

STATEMENTS OF POLICY

Title 7—AGRICULTURE

DEPARTMENT OF AGRICULTURE

[7 PA. CODE CH. 137a]

Clean and Green

The Department of Agriculture (Department) gives notice of the interim regulations for implementing 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 Law.

The most recent amendment of the Clean and Green Law was accomplished by the act of December 21, 1998 (P.L. 1225, No. 156) (Act 156). The interim regulations implement the changes accomplished by Act 156 of 1998, and should be read in conjunction with the existing regulations in Chapter 137 (relating to preferential assessment of farmland and forest land). To the extent any provision of that chapter is inconsistent with any provision of the interim regulations, the interim regulations shall prevail.

In summary, the Clean and Green Law allows owners of agricultural, agricultural reserve or forest reserve land to apply for preferential assessment of their land. If the application is approved, the land receives an assessment based upon its use value, rather than its market value.

Authority

The interim regulations are offered under authority of section 12 of Act 156 (72 P. S. § 5490.4a note). That section requires the Department to promulgate interim regulations to provide county assessors guidelines and standardized worksheets for use in implementing the provisions of Act 156. The interim regulations are specifically exempted from the formal regulatory review process described in the Regulatory Review Act (71 P. S. §§ 745.1—745.15), section 205 of the act of July 31, 1968 (P.L. 764, No. 240) (45 P. S. § 1205) (CDL) and section 204(b) of the Commonwealth Attorneys Act (71 P. S. § 732-204).

Need for the Interim Regulations

The interim regulations are required by statute. In addition, the interim regulations will help bring about uniform interpretation and application of the Clean and Green Law throughout this Commonwealth. Act 156 amended the Clean and Green Law. The interim regulations are necessary to implement the changes wrought by Act 156, and provide county assessors guidance in determining the appropriate preferential assessment for agricultural, agricultural reserve and forest reserve land enrolled in accordance with the Clean and Green Law.

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

Summary of the Interim Regulations

The interim regulations implement the amendments to the Clean and Green Law required by Act 156.

Section 137a.2 (relating to definitions) consolidates definitions found in the Clean and Green Law, its current attendant regulations in Chapter 137 and Act 156. It also adds several new terms, such as "enrolled land" and "ineligible land."

Section 137a.3 (relating to eligibility) clarifies the circumstances under which land may be enrolled under the Clean and Green Law to receive a preferential tax assessment. This section clarifies that "farmstead land" is to be included in the eligible land. It also clarifies that ineligible land may be included in an application for preferential assessment, but may not be preferentially assessed. The section contains a number of examples.

Section 137a.5 (relating to deadline for submission of applications) describes the application window for persons seeking preferential assessment of their land under the Clean and Green Law. A landowner who applies for preferential assessment by June 1 of a particular year, and whose application is subsequently approved, will begin to receive the preferential assessment as of the commencement of the tax year of each taxing body in the following calendar year.

Section 137a.7 (relating to fees of the county board for assessment appeals) describes the fees which may be charged by a county board for assessment appeals for processing or amending applications for preferential assessment. Subsection (b) lists the circumstances when an application should be amended without charge.

Section 137a.9 (relating to assessment procedures) describes the assessment process. In summary, the Department will provide a county assessor with use values for various land use categories and land use subcategories. The county assessor will use these values in determining a total use value for a tract of enrolled land. This total use value is used in calculating the preferential assessment for the enrolled land. A county assessor remains free to establish use values that are lower than those provided by the Department.

Section 137a.10 (relating to duration of preferential assessment) describes various circumstances that would alter or end preferential assessment of enrolled land. It also clarifies that the payment of roll-back taxes with respect to some portion of a tract of enrolled land does not automatically trigger the removal of the entire tract from preferential assessment. Subsection (c) sets forth a number of examples to illustrate this point. Subsection (e) lists some of the circumstances under which a county should terminate the preferential assessment of a tract of enrolled land.

Section 137a.11 (relating to calculation and recalculation of preferential assessment) requires a county assessor to recalculate the preferential assessment of currently-enrolled land if farmstead land on the currently-enrolled land is not also preferentially assessed, or if the current assessment was calculated with use values that are higher than those provided by the Department. Also, if a county conducts a countywide reassessment, it must recalculate the preferential assessment of all enrolled land. This section does not limit a landowner's right to seek recalculation of the preferential assessment.

Section 137a.12 (relating to death of an owner of enrolled land) provides that a Class A beneficiary who inherits enrolled land is not liable for roll-back taxes if the tract the beneficiary inherits does not meet the minimum requirements for preferential assessment. If the beneficiary subsequently changes the character or use of the land so that it no longer meets the minimum

requirements for preferential assessment, though, preferential assessment shall cease and roll-back taxes shall be due.

Section 137a.13 (relating to direct commercial sales of agriculturally related products and activities; rural enterprises incidental to the operational unit) allows for up to 2 acres of enrolled land to be used for activities related to agriculture and supportive of agricultural production on the remaining enrolled land. Preferential assessment would end on this up-to-2-acre tract, and roll-back taxes would also be due.

Section 137a.14 (relating to wireless or cellular telecommunications facilities) allows for a small portion of enrolled land to be leased for the erection and operation of a cellular communications tower. Preferential assessment ends with respect to the leased tract and roll-back taxes are due with respect to that leased tract, as well.

Section 137a.15 (relating to option to accept or forgive roll-back taxes in certain instances) affords a county assessor the option to waive roll-back taxes with respect to certain enrolled land that is transferred to specific charitable organizations for charitable purposes.

Sections 137a.16 and 137a.17 (relating to transfer of enrolled land for use as a cemetery; and transfer of enrolled land or transfer of an easement or right-of-way across enrolled land for use as a trail) address situations where transfers of enrolled land to specific entities for specific uses are allowed without triggering liability for roll-back taxes or ending preferential assessment of that portion of the enrolled land that is not transferred.

Section 137a.19 (relating to notice of change of application) clarifies that it is the landowner's responsibility to notify the county assessor if the use of the enrolled land changes to something other than agricultural, agricultural reserve or forest reserve, or if there is a change in ownership of the enrolled land.

Section 137a.20 (relating to liability for roll-back taxes) addresses the situations in which a landowner may be liable for roll-back taxes with respect to enrolled land. Subsection (h) provides the formula for calculating roll-back taxes.

Section 137a.21 (relating to duties of a county assessor) provides an overview of the various responsibilities of a county assessor under the Clean and Green Law. These duties involve recordkeeping, recording approved applications, updating records on an annual basis, determining total use values, notifying landowners of changes in status, enforcement, evidence gathering and assessment of roll-back taxes.

Section 137a.22 (relating to disposition of interest on roll-back taxes) implements section 9 of the Clean and Green Law (72 P. S. § 5490.8(b.1)).

