

The statement of scope for this rule, SS 040-23, was approved by the Governor on June 15, 2023, published in Register No. 810A3 on June 19, 2023, and approved by the Natural Resources Board on September 27, 2023. This rule was approved by the Governor on December 21, 2023.

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD AMENDING RULES

The Wisconsin Natural Resources Board proposes an order to **amend** NR 47.53 (1), 47.54 (1) and 47.58 (2) (a), (b), and (c) and to **create** NR 47.52 (1m), (2m), 47.54 (1m), 47.55 (1m), and 47.58 (2) (am) relating to federal funding for the Urban and Community Forestry Grant Program and affecting small business.

FR-06-23(E)

Analysis Prepared by the Department of Natural Resources

1. Statute Interpreted:

Sections 23.09 (2) and (2) (o), Stats.

2. Statutory Authority:

Sections 23.09 (2) and (2) (o), Stats., authorize this rule.

3. Explanation of Agency Authority:

Subchapter V of ch. NR 47, Wis. Admin. Code, establishes procedures for the awarding and administering of grants to fund urban and community forestry projects. It consists of a state funded grant program, which is authorized by s. 23.097 (1g), Stats., and funded by s. 20.370 (5) (az), Stats., and a federally funded grant program, which is authorized under the Cooperative Forestry Assistance Act of 1978 (16 USC 2101 et seq.), as amended, and s. 23.09 (2) (o), Stats. The purpose of this rule is to modify the provisions dealing with the federally funded urban and community forestry grants.

Section 23.09 (2), Stats., explicitly permits the department to “promulgate such rules . . . as it deems necessary to carry out the provisions and purposes of this section”. Section 23.09 (2) (o), Stats., explicitly permits the department to “accept and administer any . . . grants . . . including funds made available to the department by the federal government under any act of congress relating to any of the functions of the department.” Read together, this provision allows the department to promulgate rules to accept federal funds and administer a grant program according to the Cooperative Forestry Assistance Act of 1978 (16 USC 2101 et seq.), as amended.

4. Related Statutes or Rules:

Section 23.097 (1g) and (2), Stats., provide the authority for the state funded aspects of the grant program.

5. Plain Language Analysis:

The department has been allocated \$4.875 million of Inflation Reduction Act (IRA) funding from the USDA Forest Service (FS) to supplement the department’s Urban and Community Forestry (UCF) Grant Program. The department has received a match waiver from FS for these IRA funds, which must be passed down to sub-grant recipients. All of these IRA funds must benefit disadvantaged communities and will expire on June 30, 2028.

The proposed emergency rule changes will modify the current procedures, found in ch. NR 47, Wis. Adm. Code, for the administration of the department’s UCF Grant Program awards to local governments, tribal governments, and not-for-profit organizations for the purpose of funding urban and community

forestry projects as authorized under the Cooperative Forestry Assistance Act of 1978 (16 USC 2101 et seq.), as amended. The goal of these modifications is to facilitate the disbursement of new federal monies allocated under the IRA, and distinguish these IRA funds from state or other federal funds. Proposed rule changes include introducing match waivers for grantees, establishing an advance payment of no more than 50% of the grant upon award to all grantees, allowing annual reimbursement for multi-year projects, increasing the maximum grant award amount, and specifying that only projects that benefit disadvantaged communities are eligible for these funds. These rule changes will help facilitate equitable and efficient access to IRA funding through the department's UCF Grant Program.

6. Summary of, and Comparison with, Existing or Proposed Federal Statutes and Regulations:

All existing congressional authorities provided to the Urban and Community Forestry Assistance program established under section 9(c) of the Cooperative Forestry Assistance Act of 1978 (16 U.S.C. 2105(c)) for tree planting and related activities are applicable. Excerpts from this section are included below. This proposed rule is not intended to be more or less stringent than the federal law but rather provides implementation details needed to administer the federal grant program.

