

**Wisconsin Department of Natural Resources
Natural Resources Board Agenda Item**

SUBJECT:

Request that the Board adopt Board Order FR-23-16, proposed rules affecting chapter NR 46 related to the administration of Wisconsin's Forest Tax Law Programs to include the Managed Forest Land (MFL) and Forest Crop Law programs.

FOR: June 2019 Board meeting

PRESENTER'S NAME AND TITLE: R.J. Wickham, Tax Law Section Chief

SUMMARY:

2015 Wisconsin Act 358 signed into law on April 14, 2016 made comprehensive changes to Wisconsin's Forest Tax Law Programs to include the Managed Forest Land (MFL) and Forest Crop Law (FCL) programs.

The Bureau of Forestry Field Operations recommends adoption of the proposed language to ch. NR 46, Wis. Adm. Code, to become consistent with statutory changes in ch. 77, Wis. Stats.

Additional changes to ch. NR 46, Wis. Adm. Code, have been proposed to incorporate longstanding policy into rule as well as to streamline and clarify administration of the MFL and FCL programs.

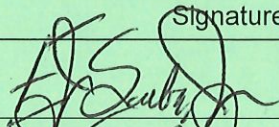
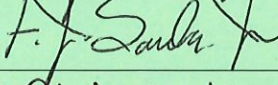

Public hearings were conducted on February 12 and 13 in Madison and Rhinelander respectively resulting in comments from 12 unique sources. 6 comments addressed the proposed rule language while 6 comments were directed to statute which DNR has no authority to address. The comments related to rule were evaluated and utilized to modify the proposed language. A complete report of comments and the Departments responses are attached.

The proposed changes to NR 46 Wis. Adm. Code will have minimal to moderate economic impacts and will not have a significant impact on small businesses (3).summary of the item.

RECOMMENDATION: That the Board adopt Board Order FR-23-16.

LIST OF ATTACHED MATERIALS (check all that are applicable):

- | | |
|---|---|
| <input type="checkbox"/> (choose one) | <input type="checkbox"/> Attachments to background memo |
| <input checked="" type="checkbox"/> Fiscal estimate and economic impact analysis (EIA) form | <input checked="" type="checkbox"/> Board order/rule |
| <input checked="" type="checkbox"/> Response summary | <input type="checkbox"/> (insert document name) |

Approved by	Signature	Date
Trent Marty, Bureau Director Forestry Field Operations Bureau		5/23/19
Fred Souba, Division Administrator Forestry Division		5/23/19
Preston D. Cole, Secretary		5/29/19

cc: Board Liaison - AD/8

By Elizabeth Kluesner
Program attorney - LS/8

Department rule officer - LS/8

CORRESPONDENCE/MEMORANDUM

DATE: May 28, 2019

TO: All Members of the Natural Resources Board

FROM: Preston D. Cole, Secretary

SUBJECT: Background memo on Board Order FR-23-16, relating to the administration of Wisconsin's Forest Tax Law programs (Managed Forest Land and Forest Crop Law).

1. Subject of Proposed Rule:

The proposed rule addresses language changes to NR46, Wis. Adm. Code, to become consistent with statutory changes in ch. 77, Wis. Stats.

2. Background:

Wis. Stats. 2015 Wisconsin Act 358 signed into law on April 14, 2016 made comprehensive changes to ch. 77, Wis. Stats. regarding Wisconsin's Forest Tax Law Programs with substantial changes to the Managed Forest Land (MFL) program and moderate changes to the Forest Crop Law (FCL) program.

The public comment period for the Draft Rule occurred from January 15, 2019 through February 15, 2019 to include offering two public hearings held on February 12, 2019 and February 13, 2019 in Madison and Rhinelander respectively. A total of 12 comments were received, however, one did not include a direct comment to NR46 proposed language and one was a customer service inquiry. Comments were evaluated and considered in modifications to the final proposed rule.

3. Why is the rule being proposed?

The proposed language aligns ch. NR 46 Wis. Adm. Code with ch. 77, Wis. Stats. Additional changes have been proposed to incorporate longstanding policy into rules as well as streamline and clarify administration of the MFL and FCL programs.

4. Summary of the rule. (Refer to Plain language analysis of the Board Order Format for details)
The following rules have been repealed, created or updated to align with Act 358 changes.

MFL Renewals

Section NR 46.18(8) provides landowners the flexibility needed for reenrolling in the program and allows all existing management plans to be updated by a certified plan writer in order to facilitate and streamline the renewal process.

Buildings and Improvements

The definition of "building" in s. NR 46.15 (1m) was clarified and provides an exception for recreational vehicles (e.g., campers and RVs). NR46.15 (17r) defines what it means to be an improvement associated with a building using guidelines developed to assess improvements for purposes of taxation. Hunting blinds are authorized and have been defined in s. NR 46.15 (17) (g). Structures and fixtures needed for sound forestry have been defined in s. NR 46.15 (30m). Clarification regarding which building rules apply to which orders, since the change affecting building rules was prospective only, was created in s. NR 46.15 (3) (b).

Accessibility

Section NR 46.20 states that public access can be satisfied if the land designated as open-MFL is (1) contiguous to other public land, (2) contiguous to other land under the same ownership as the

open-MFL parcel, or (3) if the landowner secures an easement or agreement that allows the public to cross neighboring lands. Additionally, to be designated as open-MFL, landowners must certify that they will inform the department if their access changes and that they are aware their land may need to be closed or withdrawn if they cannot provide public access. Posting standards and map requirements in s. NR 46.21 were also updated to reflect this requirement.

Additions

Section NR 46.16 (7), interprets and clarifies the requirements for additions in s. 77.82 (4), Stats., including that the additional parcel must be at least 3 contiguous acres, must be contiguous to the existing entry, and all eligibility requirements must be met. For eligibility purposes, productivity is evaluated on the parcel as a whole (existing MFL land plus added MFL land), not just the portion being added. Furthermore, in s. NR 46.16 (5), this rule removes the requirement that qualifying contiguous land in a separate municipality be on a separate order. Now, all lands eligible to be an addition can be added to an existing order.

Yield and Severance Tax

All references to MFL yield and FCL severance taxes have been repealed from NR46. Additionally, NR 46.16 (1) (cm) has been repealed since there is no longer a FLC termination tax and there is no reason to provide FLC landowners additional time to apply to the MFL program after a land conveyance occurs.

Contracts

Section NR 46.27 (2) provides the process that the department will use to contact landowners and establishes a timeline for landowner response to be eligible for withdrawal from the program without assessment of a withdrawal tax and fee following a material change. To implement the process for contacting landowners after a material change, s. NR 46.31 provides that landowners are responsible for supplying the department with updated contact information if it has changed since the time of entry and that the department's attempt to notify the landowner at a supplied address has occurred to meet the requirement of contacting a landowner.

Section NR 46.18 (9) was created to clarify amendments to management plans that may need to occur during an order period for the management plan to remain in compliance with the program.

Opportunities to Withdraw Land

Section NR 46.22 (3) provides requirements for landowners who choose to voluntarily withdraw land using the construction and small land sale withdrawal type.

Section NR 46.22 (4) establishes the requirements that need to be met for a landowner to qualify for an MFL productivity withdrawal with no penalty.

Productivity Eligibility Criteria

Changes in how productivity is evaluated as an eligibility requirement were made to address potential administrative issues that could arise as a result of the new productivity withdrawals. Specifically, s. NR 46.17 was amended to clarify that if land is part of the 80% productive portion of the entry and the land is capable of producing at the level required but is not currently meeting the density requirements established in s. NR 46.18 (2) (d) at the time of entry, mandatory practice to address density requirements must be included in the management plan. Such practices are not eligible for a withdrawal without tax or fee based on productivity issues until restoration measures have been sufficiently attempted. The density requirement table, previously called the minimum medium density table, was moved and renamed to clarify density requirements of land entered in the program.

Section NR 46.18(3) (b)1., clarifies wherein non-productive areas comprising of 1 or more contiguous acres will be used in the calculation of parcel productivity levels.

Restoration

Section NR 46.215 was added to outline when restoration may be required or offered as a solution when a parcel no longer meets productivity requirements defined in s. 77.82 (1) (a) 2., before land is withdrawn from the program, without tax and fee. If it is possible for the parcel to resume productivity through restoration within a reasonable timeframe and it is an economically feasible solution, restoration practices will be required and the management plan will be amended.

Additional requirements were added in s. NR 46.17 (4) for land that has been withdrawn for a failure to meet productivity requirements. This change makes land withdrawn for productivity or sustainability reasons ineligible for re-entry unless the department determines there has been a change that would allow the land to meet productivity requirements in s. NR 46.18 (2) (d) since the time of withdrawal. This change reduces the amount of land that can be re-entered in the program if the landowner is unable or unwilling to restore the land to meet density requirements needed to establish merchantable timber. This reduces the burden on the local units of government who would otherwise receive back taxes for land that is removed from the program.

Cutting Notices

Sections NR 46.10 and 46.185 clarify requirements for individuals to be able to submit a cutting notice without department approval. Such individuals will have to certify on the cutting notice form that they meet the requirements of submitting a cutting notice without department approval, if the cutting notice is complete and adheres to sound forestry, and the management plan and the landowner do not request department approval. For all other situations department approval is required.

Closed Land

Changes were made in s. NR 46.19 to allow landowners to close public access up to 320 acres per landowner per municipality thus removing differences between lands enrolled before or after 2004.

Leasing

Section NR 46.17. clarifies that landowners may enter into any lease or agreement if it does not conflict with the program.

Transfer of Ownership

2015 Act 358 allows landowners to sell or otherwise convey any amount of MFL land. After being notified of a land sale, the department will evaluate land retained and land conveyed to determine MFL eligibility. If the conveyed land does not meet eligibility requirements because it exceeds the non-productive requirement, the landowner can use the productivity/sustainability withdrawal, without tax and fee, to resume compliance with the productivity standards if the land sold/conveyed meets parcel size requirements after the withdrawal. If, after the withdrawal, the rest of the parcel does not meet parcel size requirements, the remaining land will be withdrawn with a tax and fee. This same evaluation will be used for land retained after a land conveyance, if any. If land conveyed or retained does not meet size requirements, that land will be withdrawn with a tax and fee.

For land that is conveyed from a large ownership, the department will transfer the land if it meets parcel size requirements established in s. 77.82 (1) (a) 2., Stats., and the new owner will have one

year to develop a management plan and determine if any land needs to be withdrawn due to productivity issues.

The following proposals codify longstanding policies.

Department orders

Section NR 46.27 (1) was added to clarify when the department may issue orders to correct or alter existing MFL entries. NR 46.16 (1) (d) clarifies that orders may be rescinded if a land sale occurs prior to the effective date.

Large Ownerships

Section NR 46.16 (4) requires large ownerships to have available for department audit, information that more closely aligns to what is required for other entry types. This will allow the department to evaluate when large ownerships are eligible for certain withdrawal types. In addition, now that landowners can sell any description of land, productivity must be evaluated at the time of transfer to determine if land is eligible to remain in the program.

Cutting Notices

Incorporates language to allow cutting notices to be renewed if no significant change has occurred, the cutting will occur within a reasonable timeframe and the submitter is in contact with the department. This alleviates burden on an industry where harvesting contracts are often more than one year long.

5. How does this proposal affect existing policy?

Ch. NR 46 Wis. Adm. Code currently does not align with statute. The proposed language updates Code to become consistent with ch 77, Wis. Stats.

6. Has Board dealt with these issues before?

Yes. The Board approved the scope statement for FR-23-16 at its June 2017 meeting and passively authorized the notice for public hearing in November 2018.

7. Who will be impacted by the proposed rule? How?

Wisconsin's Forest Tax Law programs impact a wide variety of stakeholders, however, the proposed rule will specifically impact;

- Landowners who have lands enrolled in the MFL or FCL programs or who will purchase or enroll lands in the MFL and FCL programs in the future.
- Certified plan writers who implement the MFL and FCL programs by writing management plans and helping landowners follow management plans.
- Private forest industry and private foresters who conduct mandatory practices on lands enrolled in tax law programs.
- Department staff who implement and administer the provisions of the MFL and FCL program.
- Towns and municipalities that collect taxes from MFL and FCL landowners.

Overall, the proposed rule codifies administrative processes to implement 2015 WI Act 358 as described in the above summary.

8. Soliciting public input on economic impact synopsis

A 30-day public comment period on the Draft Economic Impact Analysis (EIA) occurred from September 18, 2018 through October 2, 2018. DNR received 3 written comments from stakeholders on the EIA during this period. Additionally, one direct comment was received via phone regarding the evaluation of productivity requirements. This feedback was considered in the final rule proposal.

No comments included specific cost information, however, all comments were evaluated and considered in the final proposed rule language.

9. Small Business Analysis

The proposed changes will not have an impact on small businesses.

Drafter: R.J. Wickham, Tax Law Section Chief

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

1. Type of Estimate and Analysis <input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected	2. Date 5/28/2019
3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable) Ch. NR 46, Forest Tax Program. Board order FR-23-16.	
4. Subject Relating to the forest tax law programs (Managed Forest Law and Forest Crop Law)	
5. Fund Sources Affected <input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input checked="" type="checkbox"/> SEG <input type="checkbox"/> SEG-S	6. Chapter 20, Stats. Appropriations Affected None
7. Fiscal Effect of Implementing the Rule <input type="checkbox"/> No Fiscal Effect <input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Increase Costs <input type="checkbox"/> Decrease Costs <input checked="" type="checkbox"/> Indeterminate <input type="checkbox"/> Decrease Existing Revenues <input type="checkbox"/> Could Absorb Within Agency's Budget	
8. The Rule Will Impact the Following (Check All That Apply) <input type="checkbox"/> State's Economy <input checked="" type="checkbox"/> Specific Businesses/Sectors <input checked="" type="checkbox"/> Local Government Units <input type="checkbox"/> Public Utility Rate Payers <input type="checkbox"/> Small Businesses (if checked, complete Attachment A)	
9. Estimate of Implementation and Compliance to Businesses, Local Governmental Units and Individuals, per s. 227.137(3)(b)(1). \$Less than \$50,000 (Cost; \$29,315 and Savings/Benefits: \$92,685)	
10. Would Implementation and Compliance Costs Businesses, Local Governmental Units and Individuals Be \$10 Million or more Over Any 2-year Period, per s. 227.137(3)(b)(2)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
11. Policy Problem Addressed by the Rule Changes to Ch. NR 46, Wis. Adm. Code, to become consistent with statutory changes in ch. 77, Wis. Stats. 2015 Wisconsin Act 358 was signed into law on April 14, 2016. This act made a number of changes to the administration of the Forest Tax Programs. Chapter NR 46, Wis. Adm. Code needs to be amended as a result of Act 358 to reflect current statutory language. Additional changes to ch. NR 46, Wis. Adm. Code were also pursued in this proposed rule to incorporate longstanding policy into rule and streamline and clarify administration of the MFL and FCL programs.	
12. Summary of the Businesses, Business Sectors, Associations Representing Business, Local Governmental Units, and Individuals that may be Affected by the Proposed Rule that were Contacted for Comments. The Department solicited and responded to comments on the Economic Impact of the proposed rule language in pursuant to s. 227.137, Wis. Stats. from January 15, 2019 to February 15, 2019. The Department conducted public hearings on February 12, 2019 and February 13, 2019 in Madison and Rhinelander respectively. Additionally, written public comments were solicited. In total, 12 comments were received. The comments were evaluated and responded to accordingly. Several changes to the proposed language were adopted.	
13. Identify the Local Governmental Units that Participated in the Development of this EIA. None.	
14. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred) There are varying economic impacts associated with the passage of Act 358 in April 2016. This analysis on the proposed changes to ch. NR 46, Wis. Adm. Code, will only include evaluation of economic impacts resulting from the DNR's implementation of statutory provisions. It is anticipated that the proposed changes to ch. NR 46, Wis. Adm. Code will have minimal to moderate economic impacts and will not have an impact on small businesses. The total cost of implementing NR 46 changes is estimated to be less than \$50,000 per year. Some of these changes will impact municipalities and counties opposite the impact to the landowners to a lesser degree than the impact to the landowner, others will not impact the municipalities at all. The flexibilities offered by this proposed rule are expected to save	

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landowners approximately \$90,000 per year. The changes within NR 46 and a detailed explanation of the potential economic implications (costs and benefits) are explained below.

Minimum Acres and Renewals

This proposed rule allows landowners to perform the withdrawal of ineligible land with a tax and fee and the renewal of the land simultaneously to make the land eligible for the one-time renewal of less than 20 acres. Based on our assessment, there are 707 entries that may be impacted by this additional flexibility in the future. If we include the average rate of expiration and renewal, we anticipate 8 landowners will be impacted annually. The statewide average tax rate for productive forest land is \$40.79, therefore, a gross estimate of the statewide cost of withdrawal per acre to landowners would be the average tax rate multiplied by 10 plus a \$300 withdrawal fee. In terms of tax savings to the landowner, since this provision will be more likely to impact owners with less than 1,000 acres, we assumed an average savings of \$31.41 per acre per year (reflective of 90% of the land owing a closed acreage fee), compared to the average tax rate of productive forest land if land were not enrolled in the program. The average entry size for lands enrolled is between 11 and 21 acres, less the 1 acre building site that would need to be removed is 15.66 acres, resulting in an average savings of approximately \$491.97 per landowner per year for land allowed to be renewed in the program. On average, landowners would break even, and start benefiting from the cost of the 1-acre withdrawal for the building site in year two of their renewal order. The department anticipates the increased costs to local units of government equal to landowner savings, and conversely, increased benefit to local units of government would equal the landowner cost. Additionally, the impact of the flexibility that Section NR 46.18(8) that provides landowners to update existing management plans in order to streamline the renewal process is anticipated to be minimal. Through the new renewal provisions, landowners may be more inclined to keep the data within their management plan up to date. Keeping management plans up to date may result in a reduction in the cost of the plan for the landowner.

Buildings and Improvements

This section of the rule clarifies how buildings and improvements associated with buildings are defined, and there may be subtle differences in the cost or benefit associated with our interpretation. The department estimates that 180 orders will be impacted by this annually due to expiration of land that contains a building that the rule prohibits. The gross average increase in property taxes when land is returned to the regular property tax roll, for large and regular MFL landowners, is \$33.12 per acre (reflective of 1/3 of the land owing closed acreage fees). The department anticipates the increased benefit to local units of government would equal the landowner cost.

Accessibility

Act 358 requires that land designated as open to public recreation is accessible on foot. Owners of open lands that are not accessible by public road or other land open to public access may need to secure an agreement if they cannot provide another means of access. The alternative is to close their land to public access and pay the higher tax rate of \$10.20 per acre per year for closed lands, compared to the open-MFL tax rate of \$2.04, or to withdraw their land from the program with a tax and fee. From a cost efficiency perspective, we anticipate that landowners will not close or withdraw their land based on the new rules but will instead secure an agreement with a neighboring landowner. The department anticipates the cost to landowners to be minimal even though it cannot be determined. No additional costs to local units of government or the department are expected.

