

## **Express Terms**

6 NYCRR Part 199 will be amended as follows:

Amend section 199.1(o) by defining the term “forester” to mean an individual who has earned an associate’s or higher degree in a program recognized by the Society of American Foresters, or who possesses qualifications for the practice of forestry essentially equivalent to those possessed by a graduate of a school of forestry in a degree program recognized by the Society of American Foresters. The existing regulations refer only to graduation from a “school of forestry;” the amendment thus clarifies the minimum level of education required.

Amend section 199.1(p) by clarifying that the requirement for forest land to contain at least 500 stems per acre or 60 square feet of basal area shall apply at the time of initial enrollment in the program only. The current regulations are ambiguous and could be interpreted to prohibit even-aged management systems, which may by necessity temporarily reduce stands to less than 500 stems or 60 square feet per acre.

Amend section 199.1(q) by removing the redundant requirement that individual stand prescriptions be provided pursuant to section 199.6(b).

Add new section 199.1(r) to define the term “high-grading” as the removal of the most commercially valuable trees (by reason of size, quality or species) at the expense of future growth or future financial return, often leaving a residual stand composed of trees of poor condition or species composition. It is necessary to define the practice in order to prohibit it in a later provision of the regulations.

Re-number section 199.1(r) as section 199.1(s).

Re-number section 199.1(s) as 199.1(t) and amend it by: clarifying that the owner of an enrolled property has the discretion to designate the merchantable forest crop for production in the period covered by the management plan; clarifying the language defining such products, and; specifying that other tangible wood products, maple sap, and carbon credits are not considered merchantable forest crops for the purposes of Part 199. The intent of the statute is clearly to encourage the production of tangible goods. Participating landowners may still participate in carbon markets as long as doing so does not conflict with the purposes of the program.

Re-number sections 199.1(t), 199.1(u), 199.1(v) and 199.1(w) to sections 199.1(u), 199.1(v), 199.1(w) and 199.1(x), respectively.

Re-number section 199.1(x) to section 199.1(y) and amend it by: clarifying that a stand must be at least one contiguous acre in size and at least 120 feet in any two dimensions, and; clarifying that hedgerows, shelterbelts, wind breaks, and other non-forest tree assemblages shall not be considered stands. This clarification eliminates an unintended loophole in the regulations, which allowed the inclusion of areas that contain trees but do not function as forests.

Re-number sections 199.1(y), 199.1(z) and 199.1(aa) to sections 199.1(z), 199.1(aa) and 199.1(ab), respectively.

Amend section 199.5(b) by: reducing the number of copies of the management plan required to be submitted from two to one, and; adding a requirement that completed applications must include a signed attestation certifying that the owner has reviewed the requirements of the program with the regional forester or their designee and has had

the opportunity to ask questions and request clarification of said requirements. This amendment is intended to improve compliance by ensuring enrolled landowners are fully informed of the obligations they are agreeing to.

Amend section 199.5(c) by: clarifying that the owner must mark the property boundary lines defining the committed acreage and lines designating eligible noncommitted acreage of eligible tracts submitted for certification, and; deleting language allowing fences, stonewalls, posters, and other constructed or natural features to be used as boundary line marking. The boundaries between eligible and ineligible acreage is generally recognizable and thus does not need to be marked by the owner; existing regulations are ambiguous and could be interpreted to unnecessarily require these lines to be marked. Fences, stone walls and other objects that are not placed as part of a property survey are not reliable indicators of actual property line location.

Amend section 199.5(e) by: setting September 1 as the deadline for submission of applications; changing the amount of time allowed for the department to approve or reject applications from 60 day to 90 days, and; clarifying the time frame within which the landowner has the opportunity to remedy deficiencies for which an application is rejected.

Amend section 199.5(f) by: specifying that all certificates of approval issued by the department shall include the approved work schedule found in the approved management plan and shall also be incorporated into and become part of the approved management plan. Current regulations do not provide the department a means of ensuring that a prescription is followed as approved. Because the statute and regulations require the owner to follow the approved management plan, making an

approved prescription part of the management plan in effect requires that the approved prescription be followed as written.

Move the requirement for lands from which a merchantable forest crop has been cut or removed within three years prior to the time of application from section 199.6(a)(9) to section 199.5(g).

