

TITLE 110
LEGISLATIVE RULES
DEPARTMENT OF TAX

SERIES 11
VALUATION OF ACTIVE AND RESERVE COAL PROPERTY FOR
AD VALOREM PROPERTY TAX PURPOSES

§110-11-1. General.

1.1. Scope. -- These regulations clarify and implement State law as it relates to the appraisal at market value of active and reserve coal properties. Because these regulations provide context modifications of relevant parts of 110 C.S.R. 1 and such regulations with context changes were adopted by the Tax Commissioner through inclusion in the valuation plan required by W. Va. Code §11-1C-10(e), W. Va. Code §11-1C-5(b) eliminates the requirement that this filing be subject to the procedural requirements of W. Va. Code §29A-3-1 et seq.

1.2. Authority. -- W. Va. Code §11-1C-5(b)

1.3. Filing Date. -- July 26, 1991

1.4 Effective Date. -- July 26, 1991.

§110-11-2. Introduction.

Coal is one of the several estates in real property which may be owned either as a separate interest or in conjunction with other interests, usually as fee ownership or as mineral ownership. If coal is owned as a separate estate, either absolute or as a leasehold interest, or in conjunction with other interests, West Virginia property tax law requires such ownership to be listed, valued and taxed based on its true and actual value. Coal may be owned without being mined. Coal rights may exist where no coal is actually present, or where the coal is unmineable or mined out. For valuation purposes this regulation classifies coal property ownership into the following categories:

2.1. Active.

2.2. Reserve.

2.3. Unmineable.

2.4. Mined-out/Barren.

§110-11-3. Definitions.

As used in these regulations and unless the context clearly requires a different meaning, the following shall have the meaning ascribed herein, and shall apply in the singular and in the plural.

3.1. "Acres mined" means the average annual production, as defined in Section 3.3 of these regulations, divided by the product of the thickness (in feet) of the coal seam being mined, as detailed in mining permit reports, times eighteen hundred (1800) tons per acre foot, times the recovery rate according to the actual recovery of coal per acre being experienced at the mining operation.

<u>Average Annual Production</u> =	Annual
Thickness x 1800 x Recovery Rate	Acres
	Mined

3.2. "Active mining property" means a mineable seam of coal on a parcel involved in a mining operation. For the purposes of determining active mining property all contiguous parcels regardless of ownership, that are under lease and/or involved in the permitted operation, shall be treated as active mining property. The maximum active mining portion for each seam for each mining operation on a parcel is fifteen (15) years times the acres mined (as defined in Section 3.1 of these regulations) for deep mines or five (5) years times the acres mined for surface and auger mines. If the mineable acreage remaining in the seam(s)

being mined is less than the maximum amounts listed above, then the remaining acreage will be considered the active mining property. If more than one seam on a parcel is being actively mined, then each such seam represents separate active mining property. In the application of the herein provided valuation formula on "Active Mining Property," the appropriate formula calculation will be based upon the actual market to which the coal from the tract and seam is currently being sold, whether it is "Metallurgical" or "Steam."

If more than one mining operation is mining a given coal seam on the same parcel, then each such mining operation has a separate active mining property. However, under no circumstances shall the sum of the active acres for all mining operations on each seam exceed the number of acres on a parcel. As necessary, the Commissioner shall apportion the number of acres for each mining operation, based upon a review of relevant leases, and the respective rates of average annual production.

3.3. "Average annual production" means the average annual rate of coal production as determined by a weighted average of three (3) years' production that has occurred between January 1 and December 31 of the most current calendar years.

The weighted average shall be determined by multiplying the most recent year's production by four tenths (4/10), each of the previous two (2) years' production multiplied by three tenths (3/10), and the resulting three (3) figures added together to arrive at the average annual production. However, if there is no production during the most recent year then the property will be valued as reserve.

When there has been no production during the second or third most recent year, the production for the current year will be factored by five tenths (5/10) and the production for the earlier year in which production existed will be factored by five tenths (5/10) and the resulting two figures will be added together to arrive at the average annual production.

If there was no production in both the second and third most recent years then the production for the most recent year will be factored by 1.0 and the resulting figure will be the average annual production.

3.4. "Bands of investment discount component" means a discount rate derived by assigning rates to various debt and equity investment financing tiers and summing these rates, weighted by their respective percentages of total financing.

3.5. "Barren" means the fee properties, mineral properties and/or those coal properties where the coal rights are owned, and the existence of one or more coal seams has not been established.

3.6. "Capitalization rate" means the rate used to convert an estimate of income into an estimate of market value. (For further explanation see Section 4.1.9 of these regulations.)

3.7. "Discount component" means a rate reflecting a provision for returning to an investor a sum of money equal to the aggregate of the anticipated return-on-investment over the economic life of an investment.

3.8. "Economic life method of recapture" means a method of developing a recapture rate by estimating the period of time an investment will produce a return and estimating an equal periodic rate of recapture of the investment over this return period.

3.9. "Life of mining operation" means the life of a deep mining operation shall be fifteen (15) years, or the number of years required to exhaust the seam at the average annual production (Section 3.3 of these regulations) rate, whichever is less. The life of a surface or auger mining operation shall be five (5) years, or the number of years required to exhaust the seam at the average annual production rate, whichever is less. Fractional years will be rounded to nearest whole number.

3.10. "Management rate" means a rate reflecting a return to an investor for the management of similar investment portfolios.

3.11. "Market comparison discount" means a discount rate derived by dividing income net of recapture and property taxes by the arms-length selling price of the property.

3.12. "Market comparison method of recapture" means a recapture rate estimated by dividing income net of return on investment and property taxes by the arms-length selling price of the property.

3.13. "Metallurgical coal" means bituminous coal that is suitable for making coke by industries that refine, smelt, and work with iron and/or steel.

3.14. "Mineable coal" means coal which is so situated that it may be mined using generally accepted mining practices and suitable equipment and which is of such quality so as to be commercially saleable (as either mined coal or as a recoverable reserve). Furthermore, unless there is evidence to the contrary, coal seams which are of a thickness less than thirty inches (30") will not be considered or classified as mineable.

3.15. "Mined-out" means a seam of coal, or any portion thereof, which is depleted by prior mining operations and which is not mineable by modern technology.

