RULES AND REGULATIONS

Title 7—AGRICULTURE

DEPARTMENT OF AGRICULTURE

[7 PA. CODE CH. 137b]

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

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

Purpose of this Final-Form Rulemaking

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

Statutory Authority

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

Need for the Final-Form Rulemaking

The final-form rulemaking adds definitions and makes amendments to implement the most recent amendments to the act. These amendments are: the act of December 8, 2004 (P. L. 1785, No. 235) (Act 235); 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 final-form rulemaking adds language to resolve questions the Department has encountered in the administration of the act. It also defines several commonly used terms to help avoid confusion and create a more uniform interpretation and application of the act and the regulations. In addition, the final-form rulemaking provides new language describing how farmstead land is to be enrolled and assessed, addresses the types of recreational activities that can be conducted upon enrolled land without adverse financial consequences for the landowner and corrects the regulation describing the process by which roll-back taxes are to be calculated.

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

Description of the Final-Form Rulemaking

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

§ 137b.2. Definitions

The term "agricultural commodity" is defined in the act and was most recently amended by Act 190, which added "compost" to the list of items that constitute an agricultural commodity. The amendment to this definition brings it into alignment with its statutory counterpart in section 2 of the act (72 P. S. § 5490.2).

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

The terms "agritainment" and "county commissioners" were added to the act by Act 235. The definitions in this section repeat the statutory definitions.

The terms "alternative energy system" and "Tier I energy source" were added to the act by Act 88. The definitions in this section repeat the statutory definitions.

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

The term "compost" was added to the act by Act 190. The definition in this section repeats the statutory definition.

The term "direct commercial sales" was added to the final-form rulemaking in response to a recommendation from IRRC that is described in greater detail in Comment 41 as follows.

The term "land use subcategory" is amended to make clear that county-specific average timber values provided to county assessors by the Department each year fall within the definition. This clarification is discussed in greater detail in Comment 35 as follows.

The final-form rulemaking adds a citation to the Noncoal Surface Mining Conservation and Reclamation Act (52 P. S. §§ 3301—3326), since a reference to this statute was added to section 6(c.4)(1) of the act (72 P. S. § 5490.6(c.4)(1)) by Act 34 and a reference also appears in § 137b.73c (relating to small noncoal surface mining).

The final-form rulemaking adds a citation to 58 Pa.C.S. §§ 3201—3274 (relating to development), since a reference to this statute was added to section 6(c.1)(3) of the act by Act 88 and references appear in § 137b.73a (relating to gas, oil and coal bed methane).

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

The term "recreational activity" was added to the act by Act 235, as were references to that term in sections 3(f) and 8(f) of the act (72 P. S. §§ 5490.3(f) and 5490.8(f)). The final-form rulemaking repeats the statutory definition. In summary, Act 235 made clear that preferential assessment of enrolled agricultural use land or forest reserve land is not breached, and roll-back tax liability is not triggered, if that land is used for recreational activity.

The term "rural enterprise incidental to the operational unit" is amended by reformatting it into numbered paragraphs for easier reading and adding the requirement from section 8(d)(1)(i) of the act that these enterprises be owned and operated by the landowner or persons who are Class A beneficiaries for inheritance tax purposes. This amendment establishes a definition that is more complete and consistent with the act.

The act defines "agricultural commodity" as including silvicultural products, but does not define these products. The definition of "silvicultural products" in the final-form rulemaking seeks to distinguish between actively-cultivated tree or tree product operations and trees or tree-derived products from forest land. The significance of this distinction is that if land is used for the production of silvicultural products then: (1) it fits within the definition of "agricultural use" land and will be assessed as agricultural use land rather than as forest reserve land; and (2) farmstead land on agricultural use land automatically receives preferential assessment while farmstead land on forest reserve land might not. The examples in the definition reflect factual situations the Department has encountered in its administration of the act, and help clarify the line drawn by the definition.

§ 137b.12. Agricultural use

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

IRRC noted that the Department seeks to amend § 137b.12 and §§ 137b.13 and 137b.14 (relating to agricultural reserve; and forest reserve) by adding language that includes the "if a majority of the energy annually generated is utilized on the tract" language referenced in the preceding paragraph. IRRC asked that this preamble ". . . explain how this provision will be implemented."

Although several commentators made requests similar to IRRC's and the Department addresses these in its responses to Comments 3 and 15 as follows, the Department notes that none of these commentators was a county assessor or landowner who actually encountered a problem in navigating this standard in the nearly 4 years this standard has been in effect. At this point, the Department does not believe it is necessary to attempt to establish specific standards of proof that must be met for a landowner to demonstrate that a majority of the energy annually generated from an alternative energy system is utilized on the same enrolled tract where that system is located. In some instances, compliance with this standard will be self-apparent, such as where the lines carrying the energy do not connect to lines that extend off the tract. In some instances the utility bills received by the landowner may contain adequate information to discern the amount of energy generated on a tract and the amount of energy consumed on that same tract. In other instances there may be records or readouts that are generated or available at the location of the alternative energy system to show energy production, which can be compared to utility bills showing the amount of energy used on the tract. The Department believes that county assessors and landowners are employing flexibility and common sense in demonstrating or confirming compliance with the referenced standard. Going forward, the Department will monitor whether issues arise with respect to the referenced standard, and will revisit this subject and consider establishing formal standards of proof should that become necessary.

§ 137b.13. Agricultural reserve

Act 88 revised the statutory definition of "agricultural reserve" land to include land devoted to the development and operation of an alternative energy system "if a majority of the energy annually generated is utilized on the tract." The final-form rulemaking adds a provision in § 137b.13 that restates the statutory language regarding alternative energy systems and makes the regulation more consistent with the act.

§ 137b.14. Forest reserve

Act 88 revised the statutory definition of "forest reserve" land to include land devoted to the development and operation of an alternative energy system "if a majority of the energy annually generated is utilized on the tract." The final-form rulemaking adds a provision in § 137b.14 that restates the statutory language regarding alternative energy systems and makes the regulation more consistent with the act.

§ 137b.15. Inclusion of farmstead land

Section 3(a) of the act makes clear that farmstead land on a tract of agricultural use, agricultural reserve or forest reserve land is to be counted toward the total acreage of that tract. The final-form rulemaking adds examples to § 137b.15(a) (relating to inclusion of farmstead land) to illustrate this point and show how this applies consistently among each of the three land use categories: agricultural use, agricultural reserve and forest reserve.

When former § 137b.15(b) was promulgated in 2001, farmstead land was preferentially assessed without regard to whether it was located on enrolled agricultural use land, agricultural reserve land or forest reserve land. Subsequent amendments of the act, including Act 235, have changed that. Although farmstead land on enrolled agricultural use land continues to automatically receive preferential assessment, there are now only limited circumstances under which farmstead land on enrolled agricultural reserve or forest reserve land can be prefer-

entially assessed. Final-form § 137b.15(c) and (d) describes or identifies these circumstances. This amendment brings the regulation into alignment with the act and provides clear guidance with respect to the circumstances under which farmstead land may/must be preferentially assessed.

§ 137b.51. Assessment procedures

In its comments regarding proposed amendments to § 137b.51 (relating to assessment procedures), IRRC summarized certain comments offered by the Pennsylvania Farm Bureau (PFB) and requested that this preamble explain how the provisions of the act addressing farmstead land are to be implemented and how the final-form rulemaking is consistent with the act. These comments are addressed as follows and in Comments 30 and 33 as follows.

Act 235 made significant changes to the assessment of farmstead land on enrolled agricultural reserve or forest reserve land. The amendments to § 137b.51 implement these changes.

Although farmstead land on enrolled agricultural use land retains preferential assessment, that same preferential assessment does not automatically occur if the farmstead land is located on enrolled agricultural reserve or forest reserve land. The amendments to § 137b.51 address each of the three circumstances under which farmstead land on enrolled agricultural reserve or forest reserve land may be preferentially assessed. In summary, this preferential assessment may only occur when: (1) the county commissioners have adopted an ordinance including farmstead land in the total use value for land in agricultural reserve or forest reserve, or both, in accordance with section 3(g) of the act; (2) a majority of the land in the subject application for preferential assessment is enrolled as agricultural use land in accordance with section 4.2(d)(2)(i) of the act (72 P. S. § 5490.4b(d)(2)(i)); or (3) an application for preferential assessment contains noncontiguous tracts, and a majority of the land on the tract where the farmstead land is located is agricultural use land in accordance with section 4.2(d)(2)(ii) of the act.

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

§ 137b.52. Duration of preferential assessment

Act 109 added section 8.1 of the act (72 P. S. § 5490.8a)) identifying the circumstances under which land may be removed from preferential assessment by the landowner. Section 137b.52 (relating to duration of preferential assessment) repeats the substance of section 8.1 of the act. The Department's objectives in including this new language are to make the final-form regulation more complete and user-friendly, and to obviate the need for the reader to refer to the act for the information provided in § 137b.52.

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

Section § 137b.53 (relating to calculation and recalculation of preferential assessment) is amended to be more consistent with the act.

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

Subsection (g) is added to require the recalculation of preferential assessment of a tract of forest reserve land if: (1) the county assessor calculated the assessment of that tract using a county-specific average timber value provided by the Department; and (2) the landowner provides the county assessor documentation that the actual value of the timber on the subject tract is less than the value that was estimated using the county-specific average timber value. This is discussed in depth in Comment 35 as follows.

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

Act 190 amended section 8(d)(3) of the act to allow for the direct commercial sale of agriculturally related products on enrolled land without triggering roll-back tax liability if: (1) the sales occur on 1/2 acre or less of land; (2) utilities or new buildings are not required; and (3) the majority of these products are produced on the farm. Section 137b.72 (relating to direct commercial sales of agriculturally related products and activities; rural enterprises incidental to the operational unit) is amended to reflect this statutory change.

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

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

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

Section 137b.73a restates section 6(c.1)(1)—(4) of the act. The examples in subsection (b) illustrate how important the date of the grant of some/all of the gas and oil extraction rights is to the determination as to whether roll-back tax liability is triggered, and that the grant of something less than 100% of these rights does not alter roll-back tax treatment.

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

Section 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 is almost a verbatim restatement of section 6(c.3) of the act that was added by Act 88.

§ 137b.73c. Small noncoal surface mining

Act 34 amended section 6(c.4) of 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. Roll-back taxes are due with respect to land devoted to this use, but preferential assessment continues on the remainder. Section 137b.73c restates this statutory change.

§ 137b.73d. Wind power generation systems

Act 109 amended section 6(c.5) of the act to allow for certain wind power generation systems on enrolled land and to impose adverse roll-back tax consequences that are limited only to the land that is actually devoted to wind power generation purposes. Subsections (a) and (b) restate the statutory language.

Subsection (c) is added to make clear that a wind power generation system is a Tier I energy source that can be established and operated on enrolled land without triggering adverse roll-back tax consequences if a majority of the energy annually generated is utilized on the enrolled tract on which the wind power generation system is located. Under these circumstances, the land on which the system is located remains, by statutory definition, agricultural use, agricultural reserve or forest reserve land entitled to preferential assessment.

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

Amendments to § 137b.74 (relating to option to accept of forgive roll-back taxes in certain instances) correct a provision that is not consistent with the act.

Section 8(b) of the act affords a taxing district the discretion to decline to accept roll-back taxes if the roll-back tax liability was triggered by a change of use of the enrolled land caused by the granting or donating of some portion of that land to a school district, a municipality, a county, a volunteer fire company, a volunteer ambulance service or a charitable corporation organized under section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C.A. § 501(c)(3)).

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

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

Act 235 added a definition of "recreational activity" to the act and section 8(f) of the act clarifies that recreational activity on enrolled agricultural use or forest reserve land does not breach preferential assessment as long as the recreational activity does not prevent the land from being immediately put to agricultural use (if the enrolled land is agricultural use land) or permanently render the land incapable of producing timber (if the enrolled land is forest reserve land). It also specifies that this is the case regardless of whether a fee or charge is attached to the recreational activity. Section 137b.77 (relating to recreational activities on agricultural use or forest reserve land) restates the statutory language. As is the case with many of the amendments previously described, the Department's objective is to include the subject matter of this section to make the regulation more complete and user-friendly.

§ 137b.81. General

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

IRRC also asked that this preamble present the reason the Department is adding other language to this section, and an explanation of whether the new language is consistent with the act and in the public interest. IRRC's concerns are addressed in Comments 56 and 57 as follows.

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

The language added to § 137b.81 originates in section 6(a.3) of the act, and makes the regulation more consistent with the act. In addition, the Department has encountered several instances when a tract of enrolled land was transferred to a person (such as a developer) whose long-term intention was to convert the land to some use other than agricultural use, agricultural reserve or forest reserve. The new language helps make clear that the transfer does not trigger roll-back tax liability or impact preferential assessment, or both, but that a subsequent change of use would.

§ 137b.82. Split-off tract

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

The final-form rulemaking also reminds landowners to engage with the county assessor in advance of a planned split-off to determine the extent to which the split-off would be allowed without triggering adverse roll-back tax consequences with respect to the entire enrolled tract. This is particularly important when an enrolled tract has been separated into several tracts since it was originally enrolled or when there have been previous split-offs with respect to the enrolled tract. This reporting requirement is prescribed by section 4(c) of the act.

An example is added to § 137b.82. This example was driven by a comment from Senator Gene Yaw, a prime sponsor of Act 88, who offered language to emphasize that

if an owner of land that is enrolled and receiving preferential tax assessment splits-off a portion of that enrolled land, and that split-off complies with the requirements in section 6(a.1)(1)(i) of the act, then roll-back taxes are only due with respect to the split-off portion of the enrolled land, and not with respect to the entire tract of enrolled land. As detailed in Comment 60 as follows, Senator Yaw acknowledges that Act 88 was driven, in part, by a 2009 Commonwealth Court decision which suggested there was some ambiguity on this point.

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

The Department proposed to delete the last sentence of § 137b.87 (relating to change in use of separated land occurring within 7 years of separation). However, this amendment has been withdrawn. This is in response to a comment offered by the PFB and discussed in Comment 63 as follows.

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

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

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

Act 235 added section 5(a)(5) of the act (72 P. S. § 5490.5(a)(5)) detailing specific types of information a county assessor is required to report to the Department by January 31 each year. This information relates to acreage enrolled in each land use category, acreage enrolled in the previous year, acreage with respect to which preferential assessment was terminated within the previous year and the roll-back taxes and interest received in the previous year.

Section 137b.112 (relating to submission of information to the Department) is amended to include specific references to these statutory requirements. The amendment provides a county assessor a clearer idea of the exact information that must be compiled and the date by which it must be submitted to the Department.

Comments

Notice of proposed rulemaking was published at 43 Pa.B. 4344 (August 3, 2013), affording the public, the General Assembly and IRRC the opportunity to offer comments.

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

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

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

In its research paper "Fiscal Impacts of Different Land Uses—The Pennsylvania Experience in 2006," the Pennsylvania State University (PSU) researchers studied a sample of townships in this Commonwealth. The researchers noted that:

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

The PSU researchers found that ". . . residential land on average contributed less to the local municipality and school district than it required back in expenditures." By contrast, the study found that farm and open space land received a return in dollar-value-of-services of between 2¢ and 27¢ for every dollar of tax revenue it provided, supporting the PSU researchers' conclusion that:

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

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

> Some farmland protection programs, such as Clean and Green, reduce the amount of real estate tax paid by farmers. This lessens the revenue that farmland contributes to the school district and municipality. The results in several townships, that had land enrolled in Clean and Green, demonstrates that even when these programs are in use in a township, farmland still contributes more than it requires. Even with preferential assessments, farmland ends up subsidizing the educational costs of residential land and plays a positive economic role in the community.

This preamble contains additional information on the expected impacts of the final-form rulemaking.

Comment 2: A commentator recommended that § 137b.1 (relating to purpose) be amended by adding an additional sentence at the end of subsection (b). The sentence was originally included in the proposed rulemaking published at 30 Pa.B. 4573 (September 2, 2000) proposing to add Chapter 137b, which stated "[t]he intent of the act is to protect the owner of enrolled land from being forced to go out of agriculture, or sell part of the land to pay taxes."

The commentator suggested the addition of this sentence would be more in-line with the original intent of the act. The commentator also offered examples and argu-

ment in support of his assertion that every application for preferential assessment should be evaluated by a committee of farmers to determine whether granting preferential assessment would serve an agricultural purpose.

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

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

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

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

Commonwealth laws work together in different ways to protect normal agricultural operations, preserve land for agricultural production and preserve forest land. Of these statutory protections, the preferential tax assessments afforded under the act provide the broadest-based protection by lessening a landowner's incentive to convert agricultural use, agricultural reserve or forest reserve land to some other use. The greatest statutory protection is afforded by perpetual agricultural conservation easements such as those described in the preceding paragraph. The Agricultural Area Security Law also establishes a process by which local government units can establish "agricultural security areas" that afford enrolled farmers limited protections against government ordinances and nuisance suits. This statute requires that certain proposed eminent domain takings of farmland be reviewed and approved by the Agricultural Lands Condemnation Approval Board, an independent board, before a declaration of taking can be filed. In addition, "normal agricultural operations" receive certain protections from local ordinances and nuisance suits under 3 Pa.C.S. §§ 313—318 (relating to normal agricultural operations) and the act of June 10, 1982 (P. L. 454, No. 133) (3 P. S. §§ 951—957), known as the Right-to-Farm Law. In summary, the Commonwealth takes a multiple-front approach to protecting farmland, forest land, open space and normal agricultural operations.

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

The commentators requested the Department explain how this provision will be implemented and monitored.

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

Response: An owner of enrolled land upon which an alternative energy system is located has the burden to demonstrate that a majority of the energy annually generated is utilized on the tract. This has been the case since 2010, and in the ensuing 4 years the Department has not encountered a single instance when a landowner or a county assessor were not able to resolve to their mutual satisfaction whether this standard has been met.

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

With respect to the comment asking what penalties would apply if a landowner fails to demonstrate that a majority of the energy annually generated is utilized on the tract, the Department believes a county assessor might pursue a civil penalty under section 5.2 of the act (72 P. S. § 5490.5b) against a person. If the landowner cannot ultimately demonstrate that a majority of the energy annually generated from an alternative energy system is utilized on the same enrolled tract where that system is located, then the land would be subject to roll-back taxes in accordance with section 5.1 of the act (72 P. S. § 5490.5a).

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

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

Response: In general, land that meets the statutory definition of "agricultural use," "agricultural reserve" or "forest reserve" is eligible for preferential assessment. The

determination as to whether a tract qualifies for preferential assessment focuses on the land, rather than the identity of the landowner. It is possible a condominium/townhome developer might own a tract of enrolled land.

