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(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ...
PUBLIC HEARING - COMMITTEE RECORDS

2007-08
(session year)

Assembly
(Assembly, Senate or Joint)

Committee on Forestry...

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
  (**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
  (**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

* Contents organized for archiving by: Stefanie Rose (LRB) (July 2013)

Assembly

Record of Committee Proceedings

Committee on Forestry

Clearinghouse Rule 08-023

Relating to administration of the forest crop law and managed forest law.
Submitted by Department of Natural Resources.

July 18, 2008 Referred to Committee on Forestry.

August 18, 2008 **PUBLIC HEARING HELD**

Present: (6) Representatives Friske, Mursau, A. Ott, M. Williams, Hubler and Boyle.
Absent: (1) Representative Sherman.

Appearances For
- None.

Appearances Against
- None.

Appearances for Information Only
- None.

Registrations For
- None.

Registrations Against
- None.

Registrations for Information Only
- None.

August 18, 2008 **EXECUTIVE SESSION HELD**

Present: (6) Representatives Friske, Mursau, A. Ott, M. Williams, Hubler and Boyle.
Absent: (1) Representative Sherman.

Moved by Representative Hubler, seconded by Representative M. Williams that **Clearinghouse Rule 08-023** be recommended for modifications requested.

Ayes: (6) Representatives Friske, Mursau, A. Ott, M. Williams, Hubler and Boyle.
Noes: (0) None.
Absent: (1) Representative Sherman.

MODIFICATIONS REQUESTED RECOMMENDED, Ayes 6, Noes 0

Tim Gary
Committee Clerk

Vote Record
Committee on Forestry

Date: 8-18-2008

Moved by: Hubler Seconded by: Ott Williams

AB ____ SB ____ Clearinghouse Rule 08-023

AJR ____ SJR ____ Appointment ____

AR ____ SR ____ Other ____

A/S Amdt ____

A/S Amdt ____ to A/S Amdt ____

A/S Sub Amdt ____

A/S Amdt ____ to A/S Sub Amdt ____

A/S Amdt ____ to A/S Amdt ____ to A/S Sub Amdt ____

Be recommended for:

☐ Passage ☐ Adoption ☐ Confirmation ☐ Concurrence ☐ Indefinite Postponement

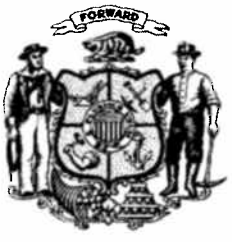
☐ Introduction ☐ Rejection ☐ Tabling ☐ Nonconcurrence

modification

Committee Member	Aye	No	Absent	Not Voting
Representative Donald Friske, Chair	☑	☐	☐	☐
Representative Jeffrey Mursau	☑	☐	☐	☐
Representative Alvin Ott	☑	☐	☐	☐
Representative Mary Williams	☑	☐	☐	☐
Representative Mary Hubler	☑	☐	☐	☐
Representative Frank Boyle	☑	☐	☐	☐
Representative Gary Sherman	☐	☐	☑	☐
Totals:	6	0	1	

☑ Motion Carried ☐ Motion Failed

WISCONSIN STATE LEGISLATURE



State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Jim Doyle, Governor
Matthew J. Frank, Secretary

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DNR Testimony
CR-08-023

Assembly Committee on Forestry

Department of Natural Resources Testimony
Robert J. Mather, Director Bureau of Forest Management
Division of Forestry
August 18, 2008

Mr. Chairman and Committee Members:

Good afternoon. My name is Bob Mather and I am the Director of the Bureau of Forest Management in the Department of Natural Resources' Division of Forestry. I appreciate this opportunity to appear before you to discuss FR-03-08 regarding changes to NR 46, which provides guidance on the administration of the Forest Tax Law programs.

The Department of Natural Resources (DNR) makes modifications to NR 46 on an annual basis to update stumpage rates and to make modifications to the administration of the Managed Forest Law (MFL) and Forest Crop Law (FCL) programs. Hearings were held on April 16 in four locations throughout the state, with hearing sites in Madison, Green Bay, Stevens Point and Eau Claire.

This year DNR received more comments about NR 46 than we have had in other years. The most contentious items that we received comments on were the definitions of "consideration" and "owner or ownership."

Consideration. The definition of consideration is being added to NR 46 as a result of statutory changes to the MFL program after 2007 Wisconsin Act 20 was signed in October of last year. This statutory provision prevents landowners who are entered under the Managed Forest Law (MFL) program from receiving consideration for recreational activities.

