

OFFICE OF THE SECRETARY OF STATE

A. JAMES MANCHIN
CHARLESTON 25305

THE STATE CAPITOL

STATE REGISTER FILING

ROBERT W. JACKSON
DEPUTY SECRETARY OF STATE
CORPORATE AFFAIRS

I, John M. Farmer, Assistant Commissioner
State Tax Department Title or Position

_____, hereby submit to records in
the State Register on 8 1/2 x 11" two (2) copies of

- (☒) proposed rules and regulations concerning topics of material not covered by existing rules and regulations;
- () proposed rules and regulations superseding rules and regulations already on file;
- (☒) notice of hearing;
- () findings and determinations;
- () Emergency rules and regulations
- (☒) Legislative (☒) Procedural () Interpretive Regulations
- () other - specify _____

FILED
1984 NOV - 2 PM 4:42
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

This filing pertains to

CHAPTER 11 ARTICLE 1A SECTION 10 of the
West Virginia Code, 1931, as amended.

SERIES IA, SECTION _____ PAGE NO. _____ of the
Administrative Code.
ADMINISTRATIVE CODE.

November 2, 1984

Date Submitted

[Signature]
Signature of Person Authorized



State Tax Department
of West Virginia

JOHN D. ROCKEFELLER IV
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Charleston 25305

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NOTICE OF PROPOSED RULE MAKING
PUBLIC COMMENT PERIOD

On November 2, 1984, two copies of proposed legislative regulations for W. Va. Code § 11-1A-10 were filed in the State Register. These proposed regulations relate to the first statewide reappraisal of property for ad valorem property tax purposes, and describe how farm land, buildings and structures will be valued.

Three (3) public hearings will be held on December 6, 1984 from 9:00 a.m. to 11:00 a.m. (unless earlier concluded) at the following locations:

Martinsburg: Martinsburg-Berkeley County Library
King & Queen Streets
Martinsburg, West Virginia

Moundsville: County Commission Room
Marshall County Courthouse
7th and Tomlinson
Moundsville, West Virginia

Petersburg: Court Room (or Lower Level
Conference Room)
Grant County Courthouse
Petersburg, West Virginia

Three (3) public hearings will also be held December 7, 1984 from 9:00 a.m. to 11:00 a.m. (unless earlier concluded) at the following locations.

Charleston: Conference Room D
Conference Center, Building 7
State Capitol Complex
Charleston, West Virginia

Clarksburg: Room 222
Correctional Center
Clarksburg, West Virginia

Lewisburg: County Court Room
Greenbrier County Courthouse
Lewisburg, West Virginia

Members of the public are invited to submit written comments on the merits of proposed Section 10 to W. Va. Leg. Reg. 11-1A, Series 1A. To be considered the written comments must be received by the Tax Commissioner on or before December 15, 1984, or bear a United States postmark dated not later than December 15, 1984. Submissions should be addressed as follows:

State Tax Commissioner
Capitol Building, WW-300
Charleston, WV 25305.

A copy of the proposed regulations may be obtained by writing to the State Tax Commissioner at the above address, or by calling the Property Tax Division of the State Tax Department at (304) 348-3940 or, toll free, at 1 (800) 642-3604.

This notice of proposed rule making and concomitant public comment period is given in conformity and compliance with the provisions of W. Va. Code § 29A-3-5.

Submitted to the State Register on November 2, 1984.


John M. Farmer
Assistant Commissioner



State Tax Department
of West Virginia

Charleston 25305

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FISCAL NOTE

Re: Fiscal note to proposed W. Va. Leg. Reg. 11-1A
Ser. 1A, § 10, Filed November 2, 1984.

The purpose of these regulations is to implement the will of the Legislature expressed in W. Va. Code § 11-1A-10 relating to valuation of farm property for ad valorem property taxation and to clearly state the qualifications for such valuation.

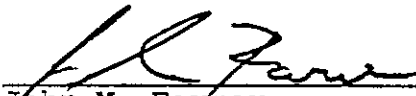
These rules restate and define the rule of W. Va. Code § 11-1A-10 that farmland shall be appraised as to its fair and reasonable value for farming purposes by giving primary consideration to the income which the property might be expected to earn if rented. Consequently the proposed rule will not have any additional economic input or fiscal consequence beyond those inherent in present statutory law.

In compliance with W. Va. Code § 29A-3-4, the itemized cost of implementing these proposed amendments as they relate to this State and to persons affected by these rules and regulations is as follows:

A. Cost to State and Taxpayers.

The administrative costs associated with administering and enforcing these proposed regulations are projected to be nominal.

Submitted to the State Register on November 2, 1984, in compliance with W. Va. Code §§ 29A-3-5 and 29A-3-9.


