

SUBJECT: Request Adoption of Board Order FR-04-10, forestry housekeeping rules package for Chapter NR 46, Wis. Admin. Code.

FOR: JUNE 2010 BOARD MEETING

TO BE PRESENTED BY: Ken Symes, Forest Tax Enforcement and Operations Specialist

SUMMARY:

DNR is seeking approval of revision to NR 46 to clarify and streamline the administration of the MFL program. Significant changes include:

1. Minimum medium density for plantations is reduced from 600 to 400 trees per acre.
2. An extension to the application deadline is created for landowners applying for MFL if purchasing FCL lands within 18 months of the impending FCL expiration date to allow more time for new landowner to enroll lands in MFL.
3. Wording and process clarifications are made for addition of acreage to existing MFL entries, plan preparation fees, and offers made for plan writing services.

Key issues and controversies: None

Last Action of the Board: Approval of the hearing request in February 2010.

RECOMMENDATION: Approve Board Order FR 04-10, revisions to NR 46 relating to Managed Forest Law.

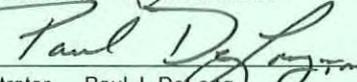
LIST OF ATTACHED MATERIALS:

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|----|-------------------------------------|---|-----|-------------------------------------|----------|
| No | <input type="checkbox"/> | Fiscal Estimate Required | Yes | <input checked="" type="checkbox"/> | Attached |
| No | <input checked="" type="checkbox"/> | Environmental Assessment or Impact Statement Required | Yes | <input type="checkbox"/> | Attached |
| No | <input type="checkbox"/> | Background Memo | Yes | <input checked="" type="checkbox"/> | Attached |

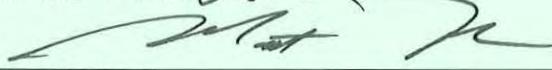
APPROVED:


 Bureau Director, Robert J. Mather

5/24/10
 Date


 Administrator, Paul J. DeLong

5-27-10
 Date


 Secretary, Matt Frank

6-8-10
 Date

cc: Laurie J. Ross - AD/8
Paul DeLong - AD/8

Robert Mather-FR/4
Kathy Nelson - FR/4

Quinn Williams-LS/8

DATE: May 25, 2010
TO: All Members of the Natural Resources Board
FROM: Matt Frank
SUBJECT: Background Memo Relating to Changes in NR46

Subject/Objective of the Proposed Rule

Amendments to NR 46 to address the annual adjustments of timber stumpage values and other administrative changes relating to the Managed Forest law (MFL). Due to the enactment of 2009 Wisconsin Act 365 on May 18, 2010 the department may not promulgate or have in effect rules that establish stumpage values. All NR 46 provisions related to stumpage values has been removed from this rule package. The department is developing processes to determine the annual stumpage values for future years.

1. Why is the rule being proposed?

Changes to clarify and streamline the MFL program are being done to:

- Create an extension to the application deadlines for landowners who purchase expiring forest crop law lands within 18 months prior to the end of the forest crop law expiration to allow them additional time to enroll in MFL.
- Clarify the requirements for additions to existing managed forest law lands.
- Amend the certified plan writer reporting requirements for plan preparation costs and requirements for making an offer to landowners for management plan writing services.
- Amend the department billing requirements when invoicing landowners for plan preparation fees.
- Amend the stocking requirements for management of plantations.

2. Summary of the Rule

Exemption for forest crop law expiration

Changes to NR 46.16(1)(cm) and NR 46.18(5)(c) would create an exemption for landowners who purchase expiring forest crop law lands within 18 months prior to expiration and who would like to apply for managed forest law. Purchasers of expiring forest crop land may not have the time or opportunity to meet managed forest law application deadlines, causing the forest crop land to expire and placed on the regular ad valorem property tax roll. Landowners whose forest crop lands are not enrolled into managed forest law must pay a termination tax based on the value of standing timber. Changes to NR 46 would allow for an additional period of time for landowners to enroll in the managed forest law program.

Additions to existing managed forest land.

Recent changes to NR 46.16(5) required that landowners enroll lands by municipality except when lands on either side of the municipal line do not meet eligibility requirements. Changes to NR 46.16(7) will require that the same eligibility requirements apply to additions as well as new enrollments so that additions across municipal lines are done only in situations where lands cannot qualify for a new entry under NR 46.17 and s. 77.82(1)(a), Stats.

