tax obligations*. The payment to date of all tax obligations due and owing by the applicant to the Commonwealth or any political subdivisions thereof.

(4) *Projected use*. The manner in which grant proceeds will be utilized in furthering sustainable agriculture in this Commonwealth. This encompasses the goals of the project, its impact on agriculture, the environment and society, its ability to increase farm profitability and productivity, and the project's potential for success.

(5) *Capital needs (amount of the grant)*. The Board will look at the capital needs of the applicant in light of available funds.

(6) *Environment*. The environmental benefit.

(7) *Profitability*. The potential impact on farm profitability.

(8) *Technology*. The applicability of the techniques or technology to other farm enterprises.

(9) *Effectiveness*. The effectiveness of the project as a demonstration, where applicable.

(10) *Farming practices*. The intent to use practices that would improve soil fertility, lower the cost of production, cause the optimum and environmentally compatible use of off-farm inputs, such as chemical or synthetic fertilizers or pesticides, or otherwise promote sustainable agriculture. These practices are further explained and defined in § 130c.39 (relating to eligible uses).

(c) *Discretion*. The Board may exercise its judgment in reviewing applications and in determining the amount of each grant so that, when possible, the widest audience becomes acquainted with the principles of sustainable agriculture. This discretion may be exercised to assure grant funds are distributed to the maximum number of applicants and dispersed throughout this Commonwealth.

§ 130c.39. Eligible uses.

(a) *Grant proceeds*. Proceeds from a grant made under this chapter shall be used by the grant recipient for the practice or promotion of sustainable agriculture or for research or educational programs pertaining to the development of sustainable agriculture, or to adopt practices that emphasize the use of alternative crops. Sustainable agriculture practices include agricultural practices which:

(1) Are ecologically beneficial.

(2) Improve and ensure the soil and water quality for future generations.

(3) Enhance environmental quality and the natural resource base upon which the agricultural economy depends.

(4) Make the most efficient use of nonrenewable resources.

(5) Integrate natural biological cycles and controls, such as planting cover crops to defend against insects and weeds, using mechanical tillage to control weeds and relying on natural systems, such as biological controls and natural predators.

(6) Ensure the optimum and environmentally compatible use of or eliminate the need for the purchase of off-farm inputs such as chemical or synthetic fertilizers and pesticides.

(7) Make the best use of on-farm labor and resources, such as using animal and plant manure to enrich soil.

(8) Sustain the economic viability of farm operations, by implementing practices which lower production costs.

(9) Enhance the quality of life for farmers and society.

(10) Satisfy human food and fiber needs.

(11) Emphasize planting a diverse array of crops and the production of alternative crops.

(12) Identify agricultural practices that maintain productivity and minimize environmental and farmland degradation.

(13) Develop, integrate and coordinate field experiments and on-farm research and educational efforts related to the practice of sustainable agriculture.

(14) Develop, integrate and coordinate new techniques and technologies which advance the field of sustainable agriculture.

(b) *Ineligible use of grant proceeds.* Grant proceeds may not be used for any of the following purposes:

(1) To refinance a portion of the total project cost or any other existing loan or debt.

(2) To finance, fund or to use in a project outside the geographic boundaries of this Commonwealth.

(3) To purchase off-farm inputs, such as chemical or synthetic fertilizers and pesticides.

(4) To fund any educational or promotional program which is not for the sole purpose of advancing the practice of sustainable agriculture.

[Pa.B. Doc. No. 01-543. Filed for public inspection March 30, 2001, 9:00 a.m.]

DEPARTMENT OF AGRICULTURE

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

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

The Department of Agriculture (Department) hereby rescinds the regulations in Chapter 137 (relating to preferential assessment of farmland and forest land), rescinds the interim regulations in Chapter 137a (relating to clean and green act—statement of policy) and adopts the regulations in 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.

Authority

The Department has the power and authority to adopt these regulations. Section 11 of the Pennsylvania Farmland and Forest Land Assessment Act of 1974 (72 P. S. § 5490.11), commonly referred to as the Clean and Green Act (act), requires the Department promulgate regulations necessary to promote the efficient, uniform, Statewide administration of the statute. In addition, section 12 of the act of December 12, 1998 (P. L. 1255, No. 156) (Act 156) amended the act to allow the Department to implement the interim regulations which are currently in Chapter 137a without proceeding through the regulatory promulgation process ordinarily required by law. It also required the Department to replace this statement of policy with formal regulations by April 30, 2001.

Need for the Regulations

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

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

Comments

Notice of proposed rulemaking was published at 30 Pa.B. 4573 (September 2, 2000) and provided for a 30-day public comment period.

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

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

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

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

Comment: The PSATS offered that the implementation of the revisions made to the act by Act 156 ". . . has the potential to dramatically reduce the (tax) revenue stream to counties, school districts and townships." The commentator also noted the PSATS membership adopted a resolution at its April 2000 State convention calling for ". . . a delay in implementation of Act 156 of 1998, and further, to require an examination of Act 156 of 1998 to determine the finalncial effects of the act on municipalities and make the necessary changes to relieve any finalncial strain inflicted upon them." The commentator also relayed the growing concern among townships regarding the ". . . potential loss of revenue from land that would

qualify for exemption under Act 156, but will never be used for agricultural purposes."

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

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

Response: The Department accepts the comment.

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

Response: It must be emphasized that the final-form regulations implement the requirements of the act and that any finalncial impacts are the result of the statute, rather than the final-form regulations. It is not the final-form regulations that establish preferential assessment or require recalculation of preferential assessment in accordance with the most recent revisions to the act—it is the act itself that requires this. The Department simply cannot provide a good-faith estimate of the finalncial impact upon municipalities or school districts resulting from the implementation of the act.

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

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

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

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

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

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

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

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

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

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

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

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

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

Response: Although the commentator's point is well-taken, the Department declines to implement commentator's suggestion since the referenced definition is from section 2 of the act.

Comment: Sullivan County recommended the term "open space lands" be defined. The term is used in the definition of "agricultural reserve" in section 2 of the act. The commentator offered that, in the absence of a definition, the term might be interpreted as meaning wooded or field land that is free of any kind of improvement. The commentator further offered that in Sullivan County there are a number of private lake associations that own hundreds of wooded acres around their respective lakes "simply to keep away development." The commentator asked whether this type of land might fit within the definition of "agricultural reserve."

Response: The Department declines to include a definition of "open space lands" in the final-form regulations.

The Department notes the absence of a definition of this term in the act, and believes this suggests the term should be construed liberally.

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

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

Response: The definitions of the terms "capitalization rate" and "net return to land" are repeated verbatim from section 2 of the act. Although the commentator's point is well-taken, the Department cannot change statutory definitions by regulation.

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

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

IRRC offered its agreement with the Legislative Committees' recommendation.

Response: The Department has revised the definition to mirror the definition appearing in section 2 of the act.

Comment: The Legislative Committees recommended the Department delete "a" from the definition of "enrolled land" in proposed § 137b.2.

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

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

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

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

Comment: The Legislative Committees, Representative Cappabianca and Representative Godshall took issue with the definition of "outdoor recreation" in proposed § 137b.2. The definition of "agricultural reserve" land in section 2 of the act requires that land be ". . . used for outdoor recreation or the enjoyment of scenic or natural beauty . . ."

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

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

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

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

> . . . The owners of the land recognize the need of these youth leagues for fields and their finalncial inability to pay for such. As good citizens of the community, they are happy to allow such a use free of charge. Were the land to become ineligible for Clean and Green, I can assure you that these recreational areas would no longer be made available and literally thousands of kids would be thrown out into the streets.
>
> I request that changes be made to these proposed regulation which allow for this passive, and at-no-charge, use of Clean and Green property. To do otherwise would result in either removal of large tracts from Clean and Green, or the loss of a large number of baseball and soccer fields used by volunteer recreation organizations. I do not believe either scenario is acceptable.

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

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

IRRC concurs with the Legislative Committees' recommendation.

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

In response to the comment offered by the Assessors' Committee, the Department agrees that it would be less cumbersome if the definition of "roll-back tax" included the required interest component. The definition, though, is repeated from section 2 of the act. The provision adding the interest component to roll-back taxes is found else-

where in section 5a of the act (72 P. S. § 5490.5a) (relating to responsibilities of the county assessor in general). Although the Department cannot change statutory definitions by regulation, the comment prompted a review of the document to ensure that the phrase "plus interest," or words to that effect, follow every reference to liability for roll-back taxes.

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

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

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

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

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

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

Comment: The Legislative Committees recommended the definition of "transfer" in proposed § 137b.2 be revised by eliminating the second sentence and deleting the word "contiguous" from the first sentence. The Legislative Committees offered that section 6(a.3) of the act (72 P. S. § 5490.6(a.3)) (relating to split-off, separation or transfer).

IRRC endorsed the Legislative Committees' recommendation.

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

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

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

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

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

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

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

Response: The Department has added a subsection describing its educational outreach role. The Department conducts an active educational outreach effort and answers questions posed by interested landowners, county assessors, legislators and others regarding the act. The subsection does not require the Department to issue legal opinions or act as a court in resolving questions that arise under the act or the final-form regulations.

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

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

Comment: The Legislative Committees suggested proposed § 137b.12 (relating to agricultural use) be revised to include the term "agricultural commodity," a term defined in section 2 of the act, rather than the undefined term "agricultural production."

IRRC offered its endorsement of the Legislative Committees' suggestion.

The Legislative Committees also suggested reference be made to the fact that agricultural use land may be enrolled in Federal soil conservation programs. This is specifically provided for in the definition of that term in section 2 of the act.

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

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

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

The Legislative Committees suggested the Department insert some reference to the fact that woodlots are considered part of agricultural reserve land. This reference is contained in the act, in the definition of "woodlot" in section 2 of the act.

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

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

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

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

The Legislative Committees offered a similar recommendation.

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

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

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

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

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

Response: The Department declines to implement this recommendation, since the basic subject matter of the recommended language is addressed in §§ 137b.19(1), 137b.21 (relating to exclusion of noncontiguous tract described in a single deed) and 137b.22.

Comment: The Legislative Committees recommended changing the title of proposed § 137b.24 (relating to ineligible land) to "ineligible land."

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

Comment: The Legislative Committees and Representative Cappabianca recommended the Department delete the sentence preceding the example in proposed § 137b.24, since the ". . . General Assembly determined eligibility requirements as stated in the act."

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

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

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

Comment: The Legislative Committees suggested the language appearing in the example in proposed § 137b.24 prohibiting a county from requiring ineligible land to be surveyed-out or deeded as a prerequisite to consideration of the application be deleted and restated in the text of that section.

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

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

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

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

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

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

Comment: The Legislative Committees "strongly recommended" proposed § 137b.27 (relating to assessment of ineligible land) be revised by deleting any reference to "buildings" in that section. The Legislative Committees offered that the inclusion of this word would be irrelevant and may cause misinterpretation of the act.

IRRC endorsed this recommendation.

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

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

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

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

With respect to IRRC's alternative, the Department has revised the final-form regulations to indicate the type of information that will be required on the Clean and Green Valuation Application. The Department believes the Clean

and Green Worksheet is self-explanatory, and has not summarized it in the final-form regulations.

Comment: The Legislative Committees had no specific revisions to offer with respect to proposed § 137b.41(d), but noted that the required language set forth in that subsection, which is prescribed by section 4(c) of the act (72 P. S. § 5490.4(c)) (relating to applications for preferential treatment), does not appear in the Department's most recent draft of the application form.

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

Comment: The Legislative Committees suggested that proposed § 137b.41(e) should be revised to make clear the requirement of section 3(e) of the act (72 P. S. § 5490.3(e)), which prohibits a county assessor from imposing conditions or requirements for eligibility for preferential assessment other than those prescribed by the act.

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

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

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

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

The Department also declines to implement IRRC's suggestion that the final-form regulations require a county assessor to conduct a "completeness review" of an application within 30 days of receipt of the application. The act imposes in section 4, a general requirement that a county assessor process applications in a timely manner. The Department believes this is sufficient to require a county assessor to move an application along through the review process, and that further regulation is not necessary. In addition, the Department does not believe it has statutory authority to impose any sanction or adverse consequences upon a county assessor who failed to meet such a deadline.

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

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

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

Comment: The Legislative Committees suggested the Department be certain that proposed § 137b.43 be revised, if necessary, to be consistent with the finall-form version of § 137b.26 in terms of whether an application must be filed in each taxing district.

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

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

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

IRRC recommended the final-form regulations make specific reference to those provisions of the act relating to fees. These provisions are in section 4(d)—(f) of the act.

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

The Department has also added subsection (c), prohibiting the collection of a recording fee with respect to an application that is ultimately rejected. This is consistent with section 4(d) of the act.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The Department has not implemented Attorney Halsted's suggestion or Montgomery County's suggestion that language be added to allow for the voluntary termination of preferential assessment without change of use of the enrolled land. The Department believes the section 4(b) of the act requires that preferential assessment continue until land use change takes place.

Comment: The PFB also offered extensive comments with respect to proposed § 137b.52(c) and (d). In summary, the PFB expressed concern that:

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

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

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

Response: The Department has revised proposed § 137b.52(c) and (d) to clarify that where a split-off occurs on some portion of enrolled land and roll-back tax liability is triggered on the entirety of the enrolled land as a result, the landowner may terminate preferential assessment of the entirety of the enrolled land by providing the county assessor the written notice of termination required under section 3(d) of the act. Where the landowner does not seek to terminate preferential assessment of the remaining land, and the remaining land continues to be eligible for preferential assessment, though, preferential assessment of the remaining land shall continue uninterrupted.

