

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
REPEALING, RENUMBERING, AMENDING, REPEALING AND RECREATING, AND CREATING RULES

The Wisconsin Natural Resources Board proposes an order to repeal NR 47.87 (9); renumber NR 47.87 (10); amend NR 46.165 (6) (a), 46.18 (5) (a) 1. to 3. and (5) (b) (intro) and 1., 47.85 (2) (a) 2. and 47.86 (3) (a); to repeal and recreate NR 47.86 (3) (c) 2. and 3.; and to create NR 46.15 (18m) and (20s), 46.165 (4) (f), 46.18 (7) and (8) relating to the administration of the Managed Forest Law and the Wisconsin Forest Landowner Grant Program.

FR-36-05

Analysis Prepared by the Department of Natural Resources

Statutes interpreted: Subch. VI Ch. 77, Stats. and s. 26.38 Stats.

Statutory authority: Sections 77.81 (2m), 77.82 (2) (i), (2m) (am), (3) (g) & (7) (c) 3. Stats. as affected by 2005 Wisconsin Act 25 and as affected by 2005 Wisconsin Act , and 227.11(2)(a), Stats. directs the department to establish a plan preparation fee for MFL plans the department agrees to prepare, to establish the qualifications for a plan writer certified by the department to prepare management plans for the managed forest law, to establish a deadline for draft plans to be submitted to the department in advance of the May 15 application deadline. Further changes including modifications in the Wisconsin Forest Landowner Grant Program implement or support additional changes recently made to Subchapter III Chapter 77, Stats.

Analysis of proposed rules: 2005 Wis. Act 25 (05/07 budget bill) made revisions to subch. VI of ch. 77 Stats. related to Managed Forest Law (MFL). The proposed rule changes for the Wisconsin Forest Landowner Grant Program are directed at accommodating the changes to the Managed Forest Law program which will increase the demand for the cost sharing of management plans.

Proposed Changes to the Managed Forest Law Program

Development of a MFL plan preparation referral program including:

- Petitions received on or before July 1 without a completed management plan are placed on a referral list distributed to Certified Plan Writers (CPW).
- If the land owner does not receive an offer for plan preparation services (a.k.a. offer) from a CPW within 45 days the department may agree to prepare the plan for that processing period.
- The CPW offer must show cost and a guarantee that the plan will be prepared in a timely manner to meet deadlines in NR46 and Ch. 77 Stats. for the appropriate entry date.
- Notice of an offer must be submitted to the department.
- Cost data for plans prepared by CPWs will be submitted and used to determine the annual Plan Preparation Fee (PPF).

Create a plan preparation fee (PPF) based on current market rates which must be assessed for a plan that the department agrees to prepare for enrollment (excludes transfers and amendments).

- Establish a formula for the PPF in rule, rather than the actual amount, to minimize future rule changes necessary to keep up with changing plan preparation costs.
- Set one statewide PPF which will consist of an average base rate plus a cost per acre. The PPF will be calculated using data collected from CPWs from the prior June 1st through May 31st.
- An initial PPF for petitions postmarked after May 31, 2005 and before July 2, 2006 shall be \$375 (base rate) plus \$5.60 per acre covered by the plan.
- Establish the PPF every July 2nd for use with plans prepared by the Department for petitions received in the preceding 12 months.

Modify deadline for draft plan submission (required for the May 15th application deadline) from April 1st to February 1st.

Modify the maintenance requirements for the CPW Program to require annual submission of cost data for MFL management plans to the department. The data is needed to calculate the annual PPF.

Proposed Changes to the Wisconsin Forest Landowner Grant Program

Current administrative rule allows for the cost share rate of actual, eligible costs to be not less than 50% or more than 65%. Currently, applications are cost shared up to 65%. This rate will be lowered to 50% to stretch cost share funds, award more landowners and reduce the “waiting list” for cost sharing. This is a change in current practices and does not require an administrative rule change.

Add a fourth application batching period of November 1st to accommodate cost shared MFL plans.

