

Chapter 20 of the Forest Tax Law Handbook has been updated and incorporates changes to the cutting notice approval process. Changes incorporated regarding cutting notices and reports can be found in Chapter 20 beginning on page 20-69.

These changes were produced using current information and legal interpretations of Wisconsin Act 358. Updated policy guidance related to the proposed changes will be incorporated into the handbook once it has gone through the public review process. Additional minor changes were made in formatting throughout the document.

The Department is now soliciting comments from the public on the draft policy guidance contained in Chapter 20 of the Forest Tax Law Handbook. Once the 21-day public comment period is complete, all comments will be considered. The program implementation guidance will be revised as needed, and final program guidance will be made available to the public.

Comments related to the draft cutting notice policy guidance should be emailed to: DNRMFLlegislation@wisconsin.gov.

CUTTING NOTICE AND REPORT - MFL and FCL

(MFL - s. 77.86(1)(b), Wis. Stats., FCL - s. 77.06, Wis. Stats.) (Form 2450-32)

The Cutting Notice and Report is used to ensure that sound forestry is being practiced on tax law lands and to track harvested forest products. The landowner may not cut merchantable timber on managed forest/forest crop land with delinquent property taxes (acreage share or closed land payments)

UNMARKED PINE THINNING POLICY

In the interest of efficiency and economy, the Forestry Operations Team has resolved that DNR Foresters should approve cutting notices for routine unmarked pine thinning when possible (FOT Minutes, December 20, 2005). Any denial of a proposed unmarked pine thinning must be based on a record of poor performance or unusual site specific silvicultural situations or complications.

DNR Foresters may inspect the proposed unmarked pine thinning according to workload criteria established by the Forestry Leadership and Forestry Operations Teams. All denials of an unmarked pine thinning should be communicated to the landowner in the same manner as other Cutting notice denials.

Landowners have the responsibility to administer all unmarked pine thinning, similar to administration of other timber sales. A landowner or designated agent may conduct an on-site meeting with the timber sale contractor prior to initiating the harvesting operation and, if possible, include the DNR forester.

FILING OF CUTTING NOTICE

Landowners who intend to cut merchantable timber on managed forest land must file a cutting notice with the Department for the proposed cutting at least **30 days** prior to harvesting timber (s. 77.86(1)(b), Wis. Stats.) on Form 2450-32 (current version of form available on line dnr.wi.gov, keyword: 2450-32). The 30 days is not a waiting period; the purpose is to provide the DNR Forester time to review the proposed harvest and make a determination on whether approval by the DNR Forester is required. Note: this process is the same for FCL enrollments as well.

INITIAL CUTTING NOTICE EVALUATION REQUIRED

All cutting notices submitted to the Department shall be evaluated. The DNR Forester must:

- Determine if the name that appears on the cutting notice (the submitter) appears on the Cutting Notice Registration List, and
- Determine if the landowner has requested DNR review and approval, which may or may not need a field review, and
- Review the landowner's management plan to ensure the proposed cutting is under the terms of and conforms to the management plan

DETERMINING WHETHER THE CUTTING NOTICE REQUIRES DEPARTMENT APPROVAL

The Department must approve all cutting notices submitted prior to cutting, unless the cutting notice is submitted by a person whose name appears on the Cutting Notice Registration List, the proposed cutting is under the terms of and conforms to the management plan, and the landowner has not requested Department approval.

- If the cutting notice is submitted by a person whose name does appear on the Cutting Notice Registration List, the proposed cutting is under the terms of and conforms to the management plan and the landowner has not requested DNR approval, no approval by the DNR Forester is required.
- If the cutting notice is submitted by a person whose name does appear on the Cutting Notice Registration List, and the proposed cutting is not under the terms of and conforms to the management plan, approval by the DNR Forester is required.
- If DNR review and approval is requested by the landowner, approval by the DNR Forester is required.
- If the cutting notice is submitted by a person whose name does not appear on the Cutting Notice Registration List, approval by the DNR Forester is required.

