

APR 05 2001

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State of Wisconsin
Department of Natural Resources

NOTICE TO PRESIDING OFFICERS OF PROPOSED RULEMAKING

Pursuant to s. 227.19, Stats., notice is hereby given that final draft rules are being submitted to the presiding officer of each house of the legislature. The rules being submitted are:

Natural Resources Board Order No. FR-42-00

Legislative Council Rules Clearinghouse Number 00-177

Subject of Rules Federal cost sharing program
to suppress gypsy moths

Date of Transmittal to Presiding Officers April 3, 2001

Send a copy of any correspondence or notices pertaining to this rule to:

Carol Turner, Rules Coordinator
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LS/5, 101 South Webster

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An electronic copy of the proposed rule may be obtained by contacting Ms. Turner

REPORT TO LEGISLATURE

NR 47 subch. IX, Wis. Adm. Code
Federal cost sharing program to suppress gypsy moths

Board Order No. FR-42-00
Clearinghouse Rule No. 00-177

Statement of Need

Gypsy moth is an insect that feeds on the foliage of a wide range of trees. For 11 years gypsy moth has been consistently trapped in Wisconsin. Gypsy moth populations continue to grow and spread in Wisconsin. The federal and state cooperative Slow The Spread (STS) program sprays pioneering colonies of this foreign pest in central and western Wisconsin in an effort to retard its movement westward. Once the gypsy moth is established throughout a county, it is considered "infested", placed under quarantine regulation and the STS program is no longer active in that area. Within quarantined areas, it is the choice of landowners to control this insect as it is to manage any pest on their land.

Where gypsy moths go into outbreak, the numbers of this pest can get so high they strip whole forests of leaves in June. When this happens, the public typically becomes very concerned and looks for ways to reduce the population of the pest to tolerable levels. Treatments to kill such large numbers of gypsy moth 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. A department organized suppression program will provide the public with a safe, effective and affordable means to prevent damage to the trees they value.

The goal of the department's suppression program is prevention of significant stress to trees from defoliation in excess of 50%. The criteria for eligibility for the cost shared suppression program reflect the program's goal of only treating gypsy moth populations that can be expected to cause significant defoliation. The department proposes to offer an aerial spray program to suppress outbreaks of gypsy moth that will be unified with the current aerial contract treatments being done for the STS program. By combining the acreage of the two programs, the department expects to be able to get a much lower price per acre for suppression than would be available to a relatively small private spray project.

Participation in the department's voluntary suppression and cost sharing program will be through counties. Most of the local tasks must be done in a period of a few months and all proposed treatment blocks must be serviced in this short period. Cost sharing from the USDA Forest Service will be available to participants in the department's aerial suppression treatments. The Forest Service offers up to 50% cost share for treating privately owned land under 500 acre/owner, up to 33% cost share for private lands of over 500 acres/owner and up to 25% cost share for treatment of publicly owned land. The cost share covers both the treatments and the administrative work done to prepare for treatments so work by local coordinators would be eligible for reimbursement, dependent on the availability of federal funds.

While applicant counties are responsible for costs that exceed the amount reimbursed by the Forest Service cost sharing program, they do have the option of recovering those costs from the landowners whose land was treated or by making other arrangements for local funding.

Modifications as a Result of Public Hearing

Reimbursement of county expenses – The rule has been modified so that the entire cost of the treatment must be sent in prior to spraying instead of the minimum local share. The counties will then receive the entire reimbursement sent by the Forest Service for both treatment and administrative costs. This change will prevent the need of the department to take money from administrative reimbursement to pay a shortfall in funds for the treatment. The rule will also allow the county to determine how the reimbursement they receive is distributed.

Public parks – The minimum acreage was decreased where parks are surrounded by ineligible lands and park are now included in the same category as the residential land that surrounds them in the criteria for eligibility.

Application by counties – The rule still limits eligible applicants to counties. The department does not, however, determine who is designated the local coordinator for the county or how the local administrative work is accomplished. The counties may come to an agreement with a municipality for the municipality to supply the local coordinator as long as the local coordinator will serve all residents of that county and has the ability to accomplish all tasks required.

Appearances at the Public Hearing and Their Position

Madison – no appearances
Marinette – no appearances

Green Bay:

In support – none
In opposition – none

As interest may appear:

Tom Walker, 1331 Bellevue, Green Bay, WI 54302

Waukesha:

In support:

Judy Shirley, Forester, Village of Fox Point, 7200 N. Santa Monica Blvd., Fox Point, WI 53217
Jeff Kante, Village of Chenequa Forestry Dept., 31275 Hwy. K, Hartland, WI 53029
Anna J. Campbell, 16860 Willow Ridge Lane, Brookfield, WI 53005
Robert Rainer, 7738 W. Dakota Street, West Allis, WI 53219
Mike Fort, 471 Caernarvon Road, Wales, WI 53183

In opposition – none

As interest may appear:

Paul Evert, 327 Lookout Drive, Pewaukee, WI 53072
Henry & Shirley Poth, 10311 W. Ruby Avenue, Wauwatosa, WI 53225
Norbert & Germaine Stephan, 4505 N. 103 Street, Wauwatosa, WI 53225
Marlin Johnson, 1234 S. Waterville Road, Oconomowoc, WI 53064
Warren Russ, W127 S7016 Woodland Court, Muskego, WI 53150

Gary Majeskie, Brookfield Parks & Forestry Supt., 2000 N. Calhoun Road, Brookfield, WI
David P. Liska, Waukesha City Forester, 1900 Aviation Drive, Waukesha, WI 53188

Response to Legislative Council Rules Clearinghouse Report

The recommendations were accepted, except for 2.f. The use of a table looked unnecessary when it was tried in a draft version of the rules.