Consideration is a legal term that is used frequently and includes the receiving of cash, goods and services. The Division of Forestry has used this definition to inform landowners of the statutory change to the MFL program in a letter that was sent to all MFL landowners on October 30, 2007.

Although the department does not believe that we needed to include this definition in NR 46, we chose to do so because it would clarify what is actually meant by the term "consideration" when this term is read in the statute.

The definition of consideration is written in the proposed rule change as follows:

> ***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.*

Comments and questions that we received about the definition included:

- *Under what authority does DNR have to determine legislative intent through defining the term "consideration" in administrative code?*

  DNR's response was that the Department of Natural Resources has been given statutory approval to create rules to help administer any statutes enforced or administered by it. The rule making authority is given to the department through s. 227.11, Wis. Stats.

- *Expressed concerns were made about how easy it might be to obtain 501(c)(3) non-profit status with the intent of circumventing the new MFL provision.*

  DNR's response to this was that the Internal Revenue Service has strict rules about what constitutes a 501(c)(3) organization and that an organization who violates those rules would be in violation of federal tax law.

- *Expressed concerns were made about landowners receiving consideration for allowing public recreation on MFL lands. The concern was if DNR can create a rule to allow the receiving of consideration for public recreation, why couldn't we create a rule that allows for private recreation?*

  DNR responded to this concern by stating that it has no authority to exceed the legislative intent of the statute (s. 227.11, Wis. Stats.) and that if we would have proposed a rule that allows the receiving of consideration for private recreation we would have exceeded our authority.

  The new statutory provisions prohibit the receipt of consideration for private recreational activities on lands enrolled in the Managed Forest Law program. The intent of the statute was to increase public access to private property by removing the incentive to close lands to public access. The purpose statement, found under Chapter 77.80, Wis. Stats., states that one of the purposes of the Managed Forest Law is to "encourage the . . . accessibility of private property to the public for recreational purposes." Statutory construction and interpretation disfavors interpretations that produce inconsistent results. Any interpretation of the statute that would prohibit landowners from allowing public recreation on closed MFL lands would clearly be inconsistent, and is not supported by the statutes or case law. Many of the governmental or non-profit payments are long term agreements for public rights including payments for the Ice Age Trail, public hunting leases, and Forest Legacy Easements. The legislature did not intend to wipe out the free public access to these worthy and well supported programs.

<u>Owner or Ownership.</u> The definition of "owner or ownership" also generated questions and concerns. Most of these questions and concerns were associated with the definition of "consideration" and suggested that this new definition would not deter people from subdividing their lands to circumvent the closed acreage limitations.

The proposed wording to the definition of "owner or ownership" would be:

> ***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, <u>a trust or similar entity,</u> or as established by statute.*

DNR was not proposing a change in the definition of ownership to circumvent any closed acreage limitation.

DNR's interest in adding "trust or other similar entity" to the definition of "owner or ownership" would allow for better administration of the MFL program. Trusts are currently tracked by the trustee and not by the name of the trust. Case law shows that trustees are actually the owners of a trust, yet many deeds do not name the trustee nor are new deeds recorded when trustees change. DNR is finding it difficult to determine who the owner of lands are if we are not able to learn of new owners at the County Register of Deeds offices.

DNR and individual landowners are also finding it difficult to work with the MFL program when banks and other institutions are listed as the trustees. Many times the institution's name on the deed will prevent some unrelated individuals from having the ability to close MFL lands to public recreation because the institution already has closed lands in the same municipality. This prevents some people from having the option to close lands.

Adding "trust or other similar entity" to the definition of "owner or ownership" will allow DNR to track these owners in a similar fashion to individual landowners, LLC, partnerships and corporations by listing the name on the deed as the owner of the land.

There were many requests for changes to stumpage values and individual comments to other provisions in the NR 46. DNR made amendments to these changes as requested.

DNR understands the concern that individuals and groups have shown over the statutory change to the MFL program as a result of 2007 Wisconsin Act 20, and we understand the balancing act that we must face with having an MFL program that is attractive enough for landowners to enter and one that is supported by the public. We believe that the proposed changes to NR 46 meet the statutory intent of the MFL program and allow DNR to make it easier to explain, enter and enforce the MFL program.

If the committee decides to only pass some provisions of NR 46 at this time, I would like to remind you that November 1 is the date for new stumpage rates to go into effect. The new stumpage rates more accurately reflect the current market conditions and thus benefit landowners who must pay yield or severance taxes.

I appreciate this opportunity to speak before you today and would be glad to answer any questions you might have.


