

**NOTICE TO PRESIDING OFFICERS
OF PROPOSED RULEMAKING**

Pursuant to s. 227.19, Stats., notice is hereby given that final draft rules are being submitted to the presiding officer of each house of the legislature. The rules being submitted are:

Natural Resources Board Order No. FR-11-01

Legislative Council Rules Clearinghouse Number 01-030

Subject of Rules Cooperating forester program and private forestry priorities for assistance

Date of Transmittal to Presiding Officers July 10, 2001

Send a copy of any correspondence or notices pertaining to this rule to:

Carol Turner, Rules Coordinator
DNR Bureau of Legal Services
LS/5, 101 South Webster

Telephone: 266-1959
e-mail: turnec@dnr.state.wi.us

An electronic copy of the proposed rule may be obtained by contacting Ms. Turner

REPORT TO LEGISLATURE

NR 1.212 and 1.213, Wis. Adm. Code
Cooperating forester program and private forestry priorities for assistance

Board Order No. FR-11-01
Clearinghouse Rule No. 01-030

Statement of Need

In 1999, the Department completed a review of the private forestry assistance program. As recommended in the study, the proposed rule will heighten recognition that simple, direct initial forestry guidance to private landowners is a critical service provided by the Department. Department foresters have an important role in other specific activities including the administration of forest incentive programs. More complicated or time consuming private forestry tasks, such as timber marking, however, should be a first priority for complementary service providers in private enterprise or other agencies rather than for Department foresters. The rule change would acknowledge that Wisconsin's private forestry assistance network is much larger than the Department itself and that others, like private enterprise, have important responsibilities.

The 1999 private forestry study also concluded that landowners would have more confidence in hiring private foresters who participate in the Department's Cooperating Forester Program if the cooperators agreed to consistently adhere to high forest management standards. Under the proposed rule, cooperators will agree to apply DNR silviculture and management standards wherever they provide forestry assistance. Currently, cooperators agree to follow DNR forestry standards only on work coming directly from DNR referrals, with a possibility of lower standards elsewhere. That variance can result in a lack of trust on the part of DNR foresters who promote the hiring of cooperators and a reduction in confidence from landowners considering the services of cooperators. The rule change will remove potential conflicts of a double standard. The rule will also raise the minimum continuing forestry education requirement for cooperators from six to ten hours per year in an additional effort to improve quality.

Modifications as a Result of Public Hearing

The Department removed the insurance requirement as a condition for participating in the cooperating forester program. Instead, the Department will request information on the cooperating forester application about insurance coverage carried by each firm. Insurance coverage will be specified in each forester's listing in the directory, allowing landowners to decide if it is an important factor in their selection of a cooperator to hire.

A note was added to clarify that the rule does not apply to timber being cut on land for land use conversions.

In s. NR 1.212(1)(e), administration of federal *forestry-related* cost-sharing programs was added as a top priority. In s. NR 1.212(1)(f), assistance to school and community forests was added. In s. NR 1.212(1)(h) and (2)(b), additional emphasis was placed on facilitating tree seedling orders and shipments and on providing tree planting advice.

Appearances at the Public Hearings and Their Position

April 11, 2001 – Stevens Point

In support:

Allan Waelchli, W7251 Belle Plaine Avenue, Shawano, WI 54160
Nancy Livingston, 832 8th Avenue, Hancock, WI 54943
John P. Czerwonka, 565 S. State Road 49, Wittenberg, WI 54499-963
Jeff Niese, Neise Rural Land Management, 40 Market Avenue, Port Edwards, WI 54469

In opposition:

Peter Johnson, Abrams Lumber Company, W1961 Ray Road, Seymour, WI 54165
Dan Kretz, Kretz Lumber Company, Inc., W8570 County F, Antigo, WI 54409
Al Koepfel, Kretz Lumber Company, Inc., P.O. Box 160, Antigo, WI 54409

As interest may appear:

George Rogers, 1032 Ridge Road, Stevens Point, WI 54481
Scott A. Eppler, Groeschl Forestry Consulting, Inc., 1750 Anderson Street, Three Lakes, WI 54562
Paul Ahlen, W10420 Beechnut Drive, Hancock, WI 54943

April 12, 2001- Eau Claire

In support:

Jack D. Edson, Wisconsin Woodland Owners Assn., S12824 County Road V, Strum, WI 54770
Keith Krajewski, Association of Consulting Foresters, S7051 County Road B, Eau Claire, WI 54701
Steve Edge, Society of American Foresters, 1910 Deepwood Court, Eau Claire, WI 54703

In opposition:

Pete Hilgers, 1770 Lone Pine Lane, Mosinee, WI 54409
Kris Denhardt, Northwest Hardwoods, 26445 100th Avenue, Cadott, WI 54727
Steve Pilgrim, Northwest Hardwoods, 3640 290th Street, Cadott, WI 54727