Modify distribution of cost share funds

- **Reduce the amount set aside for statewide forestry emergencies from 20% to 10%.** Current administrative rule allows for up to 20% of the cost sharing funds to be set aside. Reducing the amount set aside to 10% is a change in current practice and does not require an administrative rule change.
- **Limit available funds designated for management plan development (a priority 1 practice) to no more than 50%.** To comply with budget changes to cost share more plans and steer landowners towards CPW while maintaining a cost share program that funds a variety of practices. Available funds include state and federal allotments not set aside for emergencies.
- **Limit available funds to no more than 10% for priority 2 practices** identified on s. NR 47 (3) (c) 3., Wis. Admin. Code.
- **Designate remaining funds (at least 40%) for tree planting and timber stand improvement (other priority 1 practices).**

Repeal language which allows for an assignment of pay. This practice has had very little use and poses some problems including: landowner has no opportunity to agree with or review work done before payment is made and a landowner that is not satisfied with work done is not able to withhold payment.

Modify provision that states mandatory practices are ineligible for cost sharing. An error in the original wording of the rule did not except practices required for the Managed Forest Law program. Current rule *states the implementation of any practice already required by law, rule regulation or other authority is not eligible for cost sharing* with no exceptions.

Add: *This does not apply to practices required under the Managed Forest Law program.*

Comparison of Federal Regulations: There are no known federal regulations that apply to the Managed Forest Law program or to the Wisconsin Forest Landowner Grant Program. However there are federal rules for money received from the federal government. Federal funds distributed through WFLGP are subject to the rules of the specific program.

Comparison of Adjacent States: Checks with the surrounding states of Minnesota, Michigan, Iowa and Illinois indicate that while they offer some type of incentive program to forest landowners, they do not have the same level of obligation or commitment from the landowners as Wisconsin’s Managed Forest Law program. Those states listed above are reliant on federal cost share dollars from programs such as Forest Lands Enhancement Program, Environmental Quality Incentive Program and Conservation Reserve Program. The latter two being primarily agricultural programs with a small forestry component.

Anticipated Costs Incurred by Private Sector: Increased cost to the private sector (landowner applying to enter land under MFL) would include the cost for preparation of a Managed Forest Law management plan required for enrollment as managed forest land. The average cost for a 60 acres management plan is \$711. The cost may be offset by cost sharing through the Wisconsin Forest Landowner Grant Program. Up to 50% of the cost may be covered.

Summary of factual data and analytical methodologies: The current application process, number of MFL applications per year, current cost of plan preparation, current distribution of grant monies, number of grant applications, and available funding were reviewed and discussed by department staff and attorneys. Additional input from partners (private foresters and landowners) was sought at public information sessions.

Analysis to determine effect on small business: It is anticipated that the preparation of 1500 MFL management plans will be referred to private foresters certified to prepare these plans. An average size plan (60 acres) can yield approximately \$711. This is based on the cost data for contracted plans prepared for the Department in 2004/2005. Plan costs averaged \$375/plan base rate plus \$5.60/acre.

Effect on Small Business: This rule does affect small business – specifically cooperating foresters qualified as a Certified Plan Writer (CPW) may see an increase in business. Since CPW's are located throughout the state, they are accessible to landowners. Landowners petitioning for entry into the Managed Forest Law will be required to hire a CPW to prepare their MFL management plan. Average plans of 60 acres in size can yield upwards of \$700-800 per plan (larger plans more, smaller less). An estimated 1500 plans per year will be referred to CPW's. The Department may agree to prepare the plan if there is no CPW available.

Small businesses that are petitioning to enter land into the Managed Forest Law could be impacted negatively by the increased cost for the preparation of a management plan, either due to the cost of hiring a CPW or the plan preparation fee that will be collected if the Department agrees to prepare the plan. MFL is a voluntary program and landowners have the opportunity to shop around for better prices.

Agency Contact Person: Carol K. Nielsen, Forest Tax Program Manager
ph: 608/266-8019;
e-mail: carol.nielsen@dnr.state.wi.us

SECTION 1. NR 46.15 (18m) and (20s) are created to read:

NR 46.15 (18m) “Independent certified plan writer” means a certified plan writer not acting under contract with the department.

(20s) “Management plan packet” means all materials required under s. NR 46.18 (1) to (3), and a complete petition under s. 77.82 (2), (4), (4m) or (12), Stats., excluding fees.

SECTION 2. NR 46.165 (4) (f) is created to read.

NR 46.165 (4) (f) On or before May 31 of each year submit a report of managed forest law management plan packet preparation costs 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 by base rate plus cost per acre, the county where the land was located and the acres covered by the plan.

