

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

The Wisconsin Natural Resources Board proposes an order to create NR 1.27 relating to contracting for forest regeneration services on state land.

FR-24-11

Analysis Prepared by the Department of Natural Resources

1. Statutes interpreted: Section 28.05 (3) (am) Wis. Stats., created by 2011 Act 32; and Section 28.025, Wis. Stats., created by 2005 Act 166.

2. Statutory authority: Section 28.05 (3) (am) Wis. Stats.

3. Explanation of Agency Authority to Promulgate the Proposed Rules Under the Statutory Authority: 2011 Act 32, Section 913e., Wis. Stat. s. 28.05 (3) (am), directs the department to, by rule, establish a program that allows cooperating foresters and private contractors to assist the state in regenerating harvested areas of state lands to meet the annual allowable timber harvest established under Wis. Stat. s. 28.025. The statute also directs the department to pay for the services from a portion of the proceeds received from timber sales.

4. Related Rule or Statute: Sections 28.02, 28.025, 28.04 and 28.05, Stats., give authority to the department to hold and acquire forestland, to manage it sustainably for numerous purposes and benefits, to identify and undertake allowable timber harvests, and to regenerate said affected annual harvest areas.

5. Plain Language Rule Analysis: This rule will include provisions authorizing the department to contract with cooperating foresters and private contractors to conduct artificial and natural forest regeneration activities including site preparation, tree planting, and invasive species control associated with forest regeneration. The rule shall authorize cooperating foresters and private contractors with whom the department contracts under this paragraph to receive a portion of the proceeds from timber harvests on state lands.

6. Summary of, and comparison with, existing or proposed federal regulations: The federal government provides a similar mechanism on federal lands. The USDA Forest Service utilizes the Knutson-Vandenberg – Brush Disposal (KV-BD) accounts, which are deductions from timber sales to fund forest regeneration and reduce fire hazard. The USDI Bureau of Indian Affairs utilizes Forest Management Deductions (FMD) under 25 CFR § 163.25 for a similar purpose.

7. Comparison with rules in adjacent states: A search of rules in Minnesota, Michigan, Iowa and Illinois revealed that these adjacent states do not have any similar rules.

8. Summary of factual data and analytical methodologies: 2005 Act 166 promulgated the process to provide an inventory of all forested public lands, identify the forest resources available for management, develop annual allowable harvest levels, and undertake such management within 90% and 110% of those levels. Act 166 further provided a mechanism, through the use of Cooperating Foresters, to assist the department in establishing timber sales. What was not provided was an additional funding source to implement pre and post harvest

regeneration treatments in the areas identified to be managed. These funds are needed to ensure the forest continues to be sustainably managed and to assure that the post harvest stand will continue to produce re-occurring forest products and other public benefits within state and certification guidelines. To date, department owned lands have seen a 190% increase in timber sale activity since 2005 from approximately 9700 acres to approximately 25,000 acres per year. With an increase in timber sale activities, regeneration needs closely follow the acres harvested.

In 2009, the Division of Forestry went through a property level analysis of what their projected annual regeneration needs would be (both in cost and area) for the next 10 years based on projected annual allowable harvest levels based on 2005 Act 166. It was determined that the regeneration costs (manpower, services, and supplies) significantly out-paced the funding available to perform regeneration related work given the increase in harvest levels.

In the absence of the new rule the department would rely on gifts, grants, and limited existing regeneration funds to implement regeneration activities on state owned lands. In the event that these funding sources would fall short of regeneration needs, the ability to achieve future desired conditions on state lands will continue to be hampered. In addition, land managers may be apprehensive to manage more complex ecosystems where a quick response of regeneration is required. The new rule will provide assurance that funding will be available to implement forest regeneration activities after harvesting has occurred.

9. Analysis and supporting documents used to determine effect on small business or in preparation of economic impact report: There are no new compliance, reporting, or bookkeeping requirements with the proposed rule.

10. Effect on small business: This rule does affect small business. It would create opportunities for cooperating foresters and private contractors to expand into providing more services on state-owned lands; but the rule does not impose any new regulatory requirements on small businesses.

11. Agency Contacts:

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

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13. Rule Language:

SECTION 1. NR 1.27 is created to read:

NR 1.27 Contracting with cooperating foresters and private contractors for regeneration services. The department may contract with private cooperating foresters and private contractors to assist the state in the regeneration of state forest lands to meet the annual allowable timber harvest established under s. 28.025, Stats.

- (1) **Definitions.** "Cooperating forester" has the meaning defined in s. NR 1.21(2) (b) and (e).
- (2) **Contracted tasks.** Tasks included in contracts with cooperating foresters and private contractors for state land regeneration services including, but not limited to, site preparation, invasive species control, and tree planting on harvested lands. The department will determine which of these services are appropriate to contract for on individual timber sales.
- (3) **Department tasks.** The department shall select areas to regenerate, determine regeneration systems to be applied, and define any additional procedures or precautions necessary to achieve objectives in approved master plans or other department policies. The department shall monitor the performance of cooperating foresters and private contractors contracting on state forest lands for quality of service and conformance to department standards.
- (4) **Bids for services and payments to cooperating foresters and private contractors.** Cooperating foresters and private contractors shall be compensated at the department's choice of a rate per hour, acre or project established by bids for individual projects. When a need for regeneration project assistance is identified, the department will issue a project-specific request for bids to cooperating foresters and private contractors that are experienced in the desired type of work. The department may establish pre-qualification lists of cooperators and private contractors serving an area. Bids may include labor, travel, equipment and any supplies such not identified as being provided by the department that a contractor would need to do the work. As provided in s. 28.05(3)(am), Stats., payments to cooperating foresters and private contractors for regeneration assistance on state-owned lands shall be paid from an appropriation of timber sale proceeds.

SECTION 2. EFFECTIVE DATE. This rule shall take 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 3. BOARD ADOPTION. This 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 _____
Cathy Stepp, Secretary

(SEAL)