The Cooperative Forestry Assistance Act of 1978 (16 USC 2101 et seq.), as amended, authorizes the Secretary of Agriculture to provide cooperative forestry assistance to states and others. It includes a range of state and private forestry program authorities, including section 9 (16 USC 2105) "urban and community forestry assistance." Section 9 authorizes the Secretary of Agriculture to "provide financial, technical, and related assistance to state foresters or equivalent state officials for the purpose of encouraging states to provide information and technical assistance to units of local government and others that will encourage cooperative efforts to plan urban forestry programs and to plant, protect, and maintain, and utilize wood from, trees in open spaces, greenbelts, roadside screens, parks, woodlands, curb areas, and residential developments in urban areas." This program includes providing "assistance through competitive matching grants awarded . . . for urban and community forestry projects."

7. If Held, Summary of Comments Received During Preliminary Comment Period and at Public Hearing on the Statement of Scope:

A preliminary public hearing on this scope statement was held on August 21, 2023. One member of the public attended the hearing and provided public testimony in support of the statement of scope.

8. Comparison with Similar Rules in Adjacent States:

Illinois works with non-state partners to administer federally funded sub-grants for urban and community forestry activities and does not have any relevant administrative rules.

Michigan does not have any relevant administrative rules around their urban and community forestry sub-grant program.

Minnesota has state statutes and state policies that direct their urban and community forestry sub-grant programs, but they do not have anything in administrative rules. They feel they have the flexibility to align with the increase in available federal funding and the IRA requirements within their current statutes and policies.

Iowa is currently working through the process to rescind the administrative rules for their urban and community forestry grant program to align with the increase in available federal funding and the IRA requirements.

9. Summary of Factual Data and Analytical Methodologies Used and How Any Related Findings Support the Regulatory Approach Chosen:

The USDA Forest Service (FS) Urban and Community Forestry Program is a covered program under the Justice40 Initiative established through Executive Order 14008. The FS has outlined the requirements and intentions of the IRA funds in their 'FY 2023 Financial Advice Supplement to States and the District of Columbia for the Inflation Reduction Act Funding' as well as the department's 'FY2023 Grant Narrative for IRA Funds.' The department has incorporated language from the Justice40 initiative and

requirements of the IRA funding as detailed by the FS in the aforementioned documents into the proposed rule text (e.g., sections relating to disadvantaged communities and the match waiver). The department consulted with the Wisconsin Urban Forestry Council and informally surveyed partners to get information and feedback on the proposed maximum award amount of \$500,000, expanding eligibility for advance payment to all grantees, and allowing annual grant payments for multi-year projects. The department also made the Wisconsin Urban Forestry Council aware of the match waiver and the requirement from the FS that all of the IRA funds go to disadvantaged communities.

10. Analysis and Supporting Documents Used to Determine the Effect on Small Business or in Preparation of an Economic Impact Report:

This rule will provide new grant funding resources for urban and community forestry activities and will not impose new regulations. As such, this rule does not have any anticipated economic impacts.

11. Effect on Small Business (initial regulatory flexibility analysis):

This rule will have a minimal impact on most businesses, and is anticipated to positively impact urban forestry consulting businesses, arborist and tree care companies, and private tree nurseries, since these businesses may be hired by grantees to accomplish work under the grants. The exact amount that each business may gain due to the significant increase of monies being sub-awarded to local governments, tribal governments and non-profits for urban and community forest activities is unknown.

12. Agency Contact Person:

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13. Place where comments are to be submitted and deadline for submission:

Comments may be submitted to the department contact person listed above or to DNRAAdministrativeRulesComments@wisconsin.gov until the deadline given in the upcoming notice of public hearing. The notice of public hearing and deadline for submitting comments will be published in the Wisconsin Administrative Register and on the department's website, at <https://dnr.wi.gov/calendar/hearings/>. Comments may also be submitted through the Wisconsin Administrative Rules Website at https://docs.legis.wisconsin.gov/code/emergency_rules/active.

RULE TEXT

SECTION 1. NR 47.52 (1m) is created to read:

NR 47.52 (1m) “Disadvantaged community” means a community that experiences greater economic, social, or environmental burdens relative to the rest of the state and that is identified on a map or list produced by the department under s. NR 47.55 (1m).

SECTION 2. NR 47.52 (2m) is created to read:

NR 47.52 (2m) “IRA” means the Inflation Reduction Act of 2022, Public Law 117-169.