Amend section 199.6(a) by: deleting the list of elements required to be included in an approved management plan and replacing it with a requirement that approved management plans be written using a template provided by the department, which will include all the necessary plan elements, and; changing the length of the required work schedule from 15 years to 20 years.

Amend section 199.6(b) by: adding the requirement that any cutting prescriptions submitted to and approved by the department pursuant to section 199.7(b) of this Part shall be incorporated into and become part of the approved management plan and; moving the requirements for submitting cutting prescriptions to section 199.7(b).

Amend section 199.6(c) by: clarifying that for the purposes of the forest tax law program, high-grading is not an acceptable management system and; deleting the duplicative requirement that noncommercial cuttings scheduled for an eligible tract be completed during the year in which they are scheduled. (The requirement is also found in section 199.8(c) of this Part).

Amend section 199.6(d) by clarifying that grazing or otherwise integrating domestic animals in forest management systems is allowable on all committed acres, if it is listed as a treatment in an approved prescription. Existing regulations prohibit grazing on

committed acres. Allowing this practice as part of an approved prescription increases options for landowners to control competing vegetation and engage in compatible agroforestry activities.

Amend section 199.7(b)(1) by adding the requirement that any notice of commercial harvest cutting must list all stands to be harvested and include a cutting prescription prepared by a forester for each stand to be treated in said harvest.

Amend section 199.7(b)(2) by: clarifying the department shall affirmatively approve or reject cutting prescriptions; specifying that certification of stumpage value is to take place upon approval of such prescription, and; specifying that cutting prescriptions submitted to and approved by the department shall be incorporated into and become part of the approved management plan.

Amend section 199.8 by: adding new subdivision (e), requiring updated work schedules to include treatments to establish regeneration in stands that have undergone a natural or human disturbance; allowing landowners to withdraw stands from commitment without penalty if the landowner has complied with the approved management plan but has failed to establish sufficient regeneration of commercial species and; specifying that failure to implement the approved management plan regarding treatments intended to establish forest regeneration shall result in revocation pursuant to section 199.10(c) of this Part.

Amend section 199.9 by: clarifying that in addition to being extended or amended by filing a written request with the department, an approved management plan may also be updated by the same procedure and; extending the amount of time in which the

department will determine the acceptability of the proposed change and inform the owner of its determination from 10 day to 30 days of receipt of the request.

Amend section 199.9(b) by: extending the period between required management plan updates from five years to ten years.

Add new section 199.9(c) to require owners of enrolled properties to submit a narrative update of material changes to such properties on or before December 31 of the fifth calendar year during which the properties are enrolled, using forms supplied by the department. This amendment, combined with the amendment to section 199.9(b) reduces the amount of paperwork required of participating landowners.

Amend section 199.10(f) to clarify that enrolled parcels may be revoked without penalty if it is determined that the parcel is not eligible and was enrolled in error. Existing regulations are silent on the treatment of parcels enrolled in error. While existing case law supports the authority of agencies to correct administrative errors, adding language to these regulations will affirmatively allow the department to correct errors that are not the fault of participating landowners.

Add new section 199.10(g) to clarify that no penalty shall be assessed to the owner if an acreage correction results in the reduction of eligible acres. This amendment is intended to protect landowners from penalties that could arise from circumstances that are not their fault, such as improvements to technology or mapping errors.

Add new section 199.12 which will: require persons preparing management plans, management plan amendments or cutting prescriptions for approval to participate in department-approved training for the preparation of management plans and cutting

prescriptions; require such persons to meet with a department forester prior to submitting additional plans or prescriptions if the preparer has had more than three management plans or cutting prescriptions rejected by the department in a period of twelve consecutive months; stipulate that the department shall reject any plan or prescription submitted by a person who has had more than three management plans or cutting prescriptions rejected by the department in a period of 12 consecutive months and has not met with a department forester to discuss such rejections, and; stipulate that if any person has had more than nine management plans or cutting prescriptions rejected by the department in a period of 48 consecutive months, the department shall reject any plan submitted by such person for a period of one year, and until such person shall meet with a department forester to discuss such rejections. This amendment is intended to ensure a base level of knowledge about the program on the part of foresters serving participating landowners, and to discourage foresters from repeatedly submitting incomplete and sub-standard documents.

