

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

The Wisconsin Natural Resources Board proposes an order to repeal NR46.15 (27); to amend NR 46.15(21) , 46.16(2)(a) and (7), 46.18(5) and (6), and 46.23(2); to repeal and recreate NR 46.16(1), 46.19 and 46.23 (note); and to create NR 46.15 (2m) and (20m), 46.16(2)(e), 46.165, 46.23(4) and 46.26 relating to the administration of the Managed Forest Law

FR-04-05

Analysis Prepared by the Department of Natural Resources

Statutes interpreted: Subchapter VI Chapter 77, Stats.

Statutory authority: ss. 77.82 (3) (g) & (7) (c) 3., and 227.11(2)(a), Stats. Sections 77.82 (3) (g) & (7) (c) 3., Stats. direct the department to establish the qualifications for a plan writer certified by the department to prepare management plans for the managed forest law, to establish a deadline for draft plans to be submitted to the department in advance of the May 15 application deadline and define a completed plan. Further changes implement or support additional changes recently made to Subchapter VI Chapter 77, Stats.

Analysis of proposed rules. The rules are being proposed to reflect the changes made to Subchapter VI Chapter 77, Stats., in 2003 Wisconsin Act 228 and to implement one additional change recommended by the Governor's Council on Forestry, in their report *December 2002 Review of Wisconsin's Managed Forest Law*. The revisions proposed for Subchapter III Chapter NR46 Wisconsin Administrative Code

MFL application changes including

- New application deadline of July 1 (18 months prior to the effective date),
- Establishment of a second deadline of May 15 (7 1/2 months prior to the effective date) and the requirements of a completed plan that is submitted with these petitions. This deadline takes effect Nov. 1, 2005.
- Requirement that title documents be *recorded* and that existing certified survey maps be included with the application or transfer of lands entered, and
- MFL order eligible for additions restricted to order effective after April 28, 2004 or later.

Development of a plan writer certification program is included because beginning November 1, 2005 statutory changes require that all management plans must be prepared by a plan writer certified by the department or the department itself.

Modification of open/closed acreage rules to allow up to 160 acres closed per ownership per municipality for new entries and landowners are now allowed to change the open and closed designation of their lands up to two times during the order period.

Yield tax exemption provides that most new entries are exempt from yield taxes on timber harvested during the first five years of the order period. Lands converted from FCL to MFL and MFL land renewed at the end of the original order period are not eligible for the exemption.

Revision or creation of definitions including:

- *City* is added to the definition of *municipality*. Lands in cities that meet all eligibility requirements are now eligible for designation as managed forest lands.
- Repealed the definition of *renewal* as it is not needed.

Comparison of Federal Regulations: There are no known federal rules that apply to forest tax incentive programs.

Comparison of Adjacent States: Checks with the surrounding states of Minnesota, Michigan, Iowa and Illinois indicate that while they offer some type of incentive program to forest landowners, they do not have the same level of obligation or commitment from the landowners.

Anticipated Costs Incurred by Private Sector: There is no anticipated cost for the private sector.

Effect on Small Business. This rule will impact small business (i.e., farmers, landowners) who have or wish to have land designated as managed forest land. Those involved in this voluntary program pay a reduced tax in place of the regular property tax in exchange for sound forest management on the land.

The rule will also affect consulting foresters that plan to prepare management plans as they will now have to become a certified plan writer to be eligible to prepare management plans for the managed forest law. It does not effect other aspects of their business.

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SECTION 1. NR 46.15 (2m) and (20m) are created to read:

NR 46.15 (2m) "Certified plan writer" means a person certified by the department under s. NR 46.165.

(20m) "Management plan" or "plan" means a plan that meets the requirements in s. NR 46.18.

SECTION 2. NR 46.15 (21) is amended to read:

NR 46.15 (21) "Municipality" means a town, ~~or~~ village or city.

SECTION 3. NR 46.15 (27) is repealed.

SECTION 4. NR 46.16 (1) is repealed and recreated to read:

NR 46.16 Managed forest land petition. (1) PETITION DEADLINES. A petition 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 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 1 to be considered for designation effective the January 1 of the second year following the year in which the petition was received.

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

(c) Petitions from owners of 1000 acres or more of forest land in this state shall be postmarked or received by the department no later than March 31 to be considered for designation effective the following January 1.