Contracts

Currently there are approximately 50,000 MFL orders. Under Section NR 46.27 (2), if there is a material change to program statutes or rules the department will need to send a letter to each designated landowner contact within the program. Within the past 5 years there has been at least one legislative change to the MFL program in every legislative

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session. For the department to send a letter to the primary owner of each order using the Department of Administration first-class mailing and printing services, the total cost to the department is anticipated to be approximately \$25,046 each time a material change occurs.

Department orders

The department may issue orders to correct or alter existing MFL orders to coincide with facts determined to be in place at the time the order was issued. Currently the department does this, so we do not anticipate any additional costs.

Large Ownerships

This rule clarifies the information that large ownerships are required to maintain as part of their management commitment. Large ownerships will also be required to supply more information to the department at the time land is entered into the program so that the department can confirm program eligibility. We anticipate that all of these ownerships already have this information on hand and any additional cost that could be incurred related to this request will be minimal. The department anticipates no additional cost to local units of government or to the department.

Productivity Eligibility Criteria

Changes and clarifications in how the program evaluates land that is capable of producing 20 cubic feet of merchantable timber per year will likely result in an increase of land eligible for the program, and consequently, has the potential to decrease the amount of land on the regular property tax roll. Mandatory practices required in the management plan for lands not meeting density requirements at the time of entry may increase landowners' cost, though this would likely be offset by the tax savings associated with MFL enrollment. Land capable of meeting the productivity standards prior to this provision would have had to complete similar, if not the same practices before entry. Therefore, the department anticipates no economic impact to the landowner beyond a few additional years of reduced property taxes, since this provision simply allows the land to be enrolled prior to the practices taking place. Additionally, clarifying language to how productivity is evaluated on MFL parcels was added to ensure consistency. This change could result in acreage not being eligible for the program because it exceeds non-productivity. However, the department anticipates that this will likely result in a minimal amount of acreage not eligible to be enrolled in the program. Overall, due to changes and clarifications in productivity eligibility criteria, the department anticipates minimal yet indeterminant impact on landowners and local units of government and no additional cost to the department.

Restoration

To determine if landowners would be required to restore land after it has exceeded 20% nonproductive acreage, the department will evaluate whether there is an economic concern that would prohibit restoration. Landowners will be required to restore land if restoration costs are estimated to be less than involuntary withdrawal costs. If landowners are not required to restore the land, the minimum number of acres needed to be withdrawn to get the land back into compliance with productivity requirements will be withdrawn without a tax and fee. Using the average out of pocket cost for emergency funded restoration project installed since 2012 through the Wisconsin Forest Landowner Grant program and the average cost of withdrawal, the department anticipates that even though the average cost of involuntary withdrawal is higher than the average cost of restoration, restoration will only be required in rare situations because the likelihood of success of the restoration is also evaluated. Of the determinations made since the passage of Act 358, no restoration attempts have been required, and the impacted landowners have been able to withdraw the acreage without tax and fee. In situations where restoration would be required, the landowner will have the option to attempt the restoration or voluntarily withdraw the land and go back on the regular property tax roll, ultimately leaving the economic decision in the landowner's hands, but we would assume landowners would attempt restoration since the cost of withdrawal would be higher. Municipalities and counties may be impacted depending on whether the land returns to the

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regular property tax roll or the landowner restores the land. The department anticipates no additional cost to the department.

Cutting Notices

Allowing cutting notices to be renewed if no significant change has occurred alleviates a burden on tax law landowners, DNR, and any private entity involved with the cutting as industry timber sale contract periods typically last 2-3 years. Over the past 3 years, 5,685 cutting notices have been completed. The average time to completion from approval date was 2.3 years. This change will likely not have any economic impact as it is not a significant change from current operating procedures. This provision creates flexibility and may reduce cost to landowners, partners and DNR since resubmission is not required unless a substantial change has occurred. Therefore, the department anticipates no cost and unknown minimal benefits to landowners and their contractors, and no economic impact on local units of government or the department.

Leasing

Landowners may enter into any lease or agreement if it does not conflict with the program. This provision clarifies statute and long-standing policy, and therefore the department does not anticipate any additional cost. If anything, this provision provides additional unknown economic benefit for landowners. Additionally, the department anticipates no economic impact on local units of government or the department.

Transfer of Ownership

If land conveyed or retained does not meet size requirements, that land will be withdrawn with a tax and fee. This rule also allows landowners the clear flexibility to use the productivity withdrawal after a land sale if their land does not meet productivity requirements. Ultimately this will lead to an indeterminate amount of land being withdrawn without a tax and fee, that would otherwise be withdrawn with a tax and fee because of an ineligible land sale. Since the passage of Act 358, 2% (10.5 landowners/year) of partial transfers have resulted in land withdrawn without a tax and fee for productivity reasons. The average number of acres withdrawn through one of these withdrawals was 9.11 acres. The department anticipates this provision will reduce the economic burden on landowners by reducing the number of acres withdrawn with a tax and fee because of an ineligible land sale, and allows land to remain in the program that would have otherwise been withdrawn as part of a larger involuntary withdrawal. Using the statewide average tax rate for productive forest land of \$40.79, a gross estimate of a withdrawal with tax and fee to landowners would be the average tax rate multiplied by 10 plus a \$300 withdrawal fee times the number of acres withdrawn. Savings to landowners may represent tax revenue that the local governments could have received. There is no anticipated impact to the department.

Administration

Comprehensively, with these provisions there is additional administrative burden in the form of updating maps because of voluntary withdrawals, partial transfers, and changing access routes, as well as other administrative duties required to implement these changes. The department anticipates all additional work can be absorbed in the current workforce.

15. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

This rule revision largely aligns ch. NR 46 with recent statutory changes so that it is in compliance with state law. Additional administrative changes were made to help with the implementation of the changes and to codify long standing policy.

16. Long Range Implications of Implementing the Rule

The long range fiscal or economic implications of implementing the rule are the same as the short range implications.

17. Compare With Approaches Being Used by Federal Government

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

18. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

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

19. Contact Name

R.J. Wickham - Tax Law Section Chief

20. Contact Phone Number

(920) 369-6248

This document can be made available in alternate formats to individuals with disabilities upon request.

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ATTACHMENT A

1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

2. Summary of the data sources used to measure the Rule's impact on Small Businesses

3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- Less Stringent Compliance or Reporting Requirements
 - Less Stringent Schedules or Deadlines for Compliance or Reporting
 - Consolidation or Simplification of Reporting Requirements
 - Establishment of performance standards in lieu of Design or Operational Standards
 - Exemption of Small Businesses from some or all requirements
 - Other, describe:
-

4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

5. Describe the Rule's Enforcement Provisions

6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

- Yes No
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WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Scott Grosz
Clearinghouse Director

Jessica Karls-Ruplinger
Legislative Council Acting Director

Margit S. Kelley
Clearinghouse Assistant Director

CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 18-086

AN ORDER to repeal NR 46.08, 46.16 (1) (cm), 46.17 (3) (Note) (1), 46.18 (4) (a) 2., 46.19 (1) (Note) and (2), 46.21 (2) (b), 46.23 (2), 46.26, and 46.30 (1) (a), (e), and (f); to renumber and amend NR 46.18 (4) (a) 3. and 46.23 (2m); to amend NR 46.01, 46.02 (25), 46.09 (Note), 46.15 (2), (16), and (33), 46.16 (1) (intro.), (a), (d), and (e), (2) (h), (2) (Note), (5), and (7), 46.165 (3) (c), 46.17 (1) (b), 46.18 (2) (intro.) and (d), (3) (b) 1. and 2. a. and 4., (5) (bm), and (6) (Note) (1), 46.19 (1), 46.21 (2) (a) and (3) (c), 46.22 (2) and (2) (Note), 46.23 (3), 46.24 (3) (c) and 46.25; to repeal and recreate NR 46.03, 46.15 (1m), 46.17 (3), 46.18 (4) (b), 46.19 (3), 46.20 (1) and (2), 46.21 (1), 46.22 (1), and 46.23 (1); and to create NR 46.10, 46.15 (15m), (17g), (17r), (20s), (21m), (26r), (30m), and (32m), 46.16 (7m) and (10), 46.17 (1) (c), (4), and (5), 46.18 (2) (g), (4) (a) 3. a. and b. and (4) (a) 6. and (Note), (c), (5) (dm), (9), and (10), 46.185, 46.21 (2) (c), 46.215, 46.22 (3) and (4), 46.23 (2m) (b) and (c), 46.27, and 46.28, relating to the managed forest law and forest crop law programs.

Submitted by **DEPARTMENT OF NATURAL RESOURCES**

11-26-2018 RECEIVED BY LEGISLATIVE COUNCIL.
12-20-2018 REPORT SENT TO AGENCY.

MSK:REL

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS
[s. 227.15 (2) (e)]

Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached YES NO



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Scott Grosz
Clearinghouse Director

Margit Kelley
Clearinghouse Assistant Director

Terry C. Anderson
Legislative Council Director

Jessica Karls-Ruplinger
Legislative Council Deputy Director

CLEARINGHOUSE RULE 18-086

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated December 2014.]

1. Statutory Authority

In the rule summary's listing of statutory authority, consider removing the broad reference to ch. 77, Stats., and referring only to the general rulemaking authority under s. 227.11 (2) (a), Stats., to effectuate the purpose and administration of the program, which is already listed. As noted in the listing of statutes interpreted, the proposed rule interprets subchapters within ch. 77, Stats., for administration by the department. Alternatively, consider identifying specific statutes that explicitly grant authority related to certain aspects of the proposed rule, such as s. 77.83 (3), Stats., for sign design standards, s. 77.88 (2m) (c), Stats., for restoration periods, or others. [s. 1.02 (2m), Manual.]

2. Form, Style and Placement in Administrative Code

a. In the rule summary, entries should be inserted for the summary of factual data and analytical methodologies, the analysis and supporting documentation to determine the effect on small business, and the effect on small business. Also, a heading and entry should be inserted for the place where comments are to be submitted and the deadline for submission. [s. 1.02 (2) (a) 8., 9., 10., and 13., Manual.]

b. SECTION 8 of the proposed rule should be separated into two SECTIONS: (1) to renumber and amend s. NR 46.15 (2) (intro.) to s. NR 46.15 (2); and (2) to repeal s. NR 46.15 (2) (Table). Also, in the text of s. NR 46.15 (2) (intro.), the colon from the current rule text should be inserted and shown with a strikethrough. [ss. 1.04 (2) (b), 1.057, 1.06 (1) (a), and 1.067, Manual.]

c. In s. NR 46.16 (5), the acronym "MFL" should either be spelled out or added to the current definition for "managed forest land" in s. NR 46.15 (20). This same comment applies to ss. NR 46.16 (7) and (7m) (b) 2., 46.18 (4) (a) 6. and (6) (Note 1), 46.215 (1) (a), and 46.22 (2) (Note 1). [s. 1.01 (8), Manual.]

d. In s. NR 46.16 (7), "current" should be deleted. In addition, "currently" should be deleted in s. NR 46.17 (1) (c) 1. [s. 1.01 (9) (b), Manual.]

e. In s. NR 46.17 (3) (c), "cannot" should be changed to "may not". [s. 1.01 (2), Manual.]

f. SECTION 23 of the proposed rule should be separated into three SECTIONS: (1) to amend s. NR 46.18 (2) (intro.); (2) to renumber and amend s. NR 46.18 (2) (d) (intro.) to s. NR 46.18 (2) (d); and (3) to repeal s. NR 46.18 (2) (d) (Table). Also, in the text of s. NR 46.18 (2) (d) (intro.), the word "classifications" and the colon from the current rule text should be inserted and shown with a strikethrough, and the word "density" should not be underscored. [ss. 1.04 (2) (b), 1.057, 1.06 (1) (a), and 1.067, Manual.]

g. SECTION 25 of the proposed rule should be separated into three SECTIONS: (1) to renumber and amend s. NR 46.18 (3) (b) 1. to s. NR 46.18 (3) (b) 1. a.; (2) to create s. NR 46.18 (3) (b) 1. b.; and (3) to amend s. NR 46.18 (3) (b) 2. a. [ss. 1.04 (2) (b), 1.055, 1.06 (1) (a), and 1.067, Manual.]

h. In s. NR 46.20 (1) (b), "can" should be changed to "may". [s. 1.01 (2), Manual.]

i. In the treatment clause of s. NR 46.21 (2) (b), the colon should be changed to a period. The same issue occurs in the treatment clause of s. NR 46.26. [s. 1.057, Manual.]

j. In s. NR 46.23 (2m), a title should be created for the subsection, in order to mirror the use of titles in the other subsections of s. NR 46.23. [s. 1.05 (1), Manual.]

k. In s. NR 46.27 (1) (intro.), a colon should be added after "managed forest land orders". [s. 1.03 (3), Manual.]

l. In the treatment clause for SECTION 61 of the proposed rule, it appears that the second listing of sub. (1) should be removed, as par. (f) is among the list of paragraphs already identified.

m. The effective date provision should be revised to identify one date upon which the proposed rule would take effect, rather than listing two effective date alternatives. [s. 1.02 (4), Manual.]

4. Adequacy of References to Related Statutes, Rules and Forms

In s. NR 46.15 (2) (intro.), what are the "other guidelines" that would apply? A specific reference to another rule or other source should be identified. [s. 1.07 (1) (a), Manual.]

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. In s. NR 46.15 (1m), "space" should be added after "office".

b. In s. NR 46.15 (32m) (c), is "telephone service based locally" intended to mean only land line telephone service? The rule should be clarified to reflect the department's intent.

c. In s. NR 46.17 (1) (c) 1., the rule should clarify who will determine what is considered "a reasonable timeframe".

d. Section NR 46.18 (2) (intro.) provides that "practices projected beyond the term of the order may be added as appropriate". Who determines whether this is "appropriate"? What is the authority of the department to require an owner to perform mandatory practices in a management plan beyond the term of an order?

e. In s. NR 46.20 (1) (b), it appears that "or otherwise" should be changed to "or other legal agreement". In sub. (1) (c), "is" should be added between "or" and "continuous managed forest land of the owner which has been designated closed".

f. In s. NR 46.21 (2) (c), is this requirement intended to apply to open land and closed land under the same ownership that is contiguous? If so, this should be added to the rule. In addition, the rule might be clearer if the word "closed" were inserted between "posted" and "and surrounds the land designated as open to public recreation".

g. In s. NR 46.21 (3) (c), "the map" and "the managed forest law map" are noted; however, it is unclear from the rule whether this map is required to be part of the sign, or is the map that is required to be submitted under s. NR 46.25.

h. In s. NR 46.215 (1) (intro.), a colon should be added after "are met". In sub. (2) (b), it appears that "and" in between "s. 77.88 (3k) and (3L)", should be changed to "or". The same issue occurs in s. NR 46.23 (1) (a).

i. In s. NR 46.23 (1) (b), the hyphen should be removed from "land-conveyed".

NR 46 Revision - Public Comments and DNR Responses
Natural Resources Board Order No. FR-23-16

May 20, 2019

This document presents a summary of public comments received on the proposed revisions of Chapter NR46, Wisconsin Administrative Code, and the Department of Natural Resources' (DNR's) responses.

OVERVIEW

2015 Wisconsin Act 358 made comprehensive changes to ch 77, Wis. Stats regarding Wisconsin's Forest Tax Law programs with substantial changes to the Managed Forest Land (MFL) program and moderate changes to the Forest Crop Law (FCL) program.

The proposed rule language aligns ch. NR 46 Wis. Adm. Code with ch 77, Wis. Stats.

ECONOMIC IMPACTS ANALYSIS (EIA)

A 30-day public comment period on the Draft EIA occurred from September 18, 2018 through October 2, 2018. Comments and DNR responses are listed below. An additional comment was shared regarding the potential additional administrative hardships concerning the proposed draft language pertaining to the productivity evaluation which was considered in the final rule proposal.

Comment:

Good Morning Amanda,

Thank you for all of your hard work on this and many other projects. As always, I am glad there is someone willing to do it. I sure couldn't.

I wanted to comment on NR 46.18 (3) (b) 1. Changing the minimum acreage of areas that must be considered in the non-productive land calculation from 2 to 1/2 seems like it will cause a lot of problems. I am not familiar with the background of why this change was proposed, but below is my reaction to it.

It will cause the cost of preparing an MFL plan to increase which will ultimately be passed onto the landowners. Accurately mapping areas that small will take much more time. I am not sure when this will take effect, but if it is prior to June 1, 2019, many CPW's will lose money. Many of us have already contracted several MFL plans at a rate we determined using the current requirements. If this takes effect it will decrease the CPW's income, negatively impacting their businesses.

It will cause fewer enrollments in MFL. There is great potential for this to cause land that was borderline for enrollment to be just over 20% non-productive and not eligible for enrollment. This means that less land is being managed sustainably, counter to the intent of the MFL program.

Mapping areas that small under the current mapping requirements will lead to maps that are difficult to understand and use. There is a high potential for very cluttered, confusing maps that distract from sound, sustainable forest management.

This will lead to many disagreements over what exactly has to be mapped out as non-productive. This will increase the workload for Tax Law Foresters who are already overworked and stressed.

↓

Thank you.

Ken Price

Valley View Forestry, LLC

Kenneth Price - Manager

3925 Jordan Rd

Stevens Point, WI 54482

715-952-4398 - Cell

715-592-5229 - Office

ken.price27.vvf@gmail.com

DNR Response:

Dear Ken,

Thank you for your kind words and your feedback on the Economic Impact Analysis. There are a couple of reasons that we decided to clarify how to evaluate productivity in this proposed rule. Currently the way it is written in NR 46 and in handbook, the language is somewhat contradictory and leads to confusion. Across the state, we have found that CPWs and DNR foresters have different ways of interpreting the correct way to evaluate productivity. Most commonly, it seems that non-productive lands are only included in the productivity analysis if the discrete area is 2 or more acres. This leads to circumventing the intent of the program, where there are enrollments where parcels are not 80% productive, and in some cases, not even close to 80% productive.

This proposed change does not impact existing orders or alter the way maps are drawn - it is only in how productivity is calculated that we are looking at ½ acre. Cover types are still considered at 2 acres in size, and we are only asking for cover types to be mapped. Additionally, and importantly, by allowing us to more accurately and appropriately enter land into the program, this proposed change will help with the accurate and appropriate use of the productivity withdrawal once land is in the program.

As part of your comment you note that there will be an economic impact associated with this change. We agree with your input and have added the following language in red to the analysis:

Productivity Eligibility Criteria

Changes and clarifications in how the program evaluates land that is capable of producing 20 cubic feet of merchantable timber per year will likely result in an increase of land eligible for the program, and consequently, has the potential to decrease the amount of land on the regular property tax roll. Mandatory practices required in the management plan for lands not meeting density requirements at the time of entry may increase landowners' cost, though this would likely be offset by the tax savings associated with MFL enrollment. Land capable of meeting the productivity standards prior to this provision would have had to complete similar, if not the same practices before entry. Therefore, the department anticipates no economic impact to the landowner beyond a few additional years of reduced property taxes, since this provision simply allows the land to be enrolled prior to the practices taking place. Additionally, clarifying language to how productivity is evaluated on MFL parcels was added to ensure consistency. This change could result in acreage not being eligible for the program because it exceeds non-productivity. However, the department

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anticipates that this will likely result in a minimal amount of acreage not able to be enrolled in the program. Overall, due to changes and clarifications in productivity eligibility criteria, the department anticipates minimal yet indeterminant impact on landowners and local units of government and no additional cost to the department.