Section 137a.23 (relating to civil penalties) restates the penalty provisions set forth in section 5.2 of the Clean and Green Law (72 P. S. § 5490.5b).

Persons Likely to be Affected

The interim regulations implement changes to the Clean and Green Law accomplished by Act 156. Although a number of persons and entities are likely to be impacted by the subject matter of the interim regulations, it is Act 156, rather than these interim regulations, that is driving these impacts.

Owners of agricultural, agricultural reserve and forest reserve land meeting the minimum requirements for preferential assessment set forth in the Clean and Green

Law will be affected by the interim regulations. The use values prescribed by the Clean and Green Law are likely to decrease taxes for these owners of enrolled land.

Taxpayers who do not own agricultural, agricultural reserve and forest reserve land meeting the minimum requirements for preferential assessment in the Clean and Green Law will be impacted by these interim regulations, in that they are the likely entity to be called upon to make up any tax revenue shortfalls caused by a decrease in the taxes of those persons described in the preceding paragraph.

County governments will be affected by the interim regulations, in that there is likely to be expense involved in recalculating preferential assessments as required under the Clean and Green Law. There may also be costs involved as owners of currently-enrolled land seek recalculation of the preferential assessments of their land. In addition, the amendment to the Clean and Green Law accomplished by Act 156 may result in tax revenue shortfalls where collections from agricultural, agricultural reserve and forest reserve lands are lower than anticipated.

Fiscal Impact

Commonwealth

The interim regulations will have no appreciable fiscal impact upon the Commonwealth.

Political Subdivisions

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

Private Sector

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

General Public

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

Paperwork Requirements

The interim regulations will not result in an appreciable increase in the paperwork handled by the Department.

Regulatory Review

Section 12 of Act 156 exempts the interim regulations from the formal regulatory review process described in the Regulatory Review Act, section 205 of the CDL and section 204(b) of the Commonwealth Attorneys Act.

Contact Person

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

Sunset/Expiration Date

The interim regulations will expire no later than April 30, 2001, and will be replaced by regulations promulgated as provided by law. This expiration date is prescribed by section 12(b) of Act 156 of 1998.

Effective Date

The interim regulations will take effect upon publication in the *Pennsylvania Bulletin*.

SAMUEL E. HAYES, Jr.,
Secretary

(Editor's Note: The regulations of the Department, 7 Pa. Code, are amended by adding a statement of policy in §§ 137a.1—137a.24 to read as set forth in Annex A.)

Fiscal Note: 2-125. No fiscal impact; (8) recommends adoption.

Annex A**TITLE 7. AGRICULTURE****PART V-C. FARMLAND AND FOREST LAND****CHAPTER 137a. CLEAN AND GREEN
ACT—STATEMENT OF POLICY**

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§ 137a.1. Purpose.

(a) *General.* This chapter provides interim regulations for county boards for assessment appeals and county assessors to implement the act, which revised the act—commonly known as the Clean and Green Law.

(b) *Relationship to Chapter 137.* This chapter should be used in conjunction with regulations in Chapter 137 (relating to preferential assessment of farmland and forest land). If a provision of this chapter is inconsistent with a provision of Chapter 137, the provision of this chapter shall prevail. To the extent a provision of Chapter 137 is not affected by this chapter, the provision of Chapter 137 shall prevail.

§ 137a.2. Definitions.

The following words and terms, when used in this chapter, have the following meanings:

Act—The Pennsylvania Farmland and Forest Land Assessment Act of 1974 (72 P. S. §§ 5490.1—5490.13).

Agricultural commodity—Any of the following:

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

(ii) Pasture.

(iii) Livestock and the products thereof, including, but not limited to, equine.

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

(v) Poultry and the products of poultry.

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

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

Agricultural reserve—Noncommercial open space lands used for outdoor recreation or the enjoyment of scenic or natural beauty and open to the public for that use, without charge or fee, on a nondiscriminatory basis. The term includes any farmstead land on the tract.

Agricultural use—Land which is used for the purpose of producing an agricultural commodity or is devoted to and meets the requirements and qualifications for payments or other compensation pursuant to 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 and land which is rented to another person and used for the purpose of producing an agricultural commodity.

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

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

Contiguous tract—All portions of one operational unit as described in the deed, whether or not the portions are divided by streams, public roads, railroads, rights-of-way or bridges and whether or not the portions are described as multiple tax parcels, tracts, purparts or other property identifiers. 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.

(i) The preferred method of calculating the contributory value of a farm building shall be a method based upon fair market comparison and the extraction of the value of the farm building from the total fair market value of the parcel.

(ii) Alternate methods of calculating this value may be used when the contributory value of a farm building using the preferred approach would not accurately reflect this contributory value.

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

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

Department—The Department of Agriculture of the Commonwealth.

Enrolled land—Land eligible for a 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—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.

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

(ii) The term includes land which is rented to another person and used for the purpose of producing timber or other wood products.

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 2 and 4.1 of the act (72 P. S. §§ 5490.3 and 5490.4a). A land use subcategory may be based upon soil type, forest type, soil group or any other recognized subcategorization of agricultural or forest land.

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

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

Outdoor recreation—Passive recreational use of land that does not entail the erection of permanent structures,

grading of the land, the disturbance or removal of topsoil or any change to the land which would render it incapable of being immediately converted to agricultural use.

(i) The term includes hiking, hunting, horseback riding and similar passive recreational uses of the land.

(ii) The term does not include the use of land for baseball, soccer fields, football fields, golf courses or similar uses.

Pasture—Land, other than land enrolled in the USDA Conservation Reserve Program, used primarily for the growing of grasses and legumes, which are consumed by livestock in the field and at least 90% of which is clear of trees, shrubs, vines or other woody growth not consumed by livestock.

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

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

Roll-back tax—The amount equal to the difference between the taxes paid or payable on the basis of the valuation and the 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. The amount also includes interest on each year's roll-back at the rate of 6% per annum.

Rural enterprise incidental to the operational unit—An activity or use of land that does not permanently impede or otherwise interfere with the production of an agricultural commodity. Examples of uses that would permanently impede or otherwise interfere with the production of an agricultural commodity include quarrying, mining or selling topsoil.

Separation—A division, by conveyance or other action of the owner, of enrolled land into two or more tracts of land, the use of which continues to be agricultural, agricultural reserve or forest reserve and all tracts so formed meet the requirements of section 2 of the act.

Split-off—A division, by conveyance or other action of the owner, of enrolled land 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 2 of the act.

Tract—A lot, piece or parcel of land. 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, when the use of the enrolled land continues to be agricultural use, agricultural reserve or forest reserve.

USDA—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.

Use value—The value that land qualifying for assessment under the chapter has for its particular use as determined by the county assessor, considering available evidence of the soils capability for its particular use.