SECTION 3. NR 46.165 (6) (a) is amended to read:

NR 46.165 (6) (a) If certification was revoked for a failure to comply with sub. (4) (b), (c), ~~(e)~~ or (e) or (f), the individual may immediately apply to be certified by completing the requirements under sub. (3).

SECTION 4. NR 46.18 (5) (a) 1. to 3. are amended to read:

NR 46.18 (5) (a) 1. Management plans prepared by ~~a~~an independent certified plan writer ~~certified~~ shall be approved by the department, signed by the landowner, and submitted to the department forester no later than July 1 of the year in which the order of designation will be issued.

2. As a condition of designating the land, the owner shall sign the department prepared and approved management plan and return it to the department no later than August 1 of the year in which the order of designation will be issued unless otherwise specified by the department. The petitioner shall pay the plan preparation 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 ~~a~~an independent certified plan writer no later than July 1 or return the signed department prepared management plan no later than August 1 or a later date agreed to by the department will result in a denial of the petition.

SECTION 5. NR 46.18 (5) (b) (intro.) and 1. are amended to read:

NR 46.18 (5) (b) Management plans for petitions under s. NR 46.16 (1) (b) received on or before May 15 shall be a completed plan prepared by ~~a~~an independent certified plan writer and submitted with the petition. The department shall deem a management plan completed if all the following apply:

1. A draft of the management plan packet was submitted to the department for review on or before ~~April 1~~ February 1.

SECTION 6. NR 46.18 (7) is created to read:

NR46.18 (7) MANAGEMENT PLAN REFERRAL. (a) The department shall place a petition filed under s. 77.82 (2), (4), (4m), or (12), Stats., received on or before July 1 without a management plan on a management plan referral list.

(b) An independent certified plan writer may make an offer to the landowner for management plan preparation services for plans on the referral list.

(c) An offer must be in writing and include the cost for the management plan preparation service and a guarantee that an approvable plan will be completed by the following July 1.

(d) The independent certified plan writer shall notify the department in a manner acceptable to the department that an offer has been made to the petitioner within 5 days of the offer.

(e) The department may agree to prepare a management plan for a petition filed under s. 77.82 (2), (4), (4m) or (12), Stats., if no offer has been made by an independent certified plan writer within 60 days of a petition being placed on the management plan referral list. The department shall notify the landowner in writing if the department agrees to prepare the management plan.

Note: Treatment of sub. (7) first applies to petitions filed under s. 77.82, Stats., on July 2, 2005.

SECTION 7. NR 46.18 (8) is created to read

NR 46.18 (8) PLAN PREPARATION FEE. (a) The department shall charge a plan preparation fee for plans the department agrees to prepare for petitions filed under s. 77.82 (2), (4), (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 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 2 following the date the petition was filed.

(b) On July 2 of each year the statewide plan preparation fee shall be calculated. The plan preparation fee shall consist of a base rate plus 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.

SECTION 8. NR 47.85 (2) (a) 2. is amended to read:

NR 47.85 (2)(a) 2. The implementation of any practice already required by law, rule, regulation or other authority, except for those practices required in the managed forest law program under ch. 77, Stats.

SECTION 9. NR 47.86 (3) (a) is amended to read:

NR 47.86 (3)(a) Application deadlines are as follows and are contingent upon availability of funds: February 1, May 1, ~~and August 1~~ and November 1. State funds for this program other than those provided through s. 20.370 (5) (av), Stats., and federal funds awarded pursuant to a federal grant agreement may specify other application deadlines.

SECTION 10. NR 47.86 (3) (c) 2. and 3. are repealed and recreated to read:

NR 47.86 (3)(c) 2. a. No more than 50% of the remaining funds may be designated for forest stewardship plan development.

b. No more than 10% of available funds may be designated for practices that accomplish objectives identified in sub. (2) (a) 4., 6., 7. and 8.

3. The remaining funds may be designated for practices that accomplish objectives identified in sub. (2) (a) 1. and 2.

SECTION 11. NR 47.87 (9) is repealed.

SECTION 12. NR 47.87 (10) is renumbered to NR 47.87 (9).

SECTION 13. INITIAL APPLICABILITY.

(1) The treatment of NR 46.18(5) (a) 1. to 3. and NR 46.18 (5) (b) first applies to management plans that are filed on or after November 1, 2005.

SECTION 14. 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 15. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on January 25, 2006.

Dated at Madison, Wisconsin _____.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Scott Hassett, Secretary

(SEAL)