John M. Farmer
Assistant Commissioner

FILED

1984 NOV -2 PM 4: 52

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

PROPOSED

WEST VIRGINIA ADMINISTRATIVE REGULATIONS

STATE TAX DEPARTMENT

Chapter 11-1A
Series 1A
(1984)

Subject: Identification and Appraisal of Farmland
Subsequent to Base Year of Statewide
Reappraisal.

Filed in State Register
November 2, 1984

State Tax Department
Leg. Reg. 11-1A
Series IA

PROPOSED

FILED

WEST VIRGINIA ADMINISTRATIVE REGULATIONS

STATE TAX DEPARTMENT

1984 NOV -2 PM 4:52
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

LEGISLATIVE

Chapter 11-1A
Series IA
(1984)

Subject: Identification and Appraisal of Farmland Subsequent
To Base Year of Statewide Reappraisal.

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PROPOSED

FARMLAND VALUATION REGULATIONS

Section 10. Valuation of Farmland.

10.01 General.

(a) Type of Regulations. -- These regulations are a "legislative rule" as defined in W. Va. Code § 29A-1-2(d) (1982).

(b) Scope. -- These regulations clarify and implement state law as it relates to the appraisal of farmland. See W. Va. Code §§ 11-1A-3 and 11-1A-10 (1983).

(c) Authority. -- These regulations are issued under the authority of W. Va. Code § 11-1A-1 (1983).

(d) Filing Date. -- These regulations were filed as proposed regulations in the State Register on November 2, 1984.

(e) Effective Date. -- These proposed regulations will not take effect until after passage of an act of the Legislature authorizing their promulgation and they are refiled in the State Register pursuant to that act.

(f) Citation. -- These regulations may be cited as: W. Va. Leg. Reg. 11-1A, Series IA, § 10.____, page ____ (1984).

10.02. Scope, Use of Rule and Construction.

(a) Scope. -- This rule prescribes how the appraised value of farmland will be determined during the statewide reappraisal mandated by the West Virginia Constitution, Article X, § 1b. This rule does not define what property is subject to assessment for ad valorem property taxes. Second, this rule does not prescribe how the appraised values determined under it will be adjusted on account of substitutions, accretions, improvements, additions, replacements, destructions, removals, casualties, acts of God, waste or any like occurrence.¹ Third, this rule does not describe how the phase-in of increased valuation, if any, resulting from the first statewide reappraisal will apply to real and personal property.² Fourth, this rule does not prescribe when appraised values determined under it will first be used.³

¹W. Va. Code § 11-1A-14(b) required the Tax Commissioner to propose a legislative rule covering this subject on or before September 1, 1984.

²W. Va. Code § 11-1A-22 relates to determination of the phase-in, application and limitations.

³W. Va. Code § 11-1A-14(c) prohibits use of the first statewide reappraisal until the Legislature directs their use.

Section 10.02(c)

1a and 1b, and the several provisions of the West Virginia Code relating to the definition and determination of appraised value for purposes of ad valorem property taxation. In no event shall this rule be construed as requiring any property to be appraised in excess of its market value, or as subjecting to tax any property that is exempt from ad valorem property taxation under laws of the United States or this State.

State Tax Department
Leg. Reg. 11-1A
Series IA

10.03. Annual Updating.

This rule shall be reviewed and as necessary in accordance with the requirements of W. Va. Code § 29A-3-1 to properly reflect any future change in case law, to clarify application(s) of legislative regulations and to amend procedures of the State Tax Department of formal or interpretive regulations to laws or regulations. Whenever this Tax Commissioner to annually determine capitalization rates, acreage classification notice of his determinations shall be made public by filing notice thereof in the public file and by sending a copy of the notice to

10.04. Definitions.

The following definitions of terms as used in these regulations shall apply, unless the context clearly requires a different meaning.

(1) Agriculture. -- The term "agriculture" shall mean cultivation of the soil, including the planting and harvesting of crops and the breeding and management of livestock. See W. Va. Code § 11-5-3. Unless the context requires a more limited meaning, the term "agriculture" includes "horticulture" and "grazing." In this context, the term "agriculture" shall mean the production of food, fiber, and woodland products, by means of cultivation, tillage of the soil and by the conduct of farm animal, livestock, dairy, apiary, equine or poultry husbandry, and the practice of horticulture, or any other plant or farm animal production and all farm practices related, usual or incidental thereto, including storage, packing, shipping and marketing, but not including any manufacturing, milling or processing of such products by persons other than the producer thereof. See W. Va. Code § 19-19-2(a). Agriculture shall not

Section 10.04

include commercial forestry or the growing of timber for commercial purposes: Provided, that the growing of Christmas trees, orchards and nursery stock shall not be deemed to be commercial forestry or the growing of timber for commercial purposes. See W. Va. Code § 11-1A-3(f) and (g), definitions "farm" and "farming purposes."

(2) Agricultural. -- The term "agricultural" shall mean of or relating to agriculture.

