WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #4

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: State Tax Commission TITLE NUMBER: 110

CITE AUTHORITY W. Va. Code §§ 11-1C-5(a)(2)(B), 11-1C-11(c)(1) and 11-1C-11b(c)

AMENDMENT TO AN EXISTING RULE: YES X NO ____ (Repeal & Replacement)

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 1H

TITLE OF RULE BEING AMENDED: Valuation of Timberland and Managed Timberland

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: ____

TITLE OF RULE BEING PROPOSED: ____

THE ABOVE PROPOSED LEGISLATIVE RULE, FOLLOWING REVIEW BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.

Robin C. Capehart

Robin C. Capehart, Cabinet Secretary

$5.40

MODIFIED
TITLE 110
WEST VIRGINIA LEGISLATIVE RULE
STATE TAX COMMISSION

SERIES 1H
VALUATION OF TIMBERLAND AND MANAGED TIMBERLAND

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§ 110-1H-1. General.

1.1 **Scope**. -- This legislative rule establishes the procedure for the classification and valuation of timberland and managed timberland.

1.2 **Authority**. -- W. Va. Code §§ 11-1C-5(a)(2)(B), 11-1C-11(c)(1) and 11–1C–11b(c).

1.3 **Filing Date**. --

1.4 **Effective Date**. --

1.5 **Repeal of former rule**. -- This legislative rule repeals and replaces WV 110 C.S.R.1H "Valuation of Timberland and Managed Timberland" filed April 15, 1992 and effective April 15, 1992.

§ 110-1H-2. Introduction.

2.1 The appraised value of managed timberland shall be determined on the basis of the potential of the land to produce future income according to its use and productive potential. Potential future net income is discounted to its present value utilizing a discounted cash flow; this is the appraised value. The ability of a stand of timber to produce wood products for sale or use depends primarily on the quality of the soil and certain topographic and climatic features which can be expressed as a site index. Site index is the principal criterion influencing the appraised value of managed timberland. These factors shall be reviewed annually by the Tax Commissioner for necessary updating of the method described in order to properly reflect future changes in the values of managed timberland.

2.2 The appraised value of timberland (woodland/wasteland) shall be determined on the basis of market comparables derived through analysis of sales prices of comparable timberland (forested) properties. Timberland appraisal value shall always be more than the appraised value of equivalent grades of properties being classified as managed timberland in the county. The appraised value of timberland shall be determined by the county assessor based upon the Timberland Classification Schedule found in Appendix 1 of this rule.

2.3 The county assessor shall collect and analyze market data, including sales of timberland, segregated into the classes contained in the previously referenced classification schedule. Based upon this market analysis, the county assessor shall select the value for each class of timberland that best reflects the market value of the property if exposed to the market for sale as timberland. The values by class thus selected shall be entered, by the assessor, into the respective county land pricing tables and shall be used by the assessor to estimate the appraised value of timberland for property tax purposes.

§ 110-1H-3. Definitions. -- As used in this rule and unless the context clearly requires a different meaning, the following terms shall have the meaning ascribed in this section.

3.1 **"Capitalization rate"** means the rate used to convert an estimate of income into an estimate of present value. Details of the procedure for determining the capitalization rate are found in Section 12 of this rule.

3.2 **"Certified managed timberland plan"** means the managed timberland plan that is certified by the landowner when the landowner certifies that the property is maintained as managed timberland.

3.3 **"Cost"** means a component of management costs and property taxes.

3.4 **"dbh"** means the diameter of trees at breast height, which is 4.5' above ground level.

3.5 **"Division of Forestry"** means the West Virginia Bureau of Commerce, Division of Forestry.

3.6 **"Farm wood lot"** means that portion of a farm in timber but may not include land used primarily for the growing of timber for commercial purposes except that Christmas trees, or nursery stock and woodland products, such as nuts or fruits harvested for human consumption, shall be considered farm products and not timber products.

3.7 **"Harvest income per acre"** means the expected after tax revenue and accrued interest for each harvesting interval. Interest is assumed to accrue at the rate of return from the period of harvest to the end of the 80 year rotation cycle.

3.8 **"MBF"** means thousand board feet.