Thank you again for your feedback. If you would like to discuss this further, don't hesitate to reach out. Public hearings will be held early next year, and there will be an opportunity for input on the rule language at that time.

Sincerely,
Amanda Koch, Tax Law Policy Specialist

Comment:

Date: Oct 2, 2018

RE: Public input invited on proposed rules relating to the forest tax program - School Funding

Please formally enter the following as part of the public input for the proposed changes to the State's forestry program. If there is a public hearing on this, I would like to be notified of that as well.

The proposed changes are merely functional and systematic changes - ALL of which fail to identify, yet alone address the primary failure of the State's MFL program.

As I have previously stated in previous statements and hearings – the WI MFL program is a discriminatory anti-education program, prefaced on the denial of school revenue from the MFL program.

No portion of the annual property tax is ever shared with any school or tech. school district. Nor is any portion of the severance/yield tax shared with any school. I continue my challenge for the Division of Forestry to demonstrate that since the MFL inception in 1985 – that a single MFL dollar has ever been forwarded to any school.

When the State's Stewardship system absorbs a couple hundred acres here, or a few thousand acres there - there is great public concern of how this takes away from school funding - yet when millions of acres of privately held forest do the same, it is a non-event. Schools silently suffer from the reduced tax basis along with the remaining property taxpayers who are stuck picking up the tab for their neighbors.

All property taxpayers are damaged by the DNR's MFL program. Through the municipal leg of the MFL, almost all K-12 districts are likely affected. Otherwise, the vast districts of technical colleges surely affect and damage every property tax payer in the state - resident or not.

Somehow the MFL is able to discriminately interpret the State's Constitution of 'need not be uniform' into an absolute tax evasion of any and all school levies.

Both the State's Ag Land use program and the MFL originate from this clause. A limitation of the State's Ag land use program was that 'need not be uniform' could NOT be zero. That is why, as we should,

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have regular debates of what the Ag land use factor should be and AG Land Use is required to participate, at some level, in all regular levies.

The DNR thru the MFL is the sole and discriminatory deviation of the interpretation of 'need not be uniform' becomes ZERO tax liability for school levies. This complete absolution of ALL school levy liabilities can only be viewed as State run tax evasion.

The level of enrollment is no longer disclosed. Based on old publications of the DNR – there could easily be in excess of 1/4 of the state's 42 million acres (10+ million ?) now enrolled. This is not an insignificant impact on taxpayers throughout the state.

State Legislators and Senators that are being publicly challenged on school funding issues should take pause that the DNR's MFL program is minimally impeding and undermining their efforts to provide adequate funding schools. When there could be well in excess of 10 million acres enrolled, the MFL is the most likely cause of completing reversing all their efforts and the true source of rising school taxes in most of the State.

i.e. Even when the tax levy increases are compliant to the State caps, if the school levy is still being distributed thru the assessment system among fewer taxpayers, the tax rates still escalates. A rising tax basis value camouflages the decrease in the quantity of taxpayers - especially in rural, outlying WI.

I know the DNR will continue to deny this problem, but if I could ask for only one change in these systematic and functional change, it would be to add full disclosure within the State's Assessment Roll that documents the expense of the MFL program annually. All property, taxed or not, should be fully disclosed in local and state Assessment Rolls so that there is at least a public awareness of ALL the breakdowns within property assessment.

There is no reason to conceal the expense and the impact of the MFL program without also admitting a NEED to conceal the programs impact. A transparent DNR that serves the interest of the citizens of the state would fully enjoin this request for full disclosure to be included in the systematic changes proposed.

Until the MFL is consistent with other interpretations of 'need not be uniform' and participates on some form in school levies, there will continue to be an unfair distribution of school levies.

Respectfully,

Brian Hubbard
3072 Mile View Rd.
West Bend, WI, 53095
bashubbard@live.com
262.623.0618

CC: (3)

R.J.Wickman
Natural Resource Program Manager
Natural Resources, Department of

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PO Box 7921
Madison, WI 53707-7921
Richard.Wickham@wisconsin.gov

(920) 369-6248

Senator Duey Stroebel,

WI State Senator

Room 18 South
State Capitol
PO Box 7882
Madison, WI 53707-7882

Sen.Stroebel@legis.wisconsin.gov

(608) 266-7513

Representative Rick Gundrum

Room 12 West
State Capitol
PO Box 8952
Madison, WI 53708

Rep.Gundrum@legis.wisconsin.gov

(608) 264-8486

DNR Response:

Dear Brian,

Thank you for your feedback on the Economic Impact Analysis.

In your comment you make many points on how lands are taxed and how monies are distributed. The proposed changes to ch. NR 46 do not impact either of these aspects of the program. State statute, not administrative code, sets the law on how lands are taxed and how money is distributed. Lands enrolled in the forest tax law programs make annual payments in lieu of taxes. These payments are collected by the local units of government; 80% goes to the municipality and 20% goes to the county. You can find more information on what is actually being collected at the website below.

Another point you make is on disclosure of lands enrolled in the forest tax law programs. Information on lands enrolled in the Managed Forest Law or Forest Tax Law program is available to the public on both county websites and on the DNR website here (see "Master Lists"):
<https://dnr.wi.gov/topic/ForestLandowners/reports.html>

There are currently approximately 3.3 million acres enrolled in the Managed Forest Law program, and approximately 100,000 enrolled in the Forest Crop Law Program.

Thank you again for your feedback.

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Sincerely,
Amanda Koch, Tax Law Policy Specialist

Comment:

Dear Ms. Koch:

RE: Notice Soliciting Comments Regarding an Economic Impact Analysis

Regarding the question posed in the subject notice, "Would ...your business... be affected in a material economic way by the implementation of these rules relating to the forest tax law programs?", the answer from RGGGS Land & Minerals, Ltd., L.P. is: Yes, with undeterminable extent due to possible future land ownership/MFL classification changes. As detailed in the exchanges below, RGGGS owns or manages approximately 22,000 acres of land currently enrolled as OPEN in the MFL program. While a review of this land base identified two parcels at this time in which a reclassification to CLOSED status is likely to result from the proposed rule changes due to an anticipated inability to secure an easement from an uncooperative neighboring land owner (based upon past experiences), the larger concern regards the impact of future land changes. A change in ownership or a change in MFL classification from OPEN to CLOSED in only a few critical neighboring parcels could cause public access issues potentially forcing closure or forced withdrawal (if more than 320 acres closed in one municipality) of a significant number of RGGGS owned/managed parcels. It is assumed in that analysis that there would be little incentive for an owner of a CLOSED parcel to provide an easement for public access across the CLOSED parcel. The tax differential from OPEN (\$2.04/acre/year) to CLOSED (\$10.20/acre/year) along with the sizeable fees and penalties from potentially forced MFL withdrawal of parcels could obviously be substantial.

An additional general comment/concern on the proposed rule changes regards the applicability of these changes to current MFL orders/contracts. Changes to the 25-50 year commitments possibly resulting in significant closure or withdrawal costs "midstream" through the commitment period appears to be unjust and unwarranted. Making the rule changes applicable to only new or renewed MFL entries while grandfathering in the existing contracts would be a possible solution to this potentially difficult situation.

Finally, while addressed in earlier changes in this email string, reconsideration of navigable waters and kitty-corner/diagonally adjacent parcels as public access could significantly reduce the number of potential parcels declared as inaccessible to the public under the proposed rule changes.

Thank you for allowing us to provide input on the proposed rules changes and your consideration of these comments.

Larry Lindholm

DNR Response:

Dear Larry,

Thank you for your feedback on the Economic Impact Analysis. In 2016, Wisconsin Act 358 was passed, requiring that all land designated as Open-MFL is accessible to the public on foot, by public road or from other land open to public access. This analysis states that the department cannot know how costly it will be for a landowner to obtain an agreement with a neighboring landowner if it is needed to ensure access. The department does assume if the cost of the

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agreement is greater than the cost of switching the land to "CLOSED," the landowner will likely change the designated to closed, rather than secure the agreement. The department does assume that typically the cost of securing an agreement will be less than switching the land to closed. Note, an easement or formal recorded agreement is not required.

To your second point on grandfathering in land, the statute that required land to be accessible to the public took effect in 2016 and is applicable to all land enrolled in the program. This proposed rule does not and cannot alter the applicability of the statute.

To your final point, the legal analysis on what is considered access on foot is designed to promote access, and to reduce likelihood that a member of the public will be cited for trespass. The current law in Wisconsin prohibits accessing land across a corner, otherwise known as corner hopping. To attempt such access would be considered trespass unless consent is obtained from the adjacent landowners. The department cannot promote trespass. As for navigable waters, upon analysis the department has found that navigable waters do not guarantee access. We do not have an exhaustive list of all navigable waters, not all navigable waters are navigable all the time, and in addition to other complications, in many cases navigable waters may not provide access "on foot," as required by state statute.

Thank you again for your feedback. If you would like to discuss this further, don't hesitate to reach out. Public hearings will be held early next year, and there will be an opportunity for input on the rule language at that time.

Sincerely,

Amanda Koch, Tax Law Policy Specialist

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE (18-086)

DNR made all requested changes to comments received from the Wisconsin Legislative Council Rules Clearinghouse which were largely formatting concerns.

PUBLIC COMMENTS ON DRAFT RULE

The public comment period for the Draft Rule occurred from January 15, 2019 through February 15, 2019 with public hearings held on February 12, 2019 and February 13, 2019 in Madison and Rhinelander respectively. A total of 12 comments were received however 1 did not include a direct comment to NR46 proposed language and 1 customer service inquiry.

Comments and DNR Responses are listed below.

Email Comment:

Good Morning,

We have been notified of the public hearing regarding rule changes to the Managed Forest Law/Forest Crop Law. For the record, Susan and I own 58 acres of woodland in Iowa County, Highland Township. When we purchased the property it was enrolled in the Forest Crop Law, which required public access. At the expiration of the term, we did not renew the contract.

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We fully support public access to property that is being taxed at a reduced rate (MFL/FCL) with no exceptions. We do not support MFL/FCL land that is "closed" to the public. The proposed changes include an increase in the acreage that can be "closed".

A reduction in taxes ultimately results in an increase in taxes for the parties not participating. Allowing acreage to be closed removes any public benefit.

We submit this to be made part of the public record of the upcoming hearing. Thank you for your time and attention to this matter.

Sincerely,

Tim & Susan Deneen
423 E. Main Street
Evansville, WI 53536

DNR Response:

Mr. and Mrs. Deneen

Thank you for investing your time to review the proposed changes to Ch. NR46 and providing your comments. Your comment clearly demonstrates that you do not support the change to increase the acreage that can be closed to public access.

2015 Act 358 signed into legislation in April of 2016 changed the law, 77.83(1)(am), to increase the amount of acreage a landowner can close to public access to from 160 to 320 acres per landowner, per municipality.

[http://docs.legis.wisconsin.gov/document/statutes/77.83\(1\)\(am\)](http://docs.legis.wisconsin.gov/document/statutes/77.83(1)(am))

The purpose of NR46 is to interpret, enforce and administer the provisions of the Wisconsin statutes pertaining to the managed forest land program and any other tax programs concerning private forest lands. Your comment is appreciated. However, the Wisconsin Department of Natural Resources does not have the authority to change or make alteration to statute and will not be making any changes to the rule to address your concerns.

Respectfully,

R.J.

We are committed to service excellence.

Visit our survey at <http://dnr.wi.gov/customerurvey> to evaluate how I did.

R.J. Wickham

Tax Law Section Chief – Forestry Field Operation Bureau, Division of Forestry Wisconsin

Department of Natural Resources

101 S. Webster St.

PO Box 7921

Phone: (920) 369-6248

Richard.Wickham@wisconsin.gov

dnr.wi.gov

Email Comment:

Amanda, Buildings existing on MFL should be "Grandfathered " at time of renewal of MFL parcel. OK to have new sign up with no buildings.

Wisconsin wants to encourage good forest management and harvest, and being able to keep existing buildings will encourage folks to renew their MFL enrollment. Causing folks to remove or separate buildings is burdensome on land owner and may lead to not renewing their MFL.

I realize building conflict resolution on MFL is a problem for administrators, however deal with those folks, and not use a new rule to address a problem with some that abuse the permission to have a shack. Perhaps limiting the size of building to less than 200 square feet floor space could address the problem.

We have a shack 12x14 on skids with a stove, table, chairs. as you know it is taxed as personal property. On renewal we will need to remove or carve out a parcel, maybe 5 acres depending on how zoning looks at a shack .

Thank you for the opportunity to have input into the proposed new rules.

Robert Paddock, 707 W Perkins St , Augusta WI 54722

DNR Response:

Mr. Paddock,

Thank you for investing your time to review the proposed changes to Ch. NR46 and providing your comments.

2015 Act 358 signed into legislation in April of 2016 changed the law, 77.82(1)(b)3, to clearly prohibit buildings from future Managed Forest Land (MFL) enrollments.

[http://docs.legis.wisconsin.gov/document/statutes/77.82\(1\)\(b\)3](http://docs.legis.wisconsin.gov/document/statutes/77.82(1)(b)3).

The purpose of NR46 is to interpret, enforce and administer the provisions of the Wisconsin statutes pertaining to the managed forest land program and any other tax programs concerning private forest lands. Your comments are appreciated. However, **the Wisconsin Department of Natural Resources does not have the authority to change or make alterations to statute and will not be making any changes to the rule to address your concerns.**

Respectfully,

R.J.

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R.J. Wickham

Tax Law Section Chief – Forestry Field Operation Bureau, Division of Forestry Wisconsin

Department of Natural Resources

101 S. Webster St.

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PO Box 7921
Phone: (920) 369-6248
Richard.Wickham@wisconsin.gov
dnr.wi.gov

Email Comment:

Please consider the following addition to the proposed changes in MFL contract language:

S 77.84, Wis Stats. Taxation of managed forest lands.

Include language that "No tax may be levied on managed forest land" to include the term "Assessment" by drainage districts.

The argument by drainage districts is that an assessment is not a tax, however it is based on total acreage. And any fee, no matter

The term, is a tax when collected by the government.

The agriculture community pays only \$2.00/acre for "Good" farm land and \$0.80/acre for pasture land, without having to pay the additional tax

To close there land to the public. Then WHY assess MFL lands for drainage, when in fact they are paying a \$8.00 fee to keep private.

Maybe they should eliminate the \$8.00 fee as the agriculture lands do not pay a penalty for closing land and still get the low tax of \$0.80 on pasture!

Respectfully

Steven Foust

DNR Response:

Mr. Foust,

It was a pleasure speaking with you yesterday. Thank you for investing your time to review the proposed changes to Ch. NR46 and providing your comments. As we discussed on the phone the purpose of NR46 is to interpret, enforce and administer the provisions of the Wisconsin statutes pertaining to the managed forest land program and any other forest tax law programs concerning private forest lands.

Your our comment is appreciated. **However, the Wisconsin Department of Natural Resources does not have the authority to make alterations to statute or address tax assessments and will not be making any changes to the rule to address your concerns.**

I have reached out to the Department of Revenue and **Mark Paulat, Property Assessment Chief Training Officer**, is available to discuss your concerns in more detail if you wish. Mark can be reached at (608) 266-2317 or mark.paulat@wisconsin.gov.

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Respectfully,
R.J.

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R.J. Wickham
Tax Law Section Chief – Forestry Field Operation Bureau, Division of Forestry Wisconsin
Department of Natural Resources
101 S. Webster St.
PO Box 7921
Phone: (920) 369-6248
Richard.Wickham@wisconsin.gov
dnr.wi.gov

Email Comment:

Comments on my initial read of your NR-46 Rules:

1. Buildings/Structures:

I will ask, how is one to manage an MFL forest without any on-site storage for forestry equipment? A machine shed dedicated to storing tractor and implements and tools (chains saws, blades, hand saws, hand tools, fluids, etc.) used to manage the forest should be allowed under MFL rules. Forget about storing campers, ATVs, and RVs. I am talking about all of the equipment and tools I need to perform forest improvements projects on MFL property. Dedicated machine sheds should be allowed!

2. Signage:

Location of Open and Closed MFL property is already being shown in books and on maps that the DNR publishes online. There is no need to post signs in the forest.

FYI: Wisconsin State trespass laws do not require signage - why should an MFL contract require it.

- posting signs in the forest can be detrimental to tree health

If signs are required, the DNR should provide as many "standardize signs" as each MFL property needs.

I am not able to attend your February meetings. These are my initial reactions/thoughts after reading your proposed RULES.

Regards,
Tom Culbert

DNR Response:

Mr. Culbert,

||

Thank you for investing your time to review the proposed changes to Ch. NR46 and providing your comments. The purpose of NR46 is to interpret, enforce and administer the provisions of the Wisconsin statutes pertaining to the managed forest land program and any other tax programs concerning private forest lands.

2015 Act 358 signed into legislation in April of 2016 changed the law, to include addressing buildings on future MFL entries as well as securing access to lands designated as Open to public access.

- 77.82(1)(b)3, **Clearly prohibits buildings from future Managed Forest Land (MFL) enrollments and does not make any exception for storage sheds.**
[http://docs.legis.wisconsin.gov/document/statutes/77.82\(1\)\(b\)3](http://docs.legis.wisconsin.gov/document/statutes/77.82(1)(b)3).
- 77.82(1)(b)4, states that MFL lands designated as being Open to public access must be accessible on foot by public road or from other land open to public access. [http://docs.legis.wisconsin.gov/document/statutes/77.82\(1\)\(b\)4](http://docs.legis.wisconsin.gov/document/statutes/77.82(1)(b)4).

The proposed rule further clarifies statute requiring signage to identify access to MFL lands designated as open to public access. Because open MFL land may only be accessible by crossing an access corridor over closed land, the signage requirement is designed to provide confidence and clarity to both the landowner and the people accessing the land. Reasonable signage does not require the entire perimeter to have signage, as long as there are signs placed in reasonable, conspicuous locations that indicate where and how to access the open MFL land.

NR 46.21 (3) (c) proposes that the method of public access to the land designated as open shall be clearly explained on the managed forest law map required under s. NR 46.25 as a comment. In addition to the explanation, if access to open managed forest land is across lands not open to public access, as provided in s. NR 46.20 (1) (b) or (c), the location of the access shall be reasonably and clearly identified on signs meeting the requirements of this section. Signs shall be at locations and in sufficient number to provide reasonable notice to those attempting access. The location of the sign or signs that show the access route or location and that are closest to the access point from a public road or other land open to public access shall be indicated on the managed forest law map required under s. NR 46.25. If the location of the sign indicating the access route or location changes during the order period, the owner shall notify the department.

Your comments are appreciated. However, **after further review the Department concludes that the rule sufficiently secures public access and adequately describes appropriate signage requirements. No changes to the proposed rule are needed to address your concerns.**

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Please feel free to contact me if I can further explain the access and signage rules in more detail.

Respectfully,

R.J.

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R.J. Wickham

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Department of Natural Resources

101 S. Webster St.

PO Box 7921

Phone: (920) 369-6248

Richard.Wickham@wisconsin.gov

dnr.wi.gov

Email Comment:

February 15, 2019

To Whom It May Concern:

This note is to offer comments on rule changes around NR 46 relating to Wisconsin's Managed Forest Law (MFL). Thank you for the opportunity to react. Regulation writing can I'm sure be a difficult and time consuming process and I commend you, the dedicated DNR employees for your efforts both now and over the years.