For cutting notices that require DNR approval, the DNR Forester may require post-sale treatment and regeneration practices consistent with the plan, or copies of contracts, consultant tally sheets, or scale sheets as conditions of approval. If the

proposed cutting **is not under the terms of and** does not conform to the management plan, the DNR Forester must assist (see below for definition of “assist”) the owner in developing an acceptable proposal before approving the cutting notice (s. 77.86(1)(d), Wis. Stats.).

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

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

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

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

Delinquent taxes must be paid before the DNR forester may approve the Cutting notice.

The following underlined items are required to be provided on the cutting notice:

See the cutting notice Training videos for further instructions and examples at <http://dnr.wi.gov> and search keyword ‘cutting notice training’.

- **Attach a map** with enough detail to identify cutting area and to illustrate information in the cutting notice narrative (a copy of the MFL plan map without additional information is insufficient).
- **Cutting prescription.** Provide a complete and concise description of the applied Silviculture, the stand number affected, acres treated, general management type (i.e. even aged, uneven age, conversion, etc.), harvest method (i.e. selection, group selection, thinning, etc.), target residual condition (i.e. basal area, crown closure, gaps, seed trees per acre, etc.), tree retention measures implemented, marking paint colors and representation, order of removal (if different from the standard order of removal as outlined in the Silviculture Handbook).
- **BMPs for Water Quality.** Address prescriptions to mitigate water quality concerns, including identifying wetlands, streams, rivers, lakes, ponds, springs, or other water quality issues, the BMP measures that will be implemented, the permits that are required and/or need to be obtained, the conditions suitable for harvest (i.e. dry, frozen, rutting guidelines, etc.). Guidelines can be found in the Wisconsin DNR BMP for Water Quality Manual at <http://dnr.wi.gov> and search keyword ‘forestry bmp’ for more information on Wisconsin’s Forestry Best Management Practices for Water Quality.
- **BMPs for Invasive Species.** Address prescriptions to mitigate invasive species, including plants, pests and pathogens. Include time of year restrictions (i.e. excluding oak wilt period, only during frozen ground to reduce root damage, etc.), forest health treatments (treat stumps within 24 hours of cutting to prevent annosum root rot, etc.), and describe the BMP measures that will be implemented. BMPs can be found at <http://dnr.wi.gov> and search keyword ‘invasives’ or by visiting visit the Wisconsin Council on Forestry at <http://council.wisconsinforestry.org/invasives/> for more information on Wisconsin’s Invasive Species Best Management Practices.
- **NHI Prescription.** Address any prescriptions to avoid impacts to rare species or any management considerations needed because of the likely presence of rare species and/or high-quality natural communities. A search of the Natural Heritage Inventory (NHI) Database is required, but there may be additional sources for this information. Obtain NHI information prior to establishing management practice. Requests for NHI information should be made in writing or e-mailed directly to the DNR Forester responsible. The NHI data can only be provided to eligible individuals (at the time of this writing, eligible individuals include landowners, CPWs and trained Cooperating

Foresters); all other requests should be referred to the Natural Heritage Conservation Program. Document the date of the NHI search and verify any suitable habitat for species identified and describe the protection measures that will be taken to protect the species or community. See Appendix 10 for details on obtaining and sharing NHI data.

Plants. State-listed plants are not legally protected on private lands during the course of forestry activities, but landowners are encouraged to voluntarily avoid destroying the plant or its habitat. Certification does not have any additional standards above required law except that landowners should consider protecting plants identified in the NHI search. However, plants on the federal endangered and threatened list are protected when federal funds are used (as they are on federal lands).

To consider protection of endangered, threatened or special concern plants landowners need to do the following:

- a) **Conduct an NHI search.** The search will identify endangered, threatened and special concern animals and plants, as well as certain examples of communities on or near the project area. A CPW or (Cooperating Forester who has had the NHI training) can request that the DNR Forester conduct the search for them. Alternatively, the landowner can request an ER Review (<http://dnr.wi.gov/topic/ErReview/>).
- b) **Determine if there is suitable habitat.** Cooperating Foresters (with assistance from the department) should determine if suitable habitat exists for any of the NHI plants. On-the-ground searches of the property are not required to identify individual plants or groups of plants, but they can be helpful if the person surveying is qualified, and it is the right time of year for identification of the plant.
- c) **Review the results with the landowner.** If suitable habitat exists, determine what if any avoidance measures are needed, as well as any voluntary management guidance. Landowners should be provided enough information on how to protect and/or manage for an NHI plant in order to make an informed decision, including the federal and state status.
- d) **Document the landowner's decision in the cutting notice and the landowner's case file.** This documentation shows auditors and others that steps have been taken to meet certification standards. If a landowner decides not to protect the plant the document process ends.
- e) **Implement any needed protection measures.** If the landowner decides to implement the needed protection/avoidance measures, include them in the cutting notice and report form, practice plan or other management prescription and document the recommendations in the landowner's case file.

