

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

The Wisconsin Natural Resources Board proposes an order to repeal NR 46 Subchapter II; repeal NR 46.15(20s); repeal NR 46.16(1)(b) and (c); repeal NR 46.16(8); repeal NR 46.18(1); repeal NR 46.18(5)(b); repeal NR 46.18(5)(c); repeal NR 46.18(7); repeal NR 46.24(4); renumber NR 46.15(1); renumber NR 46.16(26); renumber NR 46.18(4) (title); renumber NR 46.18(4)(b), (c), (d) and (e); renumber and amend NR 46.18(4)(a); amend NR 46.15(18); amend NR 46.15(25); amend NR 46.16(1); amend NR 46.16(1)(cm); amend NR 46.16(1)(d); amend NR 46.16(1)(e); amend NR 46.16(2)(a), (b), (c), (d) and (e); amend NR 46.16(3), (4), (5), (6) and (7); amend NR 46.165(3)(a), (d) and (4)(f); amend NR 46.18(5)(a); amend NR 46.18(8); amend NR 46.23(4); amend NR 46.23(5); amend NR 46.21(1); amend NR 46.24(2); amend NR 46.26; create NR 46.16(2)(f), (g) and (h); create NR 46.16(9); create NR 46.18(4)(b); create NR 46.23(2m); amend NR 46.24(3)(b) and (c); relating to the administration of the Forest Crop Law and Managed Forest Law.

FR-45-10

Analysis Prepared by the Department of Natural Resources

Statutes interpreted: Subchs. I and VI, Ch. 77, Stats.

Statutory authority: Sections 227.11(2)(a), 77.82(2m)(a) and (am), (3)(am) and (g), (4), Stats. and generally subchs. I and VI, Ch. 77, Stats.

Analysis of proposed rules.

Repeal Subchapter II regarding the Woodland Tax Law and references to Woodland Tax Law throughout NR 46: The Woodland Tax Law was a private landowner incentive program that allowed participants to pay reduced property tax while they grew trees for harvest. A management plan was developed for each parcel enrolled in the program that required harvesting of timber. Enrollment in Woodland Tax Law was for a 15 year period. Woodland Tax Law was repealed when the Managed Forest Law was enacted in 1985. The last Woodland Tax Law contacts expired on December 31, 2000. Repealing of this subchapter will eliminate wording in NR 46 for a program that no longer exists. There are no negative impacts to existing participants under Managed Forest Law or Forest Crop Law. Forest landowners wishing to enroll in a forestry tax incentive program may enroll in Managed Forest Law.

Amend the definition of “incompatible with existing uses of the land.”: Lands that are considered incompatible with the production of timber products include those lands within a recorded subdivision plat defined under s. 236.02 (12), Stats. or other division of land recorded under s. 236.03 (1), Stats. This proposal eliminates an exception to allow for uniform interpretation and implementation of the rule. Lands that are divided as a subdivision plat are largely held for the purpose of providing land for housing development and do not easily allow for management of forested lands for timber products. Forest Crop Law lands that had subdivision plats created after enrollment into the Forest Crop Law program would no longer be allowed to enroll in Managed Forest Law unless the subdivision plat is vacated under Subchapter VIII, Section 236, Stats., even if there had been no sale of individual subdivision plat lots. There are no lands enrolled under Woodland Tax Law, so provisions relating to this program are no longer pertinent.

Repeal the definition of “management plan packet.”: 2009 Wisconsin Act 365 required that Managed Forest Law applications must include all supporting documents, including a management plan, map, forest reconnaissance data, property ownership documents (deeds, land contracts, etc.), tax statement, certified survey maps, and application fee, including a remittance form to properly deposit the application fee. A “management plan packet” is an obsolete phrase since passage of 2009 Wisconsin Act 365. The proposal is to eliminate this phrase from NR 46.

Amend the wording of NR 46 to replace “petition” and “petitioner” with “application” and “applicant.”: 2009 Wisconsin Act 365 replaced the words “petition” with “application,” and “petitioner” with “applicant.” The proposal is that NR 46 would use the same wording as in statute.