3.16. "Mining operation" means an enterprise engaged in actively obtaining or preparing to obtain coal or its by-products from the earth's crust, including underground, surface and auger mines. Each mining operation may have more than one (1) area designated as "Active Mining Property" as defined in Section 3.2 of these regulations. The designation of "Active Mining Property" areas shall be determined as follows:

3.16.1. If the mining operation is producing coal from one seam under a Department of Commerce, Labor, and Environmental Resources permit, then that

operation will be designated as an "Active Mining Property." However, if the mining operation is producing coal from more than one seam under a Department of Commerce, Labor, and Environmental Resources permit, then each active seam will be designated as an "Active Mining Property."

3.16.2. If the mining operation is producing coal from one (1) seam at different portals and/or faces under one specific Department of Commerce, Labor, and Environmental Resources permit, then that operation will be designated as an "Active Mining Property." However, if the production of coal involves different mining techniques (e.g. surface, auger or deep mining method), or if mining sites are separate and generally independent, then such sites will be designated as separate "Active Mining Properties."

3.17. "Multiplier" means the "Present Worth of One (1) Per Period" for the life of the mining operation as defined in Section 3.9 of these regulations employing the capitalization rate determined in Section 4.1.9 of these regulations, as determined by a standard mid-year life Inwood table.

3.18. "Nonliquidity rate" means 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.

3.19. "Property tax component" means a rate reflecting a provision for returning to an investor a sum of money equal to property taxes paid over the economic life of an investment.

3.20. "Recapture component" means a rate reflecting a provision for returning to an investor a sum of money equal to his investment.

3.21. "Recovery rate" means the percentage of the marketable coal seam thickness that is recovered through the mining process.

3.22. "Reserves" means those seams of coal, or portions thereof, which are mineable and

contain recoverable coal, but are not active mining property.

3.23. "Risk rate" means a rate reflecting a return to an investor necessary to attract capital to an investment containing a possible loss of principal and/or interest.

3.24. "Royalty rate" means the royalty rates determined annually by the Tax Commissioner which are the current market royalty rates for arms-length, willing-buyer, willing-seller, transactions for each of the four (4) categories of coal mining operations derived in Section 4.1.6 of these rules. The royalty rates are deemed to be paid to each owner of a coal estate for all actively mined property, and are not generally considered to contain payments for property tax purposes.

3.25. "Safe rate" means a rate reflecting a return to an investor on an investment which has little, if any, likelihood of loss of principal or of loss in anticipated return on investment.

3.26. "Steam coal" means bituminous coal that is mineable but that is not suitable for making coke by industries that refine, smelt, and work with iron and/or steel.

3.27. "Summation discount component" means a discount rate expressed as the aggregate of a safe rate, risk rate, nonliquidity rate, and management rate.

3.28. "Thickness" means the measurement of all visible coal, including any thinner coals (splits) seen above or below the main block of coal. (Thickness is also known as seam height.)

3.29. "Unmineable coal" means coal which is not mineable as defined in Section 3.14 of these regulations.

3.30. "1800 tons per acre foot" means the specific gravity of bituminous coal ranges between 1.15 and 1.5 depending on rank, moisture and ash content, and averages 1.32.

$$1800 \text{ tons/ac.ft.} = \frac{62.4 \text{ lbs./ft.}^3 \times 43,560 \text{ ft.}^3}{2,000 \text{ lbs./ton}} \times 1.32$$

§110-1I-4. Valuation methods.

4.1. Method for determining value of active mining property.

4.1.1. General - The value of active mining property shall be the value per active acre mined times the number of active acres being mined. (Active mining property is described in Section 3.2 of these regulations.) In no case will the active mining property be valued at less than its value as reserve property.

4.1.2. Value per active acre - The value per active acre is determined through the following formula:

$$\begin{aligned} & \text{Thickness (ft)} \\ & \times 1800 \text{ tons per acre foot} \\ & \times \text{Recovery rate} \\ & \times \text{Royalty rate (steam) (deep or surface)} \\ & \times \% \text{ Steam coal market} \\ & \times \text{Multiplier} \\ & \text{(divided by) (Mine life (yrs))} \\ & \text{(Plus) Thickness (ft)} \\ & \quad \times 1800 \text{ tons per acre foot} \\ & \quad \times \text{Recovery rate} \\ & \quad \times \text{Royalty rate (metallurgical)} \\ & \quad \quad \text{(deep or surface)} \\ & \quad \times \% \text{ Metallurgical coal market} \\ & \quad \times \text{Multiplier} \\ & \quad \text{(divided by) (Mine life (yrs))} \end{aligned}$$

4.1.3. Thickness (ft.). - See definition in Section 3.28 of these regulations.

4.1.4. 1800 tons per acre foot. - See definition in Section 3.30 of these regulations.

4.1.5. Recovery rate. - See definition in Section 3.21 of these regulations.

4.1.6. Royalty rate. - For use in the formula prescribed by this regulation, the royalty rate(s) shall be determined for each of

the following four (4) different types of coal mining operations.

- 4.1.6.1. Deep mines, steam coal;
- 4.1.6.2. Deep mines, metallurgical coal;
- 4.1.6.3. Surface and auger mines, steam coal; and
- 4.1.6.4. Surface and auger mines, metallurgical coal.

These royalty rates shall be established annually by the Tax Commissioner after -a review of recorded, willing seller-willing buyer arms-length coal property leases that have occurred in the State of West Virginia during at least the last five (5) years prior to the appraisal date and through inspection of any other appropriate information. The review will place a greater emphasis on the information and leases transacted during the most recent years. The Tax Commissioner will maintain and publish this survey (report) on royalty rates (which will include the preliminary rates) on or before May 31 of each year; will accept written public comment on the survey until June 15 of each year; and issue the final royalty rates on or before July 1 of each year. This survey of royalty rates will be constructed (to the maximum possible extent) to indicate the following: (1) county in which leased property is located, (2) deed book, page number, (3) lessor-lessee, (4) date recorded, (5) acreage involved, (6) seams involved, (7) type of mining operation, and (8) consideration made. From this survey, the Tax Commissioner will select the royalty rate(s) that best typify such transactions. In order to convert percentage royalty rates into specific dollars per ton rates, the Tax Commissioner will separately conduct a review of West Virginia coal selling prices, and select specific selling price rate(s) based on prices best typifying activity in each appraisal year. The selected selling price(s) per ton when multiplied by the percentage royalty will result in the specific dollar per ton royalty rate factor.

