

Report From Agency

REPORT TO LEGISLATURE

NR 1.21 and 1.26, Wis. Adm. Code
Contracting for timber sale establishment services on state land

Board Order No. FR-02-07
Clearinghouse Rule No. 07-011

Basis and Purpose of the Proposed Rule

2005 Wisconsin Act 166 created s. 28.025, Stats., which directs the Department to develop a timber sale contracting program with private “cooperating foresters” for assistance in meeting allowable harvest goals on state land. An analysis in 2005 by the Department estimates a backlog in timber sales and forest inventory on state-owned land would require 43 full-time positions to bring up to date and another 28.75 positions 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, the Legislature directed creation of a program to utilize private enterprise foresters and to pay for the foresters’ services from a “portion of the proceeds received from each timber sale”. The Department has always had authority to contract for timber sale assistance services, but in the past had to pay the expense from operating funds. The ability to pay for contracted timber sale assistance directly from timber harvest revenue will be a new tool for Department land managers.

The proposed rule 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.

The proposed rule also 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.

Summary of Public Comments

No oral or written comments were received.

Modifications Made

No modifications were made as a result of the public hearing.

Appearances at the Public Hearing

No one appeared at the public hearing.

Changes to Rule Analysis and Fiscal Estimate

No changes were required.

Response to Legislative Council Rules Clearinghouse Report

All of the comments and recommendations to the rule have been addressed. One change is the addition of s. NR 1.26(6) to further clarify the method used to determine the portion of timber sale proceeds to be paid to cooperating foresters for their services. It specifies that costs are to be paid from an appropriation account (s. 20.370(1)(cy), set up in the 2007-2009 state budget) and prorated among the administrative functions such as Forestry, Fisheries, Wildlife and Parks that receive the timber sale revenue.

The Clearinghouse commented that original language about establishing pre-qualification lists for contractors was confusing and vague. The Department agrees and deleted the term. The proposed rule is revised to say that cooperators serving the area where timber sale assistance is needed would be contacted for bids. Any other conditions can be established in Requests for Proposals per state purchasing regulations. The last sentence of s. NR 1.26(5) is revised to provide examples of bid evaluation criteria, but it is not restrictive.

Final Regulatory Flexibility Analysis

The proposed rule does have a significant economic impact on a substantial number of small businesses. The rule would create an opportunity for private consulting forestry firms to 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 s. 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.