Final Regulatory Flexibility Analysis

The proposed rule is a grant program for counties; therefore, a final regulatory flexibility analysis is not required.

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

The State of Wisconsin Natural Resources Board proposes an order to amend NR 47.005(1), 47.007(1) and 47.008(1); and to create subch. IX of ch. NR 47 relating to the federal cost sharing program to suppress gypsy moths

FR-42-00

Analysis Prepared by Department of Natural Resources

Statutory authority: s. 227.11(2), Stats.

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

Analysis of Rule NR 47, subchapter IX

The purpose of this rule is to establish the administration and 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 will include 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 eastern 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 will provide the public with a safe, effective and affordable means to prevent damage to their trees.

The suppression program will be offered to landowners through counties. Participating counties will provide a coordinator who will serve as the contact for the public and the department. The 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.

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, and VIII and IX.

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, and VIII and IX.

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

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

SECTION 4. Subchapter IX of ch. NR 47 is created to read:

**Subchapter IX
RULES FOR FEDERAL COST SHARING PROGRAM TO SUPPRESS GYPSY MOTH**

NR 47.910 Purpose. The purpose of this subchapter is to establish procedures for participation in the state cooperative gypsy moth suppression program consistent with ss. 26.30(2) and (5) and 28.07, Stats., as an alternative to a control program under s. 26.30 (7) to (10), Stats. The suppression program includes awarding and administering federal cost sharing funds to counties for the purpose of aerial insecticide treatment of gypsy moth outbreaks.

NR 47.911 Applicability. The provisions of this subchapter are applicable to all county governments applying for cost sharing under this subchapter.

NR 47.912 Definitions. In this subchapter:

(1) "Administrative cost" means eligible expenses associated with preparation of applications, notification of residents, collection of funds, maintenance of records and other activities dealing with the preparation and administration of the cost shared suppression program for gypsy moths.

(2) "Applicant" means a Wisconsin county 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.

(3) "Application" means a department form, materials and maps for all areas being proposed for treatment and cost sharing in the state gypsy moth suppression program by an applicant.

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

(5) "Forest service" means the U.S. department of agriculture, forest service.

(6) "Gypsy moth" means the foreign pest, *Lymantria dispar* L.

(7) "High use, public recreational land" means land that is publicly owned, 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, picnic areas and golf courses.

(8) "Local coordinator" means the person designated to represent and act on behalf of a county for the purpose of applying for cost sharing under this subchapter.

(9) "Local cost share" means the portion of the cost of the project other than federal funds administered by the department.

(10) "Preferred hosts" 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.

(11) "Residential land" means land with an average of one or more residences per 5 acres.

(12) "Rural land" means land with an average of less than one residence per 5 acres.

(13) "Treatment" means aerial application of insecticide.

(14) "Treatment block" means an eligible area identified under this subchapter for aerial treatment with insecticide.

NR 47.913 Eligibility. (1) ELIGIBLE APPLICANTS. (a) Counties may apply for participation in the state cost shared suppression program.

(b) An applicant shall designate a local coordinator who will administer requests for treatment from and for all residents of the county. Training shall be provided by the department. Local coordinators shall do all of the following:

1. Respond to requests for assistance from residents.
2. Determine if areas within a county are eligible for treatment.
3. Identify and map treatment blocks.
4. Complete and file applications with the department under this subchapter.
5. Collect local cost share moneys for treatments.
6. Conduct public awareness meetings in September, October or November each year and local notification meetings once blocks are determined to be eligible by the department.
7. Notify residents within eligible treatment blocks and surrounding areas determined by the applicant by mail, publication of a class one legal notice in a local newspaper, a press release and a public meeting.
8. Accommodate residents within the proposed spray block who object to treatment of their property by revising or dropping treatment blocks.
9. Attend training as a ground observer of the Wisconsin aerial spray program and assist as an observer during the treatment.

10. Perform a post treatment evaluation as described in the grant agreement.
11. Develop and submit requests for reimbursement for eligible administrative costs.
12. Maintain records and prepare an annual report to be filed with the department.

(2) ELIGIBLE TREATMENT BLOCKS. To be eligible for cost sharing under this subchapter, a proposed treatment block shall comply with the following criteria:

(a) Be of at least 40 contiguous acres in a compact and regular shape or be of at least 20 acres of publicly owned land surrounded by ineligible land.

(b) Have a canopy coverage of any of the following:

1. 25% or more on residential or high use, public recreational land.
2. 50% or more on rural land.

(c) 50% or more of the canopy must be preferred hosts.

(d) Have the following minimum average number of egg masses per acre as determined by surveys done according to directions in the application materials:

1. 500 egg masses per acre on residential or high use, public recreational land.
2. 1000 egg masses per acre on rural land.

NR 47.914 Application procedures. (1) An eligible applicant, described in s. NR 47.913 (1), may apply for participation in the statewide treatment program and cost sharing for aerial insecticide treatment and associated administrative costs for eligible blocks as described in s. NR 47.913 (2).

(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 December 1, along with a map of each proposed treatment block on a 7.5 minute quadrangle map to be eligible for participation in the treatment program for that year. Applications can be obtained by writing to the program manager for the gypsy moth grant program, bureau of community financial assistance, PO Box 7921, Madison, WI 53707-7921

(3) Applicant shall send a copy of the record of expenses from July 1-December 31 by January 7 to department staff identified on the application.