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.

§ 137a.3. Eligibility.

(a) *Inclusion of farmstead land.* 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. Farmstead land shall be considered to be land that qualifies for use value assessment under §§ 137.8—137.10 (relating to land qualifying as an agricultural use; land qualifying as an agricultural reserve; and land qualifying as a forest reserve), and other provisions in Chapter 137 (relating to preferential assessment of farmland and forest land) referencing land in agricultural use, agricultural reserve and forest reserve.

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

(c) *Common ownership required.* A landowner seeking preferential assessment under the act shall be the owner of every tract of land listed on the application.

Example 1: Husband and wife are joint owners of 2 contiguous 100-acre tracts of farmland. They have common ownership of both tracts and may include these tracts in a single application for preferential assessment.

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

(d) *County-imposed eligibility requirements.* A county assessor may not impose eligibility requirements or conditions other than those prescribed in section 2 of the act (72 P. S. § 5490.3).

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

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

(1) *Contiguous tracts.* A landowner seeking preferential assessment under the act may include in the application individual contiguous tracts that would not—if considered individually—qualify for preferential assessment. If two or more tracts on a single application for preferential assessment are contiguous, the entire contiguous area shall meet the use and minimum size requirements for eligibility.

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

(f) *Inclusion of all contiguous land described in the deed to the tract with respect to which enrollment is*

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

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

Example 2: A landowner owns 150 acres of farmland described in a single deed, and wishes to apply for preferential assessment under the act. The deed to this land describes 3 separate tracts: 2 contiguous 50-acre tracts and a noncontiguous 50 acre tract. The landowner has the option to enroll either of the 2 contiguous tracts individually or to enroll both tracts together in preferential assessment. The landowner also has the option to enroll or not enroll the noncontiguous 50-acre tract.

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

Example: A landowner owns 150 acres of farmland described in a single deed, and wishes to apply for preferential assessment under the act. The deed to this land describes 3 separate tracts: 2 contiguous 50-acre tracts and a noncontiguous 50 acre tract. The landowner has the option to seek to enroll the noncontiguous 50-acre tract.

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

(i) *Land adjoining preferentially assessed land with common ownership is eligible.*

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

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

(ii) The landowner files an amended application for preferential assessment, describing both the tract for which preferential assessment is sought and the contiguous tract of enrolled land. The amended application shall be in accordance with the act, this chapter and Chapter 137.

(2) *Roll-back taxes.* A violation of the provisions of preferential assessment on a tract added under paragraph (1) shall trigger roll-back taxes on that tract and all other contiguous tracts identified in the amended application.

(j) *Ineligible land may appear on an application, although it cannot receive preferential assessment.* A landowner seeking preferential assessment under the act

shall include ineligible land on the application if the ineligible land is part of a larger contiguous tract of eligible land, and the use of the land which causes it to be ineligible exists at the time the application is filed. Although this ineligible land may not receive preferential assessment, the applicant shall specify the boundaries and acreage of the ineligible land and may not be required, as a condition of county acceptance or approval of the application, to survey or reeded the tract so as to exclude the ineligible land.

Example: A landowner owns a 100-acre tract of land—90 acres of which is productive farmland and 10 acres of which is occupied by an auto salvage yard. If the landowner seeks preferential assessment of the 90 acres of farmland, the application shall describe the entire 100-acre tract and the county will not require the 10-acre tract be surveyed-out or reeded as a prerequisite to the application being considered. If preferential assessment is granted, it will apply to the 90 acres of farmland. The 10-acre tract would continue to be assigned its fair market value and assessed accordingly.

(k) *Multiple land use categories on a single application.* An applicant for preferential assessment under the act may include land in more than one land use category in the application. A county assessor shall allow the applicant to submit an application that designates those portions of the tract to be assessed under each of the different land use categories.

Example: A landowner owns 100 acres of land. The landowner may submit an application that designates 75 acres in agricultural use, 13 acres in agricultural reserve and 12 acres in forest reserve, if the acreage identified by the landowner for the particular land use category meets the minimum criteria in section 2 of the act for that land use category.

(l) *Assessment of ineligible land.* Land and buildings that are included in an application for preferential assessment under the act but are ineligible for preferential assessment shall be given a fair market value and shall be assessed accordingly.

§ 137a.4. Application forms and procedures.

(a) *Standardized application form required.* A county shall require a person seeking to apply for preferential assessment under the act to make that application on a uniform preferential assessment application form developed by the Department. The Department will provide these forms to a county upon request. The county shall maintain an adequate supply of these forms.

(b) *Required language.* An application for preferential assessment shall contain the following statement:

The applicant for preferential assessment hereby agrees, if the application is approved for preferential assessment, to submit 30 days written notice to the County Assessor of a proposed change in use of the land, a change in ownership of a portion of the land or of any type of division or conveyance of the land. The applicant for preferential assessment hereby acknowledges that, if the application is approved for preferential assessment, roll-back taxes under the act in 72 P. S. § 5490.5a may be due for a change in use of the land, a change in ownership of any portion of the land, or any type of division or conveyance of the land.

(c) *Signature of all landowners required.* An application for preferential assessment shall not be accepted by a

county if it does not bear the signature of all of the owners of the land described in the application.

§ 137a.5. 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, 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, 1999. 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 2000.

Example 2: A landowner applies for preferential assessment on or after June 2, 1999, but not later than June 1, 2000. The application is subsequently approved. The application deadline is June 1, 2000. Preferential assessment shall be effective as of the commencement of the tax year for each taxing body in calendar year 2001.

(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.

§ 137a.6. County processing of applications.

A county shall accept and process in a timely manner all complete and accurate applications for preferential assessment so that, if the application is accepted, preferential assessment is effective as of the tax year of each taxing body commencing in the calendar year immediately following the application deadline.

Example 1: An application for preferential assessment is filed on or before June 1, 1999. The county must review and process the application so that—if the application is approved—preferential assessment can take effect as of the commencement of the tax year of each taxing body commencing in 2000 (the calendar year immediately following the application deadline).

Example 2: An application for preferential assessment is filed at some point from June 2, 1999, through June 1, 2000. The county must review and process the application such that—if the application is approved—preferential assessment can take effect as of the commencement of the tax year of each taxing body commencing in 2001 (the calendar year immediately following the application deadline).

§ 137a.7. Fees of the county board for assessment appeals.

(a) *Application processing fee.* A county board for assessment appeals may impose a fee of no more than \$50 for processing an application for preferential assessment under the act, or for processing changes other than those described in subsection (b). This fee may be charged regardless of whether the application is ultimately approved.

(b) *Circumstances under which initial application shall be amended without charge.* A county board for assess-

ment appeals may not charge any fee for amending an initial application for preferential assessment to reflect changes resulting from one or more of the following:

- (1) Split-off.
- (2) Separation.
- (3) Transfer or change of ownership.

