

 **07hr_SC-ENR_CRule_06-139_pt01**



(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ...
PUBLIC HEARING - COMMITTEE RECORDS

2007-08

(session year)

Senate

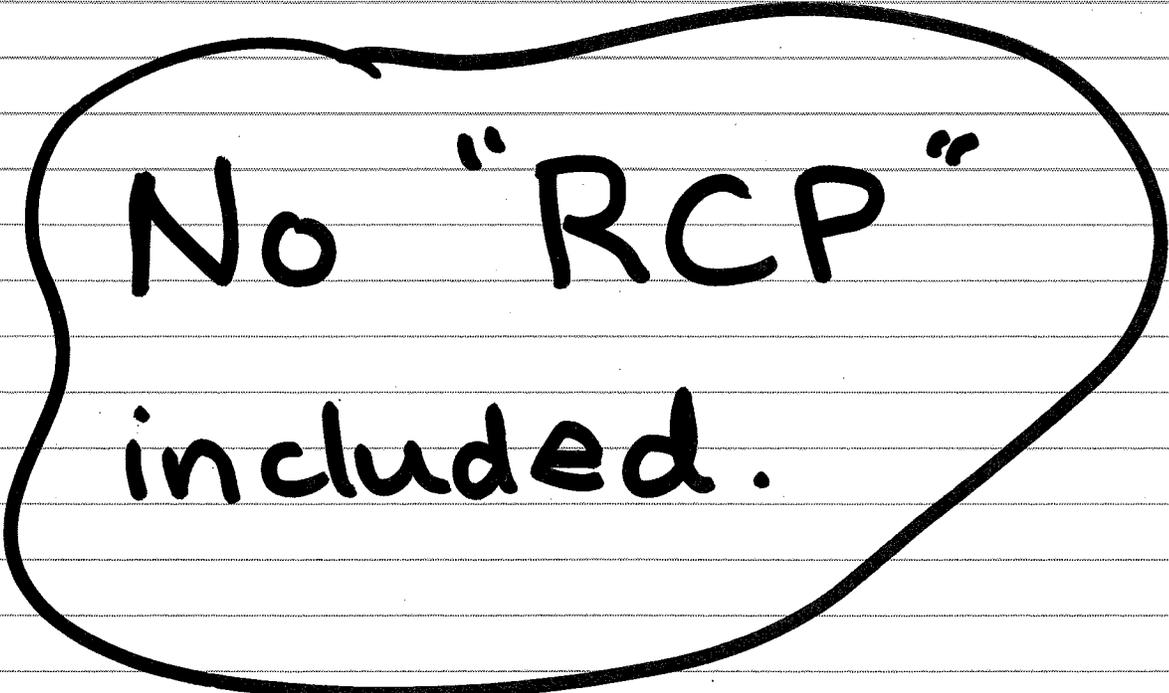
(Assembly, Senate, or Joint)

Committee on ...
Environment and Natural Resources
(SC-ENR)

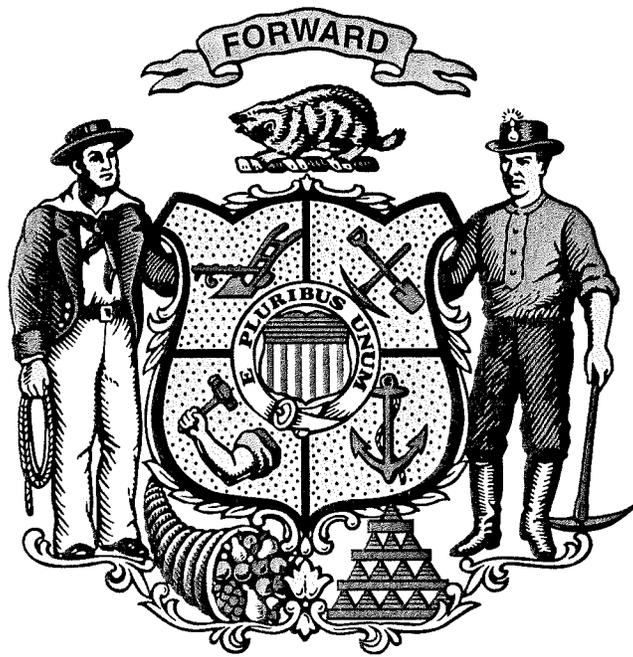
INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... **HR** ... **bills and resolutions** (w/Record of Comm. Proceedings)
 - (**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
 - (**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

* Contents organized for archiving by: Mike Barman (LRB) (July/2014)



No "RCP"
included.





