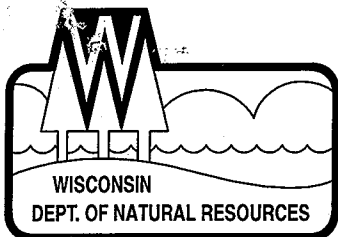


97-152

Clearinghouse Rule 97-152

State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES



Tommy G. Thompson, Governor
George E. Meyer, Secretary

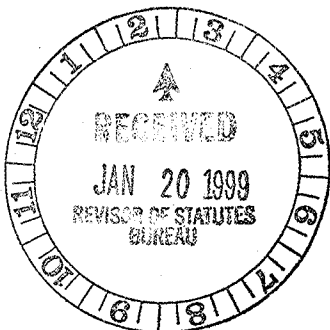
Box 7921
101 South Webster Street
Madison, Wisconsin 53707-7921
TELEPHONE 608-266-2621
FAX 608-267-3579
TDD 608-267-6897

STATE OF WISCONSIN)
) ss
DEPARTMENT OF NATURAL RESOURCES)

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, George E. Meyer, Secretary of the Department of Natural Resources and custodian of the official records of said Department, do hereby certify that the annexed copy of Natural Resources Board Order No. FR-4-98 was duly approved and adopted by this Department on September 23, 1998. I further certify that said copy has been compared by me with the original on file in this Department and that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Department at the Natural Resources Building in the City of Madison, this 14th day of January, 1999.



George E. Meyer
George E. Meyer, Secretary

(SEAL)

4-1-99

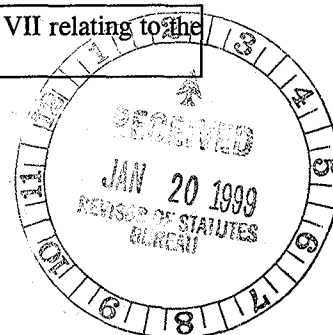


ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
CREATING RULES

The State of Wisconsin Natural Resources Board proposes an order to create ch. NR 47, subch. VII relating to the private forest landowner grant program.

FR-4-98

Analysis Prepared by Department of Natural Resources



Authorizing statutes: ss. 26.38, and 227.11(2)(a), Stats.
Statutes interpreted: s. 26.38, Stats.

The 1997-98 State Budget created the Wisconsin Forest Landowner Grant Program (WFLGP). These rules amend this chapter to include rules pertaining to the administration of the Wisconsin forest landowner assistance program.

SECTION 1 Chapter NR 47, subch. VII is created to read:

**SUBCHAPTER VII
THE PRIVATE FOREST LANDOWNER GRANT PROGRAM**

NR 47.80 PURPOSE AND SCOPE. The purpose of this subchapter is to establish procedures and standards for the administration of the private forest landowner grant program as authorized under s. 26.38, Stats., for the purpose of encouraging private forest landowners to manage their lands in a manner that benefits the state's forest and related resources and the people of the state.

NR 47.81 APPLICABILITY. This subchapter is applicable to private, non-industrial forest landowners applying for or receiving grants under this subchapter.

NR 47.82 DEFINITIONS. In addition to definitions in s. NR 47.002, the following definitions apply to this subchapter:

- (1) "Afforestation" means establishing a forest on land not previously forested due to past land use, e.g., agricultural use.
- (2) "Landowner forest stewardship plan" means the plan prescribing forest stewardship measures to be used on a particular site to achieve multiple natural resource goals.
- (3) "Person" has the meaning in s. 990.01 (26), Stats.
- (3) "Practice" means a stewardship activity or conservation measure consistent with the landowner forest stewardship plan to accomplish the landowner's desired management objectives.
- (4) "Program" means the private forest landowner grant program established by the act.
- (5) "Reforestation" means establishing a forest on lands that were previously forested but where cover has been lost due to recent harvesting, land conversions, natural disasters or other destructive agents.

(6) "Riparian area" means the area or zone adjacent to a navigable stream or other body of water.

(7) "Wetlands" means an area where water is at, near or above the land surface long enough to be capable of supporting aquatic or hydrophytic vegetation and which has soils indicative of wet conditions.

NR 47.83 PROGRAM ADMINISTRATION. The department shall administer the program, within the guidance provided by the authorizing statute.