Amend the application dates and requirements. 2009 Wisconsin Act 365 replaced the March 31, May 15 and July 1 application deadlines with a June 1 application deadline. The statutory change also required that management plans need to be submitted with the application. Independent certified plan writers would continue to provide application and management plan development service to landowners. DNR foresters provide these services in situations where services from independent certified plan writers are not available. Proposed changes to NR 46 would make all dates and requirements for Managed Forest Law applications consistent with new statutory language.

Amend MFL application fees. Recording fees at local register of deeds offices have increased to \$30.00 per document. The department is required to collect the cost of recording Managed Forest Law documents from landowners as an application fee. The proposal is to increase the application fee from \$20 to \$30 per county for each application.

Repeal NR 46 wording requirements in application forms and management plans. NR 46 currently lists wording requirements to be used on the application and management plan regarding building characteristics and management plans. Application forms are required to have certain information regarding building characteristics and wording in management plans for landowners to acknowledge that violations of the building requirements may cause lands to be withdrawn from the Managed Forest Law program. These specific wording requirements were inserted into NR 46 at a time when the building provisions were new, however these building provisions have been in effect since 1998. The proposal is to remove the wording requirements from NR 46 so that no one statutory or administrative code provision is highlighted over and above other provisions of the Managed Forest Law.

Amend the certified plan writer program certification requirements. The department has amended its training requirements according to the skills and training needs of students. NR 46 states the homework required for plan writer certification. Proposed amendments to NR 46 eliminate the specific homework requirements to allow the department to better meet student training needs.

Amend reporting dates as a result of new application deadlines provided for in 2009 Wisconsin Act 365. Deadlines for certified plan writers to report management plan cost data must be adjusted in order to have new costs available for use for the new Managed Forest Law application dates. The NR 46 proposal will be to move the dates to collect cost data to be one month earlier from May 31 to May 1 of each year.

Require that owners buying lands from large ownerships as defined in NR 46.18(4) provide a management plan within one year of the transfer date. Historically, the department has written management plans free of charge. This proposal requires that landowners who purchase lands from large ownerships provide a management plan within 1 year of the date of transfer. Landowners would follow the same protocol to obtain the services of a certified plan writer as new enrollees.

Require that owners who no longer meet the qualifications of a large ownership in NR 46.18(4) must provide a management plan within one year of losing large ownership status. Landowners who no longer qualify as a large ownership as defined in NR 46.18(4) are placed in the small landowner category, requiring that a management plan be developed. Historically the department has written these plans. This proposal would require that landowners who lose their status as a large ownership provide a management plan within 1 year of the date of losing their large ownership status. Landowners would follow the same protocol to obtain the services of a certified plan writer as new enrollees.

Amend wording associated with the alternative withdrawal tax calculation. Landowners who

withdraw lands early from the Managed Forest Law are required to pay a withdrawal tax based on a formula that multiplies the assessed value, tax rate and years under the law, or based on 5% of the average stumpage value for the market zone. Adjustments to the wording will clarify that the withdrawal tax estimates are not the same as the Department of Revenue withdrawal tax estimates recently created in 2009 Wisconsin Act 365. NR 46 wording changes will also include statutory references regarding renewal of lands under Managed Forest Law.

Comparison of Federal Regulations: There are no known federal rules which apply to the Managed Forest Law program.

Comparison of Adjacent States: Minnesota, Michigan, Iowa and Illinois offer some type of incentive program to forest landowners, however their program requirements are not as comprehensive as Wisconsin's Managed Forest Law.

Anticipated cost by private sector:

Landowners applying for Managed Forest Law will pay an additional \$10 per county for MFL applications. This extra cost covers the fees to record new MFL Orders of Designation with registers of deeds.

Effect on Small Business: Effect on small business will be de minimus.

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SECTION 1. NR 46, subch. II is repealed.

SECTION 2. NR 46.15(1) is renumbered to NR 46.15(1m).

