

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

The Wisconsin Natural Resources Board proposes an order to amend NR 47.005(1), 47.007(1) and 47.008(1) and to create NR 47, subch. XII, relating to the administration of the urban forestry catastrophic storm grant program.

FR-11-08

Analysis Prepared by the Department of Natural Resources

Statutes interpreted: s. 23.097 (1r), Stats.

Statutory authority: Section 23.097(1r), Stats., directs the department to provide grants to counties, cities, villages, towns, federally recognized Indian tribes or bands and nonprofit organizations that have been affected by catastrophic storm events in urban and developed areas for which the governor has declared a state of emergency.

Explanation of agency authority: In addition to the grants awarded under s. 23.097 (1g), Stats., the department may award grants to counties, cities, village, towns, nonprofit organizations, and federally recognized Indian tribes or bands that apply for the grants for the costs of removing, saving, and replacing trees that have been damaged by catastrophic storm events in urban areas.

Related statute or rule: None.

Analysis of proposed rules:

2007 Wisconsin Act 13 gives the department the authority to provide urban forestry grants to meet communities' needs for repair, removal, and replacement of trees following a catastrophic storm event for which the Governor has designated a state of emergency. Act 13 allows for a portion of the current urban forestry grant appropriation to be used to fund no-match catastrophic storm grants in an expedited manner for Governor-declared disasters in urban or developed areas of the state.

To accomplish this, the proposed rule will update the existing general provisions section on grantee accountability, grant termination, and enforcement contained within NR 47, subchapter I. Additionally NR 47, subchapter XII will be created to administer the urban forestry catastrophic storm grants. NR 47, subchapter XII establishes eligibility, application procedures, eligible costs for payment, the grant selection process and the required supporting documentation for the urban forestry catastrophic grant program.

Comparison of federal regulations.

No assistance is currently provided to the above listed entities from the Federal Emergency Management Administration (FEMA) for 1) restorative pruning to damaged public or private trees, 2) removal and clean up of destroyed trees on private property, 3) re-planting of destroyed public or private trees. The urban forestry catastrophic storm grant program will help to fill that gap.

Comparison of adjacent states.

No nearby state has a program or similar legislation pending that is directly related to catastrophic storm grants for damage to urban forests. There are urban forestry supported programs in near-by states; however, nothing could be found that specifically addresses catastrophic storm damage to urban forests.

One program funded by the United States Forest Service and administered by the State of Mississippi Forestry Commission provides assistance for recovery activities for urban and community forests affected by Hurricane Katrina. The program awarded a total of \$900,000 during 2006 and 2007 to local units of government, not-for-profit organizations, and educational institutions; however program funding does not appear to be ongoing as grants are not available at this time.

Summary of factual data and analytical methodologies. None.

Anticipated costs incurred by the private sector.

The private sector will not incur any costs.

Effect on small business.

Small business may benefit as a result of the proposed new grant program. Grant recipients may contract with small businesses in Wisconsin for equipment rental and sales, consulting services, providing diverse nursery stock, along with removal, remediation, restoration and tree utilization efforts.

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SECTION 1. NR 47.005(1) is amended to read:

NR 47.005(1) APPLICABILITY. The provisions of this section apply only to subchs. II, IV, V, VIII, ~~and IX~~ and XII.

SECTION 2. NR 47.007(1) is amended to read:

NR 47.007(1) The provisions of this section apply only to subchs. II, IV, V, VIII, ~~and IX~~ and XII.

SECTION 3. NR 47.008(1) is amended to read:

NR 47.008(1) The provisions in this section apply only to subchs. II, IV, V, VIII, ~~and IX~~ and XII.

SECTION 4. Chapter NR 47, subch. XII is created to read:

CHAPTER 47, Subchapter XII
Urban Forestry Catastrophic Storm Grant Program

NR 47.950 Purpose. The purpose of this subchapter is to establish criteria and procedures for awarding grants to local governments, tribes and not-for-profit organizations for the repair of catastrophic storm damage to urban forests as provided in s. 23.097 (1r), Stats.

NR 47.951 Applicability. This subchapter applies to all Wisconsin counties, cities, villages, towns, tribal governments and not-for-profit organizations applying for grants under this subchapter.

NR 47.952 Definitions. In this subchapter:

(1) "Applicant" means a Wisconsin town, village, city, county, tribal government or not-for-profit organization.

(2) "Catastrophic storm event" means snow, ice, hail, wind or tornado of sufficient ferocity to cause damage to urban forests and for which the governor declares a state of emergency under s.

166.03, Stats. Catastrophic storm event does not include forest fires, drought, insect infestations or disease, or water saturation due to flooding.