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

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

IRRC also recommended these technical corrections.

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

Comment: Montgomery County reviewed proposed § 137b.52(e)(2), and suggested the provision was inconsistent with subsection (c) of this section and several provisions of sections 4(f)(2) and 6 of the act. The commentator suggested this entire subsection be deleted.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Response: The Department declines to implement this suggestion.

Significantly, the Department notes that the Assessors' Committee, which offered extensive comments throughout the process of drafting the proposed regulation and with respect to the proposed regulation itself, offered no comment recommending the final-form regulations contain an explanation of the process by which "base year" is to be calculated.

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

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

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

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

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

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

Comment: IRRC raised several questions regarding proposed § 137b.53(g). IRRC requested the Department explain the statutory authority for this subsection, the

reason it is "optional" and the reason for the Department's selection of the "June 1, 1998" cut-off date.

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

Comment: The Legislative Committees provided specific language it recommended be added to proposed § 137b.54, and offered the following comment in support of its recommendation:

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

IRRC offered its concurrence with the Legislative Committees' recommendation.

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

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

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

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

IRRC offered its concurrence with this recommendation.

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

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

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

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

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

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

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

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

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

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

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

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

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

The Department is mindful of the numerous comments made in opposition to the definition of "outdoor recreation" in proposed § 137b.2. That definition attempted to provide detailed guidance and examples as to the types of

activities that could be considered "outdoor recreation." The definition was revised in the final-form regulations in response to these comments. Details and examples were removed from the definition, primarily at the behest of commentators from the Legislature.

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

Comment: The Legislative Committees recommended a minor grammatical revision to proposed § 137b.64(d).

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

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

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

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

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

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

Response: Although the Department agrees this paragraph can be clarified, it also believes the phrase "the land" is too general. Instead, the Department has inserted the phrase "the remaining land" into this paragraph. The Department's objective is to indicate that it is the land other that the land upon which the commercial enterprise is located that must remain capable of agricultural production and not the land upon which the commercial enterprise itself is located.

Comment: The Assessors' Association contacted IRRC with its suggestion that the final-form regulations clarify the meaning of "rural enterprise," as that term is used in proposed § 137b.72(a)(1).

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

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

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

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

Comment: The Legislative Committees suggested the text of paragraph (6) of proposed § 137b.74(a) (relating to option to accept or forgive roll-back taxes in certain instances) be switched with the text of paragraph (7) to have these paragraphs in the same order as they appear in section 5490.8 of the act (relating to determination of amounts of taxes when use abandoned).

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

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

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

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

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

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

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

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

Comment: The PFB also reviewed proposed § 137b.76, and recommended the last sentence of subsection (b) be deleted. The commentator believes this sentence is not necessary, in light of the provisions of section 8(e)(1) and (2) of the act (72 P. S. § 5490.8(e)(1)). The PFB expressed concern this sentence might: ". . . be misread as requiring preferential assessment of the remaining portion of the land originally enrolled in Clean and Green to be terminated when the owner of the trail changes the use."

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

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

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

IRRC offered essentially the same comment.

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

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

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

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

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

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

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

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

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

Comment: The Legislative Committees reviewed Example (2) in proposed § 137b.84 and expressed concern that the example might be read as requiring the payment of roll-back taxes twice with respect to the three 2-acre tracts described in that example, once at the time each tract is split-off and again when roll-back taxes are triggered with respect to the remaining 44-acre tract. The commentator also suggested a reference be made to the necessity of filing an amended application when split-off occurs.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

By contrast, the Assessors' Committee offered the following:

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

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

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

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

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

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

Comment: The Legislative Committees suggested subsection (b)(2) of proposed § 137b.93 (relating to disposition of interest on roll-back taxes) be revised to include a reference to the "special roll-back account" described in section 8(b.2) of the act.

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

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

IRRC offered its concurrence with the Legislative Committees' recommendation.

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

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

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

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

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

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

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

Section 5b(a) of the act allows for the imposition of a civil penalty upon a person for: ". . . each violation of this act or any regulation promulgated under this act." The PFB raised the point that a civil penalty should not be imposed against a person who changes the use of enrolled land to some ineligible use. This change does not "violate" any provision of the act or the final-form regulations. The act does not prohibit the occurrence of such a change in use, it merely imposes roll-back tax consequences in the event certain land use changes occur. The PFB suggested language be added to this section to prohibit the assessment of civil penalties solely on the basis that the landowner performed some act that triggers responsibility for payment of roll-back taxes and interest.

Sullivan County offered a similar comment.

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

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

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

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

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

Comment: IRRC suggested proposed § 137b.131(c) be revised to replace the phrase "10 days" with "10 calendar days" in order to make the regulatory language track with section 5b(b) of the act (72 P. S. § 5490.5b(b)).

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

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

The commentator noted that section 10 of the act (72 P. S. § 5490.10) (relating to renegotiation of open space agreements) allows for the renegotiation of certain "open space" agreements, at the option of the landowner, to make them conform to the preferential assessment requirements of the act.

The commentator also noted that section 5(c) of the act (72 P. S. § 5490.5(c)) imposes certain requirements on the State Tax Equalization Board (Board).

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

Response: The Department declines to implement the suggestion the final-form regulations address the renegotiation of "open space" agreements or the requirements imposed upon the Board. The sections of the act which address sections 10 and 5(c) respectively, are self-executing and there is nothing helpful the Department could add through regulation.

Fiscal Impact

Commonwealth

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

Political Subdivisions

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

Private Sector

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

General Public

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

Paperwork Requirements

The final-form regulations are not expected to result in an appreciable increase in paperwork.

Contact Person

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

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on August 2, 2000, the Department submitted a copy of the notice of proposed rulemaking published at 30 Pa.B. 4573 (September 2, 2000), to IRRC and to the Chairpersons of the House and Senate Standing Committees on Agriculture and Rural Affairs for review and comment.

In preparing these final-form regulationss, the Department has considered all comments received.

Under section 5.1(d) of the Regulatory Review Act (71 P. S. § 745.5a(d)), on March 7, 2001, these final-form regulationss were deemed approved by the House Agricultural and Rural Affairs Committee and the Senate Agriculture and Rural Affairs Committee. Under section 5.1(e) of the Regulatory Review Act, IRRC met on March 8, 2001, and approved the final-form regulations.

Findings

The Department finds that:

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

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

(3) The modifications that were made to these regulations in response to comments received do not enlarge the purpose of the proposed regulations published at 30 Pa.B. 4573 (September 2, 2000).

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

Order

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

(a) The regulations of the Department, 7 Pa. Code, are amended by adding §§ 137b.1—137b.4, 137b.11—137b.27, 137b.41—137b.46, 137b.51—137b.54, 137b.61—137b.64, 137b.71—137b.76, 137b.81—137b.93, 137b.101—137b.112, 137b.121, 137b.122 and 137b.131—137b.133; and by deleting §§ 137.1—137.12, 137.21—137.30, 137.41—137.46, 137.51—137.57, 137.61—137.70 and 137a.1—137a.24 to read as set forth in Annex A.

(b) The current interim regulations of the Department in Chapter 137a are hereby rescinded.

(c) New regulations of the Department are hereby established in Chapter 137b (relating to preferential assessment of farmland and forest land under the clean and green act), as set forth at Annex A.

(d) The Secretary of Agriculture shall submit this order and Annex A to the Office of General Counsel and to the Office of Attorney General for approval as required by law.

(e) The Secretary of Agriculture shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(f) This order shall take effect upon publication in the *Pennsylvania Bulletin*.

SAMUEL E. HAYES, Jr.,
Secretary

Fiscal Note: Fiscal Note 2-133 remains valid for the finall adoption of the subject regulations.

Annex A

TITLE 7. AGRICULTURE

PART V-C. FARMLAND AND FOREST LAND

CHAPTER 137. (Reserved)

§§ 137.1—137.12. (Reserved).

§§ 137.21—137.30. (Reserved).

§§ 137.41—137.46. (Reserved).

§§ 137.51—137.57. (Reserved).

§§ 137.61—137.70. (Reserved).

CHAPTER 137a. (Reserved)

§§ 137a.1—137a.24. (Reserved).

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

GENERAL PROVISIONS

ELIGIBLE LAND

APPLICATION PROCESS

PREFERENTIAL ASSESSMENT

OBLIGATIONS OF THE OWNER OF ENROLLED LAND

IMPACT OF SPECIFIC EVENTS OR USES ON PREFERENTIAL ASSESSMENT

LIABILITY FOR ROLL-BACK TAXES

DUTIES OF COUNTY ASSESSOR

RECORDER OF DEEDS

MISCELLANEOUS

GENERAL PROVISIONS

§ 137b.1. Purpose.

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

(b) The benefit to an owner of enrolled land is an assurance that the enrolled land will not be assessed at the same value for tax assessment purposes as land that is not enrolled land. In almost all cases, an owner of enrolled land will see a reduction in his property assessment compared to land assessed or valued at its fair market value. The difference between assessments of enrolled land and land that is not enrolled land will be most noticeable when a county is reassessed.

§ 137b.2. Definitions.

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

Act—The Pennsylvania Farmland and Forest Land Assessment Act of 1974 (72 P. S. §§ 5490.1—5490.13), commonly referred to as the Clean and Green Act.

Agricultural commodity—Any of the following:

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

(ii) Pasture.

(iii) Livestock and the products thereof.

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

(v) Poultry and the products of poultry.

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

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

Agricultural reserve—

(i) Noncommercial open space lands used for outdoor recreation or the enjoyment of scenic or natural beauty

and open to the public for that use, without charge or fee, on a nondiscriminatory basis.

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

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

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

(ii) The term includes a woodlot.

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

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

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

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

Contiguous tract—

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

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

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

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

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

Department—The Department of Agriculture of the Commonwealth.

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

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

Farm building—A structure utilized to store, maintain or house farm implements, agricultural commodities or crops, livestock and livestock products, as defined in the Agricultural Area Security Law (3 P. S. §§ 901—915).

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

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

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

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

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

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

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

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

Outdoor recreation—Passive recreational use of land that does not entail the erection of permanent structures or any change to the land which would render it incapable of being immediately converted to agricultural use.

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

Person—A corporation, partnership, limited liability company, business trust, other association, government entity (other than the Commonwealth), estate, trust, foundation or natural person.

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

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

Rural enterprise incidental to the operational unit—A commercial enterprise or venture that is conducted within

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

Separation—A division, by conveyance or other action of the owner, of lands devoted to agricultural use, agricultural reserve or forest reserve and preferentially assessed under the act, into two or more tracts of land, the use of which continues to be agricultural use, agricultural reserve or forest reserve and all tracts so formed meet the requirements of section 3 of the act.

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

Tract—

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

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

Transfer—A conveyance of all of the enrolled land described in a single application for preferential assessment under the act.

USDA—The United States Department of Agriculture.

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

USDA-NRCS—The United States Department of Agriculture-Natural Resources Conservation Service.

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

§ 137b.3. Responsibilities of the Department.

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

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

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

§ 137b.4. Contacting the Department.

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

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

ELIGIBLE LAND

§ 137b.11. General.

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

(1) Land in agricultural use.

(2) Land in agricultural reserve.

(3) Land in forest reserve.

§ 137b.12. Agricultural use.

Land that is in agricultural use is eligible for preferential assessment under the act if it has been 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.

§ 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).

§ 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.

§ 137b.15. Inclusion of farmstead land.

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

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

§ 137b.16. Residence not required.

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

§ 137b.17. Common ownership required.

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

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

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

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

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

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

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

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

(1) *Contiguous tracts.*

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

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

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

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

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

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

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

(1) Enroll the contiguous 50-acre tract.

(2) Enroll the noncontiguous 50-acre tract.

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

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

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

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

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

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

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

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

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

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

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

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

§ 137b.24. Ineligible land.

A landowner seeking preferential assessment under the act shall include ineligible land on the application if the eligible land is part of a larger contiguous tract of eligible land, and the use of the land which causes it to be ineligible exists at the time the application is filed. Although this ineligible land may not receive preferential assessment, the applicant shall specify the boundaries and acreage of the ineligible land, and may not expand the boundaries beyond those identified in the initial application. A landowner will not be required, as a condition of county acceptance or approval of the application, to survey or redeed the tract so as to exclude the ineligible land.

Example: A landowner owns a 100-acre tract of land, 90 acres of which is productive farmland and 10 acres of which is occupied by an auto salvage yard. If the landowner seeks preferential assessment of the 90 acres of farmland, the application shall describe the entire 100-acre tract. If preferential assessment is granted, it will apply to the 90 acres of farmland. The 10-acre tract would continue to be assigned its fair market value and assessed accordingly.

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

An applicant for preferential assessment under the act may include land in more than one land use category in the application. A county assessor shall allow the appli-

cant to submit an application that designates those portions of the tract to be assessed under each of the different land use categories.

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

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

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

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

Example 2: A landowner has a 100-acre tract of farmland—94 acres of which lie in County A and 6 acres of which lie in County B. The landowner files an application seeking preferential assessment. The fact that the tract lies in two separate counties shall be immaterial to the determination of whether the land described in the application meets the requirements for preferential assessment under the act.

§ 137b.27. Assessment of ineligible land.

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

APPLICATION PROCESS

§ 137b.41. Application forms and procedures.