Pursuant to Environmental Conservation Law §480-a, 1. Section 199.1 is amended to read as follows:

199.1 Definitions.

When used in this Part:

- (a) Approved management plan means a plan approved by the department for the management of an eligible tract which will ensure the continuing production of a merchantable forest crop selected by the owner. Every approved management plan must meet the standards and requirements of section 199.6 of this Part. Such plan must be prepared by or under the direct supervision of a forester who may be the owner or an agent of the owner, including an industrial forester or a cooperating consultant forester.
- (b) Assessor means an elected or appointed officer or body of officers charged by law with the duty of assessing real property for the purposes of taxation or special ad valorem levies, for county, city, town, village, school district or special district purposes.
- (c) Basal area means the total cross sectional area of all live tree stems expressed as square feet per acre and measured at a point 4½ feet above the ground.
- (d) Certificate of approval means the document issued by the department evidencing that the tract is an eligible tract for purposes of the real property tax exemption authorized by section 480-a of the Real Property Tax Law (RPTL).
- (e) Commercial harvest cutting means the removal of a forest crop from an eligible tract of forest land for which the owner receives economic value either from a sale or through utilization. Commercial harvest cutting shall not include up to 10 standard cords which may be cut annually for the owner's own use in accordance with sound forestry practices, or noncommercial cuttings prescribed in the approved management plan.



(f) Commitment means a declaration to the department and the assessor, made on an annual basis by the owner of a certified eligible tract, in writing, on forms provided by the department, committing such tract to continued forest crop production for the next succeeding 10 years under the approved management plan.

(g) Compatible or supportive use means any use of an eligible tract which is desired by the owner and compatible with or supportive of the continuing production of a merchantable forest crop. A use will be considered to be compatible or supportive unless it precludes forest crop production, involves permanent physical construction, or materially alters forest land with significant adverse impact upon the condition of forest crops. Compatible or supportive uses will be permissible but not mandatory components of approved management plans. The inclusion of a compatible or supportive use in an approved management plan does not represent the owner's undertaking to perform the use and does not imply that other compatible or supportive uses may not be undertaken on the eligible tract.

(h) Contiguous acres shall refer to an eligible tract where forest lands are adjacent or near each other. These may be divided by nonforest land owned and controlled by the owner, or Federal, State, county or town roads, easements, rights-of-way, energy transmission corridors, or similar facilities, as long as vehicular access necessary for forest management purposes is not precluded.

(i) Cooperating consultant forester means a forester who, or a forestry consultant firm which, has entered into an agreement with the department under the New York State cooperating consultant foresters program pursuant to section 9-0713 of the Environmental Conservation Law.

(j) Department means the Department of Environmental Conservation.

(k) Diameter at breast height (DBH) means the diameter of a tree measured 4 ½ feet from the ground.

(l) Diameter class means one of the following classifications of the stand:

(1) Seedling—sapling (SS)—the majority of dominant and codominant trees are less than 5.5 inches DBH.

(2) Pole timber (PT)—the majority of dominant and codominant trees are between 5.6 inches and 11.5 inches DBH.

(3) Saw timber (ST)—the majority of dominant and codominant trees are 11.6 inches DBH or larger.

(m) Eligible tract means a tract of privately owned forest land of at least 50 contiguous acres, exclusive of any portion thereof not devoted to the production of merchantable forest crops, which has a certificate of approval issued by the department. No otherwise eligible tract, or portion thereof, shall be deemed to be ineligible solely on the ground that any general or special State law, or rule or regulation adopted thereunder, partially restricts or requires further approval for forest crop production practices or activities on such tract or portion.

(n) Endangered and threatened species means those species of fish, shellfish, crustacea, wildlife and plants designated or listed as endangered species or threatened species under orders, rules or regulations issued by the department pursuant to section 11-0535 or section 9-1503 of the Environmental Conservation Law.

(o) Forester means an individual who has [graduated from a school of forestry] earned an associate's or higher degree in a program recognized by the Society of American Foresters, or who possesses qualifications for the practice of forestry essentially equivalent to those possessed by a graduate of a school of forestry in a [curriculum of forest management] degree program recognized by the Society of American Foresters.

