

**ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
CREATING RULES**

The statement of scope for this rule, FR-07-12, was approved by the Governor on March 14, 2012, published in Register No. 675, on March 31, 2012, and approved by the Natural Resources Board on April 25, 2012. This rule was approved by the Governor on November 7, 2014.

The Wisconsin Natural Resources Board proposes an order to create section, NR 47.65, related to directing the distribution of grant funding for a county forest time standards grant.

FR-07-12

Analysis Prepared by the Department of Natural Resources

1. Statutes interpreted:

Section 28.11 (5r), Wis. Stats.

2. Statutory authority:

Section 28.11 (5r), Wis. Stats.

Section 227.11 (2)(a), Wis. Stats,

3. Explanation of agency authority:

DNR's responsibilities for coordination and support of the County Forest program can be found in s. 28.11(5) Wis. Stats. and the authority for sustainable forestry funding is included in 28.11(5r) Wis.Stats. S. 28.11(5r)(b) states: "The department may make grants, from the appropriation under s. 20.370(5)(bw), to counties having lands entered under sub.(4) to fund the cost of activities designed to improve sustainable forestry on the lands. Finally, Wis. Stat. s. 227.11 (2)(a) allows the DNR to promulgate rules for any statute if the DNR considers it necessary to effectuate the purpose of the statute. Without rulemaking authority for this rule, the DNR will not be able to administer or enforce the grant program authorized by statute, since the DNR would not be able to establish criteria that would uniformly apply across grant applicants without running afoul of the definition of "rule" found under Wis. Stat. s. 227.01(13).

4. Related statutes or rules:

Chapter NR 47.75 - Sustainable Forestry Grant For County Forests, establishes standards and procedures for implementation of a grant program to contribute funds to sustainable forestry practices on county forests under s. 28.11 (5r), Wis. Stats., specifically for projects that are suitable as a short term and unanticipated workload item consistent with a county's comprehensive county forest land use plan under s. 28.11 (5) (a), Wis. Stats.

5. Plain language analysis:

This proposed rule would create a new grant program, which would allow additional flexibility for County Forests to select the optimal combination of resources provided to each by the Department. Presently the DNR Division of Forestry (DOF) provides assistance to County Forests, aligning workload with the statutory role of the DNR in coordination of the County Forest program. An agreed upon number of hours are provided to each county based on the workload for that particular county. The DOF's Strategic Direction process in 2011-12 realigned forest resources to better accomplish the DOF's mission in Wisconsin's Statewide Forest Plan. As part of that process, each County Forest was given the opportunity to request a modification of the allocation of resources provided by the Department among a suite of grants and the hours of technical forestry assistance the DOF provides to best meet their individual needs. Several counties (Clark, Eau Claire, Iron, Jackson and Langlade) desire to reduce their technical assistance from DNR in exchange for funding that would allow them to hire contractors or seasonal staff to accomplish similar forestry work. The thought is that some of the forestry tasks may be done adequately using potentially lesser paid seasonal or contracted staff, with the end result being the ability to get more work done with the same amount of resources. The proposed grant program is structured to focus on accomplishing tasks already identified in the time standards agreement for each county, which guides what activities have typically been accomplished by DOF staff. This funding would provide for on-the-ground sustainable forestry practices with the reallocation of funding into appropriation 20.370(5)(bw).

6. Summary and comparison with existing and proposed federal regulations.

This rule/grant does not impact and is not impacted by any federal regulations.

7. Comparison of similar rules in adjacent states:

This rule/grant is not similar to rules in any adjacent states. The County Forest Program, as established by s. 28.10 and s 28.11 Wis. Stats., is unique in the nation, in terms of the partnership and roles of the State and participating counties in the management of County Forest lands.

8. Summary of factual data and analytical methodologies:

This new rule/grant will be consistent with the goals established in the Division of Forestry's Strategic Direction conducted in 2011-12, which realigned forest resources to better accomplish the DOF's mission in Wisconsin's Statewide Forest Plan. The proposed rule/grant language was developed by a team that included several DOF staff members, the Executive Director of the Wisconsin County Forests Association, and three County Forest Administrators. The proposed language has been vetted and approved by the DOF's Leadership and Operations Team as well as the Wisconsin County Forests Association's Legislative & Certification Committee.

