

Clearinghouse Rule 08-023

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD AMENDING, REPEALING AND RECREATING AND CREATING RULES

The Wisconsin Natural Resources Board proposes an order to amend NR 46.15 (23) and 46.16(1)(b) and (6), to repeal and recreate NR 46.30 (2) (a) to (d); and to create NR 46.15 (3m) relating to the administration of the Forest Crop Law and Managed Forest Law.

FR-03-08

Analysis Prepared by the Department of Natural Resources

Statutes interpreted: Section 77.06 (2) and subch. VI Ch. 77, Stats.

Statutory authority: Sections 77.06 (2), 77.82 (3) (c), 77.91 (1) and 227.11(2)(a), Stats. Sections 77.06 (2) and 77.91 (1), Stats., directs the department to establish stumpage rates on an annual basis for use in determining the severance and yield taxes assessed when timber is harvested from lands designated as forest crop land and managed forest land. New rates shall take effect on November 1 each year. Section 77.83 (2)(am), Stats., is a newly created statutory provision for which the department is clarifying legislative intent. Section 77.82, Stats., gives implicit authority the department to create rules for processing petitions.

Analysis of proposed rules.

Annual Stumpage Rate Adjustment: For purposes of the Forest Crop Law (FCL) and the Managed Forest Law (MFL), this rule repeals and recreates s. NR 46.30(2)(a) to (d) to revise annual stumpage values used to calculate severance and yield taxes due on timber cut during the period from November 1, 2008 through October 31, 2009. Thirteen separate zones reflect varying stumpage values for different species and products across the state.

Timber prices have been stable from 2006 through 2007. The average prices for sawlogs have increased 0.10% and prices for cords have increased 0.19%. Conversely, prices for mixed products (mixture of sawlogs and cords for red pine, white pine and spruce) have dropped 0.14% when compared to the current year's rates. While the statewide averages remain constant, there are fluctuations between market zones and individual prices. Of all total 629 prices calculated, 227 (36%) increased, 125 (20%) decreased and 277 (44%) stayed the same.

The severance and yield tax collected in CY 2006 was \$2,078,390.00. Of this, 46% of the gross revenue was from sawtimber harvests. Fifty-four (54%) percent of the revenue was from cordwood harvests. There were no recorded mixed product sales in CY 2006. Based on the very small statewide increase in timber prices an estimated \$3,090.00 will be collected for municipalities.

Estimates are based on the average change in rates for private land timber sales across species and zone for each product type (cordwood, sawtimber and mixed), the volumes reported and paid for in CY 2006, and the assumption that the volume and the ratio of the cordwood and sawtimber will remain the same. Actual impact for a county and municipality will vary by the number of harvests completed and the

actual species and products cut.

Amendments and additions to definitions NR 46.15: Definitions used in the MFL program are being changed to streamline administration and processing of MFL orders, transfers and withdrawals.

NR 46.15 (3m) defines the term “consideration” under s. 77.83 (am), Stats. This definition clarifies the legislative intent to exclude payments by governmental bodies and non-profit organizations where the purpose is to provide public access for recreational activities.

NR 46.15(23) defines who “owner” or “ownership” of MFL lands. Currently trustees of a trust are considered the “owner” of the trust. The closed acreage limitation is applied to that owner or owners. Deeds and legal documents are created when lands are placed into a trust and these deeds and legal documents are recorded in the register of deeds office. DNR has no mechanism for determining when trustees change, however. Adding trusts and other similar entities to the legal definition of an owner or ownership for forest tax law purposes will provide the state with a clear chain of title or the purpose of determining who the underlying ownership is.

Amending petition requirements and deadlines

Changes to NR 46.16 (1) (b) and (6) relate to the processing of petitions and orders of designation. As a result of these changes it will be easier for landowners to enter lands under the MFL program. Specifically, these changes will allow landowners to amend their initial petition prior to submission of the management plan packet. Additionally, NR 46.16(1) (b) clarifies that a management plan packet for the May 15 deadline must be submitted with the petition.

