

Response Summary for Comments Received on Forest Tax Law Cutting Notice Guidance and Tax Law Handbook Revision

Thank you to all of the individuals and groups that provided feedback on the Department of Natural Resources proposed changes to cutting notice guidance and tax law handbook revision. There were 3 comments received. The Department made the following changes based on the feedback received:

Summary of Changes Based on Comments:

1. The cutting notice form 2450-032 will be modified to include yes and no check boxes regarding landowner requests for DNR review and approval. The draft of the new version is included at the end of this document.
2. Added handbook language clarifying when the assist guidance pertains. This change is located on page 20-70 and is now as follows:

Assist means providing silvicultural, ecological and cultural guidance to develop an acceptable proposal and complete the cutting notice. Assist also means DNR Foresters will provide NHI and the Archeological, Historical, and Cultural database search results to eligible individuals (at the time of this writing, eligible individuals include landowners, CPWs and trained Cooperating Foresters; all other requests should be referred to the Natural Heritage Conservation Program) and/or assist with the development of mitigation prescriptions for the protection of identified resources.

If the cutting notice **requires DNR approval** and is filled out or submitted by:

- **A private forester, logger, landowner or agent for the landowner:** the DNR Forester may, while working in consultation with the landowner and submitter, complete all areas of the cutting notice as needed to develop an acceptable harvest proposal.
- **A Cooperating forester and the landowner requested DNR approval:** the DNR Forester may only complete the NHI and the Archeological, Historical, and Cultural prescriptions. If any other areas of the form contain errors or omissions the form will be returned for corrections.

Note: the definition of assist is applicable to cutting notices which require DNR review and approval; however, the DNR Forester may provide assistance with mitigation prescriptions to accredited foresters prior to submittal for cutting notices that do not require DNR approval.

3. Landowners were added to the list of eligible individuals who can receive Natural Heritage Inventory (NHI) data.
4. Minor grammatical corrections not effecting content or intent.

If you have any questions regarding these changes, please contact Ryan Severson at 920-846-0462 or Ryan.Severson@wisconsin.gov

Final guidance and handbook language has been posted at <http://dnr.wi.gov/news/input/guidance.html> and is available in hard copy by request.

Following is a compilation of comments received by the Department on this matter and responses to those comments.



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Subject: Comments on draft document *Forest Tax Law Cutting Notice Guidance and Tax Law Handbook Revision*

Dear Ryan,

The Wisconsin Woodland Owners Association (WVOA) appreciates the work of the Division of Forestry's internal technical team and external advisory team in drafting revisions for the Forest Tax Law Cutting Notice Guidance and Tax Law Handbook to comply with Act 55.

WVOA is a nonprofit, educational association working with Wisconsin's private woodland owners to encourage sustainable forest management on their lands. Of Wisconsin's 16.7 million forested acres more than 9 million acres are privately owned.

WVOA requests that the Cutting Notice Form have two check boxes above the landowner's signature at the bottom of page one on the form. These boxes must be located under the black bar (words 'cutting notice'), just above the landowner's signature line on the cutting notice. The "opt out box" should include the statement "I acknowledge that I am responsible for practices conducted on my MFL enrolled property. I understand penalties could involve involuntary removal from the MFL program and assessment of associated penalties." The "opt in" box should read "I request a full review and approval of the proposed practice described on this cutting notice from the DNR forester." If neither box is checked, the form is not complete and should be returned to the landowner for completion.

These check boxes should be left justified to be clearly visible to the landowner prior to signing the cutting notice form. This makes it clear that the landowner has made a choice – rather than assuming that the absence of a marked single box means that the landowner read, understood, and actually made a choice in lieu of not seeing the item on the form.

We strongly support full disclosure to landowners on the potential consequences of not having the proposed cutting reviewed and approved. WVOA expects that the DNR will continue to administer the MFL program and that the current process and procedures for review requests for reviewing cutting notices would be utilized. We support full field reviews.