Special Concern Animals. Special concern animals are not currently listed as endangered or threatened, so they are not protected by the state's endangered species laws. However, some special concern species are protected by other state and federal laws. For example, Bald Eagles are fully protected by federal law, even though they are not protected by the state's endangered species laws. The state status code indicates if a special concern species is protected by other laws:

- SP/P – fully protected
- SC/N – no laws regulating use, possession, or harvesting
- SC/H – take regulated by establishment of open/closed seasons
- SC/F – federally protected as endangered or threatened, but not so designated by DNR
- SC/M – fully protected by federal and state laws under the Migratory Bird Treaty Act

Even when not protected by any laws, special concern species are often at-risk of becoming endangered or threatened, and landowners are encouraged to protect these species whenever possible.

How to protect plants and animals. Landowners should work with their DNR Foresters and local DNR Specialists to determine what options are available to protect species to the extent possible. Most often, timber sales can occur with certain modifications, including:

- **Timing** of the activity when the endangered or threatened species is not present. This avoidance measure is often used for species that migrate such as certain rare birds. This option would allow all of the lands to be productive forest land, although some restriction may be present on entry of the land for management purposes.

- **Avoidance** of the endangered or threatened species' habitat year-round. Some rare species inhabit small habitat within a forest such as cliffs or seeps. Avoiding harvest in an entire stand is typically not necessary for species associated with forests in Wisconsin. Complete avoidance of the habitat would cause some of the lands to no longer be suitable as productive forest land.
 - **Choice of equipment.** This option may allow for certain pieces of equipment to be used on a property that does not harm certain life cycles of an endangered or threatened species, including prescribed fire, chemical treatment, equipment with large floatation tires, etc.
 - **Other techniques** as determined by DNR Specialists.
- **Archeological, Historical and Cultural Prescriptions.** Address any prescriptions to mitigate archeological, historical and cultural concerns. Obtain Archeological, Historical, and Cultural information prior to establishing the management practice. Requests for this information should be made in writing or e-mail directly to the DNR Forester responsible. Document the date of the Archeological, Historical, and Cultural resources search and describe the measures that will be taken to protect the site. See Appendix 11 for details on obtaining and sharing archeological, historical and cultural resource data.
- **Verification of Certification under MFL Group.** Review the list of MFL orders that are part of the MFL Certified Group to determine if land covered on the Cutting notice is or is not certified. Lists are provided on the DNR website (go to dnr.wi.gov, search keyword 'forest certification', click on 'MFL certification' and the list is available at the bottom of the page) **and in WisFIRS.**
- **Order Number and Legal Description.** The Order Number can be obtained from the MFL/FCL plan, Order of Designation, or from the DNR Forester. Use a separate column for each description. The legal descriptions must be identical to the Master List.
- **Description Code.** The description code can be found in Appendix 1 of the Forest Tax Law Handbook.
- **Species Name and Product Code.** Use the drop-down box to identify the tree species and product to be harvested.
- **Volume.** Estimate the volume from the pre-harvest cruise of the stand to be harvested. Report log products in board feet (i.e. 3000), and cords in whole cords (i.e. 55). Posts, Poles, and Christmas trees shall be reported by the piece. Actual volume should be from post-harvest scale.
- **Signatures.** When submitting the Cutting notice, the landowner must sign the first page and submit to the DNR Forester responsible at least 30 days prior to cutting. When submitting the Cutting Report, the landowner must sign the second page and submit to the local DNR Forester within 30 days of completion of the cutting. Consultants or other representatives signing Cutting notices or Reports for landowners must provide proof that they are authorized to act as the owner's agent. Proof of authorization can be as simple as a letter signed by the landowner stating that the named consultant or representative has the authority to sign Cutting notices and Reports on the landowner's behalf.

