

PROPOSED RULEMAKING

DEPARTMENT OF AGRICULTURE

[7 PA. CODE CH. 137b]

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

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

The regulations implement the Pennsylvania Farmland and Forest Land Assessment Act of 1974 (72 P. S. §§ 5490.1—5490.13), commonly referred to as the Clean and Green Act (act). In summary, the act allows owners of agricultural, agricultural reserve or forest reserve land to apply for preferential assessment of their land. If the application is approved, the land receives an assessment based upon its use value rather than its market value.

Authority

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

Need for the Proposed Rulemaking

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

Summary of the Proposed Rulemaking

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Persons Affected

The proposed rulemaking promotes the efficient, uniform, Statewide administration of the act. The proposed rulemaking updates and supplants outdated and inadequate provisions and implements changes to the act by Acts 34, 35, 88, 109, 190 and 235. Although a number of persons and entities are likely to be impacted by the subject matter of these regulations, the provisions of the act, rather than the regulations, drive these impacts.

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

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

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

Fiscal Impact

Commonwealth

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

Political subdivisions

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

Private sector

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

General public

In general terms, the act and the regulations are expected to result in a tax savings to owners of land

enrolled for preferential assessment under the act. These savings cannot be readily estimated.

Paperwork Requirements

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

Effective Date

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

Sunset Date

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

Regulatory Review

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

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

Public Comment Period and Contact Person

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

GEORGE D. GREIG,
Secretary

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

Annex A

TITLE 7. AGRICULTURE

PART V-C. FARMLAND AND FOREST LAND

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

GENERAL PROVISIONS

§ 137b.2. Definitions.

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

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Agricultural commodity—Any of the following:

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

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

(viii) Compost.

Agricultural reserve—

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

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

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

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

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

Agritainment—

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

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

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

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

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

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

Change of use—

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

(ii) The term does not include:

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

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

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

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

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

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

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

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

*Department—*The Department of Agriculture of the Commonwealth.

Division by conveyance or other action of the owner—

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

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

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

(ii) The term does not include:

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

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

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

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

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

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

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

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

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

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

Outdoor recreation—

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

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

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

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

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

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

- (i) **Hunting.**
- (ii) **Fishing.**
- (iii) **Swimming.**
- (iv) **Access for boating.**
- (v) **Animal riding.**
- (vi) **Camping.**
- (vii) **Picnicking.**
- (viii) **Hiking.**
- (ix) **Agritainment activities.**
- (x) **Operation of nonmotorized vehicles.**
- (xi) **Viewing or exploring a site for aesthetic or historical benefit or for entertainment.**
- (xii) **Operation of motorized vehicles if the operation is either of the following:**

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

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

Roll-back tax—The amount equal to the difference between the taxes paid or payable on the basis of the valuation and the assessment authorized under the act and the taxes that would have been paid or payable had

that land not been valued, assessed and taxed as other land in the taxing district in the current tax year, the year of change, and in 6 of the previous tax years or the number of years of preferential assessment up to 7.

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

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

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

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

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

***Silvicultural products*—**

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

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

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

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

Tract—

- (i) A lot, piece or parcel of land.
- (ii) The term does not refer to any precise dimension of land.

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§ 137b.3. Responsibilities of the Department.

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

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

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§ 137b.4. Contacting the Department.

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

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

ELIGIBLE LAND

§ 137b.12. Agricultural use.

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

- (1) Comprised of 10 or more contiguous acres (including any farmstead land and woodlot).
- (2) Has an anticipated yearly gross income of at least \$2,000 from the production of an agricultural commodity.
- (3) Devoted to the development and operation of an alternative energy system, if a majority of the energy generated annually is utilized on the tract.

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

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

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

Example 4: Same facts as Example 3, except that horses are neither bred nor sold and there is at least \$2,000 of anticipated gross yearly income from a horse boarding operation. The land is not in agricultural use.

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

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

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

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

§ 137b.13. Agricultural reserve.

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

§ 137b.14. Forest reserve.

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

§ 137b.15. Inclusion of farmstead land.

