



CR 92-48

State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

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STATE OF WISCONSIN )  
 )  
DEPARTMENT OF NATURAL RESOURCES ) SS

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Revisor of Statutes  
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TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Bruce B. Braun, Deputy 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. WM-3-92 was duly approved and adopted by this Department on March 26, 1992. 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 here-  
unto set my hand and affixed the  
official seal of the Department at  
the Natural Resources Building in  
the City of Madison, this 8th  
day of June, 1992.

  
Bruce B. Braun, Deputy Secretary

(SEAL)

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ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD  
CREATING RULES

IN THE MATTER of creating ch. NR 47 of the  
Wisconsin Administrative Code pertaining to the  
administration of forestry grants and aids

FR-16-92

Analysis Prepared by Department of Natural Resources

Authorizing statutes: ss. 23.097(2), 23.11, 28.07 and 227.11(2)(a), Stats.  
Statutes interpreted: ss. 23.097(1) and 28.07, Stats.

These rules administer the various grant and state aid programs pertaining to forestry and forest resources in the state. The aid programs include:

1. The federal forest stewardship program established under the Food, Agriculture, Conservation and Trade Act of 1990 (16 USC 2101 et seq.). The purpose of the program is to encourage the growth of future commercial crops through sound forestry practices which recognize the objectives of individual property owners for aesthetics, wildlife habitat, erosion control, protection of endangered or threatened plants and animals, compatible recreational activities and economic returns. Included under that act are:
  - a. The Forest Stewardship program which provided federal grants to natural resource agencies, organizations and others to provide training to resource professionals, and education and assistance to landowners, to carry out the objectives of the federal Act.
  - b. The Stewardship Incentive Program which provides grants to forest landowners to manage their lands in a manner that benefits all the resources in their forest. Cost sharing is provided for developing forest stewardship management plans, tree planting, forest stand improvement, protection of soil and water, windbreak and hedgerow establishment, riparian and wetland protection, fisheries and wildlife habitat enhancement, protection of endangered and threatened plants and animals, and forest recreation improvement.
2. The federal small business administration natural resources development program established under ch. 24 of the Small Business Administration Act of 1990 (15 USC s. 651) and regulated under 13 CFR parts 121 and 125. The purpose of the natural resources development program is to provide grants to states for the purpose of contracting with small businesses to plant trees on publicly owned or controlled property.
3. The Federal Urban and Community Forestry Grant Program authorized under the cooperative forestry assistance act of 1978 as amended by title XII of the Food, Agriculture, Conservation and Trade Act of 1990. The purpose of this program is to provide grants to municipalities and nonprofit organizations for cost sharing urban and community forestry projects.
4. The State Urban Forestry Grant Program which is established under s. 23.097, Stats., and seeks to provide grants to municipalities for cost sharing of tree management plans, tree inventories, brush residue projects, development of tree management ordinances, tree disease evaluations, public education concerning trees in urban areas and other tree projects.

SECTION 1. Chapter NR 47 is created to read:

## **WISCONSIN ADMINISTRATIVE CODE - NR 47 FORESTRY GRANT AND STATE AID ADMINISTRATION**

### **Subchapter I - General Provisions**

NR 47.001	Purpose
NR 47.002	Definitions
NR 47.003	Forest stewardship committee
NR 47.004	Project reports
NR 47.005	Grantee accountability
NR 47.006	Grant variances
NR 47.007	Grant termination
NR 47.008	Enforcement

### **Subchapter II - The Forest Stewardship Grant Program**

NR 47.01	Purpose
NR 47.02	Applicability
NR 47.03	Application procedures
NR 47.04	Grant calculation
NR 47.05	Eligible applicants
NR 47.06	Eligible projects, preference
NR 47.07	Eligible and ineligible costs
NR 47.08	Grant awards; payment

### **Subchapter III - The Stewardship Incentives Program**

NR 47.10	Purpose and scope
NR 47.11	Applicability
NR 47.12	Definitions
NR 47.13	State program administration
NR 47.14	Eligible applicants
NR 47.15	Eligible practices
NR 47.16	Eligible costs
NR 47.17	Ineligible costs
NR 47.18	Grant calculation
NR 47.19	Grant selection system
NR 47.20	Application and approval
NR 47.21	Payment to landowners
NR 47.22	Reconsideration
NR 47.23	Enforcement

### **Subchapter IV - The Small Business Administration Tree Planting Program**

NR 47.30	Purpose and scope
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NR 47.31	Applicability
NR 47.32	Definitions
NR 47.33	Allocation of funds
NR 47.34	Application procedures
NR 47.35	Grant calculation
NR 47.36	Eligible applicants
NR 47.37	Eligible and ineligible costs
NR 47.38	Grant selection process
NR 47.39	Grant awards; payment
NR 47.40	Extensions

#### **Subchapter V - Urban Forestry Grant Program**

NR 47.50	Purpose and scope
NR 47.51	Applicability
NR 47.52	Definitions
NR 47.53	Application procedures
NR 47.54	Grant calculation
NR 47.55	Eligibility
NR 47.56	Eligible and ineligible costs
NR 47.57	Grant selection process
NR 47.58	Grant awards; payment

## Subchapter I - General Provisions

NR 47.001 PURPOSE. The purpose of this chapter is to implement and administer grant and state aid programs pertaining to forestry and forest resources in the state.