(p) Forest land means land primarily devoted to and suitable for forest crop production under accepted evenaged or unevenaged forest management systems through natural regeneration or through forestation and sufficiently stocked with forest trees to produce a merchantable forest crop within 30 years of time of original certification. Forest land shall consist of a stand or stands of commercial species of forest trees which contain at the time of initial enrollment in the program at least either 500 stems per acre or 60 square feet of basal area per acre which shall be evenly distributed over the area of the stand. The department may approve a smaller number of planted trees per acre if the resulting spacing between trees is appropriate for satisfactory growth for the species being planted. For natural seedlings to be part of a stand, they must be at least one foot in height, and planted trees must be at least in their third growing season on the site.

(q) Forest management area means a specific area of forest land to be managed under the approved management plan. A forest management area may be a planned sale area, anticipated commercial harvest cutting unit, or other defined operational area in which one or more stands, or portions of stands, will be managed collectively. A forest management area may contain any number of forest types, species, diameter classes, or site classes. [Management systems and cutting prescriptions within a forest management area may be generic to all stands of the same forest type. Notwithstanding

the foregoing, however, within every forest management area, stand prescriptions based upon individual stands shall be provided to the department pursuant to section 199.6(b) of this Part.]

[(r)] High-grading means the removal of the most commercially valuable trees (by reason of size, quality or species) at the expense of future growth or future financial return, often leaving a residual stand composed of trees of poor condition or species composition.

[(r)] [(s)] Management system means the silvicultural system to be employed on an eligible tract to assure the continued production of merchantable forest crops.

[(s)] [(t)] Merchantable forest crop means [timber or pulpwood,] the primary or secondary wood-based commodity designated by the owner to be produced in the period covered by the management plan, including veneer bolts, sawlogs, poles, posts, pulpwood, [chips] and chipped or solid fuelwood, that is produced on forest land, has a value in the market and may be sold. Other tangible wood products, maple sap, and carbon credits shall not be considered merchantable forest crops for the purposes of this Part.

[(t)] [(u)] Noncommercial cutting means the elimination of those trees in a stand on an eligible tract which have no commercial net value in the marketplace because of size, condition or species and that are competing with crop trees.

[(u)] [(v)] Owner means the person or persons having legal title to the eligible tract.

[(v)] [(w)] Person means any individual, corporation, industry, partnership, association, firm, trust, estate or any other legal entity whatsoever, but shall not include the State, any municipality, or any governmental agency.

[(w)] (x) Site class means the classification of the stand in terms of the inherent capacity to grow crops for commercial harvest cuttings.

[(x)] (y) Stand means an aggregation of trees or other growth occupying a specific area at least one contiguous acre in size and at least 120 feet in any two dimensions, and sufficiently uniform in species composition, arrangement or condition so as to be distinguishable from adjacent areas. Every stand shall be forest land, as defined in this section. Hedgerows, shelterbelts, wind breaks, and other non-forest tree assemblages shall not be considered stands.

[(y)] (z) Stand prescription means the stand analysis documents specifying all of the work necessary to accomplish the management system in a stand and will be based upon an onsite inspection of the stand by a forester.

[(z)] (aa) Stumpage value means the current fair market value of a merchantable forest crop as it stands prior to the time of sale, cutting, required cutting or removal. Stumpage value shall be determined by the department through one or more of the following methods: the sale price of the crop in an arm's-length sale, a review of solicited bids, the stumpage price report prepared by the department, comparison with like sales on State forests or private lands, or other appropriate means to assure that a fair market value is established within an acceptable range based on the appropriate geographic area.

[(aa)] (ab) Type means the classification of the stand according to generally accepted forest procedures.

2. Section 199.5 is amended to read as follows:

199.5 General certification provisions.

(a) Separate applications must be made for each eligible tract.

(b) A completed application shall consist of:

(1) a properly completed application on forms provided by the department;

(2) [two copies] one copy of a management plan prepared by a forester, as defined in subdivision 199.1(o) of this Part, and in accordance with section 199.6 of this Part;

(3) a location map or aerial photograph which clearly identifies the tract that is subject to application;

(4) a signed attestation certifying that the owner has reviewed the requirements of the program with the regional forester or their designee and has had the opportunity to ask questions and request clarification of said requirements.