WVOA maintains its position that it cannot recommend to our members and other forest landowners to eliminate the DNR review and approval of their cutting notices.

It is the Division of Forestry's responsibility to clearly communicate to participating landowners the option of having the cutting notice reviewed and approved. This is a significant change in the forest tax law programs and landowners need to be reminded of their liability of complying with the program. WVOA strongly encourages the Division to be transparent about this.

Most cutting notices are approved within a 10-day turn around – 87% were approved within 7 days and 97% were approved within 9 days. This is a fact to be proud of, and should be communicated to private landowners.

WVOA expects that DNR will regularly update (at a minimum annually) and maintain a list of foresters that are allowed to submit cutting notices without DNR review and approval. These foresters must list their affiliation and member identification number on the cutting notice for verification purposes.

WVOA expects that the cutting notice will be completely filled out. If the forester isn't capable or willing to complete the entire form, we do not have confidence that they can carry out the appropriate prescription. An incomplete cutting notice should be returned to the forester for completion. Harvesting should not be allowed to commence until a completed and acceptable notice is filed with the DNR forester.

WVOA strongly supports the language inserted in the Forest Tax Law Handbook Chapter 20 page 72 that the landowner must sign the Cutting Notice and Cutting Report forms. If the landowner is not signing these forms then a written form of communication from the landowner to DNR should state that the landowner has chosen to allow their designated representative to sign for them.

Thank you for accepting our comments regarding these changes. Private woodland owners must be educated in these matters in order for them to make an educated choice. We hope that the Division will work harder to communicate these important program changes to the participating landowners.

Sincerely,



Paul Kienitz
President

cc. Paul DeLong, Chief State Forester

Response:

Yes/no boxes will be incorporated into the cutting notice form to ensure landowners are aware of the choice and make a decision.

The technical and advisory teams did not support adding the disclosure statements to the cutting notice form, but the Department will develop a handout to accompany the cutting notice form. The teams generally felt landowner responsibilities are covered in various MFL documents, publications, and during discussions with DNR and consultant foresters.

The DNR will regularly (annually at a minimum) update the list of accredited foresters.

The technical and advisory teams did not feel the member identification number needed to be required on the cutting notice form as it was felt the accreditation lists were adequate. Further, if there are questions, the accrediting organization could be contacted.

The Department will encourage cutting notices to be filled out completely, but does not have authority to stop harvesting activity under the new law if the notice has been filed if the cutting is under the terms of the management plan.

Ryan,

I have the following comments and questions regarding the new CN process. I'm not entirely clear if I am to submit my comments/questions to you under the public comment period, or internally through some other avenue. So I would much appreciate if you could consider my comments/questions. All of my comments are in regards specifically to administration of the Large Ownership accounts in MFL/FCL.

1) On page 1 of the document "MFL and FCL CN 2015-2017 WI State Budget Guidance Summary", last sentence of first paragraph, what exactly does it mean when it says, "For FCL, DNR may not prescribe the amount of forest products to be removed....." ? For Large Ownerships, I'm not aware that we ever prescribed the amount of forest products to be removed, other than requiring adherence to sound forestry practices and prevention of destructive and premature harvesting as the law specifies.

2) Under the Cutting Notice Steps, Step #2, why was 5 working days selected as the period for DNR Foresters to respond to requests for NHI/A&H checks? This seems unreasonable from the field perspective. Pam and I both perform NHI/A&H checks when requested, and respond in a timely fashion. Nearly all of the requests come via email, with a rare request via snail mail. We are not always cc'd on each other's email requests, so are not always aware of the requests each other receives. And if Pam or I take leave, or are out of the office on another assignment for 5 days, how will we know that there is a request? And in our absence, is our Supervisor responsible to respond to the requests? Since our Supervisor is remote from us in Madison, and she has no access to our emails, how will she know in the event of both of our absences that there is a request? And what are the repercussions if we don't respond within 5 days? It

would seem more reasonable to phrase it in a different manner to give the DNR Forester some flexibility, or increase the specification to 10 days or thereabouts, and add that the Supervisor is responsible to respond to a request in the event of the DNR Forester's absence.