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

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

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

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

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

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

Response: The definition of "agritainment" is substantively identical to the statutory definition. Agritainment is listed among the activities that constitute a recreational activity in that same section. Recreational activities may occur on enrolled agricultural use or forest reserve land without triggering roll-back tax liability as long as they do not render the land incapable of being immediately converted to agricultural use (on agricultural use land) or permanently render the land incapable of producing timber or other wood products (on forest reserve land). This is prescribed by section 8(f) of the act.

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

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

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

With respect to the commentator's inquiry as to the reason agricultural use and forest reserve land is not open to the public without charge, the Department offers that the act clearly requires this free public access only with respect to agricultural reserve land. The act defines "agricultural reserve" land as being open to the public ". . . for outdoor recreation or the enjoyment of scenic or natural beauty and open to the public for such use, without charge or fee, on a nondiscriminatory basis." By contrast, in describing the preferential assessment of agricultural use and forest reserve land, section 8(f) of the act allows a fee to be imposed for recreational activities that occur on these categories of enrolled land.

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

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

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

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

Response: Subparagraph (ii)(A) and (B) of the definition of "change of use" reflects actual events the Department has encountered in administering the act over the years.

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

In another instance, a landowner subdivided a tract of enrolled land and then conveyed each of the newly-subdivided tracts to himself without changing the use of the land. This subdivision and transfer were done as part of a plan to transition ownership and operation of a farm to the landowner's sons. Subparagraph (ii)(B) clarifies that subdivision and transfer of subdivided land do not, by themselves, constitute a change of use.

Although the Department has not yet encountered the situation in proposed subparagraph (ii)(C), this provision sought to emphasize that it is the actual change of use to something other than agricultural use, agricultural reserve or forest reserve—and not the division of land by subdivision, the sale of parcels created through subdivision or the ultimate intention of the landowner with respect to the use of the enrolled land—that constitutes change of use. As discussed in the Department's response to Comment 10, the Department has elected to delete subparagraph (ii)(C) from the definitions of "change of use" and "division by conveyance or other action of the owner" in the final-form rulemaking.

In response to the commentator's question regarding whether it would be necessary to provide a county assessor 30 days' advance notice of the recording of a subdivision map, the Department offers that this notice is required. This advance notice requirement is imposed by section 4(c) and (c.1) of the act, and requires that notice be provided with respect to "any type of division" of the enrolled land.

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

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

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

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

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

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

Comment 10: The PFB and IRRC expressed concern with the proposed definition of "change of use." They stated that the qualifying phrase "as long as the land continues in an eligible use" in subparagraph (ii)(C) was confusing. The PFB recommended an amendment to make clear that ". . . the exception applies to any conveyance of enrolled land, notwithstanding any 'change in use' by the grantee subsequent to conveyance." The PFB also recommended this exception more clearly identify the type of land with respect to which this exception would apply.

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

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

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

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

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

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

Response: The referenced definition is statutory, and was added to the act by Act 190.

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

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

Second, the Department has some experience with similar 50% component part standards in other statutes it administers. For example, section 3 of the Agricultural Area Security Law (3 P. S. § 903) requires that at least 50% of certain products be produced by the farm operator to be considered agricultural production and section 3(b) of the Right-to-Farm Law (3 P. S. § 953(b)) requires that at least 50% of the commodities sold at an on-farm market be produced by the landowner for that farm market to receive the protections of the Right-to-Farm Law. In each of these instances there are not regulations clarifying how these standards are to be applied, yet common-sense has ruled the day and there have been rather few problems administering these standards.

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

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

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

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

Response: The Department refers to the responses to Comments 9 and 10, and has made the same changes to

the definition of "division by conveyance or other action of the owner" in the final-form rulemaking that it has made to the definition of "change of use."

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

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

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

The commentator presented the following:

> Forest reserve is a category that can be and is abused. In my discussion with forestry industry representatives, I was told that they would not be interested in harvesting a parcel of less than 12 acres and only if it contained almost 100% hardwood. What is the "intent" of this law?
>
> What species qualify? (I would suggest a list) I would suggest a requirement of a forest management program and on-going management. And a written harvest plan.
>
> With the inevitable decimation of our timber industry by the Ash Borer, (projected to be within 20 years) the value of this protected category will be greatly diminished. Re-evaluation and re-categorization should be on-going in regards to forest reserve status.

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

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

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

Comment 14: A commentator referenced the proposed definition of "forest reserve" in § 137b.2 and asked why the public is not entitled to use land that is enrolled under this land use category for outdoor recreation when public use can be made of land that is enrolled under the agricultural reserve land use category. The commentator added "[i]t is understandable to restrict access during harvesting of timber. However, given the fact that this activity occurs in cycles in excess of 20 years, it is unreasonable to restrict public access during a majority of the time it takes to grow a timber crop."

Response: Although the commentator's point is well taken, the answer to the question presented is that among the three land use categories, section 2 of the act only requires that agricultural reserve land (and not agricultural use or forest reserve land) be open to the public for outdoor recreation or the enjoyment of scenic or natural beauty. The Department does not have authority to extend this requirement to other land use categories by regulation.

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

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

Response: The Department's response to Comment 3 addresses the commentator's questions.

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

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

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

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

In summary, the statutory references to outdoor recreation pertain only to agricultural reserve land and the references to recreational activity pertain only to agricultural use land and forest reserve land. The term "outdoor recreation" is used only once in the act in the definition of "agricultural reserve." By statutory definition, agricultural reserve land may be used for outdoor recreation.

The only uses of the term "recreational activity" in the act in sections 3(f) and 8(f) pertain to agricultural use or forest reserve land.

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

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

Comment 18: In a comment regarding the definition of "roll-back tax" in proposed § 137b.2, a commentator observed that the 7-year period with respect to which roll-back taxes are assessed is "not enough to stop a determined developer" and recommended that this 7-year period be extended.

Response: The Department cannot implement the commentator's recommendation. The statutory definition of "roll-back tax" establishes the 7-year period referenced by the commentator, and the Department does not have the discretion to change this by regulation. A statutory amendment would be required to implement the commentator's suggestion.

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

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

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

Response: The Department does not believe it is necessary to add the language suggested by the commentator given the broad range of products that constitute agricultural commodities under the act. As the commentator relates, "agricultural, apicultural, aquacultural, horticultural, floricultural, silvicultural, viticultural and dairy products" are included in the definition of "agricultural commodity" in section 2 of the act. The Department believes this presents a broad range of products that the definition of "silvicultural products" in § 137b.2 could not reasonably be construed as limiting or restricting other agricultural products, including ornamental plants, from being considered agricultural commodities.

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

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

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

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

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

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

Response: A violation of the reporting requirements in the regulation can result in the county board for assessment appeals imposing a civil penalty of not more than $100 per violation. This is prescribed by section 5.2 of the act.

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

Without regard to formal financial penalties as referenced by the commentator, a county has a financial interest in administering the act and its attendant regulations correctly because that activity tends to: (1) maximize the tax revenue a county assessor may lawfully collect under the act; and (2) avoid costs of assessment appeals and litigation.

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

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

Response: The Department declines to implement this recommendation. Section 137b.3 restates the responsibilities imposed on the Department under section 4.1 of the act (72 P. S. § 5490.4a) and the Department does not have the discretion to expand these responsibilities to the extent suggested by the commentator.

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

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

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

The commentator also asked ". . . what are the reporting requirements and penalties applied for noncompliance."

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

The $2,000 figure referenced by the commentator is established in section 3(a)(1) of the act. The Department does not have the discretion to change this dollar figure by regulation.

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

With respect to the commentator's question regarding penalties for noncompliance, a violation of the reporting requirements in the regulation can result in the county board for assessment appeals imposing a civil penalty of not more than $100 per violation. This is prescribed by section 5.2 of the act. Also, if the use of the land changes to something other than an eligible use, the adverse roll-back tax consequences in section 5.1 of the act might apply.

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

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

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

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

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

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

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

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

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

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

Comment 28: The PFB reviewed proposed § 137b.13 and recommended the Department add examples as it has done in § 137b.12. In particular, the commentator suggested inclusion of an example that incorporates the spirit and intended effect of continuation of preferential

assessment captured in Example 8 in § 137b.12. The PFB's comment with respect to that particular example appears in Comment 27.

Response: The Department accepts the commentator's recommendation and § 137b.13 now contains the requested examples.

Comment 29: The PFB reviewed proposed § 137b.14 and offered essentially the same comment it offered with respect to § 137b.13. (See Comment 28.)

Response: The Department accepts the commentator's recommendation and final-form § 137b.14 contains the requested examples.

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

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

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

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

The Department notes that in Comment 33 the PFB and IRRC expressed concern with respect to the consistency among proposed §§ 137b.15 and 137b.51(c) and (g). The Department agrees with the commentators on this point and amended §§ 137b.15 and 137b.51(c) by adding general cross-references to § 137b.51(g), which presents a comprehensive description of the circumstances under which farmstead land is to receive preferential assessment.

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

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

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

Comment 32: The Lancaster County Assessment Office reviewed proposed § 137b.42 (relating to deadline for submission of applications) and offered that in "Example 2 in the current Regulations infers a 'second' application period, between June 2nd and December 31st. That is an administrative nightmare. By the time the preferential assessment would begin, the nature of that parcel can be entirely changed. Why include that example at all?"

Response: The Department believes that, in context, the referenced example clearly shows the consequences of submitting an application for preferential assessment before or after the June 1 deadline established in section 4(b) of the act. The example does not establish a new application window.

Comment 33: The PFB reviewed proposed § 137b.51 and presented essentially the same comment it offered with respect to proposed § 137b.15(b). See Comment 30. IRRC joined in this comment.

The commentators are concerned that proposed § 137b.51(c) will be read as requiring an authorizing ordinance from the county commissioners for farmstead land on agricultural reserve or forest reserve land to be preferentially assessed. As described in greater detail in Comment 30, there are actually three different circumstances under which farmstead land on agricultural reserve or forest reserve land might be preferentially assessed. These circumstances are presented in proposed § 137b.51(g).

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

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

Response: The Department refers to its response to Comment 30.

The Department accepts these comments, amended the final-form regulation accordingly and added the clarifications to this preamble as recommended by IRRC.

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

Response: The example is correct as proposed, since the majority of the land in the subject application for preferential assessment is agricultural use land. This is also the result called for under section 4.2(d)(2)(i) of the act.

Comment 35: A commentator offered a detailed comment regarding the assessment of forest reserve land under § 137b.51 and to proposed § 137b.53.

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

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

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

The commentator offered the following:

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

Response: The commentator makes some fair points.

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

There is nothing akin to the detailed soil maps referenced in the preceding paragraph to assist county assessors in calculating the preferential assessment of forest reserve land. The Department coordinates with the Department of Conservation and Natural Resources' Bureau of Forestry each year to generate for each county assessor: (1) use values that apply to six different timber types (softwood stand, select oak stand, oak stand, northern hardwood stand, black cherry stand and miscellaneous hardwood stand); and (2) a county-specific average timber value. This county-specific average timber value is only an average reflecting the value of timber in a given county, rather than on a given parcel of forest reserve land in that county. For this reason, the Department has long taken the position that a county assessor who employs a county-specific average timber value in assessing forest reserve land must disregard that value if the landowner can demonstrate that the actual timber types that are present on the tract are such that the assessment would be lower if the county assessor employed the Department-provided use values for these timber types in calculating the assessment for that tract, rather than employing the county-specific average timber value.

County assessors have generally followed the Department's position, but in recent years a single county took issue with this practice and took the position that it did not have the discretion to recalculate/lower an assessment of a forest reserve tract that had been assessed using the county-specific average timber value, even when the landowner could demonstrate that the quantity and type of timber on the tract was below this county-specific average timber value. The Department believes this approach fails to meet the requirement in section 4.2(b) of the act that "[f]or *each* application for preferential assessment, the county assessor *shall* establish a total use value for land in forest reserve *by considering available evidence of capability of the land for its particular use*." (Emphasis added.)

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

In response to this comment, the Department amended this section by: (1) revising the definition of "land use subcategory" in § 137b.2 to make clear that the county-specific average timber values are values for a land use

subcategory of land in forest reserve; and (2) adding § 137b.53(g) to specifically require a county assessor to recalculate the assessment of a tract of forest reserve land that was initially assessed using the county-specific average timber value where the landowner provides evidence that the value of the timber on the tract is lower than the value that was determined using that county-specific average timber value.

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

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

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

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

The commentator also suggested that the Department changed its stance to allow a county assessor to use only the county-specific average timber value in assessing forest reserve land and ignore evidence the landowner provides as to the specific quantity, type and value of the timber on a given tract of forest reserve land. The commentator believes the Department is ". . . turning a blind eye to the enforcement of the law and regulation without any other reason than to appease county assessors who want to circumvent the law and collect as much in revenues as possible without doing their due diligence required by law."

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

The commentator also opined that:

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

Response: The Department's response to Comment 35 addresses some of the commentators concerns.

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

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

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

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

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

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

Response: The commentator spotted a publishing error that has apparently been in place since the current regulation was published in 2000. Section 137b.53(f) read as follows when it was originally adopted at 31 Pa.B. 1701:

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

The phrase ", or lower use values established by the county assessor and land use subcategories provided by the Department" was inadvertently omitted from the regulation when codified in the *Pennsylvania Code*. The final-form rulemaking corrects this publishing error by reprinting this subsection as it was adopted at 31 Pa.B. 1701.

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

Response: The commentator's question appears to seek an opinion from the Department as to the applicability of § 137b.63, a provision that paraphrases the requirement in section 4(c) of the act that a landowner provide the county assessor at least 30 days' advance notice with respect to any type of division of a tract of enrolled land.

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

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

Response: Section 137b.64(a) essentially restates the language from the statutory definition of agricultural reserve land in section 2 of the act with respect to the use of that type of land for outdoor recreation or the enjoyment of scenic or natural beauty.

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

Comment 41: The CCAP and the TCAO reviewed proposed § 137b.72(b)(2), which describes the circumstances under which up to 1/2 acre of enrolled land may be used for direct commercial sales of agriculturally related products without breaching preferential assessment or triggering roll-back tax liability, and asked whether the 1/2 acre would include acreage devoted to ingress, egress and parking area, or just the footprint of the building from which direct commercial sales occur.

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

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

Response: Although the referenced provision essentially repeats language that was added to section 8(d)(3) of the act by Act 190, the Department agrees that acreage used for ingress, egress and parking should be counted toward the 1/2-acre standard. Section 137b.72(b)(2) has been amended to make this clear.

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

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

The referenced provision repeats the requirement in section 8(d)(3) of the act that, for a portion of an enrolled tract to be used for direct commercial sales of agriculturally related products without triggering some type of roll-back tax liability, the acreage used for these sales must be 1/2 acre or less and at least 50% of these agriculturally related products must be produced on the enrolled land.

Response: The response to Comment 11 addresses the Department's experience and perspective with respect to the referenced 50% standard. The Department will remain mindful of the commentator's concerns. If the need for clarification becomes apparent as the Department gains experience in administering this provision, it will consider revisiting this provision and providing regulatory guidance.

The county assessor is ultimately charged with determining compliance with the referenced 50% standard, since section 5(b) of the act assigns county assessors the responsibility to calculate roll-back taxes.

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

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

Response: The Department declines to require by regulation that a county assessor inventory the agriculturally related products at an operation that is engaged in the direct commercial sale of these products. A county assessor certainly has discretion to conduct an inventory, but the Department believes that there are many instances when an inventory is not necessary and would not serve a purpose. This is particularly so when the operation is a small roadside farm stand selling just a few agriculturally related products of a type visibly grown on the farm. By

contrast, when an operation sells a large variety of agriculturally related products and the source or ownership of those products is less apparent, then a county assessor might choose to exercise its discretion and conduct an inventory.

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

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

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

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

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

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

Response: The Department appreciates that this requirement imposes some burdens on county assessors, but emphasizes that these requirements are imposed by section 6(c.1)(4) of the act and that the final-form rulemaking simply restates them. The Department cannot make an amendment to the final-form rulemaking to relieve a county assessor from having to verify the date of transfer of the stated mineral rights as a prudent initial step in determining the extent of roll-back tax liability regarding oil and gas exploration/extraction activities on enrolled land.

Comment 47: Proposed § 137b.73a(b)(1)(ii) essentially restates section 6(c.1)(4) of the act providing that roll-back taxes are not due with respect to surface activities regarding the exploration for or removal of oil or gas, including coal bed methane, where the referenced exploration/extraction rights were transferred to a third party before December 26, 2010. The CCAP requested that the final-form rulemaking be amended to make clear that the transfer of these exploration/extraction rights must include the right to engage in these surface activities. The commentator offered that:

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

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

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

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

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

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

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

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

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

As far as the commentator's suggestion that a reclamation permit would be preferable to requiring a well production report goes, the Department notes that the requirements regarding well production report are imposed by section 6(c.1)(3) of the act. The Department will remain mindful of the commentator's suggestion as it administers this provision and, if experience ultimately shows that the commentator is right and the act should be amended to implement the commentator's suggestion, will consider seeking a statutory amendment.

Comment 50: Regarding proposed § 137b.73a(b)(2), the TCAO noted that it is not receiving the required well production reports from the Department of Environmental Protection (DEP) and that "it is a time consuming task to access the reports online and determine which well sites are new."

The CCAP apparently agrees with the TCAO on this point, and extended an offer to ". . . work with the Department and the DEP to streamline the process by which DEP provides a copy of the well production report to the county assessor to determine rollback taxes." The CCAP related that DEP has taken the position that it is meeting the statutory requirement in section 6(c.1)(3) of the act that it provide the county assessor a copy of the well production report when it makes these reports available on DEP's web site. The CCAP recommended that ". . . there be some sort of notification to counties to alert them when the new reports are posted every six months and if possible to make it clear which wells in the reports are new wells that came online just within the previous six month reporting period."

Response: The Department believes this is a good idea, and can assist the commentator on this project outside of this final-form rulemaking.

Section 6(c.1)(3) of the act requires that a copy of the well production report be ". . . provided by the Department of Environmental Protection to the county assessor within ten days of its submission."

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

Comment 51: The CCAP referenced three instances when new statutory or regulatory language requires an owner of enrolled land to report specific changes in the use of the enrolled land. Specifically, reference was made to the requirement that an owner of enrolled land report: (1) facilities that are appurtenant facilities with respect to the extraction of oil and gas, as required under proposed § 137b.73a(b)(2); (2) leases of enrolled land for pipe storage yards as required under section 6(c.3) of the act; and (3) the beginning of energy generation from a wind power generation system as required under section 6(c.5)(2) of the act. The CCAP offered the following general comment:

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

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

The Department notes that this response is similar to the response offered with respect to Comment 54.