3.9 **"Management cost"** means the cost determined tri-annually by the Tax Commissioner to be the average annual cost of maintaining and protecting a producing forest. Maintenance costs may include costs of inventory, boundary survey, security, maps, and any other items as can be shown to have been necessary. Protection may include costs of protection against forest fires; harmful insect and tree diseases; costs of repair and replacement resulting from damages reported to appropriate police agencies, including all-terrain vehicles (ATV's) and other vehicular damages, and costs of replacing and replanting forest production and/or plantations destroyed or injured by deer or other wild animals whose populations exceed the maximum carrying capacity of the site. Management costs shall be determined as an average for the entire State or by regions, by Managed Timberlands Productivity Grades or by parcel acreage and shall be deducted from gross annual income per acre to obtain net annual income per acre.

3.10 **"Managed Timberland"** means surface real property, except farm woodlots, of not less than ten contiguous acres which is devoted primarily to forest use and which, in consideration of their size, has sufficient numbers of commercially valuable species of trees to constitute at least forty percent normal stocking of forest trees which are well distributed over the growing site, and that it is managed pursuant to a plan as defined in subsection 3.11 and appendix 2 of this rule.

3.11 **"Managed Timberland Plan"** means the planned timberland management program that conforms to the following standards established by the Division of Forestry in the plan:

3.11.1 Includes the owner's multipurpose objectives for the property;

3.11.2 Provides for the land:

3.11.2.a to remain in at least 40% or greater forest cover of well distributed commercially important trees,

3.11.2.b to produce continuous crops of timber according to the site's productivity , and,

3.11.2.c to be monitored for and action taken against threats from injurious agencies;

3.11.3 Ensures that harvesting will be done in a manner that assures regeneration of the landowner's preferred species; and

3.11.4 Assures sustainability of forest resources and compliance with the Logging Sediment control Act, W. Va. Code § 19-1B-1 et seq.

3.12 **"Managed Timberland Productivity Grades"** means timberland classified as Grade 1 (excellent to very good), Grade 2 (good to fair), or Grade 3 (poor), according to the table in Appendix 4 of this rule.

3.13 **"Owner of surface less timber"** means any person who owns an interest in the surface where the timber rights have been sold to someone else.

3.14 **"Owner of Timber"** means any person who owns an interest in timber, including a lessor or sublessor and an owner of a contract right to cut timber. The owner of timber must have a right to cut timber for sale on his, her or its own account for use in his, hers, or its trade or business in order to have property rights that are subject to ad valorem property taxes.

3.15 **"Site Index"** means a method of measuring the productivity of a site to grow trees. It is the height that average dominant and co-dominant trees will attain at a given age. For ad valorem property tax purposes, it is the height of upland oaks at fifty (50) years of age.

3.16 **"Soil Productivity Data"** means those site index data derived from the United States Department of Agriculture Natural Resource Conservation Service (NRCS), formerly the Soil Conservation Service (SCS), Soil Survey Geographic Database (SSURGO). These data are digital representations of county soil surveys which are mapped at 1 inch = 2,000 feet.

3.16.1 In those counties where SSURGO data are not yet available, the best available information shall be used.

3.16.1.a For Pocahontas County, the article by G.R. Trimble, Jr., "An Equation for Predicting Oak Site Index Without Measuring Soil Depth", Journal of Forestry, 62:325-327, shall be used.

3.16.1.b For Wetzel, Doddridge, Braxton, Clay and Gilmer Counties, the article by L.R. Auchmoody and H. Clay Smith, "Oak Soil-Site Relationships in Northern West Virginia", (USDA Forest Service Research Paper NE 434, 1979) shall be used.

3.16.1.c For Wayne, Lincoln, Boone, Logan, Mingo and McDowell Counties, unpublished results of research at West Virginia University (1983) shall be used.

3.16.1.d For Webster county, the rates of 48% for Grade 1, 34% for Grade 2 and 18% for Grade 3 shall be used for all certified managed timberland parcels.

3.16.1.e For all counties not listed in the foregoing paragraphs 3.16.1.a through 3.16.1.d of this rule, the primary source of information shall be maps created by the Soil Survey, published by United States Department of Agriculture Natural Resource Conservation Service.

3.17 **"Stumpage Price"** means the market value of standing trees (on the stump) prior to felling and removal, and is expressed in dollars per unit of volume (MBF or cords). For appraisal purposes, real stumpage price will be adjusted to real price increases over various harvest periods during the 80 year rotation cycle. The real price increase shall be determined from the projected saw timber and pulpwood prices described in the most recent United States Forest Service Bulletin R.P.A. Timber Assessment Update and shall be calculated by the Tax Commissioner from reports based upon 16 inch (dbh) logs as prepared by the Division of Forestry and other available sources. A five-year weighted moving average shall be computed in order to minimize the effects of short-term fluctuations. Stumpage prices shall be computed for each stumpage price region in order to reflect regional differences in markets, topography, and accessibility.