§ 137a.8. Fees of the recorder of deeds.

A recorder of deeds may charge a landowner whose application for preferential assessment is approved a fee for filing the approved application in a preferential assessment docket. This fee may also be charged with respect to the filing of an amendment to a previously-approved application. A recording fee may not be charged unless the application or amendment has been approved by the county board for assessment appeals. The maximum fee for recording approved preferential assessment applications and amendments thereto shall be in accordance with laws relating to the imposition of fees by recorders of deeds.

§ 137a.9. 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 June 30, 1999, and by May 1 of each year thereafter.

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

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

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

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

(1) For each application for preferential assessment, the county assessor shall establish a total use value for land in agricultural use and agricultural reserve, including farmstead land, by considering available evidence of the capability of the land for its particular use utilizing the USDA-NRCS Agricultural Land Capability Classification system and other information available from USDA-ERS, The Pennsylvania State University and the Pennsylvania Agricultural Statistics Service. Contributory value of farm buildings shall be used.

(2) For each application for preferential assessment, the county assessor shall establish a total use value for land in forest reserve, including farmstead land, by considering available evidence of capability of the land for its particular use. Contributory value of farm buildings shall be used.

(d) *Determining preferential assessment.* The preferential assessment of land is determined by multiplying the

number of acres in each land use subcategory by the use value for that particular land use subcategory, and then adding these products. 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 that are less than the use values established by the Department. 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 § 137a.11 (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.

§ 137a.10. Duration of preferential assessment.

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

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) *Split-offs, separations, transfers and other events.* Split-offs, separations and transfers under the act, Chapter 137 or this chapter may 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 2 of the act (72 P.S. § 5490.3). In addition, the following events may not result in termination of preferential assessment on that portion of enrolled land which continues to meet the requirements of section 2 of the act:

(1) The lease of a portion of the enrolled land to be used for a wireless or cellular communication tower in accordance with section 6(b.1) of the act (72 P.S. § 5490.6(b.1)) and § 137a.14 (relating to wireless or cellular telecommunications facilities).

(2) The change of use of a portion of the enrolled land to another land use category (agricultural use, agricultural reserve or forest reserve).

(3) Condemnation of a portion of the land.

(4) The sale or donation of a portion of the enrolled land to any of the entities described in section 8(b)(1)–(7) of the act (72 P.S. § 5490.8(b)(1)–(7)), for the purposes described in that section, and § 137a.15 (relating to option to forgive roll-back taxes in certain instances).

(5) The use of up to 2 acres of the enrolled land for direct commercial sales of agriculturally related products

or for a rural enterprise incidental to the operational unit, in accordance with section 8(d) of the act, and § 137a.13 (relating to direct commercial sales of agriculturally related products and activities; rural enterprises incidental to the operational unit).

(6) The transfer of a portion of the enrolled land to a nonprofit corporation for use as a cemetery, in accordance with section 8(d) of the act and § 137a.16 (relating to transfer of enrolled land for use as a cemetery).

(7) The transfer of a portion of the enrolled land to a nonprofit corporation for use as a trail, in accordance with section 8(a) of the act and § 137a.17 (relating to transfer of enrolled land or transfer of an easement or right-of-way across enrolled land for use as a trail).

(8) The distribution, upon the death of the owner of the enrolled land, of the enrolled land among the beneficiaries designated as Class A for inheritance tax purposes, in accordance with section 6(d) of the act and § 137a.12 (relating to death of an owner of enrolled land).

(c) *Payment of roll-back taxes does not affect preferential assessment of remaining land.* The payment of roll-back taxes and interest under the act, Chapter 137 (relating to preferential assessment of farmland and forest land) or this chapter may not result in termination of preferential assessment on the remainder of the land covered by preferential assessment.

Example 1: A landowner owns a 100-acre tract of enrolled land, which is in agricultural use. The landowner splits-off a tract of no more than 2 acres and uses that 2-acre tract for a residential dwelling as described in section 6(a.1)(1)(i) of the act and meets the other criteria in that paragraph. Although the 2-acre tract is no longer entitled to receive a preferential assessment, the 98-acre tract shall continue to receive a preferential assessment. Also, roll-back taxes would be due with respect to the 2-acre tract.

Example 2: Landowner A owns a 100-acre tract of enrolled land, which is in agricultural use. Landowner A splits-off a 2-acre tract and sells it to Landowner B, with the understanding that Landowner B will use the land for a residential dwelling permitted under section 6(a.1)(1)(i) of the act. Landowner B does not erect the permitted residential dwelling, but converts the 2-acre tract to commercial use. Landowner B owes roll-back taxes with respect to the entire 100-acre tract (under section 6(a.1) of the act). If the 98-acre tract owned by Landowner A continues in agricultural use, agricultural reserve or forest reserve, and continues to meet the requirements of section 2 of the act, it shall continue to receive a preferential assessment.

Example 3: Landowner A owns a 100-acre tract of enrolled land, which is in agricultural use. Landowner A separates the land into a 50-acre tract and two 25-acre tracts, and sells a 25-acre tract to Landowner B. All 100 acres continue in agricultural use and continue to meet the requirements of section 2 of the act. No roll-back taxes are due. The entire 100-acre tract shall continue to receive a preferential assessment.

Example 4: Same facts as Example 3, except that within 7 years of the separation, Landowner B changes the use of his 25-acre tract to something other than agricultural use, agricultural reserve or forest reserve. Landowner B shall pay roll-back taxes with respect to the entire 100-acre tract (under

section 6(a.2) of the act). If the 75 acres owned by Landowner A continues in agricultural use, agricultural reserve or forest reserve, and continues to meet the requirements of section 2 of the act, shall continue to receive a preferential assessment under the Act.

Example 5: Same facts as Example 3, except that more than 7 years after the date of separation, Landowner B changes the use of his 25-acre tract to something other than agricultural use, agricultural reserve or forest reserve. Landowner B shall pay roll-back taxes on his 25-acre tract (under section 6(a.2) of the act). If the 75 acres owned by Landowner A continues in agricultural use, agricultural reserve or forest reserve, and continues to meet the requirements of section 2 of the act, it shall continue to receive a preferential assessment under the act.

(d) *Termination of preferential assessment by county.* The maximum area with respect to which a county may terminate preferential assessment may not exceed:

(1) In the case of a split-off that is not a condemnation and that meets the maximum size, use and aggregate acreage requirements in section 6(a.1)(1)(i) of the act, the land so split-off.

(2) In the case of a split-off that is not a condemnation and that does not meet the maximum size, use and aggregate acreage requirements in section 6(a.1)(1)(i) of the act, all contiguous land enrolled under the application for preferential assessment.