(4) The department shall review applications and recommend treatment for blocks determined to be eligible to the department of agriculture, trade and consumer protection for inclusion in the state treatment plan. If the department finds that a block is ineligible, the map and basis for the decision of ineligibility shall be identified and returned to the applicant for revision. Revised proposed treatment blocks shall be reconsidered by the department if filed for reconsideration within 2 weeks of the date of service of the decision of ineligibility on the applicant.

(5) The department shall notify applicants of eligibility of proposed blocks.

(6) The applicant shall enter into an agreement with the department regarding cost sharing and continued eligibility under this subchapter to continue its eligibility.

(7) 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 will 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 local coordinator. Notification requirements of applicants to landowners and tenants shall include:

(a) A written notification of planned treatment and information listed above mailed to persons owning or renting land in the treatment blocks and an area surrounding the blocks as determined by the applicant. The mailing list shall be retained in the records of the applicant for 3 years subsequent to the treatment and submitted to the department upon its request.

(b) Publication of a class 1 legal notice as defined in s. 985.07, Stats., in a local newspaper at least 10 days prior to a deadline designated in the notice for registering an objection by a landowner or tenant to treatment on the land under the landowner's or tenant's control.

(c) A press release at least 10 days prior to the deadline for objection to treatment of property and which announces the public meeting.

(d) A public meeting conducted by the applicant and held at least 7 days prior to the deadline for objection to treatment of property.

(8) Records of calls and notification mailings, meetings and publications shall be kept by the applicant and submitted to the department in accordance with the grant agreement. Failure to maintain and submit these records required in this paragraph and in the grant agreement shall result in cancellation of treatment blocks from that applicant.

(9) Applicants 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. Applicants may offer the option of having the objector notified by phone within 24 hours of when the spray will take place as an alternative to removing the property from the treatment. Objectors who take this option will be included in the list described in s. NR 47.914 (11). If objections cannot be resolved, local coordinators shall work with the department's designated staff to remove the property and a 250 foot surrounding buffer zone from treatment. If a treatment block is canceled because accommodating objectors makes the block untreatable in the judgment of the contractor for pesticide application, the local coordinator shall notify residents and return money that has been collected from the landowners or tenants. 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. Treatment blocks will be removed from the program due to nonpayment of the cost share by the applicant.

(10) (a) The department shall provide an estimate of per acre cost for treatment to local coordinators no later than February 15th of each year. The applicant shall collect the entire estimated cost for treatment of the blocks the applicant applied for and pay it to the department by April 1 unless otherwise provided on the application. 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, the department shall return the payment for that treatment block and the local coordinator shall notify residents and return money that has been collected for the spray treatment from the landowners or tenants.

(b) The department shall, under cooperative agreement, work with the department of agriculture, trade and consumer protection to coordinate treatments.

(11) Applicants shall submit no later than April 1 of each year a list of telephone contacts associated with each treatment block to the designated department staff specified in the application. 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, persons requesting 24-hour notification and other concerned parties as needed. These lists will be used by department staff to provide daily notification during the aerial treatments.

(12) 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.

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 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%.

(2) If full funding from the forest service to cover the maximum share of treatment and administrative expenditures of the applicants is not available, the federal funds shall be applied to treatment and administrative costs on a pro-rata basis based on acreage per applicant. Reimbursement for both treatment and administrative work shall be returned to the counties. Applicants are responsible for all treatment and administration costs that exceed the amount reimbursed. The county may collect adequate funds to cover administrative expenses or treatment expenses and determine how reimbursement of federal cost share is distributed once it is received by the county. Any funds recovered in excess of total program expenses shall be returned to the source of local cost share.

NR 47.916 Grant awards. (1) GRANT AWARDS. Grants shall be awarded subject to execution of the department's grant agreement by both the department and the grant applicant.

(2) PAYMENT. Grant payments may be made only upon approval of a claim supported by evidence of cost that the reimbursable work has been completed and scheduled match has been met.

(3) AUDIT. All grant records are subject to audit. Records including all documentation to support grant revenues, expenditures, and program compliance shall be kept for review by the department auditors for a period of 4 years after final payment.

NR 47.917 Eligible and ineligible costs. (1) ELIGIBLE COSTS. 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. Eligible costs of treatment and administration of a block may not be more than the maximum for the appropriate category for the block as described in s. NR 47.915 (1) (a) to (c). The following items are eligible for cost share reimbursement under this subchapter only if aerial treatments are conducted and the costs are eligible under this subchapter and as identified in the grant agreement:

(a) Topographic maps, aerial photos, weather monitoring equipment and personal safety equipment.

(b) Contracts for specialized equipment, including the rental of 2-way radios identified in the agreement between the department and the applicant.

(c) Communication supplies, including the rental of communication equipment used to coordinate the aerial treatment. Costs incurred for cellular phone service is limited to the period of April 20 through June 10 if the expenses are directly related to aerial treatments.

(d) Landowner notification supplies, including supplies and postage for notification letters, costs of publication of legal notices, costs associated with the public meeting to discuss specific proposed spray blocks, phone bills and documented proportion of office rental.

(e) Educational materials, including the costs of producing or reprinting publications, literature and maps necessary to inform the public about the suppression program.

(f) Newspaper advertisements, including the announcement of the fall scoping meeting and the winter public meetings.

(g) Personnel costs, including salary, wage and benefits for time administering the cost sharing program for treated blocks for personnel including the local coordinator, secretarial support, temporary employees and tax office support.

(h) Travel, including mileage accrued in vehicles used in preparation of sprayed blocks and during suppression activities, not to exceed the standard rates set by the department of transportation.

(i) Post-suppression evaluation costs.

(2) INELIGIBLE COSTS. (a) Costs associated with treatment blocks which are not sprayed are ineligible for cost sharing.

