

WisFIRS Update – Identifying Risk in Management Plans

June 10, 2020

Effective March 1, 2020 NR 46, the administrative code establishing the rules for administering Wisconsin’s Forest Crop Law (FCL) and Managed Forest Law (MFL) was updated. The new rule includes a requirement to include “Identified Risk” in management plans and supersedes the [Tax Law Interim Guidance: Identifying High Risk](#).

NR46.18(9) IDENTIFIED RISK. Forest regeneration or health concerns that have foreseeable repercussions on stand productivity shall be identified in the management plan. These identified risks to lands enrolled that are identified in the management plan may not be the cause for an analysis under s. NR 46.215.

It is important to note that the words “may not” in administrative code language is the equivalent of “shall not”. **Consequently, identified risk(s) cannot be the cause of a withdrawal without tax and fee.**

Why was the rule changed to require forest regeneration or health concerns that have foreseeable repercussions on stand productivity (risk) be identified in the management plan?

- In order to prevent parcels that lose productivity due to *foreseeable forest health or other pre-identified regeneration reasons* from qualifying for a withdrawal without tax and fee.
- In order to clearly inform landowners of the ramifications of enrolling land that has a known particular high risk of becoming non-productive for producing forest products. Consequently, identified risk(s) may influence a landowner’s decision to enroll specific stands/acres into MFL.
- In order to fairly compensate municipalities, the rule was written to disqualify stands with identified risk from being the basis for a withdrawal without tax and fee should they become nonproductive. Withdrawal taxes are repaid to the municipalities which have foregone property tax payments in exchange for an investment in future forest products.

How will risk be identified in management plans?

- Risk will be identified at the time of enrollment.
- The “stand productivity” field in WisFIRS has been updated to include two new categories (see below) and shall be utilized to identify risk. The bolded language in the boxes below are displayed on line 1 of the land exam. The description below the bolded language will populate the management plan within the “Stand Information” section of the respective stand.
- The Stand Conditions section of the plan shall describe the identified risk.

PRODUCTIVE 80% Productive with Identified Risk.

This stand has forest regeneration or health concerns with foreseeable repercussions on productivity. The identified risk(s) described in the stand conditions cannot be the cause of a withdrawal without tax and fee.

NON-PRODUCTIVE 20% -Trees with Identified Risk

You have chosen not to manage this stand of trees. This stand has forest regeneration or health concerns with foreseeable repercussions on productivity. The identified risk(s) are described in the stand conditions. If you later request that we amend your management plan to place this stand into the productive category, the identified risks in this stand cannot be the cause of a withdrawal without tax and fee.

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June 10, 2020

Which forest health and regeneration concerns need to be identified risks to productivity?

- For now, CPWs and TLFS are expected to use sound professional judgement when using the new stand productivity categories to identify **forest regeneration or health concerns that have foreseeable repercussions on stand productivity.**
- In the future, the Tax Law section will evaluate the potential need to provide guidance as to those specific forest health concerns and other threats to successful regeneration which must be consistently included as identified risk.

Which plans does this rule change affect?

- The rule became effective March 1, 2020. Thus, identified risk must be addressed in all 2021 and future management plans at the time of enrollment.
- Plans effective in 2020 and older will not be impacted by this rule change.
 - 2020 and older plans will qualify for productivity analysis to determine eligibility for withdrawal without tax and fee.
 - 2020 and older plans will not be updated to identify risk using the productivity fields.

Who is responsible for including the new productivity codes in 2021 plans?

- The Tax Law Section (TLS) will take responsibility for incorporating identified risk into the 2021 plans prior to issuing orders. Please refer further down for more information if you wish to handle the updates.
 - Tax Law Forestry Specialists (TLFS) will evaluate ALL (approved, returned, submitted) 2021 plans and maintain a list of orders that need the identified risk productivity code added.
 - The respective CPW's will be contacted and informed of the plans that will be updated using the new productivity category.
 - Unless the CPW requests otherwise (see "**What if the CPW wishes to implement these changes for 2021 plans?**" section below.), the TLFS will work directly with the landowner to update the plans using the new productivity fields and obtain new signatures.
 - In the case of **Large Account Management Plans** the TLFS will work directly with the CPW serving as the landowner's agent.
 - It is important to consider that after being informed of identified risk, the landowner may choose not to enroll stands with identified risk, and thus their application and plan may need to be updated. The TLS will take on the responsibility of amending the plan and application.

