Form 1100-001
(R 2/07)

NATURAL RESOURCES BOARD AGENDA ITEM

Item No. 3.B.3

SUBJECT: Adoption of Board Order FR-03-07 to revise chapter NR 1.212 (3) (a) relating to the referral of private timber sale requests to cooperating foresters

FOR: JUNE 2007 **BOARD MEETING**

TO BE PRESENTED BY: Paul Pingrey, Sustainable Forest Certifcation Coordinator

SUMMARY:

Revise private forestry policy to require 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. By limiting DNR forester assistance on private lands, they may direct further efforts to DNR's lands and addressing the allowable cut as provided for in 2005 Act 166.

RECOMMENDATION: Adopt FR-03-07 to revise chapter NR 1.212 (3) (a) relating to the referral of private timber sale requests to cooperating foresters.

LIST OF ATTACHED MATERIALS:

No	☐	Fiscal Estimate Required	Yes	☑	Attached
No	☑	Environmental Assessment or Impact Statement Required	Yes	☐	Attached
No	☐	Background Memo	Yes	☑	Attached

APPROVED:

Robert J Mather — Bureau Director, — Date 05/03/07

Paul DeLong — Administrator, — Date 5/9/07

Mary Wolsey Schlaefer — for Secretary, Scott Hassett — Date 6/13/07

cc: Laurie J. Ross - AD/5
Carol Turner - LS/5
Jimmy Christenson - LS/5
Robert Mather - FR/4
Allison Hellman - FR/4
Paul Pingrey - FR/4

CORRESPONDENCE/MEMORANDUM

State of Wisconsin

DATE: May 2, 2007 FILE REF: 2400

TO: Natural Resources Board

FROM: Scott Hassett

SUBJECT: Adoption of Board Order FR-03-07 to revise chapter NR 1.212(3) (a) relating to the referral of private timber sale requests to cooperating foresters.

1. Why is the rule being proposed?

The capacity of private sector foresters to provide timber harvest assistance to woodland owners has grown considerably since chapter NR 1.212 was created in 1989. During the same time, DNR foresters' workload grew to address other management needs on private and public lands. To make the most effective use of Department staff, an interim directive was issued in 2001 to refer all private timber sale requests to cooperating foresters. That pilot is working to the satisfaction of the Department, cooperators and most landowners. Limiting DNR forester assistance on private timber sales will also further efforts to address the allowable harvest on DNR lands as provided for in 2005 Act 166.

2. Summary of the rule.

The rule revision would require 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.

3. How does this proposal affect existing policy?

Under the rule adopted in 1989, department foresters were allowed to set up private timber sales that did not exceed 20 acres of sawtimber or 40 acres of pulpwood within certain timing or frequency limitations for an individual landowner. Sales larger than those limitations could be set up by department foresters only if service was not reasonably available from cooperators. Under terms of the Cooperating Forester Agreement, cooperators have sixty days to respond to landowners before the requests come back to the Department for service. Landowners must be able to document their good faith efforts to find cooperator assistance. 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. DNR foresters set up 930 private timber harvests on approximately 14,000 acres in 2006, demonstrating that DNR service is still available when needed.

Redundant language in the rule allowing DNR to mark private harvests if the landowner can produce a letter of refusal from a cooperator would be dropped. That provision was abused in some instances when landowners in one part of the state would get refusal letters from cooperators in another region, using the refusals as justification for free service from the Department.

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4. Hearing Synopsis.

A video conference hearing was conducted March 21, 2007 in public meeting rooms located in Madison, Eau Claire and Rhinelander. There were no personal appearances related to this rule. Four written comments were received.

One written comment from Mr. George Rogers of Stevens Point was opposed to the rule change. While he would be willing to hire a Cooperator to set up timber sales on his forty acre tract, Mr. Rogers expressed concern that owners of smaller tracts would not. He felt that small tracts might be mismanaged if free assistance is not immediately available from DNR. The Department agrees there is some risk that owners of small parcels might not be willing to take the time to search out assistance from private foresters. We are encouraging more training for loggers and piloting private programs to aggregate small timber sales, which will hopefully be efficient alternatives. As noted above, DNR still does help a substantial number of landowners annually who have gone through the timber sale referral process.

Three letters supporting the rule were received from Wisconsin Consulting Foresters (WCF) members Allan Waelchli, Ray Perry and Jeff Christie. To augment the policy change, the WCF letters recommended the Department consider adjustments to administrative provisions in Manual Code. The Forestry Division Leadership Team will be looking at those requests, which appear to be reasonable.

5. Response to the Legislative Council Rules Clearinghouse.

The comments in Clearinghouse Rule 07-012 (minor editorial changes) relating to NRB Order FR-03-07 have been addressed.

6. Information on environmental analysis, if needed.

The Environmental Analysis and Review Specialist in the Division of Enforcement and Science, Office of Energy determined that these rules are a Type III action under s. NR 150, Wis. Admin. Code and that an environmental analysis is not required.

7. Final Regulatory Flexibility Analysis.

The proposed rule has an economic impact on a substantial number of small businesses. 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 or reporting 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.