Also being that the CN is still supposed to be submitted by the landowner at least 30 days prior to the start of the harvest, why the tight restriction on the DNR Forester? With 25 days left until their harvest is supposed to begin, I would think adding a few more days would be allowable.

3) Under Step #4, "(SAF accredited means SAF certified forester). SAF certified forester – c and f need to be capitalized as "**Certified Forester**" is a registered trademark. And as an SAF Certified Forester, I want to make sure that the words are correctly displayed to indicate the earned designation.

4) Under Step #6, is there an enforcement procedure recommended if harvesting begins on an automatically approved CN prior to the 30 day period specified for submittal before the start of harvest? i.e. What's to stop the landowner/logger/cooperator from implementing the harvest immediately once the CN is submitted by one of the accredited foresters and automatically approved?

5) In the Guidance language for "**If cutting notice does not require DNR approval, the DNR Forester or reviewer shall do the following:**" under #1, it reads, "The DNR Forester does not need to review the notice.....", yet in the Forest Tax Law Handbook language on page 20-70, the first bullet on the page says, "If any other areas of the form contain errors or omissions, the form will be returned for corrections...." If the DNR Forester is **not** to review the CN form other than to verify that the submitter is on the accredited list for automatic approval, how would the DNR Forester know that there are errors or omissions?

6) In the Forest Tax Law Handbook, also on page 20-70, the last bullet under NHI Prescription reads, "Requests for NHI information should be made in writing or emailed directly to the DNR Forester in the county where the land is located." Pam and I work with Large Ownerships in 31 separate counties. Does this mean that we can transfer this part of the process to those DNR Foresters in the 31 counties where our Large Ownerships are located? Please change that phrase to include Large Ownership administration.

7) Same comment as "6" above on page 20-72 of the Forest Tax Law Handbook changes under the bullet titled, "**Archaeological, Historical, and Cultural Prescriptions**" regarding "Requests....to the DNR Forester in the county where the land is located". Please change the phrasing to include Large Ownership administration.

8) On page 20-70, under bullet "**NHI Prescription**", not identified as a change in procedure, but should be addressed. The statement reads, "The NHI data can only be provided to eligible individuals (at the time of this writing, CPWs and trained Cooperating Foresters); all other requests should be referred to the

Natural Heritage Conservation Program.” Does this mean we cannot provide NHI data directly to a landowner that requests it to fill out their own CN? We have landowners in Large Ownerships that do file their own notices. They request NHI data from Pam or I, and we provide it directly to them to complete the CN. My understanding from training has always been that the data is the property of the landowner. Why would we not be allowed to provide it directly to them?

9) On page 20-74, under “**Field Review Generally Not Needed (must meet ALL criteria listed below):**”, third bullet down reading, “For regeneration harvests: Reliable regeneration is expected within 3-5 years after cutting and adequate steps documented in the cutting notice to ensure full stocking of target regeneration (e.g. aspen, simple coppice).” This does suffice for aspen coppice cuts and oak cuts depending on stump sprouting, but is not accurate for Overstory Removals following a shelterwood prep cut, and OSRs within degraded stands. In those two OSR prescriptions which are classed as Regeneration Harvests, the advanced regeneration must be present at the time of harvest implementation in order to justify the practice. This distinction should be clarified and OSR’s should be on the list for field exam if not submitted by an accredited forester.

10) As alluded to above in Comment 2), will Supervisors be required to conduct requested NHI/A&H checks in the absence of the responsible DNR Forester? If so, will they also be held to the 5-day response time? If not, there may be delays in providing that information within the suggested timeframe.

11) Also will the Supervisor be required to conduct the field exam in the absence of the DNR Forester for those notices not submitted by a Cooperating or accredited Forester and requiring a field review?