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

Response: Since the retroactive adjustment of fair market value described in § 137b.73a(c) is imposed by section 6(c.1)(3) of the act, the Department cannot alter this requirement by regulation.

Comment 53: IRRC and the PFB offered comments with respect to proposed § 137b.73b, which allows the owner of enrolled land to temporarily lease a portion of that land for pipe storage.

IRRC and the PFB asked for guidance on the treatment of the land after the lease expires and the land is returned to its original use. IRRC asked "[w]ould the land that was leased continue to be assessed at fair market value after the expiration of the lease, or would it automatically revert to use value for taxing purposes?" IRRC asked the Department to include language in the final-form rulemaking to address this situation. The PFB suggested that the landowner will typically need to do "nothing or next-to-nothing" to restore the land to its original use, and that return to preferential assessment should be automatic unless a county assessor visits the site and determines that the required restoration has not occurred.

Response: The referenced regulation restates section 6(c.3) of the act. The Department revised the final-form rulemaking to clarify that following the expiration of a lease and the restoration of the land to its original eligible use, preferential assessment will resume unless the county assessor determines upon inspection that the land has not been restored to its original use.

Comment 54: Regarding proposed § 137b.73b, the TCAO noted that owners of enrolled land do not typically notify that office when they lease a portion of the enrolled land for pipe storage yards.

Response: Although the regulation restates section 6(c.3) of the act that an owner of enrolled land who leases a portion of that land for a pipe storage yard provide the county assessor a copy of that lease within 10 days after it is signed, the Department appreciates that there needs to be some effort to educate owners of enrolled land with respect to this requirement. The Department will attempt to do more direct outreach to the public, whether through the media or by attending local meetings.

The Department notes that this response is similar to the response offered with respect to Comment 51.

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

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

In support of his position the commentator also referenced a comment and response in the final-form rulemaking published at 31 Pa.B. 1701, which adopted Chapter 137b.

Response: A statutory amendment would be needed to implement the commentator's recommendations. Section 8(f) of the act allows a landowner to assess fees and charges with respect to agricultural use land and forest reserve land.

Comment 56: IRRC and the PFB noted that proposed § 137b.81 would add a reference to "applicable sections of the act," as follows: "The owner of enrolled land will not be liable for any roll-back tax triggered as a result of a change to an ineligible use by the owner of the split-off tract in accordance with the applicable sections of the act."

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

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

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

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

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

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

Response: Language being added to § 137b.81 is clearly consistent with the intention of the General Assembly. The language is from section 6(a.3) of the act and makes the regulation more consistent with the act. IRRC's concerns are also addressed in the Description of the Regulation portion of this preamble.

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

The Department declines to include the further amendments recommended by the PFB, and disagrees that the language that is being added to § 137b.81, which practically restates section 6(a.3) of the act, is somehow inconsistent with the act.

Comment 58: The PFB offered several comments with respect to proposed § 137b.82. With respect to the first sentence of this section, the PFB suggested "accurate" be replaced by "met."

Response: This comment suggests the commentator was reviewing the proposed rulemaking as submitted by the Department to the *Pennsylvania Bulletin* for publication, rather than the proposed rulemaking as published at 43 Pa.B. 4353. The Legislative Reference Bureau made format and style changes to the document that effectively address the commentator's concern.

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

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

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

Response: The Department believes the act establishes a bright-line standard as to the maximum amount of acreage that can be split-off without triggering roll-back tax liability with respect to the entire enrolled tract. That standard is in section 6(a.1)(1)(i) of the act, and is the

lesser of: (1) 10% of the entire tract that is subject to preferential assessment; or (2) 10 acres. In other words, there can never be more than 10 acres split-off from an enrolled 100-acre tract without triggering roll-back tax liability on the entire 100-acre tract.

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

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

Although this is not the extensive amendment requested by the commentator, in response to this comment the Department added § 137b.82(b) to advise landowners to confer with county assessors regarding planned split-offs.

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

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

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

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

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

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

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

The Department declines to add the PFB's third recommended example. While the Department agrees that it is true that if a tract of enrolled land is separated (rather than split-off) and the owner of a separated tract changes the use of the separated tract to an ineligible use, that landowner owes roll-back taxes in accordance with section 6(a.2) of the act, it does not believe this same roll-back tax liability would be triggered by a change-of-use to a tract that has been split-off.

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

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

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

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

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

Response: In response to Comment 61, the Department withdraws the proposed amendments to § 137b.84.

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

Comment 63: The PFB reviewed proposed § 137b.87 and recommended the Department either not delete the sentence it proposed for deletion or replace it with a sentence such as the following:

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

Response: The Department accepts the commentator's recommendation that the referenced sentence not be deleted. The Department withdraws the proposed amendments to § 137b.87.

Comment 64: In a comment that appears to relate to § 137b.131 (relating to civil penalties), a commentator offered that the $100 penalty amount is not a deterrent to violators and that counties are unwilling to pursue violations for low penalty amounts. The commentator recommended that "meaningful penalties be established to gain compliance" with the act.

Response: The referenced civil penalties are established in section 5.2 of the act, and the Department does not have the discretion to change them by regulation.

Persons Likely to be Affected

The final-form rulemaking promotes the efficient, uniform, Statewide administration of the act. It updates and supplants outdated and inadequate provisions. It also implements changes to the act accomplished by Act 235, Act 88, Act 109, Act 34, Act 35 and Act 190. Although a number of persons and entities are likely to be impacted by this final-form rulemaking, the act, rather than this final-form rulemaking, drives these impacts.

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

The final-form rulemaking will provide counties and county assessors 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 final-form rulemaking simply implements requirements of the act, adverse impact is attributable to the act and not the underlying regulations.

Fiscal Impact

Commonwealth

The final-form rulemaking will not have appreciable fiscal impact upon the Commonwealth.

Political subdivisions

The final-form rulemaking is not expected to impose costs on political subdivisions. To the extent a county incurs costs in recalculating preferential assessments, those costs would be driven by the act rather than by the regulations. These statutory costs cannot be readily estimated.

To the extent the final-form rulemaking helps clarify how the act is to be administered by counties, it may result in some savings to counties by virtue of there being fewer appeals and legal challenges regarding preferential assessment. These savings cannot be readily estimated.

Private sector

The final-form rulemaking will not have appreciable fiscal impact upon the private sector. The act affords the owners of agricultural use, agricultural reserve and forest reserve land the opportunity for tax savings through the use value (rather than market value) assessment of that land. These tax savings are attributable to the act rather than the regulations, and cannot be readily estimated.

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

General public

The act and the final-form rulemaking are expected to result in tax savings to owners of land enrolled for preferential assessment under the act. These savings cannot be readily estimated.

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

Paperwork Requirements

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

Effective Date

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

Regulatory Review Act

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 the notice of proposed rulemaking, published at 43 Pa.B. 4344, to IRRC and the Chairpersons of the House and Senate Agriculture and Rural Affairs Committees for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the House and Senate Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Department has considered all comments from IRRC, the House and Senate Committees and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on May 27, 2015, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on May 28, 2015, and approved the final-form rulemaking.

Findings

The Department finds that:

(a) 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 the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.

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

(c) The amendments to this final-form rulemaking in response to comments do not enlarge the purpose of the proposed rulemaking published at 43 Pa.B. 4344.

(d) The adoption of the final-form rulemaking in the manner provided in this order is necessary and appropriate for the administration of the act.

Order

The Department, acting under authority of the act, orders the following:

(a) The regulations of the Department, 7 Pa. Code Chapter 137b, are amended by adding §§ 137b.73a—137b.73d and 137b.77 and amending §§ 137b.2—137b.4, 137b.12—137b.15, 137b.42, 137b.51—137b.53, 137b.72, 137b.74, 137b.81, 137b.82, 137b.89, 137b.93 and 137b.112

to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

(*Editor's Note*: The proposed amendments to §§ 137b.84 and 137b.87 have been withdrawn by the Department.)

(*Editor's Note*: The Department included § 137b.64 in the final-form rulemaking submitted to IRRC and the House and Senate Committees. As there were not changes to this section, it is not included in Annex A.)

(b) The Secretary of the Department 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.

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

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

RUSSELL C. REDDING,
Secretary

(*Editor's Note*: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 45 Pa.B. 2962 (June 13, 2015).)

Fiscal Note: Fiscal Note 2-159 remains valid for the final adoption of the subject regulations.

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:

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.

(viii) Compost.

Agricultural reserve—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.

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

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

(ii) The term includes a woodlot.

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

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

Agritainment—

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

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

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

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

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

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

Change of use—

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

(ii) The term does not include:

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

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

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 step descendants.

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.

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.

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

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

Department—The Department of Agriculture of the Commonwealth.

Direct commercial sales—Retail or wholesale sales of agriculturally related commodities to customers who are physically present onsite to make purchases.

Division by conveyance or other action of the owner—

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

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

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

(ii) The term does not include:

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

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

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 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.

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 of agricultural use or agricultural reserve land may be based upon soil type, soil group or any other recognized subcategorization of agricultural land. A land use subcategory of forest reserve land may be based upon forest type or other recognized subcategorization of forest land, and may be a county-specific average timber value.

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

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

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

Oil and Gas Act—58 Pa.C.S. §§ 3201—3274 (relating to development).

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.

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.

Recreational activity—The term includes, but is not limited to:

(i) Hunting.

(ii) Fishing.

(iii) Swimming.

(iv) Access for boating.

(v) Animal riding.

(vi) Camping.

(vii) Picnicking.

(viii) Hiking.

(ix) Agritainment activities.

(x) Operation of nonmotorized vehicles.

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

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

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

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

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

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

(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 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.

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 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.

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

§ 137b.4. Contacting the Department.

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

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

ELIGIBLE LAND

§ 137b.12. Agricultural use.

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

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

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

(3) 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 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 yearly gross income from a horse boarding operation. The land is in agricultural use, since it is being used for the purpose of producing an agricultural commodity.

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

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

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

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

§ 137b.13. Agricultural reserve.

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

Example 1: Landowner owns 30 acres of land. The land is cleared land that was farmed at one time but that is no longer farmed. The land is open to the public for outdoor recreation or the enjoyment of scenic or natural beauty, without charge or fee, on a nondiscriminatory basis. The land qualifies to be enrolled as agricultural reserve land.

Example 2: Same facts as Example 1, except the landowner charges a fee for allowing public access for hunting and recreation. This land is not eligible to be enrolled as agricultural reserve land.

Example 3: Same facts as Example 1, except the landowner places reasonable restrictions on public access to the enrolled land that are acceptable to the county assessor in accordance with § 137b.64 (relating to agricultural reserve land to be open to the public). The land qualifies to be enrolled as agricultural reserve land.

Example 4: Landowner owns 9 acres of land. The land is cleared land that was farmed at one time but that is no longer farmed. The land is not eligible to be enrolled as agricultural reserve land because it is less than 10 contiguous acres in area.

Example 5: Landowner owns a parcel of enrolled agricultural reserve land. Landowner erects solar panels (or some other alternative energy system) on the land and a majority of the electricity generated by the alternative energy system is used on the land. The land remains in agricultural reserve.

Example 6: Landowner owns two separate parcels of enrolled land, at least one of which is agricultural reserve land. The parcels are enrolled under a single application for preferential assessment. Landowner erects solar panels (or some other alternative energy system) on an agricultural reserve parcel. The majority of the electricity generated by the alternative energy system is used on the other enrolled parcel. The parcel upon which the alternative energy system is located remains agricultural reserve land.

§ 137b.14. Forest reserve.

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

Example 1: Landowner owns 60 acres of forested land with trees of all sizes. The landowner intends to harvest timber periodically. The land qualifies to be enrolled as forest reserve land.

Example 2: Landowner owns 100 acres of land that was recently cleared and replanted with seedlings. The land qualifies to be enrolled as forest reserve land.

Example 3: Landowner owns 100 acres of land that was recently harvested for timber and seedlings remain. The land was not replanted. The land qualifies to be enrolled as forest reserve land.

Example 4: Landowner owns 50 acres of land that was cleared and not replanted. There are no trees of any size remaining on this property and no intention of planting. The land does not qualify to be enrolled as forest reserve land.

Example 5: Landowner owns an 8-acre woodlot and wants to enroll. The land is not eligible to be enrolled as forest reserve land because it is less than 10 contiguous acres in area.

Example 6: Landowner owns a parcel of enrolled forest reserve land. Landowner erects solar panels (or some other alternative energy system) on the land and a majority of the electricity generated by the alternative energy system is used on the land. The land remains in forest reserve.

Example 7: Landowner owns two separate parcels of enrolled land, at least one of which is forest reserve land. The parcels are enrolled under a single application for preferential assessment. Landowner erects solar panels (or some other alternative energy system) on a forest reserve parcel. The majority of the electricity generated by the alternative energy system is used on the other enrolled parcel. The parcel upon which the alternative energy system is located remains forest reserve land.

§ 137b.15. Inclusion of farmstead land.

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

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

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

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.

(c) Farmstead land on agricultural reserve land shall only be considered to be land that qualifies for preferential assessment under the act and this chapter if at least one of the qualifications for preferential assessment in § 137b.51(g)(2)(i)—(iii) (relating to assessment procedures) has been met.

(d) Farmstead land on forest reserve land shall only be considered to be land that qualifies for preferential assessment under the act and this chapter if at least one of the qualifications for preferential assessment in § 137b.51(g)(3)(i)—(iii) has been met.

APPLICATION PROCESS

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

(a) *General.* A landowner seeking preferential assessment under the act shall apply to the county by June 1. If the application is approved by the county assessor, preferential assessment shall be effective as of the commencement of the tax year of each taxing body commencing in the calendar year immediately following the application deadline.

Example 1: A landowner applies for preferential assessment on or before June 1, 2001. The application is subsequently approved. Preferential assessment shall be effective as of the commencement of the tax year for each taxing body in calendar year 2002.

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

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

PREFERENTIAL ASSESSMENT

§ 137b.51. Assessment procedures.

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

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

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

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

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

(1) For each application for preferential assessment, the county assessor shall establish a total use value for land in agricultural use, 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 at least one of the qualifications for preferential assessment in subsection (g)(2) has been met.

(2) For each application for preferential assessment, the county assessor shall establish a total use value for land in forest reserve by considering available evidence of 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 at least one of the qualifications for preferential assessment in subsection (g)(3) has been met.

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

(e) *Option of county assessors to establish and use lower use values.* A county assessor may establish use values for land use subcategories that are less than the use values established by the Department for those same land use subcategories. A county assessor may use these lower use values in determining preferential assessments under the act. Regardless of whether the county assessor applies use values established by the Department or lower use values established by the county assessor, the county assessor shall apply the use values uniformly when calculating or recalculating preferential assessments, and shall apply these use values to the same land use subcategories as established by the Department. Calculation and recalculation of preferential assessments shall be made in accordance with § 137b.53 (relating to calculation and recalculation of preferential assessment). A county assessor may not, under any circumstances, establish or apply use values that are higher than those use values established by the Department.

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

(g) *Valuation of farmstead land.*

(1) *Farmstead land on agricultural use land.* Farmstead land that is located on land enrolled as 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 (72 P. S. § 5490.3).

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

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

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

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

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

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

(4) *Examples.*

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

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

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

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

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

regardless of whether it is located on the agricultural use land, agricultural reserve land or forest reserve land.

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

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

§ 137b.52. Duration of preferential assessment.

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

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) *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.

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

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

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

(g) *Required recalculation of preferential assessment of forest reserve land when initial assessment was calculated using county-specific average timber value.* A county assessor shall recalculate the preferential assessment of any tract of enrolled forest reserve land if the current assessment was calculated using a county-specific average timber value provided by the Department and the landowner provides documentation to the county assessor verifying that the value of the timber on the enrolled tract is lower than the timber value that was estimated using that county-specific average timber value.

IMPACT OF SPECIFIC EVENTS OR USES ON PREFERENTIAL ASSESSMENT

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

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

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

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

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

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

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

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

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

(3) Enrolled land that is used for ingress, egress and parking with respect to the direct commercial sales and agriculturally related activities described in paragraphs (1) and (2) shall be counted toward the acreage totals referenced in those paragraphs.

(c) *Inventory by county assessor to determine ownership of goods.* A county assessor may inventory the goods sold at the business to ensure 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.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 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 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 another person in 2008 and enrolled that tract for preferential assessment under the act in 2009. The other person erects a well, a pond used to support hydrofracturing and other appurtenant facilities related to the removal of coal bed methane on the enrolled land. Roll-back taxes may not be imposed with respect to the enrolled land on which these appurtenant facilities are located.

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

Example 3: Same facts as Example 1, except the landowner sold something less than a 100% interest in

coal bed methane exploration and extraction rights to another person. Roll-back taxes may not be imposed with respect to the enrolled land on which these appurtenant facilities are located.

Example 4: Same facts as Example 2, except the landowner sold something less than a 100% interest in coal bed methane exploration and extraction rights to another person. Roll-back taxes are due with respect to the enrolled land on which the appurtenant facilities are located.

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

(i) If a well production report is required to be submitted to the Department of Environmental Protection in accordance with section 3222 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 on portions of land temporarily leased or devoted for pipe storage yards does not invalidate the preferential assessment of land which is not so leased or devoted and that land shall continue to be eligible for preferential assessment if it continues to meet the requirements of section 3 of the act (72 P. S. § 5490.3). Only one lease under this section is permitted to a landowner and a copy of the lease shall be provided to the county assessor within 10 days of its signing by the landowner. The lease may not exceed 2 years and may not be extended or renewed. Following the expiration of the lease, the land shall be restored to the original use which qualified it for preferential assessment, and preferential assessment shall resume unless the county assessor determines upon inspection that this restoration requirement has not been met.

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

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

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

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

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

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

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

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

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

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

(a) *Option to accept or forgive principal on roll-back taxes.* The taxing body of the taxing district within which a tract of enrolled land is located may accept or forgive roll-back taxes 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:

(1) A school district.

(2) A municipality.

(3) A county.

(4) A volunteer fire company.

(5) A volunteer ambulance service.

(6) A nonprofit corporation that qualifies as tax-exempt under section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C.A. § 501(c)(3)), if prior to accepting ownership of the land, the corporation enters into an agreement with the municipality wherein the subject land is located guaranteeing that the land will be used exclusively for recreational purposes, all of which shall be available to the general public free of charge. If the corporation changes the use of all or a portion of the land or charges admission or any other fee for the use or enjoyment of the facilities, the corporation shall immediately become liable for all roll-back taxes and accrued interest previously forgiven.