Public Service Commission of Wisconsin

Daniel R. Ebert, Chairperson
Mark Meyer, Commissioner
Lauren Azar, Commissioner

610 North Whitney Way
P.O. Box 7854
Madison, WI 53707-7854

The Honorable Fred Risser
c/o Jeff Renk
State Senate Journal and Records
State Capitol, B20 Southeast
Post Office Box 7882
Madison, WI 53703

The Honorable Michael Huebsch
c/o Kay Inabnet
State Assembly Records
17 West Main Street, Room 401
Madison, WI 53703

Re: Creation of Rules Regarding Energy Efficiency and Renewable
Resource Programs

1-AC-220

Clearinghouse Rule 06-139

Dear Senator Risser and Representative Huebsch:

Pursuant to Wis. Stat. § 227.19(2), the Commission submits a proposed rule in final draft form in the above-referenced matter. The proposed rule creates Wis. Admin. Code ch. PSC 137, pursuant to Wis. Act 141 and codified in Wis. Stat. § 196.374.

At its open meeting today, the Commission approved delivering this final draft to you for review by the Legislature's standing committees. Enclosed are the Rule Jackets and triplicate copies of the Commission's Order, which includes the Report to the Legislature, in the form required under Wis. Stat. § 227.19(3).

If you have any questions or concerns, please feel free to contact docket coordinator Carol Stemrich, at (608) 266-8174 or carol.stemrich@psc.state.wi.us.

Dated at Madison, Wisconsin, April 10, 2007

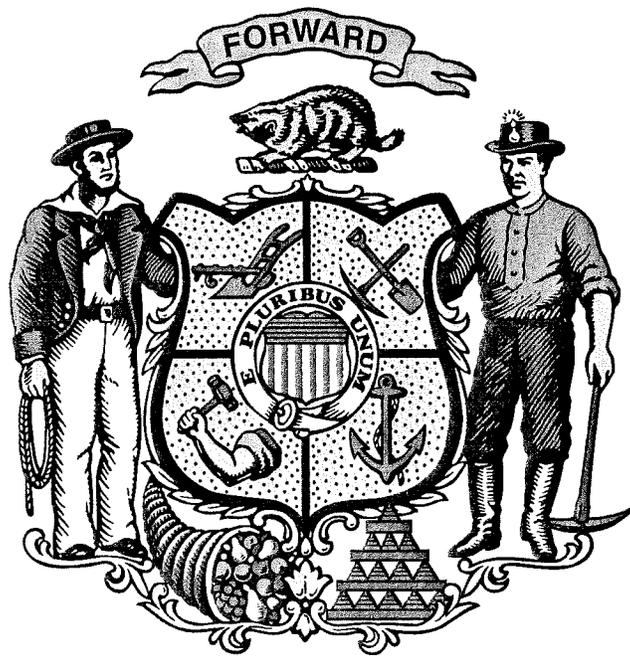
By the Commission:

Sandra J. Paske

Sandra J. Paske
Secretary to the Commission

SJP:CAS:kcd:G:\RULES\ACTIVE\1-AC-220\3 - Legislative report step\LtrLegis.doc

Enclosures



PUBLIC SERVICE COMMISSION OF WISCONSIN

Docket No. 1-AC-220
Clearinghouse Rule 06-139

NOTICE OF SUBMISSION OF FINAL RULES TO

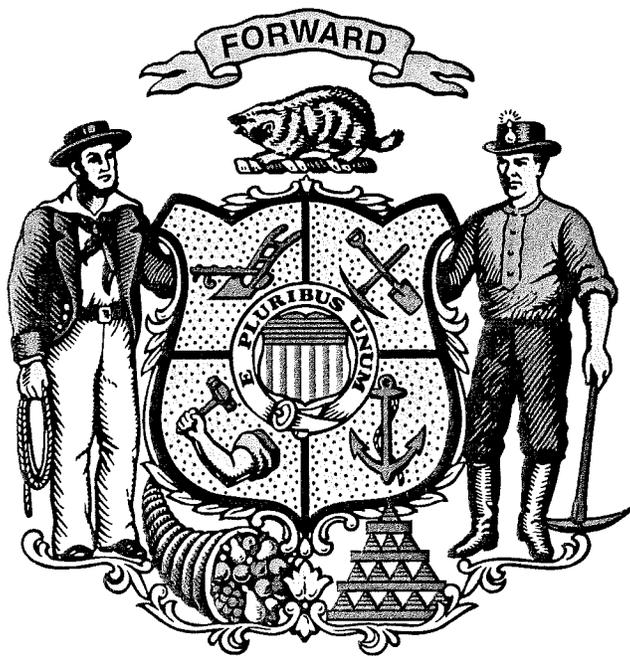
PRESIDING OFFICERS OF EACH HOUSE OF THE LEGISLATURE

NOTICE IS GIVEN, pursuant to Wis. Stat. § 227.19 (2), that the Public Service Commission of Wisconsin is submitting a final draft of proposed rules, Clearinghouse Rule 06-139, to the presiding officer of each house of the Legislature for standing committee review. The proposed rule creates Wis. Admin. Code ch. PSC 137 pursuant to 2005 Wis. Act 141, which substantially revised Wisconsin law regarding the energy efficiency programs and renewable resource programs that public utilities offer to their customers and retail electric cooperatives offer their members, and which is codified in Wis. Stat. § 196.374.