NR 47.002 DEFINITIONS. For purposes of this chapter:

- (1) "Act" means the cooperative forestry assistance act as amended (16 USC 2101, et seq.).
- (2) "Committee" means the state forest stewardship coordinating committee created under s. NR 47.003.
- (3) "Department" means department of natural resources.
- (4) "Fiscal year" means October 1 through September 30.

Note: This is the fiscal year of the United States government.

- (5) "Forest service" means United States Department of Agriculture, U.S. forest service.
- (6) "Landowner" means any private individual, group, association, corporation, Indian tribe or other native group, or other private legal entity, excluding corporations whose stocks are publicly traded or legal entities principally engaged in the production of wood products.
- (7) "Nonindustrial private forest land" means rural lands with existing tree cover or which are suitable for growing trees and owned by any landowner as defined in this section.
- (8) "Project" means the practice or activity for which funds are applied for under this chapter.
- (9) "State" means the state of Wisconsin.
- (10) "State forester" means the state forester of the department's bureau of forestry, as appointed by the secretary of the department.

NR 47.003 FOREST STEWARDSHIP COORDINATING COMMITTEE. (1) CREATION; COMPOSITION. There is created a forest stewardship coordinating committee appointed by the state forester and chaired by the state forester or his or her designee. The state forester shall ensure that the membership of the committee is representative, to the extent practicable, of the following groups:

- (a) The forest service, soil conservation service, agricultural stabilization and conservation service, and extension service;
- (b) Representatives of:
  1. Local governments
  2. Consulting foresters
  3. Environmental organizations
  4. Forest products industry

5. Forest land owners
6. Land-trust organizations
7. Conservation organizations
8. The state fish and wildlife agency, and
9. Any other individual determined appropriate by the state forester.

Note: The composition of the committee is as directed in the act.

(2) **ROLE OF COMMITTEE.** The committee shall make recommendations to the state forester on administration of the forest stewardship program.

NR 47.004 PROJECT REPORTS. (1) **APPLICABILITY.** The provisions of this section apply only to subch s. II, IV and V.

(2) **INTERIM REPORTS.** Each grant recipient shall submit to the department at no less than 6 month intervals, depending on the project period, one or more interim reports which contain details of progress, findings, problems and other information regarding the status of the project.

(3) **FINAL REPORTS.** Each grant recipient shall submit a final report to the department within 60 days after the grant expiration date. The final report shall include the following:

- (a) Documentation of all project activities conducted during the grant period.
- (b) Documentation of all project modifications that may have occurred, including the explanation of why modifications were necessary.
- (c) Documentation of all public information and educational activities which were conducted.
- (d) The conclusions and project results.
- (e) An appendix that includes all references and supporting documents for the final report. A summary of all applicable state and federal laws and regulations shall also be made part of the appendix.

NR 47.005 GRANTEE ACCOUNTABILITY. (1) **APPLICABILITY.** The provisions of this section apply only to subch s. II, IV and V.

(2) **RECORDS MANAGEMENT.** The grant recipient shall maintain an accounting system that accurately reflects all fiscal transactions, incorporates appropriate controls and safeguards, and provides a good audit trail, particularly to source or original documents, as directed in the project agreement.

(a) Fiscal controls and accounting procedures. Financial schedules and statements filed with grant applications and payment requests shall be based on records maintained under generally accepted accounting principles which meet the following minimum requirements:

1. Project accounts shall separate grant receipts and eligible expenditures from those allocable to other programs and activities.

2. Receipts and expenditures shall be listed in sufficient detail to provide a basis for accurate and complete program reporting.

3. All project receipts shall be identified in sufficient detail to reflect their source and purpose.

4. Supporting records for all project expenditures shall be itemized in detail to indicate the nature and appropriateness of each. Proof of payment, such as cancelled checks or receipts from vendors, shall be maintained.

5. Payroll records that reflect actual project hours worked by each employe as well as allocable gross wages and fringe benefits paid shall be maintained. Time and attendance records describing the work performed, specifying project hours worked by day, and both signed by the employe and bearing evidence of management review/approval, shall be maintained, along with computations showing hourly pay rates and allocation of fringe benefits.

(b) Consultant, construction and service contracts. Any work totaling \$10,000 or more per year shall be covered by a formal contract or agreement specifying financial terms, contract duration and services to be rendered.

(3) **RECORDS RETENTION AND AUDITING.** The grantee shall retain all records pertaining to its project and make them available to the department on request for one year from the date of the final payment.

NR 47.006 GRANT VARIANCES. (1) The department may approve in writing variances from nonstatutory requirements of this subchapter upon request of the grantee when it is determined that variances are essential to effect necessary actions or department objectives, and where special circumstances make variances in the best interests of the state. Before granting a variance, the department shall take into account factors such as good cause, circumstances beyond the control of the grantee and financial hardship.

(2) The department shall no later than September 30 notify its advisory committees to the stewardship and urban forestry programs of various requested and granted under this section in the previous 12 months and provide the information to others on request.

NR 47.007 GRANT TERMINATION. (1) The provisions of this section apply only to subchapters II, IV, and V.

(2) The department and a grantee may enter into an agreement to terminate the grant at any time. The agreement shall establish the effective date of termination of the project and the grant award, the basis for settlement of grant termination costs, and the amount and the date of payment of any sums due either party.

(3) The department may terminate the grant in whole or in part and the grant recipient shall return the full grant amount if the department determines that:

(a) There has been no substantial performance on the demonstration project by the grantee, without good cause;

(b) There is substantial evidence that the grant was obtained by fraud; or

(c) There is substantial evidence of gross abuse or corrupt practices in the administration of the project.