(a) *Standardized application form required.* A county shall require a landowner seeking to apply for preferential assessment under the act to make that application on a current "Clean and Green Valuation Application" Form—a uniform preferential assessment application form developed by the Department. The Department will provide an initial supply of these forms to a county upon request. The county assessor shall maintain an adequate supply of these forms. The following shall be required of an applicant on the Clean and Green Valuation Application Form:

(1) The name, address and telephone number of each landowner.

(2) A statement as to the form of ownership of the land (whether by an individual partnership, corporation, and the like. . .).

(3) A statement of whether the land is currently subject to a covenant for preservation of "open space" land in accordance with the act of January 13, 1966 (1965 P. L. 1292, No. 515) (16 P. S. §§ 11941—11947).

(4) A description of the location of the land, including the school district in which it is located.

(5) A designation of the land use category or categories (agricultural use, agricultural reserve and forest reserve) with respect to which preferential assessment is sought, and information that might reasonably be required to confirm that the land falls within the land use category with respect to which preferential asesssment is sought.

(6) Other information that might be reasonably required on the application form to confirm the location and ownership of the land, the land use category or categories of the land and whether the land is, in fact, eligible for preferential assessment.

(7) The signation of all of the owners of the land.

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

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

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

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

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

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

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

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

ment 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 finall order of the county board for assessment appeals or by October 15 of the same year, whichever date is sooner. This deadline is applicable regardless of whether judicial review of the order is sought.

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

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

§ 137b.44. County processing of applications.

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

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

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

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

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

§ 137b.46. Fees of the county board for assessment appeals; recording fees; processing fees.

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

(b) *Circumstances under which initial application shall be amended without charge.* A county board for assessment appeals may not charge a fee for amending an initial application for preferential assessment.

(c) *Recording fees.* A recording fee may not be assessed if an applicaiton for preferential assessment is not approved.

PREFERENTIAL ASSESSMENT

§ 137b.51. Assessment procedures.

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

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

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

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

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

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

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

(d) *Determining preferential assessment.* The preferential assessment of land is determined by multiplying the number of acres in each land use subcategory by the use value for that particular land use subcategory, 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.

§ 137b.52. Duration of preferential assessment.

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

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

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

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

(3) Condemnation of a portion of the land.

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

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

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

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

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

(d) *Payment of roll-back taxes does not affect preferential assessment of remaining land.* The payment of roll-back taxes and interest under the act and this chapter may not result in termination of preferential assessment on the remainder of the land covered by preferential assessment. The landowner may terminate preferential assessment on enrolled land subject to roll-back taxes by submitting written notice under section 3(d) of the act (72 P. S. § 5490.3(d)).

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

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

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

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

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

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

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

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

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

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

(4) In the case when the owner of enrolled land leases a portion of that land for wireless or cellular telecommunications in accordance with section 6(b.1) of the act and § 137b.73 (relating to wireless or cellular telecommunications facilities), the land so leased.

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

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

(7) In the case when not more than 2 acres of enrolled land is used for direct commercial sales of agriculturally related products and activities or for a rural enterprise incidental to the operational unit, in accordance with section 8(d) of the act and § 137b.72 the land so used for those purposes.

(8) In the case when a portion of enrolled land is conveyed to a nonprofit corporation for use as a cemetery in accordance with section 8(e) of the act and § 137b.75 the land so transferred.

(9) In the case when a portion of the enrolled land is conveyed to a nonprofit corporation for use as a trail in accordance with section 8(e) of the act and § 137b.76 (relating to death of an owner of enrolled land or conveyance of an easement or right-of-way across enrolled land for use as a trail), the land so transferred.

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

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

(g) *Transfer does not trigger roll-back taxes.* The transfer of all of the enrolled land described in a single application for preferential assessment to a new owner does not trigger the imposition of roll-back taxes.

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

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

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

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

(2) Establish a base year for preferential assessment of enrolled land in the county, and use this base year in

calculating the preferential assessment of enrolled land in the county, unless recalculation is required under 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.

(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.

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

A county assessor shall be responsible to calculate the contributory value of farm buildings on enrolled land. The method of calculating the contributory value of a farm building shall be a method based upon the fair market comparison and the extraction of the value of the farm building from the total fair market value of the parcel.

OBLIGATIONS OF THE OWNER OF ENROLLED LAND

§ 137b.61. Transfer of enrolled land.

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

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

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

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

(c) *Examples.*

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

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

Example 3: A landowner owns 8 acres of enrolled land. The tract generates over $2,000 in gross annual income from production of an agricultural commodity. The landowner ceases the production of that particular agricultural commodity and does not begin producing another agricultural commodity on the land. The land is no longer in agricultural use. The landowner's failure to continue the land in an agricultural use capable of producing income constitutes a change to an ineligible use. The landowner is liable

for roll-back taxes and interest, and preferential assessment shall terminate.

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

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

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

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

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

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

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

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

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

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

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

(6) The tax parcel number.

(c) *Landowner's responsibility to provide notice of termination of preferential assessment.* An owner of enrolled land shall provide the county assessor of the county in which the land is preferentially assessed with advance written notice of termination of preferential assessment, under § 137b.52(d) (relating to duration of preferential assessment) or § 137b.84 (relating to split-off that does not comply with section 6(a.1)(1)(i) of the act). The notice shall include the following information:

(1) The name and address of the landowner.

(2) Information sufficient to identify the property with respect to which preferential assessment is to be terminated. This may include tax parcel numbers, deed descriptions, references to the place of recording of the initial application for preferential assessment or similar information.

(3) The date upon which preferential assessment is to be terminated.

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

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

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

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

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

(d) *Entry upon the agricultural reserve land.* A person shall, whenever possible, notify the landowner before entering upon enrolled land that is enrolled as agricultural reserve land. The landowner may deny entry when damage to the property might result. The landowner can prohibit entry to areas of the agricultural reserve land upon prior notification to the county assessor of the existence of a hazardous condition on that land. The landowner's reasons to deny entry to the land shall be based upon fact and be acceptable to the county assessor.

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

IMPACT OF SPECIFIC EVENTS OR USES ON PREFERENTIAL ASSESSMENT

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

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

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

(b) *Inheriting a tract that meets the minimum requirements for preferential assessment.* If a person designated a Class A beneficiary inherits a tract that meets the minimum requirements for preferential assessment, and

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

Example 1: Landowner A owns 100 acres of enrolled land, which is in agricultural use. Landowner A dies, and Landowners B and C each inherit a 50-acre tract, as Class A beneficiaries. The tracts owned by Landowners B and C continue in agricultural use. Preferential assessment continues on each tract, and the landowners must file amended applications.

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

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

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

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

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

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

(c) *Inventory by county assessor to determine ownership of goods.* A county assessor may inventory the goods sold at the business to assure that they are owned by the landowner or persons who are class A beneficiaries of the landowner for inheritance tax purposes, or by a legal entity owned or controlled by the landowner or persons who are Class A beneficiaries of the landowner for inheritance tax purposes, and that the goods meet the requirements of this section.

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

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

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

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

(3) The tract is accessible.

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

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

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

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

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

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

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

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

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

(1) A school district.

(2) A municipality.

(3) A county.

(4) A volunteer fire company.

(5) A volunteer ambulance service.

(6) A 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.75. Conveyance of enrolled land for use as a cemetery.

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

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

(b) *Exception.* If a nonprofit corporation acquires enrolled land as described in subsection (a), and subsequently changes the use of the land to some use other than as a cemetery or conveys the land for use other than as a cemetery, the nonprofit corporation shall be required to pay roll-back taxes and interest on that land.

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

§ 137b.76. Conveyance of enrolled land or conveyance of an easement or right-of-way across enrolled land for use as a trail.

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

(1) The land, or an easement or right-of-way in the land, is conveyed to a nonprofit corporation.

(2) The conveyed land is used as a trail for nonmotorized passive recreational use.

(3) The conveyed land does not exceed 20 feet in width.

(4) The conveyed land is available to the public for use without charge.

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

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

(b) *Exception.* If a nonprofit corporation acquires enrolled land or an easement or right of way with respect to enrolled land as described in subsection (a), and the use of the land is subsequently changed to a use other than the use described in subsection (a)(1)—(4) or section 8(e) of the act (72 P. S. § 5490.8(e)), the nonprofit corporation shall be required to pay roll-back taxes and interest on that land.

Example: A landowner owns 50 acres of enrolled land. The land is in agricultural use. The landowner conveys a 15-foot-wide pathway across the land to a nonprofit corporation for use as a trail. The conveyance is for a use described in subsection (a)(1)—(4) or section 8(e) of the act. The nonprofit corporation subsequently changes the use of the trail to a motorcycle trail, a snowmobile trail or some other use not allowed under subsection (a)(1)—(4) or section 8(e) of the act. Under these facts, roll-back taxes and interest are due with respect to the 15-foot-wide tract. The remainder of the 50-acre tract continues to receive preferential assessment. The owner of the remainder continuing to receive preferential assessment is not liable for any roll-back taxes triggered by the nonprofit corporation's change of use.

LIABILITY FOR ROLL-BACK TAXES

§ 137b.81. General.

If an owner of enrolled land changes the use of the land to something other than agricultural use, agricultural reserve or forest reserve or changes the use of the enrolled land so that it otherwise fails to meet the requirements of section 3 of the act (72 P. S. § 5490.3), 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.

§ 137b.82. Split-off tract.

When a split-off tract meets the following criteria, which are set forth in section 6(a.1)(1) of the act (72 P. S.

§ 5490.6(a.1)(1)), roll-back taxes and interest are only due with respect to the split-off tract, and are not due with respect to the remainder:

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

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

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

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

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

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

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

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

Example 1: Landowner owns 50 acres of enrolled land. Landowner splits off 4 acres in a single year. This split-off would not meet the size requirements in section 6(a.1)(1)(i) of the act. The landowner owes roll-back taxes and interest on the entire 50-acre tract. The 4-acre tract no longer receives preferential assessment. If the 46-acre tract remains in agricultural use, agricultural reserve or forest reserve and continues to meet the requirements of section 3 of the act, preferential assessment would continue with respect to that tract, unless the landowner terminates preferential assessment 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.85. Split-off occurring through condemnation.

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

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

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

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

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

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

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

If enrolled land undergoes separation, and one of the tracts created through separation is converted to other than agricultural use, agricultural reserve or forest re-

serve 7 years or more after the date of the separation, the owner of the separated tract owes roll-back taxes and interest with respect to that separated tract, but does not owe roll-back taxes with respect to the remainder of the enrolled land. The separated tract may no longer receive preferential assessment under the act. The remaining enrolled land shall continue to receive a preferential assessment.

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

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

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

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

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

Year	*Factor*
Current Tax Year	1.00
1 Tax Year Prior	1.06
2 Tax Years Prior	1.12
3 Tax Years Prior	1.18
4 Tax Years Prior	1.24
5 Tax Years Prior	1.30
6 Tax Years Prior	1.36

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

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

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

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

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

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

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

The county can refer a claim for unpaid roll-back taxes and interest to the county's tax claim bureau, and take other actions necessary to cause a lien to be placed on the land for the value of the roll-back taxes and interest and other administrative and local court costs. The lien can be collected in the same manner as other lien-debts on real estate.

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

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

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

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

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

(b) *Disposition in an eligible county.*

(1) *County treasurer.* If a county is an eligible county, the county treasurer shall make proper distribution of the interest portion of the roll-back taxes it collects to the county commissioners or the county comptroller, as the case may be. The county commissioners or comptroller shall designate all of this interest for use by the county agricultural land preservation board. This interest shall be in addition to other local money appropriated by the

eligible county for the purchase of agricultural conservation easements under section 14.1(h) of the Agricultural Area Security Law (3 P. S. § 914.1(h)).

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

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

DUTIES OF COUNTY ASSESSORS

§ 137b.101. General.

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

§ 137b.102. Recordkeeping.

A county assessor shall indicate on property record cards, assessment rolls and any other appropriate records the base year fair market value, the use value, the normal assessment and the preferential assessment of all tracts of enrolled land.

§ 137b.103. Recording approved applications.

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

§ 137b.104. Determining total use value.

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

§ 137b.105. Annual update of records.

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

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

A county assessor shall provide the owner of enrolled land and the taxing bodies of the district in which the land is situated with written notice of an approval, termination or change with respect to preferential assessment status. This written notice shall apprise the landowner and the taxing body of the right to appeal the action in accordance with section 9 of the act (72 P. S. § 5490.9). The written notice shall be mailed within 5 days of the change of status. If the written notice terminates or changes preferential assessment status it shall set forth the reasons for the change or termination.

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

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

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

(a) A county assessor shall adjust an approved and recorded application for preferential assessment under the act to reflect a change when an owner of enrolled land changes enrollment status as a result of a split-off, separation, transfer or change of ownership. These changes may include those actions described in § 137b.52 (relating to duration of preferential assessment).

(b) A county assessor may require the preparation, execution and filing of a new application for preferential assessment (without charging the landowner an application fee) to accomplish such an adjustment.

§ 137b.109. Enforcement and evidence gathering.

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

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

A county assessor shall calculate, assess and file claims with the county's tax claim bureau for roll-back taxes and interest owed under the act.

§ 137b.111. Record of tax millage.

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

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

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

RECORDER OF DEEDS

§ 137b.121. Duty to record.