Comparison of Federal Regulations: There are no known federal rules which apply to stumpage rates or Managed Forest Law petitions. There are no known federal rules that define ownerships. There are no known federal regulations that define consideration.

Comparison of Adjacent States: Checks with the surrounding states of Minnesota, Michigan, Iowa and Illinois indicate that while they offer some type of incentive program to forest landowners, none of the states have similar forestry practice requirements nor do they calculate annual stumpage rates for severance and yield taxes in conjunction with their programs.

Anticipated cost by private sector: For owners of land designated as MFL or FCL. There is an anticipated increase in cost associated with the increase in yield tax on MFL and severance tax on FCL based on the average increase in stumpage rates proposed for both pulpwood (0.19% increase) and saw timber (0.10% increase). Actual cost could be an increase or decrease depending on the specific species, product and zone. Private landowners statewide would pay a collective total of \$ 3,090.00 when timber is harvested under these programs.

There will be an increase in costs for landowners submitting transfers that currently are not processed. An estimated \$ 3,000 will be collected from MFL landowners for transfers, of which \$600.00 will pay for recording fees at the register of deeds office and \$2400.00 will be credited to the conservation fund.

Although protected under the current statute, defining the term “consideration” will protect small businesses and non-profit organizations that may have leases or other agreements for consideration allowing public access and would significantly benefit them. The department

Changes associated with processing of petitions and management plan packets will have no fiscal effect and make the MFL program easier to enter.

Summary of factual data and analytical methodologies: Stumpage rate data is collected from Department Foresters and Cooperating Foresters annually. This data is used to calculate a three year weighted average for each species and product by zone. Only data obtained from private timber sales was used in the stumpage rate calculation.

$$\frac{\left[\begin{array}{c} \text{wtd avg} \\ \text{current year minus 3} \\ \text{selling price} \end{array} + \begin{array}{c} \text{wtd avg} \\ \text{current year minus 2} \\ \text{selling price} \end{array} + \begin{array}{c} \text{wtd avg} \\ \text{current year minus 1} \\ \text{selling price} \end{array} \right] + \begin{array}{c} \text{wtd avg} \\ \text{current year minus 1} \\ \text{selling price} \end{array}}{3} \div 2 = \text{Base Rate}$$

The current rates in NR 46.30 are compared to the proposed rates to determine the average change in rates by product.

Historical data on severance and yield tax invoices including catastrophic loss awards were reviewed to determine trends and anticipated impacts.

Analysis to determine effect on small business: A review of the law shows the impact on small business. The actual impact is dependant on the amount of timber (if any) is scheduled to be harvested on their specific land during this stumpage rate year.

Effect on Small Business: This rule will impact small businesses (i.e., farmers, landowners) that have land designated as managed forest land or forest crop land. Those involved in this voluntary program pay a reduced tax in place of the regular property tax in exchange for sound forest management on the land. When timber is harvested they pay a 5% yield tax or 10% severance tax which is calculated using the stumpage rates established in NR 46.30. At the time of entry into these programs the owner pays for the preparation of a management plan, which includes sound forest management practices that must be completed during the order period to ensure and maintain a healthy stand of timber.

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Public Comments: Comments are to be submitted by April __, 2008 to the Forest Tax Section, Bureau of Forest Management, Department of Natural Resources, P.O. Box 7963, Madison, WI 53707. Written comments may also be submitted to the Department using the Wisconsin Administrative Rules Internet Website at <http://adminrules.wisconsin.gov>

SECTION 1. NR 46.15 (3m) is created to read:

NR 46.15 (3m) "Consideration" means a benefit to the promisor or a detriment to the promisee, including the receipt of cash, goods, or in-kind services. Consideration does not include payments received from a governmental body or non-profit organization where the purpose of the payment is to provide public access for a recreational activity.