CUTTING NOTICE STEPS

(Note: the steps are the same whether the land is in MFL or FCL)

<u>Step</u>	<u>Who</u>	<u>Action</u>
1.	Forester/Logger/Landowner	Request NHI and archaeological/historical/cultural data from DNR Forester and assess the harvesting site for BMP needs for water quality and invasive species.
2.	DNR Forester	Provide NHI and archaeological/historical/cultural initial review results (i.e.: “hits”/no “hits”) within 5 working days. Eligible individuals can be provided NHI data. If there are “hits” to address, additional time may be needed to determine appropriate avoidance measures. DNR Forester can assist with prescriptions as described earlier in Chapter 20.
3.	Forester/Logger/Landowner	Establish timber sale.
4.	Forester/Logger/Landowner	Fill out cutting notice. Providing complete and thorough information may help ensure the cutting notice is under the terms of and conforms to the management plan and expedite approval (if required). The person submitting the cutting notice must indicate their affiliation (e.g. Cooperating Forester, SAF Certified Forester) or their qualifications and experience on the cutting notice, along with their name on the Cutting Notice and Report form.
5.	Landowner	Sign cutting notice (page 1). Check the appropriate box to indicate whether requesting DNR review and approval. Note: DNR review and approval may or may not include a field review. If a consultant or other representative is signing the cutting notice on the landowner’s behalf, please review the information about signatures on the previous page.
6.	Forester/Logger/Landowner	Submit the cutting notice to the DNR Forester at least 30 days prior to harvesting timber.
7.	DNR Forester	Date stamp cutting notice received. Evaluate the cutting notice to determine if the Department approval is required <ul style="list-style-type: none">• If the cutting notice is submitted by a person whose name <u>does</u> appear on the Cutting Notice Registration List, the proposed cutting is under the terms of and conforms to the management plan, and the landowner has not requested DNR approval, <u>approval by the DNR Forester is not required.</u>• If the cutting notice is submitted by a person whose name <u>does</u> appear on the Cutting Notice Registration List, and the proposed cutting is <u>not</u> under the terms of and conforms to the management plan, <u>approval by the DNR Forester is required.</u>• If DNR review and approval is requested by the landowner, <u>approval by the DNR Forester is required.</u>• If the cutting notice is submitted by a person whose name <u>does not</u> appear on the Cutting Notice Registration List, <u>approval by the DNR Forester is required.</u>
8.	DNR Forester	Follow steps below for cutting notices that <u>either do or</u> do not require DNR approval.

If cutting notice DOES NOT REQUIRE DNR APPROVAL the DNR Forester or reviewer shall do the following:

1. Having determined the cutting notice was submitted by a person whose name appears on the Cutting Notice Registration List and the proposed cutting is under the terms of and conforms to the management plan, the DNR Forester does not need to approve the cutting notice, and does not need to sign page 1 of the cutting notice.
2. Input cutting notice information into WisFIRS Private Lands.
3. Return original notice to landowner and send a copy to the person who submitted the cutting notice, acknowledging that the cutting notice does not require DNR approval if it was submitted by a person whose name appears on the Cutting Notice Registration List and the proposed cutting is under the terms of and conforms to the management plan (or management commitment for large account landowners).
4. Retain a copy of the cutting notice for the DNR Forester's file.
5. Send reminder letters to landowners who have a cutting notice that is more than one year old to ensure harvest is still being implemented in a timely manner. Update cutting notice if necessary.
6. If a complaint is received from a landowner or 3rd party, inform supervisor. Complaint reviews should be expedited and conducted as soon as possible. If unsound forestry is discovered during a field review, follow the Steps to Successful Compliance and Enforcement from Chapter 60 of the Forest Tax Law Handbook.
7. If the cutting notice is not complete or accurate or a field review is warranted, the DNR Forester may obtain additional information. Use the most efficient method to obtain clarifying information.
 - a. Contact the person who submitted the notice to clarify and resolve the issue(s). Ideally a phone call to the landowner and landowner's agent is a good starting place.
 - b. Conduct a field review if additional clarification is deemed necessary pursuant to the criteria protocol below.
 - c. Once information or clarification is obtained, document in the file and ensure the proposed cutting is under the terms of and conforms to the management plan. Follow-up with the landowner and other involved parties to ensure they are aware of the information.