(3) Agricultural Land. -- The term "agricultural land" shall mean:

(A) Not less than five acres of land and the improvements thereupon, used or usable in the production of agricultural or farm products having an annual value of one thousand dollars (\$1,000), or more, by the conduct of the business of agriculture, as defined in paragraph (1) of this section. See W. Va. Code § 19-19-2(b), or

(B) Less than five (5) acres of land, part or all of which is used to produce agricultural or farm products, if annual gross proceeds from such sales are five hundred dollars (\$500) or more.

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[Note: agricultural land is not automatically eligible for farm use appraisal. See Sections 10.05(c) and 10.05(d) for qualifications.]

(4) Capitalization Rate. -- The term "capitalization rate" shall mean a rate used to convert an estimate of income to an estimate of market value.

(5) Farm. -- The term "farm" shall mean a tract or contiguous tracts of land currently being used primarily for farming purposes, whether by the owner thereof, or by a tenant, and which has been so used at least seasonally during the year immediately preceding the then current tax year (unless it qualifies for one of the exceptions in § 10.05(c) of these regulations), but shall not include lands used primarily in commercial forestry or the growing of timber for commercial purposes: Provided, that the growing of Christmas trees or orchards and nursery stock shall not be deemed to be commercial forestry or the growing of timber for commercial purposes. See W. Va. Code § 11-1A-3(f) and (g) defining "farm" and "farming purposes" and § 11-4-3, defining "farm."

Section 10.04

(6) Farm Animal. -- The term "farm animal" shall mean and include any animal commonly found on a farm except that wildlife shall not be considered or deemed to be a farm animal unless it is intentionally and legally nurtured or raised and is intended for farm work, consumption as food or other commercial activity. This would include, but not be limited to, catfish, rabbits, buffalo, mink, foxes and otters.

(7) Farm Buildings. -- The term "farm buildings" shall mean structures which directly contribute to the operation of the farm.

(8) Farm Purposes. -- The term "farm purposes" shall mean the utilization of land to produce for sale, consumption or use, any agricultural products, including, but not limited to, livestock, poultry, fruit, vegetables, grains or hays or any of the products derived from any of the foregoing, tobacco, syrups, honey, and any and all horticultural and nursery stock, Christmas trees, all sizes of ornamental trees, sod, seed and any and all similar commodities or products including farm wood lots and the parts of a farm which are lands lying fallow or in timber or in wastelands. See W. Va. Code § 11-1A-3(g).

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(9) Farm Rent. -- The term "farm rent" shall mean the consideration paid by a lessee to lease land used for farming purposes. Such consideration may be in cash or in kind, or a combination thereof.

(10) Farm Use Application. -- The term "farm use application" means the application form designed by the Tax Commissioner which the land owner must complete and file with the county assessor on or before September 1st of each year in order to claim and obtain farm use valuation.

(11) Farm Use Valuation. -- The term "farm use valuation" shall mean a value estimated by capitalizing the fair and reasonable income which farm property might be expected to earn in the locality where situated, if rented.

(12) Filing Date. -- The term "filing date" shall mean the date by which the annual application for farm use must be received by the assessor of the county wherein the property is situated. This application for farm use must be annually filed and received by the assessor on or before September 1st following the July 1st assessment date.

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(13) Grazing. -- The term "grazing" shall mean the use of land for pasturage. See W. Va. Code § 11-5-3.

(14) Horticulture. -- The term "horticulture" shall mean plant production of every character except forestry and plants not legally grown. See W. Va. Code § 11-5-3.

(15) Horticultural. -- The term "horticultural" shall mean of or relating to horticulture.

(16) Management Rate. -- The term "management rate" shall mean a rate reflecting a return to an investor for the management of similar investment portfolios.

(17) Natural Resource. -- The term "natural resource" shall mean and include the coal, oil, gas, ore, limestone, fireclay or other mineral or mineral substance(s) in and under the surface of the land, and the timber thereon.

(18) Non-Liquidity Rate. -- The term "non-liquidity rate" shall mean a rate reflecting a return to an investor representing the loss of interest on an investment arising from the time required to sell the investment.

Section 10.04

(19) Normal Gross Rent. -- The term "normal gross rent" shall mean the rental amount which a property would attain in the open market at the time of appraisal, whether it is higher, lower or the same as the actual contract rent.

(20) Nursery. -- The term "nursery" shall mean and include any ground or premises on or in which plants are grown for sale or distribution and transplanting. This may include any place where nursery stock is being treated, packed or stored in preparation for sale, if such place is leased to or owned by the same person (including a firm or corporation) who owns the plants while they are growing in the same nursery.