NR 47.008 ENFORCEMENT. (1) The provisions in this section apply only to subch s. II, IV and V.

(2) The department may impose the following sanctions for noncompliance with the provisions of this subchapter, or any grant made under this chapter:

- (a) The grant may be terminated under s. NR 47.006.
- (b) Program costs directly related to the noncompliance may be declared ineligible.
- (c) Other administrative and judicial remedies may be instituted as legally available and appropriate.
- (d) Repayment of some or all payments that are related to noncompliance may be required.

## **SUBCHAPTER II - THE FOREST STEWARDSHIP GRANT PROGRAM**

NR 47.01 PURPOSE. The purpose of this subchapter is to establish procedures for the administration of federal grants to provide training to professionals, and education and assistance to landowners to carry out the objectives of the act, including the proper care and management of Wisconsin's nonindustrial privately owned forest lands.

NR 47.02 APPLICABILITY. This subchapter applies to all applicants for and recipients of grants under the forest stewardship program.

NR 47.03 APPLICATION PROCEDURES. (1) An eligible applicant, described under s. NR 47.05, may apply for a grant under this subchapter for purposes specified under s. NR 47.01. Applicants shall submit applications on prescribed department forms. Application forms shall include but not be limited to:

- (a) A title and a description of the project.
  - (b) The objectives to be accomplished by the project.
  - (c) The value and benefits that will accrue from the project, consistent with the purpose of this subchapter.
  - (d) The timetable for completing the project.
  - (e) The estimated costs of the project.
- (2) Applications for grants shall be received by the department prior to November 1.
- (3) The department shall present applications to the committee for its recommendations.

(4) The department shall evaluate applications to determine which applicants will receive grants according to the standards in this section.

(5) Successful applicants shall be notified by the department in writing and sent a project agreement. Development work under the project agreement may not proceed until the agreement is signed by the department and the applicant.

(6) Project agreements shall include, but not be limited to:

(a) Title and description of project.

(b) Name of project sponsor.

(c) Cost of project.

(d) All rules pertaining to the project.

Note: Applications are available from the Bureau of Forestry, P.O. Box 7921, Madison, WI 53707.

NR 47.04 GRANT CALCULATION. The grant under this subchapter shall be 50% of the actual eligible costs as provided in s. NR 47.07.

NR 47.05 ELIGIBLE APPLICANTS. Natural resource agencies, organizations and others interested in promoting the stewardship management of private non-industrial forest lands are eligible to apply for a grant under this subchapter.

NR 47.06 ELIGIBLE PROJECTS; PREFERENCE. (1) A project is eligible for funding under this subchapter if the project is capable of and directed towards achieving one or more of the following:

(a) Providing direct technical resource management assistance to landowners.

(b) Developing information and educational materials and programs on multi-resource stewardship management of forest lands for the general public, and especially landowners.

(c) Providing training and education to resource professionals and technicians that assist landowners in the stewardship of their forest lands.

(2) In selecting projects for grant assistance, the department shall give preference to projects which are directed to accomplish one or more of the following:

(a) Complementing or continuing projects eligible or approved under this subchapter.

(b) Providing statewide or regional benefits.

(c) Providing education, training and planning to encourage forest landowner participation in forest stewardship.

(d) Improving the public's understanding and awareness of forest stewardship.

(e) Providing multiple resource benefits including, but not limited to, soil conservation, wildlife and fisheries habitat improvement, water quality improvement, aesthetics and non-commercial recreation.

(f) Implementing, complementing and expanding, rather than duplicating existing programs of government agencies and organizations.

Note: For example, the Forest Productivity Council sponsors forest landowners workshops. It would be a duplication of this effort to sponsor other organizations to start a similar program.

(g) Improving forest land management through research.

NR 47.07 ELIGIBLE AND INELIGIBLE COSTS. (1) **ELIGIBLE COSTS.** Reasonable and necessary project costs which are consistent with the approved project, as determined by the department and incurred during the project period are eligible for grants. Eligible costs may include, but are not limited to:

(a) Salaries and fringe benefit costs of personnel engaged in the project;

(b) The cost of necessary supplies and equipment;

(c) The costs of leased equipment and facilities for the length of the demonstration project;

(d) The reasonable value of in-kind contributions by the applicant of labor, equipment or facilities.

(2) **CAPITAL PURCHASES.** To be fully eligible under the grant, a capital purchase shall be used exclusively for project-related purposes over its useful life. Nonexclusive capital purchases may be charged to the grant only for that portion of depreciation equitably related to use in project activities.

(3) **EQUIPMENT USE.** Rates charged for use of the applicants' own equipment shall be limited to the county machinery agreement rates established annually by the Wisconsin department of transportation.

(4) **INELIGIBLE COSTS.** (a) Costs not directly associated with or necessary for the implementation of the project as determined by the department are ineligible for grants. Ineligible costs include, but are not limited to:

1. Fines and penalties due to violations of, or failure to comply with, federal, state or local laws or regulations;

2. Ordinary operating expenses of local government applicants, such as salaries and expenses of public officials, that are not directly related to the project;

3. Costs for which payment has been or will be received under another federal or state financial assistance program;

4. Costs incurred in a contract which creates a real or apparent conflict of interest. An apparent conflict of interest arises when an official or employe of a grantee participates in the selection, awarding or administration of a contract supported by this project and:

a. The official or employe, or his or her spouse or partner, has an ownership interest in the firm selected for the contract; or

b. A person identified in subpar. a. receives a contract, gratuity or favor from the award of the contract.