Dated at Madison, Wisconsin, April 10, 2007

By the Commission:

Sandra J. Paske
for Sandra J. Paske
Secretary to the Commission



- asked for strengthening language
on emissions

- evaluating programs / on different benefits
- 1st draft had language

- in general rule looks good

- did a good job of keeping strong rule

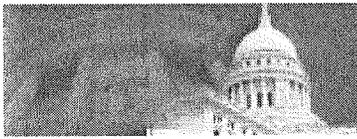
(person spoke (David Helbach) - issue w/ shared source
program

George Edgar - WECC
- also

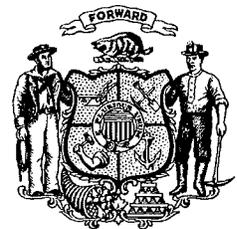
One issue - double counting between state
& RPS requirement

- Michael Vickerman talking to Dan School

- not sure if its dealt w/ in this rule



WISCONSIN STATE LEGISLATURE





**WISCONSIN LEGISLATIVE COUNCIL
RULES CLEARINGHOUSE.**

Ronald Sklansky
Clearinghouse Director

Terry C. Anderson
Legislative Council Director

Richard Sweet
Clearinghouse Assistant 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 06-139

AN ORDER to create ch. PSC 137, relating to energy efficiency and renewable resource programs.

Submitted by **PUBLIC SERVICE COMMISSION**

12-27-2006 RECEIVED BY LEGISLATIVE COUNCIL.

01-26-2007 REPORT SENT TO AGENCY.

RS:DLL



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 RULE 06-139

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 January 2005.]

I. Statutory Authority

a. Section PSC 137.05 (4) implements s. 196.374 (2) (a) 2. b., Stats., too narrowly. The statute requires that the amount set aside for local governments and agriculture programs be not less than 10% "of the amount utilities are required to spend under subd. 1. or sub. (3) (b) 2." Section 196.374 (3) (b) 2., Stats., requires utilities to spend 1.2% of annual operating revenues to fund "the utility's programs under sub. (2) (b) 1., the utility's ordered programs, and the utility's share of the statewide energy efficiency and renewable resource programs under sub. (2) (a) 1." In other words, the set-aside is 10% of 1.2% of the total annual operating revenues of all utilities, not 10% of the moneys contracted for statewide programs. In addition, s. PSC 137.05 (4) does not require that any amount of the set-aside that cannot be used cost-effectively on those programs must be used instead for commercial, institutional, and industrial programs, as required in s. 196.374 (2) (a) 2. b.

b. Section PSC 137.07 (2) (c) 1. limits certain program participants to "large commercial, industrial, institutional, or agricultural customers, as defined by the commission" How does the commission intend to define this, if not in this rule? The rule should include any further definition of those entities that is needed. The same applies to "the statewide evaluation standards that the commission establishes," cited in ss. PSC 137.07 (2) (c) 7. and 137.08 (2) (c) 6. and to the "commission standards" and the "statewide evaluation standards ...," as determined by the commission," referred to in s. PSC 137.07 (3) (b) 1. and 3., respectively.

f. The second, third, and fourth sentence of s. PSC 137.05 (12) reproduces material in ss. PSC 137.07 and 137.08, and so should be omitted. If the commission wants any of these sentences included for clarity or explanatory purposes, they can be placed in a note.

g. Section PSC 137.05 (12) appears to implement s. 196.374 (5m) (b), Stats. (except that the statute requires “equivalent opportunity” and the rule requires “equal opportunity”), but not s. 196.374 (5m) (a), Stats.

h. “Achievable potential study,” used in s. PSC 137.07 (2) (b) 3., is insider jargon. The rule should either define the term or replace it with more descriptive language that makes clear what is meant. If the term is used just once or twice, the latter is the preferred option.

i. It appears that s. PSC 137.08 (2) (b) 1. should be rewritten as follows: A description of the program, including descriptions of targeted buildings, equipment and operations; eligible (or proposed?) energy efficiency measures; and expected energy savings, itemized by technology.

j. The first part of s. PSC 137.08 (2) (c) 2. is redundant with s. PSC 137.08 (1), and the second portion would more appropriately be combined with s. PSC 137.08 (2) (c) 5.