SECTION 3. NR 46.15(18) is amended to read:

NR 46.15(18) “Incompatible with existing uses of the land” means ~~the designation of land which is within a recorded plat, whether as a subdivision defined under s. 236.02 (12), Stats., or other division of land recorded pursuant to s. 236.03 (1), Stats., as managed forest land unless the land is entered under the forest crop or woodland tax law at the time of application for designation of the lands as managed forest land.~~

SECTION 4. NR 46.15(20s) is repealed.

SECTION 5. NR 46.15(25) is amended to read:

NR 46.15(25) “Parcel” means for the purpose of determining eligibility for designation as managed forest land under s. 77.82, Stats., the acreage of contiguous land described in the ~~petition application~~ which is under the same ownership.

SECTION 6. NR 46.15(26) is renumbered NR 46.15(1) and amended to read:

NR 46.15(1) “~~Petitioner~~” or “~~applicant~~ Applicant” means any person who has an ownership interest either in fee or equity or established by statute.

SECTION 7. NR 46.16(1) is amended to read:

NR 46.16 (title) Managed forest land ~~petition~~ application. (1) PETITION APPLICATION DEADLINES. A ~~An~~ petition application for designation of land as managed forest land shall be signed by all owners, ~~be fully completed~~ on forms provided by the department and filed as follows:

(a) ~~Petitions~~ Applications from owners of less than 1000 acres of forest land in this state ~~without a completed plan~~ shall be postmarked or received by the department no later than ~~July 4~~ June 1 to be considered for designation effective the following January 1 ~~of the second year following the year in which the petition was received.~~

SECTION 8. NR 46.16(1)(b) and (c) are repealed.

SECTION 9. NR 46.16(1)(cm) is amended to read:

NR 46.16(1)(cm). Notwithstanding pars. (a), ~~(b) and (c)~~, ~~petitions~~ applications from owners of land entered as forest cropland under s. 77.02, Stats. subject to an ownership change within 18 months prior to the end of the contract period shall be postmarked or received by the department no later than July 1 or later for good cause to be considered for designation effective the following January 1.

SECTION 10. NR 46.16(1)(d) is amended to read:

NR 46.16(1)(d) Lands subject to an ownership change after the ~~petition application~~ deadline, but before the order of designation has been issued, may not be designated as managed forest land for the year for which the original ~~petition application~~ was submitted. Ownership changes taking place after the issuance of an order of designation ~~will~~ shall be processed as a normal transfer after January 1. The new owner shall submit a new and complete ~~petition application~~ by the next applicable deadline. The department may designate land that remains under the original ownership effective January 1 of the year for which the original ~~petition application~~ was submitted providing the remaining land qualifies for entry.

Note: The Department’s address for Managed Forest Law ~~petitions~~ applications is Division of Forestry, Bureau of Forest Management, Forest Tax Section, P.O. Box 7963, Madison, WI 53707.

SECTION 11. NR 46.16(1)(e) is amended to read:

NR 46.16(1)(e) Application fee. Each ~~petition application~~ submitted to the department for a new designation or a conversion of forest cropland to managed forest land shall include a nonrefundable application fee of ~~\$20.00~~ \$30.00 per county in which the land that is the subject of the ~~petition application~~ is located.

Note: This subsection interprets and administers s. 77.82 (2m) and (4), Stats., relating to application fees.

SECTION 12. NR 46.16(2)(a), (b), (c), (d) and (e) are amended to read:

NR 46.16(2) ATTACHMENTS. (a) A copy of the recorded legal instrument giving the ~~petitioner~~ applicant an ownership interest in the land subject to the ~~petition~~ application shall accompany and be part of the ~~petition~~ application.

(b) The ~~petitioner~~ applicant shall furnish a copy of a recent property tax bill or other documentation showing the parcel identification number used by that county to identify the specific real estate parcel being ~~petitioned~~ applied for designation.

(c) Upon request by the department, the ~~petitioner~~ applicant shall also submit a copy of the legal instrument giving the ~~petitioner~~ applicant an ownership interest in all land in the same municipality which is contiguous to the land subject to the ~~petition~~ application.