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

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

A recorder of deeds may charge a landowner whose application for preferential assessment is approved a fee for filing the approved application in a preferential assessment docket. This fee may also be charged with respect to the filing of an amendment to a previously-approved application. A recording fee may not be charged

unless the application or amendment has been approved by the county board for assessment appeals. The maximum fee for recording approved preferential assessment applications and amendments thereto shall be in accordance with laws relating to the imposition of fees by recorders of deeds.

MISCELLANEOUS

§ 137b.131. Civil penalties.

(a) *General.* A county board for assessment appeals may assess a civil penalty of not more than $100 against a person for each violation of the act or this chapter. An action that triggers liability for roll-back taxes and interest does not, by itself, constitute a violation of the act or this chapter.

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

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

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

(c) *Appeal hearing.* If notification of the intent to contest the civil penalty is given within the time frame described in subsection (b)(2), the person contesting the civil penalty shall be provided with a hearing in accordance with 2 Pa.C.S. Chapter 5, Subchapter B and Chapter 7, Subchapter B (relating to local agency law).

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

§ 137b.132. Distributing taxes and interest.

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

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

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

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DEPARTMENT OF AGRICULTURE

[7 PA. CODE CH. 138i]

Farm Safety and Occupational Health Tuition Assistance Program

The Department of Agriculture (Department) adopts Chapter 138i (relating to Farm Safety and Occupational Health Tuition Assistance Program) authorized and required under the Farm Safety and Occupational Health Act (act) (3 P. S. §§ 1901—1915).

Authority

The Department has the power and authority to adopt these regulations. This authority includes:

(1) The general authority to adopt rules and regulations conferred by section 5 of the act (3 P. S. § 1905), which delineates the duties of the Secretary of Agriculture (Secretary) and directs the Secretary to "... adopt and promulgate any regulations which may be necessary to implement and administer the act."

(2) The specific authority conferred by section 6(a) of the act (3 P. S. § 1906(a)) which authorizes the Secretary to establish a grant program to provide tuition assistance to rural emergency service providers, farmers, members of farm families, farm laborers and others involved in agricultural production to attend farm safety and occupational health training and emergency response programs.

(3) The specific duty and authority as set forth in section 6(d) of the act, which requires the Secretary to adopt and promulgate regulations to govern the awarding of grants under section 6 of the act.

Need for the Regulations

The regulations delineate the objectives of the Farm Safety and Occupational Health Tuition Assistance Program (FSTAP) and establish the procedures governing the submission, processing and review of grant applications. In addition, the regulations set forth the documentation required to accompany the applications, eligibility criteria, criteria and verification, cancellation, notification and reporting requirements. The regulations assure fair and impartial review of FSTAP grant applications. These regulations establish a program which will make funds available to rural emergency service providers, farmers, members of farm families, farm laborers and others involved in agricultural production who attend farm safety and occupational health training and emergency response programs intended to facilitate avoidance and elimination of farming hazards. The Commonwealth's approximately 51,000 farms are the foundation of a $35 billion industry, employing over 650,000 workers in farming and related services, food processing and food wholesale and retail sales. The National Safety Council reports Agriculture as this Nation's most hazardous industry with a work death rate 22% higher than the second most hazardous industry, mining and quarrying. Farming accounts for over 80% of Agriculture's injury toll. From 1990 through 1995 at least 249 Commonwealth citizens have lost their life to hazards associated with farming. The victims included 17 infants, toddlers and preschoolers—all under 5 years of age. Another 29 victims were at least 75 years of age. The oldest was 89 years old. In 1994, a Statewide survey showed one in every ten farm operations in this Commonwealth had at least one recordable work-related injury. Even more startling was that approximately 5% of those injuries resulted in some type of permanent disability to the victim. The numbers evidence the need for farm safety and occupational health pro-

grams. In 1994 alone, there were a total of 5,100 injuries and 250 permanent disability injuries related to farming. Therefore, the regulations should ultimately benefit both the farming community and the general public.

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

Comments

Notice of proposed rulemaking was published at 30 Pa.B. 771 (February 12, 2000) and provided for a 30-day public comment period.

Comments were received from the Independent Regulatory Review Commission (IRRC) and the Pennsylvania Emergency Health Services Council.

Comment: IRRC commented that the phrase "the Secretary or a designee" had been used in various portions of the text of the regulations (§§ 138i.2., 138i.7., 138i.8 and 138i.10) and suggested the term "designee" should be defined.

Response: The Department made three changes to the final-form regulations with regard to this comment. First, the Department defined "designee" in § 138i.2 (relating to definitions). Second, the Department, in § 138i.2 redefined the term "Secretary" by adding ". . . or a designee" to the definition. Under those changes, the third change was to delete the phrase "or a designee" from all references to the Secretary, throughout the text of the regulations. The result of the three changes is that the regulations are easier to read and more concise and all references to the Secretary are now interpreted to mean the Secretary or whomever he appoints or assigns to carry out his duties under the regulations.

Comment: IRRC commented that the term "Board" in § 138i.2 and the term "Advisory Board" in the act both refer to the "Farm Safety and Occupational Health Advisory Board." They suggested that for consistency with the statute, the Department should replace the term "Board" with the term "Advisory Board."

Response: The Department agrees the terms in the regulations should be consistent with the terms in the act. The Department has changed the term "Board" to "Advisory Board" in § 138i.2. In addition, in the final-form regulations all references to "Board" have been changed to "Advisory Board."

Comment: IRRC commented that the definition of "farm laborer" was not consistent with other proposed chapters of the Department's regulations. Specifically, IRRC advised that with regard to the FSTAP the last sentence in the definition of "farm labor" read, in part: ". . . or a farm product as defined in 1 Pa.C.S. § 1991," but that in the Department's other two proposed Farm Safety and Occupational Health regulations the definition of "Farm labor" read: ". . . or any farm product as defined in 1 Pa.C.S. § 1991. IRRC suggested that for consistency the Department's regulations should use either "a" or "any" but not both, in this definition.

Response: The Department has no objection to this comment. The Department will use "a" and has made this change in all three of the Farm Safety and Occupational Health final-form regulations.

Comment: IRRC commented that the definition of "members of farm families," in § 138i.2 was confusing and that there was a conflict between plural and singular nouns in the definition. The definition included a phrase ". . . collateral relation of the first degree . . ." IRRC found this confusing and suggested the Department replace the phrase with "nieces, nephews and grandchildren" and any others the Department would want included in the definition. In addition, IRRC commented that there was a conflict between plural and singular nouns in the term "members of farm families" and the first phrase of the definition which read: "Any son, daughter or spouse of a farmer. . . ."

Response: The Department believes the phrase "collateral relation of the first degree" is specific and should remain in the definition. However, in response to IRRC's concern for clarity, the Department has added: ". . . (such as nieces, nephews and grandchildren). . ." to the definition. We believe this should address the clarity issue while at the same time keeping the definition specific and narrow. With regard to IRRC's concern regarding a conflict between plural and singular nouns in the definition of "Members of farm families," the Department changed the phrase "Members of farm families" to "Members of farm family" and retained the singular form of the words ". . . son, daughter or spouse of a farmer. . ." in the definition. The Department believes this change is less confusing than amending the words in the definition to read ". . . sons, daughters and spouses of a farmer . . ."

Comment: IRRC commented that for clarity the contents of what was § 138i.8(c) (relating to notice of disposition of application) under the proposed regulations, should be moved to what was § 138i.6 (relating to processing of applications) under the proposed regulations. IRRC commented that alternatively the Department could create a new section captioned "Application requirements" following what was § 138i.6 under the proposed regulations.

Response: The Department agrees with this recommendation and has implemented the suggestion by moving what was § 138i.8(c) (relating to grant application requirements) under the proposed regulations, to what is now § 138i.5(b) in the final-form regulations. It should be noted that § 138i.5 in the final-form regulations still relates to applications and is the same as § 138i.6 under the proposed regulations. The section number was changed as a result of another suggestion by IRRC which required the Department to delete § 138i.1 (relating to authority) in the proposed regulations.

Comment: IRRC commented that § 138i.6(a) and (b) requires the applicants to compete and submit application forms provided by the Department, but the regulations do not list the basic information that will be required on the application form. IRRC suggested the Department should include basic information on the contents of the application form in this section.

Response: The Department knows of no requirement that an agency include a sample of an application form in the regulations. In addition, the Department will formulate and provide the application form to the applicant. The application form will notify the applicant of the information required. The Department also believes that the basic information needed on an application form is outlined in § 138i.5(b) of the final-form regulations and that further information as to content is supplied throughout the regulations such as § 138i.3 (relating to limitation on grants) and § 138i.6(d) regarding factors to be considered by the Department when reviewing a grant. Section 138i.6(b)(3) of the final-form regulations also sets forth a procedure for notifying applicants when a grant application is incomplete and provides additional time for the applicant to supply any missing information. There-

fore, the Department believes the final-form regulations are sufficiently specific and the applicant has sufficient notice with regard to the content of the application.

Comment: IRRC commented that what was § 138i.6(d) under the proposed regulations, was unclear as to its intent and should provide a specific cutoff time with regard to the acceptance of applications. IRRC suggested the Department should clarify the deadline in final-form regulations.

Response: The intent of the language of § 138i.6(d) was to allow the Department sufficient time to review and approve or disapprove an application for a tuition assistance grant and at the same time not impose a stringent deadline that would preclude potential grant recipients from receiving a tuition assistance grant. The Department was attempting to be as flexible as possible with this deadline because in many instances potential recipients of farm safety tuition assistance grants will have short notice with regard to the farm safety course for which they want to apply. In response to IRRC's concerns, the Department revised the language of this section (now § 138i.5(e)) to set the deadline at 30 days prior to the date of the project the applicant wishes to attend. In addition, in an attempt to remain flexible the Department added language allowing the Secretary to, ". . . approve an application submitted after this deadline if it is determined there is adequate time for a thorough review of the application and to issue a written approval to the applicant."

Comment: IRRC commented that subsection (a) (regarding review by the Secretary) of § 138i.7 (relating to review of applications) of the proposed regulations included three different topics and was long and potentially confusing. IRRC suggested the subsection should be broken down into outline form. In addition, IRRC commented that the section duplicates portions of §§ 138i.8. and 138i.10. IRRC asked the Department to clarify the purpose of § 138i.7(a) of the proposed regulations.

Response: The Department agrees that § 138i.7(a) would be easier to read and understand if it was broken down into outline form. Therefore, the Department has broken the subsection down in the final-form regulations. Because of other changes suggested by IRRC (deleting § 138i.1. relating to authority), § 138i.7, is now § 138i.6. in the final-form regulations. The Department has broken this section down into three subsections. Subsection (a) relating to "approval or denial," subsection (b) relating to "processing" of an application and subsection (c) relating to "Advisory Board" duties. In addition, subsection (b) has been subdivided into three paragraphs. Paragraph (1) states the Secretary will first review an application for completeness and accuracy; paragraph (2) relates to how the Secretary will process a complete and accurate application; and paragraph (3) relates to how the Secretary will process incomplete or inaccurate applications. The Department believes this will add clarity to the regulations as suggested by IRRC. With regard to IRRC's concern about duplicity, the Department believes that § 138i.7 of the proposed regulations (§ 138i.6 of the final-form regulations) is not duplicative. Section 138i.7 of the proposed regulations, dealt with the processing of a grant application and are intended to notify the applicant of who will review the grant applications, the time period of the review and the process for incomplete or inaccurate applications. Section 138i.8 of the proposed regulations (§ 138i.7 of the final-form regulations) related to review of applications deals with applicant eligibility standards and with the factors to be considered by the Secretary when reviewing and ranking a Program grant application. Finally, § 138i.10 of the proposed regulations (§ 138i.8 of the final-form regulations) relating to notice of disposition of a grant application, is intended to inform the applicant of how and in what time period the applicant will be notified of approval or denial of the grant application. It should be noted that § 138i.10 of the proposed regulations has been moved so that it now follows the sections relating to processing and review of applications. Therefore, the regulations gain a logical flow by notifying the applicant of: (1) how applications will be processed; (2) how an application will be reviewed and ranked; and (3) how and when an applicant will be notified.

Comment: IRRC commented concerning subsection (b) (regarding the Advisory Board function) of § 138i.7. of the proposed regulations. IRRC interpreted the language of the subsection to mean that the Advisory Board would have an active role in reviewing each individual grant application. Under that interpretation and the fact the Department plans to review and approve grant applications within 30 days, IRRC was concerned that it would not be feasible to include the Advisory Board in the review of each application. IRRC suggested the Department clarify the language of this section or move this subsection to § 1383i.4(b) of the proposed regulations.

Response: The Department did not intend the language of this subsection to include the Advisory Board in the review of each individual grant application. This interpretation of the language of this subsection is in direct conflict with the powers of the Advisory Board enumerated in section 3(g) of the act (3 P. S. § 1903(g)). The Department has changed the language of this section of the final-form regulations to remove all doubt as to the function of the Advisory Board. The revised language makes it clear that the Advisory Board does not and will not review individual grants. The Advisory Board will only carry out those functions set forth in the act, such as recommending overall farm safety and occupational health program priorities and recommending priorities for expenditure of funds for development and implementation of farm safety and occupational health programs. The Department does not agree with moving this language to the section related to limitations on grant funds. While the Advisory Board's recommendations on funding may affect the number of grants that can be given out under any of the various farm safety and occupational health programs and the overall factors considered when reviewing a grant application, the Advisory Boards' function does not directly affect or limit each individual grant application. Therefore, the Department has elected to keep this language in the section related to processing of applications.