(3) "Concentrated development" means an area with an aggregate population of at least 100 persons per square mile as calculated by the Wisconsin department of administration.

(4) "Department" means the department of natural resources.

(5) "Grant agreement" means a legal contract between the applicant and the department that sets forth mutual obligations related to a specific urban forestry project.

(6) "Grant period" means the period of time specified in the grant agreement during which all work shall be completed.

(7) "Marshalling yard" means a location in which storm-related tree debris is collected, held or processed for future use.

(8) "Not-for-profit organization" means an organization that is certified by the internal revenue service as meeting the requirements of section 501(c)(3) of the internal revenue code and has registered with the department of financial institutions.

(9) "Urban forest" means trees in cities, villages and other concentrated development.

NR 47.953 Eligibility. Applicant eligibility is determined by the following:

(1) A catastrophic storm event has occurred for which the governor has declared a state of emergency.

(2) The applicant is applying on behalf of the community that sustained damage as a result of the catastrophic storm event.

(3) The party applying for assistance must be an applicant as defined in s. NR 47.952 (1).

(4) Two or more eligible applicants may enter into a cooperative agreement to jointly apply for funds under this subchapter, with one applicant designated as the fiscal agent on behalf of all applicants to administer the grant agreement on behalf of all cooperating members.

NR 47.954 Application procedures. (1) An eligible applicant may apply for a grant under this subchapter for the purpose specified under s. NR 47.950.

(2) Eligible applicants shall request grant funding on the application forms provided by the department. The application shall include a resolution of the applicant's governing body that authorizes its representative to file the grant application, serve as the contact for purposes of a grant under this subchapter, and submit reimbursement claims.

Note: Application materials are available upon request from the Department of Natural Resources, Bureau of Forest Management, 101 S. Webster Street, P.O. Box 7921, Madison, WI 53707-7921, telephone (608) 267-7494. Completed forms and supporting documentation shall be mailed to the same address. Application materials may also be obtained from the Wisconsin Department of Natural Resources webpage at: <http://dnr.wi.gov/forestry/UF/index.htm>

(3) An eligible applicant shall submit an application that is postmarked no later than 60 days from the date of the governor's declaration of emergency for the catastrophic storm event for which funds are sought.

(4) The department may request additional or missing grant application information in writing or by other means. Applicants shall submit additional or missing information to the department within 30 days of the date of the request. Failure of applicants to provide the requested information by the deadline will result in the department returning the incomplete application to the applicant.

(5) The department shall evaluate all complete applications submitted using the criteria identified in s. NR 47.956.

(6) The department shall notify both eligible and ineligible applicants in writing of the status of their grant application within 60 days from the date the application is deemed complete.

(7) The department shall award grants in accordance with s. NR 47.957.

(8) If an eligible applicant submits an application but all program funds have been expended during a fiscal year, the department shall hold the application for reconsideration when additional funds become available. The department shall notify the applicant in writing of the reason for the delay and the opportunity for reconsideration of the application when additional funds become available.

NR 47.955 Eligible and ineligible costs. (1) **ELIGIBLE COSTS.** Under this subchapter, the applicant's cost of removing, repairing, and replacing trees in an urban forest that have been damaged by a catastrophic storm event shall be eligible for reimbursement so long as those costs are

not otherwise reimbursed by federal disaster assistance or other funding sources. To be eligible for reimbursement, the applicant shall have incurred eligible costs within a 365-day period beginning on the date on which the governor makes the declaration of emergency. Eligible costs includes:

- (a) Rented, leased or applicant supplied equipment and facilities.
- (b) Purchased equipment. For equipment whose useful life is one year or less, the full purchase price is an eligible cost. For equipment whose useful life is greater than one year, eligible cost is equal to one year's useful life as determined by dividing the purchase price by the number of years of useful life of the equipment. Useful life of equipment shall be determined by the department. Regardless of the useful life, equipment costing more than \$5,000 per unit is not eligible for reimbursement.
- (c) Salaries and fringe benefits associated with applicant personnel engaged in removing, repairing and replacing storm-damaged trees.
- (d) Contractor and consultant service agreements to remove, repair and replace storm-damaged trees.
- (e) Marshalling yards and their operation.
- (f) Tree removal, stump grinding, cleaning and filling holes left by tree removal, tree repair, replacement tree purchase and planting, soil amendment and mulching, and tree guards and other protective devices for new tree establishment.
- (g) Disposal of wood and brush from tree removal and repair.
- (h) Processing wood and brush for other uses from tree removal and repair.
- (i) Applicant personnel mileage.
- (j) Necessary supplies. Supplies may include but are not limited to maps, fuel, computer software or devices for storm damage assessment and response, photocopies, photography, postage and other supply costs determined by the department to be reimbursable. Supplies do not include rent, personal computers, office printers or capital expenditures.