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WWOA Testimony

STATEMENT FOR ASSEMBLY COMMITTEE ON FORESTRY - AUGUST 18, 2008

My name is Eugene Roark and I'm at this hearing to represent the Wisconsin Woodland Owners Association, usually known as WWOA, which has some 2200 members, and represents the interest of the 200,000 or more woodland owners in Wisconsin who supply more than half of the raw material for our forest products and paper industry.

WWOA has been strongly opposed to the ban on recreation leases on lands entered as closed under the Managed Forest Law, or MFL, since it went into effect on January first. We will continue to seek a change in the law to restore the right of woodland owners to enter into leases for hunting and other forms of recreation.

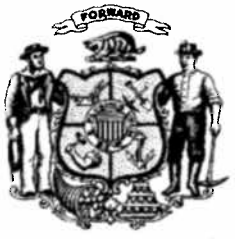
In the meantime, we object strenuously to the definition of compensation proposed in NR46.

Bartering, and the exchange of services, are traditions in rural areas all over America. Neighbors did for one another what most could not afford to pay for, working out equitable solutions when farm chores, woodcutting, barn building, or other tasks needed to be done. You did something for me, and I did something for you.

This tradition has continued to the present. Woodland owners have allowed hunters, hikers, and horseback riders on their land in return for the planting, putting up firewood, timber stand improvement, or keeping an eye on the property while owners are away. Under the proposed definition, such mutually advantageous arrangements would apparently be illegal. We see no public benefit in such an outcome.

Thank you, Chairman Friske and Committee members, for this opportunity for WWOA to express our views.


WISCONSIN STATE LEGISLATURE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State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES
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August 28, 2008

Honorable Donald Friske, Chair
Assembly Committee on Forestry
Room 312 North
State Capitol
Madison, WI 53708

Re: Clearinghouse Rule No. 08-023

Representative Donald Friske:

On August 18, 2008, the Assembly Committee on Forestry requested the Department of Natural Resources to consider modifications to Clearinghouse Rule No. 08-023 regarding changes to NR 46, which provides guidance on the administration of the Forest Tax Law programs.

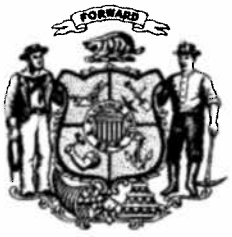
This letter is to inform you that the Department agrees to consider further modifications to Clearinghouse Rule 08-023, Section 1, NR 46.15 (3m), relating to the definition of "consideration." Should the Department, after considering further modification, choose to modify the language, that new language would require approval of the Wisconsin Natural Resources Board.

Sincerely,

for Matthew Frank
Secretary

cc: Paul Delong
Robert Mather
Kathryn Nelson
Quinn Williams
Members of the Assembly Committee on Forestry


WISCONSIN STATE LEGISLATURE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Clearinghouse Rule 08-023 related to the Managed Forest Law

Assembly Committee on Forestry

Testimony of
Richard Wedepohl (Retired DNR) and
Wisconsin Woodland Owners Legislative Committee Member
August 18, 2008

Mr. Chairman and Committee Members:

Thank you for the opportunity to provide testimony in opposition to proposed changes to the Managed Forest Law. Specifically my comments are to request that the Committee on Forestry deny the Department of Natural Resources request to create a new definition of "consideration" under NR 46.15 (3m).

This proposed definition appears to make new law, outside of the normal legislative process, that may solve a narrow, agency specific problem, while not addressing a much broader problem facing the management of Wisconsin's forestry resources.

Background on the Department's Responses to the 07-09 Budget Bill Law Change Affecting MFL

DNR's Interpretation of Law Change: On October 30, 2007 the DNR sent a letter (copy attached) to all landowners describing these new changes. In that letter the department provided a definition of compensation, even going so far as to say that consideration includes bartering for something of value in return for use of the land for recreational activities. Additionally they stated that failure to comply would result in fines of $500 or more and ultimately removal of lands from the MFL. This broad interpretation goes so far as to mean that woodland owners such as I can no longer even ask for assistance from friends and others, who we allow to recreate on my land, to help build the fence I'm required to construct to keep my neighbor's cows out of my woods - so that he only has to pay property tax of $1.60/acre on his pastured woodlot.

New laws, along with such strict interpretation of the statutes affecting even long term existing contracts, threaten the integrity of the MFL. Will woodland owners now make a 25 or 50 year commitment if they believed the

rules you thought you were operating under could be changed, without you even having had an opportunity to discuss implications of these changes?

Why the need for a Definition Change?: Obviously the department realized, sometime after passage of the new law, that various governmental programs provide consideration for recreational purposes on land enrolled in the MFL and has now proposed this rule to effectively extend the law, adding another exemption that would solve a narrow problem for some state programs but would not address a much bigger issue.