As interest may appear:

Rep. John Ainsworth, W6382 Waukechon Road, Shawano, WI 54166
David Lee, 1217 River Avenue East, Ladysmith, WI 54848
Jim Heevey, 144 27th Street, New Auburn, WI 54757
Glenn H. Carlson, Eau Claire, WI 54701

April 19, 2001 – Green Bay

In support:

Gene C. Lasch, N4815 State Highway 22, Shawano, WI 54166
Virgil Kopitske, Wis. Woodland Owners Assn., N795 Lessor Navarino Road, Bonduel, WI 54107
Lee J. Lehrer, Wis. Woodland Owners Assn., 916 Laurel Lane, Kaukauna, WI 54130
Merlin C. Becker, Wis. Woodland Owners Assn., N6888 State Road 22/110, Manawa, WI 54949
Georgiann Becker, Wis. Woodland Owners Assn., N6888 State Road 22/110, Manawa, WI 54949

Peter Wagner, Association of Consulting Foresters, 7702 Sinawa Road, Valders, WI 54245
Ellen E. Wagner, Wagner Woods and Wildlife, 7702 Sinawa Road, Valders, WI 54245
Larry Bonde, Manitowoc Co. Land Conservation Committee, 12211 Marken Road, Kiel, WI 53042

In opposition:

Jamie Waite, Krueger Lumber Co., Inc., 21324 U.S. Hwy. 151, Valders, WI
Al Koeppel, P.O. Box 160, Antigo, WI
Dan Kretz, Kretz Lumber Company, Inc., W8570 County Road F, Antigo, WI 54409

As interest may appear:

Wayne Wood, Right Path Forestry, P.O. Box 10914, Green Bay, WI 54307
George Howlett, Jr., 422 Keune Street, Seymour, WI 54165
Rep. John Ainsworth, W6382 Waukechon Road, Shawano, WI 54166
John Lubbers, 3255 Lakeview Drive, Suamico, WI 54173

Response to Legislative Council Rules Clearinghouse Report

The recommendations were accepted.

Final Regulatory Flexibility Analysis

The proposed rule should increase business for private enterprise. The changes in work priorities for Department foresters emphasize their role in giving landowners objective initial guidance followed by referral to private enterprise resource managers to implement the work. Raising the resource management standards and continuing education requirements will help build trust between the public and private forestry partners. It will also improve the confidence of landowners to hire cooperating foresters to assist them with their projects.

Most private consulting foresters and industrial foresters who worked on the development of the rules and the associated Cooperating Forester Agreement are in support of the changes. They believe that the commitment to higher management standards, investment in more training and other changes will be beneficial to their businesses and the health of the state's forests.

A minority of firms expressed dissent. They observed that landowners demanding service outside the bounds of the standards (such as an unsound timber harvest) would simply turn elsewhere, perhaps to a firm that would do even more environmental damage. They argued that although they would prefer not to help a landowner with a less than desirable cutting plan, their involvement could achieve at least some environmental protection (like erosion control), which is better than none. Some of the opponents also believed that raising forestry standards could inhibit a landowner's right to do as they wished on their property.

Since participation in the Cooperating Forester Program is entirely voluntary, those firms that are in disagreement with the new policies are free to continue their businesses independently from the program. The Cooperating Forester Program does not prevent non-participants from conducting business as they see fit or landowners from doing as they wish. Non-sustainable work, however, cannot be done under purview of the Cooperating Forester program. Supporters of the revisions, including landowner and forest industry representatives, believe that a voluntary Cooperating Forester program based on consistent standards would be effective and less obtrusive to business than mandatory forestry practice laws. The proposal is the kind of program that the public expects and landowners are demanding.

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

The Wisconsin Natural Resources Board proposes an order to amend NR 1.213(3)(b) and (d) and to repeal and recreate NR 1.212(1) and (2) relating to the cooperating forester program and private forestry priorities for assistance.

FR-11-01

Analysis Prepared by the Department of Natural Resources

Statutory Authority: ss. 23.09(2)(h), 26.35, 28.07 and 227.11(2), Stats.
Statutes Interpreted: ss. 26.35 and 28.07, Stats.

Private Forestry Priorities for Assistance: Department foresters provide forest management assistance to over 10,000 private landowners annually. Requests for assistance, however, are significantly greater than can be served with available staff. NR 1.212(1) and (2) provide guidance in setting priorities followed by Department foresters when scheduling their work. The rule establishes initial management guidance to landowners, timber harvest advice, referrals to cooperating private foresters for timber harvest marking, forestry incentives program administration, and landowner education among the highest priorities. Less emphasis would be placed on providing complex or detailed services that may be available from private enterprise or on practices that are not mandatory under the forest tax programs. These changes are designed to make more efficient use of DNR staff time and to integrate state forestry services more closely with assistance available from private enterprise and other groups in order to serve as many landowners as practical.