4.1.7. % Steam and metallurgical coal market. - See discussion in Section 3.2 of these regulations.

4.1.8. Amount of active acres. - The maximum amount of active acres for each active mining property will be fifteen (15) years times acres mined for deep mines and five (5) years times acres mined for surface and auger mines.

4.1.9. Capitalization rate. - The capitalization rate will be developed considering the techniques found in general practice in the appraisal profession when developing an income approach valuation estimate. Following is a listing of terms and definitions employed in developing various capitalization rate indicators.

4.1.9.1. Discussion. - The capitalization rate as defined in Section 3.6 of these regulations will be determined annually by the Tax Commissioner through the use of generally accepted methods for estimating such rates. The rate so developed will consider a level-terminal income series which is indicative of active mining properties. The capitalization rate used to value active mining properties will be developed giving consideration to the following three (3) approaches:

4.1.9.1.a. Discount component.

4.1.9.1.a.1. Market comparison. - Sufficient sales data permitting, the market comparison technique will be employed as the primary indicator for an appropriate discount component. The market comparison discount component will be developed by dividing aggregate royalty rate -income streams adjusted for recapture by verified recorded arms-length sales transactions for active mining properties which have occurred in the State of West Virginia during the five (5) years prior to the annual appraisal date. The market comparison discount component selected will be based upon those rate indicators best typifying activity in this five (5) year research period. In selecting the discount component, greater emphasis will be given to information from arms-length sales

occurring during the most recent years of the study.

4.1.9.1.a.2. Summation technique. - In the absence of sufficient data to statistically support primary consideration of the market comparison technique, the summation techniques will be given primary consideration. The summation discount component will be developed reflecting the following four (4) major subcomponents:

4.1.9.1.a.2.a. Safe Rate

4.1.9.1.a.2.b. Risk Rate

4.1.9.1.a.2.c.

Nonliquidity Rate

4.1.9.1.a.2.d.

Management 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. 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 coal properties. 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." The "Nonliquidity Rate" will be developed through an annual survey to determine a reasonable estimate of time that coal properties remain on the market before being sold. The market time 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 "Nonliquidity Rate." The "Management Rate" will be developed through a survey of investment firms

to identify charges for the management of investment portfolios.

4.1.9.1.a.3.

Bands-of-investment. - Data permitting the bands-of-investment technique will be considered in conjunction with the two (2) previously mentioned discount estimate components.

4.1.9.1.b. Recapture component.

- Selection of a multiplier will be accomplished through access of a standard mid-year life Inwood table. The Inwood table has a factor for recapture built into the table coefficients. Inclusion of a recapture component in the capitalization rate is therefore not appropriate.

4.1.9.1.c. Property tax

component. - This component will be derived by multiplying the assessment rate by the statewide average of tax rates on Class III property. At the present time research indicates that royalty rates do not include property taxes as a component. Thus, this component will not be used in the capitalization rate as defined in these regulations unless the above described general practice of the coal industry changes.

4.1.9.1.d. The surveys

referenced in this section will be conducted and tentative results published by the Tax Commissioner on or before May 31 of each year. Public comment on such surveys will be accepted until June 15 of each year, and final results will be issued on or before July 1 of each year.

4.1.9.2. Valuation of reserves.

4.1.9.2.a. General. - Reserves

shall be valued considering a review of sales reflecting arms-length, willing buyer-willing seller transactions of such properties, and the market conditions in the region within which the property is located. The coal reserve value shall be the product of the reserve acres multiplied by the regional reserve value per acre for the region in which the property is located.

4.1.9.2.b. Review of reserve coal property sales. - The values per acre for reserves shall be established annually by the Tax Commissioner after review of recorded willing buyer-willing seller arms-length coal property sales that have occurred in the State of West Virginia during the five (5) years prior to the appraisal date, and through inspection of other appropriate information. This review will place a greater emphasis on the information and sales transacted during the most recent years. The Tax Commissioner will maintain and publish this survey (report) of coal property sales on or before May 31 of each year; will accept written public comment on the survey until June 15 of each year; and issue the final regional values per acre on or before July 1 of each year. This survey of reserve coal sales will be constructed to indicate the following: (1) county in which the property is located, (2) deed book, page number, (3) grantor-grantee, (4) date recorded, (5) acreage involved, (6) coal seams involved, (7) consideration, and (8) consideration per coal acre sold. From this survey, the Tax Commissioner will select the regional values per acre that best typify such transactions.

4.1.9.2.c. Reserve regions. - The counties containing mineable coal seams shall be grouped into five (5) regions based on type of coal seams, location, ownership patterns, mining activity, and sale prices of reserves.

4.1.9.2.c.1. Region 1. - Brooke, Harrison, Marion, Marshall, Monongalia and Ohio Counties.

4.1.9.2.c.2. Region 2 (no present mining). - Cabell, Calhoun, Doddridge, Hancock, Jackson, Pocahontas, Putnam, Roane, Tyler, Wetzel, Wirt, and Wood Counties and the northwest portion of Kanawha County (Jefferson, Union, Poca, and part of Big Sandy and Elk Districts that lie north of Elk River).

4.1.9.2.c.3. Region 3. - Barbour, Grant, Mineral, Preston, Randolph, Taylor, Tucker and Upshur Counties.

4.1.9.2.c.4. Region 4. - Braxton, Clay, Gilmer, Greenbrier, Lewis, Mason, Nicholas and Webster Counties.

4.1.9.2.c.5. Region 5. - Boone, Fayette, Lincoln, Logan, McDowell, Mercer, Mingo, Raleigh, Summers, Wayne and Wyoming Counties and the southeast portion of Kanawha County (Washington, Malden, Louden, Cabin Creek Districts, and part of Big Sandy and Elk Districts which lie south of Elk River).

If under any circumstances, the coal in any county in Region 2 becomes active, that county will be classified in the appropriate region.