(7) A religious organization, if the religious organization uses the land only for construction or regular use as a church, synagogue or other place of worship, including meeting facilities, parking facilities, housing facilities and other facilities which further the religious purposes of the organization.

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

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

(a) *Agricultural use land.* An owner of enrolled agricultural use land who performs recreational activities on that land, or who permits or authorizes others to perform these activities, does not violate the requirements for preferential assessment and 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. A transfer of enrolled land under a single application will not trigger liability for roll-back taxes unless there is a subsequent change of use so that it fails to meet the requirements of section 3 of the act, in which case the landowner changing the use shall be liable for payment of roll-back taxes on the enrolled land under that single application.

§ 137b.82. Split-off tract.

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

(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 acres to 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. In calculating the total tract split off, the total includes the acreage of the tract that was split-off from the enrolled tract since enrollment.

Example: A landowner owns a 60-acre tract of land that is enrolled and receiving preferential assessment. The landowner splits-off 2 acres for one or more of the uses described in paragraph (2) and the split-off otherwise meets the requirements of this subsection. Roll-back taxes are due with respect to the 2-acre split-off tract, but not with respect to the remaining 58 acres. The owner of the 60-acre tract who split-off the 2-acre tract is responsible to pay these roll-back taxes.

(b) *Responsibility of landowner.* The criteria in subsection (a) shall be applied to the entire tract that was the subject of the application for preferential assessment. For this reason, a landowner should engage with the county assessor in advance of a planned split-off to determine the extent to which the criteria in subsection (a) apply, or whether the planned split-off would trigger liability for payment of roll-back taxes and interest with respect to the entire enrolled tract. In addition, § 137b.63 (relating to notice of change of application) requires a landowner to provide the county assessor at least 30 days' advance written notice of a planned split-off.

§ 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 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:

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.

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

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

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

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

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

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

[Pa.B. Doc. No. 15-1200. Filed for public inspection June 26, 2015, 9:00 a.m.]

Title 12—COMMERCE, TRADE AND LOCAL GOVERNMENT

DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT

[12 PA. CODE CH. 145]

Industrial Housing and Components; Advance Notice of Final Rulemaking

The Department of Community and Economic Development (Department) is soliciting comments on changes it recommends be made to the proposed rulemaking published at 44 Pa.B. 5026 (July 26, 2014) regarding Chapter 145 (relating to industrial housing and components). The public comment period closed on August 25, 2014. The Department received nine comments from eight commentators.

This draft final-form rulemaking satisfies amendments to the Industrialized Housing Act (35 P. S. §§ 1651.1—1651.12) requiring the Department to promulgate regulations to administer a certification program to oversee the production, installation and inspection of new commercial modular buildings. Commercial modular buildings that are produced under this certification program will be deemed to comply with the Pennsylvania Construction Code Act (35 P. S. §§ 7210.101—7210.1103).

A. *Summary of Advance Notice of Final-Form Rulemaking Changes*

In response to comments received during the official public comment period on the proposed rulemaking, the Department prepared a draft final-form rulemaking for public comment. The draft final-form rulemaking contains changes in several areas. These changes include:

Section 145.1 (relating to definitions) is revised to delete the definition of "permanent foundation."

Section 145.3 (relating to scope) is revised to state that the regulation applies to new industrialized housing, buildings and housing, or building components.

Section 145.31 (relating to requirement of certification) is revised to provide that the regulation applies to industrialized housing, buildings, or housing or building components produced after the effective date of the regulation.

Section 145.33 (relating to manufactured homes excluded) is revised to provide a definition of "permanent foundation," which was previously undefined.

While there is not a legal requirement to provide an opportunity to comment upon the Department's recommendations for final-form rulemaking, the Department believes this advance notice of final rulemaking provides for the opportunity to serve the public interest in building consensus on regulations prior to submittal of the final-form rulemaking as recommended by the Independent Regulatory Review Commission in its comments.

B. *Contact Persons*

For further information or to request a copy of the draft final-form rulemaking, contact Mark Conte, Department of Community and Economic Development, 400 North Street, 4th Floor, Harrisburg, PA 17120-0225, (717) 720-7416, mconte@pa.gov.

Electronic or written comments should be sent to Mark Conte at the previously listed address. Comments must be received by July 27, 2015. A subject heading of the rulemaking and a return name and address must be included in each letter or transmission. Comments will not be accepted by facsimile or voicemail.

DENNIS DAVIN,
Secretary

Annex A

TITLE 12. COMMERCE, TRADE AND LOCAL GOVERNMENT

PART V. COMMUNITY AFFAIRS AND DEVELOPMENT

Subpart C. COMMUNITY DEVELOPMENT AND HOUSING

CHAPTER 145. INDUSTRIAL HOUSING AND COMPONENTS

GENERAL PROVISIONS

§ 145.1. Definitions.

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

* * * * *

Approved—Approved by the Department**, or agent of the Department,** under this chapter.

Building system—**[The industrialized housing or housing components described in the building system documentation.] The method of constructing a type of industrialized home, building, or housing or building component described by plans, specifications and other documentation which together establish a set of limits meeting the building stan-**

dards in §§ 145.41 and 145.42 (relating to adoption of standards; and alternate standards), as well as the compliance control program requirements of § 145.58 (relating to basic requirements for a compliance control program), including installation details.

Building system documentation—**[The plans, specifications and other documentations which together describe industrialized housing or a housing component, including variations and installation detail, consistent with § 145.41 or § 145.42 (relating to adoption of standards; and alternate standards).] The plans, specifications, procedures and other documentation, approved by an evaluation agency under § 145.52 (relating to approval of building system documentation), which together describe industrialized home, building, or housing or building components, including any variation, installation detail and instruction consistent with this chapter.**

Certification or *certified*—Conforming to the requirements of this chapter.

Compliance assurance program—The system of policies and procedures implemented by the manufacturer and the inspection agency to assure that industrialized housing**, buildings,** or housing **or building** components are manufactured, transported and installed at the site in accordance with the approved building system documentation.

Compliance control program—The system of policies and procedures utilized by the manufacturer to assure that industrialized housing**, buildings,** or housing **or building** components, as the case may be, are manufactured, transported and installed at the site in accordance with the approved building system documentation.

* * * * *

ICC—International Code Council.

***Industrialized building* or *industrialized commercial building*—A structure designed for commercial occupancy classified within nonresidential use groups in accordance with the standards in § 145.41. The structure is wholly or in substantial part made, constructed, fabricated, formed or assembled in manufacturing facilities for installation or assembly and installation on the building site so that concealed parts or processes of manufacture cannot be inspected at the site without disassembly, damage or destruction.**

***Industrialized building component* or *industrialized commercial building component*—A closed wall subsystem or subassembly designed for use as a structure or a part of a structure which is classified within the nonresidential use groups in accordance with the standards in § 145.41. The closed wall subsystem or subassembly is fabricated in a manufacturing facility to be separately transported to the building site and cannot be inspected at the site without disassembly. Components may be installed with or without a permanent foundation.**

***Industrialized commercial building module*—**

(i) A closed wall structure or substantial part of a closed wall structure incorporating or designed to be assembled to form one or more rooms used as habitable, occupiable or mechanical/equipment space which is classified within nonresidential use groups in accordance with the standards in § 145.41. The structure is fabricated in a manufacturing facility to be separately transported to the building site and cannot be inspected at the site without disassembly.

(ii) The term includes industrialized building components that are subsystems or assemblies, or other systems of closed construction designed for use in or as a part of an industrialized commercial building.

Industrialized housing—

(i) A structure designed primarily for residential occupancy or classified within Residential Group R in accordance with the standards adopted under § 145.41 and which is wholly or in substantial part made, constructed, fabricated, formed or assembled in manufacturing facilities for installation or assembly and installation on the building site so that concealed parts or processes of manufacture cannot be inspected at the site without disassembly, damage or destruction.

(ii) The term does not include a structure or building classified as an institutional building or manufactured home, as defined by the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C.A. §§ 5401_5426).

***Industrialized housing module*—Each section of an industrialized housing structure which is fabricated in the manufacturing facility to be separately transported to the building site.**

Insignia of certification—The label**[, emblem or mark]** conforming to the requirements of this chapter which, when attached to industrialized housing **[or],** housing components**, industrialized building or building components** under this chapter**,** evidences that the industrialized housing **[or housing], buildings, or industrialized housing or building** components have been certified.

Inspection agency—An agency, private or public, which is approved by the Department under § 145.73 to perform the functions assigned by this chapter to an inspection agency. If the Department performs the functions of the inspection agency under § 145.70, the Department will be the inspection agency for the purposes of this title.

Installation—The assembly of industrialized housing **or buildings** onsite and the process of affixing industrialized housing **[or],** housing components**, industrialized buildings or components** to land, a foundation, footings, utilities or an existing building, and may include the process of affixing housing **or building** components to or within the **[housing]** structure for which they are designed.

Manufacturing facility—A place, other than the building site, at which machinery, equipment and other capital goods are assembled and operated for the purpose of making, fabricating, constructing, forming or assembling industrialized housing or housing components**, industrialized buildings or building components**.

* * * * *

Mobile home—A structure, transportable in one or more sections, which is 8 body feet or more in width and is 32 body feet in length and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and including the plumbing, heating, air conditioning and electrical system combined therein manufactured in accordance with the National Manufac-

tured Housing Construction and Safety Standards Act of 1974 **[(42 U.S.C.A. §§ 5401—5426)]**.

[*Module*—Each section of an industrialized housing structure which is fabricated in the manufacturing facility to be separately transported to the building site.]

NCSBCS—National Conference of States on Building Codes and Standards.

NFPA—The National Fire Protection Association.

Notice of Approval—A notice issued by the Department to each manufacturer of industrialized housing **[or],** housing components**, industrialized buildings or building components** that indicates the approval of the manufacturer's building systems documentation, compliance assurance program, and the authority to receive and attach insignias of certification to industrialized housing **[or],** housing components**, industrialized building or building components as applicable**.

Person—An individual or organized group of any character, including partnerships; corporations; other forms of associations; Federal, State and local instrumentalities, political subdivisions**[,]** or officers, including the Department when indicated by the context.

Residential occupancy—Occupancy of a structure or building, or part thereof, classified as a **[one or two family] one-family or two-family** dwelling, townhouse or within Residential Group R in accordance with the standards adopted under § 145.41, by families, households or individuals for purposes of shelter and sleeping, without regard to the availability of cooking or dining facilities.

Site Installation Inspection **[*Report Form*—The element of the compliance control program that will identify] *Checklist*—A part of the manufacturers building system documentation or design package that identifies** the various aspects of construction that **[must] shall** be completed **[on site by the builder or contractor] onsite, for inspection by the local code official**, that when properly completed will result in a conforming home **or building**.

Site or *building site*—The entire tract, subdivision or parcel of land on which industrialized housing **[or],** housing components**, industrialized building or industrialized building components** are installed.

* * * * *

§ 145.2. Purpose.

This chapter interprets and makes specific the provisions of the **[Industrialized Housing Act] act**, as provided in section 5 of the act (35 P. S. § 1651.5). This chapter establishes administrative procedures for the implementation of the act which will facilitate the use of industrialized housing**, buildings,** and housing **or building** components in this Commonwealth consistent with safeguarding the health, safety and welfare of citizens of **[the] this** Commonwealth and will carry out the purposes set forth in the legislative findings in section 2 of the act (35 P. S. § 1651.2). More specifically, this chapter is intended primarily to achieve the following objectives:

(1) Establish uniform standards affecting health, safety and welfare for the design, use of materials and methods of construction for industrialized housing**, buildings,** and housing **or building** components intended for sale, lease or installation for use in this Commonwealth.

(2) Establish uniform procedures to assure that industrialized housing**, buildings,** and housing **or building** components intended for sale, lease or installation for use in this Commonwealth will be manufactured, transported and installed in compliance with the uniform standards adopted by this chapter. In particular, this chapter establishes procedures under which the essential structural, electrical, mechanical and plumbing elements of industrialized housing**, buildings,** and housing **or building** components are subjected to compliance assurance procedures, including inspections, in the manufacturing facilities during the manufacturing process, thereby eliminating the need for subsequent inspections at the building site of those elements which are enclosed within the walls which might otherwise be subjected to disassembly, damage or destruction in the course of onsite inspections.

(3) Establish procedures which will facilitate the movement of industrialized housing**, buildings,** and housing **or building** components between the Commonwealth and the other States for the mutual benefit of the manufacturers and citizens of this Commonwealth.

(4) Preserve for local governments within this Commonwealth responsibilities and functions specifically reserved to local governments by the act and otherwise not inconsistent with the achievement of the purposes of the act.

§ 145.3. Scope.

Except to the extent otherwise stated in the act and the provisions of this chapter and in other applicable laws of the Commonwealth which are not inconsistent with or superseded by the act and this chapter, this chapter governs the design, manufacture, storage, transportation and installation of industrialized housing**, buildings,** and housing **or building** components which are sold, leased or installed, or are intended for sale, lease or installation, for use on a site in this Commonwealth. This chapter applies to **new** industrialized housing**, buildings,** and housing **or building** components manufactured in manufacturing facilities located within or outside this Commonwealth.

SCOPE

§ 145.31. Requirement of certification.

(a) **[Except as otherwise provided in § 145.121(b) (Reserved), after January 1, 1975, no] A** person may **not** sell, lease or install for use on a site in this Commonwealth **[an]** industrialized housing **[or housing component], buildings, or housing or building components** unless the industrialized housing**, building,** or housing **or building** component is certified and bears insignia of certification issued by the Department. The insignia of certification issued by the Department shall be attached to the industrialized housing**, building,** or housing **or building** component under this chapter, and **[they shall be] it is** subject to subsequent removal **[from the industrialized housing and housing component]** in accordance with this chapter.

(b) Industrialized housing**, buildings,** and housing **or building** components of the manufacturer which have never been occupied and which serve for model or demonstration purposes for the manufacturer do not have to bear insignia of certification under this chapter, until the

time that the industrialized housing**, building,** or housing **or building** components are first offered for sale or lease.

[(c) The sale or lease of an industrialized housing or housing structure in which housing components have been installed, which sale or lease occurs after the completion of installation may not be subject to this chapter, unless the person offering the industrialized housing or housing structure for sale or lease made an offer to a person prior to the completion of installation or unless the sale or lease was by or on behalf of or for the benefit of the manufacturer of the industrialized housing or housing components for the purpose of avoiding the certification requirements of this chapter. Nothing in this section shall be construed to prevent the application of this chapter to the installation of an industrialized housing or housing components.]

(c) This chapter applies to industrialized housing, buildings or housing or building components produced after the effective date of the regulation.

§ 145.33. Manufactured homes excluded.

* * * * *

(c) For the purpose of this chapter, permanent foundation means a foundation constructed in accordance with the prescriptive provisions of the adopted building code or, when required, designed by a licensed professional engineer. A permanent foundation must have attachment points to anchor and stabilize the home to transfer all code required loads to the underlying soil or rock. Whether a foundation is constructed in accordance with the prescriptive provisions of the adopted building code or, when required, designed by a licensed professional engineer, it must meet the following criteria:

(1) A permanent foundation must be designed for the following:

(i) *Vertical stability*:

(A) Footings must be properly sized to prevent overloading of the soil.

(B) Minimum depth of footings below undisturbed ground surface must be 12 inches or as required by the local code, whichever is greater.

(C) Shallow foundation footings must be constructed of cast-in-place concrete.

(D) Masonry walls and piers must be mortared.

(ii) *Lateral stability*:

(A) Anchorage capacity must be sufficient to prevent uplift, sliding, and overturning or other movement of the structure.

(B) May not utilize tension-only steel straps.

(C) May not utilize screw-in soil anchors.

(2) A Permanent foundation must:

(i) Be constructed of durable materials i.e., concrete, mortared masonry, or treated wood. (This includes precast foundation systems).

(ii) Not include any alternative systems or components labeled only for use under one or more of the following standards:

(A) 24 CFR 3280, Manufactured Home and Safety Standards (MHCSS)

(B) 24 CFR 3286, Manufactured Home Installation Program (MIS)

(C) NFPA 225 Model Manufactured Home Installation Standard

(D) ANSI A225.1 NFPA 501A Manufactured Home Installations

(E) International Residential Code, Appendix E

§ 145.36. Applicability of locally-enacted codes and ordinances.

(a) Industrialized housing **[and],** housing components**, industrialized buildings or building components** bearing **[insignia] insignias** of certification issued under this chapter **[shall] will** be deemed to comply with the requirements of building and related codes and ordinances enacted by local governments of the Commonwealth which codes and ordinances conform with the following:

(1) Are applicable to **[housing or home building in] residential or commercial** construction, plumbing, heating, electrical and other related codes pertaining to the construction and equipment contained within.

(2) Would otherwise be applicable to the industrialized housing **[and],** housing components**, industrialized buildings or building components** certified under this chapter as described in their building system documentation.

(b) (Reserved).

(c) If the building site is within a fire district designated by an ordinance of the local government, the requirements of the codes and standards adopted under §§ 145.41, 145.42 and 145.44 (relating to adoption of standards; alternate standards; and **[procedure for adoption of amendments] adoption and effective dates—code amendments**) for the fire district is applicable to the industrialized housing **[or],** housing components**, industrialized buildings or building components**. If the fire district designated by the ordinance of the local government is different from a fire district described in the applicable codes and standards adopted under §§ 145.41, 145.42 and 145.44 the requirements for that fire district described in the applicable codes and standards which in the judgment of the evaluation agency bears the closest similarity to the description of the applicable fire district under the locally enacted ordinance is applicable.

(d) Industrialized housing and **[housing structures in which housing] buildings in which industrialized housing or building** components have been installed shall comply with codes and ordinances of the local governments with jurisdiction over the building site which apply to the design, installation and maintenance of waterline connections from the exterior walls of housing to their main source of supply, sewer drainage connections from the exterior walls of housing to main sewers or septic systems, and electrical line connections or other energy supply connections from the exterior walls of housing to their main source of power, notwithstanding **[that the industrialized housing and housing components bear] the appropriate** insignia of certification **as provided for in § 145.60 (relating to insignia of certification)**.

(e) Nothing in the act or this chapter shall be construed as amending, repealing or superseding a local

zoning ordinance, subdivision regulation, designation of fire districts or related land development code, regulation or ordinance enacted by a local government of the Commonwealth.

(f) A dispute between a person and a local enforcement agency with respect to the application of this section shall be referred to and decided by the Department under § 145.96 (relating to interpretation of this chapter).