I must say I was disappointed that this issue appears to have been buried in a relatively obscure, usually routine, rule language change updating stumpage rates. If there was any outreach to organizations such as WWOA or other concerned citizens to discuss the definition of compensation I am unaware of it. At its February meeting the NRB was told by the department that it intended *"to develop definitions to streamline administration and processing of MFL orders, transfers and withdrawals."* Would it not have been better to clearly state a definition change is needed to allow governmental payments to MFL landowners and that the department requests approval to work with outside interest groups to discuss possible definitions? Burying this change in a rule change primarily focused on routine updating of stumpage rates, without having first contacted interested organizations such as WWOA to discuss rule changes, is reason enough to send this component of the rule back to the department for further work. And do we know what actions the department took to address the agreements it had with landowners of MFL lands to comply with the statutory directive that all leases be voided by January 1, 2008? If the department is confident the legislative intent was clear that these government payments should be exempt, then why would a rule change even be needed?

The issue here is not to contest that landowners be allowed to receive compensation for allowing access under State Parks and other programs. Most people would agree those are wonderful programs. The concern is rather about the approach the department is now using, proposing to fix its "problem", while ignoring a much bigger issue.

Agency Authority Exceeded There is a question as to whether the agency has stretched its authority to interpret legislative intent.

Specifically s.77.83(2) of the statutes now state:

1. For land designated as managed forest land under an order that takes effect on or after October 27, 2007, no person may enter into a lease or other agreement for consideration if the purpose of the lease or agreement is to permit persons to engage in a recreational activity.

2. For land designated as managed forest land under an order that took effect before October 27, 2007, all of the following apply:

a. An owner of managed forest land may enter into a lease or other agreement for consideration that permits persons to engage in a recreational activity if the lease or agreement terminates before the January 1 immediately following October 27, 2007.

b. A lease or other agreement for consideration that permits persons to engage in a recreational activity and that is in effect on October 27, 2007 shall be void beginning on the January 1 immediately following October 27, 2007.

3. Subdivisions 1. and 2. do not apply to any lease or other agreement if the consideration involved solely consists of reasonable membership fees charged by a nonprofit organization and the lease or agreement is approved by the department.

The proposed rule language effectively adds a new section to this law saying:

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 (emphasis added)** or non-profit organization where the purpose of the payment is to provide public access for a recreational activity.

I don't understand how the department can narrowly say that the legislature's intent was to also allow for governmental payments. Clearly the legislature considered making exemptions where needed because it specifically identified non-profit organizations under s.77.83(2)3. Although the department has argued they have the authority, under Section 227.11 of the statutes, to propose this change, citing broad statements on program purpose, it would appear to me that it exceeds the bounds of correct interpretation.

Specifically Section 227.11 of the statutes states that *"Each agency may promulgate rules interpreting the provisions of any statute enforced or administered by it, if the agency considers it necessary to effectuate the purpose of the statute, but a rule is not valid if it exceeds the bounds of correct interpretation."*

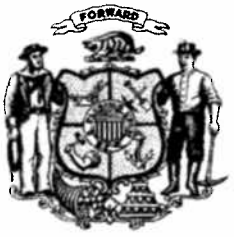
Finally, if the department could successfully argue that the purpose statements of s. 77.80 stats, citing public access as an objective, provides this authority, couldn't they also have argued that additional definition changes, e.g. clarifying that simple bartering, or landowners accepting minimal amounts of assistance to provide watershed protection, development of wildlife habitat, etc. is also not considered compensation given these are purposes of the MFL program as well?

Summary: The Assembly Committee on Forestry should reject the proposed definition of consideration and direct the department to work with woodland owners to *'arrive at a solution that is agreeable to all'* as was promised in earlier responses received from the Governor and the DNR.

I believe that the law was not intending to hurt small private woodland owners, especially those who allow the public to use and hunt their land while receiving assistance with fencing, cleaning out invasive species, doing timber stand improvement, etc. These are good things and the DNR and legislature should encourage them. But, this interpretation and definition are hurting that. The DNR should recognize that these should be included and allowed. It is the out and out payment for recreation with money that the legislature was upset with due to some legal maneuvering some large landowners were doing to close off land to the public.

If finding a solution means working with the legislature to change the law either statutorily or through the administrative rule process, then so be it. The Managed Forest Law provides innumerable benefits to the State of Wisconsin. The time has come to address many of the threats to this program head on, not through back door or dead of night maneuverings.


WISCONSIN STATE LEGISLATURE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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 MLF 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 (WWOA) 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.

<u>Modifications Made</u>

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.