I know you understand that while intended to benefit the general public, changes in a law such as the Managed Forest Law can sometimes have unforeseen, potentially negative consequences. Unfortunately, changes to the Managed Forest Law (Wisconsin Act 358) and by extension its enforcement under NR 46 could very likely negatively impact the unique situation of Camp Charles Allis (CCA) in Walworth County.

Specifically, the changes around Managed Forest Tax Law 'renewals' are going to be problematic because of the historic buildings which sit within CCA's current MFL agreement. Quoting from the revised Forest Tax Law Handbook, *"For 2017 and future entries (or renewals), buildings or improvements associated with buildings are prohibited on MFL lands."*

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This change to the previous version of the MFL is a concern because two buildings, both dating to the early 1900s, are presently within CCA lands under an MFL agreement that will expire in the year 2044. Since it first entered its lands into the MFL in 1994, it has always been the intent of CCA to renew its agreement at that time. Unfortunately, with the changes listed in the handbook, this renewal would require a new management plan excluding portions of the land with buildings, and will hence subject some valuable natural lake frontage to full and extremely steep property taxes. The result I fear could be the end of CCA, and the subsequent development of the land that is now the *single largest undeveloped stretch of land on all of Lake Beulah*.

There is no question in my mind there would be zero citizens who would prefer to see the natural shoreline and beautifully restored lands of CCA turned into a residential development. Yet, with the blanket 'no buildings' MFL requirement, that is more likely what could happen.

Is there anything you can do to revise NR 46 to allow for historic old buildings? You might be interested to know one of the two buildings of most historical consequence was dismantled in Milwaukee, brought to CCA with a horse and wagon and reassembled there in 1914. For it to have been torn down, it must have passed its useful life in Milwaukee so it was likely quite old, perhaps dating to the Civil War.

Established in 1908, CCA has been an anchor citizen in the Lake Beulah community since the beginning. From spearheading transmission of electric power to its side of the lake, to maintaining its lands in a natural state (despite significant pressure to subdivide and develop) CCA is appreciated just as it is by all who come to Lake Beulah and value Wisconsin's natural environment. For many years, CCA members have served in leadership roles within the lake community to preserve and protect its natural environment. All this, while striving since 1994 to meet and exceed the goals and requirements of the MFL. I feel confident in saying our Forest Management Plan is a great model of environmental stewardship.

While many of its current adult members will likely no longer be around by 2044, the culture of CCA is one which instills an appreciation for its natural beauty. Hence, there is no question but that those present then will want to see CCA continue its

environmental stewardship through the MFL. The new MFL prohibition of buildings, even those as modest as those at CCA, is going to make that dream much more difficult.

I would like to express my sadness at having only learned about these proposed changes through an email sent to me (thank you!) on Tuesday, February 12th. While three days for a comment deadline might have been OK for some folks, it wasn't enough time for me to fully understand the changes and how they might potentially impact Camp Charles Allis. Still, I am appreciative of the opportunity to at least offer some commentary, albeit with only a little time to study and react.

Please know Camp Charles Allis is entirely member-operated and has no paid staff. Instead it depends on the sweat equity of people like me to keep going. It's been that way since 1908. I'm telling you this to explain my comments herein are not as an expert on forestry or forest tax law, but rather as someone who cares about Wisconsin's natural beauty and wants to preserve and protect it for future generations.

Since I'm getting this public comment to you just in the nick of time, I don't have any specific suggestions for how to address this unique situation, but I'm more that willing to travel to Madison, or participate in conference calls to discuss how NR 46 can be written to accommodate unique situations like CCA. Thank you for your service.

Let's talk about this!

Sincerely,

Tom Bernhardt
Lifelong member of Camp Charles Allis
414-546-2136

ps. Here's an old Greek proverb for you...

A society grows great when old men plant trees whose shade they know they'll never sit in.

To me, that's what Camp Charles Allis is all about!

DNR Response:

Tom,

It was a pleasure speaking with you today. Kudos to you and your efforts to maintain the integrity of Camp Charles Allis and your dedication to promoting conservation and overall land stewardship.

Thank you for taking the time to review the proposed changes to Ch. NR46 and providing your thorough comments. 2015 Act 358 signed into legislation in April of 2016 changed the law, 77.82(1)(b)3, to clearly prohibit buildings from future Managed Forest Land (MFL) enrollments. [http://docs.legis.wisconsin.gov/document/statutes/77.82\(1\)\(b\)3](http://docs.legis.wisconsin.gov/document/statutes/77.82(1)(b)3).

As I mentioned the purpose of NR46 is to interpret, enforce and administer the provisions of the Wisconsin statutes pertaining to the managed forest land program and any other tax programs concerning private forest lands. Your comments are appreciated and I do empathize with situation you have described. However, **the Wisconsin Department of Natural Resources does not have the authority to change or make alterations to statute and will not be making any changes to the rule to address your concerns.**

I have copied Randy Stampfl, Tax Law Forestry Specialist, servicing Walworth County. Randy has extensive experience with MFL and is available to assist with the future forest management planning of the property. Although you may not be able to re-enroll the exact acreage you currently have enrolled in the MFL program Randy can help to lay out some options for you.

Randy Stampfl
N7225 Hwy 28
Horicon, WI 53032
(920) 382-0657
Randy.Stampfl@wisconsin.gov

Thank you again for your comments and I look forward to assisting you with the future management of Camp Charles Allis.

Respectfully,
R.J.

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R.J. Wickham
Tax Law Section Chief – Forestry Field Operation Bureau, Division of Forestry Wisconsin
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101 S. Webster St.
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Phone: (920) 369-6248
Richard.Wickham@wisconsin.gov
dnr.wi.gov

Email Comment:

Amanda,

I am concerned that the no buildings rule on mfl includes old log cabin ruins that are historic part of northern wis horse logging and trapping days .

A madison forester at our last big training session said even old log cabins with half collapsed roofs (that nothing would inhabit except animals) would have to be bulldozed if on mfl entries. THis is not only ridiculous, but would erase many semi historical sites.

Further I think the no building rule on MFL goes to far and I will be contacting all my legislators. If is hard to manage or hunt remote properties in northern wis with out a warm place to rest after working on your wood lands... there are few hotels within convenient driving distance of many north wood mfl parcels...

Having worked managing many private woodlands for the last 35 years in northern wi I see a disconnect and lack of support for forestry practices by the general public if they have not spent time in the woods.

thank you for your consideration

Tim Fitzgerald-715-776-0808

DNR Response:

Tim,

Thank you for investing your time to review the proposed changes to Ch. NR46 and providing your comments.

2015 Act 358 signed into legislation in April of 2016 changed the law, 77.82(1)(b)3, to clearly prohibit buildings from future Managed Forest Land (MFL) enrollments.
[http://docs.legis.wisconsin.gov/document/statutes/77.82\(1\)\(b\)3](http://docs.legis.wisconsin.gov/document/statutes/77.82(1)(b)3).

The purpose of NR46 is to interpret, enforce and administer the provisions of the Wisconsin statutes pertaining to the managed forest land program and any other tax programs concerning private forest lands. Your comments are appreciated and valued. However, the Wisconsin Department of Natural Resources does not have the authority to change or make alterations to statute and will not be making any changes to the rule to address your concerns.

The DNR, Division of Forestry advises landowners to follow appropriate federal, state and local ordinances for disposing of buildings and structures. Furthermore, the Division does not recommend the destruction of historic sites and encourages landowner to work with the WI Historical Society to preserve historic structures and places. The following website may be of interest to you and your clients. <https://www.wisconsinhistory.org/Records/Article/CS3098>

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Respectfully,
R.J.

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R.J. Wickham
Tax Law Section Chief – Forestry Field Operation Bureau, Division of Forestry Wisconsin
Department of Natural Resources
101 S. Webster St.
PO Box 7921

Email Comment:

Hi Amanda-

I was informed by Nancy Bozek that I can submit our comments regarding NR46 to you. Please advise me if they should be redirected. Thank you Amanda....Troy Brown

Re: Chapter NR 46, Wis. Adm. Code

NR 46.18 (4) (a) 3. a. and b.

3. a. "Maps or a GIS database at a scale usable for forest management and showing land eligible for designation. The maps or database shall represent current conditions, and include the requirements provided for in s. 77.82 (3) (c) 4. and 5., Stats. Maps on department forms that show any land designated as open to public recreation and meeting the requirements in s. NR 46.21 (3) (c) shall be provided.

b. Reconnaissance data and scheduled practices using the procedure defined in subd. 4."

Comment: 3. a. We hope the department would consider an alternative to these mapping proposals. Many large landowners have multiple parcels that would require a significant amount of work to compile for the landowner and a significant amount of work for DNR personnel to accumulate and maintain.

3. b. At this time large landowners are not required to have management plans for each parcel of ownership. Again, many large landowners do not own contiguous acreage and reconnaissance for harvests on each parcel creates undue work for both the large landowner that the DNR.

Note-A key purpose of Act 358 was to significantly reduce the amount of work for DNR staff and to lessen regulatory burden on landowners.

NR 46.18 (4) (c)

"Large ownerships shall supply the department, upon written request, any additional information required to determine owner compliance with s. 77.82 (1), Stats., and this section."

Comment: Any additional information is vague and we believe this could create unnecessary conflict. Our request is and should be eliminated from consideration in Chapter 46.

Note-Industry and DNR staff have made significant strides to coordinate a system of trust. It is working, and reasonable people come to reasonable conclusions. This broad language could create a system of mistrust on conflict that is unnecessary.

Troy Brown

President

Kretz Lumber Co., Inc.

Committed To Be The Benchmark of Excellence

DNR Response:

Hi Troy,

Thank you for investing your time to review the proposed changes to Ch. NR46 and providing your comments. Although we currently do not have a GIS component in WisFIRS we are working with our Information Technology Section to move this way in the future. We actually are piloting a "viewer" that does show all tax law order boundaries and working to digitize stand boundaries. To address your comment regarding the vagueness of additional information we have made the following changes to the proposed rule.

- NR 46.18 (4) (a) 3. a.** Maps or a GIS database at a scale usable for forest management and showing land eligible for designation. The maps or database shall represent current conditions, and include the requirements provided for in s. 77.82 (3) (c) 4. and 5., Stats. Maps, in a format approved by the department, that show any land designated as open to public recreation and meeting the requirements in s. NR 46.21 (3) (c) shall be provided.
- b. Reconnaissance data and scheduled practices using the procedure defined in subd. 4.

I understand your perspective and the tax law section is committed to working collaboratively with large landowners to get the information in a mutually efficient manner. To further clarify NR46.18(4)(a)3.a & b were drafted to more overtly clarify what components/data would need to be available and serve as the "management plan" to meet statutory requirements as provided in 77.82(1), 77.82(2), and 77.82(3). The proposed rule has been updated as follows.

NR 46.18 (4) (c) Large ownerships shall supply the department, upon written request, additional information required to determine owner compliance with s. 77.82 (1), Stats., and this section as provided for in ss. 77.82(2) and 77.82(3).

Please feel free to contact me to discuss further. Thank you again for your comments.

Best, R.J.

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R.J. Wickham

Tax Law Section Chief – Forestry Field Operation Bureau, Division of Forestry Wisconsin

Department of Natural Resources

101 S. Webster St.

PO Box 7921

Email Comment:

Comment on NR 46.17 (1) (c): This section includes language that appears to address overall MFL eligibility for stands that do not meet certain stocking requirements.

The density term in this section should be revised, and language adjusted throughout the NR 46 revisions, to clarify that the minimum eligibility for entry into the program is based on the statutory language that states "At least 80 percent of the parcel must be producing or capable of producing a minimum of 20 cubic feet of merchantable timber per acre per year". This is the criteria that should be used to determine MFL eligibility, not the stocking volumes listed in table NR 46.17 (1) (c) 2. Use of this density criteria as a metric for MFL eligibility would go beyond the statutory requirement and has potential to prevent many forested lands from being entered.

Comment on NR 46.18(3)(b)1.b: This section expands upon criteria used to calculate the maximum 20% acreage that may be non-productive by identifying that all contiguous areas ½ acre or greater be identified and counted.

We do not believe the ½ acre size is reasonable in that it is an expansion upon the current criteria that uses calculation of unproductive lands if they are 2 acres or more in area for identifying non-productive acreage. We believe there are no significant problems with the current system and it would simply result in a great increase in administrative and staff time for little benefit. For situations where there may be an issue with the % open criteria, DNR foresters, by simply working with landowners to identify a potential problem, would most likely be able to solve these situations. For landowners who are currently close to meeting the 80% productivity level this change could also put them out of compliance because existing logging roads would be included. If the department believes that this criteria is being abused, it should provide examples and document situations where landowners have exceeded the 20% criteria and were unwilling to correct it. We believe this change is not necessary and that it simply goes in the wrong direction by making the program unnecessarily more complex and less landowner friendly and....for what purpose?

Respectfully Submitted by,

Richard Wedepohl, Director

Wisconsin Alliance of Forest Owners

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www.wafo.org

608.235.3946

DNR Response:

Response to Oral and Written Statements

Good morning Richard,

I am finally following up with a complete response to your comments on the proposed NR46 language. I appreciate your thoughtful feedback and collaboration to work through these items.

In response to the feedback (oral testimony and email comments) provided by the Wisconsin Alliance of Forest Owners the Department has made the following changes.

Comment: NR 46.18(3)(b) 1.b

“We do not believe the ½ acre size is reasonable in that it is an expansion upon the current criteria that uses calculation of unproductive lands if they are 2 acres or more in area for identifying non-productive acreage...”

DNR Response:

Act 358 provided additional opportunities for landowners to transfer, and withdrawal lands creating additional administrative requirements for the Department to ensure remaining lands meet minimum productivity and eligibility requirements. Current administrative code NR46.18(3) provides contradictory guidance on the standards for productivity evaluation.

NR 46.18(3)(b) (b) The management plan may contain a schedule of approved but not mandatory practices for the management of forest resources other than trees including wildlife habitat, watersheds, and aesthetic features as follows:

NR 46.18(3)(b)1. 1. No more than 20% of an owner's total contiguous designated managed forest land acreage may be non-stocked land, land unsuitable for producing merchantable timber or a combination of both. For purposes of this determination, the department shall consider only cover types comprising 2 or more acres.

NR 46.18(3)(b)2. 2. On the 80% of a managed forest land parcel required to produce or be capable of producing 20 cubic feet per acre per year, practices for the management of forest resources other than trees may be approved consistent with owner objectives as provided in subd. 2. a. and b.

NR 46.18(3)(b)2.a. a. The creation of openings and other vegetative cover not producing forest products at the level meeting minimum eligibility requirements under s. 77.82 (1) (a) 2., Stats., may be approved so long as the total area of openings or vegetative cover, combined with land

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unsuitable for producing merchantable timber and non-stocked land, does not exceed 20% of the managed forest land parcel.

To further clarify the Department has modified the following proposed rule language wherein non-productive areas comprising of **1 or more contiguous acres will be used in the calculation of productivity levels for new MFL orders moving forward.**

SECTION 16. NR 46.16 (2) (g) 1. and 2. and 3. are created to read:

NR 46.16 (2) (g) 1. Productive cover types must be individually mapped when the cover type consists of 2 or more contiguous acres.

NR 46.16 (2) (g) 2. For lands designated as managed forest lands prior to January 1, [LRB inserts second year after rule publication], non-productive areas of the entry must be mapped when any contiguous area of non-productive land is at least 2 acres in size.

NR 46.16 (2) (g) 3. For lands designated as managed forest lands on or after January 1, [LRB inserts second year after rule publication], non-productive areas of the entry must be mapped when any contiguous area of non-productive land is at least 1 acre in size.

SECTION 19. NR 46.17 (1) (b) 1. and 2. are created to read:

NR 46.17 (1) (b) 1. For purposes of this determination, for lands designated as managed forest lands prior to January 1, [LRB inserts second year after rule publication], the department shall consider only contiguous areas of non-productive land that comprise 2 or more acres.

NR 46.17 (1) (b) 2. For purposes of this determination, for lands designated as managed forest lands on or after January 1, [LRB inserts second year after rule publication], the department shall consider only contiguous areas of non-productive land that comprise 1 or more acres.

SECTION 27. NR 46.18 (3) (b) 1. is amended to read:

NR 46.18 (3) (b) 1. No more than 20% of an owner's total contiguous designated managed forest land acreage may be non-stocked non-productive land, land unsuitable for producing merchantable timber, or a combination of both. For purposes of this determination, the department shall consider only cover types comprising 2 or more acres, which shall be calculated in accordance with s. NR 46.17 (1) (b).

SECTION 29. NR 46.18 (3) (b) 2. a. is amended to read:

NR 46.18 (3) (b) 2. a. The creation of openings and other vegetative cover not producing forest products at the level meeting density requirements under s. 77.82 (1) (a) 2., Stats., ~~may be approved~~ is allowed so long as the ~~total~~ area of created openings or other vegetative cover, combined with ~~land unsuitable for producing merchantable timber and non-stocked other non-productive~~ land, does not exceed 20% of the managed forest land parcel, which shall be calculated in accordance with s. NR 46.17 (1) (b).

Comment: NR 46.17 (1) (c)

“The density term in this section should be revised, and language adjusted throughout the NR 46 revisions, to clarify that the minimum eligibility for entry into the program is based on the statutory language that states “At least 80 percent of the parcel must be producing or capable of producing a minimum of 20 cubic feet of merchantable timber per acre per year”.

DNR Response:

In pursuant to 77.82 the Department maintains the minimum eligibility for Managed Forest Land (MFL) lands that 80% of the parcel must be producing or capable of producing a minimum of 20 cubic feet of merchantable timber per acre per year. After further legal review NR46.17 (1)(c)1 does not supersede 77.82 and furthermore repealing the minimum density classifications table in **SECTION 9. NR 46.15 (2)** provides added flexibility allowing lands to enter the program if the management plan addresses management practices such as planting within a reasonable timeframe.

To further clarify the Department has made the following modifications to the proposed rule language.

NR 46.17 (1) (c) 1. If the portion of land considered capable of producing merchantable timber in par. (a) does not meet density requirements established in subd. 2., it may be designated as managed forest land if the department determines, that within a reasonable timeframe, stocking levels can be increased to be consistent with density requirements and mandatory practices needed to achieve density standards are established in the management plan.

2. Density standards established in the table below do not address other stand-level regeneration guidelines, such as adequate levels of pre-harvest and post-harvest advanced regeneration or percent stocking to ensure continued stand productivity. On a site-by-site basis, site conditions, species, and other regeneration guidelines specific to Wisconsin cover types may be evaluated to determine an alternative density standard.

Stand Size Classes	Tree Diameter Ranges at 4.5 Feet From Ground Level	Density Standards
Seedlings	0"–1"	800 trees per acre for natural stands.

		400 trees per acre for planted stands.
Saplings	1"-5"	400 trees per acre for natural stands.
		300 trees per acre for planted stands.
Pole timber		
For conifer species	5"-9"	7 cords per acre
For other species	5"-11"	
Sawtimber		
For conifer species	9"+	3,000 board feet per acre.
For other species	11"	

Comment:

"We recommend that language which would allow the Department to change a landowner's management plan – without the landowner's concurrence – be eliminated."

