

**SUBJECT:** Request adoption of Board Order FR-45-10 regarding changes to NR 46 and administration of the Managed Forest Law program.

**FOR:** JUNE BOARD MEETING

**TO BE PRESENTED BY / TITLE:** Kathryn Nelson, Forest Tax Program and Policy Chief

**SUMMARY:**

Changes to NR 46 are required as a result of 2009 Wisconsin Act 365 and as needed to effectively administer the Managed Forest Law (MFL) program.

Significant changes include:

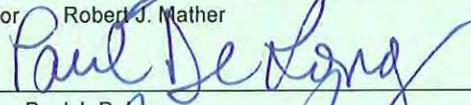
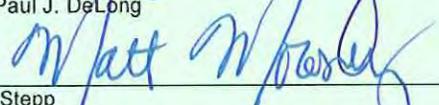
- 1) Amend the application dates and entry requirements.
- 2) Amend the MFL application fees.
- 3) Require that owners buying lands from large ownerships as defined in NR 46.18(4) provide a management plan within one year of the transfer date.
- 4) Require that owners who no longer meet the qualifications of a large ownership in NR 46.18(4) provide a management plan within one year of losing large ownership status.
- 5) Amend the training requirements to become a certified plan writer.
- 6) Other changes to NR 46 to repeal and/or amend language definitions no longer needed as a result of Act 365 or to effectively administer the MFL program.

**RECOMMENDATION:** Adopt Board Order FR-45-10 regarding changes to NR 46 and administration of the Managed Forest Law program.

**LIST OF ATTACHED MATERIALS:**

- |    |                                     |   |     |                                     |          |
|----|-------------------------------------|---|-----|-------------------------------------|----------|
| 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	<u>5/10/11</u> Date
 Administrator, Paul J. DeLong	<u>5/13/11</u> Date
 Secretary, Cathy Stepp	<u>6/6/11</u> Date

- cc: NRB Liaison  
DNR Rules Coordinator
- Kathy Nelson - FR/4  
Mark Heyde - FR/4  
Robert Mather - FR/4
- Darrell Zastrow - FR/4  
Paul DeLong - AD/8  
Quinn Williams - LS/8

DATE: May 2, 2011

TO: All Members of the Natural Resources Board

FROM: Cathy Stepp, Secretary

SUBJECT: Background Memo Relating to Board Order FR-45-10 regarding changes to NR 46 and administration of the Managed Forest Law program.

### Subject/Objective of the Proposed Rule

Amendments to NR 46 are required as a result of 2009 Wisconsin Act 365 and as needed to effectively administer the MFL program.

### 1. Why is the rule being proposed?

Changes are being made to align NR 46 with new provisions in ch. 77, Wis. Stats. as a result of 2009 Wisconsin Act 365, which went into effect on May 20, 2010, and to continue streamlining the administration of the MFL program. Specific provisions include the following:

- Repeal Subchapter II regarding the Woodland Tax Law and references to Woodland Tax Law throughout NR 46:
- Amend the definition of “incompatible with existing uses of the land
- Repeal the definition of “management plan packet.”
- Amend the wording of NR 46 to replace “petition” and “petitioner” with “application” and “applicant.”
- Amend the application dates and requirements.
- Amend MFL application fees.
- Repeal NR 46 wording requirements in application forms and management plans.
- Amend the certified plan writer program certification requirements.
- Amend reporting dates as a result of new application deadlines provided for in 2009 Wisconsin Act 365.
- 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.
- 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.
- Amend wording associated with the alternative withdrawal tax calculation.

### 2. Summary of the Rule

**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.

### **3. How does this proposal affect existing policy?**

Most of the changes will align NR 46 with ch. 77, Wis. Stats. and will not affect existing policy. Two proposed changes will affect the process for developing management plans, including:

- The requirement that a management plan is submitted with the application materials. Wisconsin Act 365 changed the application process and required that management plans are submitted with an application. Changes to NR 46 will reflect this statutory change.
- The requirement that owner buying land from large ownerships provide a management plan for approval within one year of the date of transfer. Landowners would be required to hire a certified plan writer to develop the management plan. DNR previously developed these management plans.
- The requirement that large landowners who lost their large landowner status provide a management plan for approval within one year of losing large ownership status. Landowners would be required to hire a certified plan writer to develop the management plan. DNR previously developed these management plans.

