

Chapter NR 47

FORESTRY GRANT AND STATE AID ADMINISTRATION

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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.

History: Cr. Register, August, 1992, No. 440, eff. 9–1–92.

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.

History: Cr. Register, August, 1992, No. 440, eff. 9–1–92; emerg. am. (1), eff. 11–10–00.

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.

History: Cr. Register, August, 1992, No. 440, eff. 9-1-92.

NR 47.004 Project reports. (1) APPLICABILITY. The provisions of this section apply only to subchs. II, IV and V.

(2) INTERIM REPORTS. Each grant recipient may be required to submit to the department at no less than 3 month intervals, by written request of the department, one or more interim reports which contain details of progress, findings, problems and other information regarding the status of a grant.

(3) FINAL REPORTS. Each grant recipient shall submit a final report to the department within 90 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.

History: Cr. Register, August, 1992, No. 440, eff. 9-1-92; am. (2) and (3) (intro.), Register, May, 1999, No. 521, eff. 6-1-99.

NR 47.005 Grantee accountability. (1) APPLICABILITY. The provisions of this section apply only to subchs. II, IV, V, VIII and IX.

(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 canceled checks or receipts from vendors, shall be maintained.

5. Payroll records that reflect actual project hours worked by each employee as well as allocable gross wages and fringe bene-

fits paid shall be maintained. Time and attendance records describing the work performed, specifying project hours worked by day, and both signed by the employee 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 3 years from the date of the final payment.

History: Cr. Register, August, 1992, No. 440, eff. 9-1-92; am. (1) and (3), Register, May, 1999, No. 521, eff. 6-1-99; CR 00-177: am. (1), Register July 2001, No. 547 eff. 8-1-01.

NR 47.006 Grant variances. (1) The department may approve in writing variances from nonstatutory requirements of this chapter 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 variances requested and granted under this section in the previous 12 months and provide the information to others on request.

History: Cr. Register, August, 1992, No. 440, eff. 9-1-92; am. (1), Register, May, 1999, No. 521, eff. 6-1-99.

NR 47.007 Grant termination. (1) The provisions of this section apply only to subchs. II, IV, V, VIII and IX.

(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.

History: Cr. Register, August, 1992, No. 440, eff. 9-1-92; am. (1), Register, May, 1999, No. 521, eff. 6-1-99; emerg. am. (1), eff. 11-10-00; CR 00-177: am. (1), Register July 2001, No. 547 eff. 8-1-01.

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

(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 non-compliance may be required.

History: Cr. Register, August, 1992, No. 440, eff. 9-1-92; emerg. am. (1), eff. 11-10-00; CR 00-177: am. (1), Register July 2001, No. 547 eff. 8-1-01; CR 01-146: am. (1) Register May 2002 No. 557, eff. 6-1-02.

Subchapter II — 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.

History: Cr. Register, August, 1992, No. 440, eff. 9-1-92.

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

History: Cr. Register, August, 1992, No. 440, eff. 9-1-92.

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 no later than the close of business on November 1 unless otherwise provided for on the application.

(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.

History: Cr. Register, August, 1992, No. 440, eff. 9-1-92; am. (2), Register, May, 1999, No. 521, eff. 6-1-99.

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.

History: Cr. Register, August, 1992, No. 440, eff. 9-1-92.

NR 47.05 Eligible applicants. Natural resource agencies, organizations and others interested in promoting the stewardship management of private nonindustrial forest lands are eligible to apply for a grant under this subchapter.

History: Cr. Register, August, 1992, No. 440, eff. 9-1-92.

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. Additionally, special emphasis may be placed, on an annual basis, in one of the following areas if designated in the application:

- (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. Preference to any area may be weighted based upon the recommendations of the forest stewardship coordinating committee and acceptance by the state forester.

(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, endangered resources habitat improvement, aesthetics and non-commercial recreation.

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

(g) Improving forest land management through research.

History: Cr. Register, August, 1992, No. 440, eff. 9-1-92; am. (1) (intro.) and (2) (intro.), Register, May, 1999, No. 521, eff. 6-1-99.

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 used exclusively for project-related purposes over its useful life or the cost of that portion of supplies or equipment used for the project;

(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 as supported by documentation reflecting specific assignment to the project.