SECTION 3. NR 47.53 (1) is amended to read:

NR 47.53 (1) An eligible applicant, described under s. NR 47.55 (1) may apply for a grant under this subchapter for the purposes specified under s. NR 47.55 (1m) and (2).

SECTION 4. NR 47.54 (1) is amended to read:

NR 47.54 (1) ~~A~~ Except as provided in sub. (1m), a grant under this subchapter shall be no more than 50% of actual eligible costs except that no grant may exceed \$25,000 or be less than \$1000.

SECTION 5. NR 47.54 (1m) is created to read:

NR 47.54 (1m) An IRA-funded grant under this subchapter shall be no less than 100 percent of actual eligible costs except that no grant may exceed \$500,000 or be less than \$1,000.

SECTION 6. NR 47.55 (1m) is created to read:

NR 47.55 (1m) IRA FUNDING AND DISADVANTAGED COMMUNITIES. To be eligible to receive an IRA-funded grant under this subchapter, projects shall benefit disadvantaged communities. The department shall produce a map or list that identifies disadvantaged communities using data and a methodology that is developed in consultation with the forest service. All projects that benefit Federally Recognized Tribes are eligible to receive an IRA-funded grant under this subchapter.

SECTION 7. NR 47.58 (2) (a) is amended to read:

NR 47.58 (2) (a) ~~N~~ Except as provided in par. (am), not-for-profit organizations may request an advance payment of no more than 50% of the grant upon the awarding of the grant.

SECTION 8. NR 47.58 (2) (am) is created to read:

NR 47.58 (2) (am) Any grantee receiving an IRA-funded grant under this subchapter may request an advance payment of no more than 50 percent of the grant upon the awarding of the grant.

SECTION 9. NR 47.58 (2) (b) is amended to read:

NR 47.58 (2) (b) Each grantee shall submit to the department a final ~~accounting claim for~~ reimbursement request, supported by evidence of cost, within 90 days after the grant expiration date. In addition, grantees with IRA-funded multi-year projects shall submit to the department an annual

reimbursement request on forms provided by the department, supported by evidence of cost, within 90 days after the anniversary of the grant start date if the grantee is seeking annual grant payments under par. (c).

Note: Reimbursement forms are available on the department's website at <https://dnr.wisconsin.gov/> under the topic, "Urban Forestry Grants."

SECTION 10. NR 47.58 (2) (c) is amended to read:

NR 47.58 (2) (c) Final balance payments for ~~not-for-profit organizations~~ grantees that received an advance or annual grant payment, and grant payments for all other grantees, shall be made upon approval of the final report and the final ~~accounting claim~~ reimbursement request. For IRA-funded grants, annual grant payments shall be made upon approval of the annual reimbursement request, if one has been submitted under par. (b).

SECTION 11. STATEMENT OF EMERGENCY.

The department finds that the emergency rule procedure is necessary to facilitate the immediate use of \$4.875 million of federal monies that have been recently allocated to the Wisconsin Department of Natural Resources under *H.R. 5376 - 117th Congress: Inflation Reduction Act (IRA) of 2022 Subtitle D, section 23003*. The department was awarded these funds on August 22, 2023, and they will expire on June 30, 2028. An emergency rule would facilitate the use of this federal funding by local governments, tribal governments and not-for-profit organizations in Wisconsin to fund urban and community forestry activities that benefit disadvantaged communities through the Urban and Community Forestry Grant Program. That program currently contains restraints that prevent Wisconsin from fully utilizing federal grant monies that are now available.

Urban and community forests provide measurable health, economic, social, and environmental benefits to residents, businesses, and visitors alike. These benefits include, but are not limited to, air pollution reduction, reduced air temperatures, increased property values, social cohesion, carbon sequestration and storage, and reduced stormwater runoff volumes.

It is imperative to expand the scope of subch. V of ch. NR 47, Wis. Adm. Code, to facilitate the efficient and equitable distribution of the IRA funds to local governments, tribal governments, and not-for-profit organizations throughout Wisconsin.

SECTION 12. EFFECTIVE DATE. This rule takes effect upon publication in the official state newspaper, as provided in s. 227.24(1)(c), Stats.

SECTION 13. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on December 13, 2023.