(b) The cost of capital equipment that is not directly necessary or dedicated to the completion of the suppression project and identified in the agreement with the department is ineligible for cost sharing.

(c) The cost of surveys and biological evaluations in areas other than the project area are ineligible for cost sharing.

(d) The salaries of temporary and permanent personnel for time not directly related to the suppression project are ineligible for cost sharing.

(e) Professional meetings and conferences are ineligible for cost sharing.

The foregoing rules were approved and adopted by the State of Wisconsin Natural Resources Board on March 28, 2001.

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

Dated at Madison, Wisconsin _____

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Darrell Bazzell, Secretary

(SEAL)

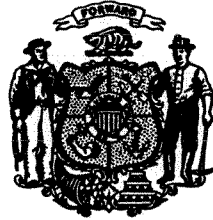
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CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 00-177

AN ORDER to amend NR 47.005 (1), 47.007 (1) and 47.008 (1); and to create subchapter IX of chapter NR 47, relating to the federal cost sharing program to suppress gypsy moths.

Submitted by **DEPARTMENT OF NATURAL RESOURCES**

12-08-00 RECEIVED BY LEGISLATIVE COUNCIL.

01-04-01 REPORT SENT TO AGENCY.

RS:RJC:tlu;rv

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]
Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]
Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]
Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS [s. 227.15 (2) (e)]
Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]
Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL REGULATIONS [s. 227.15 (2) (g)]
Comment Attached YES NO

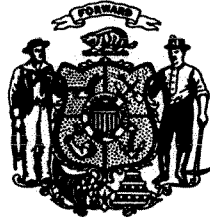
7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]
Comment Attached YES NO

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CLEARINGHOUSE RULE 00-177

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

2. Form, Style and Placement in Administrative Code

a. The title to subch. IX should be written in solid capital letters. [See s. 1.05 (2) (a), Manual.]

b. Section NR 47.912 (10) should be rewritten to read: "Municipality" means a city, village or town."

c. In s. NR 47.913 (1) (b) (intro.), the phrase "do all of the following" should be inserted before the colon. The entire rule should be reviewed for the use of phrases such as "all of the following" or "any of the following" in introductory material that leads into following subunits. The use of these phrases will clearly indicate to the reader whether all conditions, or only one condition, need be met.

d. In s. NR 47.913 (2) (b) (intro.), the word "either" should be replaced by the phrase "any of the following." Also, subs. 1. to 3. should end in periods rather than semicolons. The entire rule should be reviewed for appropriate use of punctuation at the end of lists. In addition, it is noted that sub. (2) contains no par. (c). Why? Finally, subs. 3. and 4. of par. (d) should be relocated into another rule section. Those subdivisions relate to egg mass surveys and not to the criteria applicable to an eligible treatment block. Also, in order to meet all contingencies, in subd. 3. it would be clearer to define the acreage in terms of phrases such as "40 to 50 acres" and "more than 50 acres to not more than 100 acres."

e. Because s. NR 47.914 (7) (intro.) does not appear to be actual introductory material, it should be designated par. (a) and the remaining paragraphs redesignated accordingly.

f. It appears that the material in s. NR 47.915 (1) (a) to (c) could be better placed in a table. Doing so may make the rule easier to read and would eliminate the need to use terms such as "cost-shared."

g. In s. NR 47.914 (7) (b), the word "herein" should be replaced by the phrase "in this paragraph." In sub. (8), since an applicant is defined to mean a Wisconsin county or municipality, it appears that the phrase "his or her" should be replaced by the word "its." Finally, in sub. (10), the semicolon should be deleted and the word "occurs" should be replaced by the word "exists."

h. In s. NR 47.915 (1) (intro.), the phrase "pars. (a) to (d)" should be replaced by the phrase "the following paragraphs" and the introduction should conclude with a colon.

i. In s. NR 47.917 (1) (intro.), the third sentence should be made the last sentence of the introduction and the introduction should conclude with a colon.

j. In s. NR 47.917 (1) (g), the phrase "salary/wage and benefits" should be replaced by the phrase "salary, wage and benefits." In par. (h), the phrase "is reimbursable but must be no more than the DOT standard rates" should be replaced by the phrase ", not to exceed the standard rates set by the department of transportation . . ." The reference to the standard rates should include a citation to appropriate statutory or administrative code provisions, if they exist.

4. Adequacy of References to Related Statutes, Rules and Forms

a. In s. NR 47.912 (12), a note should be included indicating where the referenced federal document can be obtained or viewed.

b. Section NR 47.914 (3) requires applicants to use a certain form. A note should be included in the rule indicating the address that a person may write to, or the telephone number that a person may call, in order to obtain the form; if the form is available on the Internet, the note should indicate a Web site from which the form may be obtained. [See s. 1.09 (2), Manual.]

c. Section NR 47.914 (7) (a) 2. refers to a "class 1 legal notice." An appropriate statutory cross-reference should be provided to better identify the type of notice required.

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. In the cover letter analysis to the rule, the word "laws" at the end of the second paragraph should, it appears, be "lawns." In addition, at the end of the third paragraph, the word "effect" should be replaced by the word "effective" and the phrase "they value" should be replaced by "it values." Finally, in the last sentence of the analysis, the word "about" should be inserted after the word "requirements."

b. In the last paragraph of the fiscal estimate, should the figure "\$30,00" be "\$30,000" or some other number?

c. In s. NR 47.910, in the second sentence, the phrase "will include" should be replaced by the word "includes." Also, should the word "funds" be inserted after the word "sharing"?

d. In s. NR 47.912 (4), can the definition of the term "buffer zone" be modified to read "means a perimeter extending 250 feet around a treatment block"?

e. In s. NR 47.912 (13), the word "be" should be inserted before the word "eligible."

f. Section NR 47.913 (1) provides for applications to be made between November 2000 and July 2001. It is noted that November and December 2000 are already completed. Also, may municipalities not apply after July of 2001?