(b) Program costs incurred before or after the project period for the grant.

NR 47.08 GRANT AWARDS; PAYMENT. (1) Grants shall be awarded subject to execution of the project agreement, as specified in s. NR 47.03(5).

(2) Grant payments may not be paid until a claim supported by evidence of cost has been received by the department, unless otherwise agreed upon by the department, in writing.

(3) Payments may not be paid for project modification unless approved by the department.

### **SUBCHAPTER III - THE STEWARDSHIP INCENTIVES PROGRAM**

NR 47.10 PURPOSE AND SCOPE. (1) The purpose of this subchapter is to establish procedures and standards for the administration of the stewardship incentive program (SIP) as authorized under the act, for the purpose of encouraging private forest landowners to manage their lands in a manner that benefits all the resources in their forest.

(2) Funding granted under this subchapter is intended to complement rather than replace or duplicate other federal cost-share programs, such as ACP and FIP.

Note: SIP funds are intended to be used in addition to, and not in place of those funds that have been traditionally provided for forestry under ACP, FIP, or any other federal cost share programs.

NR 47.11 APPLICABILITY. This subchapter is applicable to landowners applying for or receiving grants under this subchapter.

NR 47.12 DEFINITIONS. In addition to definitions in s. NR 47.002, the following definitions apply to this subchapter:

(1) "ACP" means agricultural conservation program, as referenced in 7 CFR, part 701 and part 1413.

(2) "Afforestation" means establishing a forest on land not previously forested.

(3) "ASCS" means the U.S. department of agriculture agricultural stabilization and conservation service.

(4) "FIP" means forestry incentives program.

(5) "Landowner forest stewardship plan" means the plan prescribing forest stewardship measures to be used on a particular site to achieve multiple natural resource goals.

(6) "Practice" means a stewardship activity or conservation measure consistent with the landowner forest stewardship plan to accomplish the landowner's desired management objectives.

(7) "Program" means the stewardship incentive program established by the act.

(8) "Reforestation" means establishing a forest on lands that were previously forested.

(9) "Regional forester" means the area director for state and private forestry, northeastern area of the forest service.

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

(11) "SIP" means the stewardship incentives program established by the act.

(12) "USDA" means the U.S. department of agriculture.

(13) "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 47.13 STATE PROGRAM ADMINISTRATION. The state forester shall administer the SIP program, with the advice of the committee, as required by section 19(b) of the act.

NR 47.14 ELIGIBLE APPLICANTS. (1) All nonindustrial private forest lands that are not in management under federal, state, or private financial and technical assistance programs are eligible for assistance under the program.

(2) Nonindustrial private forest lands that are managed under such existing programs are eligible for assistance under the program if forest management activities are expanded and enhanced and the landowner agrees to meet the requirements of the act.

(3) The owner of any nonindustrial private forest land which is at least 10 contiguous acres and not more than 1,000 contiguous acres may apply for a grant under this subchapter.

(4) An owner of more than 1,000 acres of nonindustrial private forest land is not eligible to receive cost-share funds under the program, except where the state forester, with the concurrence of the regional forester, determines that significant public benefits would accrue from approval of a landowner owning not more than 5,000 acres. In making a determination of significant public benefits, the state forester and the regional forester shall consider, at a minimum, whether the installation of practices by landowners who own more than 1,000 acres but less than 5,000 acres are necessary to achieve cost-effective resource management objectives without unduly affecting program participation of other eligible landowners.

NR 47.15 ELIGIBLE PRACTICES. The following practices are eligible for grants under this subsection:

(1) SIP 1. Landowner forest stewardship plan development which identifies landowner objectives and multiple resource management decisions.

(2) SIP 2. Reforestation and afforestation which includes establishment or reestablishment of diverse stands of forest trees through natural regeneration, planting or direct seeding for conservation purposes and sustainable timber production.

(3) SIP 3. Forest improvement which includes the improvement of forest and agroforest stand productivity, vigor and health and the value and quality of wood products.

(4) SIP 4. Windbreak and hedgerow establishment, maintenance and renovation which includes the establishment, maintenance and renovation of windbreaks and hedgerows to conserve energy, protect farmsteads, livestock and crops, and reduce soil erosion.

(5) SIP 5. Soil and water protection and improvement which includes the maintenance or improvement of water quality and soil productivity on forest land.

(6) SIP 6. Riparian zone and wetland protection and improvement which includes the protection, restoration and improvement of wetlands and riparian areas to maintain water quality and enhance fish or wildlife habitat.

(7) SIP 7. Fisheries habitat enhancement which includes the protection and enhancement of habitat for native fisheries, including resident and anadromous species, and threatened and endangered species habitat modification.

(8) SIP 8. Wildlife habitat enhancement which includes the establishment and enhancement of permanent habitat for game and nongame wildlife species, and threatened and endangered species habitat modification.

(9) SIP 9. Forest recreation enhancement which includes the enhancement of outdoor recreation activities and aesthetics.

NR 47.16 ELIGIBLE COSTS. (1) Grants under the program shall be used to manage the following lands under a prepared landowner stewardship plan:

(a) All of the nonindustrial private forest land with existing tree cover within a contiguous tract; and

(b) Other nonindustrial private forest land within the same contiguous tract which is identified by the landowner and approved by the department as suitable for growing trees and/or scheduled for conversion to a program practice.