(3) In the case when the owner of enrolled land changes the use of the land so that it no longer meets the requirements in section 2 of the act, all contiguous land enrolled under the application for preferential assessment.

(4) In the case when the owner of enrolled land leases a portion of that land for wireless or cellular telecommunications in accordance with section 6(b.1) of the act, and § 137a.14, the land so leased.

(5) In the case of condemnation, the land so condemned.

(6) In the case when enrolled land is sold or donated to an entity described in section 8(b)(1)–(7) of the act in accordance with the requirements in those paragraphs, the land so sold or conveyed.

(7) In the case when not more than 2 acres of enrolled land is used for direct commercial sales of agriculturally related products and activities or for rural enterprises incidental to the operational unit, in accordance with section 8(d) of the act and § 137a.13, the land so used for those purposes.

(8) In the case when a portion of enrolled land is transferred to a nonprofit corporation for use as a cemetery in accordance with section 8(e) of the act and § 137a.16, the land so transferred.

(9) In the case when a portion of the enrolled land is transferred to a nonprofit corporation for use as a trail in accordance with section 8(e) of the act and § 137a.17, the land so transferred.

(10) In the case when enrolled land is distributed upon the death of the landowner among the beneficiaries designated as Class A for inheritance tax purposes in accordance with section 6(d) of the act and § 137a.12, the portion that fails to meet the requirements for preferential assessment in section 2 of the act.

(e) *Transfer does not trigger roll-back taxes.* The transfer of all of the enrolled land described in a single application for preferential assessment to a new owner without a change of use shall not trigger the imposition of roll-back taxes.

§ 137a.11. Calculation and recalculation of preferential assessment.

(a) *New values each year.* As described in § 137a.9(b) (relating to assessment procedures), the Department will determine the land use subcategories and provide 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 June 30, 1999, and by May 1 of each year thereafter.

(b) *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. This calculation shall be accomplished in accordance with § 137a.9 so that the recalculated assessments take effect as of the commencement of the tax year of each taxing body commencing in 2000.

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. This recalculation shall be accomplished to take effect in the tax year of each taxing body commencing in 2000.

(c) *Required recalculation of preferential assessment if farmstead land has not been preferentially assessed as agricultural use, agricultural reserve or forest reserve.* A county assessor shall recalculate the preferential assessment on any tract of enrolled land which contains farmstead land if the earlier calculation did not value and assess the farmstead land as agricultural use, agricultural reserve or forest reserve. This recalculation shall be accomplished in accordance with § 137a.9, and shall be accomplished so that the recalculated assessments take effect as of the commencement of the tax year of each taxing body commencing in 2000.

Example: In calculating the preferential assessment of enrolled land, a county has assessed farmstead land at its fair market value, rather than as part of the land that is in agricultural use, agricultural reserve or forest reserve. The county shall recalculate these assessments so that the farmstead land receives preferential assessment, rather than assessment based on fair market value. The recalculation shall be completed so that it can take effect with the commencement of the tax year of each taxing body commencing in 2000.

(d) *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 § 137a.9, and shall be accomplished so that the recalculated assessments take effect as of the commencement of the tax year of each taxing body commencing in 2000.

(e) *Required recalculation of preferential assessment in county-wide reassessment.* If a county undertakes a county-wide reassessment, or a county-wide 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.

(f) *Land enrolled prior to June 2, 1998.* A county assessor is not obligated under the act or this chapter to recalculate the preferential assessment of land that is the subject of applications for preferential assessment filed on or before June 1, 1998, unless recalculation is required under subsections (b), (c), (d) or (e).

(g) *Caveat.* This chapter does not limit or prohibit an owner of enrolled land from requesting the county assessor to recalculate the preferential assessment for the enrolled land, or to supercede another law or regulation relating to the procedure for pursuing or seeking reassessment.

§ 137a.12. Death of an owner of enrolled land.

(a) *Inheriting a tract that does not meet minimum requirements for preferential assessment.* Upon the death of an owner of enrolled land, if any of the enrolled land that is divided among the beneficiaries designated as Class A for inheritance tax purposes no longer meets the minimum qualifications for preferential assessment, preferential assessment shall terminate with respect to the portion of the enrolled land that no longer meets the minimum requirements for preferential assessment, and no roll-back tax may be charged on any of the land that no longer meets the requirements for preferential assessment.

Example: Landowner A owns 100 acres of enrolled land, which is in agricultural use. Landowner A dies, and the land is divided among several Class A beneficiaries, as follows: Landowner B—75 acres. Landowner C—2 acres. Landowner D—23 acres. The tracts owned by Landowners B and D continue in agricultural use. The 2-acre tract owned by Landowner C no longer meets the size or income requirements in section 2 of the act (72 P.S. § 5490.3). Under these facts, preferential assessment of the 2-acre tract ends. Landowner C does not owe roll-back taxes with respect to this tract. Landowners B and D continue to receive preferential assessment.

(b) *Inheriting a tract that meets the minimum requirements for preferential assessment.* If a person designated as Class A beneficiary inherits a tract that meets the minimum requirements for preferential assessment, and the tract continues in agricultural use, agricultural reserve or forest reserve, preferential assessment shall continue. If a person designated as Class A beneficiary inherits a tract that meets the minimum requirements for

preferential assessment, and subsequently changes the use of that tract so that it does not qualify for preferential assessment, that beneficiary shall owe roll-back taxes with respect to the portion of the enrolled land he inherited, but no roll-back taxes are due with respect to any other portion of the enrolled land inherited by another beneficiary.

Example 1: Landowner A owns 100 acres of enrolled land, which is in agricultural use. Landowner A dies, and Landowners B and C each inherit a 50-acre tract, as Class A beneficiaries. The tracts owned by Landowners B and C continue in agricultural use. Preferential assessment continues.

Example 2: Same facts as Example 1, except Landowner B converts the 50-acre tract of agricultural land to industrial use. Landowner B owes roll-back taxes with respect to the 50-acre tract. Landowner A does not owe roll-back taxes. Preferential assessment continues with respect to Landowner A's tract.

§ 137a.13. Direct commercial sales of agriculturally related products and activities; rural enterprises incidental to the operational unit.

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, if the rural enterprise does not permanently render the land incapable of producing an agricultural commodity. The tract of 2-acres-or-less shall be subject to roll-back taxes, and preferential assessment of that 2-acres-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 2 of the act (72 P. S. § 5490.3).

§ 137a.14. Wireless or cellular telecommunications facilities.

(a) *Permitted use.* A landowner may lease a tract of enrolled land to be used for wireless or cellular telecommunications, if all of the following conditions are satisfied:

- (1) The tract so leased does not exceed 1/2 acre.
- (2) The tract does not support more than one communication tower.
- (3) The tract is accessible.
- (4) The tract is neither conveyed nor subdivided. A lease may not be considered a subdivision.

