

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

The State of Wisconsin Natural Resources Board proposes an order to renumber NR 47.913(1)(b)1. to 12.; to renumber and amend NR 47.912(10); to amend NR 47.912(2), (3m) and (7), 47.913(1)(a) and (b)(intro.), (2)(b) and (c), 47.914(2), (3), (7), (8)(intro.), (10), (11)(a) and (12), 47.915(1) and 47.917(1)(intro.) and (2)(e); and create NR 47.912(2m), and 47.913(1)(b)2. relating to the gypsy moth suppression program

FR-15-08

Analysis Prepared by Department of Natural Resources

Statutory authority: ss. 26.30(6m) and 227.11(2), Stats.

Statutes interpreted: ss. 26.30, 28.01 and 28.07, Stats.

Authority to promulgate rule: Section 26.30(6m), Stats., states that if the department establishes a cost-shared suppression program for gypsy moth, the department shall promulgate rules to implement the program.

Related statute or rule: There are no related statutes or rules.

Plain language analysis of rule: The purpose of this rule is to revise the existing procedures for participation by landowners through counties in a voluntary, cooperative state suppression program for outbreaks in Wisconsin of a foreign pest, the gypsy moth. The suppression program includes an aerial insecticide treatment program (administered in partnership with the Department of Agriculture, Trade and Consumer Protection) and administration of federal cost sharing for participants in that treatment program.

Gypsy moth is not native to Wisconsin but has become established in many counties of the state. Where this pest is established, it goes through periodic outbreaks in which the population of gypsy moth explodes and forests can be stripped of leaves in late June. The stress of heavy defoliation can cause the death of some trees and leaves surviving trees weak allowing attack by other pests and diseases. When outbreaks occur, the public typically becomes concerned and looks for ways to reduce the population of gypsy moth to tolerable levels. Treatments to kill large numbers of the pest can be expensive, at times damaging to our native insects and other animals, or even dangerous to the landowner when pesticides are not used according to directions. The department-organized suppression program provides the public with a safe, effective and affordable means to prevent damage to their trees.

The suppression program is offered to landowners through counties. Participating counties provide a coordinator who serves as the contact for the public. The existing rule defines the tasks that will be performed by the participating counties, how to apply for the program, criteria of eligible areas for treatment and cost sharing under the program and eligible costs that can be shared in the federal cost sharing program. This revision of that rule will change the eligibility requirements of the state program to comply with those of the federal program. The revision also includes housekeeping changes which will improve the program's efficiency and accommodate the needs of the participating counties.

Summary and comparison with federal regulation addressing activities to be regulated by rule:

The USDA Forest Service under the Cooperative Forestry Assistance Act of 1978 (appendix A) as amended (P.L. 95-313) and the 1990 Farm Bill offers a cost sharing program to states for the suppression of gypsy moth outbreaks. Their objective is to assist state agencies in protecting forest resources by preventing defoliation in residential, recreational and timber production lands. Cost share is made available to state cooperators who have established an acceptable integrated pest management strategy for the gypsy moth as determined by the Forest Service. The cost share from the Forest Service can be used to pay for the treatment and preparatory work for the treatment including monitoring, administration,

and public notification. The current maximum federal share of project costs is 50%. The Forest Service cost-share rate, however, may be adjusted downwards to meet annual federal budget limitations. The Forest Service requires that the treatments that receive cost sharing be voluntary and are eligible by the minimum criteria decided by the Forest Service.

Comparison of similar rules in adjacent states: Of the adjacent states, only Michigan has a suppression program for gypsy moth. The Department of Agriculture takes its authority to run the suppression program from the Insect Pest and Plant Disease Act 189 of 1931. There are no legislative rules governing the Michigan suppression program, however. Like Wisconsin's program, Michigan receives cost sharing from the USDA Forest Service so requirements described above apply to both. The two states suppression programs are similar in many ways though in Wisconsin all land uses are allowed to apply to the program and there is no prioritization of treatment for different land uses as there is in the Michigan program.

Summary of data and analysis to support regulatory approach of rule: Not applicable to this rule as it is not regulatory.

Supporting documentation on effect on small business or used in an economic impact report: Not applicable to this rule as it is not regulatory.

Anticipated costs to private sector: The program is a voluntary one and is only done at resident's request or agreement so we do not expect any involuntary expenses. We expect that this program will provide cost savings for private businesses facing losses from damage to their property by gypsy moth. Private businesses may apply to the suppression program for treatment as can any other resident or community. The program provides access to a cost-effective aerial spray treatment that may not be available in that area and also provides cost sharing from the federal government reducing costs for participants.

Effect on small businesses: The effect on small business is expected to be positive as the suppression program will make avoidance of losses from gypsy moth less expensive than other options.