(c) The owner shall have the property boundary lines defining the committed acreage and lines [designating] separating eligible noncommitted acreage from eligible committed acreage of eligible tracts submitted for certification permanently marked so as to be easily identified on the ground. Suitable marking is a blazed and painted or painted line. [Fences, stonewalls, posters, and other constructed or natural features are acceptable provided they can be easily recognized as the boundary and are approved by the regional forester of the department.]

(d) The department shall issue a certificate of approval for an eligible tract whenever the following requirements are met:

(1) the owner submits a completed application; and

(2) the owner's management plan meets the requirements of section 199.6 of this Part.

(e) Completed applications for initial enrollment and management plan amendments required pursuant to subdivision 199.9(b) of this Part shall be submitted to the regional forester before September 1, prior to the taxable status date requested for initial enrollment or when the management plan amendment is due, and will be approved or rejected by the department within [60] 90 days of receipt. The department reserves the right to reject applications in whole or in part whenever the application is not in compliance with applicable provisions of law or of this Part. The notice of rejection will be accompanied by reasons for such rejection. The owner shall have the opportunity to remedy the defects cited in the notice of rejection and resubmit the application for certification to the department within 90 days of receipt of the notice of rejection.

(f) All certificates of approval issued by the department shall require compliance with the approved management plan and shall include the approved work schedule found in the approved management plan. The certificate of approval shall also be incorporated into and become part of the approved management plan. The department may also impose, as terms of the certificate of approval, such conditions as it may deem necessary or appropriate to satisfy the provisions of the law or this Part.

(g) Lands from which a merchantable forest crop has been cut or removed within three years prior to the time of application will be ineligible for certification unless such cutting or removal was accomplished under a forest management program designed to provide for the continuing production of merchantable forest crops.

3. Section 199.6 is amended as follows:

199.6 General management plan provisions.

(a) Each approved management plan shall be in a form and format as approved by the department and shall contain a 20-year work schedule, which shall include all commercial and noncommercial cuttings, road construction and other treatments required for continued certification. The 20-year work schedule shall be formatted as two ten-year work periods. The approved management plan shall prescribe noncommercial treatments necessary to attain the production of the selected merchantable forest crops specified in the management plan. Stands which demonstrate a productive capacity of less than 50 cubic feet per acre per year may be exempted from the noncommercial treatment requirement where the selected merchantable forest crops specified in the management plan do not economically justify such treatment.[contain the following:

(1) application number provided by the department;

(2) identification of the owner and the tract;

(3) a narrative listing of the merchantable forest crops to be continually produced upon the eligible tract as a result of the implementation of the approved management plan;



(4) a narrative listing of endangered and threatened species known to exist on the eligible tract;

(5) a type map drawn neatly in ink which shall include the following:

(i) boundaries of eligible forest land drawn at a scale acceptable to the department; ineligible land or lands not to be included under this Part must be clearly identified on the map and acreage(s) individually indicated;

(ii) stands or forest management areas within eligible tract delineated as to number and acreage;

(iii) physical features such as buildings, roads, streams and power lines identified;

(iv) north arrow;

(v) name, address and title of person who prepared the map and the date prepared;

(vi) name and address of owner of the tract; and

(vii) application number provided by the department;

(6) a listing of the stands, or forest management areas, that comprise all of the forest land to be committed pursuant to the management plan. The listing shall include the following information for each stand or forest management area:

(i) stand or forest management area number;

(ii) stand type or forest management area types;

- (iii) diameter class or classes;
- (iv) site class;
- (v) acreage estimated to the nearest whole acre;
- (vi) species composition expressed as a percentage;
- (vii) basal area;
- (viii) identification of every area more than an acre in size that is not eligible;

If the listing is by forest management area, the management plan shall also identify stand numbers and estimated stand acreages for each stand within each forest management area;

(7) a work schedule for each of the next 15 years, which shall contain all commercial and noncommercial cuttings, road construction and other treatments needed for continued certification. The approved management plan shall prescribe noncommercial treatments necessary to attain the production of the selected merchantable forest crops specified in paragraph (3) of this subdivision. Such noncommercial treatments shall be accomplished at not less than the greater of the following rates:

- (i) 10 acres per year; or
- (ii) five percent of the total acreage in the certified tract needing treatment;

stands which demonstrate a productive capacity of less than 50 cubic feet per acre per year may be exempted from the noncommercial treatment

requirement where the selected merchantable forest crops specified in paragraph (3) of this subdivision do not economically justify such treatment;