4.1.9.2.d. Multiple seam parcels. - For parcels containing more than one mineable seam, the reserve portion of the seam(s) being mined are assigned a seam factor of one hundred percent (100%) of the value determined by the method summarized in Section 4.1.9.2. The remaining unmined, reserve seams shall then be ranked according to their mineable acreages. The largest reserve seam and the second largest reserve seam are each assigned a seam factor of one hundred percent (100%) of the value determined by the method summarized in Section 4.1.9.2 of these rules. The third largest unmined, reserve seam is valued using a seam factor of seventy-five percent (75%) of the amount as determined by the methods summarized in Section 4.1.9.2 of these rules. Subsequent reserve seams are each valued using a seam factor of fifty percent (50%) of the amount determined by the method summarized in Section 4.1.9.2. The final valuation of reserves on a parcel is the sum of each of the individual valuations.

4.1.9.3. Valuation of unmineable coal properties. - Properties in this category will be valued under one of the following categories:

4.1.9.3.a. Parcels in which each and every coal seam is unmineable or where each seam is partially unmineable and the remaining seam portion is mined out or barren,

will be valued at five dollars (\$5.00) per deed acre.

Example: 50 acre parcel - 3 coal seams
 -Seam #1 = 50.00 Ac Unmineable
 -Seam #2 = 20.00 Ac Unmineable,
 30.00 Ac Mined Out
 -Seam #3 = 40.00 Ac Unmineable,
 10.00 Ac Barren
 Unmineable Value = 50.00 Ac (deed) x \$5.00 = \$250.00

4.1.9.3.b. Parcels in which an acre or acres of unmineable coal exists in any seam will be valued at five dollars (\$5.00) times the amount of unmineable acreage in the seam with the least amount of unmineable acreage.

Example: 50 acre parcel - 3 coal seams
 -Seam #1 = 40.00 Ac Mineable,
 10.00 Ac Unmineable
 -Seam #2 = 30.00 Ac Mineable,
 20.00 Ac Unmineable
 -Seam #3 = 35.00 Ac Mineable,
 15.00 Ac Unmineable
 Unmineable Value = 10.00 Ac Unmineable x \$5.00 = \$50.00¹

¹This value will be added to the reserve mineable acreage value to complete the property's coal valuation.

4.1.9.4. Valuation of mined out/barren coal properties Properties in these categories will be valued under one of the following circumstances.

4.1.9.4.a. Parcels in which each and every coal seam is completely mined out and/or barren, will be valued at one dollar (\$1.00) per deed acre.

Example: 100 acre parcel - 2 coal seams
 -Seam #1 = 100 acres mined out
 -Seam #2 = 50 acres mined out,
 50 acres barren
 Value = 100 Ac (deed) x \$1.00 = \$100.00

4.1.9.4.b. Parcels in which an acre or acres of mined out/barren coal exists in any seam will be valued at one dollar (\$1.00)

times the amount of mined out/barren acreage in the seam with the least amount of mined out/barren acreage.

Example: 100 acre parcel - 2 coal seams
 -Seam #1 = 90 acres mineable,
 10 acres mined out
 -Seam #2 = 80 acres mineable,
 20 acres mined out
 Value = 10 Ac Mined Out/Barren x \$1.00 = \$10.00¹

¹This value will be added to the reserve mineable acreage value to complete the property's coal valuation.

4.1.9.5. Total coal valuation. - The total coal valuation for any coal parcel will involve the value for all active acres, all reserve acres and specific categories for unmineable and mined out/barren acreage. Thus, the total amount of coal acres valued for any parcel shall not be less than the amount of deed acres.

4.1.9.6. Summary of valuation methods.

4.1.9.6.a. Properties that involve coal shall be valued according to the following table.

Active Mining Property

Value Per Active Acre X Active Acres = Active Coal Real Property Value

Reserve Property

Regional Per Acre Reserve Value X

Reserve Acres X

Seam Factor =

Reserve Real Property Value

Unmineable Property

\$5 Per Acre X Deed Acres = Unmineable Coal Real Property Value

Mined Out Property

\$1 Per Acre X Deed Acres = Mined Out Coal Real Property Value

Barren Property

\$1 Per Acre X Deed Acres = Barren Coal Real Property Value

4.1.9.6.b. The total value for coal properties will be the sum of the value of active mining property, reserves unmineable, mined-out and barren acres.

4.1.9.6.c. If other real property interests are owned in the coal property acreage, then the value of those additional interests shall be added to the total value of the coal properties to arrive at the total real property value.

4.1.9.7. Leasehold interests. - These regulations generally attribute the value of coal to the owner of the coal property. In those circumstances, however, where the owner of the property is subject to a lease requiring the owner to permit mining at royalty rates substantially below current market rates, the owner may petition the Assessor, and on appeal, the Tax Commissioner, to attribute a portion of the value of the coal determined by this formula to the leaseholder.

4.1.9.8. Active farm properties. - The coal rights, that are part of a "fee" estate where the use of the surface has qualified as an active farm, will be valued in the following manner: (For a definition of an active farm see §110-1R-1 et seq.)

4.1.9.8.a. Where income or royalty is not derived from the coal rights (coal rights not leased or non-producing) the coal interest shall not be valued.

4.1.9.8.b. Where income or royalty is derived from the coal rights (coal

rights leased or producing) the coal interest shall be valued as follows:

4.1.9.8.b.1. Fee estates, where the annual wholesale value of farm commodities or products is fifty percent (50%) or more of the usual annual gross income from all uses of the property, shall be subject to farm use valuation. Thus coal interests shall not be valued under this situation.

4.1.9.8.b.2. Fee estates, where the annual wholesale value of farm commodities or products is less than fifty percent (50%) of the usual annual gross income from all uses of the property, shall be valued by adding the applicable coal values to the surface farm use value.

4.1.9.9. Property reports. - On or before September 1 of each year the producer and coal owner will be required to file reports with the State Tax Commissioner. These reports will be designed so that producing properties will be reported by the producer (with acknowledgement to the coal owner) and reserve properties will be reported by the coal owner.