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i. Section NR 47.914 (8) refers to a "250 foot surrounding buffer zone." Since "buffer zone" is a defined term, the phrase "250 foot surrounding" is redundant and should be deleted. Also, in the third sentence, for consistency, the term "treatment" should be inserted before the word "block." Finally, in the last sentence the word "will" should be replaced by the word "shall."

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k. Section NR 47.916 (3) provides that "all payments are contingent upon final audit." What does this mean? Does this mean that no payments may be made until a final audit is completed? Such an interpretation would seem to conflict with the next sentence that appears to contemplate audits within four years of final payment. Can this provision be clarified? Also, is the audit mandatory? The second sentence seems to imply that the department auditors might conduct an audit within four years of final payment. Is that the intent?

WISCONSIN LEGISLATIVE COUNCIL STAFF

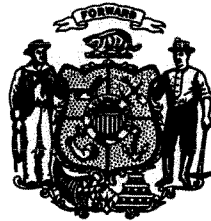


JAN 04 2000

RULES CLEARINGHOUSE

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CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 00-177

AN ORDER to amend NR 47.005 (1), 47.007 (1) and 47.008 (1); and to create subchapter IX of chapter NR 47, relating to the federal cost sharing program to suppress gypsy moths.

Submitted by **DEPARTMENT OF NATURAL RESOURCES**

12-08-00 RECEIVED BY LEGISLATIVE COUNCIL.

01-04-01 REPORT SENT TO AGENCY.

RS:RJC:tlu;rv

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached

YES

NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached

YES

NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached

YES

NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS
[s. 227.15 (2) (e)]

Comment Attached

YES

NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached

YES

NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached

YES

NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached

YES

NO

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CLEARINGHOUSE RULE 00-177

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

2. Form, Style and Placement in Administrative Code

- a. The title to subch. IX should be written in solid capital letters. [See s. 1.05 (2) (a), Manual.]
- b. Section NR 47.912 (10) should be rewritten to read: "Municipality" means a city, village or town."
- c. In s. NR 47.913 (1) (b) (intro.), the phrase "do all of the following" should be inserted before the colon. The entire rule should be reviewed for the use of phrases such as "all of the following" or "any of the following" in introductory material that leads into following subunits. The use of these phrases will clearly indicate to the reader whether all conditions, or only one condition, need be met.
- d. In s. NR 47.913 (2) (b) (intro.), the word "either" should be replaced by the phrase "any of the following." Also, subs. 1. to 3. should end in periods rather than semicolons. The entire rule should be reviewed for appropriate use of punctuation at the end of lists. In addition, it is noted that sub. (2) contains no par. (c). Why? Finally, subs. 3. and 4. of par. (d) should be relocated into another rule section. Those subdivisions relate to egg mass surveys and not to the criteria applicable to an eligible treatment block. Also, in order to meet all contingencies, in subd. 3. it would be clearer to define the acreage in terms of phrases such as "40 to 50 acres" and "more than 50 acres to not more than 100 acres."

e. Because s. NR 47.914 (7) (intro.) does not appear to be actual introductory material, it should be designated par. (a) and the remaining paragraphs redesignated accordingly.

f. It appears that the material in s. NR 47.915 (1) (a) to (c) could be better placed in a table. Doing so may make the rule easier to read and would eliminate the need to use terms such as “cost-shared.”

g. In s. NR 47.914 (7) (b), the word “herein” should be replaced by the phrase “in this paragraph.” In sub. (8), since an applicant is defined to mean a Wisconsin county or municipality, it appears that the phrase “his or her” should be replaced by the word “its.” Finally, in sub. (10), the semicolon should be deleted and the word “occurs” should be replaced by the word “exists.”

h. In s. NR 47.915 (1) (intro.), the phrase “pars. (a) to (d)” should be replaced by the phrase “the following paragraphs” and the introduction should conclude with a colon.

i. In s. NR 47.917 (1) (intro.), the third sentence should be made the last sentence of the introduction and the introduction should conclude with a colon.

j. In s. NR 47.917 (1) (g), the phrase “salary/wage and benefits” should be replaced by the phrase “salary, wage and benefits.” In par. (h), the phrase “is reimbursable but must be no more than the DOT standard rates” should be replaced by the phrase “, not to exceed the standard rates set by the department of transportation” The reference to the standard rates should include a citation to appropriate statutory or administrative code provisions, if they exist.

4. Adequacy of References to Related Statutes, Rules and Forms

a. In s. NR 47.912 (12), a note should be included indicating where the referenced federal document can be obtained or viewed.

b. Section NR 47.914 (3) requires applicants to use a certain form. A note should be included in the rule indicating the address that a person may write to, or the telephone number that a person may call, in order to obtain the form; if the form is available on the Internet, the note should indicate a Web site from which the form may be obtained. [See s. 1.09 (2), Manual.]

c. Section NR 47.914 (7) (a) 2. refers to a “class 1 legal notice.” An appropriate statutory cross-reference should be provided to better identify the type of notice required.