(21) Nursery Stock. -- The term "nursery stock" shall mean all trees, shrubs and woody vines, including ornamentals, bush fruits, grapevines, fruit trees and nut trees, whether cultivated, native or wild, and all buds, grafts, scions, fruit pits and cuttings from such plants. It also shall mean sod, including sod plugs and sod producing plants, and herbaceous plants, including strawberry plants, narcissus plants and narcissus bulbs. Florists' or greenhouse plants for inside culture or use shall not be considered nursery

Section 10.04

stock, except that all woody plants, whether greenhouse or field grown, if for outside planting, are hereby defined as "nursery stock." See W. Va. Code § 19-12-2(g). No plant shall be considered nursery stock unless it is situated in an actual "nursery," as defined in paragraph (20) of this Section.

(22) Plant and Plant Products. -- The terms "plant" and "plant products" shall mean trees, shrubs, vines; forage, fiber, cereal plants and all other plants; cuttings, grafts, scions, buds and all other parts of plants; and fruit, vegetables, roots, bulbs, seeds and all other parts of plants and plant products. See W. Va. Code § 19-12-2(i).

(23) Property Tax Component. -- The term "property tax component" shall mean a rate reflecting a provision for returning to an investor a sum of money equal to property taxes paid over the life of the investment.

(24) Risk Rate. -- The term "risk rate" shall mean a rate reflecting a return to an investor necessary to attract capital to an investment containing a possible loss of principal or interest, or both.

Section 10.04

(25) Safe Rate. -- The term "safe rate" shall mean a rate reflecting a return to an investor on an investment which has little, if any, likelihood of loss of principal or anticipated return on investment.

(26) Wood Lot. -- The term "wood lot" shall mean that portion of a farm in timber but shall not include land used primarily for the growing of timber for commercial purposes except that Christmas trees shall be considered a farm product and not a timber product.

(27) Woodland Products. -- The term "woodland products" shall mean cut trees, firewood, posts, rails, splints, logs, limbs and similar wood products and hickory nuts, walnuts, beechnuts, butternuts and similar edible nuts or fruits of woody plants and maple sap used in making syrup and maple sugar.

10.05. Valuation Procedure.

(a) General. -- This rule prescribes valuation methodologies to be employed in the appraisal of farm real estate (including the natural resources present) and the method of assessment of lands or minerals owned by domestic or foreign corporations where the surface land is used for farm purposes.

(b) Criteria. -- The following factors shall be considered in determining whether lands which appear to be actively devoted to farm or agricultural use are in fact bona fide farms:

(1) Present and past use of the land, in particular, the use during the year immediately preceding the then current tax year.

(2) Participation in governmental or private agricultural programs.

(3) Extent of production for sale of plants, livestock and food for human and animal consumption.

(4) Size of the parcel or parcels farmed. In particular, whether such size is economically compatible with the agricultural use to which the the land is purportedly devoted.

Section 10.05(b)

- (5) The amount of acreage in crops, pasture and woodland.
- (6) The quantum of livestock or poultry maintained thereon.
- (7) The amount of feed consumed by livestock and the amount of soil additives used on the property.
- (8) The inventory of farm equipment and the condition thereof.
- (9) The number, type and condition of farm buildings.
- (10) The ratio of farm or agricultural use of the land to other uses of the land.
- (11) Zoning applicable to the land. In particular, if land is zoned to a more intensive use than is permitted under agricultural zoning, such zoning is evidence that the property is not a bona fide farm.
- (12) The occurrence of multiple sales of parcels out of a tract. The marketing of land as evidenced by such sales shall be strong evidence that the property is not a bona fide farm.
- (13) Woodland shall be considered land of a bona fide farm only if:

Section 10.05(c)

(A) It is part of a tract of land which is determined by the Tax Commissioner to be actively devoted to farm or agricultural use; or

(B) It is contiguous to a tract of land in the same ownership which has been determined by the Tax Commissioner to be actively devoted to agricultural use; it was purchased at the same time as the tract so used; and such woodland is not used primarily in commercial forestry or the growing of timber for commercial purposes.

(c) Qualification. -- Qualifying farmland shall be subject to farm use valuation, with primary consideration being given to the income which the property might be expected to earn, in the locality wherein situated, if rented. However, for land to qualify for farm use valuation, all of the following criteria must be met:

(1) The property must be classified as a "farm," as defined in Section 10.04(5) of these regulations.

(2) The property must be used for "farm purposes," as defined in Section 10.04(8) of these regulations, at least seasonally during the year immediately preceding the then current tax year,

Section 10.05(c)

except that property which because of a change in management, natural disaster or other good reason was temporarily out of production, or temporarily operated at less than full production, and did not produce a sufficient crop in the immediately preceding year will nevertheless qualify if it otherwise meets the requirements. See W. Va. Code §§ 11-1A-3(f) and 11-1A-3(g).

(3) The property must, in total, comprise not less than five (5) acres of land, except that property comprising less than five (5) acres, which otherwise qualifies, may nevertheless qualify if it meets the income test set forth in Section 10.05(c)(4)(B), (C), or (D) below.