3.18 **"Stumpage Price Region"** means a geographical region of the State, usually consisting of several counties, in which conditions of the timber, timber markets, topography, and accessibility are sufficiently similar to result in similar stumpage prices at any given time. The counties involved in each stumpage price region have been identified by the Division of Forestry and are found in Appendix 3 of this rule.

3.19 **"Timber"** means trees of any marketable species, whether planted or of natural growth, standing or down, located on public or privately owned land, which are suitable for commercial or industrial use.

3.20 **"Timberland (Woodland/Wasteland)"** means any surface real property, except farm woodlots of not less than ten contiguous acres, which is primarily in forest and which has, in consideration of their size, sufficient numbers of commercially-valuable species of trees to constitute at least forty percent (40%) normal stocking of forest trees, as shown Appendix 2 of this rule, which are well distributed over the growing site. Additionally, land that has been recently harvested of merchantable timber and is growing into or being planted as a new forest may be classified as timberland.

§ 110-1H-4. Classification of Timberland and Managed Timberland.

4.1 **Managed Timberland**. -- For property to qualify for managed timberland valuation, the owner of the surface real property identified on the county tax mapping system shall annually certify in writing to the Division of Forestry that the property satisfies the requirements of managed timberland, as defined in Section 3 of this rule, and enter into a contract with the Division of Forestry to use the real estate in a planned program of multiple purpose forest management, including erosion control during timbering operations, as specified in the West Virginia Forest Practices Standards and the West Virginia Silvicultural Nonpoint Source Management Program, and as explained in Section 13 of this rule. Multipurpose forest management contemplates the periodic selection of timber on the property for harvesting as an integral part of silvicultural management practices. The silvicultural manipulation subjects the property to periodic commercial use that may have an effect on the property's classification for property tax purposes. Therefore, in recognition of the silvicultural manipulation, the following guidelines shall be observed by the Division of Forestry when classifying managed timberland for property tax purposes.

4.1.1 Property containing managed timberland, which may have been properly taxed as Class II property prior to the managed timberland application, shall remain as Class II property unless there is some other event or change in the use of the property that disqualifies it from being taxed as Class II property.

4.1.2 Property containing managed timberland, which may have been properly taxed as Class III or Class IV property prior to the managed timberland application, shall be taxed as Class III or Class IV property depending upon location.

4.2 **Timberland**. -- Timberland shall be taxed as Class II, Class III, or Class IV property in accordance with provisions of West Virginia Code § 11-8-5. In order for timberland to be taxed as Class II property, the timberland shall be used and occupied by the owner exclusively for residential purposes. (This section does not apply to farm woodlots – See, Valuation of Farmland and Structures Situated Thereon For Ad Valorem Property Tax Purposes, 110 C.S.R. 1H, § 110-1H-5.)

4.3 **Surface less timber** -- Property where the owner of the surface does not include the timber rights is not eligible for managed timberland classification and shall be valued by the assessor.

4.4 **Timber** -- Property where the owner of the timber rights does not include the surface, is not eligible for managed timberland classification and shall be valued by the assessor.

§ 110-1H-5. Valuation of Farm Wood Lots. -- Farm wood lots shall be included in the valuation of farm property under W. Va. Code § 11-1A-10, except when the farm wood lot is a separate parcel or tract entered in the land books, and/or except when the primary use of the farm wood lot is in commercial forestry or in a managed timberland contract.

§ 110-1H-6. Timberland Improvements. -- Improvements such as roads and service buildings that are a required (usual) part of timber management operations is not subject to an additional market value appraisal over and above the appraisal of the managed timberland. Improvements that are not a necessary part of the timber management operations, such as dwellings, cottages, hunting camps, other recreational facilities, and associated real estate are subject to additional market value appraisals. Additionally, haul roads, strip and/or mountaintop removal mines, plant facilities, powerline and gas/oil pipeline rights-of-way, and gas/oil well pads shall not be valued as managed timberland.

§ 110-1H-7. Appraised Value of Timberland. -- The appraised value per acre of timberland shall be determined based upon market comparables and shall be estimated by the county assessor. There are at least five (5) various timberland rates based on the timberland classification schedule described in Appendix 1 of this rule. Assessors shall tri-annually review and grade these non-managed timberland properties in order to assign the proper rate per acre to the property. The rate per acre shall be established by the assessor in conformity with requirements of subsection 2.2 of this rule.