4. Adequacy of References to Related Statutes, Rules and Forms

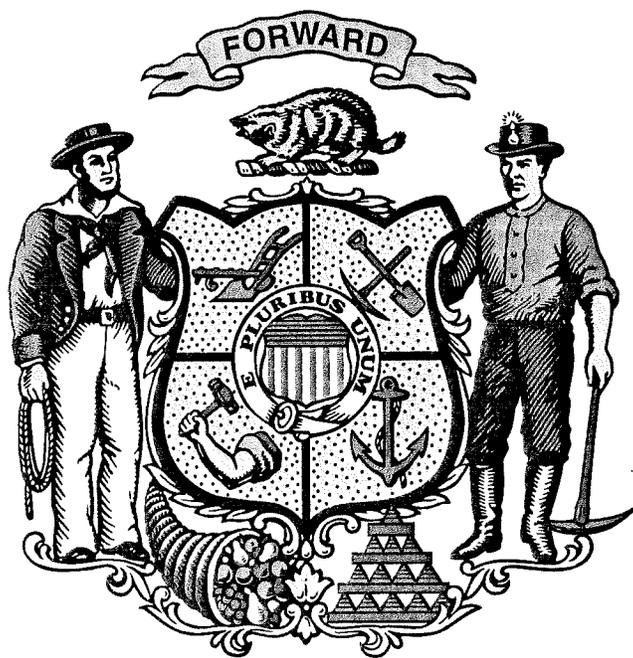
Sections PSC 137.02 (5), 137.05 (7), and 137.07 (2) (c) 4. refer to forms. The requirements of s. 227.14 (3), Stats., should be met.

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

a. The rule needs to be more clear and much more consistent in how it refers to the various programs under s. 196.374 (2), Stats. The commission should select clear, descriptive terms, such as “statewide programs,” “utility-administered programs,” “supplemental (or “additional”) utility-administered programs,” and “self-directed programs,” define the terms by cross-reference to s. 196.374 (2) (a), (b) 1. and 2., and (c), respectively, and use them exclusively throughout the rule. (We recognize that the first of these terms is so defined, and appears to be used consistently.)

b. It is not at all clear that the “proposed subcontractors” referenced in s. PSC 157.03 (1) (a) and (b) are essentially sub-administrators. As those paragraphs are written, it appears that an applicant for the program administrator contract must anticipate in advance all subcontractors who will be used in the program. These provisions need clarification.

c. The rule, in s. PSC 137.05 (7), directs the program administrator to establish annual and multi-year goals, based on statewide performance standards. How does this relate to the “goals, priorities, and measurable targets for the programs” the commission is directed to set and revise in the quadrennial review required in s. 196.374 (3) (b) 1., Stats.? Language such as that in s. PSC 137.07 (2) (b) 4. (“that are consistent with the commission’s ...”) might be helpful. Also, who establishes the performance standards, the program administrator, again?



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-01-07(E)

Summary Prepared by the Department of Natural Resources

1. **Statutes interpreted:** Section 28.025, Stats., created by of 2005 Wisconsin Act 166.
2. **Statutory authority:** Sections 28.025 and 227.24, Stats.
3. **Explanation of agency authority:** Section 28.025, 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 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, including prequalification of bidders based on experience with timber sales and related forest inventory work. Section 2 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.
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. 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. The body of evidence 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 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.

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

Section 1. NR 1.21 (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. 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.

(1) **DEFINITIONS.** "Cooperating forester" has the meaning defined in s. NR 1.21(2) (b) and (e).

(2) **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 will determine which of these services are appropriate to contract for on individual timber sales.

(3) **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 is responsible for review and approval of cutting notices and reports, contract preparation, bid requisition, sale award, stumpage receipts, bonds, and contract administration. The department shall monitor the performance of cooperating foresters contracting on state forest timber harvests for quality of service and conformance to department standards.

(4) **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 for individual timber sales. When a need for timber sale assistance is identified, the department shall issue a project-specific request for bids to pre-qualified cooperating foresters. The department may establish pre-qualification lists of cooperators serving an area based on demonstrated proficiency on department check cruises, recent experience in cruising or

marking similar forest types, past performance, or other objective criteria and availability. 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 will be determined on price alone unless additional evaluation criteria are included in the request for bids. As provided in s. 28.05, Stats., payments to cooperating foresters for timber sale establishment assistance on state-owned land shall be paid from an appropriation of timber sale proceeds.

Section 3. STATEMENT OF EMERGENCY. As provided in Section 13, 2005 Act 166, "Notwithstanding section 227.24 (1) (a) and (3) of the statutes, the department is not required to provide a finding of emergency for a rule promulgated under this subsection."

Section 4. EFFECTIVE DATE. The rule shall take effect the day of publication in the official state newspaper.

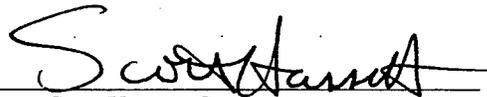
Section 5. BOARD ADOPTION. The rule was approved and adopted by the State of Wisconsin Natural Resources Board on January 24, 2007.