(4) Unless excepted under Section 10.05(c)(2), the land must be utilized to produce as follows:

(A) General rule. -- The farm must produce for sale, consumption or use farm products (as defined in Section 10.04(8) of these regulations) having a fair market value to the producer of at least one thousand dollars (\$1,000), including any government subsidies or payments for farm products and including the value of any products which may be given away: or

Section 10.05(c)

(B) Small farm rule. -- If the farm has a total area of less than five (5) acres, then it must produce for sale at least five hundred dollars (\$500) worth of farm products (as defined in Section 10.04(8) of these regulations): or

(C) Biannual harvests. If the property is at least five (5) acres and would otherwise qualify as farm property except that it is substantially being used to produce any farm product which does not normally produce a harvest every year, this property shall be classified as farm property even during the years when there is no harvest and required meet the one thousand dollars (\$1,000) minimum production value only during those years when there is an actual harvest: or

(D) Pre-production rule. -- If the property is at least five (5) acres and would otherwise qualify as a farm property except for meeting the one thousand dollars (\$1,000) annual farm production test, then, if the failure is due to the farm product being in the growing or development stage (which by its very nature requires more than one year to mature):

Section 10.05(c)

- (1) the crop must have been planted (in whole or in part) on or before the July first assessment day for which farm use value is sought; or
- (2) the livestock must have been acquired (in whole or in part) on or before the July first assessment day for which farm use value is sought.

Additionally, a farm development plan must be attached to the application, outlining by year the plan for development of a productive farm. Within ten (10) years thereafter (including the first year for which farm use value is sought), the consumption or use for sale must have a wholesale value of one thousand dollars (\$1,000) or more. Otherwise, farm use value is lost for the next tax year.

- (5) The annual wholesale value of such farm commodities or products must be fifty percent (50%) or more of the annual gross income derived from surface land use of the property.

Section 10.05(d)

(6) The application for farm use value must be submitted as required in Section 10.07 of these regulations, and explain the basis for the applicant's estimate of value of farm commodities or products produced from the property for which farm use is sought.

(7) Farm property producing income from natural resources, mineral income, or property from which the mineral estate has been severed, shall be treated in accordance with the provisions of Section 10.05(f)(3) of these regulations.

(d) Disqualifications . -- The following land is not eligible for farm land valuation:

(1) Land not used at least seasonally during the year immediately preceding the current year for farming purposes, unless it qualifies under Section 10.05(c)(2) of these regulations as land temporarily out of production or under Section 10.05(c)(4)(C) as land producing crops which do not produce an annual harvest or under Section 10.05(c)(4)(D) as land being developed to produce agricultural products.

Section 10.05(d)

(2) Land consisting of a single tract of less than five (5) acres, [or contiguous tracts of land, the combined acreage of which is less than five (5) acres] unless it qualifies under Section 10.05(c)(4)(B) as producing for sale at least five hundred dollars (\$500) worth of farm products.

(3)

(A) Land used primarily in commercial forestry or the growing of timber for commercial purposes except that Christmas trees are considered to be a farm product and not considered to be a timber or forestry product.

(B) Occasional casual sales of wood or woodland products in relatively small quantities, or sales of wood or woodland products incidental to, and a normal part of, the operation of a farm shall not constitute commercial forestry or the sale of timber for commercial purposes. Such sales may be counted toward the annual determination of the value of farm commodities on products under Section 10.05(c)(4) of these regulations.

Section 10.05(e)

Example. -- Sales by orchardists or Christmas tree growers of trees, logs, limbs or similar wood products as a result of the clearing of old trees and planting of new trees in accordance with good farming practice, or as a result of periodic pruning or the trimming or removal of damaged or deceased trees is incidental to, and a normal part of, the operation of orchards, and shall not constitute commercial forestry or the sale of timber for commercial purposes.

(4) Land owned by a corporation that is not primarily engaged in the business of farming. In the event that the controlling stock interest in such corporation is owned by another corporation, that corporation owning the controlling interest must also be primarily engaged in the business of farming.

(e) Method. -- Real property that is used primarily for farming purposes under these regulations shall be valued by giving primary consideration to the fair and reasonable income which the property might be expected to earn in the locality, where situated, if rented. To accomplish this valuation the following procedures shall be employed.

Section 10.05(e)

(1) Rental information on a cash or share basis for pasture, tillable and wood lot land shall be collected and verified by the Tax Commissioner, or his agent in each county. Provided, that where rental information is not available or is deemed insufficient by the Tax Commissioner in any given locale the rental information from similar neighboring locales, may be considered in order to determine the rent attributable to each classified acre of farmland. If that information is also deemed by the Commissioner to be insufficient, he may use the best rental information available to him.