Amendments to reporting, offer for service, and billing requirements.

Amending NR 46.165(4)(f), repealing NR 46.18(7)(c), and amending NR 46.18(8)(b) would streamline administrative processes.

NR 46.165(4)(f) would eliminate the requirement that certified plan writers report plan writing services using a base rate and cost per acre. Many certified plan writers bill landowners for plan writing services by using only a cost per acre or hourly rate. Eliminating a base rate would make it easier for all certified plan writers to submit cost data to the department.

NR 46.18(7)(c) would be deleted. This provision states how a certified plan writer makes an offer for plan writing services to a landowner. The department has no mechanism to insure that this provision is completed by certified plan writers, nor should the department set business practices for certified plan writers through the forest tax law administrative rules. Guidance on what an offer for plan writing services can be discussed verbally for certified plan writers who need additional information.

NR 46.18(8)(b) would be amended to reflect that the department will no longer charge a base rate and per acre fee when billing landowners for plan writing services. The billing will include only a per acre rate to reflect the information required from certified plan writers in NR 46.165(4)(f) Wis. Admin Code.

Amendments to plantation stocking requirements.

Stocking requirements are established to determine when lands are adequately stocked and capable of fully utilizing the site to grow forest products in a reasonable time frame. Fully stocked stands can be thinned or harvested at regular intervals, providing Wisconsin's forest products industry with valuable raw material and local municipalities with a periodic income through payment of severance and yield taxes.

The minimum medium density for plantations has been established at 600 trees per acre. Current research has shown that plantations have the ability to fully utilize the size at lower densities than was previously determined, as long as the trees are evenly distributed throughout an area. NR 46.02(24m) and NR 46.18(2) will be amended to establish the minimum medium density for plantations at 400 trees per acre to reflect this new information.

3. How does this proposal affect existing policy?

Changes will clarify existing policy or make it easier for landowners to enroll in the managed forest law program.

4. Has the Board dealt with these issues before?

The board regularly works through improvements to process and clarity of the managed forest law and forest crop law programs.

5. Who will be impacted by this rule?

Landowners who purchase expiring forest crop law lands will benefit by having additional time in which to enroll in managed forest law.

Landowners, department foresters and certified plan writers will benefit with extra clarity and streamlining of the administrative process.

Landowners who have lands that are stocked at 400 trees per acre will no longer be required to plant trees up to 600 per acre.

6. Information on environmental analysis, if needed.

An environmental analysis is not needed with this proposed rule package.

7. Small business analysis.

This proposed rule affects private woodland owners. A small business analysis is not required.

8. Statutory Authority.

Sections 77.06 (2), 77.91(1), and 227. 11(2)(a), Wis. Stats.

9. Estimate of Time Needed to Develop the Rule.

5 months.

10. Summary and Comparison With Existing or Proposed Federal Regulations.

There are no existing or proposed federal regulations to compare with Wisconsin's Managed Forest Law or Forest Crop Law programs.

Fiscal Estimate — 2009 Session

Original Updated
 Corrected Supplemental

LRB Number	Amendment Number if Applicable
Bill Number	Administrative Rule Number FR-04-10

Subject
Proposed revisions to NR46

Fiscal Effect

State: No State Fiscal Effect
 Indeterminate

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

Increase Existing Appropriation Increase Existing Revenues
 Decrease Existing Appropriation Decrease Existing Revenues
 Create New Appropriation

Increase Costs — May be possible to absorb within agency's budget.
 Yes No
 Decrease Costs

Local: No Local Government Costs
 Indeterminate

1. Increase Costs
 Permissive Mandatory
 2. Decrease Costs
 Permissive Mandatory

3. Increase Revenues
 Permissive Mandatory
 4. Decrease Revenues
 Permissive Mandatory

5. Types of Local Governmental Units Affected:
 Towns Villages Cities
 Counties Others
 School Districts WTCS Districts

Fund Sources Affected
 GPR FED PRO PRS SEG SEG-S

Affected Chapter 20 Appropriations

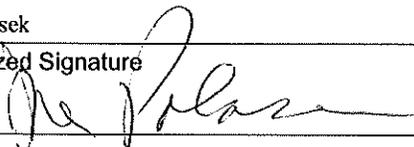
Assumptions Used in Arriving at Fiscal Estimate

The proposed rule package would make the following changes to clarify and streamline the MFL program:

- Create a process to allow landowners who purchase expiring forest crop law lands within 18 months prior to the end of the forest crop law expiration the opportunity to apply for the July 1 petition deadline or later for good cause to be considered for designation effective the following January 1.
- Clarify the requirements for additions to existing managed forest law lands.
- Amend the certified plan writer reporting requirements for plan preparation costs and requirements for making an offer to landowners for management plan writing services.
- Amend the Department billing requirements when invoicing landowners for plan preparation fees.
- Amend the minimum medium density stocking requirements for management of plantations from 600 seedlings per acre to 400 seedlings per acre.