§ 110-1H-8. Valuation of Less Than 10 Acres. -- A parcel, or contiguous parcels, of timberland totaling less than ten (10) acres shall not be considered for classification as managed timberland and shall be valued by the county assessor based upon market comparables.

§ 110-1H-9. Harvest Volumes Per Acre. -- Harvest Volumes per acre shall be based on site index and the ability of the site to yield timber measured in thousands of board feet (MBF) per acre (Scribner rule) or cords per acre with harvest intervals at thirty-five (35), fifty-five (55) and eighty (80) years for Grade 1 and Grade 2 soils, and at forty-five (45) and eighty (80) years for Grade 3 soil.

§ 110-1H-10. Appraised Value Per Acre of Managed Timberland. -- The appraised value per acre of managed timberland is the present worth of $1.00 times the difference between the future value of the harvest income less the future value of the management cost less a property tax adjustment for Class II, and a blend of Class III and Class IV tax rates for Class III and Class IV properties. However, the appraised value for any grade of managed timberland will not be less than $25 per acre.

§ 110-1H-11. Procedure for Determining Value Per Acre of Managed Timberland. -- The following is a step-by-step procedure for determining the appraised value per acre of managed timberland.

11.1 The Tax Commissioner shall enter the surface ownership maps (typically 1 inch = 400 feet or 1 inch = 800 feet) into a Geographic Information System (GIS). The GIS shall be used to register the surface ownership parcels to the same geographic coordinate system and scale as that of the soil productivity data (SSURGO). This process allows the calculation of the area of each soil productivity grade in each parcel.

11.1.1 In those counties where the GIS is not yet available, the soil productivity maps addressed in paragraphs 3.16.1.a through 3.16.1.e of this rule shall be utilized. These maps are the soil grades identified on USGS 7.5 minute topographical quadrangle sheets (1 inch = 200 feet). The West Virginia county surface ownership maps (commonly 1 inch = 400 feet of 1 inch = 800 feet) were reduced to 1 inch = 200 feet. The reduced scale surface maps were overlayed on the productivity grade maps and the grade boundaries were transferred, allowing the determination of the area at each grade for each ownership parcel.

11.2 Average stumpage price (5 year weighted moving average) is determined by stumpage price reports from the Division of Forestry and other available sources.

11.3 Total harvest income per acre over a rotation cycle of thirty-five (35) years, fifty-five (55) years and eighty (80) years for Grade 1 and 2 soils, and forty-five (45) years and eighty (80) years for Grade 3 soils shall be determined by the accumulated periodic harvest income plus accrued interest on the net income less state and federal tax payments.

11.4 End of rotation (80 year) total management costs per acre shall be determined by the accumulated after tax management cost and accrued interest on those costs.

11.5 Appraised value per acre for managed timberland shall be determined by first deducting the end of rotation total management costs; second, calculating the present worth of that difference; and third, adjusting that value by the annual ad valorem property tax rate (either Class II or a blended Class III/IV).

11.6 The GIS (when available) shall be used to calculate the appraised value of managed timberland property on an annual basis. Until the GIS is available, soil grade calculations will be made from data described in paragraphs 3.16.1.a through 3.16.1.e and subdivision 11.1.1 of this rule. The appraised value of each managed timberland property shall be calculated using the formula found in Appendix 6 of this rule.

11.6.1 Those acreages involved in a managed timberland application where the use of the property is not for managed timberland purposes (e.g., homesite, pasture, tillable, recreation, stripmine, etc.) shall not be classified as managed timberland and shall be appraised by the county assessor.

§ 110-1H-12. Capitalization Rate. -- The average statewide capitalization rate (based on a 5-year weighted moving average of various components) for managed timberland shall be determined annually by the Tax Commissioner through the use of generally accepted methods of determining those rates. The rate shall be based on the assumption of a discounted cash flow model based upon harvest intervals reflected in Appendix 4 of this rule. The capitalization rate used to value managed timberland shall be developed considering the following:

12.1 **Discount Component**. -- The summation technique shall be used in developing a discount component of the capitalization rate. The five subcomponents of the discount component are:

12.1.1 **Safe Rate**. -- The safe rate shall reflect a rate of return that an investor could expect on an investment of minimal risk. This rate shall be developed through weighted averages of interest rates offered on five-year United States Treasury Bills for the five years immediately preceding the appraisal date.

