

Clearinghouse Rule 07-012

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD AMENDING RULES

The Wisconsin Natural Resources Board proposes an order to amend NR 1.212(3)(a) pertaining to the referral of private timber sale requests to cooperating foresters.

FR-03-07

Summary Prepared by the Department of Natural Resources

1. **Statutes interpreted:** Sections 26.35 and 28.07, Stats.
2. **Statutory authority:** Sections 23.09(2)(h), 26.35, 28.07 and 227.11(2), Stats.
3. **Explanation of agency authority:** The statutes authorize the Department to provide sustainable forestry assistance including technical advice and incentive programs to private landowners in Wisconsin. The objective is to benefit as many landowners as possible with the resources that are available. To that end, program regulations establish priorities and service limitations to maximize efficiency.
4. **Related statute or rule:** Chapter NR 1.21 and NR 1.211 to 1.213 contain rules for the administration of the private forestry assistance program, priorities for servicing private forestry requests and establishment of a cooperative program with consulting and industrial foresters.
5. **Plain language analysis:** The rule revision requires referral of all timber sale requests from private landowners to cooperating foresters. DNR foresters would not provide timber harvest set up assistance to private landowners, regardless of the size of the forest tract, unless help is not reasonably available from private enterprise cooperators. The revision also drops redundant language about refusals from cooperators to provide service.
6. **Summary of and comparison with existing or proposed federal regulation:** There are no counterpart federal regulations regarding referral of timber sale requests to private foresters.
7. **Comparison with rules in adjacent states:** DNR foresters in Minnesota are allowed to establish private timber sales if the landowners pay a commission on the sale revenue. Other workload, however, results in most harvest requests being referred. Michigan DNR foresters do not provide timber sale marketing assistance to private landowners, that task being covered by local Michigan Conservation Districts. Many Michigan Conservation Districts provide timber sale assistance for a fee as a funding mechanism for their programs. Private consulting foresters often object to the competition.
8. **Summary of factual data and analytical methodologies:** Workload constraints compelled the Department to implement an interim policy to refer all private timber harvests since 2001. The proposed rule change would formalize use of the referral process for all timber harvest requests regardless of sale size. 87% of private land timber sale acreage is now being set up and administered by private Cooperating Foresters based on the 2003-2005 average accomplishment report data, with about only 13% coming back to the Department for assistance. The average total acreage of private land timber sales being reported as set up by DNR and Cooperating Foresters has also doubled since 1998, and so the referral policy appears to be working as intended.

9. **Summary of the methodologies used in support of the proposed rule:** In 2004-2005, the Department conducted a review of the private forestry assistance program. An ad hoc advisory panel including 14 stakeholder representatives found the timber sale referral process favorable and recommended its continuation. The Department Forestry Leadership Team reviewed the recommendations of the ad hoc panel and agreed that cooperators are providing quality timber sale set up service and that workload efficiencies justify making the referral policy permanent.
10. **Effect on small business:** This rule does affect small business. The rule would create an opportunity for private consulting forestry firms to expand to meet the demand for private timber harvest assistance. The rule would remove competition from the state to provide timber harvest assistance on private land. The rule does not, however, impose any new regulatory requirements on small businesses. The rule would also impact landowners who operate their woodlands as a small business, causing them to pay for timber sale set up and administration services from private enterprise foresters rather than receive free assistance from the state. Since the harvest activity generates a ready source of cash for landowners, it is appropriate that they deal with costs to sell timber as a business expense rather than rely on tax-supported help.

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Comments are to be submitted by March 30, 2007 to:

Lands Section, Bureau of Forest Management
Attn: Paul Pingrey FR/4
Wisconsin Department of Natural Resources
P.O. Box 7921
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Comments may also be electronically submitted at the following Internet site:
<http://adminrules.wisconsin.gov>.

SECTION 1. NR 1.212 (3) (a) is amended to read:

NR 1.212 (3) **Limitations, exemptions and prohibitions on assistance.** Assistance by department foresters shall ensure that forestry benefits will be provided to the greatest number of landowners.

(a) *Limitations.* 1. Each landowner requesting forest management assistance may receive no more than 3 work days (24 hours) of technical forestry service during each calendar year.

~~2. Department foresters may establish timber sales for private landowners where no more than 20 acres of sawtimber or no more than 40 acres of pole timber will be harvested and if the service has not been provided, up to these acreage limits, in the prior 10 year period.~~

~~3. 2. All timber sale marking and volume designation on land subject to a request for assistance when the landowner's timber sale requirements exceed the limitations specified in subd. 2., shall be referred to cooperating foresters pursuant to cooperative agreements between the department and the cooperating foresters. The department may not provide timber sale marking assistance unless the landowner can demonstrate to the department's satisfaction that timber sale assistance is not reasonably available from a cooperating forester, or such service has been reasonably requested by the landowner and the request has been refused by a cooperating forester. The department shall provide the necessary forms and specifications for this referral system.~~

~~4. 3. Department foresters may establish timber sales only after higher priorities are met.~~

~~5.~~ 4. Department foresters may only establish timber sales on lands for which there is a current forest management plan.

SECTION 2. EFFECTIVE DATE. The rule shall take effect the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22(2)(intro.), Stats.

SECTION 3. BOARD ADOPTION. The rule was approved and adopted by the State of Wisconsin Natural Resources Board on _____.

Dated at Madison, Wisconsin _____

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Scott Hassett, Secretary

(SEAL)