(2) 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 NR 47.19 ELIGIBLE PRACTICES.

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

NR 47.17 INELIGIBLE COSTS. (1) No person may use grant funds under this subchapter for any of the following:

(a) Costs incurred before an application for grant assistance is approved;

(b) The implementation of any practice already required by law, regulation or other authority;  
or

(c) Repairs or normal upkeep or maintenance of any practice.

(2) Except as authorized by the forest service, 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 47.18 GRANT CALCULATION.** (1) The grant shall be that percentage of the actual eligible costs, or rates determined by the department as follows:

(a) **SIP 1.** Practices described in s. NR 47.15 (1): 75%

(b) **SIP 2.** 1. Practices described in s. NR 47.15 (2): 50% in counties where other cost-share programs such as FIP and ACP are available; 65% in counties where other cost-share programs are not available

2. The fencing component of SIP 2 shall be cost-shared at 75% of the established rate.

(c) **SIP 3.** 1. Practices described in s. NR 47.15 (3): 50% in counties where other cost-share programs such as FIP and ACP grants are available; 65% in counties where other cost-share program grants are not available,

2. The fencing component of SIP 3 shall be cost-shared at 75% of the established rate.

(d) **SIP 4.** Practices described in s. NR 47.15 (4): 75%.

(e) **SIP 5.** Practices described in s. NR 47.15 (5): 75%.

(f) **SIP 6.** Practices described in s. NR 47.15 (6): 75%.

(g) **SIP 7.** Practices described in s. NR 47.15 (7): 75%

(h) **SIP 8.** Practices described in s. NR 47.15 (8): 75%

(i) **SIP 9.** Practices described in s. NR 47.15 (9): 50%.

(2) The amount of payment under the program to any one landowner may not exceed \$10,000 in any fiscal year. In the case where an individual is not a sole proprietor but is a partner, corporate shareholder or has an ownership interest in another private legal entity, the amount of payment to the individual shall be equivalent to the percentage of ownership the individual holds in such partnership, corporation or other private legal entity times the payment made to such partnership, corporation or other legal entity.

(3) Grant payments may not exceed 100% of cost paid by the SIP applicant to carry out a practice.

(4) The grant shall be paid to the applicant by the county ASCS office.

NR 47.19 GRANT SELECTION SYSTEM. In selecting practices for grant assistance, the department shall give preference to practices which are directed to accomplish one or more of the following:

- (1) Provide protection of soil and water resources.
- (2) Include additional land under written forest stewardship management plans.
- (3) Provide riparian zone and wetlands protection.
- (4) Provide wildlife or fisheries habitat enhancement, or both.
- (5) Establish, maintain or renovate windbreaks or hedgerows.
- (6) Establish or reestablish forests through various methods of regeneration, including planting, direct seeding or natural regeneration.
- (7) Improve forest stand productivity, stand vigor, forest health, and the value and quality of wood products.
- (8) Provide forest recreation enhancement.

NR 47.20 APPLICATION AND APPROVAL. (1) A landowner wishing to participate in the program shall apply at the ASCS office for the county in which the land is located, on ASCS forms.

(2) The state forester shall make basic eligibility determinations, including whether the applicant meets nonindustrial private forest land ownership criteria and minimum and maximum acreage criteria, and the landowner shall be notified of the determination in writing.

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

- (a) Verification that the landowner has an approved landowner forest stewardship plan.
- (b) The practice is needed and feasible.
- (c) The practice is eligible under this subchapter.

(4) Applications will be approved provided grant funds are available. Department approval of an application shall constitute an agreement by the state, United States and the landowner.

(5) 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.

(6) Upon approval of a practice, the landowner shall be notified in writing by the ASCS. Such notice shall state that the landowner can begin implementing the approved practice.

NR 47.21 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 ASCS.

(3) A practice may consist of one or more component activities. A landowner may receive partial payment for completed components 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).

Note: For instance, one component of tree planting is site preparation; another component is the planting of the trees.

(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:

1. A reasonable effort was made to meet the minimum requirements; and
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 forest service.

(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 United States for grant payments on the practices. The state forester may discount the reimbursement owed the United States by the percentage of years during which the practice has been maintained. In the case of death or incompetency of any landowner, the state forester 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 United States government.

NR 47.22 RECONSIDERATION. Any landowner, successor or assignee who is dissatisfied with any determination made under the program may request reconsideration by the state forester and, if the matter is still not resolved, by the regional 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 47.23 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 herein requiring the withholding or refunding of cost-share grants shall preclude any other penalty or liability otherwise imposed by law.

#### **Subchapter IV - The Small Business Administration Tree Planting Program**

NR 47.30 PURPOSE AND SCOPE. (1) The purpose of this subchapter is to implement and administer the United States small business administration's natural resources development program as established under ch. 24 of the small business administration act of 1990 (15 USC s. 651) and regulated under 13 CFR parts 121 and 125.

(2) The purpose of the natural resources development program is to provide grants to states for the purpose of units of government contracting with small businesses to plant trees on publicly owned or controlled property.

NR 47.31 APPLICABILITY. The provisions of this chapter are applicable to all villages, cities, towns, counties of the state, and state agencies applying for grants under this subchapter.

NR 47.32 DEFINITIONS. In this subchapter:

(1) "Applicant" means the municipal government, county government or state agency applying for a grant under this subchapter.

(2) "County government" means a Wisconsin county government or agency.

(3) "District" means one of the 6 district field administrative offices of the department.

