

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

SUBJECT:

Request that the Board adopt Board Order FR-24-11, proposed rules affecting chapter NR 1 related to regenerating harvested areas of Department owned and managed lands.

FOR: June 2013 Board meeting

PRESENTER'S NAME AND TITLE: Teague Prichard, State Lands Specialist and Tim Beyer, Forester

SUMMARY:

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 Department owned lands to meet the annual allowable timber harvest established under Wis. Stat. s. 28.05.

This rule will create a funding mechanism for artificial and natural regeneration treatments conducted by cooperating foresters and private contractors directly related to timber sales specified in 2005 Act 166. The rule shall authorize cooperating foresters and private contractors with whom the Department contracts to receive a portion of the proceeds from timber harvests on Department owned lands. Regeneration treatments include site preparation, tree planting, and invasive species control associated with forest regeneration.

Entities that may be affected by the rule include: cooperating foresters and private contractors that perform regeneration services; forest nurseries that grow seedlings for regeneration; companies that sell pesticides used in site preparation, invasive plant control, and tree planting work; and companies that manufacture or sell equipment used in regeneration services.

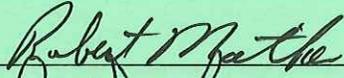
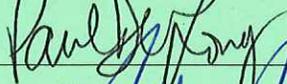
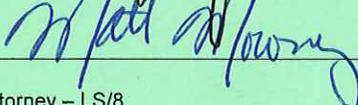
The board approved the Statement of Scope and authorized drafting of Board Order FR-24-11, related to regenerating harvested areas of Department owned and managed lands at their December 2011 meeting. Public hearing was authorized at the February 2013 meeting. Public hearing was held on April 26th, 2013 and no comments were submitted.

This rule is anticipated to be a Level 3 Economic Impact - Little to no economic impact expected. A positive impact may occur for businesses that provide regeneration services (including small businesses).

RECOMMENDATION: That the Board adopt Board Order FR-24-11.

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

- | | |
|---|---|
| <input checked="" type="checkbox"/> background memo | <input type="checkbox"/> Attachments to background memo |
| <input type="checkbox"/> Statement of scope | <input type="checkbox"/> Governor approval of statement of scope |
| <input checked="" type="checkbox"/> Fiscal estimate and economic impact analysis (EIA) form | <input type="checkbox"/> Environmental assessment or impact statement |
| <input type="checkbox"/> Response summary | <input checked="" type="checkbox"/> Board order/rule |

Approved by	Signature	Date
Robert Mather, Bureau Director		5/16/2013
Paul DeLong, Administrator		5/17/13
Cathy Stepp, Secretary		6/3/13

cc: Board Liaison - AD/8

Program attorney - LS/8

Department rule coordinator - LS/8

DATE: May 14, 2013

TO: All Members of the Natural Resources Board

FROM: Cathy Stepp, Secretary

SUBJECT: Background memo on Board Order FR-24-11, relating to adoption of proposed rules affecting chapter NR 1 related to regenerating harvested areas of Department owned and managed lands.

1. Subject of Proposed Rule:

The proposed rule addresses a funding mechanism for artificial and natural regeneration treatments conducted by cooperating foresters and private contractors to assist the state in regenerating harvested areas of Department owned lands to meet the annual allowable timber harvest established under Wis. Stat. s. 28.05

2. Background:

2005 Act 166 promulgated the process to provide an inventory of all forested Department of Natural Resource 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 harvested. 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.

3. Why is the rule being proposed?

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 the absence of the proposed rule the Department would rely on gifts, grants, and limited existing regeneration funds to implement regeneration activities on state owned lands. These funding sources fall short of regeneration needs and the ability to achieve future desired conditions on state lands will continue to be hampered. In addition, land managers may be apprehensive to harvest in 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.

4. Summary of the rule.

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.

5. How does this proposal affect existing policy?

This rule will create a funding mechanism to allow cooperating foresters and contractors performing regeneration related services on timber sales on department owned and managed lands to receive a portion of the proceeds of timber revenues deposited into the Forestry Account.

6. Has Board dealt with these issues before?

The board has not dealt with these issues before.

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

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

8. Soliciting public input on economic impact synopsis

The Department conducted an economic impact analysis in November of 2012 to determine if any individuals, businesses, or other entities expected to be affected economically. Comment requests were sent to 130 businesses that could be affected. Six responses were received, 4 indicating no impact to their businesses, and 2 indicating a positive impact and the potential ability to expand their businesses as a result of the rule.

9. Environmental Analysis

This is a Type III action under Chapter NR 150, Wis. Admin. Code. No environmental assessment is required.

10. Small Business Analysis

It is not expected that there will be any adverse economic impact directly related to this rule on small businesses (Level 3).

11. Hearing Synopsis and Response Summary

A public hearing was held on April 26th, 2013. No comments to the proposed rule were received either in person or in writing.

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

1. Type of Estimate and Analysis

Original Updated Corrected

2. Administrative Rule Chapter, Title and Number

NR 1, Contracting with cooperating foresters and private contractors for regenerations services, NR 1.27

3. Subject

Contracting with cooperating foresters or private contractors for forest regeneration services on harvested lands owned and managed by the Department of Natural Resource.