(2) Rental rates shall be established annually by the Tax Commissioner after a review of identifiable, willing seller-willing buyer arms-length farmland leases that have occurred in the State of West Virginia during the eight (8) years (W. Va. Code § 11-1A-3) prior to the appraisal date and through review of any other appropriate information. The review shall give primary emphasis to the information and leases transacted during the most recent years.

Section 10.05(f)

(f) Valuation.

(1) Farmland. -- Farmland shall be classified based upon its optimal farm use in the categories illustrated in Appendix 1. Rental amounts by class shall be assigned to each class of land on a per acre basis. The per acre rental value shall be capitalized to yield an appraised value per acre. The appraised value per acre thus determined shall be multiplied by the number of farm surface acres to yield the appraised value of farmland. This value shall be the farm use value as required by W. Va. Code § 11-1A-10.

(2) Farm Buildings. -- Farm buildings and other improvements on the land, shall be valued by replacement cost new less depreciation valuation procedures. One (1) acre of land shall be assigned to all buildings as a unit situate on the property, regardless of the actual acreage occupied by such buildings and shall be appraised at its farm use valuation based on the highest class of farmland present on the farm. Farmland meeting the criteria set out in Section 10.05(c) of these regulations shall be subject to farm use valuation.

Section 10.05(f)

(3) Timber & Other Natural Resources. -- Minerals timber and other natural resources on or under farmland subject to farm use valuation will (except for woodlots) be valued based upon the following circumstances:

(A) Fee estates which include natural resources, where income is not derived from such natural resources(s), shall be subject to farm use valuation only. Such natural resource(s) as may underlie or be present on such fee estates shall not be valued so long as income is not derived therefrom.

(B) Fee estates which include natural resources, where income is derived from such natural resource(s), shall be valued as follows:

(1) Fee estates where the annual wholesale value of farm commodities or products, as enumerated in Section 10.04(8) of these regulations is fifty percent (50%) or more of the annual gross income from all uses of the property, shall be subject to farm use valuation.

Section 10.05(f)

(2) Fee estates where the annual wholesale value of farm commodities or products as enumerated in Section 10.04(8) of these regulations is less than fifty percent (50%) of the annual gross income from all uses of the property, shall be valued by adding to the surface farm use value, the applicable natural resource value as provided in W. Va. Leg. Reg. 11-1A, Series IA §§ 11.04, 11.05, 11.06, 11.07, 11.08.

(3) For the purposes of these regulations, payments in kind of natural resources to any person from such fee estates shall be considered income. For example: Payments of so called "free gas" to lessors or tenants of a natural gas producing tract are income for the purposes of these regulations.

(C) Estates in land arising from the severance of the surface and any mineral estate, shall be valued as follows:

(1) Each separate estate in land, if owned by the person requesting farm use valuation, shall be valued as follows:

Section 10.05(f)

(a) Where the annual wholesale value of farm commodities or products as enumerated in Section 10.04(8) of these regulations is fifty percent (50%) or more of the annual gross income from all separate estates, the property shall be subject to farm use valuation only.

(b) Where the annual wholesale value of farm commodities or products, as enumerated in Section 10.04(8) of these regulations is less than fifty percent (50%) of the annual gross income from all uses of the separate estates, the property shall be valued by adding to the surface farm use value, the applicable natural resource value as provided in W. Va. Leg. Reg. 11-1A, Series 1A, §§ 11.04, 11.05, 11.06, 11.07, 11.08.

(2) Where the owner of any freehold estate in land is not the person requesting farm use valuation, those estates shall be valued as follows:

Section 10.05(f)

(a) The estate which encompasses the surface land shall be subject to farm use valuation.

(b) The estate(s) which do not encompass surface land shall be valued as provided in W. Va. Leg. Reg. 11-1A, Series 1A, §§ 11.04, 11.05, 11.06, 11.07, 11.08. Provided, however, that nothing herein shall alter the method of valuation of lands or minerals owned by domestic or foreign corporations. Property owned by a corporation or an unincorporated business is not considered a farm or land used for farming purposes unless the principal activity of the corporation or unincorporated business is the business of farming, and in the event that the controlling stock interest in a corporation is owned by another corporation, the corporation owning

Section 10.05(f)

the controlling interest must also be primarily engaged in the business of farming. A corporation or unincorporated business shall be deemed to be primarily engaged in the business of farming if the wholesale value of farm commodities or products as enumerated in Section 10.04(8) of these regulations is fifty percent (50%) or more of the annual gross income of the corporation or unincorporated business. In addition, a person is not engaged in farming if he is primarily engaged in forestry or growing timber.

- (4) Life Estates and Estates and Interests Less Than Fee Simple. -- Life estates, dower interests, terms of years, remainders, remainder interests and similar estates and interests in property qualified for farm real estate valuation under these regulations shall be valued at present value based upon the farmland valuation of the property derived in accordance with these regulations.