(4) "Grantee" means the recipient of a grant under this subchapter.

(5) "Indirect costs" are those costs not directly assignable to a grant, program or project. Such costs are generally administrative in nature, are incurred for a common or joint purpose or are not readily assignable to a project or program.

(6) "Municipal government" means a Wisconsin village, city or town government or agency.

(7) "Planting" means to set trees in the ground for growth and includes watering, application of fertilizer, herbicides, pruning and shaping and other subsequent care and maintenance for a period of 3 years after the trees are set in the ground.

(8) Program means the SBA natural resources development program established under ch. 24 of the small business administration act of 1990 and regulated under 13 CFR parts 121 and 125.

(9) "Project agreement" means a contract between the grantee and department setting forth the mutual obligations with regard to a portion or all of a specific project.

(10) "Project period" means the period of time specified in the agreement during which all work shall be accomplished.

(11) "SBA" means United States small business administration.

(12) "Small business" means any business together with its affiliates having 100 employees or less and meeting the other regulatory requirements in 13 CFR part 121.

Note: The term "affiliates" is defined in 13 CFR part 121.401. Rules for determining "number of employees" are in 13 CFR part 121.407.

(13) "State agency" has the same meaning as a department as defined in s. 15.01(5), Stats., or an independent agency as defined in s. 15.01(9), Stats.

(14) "Tree" means any species which is traditionally considered to be classified as a tree. "Tree" does not include shrubs.

NR 47.33 ALLOCATION OF FUNDS. (1) SBA tree planting funds apportioned to Wisconsin each fiscal year shall be allocated on a pro rata basis to municipal governments, county governments and state agencies based on the ratio of the number of eligible project applications from each group divided by the total number of eligible projects.

(2) Funds allocated to municipal governments, county governments or state agencies but not encumbered shall be reallocated to governments with outstanding grant applications in the following order:

- (a) Municipal governments;
- (b) County governments;
- (c) State agencies.

NR 47.34 APPLICATION PROCEDURES. (1) An eligible applicant, described under s. NR 47.36(1) may apply for a grant under this subchapter for the purposes specified under s. NR 47.36(2).

(2) Applicants shall submit applications on the prescribed department forms to the district office for the district where the applicant is located. The application shall indicate that:

- (a) Trees shall be planted on publicly owned or controlled property;
- (b) All tree planting under the project shall be conducted by small business contractors; and
- (c) Purchased trees and supplies shall be purchased from small businesses.

(3) The grant proposal shall to the extent possible divide the project to allow more than one small business concern to perform work under the project and promote increased employment in local communities.

(4) Applications shall be received by the department district office no later than close of business on March 1 unless otherwise provided on the application.

(5) The department shall evaluate completed applications and make preliminary determinations as to which applicants may receive grants.

(6) The department shall submit its preliminary determinations to the SBA for review.

(7) The department may not award grants before receiving SBA approval.

(8) Successful applicants shall be notified by the department and sent a project agreement. Work under the project agreement may not proceed until the agreement is signed by the department and the applicant.

**NR 47.35 GRANT CALCULATION.** (1) A grant under this subchapter shall be 50% of actual eligible costs except that no grant may exceed \$15,000 or be less than \$2000.

(2) If insufficient monies are available to fully fund the grant request, the applicant shall be contacted for approval of funding the project with the available monies.

**NR 47.36 ELIGIBILITY.** (1) **ELIGIBLE APPLICANTS.** (a) Municipal governments, county governments and state agencies are eligible to apply for a grant under this subchapter.

(b) Tribal governments are not eligible to apply for grants under this subchapter.

(2) **ELIGIBLE PROJECTS.** Projects for the purpose of contracting with small businesses to plant trees on publicly owned or controlled property.

(3) **INELIGIBLE PROJECTS.** (a) Projects which do not use small businesses to plant all project trees.

(b) Projects which use trees or supplies not procured from small businesses, except when trees are provided by the applicant's own nursery or when bids for trees or supplies are solicited, but not received from small businesses.

**NR 47.37 ELIGIBLE AND INELIGIBLE COSTS.** (1) **ELIGIBLE PROJECT COSTS, REIMBURSABLE.** Costs specified with contracts with small businesses for the purchase and planting of trees on publicly owned or controlled property are eligible for reimbursement.

(2) **ELIGIBLE PROJECT COSTS, NON-REIMBURSABLE.** The following costs are ineligible for reimbursement, but if reasonable are allowable for the 50% match for the project:

- (a) Project administration costs;
- (b) Indirect costs;
- (c) Shipping fees;
- (d) Costs of purchasing, planting or placing complementary ground covers;
- (e) Value of in-kind or donated labor, supplies and equipment for maintaining planted trees for up to 3 years after planting;

Note: Direct costs shall be supported by time sheets, vouchers or similar documentation reflecting specific assignment to the project. Actual fringe benefits may not exceed 34.6% of the direct labor costs claimed. Value of donated labor will be set by the department. Equipment rental rates or donated value shall not exceed the county equipment rates established annually by the department of transportation. To be fully eligible project costs under the grant, a capital purchase shall be used exclusively for project-related purposes over its useful life. Non-exclusive capital purchases may be charged as project costs only for that portion of depreciation equitably related to use in project activities.

- (f) Value of trees provided from the grantee's own nursery; and
- (g) The value of trees or supplies provided by suppliers that are not small businesses if bids are solicited, but not received from small businesses.

