

Report From Agency

REPORT TO LEGISLATURE

NR 46, Wis. Adm. Code

Board Order No. FR-09-09
Clearinghouse Rule No. 09-31

Basis and Purpose of the Proposed Rule

Changes to NR 46 are done annually to update the stumpage values used to collect yield taxes for lands entered under the Forest Crop Law (FCL) and Managed Forest Law (MFL) programs. Additional changes to streamline the MFL program are being done to clarify how the department will administer the entry of lands that span municipal lines, create a draft deadline date for plans submitted for the current July 1 deadline and change the deadline for when completed and approved management plans are returned back to the department.

1. **Annual Stumpage Rate Adjustment:** For purposes of the Forest Crop Law (FCL) and the Managed Forest Law (MFL), this rule repeals and recreates NR 46.30(2)(a) to (e) and creates NR 46.30(2)(f) to (g) to revise annual stumpage values used to calculate severance and yield taxes due on timber cut during the period from November 1, 2009 through October 31, 2010. Two new stumpage tables are created to represent new stumpage values used to calculate severance and yield taxes due on timber if the timber is sold by weight (tons). Thirteen separate zones reflect varying stumpage values for different species and products across the state.
2. **Amendment to Entry of Lands that Span Multiple Municipalities:** Currently, NR 46.16 (5) requires that *[A]ll eligible MFL land under the same ownership, when applied for designation in the same year, shall be designated under the same order of designation.* This rule, in effect, requires that lands that are not adjacent to each other, including lands that lie in different counties in the state, are entered under the same MFL order.

2005 Wisconsin Act 299 had removed the eligibility requirement that lands must consist of at least 10 contiguous acres in a single municipality. With the municipal lines requirement removed, lands that span across municipal lines, including township, village, city and county lines, may be entered into the MFL program as long as they meet eligibility requirements (i.e. are 10 acres and 80% productive).

DNR in kind removed statements to eliminate municipal lines in NR46. This change caused lands that lie in different parts of the state to be entered under the same MFL order. Landowners, DNR Foresters and Certified Plan Writers are confused with who is responsible for preparing and reviewing these MFL entries.

Since it appeared that the legislative intent was to allow a landowner's adjacent lands that do not meet the eligibility requirements per municipality to be entered under MFL, an argument can be made that a landowner's land that does meet the eligibility requirement per municipality can and should be entered under its own MFL order.

To simplify entry and administration of MFL lands DNR would allow entries of land per municipality except in cases where lands must cross municipality lines to meet eligibility requirements.

3. **Amendments to Management Plan Deadlines:** Deadlines to submit management plans for DNR approval are being changed to make the two application deadlines similar to each other.

Currently certified plan writers (CPWs) must submit a “completed and approved management plan to the Department by the 2nd July 1 after the landowner’s initial application is received. A high percentage of the CPW prepared management plans need minor adjustments or slight corrections before they can be approved. Creation of a draft plan deadline date would allow for any corrections to be made prior to the final deadline. This change to NR 46 suggests a June 1 draft deadline date and allows “completed and approved” plans to be returned on or before August 15. These deadline dates increase the time available to CPW’s to finalize their work.

Landowners with management plans prepared by DNR foresters must return their signed plans by August 1. A change in this deadline to August 15 is proposed to make the certified plan writer and DNR deadline the same for landowners to turn in completed management plans.

Summary of Public Comments

Attendance at the public hearing increased this year compared to past years. Submittal of written comments during the public comment period also increased. The interest in participation is largely due to three factors:

1. Downturn in the economy caused folks to report current stumpage rates.
2. The addition of stumpage tables based on weight, or tons, caused folks to look at the tables closer.
3. The addition of a stumpage rate for material 4 inches in diameter and smaller caused energy companies and industries who supply raw materials for these companies to find a term that could be used to collect yield tax and not conflict with other state law definitions.

Significant comments made during the public testimony and the Department's responses are:

- **Comment:** Recommendations to individual stumpage prices within individual Severance and Yield Schedule Zones.
Response: Changes to stumpage prices were made.
- **Comment:** Recommendations to change the word of “biomass” to either “small woody debris,” “fine woody debris,” or “fine woody material.”
Response: The word “biomass” was changed to “fine woody material.”
- **Comment:** Concerns were raised about the validity of the initial data the department collects to create the average stumpage values. Suggestions were made to re-evaluate the process used to collect and use the data. Suggestions were also made to hold a round table discussion on how these rates are collected and to discuss ways to improve the process.
Response: DNR will consider hosting a round table discussion and will re-evaluate the process used to collect the raw data.

Modifications Made

Adjustments were made to the stumpage rate tables based on public comment. The term “biomass” was replaced by the words “fine woody material.” Revisions were made to clarify how landowners would enter lands that crossed municipal lines and when the revisions would be effective. The word “draft” was removed from the provisions describing the deadlines for submitting management plans for department review. References were made to other provisions within NR 46 to describe the requirements of a management plan.

No modifications were requested by the Natural Resources Board.

Appearances at the Public Hearing

May 13, 2009 – Stevens Point

As interest may appear:

Juris Repsa, 1011 Cheryl Court, Port Edwards, WI 54469-1164

Tim Nicklaus, 600 S. Center, Merrill, WI 54452

Jere Hamel, 5490 Poplar Lane, Vesper, WI 54489

Jerry Kauth, 911 4th St., Plover, WI 54467

Jim Hoppe, N9090 Cty. Rd. E, Tomahawk, WI 54487

In support – none

In opposition – none

May 13, 2009 – Green Bay

As interest may appear:

Tom Jacobs, 9300 Hwy S., P.O. Box 190, Tomahawk, WI 54487

In support – none

In opposition – none

May 13, 2009 – Eau Claire – no appearances

May 13, 2009 – Madison

As interest may appear:

Lee Herek, W9111 Delaney Lane, Elroy, WI 53929f

Scott Sawle, 19717 St. Hwy. 80, Box 652, Richland Center, WI 53581

In support – none

In opposition – none

Changes to Rule Analysis and Fiscal Estimate

Modifications were made to the rule analysis and fiscal estimate as a result of the public comments. Many stumpage rates decreased for the various tree species in the thirteen different Severance and Yield Schedule Zones. The decrease in stumpage rates is reflected in a decrease in money collected for yield and severance taxes that is returned to the local municipalities as payment of deferred property taxes.

Response to Legislative Council Rules Clearinghouse Report

All Clearinghouse comments were addressed.

Final Regulatory Flexibility Analysis

The proposed rule will affect landowners who are required to pay severance and yield taxes when timber is harvested from lands enrolled in Forest Crop Law and Managed Forest Law. It also requires that lands are entered under MFL by municipality except when lands in any one municipality is less than 10 acres in size or less than 80% productive. In these cases the lands will be entered under a single MFL order. Certified plan writers are given a deadline of June 1 to submit management plans for review by the DNR and a deadline of August 15 to submit a final management plan with landowner signatures. DNR Foresters are given under August 15 to submit final management plans with landowner signatures.