#### **4. Hearing Synopsis.**

A public hearing was held beginning at 10 AM on April 13, 2011 at the Marathon County Public Library in Wausau. Forestry Attorney Quinn Williams was the hearing administrator and Kathy Nelson, Forest Tax Program and Policy Chief, provided program expertise. Three people attended the hearing. Written comments were allowed to be received through April 22, 2011; however no written comments were submitted. All public comments are summarized in the attached document.

The comments from the hearing were favorable toward the proposed rule package; however people attending the hearing spoke more about the MFL Legislative Study Committee recommendations and other topics not associated with the rule package per se.

#### **5. Information on environmental analysis, if needed.**

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

#### **6. Final Regulatory Flexibility Analysis on Small Businesses.**

This rule has some impact on certified plan writers (CPWs). CPWs are private foresters who write management plans for landowners entering into the MFL program.

Management plans are now required with MFL applications, requiring CPWs to adjust the time frame in which to complete work for their clients. Many CPWs have adjusted their work structure to accommodate the change in ch. 77, Wis. Stats. as a result of 2009 Wisconsin Act 365 already. Impact to CPWs regarding the changes to entry criteria in NR 46 will be minimal.

CPW certification requirements will be amended by NR 46 proposals. The certification requirements relate to the initial training taken by CPW candidates and allow the department additional flexibility to develop the training required to best meet the needs of the candidates. Impacts to CPWs regarding the changes to training requirements will be minimal and affect only CPW candidates during the certification process.

CPWs will be required to report management plan cost data one month early as a result of 2009 Wisconsin Act 365. Impacts to CPWs regarding reporting deadlines will be minimal.

Changes to development of management plans when landowners purchase lands from large landowners or large landowners lose their large landowner status will increase the number of management plans available for development by the private sector.

## FR 45-10 Hearing Synopsis

On April 13, 2011 a public hearing was held for FR 45-10 at the Marathon County Public Library in Wausau, Wisconsin. Three people attended the hearing and provided statements. There were no written comments submitted.

Many of the comments provided were in regards to the MFL Legislative Study Committee recommendations and not about the NR 46 rule package.

### Public Hearing

#### 1. Marvin C. Meier – Sweet Spirit Woodlands.

##### Comment(s):

- a. In support of the proposed changes. Happy to see there is a hearing and new discussion on MFL.
- b. In support of the MFL Legislative Study Committee recommendations:
  - i. WLC: 0044/1 - Allowing recreational income and repeal the prohibition on leasing. Supports changes. Was inappropriate to prohibit leasing.
  - ii. WLC: 0050/1 - Designation of additional acres to existing MFL.
  - iii. WLC: 0067/1 - Board of review. Clearly a good way to deal with issues that will come up between landowners and DNR.
- c. Agrees with simplifying the MFL program.
- d. Is concerned that the MFL program can be changed because it is not a contract.

##### Result:

- a. Discussed during the hearing that the MFL Legislative Study Committee discussed similar concerns about the MFL program being subject to change by the legislature. The MFL Legislative Study Committee did not forward any recommendations to make MFL a contractual relationship, however the MFL program has many provisions that are contractual in nature, including the length of the MFL entry period. Discussed the need to have management plans flexible to adjust to changes in stand conditions and management strategies.

#### 2. Todd Pond – Futurewood Corporation

##### Comment(s):

- a. In support of allowing leasing and repealing the leasing prohibition.
- b. In support of NR 46 proposed changes to simplify the MFL program.

##### Result:

- a. None taken.

#### 3. Chris Burke – Futurewood Corporation

Comment(s):

- a. Is in support that the leasing prohibition be removed from the MFL program.
- b. Wants every opportunity to allow landowners to make a profit from their lands.
- c. Steps that have been made prior to the proposed NR 46 rule package to make the MFL program easier shows that administration of the MFL program is going in the right direction.
- d. Template is a good move, highly supportive of it.
- e. Looking forward to WisFIRS.
- f. Concerned that the MFL program is not a contract that can be changed. Example is that the tax rate can change without the agreement of the landowner.
- g. Would like to have lands taxed appropriately as if landowners sustainably manage their timber lands.
- h. Would like to remove the maximum closed acreage limit. It appears that DNR cannot stop the subdividing of lands anyway.