(d) Lands subject to an ownership change after the petition 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 was submitted. Ownership changes taking place after the issuance of an order of designation will be processed as a normal transfer after January 1. The new owner shall submit a new and complete petition 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 was submitted providing the remaining land qualifies for entry.

Note: The Department's address for Managed Forest Law petitions is Division of Forestry, Bureau of Forest Management, Forest Tax Section, P.O. Box 7963, Madison, WI 53707.

SECTION 5. NR 46.16 (2) (a) is amended to read:

NR 46.16 (2) ATTACHMENTS. (a) A copy of the recorded legal instrument giving the petitioner an ownership interest in the land subject to the petition shall accompany and be part of the petition.

SECTION 6. NR 46.16 (2) (e) is created to read:

NR 46.16(2)(e) A copy of any certified survey map recorded for the land subject to the petition, or referenced in the legal instrument provided under par. (a) and pertaining to land adjacent to land subject to the petition shall accompany and be part of the petition.

SECTION 7. NR 46.16 (7) is amended to read:

NR 46.16(7) ADDITIONS. An owner petitioning 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.

SECTION 8. NR 46.165 is created to read:

NR 46.165 Certified plan writer. (1) PURPOSE. The purpose of this section is to establish a program to identify and qualify non-department individuals to become certified to prepare management plans for the department under the managed forest land program.

(2) TRAINING MATERIALS AND GUIDANCE. The department shall provide training materials and department guidance for management plan development.

(3) CERTIFICATION REQUIREMENTS. The department shall certify an individual as a plan writer if the individual:

(a) Submits an application to the department for certification to prepare management plans 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.

(b) Is a cooperating forester as defined in s. NR 1.21(2)(b) and participates and complies with the "cooperating forester program" as provided in s. NR 1.213.

(c) Completes the basic training session sponsored by the department.

(d) Submits within 120 days of attending the basic training session 2 managed forest law management plans prepared by them within the last 3 years which must be reviewed and approved by the department regardless of any earlier approval by the department.

(4) CERTIFICATION MAINTENANCE. To maintain plan writer certification the certified plan writer shall:

(a) Comply with all guidelines, manuals and directives provided by the department at the time of application and during training to maintain certification status.

(b) Prepare a minimum of one managed forest law management plan every 2 years which has been approved by the department

(c) Attend one department sponsored update training session each year.

(d) Prepare managed forest law management plans consistent with department guidelines, manuals and directives.

(e) Maintain status as a cooperating forester as defined in s. NR 1.21(2)(b) and participate and comply with the "cooperating forester program" as provided in s. NR 1.213.

(5) REVOKING CERTIFICATION. (a) The department may revoke the certification of a plan writer for failure to comply with any certification maintenance requirements in sub. (4).

(b) Revocation may be for a period of no more than 2 years if revocation is the result of failure to comply with sub. (4) (a) or (d).

(c) Certified plan writers shall be notified of the cause for revocation.

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

(b) If certification was revoked for a failure to comply with sub. (4) (a) or (d), the individual may not apply to be certified until the period of revocation has been completed. Applicants shall:

1. Comply with the requirements under sub. (3) (a), (b) and (c).

2. Submit within 120 days of attending the basic training session 2 managed forest law management plans prepared after the certification was revoked which are approved by the department.

SECTION 9. NR 46.18 (5) is amended to read:

NR 46.18(5) MANAGEMENT PLAN AS A CONDITION OF DESIGNATION. (Intro.) A management plan agreed to by the department and the owner is a condition of designation.

(a) Management plans for petitions under s. NR 46.16 (1) (a) 1. received on or before July 1 shall be prepared by a certified plan writer or the department itself.

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

~~(b) 2.~~ As a condition of designating the land, the owner shall sign the department prepared and approved management plan and return it to the department no later than August 1 of the year in which the order of designation will be issued unless otherwise specified by the department.

~~(c) 3.~~ Failure to submit a landowner or consultant forester prepared management plan prepared by a certified plan writer no later than July 1 or return the signed department prepared management plan no later than August 1 or a later date agreed to by the department will result in a denial of the petition.