(b) *Roll-back taxes imposed with respect to leased land.* A county assessor shall assess and impose roll-back taxes upon the tract of land leased by an owner of enrolled land for wireless or cellular telecommunications purposes.

(c) *Preferential assessment ends and fair market value assessment commences with respect to leased land.* A county assessor shall assess land leased in accordance with subsection (a) based upon its fair market value.

(d) *Preferential assessment continues on unleased land.* The lease of enrolled land in accordance with subsection (a) does not invalidate the preferential assessment of the remaining enrolled land that is not so leased, and that enrolled land shall continue to receive a preferential assessment, if it continues to meet the minimum requirements for eligibility in section 2 of the act (72 P. S. § 5490.3).

(e) *Wireless services other than wireless telecommunications.* Wireless services other than wireless telecommunications may be conducted on land leased in accordance with subsection (a) if the wireless services share a tower with a wireless telecommunications provider.

(f) *Responsibility for obtaining required permits.* The wireless or cellular telecommunications provider shall be solely responsible for obtaining required permits in connection with any construction on a tract of land which it leases for telecommunications purposes under subsection (a).

(g) *Responsibility of municipality for issuing required permits.* A municipality may not deny a permit necessary for wireless or cellular communications use for any reason other than the applicant's failure to strictly comply with permit application procedures.

§ 137a.15. Option to accept or forgive roll-back taxes in certain instances.

The taxing body of the taxing district within which a tract of enrolled land is located may accept or forgive roll-back taxes with respect to that portion of the enrolled land that is granted or donated to any one of the following:

- (1) A school district.
- (2) A municipality.
- (3) A county.
- (4) A volunteer fire company.
- (5) A volunteer ambulance service.
- (6) A 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.

(7) A not-for-profit corporation that qualifies as tax-exempt under section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. § 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.

§ 137a.16. Transfer of enrolled land for use as a cemetery.

(a) *Transfers.* If an owner of enrolled land sells, donates or otherwise transfers any portion of the enrolled land to a nonprofit corporation for use as a cemetery, and at least 10 acres of the remainder of the enrolled land remain in agricultural use, agricultural reserve or forest reserve after the transfer, no violation of preferential assessment will be deemed to have occurred and roll-back taxes may not be assessed with respect to either the transferred portion of the enrolled land or the remainder of the enrolled land.

Example: A landowner owns 50 acres of enrolled land. The land is in agricultural use. The landowner sells 20 acres of the enrolled land to a nonprofit corporation for use as a cemetery. The remaining 30-acre tract continues in agricultural use. Under

these facts, no roll-back taxes are due with respect to either tract. The 30-acre tract continues to receive preferential assessment. The 20-acre tract receives an assessment based on fair market value.

(b) *Exception.* If a nonprofit corporation acquires enrolled land as described in subsection (a), and subsequently changes the use of the land to some use other than as a cemetery or transfers the land for use other than as a cemetery, the nonprofit corporation shall be required to pay roll-back taxes on that land.

Example: Same facts as the example under subsection (a), but 2 years after it acquired the 20-acre tract, the nonprofit corporation changes the use to something other than cemetery use. The nonprofit corporation owes roll-back taxes with respect to the 20-acre tract.

§ 137a.17. Transfer of enrolled land or transfer of an easement or right-of-way across enrolled land for use as a trail.

(a) *Transfers.* If an owner of enrolled land sells, donates or otherwise transfers any portion of the enrolled land, or transfers an easement or right-of-way with respect to any portion of the enrolled land, no violation of preferential assessment will be deemed to have occurred and roll-back taxes may not be assessed with respect to either the transferred portion of the enrolled land or the remainder of the enrolled land if all of the following occur:

- (1) The land is transferred to a nonprofit corporation.
- (2) The transferred land is used as a trail for nonmotorized passive recreational use. Walking, jogging, running, roller skating, in-line skating, pedacycling, horseback riding and the use of animal-drawn vehicles are examples of passive recreational use, as are all other forms of man-powered or animal-powered conveyance.
- (3) The transferred land does not exceed 20 feet in width.
- (4) The transferred land is available to the public for use without charge.
- (5) At least 10 acres of the remainder of the enrolled land remain in agricultural use, agricultural reserve or forest reserve.

Example: A landowner owns 50 acres of enrolled land. The land is in agricultural use. The landowner conveys a 20-foot-wide pathway across the land to a nonprofit corporation for use as a trail, and otherwise complies with paragraphs (1)—(5) and section 8(e) of the act (72 P. S. § 5490.8(e)). Under these facts, no roll-back taxes are due with respect to either tract. The trail receives an assessment based upon fair market value. The remainder of the landowner's 50-acre tract continues to receive a preferential assessment.

(b) *Exception.* If a nonprofit corporation acquires enrolled land or an easement or right of way with respect to enrolled land as described in subsection (a), and the use of the land is subsequently changed to a use other than the use described in subsection (a)(1)—(5) or section 8(e) of the act, the nonprofit corporation shall be required to pay roll-back taxes on that land. The land is no longer entitled to preferential assessment.

Example: A landowner owns 50 acres of enrolled land. The land is in agricultural use. The landowner conveys a 15-foot-wide pathway across the land to a nonprofit corporation for use as a trail. The convey-

ance is for a use described in subsection (a)(1)—(5) or section 8(e) of the act. The nonprofit corporation subsequently changes the use of the trail to a motorcycle trail, a snowmobile trail or some other use not allowed under subsection (a)(1)—(5) or section 8(e) of the act. Under these facts, roll-back taxes are due with respect to the 15-foot-wide tract. The nonprofit corporation shall also pay roll-back taxes on the remainder of the 50-acre tract. That remainder continues to receive a preferential assessment.

§ 137a.18. Transfer of enrolled land.

When enrolled land is transferred to a new owner, the new owner shall file an amendment to the original application for the purposes of providing the county assessor with current information and to sign the acknowledgements required under section 4(c) of the act (72 P. S. § 5490.4(c)).

§ 137a.19. Notice of change of application.

(a) *Landowner's responsibility to provide advance notice of changes.* An owner of enrolled land shall provide the county assessor of the county in which the land is located at least 30 days' advance written notice of any of the following:

- (1) A change in use of the enrolled land to some use other than agricultural use, agricultural reserve or forest reserve.
- (2) A change in ownership with respect to the enrolled land or any portion of the land.
- (3) Any type of division or conveyance of the enrolled land.

(b) *Landowner's duty to notify.* As stated in § 137a.4(b) (relating to application forms and procedures), a person applying for preferential assessment of land under the act shall acknowledge on the application form the obligation under subsection (a) on the application form.