(8) a description of compatible or supportive uses that are desired by the owner;

(9) a description of any cuttings or removals of merchantable forest crops during the past three years, including the date, location and cutting prescription of such cuttings or removals; lands from which a merchantable forest crop has been cut or removed within three years prior to the time of application will be ineligible for certification unless such cutting or removal was accomplished under a forest management program designed to provide for the continuing production of merchantable forest crops; and

(10) the signature and typed or printed name of the forester who prepared or supervised the preparation of the management plan and the date prepared, together with certification by the forester that all land shown as eligible land on the type map is forest land as defined in section 199.1 of this Part.]

(b) Any cutting prescriptions submitted to and approved by the department pursuant to subdivision 199.7(b) of this Part shall be incorporated into and become part of the approved management plan. [In addition to the information required by subdivision (a) of this section, the following information shall be provided at least 30 days prior to any commercial harvest cutting or noncommercial cutting. No commercial harvest cutting or noncommercial cutting may be commenced before approval of the department within 30 days of receipt of such information in a manner acceptable to the department:

(1) management system or systems on the portion of the tract to be cut;

(2) identification of the stands or forest management area(s) to be cut and approximate acreage to be cut within the stands or forest management area(s); cutting prescription with approximate average basal areas before and after the cut; merchantable forest crop or crops to be cut and volume by species; specifications to accommodate endangered or threatened species, if any;

(3) description of necessary road layout and erosion control and sediment control measures;

(4) description of noncommercial work, if any, to be undertaken on the area to be cut; and

(5) the name and address of the person under whose supervision the harvest will be conducted.]

(c) The owner shall have the right to select management systems and cutting prescriptions, provided they are consistent with the approved management plan and designed to assure the continuing production of merchantable forest crops identified in the approved management plan. For the purposes of this program, high-grading as defined in subdivision 199.1(r) of this Part shall not be an acceptable management system. [Noncommercial cuttings scheduled for an eligible tract must be completed during the year in which they are scheduled.]

(d) Grazing [by] or otherwise integrating domestic animals in forest management systems is prohibited on all [eligible tracts] committed acres, unless listed as a treatment in an approved prescription.

4. Section 199.7 is amended as follows:

199.7 Filing procedures.

(a) It is the responsibility of the owner to comply with filing requirements of subdivision (3) of section 480-a of the Real Property Tax Law by:

(1) filing the original certificate of approval with the clerk of the county in which the eligible tract is located;

(2) filing the original application for real property tax exemption with the appropriate assessor on forms prescribed by the State Board of Equalization and Assessment, together with the commitment certified by the department and recorded by the clerk of the county; and

(3) filing with the appropriate assessor a commitment certified by the department prior to the taxable status date in each year for which a real property tax exemption is sought.

(b) Implementation of the requirements of subdivision 5 of section 480-a of the Real Property Tax Law shall be according to the following schedule and procedures:

(1) At least 30 days prior to any commercial harvest pursuant to an approved management plan, the owner shall file with the department on forms provided by the department, a notice of commercial harvest cutting to include all stands to be harvested, and a cutting prescription prepared by a forester for each stand to be treated in said harvest.

(2) The department, within 15 days of receipt of such notice, shall [determine the compliance of the proposed harvest with the approved management plan and upon such determination,] review and either approve or reject the cutting prescriptions, and upon approval shall certify the stumpage value of such harvest to the owner and to the county treasurer of the county or counties in which the tract is situated. Cutting prescriptions submitted to and approved by the department shall be incorporated into and become part of the approved management plan.

(3) No later than 30 days after receipt of the certification of the value of such harvest, the owner shall pay a stumpage tax of six per centum of the certified value to such county treasurer.

(c) Notwithstanding the foregoing provisions of this section, if the stumpage value of a merchantable forest crop will be determined with reference to a scale to be conducted after the commencement of the proposed cutting, the owner may elect to be taxed in accordance with this subdivision. Such election shall be made not less than 30 days in advance of commencement of the cutting, on a properly completed notice of commercial harvest cutting. Such notice shall include information as to the anticipated volume estimate, scaling method, and the schedule and length of the cutting period, not to exceed one year. If a proper election has been made in accordance with this subdivision, the department will notify the owner and the appropriate assessor or assessors before any cutting takes place on the eligible tract, and the department will certify the scaled stumpage value to the owner of the tract and to the county treasurer of the county or counties when the cutting has concluded. No later than 30 days after the

receipt of such certification of value, the owner shall pay a six per centum tax on the stumpage value of the merchantable forest crop to such county treasurer.