(b) Management plans for petitions under s. NR 46.16 (1) (a) 2. received on or before May 15 shall be a completed plan prepared by a certified plan writer and submitted with the petition. The department shall deem a management plan completed if all the following apply:

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

2. The management plan includes all requirements under s. NR 46.18 (1) to (3) and meets department standards.

3. The department has approved the management plan.

4. The owner has signed the management plan.

[Drafter's Note: Section 77.82(7)(c)3., Stats., regarding the certified plan writer requirement was created by 2003 Wis. Act 228 and will take effect on 11-1-05.]

SECTION 10. NR 46.18 (6) and notes are amended to read:

NR 46.18(6) MODIFICATION OF DESIGNATION OF CLOSED OR OPEN AREAS. A landowner, ~~other than and consistent with the provisions in s. 77.83, Stats.,~~ may modify the designation of a closed or open area ~~once twice~~ during the period ~~of the order beginning with April 28, 2004 and ending with the expiration date of the order.~~ Requests for changes in the open/closed designation shall be in writing or on department forms filed with the department. Requests received by the department no later than December 1 in a given year will be eligible to be effective the following January 1. Requests received by the department after December 1 and before the end of the year, shall be effective January 1 of the second year beginning after the year in which the form is received.

Note: Requests to change the open/closed status must be filed by the deadline at: Bureau/Division of Forestry, Bureau of Forest Management, Forest Tax Section, PO Box 7963, Madison, WI 53707.

Note: This section interprets and administers ss. 77.82(3) and (7) and 77.83(1) and (1m), Stats., which describe further requirements for the management plan and designation of closed areas.

SECTION 11. NR 46.19 is repealed and recreated to read:

NR 46.19 Closed area. (1) An owner of land designated as managed forest land effective on or after April 28, 2004 may designate a maximum of 160 acres in the municipality as closed to public access in accordance with sub. (3). Not more than 80 acres or 2 legal descriptions may be land designated as managed forest land prior to April 28, 2004.

Note: To be treated as a "legal description" all of the land with in it must be designated as managed forest land.

(2) An owner of land designated as managed forest land effective before April 28, 2004 may designate a maximum of 80 acres in the municipality as closed to public access in accordance with sub. (3).

(3) A closed area may consist of either of the following:

(a) Any combination of:

1. A parcel or parcels of managed forest land.
2. All of an owner's managed forest land within quarter quarter sections, government lots or fractional lots.
3. An additional block of acreage within a legal description, not exceeding a length to width ratio of 4 to 1, unless limited by the size of the entry, to complete the total closed area.

(b) Any combination of 2 quarter quarter sections, government lots or fractional lots if the owner owns all of the land in the legal description.

Note: This section interprets s. 77.83(1, Stats., which provides further direction on the establishment or designation of closed areas.

SECTION 12. NR 46.23 (2) is amended to read:

NR 46.23(2) If land transferred ~~under s. 77.88(2)(a), Stats.,~~ does not meet the eligibility requirements ~~under s. 77.82(1)(a)2. and (b) subch. IV of ch. 77, Stats.,~~ the department shall issue an order withdrawing the land and assess the withdrawal tax under s. 77.88 (5), Stats., and the withdrawal fee against the transferee.

SECTION 13. NR 46.23 (4) is created to read:

NR 46.23 (4) ATTACHMENTS. Each petition for transfer shall include the following:

(a) A copy of the recorded legal instrument giving the transferee an ownership interest in the land subject to the petitioned for transfer.

(b) A copy of any certified survey map recorded for the 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.

SECTION 14. The first note following NR 46.23 is repealed and recreated to read:

Note: Forms for transferring managed forest land should be sent to the DNR forester in the county where the land is located. Forms may be obtained at no charge by writing: Division of Forestry, Bureau of Forest Management, Forest Tax Section, PO Box 7963, Madison, WI 53707.

SECTION 15. NR 46.26 is created 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 5th 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 under s. 77.82(7)(d) or (12), Stats.

SECTION 16. INITIAL APPLICABILITY.

- (1) The treatment of NR 46.16(1)(a)2. first applies to petitions filed under NR 46.16(1)(a)2. on or after November 1, 2005.
- (2) The treatment of NR 46.18(5) first applies to management plans that are filed on or after November 1, 2005.

SECTION 17. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on March 23, 2005.

Dated at Madison, Wisconsin _____.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Scott Hassett, Secretary

(SEAL)