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Written comments: Comments may be submitted via mail to the contact and address above. In addition, comments may be submitted during the open comment period using the Internet at <http://adminrules.wisconsin.gov>. The comment period will end on October 17, 2008.

SECTION 1. NR 47.912(2) is amended to read:

NR 47.912(2) "Applicant" means a Wisconsin county or department bureau or division that submits an application for inclusion in the state gypsy moth suppression program and cost sharing for the treatment of and associated administrative costs for suppression of gypsy moth outbreaks.

SECTION 2. NR 47.912(2m) is created to read:

NR 47.912(2m) “Bureau coordinator” means a person designated to represent and act on behalf of an applicant department bureau or division for the purpose of applying for cost sharing and executing an agreement binding his or her principal as detailed under this subchapter.

SECTION 3. NR 47.912(3m) and (7) are amended to read:

NR 47.912(3m) “County coordinator” means the person designated to represent and act on behalf of an applicant county for the purpose of applying for cost sharing and executing an agreement binding his or her principal, either by duly adopted resolution or otherwise, as detailed under this subchapter.

(7) “High use recreational land” means land that is used primarily for recreation and where trees are at a similar density, stress level and individual value to those in residential areas. This category includes campgrounds, urban parks, playgrounds, and picnic areas ~~and golf courses~~.

SECTION 4. NR 47.912(10) is renumbered NR 47.012(8) and, as renumbered, is amended to read:

NR 47.912(8) “~~Preferred hosts~~ Hosts that are moderately or highly susceptible to defoliation by gypsy moth” means tree species listed as Class I and II in the Gypsy Moth Management in the United States: a cooperative approach, Environmental Impact Statement, Appendix G, Table 2–2. This document can be obtained from the USDA Forest Service, Northeastern Area State and Private Forestry, 1992 Folwell Ave., St. Paul, MN 55108.

SECTION 5. NR 47.913(1)(a) and (b)(intro.) are amended to read:

NR 47.913 Eligibility. (1) ELIGIBLE APPLICANTS. (a) Only counties and department bureaus or divisions may apply for participation in the state cost shared suppression program.

(b)(intro.) An applicant shall designate a ~~county~~ coordinator. County coordinators ~~who~~ shall administer requests for treatment from and for all residents of the county. Bureau coordinators shall administer requests for treatment for properties within that department bureau or division. Training shall be provided by the department.

1. A county coordinator, or his or her designee, shall complete all of the following tasks:

SECTION 6. NR 47.913(1)(b)1. to 12. are renumbered NR 47.913(1)(b)1.a. to L.

SECTION 7. NR 47.913(1)(b)2. is created to read:

NR 47.913(1)(b)2. A bureau coordinator, or his or her designee, shall complete all of the following tasks:

- a. Respond to requests for assistance from properties managed by the bureau or division.
- b. Ensure that the properties applying for treatment have approved gypsy moth management plans and that proposed spray areas are in agreement with this plan.
- c. Determine if areas requested for treatment within bureau or division properties are eligible for treatment.
- d. Identify areas for treatment and map treatment blocks.
- e. Complete and file applications with the department under this subchapter.
- f. Collect program cost share moneys for treatments.
- g. Notify residents within eligible treatment blocks and surrounding areas determined by the applicant by publication of a class one legal notice under ch. 985, Stats. in a local newspaper at least 10 days before a deadline, a press release and a public meeting. The department program coordinator, or his or her designee, shall conduct the public meeting.
- h. Accommodate residents within the proposed spray block who object to treatment of their property by revising or dropping treatment blocks. If other resident's properties are dropped from a

suppression block due to accommodating an objector, the department program coordinator shall notify affected residents.

i. Assist as a ground observer or provide observers as required by the department during the aerial treatment or both. All observers shall attend observer training provided by the department.

j. Perform a post treatment evaluation of defoliation within blocks identified by the department. The department shall provide the procedure for evaluation.

k. Maintain records and file with the department materials requested for an annual report.

SECTION 8. NR 47.913(2)(b) and (c) are amended to read:

NR 47.913(2) (b) Have a canopy coverage of 50% or more ~~any of the following:~~

~~1. 25% or more on residential or high use recreational land.~~

~~2. 50% or more on rural land.~~

(c) 50% or more of the canopy must be preferred hosts that are moderately or highly susceptible to defoliation by gypsy moth.

SECTION 9. NR 47.914(2), (3), (7), (8)(intro.), (10), (11)(a) and (12) are amended to read:

NR 47.914(2) Applicants shall submit applications for cost sharing to department staff, identified on the application for the area of the state involved, no later than the first Friday in December, along with a digitized map of each proposed treatment block in the format specified on the application form to be eligible for participation in the treatment program for that year. For treatment in 2009 only, applications will be accepted from department bureaus or divisions until April 1, 2009 if all other required activities and deadlines have been met. Application forms can be obtained from the grants section of the department's gypsy moth suppression web pages or by writing to the program manager for the gypsy moth grant program.