All of these provisions have no state or local fiscal impact.

Long-Range Fiscal Implications

Prepared By: Joe Polasek	Telephone No. 266-2794	Agency Department of Natural Resources
Authorized Signature 	Telephone No. 266-2794	Date (mm/dd/ccyy) 05-25-10

Fiscal Estimate — 2009 Session

Page 2 Assumptions Narrative Continued

LRB Number	Amendment Number if Applicable
Bill Number	Administrative Rule Number FR-04-10

Assumptions Used in Arriving at Fiscal Estimate – Continued:

Fiscal Estimate Worksheet — 2009 Session
 Detailed Estimate of Annual Fiscal Effect

Original Updated
 Corrected Supplemental

LRB Number	Amendment Number if Applicable
Bill Number	Administrative Rule Number FR-04-10

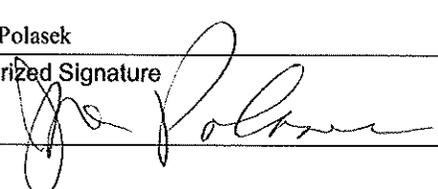
Subject
 Proposed revisions to NR46

One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):
 None.

Annualized Costs:		Annualized Fiscal Impact on State Funds from:	
		Increased Costs	Decreased Costs
A. State Costs by Category			
State Operations — Salaries and Fringes	\$	\$ -	
(FTE Position Changes)	(FTE)	(- FTE)	
State Operations — Other Costs		-	
Local Assistance		-	
Aids to Individuals or Organizations		-	
Total State Costs by Category	\$	\$ -	
B. State Costs by Source of Funds			
GPR	\$	\$ -	
FED		-	
PRO/PRS		-	
SEG/SEG-S		-	
State Revenues	<small>Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)</small>	Increased Revenue	Decreased Revenue
GPR Taxes	\$	\$ -	
GPR Earned		-	
FED		-	
PRO/PRS		-	
SEG/SEG-S		-	
Total State Revenues	\$	\$ -	

Net Annualized Fiscal Impact

	State	Local
Net Change in Costs	\$	\$ 0
Net Change in Revenues	\$	\$

Prepared By: Joe Polasek	Telephone No. 266-2794	Agency Department of Natural Resources
Authorized Signature 	Telephone No. 266-2794	Date (mm/dd/ccyy) 05-25-10

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

The Wisconsin Natural Resources Board proposes an order to amend NR46.02(24m), create NR46.16(1)(cm), amend NR46.16(7), amend NR46.165(4)(f), amend NR46.18(2)(d), create NR46.18(5)(c), repeal NR 46.18(7)(c), amend NR 46.18(8)(b), repeal NR46.30(2).

FR-04-10

Analysis Prepared by the Department of Natural Resources

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

Statutory authority: Sections 77.06 (2), 77.82 (3) (c), 77.91 (1), Wis. Stats., and 227.11(2)(a), Wis. Stats. Section 77.82 gives implicit authority to the department to create rules for processing petitions.

Analysis of proposed rules.

Annual Stumpage Rate Adjustment: Due to the enactment of Act 365 on May 18, 2010 the annual stumpage values are no longer promulgated through the rules process and have been removed from this rules package. The department is developing processes to determine the annual stumpage rates for future years.

Amendments to minimum medium density of plantations in NR 46.02(24m) and NR 46.18(2)(d): Stocking requirements are established to determine when lands are adequately stocked and capable of fully utilizing the site to grow forest products in a reasonable time frame. Fully stocked stands can be thinned or harvested at regular intervals, providing Wisconsin's forest products industry with valuable raw material and local municipalities with a periodic income through payment of severance and yield taxes.

