

**WEST VIRGINIA  
SECRETARY OF STATE  
NATALIE E. TENNANT  
ADMINISTRATIVE LAW DIVISION**

Form #3

Do Not Mark In This Box

FILED IN THE OFFICE OF  
THE SECRETARY OF STATE  
THIS DATE 7/29/2015  
ADMINISTRATIVE LAW DIVISION

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE  
AND  
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: State Tax Department TITLE NUMBER: 110

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

AMENDMENT TO AN EXISTING RULE: YES  NO


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 RULE BEING PROPOSED: \_\_\_\_\_

TITLE OF RULE BEING PROPOSED: \_\_\_\_\_

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE FOR THEIR REVIEW.



Authorized Signature

APPENDIX B

**FISCAL NOTE FOR PROPOSED RULES**

Rule Title: VALUATION OF TIMBERLAND AND MANAGED TIMBERLAND

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Type of Rule:  Legislative  Interpretive  Procedural

Agency: State Tax Department, Legal Division

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Address: P.O. Box 1005  
Charleston, WV 25324

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Phone Number: 304-558-5330 Email: [Mark.S.Morton@wv.gov](mailto:Mark.S.Morton@wv.gov)

**Fiscal Note Summary**

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

The legislative rule establishes the procedures for the classification and valuation of timberland and managed timberland. The proposed changes to the rule will result in shifting between the grading of parcels in the managed timberland program. This will cause the State Tax Department to have to re-enter parcel acres into the computer system and will require either temporary assistance or overtime.

**Fiscal Note Detail**

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	25,000.00	25,000.00	0.00
Personal Services	0.00	0.00	0.00
Current Expenses	0.00	0.00	0.00
Repairs & Alterations	0.00	0.00	0.00
Assets	0.00	0.00	0.00
Other	0.00	0.00	0.00
2. Estimated Total Revenues	25,000.00	25,000.00	0.00

Rule Title: VALUATION OF TIMBERLAND AND MANAGED TIMBERLAND

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VALUATION OF TIMBERLAND AND MANAGED TIMBERLAND

Rule Title: \_\_\_\_\_

3. **Explanation of above estimates (including long-range effect):**  
Please include any increase or decrease in fees in your estimated total revenues.

While local revenues might be impacted somewhat by the proposed rule changes, state revenues should be only minimally impacted. It is anticipated that the State Tax Department will re-enter parcel acres into the computer system using overtime for current employees. It is also anticipated that this will take two years to convert all the parcels once the rule changes are approved.

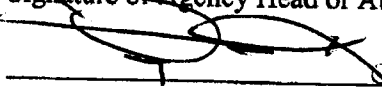
**MEMORANDUM**

Please identify any areas of vagueness, technical defects, reasons the proposed rule would not have a fiscal impact, and/or any special issues not captured elsewhere on this form.

- A. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of Citizens.  
From the perspective of the Tax Department, there could be a minimal decrease in local property tax revenues.
- B. Economic Impact on Citizens/Public at Large.  
From the perspective of the Tax Department, there could be a minimal decrease on the property taxes of managed timberland owners.

Date: 6-11-15

Signature of Agency Head or Authorized Representative

  
\_\_\_\_\_



State Tax Department - Legal Division, P.O. Box 1005, Charleston, WV

304-558-5330 (tel) 304-558-8728 (fax)

Mark.S.Morton@wv.gov

- g. **IF DIFFERENT FROM ITEM 'f'**, please give **Name, title, address and phone number(s)** of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

\_\_\_\_\_  
\_\_\_\_\_

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

\_\_\_\_\_ N/A \_\_\_\_\_  
\_\_\_\_\_

- b. Date of hearing or comment period:

\_\_\_\_\_ N/A \_\_\_\_\_

- c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

\_\_\_\_\_ N/A \_\_\_\_\_

- d. Attach findings and determinations and reasons:

Attached \_\_\_\_\_ N/A \_\_\_\_\_

W.Va. CSR § 110-1H-1 *et seq.*

**TITLE 110  
WEST VIRGINIA LEGISLATIVE RULE  
DEPARTMENT OF TAX AND REVENUE  
DIVISION OF TAX**

**SERIES 1H**

**VALUATION OF TIMBERLAND AND MANAGED TIMBERLAND**

**STATEMENT OF CIRCUMSTANCES  
AND  
SUMMARY OF RULE**

West Virginia Code § 11-1C-11b requires the Tax Commissioner to establish by legislative rule two methodologies for determining the appraised value of managed timberland as well as the methodologies to determine the appraised value of timberland. The development of more accurate methods of mapping, grading land productivity and establishing the basis of determining timber growth rates make rule revisions necessary.