NR 47.84 ELIGIBILITY. (1) ELIGIBLE APPLICANTS. (a) All nonindustrial private forest lands that meet the program requirements as herein stated are eligible for assistance under the program.

(b) The owner of any nonindustrial private forest land which consists of at least 10 contiguous acres and not more than 500 acres of non-industrial private forest land in the state may apply for a grant under this subchapter.

(2) ELIGIBLE PRACTICES. (a) Plan development. Landowner forest stewardship plan development which identifies landowner objectives and multiple resource management decisions. The plan shall meet the following minimum standards:

1. Title page.
2. Signatures of landowners.
3. Landowner's long-range goals for the property.
4. Map or aerial photograph showing the property with stands delineated and uniquely labeled.
5. Property overview, i.e., general location, major forest types, general landforms, relevant description of the landscape, etc. Also include discussion of any known threatened or endangered species. (Usually one paragraph).
6. General discussion of landowner goals and the expected effects of achieving these goals on the soil and water, wildlife, recreation/aesthetics, timber and other natural resources. This may be included either as a separate item or as part of the stand recommendations.
7. Stand descriptions and recommendations including: Unique stand identification keyed to the map: vegetation cover type; size class; size (acres); soil characteristics and erodibility (may be covered in a general paragraph if the description is applicable to the whole property); stand objective and its relationship to the landowner goals for the property; recommendations and a short discussion of the effects of such actions on the soil and water, wildlife, recreation/aesthetics and timber resources. Discussion of the effects is not necessary on a stand-by-stand basis if covered in the general discussion.
8. Activity schedule showing all stands and approximate year of recommended actions for a 5-year period. Include all stands, even if no action is recommended.
9. Contain practices that protect and enhance soil and water quality; threatened, rare or endangered species or communities; sustainable forestry; habitat for fish and wildlife; and the recreational, aesthetic and environmental benefits that the forest land provides.

(b) Practices. The following practices are eligible for grants under this subchapter if the land is subject to a department approved forest stewardship landowner management plan:

Note: All practices will strongly encourage the use of native plant and animal species where practical.

1. Reforestation and afforestation which includes establishment or reestablishment of diverse stands of native forest trees through natural regeneration, planting or direct seeding for conservation purposes and sustainable timber production.

2. Forest improvement which includes practices to increase tree growth, tree quality, biological diversity, tree vigor and forest health.

3. Soil and water protection and improvement which includes the maintenance or improvement of water quality and soil productivity, and the reduction of erosion on forest and related land.

4. Wetland protection, restoration and creation which includes the management, protection, restoration and improvement of wetlands to maintain water quality, protect and improve wetlands and improve habitat for wetland wildlife species.

5. Riparian protection and improvement which includes the management, protection, restoration and improvement of riparian areas to maintain water quality, reduce sedimentation and enhance fish or wildlife habitat.

6. Terrestrial wildlife and habitat enhancement which includes the establishment, management and enhancement of permanent habitat for game and non-game wildlife species.

7. Forest historic, environmental and recreational enhancement which helps in identifying and protecting archeological and culturally significant sites; protect, enhance or restore aesthetic quality; enhance non-commercial recreation, and protect forest health.

8. Endangered, threatened or rare natural resource protection, management, restoration and enhancement targeted at threatened or endangered species habitat maintenance or enhancement, and management of significant natural communities or rare native vegetation.

NR 47.85 COSTS. (1) ELIGIBLE COSTS. (a) Grants under the program shall be used to prepare management plans or manage the following lands under an approved landowner forest stewardship plan:

1. All of the nonindustrial private forest land with existing tree cover within a contiguous tract.
2. Other nonindustrial private forest land within the same contiguous tract which is identified by the landowner and approved by the department as suitable for the approved program practice scheduled.
3. Other contiguous related lands included in the forest stewardship plan, such as water, streams and stream corridors, wetlands, marshes, savannas, barrens and prairies.

(b) To be eligible for a grant under this program, one or more eligible practices shall be identified in the forest stewardship plan, except that a grant may be awarded for the development of a forest stewardship plan.

Note: See s. NR 47.86 for eligible practices.

(c) Eligible costs are all those associated with the preparation or installation of a specific practice as approved by the state forester.

