

CR 08-023

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

The Wisconsin Natural Resources Board proposes an order to create NR 46.15 (3m), amend NR 46.15 (23), NR 46.16 (1) (b), and NR 46.16 (6) relating to the administration of the Forest Crop Law and Managed Forest Law.

FR-03-08

Analysis Prepared by the Department of Natural Resources

Statutes interpreted: Section 77.06 (2) and subch. VI Ch. 77, Stats .

Statutory authority: Section 227.11(2)(a), Stats. gives the department the authority to 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. Section 77.83 (2)(am), Wis. Stats. is a newly created statutory provision for which the department is clarifying legislative intent. Section 77.82 gives implicit authority the department to create rules for processing petitions.

Analysis of proposed rules.

Amendments and additions to definitions NR 46.15: Definitions used in the MFL program are being changed to streamline administration and processing of MFL orders, transfers and withdrawals. The definition also includes a note on how the department intends to interpret the definition.

NR 46.15 (3m) defines the term “consideration” under s. 77.83 (am), Wis. Stats. This definition clarifies the legislative intent to exclude payments by governmental bodies and non-profit organizations where the purpose is to provide public access for recreational activities.

NR 46.15(23) defines “owner” or “ownership” of MFL lands. Currently trustees of a trust are considered the “owner” of the trust. The closed acreage limitation is applied to that owner or owners. Deeds and legal documents are created when lands are placed into a trust and these deeds and legal documents are recorded in the register of deeds office. DNR has no mechanism for determining when trustees change, however. Adding trusts and other similar entities to the legal definition of an owner or ownership for forest tax law purposes will provide the state with a clear chain of title for the purpose of determining who the underlying ownership is.

Amending petition requirements and deadlines

Changes to NR 46.16 (1) (b) and NR 46.16 (6) relate to the processing of petitions and orders of designation. As a result of these changes it will be easier for landowners to enter lands under the MFL program. Specifically, these changes will allow landowners to amend their initial petition prior to submission of the management plan packet. Additionally, NR 46.16(1) (b) clarifies that a management plan must be submitted with the petition when applying for the May 15 petition

deadline.

Comparison of Federal Regulations: There are no known federal rules that define ownerships. There are no known federal regulations that define consideration.

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, none of the states have similar forestry practice requirements with their programs.

Anticipated cost by private sector:

There will be an increase in costs for landowners submitting transfers that currently are not processed. An estimated \$ 3,000 will be collected from MFL landowners for transfers, of which \$600.00 will pay for recording fees at the register of deeds office and \$2,400 will be credited to the conservation fund.

Defining the term “consideration” will provide greater clarity for non-profit organizations that may have leases or other agreements for consideration in allowing public access and would significantly benefit them.

Changes associated with processing of petitions and management plan packets will have no fiscal effect and make the MFL program easier to enter.

Summary of factual data and analytical methodologies:

Factual data and analytical methodologies associated with the collection and analysis of stumpage rates were approved on September 17, 2008.

Analysis to determine effect on small business: A review of the law indicates minimal impact on small businesses. The actual impact is dependant on the number of transfers between individuals and trusts, where the individuals are the trustees.

Effect on Small Business: This rule will impact small businesses (i.e., farmers, landowners) that have land designated as managed forest land or forest crop land. At the time of entry into these programs the owner pays for the preparation of a management plan, which includes sound forest management practices that must be completed during the order period to ensure and maintain a healthy stand of timber. Transfers between an individual and their trust, where the individuals are the trustees, will need to file a \$100 transfer fee.

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SECTION 1. NR 46.15 (3m) is created to read:

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.

Note: This definition clarifies the legislative intent of 2007 Wisconsin Act 20 which prohibits receiving consideration for recreation on MFL land. The definition of "consideration" is not meant to prohibit landowners, neighbors, and friends from assisting each other in property management activities, such as clearing and maintaining fences, watching each other's properties, or sharing land management activities (such as conducting timber stand and wildlife habitat improvement projects where several parties could collectively supply the proper equipment). The definition of "consideration" is also not meant to prohibit hunters and other recreational users from thanking landowners for recreating on their lands or providing a gift for the use of the land, as long as the gift is reasonable and given freely. DNR encourages friendly hunter-landowner relationships. The definition of "consideration" is meant to prevent landowners from requiring cash, goods, and services from recreational users as a condition for using lands under the MFL program for recreational uses. In other words, landowners are prohibited from requiring that a recreational user pay cash (for example pay a lease on non-MFL lands, a hunting lodge or cabin, vehicle parking space, or making a donation to a charity or fund raiser), provide a material good (for example an ATV, culvert, gravel, television, or any other household or non-household item), or provide a service (for example shingle and put siding on a house, build a wildlife pond, restore an antique automobile, bail hay or harvest grain, etc.) as a condition for permitting recreation on their MFL land.

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, a trust or similar entity, or as established by statute.

SECTION 3. NR 46.16 (1) (b) amended to read:

NR 46 (1) (b) Petitions and completed management plans from owners of less than 1000 acres of forest land in this state ~~with a completed management plan~~ shall be postmarked or received by the department no later than May 15 to be considered for designation effective the following January 1.

Note: The treatment of par. (b) first applies to petitions filed on or after November 1, 2005.

SECTION 4. NR 46.16 (6) is amended to read:

NR 46 (6) PETITION AMENDMENTS FOR JULY 1 DEADLINE RESTRICTIONS. A petition for designation of land as managed forest land may ~~not~~ be altered or amended prior to submission of a completed management plan packet. ~~a manner which will split a cover type.~~

SECTION 5. 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 6. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on _____.

Dated at Madison, Wisconsin _____.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Matthew Frank, Secretary

(SEAL)