Cooperating Forester Program: Department foresters and foresters in private enterprise offer complementary services, each having particular strengths in motivating landowners and helping them implement forestry practices. The Cooperating Forester Program was established by rule in 1989 to provide a framework for giving out landowners' forestry assistance requests to private consulting foresters and industrial foresters that participate. Lists of Cooperators' names are also provided to landowners wanting to make their own contacts.

The proposed rule requires Cooperating Foresters to apply DNR approved silviculture guidelines on all private land where they provide service. Currently, Cooperators agree to follow DNR forestry standards only on work coming directly from DNR referrals, with a possibility of lower standards elsewhere. That variance can result in a lack of trust on the part of DNR foresters who promote the hiring of Cooperators and a reduction in confidence from landowners considering the services of foresters on the Department's Cooperating Forester lists. The rule change will remove potential conflicts of a double standard. The rule will also raise the minimum continuing forestry education requirement for Cooperators from six to ten hours per year in an additional effort to improve quality.

SECTION 1. NR 1.212(1) and (2) are repealed and recreated to read:

NR 1.212 (1) PRIORITY I ACTIVITIES. The following activities, listed in order of significance, shall be the highest priority for department foresters providing private forestry assistance except that department foresters may exercise discretion in applying the priorities within this subsection and sub. (2) based on statutory requirements, seasonal needs and scheduling efficiency:

(a) A first time request from a landowner for management guidance including an assessment of the landowner's objectives, a walk-through or cruise of the property, educational and advisory information, written management recommendations or referral to other resource professionals.

(b) Timber sale guidance including forest reconnaissance, a written harvest prescription or a referral to other resource professionals.

Note: Timber sale guidance is distinguished from timber sale marking, which is listed in sub. (2)(a).

(c) Administration and oversight of the forest tax laws including review of petitions for eligibility, preparation of management plans, mandatory practices follow up and enforcement of the provisions of the law.

(d) Establishment of mandatory practices under forest tax laws in subchs. I and VI, ch. 77, Stats., if a cooperating forester has not provided assistance.

(e) Administration of the Wisconsin forest landowner grant program in s. 26.38, Stats., and federal cost-sharing programs related to forest management practices.

(f) One-to-one educational opportunities with private landowners and cooperating foresters; landowner or educator conferences, workshops and field demonstrations; assistance to school and community forests; and news articles.

(g) Major pest outbreaks or other catastrophic occurrences.

(h) Coordination of state tree nursery orders and shipments.

(2) PRIORITY II ACTIVITIES. The following activities shall be important, but a lower priority for department foresters providing private forestry assistance:

(a) Timber sale marking and volume designation including painting, flagging or otherwise marking individual trees or cutting boundaries for the purpose of a commercial harvest on land not under the forest tax programs in subchs. I and VI, ch. 77, Stats., but for which there is a written management plan and within the limitations specified in sub. (3).

(b) Tree planting advice on land not under the forest tax programs in subchs. I and VI, ch. 77, Stats., or a state or federal cost-sharing program.

(c) Certification of need and performance for federal cost-sharing assistance programs not immediately related to management of forests.

(d) Educational presentations to school groups, civic groups, or at parades or fairs.

(e) Development of forest stewardship management plans on lands not enrolled or for which there is no application for enrollment under the forest tax laws in subchs. I and VI, ch. 77, Stats.

(f) Facilitation of any forest improvement, pruning, thinning, site preparation, release or tree planting practices which are not mandatory under the forest tax programs in subchs. I and VI, ch. 77, Stats.

(g) Insect and disease surveys and recommendations other than those related to catastrophic outbreaks.

SECTION 2. NR 1.213(3)(b) and (d) are amended to read:

NR 1.213 (3)(b) The cooperating forester shall manage private lands referred to the consulting or industrial forester where the cooperator provides service in a manner which complies with standards established by the department for the management of department land maintains the long-term capacity of the land to provide forest products, uses and values desired by landowners in accordance with the

silvicultural guidelines in department handbooks and directives or a written, science-based forest management commitment submitted to and approved by the department in advance.

Note: This section does not apply to land use conversions, such as the change of forestland to agricultural use. Land use conversions are not considered to be forest management.

(d) The cooperating forester shall attend a minimum of ~~6~~ 10 hours of department-approved training annually.

The foregoing rules were approved and adopted by the State of Wisconsin Natural Resources Board on June 27, 2001.

The rules 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.

Dated at Madison, Wisconsin _____.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Darrell Bazzell, Secretary

(SEAL)



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Ronald Sklansky
Clearinghouse Director

Richard Sweet
Clearinghouse Assistant Director

Terry C. Anderson
Legislative Council Director

Laura D. Rose
Legislative Council Deputy Director

CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 01-030

AN ORDER to amend NR 1.213 (3) (b) and (d); and to repeal and recreate NR 1.212 (1) and (2), relating to the cooperating forester program and private forestry priorities for assistance.