WEST VIRGINIA LEGISLATIVE REGULATIONS
DEPARTMENT OF TAX AND REVENUE
TITLE 110
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AD VALOREM PROPERTY TAX PURPOSES

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1.2 Authority. - W. Va. Code § 11-1C-5(b).

1.3 Filing Date. -

1.4 Effective Date. - July 1, 1991.

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2.1 Active.

2.2 Reserve.

2.3 Unmineable.

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§ 110-11-3. Definitions. - As used in these regulations and unless the context clearly requires a different meaning, the following shall have the meaning ascribed herein, and shall apply in the singular and in the plural.

3.1 "Acres mined" means the average annual production, as defined in Section 3.3 of these regulations, divided by the product of the thickness (in feet) of the coal seam being mined, as detailed in mining permit reports, times eighteen hundred (1800) tons per acre foot, times the recovery rate according to the actual recovery of coal per acre being experienced at the mining operation.

$$\frac{\text{Average Annual Production}}{\text{Thickness} \times 1800 \times \text{Recovery Rate}} = \text{Annual Acres Mined}$$

3.2 "Active mining property" means a mineable seam of coal on a parcel involved in a mining operation. For the purposes of determining active mining property all contiguous parcels regardless of ownership, that are under lease and/or involved in the permitted operation, shall be treated as active mining property. The maximum active mining portion for each seam for each mining operation on a parcel is fifteen (15) years times the acres mined (as defined in Section 3.1 of these regulations) for deep mines or five (5) years times the acres mined for surface and auger mines. If the mineable acreage remaining in the seam(s) being mined is less than the maximum amounts listed above, then the remaining acreage will be considered the active mining property. If more than one seam on a parcel is being actively mined, then each such seam represents separate active mining property. In the application of the herein provided valuation formula on "Active Mining Property," the appropriate formula calculation will be based upon the actual market to which the coal from the tract and seam is currently being sold, whether it is "Metallurgical" or "Steam."

If more than one mining operation is mining a given coal seam on the same parcel, then each such mining operation has a separate active mining property. However, under no circumstances shall the sum of the active acres for all mining operations on each seam exceed the number of acres on a parcel. As necessary, the Commissioner shall apportion the number of acres for each mining operation, based upon a review of relevant leases, and the respective rates of average annual production.

3.3 "Average annual production" means the average annual rate of coal production as determined by a weighted average of three (3) years' production that has occurred between January 1 and December 31 of the most current calendar years.

The weighted average shall be determined by multiplying the most recent year's production by four tenths (4/10), each of the previous two (2) years' production multiplied by three tenths (3/10), and the resulting three (3) figures added together to arrive at the average annual production. However, if there is no production during the most recent year then the property will be valued as reserve.

When there has been no production during the second or third most recent year, the production for the current year will be factored by five tenths (5/10) and the production for the earlier year in which production existed will be factored by five tenths (5/10) and the resulting two figures will be added together to arrive at the average annual production.

If there was no production in both the second and third most recent years then the production for the most recent year will be factored by 1.0 and the resulting figure will be the average annual production.

3.4 "Bands of investment discount component" means a discount rate derived by assigning rates to various debt and equity investment financing tiers and summing these rates, weighted by their respective percentages of total financing.

3.5 "Barren" means the fee properties, mineral properties and/or those coal properties where the coal rights are owned, and the existence of one or more coal seams has not been established.

3.6 "Capitalization rate" means the rate used to convert an estimate of income into an estimate of market value. (For further explanation see Section 4.1.9 of these regulations.)

3.7 "Discount component" means a rate reflecting a provision for returning to an investor a sum of money equal to the aggregate of the anticipated return-on-investment over the economic life of an investment.

3.8 "Economic life method of recapture" means a method of developing a recapture rate by estimating the period of time an investment will produce a return and estimating an equal periodic rate of recapture of the investment over this return period.

3.9 "Life of mining operation" means the life of a deep mining operation shall be fifteen (15) years, or the number of years required to exhaust the seam at the average annual production (Section 3.3 of these regulations) rate, whichever is less. The life of a surface or auger mining operation shall be five (5) years, or the number of years required to exhaust the seam at the average annual production rate, whichever is less. Fractional years will be rounded to nearest whole number.

3.10 "Management rate" means a rate reflecting a return to an investor for the management of similar investment portfolios.

3.11 "Market comparison discount" means a discount rate derived by dividing income net of recapture and property taxes by the arms-length selling price of the property.

3.12 "Market comparison method of recapture" means a recapture rate estimated by dividing income net of return on investment and property taxes by the arms-length selling price of the property.

3.13 "Metallurgical coal" means bituminous coal that is suitable for making coke by industries that refine, smelt, and work with iron and/or steel.

3.14 "Mineable coal" means coal which is so situated that it may be mined using generally accepted mining practices and suitable equipment and which is of such quality so as to be commercially saleable (as either mined coal or as a recoverable reserve). Furthermore, unless there is evidence to the contrary,

coal seams which are of a thickness less than thirty inches (30") will not be considered or classified as mineable.

3.15 "Mined-out" means a seam of coal, or any portion thereof, which is depleted by prior mining operations and which is not mineable by modern technology.

3.16 "Mining operation" means an enterprise engaged in actively obtaining or preparing to obtain coal or its by-products from the earth's crust, including underground, surface and auger mines. Each mining operation may have more than one (1) area designated as "Active Mining Property" as defined in Section 3.2 of these regulations. The designation of "Active Mining Property" areas shall be determined as follows:

3.16.1 If the mining operation is producing coal from one seam under a Department of Commerce, Labor, and Environmental Resources permit, then that operation will be designated as an "Active Mining Property." However, if the mining operation is producing coal from more than one seam under a Department of Commerce, Labor, and Environmental Resources permit, then each active seam will be designated as an "Active Mining Property."

3.16.2 If the mining operation is producing coal from one (1) seam at different portals and/or faces under one specific Department of Commerce, Labor, and Environmental Resources permit, then that operation will be designated as an "Active Mining Property." However, if the production of coal involves different mining techniques (e.g. surface, auger or deep mining method), or if mining sites are separate and generally independent, then such sites will be designated as separate "Active Mining Properties."