SECTION 2. NR 46.15 (23) is amended to read:

NR 46.15 (23) "Owner" or "ownership" means one with an interest in the land in fee or in equity, including that of a grantee of a land contract prior to satisfaction of all conditions of the contract, a trust or similar entity, or as established by statute.

SECTION 3. NR 46.16 (1) (b) amended to read:

NR 46.16 (1) (b) Petitions and management plan packets from owners of less than 1000 acres of forest land in this state with a completed management plan shall be postmarked or received by the department no later than May 15 to be considered for designation effective the following January 1.

Note: The treatment of par. (b) first applies to petitions filed on or after November 1, 2005.

SECTION 4. NR 46.16 (6) is amended to read:

NR 46.16 (6) ~~PETITION RESTRICTIONS AMENDMENTS FOR JULY 1 DEADLINE.~~ A petition for designation of land as managed forest land may ~~not~~ be altered or amended ~~in a manner which will split a cover type~~ prior to submission of a completed management plan packet.

Section 5. NR 46.30 (2) (a) to (d) are repealed and recreated to read:

NR 46.30(2)(a) Logs (stumpage value per thousand board feet measurement by the Scribner Decimal C log rule).

2009 Rates - Effective Nov. 1, 2008

	ZONES												
	1	2	3	4	5	6	7	8	9	10	11	12	13
	Wau- kesha	Green Bay	Crivitz	Wausau	Wau- toma	Dodge- Ville	Rhine- lander	Adams	Richland Center	Hay- ward	Eau Claire	River Falls	Sparta
Cedar	80.00	132.00	79.00	178.00	60.00	61.00	80.00	80.00	NA	80.00	80.00	80.00	80.00
Fir	NA	50.00	50.00	94.00	NA	50.00	90.00	NA	NA	28.00	110.00	100.00	100.00
Hemlock	NA	56.00	53.00	89.00	NA	NA	70.00	NA	NA	300.00	100.00	57.00	57.00
Pine													
Jack	72.00	72.00	72.00	72.00	141.00	72.00	100.00	45.00	62.00	135.00	70.00	60.00	70.00
Red	57.00	96.00	68.00	56.00	114.00	63.00	126.00	114.00	114.00	105.00	62.00	116.00	140.00
White	165.00	74.00	129.00	128.00	120.00	114.00	130.00	163.00	105.00	158.00	127.00	104.00	196.00
Spruce	90.00	105.00	70.00	154.00	78.00	99.00	120.00	80.00	62.00	73.00	150.00	49.00	80.00
Tamarack	50.00	117.00	50.00	50.00	50.00	50.00	50.00	50.00	50.00	50.00	50.00	50.00	50.00
Aspen	70.00	62.00	109.00	42.00	56.00	59.00	119.00	63.00	65.00	133.00	107.00	58.00	57.00
Ash	113.00	166.00	103.00	144.00	182.00	128.00	133.00	144.00	141.00	131.00	128.00	116.00	80.00
Basswood	145.00	136.00	165.00	150.00	99.00	153.00	166.00	153.00	128.00	130.00	111.00	131.00	112.00
Birch													
White	110.00	108.00	136.00	148.00	53.00	68.00	186.00	64.00	56.00	196.00	74.00	118.00	104.00
Yellow	200.00	263.00	146.00	96.00	229.00	229.00	157.00	99.00	252.00	156.00	116.00	69.00	112.00
Elm	50.00	11.00	117.00	41.00	96.00	68.00	85.00	125.00	51.00	89.00	39.00	51.00	60.00
Maple													
Sugar	436.00	583.00	491.00	488.00	328.00	551.00	422.00	434.00	407.00	360.00	342.00	380.00	480.00
Other	142.00	234.00	165.00	213.00	240.00	170.00	189.00	228.00	82.00	129.00	138.00	167.00	167.00
Oak													
Red	378.00	482.00	332.00	356.00	362.00	391.00	356.00	356.00	369.00	287.00	364.00	342.00	333.00
White	212.00	233.00	174.00	138.00	164.00	224.00	133.00	166.00	197.00	97.00	118.00	146.00	164.00
Other	164.00	240.00	122.00	147.00	154.00	171.00	123.00	128.00	161.00	139.00	129.00	173.00	137.00
Other Hardwood	238.00	74.00	84.00	117.00	158.00	234.00	231.00	137.00	183.00	153.00	115.00	131.00	109.00
Black Walnut	1,633.00	NA	NA	242.00	NA	1512.00	252.00	NA	1534.00	NA	400.00	873.00	1395.00
Cherry	687.00	524.00	400.00	583.00	482.00	729.00	350.00	413.00	827.00	432.00	520.00	367.00	1000.00