This rule revises the methodologies for determining the appraised value of managed timberland and timberland as required by West Virginia Code § 11-1C-11b.

RECEIVED

JUL 09 2015

WV TAX DEPARTMENT  
LEGAL DIVISION



## West Virginia Forestry Association

P.O. Box 718 Ripley, WV 25271 Phone: 304-372-1955 Email: wvfa@wvfa.org

July 7, 2015

Legal Division  
State Tax Departments  
P O Box 1005  
Charleston, WV 25324-10058

To Whom It May Concern:

Please find herewith the comments of the West Virginia Forestry Association, Inc. on the Title 110, Series 1H proposed amendments to legislative rule (valuation of timberland and Managed Timberland) filed June 11, 2015 with the Secretary of State by the WV State Tax Department.

If you have questions, please do not hesitate to contact WVFA.

Sincerely,

Frank Stewart  
Executive Director

enclosure

**COMMENTS OF THE WEST VIRGINIA FORESTRY ASSOCIATION ON THE TITLE 110, SERIES 1H PROPOSED AMENDMENTS TO LEGISLATIVE RULE (VALUATION OF TIMBERLAND AND MANAGED TIMBERLAND) FILED JUNE 11, 2015 WITH THE SECRETARY OF STATE BY THE WV STATE TAX DEPARTMENT**

The West Virginia Forestry Association (the Association) appreciates the opportunity to provide the following official comments on the above-referenced proposed amended rule. The Association particularly appreciated and thanks the State Tax Department for the opportunity to provide input into initial drafts of the rule amendments beginning in 2014, and believes that the proposed amended rule is a significant improvement over the existing one. However, as noted *infra*, the Association remains concerned about a few aspects of the amended rule as proposed.

**General Comments**

The existing rule, as written, contained several references to stumpage prices, income projections, management and tax costs, which led to confusion in the actual calculation of taxable values of managed timberland. Most notably, there has been confusion about the need to consistently convert the values of all such data items to real, instead of nominal, values. As a result, the Association offered extensive replacement language in the form of express, detailed language describing the valuation computation process, to avoid such confusion. By retaining some of the prior language, and not adopting that replacement language, the proposed amendment remains susceptible to the same confusion. However, as long as the rule, as amended, clearly and unambiguously requires the conversion of all data, on which the valuation computations rely, to real values, instead of nominal values, the retention of some of the potentially confusing language about particular data items should not condemn the resulting amended rule to the same potential for confusion as to which it has suffered in the past.

**Specific Comments to Proposed Rule**

**Page Number  
of Proposed  
Rule**

<b>§110-1H-10. Appraised Value Per Acre of Managed Timberland. ....</b>	<b>10</b>
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**Comment 1:** The proposed rule retains arbitrary minimum values per acre, stated in dollars per acre for each soil grade and each tax rate class, thus distorting the application of the income-based valuation method, as expressly required by the statute and as otherwise provided throughout the rule. See, WV Code §§ 11-1C-5(a)(2)(B) and 11-1C-11b. As a result, the inclusion of such minimum values per acre improperly alter, add to and amend the substantive terms of the statute, governing the methodology for determination of the taxable values of managed timberland. Thus, inclusion of such minimum value provisions represents an invalid exercise of State Tax Commissioner's rule-making authority by purporting to make substantive law beyond the clear terms of the governing statutes, and the fact that such provisions were contained in previously approved legislative rules does not otherwise validate them. See, *CNG Transmission v. Craig*, 211 W.Va. 170, 564 S.E.2d 167 (2002) (invalidating a legislative rule ten years after its legislatively approved promulgation); and *Syncor International Corp. v. Palmer*, 208 W.Va. 658, 542 S.E.2d 479 (2001) (invalidating a legislative rule a full twelve years after its legislatively approved promulgation).