Comment: IRRC commented with regard to § 138i.12 (relating to right of recovery) of the proposed regulations, that the term "used" in the phrase ". . . grant may be canceled by the Secretary upon a determination that the funds are not being or were not properly used" was not defined and it was unclear as to what the term meant.

Response: The Department added language to this section that narrows the scope of what the term "used" could mean. The language of this section now refers to violations of any provision of the act, the regulations or the grant agreement and implementation of the project set forth in the grant application.

Comment: IRRC commented that § 138i.1 entitled "Authority" was unnecessary and should be deleted.

Response: The Department agrees with this comment and has deleted § 138i.1 from the final-form regulations.

Comment: The Pennsylvania Emergency Health Services Council (PEHSC) commented with regard to the Department's interpretation of § 138i.4(e) of the proposed regulations. The PEHSC questioned whether the Department interpreted ". . . emergency medical care-related programs specifically designed for farm-related emergencies" as eligible for Program grants.

Response: Emergency medical care-related programs specifically designed for farm-related emergencies do qualify for tuition assistance. Program grants may be awarded to supplement tuition to the types of projects delineated in section 4(b) of the act. Section 4(b)(9) of the act specifically refers to training of emergency service providers in methods and procedures for responding to farm emergencies, including farm rescue and machinery extraction. In addition section 6(a) of the act, regarding tuition assistance states that tuition assistance may be provided to eligible applicants to ". . . attend farm safety and occupational health training and emergency response programs. Section 2 of the act (3 P. S. § 1902), regarding the definition of "emergency service provider" supports this interpretation.

Fiscal Impact

Commonwealth

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

Political Subdivisions

The final-form regulations will impose no direct costs and have no fiscal impact upon political subdivisions.

Private Sector

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

General Public

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

Paperwork Requirements

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

Contact Person

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

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on January 31, 2000, the Department submitted a copy of the notice of proposed rulemaking published at 30 Pa.B. 771 (February 12, 2000) to IRRC and to the Chairpersons of the House and Senate Standing Committees on Agriculture and Rural Affairs for review and comment.

In compliance with section 5(c) of the Regulatory Review Act, the Department also provided IRRC and the Committees with copies of the comments received, as well as other documentation. In preparing these final-form regulations, the Department has considered the comments received from IRRC, the Committees and the public.

Under section 5.1(d) of the Regulatory Review Act (71 P. S. § 745.5a(d)), these final-form regulations were deemed approved by the House and Senate Committees on February 13, 2001. Under section 5.1(e) of the Regulatory Review Act, IRRC met on February 15, 2001, and approved the final-form regulations.

Findings

The Department finds that:

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

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

(3) The modifications that were made to these regulations in response to comments received do not enlarge the purpose of the proposed regulations published at 30 Pa.B. 771.

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

Order

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

(a) The regulations of the Department, 7 Pa. Code, are amended by adding §§ 138i.1—138i.13 to read as set forth in Annex A.

(b) The Secretary shall submit this order and Annex A to the Office of General Counsel and to the Office of

Attorney General for review and approval as to legality and form, as required by law.

(c) The Secretary shall certify this order and Annex A and deposit them with the Legislative Reference Bureau, as required by law.

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

SAMUEL E. HAYES, Jr.,
Secretary

(*Editor's Note*: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 31 Pa.B. 1291 (March 3, 2001).)

Fiscal Note: Fiscal Note 2-123 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 7. AGRICULTURE

PART V-C. FARMLAND AND FOREST LAND

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

Sec.

§ 138i.1. Program objectives.

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

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

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

§ 138i.2. Definitions.

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

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

Advisory Board—The Farm Safety and Occupational Health Advisory Board.

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

Department—The Department of Agriculture of the Commonwealth.

Designee—A person chosen or appointed by the Secretary to carry out the Secretary's duties under this chapter.

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

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

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

Members of farm family—Any son, daughter or spouse of a farmer or any lineal relation of the farmer who works on the farm or any collateral relation of the first degree (such as nieces, nephews or grandchildren) who works on the farm.

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

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

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

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

Secretary—The Secretary of Agriculture of the Commonwealth or a designee.

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

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

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

§ 138i.3. Limitation on grants.

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

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

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

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

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

(f) *Additional limitations.*

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

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

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

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

§ 138i.4. General conditions.

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

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

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

(d) *Failure to verify.* If a fully completed final report containing the required receipts, records and documentation is not submitted within the 2-week period, the Program grant recipient shall be deemed to have defaulted. The Secretary may direct that no Program grant funds be paid to the defaulting recipient. The Secretary will notify the grant recipient in writing of a default due to the grant recipient's failure to supply a completed final report. The recipient will have 10 days, from the receipt of the written notice to remedy the default. The Secretary may extend the verification deadline if the Secretary determines the grant recipient has made a reasonable effort to verify, but the verification was incomplete, or for extenuating circumstances.

§ 138i.5. Applications.

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

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

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

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

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

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

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

(d) *Additional information.* The Secretary may require an applicant to submit additional documentation as may be necessary to complete, verify or clarify the application.

(e) *Application deadline.* Applications for grants under this chapter shall be received by the Department 30 days prior to the date of the project the applicant wishes to attend. The Secretary may approve an application submitted after this deadline if it is determined there is adequate time for a thorough review of the application and to issue written approval to the applicant.

§ 138i.6. Processing of applications.

(a) *Approval or denial.* The Secretary will approve, approve with special conditions or reject grant applications and issue grants in accordance with the general considerations and criteria of the act and this chapter. The Secretary may exercise his judgment in approving grant applications and in determining the distribution of grants so that the widest possible audience becomes acquainted with farm safety and occupational health practices and techniques espoused by the act and this chapter. The Secretary may impose restrictions or special conditions upon the issuance of a grant.

(b) *Processing.* An application for a program grant shall be processed in the following manner:

(1) *Completeness and accuracy.* Upon receipt of an application for a program grant and the required supporting documentation, the Secretary will review this information for completeness and accuracy.

(2) *Complete and accurate applications.* Applications containing all the required information and supporting documentation will be reviewed in accordance with the

criteria in the act and this chapter and accepted, accepted with special conditions or rejected. Grant applicants will be notified in writing as set forth in § 138i.8(a) (relating to notice of disposition of application).

(3) *Incomplete or inaccurate applications*. If the Secretary determines an application is incomplete or inaccurate, final processing of the application may be discontinued or additional data may be requested. If additional data is requested, the request shall be in writing as set forth in § 138i.8(b) and will be sent to the address listed on the grant application. The processing of the application will cease until the applicant supplies the requested data. The Secretary will terminate the processing of an incomplete application when the additional data requested is not supplied within 10 days of the request for the data.

(c) *Advisory Board*. The Advisory Board, as required under section 3(g)(2) and 4(c) of the act (3 P. S. §§ 1903(g)(2) and 1904(c)), shall recommend overall program priorities for each grant program to the Secretary. Additionally, the Advisory Board, as required by section 3(g)(3) of the act (3 P. S. § 1903(g)(3)), shall recommend the amount of funds to be allocated to each grant program. The Advisory Board has no authority to and will not review individual grant applications and will have no input into individual grant awards.

§ 138i.7. Review of applications.

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

(b) *Applicant eligibility*. To be eligible for a Program grant, the applicant shall be a rural emergency service provider, farmer, member of a farm family or farm laborer or be otherwise involved in agricultural production. An emergency service provider shall submit an application for each individual member for which it wishes to receive a Program grant. Each member for which it receives a Program grant shall comply with the criteria established by the act and this chapter, including the verification criteria.

(c) *Grant application completeness*. An application for a Program grant will not be considered by the Secretary unless it contains the required information and items as set forth in § 138i.5(b) (relating to applications).

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

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

(2) The innovativeness of the project.

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

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

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

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

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

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

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

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

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

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

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

(b) *Applications deemed incomplete*. Within 30 days of receipt of a grant application, the Secretary will notify the applicant of a decision to reject the grant application or notify the applicant of a deficiency in the grant application and request additional data. If additional data is requested, notification shall be in writing and detail the additional data needed. The Secretary will follow the action prescribed in § 138i.6(b)(3) (relating to processing of applications).

§ 138i.9. Conflict of interest.

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

§ 138i.10. Recordkeeping.

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

§ 138i.11. Grant cancellation.

A Program grant may be canceled by the Secretary upon a determination that the grant recipient has violated any provision of the act, this chapter or the grant agreement, the grant funds or any portion thereof were not used to implement the project set forth in the grantee's approved grant application, or upon failure of the recipient to satisfy the verification requirements of this chapter. Upon cancellation the Secretary may seek recovery of the grant funds or any portion thereof as delineated in § 138i.12 (relating to right of recovery).

§ 138i.12. Right of recovery.

The Department has the right to make a claim for and receive from the grant recipient grant funds not expended in accordance with the act, the grant agreement or this chapter and may demand the return of the grant funds or any portion thereof.

§ 138i.13. Deficits.

The Department's financial obligation is limited to the amount of the grant.

[Pa.B. Doc. No. 01-545. Filed for public inspection March 30, 2001, 9:00 a.m.]

Title 25—ENVIRONMENTAL PROTECTION

ENVIRONMENTAL QUALITY BOARD

[25 PA. CODE CH. 78]

Oil and Gas Wells

The Environmental Quality Board (Board) by this order amends Chapter 78 (relating to oil and gas wells). Amendments are needed to reflect the statutory amendment of act of May 15, 1998 (P. L. 358, No. 57) (Act 57), which eliminated the bonding requirement for oil and gas wells drilled prior to April 18, 1985. These amendments also clarify several sections, including brine spill reporting, notification requirements, permit requirements, disposal options and requirements for drilling through a gas storage reservoir.

This order was adopted by the Board at its meeting of January 16, 2001.

A. *Effective Date*

These amendments will go into effect upon publication in the *Pennsylvania Bulletin* as final-form rulemaking.

B. *Contact Persons*

For further information, contact James Erb, Director of the Bureau of Oil and Gas Management, P. O. Box 8765, Rachel Carson State Office Building, Harrisburg, PA 17105-8765, (717) 772-2199, or Scott Perry, Assistant Counsel, Bureau of Regulatory Counsel, P. O. Box 8464, Rachel Carson State Office Building, Harrisburg, PA 17105-8464, (717) 787-7060. Persons with a disability may use the AT&T Relay Service by calling (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This proposal is available electronically through the Department of Environmental Protection's (Department) website (http://www.dep.state.pa.us).

C. *Statutory Authority*

The final rulemaking is adopted under the authority of sections 601—604 of the Oil and Gas Act (act) (58 P. S. §§ 601.601—601.604), which directs the Board to adopt regulations to implement the provisions of the act; section 5(b)(1) of The Clean Streams Law (CSL) (35 P. S. § 691.5(b)(1)), which grants the Department the power and duty to formulate, adopt, promulgate and repeal rules and regulations necessary to implement the provisions of the CSL; section 304 of the CSL (35 P. S. § 691.304), which grants the Department the power to adopt, prescribe and enforce rules and regulations as may be necessary for the protection of the purity of the waters of this Commonwealth, or parts thereof, and to purify those now polluted, and to assure the proper and practical operation and maintenance of treatment works approved by the Department; section 402(a) of the CSL (35 P. S. § 691.402(a)), which grants the Department the authority to require by rules and regulations that activities be conducted under a permit or other conditions established by the Department whenever the Department finds that the activity creates a danger of pollution of the waters of this Commonwealth, or that regulation is necessary to avoid pollution; section 105(a) of the Solid Waste Management Act (SWMA) (35 P. S. § 6018.105(a)), which grants the Board the power and duty to adopt the rules and regulations of the Department to carry out the provisions of the SWMA; and sections 1901-A, 1917-A, 1920-A, 30 and 31 of The Administrative Code of 1929 (71 P. S. §§ 510-1, 510-17, 510-20, 510-103 and 510-104).

D. *Background of the Amendments*

The final-form rulemaking is required to update the current regulations to reflect the legislated changes in Act 57, regarding bonding for wells drilled prior to April 18, 1985. It incorporates recommendations received during the Oil and Gas Customer Needs Project regarding standardizing the use of pits, clarifying terms, organization of the sections of the regulations, and the placement of design criteria in the regulations. It also includes an additional recommendation regarding notification requirements for de minimis brine spill reporting. The Oil and Gas Technical Advisory Board suggested additional precautions regarding notification requirements to coal owners and gas storage operators as well as advance notice of procedures when drilling is proposed in relation to gas storage operations.

E. *Summary of the Amendments and Changes to the Proposed Rulemaking*

This section describes the substantive changes in the proposed rulemaking and those made at final-form rulemaking based on public comment.

Section 78.1. Definitions.

The amendments add a definition for "reportable release of brine." This change provides clarification as to the quantity of spilled brine that must be reported. This definition is added in conjunction with § 78.66 (relating to reporting releases).

Section 78.17. Permit renewal.

The amendments add affected coal owners and gas storage operators to the persons who shall be notified when an operator requests a permit renewal. This change provides consistency with other sections of the regulations that allow coal owners and gas storage operators the opportunity for notification and objection of well permits. The final version was changed to clarify that notice shall be given to gas storage operators where the permit renewal is for a proposed well location without an underground gas storage reservoir or the reservoir protective area.

Section 78.53. Erosion and sediment control.

The amendment references the best management practices for oil and gas well operators as part of the technical guidance found in the *Oil and Gas Operators Manual.* The title of the section is changed for consistency. The final version requires well operators to design and implement best management practices.