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

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

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

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

(b) Farmstead land on agricultural use land shall be considered to be land that qualifies for preferential assessment under the act and this chapter. Farmstead land on agricultural reserve land shall only be considered to be land that qualifies for preferential assessment under the act and this chapter if the county commissioners have adopted an ordinance

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

APPLICATION PROCESS

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

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

PREFERENTIAL ASSESSMENT

§ 137b.51. Assessment procedures.

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

(1) For each application for preferential assessment, the county assessor shall establish a total use value for land in agricultural use [and agricultural reserve], including farmstead land, and for land in agricultural reserve, by considering available evidence of the capability of the land for its particular use utilizing the USDA-NRCS Agricultural Land Capability Classification system and other information available from USDA-ERS, the Pennsylvania State University and the Pennsylvania Agricultural Statistics Service. Contributory value of farm buildings, as calculated in accordance with § 137b.54 (relating to calculating the contributory value of farm buildings), shall be used. **With respect to agricultural reserve land, the total use value includes farmstead land if the county commissioners have adopted an ordinance to include farmstead land in the total use value for land in agricultural reserve, as described in section 3(g)(1) of the act (72 P. S. § 5490.3(g)(1)).**

(2) For each application for preferential assessment, the county assessor shall establish a total use value for land in forest reserve [, including farmstead land,] by considering available evidence of the capability of the land for its particular use. Contributory value of farm buildings, as calculated in accordance with § 137b.54 shall be used. **The total use value includes farmstead land if the county commissioners have adopted an ordinance to include farmstead land in the total use value for land in forest reserve, as described in section 3(g)(2) of the act.**

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

regard to whether it was provided by the Department or established by the county assessor.

(g) *Valuation of farmstead land.*

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

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

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

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

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

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

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

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

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

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

(4) *Examples.*

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

Example 2: Same facts as Example 1 except that the farmstead land is located on agricultural re-

serve land or forest reserve land. The farmstead shall be assessed at agricultural use value.

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

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

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

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

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

§ 137b.52. Duration of preferential assessment.

(a) *General.* Enrolled land shall remain under preferential assessment for as long as it continues to meet the minimum qualifications for preferential assessment or until removed from preferential assessment in accordance with the procedure in subsection (b). Land that is in agricultural use, agricultural reserve or forest reserve shall remain under preferential assessment even if its use changes to either of the other two land use categories.

* * * * *

(b) [No termination of preferential assessment without change of use. An owner of enrolled land

may not unilaterally terminate or waive the preferential assessment of enrolled land. Preferential assessment terminates as of the change of use of the land to something other than agricultural use, agricultural reserve or forest reserve. It is this event—the change of use of the enrolled land to something other than agricultural use, agricultural reserve or forest reserve—that terminates preferential assessment and triggers liability for roll-back taxes and interest.]

Removal of land from preferential assessment.

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

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

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

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

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

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

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

* * * * *

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

* * * * *

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

[Example: In calculating the preferential assessment of enrolled land, a county has assessed farm-

stead land at its fair market value, rather than as part of the land that is in agricultural use, agricultural reserve or forest reserve. The county shall recalculate these assessments so that the farmstead land receives preferential assessment, rather than assessment based on fair market value.]

* * * * *

IMPACT OF SPECIFIC EVENTS OR USES ON PREFERENTIAL ASSESSMENT

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

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

* * * * *

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

(b) *Roll-back taxes and status of preferential assessment.*

(1) If a tract of 2-acres-or-less of enrolled land is used for direct commercial sales of agriculturally related products and activities, or toward a rural enterprise incidental to the operational unit, **and paragraph (2) is not applicable**, the 2-acre-or-less tract shall be subject to roll-back taxes and interest, and preferential assessment of that 2-acre-or-less tract shall end. The remainder of the enrolled land shall continue under preferential assessment as long as that remainder continues to meet the requirements for eligibility in section 3 of the act (72 P. S. § 5490.3).

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

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

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

(c) *Inventory by county assessor to determine ownership of goods.* A county assessor may inventory the goods sold at the business to [**assure**] **ensure** that they are owned by the landowner or persons who are [**class**] **Class A** beneficiaries of the landowner for inheritance tax purposes, or by a legal entity owned or controlled by the landowner or persons who are Class A beneficiaries of the landowner for inheritance tax purposes, and that the goods meet the requirements of this section.