12.1.2 **Nonliquidity** . -- The nonliquidity rate shall be developed through an annual review to determine a reasonable estimate of time that timberland, when exposed for sale, remains on the market before being sold. The time thus determined shall be used to identify United States Treasury Bills with similar time differentials in excess of thirteen-week Treasury Bills. The interest differential between these securities shall be used to represent the nonliquidity rate. For example, if it is determined that a tract of timberland remains on the market for an average of nine months (39 weeks) before being sold, the nonliquidity rate shall be derived by subtracting the rate on 13-week Treasury Bills from the rate on one year Treasury Bills. This review shall consider the weighted average of these differences for a five year period immediately preceding the appraisal date.

12.1.3 **Risk Rate**. -- The relative degree of risk of an investment in timberland shall be developed through an annual review of thirty-year United States Treasury Bills less five-year United States Treasury Bills. The review shall consider the weighted averages of debt and equity components of these differences for a five-year period immediately preceding the appraisal date.

12.1.4 **Management Rate**. -- The management rate represents the cost of managing the investment, not the cost of managing the timberland. Historically, the management rate has been one-half of one percent (0.5%); therefore, this rate shall be considered the industry standard for current applications.

12.1.5 **Inflation Rate (negative)**. -- Nominal interest rates, including the "safe rate" mentioned in subdivision 12.1.1 of this rule, are higher than real rates by an amount representing expectation of future inflation. However, net annual income from timberland is to be estimated assuming level future prices (no inflation). Therefore, the capitalization rate must be a real rate, net of expectation of inflation. The inflation rate shall be established through a weighted average analysis of the most recent five calendar year's urban consumer price index as determined by the United States Department of Labor, Bureau of Labor Statistics.

12.1.6 **Discount Component**. -- In determining the discount component of the capitalization rate, the Tax Commissioner shall take the sum of the safe rate, the nonliquidity rate, the risk rate, and the management rate, and shall deduct from this sum the inflation rate.

12.2 **Property Tax Component**. -- The property tax component shall be derived by multiplying the assessment rate by the statewide five year weighted average of tax rates on Class II and on a blended rate for Class III and Class IV properties. The discounted property tax rates shall be deducted from the discounted difference between total harvest income and end of rotation management costs.

§ 110-1H-13. Application for Certification and Valuation as Managed Timberland. -- In order to qualify, under the provisions of this rule, for managed timberland valuation purposes, the owner of the timberland shall annually, on or before the first day of July, enter into a contract with the Division of Forestry. The contract shall state that the real estate is being used in a planned program of timber management and erosion control practices intended to enhance the growth of commercially desirable species through generally accepted silvicultural practices and the use of Best Management Practices as specified in the West Virginia Forest Practice Standards and the West Virginia Nonpoint Source Management Program. The contract shall be assignable with the sale of the land when the land is sold to be used for managed timberland purposes. On or before September 1, the owner shall file an application for certification as managed timberland with the Division of Forestry. The application shall include either (a) a commitment to maintain and protect timberland certified as managed timberland by demonstrating land-use objectives to include resource management and soil and water protection; or (b) a written plan prepared by a professional forester. Falsification of certification or failure to follow a professionally prepared plan shall result in loss of valuation as managed timberland. In any event, the following information shall be provided:

13.1 The county, district, map, parcel number, deed book surface acreage and actual surveyed surface acreage, if available, for each parcel that is to be valued as managed timberland;

13.1.1 The amount of acreage in each parcel that should be classified as managed timberland. For those properties where managed timberland acreage is different than deed acreage, information identifying the use of the non-managed acreage is required;

13.1.2 The signature of owner (including all fractional interests) acknowledging that the contract with the Division of Forestry has been annually reviewed and approved and that the property is being managed in accordance with the Best Management Practices for forestry as outlined in the West Virginia Forest Practice Standards and the Best Management Practices for water quality as outlined in the West Virginia Nonpoint Source Management Program. If a written plan is provided in accordance with Section 13 of this rule, that plan shall be approved and signed by a registered timber management forester.

13.2 The Division of Forestry shall, on or before October 1 of each year, provide the State Tax Commission with a copy of the certifications and reports and provide a list of those properties certified as managed timberland and those denied certification. After the October 1 report is filed, the Division of Forestry has until January 15 of the next calendar year to review any applications questioned by the State Tax Commission or county officials.

13.3 The property owner whose managed timberland application was denied or who has been refused certification pending demonstration of specific facts may, on or before November 1 of the assessment year, file an appeal of the denial or file the requested data with the Director of the Division of Forestry. On or before the following December 1, the Division of Forestry shall advise the Tax Commissioner of any changes of application denials.

§ 110-1H-14. Summary of Method of Determining Appraised Value. -- The formula to be used in determining the appraised value of property categorized as managed timberland is found in Appendix 5 of this rule.