DNR Response:

The Department maintains that management plans are dynamic documents and may be subject to change. However, the change cannot be a unilateral decision. NR46.18(10) has been changed to encourage amendment to management plans with mutual agreement between the Department and the landowner.

NR 46.18 (10) AMENDING A MANAGEMENT PLAN. Owners may amend their management plan under s. 77.82 (3) (f), Stats., for reasons that include;

- (a) Landowner requests a change that maintains the management plan's required compliance with the provisions of this chapter and subch. VI of ch 77, Stats.
- (b) The management plan is inaccurate or missing information.
- (c) On the ground conditions have changed since the time of entry to the extent that the prescribed practices in the plan are no longer considered sound forestry practices
- (d) Changes in silvicultural research and practices, including invasive species management, to the extent that the prescribed practices in the plan are no longer considered sound forestry practices.

The Department appreciates the following comments however, after further evaluation no additional changes to the proposed rule language will be made.

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Comment:

"We recommend that the Department identify a storage shed as a structure needed for sound forestry."

DNR Response:

2015 Act 358 signed into legislation in April of 2016 changed the law, 77.82(1)(b)3, to clearly prohibit buildings from future Managed Forest Land (MFL) enrollments. [http://docs.legis.wisconsin.gov/document/statutes/77.82\(1\)\(b\)3](http://docs.legis.wisconsin.gov/document/statutes/77.82(1)(b)3)

The purpose of NR46 is to interpret, enforce and administer the provisions of the Wisconsin statutes pertaining to the managed forest land program and any other tax programs concerning private forest lands. Your comments are appreciated. However, **the Wisconsin Department of Natural Resources does not have the authority to change or make alterations to statute and will not be making any changes to the rule to address your concerns.**

Comment:

"Broaden the Allowance for Land Additions"

DNR Response:

The DNR maintains the intent with 77.82 (4) requires additions to be a minimum parcel size of at least 3 acres and be contiguous to existing Managed Forest Land owned by the same landowner.

Thank you again for our continued collaboration. NR46 will be on the June NRB agenda where I will be asking for their approval.

I welcome further discussions.

Best, R.J.

We are committed to service excellence.

Visit our survey at <http://dnr.wi.gov/customersurvey> to evaluate how I did.

R.J. Wickham

Phone: (920) 369-6248

Richard.Wickham@wisconsin.gov

From: Richard Wedepohl <wedepohl@charter.net>

Sent: Friday, February 15, 2019 2:08 PM

To: Koch, Amanda A - DNR <AmandaA.Koch@wisconsin.gov>

Subject: FW: comments on NR 46

From: Richard Wedepohl [<mailto:wedepohl@charter.net>]

Sent: Friday, February 15, 2019 1:35 PM

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To: 'DNRAdministrativeRuleComments@wisconsin.gov'

<DNRAdministrativeRuleComments@wisconsin.gov>

Subject: comments on NR 46

Comment on NR 46.17 (1) (c): This section includes language that appears to address overall MFL eligibility for stands that do not meet certain stocking requirements.

The density term in this section should be revised, and language adjusted throughout the NR 46 revisions, to clarify that the minimum eligibility for entry into the program is based on the statutory language that states "At least 80 percent of the parcel must be producing or capable of producing a minimum of 20 cubic feet of merchantable timber per acre per year". This is the criteria that should be used to determine MFL eligibility, not the stocking volumes listed in table NR 46.17 (1) (c) 2. Use of this density criteria as a metric for MFL eligibility would go beyond the statutory requirement and has potential to prevent many forested lands from being entered.

Comment on NR 46.18(3)(b)1.b: This section expands upon criteria used to calculate the maximum 20% acreage that may be non-productive by identifying that all contiguous areas ½ acre or greater be identified and counted.

We do not believe the ½ acre size is reasonable in that it is an expansion upon the current criteria that uses calculation of unproductive lands if they are 2 acres or more in area for identifying non-productive acreage. We believe there are no significant problems with the current system and it would simply result in a great increase in administrative and staff time for little benefit. For situations where there may be an issue with the % open criteria, DNR foresters, by simply working with landowners to identify a potential problem, would most likely be able to solve these situations. For landowners who are currently close to meeting the 80% productivity level this change could also put them out of compliance because existing logging roads would be included. If the department believes that this criteria is being abused, it should provide examples and document situations where landowners have exceeded the 20% criteria and were unwilling to correct it. We believe this change is not necessary and that it simply goes in the wrong direction by making the program unnecessarily more complex and less landowner friendly and....for what purpose?

Respectfully Submitted by,

Richard Wedepohl, Director

Wisconsin Alliance of Forest Owners

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608.235.3946

Wisconsin Woodland Owners Association, Inc.

Richard Wagner, President

E5861 Clark St.

Weyauwega, WI 54983

Subject: Response to Comments – Proposed NR46 Language FR-23-16

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Mr. Wagner,

Thank you to you and the WWOA Board for investing time to review the proposed language to NR46. I appreciate your support, thoughtful comments and constructive feedback.

In response to the feedback provided at the public hearings and received during the public comment period the Department has made the following changes to the proposed NR46 rule language.

WWOA Comment:

"The WWOA Board of Directors supports the intent of 2015 Act 358 to reinstate Managed Forest Law management plans as contracts, and therefore we do not support any interpretations within proposed changes that allow for one-sided changes to the contract. Specifically, WWOA does not support the changes proposed in Section 41. NR 46.18(10) AMENDING A MANAGEMENT PLAN or Section 63. NR 46.27 Department orders. (1) CHANGING ORDERS and we request these be struck."

DNR Response:

The Department maintains that management plans are dynamic documents and may be subject to change. However, the change cannot be a unilateral decision. NR46.18(10) has been changed to encourage amendment to management plans with mutual agreement between the Department and the landowner.

NR 46.18 (10) AMENDING A MANAGEMENT PLAN. Owners may amend their management plan under s. 77.82 (3) (f), Stats., for reasons that include;

- (e) Landowner requests a change that maintains the management plan's required compliance with the provisions of this chapter and subch. VI of ch 77, Stats.
- (f) The management plan is inaccurate or missing information.
- (g) On the ground conditions have changed since the time of entry to the extent that the prescribed practices in the plan are no longer considered sound forestry practices
- (h) Changes in silvicultural research and practices, including invasive species management, to the extent that the prescribed practices in the plan are no longer considered sound forestry practices.

The Department appreciates the following comment however, after further evaluation no additional changes to the proposed rule language will be made.

WWOA Comment:

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"WI DNR's interpretation of not allowing permanent structures when the statute clearly state that "structures and fixtures" are acceptable, contradicts the statute. WWOA requests that draft language in Section 7 NR 46.15 (1m), Section 12 NR 46.15 (17r) and 46.15 (30m), Section 21 NR 46.17(3) and (3)(c) be amended to reflect that permanent structures for the storage and maintenance of forestry equipment is permissible."

DNR Response:

2015 Act 358 signed into legislation in April of 2016 changed the law, 77.82(1)(b)3, to clearly prohibit buildings from future Managed Forest Land (MFL) enrollments.

[http://docs.legis.wisconsin.gov/document/statutes/77.82\(1\)\(b\)3](http://docs.legis.wisconsin.gov/document/statutes/77.82(1)(b)3)

The purpose of NR46 is to interpret, enforce and administer the provisions of the Wisconsin statutes pertaining to the managed forest land program and any other tax programs concerning private forest lands. **The Wisconsin Department of Natural Resources does not have the authority to change or make alterations to statute and will not be making any changes to the rule to address your concerns.**

Thank you for your valued partnership. I welcome the opportunity to address the WWOA Board if further discussions are warranted.

Respectfully,

R.J. Wickham

Tax Law Section Chief

Steigerwaldt

Thomas Hittle

856 North 4th Street

Tomahawk, WI 54487

Subject: Response to Comments – Proposed NR46 Language FR-23-16

Tom,

I hope all is well. Thank you for investing time to review the proposed language to NR46. I appreciate your support, thoughtful comments and constructive feedback.

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In response to the feedback obtained during at the public hearings and public comment period the Department has made the following changes to the proposed NR46 rule language.

Comment:

Productivity Eligibility Criteria

Section 20 (and Section 9)

NR 46.17 (1) (c)

This revision appears to change minimum MFL eligibility, which we believe was not a directive of Act 358 or needed to meet Act 358 implementation. We understand there is a

potential need to clarify productivity considering Act 358 exempt withdrawal procedures;

however, this appears to do more. The stocking levels included in the table as "Minimum Medium Density" are well above those listed as Minimum Density in the current NR 46.15 (2) table, and, in our opinion, are well above minimum "productive" forest stand metrics and unreasonable as minimum criteria for MFL eligibility. Wis. Stats 77.82 (1) 2. states simply that "At least 80 percent of the parcel must be producing or capable of producing a minimum of 20 cubic feet of merchantable timber per acre per year"; no density metrics are mentioned. Additionally, the density term "minimum medium" is unclear to us. We suggest that the density term be revised, and language adjusted throughout the NR 46 revisions to clarify that the minimum eligibility is the 20 cubic feet metric and not the stocking volumes listed in table NR 46.17 (1) (c) 2.

DNR Response:

In pursuant to 77.82 the Department maintains the minimum eligibility for Managed Forest Land (MFL) lands that 80% of the parcel must be producing or capable of producing a minimum of 20 cubic feet of merchantable timber per acre per year. After further legal review NR46.17 (1)(c)1 does not supersede 77.82 and furthermore repealing the minimum density classifications table in **SECTION 9. NR 46.15 (2)** provides added flexibility allowing lands to enter the program if the management plan addresses management practices such as planting within a reasonable timeframe.

To further clarify the Department has made the following modifications to the proposed rule language.

NR 46.17 (1) (c) 1. If the portion of land considered capable of producing merchantable timber in par. (a) does not meet density requirements established in subd. 2., it may be designated as managed forest land if the department determines, that within a reasonable timeframe, stocking levels can be increased to be

consistent with density requirements and mandatory practices needed to achieve density standards are established in the management plan.

2. Density standards established in the table below do not address other stand-level regeneration guidelines, such as adequate levels of pre-harvest and post-harvest advanced regeneration or percent stocking to ensure continued stand productivity. On a site-by-site basis, site conditions, species, and other regeneration guidelines specific to Wisconsin cover types may be evaluated to determine an alternative density standard.

Stand Size Classes	Tree Diameter Ranges at 4.5 Feet From Ground Level	Density Standards
Seedlings	0"-1"	800 trees per acre for natural stands.
		400 trees per acre for planted stands.
Saplings	1"-5"	400 trees per acre for natural stands.
		300 trees per acre for planted stands.
Pole timber		
For conifer species	5"-9"	7 cords per acre
For other species	5"-11"	
Sawtimber		
For conifer species	9"+	3,000 board feet per acre.
For other species	11"	

Comment:

Productivity Eligibility Criteria

Section 29

NR 46.18 (3) (b) 1. b.

Comment: This modification appears to decrease the size of an area mapped as non-productive land to ½ acre, well below what we believe to have been the standard size of 2 acres. The Map Standards portion of the Forest Tax Law Handbook, on page 20-43, referring to content for MFL maps, states: "..... since areas of less than 2 acres are by definition not cover types, they need not be mapped and should not be considered in determining the 20% nonproductive/unsuitable acreage."

This revision changes minimum MFL eligibility, which we believe was not a directive of Act

needed to meet Act 358 implementation. It is, in our opinion, a mapping standard that cannot

be employed on a consistent and routine basis, nor do we believe the ½ acre size is reasonable

for identifying non-productive acreage. The DNR requires maps at a scale of 8 inches equals one mile or 1:7,920. At this scale, a ½ acre area (less than 150 feet by 150 feet in ground dimensions) would be less than ¼ inch square displayed on the 8.5 by 11 inch map. In our considerable experience, mapping at the scale necessary to identify ½ acre areas is impractical and not to industry standards. This would also draw into question the need to identify and map areas associated with internal woods roads and trails. A 20-foot-wide woods road that travels a quarter mile (the length of one 40-acre description, or 1,320 feet) encompasses 0.61 acre. We believe that categorizing woods roads required to manage forestland as non-productive or non-MFL eligible acreage is not consistent with the intent of the MFL.

DNR Response:

Act 358 provided additional opportunities for landowners to transfer, and withdrawal lands creating additional administrative requirements for the Department to ensure remaining lands meet minimum productivity and eligibility requirements. Current administrative code NR46.18 (3) provides contradictory guidance on the standards for productivity evaluation.

NR 46.18(3)(b) (b) The management plan may contain a schedule of approved but not mandatory practices for the management of forest resources other than trees including wildlife habitat, watersheds, and aesthetic features as follows:

NR 46.18(3)(b)1. 1. No more than 20% of an owner's total contiguous designated managed forest land acreage may be non-stocked land, land unsuitable for producing merchantable timber or a combination of both. For purposes of this determination, the department shall consider only cover types comprising 2 or more acres.

NR 46.18(3)(b)2. 2. On the 80% of a managed forest land parcel required to produce or be capable of producing 20 cubic feet per acre per year, practices for the management of forest resources other than trees may be approved consistent with owner objectives as provided in subd. 2. a. and b.

NR 46.18(3)(b)2.a. a. The creation of openings and other vegetative cover not producing forest products at the level meeting minimum eligibility requirements under s. 77.82 (1) (a) 2., Stats., may be approved so long as the total area of openings or vegetative cover,

combined with land unsuitable for producing merchantable timber and non-stocked land, does not exceed 20% of the managed forest land parcel.

To further clarify productivity evaluation the Department has modified the following proposed rule language wherein non-productive areas comprising of **1 or more contiguous acres will be used in the calculation of productivity levels for new MFL orders moving forward.**

SECTION 16. NR 46.16 (2) (g) 1. and 2. and 3. are created to read:

NR 46.16 (2) (g) 1. Productive cover types must be individually mapped when the cover type consists of 2 or more contiguous acres.

NR 46.16 (2) (g) 2. For lands designated as managed forest lands prior to January 1, [LRB inserts second year after rule publication], non-productive areas of the entry must be mapped when any contiguous area of non-productive land is at least 2 acres in size.

NR 46.16 (2) (g) 3. For lands designated as managed forest lands on or after January 1, [LRB inserts second year after rule publication], non-productive areas of the entry must be mapped when any contiguous area of non-productive land is at least 1 acre in size.

SECTION 19. NR 46.17 (1) (b) 1. and 2. are created to read:

NR 46.17 (1) (b) 1. For purposes of this determination, for lands designated as managed forest lands prior to January 1, [LRB inserts second year after rule publication], the department shall consider only contiguous areas of non-productive land that comprise 2 or more acres.

NR 46.17 (1) (b) 2. For purposes of this determination, for lands designated as managed forest lands on or after January 1, [LRB inserts second year after rule publication], the department shall consider only contiguous areas of non-productive land that comprise 1 or more acres.

SECTION 27. NR 46.18 (3) (b) 1. is amended to read:

NR 46.18 (3) (b) 1. No more than 20% of an owner's total contiguous designated managed forest land acreage may be ~~non-stocked non-productive land, land unsuitable for producing merchantable timber, or a combination of both.~~ For purposes of this determination, the department shall consider only cover types comprising 2 or more acres, which shall be calculated in accordance with s. NR 46.17 (1) (b).

SECTION 29. NR 46.18 (3) (b) 2. a. is amended to read:

NR 46.18 (3) (b) 2. a. The creation of openings and other vegetative cover not producing forest products at the level meeting density requirements under s. 77.82 (1) (a) 2., Stats., may be approved is allowed so long as the total area of created openings or other vegetative cover, combined with land unsuitable for producing merchantable timber and non-stocked other non-productive land, does not exceed 20% of the managed forest land parcel, which shall be calculated in accordance with s. NR 46.17 (1) (b).

Comment:

Large Ownerships

Section 33

NR 46.18 (4) (a) 3. a. and b.

These newly created NR 46 code requirements place additional burden on large ownerships not addressed in Act 358. This section follows NR 46 requirements for details to be

included in a large owner management plan, referenced in the management commitment.

Bearing in mind requirements of Wis. Stats 77.82 and 77.83, the requirement for large owners to

provide "Maps on Department forms" is unrealistic and a significant task. Large ownerships with

tens- or hundreds-of-thousands of acres would be creating hundreds of maps, considering maps

would be required for each legal section where land occurs. We suggest that an alternative use

of digital mapping technology be discussed, which would meet DNR obligations and be reasonable for large owners.

In addition, item b. is a new requirement for reconnaissance data and scheduled practices to be included in a management plan. Large owners consider reconnaissance or timber inventory data to be owned proprietary data and will not be able to include that as part of a public document. This data can also be extensive and impractical to include in a document. Additionally, "scheduled practices" have not been part of large landowner management commitment requirements. Large landowners do not "schedule" specific practices for specific stands, but rather develop silvicultural methodology and approaches for broad forest types to be applied on the ground and timed according to several variables including economic and product market consideration. We believe this revision was not a directive of Act 358 or needed to meet Act 358 implementation.

DNR Response:

Section 32 codifies long standing policy providing for large ownership designations. To afford the flexibility of alternate mapping technologies the proposed language has been modified as follows.

NR 46.18 (4) (a) 3. a. Maps or a GIS database at a scale usable for forest management and showing land eligible for designation. The maps or database shall represent current conditions, and include the requirements provided for in s. 77.82 (3) (c) 4. and 5., Stats. Maps, in a format approved by the department, that show any land designated as open to public recreation and meeting the requirements in s. NR 46.21 (3) (c) shall be provided.

Comment:

Large Ownerships

Section 35

NR 46.18 (4) (a) 6.

"....the land may qualify as a large ownership without fulfilling requirements under subd. 3 if the owner maintains the third-party certification and provides maps on department forms that show lands designated as open to public recreation and meeting the requirements in s. NR 46.21 (3) (c)."

Comment: As noted above, it is impractical for a large owner with extensive acreage to provide maps on DNR forms. We suggest that an alternative use of digital mapping technology be discussed, which would meet DNR obligations and be reasonable for large owners.

Large Ownerships

Section 37

NR 46.18 (4) (c)

"Large ownerships shall supply the department, upon written request, any additional information required to determine owner compliance with s. 77.82 (1), Stats., and this section."

Comment: The request for "any additional information required" is overly broad and could easily put a large landowner in conflict with the DNR and landowner internal proprietary and confidential information requirements. We suggest this newly created NR 46 code requirement be eliminated.

Comment:

Large Ownerships

Section 37

NR 46.18 (4) (c)

Comment: The request for "any additional information required" is overly broad and could easily

put a large landowner in conflict with the DNR and landowner internal proprietary and confidential information requirements. We suggest this newly created NR 46 code requirement

be eliminated.

DNR Response:

The proposed rule language has been modified as follows to align with statute requirements.

NR 46.18 (4) (c) Large ownerships shall supply the department, upon written request, additional information required to determine owner compliance with s. 77.82 (1), Stats., and this section as provided for in ss. 77.82(2) and 77.82(3).