12) On page 20-76 in the Forest Tax Law Handbook, the statement under “Filing of Cutting Report”, reads, “If the Cutting Notice did not require DNR approval, the Cutting Report process is not impacted.” What exactly does that mean or refer to?

13) Finally, Pam and I are the assigned DNR monitors for the Large Ownership Conservation Easements (which are all currently enrolled in MFL/FCL). Under CE monitoring protocols, we monitor timber harvesting as part of the allowable activities on these working forest CEs. I strongly feel that the Large Ownership DNR Foresters need to be able to field-check CNs on the Conservation Easements to verify the activities as part of our normal monitoring responsibilities, not specifically for approval of the CNs, but to fulfill DNR’s accountability duties under terms of the CEs. In the past, we didn’t target CNs for separate monitoring because that was part of our normal work, but now that the CN process has changed, we need to make CN review a part of formal monitoring activities. And there are also CN’s submitted on the easements that are not submitted by Cooperators or accredited Foresters.

Ryan, thanks for your consideration of my comments and questions. My only intention is to clarify those elements in the new process that are unclear or haven't been discussed or presented in order to help make the process as smooth as possible.

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Jerry Crow

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Response:

1. This is direct wording from the law. In practice, DNR has not prescribed the amount to be removed.
2. 5 day response was a direct request from the Advisory Team. NHI/A&H look ups are seen by some as a barrier, and partners wanted to see the process expedited. 5 days was the suggestion and it was originally written as “ideally” within 5 days. Several suggestions were received to remove “ideally” and make it a requirement. When staff are on leave, their out of office messages (email and phone) should refer to an alternate if there is an immediate assistance need. Alternates can include coworkers and supervisors.

Based on your comment, this topic was taken back to the advisory team a second time. The advisory team remained committed to the 5 day period but clarified the time period to 5 “working days”.

3. Change was made to capitalize “Certified Forester”.
4. There is not “automatic approval”. DNR has no approval authority for notices submitted by the accredited group. The 30 days is not a waiting period and harvesting can commence upon submittal.
5. There was conflicting language carryover from before the new law was passed. Clarifying statements were added on page 20-70.
6. Change was made to “Forester responsible”.
7. Change was made to “Forester responsible”.

8. DNR Foresters can assist with the NHI prescription, but the data can only be provided to eligible individuals including landowners. Appropriate edits were made.
9. The practices described are not included on the list of treatments when field review is not needed, therefore a field review would be expected or documentation why a field review was not conducted. Only mechanical thinning, simple clearcut, or simple coppice do not need field review.
10. Coverage plan in one's absence should be a discussion with their supervisor.
11. Coverage plan in one's absence should be a discussion with their supervisor.
12. The intent was to clarify that the cutting report process is not impacted by how the notice was approved.
13. The law and legislative intent is clear that DNR is not to check this group of cutting notices. Monitoring of easements would be a separate task.

Ryan,

I want to take the opportunity to share my concerns regarding the Draft Forest Tax Law Cutting Notice Guidance. Please understand that I am not refuting the legislative decision. However, I have found some contradictions in the guidance that prevent me as a manager to direct and guide my staff to accurately meet expectations.

Of most concern to me is the **definition of "ASSIST" as described on page 20-70 in the Forest Tax Law Handbook**. I believe the definition of Assist came from a FOT decision prior to the legislature exempting Cooperating Foresters, SAF Certified Foresters, WCF, or ACF from Tax Law Cutting Notice reviews. As a result the definition seems to be contradictory and must be updated. Although my concerns seem simple they have significant impact on following the standard operating procedures outlined in this chapter. Additionally, I have highlighted attached a draft with some items (comments in RED font) throughout the chapter which I feel need clarification.