APPENDIX 1
Timberland Classification Schedule

Class "A"

This land is adaptable for use as forest property. It may be adaptable to other profitable uses. There is a stand of trees of commercial species, the size being from fourteen (14) to twenty (20) inches d.b.h. and above.

Class "B"

This land is also adaptable for use as forest property. It may be adaptable for other profitable uses. There is a stand of trees of commercial species, the size being from ten (10) to fourteen (14) inches d.b.h.

Class "C"

This land is adaptable for use as forest property. There is a stand of trees of commercial species, the size being from six (6) to ten (10) inches d.b.h.

Class "D"

This land is adaptable for use as forest property. There is a stand of trees of commercial species, the size being from four (4) to six (6) inches d.b.h.

Class "E"

This land is adaptable for use as forest property. There are trees of commercial species less than four (4) inches d.b.h. This class of timberland also includes clear cut property and property subjected to total harvest where the remaining commercial species are less than four (4) inches d.b.h.

APPENDIX 2

Minimum Number of Trees Required Per Acre to Determine 30 Square Feet of Tree Basel Area of 40% Stocking for Classification as Forest Land

D.B.H. Range	D.B.H. in 2" Classes	Basel Area Per Tree	Per Acre	Per 1/5 Acre	Per 1/10 Acre
up to 2.9"..........	Seedlings		400	80	40
3.0-4.9".............	4	0.0873	400	80	40
5.0-6.9"............	6	0.1964	153	31	15
7.0-8.9".............	8	0.3491	86	17	9
9.0-10.9"...........	10	0.5454	55	11	6
11.0-12.9".........	12	0.7854	38	8	4
13.0-14.9".........	14	1.0690	28	6	3
15.0"+...............	16+	1.3983	21	4	2

NOTE:(a) Area 1/5 acre, circle, diameter 105=4"; square 93.4" per side

(b) Area 1/10 acre; circle, diameter 74=6"; square 66=

(c) Number of seedlings present may qualify on a percentage basis; Example, 100 seedlings would be equivalent of 7.5 square feet of basal area (25% x 30 B 7.5)

(d) Seedlings per acre are based on total pine and hardwood stems. Where intensive pine management is practiced a minimum of 250 well distributed pine seedlings will qualify.

APPENDIX 3

Stumpage Price Regions

Region 1	Region 2	Region 3	Region 4	Region 5
Brooke	Braxton	Barbour	Berkeley	Boone
Cabell	Calhoun	Greenbrier	Grant	Fayette
Hancock	Clay	Monroe	Hampshire	Kanawha
Jackson	Doddridge	Nicholas	Hardy	Lincoln
Marshall	Gilmer	Pendleton	Jefferson	Logan
Mason	Harrison	Pocahontas	Mineral	McDowell
Ohio	Lewis	Preston	Morgan	Mercer
Pleasants	Marion	Randolph		Mingo
Putnam	Monongalia	Tucker		Raleigh
Tyler	Ritchie	Upshur		Summers
Wetzel	Roane	Webster		Wayne
Wood	Taylor			Wyoming
	Wirt			

APPENDIX 4

TABLE OF HARVEST VOLUMES PER ACRE WITH HARVEST INTERVALS OVER AN 80 YEAR ROTATION CYCLE

	35 Years	55 Years	80 Years	Total
Grade 1				
Site Index (75 or more) (Very Good to Excellent)	4.6 Cords 1.5 MBFs	2.6 Cords 4.4 MBFs	3.3 Cords 8.6 MBFs	10.5 Cords 14.5 MBFs
Grade 2				
Site Index (65-74) (Fair to Good)	3.3 Cords 1.0 MBFs	7.0 Cords 3.2 MBFs	4.6 Cords 5.5 MBFs	14.9 Cords 9.7 MBFs

	45 Years	80 Years	Total
Grade 3			
Site Index (less than 65) (Poor)	3.1 Cords .8 MBFs	15.4 Cords 3.7 MBFs	18.5 Cords 4.5 MBFs

Scribner rule. Schnur, G. Luther. UNITED STATES DEPARTMENT OF AGRICULTURE Tech. Bul. No. 560. 1937. The Tax Commissioner may adopt a different timber scale and revise yields as standards of timber utilization change or as new information becomes available on timber yields of forest stands.

APPENDIX 5

For Class II Parcels:

Appraised Value Per Acre = [[Present worth of 1] x [(Future value of Harvest Income) - (Future value of management costs)]] less discounted property tax Class II rate.