Thus, the Association suggests changing Section 10 to read as follows:

§ 110-1H-10. Appraised Value Per Acre of Managed Timberland.

Notwithstanding, anything herein contained to the contrary, the appraised value per acre of managed timberland is the present worth of an infinite periodic net income from the land 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, all of which are to be applied using real values, and not nominal values. However, subject to the provisions of subsection 2.2 of this rule, the appraised value per acre for any grade of managed timberland in any county shall not be less than the appraised value of farm woodlots of the comparable grade in that same county. The appraised value is the net present worth of all revenues and costs, stated in real terms, associated with growing timber on the land in perpetuity. Net income is the difference between projected revenues (e.g. harvest revenues in years 35, 55 and 80) and projected costs (e.g. management costs) all stated in real terms.

July 7, 2015

Respectfully submitted,

Frank Stewart, RF, LCP, CNM  
Executive Director

## **PUBLIC COMMENTS**

### **RE: PROPOSED "MANAGED TIMBERLAND" REGULATIONS**

The West Virginia Tax Department received only one comment on the proposed rule. That comment came from the West Virginia Forestry Association, and contains a number of points.

The commenter's unnumbered "general comments" read as follows:

#### **General Comments**

The existing rule, as written, contained several references to stumpage prices, income projections, management and tax costs, which led to confusion in the actual calculation of taxable values of managed timberland. Most notably, there has been confusion about the need to consistently convert the values of all such data items to real, instead of nominal, values. As a result, the Association offered extensive replacement language in the form of express, detailed language describing the valuation computation process, to avoid such confusion. By retaining some of the prior language, and not adopting that replacement language, the proposed amendment remains susceptible to the same confusion. However, as long as the rule, as amended, clearly and unambiguously requires the conversion of all data, on which the valuation computations rely, to real values, instead of nominal values, the retention of some of the potentially confusing language about particular data items should not condemn the resulting amended rule to the same potential for confusion as to which it has suffered in the past.

Response to the unnumbered "general Comment":

The rule has not been changed in response to the "general comment."

The language for determining minimum valuations has not led to any known ambiguity or confusion in administration of, or compliance with, the previous iteration of the Valuation of Timberland and Managed Timberland Rule in the past. Therefore it is not expected to do so in the future.

The commenter's numbered comments read as follows:

§110-1H-10. Appraised Value Per Acre of Managed Timberland. ....

**Comment 1:** The proposed rule retains arbitrary minimum values per acre, stated in dollars per acre for each soil grade and each tax rate class, thus distorting the application of the income-based valuation method, as expressly required by the statute and as otherwise provided throughout the rule. See. WV Code §§ 11-1C-5(a)(2)(B) and 11-1C-11b. As a result, the inclusion of such minimum values per acre improperly alter, add to and amend the substantive terms of the statute, governing the methodology for determination of the taxable values of managed timberland. Thus, inclusion of such minimum value provisions represents an invalid exercise of State Tax Commissioner's rule-making authority by purporting to make substantive law beyond the clear terms of the governing statutes, and the fact that such provisions were contained in previously approved legislative rules does not otherwise validate them. See, *CNG Transmission v. Craig*, 211 W.Va. 170, 564 S.E.2d 167 (2002) (invalidating a legislative rule ten years after its legislatively approved promulgation); and *Syncor International Corp. v. Palmer*, 208 W.Va. 658, 542 S.E.2d 479 (2001) (invalidating a legislative rule a full twelve years after its legislatively approved promulgation).

**Response to comment 1 (numbered per the text of the comment):**

The rule has not been changed in response to the comment.

The formula set forth in the Tax Department's rule is compliant with the statute, and the Tax Department does not agree that specifying means for determining minimum valuations in any way exceeds the Tax Department's authority. To the contrary, it fulfills the Tax Department's statutory mandate to "*provide a method to appraise such property [managed timberland] in the State so that all such property is valued in the same manner no matter where it is situated in the State . . .*" West Virginia Code §11-1C-5(a)(2)(B).

The West Virginia Supreme Court of Appeals has held (quoting the State Constitution) that "taxation shall be equal and uniform throughout the state and all property, both real and personal, shall be taxed in proportion to its value to be ascertained as directed by law." *Tug Valley Recovery Center, Inc. v. Mingo County Commission, etc., et al.*, 261 S.E.2d 165 (W.Va. 1979).