10.06 Capitalization Rate.

(a) Discussion. -- A single statewide capitalization rate will be determined annually by the Tax Commissioner through the use of generally accepted methods for estimating such rates. The rate so developed will assume a level perpetual income series. The capitalization rate used to value farmland will be developed considering (1) a discount rate determined by the summation technique, (2) a recapture component, and (3) a property tax component.

(b) Components. -- Components of the capitalization rate are as follows:

(1) Discount Component.

(A) Summation Technique. -- The summation technique will be employed in developing a discount component in the valuation of farmland. Since land is a non-wasting asset and is expected to last indefinitely the rental income from land is assumed to be perpetual. The present value of future rentals for farmland will be estimated reflecting the following four (4) major subcomponents of a discount rate:

Section 10.06(b)

(i) Safe Rate. -- The "Safe Rate" will be developed through review of quarterly interest rates offered on thirteen (13) week United States Treasury Bills for a period of three (3) years prior to the appraisal date.

(ii) Risk Rate. -- The "Risk Rate" will be developed through review of data resulting from an annual survey of lending institutions, such survey reflecting interest rates required on loans for acquisition and/or development of farmland. This survey will be conducted for a three (3) year period prior to the appraisal date. Results of the survey will be compared to quarterly interest rates offered on thirteen (13) week United States Treasury Bills for the same three (3) year period. An interest differential will then be selected representing the "Risk Rate."

(iii) Non-Liquidity Rate. -- The "Non-Liquidity Rate" will be developed

Section 10.06(b)

through an annual survey to determine a reasonable estimate of time that farmland remains on the market before being sold. The selling time requirement thus determined will be used to identify United States Treasury Bills with similar time differentials in excess of thirteen (13) week Treasury Bills. The interest differential between these securities will be deemed to be representative of the "Non-Liquidity Rate."

(iv) Management Rate. -- The "Management Rate" will be developed through a survey of investment firms to identify charges for the management of investment portfolios.

(2) Recapture Component. -- Land is a nonwasting asset and is expected to last indefinitely. Given this characteristic, inclusion of a recapture component in the capitalization rate is not appropriate.

(3) Property Tax Component. -- This component will be derived by multiplying the assessment rate by the statewide average of tax rates on Class II property.

10.07. Farmland Valuation Application; Appeal.

(a) When to Apply. -- In order to qualify under the provisions of this rule for valuation purposes, the owner(s) of land must apply annually for farmland valuation after June 30th and on or before September 1st of each year. The application must be on forms prescribed by the State Tax Commissioner and filed with the assessor of the county wherein the land is situated. See Appendix II of these regulations for application timetable.

(b) Response To Applicant. -- The assessor must notify each applicant, by first class mail, of his decision to grant or deny the application, not later than thirty (30) days following the receipt of the application. In those instances where the application is denied, the notice must include the basis for the denial, advise the applicant of the right to appeal and explain the appeal process.

(c) Appeal Process. -- The applicant may, within thirty (30) days of notification of the denial of the application, appeal the assessor's decision to the State Tax Commissioner. The State Tax Commissioner shall rule on the petition not later than January 1st

Section 10.07(a)

and shall notify the appellant and assessor thereof in due course. The Tax Commissioner may consider any appropriate information relevant to the determination. The decision, which shall be binding on the assessor and property owner, shall only apply to the eligibility of property for farm use valuation. The Tax Commissioner shall decide only the issue of whether the property constitutes a "farm" or "farms" within the meaning of W. Va. Code § 11-1A-3(i) and these regulations. Questions involving classification shall be resolved through W. Va. Code § 11-3-24a. Questions involving appraised values shall be resolved through W. Va. Code § 11-3-24.

APPENDIX I

CATEGORIES OF FARMLAND

A. Introduction

(a) Appendix I divides farmland into three categories according to utility or use of the land.

(b) Farmland is categorized as:

(1) Tillable. -- The term "tillable land" shall mean land used or usable and intended for use in raising crops.

(2) Pasture. -- The term "pasture land" shall mean used or usable and intended for use in grazing livestock.

(3) Woodland. -- The term "woodland" shall mean land used for growing timber.

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(c) Each of these three categories is divided into five subcategories which grade the property according to quality and fitness for the particular utility or use category to which it has been relegated. These subcategories are designated "Grade A" through "Grade E." Land having less than the highest quality and fitness is classified as "Grade B" through "Grade E," "Grade E" being the lowest quality and fitness classification.

Any given tract of land may fall into any number of these categories and subcategories in accordance with the actual use to which the land is suited.

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B. TILLABLE

Tillable land is categorized into five (5) grades.

Grade "A". -- This land is good loam soil that is easy to work (a tract approximately ten acres or more in one continuous parcel) and can be cultivated safely with ordinary good farm methods. This land is nearly level and there is little or no erosion.