(d) Upon request by the department, the ~~petitioner~~ applicant shall furnish further documentation on the establishment, by-laws, agreements or the status of corporations, partnerships, trusts and cooperatives having an ownership interest in the land subject to the ~~petition~~ application.

(e) A copy of any certified survey map recorded for the land subject to the ~~petition~~ application, or referenced in the legal instrument provided under par. (a) and pertaining to land adjacent to land subject to the ~~petition~~ application shall accompany and be part of the ~~petition~~ application.

SECTION 13. NR 46.16(2)(f), (g) and (h) are created to read:

NR 46.16(2)(f) A management plan, on forms provided by the department, by all persons with an ownership interest.

(g) A map, on forms provided by the department, showing land eligible for designation and areas designated as closed to public access under s. 77.83, Stats. The map shall show major land features, using conventional map symbols, and vegetation cover types indicating species, size and density where appropriate.

(h) Reconnaissance data and scheduled practices on forms provided by the department.

NOTE: Forms can be obtained by contacting the Division of Forestry, Bureau of Forest Management, PO Box 7921, Madison, WI 53707.

SECTION 14. NR 46.16(3), (4), (5), (6) and (7) are amended to read:

NR 46.16(3) ENCUMBRANCES. Any person holding encumbrances on the land subject to the ~~petition~~ application shall sign the ~~petition~~ application prior to its filing to indicate agreement with it.

(4) UNPAID TAXES. The ~~petitioner~~ applicant shall upon request of the department furnish proof acceptable to the department that taxes are paid in full.

(5) SAME OWNERSHIP. All eligible land under the same ownership and located in the same municipality when applied for designation in the same year, shall be designated under the same order of designation. All eligible land under the same ownership that crosses any municipal boundary where land designated for entry in any one municipality is less than 10 acres in size or less than 80% productive, when applied for designation in the same year, shall be designated under the same order of designation. ~~This provision shall take effect for MFL petitions received for the July 1, 2010 petition deadline.~~

(6) ~~PETITION APPLICATION AMENDMENTS FOR JULY 1 DEADLINE. An~~ petition application for designation of land as managed forest land may be altered or amended ~~prior to submission of a completed management plan packet to~~ accurately reflect lands eligible for entry prior to issuance of the order of designation.

(7) ADDITIONS. An owner may ~~petition~~ apply to the department to designate 10 or more acres of land as managed forest land which is contiguous to land that was designated as managed forest land on or after April 28, 2004 as an addition to the previously designated and contiguous managed forest land. If the ~~petition~~ application for an addition is for land which is contiguous to land that was designated as managed forest land on or after April 28, 2004 in an adjacent municipality, the land must be designated under a separate order if it meets the eligibility requirements under s. NR 46.17 and s. 77.82(1)(a), Stats.

SECTION 15. NR 46.16(8) is repealed.

SECTION 16. NR 46.16(9) is created to read:

NR 46.16(9) DEPARTMENT PREPARED APPLICATIONS. (a) The department shall refer all requests for managed forest law applications to certified plan writers.

(b) The department may agree to develop an application to be filed under s. 77.82 (2), (4), (4g), (4m) or (12), Stats. if, by the January 1 prior to the application deadline, services by an independent certified plan writer are not available in the county in which the land is located. The department shall notify the owner in writing if the department agrees to prepare the management plan. Managed forest law applications includes requirements under s. 77.82(2), (2m), and (3), Wis. Stats. and s. NR 46.16(1), (2), (3), and (6), and s. NR 46.18.

SECTION 17. NR 46.165(3)(a), (d) and (4)(f) are amended to read:

NR 46.165(3)(a) ~~Submits an application to~~ Applies and submits information required consistent with application deadlines specified by the department on forms prepared and provided by the department for certification to prepare management plans applications under the managed forest land program on forms prepared and provided by the department and submits the information required consistent with application deadlines specified by the department on the application.