(2) COST CONTAINMENT. Applicants shall control costs using the following methods. Failure by the applicant to demonstrate cost containment efforts at the time of reimbursement request may result in refusal by the department to issue reimbursement payments. Cost containment methods include the following:

(a) Heavy equipment costs shall be calculated on an hourly or mileage rate, not to exceed the hourly or mileage rates established by the Wisconsin department of transportation for highway equipment.

Note: The county highway rates for equipment are formulated under s. 84.07, Stats., and can be found in chapter 5 of the *State Highway Maintenance Manual* published by the Wisconsin Department of Transportation, 4802 Sheboygan Avenue, Madison, WI 53705.

(b) Applicants shall implement cost-effective best management practices. All tree care operations shall meet standards established in all parts of the most current editions of ANSI A300 American National Standard for Tree Care Operations – Standard Practices and ANSI Z133.1 American National Standard for Arboricultural Operations - Safety Requirements.

Note: The ANSI standards are available at www.isa-arbor.com International Society of Arboriculture, PO Box 3129, Champaign, IL 61826.

(c) Costs for removing, repairing, replacing or planting trees may not exceed local market rates.

(d) All applicants receiving a grant under this subchapter shall comply with the state procurement law under ss. 59.52, 60.47, 61.55, 61.56, 62.15, 66.0131 and 66.0901, Stats.

Note: So that applicants may better comply with state procurement and cost-containment requirements, the department makes available the document titled *Procurement Guide for Local Governments Receiving Grants*. This document is available from the department upon request by writing to: Department of Natural Resources, Bureau of Forest Management, 101 S. Webster Street, P.O. Box 7921, Madison, WI 53707-7921, telephone (608) 267-7494, or on-line at: <http://dnr.wi.gov/org/caer/cfa/grants/Forms/ProcurementGuide.pdf>

(3) INELIGIBLE COSTS. The department may not reimburse costs not directly associated with the implementation of this subchapter. Those costs include, but are not limited to the following:

- (a) Costs incurred before or more than 365 days after a governor's declared state of emergency for the applicant's area.
- (b) Costs for the repair of structures, vehicles, fences, sidewalks or other objects damaged by damaged trees or their parts.
- (c) Legal or settlement costs due to storm-related litigation.

- (d) Costs of routine urban forest management to trees unaffected by the storm.
- (e) Fines and penalties due to violations of, or failure to comply with, federal, state or local laws or regulations.
- (f) Ordinary applicant operating expenses, also called indirect costs, such as salaries and expenses of elected officials that are not directly related to urban forestry management.
- (g) Costs incurred in a contract which creates a real or apparent conflict of interest.
- (4) CONFLICT OF INTEREST PROHIBITION.** An apparent conflict of interest arises when an official or employee of an applicant participates in the selection, awarding or administration of a contract supported by the grant and either:
 - (a) The official or employee, or his or her spouse or partner or children, has an ownership interest in the firm selected for the contract.
 - (b) A person identified in par. (a) receives a contract, gratuity or favor as a result of the award of the contract.

NR 47.956 Application review criteria. (1) The department shall review and consider, as a group, all applications postmarked within 60 days of each state of emergency declaration made by the governor. Each application in the group shall be evaluated for all of the following factors:

- (a) Extent of tree damage in public areas, residential properties, businesses and natural areas.
- (b) The damaged area within the applicant's jurisdiction as a percentage of overall land area.
- (c) Repair work needed in the categories of tree removal, stump grinding and cleanup; tree restoration; tree planting and the estimated cost of those repairs.
- (d) Population of the applicant's jurisdiction.
- (2)** Each eligible applicant will share grant funding with all other reviewed applications in its group consistent with the provisions in s. NR 47.957(3).

NR 47.957 Grant awards (1) SOURCE OF GRANT FUNDING. The department shall allocate up to 20% of the amount appropriated under s. 20.370. (5)(bw) and (1)(mv), Stats., for grants issued under this subchapter. An individual grant awarded by the department under this subchapter may range from not less than \$4,000 and not more than \$50,000.

(2) RESTRICTIONS. The department may not award funds under this subchapter if eligible costs were received by the applicant from any of the following sources:

- (a) Federal or state agencies.
- (b) Public or private insurance.
- (c) Charitable contributions.
- (d) Other sources.

(3) ALLOCATION OF FUNDS. (a) All eligible applicants following the governor's state of emergency declaration will share grant funds available under this subchapter at that time. If grant funds are insufficient to fully fund all eligible applicants, the department will pro-rate available funds among all eligible applicants until funds are exhausted.