Grade "B". -- This land is level to rolling and can be cultivated safely with ordinary good farm methods. The soil may need lime or fertilizing. The bottom land may need improved drainage.

Grade "C". -- This land is also level to rolling crop land. The drainage of the property is generally good. A small amount of erosion may be taking place. This land can be cultivated with care. It needs contour strip cropping, usually best suited for hay and other grass crops. This type of property may be cut into smaller sections due to some sort of natural or man-made obstructions.

Grade "D". -- This land is good hillside farmland; eighty percent (80%) of this land can be farmed with a

Appendix I

tractor. The soil is generally of a good quality and the grainage is good. This type of land is generally best suited for the raising of hay.

Grade "E". -- This crop land is very steep hillside that is too steep to farm with modern farm machinery. The soil is generally of a poor quality and its cultivation may cause severe erosion.

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C. PASTURE

Pasture land is categorized into five (5) grades.

Grade "A". -- This type of land could be used for either pasture or crop land. Its topography is level to rolling. The land can be clipped with a farm tractor; lime and fertilizer can be applied with modern farm equipment. The drainage of the property will be good and the soil will be of good quality. The land is clear of any significant overgrowth such as excess trees or brush.

Grade "B". -- This land is of similar nature to the Grade "A" Pasture land other than the fact that the quality of the soil is not as good. The size of the parcel will be of smaller nature. This type of land, for some reason, is not suitable for tilling and is generally best suited for permanent pasture.

Grade "C". -- This land will generally have a moderate amount of erosion. The topography of the land will be average.

Grade "D". -- This land is generally hillside pasture that has a very steep degree of slope. The pasture will generally have some natural obstruction such as overbrush, etc. The type of soil is generally of poor quality.

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Grade "E". -- This land is generally very steep and there may be a mixture of overbrush and pasture throughout. Brush must be cleared with hand tools. The soil consistency is generally of a poor quality; lime or fertilizer is seldom applied to this type of land and then only with hand tools.

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D. WOODLAND

Woodland is categorized into five (5) grades:

Grade "A". -- This land is adaptable, upon clearing, for use as tillable land or pasture land. The topography of the land will be level to slightly rolling. The soil type is general of loam. There will be a stand of tress of commercial species. The size of such trees being generally from 14 to 20 inches in diameter at breast height.

Grade "B". -- This land is also level to rolling. It is adaptable for other profitable uses. There may be a minimal amount of erosion. The soil is generally of a good quality. This land is predominantly covered with a stand of timber from 10 to 14 inches in diameter at breast height.

Grade "C". -- The topography of this land is such that the land is not economically feasible to use for anything other than growing tress. The predominant size of the trees on this class of woodland is from six (6) to eight (8) inches in diameter at breast height. There may be some erosion of the soil.

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Grade "D". -- The topography of this land indicates that its best use is for the growing of timber. There is a stand of sound trees of commercial species in good form. The dimensions of trees at breast height, generally would measure from four (4) to six (6) inches in diameter. Such trees will become saw timber if left to grow.

Grade "E". -- The topography of this land is generally steep. It will be difficult land from which to harvest the timber. This land generally exhibits poor soil quality. There is a stand of trees of a commercial species generally less than four (4) inches in diameter at breast height and of good form and vigor.

APPENDIX II

TIMETABLE FOR FILING APPLICATION AND APPEALS

The following timetable shows the final dates for filing the farm use application, for filing appeals and for the issuance of administrative decisions at each step of the application and appeal procedure.

- September 1st -- The taxpayer's farm use application must be filed after June 30 and on or before September 1st of the calendar year for determinations applicable to the next tax year. See Section 10.07(a) of these regulations.
- October 1st -- The assessor must grant or deny the application and notify the applicant of such action within thirty (30) days of receipt of the application. See Section 10.07(b) of these regulations.
- October 31st -- The applicant may appeal the assessor's decision to the Tax Commissioner within thirty (30) days of notification thereof. See Section 10.07(c) of these regulations.

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January 1st -- The Tax Commissioner must rule on the applicant's appeal on or before January 1st. See Section 10.07(c) of these regulations. An adverse decision of the Tax Commissioner may be appealed to the circuit court under W. Va. Code § 11-3-25.

February 15th -- If the Tax Commissioner rules in favor of the applicant, finding that the property in controversy is a "farm" or "farms" within the meaning of W. Va. Code § 11-1A-3(i) and these regulations, the taxpayer may then petition the county commission under the review and equalization provisions of W. Va. Code § 11-3-24 for farmland valuation. The county commission must meet not later than February 1st for the purpose of equalization and review, and may not adjourn sine die before February 15th. See W. Va. Code § 11-3-24.

WEST VIRGINIA ADMINISTRATIVE REGULATIONS

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