(3) **INELIGIBLE COSTS.** (a) Costs not directly associated with or necessary for the implementation of the project as determined by the department are ineligible for grant funding. Ineligible costs include, but are not limited to:

1. Fines and penalties due to violations of, or failure to comply with, federal, state or local laws or regulations;
2. Ordinary operating expenses of local government applicants, such as salaries and expenses of a mayor or city council members, that are not directly related to the project;
3. Costs for which payment has been or will be received under another federal or state financial assistance program;
4. Costs incurred in a contract which creates a real or apparent conflict of interest. An apparent conflict of interest arises when an official or employe of a grantee participates in the selection, awarding or administration of a contract supported by this project and:
  - a. The official or employe, or his or her spouse or partner, has an ownership interest in the firm selected for the contract; or
  - b. A person identified in subpar. a. receives a contract, gratuity or favor from the award of the contract.
5. Costs incurred before or after the project period.
6. Land costs or land charges.

**NR 47.38 GRANT SELECTION PROCESS.** In selecting projects for grants under this subchapter, the department shall give priority to the following listed in no particular order:

(1) Applicants with a department, board or commission charged with the development and administration of a comprehensive tree care program.

(2) Applicants with a tree ordinance, plan or administrative rule which describes public policies for tree planting, maintenance and removal.

(3) Applicants with an ongoing forestry program budget. This funding need not be a specifically designated amount in the budget, but may include, but not be limited to, expenditures for tree removal, administration expenses, volunteer labor and other activity involved in managing trees.

(4) Projects that properly prepare or modify planting sites to maximize survival.

(5) Projects that select species adapted and appropriate for the site.

(6) Projects that maximize benefits to the public.

(7) Applicants that have a budget for replacement of project trees that die.

(8) Projects that maximize small business involvement.

(9) Projects that improve species diversity of the forest resource.

(10) Projects that are innovative.

(11) Applicants that have not received SBA tree planting grants in the past.

**NR 47.39 GRANT AWARDS; PAYMENT.** (1) **GRANT AWARDS.** Grants shall be awarded subject to execution of the department's project agreement.

(2) **PAYMENT.** (a) 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 to that point.

(b) The recipient shall submit reports as required in s. NR 47.004 documenting continuing maintenance costs to meet the match.

(c) Grant funds that are not matched over the course of the grant period shall be returned to the department.

(3) **FINAL AUDIT.** All payments are contingent upon final audit. Financial record including all documentation to support entries in the accounting records to substantiate charges for each project shall be kept available for review by state or federal officials for a period of 3 years after final payment.

(4) **MAINTENANCE.** Grantees shall agree to provide or be responsible for 100% of the maintenance of the planted trees.

(5) **COMPLIANCE.** Grantees shall comply with all applicable state and federal regulations, certifications and assurances specified by the program.

NR 47.40 EXTENSIONS. Project extensions for the reimbursable portion of a project under this subchapter are not allowed.

## **SUBCHAPTER V - URBAN AND COMMUNITY FORESTRY GRANT PROGRAM**

NR 47.50 PURPOSE AND SCOPE. The purpose of this subchapter is to establish procedures for the awarding and administering of grants to municipalities and non-profit organizations for the purpose of funding urban and community forestry projects as authorized under the act and under s. 23.097, Stats.

NR 47.51 APPLICABILITY. The provisions of this subchapter are applicable to all counties, cities, villages, towns, tribal governments and not-for-profit organizations of the state applying for grants under this subchapter.

NR 47.52 DEFINITIONS. In this subchapter:

- (1) "Applicant" means the Wisconsin town, village, city, county, tribal government or not-for-profit organization that submits an application for a grant under this subchapter.
- (2) "District" means one of the 6 district field administrative offices of the department.
- (3) "Grantee" means the recipient of a grant under this subchapter.
- (4) "Municipal government" means a Wisconsin village, city, town or tribal government.
- (5) "Not-for-profit organization" includes approved organizations that meet the requirements of section 501(c)(3) of the United States internal revenue code of 1986 and other not-for-profit organizations.
- (6) "Project agreement" means a contract between the grantee and department setting forth the mutual obligations with regard to a portion or all of a specific project.
- (7) "Project period" means the period of time specified in the agreement during which all work shall be accomplished.

NR 47.53 APPLICATION PROCEDURES. (1) An eligible applicant, described under s. NR 47.75(1) may apply for a grant under this subchapter for the purposes specified under s. NR 47.75(2).

(2) Applicants shall submit applications on the prescribed department forms to the district office for the district where the applicant is located.

(3) Applications shall be received by the department district office no later than close of business on October 1 unless otherwise provided on the application.

(4) The department shall evaluate completed applications to determine which applicants will receive grants according to the standards in this section.

(5) Successful applicants shall be notified by the department and sent a project agreement. Work under the project agreement may not proceed until the agreement is signed by the department and the applicant.

NR 47.54 GRANT CALCULATION. (1) A grant under this subchapter shall be 50% of actual eligible costs except that no grant may exceed \$25,000 or be less than \$1000.

(2) If insufficient monies are available to fully fund the grant request, the applicant will be contacted for approval of funding the project with the available monies.

(3) Up to 20% of the monies available for grants under this subsection may be used to fund tree planting and maintenance projects.

NR 47.55 ELIGIBILITY. (1) ELIGIBLE APPLICANTS. (a) Municipal governments, counties and not-for-profit organizations are eligible to apply for a federally funded grant under this subchapter.

(b) Municipal governments are eligible to apply for a state funded grant under this subchapter.