STANDARDS

§ 145.41. Adoption of standards.

(a) The following codes, which relate to the design, materials and method of construction of buildings, are adopted as the standards applicable to the industrialized housing **[and],** housing components**, industrialized buildings or building components** for purposes of this chapter:

(1) The ICC International Building Code.

(2) The ICC International Mechanical Code.

(3) The ICC International Plumbing Code.

(4) The International Energy Conservation Code.

(5) The National Electric Code (NFPA No. 70).

(6) The ICC International Residential Code (for one and two family dwellings and town homes)**[.] except:**

(i) Section R313.2, regarding automatic fire sprinkler systems in one-family and two-family dwellings, of the 2009 International Residential Code. Successor triennial revisions are excluded.

(ii) Sections R602.10—R602.12.1.6, regarding wall bracing requirements, are excluded and replaced by §§ R602.10—R602.11.3 of the 2006 International Residential Code.

(b) Except as provided in § 145.43 (relating to amendment policy), the codes must be the latest edition. The effective date of all code changes must be in accordance with §§ 145.44 and 145.122(b) (relating to adoption and effective dates—code amendments; and effective date).

(c) Insulation technique and installation applicable to the floor or foundation wall is not always practical at the manufacturing facility. **[Industrialized-modular-housing builders or contractors] Builders or contractors of industrialized houses or buildings** may supply and install the required floor or foundation wall insulation. If the floor or foundation wall insulation is not installed at the manufacturing facility, the manufacturer shall indicate on the Site Installation Inspection **[Report] Checklist** referenced in § 145.91(e) (relating to reports to **the** Department) that the insulation must be installed **[on site] onsite**.

(d) The provisions of the codes in subsection (a) that relate specifically to the interpretation, administration and enforcement of the codes and to matters which are not within the authority conferred on the Department by the act and this chapter are not adopted under this chapter and are not applicable in the administration and enforcement of this chapter. If there is an inconsistency or conflict between the provisions of a code adopted under this chapter and this chapter, this chapter will prevail.

(e) Only listed and labeled materials listed for use as documented shall be used in all construction.

§ 145.42. Alternate standards.

(a) As an alternative to the primary codes specified in § 145.41 (relating to adoption of standards), a manufacturer may elect to satisfy the requirements of the following alternate standards. Copies of these documents are available through the respective promulgating agencies as defined in § 145.47 (relating to acquisition of adopted codes and amendments):

(1) As an alternate to the ICC International Residential Code, Chapter 11, regarding energy efficiency, the manufacturer may use **the appropriate edition of** one of the following:

(i) The prescriptive methods for residential buildings in the International Energy Conservation Code compliance guide containing State maps, prescriptive energy packages and related software published by the United States Department of Energy, Building Standards and Guidelines Program (REScheck™).

(ii) Pennsylvania's Alternative Residential Energy Provisions developed by the Pennsylvania Housing Research Center at the Pennsylvania State University.

(2) As an alternate to the ICC International Residential Code, Chapter 3, regarding building planning, in regards to stairway construction, the manufacturer may use the following standard:

* * * * *

(v) Handrails may project from each side of a stairway a distance of 3 1/2 inches into the required width of the stairway.

(3) As an alternate to the ICC International Building Code, Chapter 13, regarding energy efficiency, the manufacturer may use the appropriate edition of prescriptive methods for buildings or structures in the current version of the International Energy Conservation Code compliance guide containing state maps, prescriptive packages and related software published by the United States Department of Energy, Building Standards and Guidelines Program (COMcheck™).

(b) Except as provided in § 145.43 (relating to amendment policy), the codes must be the latest edition. The effective date of code changes must be in accordance with §§ 145.44 and 145.122(b) (relating to adoption and effective dates—code amendments; and effective date).

CERTIFICATION

§ 145.51. General requirements for certification.

Industrialized housing **[and],** housing components**, industrialized buildings or building components** shall be certified if the building system documentation **[for the industrialized housing or housing components]** and the compliance assurance program relating to its design, materials, manufacture, transportation and installation have been approved by an evaluation agency **under contractual arrangement with the Department as provided in § 145.78(b) (relating to contractual arrangements)**, and if the industrialized housing **[or],** housing components**, industrialized buildings or building components** have been manufactured under approved building system documentation **[and an approved compliance assurance program],** inspected and approved by an inspection agency. Certification shall be evidenced by insignia of certification which conform to the requirements of this chapter and which shall be issued for each **[dwelling unit] module** of industrialized housing**, industrialized building** and for each housing **or building** component or set of **[housing]**

components that, upon installation, are incorporated in a **[single-dwelling unit] dwelling unit or building as applicable**.

§ 145.53. Variations.

Building system documentation approved under § 145.52 (relating to approval of building system documentation) may contain variations or a range of variations for one or more elements of the industrialized housing **[or],** housing components**, industrialized buildings or building components** described in the building system documentation, provided that the approved building system documentation conforms to all of the applicable requirements of the applicable codes and standards under each variation or set of variations within the range of variations. Any material deviation from variations contained within the approved building system documentation must be approved by the evaluation agency, consistent with this chapter, prior to the start of construction.

§ 145.54. Building System Approval Report and Summary.

At the time that an evaluation agency approves a set of building system documentation under § 145.52 (relating to approval of building system documentation) and the related compliance assurance program under § 145.57 (relating to approval of compliance assurance program), it **[must] shall** prepare a Building System Approval Report (BSAR) and a Building System Approval Summary. The BSAR **[shall] must** contain a list of the identification numbers of each sheet constituting the approved building system documentation, the Compliance Control Manual of the manufacturer, an Index of Code Compliance in the form specified by the Department for industrialized housing **or buildings**, a statement of the fire districts, if any, in which the industrialized housing **or buildings** can be installed, and the additional information relating to the building system documentation and the compliance assurance program as the evaluation agency deems necessary or as the Department may require. The Building System Approval Summary shall be prepared on a form furnished by the Department. The evaluation agency shall furnish to the Department and to the manufacturer one copy each of the BSAR and the Building System Approval Summary, clearly stating the date it is effective. The BSAR shall be revised monthly as needed.

§ 145.57. Approval of compliance assurance program.

An evaluation agency shall approve a compliance assurance program for purposes of this chapter if the evaluation agency determines that the manufacturer's compliance control program, described in the compliance control manual, meets the requirements of this chapter, and the compliance control program will be monitored by an approved inspection agency. The evaluation agency shall review the manufacturer's building system documentation, the manufacturer's compliance control manual and the manufacturer's proposed implementing contract with an inspection agency, shall inspect each of the manufacturer's manufacturing facilities where the industrialized housing **[or],** housing components**, industrialized buildings or building components** are to be manufactured for installation on sites in this Commonwealth, and shall review the other data and information as the evaluation agency may deem necessary.

§ 145.58. Basic requirements for a compliance control program.

(a) An evaluation agency shall approve a compliance control program if it determines that the implementation of the compliance control program will assure that the industrialized housing **[or],** housing components, **industrialized buildings or building components,** when installed at the site, will conform to the approved building system documentation, the manufacturer possesses the facilities, personnel and organization to implement its compliance control program properly, and the requirements of this section are met. It is the policy of the Department to recognize that the level of sophistication of a compliance control program of a manufacturer will depend on many factors, including the level of sophistication and technological characteristics of the building system and the manufacturing process. It is further the policy of the Department that the maximum respect shall be accorded to a manufacturer's customary business practice consistent with achievement of the purposes of the act and this chapter. It is further the policy of the Department that the approval of a compliance control program under this chapter does not relieve the manufacturer and the inspection agency of responsibility for assuring that industrialized housing **[and],** housing components**, industrialized buildings or building components** manufactured for sale, lease or installation for use on sites in this Commonwealth conform in every material respect to the approved building system documentation.

(b) To facilitate review and approval, the manufacturer's compliance control program shall present an overview of its policies and procedures on the following:

(1) The placement, storage and handling of construction materials.

(2) The manufacturing process within the manufacturing facilities, including the jigs and fixtures necessary for production.

(3) The storage and transportation of industrialized housing **[and],** housing components**, industrialized buildings or building components** to the site, including detailed lifting calculations.

(4) The installation of industrialized housing **[and],** housing components **[at the site], industrialized buildings or building components at the site, including the Site Installation Inspection Checklist, referenced in § 145.91(e) (relating to reports to the Department), identifying specific functions and techniques that are of critical importance**.

(c) For approval, except as modified under subsection (e), the compliance control program shall include requirements on the following items:

(1) Specific assignments of responsibility to designated divisions or **[employes] employees** of the manufacturer for every significant phase in the production, transportation and installation of the industrialized housing **[or],** housing components**, industrialized buildings or building components**.

(2) Procedures under which **[employes] employees** of the manufacturer inspect and approve each significant process in every significant phase of the manufacture, transportation and installation of the industrialized housing **[or],** housing components**, industrialized buildings or building components**.

(3) Procedures for marking identified deficiencies—such as serialized colored tags that can be attached to the deficiency—and for assuring their correction or the disposal of the deficient item.

(4) Procedures to assure that the fabrication or shop drawings for the industrialized housing **[and],** housing components**, industrialized buildings or building components** conform to the approved building system documentation or to the drawings approved by the third-party agency with whom the manufacturer has an implementing contract.

(5) Procedures to maintain, file and control fabrication or shop drawings and documents constituting the building system.

(6) Procedures to maintain complete and reliable records of the manufacture, transportation and installation of the industrialized housing **[and],** housing components, **industrialized buildings or building components,** each unit of which shall be assigned a manufacturer's serial number to facilitate identification.

(7) Procedures employed by the manufacturer to request, store and attach the insignia of certification issued to it by the Department under § 145.63 (relating to procedures for requesting, controlling and attaching insignia of certification).

(8) Procedures for controlling the storage and transportation of industrialized housing **[and],** housing components**, industrialized buildings or building components** from the manufacturing facilities to the site, identifying specific functions and techniques that are of critical importance.

(9) Procedures for controlling the installation of industrialized housing **[and],** housing components**, industrialized commercial buildings or industrialized commercial building components** at the site **[, identifying specific functions and techniques that are of critical importance]**.

(10) A brief identification and description of physical testing to be performed at a point during a phase of manufacture, transportation and installation, the frequency of its performance, and the identification and qualifications of the persons performing the testing.

(d) The list of topics set forth in subsection (c) is not exclusive and is not intended to preclude additional items and greater details prior to approving a compliance control program.

(e) If a manufacturer transfers title to and effective control over its industrialized housing **[or],** housing components**, industrialized buildings or building components** to other, unrelated persons at a point prior to its installation at the site, the manufacturer shall be responsible for furnishing to the persons responsible for transportation and installation adequate information **[and],** manuals**, checklists, Notices of Approval, and the like,** relating to the transportation and installation of the industrialized housing **[and],** housing components**, industrialized buildings or building components**, including the relevant portions from its compliance control program referred to in subsections (c)(8)—(10), but the manufacturer may not be responsible for implementation after the transfer of title and effective control.

(f) An evaluation agency's approval of a compliance control program shall be evidenced by the stamp of approval of the evaluation agency affixed to the title page of the compliance control manual and signed and dated by a designated **[employe] employee** of the evaluation agency.

§ 145.60. Insignia of certification.

(a) Certified industrialized housing **[constituting a single dwelling unit]** must bear **an** insignia of certification for each module. The insignia of certification will be furnished by the Department to the manufacturer under the procedures of § 145.63 (relating to procedures for requesting, controlling and attaching insignia of certification). The manufacturer shall permanently attach the insignia of certification for each module adjacent to the data plate located in a visible location in a cabinet under the kitchen sink, or if this cabinet is not available, the location must be clearly identified on the Site Installation Inspection **[Report] Checklist** referenced in § 145.91(e) (relating to reports to the Department). Insignias may not be attached to doors or other easily removable features of the home. Each insignia of certification must bear an insignia serial number furnished by the Department and contain the following language:

INSIGNIA OF CERTIFICATION FOR INDUSTRIALIZED HOUSING

Serial No.

This insignia certifies that this dwelling unit of industrialized housing has been manufactured from plans, specifications and other related design documents under a compliance assurance program in accordance with the requirements of the Industrialized Housing Act**[, Title 35 of the Purdon's Pennsylvania Statutes Annotated, §§ 1651.1 to 1651.12,]** and the regulations issued thereunder by the Department of Community and Economic Development of the Commonwealth of Pennsylvania.

(b) Each certified housing component or components comprising a **[project in] single unit or added to** a single dwelling unit must bear an insignia of certification for housing components. The insignia of certification **[must] will** be furnished by the Department to the manufacturer under the procedures of § 145.63. The manufacturer shall permanently attach the insignia of certification to the housing component in a visible location identified in the building system documentation and **[in the Building System Approval Report] must be clearly identified on the Site Installation Inspection Checklist referenced in § 145.91(e)**. Each insignia of certification must bear an insignia serial number furnished by the Department and contain the following language:

INSIGNIA OF CERTIFICATION FOR HOUSING COMPONENTS

Serial No.

This insignia certifies that this housing component has been manufactured from plans, specifications and other related design documents under a compliance assurance program in accordance with the requirements of the Industrialized Housing Act**[, Title 35 of the Purdon's Pennsylvania Statutes Annotated, §§ 1651.1 to 1651.12,]** and the regulations issued thereunder by the Department of Community and Economic Development of the Commonwealth of Pennsylvania.

(c) **[Insignia of certification issued by the Department will be of a size and design and of materials and will provide for the methods of at-**

tachment as determined by the Department.] Certified industrialized commercial buildings must bear insignia of certification for each module. The insignia of certification will be furnished by the Department to the manufacturer under the procedures of § 145.63. The manufacturer shall permanently attach the insignia of certification for each module in a visible location adjacent to the electrical panel box. If this area is unavailable, the location must be clearly identified on the Site Installation Inspection Checklist referenced in § 145.91(e). The insignia may not be attached to a door or other easily removable feature of the building. Each insignia of certification must bear an insignia serial number furnished by the Department and contain the following language:

INSIGNIA OF CERTIFICATION FOR INDUSTRIALIZED COMMERCIAL BUILDINGS

Serial No.

This insignia certifies that this industrialized building module has been manufactured from plans, specifications and other related design documents under a compliance assurance program in accordance with the requirements of the Industrialized Housing Act and the regulations issued thereunder by the Department of Community and Economic Development of the Commonwealth of Pennsylvania.

(d) Certified industrialized commercial building components, comprising a single building or unit, must bear insignia of certification for building components. The insignia of certification will be furnished by the Department to the manufacturer under the procedures of § 145.63. The manufacturer shall permanently attach the insignia of certification for each module in a visible location identified in the building system documentation and clearly identified on the Site Installation Inspection Checklist referenced in § 145.91(e). Each insignia of certification must bear an insignia serial number furnished by the Department and contain the following language:

INSIGNIA OF CERTIFICATION FOR INDUSTRIALIZED COMMERCIAL BUILDING COMPONENTS

Serial No.

This insignia certifies that this industrialized building component has been manufactured from plans, specifications and other related design documents under a compliance assurance program in accordance with the requirements of the Industrialized Housing Act and the regulations issued thereunder by the Department of Community and Economic Development of the Commonwealth of Pennsylvania.

(e) An insignia of certification issued by the Department will be of a size and design and of materials and provide for the methods of attachment as determined by the Department.

§ 145.61. Insignia of inspection agencies.

(a) The inspection agency shall attach **[to a housing component]** its label, seal or other insignia adjacent to the data plate for each industrialized housing **or building** module.

(b) The inspection agency shall attach its label, seal or other insignia or other identification for certified housing **[components comprising a project in a single dwelling unit] or building components, or group of components, that are transported separately to the building site**.

(c) The label, seal or other insignia of the inspection agency must identify the name **[and address]** of the inspection agency and have a serial number. In other respects, the inspection agency may design its label, seal or other insignia as it wishes, provided that the label, seal or other insignia does not contain statements which the Department determines are inconsistent with the act or this chapter. **[Each label, seal or other insignia must be attached in a clearly visible location to the housing component or element of the industrialized housing or housing component, as applicable, by the time of its arrival at the building site, but the] The** label, seal or other insignia may be covered up during the process of assembly and installation at the building site so that it is not permanently visible.

§ 145.62. Data plates.

(a) A dwelling unit of certified industrialized housing must contain a data plate. The data plate shall be furnished by the manufacturer and be permanently attached by the manufacturer in a visible location as specified in § 145.60(a) (relating to insignia of certification). **[The data plate must contain sufficient space to permit the attachment of insignia of certification as provided in § 145.60(a) and of the label, seal or other insignia of the inspection agency as provided in § 145.61(a) (relating to insignia of inspection agencies).]** The data plate must contain, but not be limited to, the following information:

* * * * *

[(8) Serial or other identifying numbers of each module of industrialized housing.

(9)] (8) Minimum Btu output of furnace needed to maintain average 70° F interior temperature at outside design temperature of ____F.

[(10)] (9) Annual degree days for which the house has been designed.

[(11)] (10) Snow loads-maximum.

[(12)] (11) Wind loads—maximum.

[(13)] (12) Floor loads-maximum, sleeping/non-sleeping.

[(14)] (13) Other special environmental factors.

[(15)] (14) Tests required and actually conducted.

[(16)] (15) Applicable codes, including name of code, edition or year of publication.

(b) **[A housing structure containing certified] Certified** housing components shall **[contain] be provided with** a data plate. The data plate shall be furnished by the manufacturer and be permanently attached by the manufacturer in a visible location **[in the utility room or utility area, if feasible, and otherwise in other areas identified in the plans for the housing structure] identified in the Site Installation Inspection Checklist referenced in § 145.91(e) (relating to reports to the Department)**. **If attachment in the factory is not possible, the data plate**

may be tethered to the certified housing components for attachment at the site. The manufacturer shall provide instructions for attachment along with the data plate. The insignia of certification of the Department may not be attached to the data plate. The data plate must contain, but not be limited to, the following information relating to the housing components:

* * * * *

(5) Manufacturer's serial number **and date of manufacture** for housing components.

(6) Inspection and evaluation agencies' serial numbers.

(7) **[Serial number of Department's insignia of certification attached to each housing component.] Department insignia of certification numbers.**

(8) Snow loads—maximum.

(9) Wind loads—maximum.

(10) Other special environmental factors, if applicable.

