

Report From Agency

REPORT TO LEGISLATURE

NR 47 subchs. VII and XIII, Wis. Adm. Code

Board Order No. FR-19-11
Clearinghouse Rule No. 12-029

Basis and Purpose of the Proposed Rule

A review of the 12 year old Wisconsin Forest Landowner Grant Program (WFLGP) was completed by the Division of Forestry's Private Land Management Specialist Team to identify ways to streamline administration, more efficiently use the dollars available and to continue to address landowner and forest resource needs. The team included internal forestry and wildlife staff, and external landowner, consulting forester and educator representatives.

As directed in 2007-09 Biennial Budget (*2007 Wis. Act 20*), the department is proposing to create subch. XIII NR 47 to establish the rules for administering and implementing a cost-share grant program for controlling invasive plants in weed management areas (WMA-PFGP).

The proposed rule addresses 1) revision to the current WFLGP for nonindustrial private forest (NIPF) landowners in subch. VII NR 47 Admin. Code and 2) the establishment of Weed Management Area Private Forest Grant Program (WMA-PFGP) in subch. XIII NR 47, Admin. Code.

Summary of Public Comments

An oral testimony by Steven Raether of Chippewa Falls, WI on behalf of the Wisconsin Woodland Owners Association (WOOA) was given approving of the changes to WFLGP in regards to extending grants when conditions are beyond the applicant's control, work on invasive plants, and reissuing money from those grant recipients who withdraw their application.

One written comment from Rod Sharka of Land O' Lakes, WI was received by the department during the comment period which ended July 31, 2012. The comment addressed a couple of recommendations that will be addressed in the WMA-PFGP handbook including what is considered "heavily infested" and allowing in-kind labor to be used as a match. The comment also mentioned the acreage limitation of 500 acres or less may exclude certain projects, however, the acreage limitation is set by s. 26.38 (2m) (a), Wis. Stats., not administrative code.

Modifications Made

There were no changes made to the rule order based on the comments received.

Appearances at the Public Hearing

Three hearings were held on Friday, July 20, 2012 at the DNR Service Centers in Fitchburg, Rhinelander (remote) and Eau Claire (remote). Three members of the public, Mr. & Mrs. Steven Raether of Chippewa Falls, WI and Steve Reinhardt of Madison, WI, attended and one gave oral testimony.

Changes to Rule Analysis and Fiscal Estimate

There have not been any changes to either the rule analysis or fiscal estimate.

Response to Legislative Council Rules Clearinghouse Report

Statutory Authority – How does the department reconcile s. NR 47.962 (17) and s. NR 47.964 (1) (b) with the requirement in s. 26.38 (2m) (a), Stats., that the “department shall award the grants only to persons owning 500 acres or less of nonindustrial private forest land in this state or to groups in which each person participating owns 500 acres or less of nonindustrial private forest land in this state”?

The Legislature has not defined by statute what a person participating means. The department, exercising its rule making authority, and consistent with the intent and the plain language of the statute, has provided the mechanism to allow groups of interested parties to receive grants for projects to control invasive plants in weed management areas. Under a plain language statutory construction analysis, as part of 2007 Wisconsin Act 20 amendment, the clause “and to award grants to groups of interested parties for projects to control invasive plants in weed management areas,” was added at the same time (in para materia) as the clause “or to groups in which each person participating owns 500 acres or less of NIPF lands in this state” to s. 26.38 (2m) (a), Stats. This makes it clear that the Legislature intended to award grants to groups of interested parties not to simply groups of landowners.

In addition, the second clause in the last sentence of s. 26.38 (2m) (a), Stats., is superfluous without the department’s definition of “person participating.” Prior to 2007 Wisconsin Act 20, there was nothing in statute that prevented groups where each member of the group owned 500 acres or less of NIPF land in this state from being eligible for grants under the prior s. 26.38 (2m) (a), Stats. Statutes should not be read in any way that makes them superfluous.

This is consistent with both the Legislative history of this provision and the structure of existing weed management groups that this Legislative change was designed to give assistance to.

Form, Style and Placement - *Incorporated all recommendations.*

Adequacy of References to Related Statutes, Rules and Forms - *Their recommendation to repeal subch. III of ch. NR 47 is being addressed by the small business ombudsman as part of the department wide review of outdated administrative rules.*

Clarity, Grammar, Punctuation and Use of Plain Language - *Incorporated all recommendations.*

Final Regulatory Flexibility Analysis

The total amount of funding from the WFLGP appropriation under s. 20.370 (5) (av), Stats., is not changing from the past amounts; therefore the overall secondary effect on small businesses will be the same as it has been in the past. The only change is to shift \$60,000 of the WFLGP funds to be awarded through WMA-PFGP; this shift in funds will have a positive secondary impact on small businesses that provide services or equipment for controlling terrestrial invasive plants.