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. In the cover letter analysis to the rule, the word “laws” at the end of the second paragraph should, it appears, be “lawns.” In addition, at the end of the third paragraph, the word “effect” should be replaced by the word “effective” and the phrase “they value” should be replaced by “it values.” Finally, in the last sentence of the analysis, the word “about” should be inserted after the word “requirements.”

b. In the last paragraph of the fiscal estimate, should the figure "\$30,00" be "\$30,000" or some other number?

c. In s. NR 47.910, in the second sentence, the phrase "will include" should be replaced by the word "includes." Also, should the word "funds" be inserted after the word "sharing"?

d. In s. NR 47.912 (4), can the definition of the term "buffer zone" be modified to read "means a perimeter extending 250 feet around a treatment block"?

e. In s. NR 47.912 (13), the word "be" should be inserted before the word "eligible."

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Report to
Legislative Council Rules Clearinghouse
NR 47, subch. IX, Wis. Adm. Code
Natural Resources Board Order No. FR-42-00

Wisconsin Statutory Authority

s. 227.11(2), Stats., interpreting ss. 26.30, 28.01 and 28.07, Stats.

Federal Authority

N/A

Court Decisions Directly Relevant

None

Analysis of the Rule - Rule Effect - Reason for the Rule

Gypsy moth is an insect that feeds on the foliage of a wide range of trees. It was accidentally introduced into Boston in 1869 and since then has spread throughout the northeastern and mid-Atlantic states, Quebec, Ontario and Michigan. For eleven years, gypsy moth has been consistently trapped in Wisconsin, first along the shoreline of Lake Michigan and recently further into the interior of the state. Gypsy moth populations continue to grow and spread in Wisconsin. The federal and state cooperative Slow The Spread (STS) program sprays pioneering colonies of the foreign pest in central and western Wisconsin in an effort to retard its movement westward. Once the gypsy moth is established throughout a county, it is considered "infested", placed under quarantine regulation and the STS program is no longer active in that area. Within quarantined areas, it is the choice of landowners to control this insect as it is to manage any pest on their land.

Gypsy moth is now established in counties along the shoreline of Lake Michigan and Green Bay, inland to Waukesha, Dodge, Fond du Lac, Outagamie and Shawano counties. While populations of gypsy moth are increasing throughout the counties where they are established, the increase in some local areas has been more rapid than in others. The rate of population growth has been particularly high in locations where gypsy moth are feeding on oaks grown in laws, for example in some city parks. *Clams?*

Counties where gypsy moth populations may be high enough in some localities to cause defoliation in spring 2001 include Marinette, Brown, Outagamie, Kewaunee, Manitowoc, Sheboygan, Ozaukee, Washington, Waukesha and Milwaukee.

Where gypsy moths go into outbreak, the numbers of this pest can get so high they strip whole forests of leaves in June. When this happens, the public typically becomes very concerned and looks for ways to reduce the population of the pest to tolerable levels. Treatments to kill such large numbers of gypsy moth 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. A department organized suppression program will provide the public with a safe, effective and affordable means to prevent damage to the trees they value. *effective*

The Department proposes to offer an aerial spray program to suppress outbreaks of gypsy moth that will be unified with the current aerial contract treatments being done for the STS program. Participation in the department's voluntary suppression and cost sharing program will be through counties and/or municipalities. Cost sharing from the USDA Forest Service will be available to participants in the department aerial suppression treatments. While applicant counties are responsible for costs that exceed the amount reimbursed by the Forest Service cost sharing program, they do have the option of recovering those costs from the landowners whose land was treated or by making

other arrangements for local funding. The department has no requirements ^{related} how the local share of costs is raised. X

Agency Procedures for Promulgation

Public hearings, Natural Resources Board final adoption, followed by legislative review.

Description of any Forms (attach copies if available)

None

Name and Telephone Number of Agency Liaisons

Andrea Diss, Bureau of Forestry - 264-9247
Jim Christenson, Bureau of Legal Services - 266-1318
Carol Turner, Bureau of Legal Services - 266-1959

Submitted on December 7, 2000

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

The State of Wisconsin Natural Resources Board proposes an order to amend NR 47.005(1), 47.007(1) and 47.008(1); and to create subch. IX of ch. NR 47 relating to the federal cost sharing program to suppress gypsy moths

FR-42-00

Analysis Prepared by Department of Natural Resources

Statutory authority: s. 227.11(2), Stats. ✓
Statutes interpreted: ss. 26.30, 28.01 and 28.07, Stats. ✓

The purpose of this rule is to establish the administration and 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 will include 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 eastern 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 will provide the public with a safe, effective and affordable means to prevent damage to their trees.

The suppression program will be offered to landowners through counties and municipalities if the county in which they are located declines to participate. Participating counties or municipalities will provide a coordinator who will serve as the contact for the public and the department. The rule defines the tasks that will be performed by the participating counties and municipalities, 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.

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, ~~and VIII~~ and IX.

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, and VIII and IX.

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

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

SECTION 4. Subchapter IX of ch. NR 47 is created to read:

Subchapter IX
Rules for Federal Cost Sharing Program to Suppress Gypsy Moth

*Sold capital letters
[1.05(2)(a)]*

funds

NR 47.910 Purpose. The purpose of this subchapter is to establish procedures for participation in the state cooperative gypsy moth suppression program consistent with ss. 26.30(2) and (5) and 28.07, Stats., as an alternative to a control program under s. 26.30 (7) to (10) Stats. The suppression program will include awarding and administering federal cost sharing to counties and municipalities if the county in which they are located declines to participate, for the purpose of aerial insecticide treatment of gypsy moth outbreaks. X

NR 47.911 Applicability. The provisions of this subchapter are applicable to all county and municipal governments applying for cost sharing under this subchapter.

NR 47.912 Definitions. In this subchapter:

(1) "Administrative cost" means eligible expenses associated with preparation of applications, notification of residents, collection of funds, maintenance of records and other activities dealing with the administration of the cost shared suppression program for gypsy moths.