For Class III & IV Parcels:

Same formula except the discounted property tax rate for Class III and Class IV properties is used.

Until the present natural resource and county computer systems can be programmed to change appraisals based on tax classifications or until a new computerized appraisal system can be put into effect, the property tax discount shall be a blended rate including both Class II and Class III rates.

APPENDIX 6

AV = (P1V1) + (P2V2) + (P3V3)
where
AV = Property Appraised Value
P1 = Total Acreage of Parcel in Soil Productivity Grade 1
P2 = Total Acreage of Parcel in Soil Productivity Grade 2
P3 = Total Acreage of Parcel in Soil Productivity Grade 3
V1 = Value of Soil Productivity Grade 1
V2 = Value of Soil Productivity Grade 2
V3 = Value of Soil Productivity Grade 3

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Nov 16 12 15 PM '98

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
Legislative Rule-Making Review Committee

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November 12, 1998

Senator Mike Ross, Co-Chairman
Delegate Mark Hunt, Co-Chairman
Debra A. Graham, Counsel

Joseph A. Altizer, Associate Counsel
Rita Pauley, Associate Counsel
Teri Anderson, Administrative Assistant

NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hechler, Secretary of State, State Register

TO: Don Hebb
State Tax Commission
Capitol Complex
Building 1, Room 400-W

FROM: Legislative Rule-Making Review Committee

Proposed Rule: **Value of Timberland and Managed Timberland, 110CSR1H**

The Legislative Rule-Making Review Committee recommends that the West Virginia Legislature:

1. Authorize the agency to promulgate the Legislative Rule
   (a) as originally filed ____
   (b) as modified by the agency ____

2. Authorize the agency to promulgate part of the Legislative rule; a statement of reasons for such recommendation is attached. ____

3. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached. ____

4. Authorize the agency to promulgate the Legislative rule as modified with certain amendments; amendments and a statement of reasons for such recommendation is attached. ✓

DAG

ANALYSIS OF PROPOSED LEGISLATIVE RULES

Agency: State Tax Commission

Subject: Value of Timberland and Managed Timberland, 110CSR1H

PERTINENT DATES

Filed for public comment: June 2, 1998
Public comment period ended: July 2, 1998
Filed following public comment period: July 29, 1998
Filed LRMRC: July 29, 1998
Filed as emergency: July 1, 1998

Fiscal Impact: $1,057,160 increase in cost

ABSTRACT

The proposed rule amends a current legislative rule. The following is a section by section synopsis of the proposed rule.

Section 1 is the standard general section, setting forth the scope, authority, filing date and effective date of the proposed rule.

Section 2 is an introduction. It sets forth in general terms how the appraised value of timberland and managed timberland will be determined. It also gives a general description of the duties of the county assessor in collecting and analyzing market data and in selecting the value for each class of timberland.

Section 3 defines terms.

Section 4 relates to the classification of timberland and managed timberland. It requires an owner of managed timberland to annually certify to the Division of Forestry that the property satisfies the requirements of managed timberland. It provides for the taxation of the managed timberland.

This section also provides that timberland shall be classed as Class II, Class III or Class IV property.

The property owner must own both the surface rights and the timber in order for the property to be eligible for the managed timberland classification.

Section 5 specifies that farm wood lots are to be included in the valuation of the farm property except where the lot is a separate parcel entered in the land books or when its primary use is commercial forestry or in a managed timberland contract.

Section 6 provides that improvements that are a required part of timber management operations are not subject to an additional market value appraisal over and above the appraisal of the managed timberland.

Section 7 states that the county assessor is to establish the rate per acre and grade per acre of timberland from the 5 rates in Appendix 1 of the proposed rule.

Section 8 provides that the county assessor is to value parcels or contiguous parcels of less than 10 acres based upon market comparables and that they may not be considered for classification as manage timberland.

Section 9 provides that harvest volumes per acre are based on site index and the ability of the site to yield timber.

Section 10 provides that the appraised value per acre of managed timberland is the present worth of $1 times the difference between the future value of the harvest income less the future value of the management cost less a property tax adjustment for Class II and a blend of Class III and Class IV rates for Class III and Class IV properties. The minimum appraised value is $25 per acre.

Section 11 sets forth the step-by-step procedure for determining the appraised value per acre of managed timberland.

Section 12 provides for the annual determination of the average statewide capitalization rate for managed timberland by the Tax Commissioner. It provides the method for determining the capitalization rate.

Section 13 sets forth the requirements for application and certification as managed timberland. It requires the Division of Forestry to provide a list of certified properties and the certifications to the Commissioner by October 1 of each year.