5. Section 199.8 is amended as follows:

199.8 Required cuttings.

(a) The department may serve notice upon the owner of a certified tract directing such owner to make a cutting as prescribed in the approved management plan for such tract. Should such cutting involve the sale or utilization of a merchantable forest crop, not less than 30 days in advance of cutting the owner shall give notice to the department of the stumpage value, amount and location of the cutting on a form prescribed by the department. The department shall, within 15 days after receipt of such notice from the owner, certify the stumpage value, if any, to the owner and to the county treasurer of the county or counties in which the tract is situated. No later than 30 days after receipt of such certification of value, the owner shall pay a six per centum tax on the certified stumpage value to such county treasurer.

(b) Any cutting of a merchantable forest crop under this section must be conducted within two years from the date of notice. Upon failure of the owner within such period to conduct such cutting, the department shall certify to the owner and the county treasurer of the county or counties the stumpage value of such merchantable forest crop. No later than 30 days after receipt of such certification of value, the owner shall pay a six per centum tax on the real property certified stumpage value to such county treasurer.

(c) Any noncommercial cutting under this section must be conducted within [the tax year prescribed on the certificate of approval] one year from the date of notice.

(d) If the owner, within the period prescribed by this section, makes such cuttings as directed by the department, the tract shall continue to be certified as long as the owner shall continue to comply with the provisions of this Part and manage the tract in the manner prescribed in the approved management plan.

(e) When the management plan is amended as required in subdivision 199.9(b) of this Part, the work schedule shall be amended to include treatments to establish regeneration in stands that have undergone a natural or human disturbance unless the stand is re-occupied with enough regeneration of commercial species to ensure future production of merchantable forest crops. If, when a subsequent management plan amendment is required under subdivision 199.9(b) of this Part, the landowner has fully complied with the approved management plan but has failed to establish enough regeneration of commercial species to ensure future production of merchantable forest crops, the landowner shall be allowed to withdraw the stand from commitment without penalty pursuant to the provisions of paragraph 199.11(a)(4) or subdivision 199.11(c) of this Part. Failure to implement the approved management plan regarding treatments intended to establish forest regeneration shall result in revocation pursuant to subdivision 199.10(c) of this Part.

6. Section 199.9 is amended as follows:

199.9 Amendment and update.

An approved management plan may be updated, extended or amended by filing a written request with the department indicating the nature and substance of the change.

The department will determine the acceptability of the proposed change and shall



inform the owner, in writing, of its determination within [10] 30 days of receipt of the request. If the request for change is not approved by the regional forester of the department, the owner may appeal, within 30 days of its receipt, the decision of the regional forester by filing a written appeal to the Director of the Division of Lands and Forests. When a request for change is approved, the department shall inform the owner of the necessary administrative and technical procedures to follow to effect the change in conformance with the rules and regulations.

(a) The owner must submit amendments of the approved management plan whenever necessary to assure the management plan is for a period at least as long as the commitment.

(b) If the owner continues to file the annual commitment form, an amendment to the management plan must be filed every [five] ten years to assure the management plan is for a period at least as long as the commitment. The owner also must submit amendments whenever required under section 199.10 of this Part, whenever there is a material change in the acreage or ownership or location of any stands or forest management area, and whenever a cutting changes or will be delayed or substantially altered because of destruction or damage to the forest crop by fire, infestation, disease, storm, flood or other natural disaster, act of God, accident, trespass, or war.

(c) On or before December 31 of the fifth calendar year during which the tract is enrolled, the owner shall submit a narrative update of material changes in physical attributes or uses of enrolled tax parcels, using forms supplied by the department.

7. Section 199.10 is amended as follows:

199.10 Revocation.

(a) The department shall notify the owner in writing of its intention to issue a notice of violation to the owner at least 30 days prior to the issuance of such notice of violation to the county and shall offer the owner an opportunity to meet with the department representatives informally for the purpose of resolving alleged violations. If the parties can agree to a resolution of the alleged violations, then a written memorandum setting forth the terms of the agreement shall be prepared and signed by the parties. This memorandum shall become part of the approved management plan.