(2) "Applicant" means a Wisconsin county or municipality 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.

(3) An "application" is a department form, materials and maps for all areas being proposed for treatment and cost sharing in the state gypsy moth suppression program by an applicant. *forms*

(4) "Buffer zone" is 250 feet surrounding a treatment block or exclusion area within a treatment block. *a perimeter extending around*

(5) "Department" means the Wisconsin department of natural resources.

(6) "Forest service" means the U.S. department of agriculture, forest service.

(7) "Gypsy moth" refers to the foreign pest, *Lymantria dispar*.

(8) "Local coordinator" means the person designated to represent and act on behalf of a county or municipality for the purpose of applying for cost sharing under this subchapter.

(9) "Local cost share" refers to the portion of the cost of the project other than federal funds administered by the department.

(10) "Municipality" (includes) cities, villages and towns. X

(11) "One fortieth (1/40) acre, fixed radius survey" refers to an egg mass survey used to predict population size in the following spring.

(12) "Preferred hosts" includes tree species listed as Class I and II in the federal Environmental Impact Statement, Appendix G, Table 2-2. include not indicating where this may be obtained

(13) "Project period" means the period of time specified in a grant agreement during which all work shall be accomplished in order to be eligible for reimbursement. T

(14) "Residential land" means land with an average of one or more residences per 5 acres.

(15) "Rural land" means land with an average of less than one residence per 5 acres.

(16) "Treatment" refers to aerial application of insecticide.

(17) "Treatment block" means an eligible area identified under this subchapter for aerial treatment with insecticide.

NR 47.913 Eligibility. (1) ELIGIBLE APPLICANTS. (a) Counties may apply for participation in the state cost shared suppression program. Where a county declines to participate, municipalities within that county may apply for participation in the state cost shared suppression program during the period of November 2000 to July 2001.

(b) An applicant shall designate a local coordinator who will administer requests for treatment from and for residents. Training shall be provided by the department. Local coordinators shall:

- do all of the following*
1. Respond to requests for assistance from residents.
 2. Determine if areas within a county or municipality are eligible for treatment.
 3. Identify and map treatment blocks.
 4. Complete and file applications with the department under this subchapter.
 5. Collect local cost share moneys for treatments.
 6. Conduct public awareness meetings in September, October or November each year and local notification meetings once blocks are determined to be eligible by the department.

7. Notify treatment residents within eligible treatment blocks and surrounding buffer zone by mail, publication of a class one legal notice in a local newspaper and a public meeting.

8. Accommodate spray objectors by revising or dropping treatment blocks.

9. Assist with observation of treatment.

10. Develop and submit requests for reimbursement for eligible administrative costs.

11. Maintain records and prepare an annual report to be filed with the department.

(2) ELIGIBLE TREATMENT BLOCKS. To be eligible for cost sharing under this subchapter, a proposed treatment block shall comply with the following criteria:

(a) Be of at least 40 contiguous acres in a compact and regular shape;

(b) Have a canopy coverage of either: *any of the following*

1. 25% or more on residential land;

2. 50% or more on rural land;

3. 50% or more of the canopy must be preferred hosts;

(c) *make this*
↑ *all of*
(d) Have the following minimum average number of egg masses per acre as determined by surveys consistent with subd. 3:

1. 500 egg masses per acre on residential land

2. 1000 egg masses per acre on rural land

3. Egg mass surveys shall be conducted using the 1/40th acre fixed radius survey method described in subd. 4. The number of survey plots taken to determine the average number of egg masses per acre shall be:

a. 40 -50 acres	3 survey plots	} and in between?
b. 51-100 acres	4 survey plots	
c. 101-200 acres	6 survey plots	
d. over 200 acres	6 survey plots plus an additional plot for each additional 100 acres	

4. The procedure for a survey is as follows:

a. Select a location with forest cover representative of the area, *periods*

b. Describe a circle with a radius of 18.5 feet with a rope and stake,

c. Count all current year egg masses within the circle making sure to search all items within the circle thoroughly and searching the upper reaches of the trees using binoculars,

d. Multiply the number of current year egg masses found by 40 to determine the number of egg masses per acre as estimated from this plot.

NR 47.914 Application procedures. (1) An eligible applicant, described in s. NR 47.913 (1), may apply for participation in the statewide treatment program and cost sharing for aerial insecticide treatment and associated administrative costs for eligible blocks as described in s. NR 47.913 (2).

(2) Applicants shall submit locations of proposed treatment sites and an estimate of acreage to be treated at each site to the department staff designated in the application by November 30.

(3) Applicants shall submit applications for cost sharing on prescribed department forms to department staff, designated by the department and identified on the application, for the area of the state involved no later than January 3, along with a map of each proposed treatment block on a 7.5 minute quadrangle map to be eligible for participation in the treatment program for that year.

note: where to get forms?

(4) Applicants shall submit a record of administrative costs incurred prior to and in preparation ^{of} ~~the~~ submittal of the application to the department.

(5) The department shall review applications and recommend treatment for blocks determined to be eligible to the department of agriculture, trade and consumer protection for inclusion in the state treatment plan. If the department finds that a block is ineligible, the map and basis for the decision of ineligibility shall be identified by the department and returned to the applicant for revision. Revised proposed treatment blocks shall be reconsidered by the department if filed for reconsideration within 2 weeks of the date of service of the decision of ineligibility on the applicant.

(6) The applicant shall enter into an agreement with the department regarding cost sharing and continued eligibility under this subchapter to continue its eligibility.

~~(7)~~ The department shall notify applicants of eligibility of proposed blocks.