Dated at Madison, Wisconsin

1/25/07

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By



Scott Hassett, Secretary

(SEAL)

Fiscal Estimate — 2007 Session

Original Updated
 Corrected Supplemental

LRB Number	Amendment Number if Applicable
Bill Number	Administrative Rule Number NR 1.26 (FR-0107E & FR-0207)

Subject

Contracting with cooperating foresters for timber sale establishment services on state land

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
 s. 20.370 (1)(cy)

Assumptions Used in Arriving at Fiscal Estimate

Section 1

A fiscal estimate about contracting for timber sale establishment services and increasing the timber harvest from state forest lands was completed for 2005 Act 166. That detailed analysis (LRB Number 05-0195/3 - 2005 AB 254) is the basis for this estimate and is incorporated as Attachment 1.

Two opportunities for increasing timber sale revenue from state land were identified. One from "inventoried" state lands and the other from "un-inventoried" state lands. The inventoried properties are typically State Forests and larger Wildlife properties that have been subject to active management in the past. Un-inventoried state lands are mostly Wildlife, Fishery, Parks and Natural Area tracts. 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.

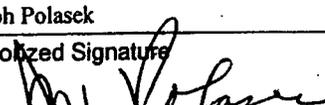
Inventoried State Lands Impacts: 2005 Act 166 requires the Department to maintain an "allowable timber harvest" on all lands. To sustain the level of activity and to prevent sliding into a future backlog of timber sales, about 18,000 acres requiring 35 FTE for timber harvest and inventory maintenance would be needed annually. Currently, there is 10 FTE worth of activity on 8,500 acres/yr. There is a net need for an additional 25 FTE of services costing \$1,720,625/yr to fill the gap. Potential revenues would be \$9.2 million annually or \$4.98 million/yr more than currently being generated.

Un-inventoried State Land Impacts: In the long term, there is an estimated potential to increase timber harvests from "un-inventoried" state lands by additional 1,989 acres annually. Services associated with the timber harvest and inventory work would require an additional 3.75 FTE costing \$258,093/yr. Net revenue from the additional harvest activity would increase an estimated \$758,823/yr.

Combining inventoried and un-inventoried categories results in a potential long-range estimated cost increase of \$1,978,718/yr for 28.75 FTE of services and a revenue increase of \$5,738,823/yr.

Long-Range Fiscal Implications

Contracting for 18.75 FTE of timber sale and related forest inventory services would cost about \$1,290,468/yr and increase revenue an estimated \$3,742,710/yr in the long term.

Prepared By: Joseph Polasek	Telephone No. 266-2794	Agency Department of Natural Resources
Authorized Signature 	Telephone No. 266-2794	Date (mm/dd/ccyy) 12-21-06

Fiscal Estimate — 2007 Session

Page 2 Assumptions Narrative Continued

LRB Number	Amendment Number if Applicable
Bill Number	Administrative Rule Number NR 1.26 (FR-0107E & FR-0207)

Assumptions Used in Arriving at Fiscal Estimate – Continued

As a result of efficiencies gained from changes in how Managed Forest Law enrollments are administered, the Department anticipates about 10 FTE* of agency staff time can be reallocated in the long term from private forestry assistance to sustaining an allowable timber harvest on state land. This would leave a potential for contracting about 18.75 FTE of timber sale set up and related forest inventory services. If such level of time were available from cooperating foresters, the proportional cost (and impact of this rule) would be \$1,290,468 and the proportional revenue from contracting would be \$3,742,710.

As detailed in Attachment 1, the Department also estimates that in 2005 there was a backlog of 170,175 acres of timber sale and inventory work on state land. These lands would require approximately 43 FTE at a cost of \$2,959,475 to bring management needs up to date. Contracting with cooperating foresters could play a role in dealing with the backlog, but in the short term the Department plans to address the backlog through internal reallocation of time (see footnote). This fiscal estimate only speaks to the cost and revenue associated with the long-range maintenance of the annual allowable harvest.

In practice, it will take a decade or longer for cooperating foresters to develop the capacity to substantially increase private forestry assistance related for MFL and to contract for state timber sale set up services. Those two demands would call for about 35 FTE of additional forestry services from the private sector. In the short term, DNR will encourage cooperators to focus on growing MFL capacity. Initially, contracting for state land assistance would proceed at a trial level, only about 1 FTE/yr.

Regarding the s. 20.370 (1)(cy) appropriation, this is a new category that was included on page 206 of the 2007-2009 DNR Biennial Budget Request dated October 3, 2006. A 2007 Bill would set up the appropriation as directed in section 28.025, Stats., to pay the costs for services contracted from cooperating foresters from an equal portion of the timber sale proceeds.

Section 2

The proposed rule amends NR 1.21(2) (e) to make the educational requirements for cooperating foresters consistent with those for department foresters under section 28.045(1), Wis. Statutes. The minor definition change is technical in nature and would result in no fiscal impact.

*DNR anticipates saving about 20 hours of MFL plan writing time per application on about 1,500 applications per year. Instead of DNR staff preparing the plans, statute changes require landowners to hire cooperating foresters for that task. The change will free up about 16 FTE of DNR staff time. About 6 FTE will be needed for MFL administration and other private forestry assistance. That leaves about 10 FTE of DNR staff time to reallocate to state lands timber sale/forest inventory services. Currently, that freed time is being directed to clear up a 43 FTE backlog of harvest and inventory work on state lands.