The Court stated: "Implicit in our holding today, and in the Acts of the Legislature, is the understanding that every taxpayer, every person affected by the tax base, has a financial interest in seeing that all property in the district be properly taxed."

If one party is under-assessed, the resulting injury is to all other members of the taxing district who are discriminatorily assessed and denied the benefits of full and equitable taxation. One potential alternative to minimum valuation would result in property going entirely untaxed.

Minimum valuations, which ensure equal and uniform taxation, are supported by the West Virginia Constitution, the West Virginia Supreme Court of Appeals, and the West Virginia Code.

We would note that the cases cited in the comment (*Syncor* and *CNG*) are not ad valorem property tax cases, but are Consumer's Sales and Service Tax cases, and therefore are not on point with the issue at hand, and are of limited analytical and precedential value to the commenter's argument .

In light of the foregoing, the rule need not be altered.

### **Analysis of the Proposed Substitute Section 110-1H-10 Language:**

The commenter offered substitute language to displace the language set forth in section 110-1H-10 of the rule with these words:

Thus, the Association suggests changing Section 10 to read as follows:

#### **§ 110-1H-10. Appraised Value Per Acre of Managed Timberland.**

Notwithstanding, anything herein contained to the contrary, the appraised value per acre of managed timberland is the present worth of an infinite periodic net income from the land 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, all of which are to be applied using real values, and not nominal values. However, subject to the provisions of subsection 2.2 of this rule, the appraised value per acre for any grade of managed timberland in any county shall not be less than the appraised value of farm woodlots of the comparable grade in that same county. The appraised value is the net present

worth of all revenues and costs, stated in real terms, associated with growing timber on the land in perpetuity. Net income is the difference between projected revenues (e.g. harvest revenues in years 35, 55 and 80) and projected costs (e.g. management costs) all stated in real terms.

### **Clause 1:**

The commenter's clause 1 reads as follows:

**Notwithstanding, anything herein contained to the contrary**, the appraised value per acre of managed timberland is the present worth of an infinite periodic net income from the land 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, all of which are to be applied using real values, and not nominal values.

*Emphasis added.*

### **Analysis:**

**First and Foremost** -- let us note that use of the words "**Notwithstanding, anything herein contained to the contrary**," voids absolutely every other provision of the rule, that would prescribe a method for valuation of managed timberland, and would set the valuation of **ALL** managed timberland at the proposed hypothetical minimal valuation.

This is unacceptable on its face. It would contravene the constitutional and statutory requirement for equal and uniform taxation of property by setting property tax valuation of properties of differing values at the same minimal value.

### **Second (continuing with clause 1):**

The commenter would have minimum valuations be determined based on "the present worth of an infinite periodic net income from the land," with adjustments for the class of the property. But **ONLY** on real values, and **NOT** nominal values.

The proposal is in effect a proposal to value managed timberland as a perpetuity -- as if the value could be simply characterized as a stream of equal payments that carries on indefinitely. It cannot be so characterized. A consistent periodic stream of payments is not characteristic of the industry. The consistency and equality of any payments related to managed timberland is also not characteristic of the industry. Timber and timberland valuations are subject to the many influences of market pricing, fluctuations of the base economy, and inflation, among many other factors.

There is no stream of equal payments over an infinite period of time as related to managed timberland.

The proposal (**clause 1**) fails to provide any substantive guidance as to the "infinite periodic net income" on which it purports to be based. The determination of value under this language would be speculative, and would constitute an invitation to endless arguments and litigation regarding minimal valuations for managed timberland.

**Third** -- the proposal (**clause 1**) mandates the adoption of purported "real values, and **NOT** nominal values." Then, ambiguously, in the selfsame paragraph, proposes hypothetical valuation criteria that are manifestly **NOT** "real values."

This proposed substitute language is antithetical to the basic purpose of the section, which is to determine minimal values.