Section 78.56. Pits and tanks for temporary containment.

The amendment changes subsection (a) to recognize additional operations that may result in the discharge of pollutional substances, and includes additional pollutional substances that must be contained. This section eliminates the permitting requirement for recompletion, servicing, and plugging pits, which are temporary in nature.

The amendment changes subsection (a)(4) to include drill cuttings from below the casing seat as a substance that must be considered when an operator is installing, constructing or maintaining the temporary pit.

The amendment adds subsection (a)(4)(v) to clarify the maintenance requirement for pit liners.

Subsection (d) is amended to include pits used during servicing and plugging. At final rulemaking, the word "restored" was replaced with "removed or filled."

Section 78.59. Pits used during servicing and plugging.

The amendment deletes this section because the changes to § 78.56 (relating to pits and tanks for temporary containment) regulate the same pits.

Section 78.60. Discharge requirements.

The amendment changes subsection (b)(5) to clarify that discharge of tophole water may include accumulated precipitation, and that tophole water is more appropriately characterized as the discharge.

Section 78.61. Disposal of drill cuttings.

The amendment changes subsections (a)—(c) to add a leading description to each subsection.

The amendment adds subsection (b)(8) and amend subsection (a) to clarify that free liquid fraction must be disposed of in accordance with the proper discharge requirements. Subsection (b)(8) is added for consistency with subsection (a).

Sections 78.62 and 78.63. Disposal of residual waste—pits; and disposal of residual waste—land application.

The amendments change §§ 78.62(a)(3) and 78.63(a)(3) to reflect the legislative changes that Act 57 created. Act 57 eliminated the bonding requirement for onsite disposal of residual wastes at oil and gas wells drilled prior to April 18, 1985. Clarifying language was added to these sections at final rulemaking to specify that the requirements apply to wells drilled on or after April 18, 1985.

Section 78.66. Reporting releases.

The amendment adds this section to clarify when a brine spill must be reported to the Department. This section also details the notification requirements for such a brine release. The title has been changed in the final version, and minor word changes were made in subsections (a) and (c).

Section 78.75. Alternative methods.

The amendment changes subsections (c) and (d) to clarify who is to be notified when an alternate method of casing, plugging or equipping a well is proposed by the well operator. The amendment includes all potentially impacted parties, such as coal owners and gas storage operators. This amendment includes these owners and operators as individuals who may evaluate the impact the alternate method may have on their interests.

Section 78.76. Drilling within a gas storage reservoir area.

The amendment changes subsection (a) to clarify that when a well operator proposes to drill within a gas storage area or reservoir protective area, the Department and the gas storage operator are to receive copies of the drilling proposal to allow them the opportunity to evaluate the impact on gas storage operations. Subsection (b) clarifies that the storage operator may object to the drilling, casing, and cementing plan or location of the proposed well. Subsection (c) is deleted here and moved to new § 78.87(a)(4) (relating to cementing procedures).

Section 78.78. Pillar permit applications.

The amendment adds subsection (a) to recognize the Department's use of the most current coal pillar study when considering a coal pillar permit application. The most recent coal pillar study was developed in 1957 and is still valid. Several other states also use this study in determining pillar adequacy.

The amendment adds subsection (b) to allow coal mine operators the opportunity to propose alternative adequate methods for developing a coal pillar. The final version references the applicable study in subsection (a).

Sections 78.81 and 78.87. General provisions, and gas storage reservoir protective casing; and cementing procedures.

The amendments relocate and modify § 78.81(d) as new § 78.87 to improve clarity of the regulation.

Specific changes from § 78.81 to § 78.87 are:

1) Section 78.87(a)(1) requires well operators to use drilling procedures capable of controlling anticipated gas flows and pressures when drilling from the surface to 200 feet above a gas storage reservoir or gas storage horizon. Deleted § 78.81 required these procedures "at all times."

2) Language deleted in § 78.81(d)(2) that provided for mutual agreement between well operators and gas storage operators concerning well casing has not been included in § 78.87. This language has been modified and is included in § 78.76 (relating to drilling within a gas storage reservoir area).

The final version clarifies that the protective area is the gas storage protective area.

Sections 78.91—78.93. General provisions; wells in coal areas—surface or coal protective casing is cemented; and wells in coal areas—surface or coal protective casing anchored with a packer or cement.

The amendments delete the word "expanding" from these three sections. The word "expanding" was used as an adjective to describe "cement." Cement expands upon curing; therefore, the use of the adjective is not necessary.

Section 78.302. Requirement to file a bond.

The amendment revises this section to reflect the legislative change of Act 57, which eliminated the bonding requirement for oil and gas wells drilled prior to April 18, 1985.

Section 78.303. Form, terms and conditions of the bond.

The amendment deletes susbsections (a)(3) and (e)(3) to reflect the legislative changes of Act 57.

Section 78.309. Phased deposit of collateral.

The amendment revises susbsection (a)(1) to reflect the legislative changes of Act 57. The amendment states that an operator who has a phased deposit of collateral bond in effect as of the date of Act 57 (November 26, 1997) may maintain that bond. Due to the elimination of the bonding requirement for oil and gas wells drilled prior to April 18, 1985, operators can no longer qualify for a new phased deposit of collateral bond.

The amendment changes susbsection (a)(1) to provide that all of the operator's wells are included in the number of wells considered for the purpose of calculating an operator's annual deposit amount. This amendment reflects the legislative changes of Act 57.

The amendment deletes subsection (b)(1)(ii) because it only applied to pre-act wells. This amendment reflects the legislative changes of Act 57.

Section 78.310. Replacement of existing bond.

The amendment changes this section to delete the fee-in-lieu of bond option because new fee-in-lieu of bonding is not allowed. This amendment reflects the legislative changes of Act 57.

Section 78.901. Definitions

The amendment deletes this section because the only definition listed is for the Natural Gas Policy Act, a Federal program no longer delegated to the Department.

Section 78.903. Frequency of inspections.

The amendments delete paragraph (17) in accordance with the Department's operation under the act, and not the Federal Natural Gas Policy Act. The Federal program was discontinued.

F. *Summary of Comments and Responses on the Proposed Rulemaking*

The Board approved the proposed rulemaking on April 18, 2000, and it was published at 30 Pa.B. 3065 (June 17, 2000), with provision for a 30-day public comment period that closed on July 17, 2000. Comments were received from a total of five commentators and the Independent Regulatory Review Commission (IRRC).

The majority of comments suggested clarifying language, which was incorporated in the final-form regulations. Several commentators had opposing views regarding the anticipated drilling date and drilling plan notification requirements for drilling through gas storage reservoirs. Comments suggesting that gas storage operators be given the authority to reject a well operator's drilling plan were not included in the final-form rulemaking. This ability to effectively veto the Department's permitting authority goes beyond the statutory provisions of the act. Comments suggesting that well operators be excluded from providing notice to gas storage operators were also not included in the final-form rulemaking. Providing notice of the anticipated drilling date and the drilling plan is important because pressure in a storage reservoir fluctuates from low pressures in the summer to high pressures in fall and winter. Thus, the date drilling is to occur impacts how an operator must plan. The changes to § 78.76 ensure that the storage reservoir is protected by allowing a storage operator to confirm that the well operator's drilling plan adequately provides for the anticipated storage reservoir pressures.

G. *Benefits, Costs and Compliance*

Executive Order 1996-1 requires a cost/benefit analysis of the final-form regulations.

Benefits

These amendments are needed to reduce unnecessary permitting and reporting requirements, standardize the use of pits, clarify terms, organize the sections of the regulation, and provide information as to where to find design criteria. The amendments include notification requirements for de minimis brine spill reporting. The Oil and Gas Technical Advisory Board suggested additional precautions regarding notification requirements to coal owners and gas storage operators as well as advance notice of procedures when drilling is proposed in relation to gas storage operations. The amendments also reflect the legislative changes of Act 57. The oil and gas industry and the Department should realize savings in the form of reduced time and costs due to decreased permitting and reporting requirements and improved regulation clarity. The provision regarding elimination of the permit requirement for temporary pits will affect operators with active drilling or plugging programs. The renewal notification requirements will benefit coal owners and gas storage operators. The spill reporting provision will benefit about 2,000 operators with active wells as well as reduce the Department's staff time to address reported de minimis spills.

Compliance Costs

Operators proposing to drill a well in a gas storage area will have to provide the storage well operator the details of how the operator intends to construct the well. There will be fewer than 20 occurrences each year. This particular amendment will impose minimal additional compliance costs on the Department and the regulated community; however, these costs are likely to be offset by the overall savings of time and costs that are described in the Benefits section of this Preamble.

Compliance Assistance Plan

The technical guidance for the coal pillar permit criteria is made available on the Department website. The best management practices for erosion and sedimentation control is made available in the *Oil and Gas Operators Manual*. Both of these documents are available from the contact persons listed in Section B of this Preamble.

Paperwork Requirements

These amendments will reduce certain paperwork required for brine spill reporting and eliminate permits for certain pits.

H. *Sunset Review*

These regulations will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulations effectively fulfill the goals for which they were intended.

I. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on May 31, 2000, the Department submitted a copy of the notice of proposed rulemaking at 30 Pa.B. 3065, to IRRC and the Chairpersons of the House and Senate Environmental Resources and Energy Committees.

Under section 5(c) of the Regulatory Review Act, the Department also provided IRRC and the Committees with copies of the comments received, as well as other documentation. In preparing these final-form regulations, the Department has considered all comments received from IRRC and the public. The Committees did not provide comments on the proposed rulemaking.

Under section 5.1(d) of the Regulatory Review Act (71 P. S. § 745.5a(d)) these final-form regulations were deemed approved by the House and Senate Committees on February 26, 2001. IRRC met on March 8, 2001, and approved the amendments in accordance with section 5.1(e) of the Regulatory Review Act.

J. *Findings*

The Board finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and regulations promulgated in 1 Pa. Code §§ 7.1 and 7.2.

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

(3) These final-form regulations do not enlarge the purpose of the proposal published at 30 Pa.B. 3065.

(4) These final-form regulations are necessary and appropriate for administration and enforcement of the authorizing acts identified in Section C of this Preamble.

K. *Order*

The Board, acting under the authorizing statutes, orders that:

(a) The regulations of the Department, 25 Pa. Code Chapter 78, are amended by amending §§ 78.1, 78.60, 78.75, 78.76, 78.81, 78.91—78.93, 78.302, 78.303, 78.310 and 78.903 and deleting §§ 78.59 and 78.901 to read as

set forth at 30 Pa.B. 3065; and by amending §§ 78.17, 78.53, 78.56, 78.61—78.63 and 78.309 and adding §§ 78.66, 78.78 and 78.87 to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

(b) The Chairperson of the Board shall submit this order, 30 Pa.B. 3065 and Annex A to the Office of General Counsel and the Office of Attorney General for approval and review as to legality and form, as required by law.

(c) The Chairperson shall submit this order, 30 Pa.B. 3065 and Annex A to IRRC and the Senate and House Environmental Resources and Energy Committees as required by the Regulatory Review Act.

(d) The Chairperson of the Board shall certify this order, 30 Pa.B. 3065 and Annex A and deposit them with the Legislative Reference Bureau, as required by law.

(e) This order shall take effect immediately upon publication in the *Pennsylvania Bulletin*.

JAMES M. SEIF,
Chairperson

(*Editor's Note:* For the text of the order of the Independent Regulatory Review Commission relating to this document, see 31 Pa.B. 1647 (March 24, 2001).)

Fiscal Note: Fiscal Note 7-353 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION

PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION

Subpart C. PROTECTION OF NATURAL RESOURCES

ARTICLE I. LAND RESOURCES

CHAPTER 78. OIL AND GAS WELLS

Subchapter B. PERMITS, TRANSFERS AND OBJECTIONS

PERMITS AND TRANSFERS

§ 78.17. Permit renewal.

An operator may request a 1-year renewal of a well permit. The request shall be accompanied by a permit fee, the surcharge required in section 601 of the act (58 P. S. § 601.601), and an affidavit affirming that the information on the original application is still accurate and complete, that the well location restrictions are still met and that the surface owners, coal owners and operators, gas storage operators, where the permit renewal is for a proposed well location within an underground gas storage reservoir or the reservoir protective area, and water supply owners within 1,000 feet have been notified of this request for renewal. The request shall be received by the Department at least 15 calendar days prior to the expiration of the original permit.

Subchapter C. ENVIRONMENTAL PROTECTION PERFORMANCE STANDARDS

§ 78.53. Erosion and sediment control.

During and after earthmoving or soil disturbing activities, including the activities related to siting, drilling, completing, producing, servicing and plugging the well, constructing, utilizing and restoring the access road and restoring the site, the operator shall design, implement and maintain best management practices in accordance with Chapter 102 (relating to erosion and sediment control) and an erosion and sediment control plan prepared under that chapter. Best management practices for oil and gas well operations are listed in the *Oil And Gas Operators Manual*, Commonwealth of Pennsylvania, Department of Environmental Protection, Guidance No. 550-0300-001 (April 1997), as amended and updated.

§ 78.56. Pits and tanks for temporary containment.