(c) *Civil penalty for failure to provide notice.* A county board for assessment appeals may assess a civil penalty against a person who fails to provide notice required under subsection (a). This civil penalty shall be in accordance with section 5.1 of the act (72 P. S. § 5490.5b) and § 137a.23 (relating to civil penalties).

§ 137a.20. Liability for roll-back taxes.

(a) *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 2 of the act (72 P. S. § 5490.3), that landowner shall be responsible for the payment of roll-back taxes. The owner of enrolled land may 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.

(b) *Split-off tract.* Section 6(a.1)(1)(i) of the act (72 P. S. § 5490.6(a.1)(1)(i)), provides that roll-back taxes are not due with respect to a split-off tract which meets all of the following criteria:

- (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 lot size of 2—3 acres.
- (2) The tract is used for agricultural use, agricultural reserve or forest reserve or for the construction of a residential dwelling to be occupied by the person to whom the land is conveyed.

(3) The total tract split off does not exceed the lesser of 10 acres or 10% of the entire tract of enrolled land.

(c) *Split-off that complies with section 6(a.1)(1)(i) of the act.* If enrolled land undergoes split-off and the tract that is split-off meets the size, use and aggregate acreage requirements in section 6(a.1)(1)(i) of the act, the landowner who conducted the split-off shall owe roll-back taxes with respect to the split-off tract. The preferential assessment of that split-off tract shall be terminated. If the remainder of the enrolled land is in agricultural use, agricultural reserve or forest reserve, and continues to meet the requirements of section 2 of the act, no roll-back taxes are due with respect to that remainder, and preferential assessment shall continue with respect to that tract.

Example: Landowner owns 50 acres of enrolled land. Landowner splits-off 2 acres for a residential dwelling, in compliance with section 6(a.1)(1)(i) of the act. The landowner owes roll-back taxes on the 2-acre tract, and the preferential assessment of that tract shall be terminated. The remaining 48-acre tract would continue to receive a preferential assessment, assuming it remains in agricultural use, agricultural reserve or forest reserve and otherwise continues to meet the requirements of section 2 of the act.

(d) *Split-off that does not comply with section 6(a.1)(1)(i) of the act.* If enrolled land undergoes split-off and the tract that is split-off does not meet the size, use and aggregate acreage requirements in section 6(a.1)(1)(i) of the act, the landowner who conducted the split-off shall owe roll-back taxes with respect to all of the enrolled land.

Example 1: Landowner owns 50 acres of enrolled land. Landowner splits-off 4 acres in a single year. This split-off would not meet the size requirements in section 6(a.1)(1)(i) of the act. The landowner owes roll-back taxes on the entire 50-acre tract. The 4-acre tract no longer receives a preferential assessment. The remaining 46-acre tract would continue to receive a preferential assessment, assuming it remains in agricultural use, agricultural reserve or forest reserve and continues to meet the requirements of section 2 of the act.

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

(e) *Split-off occurring through condemnation.* If a portion of a tract of enrolled land is condemned, the condemnation may not trigger liability for roll-back taxes on either the condemned portion of the enrolled land or the remainder. If the condemned portion or the remainder of the enrolled land remains in agricultural use, agricultural reserve or forest reserve, and meets the criteria in section 2 of the act, preferential assessment shall continue with respect to that condemned portion or remainder.

(f) *Change in use of separated land occurring within 7 years of separation.* If enrolled land undergoes separation, and one of the tracts created through separation is converted to other than agricultural use, agricultural reserve or forest reserve within 7 years of the date of the separation, or is converted so that it no longer meets the requirements of section 2 of the act, the owner of the ineligible tract owes roll-back taxes with respect to all of the enrolled land. The ineligible tract may no longer receive preferential assessment under the act. The remaining enrolled land shall continue to receive a preferential assessment.

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

(g) *Change in use of separated land occurring 7 years or more after separation.* If enrolled land undergoes separation, and one of the tracts created through separation is converted to other than agricultural use, agricultural reserve or forest reserve 7 years or more after the date of the separation, the owner of the ineligible tract owes roll-back taxes with respect to that ineligible tract, but does not owe roll-back taxes with respect to the remainder of the enrolled land. The ineligible tract may no longer receive preferential assessment under the act. The remaining enrolled land shall continue to receive a preferential assessment.

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

(h) *Calculation of roll-back taxes.* A county assessor shall calculate roll-back taxes using the following formula, which supercedes the formula in § 137.54 (relating to calculating roll-back taxes):

(1) Calculate the difference between preferential assessment and normal assessment in each of the 7 most recent tax years.

(2) With respect to each of these seven sums, multiply that sum by the corresponding factor, which reflects compounded interest at the rate of 6% per annum from that particular tax year to the present:

| <i>Year</i> | <i>Factor</i> |
|---------------|---------------|
| Current | 1.00 |
| 1 Year Prior | 1.06 |
| 2 Years Prior | 1.1236 |
| 3 Years Prior | 1.1910 |
| 4 Years Prior | 1.2625 |

| Year | Factor |
|---------------|--------|
| 5 Years Prior | 1.3382 |
| 6 Years Prior | 1.4185 |

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

Example: Landowner owes roll-back taxes. The county assessor calculates the difference between the preferential assessment and normal assessment in each of the 7 preceding tax years, and determines that sum to be \$2,000 in each of those 7 years.

| Year | Amount Multiplied by Factor |
|---------------|-------------------------------|
| Current | \$2,000 x 1.00 = \$2,000 |
| 1 Year Prior | \$2,000 x 1.06 = \$2,120 |
| 2 Years Prior | \$2,000 x 1.1236 = \$2,247.20 |
| 3 Years Prior | \$2,000 x 1.1910 = \$2,382 |
| 4 Years Prior | \$2,000 x 1.2625 = \$2,525 |
| 5 Years Prior | \$2,000 x 1.3382 = \$2,676.40 |
| 6 Years Prior | \$2,000 x 1.4185 = \$2,837 |

TOTAL ROLL-BACK TAXES: \$16,787.60

§ 137a.21. Duties of a county assessor.

(a) *General.* A county assessor shall perform all the duties prescribed by the act and this chapter. In addition, a county assessor shall perform the duties prescribed in Chapter 137 (relating to preferential assessment of farmland and forest land) to the extent those duties do not conflict with the act or this chapter.

(b) *Recordkeeping.* A county assessor shall indicate on property record cards, assessment rolls and any other appropriate records the fair market value, the use value, the normal assessment and the preferential assessment of all tracts of enrolled land.

(c) *Recording approved applications.* A county assessor shall record any approved application in the office of the recorder of deeds in the county where the land is preferentially assessed.

(d) *Determining total use value.* A county assessor shall determine the total use value for all enrolled land. The contributory value of farm buildings shall be used in determining the total use value.