3.17 "Multiplier" means the "Present Worth of One (1) Per Period" for the life of the mining operation as defined in Section 3.9 of these regulations employing the capitalization rate determined in Section 4.1.9 of these regulations, as determined by a standard mid-year life Inwood table.

3.18 "Nonliquidity rate" means 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.

3.19 "Property tax component" means a rate reflecting a provision for returning to an investor a sum of money equal to property taxes paid over the economic life of an investment.

3.20 "Recapture component" means a rate reflecting a provision for returning to an investor a sum of money equal to his investment.

3.21 "Recovery rate" means the percentage of the marketable coal seam thickness that is recovered through the mining process.

3.22 "Reserves" means those seams of coal, or portions thereof, which are mineable and contain recoverable coal, but are not active mining property.

3.23 "Risk rate" means a rate reflecting a return to an investor necessary to attract capital to an investment containing a possible loss of principal and/or interest.

3.24 "Royalty rate" means the royalty rates determined annually by the Tax Commissioner which are the current market royalty rates for arms-length, willing-buyer, willing-seller, transactions for each of the four (4) categories of coal mining operations derived in Section 4.1.6 of these rules. The royalty rates are deemed to be paid to each owner of a coal estate for all actively mined property, and are not generally considered to contain payments for property tax purposes.

3.25 "Safe rate" means a rate reflecting a return to an investor on an investment which has little, if any, likelihood of loss of principal or of loss in anticipated return on investment.

3.26 "Steam coal" means bituminous coal that is mineable but that is not suitable for making coke by industries that refine, smelt, and work with iron and/or steel.

3.27 "Summation discount component" means a discount rate expressed as the aggregate of a safe rate, risk rate, nonliquidity rate, and management rate.

3.28 "Thickness" means the measurement of all visible coal, including any thinner coals (spliffs) seen above or below the main block of coal. (Thickness is also known as seam height.)

3.29 "Unmineable coal" means coal which is not mineable as defined in Section 3.14 of these regulations.

3.30 "1800 tons per acre foot" means the specific gravity of bituminous coal ranges between 1.15 and 1.5 depending on rank, moisture and ash content, and averages 1.32.

$$1800 \text{ tons/ac.ft.} = \frac{62.4 \text{ lbs./ft.}^3 \quad 43,560 \text{ ft.}^3}{2,000 \text{ lbs./ton} \times \text{ac/ft.} \times 1.32}$$

§ 110-11-4. Valuation methods.

4.1 Method for determining value of active mining property.

4.1.1 General. - The value of active mining property shall be the value per active acre mined times the number of active acres being mined. (Active mining property is described in Section 3.2 of these regulations.) In no case will the active mining property be valued at less than its value as reserve property.

4.1.2 Value per active acre. - The value per active acre is determined through the following formula:

Thickness (ft)
x 1800 tons per acre foot

x Recovery rate
x Royalty rate (steam) (deep or surface)
x % Steam coal market
x Multiplier
(divided by) (Mine life (yrs))
(Plus) Thickness (ft)
x 1800 tons per acre foot
x Recovery rate
x Royalty rate (metallurgical)
(deep or surface)
x % Metallurgical coal market
x Multiplier
(divided by) (Mine life (yrs))

4.1.3 Thickness (ft.). - See definition in Section 3.28 of these regulations.

4.1.4 1800 tons per acre foot. - See definition in Section 3.30 of these regulations.

4.1.5 Recovery rate. - See definition in Section 3.21 of these regulations.

4.1.6 Royalty rate. - For use in the formula prescribed by this regulation, the royalty rate(s) shall be determined for each of the following four (4) different types of coal mining operations.

4.1.6.1 Deep mines, steam coal;

4.1.6.2 Deep mines, metallurgical coal;

4.1.6.3 Surface and auger mines, steam coal; and

4.1.6.4 Surface and auger mines, metallurgical coal.

These royalty rates shall be established annually by the Tax Commissioner after a review of recorded, willing seller-willing buyer arms-length coal property leases that have occurred in the State of West Virginia during at least the last five (5) years prior to the appraisal date and through inspection of any other appropriate information. The review will place a greater emphasis on the information and leases transacted during the most recent years. The Tax Commissioner will maintain and publish this survey (report) on royalty rates (which will include the preliminary rates) on or before May 31 of each year; will accept written public comment on the survey until June 15 of each year; and issue the final royalty rates on or before July 1 of each year. This survey of royalty rates will be constructed (to the maximum possible extent) to indicate the following: (1) county in which leased property is located, (2) deed book, page number, (3) lessor-lessee, (4) date recorded, (5) acreage involved, (6) seams involved, (7) type of mining operation, and (8) consideration made. From this survey, the Tax Commissioner will select the royalty rate(s) that best typify such transactions. In order to convert percentage royalty rates into specific dollars per ton rates, the Tax Commissioner will separately conduct a review of West Virginia coal selling prices, and select specific selling price

rate(s) based on prices best typifying activity in each appraisal year. The selected selling price(s) per ton when multiplied by the percentage royalty will result in the specific dollar per ton royalty rate factor.

4.1.7 % Steam and metallurgical coal market. - See discussion in Section 3.2 of these regulations.

4.1.8 Amount of active acres. - The maximum amount of active acres for each active mining property will be fifteen (15) years times acres mined for deep mines and five (5) years times acres mined for surface and auger mines.

4.1.9 Capitalization rate. - The capitalization rate will be developed considering the techniques found in general practice in the appraisal profession when developing an income approach valuation estimate. Following is a listing of terms and definitions employed in developing various capitalization rate indicators.

4.1.9.1 Discussion. - The capitalization rate as defined in Section 3.6 of these regulations will be determined annually by the Tax Commissioner through the use of generally accepted methods for estimating such rates. The rate so developed will consider a level-terminal income series which is indicative of active mining properties. The capitalization rate used to value active mining properties will be developed giving consideration to the following three (3) approaches:

4.1.9.1.a Discount component.

4.1.9.1.a.1 Market comparison. - Sufficient sales data permitting, the market comparison technique will be employed as the primary indicator for an appropriate discount component. The market comparison discount component will be developed by dividing aggregate royalty rate income streams adjusted for recapture by verified recorded arms-length sales transactions for active mining properties which have occurred in the State of West Virginia during the five (5) years prior to the annual appraisal date. The market comparison discount component selected will be based upon those rate indicators best typifying activity in this five (5) year research period. In selecting the discount component, greater emphasis will be given to information from arms-length sales occurring during the most recent years of the study.