Fiscal Estimate Worksheet — 2007 Session
 Detailed Estimate of Annual Fiscal Effect

Original Updated
 Corrected Supplemental

LRB Number	Amendment Number if Applicable
Bill Number	Administrative Rule Number NR 1.26 (FR-0107E & FR-0207)

Subject
 Contracting for timber sale establishment services on state land

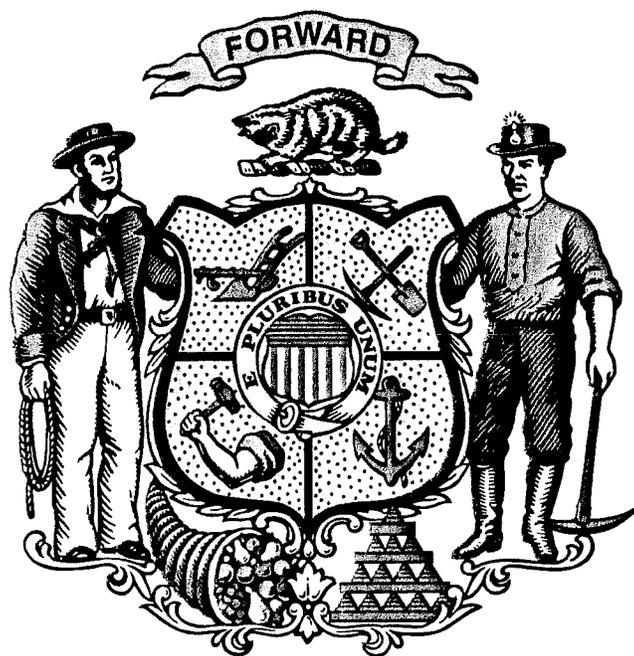
One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):

Annualized Costs:	Annualized Fiscal Impact on State Funds from:	
	Increased Costs	Decreased Costs
A. State Costs by Category		
State Operations — Salaries and Fringes	\$ 0	\$ - 0
(FTE Position Changes)	(0 FTE)	(- 0 FTE)
State Operations — Other Costs	1,290,468	- 0
Local Assistance	0	- 0
Aids to Individuals or Organizations	0	- 0
Total State Costs by Category	\$ 1,290,468	\$ -
B. State Costs by Source of Funds	Increased Costs	Decreased Costs
GPR	\$	\$ -
FED		-
PRO/PRS		-
SEG/SEG-S	1,290,468	-
State Revenues	Increased Revenue	Decreased Revenue
GPR Taxes	\$	\$ -
GPR Earned		-
FED		-
PRO/PRS		-
SEG/SEG-S	3,742,710	-
Total State Revenues	\$ 3,742,710	\$ -

Net Annualized Fiscal Impact

	State	Local
Net Change in Costs	\$ 1,290,468	\$
Net Change in Revenues	\$ 3,742,710	\$

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



ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
CREATING RULES

The Wisconsin Natural Resources Board proposes an order to create NR 45.075 pertaining to declaring natural emergencies on forested lands owned by the state and under the jurisdiction of the department.

FR-11-07(E)

Analysis Prepared by the Department of Natural Resources

1. **Statutes interpreted:** Section 23.114, Stats.
2. **Statutory authority:** Sections 23.114 and 227.24, Stats.
3. **Explanation of agency authority to promulgate the proposed rule under statutory authority:** Section 23.114 (b) Stats., states that the department shall promulgate rules specifying those emergencies over which the chief state forester shall have management responsibility on state forest land under the jurisdiction of the department. The statute requires that emergencies specified in the rules shall include invasive species or pest infestation, disease, and damage to timber from fire, snow, hail, ice or wind
4. **Related statute or rule:** Section NR 30.06, Wis. Adm. Code, which pertains to emergency use restrictions relating to forest fire control, gives the department secretary authority to declare a forest fire emergency and order use restrictions on all lands managed by the department or to close or modify hunting, trapping or fishing regulations. This rule also states that the secretary shall act only after consideration of department personnel in the area affected and includes a process by which the orders shall become effective by public notice.
5. **Plain language analysis:** Rule FR-11-07(E) specifies those emergencies on forested land under the jurisdiction of the department over which the chief state forester shall have management authority. This rule describes causes of unforeseen damage or threat of damage to trees that could lead the chief state forester to declare an emergency and assume management authority. Included in the list of damaging agents that could lead to the declaration of an emergency are those required by the legislature: invasive species, pest infestation, disease, and damage to timber from fire, snow, hail, ice, or wind. The rule states that when declaring and responding to an emergency, the chief state forester shall consider the purpose of and management plan for the affected property in his or her decisions. This rule, however, would allow the chief state forester to take actions not described in the management plan for a property if that were the most appropriate response to the emergency. Finally, this rule describes the processes by which the declaration of the state of emergency shall be made effective, canceled or modified.
6. **Summary of, and comparison with, existing or proposed federal regulation:** Federal Forest Supervisors may close or restrict the use of described areas, roads or trails within their area of jurisdiction on National Forests (36 CFR Ch.11, subpart B, 261.50). There is, though, no requirement that the situation causing the closure be an emergency as there is in FR-11-07(E).
7. **Comparison with rules in adjacent states:** There are no similar rules in adjacent states.
8. **Summary of factual data and analytical methodologies:** Unforeseen damage to state forest land is a rare situation that may require a rapid response if further damage is to be prevented. State property managers have tried to predict possible emergencies and appropriate actions in their property management plans to allow for a timely response. Not all situations can be predicted, however, and even if they are, when the event occurs it may become obvious that the plan for handling it may no longer be appropriate. In such a situation under existing processes, it may take up to a month to bring the request for an exception to the management plan to the Natural Resources Board for approval. In addition to relatively common disturbances such as fire or wind damage, we now are dealing with increasing problems with invasive species of forest lands. There may be situations in the near future where a response within a week will be critical to preventing the spread of a newly found invasive species colony that could threaten both the forests on department lands and private property. This rule will allow the chief state forester to