Who is responsible for including the new productivity codes in 2022 and later plans?

- CPWs are required to identify risk in all 2022 and future management plans as described above in "How will risk be identified in management plans?"

WisFIRS Update – Identifying Risk in Management Plans

June 10, 2020

What if the CPW wishes to implement these changes for approved 2021 plans?

- We recognize that some CPWs may wish to implement this change to the plans for their customers.
- **For already approved plans:**
 - **By no later than: 5:00 pm WEDNESDAY, JUNE 17, 2020 please respond to Chase O’Brien, Tax Law Specialist via email Chase.Obrien@wisconsin.gov with a subject of “Identifying Risk in 2021 Plans” informing Chase if you wish to update ALL or NONE of the 2021 plans you authored that are already approved.**
 - If Chase does not hear from you the tax law section will move forward as proposed above.
- **For plans in “returned” and “submitted” status:**
 - You will be contacted separately for the plans in these statuses that need identified risk added, we hope to make the process as efficient and fair as possible, while being completely willing to take on all the additional work updating the plan entails.

Please note these are the changes that will be needed should you elect to make the changes (see Appendix A for details on workflows):

- ✓ have the conversation with the landowner (explain identified risk)
- ✓ add the new code, and/or
- ✓ adjust the plan and other documents as needed,
- ✓ acquire landowner signatures on the plan signature page,
- ✓ resubmit through WisFIRS
- ✓ it may turn out that a landowner wishes to cancel the application. Then we need a signed letter from the landowner stating they wish to cancel.

IMPORTANT: Time is of the essence to ensure orders can be issued for approvable plans. As a valued partner, please expedite edits to returned plans as soon as possible. In accordance to NR 46.18 (5) (dm), all returned plans must be re-submitted by September 15 and plans submitted after September 15 that are not approvable may be denied. By statute the DNR must approve plans by October 1st.

What are the next steps?

1. CPWS are highly recommended to attend one of the upcoming Skype meetings.
2. Reply to Chase O’Brien with your wishes for making changes to already approved plans by 5:00 pm Wednesday, June 17, 2020.
3. Once tax law staff know whether a CPW wishes to update their plans, tax law staff will begin working with landowners starting on the approved plans.
4. For returned and submitted status plans, tax law staff will contact you to determine the best way to update these in progress plans. CPWs have the option to let the tax law staff update the productivity code and discuss the change with the landowner.

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June 10, 2020

Appendix A: Workflows – Updating 2021 MFL Plans to Identify Risk (6/10/20)

The following workflows outline the process to update 2021 MFL plans to identify risk.

Approved

TLFS Handles Update:

1. TLAS or TLOS open plan for late changes
2. CONTACT the landowner to explain the change and decide how to move forward
3. TLFS edits plan
4. TLFS obtains signatures from landowner

CPW Handles Update:

1. Plan un-approved by TLAS
2. TLFS returns plan to CPW with the returned reason of “CPW requested to incorporate new productivity code and address with landowner”
3. CPW updates stand productivity and explains to the landowner
4. CPW obtains signatures
5. CPW submits plan for approval

Submitted

TLFS Handles Update:

1. Approve the plan if no other returns reasons exist other than identifying risk
2. Open for late changes
3. CONTACT the landowner to explain the change and decide how to move forward
4. Edit the plan
5. Obtain landowner signatures

CPW Handles Update:

1. CPW notifies TLFS that they will make the update
2. TLFS returns plan to CPW with the returned reason of “CPW requested to incorporate new productivity code and address with landowner?”
3. CPW updates “Stand Productivity” and explains to the landowner
4. CPW can either:
 - a. Submit application without signatures and obtain those signatures after it is determined to be “approvable” by TLFS

Or...

- b. Obtain landowners signatures on management plan and submit with application for approval

Returned

TLFS Handles Update:

1. CPW submits plan
2. Approve the plan if no other return reasons exist other than identifying risk.
3. Open for late changes
4. CONTACT the landowner to explain the change and decide how to move forward.
5. Edit the plan stand productivity
6. Provide plan to landowner and obtain signatures
7. Approve
8. Upload signed plan

CPW Handles Update:

1. CPW notified that “Stand Productivity” needs to be updated
2. CPW makes the update and explains to the landowner
3. CPW can either:
 - a. Submit application without signatures and obtain those signatures after it is determined to be “approvable” by TLFS

Or...

- b. Obtain landowners signatures on management plan and submit with application for approval