NA - Not Applicable - This species/product is not normally harvested within this zone.

Note: Stumpage values used to calculate severance and yield taxes during any specific period are intended for the purposes of the Forest Crop Law and Managed Forest Law. They are not a guarantee of actual market prices. Actual market prices can fluctuate, both up and down, and are the product of macro and micro-economic conditions reflecting specific factors of each individual sale.

NR 46.30(2)(b) Cord Products - 128 cubic feet of wood, air and bark assuming careful piling.

2009 Rates - Effective Nov. 1, 2008

	ZONES												
	1	2	3	4	5	6	7	8	9	10	11	12	13
	Wau- kesha	Green Bay	Crivitz	Wausau	Wau- toma	Dodge- ville	Rhine- Lander	Adams	Richland Center	Hay- ward	Eau Claire	River Falls	Sparta
Cedar	6.00	14.00	35.00	21.00	20.00	10.00	16.00	10.00	NA	10.00	10.00	10.00	10.00
Fir	NA	5.00	22.00	15.00	21.00	NA	16.00	22.00	NA	20.00	16.00	20.00	15.00
Hemlock	NA	9.00	11.00	10.00	NA	NA	18.00	13.00	8.00	21.00	13.00	13.00	13.00
Pine													
Jack	30.00	27.00	40.00	28.00	29.00	18.00	36.00	31.00	30.00	37.00	29.00	40.00	31.00
Red	38.00	18.00	56.00	39.00	41.00	29.00	43.00	39.00	21.00	42.00	45.00	37.00	39.00
White	18.00	22.00	23.00	20.00	27.00	18.00	13.00	22.00	17.00	18.00	24.00	20.00	22.00
Spruce	20.00	26.00	37.00	36.00	37.00	42.00	33.00	30.00	25.00	30.00	24.00	31.00	26.00
Tamarack	27.00	21.00	23.00	12.00	18.00	13.00	12.00	15.00	19.00	19.00	38.00	43.00	15.00
Aspen	12.00	17.00	31.00	25.00	17.00	13.00	26.00	25.00	15.00	31.00	25.00	27.00	22.00
Birch	40.00	14.00	34.00	24.00	24.00	10.00	26.00	21.00	8.00	28.00	22.00	21.00	13.00
Basswood	31.00	7.00	26.00	9.00	6.00	6.00	12.00	10.00	5.00	11.00	9.00	9.00	5.00
Oak	10.00	24.00	19.00	15.00	17.00	5.00	16.00	20.00	11.00	13.00	16.00	12.00	15.00
Other Hardwood	31.00	15.00	27.00	23.00	19.00	14.00	24.00	26.00	9.00	26.00	23.00	21.00	22.00
Fuelwood	10.00	11.00	14.00	10.00	7.00	5.00	15.00	14.00	10.00	8.00	6.00	10.00	9.00

NA - Not Applicable - This species/product is not normally harvested within this zone.

Note: Stumpage values used to calculate severance and yield taxes during any specific period are intended for the purposes of the Forest Crop Law and Managed Forest Law. They are not a guarantee of actual market prices. Actual market prices can fluctuate, both up and down, and are the product of macro and micro-economic conditions reflecting specific factors of each individual sale.