(11) **[Applicable codes, including name of code, edition, year of publication and applicable supplement, if any.] Tests required and actually conducted.**

(12) **[Date data plate attached to dwelling unit.] Thermal transmittance values.**

(13) **[Tests required and actually conducted.] Applicable codes, including name of code, edition, year of publication and applicable supplement, if any.**

(c) Additional information may be included on the data plate for dwelling units of certified industrialized housing and housing structures containing certified housing components if there is no conflict with the requirements of the act or this chapter. If less than the minimum data required in this section is deemed necessary, prior approval shall be obtained from the Department.

(d) To insure that proper installation equipment is utilized for the lifting of industrialized housing units or housing components, a manufacturer shall indicate on the data plate the total shipping weight in tons per component.

(e) Certified industrialized commercial buildings must contain a data plate. The data plate shall be furnished by the manufacturer and be permanently attached by the manufacturer in a visible location as specified in § 145.60(c). The data plate must contain, but not be limited to, the following information:

(1) Name of manufacturer.

(2) Address of principal office of manufacturer.

(3) Address of manufacturing facility where the industrialized building or its principal elements were produced.

(4) Manufacturer's model name.

(5) Manufacturer's serial number and date of manufacture.

(6) Inspection and evaluation agencies' serial numbers.

(7) Department insignia of certification numbers.

(8) Occupancy classification as provided for in § 145.41 (relating to adoption of standards).

(9) Construction classification.

(10) Snow loads—maximum.

(11) Wind loads—maximum.

(12) Floor loads—maximum.

(13) Thermal transmittance values.

(14) Other special environmental factors.

(15) Tests required and actually conducted.

(16) Applicable codes, including name of code, edition or year of publication.

(f) Certified industrialized commercial building components must contain a data plate. The data plate shall be furnished by the manufacturer and be permanently attached by the manufacturer in a visible location identified in the Site Installation Inspection Checklist referenced in § 145.91(e). If attachment in the factory is not possible, the data plate may be tethered to the certified building component for attachment at the site. The manufacturer shall provide instructions for attachment along with the data plate. The insignia of certification of the Department may not be attached to the data plate. The data plate must contain, but not be limited to, the following information:

(1) Name of manufacturer.

(2) Address of principal office of manufacturer.

(3) Address of manufacturing facility where the industrialized housing or its principal elements were produced.

(4) Manufacturer's model name.

(5) Manufacturer's serial number for dwelling unit and date of manufacture.

(6) Inspection and evaluation agencies' serial numbers.

(7) Department insignia of certification numbers.

(8) Occupancy classification as provided for in § 145.41.

(9) Construction classification.

(10) Snow loads—maximum.

(11) Wind loads—maximum.

(12) Floor loads—maximum.

(13) Thermal transmittance values.

(14) Other special environmental factors.

(15) Tests required and actually conducted.

(16) Applicable codes, including name of code, edition or year of publication.

§ 145.63. Procedures for requesting, controlling and attaching insignia of certification.

(a) A manufacturer with an approved building system documentation and related approved compliance assurance program may request the Department to issue to it insignia of certification, in a quantity not less than five and not more than the quantity needed for the manufacturer's reasonably estimated production during a 1-month period. The manufacturer's request shall be made on a Request for Insignia of Certification Form furnished by the Department and shall be accompanied by a check **[or],** money order**[,] or electronic payment** in an amount calculated in accordance with the fee schedule in § 145.94 (relating to fees). If the manufacturer's request is complete and the fee payment is correct **and the manufacturer and its third-party agency have fulfilled all of their obligations under this chapter**, the

Department will promptly issue to the manufacturer the requested number of insignia of certification. Each individual insignia of certification shall bear a separate insignia serial number written thereon by the Department. The insignia of certification issued to the manufacturer shall be accompanied by an Insignia of Certification Inventory Control List, on a form furnished by the Department**[, on which the Department has written the serial number of each insignia and the date of shipment to the manufacturer, and with space to permit additional information to be recorded regarding the storage and disposition of each insignia of certification]**. The Department will send a copy of the Insignia of Certification Inventory Control List to the appropriate inspection agency.

(b) The manufacturer shall entrust the custody of the insignia of certification received from the Department only to employees designated in the compliance control program as responsible for the custody and control of the insignia of certification. The manufacturer shall attach the insignia **[to dwelling units of industrialized housing or to housing components]** only in the circumstances prescribed in the compliance control program and only with the prior specific authorization from the inspection agency. The manufacturer shall attach the insignia of certification in the manner specified by the Department intended to assure that the insignia cannot be removed without destroying the insignia. The manufacturer shall promptly record the attachment of each insignia of certification on the Insignia of Certification Inventory Control List. A copy of the Insignia of Certification Inventory Control List, with all columns filled out by the manufacturer, shall be sent by the manufacturer to the Department and to the inspection agency promptly following the use of all the insignias listed on the list. The manufacturer shall report to the Department and to the inspection agency the status of all insignias issued to them on a monthly basis, utilizing a method approved by the Department.

(c) The manufacturer shall return to the Department unused insignia of certification that have been issued to it within 10 days following the suspension of approval under § 145.66(a) (relating to emergency suspension) of previously approved building system documentation or compliance assurance programs of the manufacturer, or following the suspension under § 145.66(b) of the manufacturer's right to receive or attach insignia of certification, or following recall under § 145.69 (relating to suspension of certificate of approval of out-of-State manufacturer for lack of activity) or following the manufacturer's discontinuance of the manufacture of industrialized housing**, buildings,** or housing **or building** components for sale, lease or installation for use in this Commonwealth, or following the bankruptcy or dissolution of the manufacturer or the discontinuance of the manufacturer's business for whatever reason, or following the manufacturer's determination that the insignia of certification is no longer needed. The Department will cause the manufacturer to be refunded a portion of the fee already paid for the insignia equal to the product of the number of insignia of certification returned by the manufacturer and the fee per insignia paid by the manufacturer, less $50 to be retained by the Department for handling expenses. Insignia returned to the Department under § 145.69 will not be subject to the charge for handling expenses.

(d) A manufacturer may not use, transfer, sell or otherwise dispose of insignia of certification issued to it by the Department in any manner not specifically authorized of this chapter.

§ 145.64. Modification **[of industrialized housing or housing components]** after certification.

(a) Certified industrialized housing**, buildings** and certified housing **or building** components bearing the insignia of certification may not be modified after the insignia of certification has been attached, unless the modification is approved in advance by the evaluation agency on the basis that the industrialized housing**, building,** or housing **or building** component, as so modified, will still conform to the approved building system documentation. Approvals of modifications which are consistent with the approved building system documentation may be by oral authorization by an officer or **[employe] employee** of the evaluation agency, but in **[such] this** event each approval shall be subsequently evidenced by a letter from the evaluation agency to the manufacturer within 10 days after the oral authorization. Proposed modifications which are inconsistent with the approved building system documentation shall be treated as proposed amendments to the building system documentation subject to the approval of the evaluation agency under § 145.55 (relating to general requirements for approval of amendments to building system documentation).

(b) Modifications of certified industrialized housing**, buildings,** or certified housing **or building** components are not prohibited under the act or **[the provisions of]** this chapter if the modifications are made after the issuance of a certificate of occupancy**[, or other similar permit,]** by the local enforcement agency **[or, if the industrialized housing or housing components have been installed for use in a jurisdiction of local government which does not issue certificates of occupancy, or other similar permit, after occupancy of such industrialized housing or housing structure containing the housing components by a person intending to reside therein for a continuous period of 6 months, unless the modifications are made by the manufacturer or other person with an intent to evade the requirements of the act or this chapter]**. The modifications referred to in this subsection **[shall be] are** subject to other applicable laws, codes and ordinances of the Commonwealth and of the local government of the jurisdiction in which the industrialized housing or **[housing] building** structure is located.

(c) Nothing in this section shall prevent a manufacturer, on its own motion or at the order of the inspection agency or of the Department, from repairing damage to or remedying a defect found in an industrialized housing component.

§ 145.66. Emergency suspension.

* * * * *

(d) No industrialized housing **[or],** housing components**, industrialized building or building components** may be certified and insignia of certification attached thereto while an emergency suspension under this section pertaining to the manufacturer shall remain in effect, unless otherwise permitted by order of the Department.

§ 145.67. Revocation of certification **[of industrialized housing and housing components]**.

(a) The Department or the appropriate third-party agency may send by certified mail a notice of intent to revoke:

* * * * *

(2) The authority of the manufacturer to receive and to attach insignia of certification to industrialized housing **[or],** housing components**, industrialized building or building components** following a determination by the agency that the manufacturer is possibly failing in any material respect to conform with its approved building system documentation or to meet its responsibilities under the approved compliance assurance program or that the manufacturer is in violation in any material respect of the act or this title.

* * * * *

(c) If the manufacturer fails to correct the violations within the time allowed, the Department will schedule a hearing to consider revocation of:

(1) The certification of industrialized housing **[and],** housing components**, industrialized building or building components**.

* * * * *

§ 145.69. Suspension of certificate of approval of out-of-State manufacturer for lack of activity.

A manufacturer certified to ship industrialized housing **[or],** housing components**, industrialized buildings or building components** into this Commonwealth and whose plant is located in another state will have its certificate suspended if it fails to **[ship any units into] manufacture units for installation on a site in** this Commonwealth for 2 consecutive years. Written notice of this suspension will be provided to the manufacturer. If the manufacturer desires to ship a unit into this Commonwealth within 1 year of its suspension, approval may be reinstated through a letter submitted by an approved third-party agency to the Department which provides that the manufacturer meet the requirements of the laws and this title, including the submission to the Department of its current approved building system documentation and compliance assurance program if the previous submissions to the Department have been revised. The Department will review the third-party evaluation and then conduct an inspection of the plant. If a manufacturer has not made shipments into this Commonwealth for 1 year from the date of the suspension of its certificate, the certificate will lapse. To be reapproved**,** the manufacturer shall comply with this title in the same manner as would another manufacturer applying for initial approval.

THIRD-PARTY AGENCIES

§ 145.70. Departmental evaluation and inspection.

A manufacturer producing industrialized housing **[or],** housing components**, industrialized buildings or building components** for installation in this Commonwealth has the option of electing the Department to evaluate or inspect, or both, its products for certification. The Department will provide the services requested subject to the availability of staff. The following are applicable:

(1) The manufacturer shall enter into an implementing contract with the Department which shall include, but not be limited to, a specific time period for the contract, a mutual termination clause with a minimum of 45 days of notice to terminate period, the services to be provided, and the fees to be charged to the manufacturer for services in accordance with § 145.94(e) (relating to fees).

(2) Evaluation services by the Department will include:

(i) Investigation, evaluation, testing, and, if justified, approval of each set of building system documentation, and each amendment thereto submitted to it by a manufacturer for compliance with all of the applicable requirements of the codes and standards adopted under §§ 145.41, 145.42 and 145.43 (relating to adoption of standards; alternate standards; and amendment policy).

(ii) Investigation, evaluation, and, if justified, approval of the compliance assurance program and each amendment thereto—relating to the manufacture, transportation and installation of industrialized housing **[or],** housing components**, industrialized buildings or industrialized building components** described in each set of building system documentation approved under this section—submitted by the manufacturer for compliance with the requirements of this title.

(iii) Preparation and periodic revisions as necessary of the Building System Approval Report for each set of approved building system documentation and related compliance program.

(3) Inspection services by the Department will include:

(i) Monitoring the manufacturer's compliance control program for the manufacture, transportation and installation of industrialized housing **[or],** housing components**, industrialized buildings or building components** of each manufacturer having an implementing contract.

(ii) Verification that the industrialized housing **[or],** housing components**, industrialized buildings or building components** have been manufactured under approved building documentation and an approved compliance assurance program and authorization to the manufacturer for the attachment of insignia of certification to the industrialized housing **[or],** housing components**, industrialized buildings or building components**.

(4) Procedure for requesting, controlling and attaching insignia of certification shall be the same as detailed in § 145.63 (relating to procedures for requesting, controlling and attaching insignia of certification). Manufacturers shall purchase their insignia of certification at fees indicated in **[§ 145.94(c) and (d)] § 145.94(e) and (f)**, and the cost of the insignia is not included in their evaluation or inspection, services, or both, provided by the Department under **[paragraphs (1)—(3)] § 145.94(e)**.

(5) The specification document defining the requirements for submission of drawings, specifications, calculations and related material for Departmental approval will be provided upon request of the manufacturer.

§ 145.71. Responsibilities of evaluation agencies.

Each evaluation agency shall discharge under **[these regulations] this chapter** the following responsibilities:

* * * * *

(2) Investigation, evaluation and, if justified, approval of the compliance assurance program, and each amendment thereto, relating to the manufacture, transportation and installation of the industrialized housing **[or],** housing components**, buildings or building components** described in each set of building system documen-

tation approved under subsection (a), submitted to it by a manufacturer with which it has an implementing contract for compliance with the requirements of this chapter.

* * * * *

§ 145.72. Responsibilities of inspection agencies.

Each inspection agency shall discharge under this chapter the following responsibilities:

(1) Monitoring the manufacturer's compliance control program for the manufacture, transportation and installation of industrialized housing **[or],** housing components**, buildings or building components** of each manufacturer with which it has an implementing contract.

(2) Verification that industrialized housing **[or],** housing components**, buildings or building components** have been manufactured under approved building system documentation and an approved compliance assurance program and authorization to the manufacturer of the attachment of insignia of certification to the industrialized housing **[or],** housing components**, buildings or building components**.

(3) Preparation of reports to the Department as are required by this chapter or as may be required by the Department in carrying out its responsibilities under the act and this chapter.

(4) Performance of its obligations under its contract with the Department.

§ 145.72a. Frequency of inspections.

(a) In carrying out its monitoring responsibilities under § 145.72 (relating to responsibilities of inspection agencies), an inspection agency shall observe the **[following]** minimum frequency of inspection requirements**[:] in this subsection. During the inspection agency's initial work at the factory or after revocation under § 145.67 (relating to revocation of certification), the inspection agency shall monitor the manufacturer's approved compliance control program by inspecting industrialized housing, buildings, or housing or building components until it can be certified that the manufacturer is producing conforming industrialized housing, buildings, or housing or building components on an ongoing basis. Due to the varied nature and complexities of these products prior to beginning this certification process, the third-party agency shall submit to the Department its recommendation as to the minimum inspection frequency required to certify, and the frequency of inspections for routine inspection surveillance to assure the manufacturer is producing conforming housing or building components on an ongoing basis. The Department will review and determine if the third-party agency's proposal is adequate to grant the manufacturer authority to receive and attach insignias of certification. At any time during the certification process, the inspection agency may modify the proposal and submit the revised proposal to the Department for further review.**

[(1) During the inspection agency's initial work at the factory or after revocation under § 145.67 (relating to revocation of certification of industrialized housing and housing components), the inspection agency shall monitor the manufacturers approved compliance control program by inspecting industrialized homes throughout every work station, until it can be certified that the manufacturer is producing conforming homes on an ongoing basis.

(2) At a minimum, ten industrialized homes shall be inspected at every work station prior to granting the manufacturer authority to receive and attach insignias of certification for industrialized housing. At least one home through this certification process must be an industrialized house or housing component destined for a site in this Commonwealth.

(b) In carrying out its monitoring responsibilities under §§ 145.72(1), an inspection agency shall inspect every major subsystem of every dwelling unit produced which is to bear the insignia of certification when the inspection agency label is not being attached to every dwelling unit produced in the factory.]

[(c)] (b) An inspection agency's monitoring responsibilities under § 145.72(1) **[and (2)]** include**, at a minimum,** the monthly inspection of the storage and transportation methods and facilities employed by or on behalf of the manufacturer for as long as the manufacturer retains title to or effective control over the **[dwelling]** units to insure that the units are not altered from the manner in which they were approved.

[(d)] (c) In carrying out its monitoring responsibilities under § 145.72(1) **[and (2)],** an inspection agency shall inspect industrialized housing **and buildings** at the site after installation is complete in a manner and frequency, consistent with factors set forth in subsection **[(e)] (d)**, necessary to confirm that the manufacturer's approved compliance control program is effective in assuring installation consistent with the manufacturer's approved building system documentation. Documentation of the onsite inspections must be on file in each manufacturing facility and be provided to the Department within 30 days of the Department's request for the documentation.

[(e)] (d) The minimum frequency of inspection requirements of this section are not intended to substitute for the professional judgment of an inspection agency in determining whether a greater frequency of inspections is necessary to discharge its responsibilities properly. Factors that should be considered in establishing an appropriate frequency of inspection level for any manufacturer are the production volume of the factory, the design complexity of the **[dwelling]** units, the qualifications of the manufacturer's compliance control personnel and the experience record of the manufacturer.

§ 145.73. Criteria for approval of evaluation and inspection agencies.

(a) The Department will **[approve] accept** a written application from the designated **[employe] employee** of an agency who **[applies to it] wishes** to become an evaluation agency or an inspection agency **[if] for industrialized housing or industrialized buildings, or both. If** the Department determines, on the basis of the inquiry as the Department deems necessary and appropriate, that the agency possesses the capacity of discharging reliably, objectively and without bias the responsibilities assigned by this chapter to an evaluation agency or to an inspection agency, as the case may be**, the Department will approve the application**. In making the determination, the Department will consider that:

(1) There is a sufficient breadth of interest or activities so that the loss or award of a specific contract to an agency determining compliance of a product with this chapter would not be a substantial factor in the financial well-being of the agency performing the required functions.

(2) Employment security of personnel is free of influence or control by any manufacturer, supplier or vendor.

(3) The agency is not engaged in the promotion of products that they shall determine to be in compliance with this chapter.

(b) The Department will evaluate information on the following factors that relate to the ability of the applying agency to discharge the responsibilities that would be assigned to it as an approved evaluation agency or an approved inspection agency, as the case may be:

(1) The legal character and good standing of the applying agency.

(2) The financial strength of the applying agency.

(3) The **current** qualifications of the management and technical personnel of the applying agency. **A list of the required qualifications will be published in the *Pennsylvania Bulletin* annually.**

(4) The range of salaries and other compensation of the technical personnel, including inspectors of the applying agency, excluding principals, principal officers, and directors of the applying agency.

(5) The policies and procedures of the applying agency for the hiring, training and supervision of technical personnel, including education and training following changes in the codes and standards applicable under this chapter.

(6) The extent, if any, to which the applying agency will engage independent consultants and the functions the independent consultants will perform; in general, the Department will not approve an applying agency who utilizes as key technical or supervisory personnel anyone who is an independent consultant. Also, the Department will not permit the use, by an inspection agency, of part-time inspectors unless the inspection agency's present volume of business in designated geographic areas does not justify full-time personnel or unless there are other compelling justifications.

(7) The prior experience **and level of performance** of the applying agency in performing similar or related functions.