(c) Municipal governments, counties and not-for-profit organizations may apply jointly for assistance under this subchapter.

(d) The department may require that municipal governments to have on file with the department a comprehensive urban forestry management plan, approved by the department, to be eligible for grants for all projects except for the development of an urban forestry management plan.

(e) The department may require not-for-profit organizations to have on file with the department a constitution, bylaws or similar document, approved by the department, detailing the organization's interest and activities in urban and community forestry.

(2) ELIGIBLE PROJECTS. Requests for grant assistance may include, but are not limited to, requests for:

(a) Development of comprehensive urban forestry management plans;

(b) Development of urban forestry ordinances;

(c) Performing inventories of existing trees and tree planting needs;

(d) Development of master tree planting plans;

(e) Development of integrated pest management or other urban forest maintenance plans;

(f) Training programs for community employees or volunteers;

(g) Development and implementation of urban forest management public information or involvement programs; and

(h) Demonstration planting or maintenance projects whose primary purpose is to provide education, technology transfer or information exchange in urban and community forestry management.

(3) INELIGIBLE PROJECTS. The following projects are ineligible for grants under this subchapter:

(a) Stump or brush removal;

(b) Land or boundary surveys or title search; and

(c) Appraisals involving sale or exchange of real property.

NR 47.56 ELIGIBLE AND INELIGIBLE COSTS. (1) ELIGIBLE COSTS, REIMBURSABLE.

Reasonable and necessary project costs which are consistent with the approved project scope and incurred during the project period are eligible for grant funding. Eligible costs may include, but are not limited to:

- (a) Salaries and fringe benefit costs of personnel engaged in the project;
- (b) The cost of necessary supplies and equipment;

Note: To be fully eligible project costs under the grant, a capital purchase shall be used exclusively for project-related purposes over its useful life. Nonexclusive capital purchases may be charged as project costs only for that portion of depreciation equitably related to use in project activities.

- (c) The costs of leased equipment and facilities for the length of the project;
- (d) The reasonable value of in-kind contributions by the applicant of labor, equipment or facilities.

Note: Direct costs shall be supported by time sheets, vouchers or similar documentation reflecting specific assignment to the project. Actual fringe benefits may not exceed 34.6% of the direct labor costs claimed. Equipment rental rates may not exceed the county equipment rates established annually by the department of transportation.

- (e) Contract costs of qualified vendors to perform project activities.

(2) ELIGIBLE COSTS, NON-REIMBURSABLE. Reasonable value of donated labor, equipment, supplies, facilities or services are eligible project costs for the purposes of match, but are not eligible for reimbursement.

Note: To be fully eligible project costs under the grant, a capital donation shall be used exclusively for project-related purposes over its useful life. Nonexclusive capital donations may be charged as project costs only for that portion of depreciation equitably related to use in project activities. Value of donated labor will be calculated using rates established by the department.

(3) INELIGIBLE COSTS. (a) Costs not directly associated with or necessary for the implementation of the project as determined by the department are ineligible for grant funding. Ineligible costs include, but are not limited to:

1. Fines and penalties due to violations of, or failure to comply with, federal, state or local laws or regulations;
2. Ordinary operating expenses of local government applicants, such as salaries and expenses of a mayor or city council members, that are not directly related to the project;
3. Costs for which payment has been or will be received under another federal or state financial assistance program;
4. Costs incurred in a contract which creates a real or apparent conflict of interest. An apparent conflict of interest arises when an official or employe of a grantee participates in the selection, awarding or administration of a contract supported by this project and:

a. The official or employe, or his or her spouse or partner, has an ownership interest in the firm selected for the contract; or

b. A person identified in subpar. a. receives a contract, gratuity or favor from the award of the contract.

(b) Program costs incurred before or after the project period.

NR 47.57 GRANT SELECTION PROCESS. In selecting projects for grants under this subchapter, the department shall give priority to the following listed in no particular order:

(1) Applicants with a department, board or commission charged with the development and administration of a comprehensive tree care program.

(2) Applicants with a tree ordinance, plan or administrative rule which describes public policies for tree planting, protection, maintenance and removal.

(3) Applicants with an ongoing forestry program budget. This funding need not be a line item amount in the budget but could include for example expenditures for tree removal, administration expenses, volunteer labor and other activity involved in managing trees.

(4) Applicants that have not received urban forestry assistance grants in the past.

(5) Projects that maximize benefits to the urban forest resource.

(6) Projects that are cost effective.

(7) Projects that involve the community in the development or implementation of the project.

(8) Projects that maximize benefits to the public.

(9) Projects that are innovative.

(10) Activities that are not currently funded.

(11) Community population.

NR 47.58 GRANT AWARDS; PAYMENT. (1) GRANT AWARDS. Grants shall be awarded subject to execution of the department's project agreement.

(2) PAYMENT. Grant payments shall be made upon approval of the final report and the final accounting claim supported by evidence of cost.

(3) FINAL AUDIT. All payments are contingent upon final audit. Financial records including all documentation to support entries in the accounting records to substantiate charges for each project shall be kept available for review by state or federal officials for a period of 3 years after final payment.

The foregoing rule was approved and adopted by the State of Wisconsin Natural Resources Board on April 23, 1992.

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 June 8, 1992

STATE OF WISCONSIN  
DEPARTMENT OF NATURAL RESOURCES

By Carroll D. Besadny

Carroll D. Besadny, Secretary

(SEAL)

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