The minimum medium density for plantations has been established at 600 trees per acre. Current research has shown that plantations have the ability to fully utilize the size at lower densities than was previously determined, as long as the trees are evenly distributed throughout an area. NR 46.02(24m) and NR 46.18(2) will be amended to establish the minimum medium density for a plantation at 400 trees per acre to reflect this new information.

Amendments to the managed forest law petition deadlines and management plans if petitions from owners of land entered as forest crop land are subject to an ownership change within 18 months prior to the end of the forest crop law contract period in NR 46.16(1)(cm) and NR 46.18(5)(c).

Landowners who purchase expiring forest crop law lands within 18 months prior to the expiration of forest crop law contract may be interested in enrolling in the managed forest law program. New landowners, depending upon the date of purchase, may find it difficult to meet the petition deadlines established by statute and administrative code. Forest crop law lands that are not immediately enrolled in the managed forest law are placed on the regular property tax rolls and landowners are assessed a termination tax.

NR 46.16(1)(cm) is created to allow landowners who purchase expiring forest crop law lands within 18 months prior to the end of the forest crop law expiration the opportunity to apply for the July 1 petition deadline or later for good cause to be considered for designation effective the following January 1.

Management plans would need to be developed by certified plan writers; however management plans would not need to have been previously reviewed by the department by the deadline date of March 1. Department review of the managed forest law petition will be done according to the provisions of NR 46.18(5).

Amendments to the requirements for additions to existing managed forest land in NR 46.16(7):

Recent changes to NR 46.16(5) required that landowners enroll lands by municipality except when lands on either side of the municipal line do not meet eligibility requirements. Changes to NR 46.16(7) will require that the same eligibility requirements apply to additions as well as new enrollments so that additions across municipal lines are done only in situations where lands cannot qualify for a new entry under NR 46.17 and s. 77.82(1)(a), Stats.

Amendment to the format that Certified Plan Writers submit plan writing data to the department in NR 46.165(4)(f):

The method in which certified plan writers submit their plan preparation costs for work done in the previous 12 months is being amended to make it easier for certified plan writers to submit the data.

Currently, NR 46.165(4)(f) requires that certified plan writers submit their plan preparation cost by base rate per plan plus the cost per acre. Many certified plan writers charge clients an hourly rate or a per acre rate. These certified plan writers are not able to easily determine their base rate and cost per acre.

The change to administrative code will eliminate the requirement to submit a base rate per plan.

The department collects this information in order to determine the average cost of plan writing services statewide. This average value is used to charge landowners for plan writing services on plans that the department writes.

Eliminate the requirement that offers for plan writing services must be in writing and guarantee that plans are submitted for the following July 1 deadline in NR 46.18(7)(c):

Management plans that are submitted for the July 1 petition deadline without a management plan or indicating a certified plan writer are placed on a management plan referral list. Certified plan writers are given the opportunity to offer plan writing services to landowners.

NR 46.18(7)(c) provided that certified plan writers must submit their offers in writing and include the cost for the management plan preparation service and guarantee that an approvable plan will be completed by the following July 1. The department does not require that it receive a copy of the offer, only that a certified plan writer report that an offer has been made within 5 days of the offer under NR 46.18(7)(d).

The managed forest law statutes and administrative codes establish the eligibility and management provisions of the program, but do not establish the business practices of certified plan writers in working with private landowners. Additionally, the cooperating forester agreement (note: certified plan writers must also be a cooperating forester) states that cooperating foresters have sole control over the methods, hours worked, and time and manner of any performance under the agreement other than as expressly required by the Cooperative Agreement.

Because the department has no mechanism to insure that written offers are provided to landowners, and because the department does not direct the business practices of certified plan writers, NR 46.18(7)(c) this provision will be removed from administrative code.

Amendment of the format in which the department charges landowners for plan writing services in NR 46.18(8)(b).

The department must charge landowners a plan preparation fee that includes a base rate and a rate per acre. Changes to NR 46.165(4)(f) to eliminate the requirement to submit a base rate per plan will require the department's billing procedure to also change. Changes to NR 46.18(8)(b) will eliminate the base rate per plan.

Comparison of Federal Regulations: There are no known federal rules which apply to stumpage rates or Managed Forest Law petitions.

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.

Anticipated cost by private sector:

Changes associated with this rule package will have no fiscal effect and allow additional time for plans to be written and approved. Exceptions to application deadlines will allow additional time for plans to be written and approved.