(e) *Annual update of records.* A county assessor shall, at least on an annual basis, update property record cards, assessment rolls and any other appropriate records to reflect all changes in the fair market value, the use value, the normal assessment and the preferential assessment of all tracts of enrolled land. This requirement does not constitute a requirement that a county assessor recalculate the preferential assessment of all enrolled land each year, but instead requires the county assessor to maintain reasonably current records reflecting any changes in preferential assessment.

(f) *Notification of change in preferential assessment status.* A county assessor shall provide the owner of enrolled land and the taxing bodies of the district in which the land is situated with written notice of an approval, termination or change with respect to the preferential assessment status. This written notice shall apprise the landowner and the taxing body of the right to appeal the action in accordance with section 9 of the act (72 P. S. § 5490.9). The written notice shall be mailed within 5 days of the change of status. If the written notice terminates or changes preferential assessment status it shall set forth the reasons for the change or termination.

(g) *Notification of change in factors affecting total assessment.* A county assessor shall provide the owner of enrolled land and the taxing bodies of the district in which the land is situated with written notice of any change in the fair market value, the normal assessment, the use value or the preferential assessment. This written notice shall apprise the landowner and the taxing body of the right to appeal the action in accordance with section 9 of the act. The written notice shall be mailed within 5 days of the change.

(h) *Adjusting records to reflect split-off, separation or transfer.* A county assessor shall adjust an approved and recorded application for preferential assessment under the act to reflect a change when an owner of enrolled land changes enrollment status as a result of a split-off, separation, transfer or change of ownership. These changes may include those actions described in § 137a.7(c) or § 137a.10(e) (relating to fee of the county board for assessment appeals; and duration of preferential assessment). A county assessor may require the preparation, execution and filing of a new application for preferential assessment to accomplish such an adjustment.

(i) *Enforcement and evidence gathering.* The evidentiary burden shall be on a county assessor to produce evidence demonstrating that a split-off tract is actively being used in a manner which is inconsistent with residential use, agricultural use, agricultural reserve or forest reserve.

(j) *Assessment of roll-back taxes.* A county assessor shall calculate, assess and file claims for roll-back taxes owed under the act.

§ 137a.22. 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, in its discretion, 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.

(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 Pur-

chase Fund. The county treasurer shall coordinate with the Department's Bureau of Farmland Protection, at the address in § 137a.24 (relating to contacting the department) to accomplish this transfer.

§ 137a.23. Civil penalties.

(a) *General.* A county board for assessment appeals may assess a civil penalty of not more than \$100 against a person for each violation of the act, this chapter or the applicable regulations in Chapter 137 (relating to preferential assessment of farmland and forest land).

(b) *Written notice of civil penalty.* A county board for assessment appeals shall assess a civil penalty against a person by providing that person written notice of the penalty. This notice shall be served by certified mail or personal service. The notice shall set forth the following:

(1) A description of the nature of the violation and of the amount of the civil penalty.

(2) A statement that the person against whom the civil penalty is being assessed may appeal the penalty by delivering written notice of the appeal to the county board for assessment appeals within 10 calendar days of receipt of the written notice of penalty.

(c) *Appeal hearing.* If timely notification of the intent to contest the civil penalty is given, the person contesting the civil penalty shall be provided with a hearing in accordance with 2 Pa.C.S. Chapter 5, Subchapter B and Chapter 7, Subchapter B (relating to local agency law).

(d) *Final civil penalty.* If, within 10 days from the receipt of the notification described in subsection (b), the person against whom the civil penalty is assessed fails to notify the county board for assessment appeals of intent to contest the assessed penalty, the civil penalty shall become final.

§ 137a.24. Contacting the Department.

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

Pennsylvania Department of Agriculture
Bureau of Farmland Protection
2301 North Cameron Street
Harrisburg, PA 17110-9408
Telephone: (717) 783-3167
Facsimile: (717) 772-9798

[Pa.B. Doc. No. 99-965. Filed for public inspection June 18, 1999, 9:00 a.m.]

Title 31—INSURANCE

INSURANCE DEPARTMENT

[31 PA. CODE CH. 38]

Procedures for State and Nationally Chartered Banking Institutions Selling Annuities or Insurance

The Insurance Department (Department) hereby deletes Chapter 38 as set forth in Annex A. The statement of policy was announced December 14, 1996 (26 Pa. B. 5992) under the authority of sections 602 and 622 of The Insurance Department Act of 1921 (40 P. S. §§ 232 and 252). The statement of policy set forth the Department's procedures for the sale of insurance and annuities by National and State banks in compliance with the preemp-

tion of State law as announced in *VALIC*, 115 S. Ct. 810 (1995) and *Barnett*, 116 S. Ct. 1103 (1996).

Purpose

The purpose of this notice is to delete Chapter 38 and to eliminate an obsolete statement of policy. The act of June 25, 1997 (P. L. 349, No. 40)(40 P. S. §§ 286—289.1) removed the restriction against financial institutions engaging in the sale of insurance and established parameters for the sales of insurance by financial institutions. Therefore, the statement of policy is no longer needed.

Affected Parties

Financial institutions doing the business of insurance and annuities in this Commonwealth will be effected.

Fiscal Impact

The deletion of the statement of policy has no fiscal impact.

Paperwork

The deletion of the statement of policy has no impact on paperwork.

Effectiveness/Sunset Date

The deletion of the statement of policy will become effective upon final publication in the *Pennsylvania Bulletin*. No sunset date has been assigned because the Department is deleting an obsolete statement of policy.

Contact Person

The person to contact for information on the deletion of this statement of policy is Peter J. Salvatore, Regulatory Coordinator, 1326 Strawberry Square, Harrisburg, PA 17120, (717) 787-4429.

Questions or comments regarding this deletion may also be e-mailed to psalvato@ins.state.pa.us or faxed to (717) 705-3873.

Findings

The Commissioner finds that:

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

(2) The adoption of this rulemaking in the manner provided in this order is necessary and appropriate for the administration and enforcement of the authorizing statutes.

Order

The Commissioner, acting under the authorizing statutes, orders that:

(a) The regulations of the Department, 31 Pa. Code Chapter 38, are amended by deleting §§ 38.1, 38.11, 38.21, 38.31—38.33 and 38.51—38.65 to read as set forth in Annex A.

(b) The Commissioner shall submit this order and Annex A to the Office of General Counsel for approval as to form and legality 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) The statement of policy deleted by this order shall take effect upon final publication in the *Pennsylvania Bulletin*.

M. DIANE KOKEN,
Insurance Commissioner

Fiscal Note: 11-169. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 31. INSURANCE

PART I. GENERAL PROVISIONS

Subpart C. AGENTS AND BROKERS

CHAPTER 38. (Reserved)

[Pa.B. Doc. No. 99-966. Filed for public inspection June 18, 1999, 9:00 a.m.]