Comment:

Contracts and Management Plans

Section 46

NR 46.18 (10)

Comment: Reference above to subch. IV of ch. 77 Stats., should be subch. VI. We believe that

the "need" for landowners to amend their management plans conflicts with Act 358 and Wis.

Stats. 77.82 (11) "...Except as provided in subs. (3) (f) and (11m), the Department may not amend

or otherwise change the terms of an order or management plan to conform with changes made

to any provision of this subchapter subsequent to the date on which the order was entered or the

plan was approved". While the logic of a plan being flexible is sensible and desirable, the need, or requirement, for plan revisions appears in conflict as written, especially with the broad content

stated in item (d) "... prescribed practices in the plan are no longer considered sound forestry practices." We suggest language that describes the situations that may lead to management plan revisions agreeable to the landowner, and at their discretion, rather than as dictated by the

Department.

DNR Response:

The Department maintains that management plans are dynamic documents and may be subject to change. However, the change cannot be a unilateral decision. NR46.18(10) has been changed to encourage amendment to management plans with mutual agreement between the Department and the landowner.

NR 46.18 (10) AMENDING A MANAGEMENT PLAN. Owners may amend their management plan under s. 77.82 (3) (f), Stats., for reasons that include;

- (i) Landowner requests a change that maintains the management plan's required compliance with the provisions of this chapter and subch. VI of ch 77, Stats.
- (j) The management plan is inaccurate or missing information.
- (k) On the ground conditions have changed since the time of entry to the extent that the prescribed practices in the plan are no longer considered sound forestry practices
- (l) Changes in silvicultural research and practices, including invasive species management, to the extent that the prescribed practices in the plan are no longer considered sound forestry practices.

Comment:

Withdrawals

Section 54

NR 46.22 (3)

Comment: In item 2, the landowner is required to provide "sufficient documentation, as determined by the Department"; this, in our opinion, is overly broad and undefined and puts the

landowner in a position where the sufficient documentation required could be extensive and

beyond reasonableness.

DNR Response:

The Department agrees that the proposed language is overly broad and has modified the rule language as follows.

NR 46.22 (3) VOLUNTARY WITHDRAWAL; OTHER CONSTRUCTION; SMALL LAND SALES. (a) Owners of managed forest land requesting to voluntarily withdraw land under s. 77.88 (3j), Stats., are responsible for all of the following:

1. Following any local ordinances that may apply to construction or land sales.
 2. Providing a map or detailed written description that clearly defines the area requesting to be withdrawn in enough detail that the department is able to delineate the boundaries of the area requesting to be withdrawn and verify the acreage of the area. If the request does not clearly describe the area to be withdrawn, the department may deny the request for withdrawal.
- (b) A withdrawal under this subsection may be used to rectify violations related to eligibility requirements established in s. 77.82 (1) (b), Stats., subject to the constraints established in s. 77.88 (3j) (b), Stats.

The Department appreciates the following comment however, after further evaluation no additional changes to the proposed rule language will be made.

Comment:

Additions

Section 16

NR 46.16 (7)

Comment: In the NR 46 Additions introduction narrative, it is pointed out that eligibility is

determined on the entirety of the acreage as follows: "For eligibility purposes, productivity is

evaluated on the parcel as a whole (existing MFL land plus added MFL land), not just the portion

being added." It is unclear to us, reading the language in the revised administrative code, that

the intent is to evaluate eligibility over the entire acreage.

DNR Response:

The proposed language does state that additions shall meet all current eligibility requirements when an exception for minimum acreage, which is 3 acres for additions rather than 20 acres, and productivity requirements, which shall be met at the time land is designated as managed forest land.

Essentially, if a landowner has an MFL entry that is 100 percent productive they could add a parcel that is 100 percent non-productive so long as the addition acres does not exceed 20 percent of the total entry.

Comment:

Large Ownerships

Section 34

NR 46.18 (4) (a) 4.

"...The information provided in this subdivision shall be updated when land is added to, transferred from, or renewed under the ownership."

Comment: It is unclear in this amended section about what "information" is being requested to

be updated, and if land sales are being referred to as "transferred from". It would be unrealistic

to expect a large landowner to update a management plan document for every land sale or

small acquisition that would occur.

DNR Response:

NR 46.18 (4) (a) 4 codifies requirements necessary to maintain accurate records of lands enrolled in the MFL program to include accurately designating lands open to public access.

Thank you for your valued partnership. I appreciate the candid conversations to further evaluate these comments and I welcome the opportunity to address these responses in further detail.

Respectfully,

R.J. Wickham

Tax Law Section Chief

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

The Wisconsin Department of Natural Resources proposes an order **to repeal** NR 46.08, 46.15 (2) (Table) and (22), 46.16 (1) (cm), 46.17 (3) (Note) (1), 46.18 (2) (d) (Table) and (4) (a) 2., 46.19 (1) (Note) and (2), 46.21 (2) (b), 46.23 (2), 46.26, 46.30 (1) (a), (e), (f); **to renumber and amend** NR 46.15 (2) (intro.), 46.17 (1) (b), 46.18 (2) (d) (intro.), and (4) (a) 3., and 46.23 (2m); **to amend** NR 46.01, 46.02 (25), 46.09 (Note), 46.15 (16), and (33), 46.16 (1) (intro.), (a), (d), and (e), (2) (h), (2) (Note), (5), and (7), 46.165 (3) (c), 46.18 (2) (intro.), (3) (b) 2. a., and 4., (5) (bm), (6) (Note) (1), 46.19 (1), 46.21 (2) (a) and (3) (c), 46.22 (2) and (2) (Note), 46.23 (3), 46.24 (3) (c) and 46.25; **to repeal and recreate** NR 46.03, 46.15 (1m), 46.17 (3), 46.18 (4) (b), 46.19 (3), 46.20 (1) and (2), 46.21 (1), 46.22 (1), and 46.23 (1); **to create** NR 46.10, 46.15 (17g), (17r), (20s), (21m), (26r), (30m), and (32m), 46.16 (2) (g) 1., 2., and 3., (7m) and (10), 46.17 (1) (b) 1. and 2., (c), (4), and (5), 46.18 (2) (g), (4) (a) 3. a. and b. and (4) (a) 6. and (Note), (c), (5) (dm), (9), and (10), 46.185, 46.215, 46.22 (3) and (4), 46.23 (2m) (b) and (c), 46.27, and 46.28, relating to the managed forest law and forest crop law programs.

FR-23-16

Analysis Prepared by the Department of Natural Resources

1. Statutes interpreted:

Subch. I and VI Ch. 77, Stats.

2. Statutory authority:

Sections 227.11 (2) (a) Wis. Stats.

3. Explanation of agency authority:

The Department is granted general authority to interpret statutory authority by s. 227.11 (2) (a), Wis. Stats. Additional authority is granted to implement and administer the Forest Tax programs in ch. 77, Wis. Stats.

4. Related statutes or rules:

None

5. Plain language analysis:

Minimum Acres and Renewals

2015 Wisconsin Act 358 increases the minimum managed forest land (MFL) forest parcel size requirement for entry into the MFL program from 10 to 20 acres. With this change, a provision was added to allow parcels that are currently enrolled but do not meet the new acreage requirement to be renewed in the program once if certain requirements are met, including all other eligibility criteria. Section NR 46.18(8) provides landowners the flexibility needed for reenrolling in the program, allowing all existing management plans to be updated by a certified plan writer in order to facilitate and streamline the renewal process.

For one time renewals of parcels less than 20 acres, those parcels must be identical, as required in s. 77.82 (12) (a) 2., Stats. If such parcels contain an ineligible building or improvement, the landowner may withdraw the building or improvement site using a voluntary withdrawal under s. 77.88 (3j), Stats. To be considered identical, and eligible for renewal, the withdrawal application must be submitted before the department can approve the application for renewal.

Buildings and Improvements

2015 Wisconsin Act 358 prohibits the enrollment of a parcel if it contains a building or improvement associated with a building. The definition of “building” in s. NR 46.15 (1m) was clarified to administer this provision, and provides an exception for recreational vehicles (e.g., campers and RVs). For purposes of administration, what it means to be an improvement associated with a building has also been defined in s. NR 46.15 (17r), using guidelines developed to assess improvements for purposes of taxation. With the passage of Act 358, certain exemptions from improvements were outlined, including exemptions for hunting blinds and structures and fixtures needed for sound forestry. Hunting blinds has been defined in s. NR 46.15 (17) (g). Structures and fixtures needed for sound forestry has been defined in s. NR 46.15 (30m). Clarification regarding which building rules apply to which orders, since the change affecting building rules was prospective only, was created in s. NR 46.15 (3) (b).

Accessibility

2015 Wisconsin Act 358 provides that the public must be able to access any land designated as open-MFL on foot. Section NR 46.20 states that this requirement can be satisfied if the land designated as open-MFL is (1) contiguous to other public land, (2) contiguous to other land under the same ownership as the open-MFL parcel, or (3) if the landowner secures an easement or agreement that allows the public to cross neighboring lands. Additionally, to be designated as open-MFL landowners must certify that they will inform the department if their access changes and that they are aware their land may need to be closed or withdrawn if they cannot provide public access. Posting standards and map requirements in s. NR 46.21 were also updated to reflect this requirement.

Additions

2015 Wisconsin Act 358 allows all MFL entries to have land added to them if certain criteria are met. Section NR 46.16 (7), interprets and clarifies the requirements for additions in s. 77.82 (4), Stats., including that the additional parcel must be at least 3 contiguous acres, must be contiguous to the existing entry, and all eligibility requirements must be met. For eligibility purposes, productivity is evaluated on the parcel as a whole (existing MFL land plus added MFL land), not just the portion being added. Furthermore, in s. NR 46.16 (5), this rule removes the requirement that qualifying contiguous land in a separate municipality to be on a separate order, now all lands eligible to be an addition can be added to an existing order.

Yield and Severance Tax

2015 Wisconsin Act 358 eliminated severance and yield taxes. As a result of this repeal, references to the assessment and collection of these taxes have been repealed from this chapter of administrative code.

This rule also repeals s. NR 46.16 (1) (cm) as a result of the statutory repeal of the mechanism to calculate Forest Crop Law termination tax in Wisconsin Act 358. Now that there is no termination tax, there is no reason to provide FLC landowners additional time to apply to the MFL program after a land conveyance occurs.

Contracts

2015 Wisconsin Act 358 provides that department orders designating land as MFL are contracts. When a material change occurs in statute or administrative code, the department will contact landowners impacted by the change. Section NR 46.27 (2) provides the process that the department will use to contact landowners and establishes a timeline for landowner response to be eligible for withdrawal from the program without assessment of a withdrawal tax and fee following a material change. To implement the process for contacting landowners after a material change, s. NR 46.31 provides that landowners are responsible for supplying the department with updated contact information if it has changed since the time of entry, and that the department’s attempt to notify the landowner at a supplied address is considered to meet the requirement of contacting a landowner.

As a result of all orders designating land as MFL being contracts, s. NR 46.18 (9) was created to clarify amendments to management plans that may need to occur during an order period for the management plan to remain in compliance with the program

Department orders

To codify long-standing policy, s. NR 46.27 (1) was added to clarify when the department may issue orders to correct or alter existing MFL entries. Additionally, a long-standing policy whereby orders may be rescinded if a land sale occurs prior to the effective date was clarified in s. NR 46.16 (1) (d).

Large Ownerships

2015 Wisconsin Act 358 changed a number of aspects related to MFL entries. Now that orders are considered contracts and land is eligible for withdrawals without tax and fee when certain criteria are met, it is increasingly important that more information is obtained and the program is implemented more consistently across order types. Section NR 46.16 (4) requires large ownerships to have available for department audit, information that more closely aligns to what is required for other entry types. This will allow the department to evaluate when large ownerships are eligible for certain withdrawal types. In addition, now that landowners can sell any description of land, productivity must be evaluated at the time of transfer to determine if land eligible to remain in the program.

Opportunities to Withdraw Land

2015 Wisconsin Act 358 provides new voluntary withdrawal options for landowners enrolled in MFL. Section NR 46.22 (3) provides requirements for landowners who choose to voluntarily withdraw land using the construction and small land sale withdrawal type. In using this withdrawal type, landowners are responsible for following zoning requirements and providing the department with information on where the withdrawal will occur. Additionally, this provision allows landowners to use this small acreage withdrawal to rectify enforcement situations.

As a result of Act 358, landowners can request to withdraw land with no penalty if the withdrawal is needed for a parcel of managed forest land to resume compliance with the MFL productivity requirements. Section NR 46.22 (4) establishes the requirements that need to be met for a landowner to use this withdrawal type.

Productivity Eligibility Criteria

Changes in how productivity is evaluated as an eligibility requirement were made to address potential administrative issues that could arise as a result of the new productivity withdrawals. Specifically, s. NR 46.17 was amended to clarify that if land is part of the 80% productive portion of the entry and the land is capable of producing at the level required, but is not currently meeting the density requirements established in s. NR 46.18 (2) (d) at the time of entry, mandatory practice to address density requirements must be included in the management plan. Such practices are not eligible for a withdrawal without tax or fee based on productivity issues until restoration measures have been sufficiently attempted. The density requirement table, previously called the minimum medium density table was moved and renamed to clarify density requirements of land entered in the program.

In addition to clarifications regarding what it means to be capable of producing merchantable timber at the required level, clarification was also made to the method of evaluating productive and non-productive areas within an entry. This change was made in s. NR 46.17(1)(b) wherein non-productive areas comprising of 1 or more contiguous acres will be used in the calculation of productivity levels for new MFL orders moving forward.

Restoration

As a result of Act 358, landowners may have a period of time in which their land does not meet productivity requirements if they have a restoration plan in place. Section NR 46.215 was added to outline when restoration may be required or offered as a solution when a parcel no longer meets productivity requirements defined in s. 77.82 (1) (a) 2., before land is withdrawn from the program, without tax and fee. If it is possible for the parcel to resume productivity through restoration within a reasonable timeframe and it is an economically feasible solution, restoration practices will be required and the management plan will be amended.

Additional requirements were added in s. NR 46.17 (4) for land that has been withdrawn for a failure to meet productivity requirements. This change makes land withdrawn for productivity or sustainability reasons ineligible for re-entry unless the department determines there has been a change that would allow the land to meet productivity requirements in s. NR 46.18 (2) (d) since the time of withdrawal. This change reduces the amount of land that can be re-entered in the program if the landowner is unable or unwilling to restore the land to meet density requirements needed to establish merchantable timber. This reduces the burden on the local units of government who would otherwise receive back taxes for land that is removed from the program.

Cutting Notices

2015 Wisconsin Act 358 added categories of individuals who can submit a cutting notice without department approval. Sections NR 46.10 and 46.185 clarify requirements for individuals to be able to submit a cutting notice without department approval. Such individuals will have to certify on the cutting notice form that they meet the requirements of submitting a cutting notice without department approval, and if the cutting notice is

complete and adheres to sound forestry and the management plan and the landowner does not request department approval, then department approval is not required. For all other situations department approval is required.

In addition to changes relating to who can submit a cutting notice without approval, long-standing policy was also incorporated allow cutting notices to be renewed if no significant change has occurred, the cutting will occur within a reasonable timeframe and the submitter is in contact with the department. This alleviates burden on an industry where harvesting contracts are often more than one year long.

Closed Land

2015 Act 358 increases the amount of acreage a landowner can close to public access to 320 acres per landowner, per municipality. Changes were made in s. NR 46.19 to allow for this and remove differences between lands enrolled before or after 2004 as those were also removed with Act 358.

Leasing

Clarification on eligible leases and agreements was added in s. NR 46.17. Landowners may enter into any lease or agreement if it does not conflict with the program.

Transfer of Ownership

2015 Act 358 allows landowners to sell or otherwise convey any amount of MFL land. After being notified of a land sale, the department will evaluate land retained and land conveyed to determine MFL eligibility. If the conveyed land does not meet eligibility requirements because it exceeds the non-productive requirement, the landowner can use the productivity/sustainability withdrawal, without tax and fee, to resume compliance with the productivity standards if the land sold/conveyed meets parcel size requirements after the withdrawal. If after the withdrawal, the rest of the parcel does not meet parcel size requirements, the remaining land will be withdrawn with a tax and fee. This same evaluation will be used for land retained after a land conveyance, if any. If land conveyed or retained does not meet size requirements that land will be withdrawn with a tax and fee.

For land that is conveyed from a large ownership, the department will transfer the land if it meets parcel size requirements established in s. 77.82 (1) (a) 2., Stats., and the new owner will have one year to develop a management plan and determine if any land needs to be withdrawn due to productivity issues.

6. Summary and comparison of federal regulations:

There are no known federal rules which apply to stumpage rates or Managed Forest Law petitions.

7. Comparison of Adjacent States:

Checks with the surrounding states of Minnesota, Michigan, Iowa and Illinois indicate that while they offer some type of incentive program to forest landowners, none of the states have similar forestry practice requirements.

8. Summary of factual data and analytical methodologies:

The department is proposing rules consistent with state regulations, incorporating longstanding policy and providing consistency with statutory changes, which did not require use of any factual data or analytical methodologies.

9. Analysis and supporting documentation used to determine effect on small business or in preparation of an economic impact analysis:

It is anticipated that the proposed changes will have minimal to moderate economic impacts and will not have an impact on small businesses.

10. Effect on small business:

The proposed changes will not have an impact on small businesses.

11. Agency Contact Person:

Amanda Koch
Wisconsin Department of Natural Resources, Division of Forestry
101 South Webster Street, P.O. Box 7921, Madison, WI 53707-7921
AmandaA.Koch@wisconsin.gov

13. Place where comments are to be submitted and deadline for submission:

Written comments may be submitted at the public hearings, by regular mail or by email to the department. Comments on the proposed rule must be received on or before February 15, 2019.

Hearing Information:

Dates: **February 12 and 13, 2019**
Time: **3:00pm – 6:00pm**
Locations: **February 12:** Dane county Courthouse – Room 351
215 S. Hamilton St., Madison, WI 53703

February 13: Rhinelander Station
107 Sutliff Ave, Rhinelander, WI 54501

Written comments may also be submitted to: DNRAAdministrativeRuleComments@wisconsin.gov

Or to: Amanda Koch
Wisconsin Department of Natural Resources, Division of Forestry
101 South Webster Street, P.O. Box 7921, Madison, WI 53707-7921
AmandaA.Koch@wisconsin.gov

SECTION 1. NR 46.01 is amended to read:

NR 46.01 Purpose. It is the purpose of this chapter to interpret, enforce and administer the provisions of the Wisconsin statutes pertaining to the forest croplands program, ~~the woodland tax law program~~ the managed forest land program, and any other tax programs concerning private forest lands.

SECTION 2. NR 46.02 (25) is amended to read:

NR46.02 (25) “Wood products” or “forest products” means those items listed on the current forest crop law stumpage values ~~for severance tax~~.

SECTION 3. NR 46.03 is repealed and recreated to read:

NR46.03 Petitions or applications. The forest cropland program is no longer open for enrollment or renewal.

**** NOTE TO LRB: Start of Subch. I****

SECTION 4. NR 46.08 is repealed.

SECTION 5. NR 46.09 (Note) is amended to read:

NR 46.09 Note: Forms for withdrawal must be filed by the deadline at: ~~Bureau of Forestry, Forest Tax Section, PO Box 7963, Madison, WI 53707~~. Forms may be obtained ~~at no charge by writing the same address~~ online at dnr.wi.gov, search keyword “FCL”.