Section 14 states that the formula for determining the appraised value of managed timberland is in Appendix 5 of the proposed rule.

Section 15 is an unnecessary severability section.

AUTHORITY

Statutory authority: W.Va. Code, §11-1C-11b, which provides, in part, as follows:

> (a) The tax commissioner shall establish by legislative rule two methodologies for determining the appraised value of managed timberland, based upon the land's potential to produce future income according to its use and productive potential as managed timberland and whether the property is classified as Class II property or as Class III or IV property for property tax purposes. These values shall be determined by discounting the potential future net income of the timberland to its present value utilizing a discounted cash flow model based upon whether the property is classified as Class II property or as Class III or IV property for property tax purposes.
>
> (b) The tax commissioner shall also establish by legislative rule a method to determine the appraised value of timberland that is not certified as managed timberland. All timberland that is not certified as managed timberland shall be valued at its market value, except for farm woodlots which shall be valued as part of the farm...

ANALYSIS

I. HAS THE AGENCY EXCEEDED THE SCOPE OF ITS STATUTORY AUTHORITY IN APPROVING THE PROPOSED LEGISLATIVE RULE?

No.

II. <u>IS THE PROPOSED LEGISLATIVE RULE IN CONFORMITY WITH THE INTENT OF THE STATUTE WHICH THE RULE IS INTENDED TO IMPLEMENT, EXTEND, APPLY, INTERPRET OR MAKE SPECIFIC</u>?

Yes.

III. <u>DOES THE PROPOSED LEGISLATIVE RULE CONFLICT WITH OTHER CODE PROVISIONS OR WITH ANY OTHER RULE ADOPTED BY THE SAME OR A DIFFERENT AGENCY</u>?

No.

IV. <u>IS THE PROPOSED LEGISLATIVE RULE NECESSARY TO FULLY ACCOMPLISH THE OBJECTIVES OF THE STATUTE UNDER WHICH THE PROPOSED RULE WAS PROMULGATED</u>?

Yes.

V. <u>IS THE PROPOSED LEGISLATIVE RULE REASONABLE, ESPECIALLY AS IT AFFECTS THE CONVENIENCE OF THE GENERAL PUBLIC OR OF PERSONS AFFECTED BY IT</u>?

Yes.

VI. <u>CAN THE PROPOSED LEGISLATIVE RULE BE MADE LESS COMPLEX OR MORE READILY UNDERSTANDABLE BY THE GENERAL PUBLIC</u>?

No.

VII. <u>WAS THE PROPOSED LEGISLATIVE RULE PROMULGATED IN COMPLIANCE WITH THE REQUIREMENTS OF CHAPTER 29A, ARTICLE 3 AND WITH ANY REQUIREMENTS IMPOSED BY ANY OTHER PROVISION OF THE CODE</u>?

Yes.

VIII. <u>OTHER</u>.

Counsel has technical modifications to suggest.

"On page 2, section 2.3 by striking out the entire section and inserting in lieu thereof the words "2.3 "Full-time employee" means a permanent hourly employee of an eligible taxpayer, who is a West Virginia domiciled resident, and works in a new value-added steel product manufacturing facility in this state, or in a new value-added steel product line of an existing manufacturing facility in this state, more than eighteen hundred hours during the entire twelve-month period ending on the last day of the taxable year of the eligible employer, whether these hours are hours worked at the manufacturing facility, or include hours of employer paid vacation leave or other employer paid leave. Full-time employee does not include an employee who is a part-time, seasonal or temporary employee.",

And,

On page four, section 5.1, following the word "Code" by striking out "§11-13M-7" and inserting in lieu thereof "§11-13N-7"."

(h) The legislative rule filed in the state register on the twenty-ninth day of July, one thousand nine hundred ninety-eight, authorized under the authority of section eleven-b, article one-c, chapter eleven of this code, modified by the state tax commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the seventeenth day of November, one thousand nine hundred ninety-eight, relating to the state tax commissioner (value of timberland and managed timberland, 110 CSR 1H), is authorized with the amendment set forth below:

"on page 7, section 10, by inserting the following sentence at the end of the section:

'In no case may managed timberland values for Class III and IV property be lower than $225 per acre for Grade 1; $150 per acre for Grade 2; $75 per acre for Grade 3, and Class II properties may not be lower than $200 per acre for Grade 1; $140 per acre for Grade 2; and $50 per acre for Grade 3.'"

(i) The legislative rule filed in the state register on the twenty-ninth day of July, one thousand nine hundred ninety-