(8) The capability, if any, of the applying agency to perform testing, including the nature of the testing and the facilities and personnel to perform it, and the identity, facilities, experience and key personnel of an independent testing agency with which arrangements have been made for testing services and the nature of the testing services.

(9) The extent, if any, to which the applying agency is affiliated with or influenced or controlled by a producer, manufacturer, supplier or vendor of products, supplies or equipment used in industrialized housing or **[housing components] industrialized buildings**.

(10) The procedures to be used by the applying agency in discharging the responsibilities under this chapter of an evaluation agency or inspection agency, as the case may be. An applying agency seeking approval as an inspection agency **[should furnish representative examples of compliance assurance manuals] shall furnish the complete procedures for monitoring the manufacturer's compliance control program** it would use for each type of construction for which it seeks approval, and state its policy with respect to the frequency at which it will conduct inspections of each phase of the manufacture, transportation and installation of industrialized housing **[and],** housing components**, industrialized buildings or building components**.

(c) The Department may consider information with respect to other factors that it may deem relevant to its determination of approval or disapproval. In approving an evaluation or inspection agency, the Department may limit the scope of the agency's approved activities to particular types of industrialized housing**, buildings,** or housing **or building** components, geographic area or the number of manufacturers the Department determines an agency can effectively evaluate or inspect, or both.

§ 145.74a. Prohibition on consulting services.

A third-party agency may not perform consulting engineering services relating to industrialized housing **[or],** housing components**, industrialized buildings or building components** for a manufacturer for as long as the third-party agency has an implementing contract with the manufacturer **or related manufacturer** under § 145.78(c) (relating to contractual arrangements).

§ 145.76. Reapprovals of third-party agencies.

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(b) Within 30 days following the receipt by the Department of an application for reapproval, the Department will make its determination whether the applying third-party agency continues to meet the requirements of this chapter for an **industrialized housing evaluation agency or commercial building** evaluation agency**, or both,** or an **industrialized housing inspection agency or commercial building** inspection agency, or both. In the event of a disapproval, the Department will provide the applying third-party agency with a brief written explanation of the reasons for the disapproval. In the event of a reapproval, the Department will provide the applying third-party agency with a brief written letter of reapproval. A reapproval shall expire on the date of the next anniversary of the date of the scheduled expiration of the current approval from the Department.

(c) The Department may, on its own motion or at the request of an evaluation agency or inspection agency, grant a temporary reapproval of an evaluation agency or inspection agency for a period not to exceed 60 days. The applying third-party agency seeking reapproval shall be subject to procedures that satisfy the Department of its ability to perform its functions. The procedures shall require annual interviews of third-party agency personnel at their headquarters **or by teleconference** to assess the desired performance.

§ 145.78. Contractual arrangements.

* * * * *

(c) A manufacturer seeking certification of industrialized housing **[or],** housing components**, industrialized buildings or building components** that it manufactures shall enter into implementing contracts with an evaluation agency and an inspection agency with contracts with the Department under subsection (b). Each third-party agency shall send a copy of each implementing contract to the Department.

(d) A manufacturer of industrialized housing **[or],** housing components**, industrialized buildings or building components** approved under this title shall

have a current implementing contract with an approved evaluation agency and an approved inspection agency or have alternate arrangement for evaluation or inspection, or both, of its products with the Department under § 145.70 (relating to Departmental evaluation and inspection).

(e) A manufacturer of industrialized housing **[or],** housing components**, industrialized buildings or building components** operating under an implementing contract with an approved evaluation agency and an approved inspection agency, who wishes to enter into an implementing contract with a different evaluation or inspection agency, shall provide justification and receive approval from the Department prior to entering into the new contract**, except as provided for in § 145.79(e) (relating to suspension and revocation of third-party agencies)**.

§ 145.79. Suspension and revocation of third-party agencies.

* * * * *

(f) If the Department determines that there is a substantial threat to the health, safety or welfare of the occupants of industrialized housing or housing structures containing housing components **[because the industrialized housing or housing components] or industrialized buildings or structures containing industrialized building components, because they** were manufactured in accordance with building system documentation and related compliance assurance program approved by an evaluation agency whose approval has been suspended or revoked by the Department under this section or were certified by an inspection agency whose approval has been suspended or revoked by the Department under this section, the Department may require the manufacturer to take the actions with respect to the industrialized housing or housing components**, industrialized buildings or building components** as may be necessary to eliminate substantially the threat to the health, safety or welfare of the occupants.

(g) Upon the suspension or revocation of an evaluation agency or inspection agency under this section, the Department will, upon the request of a manufacturer with an implementing contract with the suspended or revoked third-party agency, consult with the manufacturer to establish a temporary arrangement by which the manufacturer can continue to manufacture, sell, lease and install industrialized housing **[and],** housing components**, industrialized buildings or building components** in conformity with the act and this chapter until the suspension or revocation is lifted or an implementing contract entered into with another third-party agency. For these purposes, the Department may in its sole discretion discharge some or all of the responsibilities of a third-party agency. The Department may also approve another temporary arrangement which the Department determines would best promote the purposes of the act and this chapter under the circumstances.

LOCAL ENFORCEMENT AGENCIES

§ 145.81. Responsibilities of local enforcement agencies.

(a) Local enforcement agencies**, building code and construction code officials** can make an important contribution to the effective administration of the act and this chapter. In addition to discharging the responsibility under local law for the enforcement of applicable locally-enacted codes and ordinances governing site preparation work and water, sewer, electrical and other energy supply connections as described more particularly in § 145.36 (relating to applicability of locally-enacted codes and ordinances), and in view of the responsibilities of local enforcement agencies under State and local law and of the responsibilities of local governments to cooperate with agencies of the Commonwealth to protect the health, safety and welfare of the citizens of **[the] this** Commonwealth, local enforcement agencies shall assist the Department in enforcing the act and this chapter for industrialized housing **[and],** housing components**, industrialized buildings or building components** at the time of installation in the jurisdiction of their local government in the following respects:

(1) Site inspections of industrialized housing **[and],** housing components**, industrialized buildings or building components,** upon arrival at the site, **[but prior to installation,]** for apparent damage occurring during transportation from the manufacturing facilities to the site and other apparent nonconformity with the approved building system documentation.

(2) Site inspections of the installation of the industrialized housing **[and housing components at the site for nonconformity with], housing components, industrialized buildings or building components consistent with those elements of installation addressed in the Site Installation Inspection Checklist required under § 145.91(e) (relating to reports to the Department) and** the installation instructions in the Building System Approval Report.

(3) Notifications to the **Department and the** manufacturer **[and to the inspection agency with an implementing contract with the manufacturer]** of damage and nonconforming elements found in the industrialized housing **[and],** housing components**, industrialized buildings or building components** as a result of the site inspections, as well as additional site inspections of efforts made to remedy or repair the damage and nonconforming elements shall be **[channelled] channeled** through the Department.

(4) Notification to the Department of violations of the act and this chapter by the manufacturer, inspection agency or other person, including instances in which industrialized housing **[and],** housing components**, industrialized buildings or building components** are installed or are intended for installation without bearing the required insignia of certification.

(5) Cooperation with the Department in efforts to take action to remedy the violations and prevent future occurrences.

(b) Site inspections of industrialized housing and housing components which a local enforcement agency performs under this chapter shall include, and be limited to, any type of visual exterior inspection and monitoring of tests performed by other persons during installation in accordance with the installation requirements in the Building System Approval Report. Destructive disassembly of the industrialized housing **[or],** housing components**, industrialized buildings or building components** may not be performed, and nondestructive disassembly may not be performed in the course of an inspection except to the extent of opening access panels and cover plates.

§ 145.82. Issuance of building permits.

(a) A person seeking a building permit from a local enforcement agency for industrialized housing or a housing structure in which will be installed housing components**, industrialized buildings or structures containing industrialized commercial building components** shall furnish **installation documentation required under § 145.58(b)(4) (relating to basic requirements for a compliance control program) and** a current Notice of Approval **under § 145.92(a)(5) (relating to reports by the Department)** and a statement signed by the person seeking the building permit or, if a corporation, by an officer or authorized representative of the corporation, that the work to be performed under the building permit will include the installation of certified industrialized housing **[or certified],** housing components, **industrialized buildings or building components** bearing the **appropriate** insignia of certification issued by the Department under the act and this chapter.

(b) The local enforcement agency may not withhold the issuance of a building permit for certified industrialized housing or a housing structure in which will be installed certified housing components**, industrialized buildings or structures containing industrialized building components** if the applicant submits the documents required by this section, and the application for a building permit complies with applicable locally-enacted codes and ordinances with regard to set-up and site details, **[consistent with the approved building system documentation] and land use**.

§ 145.83. Issuance of certificates of occupancy.

The local enforcement agency may not withhold the issuance of a certificate of occupancy or other similar permit for certified industrialized housing or a housing structure in which has been installed certified housing components **[if the industrialized housing or housing], industrialized buildings or structures containing building components if the properly completed Site Installation Inspection Checklist required under § 145.91 (relating to reports to the Department) is submitted and the** structure was constructed and installed on the site under a validly issued building permit and in other respects complies with applicable locally-enacted codes and ordinances not preempted by the act and this chapter.

ADMINISTRATIVE PROVISIONS

§ 145.91. Reports to the Department.

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(e) A person installing industrialized housing **[or],** housing components**, industrialized buildings or building components** for use on a site in a jurisdiction in this Commonwealth shall **[prepare] complete** and return to the manufacturer **and provide a copy to the local building code official** a Site Installation Inspection **[Report] Checklist** on a form furnished by the manufacturer **[as part of the approved compliance control program]**. The manufacturer is responsible for furnishing to the person performing the installation a copy of the Site Installation Inspection **[Report] Checklist** Form and instructions as to its intended use.

§ 145.92. Reports by the Department.

(a) The Department will send **[periodic reports, no less frequently than once every calendar quarter,] reports** to third-party agencies and manufacturers with approved building system documentation which **[reports shall] will** include all of the following:

* * * * *

(4) A current list of the names and addresses of currently approved third-party agencies.

(5) A Notice of Approval to each manufacturer that is approved as provided for in § 145.72a (relating to frequency of inspections).

(b) Each report may contain additional information relating to the administration of this chapter.

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§ 145.93. Factory inspections; right of entry.

(a) *Authorized inspections by Department.*

(1) The Department is authorized to inspect:

(i) A manufacturing facility of a manufacturer with approved building system documentation or to whom insignia of certification has been issued under § 145.103 (relating to issuance of insignia of certification).

(ii) The transportation facilities utilized for the transport of certified industrialized housing **[or],** housing components**, industrialized commercial buildings or industrialized commercial building components**.

(iii) The building sites on which certified industrialized housing **[or],** housing components**, industrialized commercial buildings or industrialized commercial building components** have been or are intended to be installed.

(iv) The books and records—wherever maintained—of a manufacturer with approved building system documentation or to whom insignia of certification has been issued under § 145.103 which relate to the manufacture, sale, lease or installation of industrialized housing **[or],** housing components**, industrialized commercial buildings or industrialized commercial building components** for use on a site in this Commonwealth.

(v) The facilities and the books and records of a third-party agency which relate to the discharge of its responsibilities under this chapter.

(2) A manufacturer with approved building system documentation or to whom insignia of certification has been issued under § 145.103 and every approved evaluation agency and approved inspection agency shall grant to authorized representatives of the Department the right of entry on its property at reasonable times during normal business hours for the purpose of conducting the inspections and examinations as authorized under this section.

(3) Persons selling, acquiring or leasing the industrialized housing **[or],** housing components**, industrialized buildings or building components**, and persons engaged in its transportation to and installation at the building site, shall grant to authorized representatives of the Department the same right of entry on their property as the manufacturer is required to grant under this chapter.

(b) *Yearly inspections.* A factory or manufacturing facility with approved building system documentation will be inspected at least once each year by the Department. The inspections are to verify the effectiveness of the sponsor's quality program and compliance with approved building systems documentation.

(c) *Inspection upon complaints or suspected violations.* A manufacturer with approved building system documentation shall grant to authorized representatives of an evaluation and inspection agency with which it has an implementing contract the right of entry on its property at least twice per year during normal business hours and at other times upon complaint or a reasonable belief that violations of this chapter may exist, for the purpose of conducting inspections and examination as the evaluation or inspection agency deems necessary to discharge its responsibilities under this chapter and under its contract with the manufacturer. Persons selling, acquiring or leasing the industrialized housing **[or],** housing components**, industrialized buildings or building components**, and persons engaged in its transportation to and installation on the building site, shall grant to an evaluation and inspection agency with an implementing contract with the manufacturer the same right of entry on their property as the manufacturer is required to grant under this chapter.

(d) *Inspection restrictions.* Upon entry onto a manufacturer's property or other property for the purpose of conducting an inspection under this section, the Department's **[employe] employee** or representative will state the scope of the intended inspection and that the inspection will be conducted under the act.

§ 145.94. Fees.

(a) A person submitting an application to the Department under § 145.75(a) (relating to procedures for obtaining approvals of evaluation and inspection agencies) for approval as an **industrialized housing** evaluation agency or inspection agency shall pay a fee of $1,000. If the person seeks approval as both an **industrialized housing** evaluation agency and an inspection agency, the combined fee **[shall be] is** $2,000.

(b) A third-party agency submitting an application to the Department under § 145.76 (relating to reapprovals of third-party agencies)**[,]** for reapproval as an **industrialized housing** evaluation agency or inspection agency shall pay a fee of $500. If the person seeks reapproval as both an **industrialized housing** evaluation agency and an inspection agency, the combined fee **[shall be] is** $1,000.

(c) **[Each manufacturer requesting the Department under § 145.63 (relating to procedures for requesting, controlling and attaching insignia of certification) to issue insignia of certification shall pay a fee of $40 for the insignia of certification for each module of industrialized housing.] A person submitting an application to the Department under § 145.75(a) for approval as an industrialized buildings evaluation agency or inspection agency shall pay a fee of $1,000. If the person seeks approval as both an evaluation agency and an inspection agency, the combined fee is $2,000.**

(d) **[Each manufacturer requesting the Department under § 145.63 to issue insignia of certification for housing components shall pay a fee of $40 for each housing component which will bear insignia of certification.] A third-party agency submitting an application to the Department under § 145.76, for reapproval as an industrialized buildings evaluation agency or inspection agency shall pay a fee of $500. If the person seeks reapproval as both an industrialized buildings evaluation agency and an inspection agency, the combined fee is $1,000.**

(e) For manufacturing facilities in this Commonwealth, the insignia of certification fee is:

(1) $40 per insignia for each module of an industrialized housing.

(2) $40 per insignia for each industrialized housing component. The fee payable under this paragraph for industrialized housing components installed in or on a single dwelling unit may not exceed $40.

(3) $60 per insignia for each transportable section of an industrialized building.

(4) $60 per insignia for each industrialized building module or component. A manufacturer may request special consideration from the Department in the event the manufacturer believes that insignia placement on individual modules or components is unreasonable due to the unique scope of a particular project.

(f) For manufacturing facilities outside of this Commonwealth, the insignia of certification fee is:

(1) $60 per insignia for each module of an industrialized housing unit.

(2) $60 per insignia for each industrialized housing component. The fee payable under this paragraph for industrialized housing components installed in or on a single dwelling unit may not exceed $60.

(3) $90 per insignia for each transportable section of an industrialized building.

(4) $90 per insignia for each industrialized building module or component. A manufacturer may request special consideration from the Department in the event the manufacturer believes that insignia placement on individual modules or components is unreasonable due to the unique scope of a particular project.

[(e)] (g) When the Department is authorized to monitor or inspect under § 145.93 (relating to factory inspections; right of entry) or otherwise, or provide evaluation or inspection services, or both, under § 145.70 (relating to Departmental evaluation and inspection), the manufacturer shall pay to the Department the following fees:

(1) Engineering services—**[$400 per day or $60] $75** per hour.

(2) Administrative services—**[$175 per day or $25] $40** per hour.

(3) Travel and per diem expenses—current Commonwealth travel and per diem expenses.

[(f)] (h) The Department may establish reasonable handling and other administrative fees as indicated elsewhere in this chapter, subject to the stated limitations in amount.

[(g)] (i) Fees paid to the Department under this chapter are nonrefundable except as otherwise specifically set forth in this chapter. Fees must be paid **electronically (as determined by the Department),** by check or money order.

§ 145.97. Amendments to this chapter.

The Department may propose amendments to this chapter. The Department will **[mail a copy of] publish** each proposed amendment **in the *Pennsylvania Bulletin* and provide notice of the amendment** to third-party agencies and to manufacturers with approved building system documentation. The Department will hold public hearings on proposed amendments to this chapter. A proposed amendment shall become effective upon compliance with the applicable requirements of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1102, 1201—1208 and 1602) and 45 Pa.C.S. **[Chapters 5, 7 and 9, known as the Commonwealth Documents Law] Part II (relating to publication and effectiveness of Commonwealth documents)**.

§ 145.99. Remedies.

The Department may seek an order from a court of applicable jurisdiction in this Commonwealth for the enforcement of the act or this chapter, including without limitation an order for injunctive relief to enjoin the sale, lease, delivery or installation of **[an]** industrialized housing **[or],** housing components**, buildings or building components** which have not been manufactured, transported or installed in conformity with the requirements of the act or this chapter, or for the refusal of a party to comply with the act or this chapter.

INTERSTATE ACCEPTABILITY

§ 145.101. General authority.

The Department is authorized under section 6 of the act (35 P. S. § 1651.6) to issue insignia of certification to **approved** manufacturers **[of industrialized housing and housing components] under this program** for their industrialized housing **[or],** housing components**, industrialized buildings or building components** which have been certified by any competent authority within a **[State] state** of the United States following a finding by the Department that the certifications have been granted on the basis of standards substantially equivalent to this chapter. Sections 145.102 and 145.103 (relating to determinations of acceptability of certifications of a competent **[State] state** authority; and issuance of insignia of certification) set forth more detailed criteria to support a finding by the Department that the standards are substantially equivalent to this chapter and establish additional procedures necessary to safeguard the health, safety and welfare of the citizens of this Commonwealth from noncomplying industrialized housing **[and],** housing components**, industrialized buildings or building components** certified by a competent **[State] state** authority.

§ 145.102. Determinations of acceptability of certifications of a competent **[State] state** authority.