(3)(d) ~~Submits within 120 days of attending the basic training session under par. (c) 2 managed forest law management plans prepared by them within the last 3 years any required training materials which must be reviewed and approved by the department regardless of any earlier approval by the department.~~

(4)(f) ~~On or before May 31 of each year submit a report of managed forest law management plan packet preparation costs fees charged as an independent certified plan writer during the preceding 12 months in a method approved by the department. The report shall include the cost per acre, the county where the land was located and the acres covered by the plan.~~

SECTION 18. NR 46.18(1) is repealed.

SECTION 19. NR 46.18(4) (title) is renumbered NR 46.18(4) (title) (a).

SECTION 20. NR 46.18(4)(a) is renumbered NR 46.18(4)(a)1. and amended to read:

NR 46.18(4)(a)1. ~~Other land of the owner entered as managed forest land, forest crop land and woodland tax law land or other forest tax law programs administered by the department.~~

SECTION 21. NR 46.18(4)(b), (c), (d) and (e) are renumbered NR 46.18(4)(a)2., 3., 4. and 5.

SECTION 22. NR 46.18(4)(b) is created to read:

NR 46.18(4)(b) A management plan under 77.82(3), Stats. shall be developed by owners who no longer qualify as a large ownership in sub. (4)(a). All items listed in NR 46.16(2)(f), (g) and (h) must be submitted to the department for approval within one year after being notified by the department of no longer meeting the requirements in sub. (4)(a).

SECTION 23. NR 46.18(5)(a) is amended to read:

NR 46.18(5)(a) ~~Management plans for petitions~~ applications under s. NR 46.16 (1) (a) received on or before June 1 or under s. NR 46.16 (1) (cm) received on or before July 1 shall be prepared by a certified plan writer or the department itself.

1. ~~Management plans prepared by an independent certified plan writer shall be approved by the department, signed by the landowner, and submitted to the department forester no later than August 15 October 1 of the year in which the order of designation will be issued. The department shall deem a approve a management plan completed if all the following apply:~~

~~a. The management plan packet was submitted to the department for review on or before June 1.~~

~~b. The management plan includes all requirements under subs. (4)(2) to and (3), as approved by the department.~~

~~c. The department has approved the management plan.~~

~~d. The owner has All owners have signed the management plan.~~

2. ~~As a condition of designating the land for plans prepared by the department, the owner shall sign the department prepared and approved management plan and return it to the department no later than August 15 of the year in which the order of designation will be issued unless otherwise specified by the department. The petitioner applicant shall pay the plan preparation management plan fee no later than October 1 of the year in which the order of designation will be issued.~~

3. ~~Failure to submit a management plan prepared by an independent certified plan writer no later than~~

~~August 15 or return the signed department prepared management plan no later than~~ have a management plan approved by the department on or before August 15 October 1 of the year in which the order of designation will be issued or a later date agreed to by the department, conditioned by s. 77.82(9), Stats., will result in a denial of the ~~petition~~ application.

SECTION 24. NR 46.18(5)(b) is repealed.

SECTION 25. NR 46.18(5)(c) is repealed.

SECTION 26. NR 46.23(2m) is created to read:

NR 46.23(2m). A management commitment under 46.18(4)(a)4. does not qualify as a management plan under s. 77.88(2)(e), Stats. unless the transferred land qualifies as a large ownership under NR 46.18(4)(a). The transferee shall provide a management plan under 77.82(3), Stats. with all items listed under NR 46.16(2)(f), (g) and (h) and must submit the management plan to the department for approval within one year of transfer.

SECTION 27. NR 46.18(7) is repealed.

SECTION 28. NR 46.18(8) is amended to read:

NR 46.18(8) PLAN PREPARATION MANAGEMENT PLAN FEE. (a) The department shall charge a ~~management plan preparation fee~~ management plan preparation fee for plans the department ~~agrees to prepare~~ prepares for petitions applications filed under s. 77.82 (2), (4), ~~(4g), (4m)~~ and (12), Stats.