Submitted by **DEPARTMENT OF NATURAL RESOURCES**

03-13-01 RECEIVED BY LEGISLATIVE COUNCIL.

04-03-01 REPORT SENT TO AGENCY.

RNS:WF;jal;ksm

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS
[s. 227.15 (2) (e)]

Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached YES NO



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CLEARINGHOUSE RULE 01-030

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

2. Form, Style and Placement in Administrative Code

a. Section NR 1.212 (1) (intro.) is incorrectly drafted as introductory material since it does not end with a colon and lead into the subsequent paragraphs. [See s. 1.03 (8), Manual.] Subsection (2) (intro.) was drafted correctly in this regard.

b. The phrase "but is not limited to" in s. NR 1.212 (1) (a) should be deleted. [See s. 1.01 (7) (c), Manual.]

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. The second sentence in s. NR 1.212 (1) (intro.) is unnecessarily ambiguous. If the activities described in the subsection are listed sequentially in order of significance, the subsection should say so. If something else is meant by this sentence, the department should more clearly explain what that is.

b. The note following s. NR 1.212 (1) (b) is drafted in a manner that is unclear. The department should explain how timber sale guidance or information is different than marking timber sales. In addition, it is suggested that the note state that timber sale marking is listed in s. NR 1.212 (2) (a).

c. The phrase "non-mandatory" should be replaced with "not mandatory" in s. NR 1.212 (2) (e).

d. Read literally, s. NR 1.213 (3) (b), as amended by Clearinghouse Rule 01-030, is a directive from the department to cooperating foresters to manage all private lands. It is suggested that the word "all" be deleted and that the phrase "under his or her management" be inserted after the word "lands" in this paragraph.



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Comment Attached YES NO



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Bad intro. NR 1.212 (1) PRIORITY I ACTIVITIES. The following activities shall be the highest priority for department foresters providing private forestry assistance. The order in which the priorities are listed is significant. Department foresters may, however, exercise discretion in applying the priorities within this subsection and sub. (2) based on seasonal needs and scheduling efficiency. 5

(a) A first time request from a landowner for management guidance may include but is not limited to an initial contact with the landowner, an assessment of the landowner's objectives, a walk-through or cruise of the property, educational and advisory information, written management recommendations or referral to other resource professionals. 2

(b) Responding to requests for timber sale guidance or information may include an on-the-ground inspection by the department forester to provide sound silviculture advice or a referral to other resource professionals.

Note: Providing timber sale guidance or information is a higher priority for department foresters than marking timber sales; these functions are different.

(c) Administration and oversight of the forest tax laws including: review of petitions for eligibility, preparation of management plans, mandatory practices follow up and enforcement of the provisions of the law.

(d) Establishment of mandatory practices under forest tax laws in subchs. I and VI, ch. 77, Stats., if a cooperating forester has not provided assistance.

(e) Administration of the Wisconsin forest landowner grant program in s. 26.38, Stats.

(f) One-to-one educational opportunities with private landowners and cooperating foresters; landowner or educator conferences, workshops and field demonstrations; and news articles.

(g) Major pest outbreaks or other catastrophic occurrences.

(2) PRIORITY II ACTIVITIES. The following activities shall be important, but a lower priority for department foresters providing private forestry assistance:

(a) Timber sale marking and volume designation on land not under the forest tax programs in subchs. I and VI, ch. 77, Stats., but for which there is a written management plan and within the limitations specified in sub. (3).

(b) Certification of need and performance for federal cost-sharing assistance programs.

(c) Educational presentations to school groups, civic groups, or at parades or fairs.

(d) Development of forest stewardship management plans on lands not enrolled or for which there is no application for enrollment under the forest tax laws in subchs. I and VI, ch. 77, Stats.

(e) Facilitation of any forest improvement, pruning, thinning, site preparation, release or tree planting practices which are non-mandatory under the forest tax programs in subchs. I and VI, ch. 77, Stats.

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NR 1.213 (3)(b) The cooperating forester shall manage all private lands referred to the consulting or industrial forester in a manner which complies with standards established by the department for the management of department land maintains the long-term capacity of the land to provide forest products, uses and values desired by landowners in accordance with the silvicultural guidelines in department handbooks and directives or a written, science-based forest management commitment submitted to and approved by the department in advance.

(d) The cooperating forester shall attend a minimum of ~~6~~ 10 hours of department-approved training annually.

The foregoing rules were approved and adopted by the State of Wisconsin Natural Resources Board on _____.

The rules 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.

Dated at Madison, Wisconsin _____.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Darrell Bazzell, Secretary

(SEAL)