4.1.9.1.a.2 Summation technique. - In the absence of sufficient data to statistically support primary consideration of the market comparison technique, the summation techniques will be given primary consideration. The summation discount component will be developed reflecting the following four (4) major subcomponents:

4.1.9.1.a.2.a Safe Rate

4.1.9.1.a.2.b Risk Rate

4.1.9.1.a.2.c Nonliquidity Rate

4.1.9.1.a.2.d Management 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. 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 coal properties. 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." The "Nonliquidity Rate" will be developed through an annual survey to determine a reasonable estimate of time that coal properties remain on the market before being sold. The market time 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 "Nonliquidity Rate." The "Management Rate" will be developed through a survey of investment firms to identify charges for the management of investment portfolios.

4.1.9.1.a.3 Bands-of-investment. - Data permitting the bands-of-investment technique will be considered in conjunction with the two (2) previously mentioned discount estimate components.

4.1.9.1.b Recapture component. - Selection of a multiplier will be accomplished through access of a standard mid-year life Inwood table. The Inwood table has a factor for recapture built into the table coefficients. Inclusion of a recapture component in the capitalization rate is therefore not appropriate.

4.1.9.1.c Property tax component. - This component will be derived by multiplying the assessment rate by the statewide average of tax rates on Class III property. At the present time research indicates that royalty rates do not include property taxes as a component. Thus, this component will not be used in the capitalization rate as defined in these regulations unless the above described general practice of the coal industry changes.

4.1.9.1.d The surveys referenced in this section will be conducted and tentative results published by the Tax Commissioner on or before May 31 of each year. Public comment on such surveys will be accepted until June 15 of each year, and final results will be issued on or before July 1 of each year.

4.1.9.2 Valuation of reserves.

4.1.9.2.a General. - Reserves shall be valued considering a review of sales reflecting arms-length, willing buyer-willing seller transactions of such properties, and the market conditions in the region within which the property is located. The coal reserve value shall be the product of the reserve acres multiplied by the regional reserve value per acre for the region in which the property is located.

4.1.9.2.b Review of reserve coal property sales. - The values per acre for reserves shall be established annually by the Tax

Commissioner after review of recorded willing buyer-willing seller arms-length coal property sales that have occurred in the State of West Virginia during the five (5) years prior to the appraisal date, and through inspection of other appropriate information. This review will place a greater emphasis on the information and sales transacted during the most recent years. The Tax Commissioner will maintain and publish this survey (report) of coal property sales on or before May 31 of each year; will accept written public comment on the survey until June 15 of each year; and issue the final regional values per acre on or before July 1 of each year. This survey of reserve coal sales will be constructed to indicate the following: (1) county in which the property is located, (2) deed book, page number, (3) grantor-grantee, (4) date recorded, (5) acreage involved, (6) coal seams involved, (7) consideration, and (8) consideration per coal acre sold. From this survey, the Tax Commissioner will select the regional values per acre that best typify such transactions.

4.1.9.2.c Reserve regions. - The counties containing mineable coal seams shall be grouped into five (5) regions based on type of coal seams; location, ownership patterns, mining activity, and sale prices of reserves.

4.1.9.2.c.1 Region 1. - Brooke, Harrison, Marion, Marshall, Monongalia and Ohio Counties.

4.1.9.2.c.2 Region 2 (no present mining). - Cabell, Calhoun, Doddridge, Hancock, Jackson, Pocahontas, Putnam, Roane, Tyler, Wetzel, Wirt, and Wood Counties and the northwest portion of Kanawha County (Jefferson, Union, Poca, and part of Big Sandy and Elk Districts that lie north of Elk River).

4.1.9.2.c.3 Region 3. - Barbour, Grant, Mineral, Preston, Randolph, Taylor, Tucker and Upshur Counties.

4.1.9.2.c.4 Region 4. - Braxton, Clay, Gilmer, Greenbrier, Lewis, Mason, Nicholas and Webster Counties.

4.1.9.2.c.5 Region 5. - Boone, Fayette, Lincoln, Logan, McDowell, Mercer, Mingo, Raleigh, Summers, Wayne and Wyoming Counties and the southeast portion of Kanawha County (Washington, Malden, Loudon, Cabin Creek Districts, and part of Big Sandy and Elk Districts which lie south of Elk River).

If under any circumstances, the coal in any county in Region 2 becomes active, that county will be classified in the appropriate region.

4.1.9.2.d Multiple seam parcels. - For parcels containing more than one mineable seam, the reserve portion of the seam(s) being mined are assigned a seam factor of one hundred percent (100%) of the value determined by the method summarized in Section 4.1.9.2. The remaining unmined, reserve seams shall then be ranked according to their mineable acreages. The largest reserve seam and the second largest reserve seam are each assigned a seam factor of one hundred percent (100%) of the value determined by the method summarized in Section 4.1.9.2 of these rules. The third largest unmined, reserve seam is valued using a seam factor of seventy-five percent (75%) of the amount as

determined by the methods summarized in Section 4.1.9.2 of these rules. Subsequent reserve seams are each valued using a seam factor of fifty percent (50%) of the amount determined by the method summarized in Section 4.1.9.2. The final valuation of reserves on a parcel is the sum of each of the individual valuations.

4.1.9.3 Valuation of unmineable coal properties. - Properties in this category will be valued under one of the following categories:

4.1.9.3.a Parcels in which each and every coal seam is unmineable or where each seam is partially unmineable and the remaining seam portion is mined out or barren, will be valued at five dollars (\$5.00) per deed acre.

Example: 50 acre parcel - 3 coal seams

-Seam #1 = 50.00 Ac Unmineable

-Seam #2 = 20.00 Ac Unmineable,
30.00 Ac Mined Out

-Seam #3 = 40.00 Ac Unmineable,
10.00 Ac Barren

Unmineable Value = 50.00 Ac (deed) x \$5.00 = \$250.00

4.1.9.3.b Parcels in which an acre or acres of unmineable coal exists in any seam will be valued at five dollars (\$5.00) times the amount of unmineable acreage in the seam with the least amount of unmineable acreage.