Result:

- a. Discussed during the hearing that the MFL Legislative Study Committee discussed similar concerns about the MFL program being subject to change by the legislature. The MFL Legislative Study Committee did not forward any recommendations to make MFL a contractual relationship, however the MFL program has many provisions that are contractual in nature, including the length of the MFL entry period. Discussed the need to have management plans flexible to adjust to changes in stand conditions and management strategies.

### **Legislative Rules Clearinghouse Comments**

Several changes were recommended by the Legislative Rules Clearinghouse.

1. Form, Style and Placement in Administrative Code
  - a. Arrangement of rule sections within the introductory clause of the rule-making order.
  - b. Capitalize the word "Section" throughout the entire rule.
  - c. Changes in wording, such as "shall" to "may."
2. Clarity, Grammar, Punctuation and Use of Plain Language
  - a. Add information on how to obtain DNR forms.
  - b. Add clarity to what is meant to "develop an application."

Result: DNR made the recommended corrections.

**Fiscal Estimate — 2009 Session**

<input checked="" type="checkbox"/> Original	<input type="checkbox"/> Updated	LRB Number	Amendment Number if Applicable
<input type="checkbox"/> Corrected	<input type="checkbox"/> Supplemental	Bill Number	Administrative Rule Number FR-45-10

**Subject**  
 Proposed revisions to Subchs. II and III Ch. NR46 regarding changes to the administration of the Managed Forest Law program.

**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  
 s. 20.370(1)(cr)

**Assumptions Used in Arriving at Fiscal Estimate**

Summary of the changes to NR 46, Wis. Admin. Code under FR-45-10. Changes to NR 46 include a variety of topics including elimination of the subsection associated with management of the Woodland Tax Law, changing the definition of "incompatible with existing uses of the land," repealing of the definition of "management plan packet," replacing the words "petition" and "petitioner" with "application" and "applicant," amending the application dates and requirements, amending the application fees, repealing the requirement for specific wording on application forms and management plans, amending the requirements to be certified as a plan writer, amending reporting dates for certified plan writers, requiring that owners buying lands from larger ownerships provide a management plan within one year of the date of transfer, requiring that owners who no longer meet the qualifications of a large ownership provide a management plan within one year of losing large ownership status, amending wording associated with the alternative withdrawal tax calculation.

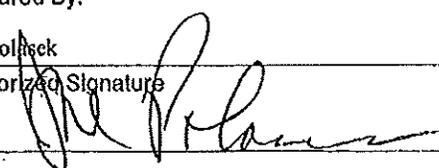
Most provisions of the proposed NR 46 rule change have no fiscal impact on state or local revenues or expenditures, including provisions to repeal subchapter II, amend or repeal definitions, amending application deadlines and requirements, repeal specific wording used in MFL forms, amend certified plan writer program certification requirements, amend certified plan writer reporting dates, amending wording associated with determining the alternative withdrawal tax.

Changes to NR 46 that do have a fiscal impact include the following:

**A. STATE FISCAL IMPACT**

Amend MFL application fees. The department's cost to record orders at the register of deeds office has increased from \$20 to \$30 per order. Since MFL landowners pay an application fee that covers the recording costs, application fees must be increased from \$20 to \$30. Over the past 5 years, an average of 1,249 applications have been received for entry into MFL. This new entry is expected to be constant for the next 5 years. In addition, there is an expected increase in applications due to the renewal of lands from expiring MFL entries. Roughly 67% of lands that are expiring from the Forest Crop Law program re-enroll under MFL. If this trend remains constant it is expected that an average of 837 renewals will be submitted annually. If landowners pay an additional \$10 per entry for

**Long-Range Fiscal Implications**

Prepared By:	Telephone No.	Agency
Joe Polasek	266-2794	Department of Natural Resources
Authorized Signature	Telephone No.	Date (mm/dd/yyyy)
	266-2794	12-14-10

## Fiscal Estimate — 2009 Session

### Page 2 Assumptions Narrative Continued

LRB Number	Amendment Number if Applicable
Bill Number	Administrative Rule Number FR-45-10

#### Assumptions Used in Arriving at Fiscal Estimate – Continued:

new or renewal applications, the department will collect an additional \$20,860 to cover the recording costs (1,249 new entries + 837 renewals = 2,086 total entries x \$10/entry = \$20,860).