Cc: Quinn Williams – LS/5
Carol Turner – LS/5
Robert Mather – FR/4
Paul Pingrey – FR/4

CORRESPONDENCE/MEMORANDUM

State of Wisconsin

DATE: May 2, 2007

FROM: Paul Pingrey, Division of Forestry

SUBJECT: Clearinghouse Rule 07-012

Revisions to the proposed Natural Resources Board Order FR-03-07 are attached in response to the Rules Clearinghouse review.

2. Form, Style and Placement in Administrative Code

a. In the rule's relating clause, "pertaining to" has been replaced with "relating to."

b. Section NR 1.212 (3) (intro.) has been dropped since is not affected by the rule. In sub. (3) (a) 1, "24 hours" has been inserted in place of "3 work days (24 hours)."

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Wisconsin Department of Administration
Division of Executive Budget and Finance
DOA-2048 (R10/2000)

Fiscal Estimate — 2007 Session

		LRB Number	Amendment Number if Applicable
☒ Original	☐ Updated		
☐ Corrected	☐ Supplemental	Bill Number	Administrative Rule Number NR 1.212 (NRB Order FR-0307)

Subject

Revision of chapter NR 1.212 (3) (a) pertaining to the referral of private timber sale requests to cooperating foresters.

Fiscal Effect

State: ☒ No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

☐ Increase Existing Appropriation ☐ Increase Existing Revenues
☐ Decrease Existing Appropriation ☐ Decrease Existing Revenues
☐ Create New Appropriation

☐ Increase Costs — May be possible to absorb within agency's budget.
☐ Yes ☐ No

☐ Decrease Costs

Local: ☒ No Local Government Costs

1. ☐ Increase Costs
   ☐ Permissive ☐ Mandatory
2. ☐ Decrease Costs
   ☐ Permissive ☐ Mandatory
3. ☐ Increase Revenues
   ☐ Permissive ☐ Mandatory
4. ☐ Decrease Revenues
   ☐ Permissive ☐ Mandatory
5. Types of Local Governmental Units Affected:
   ☐ Towns ☐ Villages ☐ Cities
   ☐ Counties ☐ Others _____
   ☐ School Districts ☐ WTCS Districts

Fund Sources Affected

☐ GPR ☐ FED ☐ PRO ☐ PRS ☒ SEG ☐ SEG-S

Affected Chapter 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate

The rule revision would require 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.

Workload constraints compelled the Department to implement an interim policy to refer all timber harvests since 2001. The rule revision would make the policy change permanent. Although DNR foresters do not spend as much time setting up private timber sales, their time is redirected to other private forestry assistance needs such as administration of the Managed Forest Law and to meeting management needs on state-owned land. The landowners' cost to pay for assistance from cooperators comes from harvest revenue and is not a governmental expense.

Long-Range Fiscal Implications

None.

Prepared By:	Telephone No.	Agency
Joseph Polasek	266-2794	Department of Natural Resources
Authorized Signature	Telephone No.	Date (mm/dd/ccyy)
	266-2794	12/12/2006

Wisconsin Department of Administration
Division of Executive Budget and Finance
DOA-2047 (R10/2000)

Fiscal Estimate Worksheet — 2007 Session

Detailed Estimate of Annual Fiscal Effect

		LRB Number	Amendment Number if Applicable
☒ Original	☐ Updated		
☐ Corrected	☐ Supplemental	Bill Number	Administrative Rule Number NR 1.212 (NRB Order FR-0307)

Subject

Revision of chapter NR 1.212 (3) (a) pertaining to the referral of private timber sale requests to cooperating foresters.

One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):

Annualized Costs:	Annualized Fiscal Impact on State Funds from:	
A. State Costs by Category	Increased Costs	Decreased Costs
State Operations — Salaries and Fringes	$ 0	$ - 0
(FTE Position Changes)	(0 FTE)	(- 0 FTE)
State Operations — Other Costs	0	- 0
Local Assistance	0	- 0
Aids to Individuals or Organizations	0	- 0
Total State Costs by Category	$ 0	$ -
B. State Costs by Source of Funds	Increased Costs	Decreased Costs
GPR	$	$ -
FED		-
PRO/PRS		-
SEG/SEG-S	0	-
State Revenues — Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)	Increased Revenue	Decreased Revenue
GPR Taxes	$	$ -
GPR Earned		-
FED		-
PRO/PRS		-
SEG/SEG-S	0	-
Total State Revenues	$ 0	$ -

Net Annualized Fiscal Impact

	State	Local
Net Change in Costs	$ 0	$
Net Change in Revenues	$ 0	$

Prepared By:	Telephone No.	Agency
Joe Polasek	266-2794	Department of Natural Resources
Authorized Signature Joe Polasek	Telephone No. 266-2794	Date (mm/dd/ccyy) 12/12/2006

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
AMENDING RULES

The Wisconsin Natural Resources Board proposes an order to amend s. NR 1.212(3) (a) relating 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 or reporting 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.

Agency contact person: Paul E. Pingrey, Private Forestry - Forest Certification Specialist
Ph: 608-267-7595
e-mail: paul.pingrey@wisconsin.gov

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

NR 1.212 (3) (a) *Limitations.* 1. Each landowner requesting forest management assistance may receive no more than ~~3 work days (24 hours)~~ 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 poletimber will be harvested and if the service has not been provided, up to these acreage limits, in the prior 10 year period.~~

~~3.~~ 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)