SECTION 6. NR 46.10 is created to read:

NR 46.10 Forestry practices. (1) INCOMPLETE CUTTING NOTICES. Incomplete cutting notices shall be returned.

(2) CUTTING NOTICES THAT REQUIRE DEPARTMENT APPROVAL. Department approval of a submitted complete cutting notice is required prior to harvest if any of the following apply:

- (a) The cutting notice is not consistent with sound forestry.
- (b) The owner requests on the form that the department review the cutting notice.
- (c) The person who submits the cutting notice does not certify on the form that they meet one of the requirements provided in s. 77.06 (1) (b) 2. Stats.

**** NOTE TO LRB: Start of Subch. III****

SECTION 7. NR 46.15 (1m) is repealed and recreated to read:

NR 46.15 (1m) “Building” means any structure that is used for or able to be used for sheltering people, machinery, animals, or plants, for storing property, or for gathering, working, office, parking, or display space. Camping trailers and recreational vehicles that are not connected to utilities or set upon a foundation, in whole or in part, for more than a temporary time and that are used as temporary living quarters for recreation, camping, or seasonal purposes are not considered buildings for the purpose of the managed forest law program.

SECTION 8. NR 46.15 (2) (intro) is renumbered 46.15 (2) and amended to read:

NR 46.15 (2) “Capable of producing 20 cubic feet of merchantable timber per acre per year” means land determined by the department to be capable of such production ~~according to normal yield tables published by the North Central Forestry Experiment Station and the Lake States Forest Experiment Station and meeting one of the following size and minimum density classifications:~~ based on site conditions and scientific information specific to Wisconsin cover types.

SECTION 9. NR 46.15 (2) (Table) is repealed.

SECTION 10. NR 46.15 (16) is amended to read:

NR 46.15 (16) “Grazing” means the feeding on living plants by domestic animals except by animals used during timber cutting operations as a silvicultural tool to accomplish a sound forestry practice, as approved by the department.

SECTION 11. NR 46.15 (17g), (17r), (20s) and (21m) are created to read:

NR 46.15 (17g) “Hunting blind” means a structure that is used exclusively for hunting.

NR 46.15 (17r) “Improvements associated with a building” means any of the following:

- (a) A structure or fixture that is attached to a building or that is appurtenant to a building.
- (b) A structure or fixture that provides a specific purpose or use related to the use of a building.
- (c) A structure or fixture for which the intent is that it becomes a permanent addition to a building.

NR 46.15 (20s) “Material change” means a change in statute or administrative code that has a significant negative impact on an existing managed forest law order, as determined by the department when not explicitly stated by the legislature.

NR 46.15 (21m) “Non-productive area” or “non-productive land” means land incapable of producing 20 cubic feet of merchantable timber per acre per year, land unsuitable for producing merchantable timber, or land designated by the owner as part of their 20% allowance of land not producing merchantable timber.

SECTION 12. NR 46.15 (22) is repealed.

SECTION 12. NR 46.15 (26r), (30m), and (32m) are created to read:

NR 46.15 (26r) “Restoration” means the management of land to resume compliance with productivity requirements as established in s. 77.82 (1) (a) 2., Stats., and density requirements established in s. NR 46.17 (1) (c) 2.

NR 46.15 (30m) “Structures and fixtures needed for sound forestry” means a structure or fixture that is placed on the land for the sole purpose of conducting a forest management practice that is either in the management plan, or agreed upon by the department and the owner.

NR 46.15 (32m) “Utilities” means any of the following:

- (a) Indoor plumbing including water and sewer, piped to either a municipal or septic system.
- (b) Electrical service by connection to the lines of a power company.
- (c) Landline telephone service.

SECTION 12. NR 46.15 (33) is amended to read:

NR 46.15 (33) “Wood products” or “forest products” means those items listed on the current schedule of stumpage values ~~for severance or yield tax~~ in s. NR 46.30.

SECTION 13. NR 46.16 (1) (intro.) and (a) are amended to read:

NR 46.16 (1) APPLICATION DEADLINES. An application for a new designation or a renewal of land as managed forest land shall be signed by all owners on forms provided by the department and filed as follows:

NR 46.16 (1) (a) Applications shall be ~~postmarked or~~ received by the department no later than June 1 to be considered for designation effective the following January 1.

SECTION 14. NR 46.16 (1) (cm) is repealed.

SECTION 15. NR 46.16 (1) (d) and (1) (e) are amended to read:

NR 46.16 (1) (d) Lands subject to an ownership change after the 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 application was submitted. ~~Ownership changes taking place after the issuance of an order of designation shall be processed as a normal transfer after January 1.~~ The new owner shall ~~may~~ submit a new and complete application by the next applicable deadline. The department may designate land included on the application that remains under the original ownership effective January 1 of the year for which the original application was submitted providing the remaining land qualifies for entry. Ownership changes taking place after the issuance of an order of designation, but before January 1, shall be processed as a normal transfer after January 1, or the order shall be rescinded.

NR 46.16 (1) (e) Each 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 \$30.00 per county in which the land that is the subject of the application is located. This fee shall be submitted to the department within 14 days of the submission of the application along with a printed remittance form provided by the department.

SECTION 16. NR 46.16 (2) (g) 1. and 2. and 3. are created to read:

NR 46.16 (2) (g) 1. Productive cover types must be individually mapped when the cover type consists of 2 or more contiguous acres.

NR 46.16 (2) (g) 2. For lands designated as managed forest lands prior to January 1, [LRB inserts second year after rule publication], non-productive areas of the entry must be mapped when any contiguous area of non-productive land is at least 2 acres in size.

NR 46.16 (2) (g) 3. For lands designated as managed forest lands on or after January 1, [LRB inserts second year after rule publication], non-productive areas of the entry must be mapped when any contiguous area of non-productive land is at least 1 acre in size.

SECTION 15. NR 46.16 (2) (h) and (2) (Note) and (5) and (7) are amended to read:

NR 46.16 (2) (h) Reconnaissance data and scheduled practices on electronic forms provided by the department.

NR 46.16 (2) Note: Forms can be obtained by contacting the Division of Forestry, Bureau of Forest Management, PO Box 7921, Madison, WI 53707 electronically through the Wisconsin Forest Inventory and Reporting System (WisFIRS).

NR 46.16 (5) SAME OWNERSHIP. All eligible land under the same ownership and located in the same municipality when applied for designation or renewal 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 ~~40 acres in the minimum parcel size~~ or less than 80% productive, when applied for designation in the same year, shall be designated under the same order of designation. This subsection does not apply to land added to an existing managed forest land entry under sub. (7).

NR 46.16 (7) ADDITIONS. An owner may apply to the department to ~~designate 10 or more acres of land as managed forest land which is add land to a managed forest land order.~~ To be eligible, the addition shall be a parcel that is at least 3 acres in size and that is contiguous to land that was is designated as managed forest land on or after April 28, 2004 as an addition to the previously designated and contiguous managed forest land the date the application for addition is submitted. If the 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. Land contained in an application for addition shall meet all current eligibility requirements under s. NR 46.17 and s. 77.82 (1) (a), Stats., except for minimum acreage and productivity requirements, which shall be met at the time land is designated as managed forest land. Land contained in an application for addition shall have the same ownership as the existing entry.

SECTION 16. NR 46.16 (7m) and (10) are created to read:

NR 46.16 (7m) RENEWALS. (a) All land designated as managed forest land may be eligible for renewal. The department shall approve applications for an additional 25- or 50-year period at the end of an existing order period if all of the following are met:

1. The land meets all eligibility requirements outlined in s. NR 46.17 and s. 77.82 (1), Stats.,
 2. Items listed in s. 77.82 (3) (c), Stats., have been updated within the 5 years prior to the date of the application for renewal and practices in s. NR 46.18 (2) and (3) have been scheduled during the renewal order period; or a new management plan is submitted with the renewal application that meets all management plan requirements for new entries.
 3. The owner is in compliance with all aspects of the management plan that is in effect on the date that the application for renewal is filed.
- (b) 1. If there is a parcel within the order that is less than 20 acres but greater than or equal to 10 acres, the land may be renewed once.

4. If the current entry contains a parcel of managed forest land that is less than 20 acres and that parcel will remain less than 20 acres in the renewal period, then the parcel on the renewal application shall be identical to the current enrollment without any changes to acreage other than those provided for in s. NR 46.27 (1). If such a parcel includes an ineligible building or improvement, a withdrawal under s. 77.88 (3j), Stats., may be used to rectify the situation and allow the existing and renewed lands to be identical on the renewal application, subject to constraints provided for in s. 77.88 (3j) (b), Stats. To be considered identical, the withdrawal form shall be submitted before the department can approve the renewal application.

NR 46.16 (10) APPLICATION SUBMISSION AND DATA COLLECTION. All applications submitted to the department shall be completed and submitted electronically through the Wisconsin Forest Inventory and Reporting System (WisFIRS) by a certified plan writer, unless a certified plan writer is unavailable, as provided for in s. 77.82 (3) (am), Stats.

SECTION 17. NR 46.165 (3) (c) is amended to read:

NR 46.165 (3) (c) Completes ~~the~~a basic training session sponsored by the department.

SECTION 18. NR 46.17 (1) (b) (intro.) is renumbered and amended to read:

NR 46.17 (1) (b) No more than 20% of a managed forest land parcel may consist of land unsuitable for producing merchantable timber as provided in s. 77.82 (1) (b) 1., Stats., or ~~non-stocked~~ non-productive land as defined in s. NR 46.15 (21m) or a combination of those types of land.

SECTION 19. NR 46.17 (1) (b) 1. and 2. are created to read:

NR 46.17 (1) (b) 1. For purposes of this determination, for lands designated as managed forest lands prior to January 1, [LRB inserts second year after rule publication], the department shall consider only contiguous areas of non-productive land that comprise 2 or more acres.

NR 46.17 (1) (b) 2. For purposes of this determination, for lands designated as managed forest lands on or after January 1, [LRB inserts second year after rule publication], the department shall consider only contiguous areas of non-productive land that comprise 1 or more acres.

SECTION 19. NR 46.17 (1) (c) is created to read:

NR 46.17 (1) (c) 1. If the portion of land considered capable of producing merchantable timber in par. (a) does not meet density requirements established in subd. 2., it may be designated as managed forest land if the department determines, that within a reasonable timeframe, stocking levels can be increased to be consistent with density requirements and mandatory practices needed to achieve density standards are established in the management plan.

2. Density standards established in the table below do not address other stand-level regeneration guidelines, such as adequate levels of pre-harvest and post-harvest advanced regeneration or percent stocking to ensure

continued stand productivity. On a site-by-site basis, site conditions, species, and other regeneration guidelines specific to Wisconsin cover types may be evaluated to determine an alternative density standard.

Stand Size Classes	Tree Diameter Ranges at 4.5 Feet From Ground Level	Density Standards
Seedlings	0"–1"	800 trees per acre for natural stands. 400 trees per acre for planted stands.
Saplings	1"–5"	400 trees per acre for natural stands. 300 trees per acre for planted stands.
Pole timber		
For conifer species	5"–9"	7 cords per acre
For other species	5"–11"	
Sawtimber		
For conifer species	9"+	3,000 board feet per acre.
For other species	11"	

SECTION 20. NR 46.17 (3) is repealed and recreated to read:

NR 46.17 (3) BUILDINGS ON MANAGED FOREST LAND. (a) *Buildings or improvements associated with buildings.*

1. For lands designated or renewed as managed forest land in 2017 and later, a building or an improvement associated with a building that is placed or constructed on land renders the land not eligible for designation.

2. For lands designated as managed forest land prior to 2017, a building is allowed if it is not considered developed for human residence as defined in s. NR 46.15 (9).

(b) *Hunting blinds.* Tree stands and hunting blinds are permitted on lands enrolled in the managed forest law program if they meet all of the following criteria:

1. Are not connected to utilities;
2. Are not used as a human residence;
3. Do not interfere with forestry practices; and
4. Are either:
 - i. Tree stands and hunting blinds owned by, or constructed with permission of, the landowner; or
 - ii. Portable tree stands and hunting blinds placed on land designated as open to public access by a member of the public, and completely removed each day at the close of shooting hours.

(c) *Structures and fixtures needed for sound forestry.* Structures and fixtures placed on land enrolled in managed forest law for this purpose shall be removed following the completion of the practice. Structures and fixtures needed for sound forestry may not include those that meet the definition of a building.

SECTION 21. NR 46.17 (3) Note 1 is repealed.

SECTION 22. NR 46.17 (4) and (5) are created to read:

NR 46.17 (4) WITHDRAWN LAND. Land withdrawn under s. 77.88 (1), (3k), or (3L), Stats., for failure to meet productivity requirements provided for in s. NR 46.17(1)(c)2., may not be eligible for reentry in the program unless the department determines that there has been an environmental, ecological, or economic change that would allow the land to meet density requirements as provided for in s. NR 46.17 (1) (c) 2., and productivity requirements as provided for in s. 77.82 (1), Stats.

NR 46.17 (5) LEASES OR AGREEMENTS. An owner of managed forest land may enter into a lease or agreement on such lands so long as the terms of the lease or agreement do not conflict or interfere with any aspect of this chapter or subch. VI of ch 77, Stats.

SECTION 23. NR 46.18 (2) (intro.) is amended to read:

NR 46.18 (2) MANDATORY PRACTICES. The management plan shall be prepared on forms provided by the department through the Wisconsin Forest Inventory and Reporting System (WisFIRS), signed by all owners and

shall include a list of stands subject to mandatory practices, a schedule of completion dates and a description of the mandatory practices to be undertaken during the term of the order. Practices included in the management plan and any additional practices needed to complete a scheduled practice or establish regeneration after a scheduled practice may not be eligible for an analysis under s. NR 46.215 until such practices have been sufficiently attempted, as determined by the department, even if the additional practices are not overtly identified in the management plan. Practices projected beyond the term of the order may be added, if requested by the landowner. The following practices, if determined applicable by the department, shall be addressed in the management plan:

SECTION 24. NR 46.18 (2) (d) (intro.) is renumbered 46.16 (2) (d) and amended to read:

NR 46.18 (2) (d) Reforestation or afforestation of land to meet one of the following size and minimum medium-density classifications: requirements established in s. NR 46.17 (1).

SECTION 25. NR 46.18 (2) (d) (Table) is repealed.

SECTION 26. NR 46.18 (2) (g) is created to read:

NR 46.18 (2) (g) Restoration of land, if required under s. NR 46.215.

SECTION 27. NR 46.18 (3) (b) 1. is amended to read:

NR 46.18 (3) (b) 1. No more than 20% of an owner's total contiguous designated managed forest land acreage may be ~~non-stocked non-productive land, land unsuitable for producing merchantable timber, or a combination of both. For purposes of this determination, the department shall consider only cover types comprising 2 or more acres. which shall be calculated in accordance with s. NR 46.17 (1) (b).~~

SECTION 29. NR 46.18 (3) (b) 2. a. is amended to read:

NR 46.18 (3) (b) 2. a. The creation of openings and other vegetative cover not producing forest products at the level meeting density requirements under s. 77.82 (1) (a) 2., Stats., ~~may be approved is allowed~~ so long as the total area of created openings or other vegetative cover, combined with ~~land unsuitable for producing merchantable timber and non-stocked other non-productive land,~~ does not exceed 20% of the managed forest land parcel, which shall be calculated in accordance with s. NR 46.17 (1) (b).

SECTION 30. NR 46.18 (4) (a) 2. is repealed.

SECTION 31. NR 46.18 (4) (a) 3. is renumbered (4) (a) 3. (intro.) and amended to read:

NR 46.18 (4) (a) 3. The existence ~~and availability for review~~ of a management plan prepared by or for the owner and acceptable to the department. The management plan shall be readily available to the department upon written request or audit. A management plan under this section shall include all of the following:

SECTION 32. NR 46.18 (4) (a) 3. a. and b. are created to read:

NR 46.18 (4) (a) 3. a. Maps or a GIS database at a scale usable for forest management and showing land eligible for designation. The maps or database shall represent current conditions, and include the requirements provided for in s. 77.82 (3) (c) 4. and 5., Stats. Maps, in a format approved by the department, that show any land designated as open to public recreation and meeting the requirements in s. NR 46.21 (3) (c) shall be provided.

b. Reconnaissance data and scheduled practices using the procedure defined in subd. 4.

SECTION 33. NR 46.18 (4) (a) 4. is amended to read:

NR 46.18 (4) (a) 4. ~~Submission of~~ At the time of application to become a large ownership, submission of legal descriptions and maps or aerial photographs that meet the requirements established in s. 77.82 (3) (c) 4. and 5., Stats., for the land being entered, and a written commitment from an owner to provide, upon department request, information from the management plan for review or audit. The commitment shall that describes the management

plan that is required in subd. 3, and outline outlines the procedure used to update and amend the management plan, or that fulfills requirements established in subd. 6, if applicable. The information provided in this subdivision shall be updated when land is added to, transferred from, or renewed under the ownership.

SECTION 34. NR 46.18 (4) (a) 6. and (Note) are created to read:

NR 46.18 (4) (a) 6. If the land considered for large ownership is under a nationally recognized third-party forest certification standard with a valid certificate held by the managed forest land owner, the land may qualify as a large ownership without fulfilling requirements under subd. 3 if the owner maintains the third-party certification and provides maps, in a format approved by the department, that show lands designated as open to public recreation and meeting the requirements in s. NR 46.21 (3) (c).

NR 46.18 (4) (a) 6. Note: Examples of nationally recognized third-party forest certification standards include American Tree Farm System®, the Forest Stewardship Council®, and the Sustainable Forestry Initiative®.

SECTION 35. NR 46.18 (4) (b) is repealed and recreated to read:

NR 46.18 (4) (b) The department may revoke large ownership status for large ownerships failing to meet requirements established in sub. (a). Large ownerships shall be notified of the cause for revocation in writing, and shall be given one year to develop a management plan under s. 77.82 (3), Stats., that contains all items listed in s. NR 46.16 (2) (f), (g), and (h).

SECTION 36. NR 46.18 (4) (c) is created to read:

NR 46.18 (4) (c) Large ownerships shall supply the department, upon written request, additional information required to determine owner compliance with s. 77.82 (1), Stats., and this section as provided for in ss. 77.82(2) and 77.82(3).

SECTION 37. NR 46.18 (5) (bm) is amended to read:

NR 46.18 (5) (bm) Management plans for applications under s. NR 46.16 (1) (a) received on or before June 1 ~~or under s. NR 46.16 (1) (em) received on or before July 1~~ shall be prepared by a certified plan writer or the department itself.

SECTION 38. NR 46.18 (5) (dm) is created to read:

NR 46.18 (5) (dm) Management plans submitted by June 1 that are returned to a certified plan writer by the department for revisions shall be resubmitted by September 15. Plans resubmitted after September 15 that are not approvable may be denied. Extensions may be granted with department approval.

SECTION 39. NR 46.18 (6) Note (1) is amended to read:

Note: Requests to change the open/closed status shall be filed by the deadline at: ~~Division of Forestry, Bureau of Forest Management, Forest Tax Section, PO Box 7963, Madison, WI 53707.~~ Forms may be obtained online at dnr.wi.gov, search keywords "Managed Forest Law".