(a) Except as provided in §§ 78.60(b) and 78.61(b) (relating to discharge requirements; and disposal of drill cuttings), the operator shall contain pollutional substances and wastes from the drilling, altering, completing, recompleting, servicing and plugging the well, including brines, drill cuttings, drilling muds, oils, stimulation fluids, well treatment and servicing fluids, plugging and drilling fluids other than gases in a pit, tank or series of pits and tanks. The operator shall install or construct and maintain the pit, tank or series of pits and tanks in accordance with the following requirements:

(1) The pit, tank or series of pits and tanks shall be constructed and maintained with sufficient capacity to contain all pollutional substances and wastes which are used or produced during drilling, altering, completing and plugging the well.

(2) A pit shall be designed, constructed and maintained so that at least 2 feet of freeboard remain at all times. If open tanks are used, the tanks shall be maintained so that at least 2 feet of freeboard remain at all times unless the tank is provided with an overflow system to a standby tank or pit with sufficient volume to contain all excess fluid or waste. If an open standby tank is used, it shall be maintained with 2 feet of freeboard. If this subsection is violated, the operator immediately shall take the necessary measures to ensure the structural stability of the pit or tank, prevent spills and restore the 2 feet of freeboard.

(3) Pits and tanks shall be designed, constructed and maintained to be structurally sound and reasonably protected from unauthorized acts of third parties.

(4) A pit or tank that contains drill cuttings from below the casing seat, pollutional substances, wastes or fluids other than tophole water, fresh water and uncontaminated drill cuttings shall be impermeable and comply with the following:

(i) The pits shall be constructed with a synthetic flexible liner with a coefficient of permeability of no greater than 1×10^{-7} cm/sec and with sufficient strength and thickness to maintain the integrity of the liner. The liner shall be designed, constructed and maintained so that the physical and chemical characteristics of the liner are not adversely affected by the waste and the liner is resistant to physical, chemical and other failure during transportation, handling, installation and use. Adjoining sections of liners shall be sealed together to prevent leakage in accordance with the manufacturer's directions. If the operator seeks to use a liner material other than a synthetic flexible liner, the operator shall submit a plan identifying the type and thickness of the material and the installation procedures to be used, and shall obtain approval of the plan by the Department before proceeding.

(ii) The pit shall be constructed so that the liner subbase is smooth, uniform and free from debris, rock and other material that may puncture, tear, cut or otherwise cause the liner to fail. The liner subbase and subgrade shall be capable of bearing the weight of the material above the liner without settling that may affect the integrity of the liner. If the pit bottom or sides consist of rock, shale or other materials that may cause the liner to fail, a subbase of at least 6 inches of soil, sand or

smooth gravel, or sufficient amount of an equivalent material, shall be installed over the area as the subbase for the liner.

(iii) The bottom of the pit shall be at least 20 inches above the seasonal high groundwater table, unless the operator obtains approval under subsection (b) for a pit that exists only during dry times of the year and is located above groundwater.

(iv) If a liner becomes torn or otherwise loses its integrity, the pit shall be managed to prevent the pit contents from leaking from the pit. If repair of the liner or construction of another temporary pit is not practical or possible, the pit contents shall be removed and disposed at an approved waste disposal facility or disposed on the well site in accordance with § 78.61, § 78.62 or § 78.63 (relating to disposal of residual waste—pits; and disposal of residual waste—land application).

(v) If the liner drops below the 2 feet of freeboard, the pit shall be managed to prevent the pit contents from leaking from the pit and the 2 feet of lined freeboard shall be restored.

(b) The operator may request to use practices other than those specified in subsection (a) which provide equivalent or superior protection by submitting a request to the Department for approval. The request shall be made on forms provided by the Department.

(c) Disposal of uncontaminated drill cuttings in a pit or by land application shall comply with § 78.61. A pit used for the disposal of residual waste, including contaminated drill cuttings, shall comply with § 78.62. Disposal of residual waste, including contaminated drill cuttings, by land application shall comply with § 78.63.

(d) Unless a permit under The Clean Streams Law (35 P. S. §§ 691.1—691.1001) or approval under § 78.57 or § 78.58 (relating to control, storage and disposal of production fluids; and existing pits used for the control, storage and disposal of production fluids) has been obtained for the pit, the owner or operator shall remove or fill the pit within 9 months after completion of drilling, or in accordance with the extension granted by the Department under section 206(g) of the act (58 P. S. § 601.206(g)). Pits used during servicing, plugging and recompleting the well shall be removed or filled within 90 days of construction.

§ 78.61. Disposal of drill cuttings.

(a) *Drill cuttings from above the casing seat—pits.* The owner or operator may dispose of drill cuttings from above the casing seat determined in accordance with § 78.83(b) (relating to surface and coal protective casing and cementing procedures) in a pit at the well site if the owner or operator satisfies the following requirements:

(1) The drill cuttings are generated from the well at the well site.

(2) The drill cuttings are not contaminated with pollutional material, including brines, drilling muds, stimulation fluids, well servicing fluids, oil, production fluids or drilling fluids other than tophole water, fresh water or gases.

(3) The disposal area is not within 100 feet of a stream, body of water or wetland unless approved as part of a waiver granted by the Department under section 205(b) of the act (58 P. S. § 601.205(b)).

(4) The disposal area is not within 200 feet of a water supply.

(5) The pit is designed, constructed and maintained to be structurally sound.

(6) The free liquid fraction of the waste shall be removed and disposed under § 78.60 (relating to discharge requirements).

(7) The pit shall be backfilled to the ground surface and graded to promote runoff with no depression that would accumulate or pond water on the surface. The stability of the backfilled pit shall be compatible with the adjacent land.

(8) The surface of the backfilled pit area shall be revegetated to stabilize the soil surface and comply with § 78.53 (relating to erosion and sedimentation control). The revegetation shall establish a diverse, effective, permanent, vegetative cover which is capable of self-regeneration and plant succession. Where vegetation would interfere with the intended use of the surface of the landowner, the surface shall be stabilized against erosion.

(b) *Drill cuttings from above the casing seat—land application.* The owner or operator may dispose of drill cuttings from above the casing seat determined in accordance with § 78.83(b) by land application at the well site if the owner or operator satisfies the following requirements:

(1) The drill cuttings are generated from the well at the well site.

(2) The drill cuttings are not contaminated with pollutional material, including brines, drilling muds, stimulation fluids, well servicing fluids, oil, production fluids or drilling fluids other than tophole water, fresh water or gases.

(3) The disposal area is not within 100 feet of a stream, body of water or wetland unless approved as part of a waiver granted by the Department under section 205(b) of the act (58 P. S. § 601.205(b)).

(4) The disposal area is not within 200 feet of a water supply.

(5) The soils have a minimum depth from surface to bedrock of 20 inches.

(6) The drill cuttings are not spread when saturated, snow covered or frozen ground interferes with incorporation of the drill cuttings into the soil.

(7) The drill cuttings are not applied in quantities which will result in runoff or in surface water or groundwater pollution.

(8) The free liquid fraction is disposed in accordance with § 78.60.

(9) The drill cuttings are spread and incorporated into the soil.

(10) The land application area shall be revegetated to stabilize the soil surface and comply with § 78.53. The revegetation shall establish a diverse, effective permanent vegetative cover which is capable of self-regeneration and plant succession. Where vegetation would interfere with the intended use of the surface by the landowner, the surface shall be stabilized against erosion.

(c) *Drill cuttings from below the casing seat.* After removal of the free liquid fraction and disposal in accordance with § 78.60, drill cuttings from below the casing seat determined in accordance with § 78.83(b) may be disposed of as follows:

(1) In a pit that meets the requirements of § 78.62(a)(5)—(18) and (b) (relating to disposal of residual waste—pits).

(2) By land application in accordance with § 78.63(a)(5)—(20) and (b) (relating to disposal of residual waste—land application).

(d) The owner or operator may request to use solidifiers, dusting, unlined pits, attenuation or other alternative practices for the disposal of uncontaminated drill cuttings by submitting a request to the Department for approval. The request shall be made on forms provided by the Department and shall demonstrate that the practice provides equivalent or superior protection to the requirements of this section.

(e) A pit used for the disposal of residual waste, including contaminated drill cuttings, shall comply with § 78.62. Land application of residual waste, including contaminated drill cuttings, shall comply with § 78.63.

§ 78.62. Disposal of residual waste—pits.

(a) After the removal and disposal of the free liquid fraction of the waste under § 78.60(a) (relating to discharge requirements), the owner or operator may dispose of residual waste, including contaminated drill cuttings, in a pit at the well site if the owner or operator satisfies the following requirements:

(1) The waste is generated by the drilling or production of an oil or gas well that is located on the well site where the waste is disposed.

(2) The well is permitted under section 201 of the act (58 P. S. § 601.201) or registered under section 203 of the act (58 P. S. § 601.203).

(3) The requirements of section 215 of the act (58 P. S. § 601.215) are satisfied by filing a surety or collateral bond for wells drilled on or after April 18, 1985.

* * * * *

§ 78.63. Disposal of residual waste—land application.

(a) The owner or operator may dispose of residual waste, including contaminated drill cuttings, at the well site by land application of the waste if the owner or operator satisfies the following requirements:

(1) The waste is generated by the drilling or production of an oil or gas well that is located on the well side.

(2) The well is permitted under section 201 of the act (58 P. S. § 601.201) or registered under section 203 of the act (58 P. S. § 601.215).

(3) The requirements of section 215 of the act (58 P. S. § 601.215) are satisfied by filing a surety or collateral bond for wells drilled on or after April 18, 1985.

* * * * *

§ 78.66. Reporting releases.

(a) A release of a substance causing or threatening pollution of the waters of this Commonwealth, shall comply with the reporting and corrective action requirements of § 91.33 (relating to incidents causing or threatening pollution).

(b) If a reportable release of brine on or into the ground occurs at the well site, the owner or operator shall notify the appropriate regional office of the Department as soon as practicable, but no later than 2 hours after detecting or discovering the release.

(c) The notice required by subsection (b) shall be by telephone and describe:

(1) The name, address and telephone number of the company and person reporting the incident.

(2) The date and time of the incident or when it was detected.

(3) The location and cause of the incident.

(4) The quantity of the brine released.

(5) Available information concerning the contamination of surface water, groundwater or soil.

(6) Remedial actions planned, initiated or completed.

(d) If, because of an accident, an amount of brine less than the reportable amount as described in § 78.1 (relating to definitions), spills, leaks or escapes, that incident does not have to be reported.

(e) Upon the occurrence of any release, the owner or operator shall take necessary corrective actions to:

(1) Prevent the substance from reaching the waters of this Commonwealth.

(2) Recover or remove the substance which was released.

(3) Dispose of the substance in accordance with this subchapter or as approved by the Department.

Subsection D. WELL DRILLING, OPERATION AND PLUGGING

GENERAL

§ 78.78. Pillar permit applications.

(a) The Department will use recommendations for coal pillar size and configuration set forth in the coal pillar study, listed in the Department's *Coal Pillar Technical Guidance* Number 550-2100-006 (October 31, 1998) and any updates or revisions, as a basis for approval or disapproval of coal pillar permit applications submitted by underground coal mine operators.

(b) Where proposed coal pillar size and configuration does not conform to the recommendations of the coal pillar study referenced in subsection (a), the underground coal mine operator may request Department approval for an alternate coal pillar size and configuration.

CASING AND CEMENTING

§ 78.87. Gas storage reservoir protective casing and cementing procedures.

(a) In addition to the other provisions in this subchapter, a well drilled through a gas storage reservoir or a gas storage reservoir protective area shall be drilled, cased and cemented as follows:

(1) An operator shall use drilling procedures capable of controlling anticipated gas flows and pressures when drilling from the surface to 200 feet above a gas storage reservoir or gas storage horizon.

(2) An operator shall use drilling procedures capable of controlling anticipated gas storage reservoir pressures and flows at all times when drilling from 200 feet above a gas storage reservoir horizon to the depth at which the gas storage protective casing will be installed. Operators shall use blow-out prevention equipment with a pressure rating in excess of the allowable maximum storage pressure for the gas storage reservoir.

(3) To protect the gas storage reservoir, an operator shall run intermediate or production casing from a point located at least 100 feet below the gas storage horizon to

the surface. The operator shall cement this casing by circulating cement to a point at least 200 feet above the gas storage reservoir or gas storage horizon.

(4) When cementing casing in a well drilled through a gas storage reservoir, the operator shall insure that no gas is present in the drilling fluids in an amount that could interfere with the integrity of the cement.

(b) A request by an operator for approval from the Department to use an alternative method or material for the casing, plugging or equipping of a well drilled through a gas storage reservoir under section 211 of the act (58 P. S. § 601.211) shall be made in accordance with § 78.75 (relating to alternative methods).

Subchapter G. BONDING REQUIREMENTS

§ 78.309. Phased deposit of collateral.

(a) *Operators.*

(1) *Eligibility.* An operator who had a phased deposit of collateral in effect as of November 26, 1997, may maintain that bond for wells requiring bonding, for new well permits and for wells acquired by transfer.

(i) An operator may not have more than 200 wells.

(ii) Under the following schedule, an operator shall make a deposit with the Department of approved collateral prior to the issuance of a permit for a well or the transfer of a permit for a well, and shall make subsequent annual deposits and additional well payments. For the purpose of calculating the required deposit, all of the operator's wells are included in the number of wells.

Number of Wells	*Annual Deposit*	*Per Additional Well*
1-10 with no intention to operate more than 10	$50/well	N.A.
11-25 or 1-10 and applies for additional well permits	$1,150	$ 150
26-50	$1,300	$ 400
51-100	$1,500	$ 400
101-200	$1,600	$1,000

(iii) An operator shall make the phased deposits of collateral as required by the bond.