(b) The department shall issue a grant agreement to all eligible applicants that receive grant funds. The grant agreement shall be signed by the applicant's authorized representative and returned to the department within 30 days of the date of the agreement. Failure of the applicant to sign and return the grant agreement by the deadline may result in the department canceling the agreement and awarding associated funds to another eligible applicant.

(4) APPLICANT MATCH. There is no match requirement for grants under this subchapter. It is anticipated that project costs will exceed available grant funding. Costs in excess of the grant award amount are the responsibility of the applicant.

(5) ADVANCE PAYMENTS. Applicants may request from the department one advance payment not to exceed 50% of the total grant award amount. Applicants shall make this request, in writing, when returning the signed grant agreement to the department. The applicant shall maintain detailed records and proofs of payment to justify expenditure of any advance for a project under this subchapter. Applicants shall submit these proofs of payment when final reimbursement is requested.

NR 47.958 Reimbursements. (1) CLAIM SUBMITTAL. Only eligible applicants that have entered into a signed grant agreement with the department for funding under this subchapter may apply for reimbursement of urban forest damage costs. Eligible applicants shall do all of the following:

(a) Make claims on forms provided by the department.

Note: Reimbursement claim forms are available upon request from the Department of Natural Resources, Bureau of Forest Management, 101 S. Webster Street, P.O. Box 7921, Madison, WI 53707-7921, telephone (608) 267-7494. Completed forms and supporting documentation shall be mailed to the same address. Forms may also be found on the Wisconsin Department of Natural Resources webpage at: <http://dnr.wi.gov/forestry/UF/index.htm>

(b) Submit proofs of payment with reimbursement claims. Proofs of payment may include copies of canceled checks, copies of checks and bank statements and credit card receipts and credit card statements.

(c) Specify all of the following if the applicant seeks reimbursement of employee salaries or fringe benefits, or independent contractor fees.

1. The position number of the employee, or the contract number of the independent contractor.
2. The total amount of salaries and fringe benefits, or the total amount of contractor fees, for which the applicant seeks reimbursement.

(d) Submit proof of cost-containment efforts.

Note: So that applicants may better comply with state procurement and cost-containment requirements, the department makes available the document titled *Procurement Guide for Local Governments Receiving Grants*. The document is available from the department upon request by writing to: Department of Natural Resources, Bureau of Forest Management, 101 S. Webster Street, P.O. Box 7921, Madison, WI 53707-7921, telephone (608) 267-7494, or on-line at: <http://dnr.wi.gov/org/caer/cfa/grants/Forms/ProcurementGuide.pdf>

(e) Request reimbursement only for eligible costs identified in s. NR 47.955.

(f) Comply with generally accepted accounting principles and practices.

(g) Substantiate, with proofs of payment, any advance payment earlier provided by the department.

(h) Submit final reimbursement claims postmarked within 60 days of the end of the grant agreement.

(2) DISBURSEMENT. The department shall disburse payments under this subchapter following review of final reimbursement claims submitted by applicants. The department shall compare reimbursement claims with the applicant grant agreement. The department shall offset the amount of a final reimbursement by any portion of an advance that the applicant cannot substantiate with proofs of payment and by other sources of funding that the applicant has received for damages in the same storm event as described in s. NR 47.957(2).

(3) REPAYMENT OF ADVANCE. If the department finds that proofs of payment are insufficient to substantiate the full amount of an advance, the department shall notify the applicant in writing and request additional documentation. The applicant shall respond to the request for additional information within 30 days of receiving written notice from the department. If the applicant cannot substantiate the full amount of an advance, then the applicant shall return the unsubstantiated balance of the advance to the department within 30 days of receipt of the department's request.

NR 47.959 Audit and records retention. (1) AUDIT. If eligible costs are subsequently reimbursed by sources other than the department after the department has issued payment under this subchapter, the applicant shall refund to the department the amount of those costs. If the department, applicant or applicant's auditor determines that both the department and another source paid an eligible cost, the applicant shall refund the questioned cost to the department. The department shall deposit any refund back into the urban forestry grant fund appropriation.

(2) RECORDS RETENTION. The applicant shall retain all receipts, records and supporting documentation associated with each grant award for a period of 3 years after final payment date. The applicant shall make these documents available for review by the department upon request.

SECTION 5. INITIAL APPLICABILITY. This rule first applies to costs incurred as a result of catastrophic storm damage to an urban forest on or after June 14, 2007, and for which the governor has declared a state of emergency.

SECTION 6. EFFECTIVE DATE. The 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 7. BOARD ADOPTION. The rule was approved and adopted by the State of Wisconsin Natural Resources Board on October 22, 2008.

Dated at Madison, Wisconsin _____

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Matthew J. Frank, Secretary

(SEAL)