(2) INELIGIBLE COSTS. (a) No person may use grant funds under this subchapter for any of the following:

1. Costs incurred before an application for grant assistance is approved.
2. The implementation of any practice already required by law, rule regulation or other authority.
3. Repairs or normal upkeep or maintenance of any practice, except those necessary to ensure seedling or shrub survival, restore prairies, barrens or savannas, control invasive species or other instances where several years of practice implementation are necessary to properly establish a practice, as determined by the department.

(b) Except as authorized by the department, grant assistance may not be paid for repeating practices on the same site by the same landowner which have been implemented under the forestry incentives program or any other federal, state or local government programs, except where the practices are repeated due to a failure of a prior practice without fault of the landowner.

NR 47.86 GRANTS, (1) GRANT CALCULATION. (a) The matching grant shall be 65% of the actual eligible costs.

(b) An annual grant under the program may not exceed \$10,000 for any individual, person or project.

(2) GRANT SELECTION SYSTEM. (a) In selecting practices for grant assistance, the department shall give preference to projects which are directed to accomplish one or more of the following; these are not listed in order of priority:

1. Establish or reestablish forests through various methods of regeneration, including planting, direct seeding or natural regeneration.
2. Improve forest stand productivity, stand vigor, forest health, and the value and quality of wood products
3. Encourage sustainability of forest lands.
4. Provide protection of soil and water resources.
5. Include additional land under written forest stewardship management plans.
6. Provide protection and enhancement of riparian area and wetlands.
7. Provide protection and enhancement of terrestrial wildlife habitat.
8. Provide endangered, threatened or rare species habitat enhancement and natural community habitat maintenance and enhancement.

(3) APPLICATION AND APPROVAL. (a) Applicants shall file applications form with the bureau of forestry no later than November 30, 1998. Starting in 1999, the application deadlines are as follows and are contingent upon availability of funds: February 1, June 1, and September 1.

Note: Applications can be obtained from the local department of natural resources forester or from the State Forester, P.O. 7921, Madison, WI 53707-7921.

(b) The department shall make basic eligibility determinations, including whether the applicant meets nonindustrial private forest land ownership criteria and minimum and maximum acreage criteria.

(c) Grants shall be awarded for eligible projects on first-come-first-serve based on the information received by the bureau of forestry.

(d) Applications not able to be funded during the one applications period will be held until the subsequent application period unless the landowner requests the application be canceled.

(e) The department shall review applications to determine practice eligibility, based on the following:

1. Consistency with a department approved landowner forest stewardship unless the applicant is applying for a grant to develop one.

2. The practice is needed and feasible.

3. The practice is eligible under this subchapter.

4. The practice cost is determined to be at least \$100 or more.

5. Applications will be approved provided grant funds are available. Department approval of an application shall constitute an agreement between the state and the landowner.

6. Upon approval of a practice, the department shall prepare a practice outline that identifies the needed technical practices, specifications, and approximate time frames for the implementation of the practice, to achieve the objectives of the practice. The outline shall be attached to and become part of the landowner forest stewardship plan and shall be effective for the duration of the practice. The requirements in the practice outline shall constitute the basis for determining acceptable performance upon practice completion.

7. Upon approval of a practice, the landowner shall be notified in writing by the department or its agent. The notice shall state that the landowner can begin implementing the approved practice.

8. Within 8 weeks of the end of the batching period, the department shall notify the landowner in writing as to the status of his or her application.

NR 47.87 PAYMENT TO LANDOWNERS. (1) A landowner shall complete each practice within 18 months of approval. However, if a practice is not completed in 18 months due to conditions beyond the landowner's control, a 6 month extension period may be granted by the department.

(2) Upon certification by the department that a practice has been completed in accordance with specifications, the grant payment shall be calculated by the department and disbursed to the landowner by the department or its agent.

(3) A practice may consist of one or more component activities. A landowner may receive partial payment for completed components, with approval of the department forester, on the condition that the landowner agrees to complete the remaining components of the practice within the time period specified by the department, not to exceed 18 months following approval to implement the practice, unless an extension is justified as provided in sub. (1).