(2) *Termination of eligibility.* An operator is no longer eligible to make phased deposits of collateral when one or more of the following occur:

(i) The operator shall fully bond the wells immediately, if an operator has more than 200 wells.

(ii) If the operator misses a phased deposit of collateral payment, the operator shall do one of the following:

(A) Immediately submit the appropriate bond amount in full.

(B) Cease all operations and plug the wells covered by the bond in accordance with the plugging requirements of section 210 of the act (58 P. S. § 601.210).

(b) *Individuals.*

(1) *Eligibility.*

(i) An individual who seeks to satisfy the collateral bond requirements of the act by submitting phased deposit of collateral under section 215(d.1) of the act (58 P. S. § 601.215(d.1)), may not drill more than ten new wells per calendar year. A well in which the individual has a financial interest is to be considered one of the wells permitted under this section. A partnership, association or corporation is not eligible for phased deposit of collateral under this subsection.

(ii) The individual shall deposit with the Department $500 per well in approved collateral prior to issuance of a new permit.

(iii) The individual shall deposit 10% of the remaining amount of bond in approved collateral in each of the next 10 years. Annual payments shall become due on the anniversary date of the issuance of the permit, unless otherwise established by the Department. Payments shall be accompanied by appropriate bond documents required by the Department.

(iv) The individual shall make the phased collateral payments as required by the bond.

(2) *Termination of eligibility.* If the individual misses a phased deposit of collateral payment, the individual will no longer be eligible to make phased deposits of collateral and shall do one of the following:

(i) Immediately submit the appropriate bond amount in full.

(ii) Cease operations and plug the wells covered by the bond in accordance with the plugging requirements of section 210 of the act.

(c) *Interest earned.* Interest earned by collateral on deposit by operators and individuals under this section shall be accumulated and become part of the bond amount until the operator completes deposit of the requisite bond amount in accordance with the schedule of deposit. Interest earned by the collateral shall be retruned to the operator or the individual upon release of the bond. Interest may not be paid for postforfeiture interest accruing during appeals and after resolution of the appeals, when the forfeiture is adjudicated, decided or settled in favor of the Commonwealth.

[Pa.B. Doc. No. 01-546. Filed for public inspection March 30, 2001, 9:00 a.m.]

ENVIRONMENTAL QUALITY BOARD
[25 PA. CODE CH. 240]
Radon Certification; Continuing Education

The Environmental Quality Board (Board) by this order amends Chapter 240 (relating to radon certification). The amendment is being adopted to modify the requirements for a continuing education program by certified persons performing radon-related work in this Commonwealth outlined in § 240.306 (relating to continuing education program) to read as set forth in Annex A.

This order was adopted by the Board at its meeting of January 16, 2001.

A. *Effective Date*

This amendment will go into effect upon publication in the *Pennsylvania Bulletin* as final-form rulemaking.

B. *Contact Person*

For further information contact Michael A. Pyles, Chief, Division of Radon, P. O. Box 8469, Rachel Carson State Office Building, Harrisburg, PA 17105-8469, (717) 783-3594; or Marylou Barton, Assistant Counsel, Bureau of Regulatory Counsel, P. O. Box 8464, Rachel Carson State Office Building, Harrisburg, PA, 17105-8464, (717) 787-7060. Persons with a disability may use the AT&T Relay Service by calling (800) 654-5984 (TDD users) or (800)

654-5988 (voice users). This rulemaking is available electronically through the Department of Environmental Protection's (Department) website (http:// www.dep.state.pa.us).

C. *Statutory Authority*

The final rulemaking is being made under the authority of section 13 of the Pennsylvania Radon Certification Act (63 P. S. § 2013); and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510.20).

D. *Background of the Amendment*

The Department is responsible for maintaining a certification program for persons conducting radon-related work in this Commonwealth, and a component of that certification program is a continuing education program. Currently the regulation requires that a certified person conducting radon-related activities in this Commonweatlh will participate in a continuing education program consisting of a minimum of 16 hours of Department-approved courses or seminars on radon testing or mitigation each year. This amendment will reduce this minimum continuing education requirement to 8 hours each year.

The purpose of this reduction in the required number of continuing education hours is to conform the Commonwealth's regulations with the recommendations of National bodies which set standards in this area, as well as with the requirements for continuing education in neighboring states with active radon certification programs, and provide relief to the radon regulated community in this Commonwealth from a regulation that is unnecessarily burdensome.

The National Environmental Health Association (NEHA), and the National Radon Safety Board (NRSB), both of which have standards for continuing education by persons conducting radon-related activities, recommend a minimum of 8 hours of continuing education each year. Likewise, the neighboring states of New Jersey and Ohio have active radon certification programs, and require a minimum of 8 hours of continuing education each year.

The radon regulated community in this Commonwealth participated in a series of eight radon regulatory workshops in 1996. At that time, the regulated community and members of organizations involved with the radon issue represented at these workshops recommended that the minimum continuing education requirement for certified persons performing radon-related work in this Commonwealth be reduced from 16 hours each year to 8 hours each year. The participants believed that the 16-hour minimum requirement was unnecessarily burdensome. In February 2000, staff from the Department's Radon Division surveyed the workshop participants to confirm their views on this amendment. The results of this survey indicated that participants continued to support this reduction of hours.

No comments or questions were received from the public, the Independent Regulatory Review Commission (IRRC) or the House and Senate Standing Committees on the proposed rulemaking. As a result, the text of the final-form rulemaking submission is identical to the text of the proposed rulemaking. The radon regulatory workshop participants were notified in September 2000 that no comments or questions had been submitted on the proposed rulemaking and they continue to support the rulemaking.

E. *Benefits, Costs and Compliance*

Executive Order 1996-1 requires a cost/benefit analysis of the final-form regulation.

Benefits

This final-form rulemaking would benefit about 200 certified radon laboratory, testing and mitigation persons who take continuing education courses to fulfill the requirements in § 240.306. By reducing the minimum number of required continuing education hours from 16 hours each year to 8 hours each year, the estimated savings per certified person per year is expected to be $150. Thus, the total savings to the community of certified radon laboratory, testing and mitigation persons is estimated to be about $30,000 per year.

Costs

There are no additional costs to the Commonwealth, its citizens or regulated community associated with this regulation.

Compliance Costs

The final-form regulation is not expected to impose any additional compliance costs on the regulated community.

F. *Sunset Review*

This final-form regulation will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulation effectively fulfills the goals for which it was intended.

G. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on July 11, 2000, the Department submitted a copy of the notice of proposed rulemaking, published at 30 Pa.B. 3661 (July 22, 2000), to IRRC and the Chairpersons of the House and Senate Environmental Resources and Energy Committees for review and comment. There were no comments received from IRRC, the Committees or the public.

Under section 5.1(g) of the Regulatory Review Act (71 P. S. § 745.5a(g)), on February 26, 2001, these final-form regulation was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on March 8, 2001, and approved the final-form regulation.

H. *Findings*

The Board finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and regulations promulgated thereunder in 1 Pa. Code §§ 7.1 and 7.2.

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

(3) The regulation do not enlarge the purpose of the proposal published at 30 Pa.B. 3661 (July 22, 2000).

(4) The regulation is necessary and appropriate for administration and enforcement of the authorizing acts identified in Section C of this order.

I. *Order*

The Board, acting under the authorizing statutes, orders that:

(a) The regulations of the Department, 25 Pa. Code Chapter 240, are amended by amending § 240.306 to read as set forth at 30 Pa.B. 3661.

(b) The Chairperson of the Board shall submit this order and 30 Pa.B. 3661 to the Office of General Counsel and the Office of Attorney General for review as to legality and form, as required by law.

(c) The Chairperson shall submit this order and 30 Pa.B. 3661 to IRRC and the Senate and House Environmental Resources and Energy Committees as required by the Regulatory Review Act.

(d) The Chairperson of the Board shall certify this order and 30 Pa.B. 3661 and deposit them with the Legislative Reference Bureau, as required by law.

(e) This order shall take effect immediately upon publication in the *Pennsylvania Bulletin*.

JAMES M. SEIF,
Chairperson

(*Editor's Note:* For the text of the order of the Independent Regulatory Review Commission relating to this document, see 31 Pa.B. 1647 (March 24, 2001).)

Fiscal Note: Fiscal Note 7-351 remains valid for the final adoption of the subject regulation.

[Pa.B. Doc. No. 01-547. Filed for public inspection March 30, 2001, 9:00 a.m.]

Title 49—PROFESSIONAL AND VOCATIONAL STANDARDS

STATE ARCHITECTS LICENSURE BOARD

[49 PA. CODE CH. 9]

Biennial Renewal Fees

The State Architects Licensure Board (Board) adopts an amendment to § 9.3 (relating to fees) by raising the biennial renewal fee for architects.

Notice of proposed rulemaking was published at 30 Pa.B. 2481 (May 20, 2000). Publication was followed by a 30-day public comment period during which the Board received no comments from the general public. Neither the House Professional Licensure Committee, nor the Senate Consumer Protection and Professional Licensure Committee made comments on the proposed amendment. The Independent Regulatory Review Commission (IRRC) sent a letter to the Board, stating it had no objections, comments or suggestions to offer on the proposed amendment.

A. *Effective Date*

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

B. *Statutory Authority*

The amendment is authorized under section 11 of the Architects Licensure Law (act) (63 P. S. § 34.11).

C. *Background and Purpose*

Section 11(b) of the act requires the Board to fix the fees required for renewal of licenses by regulation. In addition, section 11(a) of the act requires the Board to increase fees by regulation if the revenues raised by fees, fines and civil penalties are not sufficient to meet expenditures over a 2-year period.

The Board last increased its biennial renewal fees on February 2, 1987. At the close of the 1997—1999 biennial period, the Board experienced a deficit of approximately $51,445.79. The Board estimates that it must generate revenues of about $725,100 to meet its anticipated expenditures for the July 1, 1999, through June 30, 2001, biennial period. In addition, since the Board incurred a biennial reconciliation deficit, the Board anticipates recovering that deficit during the July 1, 1999, through June 30, 2001, biennial period. The Board anticipates that the new fees plus the increased user fees which are being separately promulgated, will enable it to recapture the current deficit, meet its estimated expenditures for the 1999—2001 biennial cycle, and generate a surplus of approximately $264,637.08 of its biennial expenses at the end of the 1999—2001 biennial period.

D. *Description of Amendment*

The following table outlines the affected fee and change:

Application	*Current Fee*	*New Fee*
Biennial renewal fee	$50	$100

E. *Compliance with Executive Order 1996-1*

Copies were provided to those interested parties who requested an opportunity to provide input.

F. *Fiscal Impact and Paperwork Requirements*

The amendment increases the biennial renewal fee for architects in this Commonwealth; otherwise, it should have no fiscal impact on the private sector, the general public or political subdivisions.

The amendment requires the Board to alter some of its forms to reflect the new biennial renewal fees; however, the amendment should create no additional paperwork for the private sector.

G. *Sunset Date*

The Board continuously monitors the cost effectiveness of its regulations. Therefore, no sunset date has been assigned.

H. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on May 5, 2000, the Board submitted a copy of the notice of proposed rulemaking, published at 30 Pa.B. 2481, to IRRC and the Chairpersons of the House Professional Licensure Committee and the Senate Consumer Protection and Professional Licensure Committee.

Publication of the notice of proposed rulemaking was followed by a 30-day public comment period during which the Board received no written comments from the public. Subsequent to the close of the public comment period, the Board received no comments from the Committees. The Board received no comments from IRRC.

Under section 5.1(d) of the Regulatory Review Act (71 P. S. § 745a(d)), on February 22, 2001, this final-form regulation was deemed approved by the House and Senate Committees, and approved by the Professional Licensure Committee on February 27, 2001. The amendment was deemed approved under 5.1(g) of the Regulatory Review Act effective February 28, 2001.

I. *Further Information*

Individuals who need information about the regulation may contact Roberta Silver, Counsel, State Architects Licensure Board, P. O. Box 2649, Harrisburg, PA 17105-2649, (717) 783-7200.

J. *Findings*

The Board finds that:

(1) Public notice of intention to adopt a final-form regulation in 49 Pa. Code Chapter 9, was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769,

No. 240) (45 P. S. §§ 1201 and 1202) and the regulations promulgated thereunder in 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law.

(3) This amendment does not enlarge the purpose of proposed rulemaking published at 30 Pa.B. 2481.

(4) The amendment of the Board is necessary and appropriate for the administration of the act.

K. *Order*

The Board therefore orders that:

(a) The regulations of the Board, 49 Pa. Code Chapter 9, are amended by amending § 9.3 to read as set forth at 30 Pa.B. 2481.

(b) The Board shall submit a copy of this order and 30 Pa.B. 2481 to the Office of Attorney General and the Office of General Counsel for approval as required by law.

(c) The Board shall certify this order and 30 Pa.B. 2481 shall deposit them with the Legislative Reference Bureau as required by law.

(d) The regulations shall take effect immediately upon publication in the *Pennsylvania Bulletin*.

FRANK M. ADAMS,
Chairperson

Fiscal Note: Fiscal Note 16A-415 remains valid for the final adoption of the subject regulation.

(*Editor's Note*: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 31 Pa. B. 1647 (March 24, 2001).)

[Pa.B. Doc. No. 01-548. Filed for public inspection March 30, 2001, 9:00 a.m.]