If cutting notice DOES REQUIRE DNR APPROVAL, the DNR Forester or reviewer shall do the following:

1. Take action to approve or return the cutting notice as soon as possible. Strive to get to an approvable notice within 30 days. Input cutting notice information into WisFIRS Private Lands.
2. Check the entire cutting notice and attached map for accuracy and completeness.
3. Determine if a field review is needed using the criteria listed below. The purpose of these criteria is to provide a relatively consistent method to determine when to spend time on field reviews with the goal of reducing the number of field reviews conducted. Staff, supervisors, and partners need to communicate often when questions arise. In general, a DNR reviewer should not field check cutting notices if all of the criteria below are met.**

Criteria For Which No Field Review Is Needed (must meet ALL criteria listed below):

- Mechanical thinning (e.g. row thinning/remove every 3rd row), simple clearcut, or simple coppice treatments.
- Silviculture complies with recommended silvicultural practices as described in the Silviculture Handbook, including the Generally Accepted Practices (see GAP's in Table 21.1) and other cover type guidance.
- For regeneration harvests: Reliable regeneration is expected within 3-5 years after cutting and adequate steps have been documented in the cutting notice to ensure full stocking of target regeneration (e.g., aspen simple coppice).
- Silvicultural prescription matches the MFL plan prescription.

- Timber sale map is consistent with the MFL stand(s) being treated.
- Cooperating Forester or SAF, WCF, or ACF accredited forester, or Master Logger involved in sale establishment.
- Appropriate green tree retention addressed.
- No listings for elements or concerns with respect to NHI, Archaeological & Historical Sites or these items are adequately addressed on Cutting notice.
- Mitigation measures required for BMP's for water quality, soil protection, invasive plants, or forest health or these items are adequately addressed on Cutting notice.
- Not a salvage harvest.

***If all of the above criteria are met but the reviewer would like to conduct a field review anyway, the reviewer will discuss reasons for their choice and obtain supervisor approval before conducting the field review. Likewise, if the all criteria are not met, but the reviewer does not think a field review of the cutting notice is necessary, the reviewer must document the reason(s) for not completing a field review. Complete documentation of the decision should be maintained in the landowner file or other appropriate location.*

4. If the cutting notice and attached map are complete, accurate, and no field review is warranted, then approve the notice.
5. If the cutting notice is not complete or accurate or a field review is warranted **the DNR Forester should obtain additional information. Use the most efficient method to obtain clarifying information and resolve the issue causing return.**
 - a. Contact the **person who submitted** the notice to clarify and resolve the issue(s). Ideally a phone call to the landowner and landowner's agent is a good starting place.
 - b. Conduct a field review if additional clarification is deemed necessary pursuant to the criteria protocol above.
 - c. Once information or clarification is obtained then, if appropriate, approve the cutting notice.
 - d. Document any additional conditions necessary to ensure **the proposed cutting is under the terms of and conforms to the management plan and is consistent with sound forestry. Follow-up with the landowner and other involved parties to ensure they are aware of these added conditions and information.**
6. **Before initiating this step, the DNR Forester must ensure their supervisor is aware and concurs with the need for full re-evaluation.** If the cutting notice cannot be approved, even after obtaining additional information which includes evaluating and suggesting other options, then formally notify the originator and landowner that a full re-evaluation of the proposed practice will be necessary in order to achieve an approvable cutting notice. Document all work in the landowner file and other designated method (e.g. WisFIRS).
7. Return original approved **cutting** notice to landowner and a copy to the **person who submitted the cutting notice.**
8. Retain a copy for the DNR Forester's file.
9. Send reminder letters to landowners whose cutting notice is more than one year old to ensure harvest is still being implemented in a timely manner. Update cutting notice if necessary.
10. If a complaint is received from a landowner or 3rd party, inform supervisor. Complaint reviews should be expedited and conducted as soon as possible. If unsound forestry is discovered during a field review, follow the Steps to Successful Compliance and Enforcement from Chapter 60 **of the Forest Tax Law Handbook**