

STATEMENT OF SCOPE

Department of NATURAL RESOURCES

Rule No.: FR-06-23(E)

Relating to: Federal funding for the Urban and Community Forestry Grant Program (ch. NR 47)

Rule Type: Emergency

1. Finding/nature of emergency (Emergency Rule only):

The Department of Natural Resources (department) finds that the emergency rule procedure is necessary to facilitate the immediate use of significant federal monies that have been recently allocated under *H.R. 5376 - 117th Congress: Inflation Reduction Act (IRA) of 2022 Subtitle D, section 23003*. An emergency rule would facilitate the use of this federal funding by local governments, tribal governments and not-for-profit organizations in Wisconsin to fund urban and community forestry activities. Urban and community forests provide measurable health, economic, social, and environmental benefits to residents, businesses, and visitors alike. These benefits include, but are not limited to, air pollution reduction, reduced air temperatures, increased property values, social cohesion, carbon sequestration and storage, and reduced stormwater runoff volumes.

The department administers the Urban and Community Forestry (UCF) Grant Program, codified through subch. V of ch. NR 47, Wis. Admin. Code. Federal funding disbursed through the department's UCF Grant Program must adhere to existing congressional authorities provided under the Cooperative Forestry Assistance Act (16 USC 2101 et seq.), and subch. V of ch. NR 47, Wis. Admin. Code. That program currently contains restraints that may prevent Wisconsin from fully utilizing federal grant monies that are now available.

The descriptor "urban" is used often in this scope statement to match the name of the department's grant program, which also matches the name of the federal authorizing legislation; however, "urban" is not used in the traditional sense. "Urban" is used by foresters and arborists to distinguish forestry practiced in developed/residential/suburban areas from the more traditional type of forestry that occurs on large undeveloped tracts of land. Urban forestry is practiced in communities of all sizes in Wisconsin, and communities as small as the Village of Wyocena (pop: 768, grant received in 2023) have received urban forestry grants from the department.

Promulgating this emergency rule is in the best interest of Wisconsin communities as it will benefit local governments, tribal governments and not-for-profit organizations across the state as they apply for IRA funds through the department's UCF Grant Program to conduct forestry activities in their communities. Eligible activities include but are not limited to hazard tree removal, tree planting and maintenance, tree inventory and management plan development, public education and engagement in urban and community forestry, training and education opportunities. By providing funding to local entities to conduct these activities, we expect these monies to have a significant, positive and longlasting impact on forest resources across the state, and on the health and welfare of Wisconsin residents. The program will also benefit the economy, including private businesses in the urban and community forestry industry such as arborist and tree care companies, private tree nurseries, and urban and community forestry consulting businesses, since these business may be hired by grantees to accomplish work under the grants.

It is imperative to expand the scope of subch. V of ch. NR 47, Wis. Admin. Code, to facilitate the efficient and equitable distribution of the IRA funds to local governments, tribal governments, and not-for-profit organizations throughout Wisconsin.

2. Detailed description of the objective of the proposed rule:

The department has been allocated \$4.875 million of *H.R. 5376 - 117th Congress: Inflation Reduction Act (IRA) of 2022 Subtitle D, section 23003* funding to supplement the department's UCF Grant Program. The department has received a match waiver from the USDA Forest Service (FS) for these IRA funds, which must be passed down to sub-grant recipients. These federal funds must be used within 5 years of being awarded.

The proposed emergency rule changes will modify the current procedures for the administration of the department's UCF Grant Program awards to local governments, tribal governments, and not-for-profit organizations for the purpose of funding urban and community forestry projects as authorized under the Cooperative Forestry Assistance Act of 1978 (16 USC 2101 et seq.), as amended. The goal of these modifications is to facilitate the disbursement of more funding than the program has been structured to efficiently administer. Proposed rule changes include introducing match waivers for grantees, establishing an advance payment of no more than 50% of the grant upon award to all grantees, allowing annual reimbursement for multi-year projects, and increasing the maximum grant award amount. These rule changes help support equitable access to IRA funding through the department's UCF Grant Program. This funding will support the maintenance and expansion of tree canopy in rural and urban communities across the state, and therefore increase the health, economic, social, and environmental benefits provided by tree canopy.

Additional rule changes may be pursued which are reasonably related to those discussed here.

3. Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:

Existing Policies

The department's UCF Grant Program offers federally funded grants to Wisconsin towns, cities, villages, counties, tribal governments and not-for-profit organizations conducting projects in Wisconsin. The UCF Grant Program is regulated under subch. V of ch. NR 47, Wis. Admin. Code. The current rule requires a dollar for dollar match from the grantee, has a maximum award amount of \$25,000, and allows advance payment of no more than 50% for not-for-profit grantees upon the awarding of the grant.

New Policies Proposed

A requirement of the IRA funding is that any match waiver the department receives must be passed along to sub-grant recipients. These monies must also be used within 5 years of the department being awarded the grant.

The department proposes an emergency rule that eliminates the dollar for dollar match requirement, changes the maximum award amount, allows any grantee to request partial advance payment upon the awarding of the grant, and allows for annual reimbursement from the department to the grantee if the grant project is longer than one-year in duration. These changes will benefit Wisconsin communities by:

- Providing a match waiver will align with the requirements of the IRA funding. The department has received a match waiver from the FS for the IRA funds, which must be passed down to any sub-grant recipients. The match waiver will increase access to these monies by communities, tribal governments and not-for-profit organizations that may otherwise struggle to meet current grant match requirements.
- Increasing grant award amounts will fund larger scale projects, expanding its impact and reaching more rural and urban Wisconsin communities.
- Providing an advance payment of no more than 50% of the grant upon awarding to all grantees and allowing for annual reimbursements for multi-year projects will better assist in facilitating urban and community forestry projects across Wisconsin as some communities, tribal governments and not-for-profit organizations might otherwise not have funding resources to finance these activities in advance.

