

Report From Agency

REPORT TO LEGISLATURE

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

Board Order No. FR-13-07
Clearinghouse Rule No. 07-024

Basis and Purpose of the Proposed Rule

The rule continues existing administrative practices on the stumpage prices, amends the provisions to qualify for catastrophic loss consideration and the method for determining stumpage values for fire caused losses. The rule also amends the policy for Managed Forest Law petitions filed for lands in different municipalities but under the same ownership and it adjusts application fees. Only one petition per ownership will be required instead of one for each municipality. The application fee will be \$20 per county included on the petition.

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, 2007 through October 31, 2008. Thirteen separate zones reflect varying stumpage values for different species and products across the state.

Amendments to catastrophic loss provisions in NR 46.30 (1): The changes proposed include reducing acres that are affected from 10 contiguous acres to 5 contiguous acres and increasing the reduction in the stumpage value for catastrophic losses caused by fire mortality from 30% to 70%. These changes were selected from options developed by the Catastrophic Loss Working Group.

Concerns raised by landowners, foresters and legislators have prompted the Department to review the current provisions for qualifying for catastrophic loss and the values used for assessing the yield and severance tax. The working group consisting of non-industrial and industrial private landowners, forest industry, DNR and Cooperating Foresters, Wisconsin Towns Association (WTA), Wisconsin Counties Association (WCA) and Wisconsin Professional Loggers Association (WPLA) met in December 2006 to develop options for the Department's consideration. The guidelines for the group were 1) the stumpage value set must be reasonable (statutory), 2) the results must be fair to all involved and 3) there can be no increase in department positions. Some of the main concerns expressed in the group included that fire damage resulted in a more severe loss than other types of events; that basing the stumpage value on the value (money and service) received would be the fairest to the landowner but not necessarily to the municipality/county and would increase Department workload; and that keeping it simple was important. It was recognized that all of the options would reduce the revenue to the municipalities and counties that receive compensation from the yield and severance taxes but overall the reduction in revenue would not be significant since this would only apply to stumpage values for catastrophic losses. Revenues from invoices with catastrophic losses are on average less than 5% (\$60,000) of the average \$1.6 million collected annually from yield and severance taxes. The options adopted by the Natural Resources Board are as follows:

1. Change the reduction in value for fire caused catastrophic losses from 30% to 70%. This option acknowledges that there is a greater loss from fire events, keeps it simple, does not require additional workload and would require a minimal amount of reprogramming to implement. It does treat other types of catastrophic events differently.
2. Reduce acreage requirement to 5 contiguous acres. This option is the easiest to implement, treats all types of catastrophic events the same, keeps it simple, provides incentive to clean up smaller

areas and would not require any reprogramming. There would be an increase in claims but they are sites that would have been reviewed and denied in the past so there would be little additional workload.

Summary of Public Comments

All comments received included recommendations related to the stumpage rates. The majority of the comments opposed the portions of the stumpage rate adjustments (22 out of 25). Comments made stated that the stumpage rates calculated using the 3-year weighted average formula do not reflect a recent downturn in the market for some species and products.

Background: The 3-year weighted average is used to calculate the initial proposal for the stumpage values. It is set at 3 years to slow the effect of increases and decreases in stumpage values since most timber sale contracts are 18 to 24 months (or more) in length. Further adjustments are made to the proposed rates based on comments received during the public comment period. An analysis of the stumpage data received in 2006 for 507 private timber sales showed that if these sales were from Managed Forest land:

- 50% of the yield tax bills would have been between 4% and 6% of what was actually received.*
- 85% of the yield tax bills would have been between 3% and 7% of what was actually received.*

* Based on dollars received only. Information on the value of goods and services received was not available.

Response: The proposed rates were adjusted based on the comments received, over 250 of the 440 sawtimber and pulpwood rates were lowered. The adjustments resulted in a decrease in the average sawtimber and pulpwood values instead of an increase. The average sawtimber change was a 5% decrease and the average pulpwood change was a 10% decrease.

The current formula used for calculating the rates should not include timber sale data from public timber sales. It is generally felt that the public rates are higher than the private rates.

Background: The initial rates proposed were calculated first using the *combined public and private timber sale data* and then again using *private only timber sale data*. A comparison of the two set of rates for the 440 sawtimber and pulpwood rates showed:

- 187 of the rates were the same for each calculation. This mostly occurred where there was no new data or very little data from one group or the other (public or private).
- 152 of the rates were higher when using the *combined public and private timber sale data*.
- 91 of the rates were higher when using the *private only timber sale data*.

A review of the data used also showed that over the 3 year period 7,500 more records were received from private timber sales than from public timber sales (20,000 private records, 12,500 public records).

Response: The rates were shifted to the *private only timber sale data* rate in most cases unless an adjustment was appropriate based on comments received. *Private only timber sale data* will be used in subsequent years.

The formula used for calculating the stumpage values should be reviewed for revision.

Background: The formula was reviewed in 2003/2004 when work was being done for 2003 Wis. Act 228. It was decided to leave the formula as is.

Response: The formula will be revised immediately to use private timber sale data only since the amount of data from private timber sales available and reported has increased. A working group will be convened during 2007/2008 to review the formula and provide alternatives to the department.

The yield tax for harvests on managed forest land should be dropped in conjunction with an increase in the annual acreage share tax.

Background: The severance tax for timber harvest on Forest Crop land and the yield tax for timber harvests on Managed Forest land are written in Ch. 77, Wis. Stats. They were established as a deferral of part of the

property taxes saved by the owner while the land was designated under one of the programs. The taxes are returned to the municipality and county.

Response: Dropping the yield tax and raising the annual acreage share tax would require a statutory change and therefore cannot be revised by this rule change.

Modifications Made

The rates initially proposed showed an average increase for sawtimber (0.32%) and pulpwood (1.52%) rates when compared to the current year's rates. These rates were adjusted based on comments received during the public hearing and the comment period. The main concern expressed is a recent drop in the markets. Fifty-five percent of the 440 sawtimber and pulpwood rates were lowered. As a result of the changes the rates being proposed show an average decrease when compared to the current year's rates instead of an increase. The average change for sawtimber is a 5% decrease and the average change for pulpwood is a 10% decrease.

Appearances at the Public Hearing

In support – none

In opposition:

Juris Repsa-Domtar, Domtar Industries, Inc., 100 Wisconsin River Drive, Port Edwards, WI 54469
David F. Jackson, N5391 Town Hall Road, Gleason, WI 54435

As interest may appear:

Al Koepfel, Kretz Lumber Co., Inc., P.O. Box 160, Antigo, WI 54409
Thomas A. Jacobs, N3312 River Road Drive, Peshtigo, WI 54157
Mike Regan, P.O. Box 8050, Wisconsin Rapids, WI 54495
Robert Puent, Wausau Timberland Company, 2290 County Road X, Suite A, Mosinee, WI 54455
Nick Barden, 3906 Knaack Avenue, Weston, WI 54476

Changes to Rule Analysis and Fiscal Estimate

The rule analysis was revised to reflect the change in stumpage values. The fiscal estimate was also revised to reflect these changes now showing the net annualized fiscal impact decreasing from zero for the State of -\$1,580 and for Local governments a decrease from \$8,600 to -\$134,200.

Response to Legislative Council Rules Clearinghouse Report

The recommendations were accepted.

Final Regulatory Flexibility Analysis

This rule does affect small business. Small private forest landowners and forest industries voluntarily enrolled under the Forest Crop Law and the Managed Forest Law are required to pay 10% and 5% respectively of the stumpage value adopted in the zone for the species and wood product volume cut from their land.