Example: 50 acre parcel - 3 coal seams

-Seam #1 = 40.00 Ac Mineable,
10.00 Ac Unmineable

-Seam #2 = 30.00 Ac Mineable,
20.00 Ac Unmineable

-Seam #3 = 35.00 Ac Mineable,
15.00 Ac Unmineable

Unmineable Value = 10.00 Ac Unmineable x \$5.00 = \$50.00¹

¹This value will be added to the reserve mineable acreage value to complete the property's coal valuation.

4.1.9.4 Valuation of mined out/barren coal properties. - Properties in these categories will be valued under one of the following circumstances.

4.1.9.4.a Parcels in which each and every coal seam is completely mined out and/or barren, will be valued at one dollar (\$1.00) per deed acre.

Example: 100 acre parcel - 2 coal seams

-Seam #1 = 100 acres mined out

-Seam #2 = 50 acres mined out,
50 acres barren

Value = 100 Ac (deed) x \$1.00 = \$100.00

4.1.9.4.b Parcels in which an acre or acres of mined out/barren coal exists in any seam will be valued at one dollar (\$1.00) times the amount of mined out/barren acreage in the seam with the least amount of mined out/barren acreage.

Example: 100 acre parcel = 2 coal seams
-Seam #1 = 90 acres mineable,
 10 acres mined out
-Seam #2 = 80 acres mineable,
 20 acres mined out
Value = 10 Ac Mined Out/Barren x \$1.00 = \$10.00¹

¹This value will be added to the reserve mineable acreage value to complete the property's coal valuation.

4.1.9.5 Total coal valuation. - The total coal valuation for any coal parcel will involve the value for all active acres, all reserve acres and specific categories for unmineable and mined out/barren acreage. Thus, the total amount of coal acres valued for any parcel shall not be less than the amount of deed acres.

4.1.9.6 Summary of valuation methods.

4.1.9.6.a Properties that involve coal shall be valued according to the following table.

Active Mining Property

Value Per Active Acre X Active Acres = Active Coal Real Property Value

Reserve Property

Regional Per Acre Reserve Seam Reserve Real
Reserve Value X Acres X Factor = Property Value

Unmineable Property

\$5 Per Acre X Deed Acres = Unmineable Coal Real Property Value

Mined Out Property

\$1 Per Acre X Deed Acres = Mined Out Coal Real Property Value

Barren Property

\$1 Per Acre X Deed Acres = Barren Coal Real Property Value

4.1.9.6.b The total value for coal properties will be the sum of the value of active mining property, reserves unmineable, mined-out and barren acres.

4.1.9.6.c If other real property interests are owned in the coal property acreage, then the value of those additional interests shall be

added to the total value of the coal properties to arrive at the total real property value.

4.1.9.7 Leasehold interests. - These regulations generally attribute the value of coal to the owner of the coal property. In those circumstances, however, where the owner of the property is subject to a lease requiring the owner to permit mining at royalty rates substantially below current market rates, the owner may petition the Assessor, and on appeal, the Tax Commissioner, to attribute a portion of the value of the coal determined by this formula to the leaseholder.

4.1.9.8 Active farm properties. - The coal rights, that are part of a "fee" estate where the use of the surface has qualified as an active farm, will be valued in the following manner: (For a definition of an active farm see § 110-1R-1 et seq.)

4.1.9.8.a Where income or royalty is not derived from the coal rights (coal rights not leased or non-producing) the coal interest shall not be valued.

4.1.9.8.b Where income or royalty is derived from the coal rights (coal rights leased or producing) the coal interest shall be valued as follows:

4.1.9.8.b.1 Fee estates, where the annual wholesale value of farm commodities or products is fifty percent (50%) or more of the usual annual gross income from all uses of the property, shall be subject to farm use valuation. Thus coal interests shall not be valued under this situation.

4.1.9.8.b.2 Fee estates, where the annual wholesale value of farm commodities or products is less than fifty percent (50%) of the usual annual gross income from all uses of the property, shall be valued by adding the applicable coal values to the surface farm use value.

4.1.9.9 Property reports. - On or before September 1 of each year the producer and coal owner will be required to file reports with the State Tax Commissioner. These reports will be designed so that producing properties will be reported by the producer (with acknowledgement to the coal owner) and reserve properties will be reported by the coal owner.



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(Plus all the volunteer
help we can get)

STATE OF WEST VIRGINIA

SECRETARY OF STATE

Building 1, Suite 157-K
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TO: John Montgomery

AGENCY: Tax Department

FROM: JUDY COOPER, DIRECTOR, ADMINISTRATIVE LAW DIVISION

DATE: October 7, 1992

THE ATTACHED RULE RECENTLY FILED BY YOUR AGENCY HAS BEEN ENTERED INTO OUR COMPUTER SYSTEM. PLEASE REVIEW, PROOF AND RETURN IT WITH ANY CORRECTIONS. IF THERE ARE NO CORRECTIONS, PLEASE SIGN THIS MEMO AND RETURN IT TO THIS OFFICE. YOU WILL BE SENT A FINAL VERSION OF THE RULE FOR YOUR RECORDS.

PLEASE RETURN EITHER THE CORRECTED RULE OR THIS FORM WITHIN TEN (10) WORKING DAYS OF THE DATE YOU RECEIVED THIS REQUEST. CALL IF YOU HAVE ANY QUESTIONS.

SERIES: 11 TITLE: 110 Tax Department

* THE ATTACHED RULE HAS BEEN REVIEWED AND IS CORRECT.

SIGNED: [Signature]

TITLE OF PERSON SIGNING: Staff Attorney

DATE: 10/28/92

* THE ATTACHED RULE HAS BEEN REVIEWED AND NEEDS CORRECTING. THE CORRECTIONS HAVE BEEN MARKED.

SIGNED: _____

TITLE OF PERSON SIGNING: _____

DATE: _____

NOTE: IF YOU ARE NOT THE PERSON WHO HANDLES THIS RULE, PLEASE FORWARD TO THE CORRECT PERSON.