(4) Where performance actually rendered does not meet the minimum specifications for the practice due to

factors beyond the landowner's control, the department may approve grant payment under one of the following conditions:

(a) The landowner repeats applications of components previously implemented or establishes additional eligible components under terms and conditions the department approves to the extent that measures are needed to meet the objectives of the landowner forest stewardship plan; or

(b) The landowner establishes to the satisfaction of the department that the following have been met:

1. A reasonable effort was made to meet the minimum requirements.

2. The practice, as performed, adequately meets the objectives of the landowner forest stewardship plan.

(5) Where the landowner has received grant assistance for site preparation and the establishment of trees has been unsuccessful due to factors beyond the landowner's control, the department shall require that trees be re-established and shall approve grant assistance for the activity.

(6) The minimum length of time a landowner shall be required to maintain a practice is 10 years.

(7) To be eligible to receive cost-share grants under the program, a landowner shall agree to maintain program practices for 10 years, unless otherwise specified by the state forester.

(8) Prior to receiving approval to implement any program practice, eligible landowners shall have a department approved landowner forest stewardship plan. If a landowner sells, conveys, or otherwise loses control of lands upon which there is a continuing obligation to maintain a practice and the new landowner does not agree to assume the responsibility for maintaining the practice, the landowner who was originally obligated to maintain the practice shall be liable to reimburse the department for payments on the practices. The state forester may discount the reimbursement owed the department by the percentage of years during which the practice has been maintained. In the case of death or incompetency of any landowner, the department shall approve grant payments to the successor if the successor agrees to maintain the practice for the duration of the agreement.

(9) Any landowner who may be entitled to any grant payment under this section may assign the right, in whole or in part, with the prior written approval of the department.

(10) No grant payment owed to any landowner shall be subject to any claim arising under state law by any creditor, except agencies of the state of Wisconsin.

NR 47.88 RECONSIDERATION. Any landowner, successor or assignee who is dissatisfied with any determination made under the program may request reconsideration by the state forester. All requests for reconsideration shall be in writing and shall contain factual information explaining the basis for requesting reconsideration. All decisions upon reconsideration shall be issued in writing.

NR 47.89 ENFORCEMENT. (1) If any landowner, successor or assignee uses any scheme or device to unjustly benefit from this program, the cost-share grants shall be withheld or a refund of all or part of any program payments otherwise due or paid that person shall be secured. A scheme or device includes, but is not limited to, coercion, fraud or misrepresentation, false claims, or any business dissolution, reorganization, revival or other legal mechanism designed for or having the effect of evading the requirements of this subchapter.

(2) If any landowner or successor takes any action or fails to take action which results in the destruction or impairment of a prescribed practice for the duration of the practice, cost-share grants shall be withheld or a refund of all or part of any program payments otherwise due or paid shall be secured.

(3) Nothing in this subchapter requiring the withholding or refunding of cost-share grants shall preclude any other penalty or liability otherwise imposed by law.

The foregoing rule was approved and adopted by the State of Wisconsin Natural Resources Board on September 23, 1998.

The rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22(2)(intro.), Stats.

Dated at Madison, Wisconsin

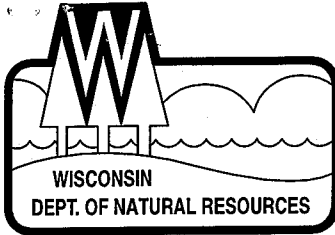
January 14, 1999

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By

George E. Meyer
George E. Meyer, Secretary

(SEAL)



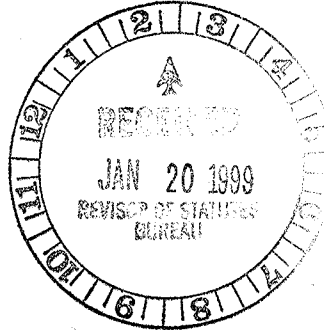
State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

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January 13, 1999

Mr. Gary L. Poulson
Assistant Revisor of Statutes
131 West Wilson Street - Suite 800
Madison, WI



Dear Mr. Poulson: *Gary*

Enclosed are two copies, including one certified copy, of State of Wisconsin Natural Resources Board Order No. FR-4-98. These rules were reviewed by the Assembly Committee on Natural Resources and the Senate Committee on Environment and Energy pursuant to s. 227.19, Stats. Summaries of the final regulatory flexibility analysis and comments of the legislative review committees are also enclosed.

You will note that this order takes effect following publication. Kindly publish it in the Administrative Code accordingly.

Sincerely,

George
George E. Meyer
Secretary

Enc.