(*Editor's Note:* Sections 137b.73a—137b.73d are new and printed in regular type to enhance readability.)

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

(a) *General.*

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

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

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

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

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

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

(b) *Roll-back tax liability.*

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

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

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

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

(B) December 26, 2010.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The owner of enrolled land may temporarily lease a portion of the land for pipe storage yards provided that roll-back taxes shall be imposed upon those portions of land subject to preferential assessment that are temporarily leased or otherwise devoted for pipe storage yards and the fair market value of those portions of land shall be adjusted accordingly. The imposition of roll-back taxes of portions of land temporarily leased or devoted for pipe storage yards does not invalidate the preferential assessment of land which is not leased or devoted and that land shall continue to be eligible for preferential assessment if it continues to meet the requirements of section 3 of the act. Only one lease under this section is permitted to a landowner and a copy of the lease shall be provided to the county assessor within 10 days of its signing by the landowner. The lease may not exceed 2 years and may not be extended or renewed. Following the expiration of the lease, the land shall be restored to the original use which qualified it for preferential assessment.

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

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

(b) Roll-back taxes shall be imposed upon those portions of land leased or otherwise devoted to small noncoal surface mining and the fair market value of those portions of the land shall be adjusted accordingly. Roll-back taxes on those portions of the land do not invalidate the preferential assessment of the land which is not leased or devoted to small noncoal surface mining and the land shall continue to be eligible for preferential assessment if it continues to meet the requirements of section 3 of the act (72 P. S. § 5490.3).

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

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

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

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

(b) Roll-back taxes shall be imposed upon those portions of the land actually devoted by the landowner for wind power generation system purposes and the fair market value of those portions of the land shall be adjusted accordingly. The wind power generation system must include the foundation of the wind turbine and the area of the surface covered by the appurtenant structures including new roads and bridges, transmission lines, substations and other buildings or structures related to the wind power generation system. The utilization of a portion of the land for a wind power generation system does not invalidate the preferential assessment of land

which is not utilized and the land shall continue to receive preferential assessment if it continues to meet the requirements of section 3 of the act (72 P. S. § 5490.3). An owner who is subject to roll-back taxes under this subsection shall submit a notice of installation of a wind power generation system to the county assessor within 30 days following the beginning of electricity generation at the wind power generation system. Roll-back taxes shall become due on the date the notice of installation of a wind power generation system is received by the county assessor.

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

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

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

* * * * *

(*Editor's Note:* The following section is new and printed in regular type to enhance readability.)

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

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

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

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

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

LIABILITY FOR ROLL-BACK TAXES

§ 137b.81. General.

If an owner of enrolled land changes the use of the land to something other than agricultural use, agricultural reserve or forest reserve or changes the use of the

enrolled land so that it otherwise fails to meet the requirements of section 3 of the act (72 P. S. § 5490.3), that landowner shall be responsible for the payment of roll-back taxes and interest, and preferential assessment shall end on that portion of the enrolled land which fails to meet the requirements of section 3 of the act. The owner of enrolled land will not be liable for any roll-back tax triggered as a result of a change to an ineligible use by the owner of a split-off tract **in accordance with the applicable sections of the act. A transfer of enrolled land under a single application will not trigger liability for roll-back taxes unless there is a subsequent change of use so that it fails to meet the requirements of section 3 of the act, in which case the landowner changing the use shall be liable for payment of roll-back taxes on the enrolled land under that single application.**

§ 137b.82. Split-off tract.

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

* * * * *

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

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

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

* * * * *

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

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

* * * * *

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

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

* * * * *

(2) With respect to each of these sums, multiply [**that sum**] **the tax difference determined under Step (1)**

by the corresponding factor, which reflects simple interest at the rate of 6% per annum from that particular tax year to the present:

* * * * *

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

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

* * * * *

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

* * * * *

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

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

DUTIES OF COUNTY ASSESSOR

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

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

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

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

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

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

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

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