#### B. LOCAL GOVERNMENT FISCAL IMPACT

None

#### C. PRIVATE SECTOR FISCAL IMPACT

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. Roughly 113 transfers from a large ownership to a small ownership have occurred annually from calendar year 2005 through 2009. Under this rule proposal, landowners would be required to provide a management plan within one year of the date of transfer that would be written by a certified plan writer. DNR foresters would write a management plan only if services from a certified plan writer are not available.

Certified plan writers charge for their services in a variety of ways including: (1) a combination of plan cost and per acre cost, (2) per acre costs only, (3) hourly costs or (4) project costs. To determine the cost of plan writing services for this fiscal estimate the cost the department would charge to write a management plan is used, which is based on the plan cost and per acre costs. DNR determines these costs by averaging the costs certified plan writers annually charge landowners for plan writing services. The current base rate, or cost per plan is \$470 per plan, with an additional charge of \$6.73 per acre.

The average MFL ownership is 67 acres; therefore, landowners would collectively spend \$104,062.83 to have these plans prepared by certified plan writers [(113 plans x \$470/plan) + (7,571 acres (67 ac. per plan x 113 plans) x \$6.73/acre) = \$104,062.83].

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. Currently there are two large landowners who no longer meet the qualifications of a large landowner that would need to develop management plans through a certified plan writer. Under this rule proposal these two landowners would need to have management plans developed at a cost of \$17,032.99 [(10 plans x \$470/plan) + (1,832.54 acres x \$6.73/acre) = \$17,032.99].

**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-45-10

Subject  
 Proposed revisions to Subchs. II and III Ch. NR46 regarding changes to the administration of the Managed Forest Law program.

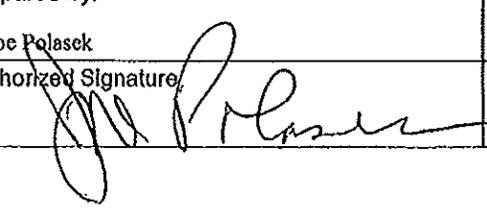
One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):

None.

Annualized Costs:		Annualized Fiscal Impact on State Funds from:	
		Increased Costs	Decreased Costs
<b>A. State Costs by Category</b>			
State Operations — Salaries and Fringes		\$	\$ -
(FTE Position Changes)		( FTE )	( - FTE )
State Operations — Other Costs			-
Local Assistance			-
Aids to Individuals or Organizations			-
<b>Total State Costs by Category</b>		\$	\$ -
<b>B. State Costs by Source of Funds</b>			
GPR		\$	\$ -
FED			-
PRO/PRS			-
SEG/SEG-S			-
State Revenues	Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)	Increased Revenue	Decreased Revenue
GPR Taxes		\$	\$ -
GPR Earned			-
FED			-
PRO/PRS			-
SEG/SEG-S		\$20,860	-
<b>Total State Revenues</b>		\$	\$ -

**Net Annualized Fiscal Impact**

	State	Local
Net Change in Costs	\$ 0	\$ 0
Net Change in Revenues	\$ 20,860	\$

Prepared By: Joe Polasek	Telephone No. 266-2794	Agency Department of Natural Resources
Authorized Signature: 	Telephone No. 266-2794	Date (mm/dd/ccyy) 12-14-10



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 46.16(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.

**Agency Contact Person:**

Kathryn J. Nelson  
Forest Tax Program and Policy Chief  
Ph: 608-266-3545  
e-mail: [Kathryn.Nelson@Wisconsin.gov](mailto:Kathryn.Nelson@Wisconsin.gov)

---

**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 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 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 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 5<sup>th</sup> 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 \_\_\_\_\_.

Dated at Madison, Wisconsin \_\_\_\_\_.

STATE OF WISCONSIN  
DEPARTMENT OF NATURAL RESOURCES

By \_\_\_\_\_  
Cathy Stepp, Secretary

(SEAL)