SECTION 40. NR 46.18 (9) and (10) are created to read:

NR 46.18 (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.

NR 46.18 (10) AMENDING A MANAGEMENT PLAN. Owners may amend their management plan under s. 77.82 (3) (f), Stats., for reasons that include;

- (a) Landowner requests a change that maintains the management plan's required compliance with the provisions of this chapter and subch. VI of ch 77, Stats.
- (b) The management plan is inaccurate or missing information.
- (c) On the ground conditions have changed since the time of entry to the extent that the prescribed practices in the plan are no longer considered sound forestry practices
- (d) Changes in silvicultural research and practices, including invasive species management, to the extent that the prescribed practices in the plan are no longer considered sound forestry practices.

SECTION 41. NR 46.185 is created to read:

NR 46.185 Forestry practices. (1) INCOMPLETE NOTICE OF INTENT TO CUT. In accordance with s. 77.86(1)(b), landowners shall file a notice of intent to cut on department forms prior to cutting on managed forest law lands. Incomplete notices shall be returned to the submitter to be completed. The complete notice shall be submitted 30 days before cutting takes place.

(2) NOTICES OF INTENT TO CUT THAT REQUIRE DEPARTMENT APPROVAL. Department approval of a submitted complete notice is required prior to harvest if any of the following apply:

(a) The notice does not conform to the approved management plan in place for the managed forest law land subject to the notice.

(b) The notice is not consistent with sound forestry.

(c) The owner requests on the form that the department review the notice.

(d) The person who submits the notice does not certify on the form that they meet one of the requirements provided in s. 77.86 (1) (b) 2., Stats. For purposes of applying this paragraph, "full-time profession" as used in s. 77.86 (1) (b) 2., Stats., means full-time employment by a business or company in a position requiring specialized knowledge or training.

(3) EXPIRATION OF NOTICES OF INTENT TO CUT. If the cutting has not commenced within 1 year of cutting notice submission or approval, as provided in s. 77.86 (3), Stats., the department may renew the cutting notice if all of the following apply:

(a) The owner or filer are in communication with the department and have adequately shown that a plan for the cutting within a reasonable timeframe is in place.

(b) A new notice would not be significantly different from the cutting notice on file, as determined by the department.

SECTION 42. NR 46.19 (1) is amended to read:

NR 46.19 (1) CLOSED ACREAGE LIMIT. An owner of land designated as managed forest land effective on or after April 28, 2004 may designate a maximum of 160 320 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.~~

SECTION 43. NR 46.19 (1) (Note) and (2) are repealed.

SECTION 44. NR 46.19 (3) is repealed and recreated to read:

NR 46.19 (3) CLOSED AREA CONFIGURATION. A closed area may consist of any combination of the following:

(a) A parcel or parcels of managed forest land.

(b) All of an owner's managed forest land within quarter quarter sections, government lots, or fractional lots.

(c) An additional block of acreage within a quarter quarter section, government lot or fractional lot, if the additional block is contiguous to existing closed acreage, if applicable, and does not exceed a length to width ratio of 4 to 1, unless limited by the size of the entry.

SECTION 45. NR 46.20 (1) and (2) are repealed and recreated to read:

NR 46.20 (1) PUBLIC ACCESS REQUIREMENTS. The owner of managed forest land shall provide public access on foot to land designated as open to public access for activities authorized in s. 77.83 (2) (a), Stats., unless it has been designated closed under s. 77.83 (1) (a), Stats. Public access on foot to open managed forest land shall satisfy one of the following conditions:

(a) *Contiguous to public land.* The land designated as open managed forest land is contiguous to other land or public roads that are open to public access on foot. Lands contiguous to other land open to public access at a single point are not considered to have met this requirement.

(b) *Easement or agreement.* By easement or agreement, the owner has obtained a reasonable route or location at which the public may access the open managed forest land on foot by crossing land that is not generally considered open to public access, which shall be designated in accordance with s. NR 46.21 (3).

(c) *Other land under same ownership.* The land designated as open managed forest land is accessible from other land or public roads that are open to public access on foot by crossing contiguous land of the owner which is not entered as managed forest land or is contiguous managed forest land of the owner which has been designated closed under s. 77.83 (2) (a), Stats. The owner may not restrict public access for activities authorized in s. 77.83 (2) (a), Stats., through or across such land except the access across such land may be limited to a reasonable corridor or location, which shall be designated in accordance with s. NR 46.21 (3).

(2) **OPEN LAND AGREEMENT.** An owner who chooses to designate any of their managed forest land as open shall certify on department prepared forms that there is public access on foot to the land designated as open and that if the access changes or is removed during the order period the owner shall notify the department and change the designation of the land to closed under s. 77.83 (1) (a), Stats., if access meeting the requirements in this section can no longer be achieved.

SECTION 46. NR 46.21 (1) is repealed and recreated to read:

NR 46.21 (1) SIGN STANDARDS. Signs designating open and closed managed forest lands shall meet all of the following requirements:

- (a) Are a minimum size of 11 inches by 11 inches.
- (b) Are in conspicuous view.
- (c) Are a minimum of 4 feet above the ground.
- (d) Are at an interval of at least 2 per one quarter mile on the boundary of the designated area or as otherwise approved by the department.
- (e) All print is of equal size to other print on the sign, if sign standards are required under sub. (2) (c) or (3).

SECTION 47. NR 46.21 (2) (a) is amended to read:

NR 46.21 (2) (a) Closed areas may be posted with commonly used no trespass signs or signs indicating the land is closed to public access or trespass, in conformance with ~~par. (b) this section~~ and s. 943.13, Stats.

SECTION 48. NR 46.21 (2) (b) is repealed.

SECTION 49. NR 46.21 (3) (c) is amended to read:

NR 46.21 (3) (c) ~~If~~ The method of public access to the land designated as open shall be clearly explained on the managed forest law map required under s. NR 46.25 as a comment. In addition to the explanation, if access to open managed forest land is limited across lands not open to public access, as provided in s. NR 46.20 (1) (b) or (c), the location of the access shall be reasonably and clearly identified on signs meeting the requirements of this section in print of equal size to other print on the sign. Signs shall be at locations and in sufficient number to provide reasonable notice to those attempting access. The location of the sign or signs that show the access route or location and that are closest to the access point from a public road or other land open to public access shall be indicated on the managed forest law map required under s. NR 46.25. If the location of the sign indicating the access route or location changes during the order period, the owner shall notify the department.

SECTION 50. NR 46.215 is created to read:

NR 46.215 Productivity. (1) The department may require that an owner of managed forest land attempt to restore non-productive lands if it determines that all of the following conditions are met:

(a) The managed forest land parcel is not 80% productive as provided for in s. 77.88 (1) (a) 2., Stats., or land that is part of the 80% productive portion of the parcel does not meet density standards established in s. NR 46.17 (1) (c) 1.

(b) It is reasonably possible for the land to be restored so the parcel resumes compliance within a reasonable timeframe, based on guidelines specific to Wisconsin cover types.

(c) The estimated cost of restoration is less than the estimated withdrawal tax for the withdrawal of the minimum number of acres under s. NR 46.22 (1). To determine the estimated cost of restoration the department shall use data obtained through the administration of subch. VII of ch. NR 47 and may take into consideration any pertinent state grants available. Owners may dispute restoration cost estimates determined in this subdivision by obtaining and submitting to the department 3 quotes for the practices. Owners may be required to obtain quotes if the department has insufficient data from the administration of subch. VII of ch. NR 47.

(2) If restoration is required under sub. (1), the management plan on file with the department shall be amended to include restoration practices that are agreed upon by the owner and the department.

(a) The department may order a withdrawal under s. 77.88 (1), Stats., if an owner chooses not to adopt adequate restoration practices or if the department determines that the owner has not sufficiently attempted the restoration practices adopted in the management plan.

(b) The department may order a withdrawal under s. 77.88 (3k) or (3L), Stats., of the minimum number of whole acres needed to be withdrawn for the parcel to resume compliance with productivity requirements if restoration practices are adopted into the management plan and the restoration is sufficiently attempted, as determined by the department, but is not successful within the timeframe established in the management plan. If determined appropriate, the department and the owner may agree to extend the timeframe of the restoration.

SECTION 51. NR 46.22 (1) is repealed and recreated to read:

NR 46.22 (1) WITHDRAWAL BY DEPARTMENT ORDER. (a) The department may conduct any investigation necessary on managed forest land for purposes of ensuring compliance with program provisions provided in this chapter and subch. VI of ch. 77, Stats.

(b) The department may order withdrawal of land under s. 77.88 (1), Stats., if the land comprises any of the following:

1. An entire quarter quarter section, government lot or fractional lot of managed forest under the same order.
2. An entire parcel of managed forest land.
3. All managed forest land under the same order owned by the owner in a quarter quarter section, government lot or fractional lot.

(c) Land remaining after a withdrawal under this section shall meet eligibility requirements established in s. 77.82 (1), Stats., or the entire parcel of managed forest land may need to be withdrawn as provided for in s. 77.88 (1), Stats.

SECTION 52. NR 46.22 (2) and (Note) are amended to read:

NR 46.22 (2) VOLUNTARY WITHDRAWAL DEADLINES. Voluntary withdrawals submitted for processing under s. 77.88 (3), (3j), (3k) and (3L), Stats., shall be filed with the department on forms provided by the department. ~~Requests~~ Eligible requests received by the department no later than December 1 on department forms will be eligible to be effective by the following January 1. ~~Requests~~ Eligible requests for withdrawal 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.

NR 46.22 (2) Note (1): Forms for withdrawal must be filed by the deadline at: ~~Bureau of Forestry, Forest Tax Section, PO Box 7963, Madison, WI 53707.~~ Forms for withdrawal may be obtained at no charge by writing the same address online at dnr.wi.gov, search keywords "Managed Forest Law".

SECTION 53. NR 46.22 (3) and (4) are created to read:

NR 46.22 (3) VOLUNTARY WITHDRAWAL; OTHER CONSTRUCTION; SMALL LAND SALES. (a) Owners of managed forest land requesting to voluntarily withdraw land under s. 77.88 (3j), Stats., are responsible for all of the following:

1. Following any local ordinances that may apply to construction or land sales.
2. Providing a map or detailed written description that clearly defines the area requesting to be withdrawn in enough detail that the department is able to delineate the boundaries of the area requesting to be withdrawn and verify the acreage of the area. If the request does not clearly describe the area to be withdrawn, the department may deny the request for withdrawal.

(b) A withdrawal under this subsection may be used to rectify violations related to eligibility requirements established in s. 77.82 (1) (b), Stats., subject to the constraints established in s. 77.88 (3j) (b), Stats.

NR 46.22 (4) VOLUNTARY WITHDRAWAL; PRODUCTIVITY; SUSTAINABILITY. Upon the request of an owner of managed forest land to withdraw part of a parcel under ss. 77.88 (3k) or (3L), Stats., the department shall order withdrawal of the minimum number of whole acres that is necessary for the parcel to resume productivity requirements established in s. 77.82 (1), Stats., if all of the following apply:

(a) The department determines that the likely cause of the inability to meet productivity standards was a significant change in environmental or ecological condition that has occurred since the time of enrollment and the owner is not required to attempt restoration due to economic or other conditions as provided for in s. NR 46.215; or the department determines that the parcel does not meet productivity standards as a result of a land conveyance as described in s. NR 46.23.

(b) The anticipated cause of the change in suitability of the parcel is not due to owner noncompliance with the program as established in this chapter and subch. VI of ch. 77, Stats., or noncompliance with management guidance to address forest regeneration or health concerns that have foreseeable repercussions on stand productivity. For the purposes of this provision, areas cleared under an easement for a public road or railroad or utility right-of-way are considered outside of owner control and not an issue of compliance.

Note: Commonly accepted forest health guidelines can be found in Chapter 8 of the Department's Forest Management Guidelines PUB-FR-226. Forest regeneration concerns may include high deer population, invasive species, and other characteristics evaluated on a site-specific basis.

SECTION 54. NR 46.23 (1) is repealed and recreated to read:

NR 46.23 (1) DEPARTMENT ORDERED TRANSFERS. Upon conveyance of managed forest land, the new owner of managed forest land shall file a transfer form or voluntarily withdraw all of the land conveyed within 30 days of the change in ownership. Failure to file a transfer form may render the managed forest land ineligible for continued designation. The department shall only issue an order transferring eligible conveyed land, except as provided in sub. (2m) (b). After the land conveyance, the department shall investigate both the land conveyed and the land retained, if any, to determine if eligibility requirements established in s. 77.82 (1), Stats., are met and may transfer or withdraw land subject to all of the following:

(a) If after a land conveyance the department determines a parcel meets all eligibility requirements other than that provided for in s. 77.82 (1) (a) 2., Stats., a partial withdrawal may occur under s. 77.88 (3k) or (3L), Stats., to allow the parcel to resume compliance with s. 77.82 (1) (a) 2., Stats. If after a withdrawal under s. 77.88 (3k) and (3L) the land no longer meets eligibility requirements due to parcel size, the land may be withdrawn as provided for in sub. (b).

(b) If the department determines that the land conveyed does not meet the eligibility requirements under subch. VI of ch. 77, Stats., except as provided for in sub. (a), or a transfer form is not filed with the department, the department shall issue an order withdrawing the ineligible land. The withdrawal tax and fee under s. 77.88 (5) and (5m), Stats., shall be assessed on the land ineligible for continuation. If eligible land remains after such a withdrawal, the department shall issue an order transferring those lands if a transfer form for the eligible lands is filed with the department.

(c) If the department determines that the land retained after the conveyance, if any, does not meet the eligibility requirements under subch. VI of ch. 77, Stats., except as provided for in sub. (a), the department shall issue an order withdrawing the ineligible land. The withdrawal tax and fee under s. 77.88 (5) and (5m), Stats., shall be assessed on the land ineligible for continuation.

SECTION 55. NR 46.23 (2) is repealed.

SECTION 56. NR 46.23 (2m) is renumbered NR 46.23 (2m) (a) and amended to read:

NR 46.23 (2m) LAND CONVEYED FROM A LARGE OWNERSHIP. (a) A management commitment under s. NR 46.18 (4) (a) 4. does not qualify as a management plan under s. 77.88 (2) (ac), Stats., unless ~~the transferred land qualifies as a large ownership~~ considerations under s. NR 46.18 (4) (a) are met. The transferee shall provide a management plan under s. 77.82 (3), Stats., with all items listed under s. NR 46.16 (2) (f), (g), and (h) and shall submit the management plan to the department for approval within one year of transfer.

SECTION 57. NR 46.23 (2m) (b) and (c) are created to read:

NR 46.23 (2m) (b) If parcel size requirements are met, land conveyed from a large ownership may be transferred even if eligibility criteria established in s. 77.82 (1) (a) 2., Stats., are not met, provided that upon the submission of the management plan required in par. (a), the owner voluntarily withdraws any ineligible acres following the procedure in sub. (1) (a).

(c) Land conveyed from large ownership that does not meet requirements in pars. (a) and (b) within one year of the transfer shall be withdrawn under s. 77.88 (1), Stats. The withdrawal tax and fee under s. 77.88 (5) and (5m), Stats., shall be calculated on the transferred land and issued to the owners of record.

SECTION 58. NR 46.23 (3) is amended to read:

NR 46.23 (3) PUBLIC ACCESS DESIGNATION. ~~Transfers-Eligible transfers~~ requesting a change in the "open/closed" designation shall be in writing on department forms filed with and received by the department by December 1 for the change in the "open/closed" status to be eligible to be effective the following January 1. Requests for transfers, which change the "open/closed" designation, received by the department after December 1 but 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.

SECTION 59. NR 46.24 (3) (c) is amended to read:

NR 46.24 (3) (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 ~~severance and yield schedule~~ stumpage value zones identified pursuant to s. 77.91 (1), Stats., in which the subject land is located, and

SECTION 60. NR 46.25 is amended to read:

NR 46.25 Information on location of managed forest land. Information listing the location of open and closed managed forest law land shall be in the form of annually updated ~~computer-generated printouts showing acreage of open land by legal description, county and town and shall be offered for sale at the cost of copying and average mailing cost reports and an online map that describes the location of land designated as open managed forest land.~~

SECTION 61. NR 46.26 is repealed.

SECTION 62. NR 46.27 is created to read:

NR 46.27 Department orders. (1) CHANGING ORDERS. In addition to orders established in subch. VI of ch. 77, Stats., the department may issue any of the following orders altering existing managed forest land orders:

(a) *Correction and amendment orders.* Correction and amendment orders may be issued to correct factual errors. These orders correct issued orders to coincide with facts that are determined to have been in place at the time of the issuance of the order, including a change in acreage based on surveys including certified surveys, assessors' plats, county GIS, or monument reestablishment projects that more clearly calculate acreage of lands enrolled. Amendment orders are also used when a landowner changes public access designation.

(b) *Rescinding orders.* Rescinding orders may be issued to cancel or adjust orders issued by the department. Rescinding orders may be issued in the following situations:

1. The department determines that the land, or part of the land, was entered into the program by department error. Errors in the application by the owner or the certified plan writer do not constitute department error.
2. The owner chooses to not be enrolled in the program after an order of designation is issued but prior to the effective date of that order.
3. The department determines that an order other than an order of designation was issued in error.

(2) **ORDERS OF DESIGNATION AS A CONTRACT.** (a) *Timeline for exempt withdrawals due to material change.* If a statute is enacted or a rule is promulgated that materially changes the terms of an existing order, as determined by the department, the department shall notify owners potentially impacted by the change. Owners shall send their request to withdraw their lands without withdrawal tax and fee due to the material change to the department in writing by the December 1 immediately following the effective date of the material change. If the material change is effective within 90 days preceding December 1, the owners have until the second December 1 following the effective date of the material change to request to withdraw their lands due to the material change.

(b) *Effective dates for exempt withdrawals due to material change.* Upon receipt of a written request for withdrawal, if the department determines that the order was materially changed, the department shall order the withdrawal of the entry without the withdrawal tax and fee established in s. 77.88 (5) and (5m), Stats. Requests for withdrawal provided to the department within the timelines established in par. (a) will be effective the following January 1 if received no later than December 1.

(c) *Land staying in the program after a material change.* Owners who do not declare their request to withdraw their land within the timeline established in par. (a) or who do not declare their request in writing, shall have elected to accept the modifications to the contract or shall follow normal withdrawal procedures established in s. 77.88 (3), Stats., including assessment of a withdrawal tax and fee as provided for in ss. 77.88 (5) and (5m), Stats.

SECTION 63. NR 46.28 is created to read:

NR 46.28 Landowner contact information. (1) Owners of land designated as managed forest land shall notify the department of a change in mailing address and other contact information.

(2) Mail returned to the department because it is undeliverable due to an incorrect address or otherwise shall be determined to have met the department's obligation of notifying the landowner for all aspects of this chapter and ch. 77, Stats.

**** NOTE TO LRB: Start of Subch. IV****

SECTION 64. NR 46.30 (1) (a), (e), and (f) are repealed.

SECTION 65. Effective Date This rule takes 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 66. Board Adoption. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on [DATE].

Dated at Madison, Wisconsin _____.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

BY _____

Preston D. Cole, Secretary

(SEAL)