9. Analysis and supporting documents used to determine effect on small business or in preparation of an economic impact analysis:

The Division of Forestry is directly contacting County Forest Administrators, who would be most directly affected group affected by this proposed rule/grant to solicit their input in the development of the Economic Impact Analysis (EIA). The County Forest Administrators are the

individuals that would be responsible for completing and submitting grant applications under the proposed rule, and therefore are in the best position to describe the potential impacts of the rule on their budgets and the small businesses they may potentially hire to complete sustainable forestry projects.

10. Effect on small business:

This rule/grant would provide an option for counties to receive grant funding as an alternative to DNR staff assistance, which could be used to hire temporary staff or contractors to accomplish sustainable forestry projects. As such, there could potentially be a minor economic impact on small businesses, if counties received grant funding and subsequently hired contractors for that work. The actual overall economic impact to small businesses in Wisconsin will be minimal, although a few small businesses may see significant benefits if selected to do contract work on County Forest projects.

11. A copy of any comments and opinion prepared by the Board of Veterans Affairs under s. 45.03 (2m), Stats., for rules proposed by the Department of Veterans Affairs:

Not applicable.

12. Agency Contact (include email and telephone number):

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Section 1. NR 47.65 is created to read:

NR 47.65 – County forest time standards grant program.

(1) PURPOSE. The purpose of this section is to establish standards and procedures for implementation of a grant program to contribute funds towards accomplishing sustainable forestry practices which have been identified through the county forest time standards calculation for county forests, pursuant to the authority under s. 28.11 (5r) (b), Stats.

(2) APPLICABILITY. This section is applicable to those counties that have land entered under s. 28.11 (4), Stats., as county forest and which apply for an adjustment from the calculated level of technical forestry assistance provided by the department's division of forestry as established under the county forest time standards calculation.

(3) DEFINITIONS. As used in this section:

(a) "Comprehensive county forest land use plan" means the document governing management of the county forest which has been approved by the county board and the department, under s. 28.11 (5), Stats.

(b) "County" means a county that has entered county-owned land under the county forest law, in ss. 28.10 and 28.11, Stats.

(c) "County forest time standards" means to the agreement between the department and a county that quantifies the amount of technical forestry assistance the department provides to the county to fulfill s. 28.11 (5) and (6), Stats., responsibilities.

(d) "Fiscal year" means the time period commencing on July 1 and ending on June 30.

(e) "Nonprofit organization" has the same meaning as non-profit corporation, as described in s. 181.0103 (17), Stats.

(f) "Sustainable forestry" has the meaning given in s. 28.04 (1) (e), Stats.

(g) "Technical forestry assistance" means department staff time provided to assist a county in accomplishing the activities described in the county forest time standards and consistent with a county's comprehensive county forest land use plan.

(4) ELIGIBLE PROJECTS. To be eligible for a time standards grant, projects must meet all of the following requirements:

(a) Projects shall promote sustainable forestry on the county forest. Projects may include any of the activities identified through the county forest time standards which are not solely the responsibility of department.

(b) Projects shall be consistent with a county's comprehensive county forest land use plan under s. 28.11 (5) (a), Stats.

(5) INELIGIBLE PROJECTS. Projects that are not eligible for a time standards grant include, but are not limited to:

(a) Purchase of equipment and supplies.

(b) Permanent staff salary or benefits.

(c) Upgrade or replacement of existing computer software and hardware.

(d) Land surveying.

(6) APPLICATION PROCEDURE.

(a) Other than as provided in par. (c), a county may apply for a time standards grant under this section for the project purposes described in sub. (4). The application shall include, but is not

limited to, all of the following:

1. Documentation of approval by county forestry committee as identified in s. 28.11 (3) (a), Stats., specifying the county's decision to apply for a time standards grant.
2. The project description including an estimated cost breakdown and a short narrative describing the proposed work to be accomplished and how it directly relates to the calculated time standard activities, to be signed and approved by the county forest administrator.
3. The amount of grant funding requested to accomplish the proposed work and the corresponding reduction in technical forestry assistance as described in sub. (7) (e).
4. Other information the department feels necessary and requests within 30 days following receipt of the application.