NR 46.30(2)(c) Mixed products (stumpage value per cord). Only for use with red pine, white pine and spruce. Not to be used in combination with other product codes.

2009 Rates - Effective Nov. 1, 2008

	ZONES												
	1	2	3	4	5	6	7	8	9	10	11	12	13
	Wau- kesha	Green Bay	Crivitz	Wausau	Wau- toma	Dodge- ville	Rhine- lander	Adams	Richland Center	Hay- ward	Eau Claire	River Falls	Sparta
Pine													
Red	30.00	4.00	42.00	53.00	43.00	38.00	38.00	40.00	37.00	53.00	30.00	33.00	39.00
White	25.00	2.00	40.00	44.00	31.00	15.00	20.00	32.00	20.00	20.00	50.00	15.00	22.00
Spruce	34.00	10.00	39.00	35.00	29.00	26.00	26.00	35.00	26.00	15.00	29.00	15.00	39.00

Note: Stumpage values used to calculate severance and yield taxes during any specific period are intended for the purposes of the Forest Crop Law and Managed Forest Law. They are not a guarantee of actual market prices. Actual market prices can fluctuate, both up and down, and are the product of macro and micro-economic conditions reflecting specific factors of each individual sale.

NR 46.30(2)(d) Piece products (stumpage value per piece).

2009 Rates - Effective Nov. 1, 2008

	ZONES												
	1	2	3	4	5	6	7	8	9	10	11	12	13
	Wau- kesha	Green Bay	Crivitz	Wausau	Wau- toma	Dodge- ville	Rhine- lander	Adams	Richland Center	Hay- ward	Eau Claire	River Falls	Sparta
Posts & Poles													
7 and 8 ft.	0.70	0.60	0.50	0.70	0.60	0.70	0.60	0.80	0.70	0.80	0.70	0.60	0.60
10 and 12 ft.	2.10	1.90	1.60	2.10	1.90	2.10	1.80	2.30	2.10	2.30	2.10	1.90	1.90
14 and 16 ft.	3.50	3.10	3.10	3.60	3.30	3.50	2.90	3.90	3.50	3.83	3.50	3.10	3.10
18 and 20 ft.	7.00	6.20	5.30	7.10	6.50	7.00	5.90	7.70	7.00	7.60	7.00	6.20	6.20
21 and 30 ft.	10.10	8.90	7.60	10.20	9.30	10.10	8.40	11.00	10.00	10.90	10.00	8.90	8.90
31 and 40 ft.	17.40	15.40	13.20	20.00	16.00	17.40	20.00	19.10	17.40	20.00	17.30	15.30	15.40
41 and 50 ft.	26.00	23.00	19.70	25.00	24.00	26.00	25.00	28.50	26.00	28.20	25.90	22.90	23.00
51 and 60 ft.	35.90	31.80	27.30	36.50	33.10	35.90	30.10	49.50	45.00	39.00	35.80	31.60	31.80
61 and 70 ft.	47.00	41.60	73.00	47.70	43.30	47.00	39.30	51.50	47.00	51.00	46.80	41.40	41.60
Christmas Trees													
Unsheared	2.00	2.00	2.00	2.00	2.00	2.00	3.80	2.00	2.00	2.84	2.00	4.00	3.00
Sheared	6.70	6.70	6.70	6.70	6.70	6.70	6.70	6.70	6.70	6.70	6.70	6.70	6.70

Note: Stumpage values used to calculate severance and yield taxes during any specific period are intended for the purposes of the Forest Crop Law and Managed Forest Law. They are not a guarantee of actual market prices. Actual market prices can fluctuate, both up and down, and are the product of macro and micro-economic conditions reflecting specific factors of each individual sale.

SECTION 6. EFFECTIVE DATE. This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22 (2) (intro), Stats.

SECTION 7. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on _____.

Dated at Madison, Wisconsin _____.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____.
Matthew J. Frank, Secretary

(SEAL)