The proposed rule revisions will update the department's UCF Grant Program to accommodate the influx of federal funding to better serve Wisconsin counties, cities, villages, towns, tribal governments, and not-for-profit organizations. The proposed rule changes will also benefit local businesses, Wisconsin citizens and establish partnerships with local organizations working to support Wisconsin urban and rural communities experiencing low tree canopy.

Policy Alternative

Do nothing. Local governments, tribal governments and not-for-profit organizations would miss out on the opportunity to apply for \$4 million of federal funding for urban and community forestry activities because of the IRA requirement to pass the waiver of match through to sub-grantees. Additionally, it is unlikely that the department could administer \$4 million within the 5-year award period of the federal grant if the maximum award amounts remained at \$25,000.

4. Detailed explanation of statutory authority for the rule (including the statutory citation and language):

Subchapter V of ch. NR 47, Wis. Admin. Code, establishes procedures for the awarding and administering of grants to fund urban and community forestry projects. It consists of a state funded grant program, which is authorized by s. 23.097(1g), Wis. Stats., and funded by s. 20.370(5)(az), Wis. Stats., and a federally funded grant program, which is authorized under the Cooperative Forestry Assistance Act of 1978 (16 USC 2101 et seq.), as amended, and s. 23.09(2)(o), Wis. Stats. The purpose of this rule is to modify the provisions dealing with the federally funded urban and community forestry grants. In the event that making such changes impacts the state funded portion of the grant program, those statutory authorities are also referenced in this section.

Under s. 23.097(1g), Wis. Stats., the department is directed to award grants to, "...counties, cities, villages, towns, and nonprofit organizations for up to 50 percent of the cost of tree management plans, tree inventories, brush residue projects, the development of tree management ordinances, tree disease evaluations, public education concerning trees in urban areas and other tree projects." The statute also directs the department to promulgate rules to establish criteria for awarding such grants (s. 23.097(2), Wis. Stats.)

Section 23.09(2), Wis. Stats., explicitly permits the department to "promulgate such rules . . . as it deems necessary to carry out the provisions and purposes of this section". Section 23.09(2)(o), Wis. Stats., explicitly permits the department to "accept and administer any . . . grants . . . including funds made available to the department by the federal government under any act of congress relating to any of the functions of the department." Read together, this provision allows the department to promulgate rules to accept federal funds and administer a grant program according to the Cooperative Forestry Assistance Act of 1978(16 USC 2101 et seq.), as amended.

The Cooperative Forestry Assistance Act of 1978 (16 USC 2101 et seq.), as amended, authorizes the Secretary of Agriculture to provide cooperative forestry assistance to states and others. It includes a range of state and private forestry program authorities, including sec. 9 (16 USC 2105) "urban and community forestry assistance." Section 9 authorizes the Secretary of Agriculture to "provide financial, technical, and related assistance to state foresters or equivalent state officials for the purpose of encouraging states to provide information and technical assistance to units of local government and others that will encourage cooperative efforts to plan urban forestry programs and to plant, protect, and maintain, and utilize wood from, trees in open spaces, greenbelts, roadside screens, parks, woodlands, curb areas, and residential developments in urban areas." This program includes providing "assistance through competitive matching grants awarded . . . for urban and community forestry projects."

5. Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:

Employees will spend approximately 140 hours developing this rule.

6. List with description of all entities that may be affected by the proposed rule:

Eligible grant applicants including local governments (cities, villages, towns, counties), tribal governments, and 501(c)(3) not-for-profit organizations engaged in urban and community forestry activities.

Private businesses including urban and community forestry consulting businesses, private tree nurseries, arborists, and tree care businesses.

Wisconsin residents, businesses, and visitors who will benefit from increased investment in our state's urban and community forest resource.

7. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:

All existing congressional authorities provided to the Urban and Community Forestry Assistance program established under section 9(c) of the Cooperative Forestry Assistance Act of 1978 (16 U.S.C. 2105(c)) for tree planting and related activities are applicable. Excerpts from this section are included above. This proposed rule is not intended to be more or less stringent than the federal law but rather provides implementation details needed to administer the federal grant program.

8. Anticipated economic impact of implementing the rule (note if the rule is likely to have a significant economic impact on small businesses):

There are many anticipated positive economic impacts ranging from advancing environmental equity in Wisconsin communities, creating jobs, and supporting local businesses' and economies across Wisconsin. These grant funds will build green infrastructure, ensuring continued investment in urban forests throughout Wisconsin communities. Trees offer benefits to residents of communities of all sizes and locales, improving air quality and public health, reducing heat and heat illnesses, lowering utility bills, improving water quality and reducing flooding and stormwater runoff.

There are no negative economic impacts or costs to grantees associated with this rule, though there are ongoing maintenance costs associated with planting trees.

9. Anticipated number, month and locations of public hearings:

The department anticipates holding one virtual public hearing in the month of October, 2023.

The department will hold this hearing virtually to allow for attendance and engagement across the state.

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