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

The Wisconsin Natural Resources Board proposes an order to amend NR 1.21(2)(e) pertaining to the educational requirements for cooperating foresters and to create NR 1.26 relating to contracting for timber sale establishment services on state land.

FR-02-07

Summary Prepared by the Department of Natural Resources

1. **Statutes interpreted**: Section 28.025, Wis. Stats., created by of 2005 Act 166.

2. **Statutory authority**: Sections 28.025 and 28.05 (3), Wis. Stats.

3. **Explanation of agency authority**: Section 28.025, Wis. Stats., directs the Department to develop a timber sale contracting program with private "cooperating foresters" for assistance in meeting allowable harvest goals on state land. The statute also directs the Department to pay for the foresters' services from a portion of the proceeds received from each timber sale.

4. **Related statute or rule**: Sections 28.04, 28.042, and 28.05, Stats., give authority to the Department to hold and acquire forestland, to manage it for numerous purposes and benefits, and to harvest timber. Section 28.045, Stats., establishes educational requirements for Department foresters.

5. **Plain language analysis**: Section 1 makes technical corrections in the definition of educational requirements for cooperating foresters. The change would make educational requirements for cooperating foresters and department foresters identical, including the allowance of training equivalent to that obtained at a college accredited by the Society of American Foresters.

   Section 2 of the proposed rule distinguishes between timber sales related tasks that can be contracted and functions that Department staff must perform to protect the resource and assure compliance with regulations and property master plans. The purpose is to divide technical activities that are appropriate for contracting from administration of finance, policy and compliance issues. The rule defines bidding and payment procedures for the contracted services.

6. **Summary of and comparison with existing or proposed federal regulation**: There are no federal regulations regarding forestry contracting that apply to state-owned lands, but U.S. Forest Service regulations provide for a similar program to contract for technical forestry assistance on National Forests in Wisconsin and were used as a model for this rule.

7. **Comparison with rules in adjacent states**: Adjacent states have regulations that allow for contracting of services on state-owned land, as did Wisconsin prior to the enactment of 2005 Act 166. What is unique about the Wisconsin program in Section 28.025, Stats., is authorization to pay for the contracted services from an appropriation of timber harvest revenue rather than the annual operating budget of the agency.

8. **Summary of factual data and analytical methodologies**: A detailed analysis was completed in 2005 by the Department and Legislative Fiscal Bureau as part of 2005 Act 166. It estimates a backlog in timber sales and forest inventory on state-owned land would require 43 full-time-equivalent (FTE) positions to bring up to date and an additional 28.75 FTEs annually to keep current with resource needs. Since it is not practical to add enough state employees or to reallocate enough time to address the entire demand, enabling contracting and payment from harvest revenue could be an effective option. The legislative analysis found that implementing a program to contract for timber sale assistance has the potential to increase state revenue by approximately $6 million/yr at a cost of about $2 million/yr (actual costs based on bidding could be significantly lower). Following through with allowable harvest goals would also improve forest health and help the Department better manage the land. Any increase in harvesting timber would not be allowed unless useful as a tool for

achieving property objectives and consistent with property master plans or the purposes for which the land was acquired by the state.

9. **Summary of the methodologies used in support of the proposed rule:** In developing 2005 Act 166, the Legislature considered forest inventory and timber harvest accomplishment data collected since mid-1900. Testimony was received from stakeholders at hearings across the state. Testimony supported the need for assistance and an effective way to pay for contracted services to complement the forest management efforts of agency employees.

10. **Effect on small business:** This rule does affect small business. It would create an opportunity for private consulting forestry firms to add an estimated 18.75 positions as explained in the fiscal analysis and expand into providing more services on state-owned land; but the rule does not impose any new regulatory or reporting requirements on small businesses. The proposed change in the educational requirements for cooperating foresters is more flexible than the definition that was adopted under NR 1.21(2) (e) in 1989. The revised educational requirement would clarify that the Chief State Forester can identify college training that is equivalent to accreditation by the Society of American Foresters. While training equivalency is allowed under statute for Department foresters, the existing rule for cooperating foresters does not specifically address equivalent degree programs. The rule revision would correct the discrepancy.

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SECTION 1. NR 1.21(2) (e) is amended to read:

NR 1.21(2)(e) "Forester" means a person other than one employed by the department who has received ~~a forestry degree in an accredited forest management curriculum from a university or college with a 4–year curriculum, or accredited graduate degree in the management of forest resources~~ a bachelor's or higher degree in forestry from a school of forestry with a curriculum accredited by the Society of American Foresters or an equivalent degree, as determined by the chief state forester.

SECTION 2. NR 1.26 is created to read:

NR 1.26 Contracting with cooperating foresters for timber sale establishment. (1) PURPOSE. The department may contract with private cooperating foresters to assist the state in the harvesting and sale of timber from 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 cooperating forester contracts for state land timber harvests may include updating of forest reconnaissance, marking of trees and harvest boundaries, estimating volume, preparing maps, recommending timber sale contract terms or operational specifications, providing data on cutting notices and reports, scaling cut products, and inspecting active harvests. 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 harvest, determine silvicultural harvest systems to be applied, and define any additional timber sale procedures or precautions necessary to achieve objectives in approved master plans or other department policies. The department shall review and approve cutting notices and reports, prepare contracts, advertise for timber sale bids, award sales, receive stumpage payments and performance bonds, and administer timber sale contracts. The department shall monitor the performance of cooperating foresters contracting on state forest timber harvests for quality of service and conformance to department standards.

(5) BIDS FOR SERVICES AND PAYMENTS TO COOPERATING FORESTERS. Cooperating foresters shall be compensated at the department's choice of a rate per hour, acre or project established by bids. When a need for

timber sale assistance is identified, the department shall issue a request for bids to cooperating foresters serving the area. Bids shall include labor, travel, equipment and any supplies such as marking paint not identified as being provided by the department that a contractor would need to do the work. Timber sale assistance contract awards shall be determined on price alone unless additional evaluation criteria such as specialized training or experience are included in the request for bids.

(6) METHOD TO ALLOT TIMBER SALE REVENUE. As provided in s. 28.05, Stats., payments to cooperating foresters for timber harvesting and selling assistance on state-owned land shall be paid from an allocation of timber sale proceeds. The department of natural resources shall make periodic requests to the department of administration for allocations of funding to the cooperating foresters appropriation, s. 20.370(1)(cy), Stats. The size of the requested allocation shall be based on outstanding purchase requisitions for the contracted timber harvest assistance. The appropriation shall be split-funded with the proportionate splits coming from the administrative function accounts where the timber sale revenues are deposited.

SECTION 3. 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 4. BOARD ADOPTION. The rule was approved and adopted by the State of Wisconsin Natural Resources Board on June 27, 2007.

Dated at Madison, Wisconsin _____

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Scott Hassett, Secretary

(SEAL)