~~1. The plan preparation fee for petitions postmarked after May 31, 2005 and before July 2, 2006 consists of a base rate of \$375.00 plus \$5.60 per acre included in the plan prepared.~~

2. The management plan preparation fee for petitions postmarked after July 1, 2006 will be based on a formula established in this section. The fee assessed shall be the fee in effect on the ~~July~~ June 2 following the date the petition application was filed.

(b) On ~~July~~ June 2 of each year the statewide management plan preparation fee shall be calculated. The management plan preparation fee shall consist of a cost per acre rate. The rates shall be calculated by averaging the cost preparation data submitted by independent certified plan writers under s. NR 46.165 (4) (f) from the 12-month period ending on the prior ~~May-31~~ 1.

SECTION 29. NR 46.23(4) is amended to read:

NR 46.23(4) ATTACHMENTS. Each ~~petition for transfer request~~ request shall be on forms provided by the department and include the following:

(a) A copy of the recorded legal instrument giving the transferee an ownership interest in the land subject to the ~~petition for transfer~~.

(b) A copy of any certified survey map recorded for the transferred land petitioned for transfer, or referenced in the legal instrument provided under par. (a) ~~and pertaining to land adjacent to land petitioned for transfer~~.

(c) A copy of a recent property tax bill or other documentation showing the parcel identification number used by that county to identify the specific real estate ~~parcel being petitioned for transfer~~ transferred.

SECTION 30. NR 46.23(5) is amended to read:

NR 46.23(5) TRANSFER FEE. ~~Twenty~~ Thirty dollars for each county included on the petition application to transfer shall be credited to the appropriation under s. 20.370 (1) (cr), Stats., from the transfer fee collected under s. 77.88 (2) (d), Stats. The amount credited may not exceed the transfer fee collected.

SECTION 31. NR 46.24(1) is amended to read:

NR 46.24(1) ~~Alternative Withdrawal~~ withdrawal tax. (1) ESTIMATE. If calculated by the department, the determination of the withdrawal tax under s. 77.88 (5) (a) 2. and (b) 2., Stats., shall be based on merchantable timber volume estimated from department forest cover type maps indicating timber size and density classes or from aerial photographic interpretation and values established by the current stumpage value schedule ~~in s. NR 46.30 pursuant to s. 77.91(1), Stats.~~

SECTION 32. NR 46.24(2) is amended to read:

NR 46.24(2) ACCURACY. If the estimate of merchantable volume of timber for the purpose of calculating the alternative withdrawal tax under s. 77.88 ~~(5) (a) 2. and (b) 2.~~, Stats., is made by an estimator other than the department, the cruise shall be established by on site sampling at an accuracy level $\pm 15\%$ to $\pm 20\%$ at 2 standard deviations for any one owner in a single municipality. The cost of such an estimate shall be paid by the landowner.

SECTION 33. NR 46.24(3)(b) and (c) are amended to read:

NR 46.24(3)(b) A timber product which is or has been salable within the last calendar year preceding the date of the owner's declaration or withdrawal within the department's administrative area identified ~~in sub. (4) pursuant to s. 77.91(1), Stats.~~ in which the subject land is located,

(c) Located in terrain which can be commercially logged with equipment and logging methods commonly used by the timber producers operating within the department's ~~administrative area~~ severance and yield schedule zones identified in sub. (4) pursuant to s. 77.91(1), Stats. in which the subject land is located, and

SECTION 34. NR 46.24(4) is repealed.

SECTION 35. NR 46.26 is amended to read:

NR 46.26 Yield tax. No yield tax under s. 77.87 (1), Stats., may be assessed for timber cut before the end of the 5th year of the managed forest land order for lands designated as managed forest land effective on or after April 28, 2004 unless the lands were ~~petitioned for designation~~ applied for under 77.82 (7) (d) (4), (4g), (4m) or (12), Stats. or unless the lands that were applied for under s. 77.82(2), Stats. were subject to an expiring contract under 77.03, Stats.

SECTION 36. 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 37. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on June 21, 2011.

Dated at Madison, Wisconsin _____.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Cathy Stepp, Secretary

(SEAL)