

Report From Agency

REPORT TO LEGISLATURE

NR 46, Wis. Adm. Code
Administration of the forest crop law and managed forest law

Board Order No. FR-03-08
Clearinghouse Rule No. 08-023

Basis and Purpose of the Proposed Rule

The Department is required to assess the value of cut wood products from Forest Crop Law (FCL) and Managed Forest Law (MFL) lands based on the current stumpage value schedule. Stumpage values are determined each year by surveying industry, private forestry consultants and DNR field staff on the prices obtained the previous year for wood products by species, product type, and zone. These values are recalculated annually using a weighted three-year average and published in NR 46.30. The stumpage value charts are used to determine severance and yield tax payments for participants in the Forest Tax Law programs. It is important to adjust these values annually so that landowners are not paying too much or too little in yield/severance tax. The monies collected are distributed to the municipalities within which the land is located to help offset reduced property taxes collected from these lands.

A definition of "consideration" is developed to clarify how the department will administer the changes to the MFL program after the passage of 2007 Wisconsin Act 27. Act 27 removed the incentive for landowners to subdivide their properties for the purposes of leasing the lands for recreational activities. The proposed definition of consideration excludes payments from governmental agencies and non-profit organizations if the purpose of the payment is to provide public recreation. This definition is consistent with the purpose of the MFL program in s. 77.80, Stats., in that more private property will be made accessible to the public for recreational activities. It is also consistent with s. 77.83, Stats., which describes the amount of lands that may be closed to public recreation and activities that must be allowed through public recreation.

Under s. NR 46.15(23), the current definition of '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, or as established by statute. Under this definition, changes in ownership by owners converting their direct property interest to trusts and other similar "will-substitutes" are not considered "transfers" under current interpretation of Wisconsin law. This prevents the effective administration of the MFL program, by preventing direct notification of potential changes in controlling ownership of the MFL property in question. A change in the definition that includes trusts and other similar entities would solve this problem by clearly establishing the need for an owner to document and record the transfer of interest with the Department's Forest Tax Law section.

Current petitions and entry packets have information and requirements which have become either duplicative, based on the subsequent management plan requirements, or unnecessary based on advances both in the technical capabilities of the Forest Tax Section's administrative capabilities and response times. The Department's changes will allow for faster turn around and entry into the Managed Forest Law program, and will result in a less burdensome and more customer friendly approach to the program.

Summary of Public Comments

Hearings were held on April 16, 2008 beginning at 10 AM. Hearing location sites were in Madison, Green Bay, Stevens Point and Eau Claire. Seven people attended the hearings with 5 people in Green Bay and 2 people in Stevens Point. No one attended the hearings in Eau Claire or Madison. There were ten

comments received by the Forest Tax Section before and after the public hearings were held. Comments mostly reflected suggestions for individual stumpage prices within the 13 existing market zones. Eighteen (18) changes were made to the pulpwood prices and ten (10) changes were made to the sawlog prices. A suggestion was made to remove the statement on the mixed products table to allow the use of mixed products with pulpwood, sawlogs, and piece products. These suggestions were incorporated into the final rule package.

One comment questioned the new definition of “consideration” and whether the department had the authority to clarify legislative intent on the change in the Managed Forest Law due to 2007 Wis. Act 20. The comment also questioned whether the department could develop a definition that allowed some landowners to receive consideration for providing public access for recreational activities while not allowing other landowners to receive consideration for allowing individual people access for the same recreational activities.

DNR’s response is that it has the authority to clarify legislative intent through the rulemaking process. The Managed Forest Law program was originally designed to have a certain amount of lands closed to public access with the intent that the remaining lands would be left open to public access. This intent is identified in the purpose of the MFL program. Since the legislature prohibited landowners from receiving compensation for closing and leasing lands to individual recreational use, it can be construed that leasing to encourage public recreational use is consistent with the original purpose of the MFL program and should be encouraged by the department.

Two comments were received against the change in the definition of “ownership” to include trusts. These people suggested that listing trustees as the owner and not the trust would help to reduce the incentive to subdivide property and to keep more lands open to public access.

DNR’s response is that landowners have many avenues in which to subdivide their properties in order to create the appearance of different owners for the purpose of having the maximum acreage of land closed to public access. Landowners who are intent on closing lands will find one of these avenues to meet their goals. DNR is proposing the change in definition in order to determine the actual owners of a piece of property. Deeds are usually recorded at the register of deeds office when land transactions occur, including transferring of lands from individuals to trusts, regardless of whether the trustees are listed on the deed. Since changes in trustees are not necessarily recorded at the register of deeds office, DNR has no mechanism for finding changes in trustees. This proposed rule change would allow DNR to list the trust as the owner. Trustees could be listed as the contact person without the need to file a transfer for each change in trustee.