### **Analysis of Clause 3:**

The commenter's clause 3 reads as follows:

However, subject to the provisions of subsection 2.2 of this rule, the appraised value per acre for any grade of managed timberland in any county shall not be less than the appraised value of farm woodlots of the comparable grade in that same county. The appraised value is the net present worth of all revenues and costs, stated in real terms, associated with growing timber on the land in perpetuity. Net income is the difference between projected revenues (e.g. harvest revenues in years 35, 55 and 80) and projected costs (e.g. management costs) all stated in real terms.

The commenter would have managed timberland minimum valuation be set as if the property were a farm woodlot. This proposal is not consistent with either the statutory structure for the farm property valuation, nor the statutory structure for managed timberland valuation.

Again, in clause 3, the commenter proposes to use a net present value, based on impossible to determine, speculative revenues and costs.

The Tax Department cannot adopt the proposal of the West Virginia Forestry Association. To do so would effectively render valuation of managed timberland uncertain, and potentially non-uniform and unequal. Adoption of the proposal would do a disservice to the Taxpayers of West Virginia, who rely on equal and uniform taxation to support crucial government services.

The comment has not been adopted into the post comment, Agency Approved Rule.

**FILED**

2015 JUL 29 P 4:09

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**TITLE 110. WEST VIRGINIA LEGISLATIVE RULE  
DIVISION OF TAX**

**SERIES 1H**

**VALUATION OF TIMBERLAND AND MANAGED TIMBERLAND**

§ 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) and 11-1C-11b(a) and (b).

1.3. Filing Date. -- \_\_\_\_\_, 2016

1.4. Effective Date. -- \_\_\_\_\_, 2016

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 6, 1999 and effective May 1, 1999.

§ 110-1H-2. Introduction.

2.1. The appraised value of managed timberland shall be determined by the State Tax Commissioner 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 comparable 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" or "d.b.h." means the diameter of trees at breast height, which is 4.5' above ground level.

3.5. "Division of Forestry" means the West Virginia Department 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. "Integrated Moisture Index" means soil moisture data derived from a methodology described in "A GIS-Derived Integrated Moisture Index"; by Louis R. Iverson and Anantha M. Prasad; USDA Forest Service, Northeastern Research Station, Delaware, Ohio; 2003, as the same is refined and applied, from time to time, by subsequent professional studies conducted, or contracted for, by the Division of Forestry to determine current measures of the same.

3.9. "MBF" means thousand board feet.

3.10. "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.

3.11. "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 3.12 and appendix 2 of this rule.

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

3.12.1. Includes the owner's multipurpose objectives for the property;

3.12.2. Provides for the land:

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

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

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

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

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

3.13. "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.

3.14. "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.

3.15. "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.

3.16. "Site Index" means a method of measuring the potential of a site to grow trees to the height that the average dominant and co-dominant trees on the site will attain at a given age. For purposes of this rule, it is the height of upland oaks at fifty (50) years of age. The site index will be determined using the applicable Integrated Moisture Index.

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 changes over various harvest periods (i.e., 35, 45, 55 or 80 years) during the 80 year rotation cycle. The real price change shall be determined using historical West Virginia saw timber and pulpwood prices based upon 16 inch (dbh) logs provided by the West Virginia Division of Forestry (i.e. data from the last 20 years or more depending on data availability). 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 Managed Timberland and 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. 1A, § 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 are 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. 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.

§ 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 Integrated Moisture Index. This process allows the calculation of the area of each soil productivity grade in each parcel.

11.2. Average stumpage price (5 year weighted moving average) is determined by the State Tax Commissioner, based on 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 shall be used to calculate the appraised value of managed timberland property on an annual basis. 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, strip-mine, 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 Premium. -- The nonliquidity premium 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. 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.

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, on or before the first day of September, 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. Annually, 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 Commissioner 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 Commissioner 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 Basal Area of 40%  
Stocking for Classification as Forest Land**

D.B.H. Range	D.B.H. in 2" Classes	Basal 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 = 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 YEARS ROTATION CYCLE**

	35 Years	55 Years	80 Years	Total
<b>Grade 1</b>				
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
<b>Grade 2</b>				
Site Index (65-74) (Fair to Good)	3.3 Cords 1.0 MBFs	7.0 Cords 4.4 MBFs	4.6 Cords 8.6 MBFs	14.9 Cords 14.5 MBFs
<b>Grade 3</b>				
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