4. Fund Sources Affected

GPR FED PRO PRS SEG SEG-S

5. Chapter 20, Stats. Appropriations Affected
20.370 (1)(cy)

6. Fiscal Effect of Implementing the Rule

No Fiscal Effect Increase Existing Revenues Increase Costs
 Indeterminate Decrease Existing Revenues Could Absorb Within Agency's Budget
 Decrease Cost

7. The Rule Will Impact the Following (Check All That Apply)

State's Economy Specific Businesses/Sectors
 Local Government Units Public Utility Rate Payers
 Small Businesses (if checked, complete Attachment A)

8. Would Implementation and Compliance Costs Be Greater Than \$20 million?

Yes No

9. Policy Problem Addressed by the Rule

2005 Assembly Bill 254 and the resulting 2005 Act 166 promulgated the process to provide an inventory of all forested Department of Natural Resource 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 harvested. 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 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. These funding sources fall short of regeneration needs and the ability to achieve future desired conditions on state lands will continue to be hampered. In addition, land managers may be apprehensive to harvest in 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.

10. 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.

Entities that may be affected by the proposed rule that were contacted for comments include: cooperating foresters and private contractors that perform regeneration services. The department utilized a e-mail distribution list that includes registered cooperating foresters, members of Wisconsin Consulting Foresters (WCF), and small businesses that perform regeneration services.

11. Identify the local governmental units that participated in the development of this EIA.

No local units of government are affected by this rule and as such none were involved in the development of the EIA

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

12. 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)

The rule will provide a positive economic impact on short and long term business opportunities for contractors that perform and provide regeneration services and equipment. It is estimated that annual state spending under the rule will be between \$300,000.00 and \$600,000.00. This will support between 6,000 and 12,000 contractor-hours spread across the entire state, but concentrated in rural areas. The forests will continue to be sustainably managed and assure that the post harvest stand will continue to produce re-occurring forest products and other public benefits, including long-term support of Wisconsin forest products industry.

Minimal implementation or compliance costs are expected to be incurred. Any oversight or administration of this rule will be performed by existing staff.

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

The new rule will provide assurance that funding will be available to implement forest regeneration activities after harvesting has occurred. 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. Implementing the rule will allow the Department to meet land management objectives identified in property master plans and provide assurances that harvested lands will be regenerated and those harvested lands will be managed accordingly.

14. Long Range Implications of Implementing the Rule

Wisconsin's state forests will continue 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 guidelines.

15. Compare With Approaches Being Used by Federal Government

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 and method.

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

A search of rules in Illinois, Iowa, Michigan, and Minnesota revealed that these states do not have similar rules

17. Contact Name	18. Contact Phone Number
Tim Beyer	(920) 892-8756 x3047

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

ADMINISTRATIVE RULES
Fiscal Estimate & Economic Impact Analysis

ATTACHMENT A

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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)

The rule will provide a positive economic impact on short and long term business opportunities for contractors that perform and provide regeneration services and equipment. It is estimated that annual state spending under the rule will be between \$300,000.00 and \$600,000.00. This will support between 6,000 and 12,000 contractor-hours spread across the entire state, but concentrated in rural areas. The forests will continue to be sustainably managed and assure that the post harvest stand will continue to produce re-occurring forest products and other public benefits, including long-term support of Wisconsin forest products industry.

There are no new compliance, reporting, or bookkeeping requirements with the proposed rule..

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

This rule is not expected to have any adverse impact on small businesses.

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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:

There will be no impact on small business.

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

This rule provided a positive economic impact on small businesses the perform regeneration services. Minimal implementation or compliance costs are expected to be borne by small businesses. It simply provides a funding mechanism to fund regeneration work on state managed lands.

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5. Describe the Rule's Enforcement Provisions

There are no enforcement provisions specific to this rule other that enforcement of performance measures outlined in State of Wisconsin Professional Services contracts (specific performance criteria, state labor laws, etc.)

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

Yes No

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 lands.

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. 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 statutes or rules. 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 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 statutes and 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 analysis. 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:

Teague Prichard, State Lands Specialist
Bureau of Forest Management
Ph: 608-264-8883
e-mail: teague.prichard@wisconsin.gov

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

Tim Beyer
Wisconsin Department of Natural Resources
1155 Pilgrim Road
Plymouth, WI 53073
920-892-8756 x3047
Tim.Beyer@wisconsin.gov

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.

- (1) **PURPOSE.** 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..
- (2) **DEFINITION.** "Cooperating forester" has the meaning given in s. NR 1.21(2) (b).
- (3) **CONTRACTED TASKS.** Tasks included in contracts with cooperating foresters and private contractors for state lands regeneration services may include, site preparation, invasive species control, and tree planting on harvested lands. The department shall determine which of these services are appropriate to contract for on individual timber sales.
- (4) **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.
- (5) **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 shall 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 cooperating foresters and private contractors serving an area. Bids may include labor, travel, equipment and any supplies not identified as being provided by the department that a private 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

(SEAL)

By _____
Cathy Stepp, Secretary