Note: The address for the program manager for the gypsy moth grant program is Bureau of Community Financial Assistance, P.O. Box 10448, Green Bay, WI 54307-0448.

(3) Applicants shall submit with the application an electronic list of telephone, facsimile, mailing address and email contacts associated with each treatment block to the designated department staff specified in the application and in the format provided by the department. Required contacts for each block include all schools and licensed daycare providers within a treatment block, local government officials, health, police, sheriff and fire departments within whose jurisdiction a treatment block exists, hospital emergency rooms in the area of treatment blocks, and other ~~concerned parties~~ public and quasi public institutions or organizations as deemed necessary by the department. These lists shall be used by department staff to provide prior notification of aerial treatments.

(7) The applicant shall designate ~~a county-wide~~ either:

(a) A county deadline for residents of county proposed spray blocks to register their objection to treatment and also the method for registering an objection.

(b) A bureau deadline for residents within bureau property boundaries of bureau proposed spray blocks to register their objection to treatment and also the method for registering an objection.

(8) (intro.) The applicant shall notify landowners and tenants within the eligible proposed treatment blocks and an area surrounding those blocks to be determined by the applicant. All notices shall provide information on location of proposed treatment blocks, insecticide to be used, approximate timing of treatment, how to register an objection to treatment of property and the name, address and phone number of the county or bureau coordinator as appropriate. Notification requirements of applicants to landowners and tenants shall include:

(10) County or bureau coordinators shall contact objectors who register an objection to treatment of their property before the deadline, determine the cause for objection and attempt to resolve it. If ~~objections~~ an objection cannot be resolved, county or bureau coordinators shall work with the

department's designated staff to remove the property and add ~~any~~ a buffer strip necessary to avoid treatment of the property. The buffer strip may not exceed 250 feet. If a treatment block is canceled because accommodating objectors makes the block untreatable in the judgment of the contractor for pesticide application, the county or bureau coordinator shall notify residents and property managers and return money that has been collected. The applicant shall resolve any objections on the basis of payment and the applicant is responsible for the entire local share of costs of treatment for blocks under its jurisdiction as of the date the applicants submits the grant application referenced in sub. (6). Treatment blocks shall be removed from the program due to nonpayment of the cost share by the applicant.

(11) (a) The department shall provide an estimate of per acre cost for treatment to county and bureau coordinators ~~no later than February 15th of each year~~ as soon as it is available. The applicant shall collect the entire estimated cost for treatment of the blocks the applicant applied for and pay it to the department by 30 calendar days following invoice or April 4 30 which ever is first unless otherwise provided on the application. If payment is not received by the deadline, the block shall be dropped from the program. Once the payment for treatment blocks has been received, the boundaries of these treatment blocks shall be considered fixed. Alteration or cancellation of a treatment block may only occur in the event of an irreconcilable conflict with a federally listed threatened or endangered species or where the contractor for pesticide application determines treatment of the block to be hazardous to the contractor. If a block is removed for these reasons, the department shall return the payment for that treatment block and the county coordinator shall notify residents and return money that has been collected for the spray treatment.

(12) ~~Applicants~~ If applying for cost sharing for administrative expenses, applicants shall submit a record of administrative costs incurred in the project period of July 1 through June 30 to the department by July 15.

SECTION 10. NR 47.915(1) is amended to read:

NR 47.915 Grant calculation. (1) A grant under this subchapter shall be no more of the eligible costs of treatment and administration than the maximum ~~for the appropriate category described in the following paragraphs~~ of 50% and be based on the amount of cost share funding received from the forest service:

- ~~(a) Privately owned lands under 500 acres per owner may be cost shared up to 50%.~~
- ~~(b) Private lands of over 500 acres per owner may be cost shared at up to 33%.~~
- ~~(c) Publicly owned lands may be cost shared at up to 25%.~~

SECTION 11. NR 47.917(1)(intro) and (2)(e) are amended to read:

NR 47.917(1) ELIGIBLE COSTS. (intro.) Applicant expenditures eligible for reimbursement under this subchapter shall be documented and provided to the department with any request for cost-share reimbursement. Eligible costs from July 1 to June 30 of each year are subject to cost share reimbursement under this subchapter. Reimbursement for treatment and administration of a block may not be more than the maximum ~~for the appropriate category for the block or portion thereof as described in s. NR 47.915 (1) (a) to (c)~~ of 50%. The following items are eligible for cost share reimbursements under this subchapter only if aerial treatments are conducted and the costs are eligible under this subchapter and as identified in the grant agreement:

(2)(e) Professional meetings and conferences attended by applicants are ineligible for cost sharing.

SECTION 12. EFFECTIVE DATE. This 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 13. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on _____.

Dated at Madison, Wisconsin _____.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Matthew J. Frank, Secretary

(SEAL)