declare an emergency in response to damage or threatened damage to forested department land and to manage that time sensitive emergency free of delays associated with normal processes for actions on department lands. The list of detrimental forest disturbances where an emergency could be declared is limited and the chief state forester must decide whether an emergency will be declared. Not all situations where these disturbances have occurred will be declared an emergency. On some properties the management plan may provide adequate guidance. The chief state forester must also consider the purpose of the property in deciding on the action to take to manage the emergency to avoid compromising the primary purpose of the property and possibly the federal financial support for that property or others. This rule does not exempt the actions of the chief state forester in response to an emergency from public review or Environment Assessment if required by s. NR 150.03, Wis. Adm. Code. The length of public review is not set, however, and an Environmental Assessment would only be needed as required by rule, such as if a pesticide were applied over more than 160 acres. This would be an unusual situation even when responding to a colony of an invasive species.

In preparing this analysis, property managers were asked when this rule might have been used in the past on their property. They responded that this rule could have been used in the past only rarely, in response to catastrophic wind or hail damage once or twice in the past 10 years, a notable example being the Brule River State Forest hail damage in 2000. Property managers did recognize that this rule could be very helpful in the future event of a find of emerald ash borer, Asian long-horned beetle or other invasive that has a particularly high potential for damaging forests.

The cost of managing emergencies declared under this rule would vary depending on the situation. In cases where a salvage harvest was appropriate, such as with damage from weather events, management would result in revenue to the state. Removal of host trees as a part of eradication of an invasive pest could also provide revenue, though the amount collected would depend on limitations on use of the timber. Pesticide treatments would result in a cost, though federal cost sharing may be available for treatments depending on the species being controlled or eradicated.

9. Analysis and supporting documents used to determine effect on small business or in preparation of economic impact report: This rule is designed to allow management of forest emergencies that need to be addressed more quickly than current processes allow. In those situations, the rule should prevent additional damage or losses that would otherwise occur as a result of a delay in action. It should thus provide a benefit to the state as a whole in reducing losses from forest emergencies. Each emergency may have different effects on small businesses, however, some small businesses may benefit from management actions while others may be hurt. In either case, the effect should be short-term as the management decision will be made with consideration of the purpose of the property and therefore recovering the property to normal operation.

10. Effect on small business: Both the situation that leads to the declaration of an emergency and the actions taken to manage the emergency may have impacts on businesses dependent on the normal activities on the property or those involved in the management actions. Whether these impacts are positive or negative will be determined by the nature of the emergency and management activities. For example, a blow-down of trees in a campground would itself cause a hazardous situation for campers as would a salvage harvest to remove the dangerous fallen or hanging trees. Closure of that campground during the cleanup would be a reasonable response but could affect local businesses that depend on campers during the time the campground is closed. The logger who obtained the bid for the salvage harvest, however, would benefit from the sale of timber as would businesses that process the timber.

11. Agency contact person: Dr. Andrea Diss-Torrance, 608-264-9247, Andrea.DissTorrance@wi.gov

SECTION 1. NR 45.075 is created to read:

NR 45.075 Natural emergencies. (1) The chief state forester may declare and shall manage emergencies that threaten forested lands owned by the state and under the jurisdiction of the department. When declaring and responding to an emergency, the chief state forester shall consider the purpose of and management plan for the affected property in his or her decisions. Emergencies include unforeseen damage or threat of damage to trees from various causes including:

- (a) Fire.
- (b) Invasive species including but not limited to insects, plants, animals and disease-causing organisms.
- (c) Pest infestation.
- (d) Disease.
- (e) Vertebrates.
- (f) Extreme weather including but not limited to:
 1. Wind and tornados.
 2. Snow, hail, ice.
 3. Flooding.
 4. Drought.
 5. Lightning.
 6. Freeze or heat injury.
- (g) Deliberate or accidental damage by human activity.