~~(8)~~ The applicant shall then notify landowners and tenants within the eligible proposed treatment blocks and buffer zones and provide information on insecticide to be used, approximate timing of treatment and how to register an objection to treatment. Notification requirements of applicants to landowners and tenants shall be detailed in the agreement and include: *all of the following*

1. A written notification of planned treatment mailed to persons owning or renting land in the treatment blocks or buffer zones. The mailing list shall be retained in the records of the applicant for 3 years subsequent to the treatment and submitted to the department upon its request.

2. Publication of a class 1 legal notice in a local newspaper at least 7 days prior to a deadline designated in the notice for registering an objection by a landowner or tenant to treatment on the land under the landowner's or tenant's control.

3. A public meeting conducted by the applicant and held at least 7 days prior to the objection deadline.

} how work?

(b) Records of calls and notification mailings, meetings and publications shall be kept by the applicant and submitted to the department in accordance with the grant agreement. Failure to maintain and submit these records required herein and in the grant agreement shall result in cancellation of treatment blocks from that applicant. *in this part*

(8) Applicants shall contact objectors who register an objection before the deadline, determine the cause for objection and attempt to resolve it. If objections cannot be resolved, local coordinators shall work with the department's designated staff to remove the property and a 250 foot surrounding buffer zone from treatment. If a block is removed, the local coordinator shall notify residents and return money that has been collected from the landowners or tenants. Any objections on the basis of payment shall be resolved by the applicant and the applicant is responsible for the entire local share of costs of treatment for blocks under his or her jurisdiction. Properties will be removed from treatment due to nonpayment of the cost share by the applicant. *redundant - buffer zone default* *should*

(9)(a) The department shall provide an estimate of per acre cost for treatment and administration to local coordinators no later than February 15th of each year. The applicant shall enter into an agreement with the department to pay the local cost share as determined under s. NR 47.915. The applicant shall collect the estimated local cost share and pay its share to the department by April 1 unless otherwise provided on the application. Once the local cost share 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 then 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, the local coordinator shall notify residents and return money that has been collected from the landowners or tenants.

(b) The department shall under cooperative agreement work with the department of agriculture, trade and consumer protection to coordinate treatments.

(10) Applicants shall submit no later than April 1 of each year a list of telephone contacts associated with each treatment block to the designated department staff specified in the application. 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 occurs, hospital emergency rooms in the area of treatment blocks, persons requesting 24-hour notification and other concerned parties as needed. These lists will be used by department staff to provide daily notification during the aerial treatments. *how do you do this?*

(11) Applicants shall submit a bill for eligible expenditures to the department no later than June 30th of each year for eligible expenditures incurred for the project period.

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 pars. (a) to (d) 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%. *table*

(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%.

(2) If full funding to cover the maximum share of treatment and administrative expenditures of the applicants is not available, the federal funding received shall first be applied to the cost of the treatment. If funds are not adequate to cover the maximum share for the cost of treatment, federal funds will be applied to treatment costs on a pro-rata basis based on acreage per applicant. Federal funding remaining after payment of the maximum share of the cost of treatment shall be paid on a pro-rata basis to the applicants to be applied to administration costs. Applicants are responsible for all treatment and administration costs that exceed the amount reimbursed.

NR 47.916 Grant awards. (1) GRANT AWARDS. Grants shall be awarded subject to execution of the department's grant agreement by both the department and the grant applicant.

(2) **PAYMENT.** Grant payments may be made only upon approval of a claim supported by evidence of cost that the reimbursable work has been completed and scheduled match has been met.

(3) **FINAL AUDIT.** All payments are contingent upon final audit. Financial records including all documentation to support entries in the accounting records shall be kept for review by the department auditors for a period of 4 years after final payment.

NR 47.917 Eligible and ineligible costs. (1) ELIGIBLE COSTS. 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. The following items are eligible for cost share reimbursement under this program only if aerial treatments are conducted and the costs are eligible under this subchapter and as identified in the grant agreement. Eligible costs of treatment and administration of a block shall be no more than the maximum for the appropriate category for the block as described in s. NR 47.915 (1) (a) to (c).

(a) Topographic maps, aerial photos, weather monitoring equipment and personal safety equipment.

(b) Contracts for specialized equipment, including the rental of 2-way radios identified in the agreement between the department and the applicant.

(c) Communication supplies, including the rental of communication equipment used to coordinate the aerial treatment. Costs incurred for cellular phone service is limited to the period of April 20th through June 10th if the expenses are directly related to aerial treatments.

(d) Landowner notification supplies, including supplies and postage for notification letters, costs of publication of legal notices, costs associated with the public meeting to discuss specific proposed spray blocks, phone bills and documented proportion of office rental.

(e) Educational materials, including the costs of producing or reprinting publications, literature and maps necessary to inform the public about the suppression program.

(f) Newspaper advertisements, including the announcement of the fall scoping meeting and the winter public meetings.

(g) Personnel costs, including salary/wage and benefits for time administering the cost sharing program for treated blocks for personnel including the county coordinator, secretarial support, temporary employees and tax office support.

(h) Travel, including mileage accrued in vehicles used in preparation of sprayed blocks and during suppression activities, is reimbursable but must be no more than the DOT standard rates. *not to exceed*

(i) Post-suppression evaluation costs.

(2) INELIGIBLE COSTS. Costs associated with treatment blocks which are not sprayed are ineligible for cost sharing. The cost of capital equipment that is not directly necessary or dedicated to the completion of the suppression project and identified in the agreement with the department is ineligible for cost sharing.

The foregoing rules were approved and adopted by the State of Wisconsin Natural Resources Board on

The rules 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 _____

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
George E. Meyer, Secretary

(SEAL)