Analysis to determine effect on small business: A review of the law shows there will be no impact on small businesses.

Agency Contact Person: Kathryn J. Nelson, Forest Tax Policy Chief
Ph: 608/266-3545
e-mail: Kathryn.Nelson@Wisconsin.gov

SECTION 1. NR 46.02(24m) is amended to read:

46.02 (24m) "Understocked areas" means forest lands not meeting the minimum medium density classification (source, DNR Manual Code 8625.2) described in the following size classes:

Stand Size Classes	Tree Diameter Ranges at 4.5 Feet From Ground Level	Minimum Medium Density
Seedlings	0"-1"	800 trees per acre ¹
Saplings	1"-5"	400 trees per acre ²
Pole timber	5"-9"* , 11"***	7 cords per acre
Sawtimber	9"+* , 11"+**	3,000 board feet per acre

*For conifer species

**For other species

¹ Applies to natural stands. Planted stands with uniform spacing qualify as medium density with ~~600~~ 400 trees per acre.

² Applies to natural stands. Planted stands with uniform spacing qualify as medium density with 300 trees per acre.

Note: DNR Manual Code is available for inspection at any DNR office.

SECTION 2. NR 46.16(1)(cm) is created to read:

NR 46.16(1)(cm). Notwithstanding pars. (a), (b) and (c), petitions 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 3. NR 46.16(7) is amended to read:

NR 46.16(7) ADDITIONS. An owner petitioning may petition 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 ~~shall indicate on the petition whether the land subject to the petition is to be ordered designated as managed forest land under a separate order or as an addition to the previously designated and contiguous managed forest land.~~ If the petition 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 4. NR 46.165(4)(f) is amended 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 5. NR 46.18(2)(d) is amended to read:

NR 46.18(2)(d) Reforestation of land to meet one of the following size and minimum medium density classifications:

Stand Size Classes	Tree Diameter Ranges at 4.5 Feet From Ground Level	Minimum Medium Density
Seedlings	0" - 1"	800 trees per acre for natural stands. 600 400 trees per acre for planted stands.
Saplings	1" - 5"	400 trees per acre for natural stands. 300 trees per acre for planted stands.
Pole timber For conifer species	5" - 9"	7 cords per acre

For other species	5" - 11"	
Sawtimber		
For conifer species	9"+	3,000 board feet per acre.
For other species	11"+	

SECTION 6. NR 46.18(5)(c) is created to read:

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

2. 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 of the year in which the order of designation will be issued. The department shall deem a management plan completed if all the following apply:

a. The management plan packet was submitted to the department as part of the managed forest law petition for review on or before July 1.

b. The management plan includes all requirements under subs. (1) to (3).

c. The department has approved the management plan.

d. The owner has signed the management plan.

3. Failure to return the signed and approved management plan no later than August 15 or a later date agreed to by the department will result in a denial of the petition.

SECTION 7. NR 46.18(7)(c) is repealed.

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

NR 46.18(8)(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 9. NR 46.30 (1) (e) is amended to read:

NR 46.30 (1) (e) Except as provided in par. (f), a reduction of 30% of the stumpage value for severance and yield tax, as listed under ~~sub. (2) the current stumpage value schedule~~, shall be made for those species salvaged as a result of catastrophic loss. In order to be eligible for this reduction, the catastrophic loss must directly involve 30% of the merchantable timber on 5 contiguous acres or more and must result in a reduction of 30% or more in stumpage value to the owner as certified by the owner on forms provided and verified by department appraisal. The owner or representative may be required to accompany the department field inspector in the determination of eligibility for catastrophic reduction.

SECTION 10. NR 46.30 (1)(f) is amended to read:

NR 46.30 (1)(f) A reduction of 70% of the stumpage value for severance and yield tax, as listed under ~~sub. (2) the current stumpage value schedule~~, shall be made for those species salvaged as a result of catastrophic loss caused by fire mortality. In order to be eligible for this reduction, the catastrophic loss must directly involve 30% of the merchantable timber on 5 contiguous acres or more and must result in a reduction of 30% or more in stumpage value to the owner as certified by the owner on forms provided and verified by department appraisal. The owner or representative may be required to accompany the department field inspector in the determination of eligibility for catastrophic reduction.

SECTION 11. NR 46.30 (2) is repealed.

SECTION 12. 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 13. 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)