One comment was received relating to NR 46.16 (1) (b) relating to the addition of the words “management plan packet.” The additions of these words were found to be confusing since the definition of a “management plan” included most of the definition of a “management plan packet.”

DNR responded by changing the definition to eliminate the words “management plan packet” and restructured the sentence to place the words “management plan” adjacent to the word “petition.”

The Wisconsin Paper Council recommended that DNR work with partners to expand private land timber sales data available to the DNR and the possibility of having seasonal stumpage data.

DNR will work with the Wisconsin Paper Council and other partners to discuss ways to expand private land timber sales data prior to beginning the administrative rulemaking process in the fall of 2008.

Comments received by Wisconsin Woodlot Owners Association (WVOA) were done so through the public legislative website.

Categorized Public Comments

The comments broke down to 20 individuals with a total of 47 distinct comments.

- 34 comments on stumpage values or issues dealing with determining stumpage values
- 4 comments on the definition of ownership
- 2 comments on the definition of consideration
- 2 comments on department authority to clarify legislative intent through rule change
- 2 comments not related to NR 46 proposed changes.
- 2 comments on non-profits and governments ability to receive or give consideration for recreation
- 1 comment on redundant language in 46.16 (1)(b)

Definition of Consideration

As a result of the new law being passed through the budget process there was no mechanism to promulgate the new law with definitions for enforcement and clarification. The department simply tried to clarify the new law by using a commonly accepted definition for the term “consideration” so landowners would be better informed on the legal definition of consideration.

Non Profit/Government Issue

One of the purposes of MFL is the “accessibility of private property to the public for recreational purposes” (s. 77.80, Wis. Stats). Landowners that use creative deed writing to skirt this purpose was the impetus behind prohibiting consideration for recreation. Non profit and government programs that increase the number of people that are able to recreate on MFL lands actually fulfill this purpose and do not need to be addressed by the new law.

Definition of Ownership

A completely different issue was addressed by re-defining ownership. As a result of a landowner request, a policy clarification regarding listing trustees as the owner of MFL lands and not the trust occurred in 2006. In the past ownership interest of entered lands were tracked by the trust name. The change in policy allowed for the trustee(s) to be named as the owner not the trust name.

However, in doing this the Department failed to consider two issues.

1. Many times a common trustee is listed in unrelated trusts. An example of this is the listing of a bank as a trustee. This resulted in ownership groups that had no relation being considered the same owner and subjected to the open/closed rules.
2. There is no way for the Department to track a change in trustees of a trust. This contrasts to when land is sold and a new deed is recorded with the county. In this case local staff is able to track the need for an ownership interest transfer.

When trustees change for a trust no document is filed with the county and local staff has no way to track this change. So two trusts with two different trustees may change to have just one trustee and under the current definition of ownership would be considered the same owner and lands associated with the trusts subject to the open/closed rules.

These issues needed to be addressed in a timely manner and the solution was to go back to the old ownership definition that allows the trust to be listed as the owner not the trustee.

Modifications Made

Eighteen (18) changes were made to the pulpwood prices and ten (10) changes were made to the sawlog prices. A suggestion was made to remove the statement on the mixed products table to allow the use of mixed products with pulpwood, sawlogs, and piece products. These suggestions were incorporated into the final rule package.

The definition to eliminate the words “management plan packet” and restructured the sentence to place the words “management plan” adjacent to the word “petition.”

Appearances at the Public Hearing

In support:

Joseph Blazei, 805 Lincoln Street, Kewaunee, WI 54216

In opposition – none

As interest may appear:

Thomas A. Jacobs, Louisiana Pacific Corp., N3312 River Bend Drive, Peshtigo, WI 54157

Ted Cychosz, 3036 County Road J North, Custer, WI 54423

Tim Nicklaus, Kretz Lumber Co., Highway G, Antigo, WI 54409

Changes to Rule Analysis and Fiscal Estimate

The analysis was revised to reflect the modifications made.

The fiscal estimate changed to reflect that the estimated net increase in local revenues of approximately \$3,090 because a estimated net loss of approximately \$20,242 due to the changes in stumpage rates.

Response to Legislative Council Rules Clearinghouse Report

The Legislative Council Rules Clearinghouse Report found one paragraph that was incomplete. Wording in the paragraph was corrected and made clear.

Final Regulatory Flexibility Analysis

Department staff has determined that there will be no significant impact to small businesses located within the State of Wisconsin as a result of these rule changes. The proposed rule changes will affect woodland owners.