"Assist means providing silvicultural, ecological and cultural guidance to ensure an acceptable proposal and the completion of the Cutting Notice and Report form. Assist also means DNR Foresters will provide NHI and the Archeological, Historical, and

Cultural database search results to eligible individuals (at the time of this writing, CPWs and trained Cooperating Foresters; **all**

other requests should be referred to the Natural Heritage Conservation Program). *This clause is pretty clear that DNR foresters must refer landowners, loggers, foresters, contractors, buyers etc. to NHC. If this is the intent all other NHI references throughout the handbook will need to be updated.* If the Cutting Notice and Report form is filled out and or submitted by:

- A Cooperating forester, the DNR Forester **may only complete the NHI and the Archeological, Historical, and**

Cultural prescriptions on the Cutting Notice and Report form. If any other areas of the form contain errors or

omissions the form will be returned for corrections. *These sentences are now outdated with the professional forester exemption. DNR foresters should approve the notice and inform the credentialed forester of missing information.*

- A private forester, logger, agent for the landowner or landowner, the DNR Forester may complete all areas of the Cutting Notice and Report form as needed.” *According to the definition of assist DNR foresters do not run NHI searches for landowner and need to refer them to NHC for NHI and Archeological, Historical and Cultural database review.*

Let me know if you have any follow-up questions or if you need me to make any clarifications with my concerns.

R.J.

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Richard J. Wickham

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Response:

Language clarifying “assist” was added to page 20-70.

DNR Foresters can assist with NHI prescriptions, but data can only be provided to those eligible which includes landowners. Appropriate edits have been made.

Cutting Notice and Report of Wood Products from Forest Crop and Managed Forest Lands

Send completed form to the Department of Natural Resources Forester in the county where cutting will occur. Form 2450-032 (R 11/15) Page 1 of 2

1. File this notice at least 30 days prior to cutting.
2. Cutting prescriptions must be approved by the Department¹ of Natural Resources before cutting may begin. DNR Foresters may attach additional requirements as a condition of approval.
3. Attach a map and additional pages to help describe proposed cutting.

Notice: Submittal of this form is required to assure compliance with these forest tax programs under s. 77.06 and s. 77.86, Wis. Stats. Failure to file a notice or report or intentional filing of a false report may be punishable by a forfeiture of up to \$1,000 and may result in withdrawal of the land from these programs.

Landowner Name and Address		County	Municipality
		Daytime Phone Number	Cell Phone Number (optional)
		Email Address (optional)	
Forester / Accreditation ¹	Phone Number	Select one: (Separate notice/report must be filed for each order.)	
Logging Contractor	Phone Number	<input type="radio"/> Forest Crop Land: <input type="radio"/> Managed Forest Land	

Cutting Prescription: Describe the proposed cutting. Include the current timber type, silvicultural system (even-aged, uneven-aged, etc.), target stand condition and forest pest concerns. Identify marking paint colors used and what they represent (attach additional pages if needed).

BMP for Water Quality Prescription: Address prescriptions to mitigate water quality concerns. Guidelines can be found in the Wisconsin DNR BMP for Water Quality Manual.

BMP for Invasive Species Prescription: Address prescriptions to mitigate invasive species. Guidelines can be found in the Forestry Invasives BMP Manual.

NHI Prescription: Address any prescriptions to mitigate Natural Heritage Inventory (NHI) concerns.

Archeological, Historical, Cultural Prescription: Address any prescriptions to mitigate archeological, historical and cultural concerns.

Cutting Notice

Complete page two of this form indicating estimated volumes of wood to be cut, answer yes or no to the following statement, sign here and submit to your local DNR Forester at least 30 days prior to cutting.

Landowner requests DNR review and approval¹ Yes No

Signature of Landowner(s) Date Signed Approved by DNR Forester¹ Date Signed

¹Cutting notices submitted by Wisconsin Cooperating Foresters or foresters accredited by Society of American Foresters, Wisconsin Consulting Foresters, or Association of Consulting Foresters do not require DNR approval. Landowners may request DNR review and approval of cutting notices when not required.