(a) The Department may, on the basis of its review of the applicable statutes, regulations and administrative practices and experience and the other information as it may consider necessary for an informed finding, find that the standards of a competent authority of a **[State] state** of the United States under which industrialized housing **[or],** housing components**, industrialized buildings or building components** are certified, are substantially equivalent to the provisions of this chapter. The finding by the Department **[shall] will** be based on the following subsidiary findings:

(1) An agency, authority or division of the government of a **[State] state** of the United States has established and is actively administering under valid legislative authority a program for the certification of industrialized housing **[or],** housing components, **industrialized buildings or building components** or type of industrialized housing **[or],** housing components, **industrialized buildings or building components** similar in its purposes to the program authorized by the act.

(2) The codes and standards utilized by the competent authority of the other **[State] state** governing the design, materials and method of construction **[of the industrialized housing or housing components]** are substantially equivalent to the codes and standards adopted by the Department under §§ 145.41, 145.42 and 145.44 (relating to adoption of standards; alternate standards; and adoption and effective dates—code amendments). The determination of substantial equivalency **[shall] will** be based on a finding that the degree of protection to the health, safety and welfare of the citizens of this Commonwealth would not be materially less under other codes and standards than under the codes and standards adopted by the Department under §§ 145.41, 145.42 and 145.44. It is not intended that findings of substantial equivalency be limited to codes adopted by other jurisdictions which are identical or substantially identical with the codes adopted under §§ 145.41, 145.42 and 145.44. In addition, a finding of substantial equivalency may be limited to designated types of buildings or methods of construction for buildings.

(3) The competent **[State] state** authority will not certify industrialized housing **[or],** housing components**, industrialized buildings or building components** unless there has been a finding that the manufacturer is administering an acceptable compliance control program or, if third-party agencies are utilized, there is an acceptable compliance assurance program.

(4) The evaluation of the building system documentation of manufacturers for conformity with the adopted codes and standards and of the related compliance control program or compliance assurance program, as the case may be, is performed by personnel possessing satisfactory qualifications to assure determinations that are reliable, objective and without bias.

(5) The procedures adopted by the competent **[State] state** authority are satisfactory to assure effective enforcement of the regulations and standards adopted by that jurisdiction.

(b) If the Department makes a finding of substantial equivalency under subsection (a), it shall further determine whether there are procedures adopted by the competent **[State] state** authority with respect to which the finding of substantial equivalency is made under which the Department would be promptly notified in the event of the suspension or revocation of approval of any manufacturer or third-party agency or of any other approval issued by the competent **[State] state** authority relating to the enforcement of its applicable regulations. If there are no procedures for prompt notification to the Department, the Department may seek agreement from the competent **[State] state** authority for the establishment of notification procedures.

(c) Promptly after the Department makes a finding of substantial equivalency under subsection (a) with respect to the standards adopted by a competent **[State] state**

authority under which industrialized housing or housing components are certified by the authority, and further determines that the competent **[State] state** authority has adopted the notification procedures prescribed in subsection (b), the Department will notify third-party agencies and manufacturers with approved building system documentation that, on compliance with the requirements of § 145.103 (relating to issuance of insignia of certification), the Department will issue to a manufacturer insignia of certification for attachment to industrialized housing **[or],** housing components**, industrialized buildings or building components** certified by the competent **[State] state** authority with respect to which the findings have been made.

§ 145.103. Issuance of insignia of certification.

(a) A manufacturer, regardless of whether its building system documentation and related compliance assurance program have been approved under this chapter, may request that the Department issue to it insignia of certification for attachment to industrialized housing **[or],** housing components**, industrialized buildings or building components** which have been or will be certified by a competent **[State] state** authority with respect to which the Department has made the requisite findings required by § 145.102 (relating to determinations of acceptability of certifications of a competent **[State] state** authority). In addition to meeting all of the requirements of § 145.63 (relating to procedures for requesting, controlling and attaching insignia of certification), the manufacturer's request shall contain the following additional information:

(1) A list of the building system documentation which was approved by the competent **[State] state** authority for the industrialized housing **[or],** housing components**, industrialized buildings or building components** to which the insignia of certification are to be attached.

(2) Evidence that building system documentation and related compliance assurance program or compliance control program, as the case may be, was approved under the policies and procedures of the competent **[State] state** authority as conforming to the standards with respect to which the Department's determination of substantial equivalency was made.

(3) The name and address of an inspection agency, approved by the Department, which will participate in the compliance assurance program and authorize the attachment of the insignia of certification to the industrialized housing **[or],** housing components**, industrialized buildings or building components** to be sold, leased or installed for use on a site in this Commonwealth.

(b) If the competent **[State] state** authority uses its own personnel for monitoring a manufacturer's compliance control program and inspecting industrialized housing or housing components, the manufacturer seeking the issuance of insignia of certification under subsection (a) may eliminate the requirement of subsection (a)(3) for utilizing an inspection agency to monitor its compliance control program and authorize the attachment of insignia of certification, provided that the Department and the competent **[State] state** authority have entered into an agreement under which the competent **[State] state** authority will institute procedures, acceptable to the Department, for authorizing the attachment of the insignia of certification for industrialized housing **[or],** housing components**, industrialized buildings or building components** intended for sale, lease or installation for use on sites in this Commonwealth. The Department will enter into an agreement only if it determines that the procedures for controlling the use of the insignia of certification contain adequate safeguards and that the competent **[State] state** authority has the satisfactory organization and personnel to discharge its obligations under the agreement and will not charge the approval or reapproval fees as outlined in § 145.94(a) and (b) (relating to fees).

§ 145.104. Reciprocal agreements.

(a) The Department is authorized to enter into agreements with the United States Department of Housing and Urban Development or with a competent authority within a **[State] state** of the United States which has established under valid legislative authority a program for the certification of industrialized housing **[or],** housing components**, industrialized buildings or building components** under which each party to an agreement will recognize the certification **[of industrialized housing or housing components]** issued under the laws, regulations and administrative procedures of the other party. An agreement shall establish procedures additional to those set forth in this chapter and shall in respects be consistent with the act.

(b) The reciprocal agreement may also establish that acceptability of the competent **[State] state** authority insignia of certification for industrialized housing units **[or],** components**, industrialized buildings or building components** shall be recognized by the Department **[in lieu] instead** of the provisions set forth in §§ 145.102 and 145.103 (relating to determinations of acceptability of certifications of a competent **[State] state** authority; and issuance of insignia of certification).

(c) The inspection and evaluation agency fees outlined in § 145.94(a) and (b) (relating to fees) will not be charged to a competent **[State] state** authority entering into a reciprocal agreement, as outlined in this chapter, using its own personnel for monitoring a manufacturer's compliance control program and inspecting industrialized housing **[or],** housing components**, industrialized buildings or building components**.

§ 145.105. Suspension and revocation.

(a) The Department, on the basis of its review of the applicable statutes, regulations and administrative practices and experience and other information that it may consider necessary for an informed finding, determine that its finding that the standards of a competent **[State] state** authority, previously found by the Department to be substantially equivalent to this chapter, is no longer justified under the criteria set forth in § 145.102(a) (relating to determinations of acceptability of certifications of a competent **[State] state** authority) or the procedures for notification set forth in § 145.102(b) are no longer effective. The Department will promptly notify third-party agencies and manufacturers with approved building system documentation or possessing insignia of certification issued to them under § 145.103 (relating to issuance of insignia of certification) of its finding. If requested by the Department, manufacturers possessing insignia of certification issued under § 145.103 shall promptly return the insignia to the Department and, upon receipt by the Department of the returned insignia, the fee paid by the manufacturer for the insignia

[shall] will be refunded in full. No additional insignia of certification will be issued by the Department under § 145.103 with respect to industrialized housing or housing components certified by the competent **[State] state** authority with respect to which the finding by the Department was made. In addition, the Department will be authorized to remove, or cause the removal of, insignia of certification theretofore attached to industrialized housing **[or],** housing components**, industrialized buildings or building components** certified by the competent **[State] state** authority, if the Department determines that there is a substantial threat to the health, safety or welfare of the occupants of the industrialized housing or housing structures containing the housing components**, industrialized buildings or structures containing building components** unless **[such industrialized housing or housing components are]** brought into compliance with this chapter.

(b) The suspension or revocation of the certification of a manufacturer or third-party agency or of an industrialized housing **[or],** housing components**, industrialized buildings or building components** by a competent **[State] state** authority shall automatically suspend the right of a manufacturer affected in a material respect by the suspension or revocation to utilize an insignia of certification issued to it under § 145.103. The manufacturer may thereafter request the Department to determine in writing those circumstances in which it may continue to use the insignia of certification.

(c) Nothing in this section shall be construed to limit or restrict the rights of suspension and revocation of the Department under this chapter.

[Pa.B. Doc. No. 15-1201. Filed for public inspection June 26, 2015, 9:00 a.m.]

Title 49—PROFESSIONAL AND VOCATIONAL STANDARDS

BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS

[49 PA. CODE CH. 43b]

Schedule of Civil Penalties—Optometrists

The Acting Commissioner of Professional and Occupational Affairs (Commissioner) adds § 43b.25 (relating to schedule of civil penalties—optometrists) to read as set forth in Annex A.

Effective Date

The final-form rulemaking will be effective upon publication in the *Pennsylvania Bulletin* and will apply to violations that occur on or after the effective date.

Statutory Authority

Section 5(a) of the act of July 2, 1993 (P. L. 345, No. 48) (Act 48) (63 P. S. § 2205(a)) authorizes the Commissioner, after consultation with licensing boards in the Bureau of Professional and Occupational Affairs (Bureau), to promulgate a schedule of civil penalties for violations of the acts or regulations of the licensing boards.

Background and Purpose

Act 48 authorizes agents of the Bureau to issue citations and impose civil penalties under schedules adopted by the Commissioner in consultation with the Bureau's boards and commissions. Act 48 citations streamline the disciplinary process by eliminating the need for formal orders to show cause, answers, adjudications and orders, and consent agreements. At the same time, a licensee who receives an Act 48 citation retains due process rights to a hearing prior to the imposition of judgment. The use of Act 48 citations has increased steadily since 1996, when the program was first implemented, and they have become an important part of the Bureau's enforcement efforts. Section 5(b)(4) of Act 48 authorizes the State Board of Optometry (Board), as a licensing board within the Bureau, to levy a civil penalty of not more than $10,000 on any licensee or unlicensed person who violates a provision of the Optometric Practice and Licensure Act (act) (63 P. S. §§ 244.1—244.12) or Board regulations. However, section 5(a) of Act 48 limits the civil penalty levied by citation to no more than $1,000 per violation.

This is the first time that the Board will participate in the Act 48 citation program. The Board and the Commissioner believe that it is necessary to implement the civil penalties in this final-form rulemaking to streamline the disciplinary process to be more efficient and cost effective.

This schedule of civil penalties sets forth penalties for practicing on a lapsed license as well as for failure to complete the required 30 hours of approved continuing education. The civil penalty schedule for failure to complete the required hours of continuing education in accordance with § 23.82(a) (relating to continuing education hour requirements) is in addition to and not instead of the requirement under section 5(b) of the act (63 P. S. § 244.5(b)) that licensees may not renew a license if the licensee has not completed the required hours of continuing education. That is, the Board will not renew a license unless the licensee certifies to the Board that all required continuing education has been completed. The Board intends to follow this final-form rulemaking with a rulemaking that, among other things, clarifies that a licensee who receives a citation for continuing education violations must make up the deficiency and that the hours of continuing education submitted to the Board to make up for a deficiency may not be used to satisfy the continuing education requirement for the current biennium.

Summary of Comments

The proposed rulemaking was published at 44 Pa.B. 2247 (April 12, 2014) with a 30-day public comment period. On May 8, 2014, the Pennsylvania Optometric Association submitted a letter stating that they "have reviewed these proposed penalties and have no additional recommendations." The Commissioner did not receive other public comments. On June 11, 2014, the Independent Regulatory Review Commission (IRRC) sent a letter to the Commissioner indicating that IRRC did not have objections, comments or recommendations to offer on the proposed rulemaking. Neither the House Professional Licensure Committee (HPLC) nor the Senate Consumer Protection and Public Licensure Committee (SCP/PLC) submitted comments on the proposed rulemaking.

Fiscal Impact and Paperwork Requirements

The final-form rulemaking will not have adverse fiscal impact on the Commonwealth or its political subdivisions. The final-form rulemaking will reduce the paperwork requirements of the Commonwealth and the regulated community by eliminating the need for orders to show

cause, answers, consent agreements, and adjudications and orders for those violations subject to the Act 48 citation process. The only fiscal impact of the final-form rulemaking is borne by those persons who violate the act or the regulations of the Board and are subject to the civil penalties in this schedule.

Sunset Date

The Commissioner and the Board continuously monitor the effectiveness of their regulations. Therefore, a sunset date has not been assigned.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on March 28, 2014, the Board submitted a copy of the notice of proposed rulemaking, published at 44 Pa.B. 2247, to IRRC and the Chairpersons of the HPLC and the SCP/PLC for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC, the HPLC and the SCP/PLC were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Board has considered all comments from IRRC, the HPLC, the SCP/PLC and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on May 27, 2015, the final-form rulemaking was deemed approved by the HPLC and the SCP/PLC. Under section 5(g) of the Regulatory Review Act, the final-form rulemaking was deemed approved by IRRC effective May 27, 2015.

Contact Person

Further information may be obtained by contacting the Commissioner or the State Board of Optometry, P.O. Box 2649, Harrisburg, PA 17105-2649, RA-optometry@pa.gov.

Findings

The Commissioner 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 the regulations promulgated thereunder, 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) This final-form rulemaking is necessary and appropriate for administering and enforcing the authorizing act identified in this preamble.

Order

The Commissioner, acting under the authority of Act 48, orders that:

(a) The regulations of the Commissioner, 49 Pa. Code Chapter 43b, are amended by adding § 43b.25 to read as set forth in Annex A.

(b) The Commissioner shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General as required by law.

(c) The Commissioner 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 on publication in the *Pennsylvania Bulletin*.

IAN J. HARLOW,
Acting Commissioner

(*Editor's Note*: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 45 Pa.B. 2961 (June 13, 2015).)

Fiscal Note: Fiscal Note 16A-5212 remains valid for the final adoption of the subject regulation.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 43b. COMMISSIONER OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS

SCHEDULE OF CIVIL PENALTIES, GUIDELINES FOR IMPOSITION OF CIVIL PENALTIES AND PROCEDURES FOR APPEAL

§ 43b.25. Schedule of civil penalties—optometrists.

STATE BOARD OF OPTOMETRY

Violation under 63 P. S.	*Title / Description*	*Civil Penalty*
Section 244.8(d)	Practicing or offering to practice optometry by person whose license is expired.	1st offense—less than 5 months—$250; 5 months to 8 months—$500; over 8 months to 12 months—$1,000; over 12 months—formal action 2nd offense—less than 6 months—$500; 6 months to 12 months—$1,000; over 12 months—formal action 3rd or subsequent offense—formal action

Violation under 49 Pa. Code	*Title / Description*	*Civil Penalty*
§ 23.82(a)	Failure to complete required hours of continuing education during the 2 years preceding renewal or reactivation.	1st offense—20 or fewer hours of deficiency—$50 per hour; more than 20 hours of deficiency—formal action 2nd offense—10 or fewer hours of deficiency—$100 per hour; more than 10 hours of deficiency—formal action 3rd or subsequent offense—formal action

[Pa.B. Doc. No. 15-1202. Filed for public inspection June 26, 2015, 9:00 a.m.]

Title 58—RECREATION

GAME COMMISSION

[58 PA. CODE CH. 147]

Corrective Amendment to 58 Pa. Code § 147.673

The Game Commission (Commission) has discovered a discrepancy between the agency text of 58 Pa. Code § 147.673 (relating to eligibility and application for DMAP) as deposited with the Legislative Reference Bureau and published at 41 Pa.B. 1766 (April 2, 2011), the official text published in the *Pennsylvania Code Reporter* (Master Transmittal Sheet No. 439) and as currently appearing in the *Pennsylvania Code*. The amendments made by the Commission at 41 Pa.B. 1766 were codified incorrectly.

Therefore, under 45 Pa.C.S. § 901: the Commission has deposited with the Legislative Reference Bureau a corrective amendment to 58 Pa. Code § 147.673. The corrective amendment to 58 Pa. Code § 147.673 is effective as of June 4, 2011, the date the defective official text was announced in the *Pennsylvania Bulletin*.

The correct version of 58 Pa. Code § 147.673 appears in Annex A.

Annex A

TITLE 58. RECREATION

PART III. GAME COMMISSION

CHAPTER 147. SPECIAL PERMITS

Subchapter R. DEER CONTROL DEER MANAGEMENT ASSISTANCE PROGRAM PERMITS

§ 147.673. Eligibility and application for DMAP.

(a) Owners or lessees of private land, hunting clubs or authorized officers or employees of political subdivisions or government agencies shall apply for the DMAP on a form provided by the Commission.

(1) Applications shall be submitted to a regional office by May 1 immediately preceding the first fall deer season and include the name of the owner, lessee, political subdivision or government agency that is applying for the DMAP and the name and address of the contact person for the DMAP as well as other information required on the application.

(2) One DMAP harvest permit will be allocated for every 5 acres of land enrolled in the DMAP where material destruction of cultivated crops, fruit trees or vegetables by deer has been or can be documented. One DMAP harvest permit will be allocated for every 50 acres of land enrolled in the DMAP for all other lands. Additional DMAP harvest permits may be allocated dependent on current conditions relative to goals and objectives outlined in a Commission-approved management plan.

(3) Applications will not be accepted for the following areas without an approved management plan:

(i) Areas within 1 air mile of another DMAP area that is owned, leased or controlled by the same person, political subdivision or governmental agency.

(ii) Areas owned or leased by a Federal agency, State agency or municipal political subdivision.

(iii) Areas with less than 5 acres of cultivated crops, fruit trees or vegetables, or less than 50 acres of other lands.

(b) Management plans must include at least the following information:

(1) A map showing the location and boundaries of the area and the county, township and Commission wildlife management unit the site is located in.

(2) A description of the management area delineated on the map in paragraph (1) including the size in acres, cover types (forested or nonforested), principle land uses, huntable areas and safety zones.

(3) An explanation of the deer management goals and objectives for the area.

(4) An explanation to substantiate why the person in control of the land wants to increase the harvest of antlerless deer by allowing the use of DMAP in the area. Area specific information shall be provided that supports the deer management goals and objectives.

(c) Upon approval of the application, the location and boundaries of the area shall be designated in a manner approved by the Commission.

(d) Approved applicants will receive one coupon for each DMAP permit the DMAP area is entitled to. In DMAP areas designated by the Director, DMAP harvest permits may be made available directly through authorized issuing agents without coupons being issued.

[Pa.B. Doc. No. 15-1203. Filed for public inspection June 26, 2015, 9:00 a.m.]