(b) Grant applications shall be for a minimum of \$1,000.00 with a maximum not to exceed the equivalent of 25% of a county's calculated county forest time standard. Applications shall be filed by the county with the department's division of forestry.

Note: The mailing address is WI DNR, Division of Forestry, P.O. Box 7921, Madison, WI 53707-7921 Attn: County Forest Specialist.

(c) A county is ineligible to apply if any of the following occur:

1. Management or internal county policy is in opposition to the comprehensive county forest land use plan, under s. 28.11 (5), Stats.
2. Previous unexpended funds from the grant program under this section are owed the department as described in sub. (8)(d).
3. A county fails to comply within 3 years to department forestry audit recommendations.

(d) Applications shall be for a 4 year period, set in conjunction with the state biennial budget covering a period of four state fiscal years, 2 state budgets.

(e) Grant applications shall be accepted during the period from October 1 to December 31 in every other odd numbered year. Grant awards for those applications shall be made no later than July 31 of the subsequent odd numbered year.

Note: For example, applications shall be accepted from October 1 – December 31, 2013 for funding during state fiscal years 2016-2019. Grant awards shall be made no later than July 31, 2015. Application years: 2013, 2017, 2021, 2025, 2029, etc.

(f) Funding amounts requested in grant applications shall be considered final once submitted.

(g) Applications may be submitted and grants awarded at other times if resources are available and circumstances are warranted, as determined by the department.

Note: For example, department vacancies.

(7) GRANT AWARD PROCEDURE, FUNDING RATES AND CONSTRAINTS.

(a) Payment of all grants shall be made by September 30 of the first year of the biennium. The grant covers a 4 year period, consequently the grant amount requested shall be split equally between the 2 state budget biennium. Funding in the second biennium is subject to inclusion of adequate funding in the state budget for that period.

(b) A grant under this section may be awarded to a county to contribute to the funding of a subcontractor for the purposes described in sub. (4).

(c) The county shall submit information requested by and satisfactory to the department demonstrating project completion by January 31st following each biennium.

Note: For example, project accomplishment reports for the fiscal year 2016 & 2017 biennium are due by January 31, 2018. Accomplishment reporting years: 2018, 2020, 2022, etc. The mailing address is WI. DNR, Division of Forestry, P.O. Box 7921, Madison, WI 53707-7921 Attn: County Forest Specialist.

(d) Funding rates shall be based on eligible applications received by the department and total available funding for each of the biennial budget periods. In determining funding, all of the following shall apply:

1. Total eligible funding shall be based upon an appropriation under s. 20.370 (5) (bw), Stats., while reserving an amount of funds agreed to biannually by the department and a nonprofit organization that provides leadership and counsel to county forest administrators and that functions as an organizational liaison to the department as identified in s. 28.11(5m)(am) Stats., to address projected sustainable forestry grant project needs under s. NR 47.75 and funds to cover projected county forest administration grant needs under s. NR 47.70., based on the previous year's eligible administration grant requests plus a projected five percent annual growth of administration grant requests.

2. If full funding is not available due to insufficient funds to provide grants applied for, the department shall offer the applicants the choice of receiving pro-rated funding for the project up to the amount of available funding described in subd. 1, or withdrawal of the application.

(e) The calculated rate for conversion of technical forestry assistance to time standards grant funding shall be calculated by adding the average department forester hourly cost, factored at 75% of the calculated average, and the average department forestry technician hourly cost, factored at 25% of the calculated average, based on actual salary, fringe, and supply rates for the fiscal year proceeding the application period.

(8) PROJECT COMPLETION ACCOUNTABILITY AND AUDIT PROCEDURES.

(a) Grant funds may be spent only on eligible activities as described in sub. (4).

(b) All grant funds received from the department shall be deposited in the county state aid forestry account.

(c) All grant records shall be audited with the normal departmental audit of the county forest program.

(d) Any grant funds not spent on eligible costs by January 31st of the year in which reporting is required under sub. (7) (c) shall be returned to the department. Failure to return the funds shall render a county ineligible for any future grants under this section.

(e) A county may maintain funds contrary to par. (d) upon written approval from the department.

(f) Project scope may be amended over grant period as requested by the county forest administrator and contingent upon approval by the department.

Section 2. EFFECTIVE DATE. This 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

Section 3. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on September 24, 2014.