(b) If the parties cannot agree, the owner has the right to request in writing a hearing within this initial 30-day period. If the owner does not request a hearing within 30 days of receipt of the notice provided for in this subdivision, then such failure will be deemed a waiver of the right to a hearing and the department may proceed to issue a notice of violation to the owner and to the county. If the owner does request a hearing, the matter will be referred to an Administrative Law Judge for scheduling a hearing in accordance with procedures of the State Administrative Procedure Act and Part 622 of this Title. The owner and assessor or assessors shall be given notice of such hearing and an opportunity to be heard.

(c) A notice of violation may be issued for any of the following reasons:

(1) the certified eligible tract or portion thereof is converted to a use which precludes or is inconsistent with management of the land for forest crop production;

(2) the owner fails to give notice of a proposed cutting on such tract or fails to timely pay the appropriate tax on the stumpage value of the merchantable forest crop determined pursuant to either subdivision (5) or (6) of section 480-a of the Real Property Tax Law;

(3) the owner fails to comply with the approved management plan for such tract at any time during the commitment period;

(4) the owner fails to make a timely cutting in accordance with the provisions of subdivision (6) of section 480-a of the Real Property Tax Law, after service of notice by the department to make such a cutting; or

(5) the owner voluntarily requests immediate withdrawal for all of a portion of the certified eligible tract by submitting a notarized written request to the department and assumes obligation for appropriate penalties.

(d) Notwithstanding the finding of an occurrence described in paragraph (2), (3) or (4) of subdivision (c) of this section, the department may determine that a violation has not occurred if the failure to comply was due to reasons beyond the control of the owner and such failure can be corrected forthwith without significant effect on the overall purpose of the management plan.

(e) A notice of violation issued under this section shall be given by the department to the owner, to the appropriate assessor(s), and to the county treasurer of the county or counties in which such tract is located. Upon receipt of a county treasurer's tax search or other proof satisfactory to the department that penalties, stumpage taxes and interest imposed by section 480-a of the Real Property Tax Law have been fully paid or

satisfied, the department shall revoke the certificate of approval for the tract, and notice of such revocation shall be given to the owner and to the county clerk of the county or counties in which the tract is located. In the event of a revocation for conversion of a portion of the certified eligible tract, the revocation shall apply only to the portion of the land so converted.

(f) The certificate of approval of a certified tract for which no notice of violation has been issued shall be revoked without penalty upon receipt from the owner of receipted property tax bills or other proof satisfactory to the department that nine years have passed from the year of the last certified commitment filed with the assessor, or upon determination by the department that the tract in question was certified in error and is not in fact eligible as defined in section 199.1 of this Part. Notice of such revocation shall be given to the owner and to the county clerk of the county or counties in which the tract is located.

(g) If the department determines the actual number of committed acres in a given tract is different than the amount specified in the certificate of approval, the department shall provide to the assessor, the county clerk and the owner of the tract a revised certificate of approval with the correct number of acres. If the revision is a reduction of committed acres, no penalty shall be assessed to the owner for the removal of acres determined not to be eligible.

8. A new Section 199.12 is added to read as follows:

199.12 Requirements for Management Plan and Cutting Prescription Preparers

Any person preparing a management plan, management plan amendment or cutting prescription for approval pursuant to this Part must meet the following requirements:

(a) Not more than two years prior to preparing the management plan, management plan amendment or cutting prescription, the preparer must participate in department-approved training for the preparation of management plans and cutting prescriptions;

(b) If the preparer has had more than three management plans or cutting prescriptions rejected by the department in a period of twelve consecutive months, the preparer must meet with a department forester prior to submitting additional plans or prescriptions to discuss the reasons for the rejection of previous plans or prescriptions and means for avoiding future rejections. The department shall reject any plan or prescription submitted by a person who has had more than three management plans or cutting prescriptions rejected by the department in a period of 12 consecutive months and has not met with a department forester to discuss such rejections. If any person has had more than nine management plans or cutting prescriptions rejected by the department in a period of 48 consecutive months, the department shall reject any plan submitted by such person for a period of one year, and until such person shall meet with a department forester to discuss such rejections.