(2) The declaration of a forest health emergency by the chief state forester, including findings of fact supporting it, shall become effective upon the publication in the official state newspaper. As soon thereafter as is feasible and reasonable, the department shall publish the order in one newspaper in the area affected which is likely to give notice to residents in that area, file copies of the emergency declaration within one week of its effective date with clerks of all counties affected by the declaration and take other steps as it deems necessary to convey effective notice to persons who are likely to have an interest in the declaration. The same procedure shall be followed to cancel or modify the declaration or any part thereof.

Note: This rule does not apply to a state of emergency declared by the governor under s. 166.03, Stats., and does not supersede the authority of the department of agriculture, trade and consumer protection under ch. 94, Stats.

(3) Definitions. The following definitions apply to terms used in this section:

(a) "Disease" includes any disturbance of a plant that interferes with its normal structure or function.

(b) "Pest" includes any living stage of insects, mites, nematodes, slugs, snails or other invertebrate animals injurious to plants, plant products, animals and humans; any bacteria, fungi, other parasitic plants or reproductive parts thereof, viruses, mycoplasma, protozoans or infectious substances which cause disease in or damage to plants or plant products; any host upon which a plant pest is dependent for the completion of all or a portion of its life cycle.

SECTION 2. FINDING OF EMERGENCY. As provided in Section 13, 2005 Wisconsin Act 166, notwithstanding s. 227.24, Stats., the Department is not required to provide a finding of emergency for this rule and the emergency rule will remain in effect until a permanent rule is promulgated.

SECTION 3. EFFECTIVE DATE. This rule shall take effect the day of publication in the official state newspaper.

SECTION 4. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on January 24, 2007.

Dated at Madison, Wisconsin

1/28/07

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By


Scott Hassett, Secretary

(SEAL)

Fiscal Estimate — 2005 Session

<input checked="" type="checkbox"/> Original	<input type="checkbox"/> Updated	LRB Number	Amendment Number if Applicable
<input type="checkbox"/> Corrected	<input type="checkbox"/> Supplemental	Bill Number	Administrative Rule Number FR-11-07(E)

Subject
 Declaring natural emergencies on department lands

Fiscal Effect

State: No State Fiscal Effect
 Indeterminate

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

- | | |
|--|---|
| <input type="checkbox"/> Increase Existing Appropriation | <input type="checkbox"/> Increase Existing Revenues |
| <input type="checkbox"/> Decrease Existing Appropriation | <input type="checkbox"/> Decrease Existing Revenues |
| <input type="checkbox"/> Create New Appropriation | |

Increase Costs — May be possible to absorb within agency's budget.

Yes No

Decrease Costs

Local: No Local Government Costs

Indeterminate

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

This rule specifies causes of unforeseen damage or threat of damage to trees on department lands that the chief state forester could declare emergencies and take management responsibility. Included in the list of damaging causes are damage to timber from fire, snow, hail, ice or wind, invasive species, pest infestation or disease among others. This rule would allow a more rapid management response than would currently be possible in some circumstances. The chief state forester would consider the purpose and management plan for the affected property in his or her decision to declare an emergency and how it would be managed.

The fiscal impacts of this rule are indeterminate because the events are unpredictable. The emergencies specified in this rule themselves involve loss to the state and their management will limit or return some of this loss. Property managers were asked when this rule might have been used in the past and they replied that it would have been used only once or twice in the past 10 years, the Brule River State Forest hail damage in 2000 being a notable example. Management of damage to timber from weather usually involves a salvage harvest and these typically bring in revenue which can offset other costs of management. Pesticide treatment of invasive species or pest infestation would involve a cost but these costs have in the past been absorbed by the program supporting the property or by department funds such as the Forest Productivity Fund. Removal of host trees to contain an invasive pest such as the emerald ash borer would typically produce revenue though the amount may be small depending on restrictions on handling the logs. Federal cost sharing may also be available for eradication or slow the spread efforts to contain invasive species. It is estimated that no new staff will be required to implement this rule.

There are no estimated fiscal effects on county, city, village, town, school district, technical college district or sewerage districts from this rule since they only affect management of department lands. We do not anticipate significant direct costs to the private sector from this rule

Long-Range Fiscal Implications

Long-range fiscal implications of this rule are uncertain due to the unpredictability of forest emergencies, their management costs or revenue. With experience, writers of property management plans will include more rare events in their plans, reducing the need for use of the rule to manage such events.

Prepared By: Joe Polasek	Telephone No. 266-2794	Agency Department of Natural Resources
Authorized Signature 	Telephone No. 266-2794	Date (mm/dd/ccyy) 12-20-06