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

(2) 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 employee of a grantee participates in the selection, awarding or administration of a contract supported by this project and:

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

b. A person identified in subd. 4. 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.

History: Cr. Register, August, 1992, No. 440, eff. 9-1-92; am. (1) (b) to (d), cr. (1) (e), r. (2) and (3), renum. (4) to be (2), Register, May, 1999, No. 521, eff. 6-1-99.

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.

History: Cr. Register, August, 1992, No. 440, eff. 9-1-92.

Subchapter III — 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.

History: Cr. Register, August, 1992, No. 440, eff. 9-1-92.

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

History: Cr. Register, August, 1992, No. 440, eff. 9-1-92.

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) "FIP" means forestry incentives program.

(4) "FSA" means the U.S. department of agriculture, farm services agency.

(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.

History: Cr. Register, August, 1992, No. 440, eff. 9-1-92; am. (3), Register, May, 1994, No. 461, eff. 6-1-94; renum. (3) and (4) to be (4) and (3) and am. (4), Register, May, 1999, No. 521, eff. 6-1-99; correction in (10) was made to restore dropped copy, Register January 2002 No. 553.

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.

History: Cr. Register, August, 1992, No. 440, eff. 9-1-92.

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.

History: Cr. Register, August, 1992, No. 440, eff. 9-1-92.

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 maintenance and enhancement, and management of significant natural communities or native vegetation.

(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 maintenance and enhancement, and management of significant natural communities or native vegetation.

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

History: Cr. Register, August, 1992, No. 440, eff. 9-1-92; am. (7) and (8), Register, May, 1994, No. 461, eff. 6-1-94.

NR 47.16 Eligible costs. (1) Grants under the program shall be used to manage the following lands under a prepared landowner forest 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 s. NR 47.15 Eligible practices.

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

History: Cr. Register, August, 1992, No. 440, eff. 9-1-92.

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.

History: Cr. Register, August, 1992, No. 440, eff. 9-1-92.

NR 47.18 Grant calculation. (1) The grant shall be that percentage of the actual costs, or rates determined by the department. The maximum cost-share rate for practices described in s. NR 47.15 shall be 75%. The rates for practices shall be established by the state forester.

(2) The amount of payment under the program to any one landowner may not exceed \$10,000 in any fiscal year; although this limit may be lowered at the recommendation of the forest stewardship coordinating committee with concurrence of the state forester. 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 the partnership, corporation or other private legal entity times the payment made to the 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 Kansas City treasury, regional dispersing office, P O Box 3329, Kansas City, KS 66103.

History: Cr. Register, August, 1992, No. 440, eff. 9-1-92; r. and recr. (1), am. (4), Register, May, 1994, No. 461, eff. 6-1-94; am. (2), Register, May, 1999, No. 521, eff. 6-1-99.

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.

(9) Provide endangered species habitat enhancement and natural community habitat maintenance and enhancement.

History: Cr. Register, August, 1992, No. 440, eff. 9-1-92; cr. (9), Register, May, 1994, No. 461, eff. 6-1-94.

NR 47.20 Application and approval. (1) A landowner wishing to participate in the program shall apply at the FSA office for the county in which the land is located, on FSA 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 FSA. The notice shall state that the landowner can begin implementing the approved practice.

History: Cr. Register, August, 1992, No. 440, eff. 9-1-92; am. (1) and (6), Register, May, 1999, No. 521, eff. 6-1-99.

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 the Kansas City Treasury, Regional Dispersing Office, P O Box 3329, Kansas City, KS 66103.

(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.

History: Cr. Register, August, 1992, No. 440, eff. 9-1-92; am. (2), Register, May, 1994, No. 461, eff. 6-1-94.

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.

History: Cr. Register, August, 1992, No. 440, eff. 9-1-92.

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.

History: Cr. Register, August, 1992, No. 440, eff. 9-1-92.

Subchapter IV — 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 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.

History: Cr. Register, August, 1992, No. 440, eff. 9-1-92.

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.

History: Cr. Register, August, 1992, No. 440, eff. 9-1-92.

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.

History: Cr. Register, August, 1992, No. 440, eff. 9-1-92.

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.

History: Cr. Register, August, 1992, No. 440, eff. 9-1-92.

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.

History: Cr. Register, August, 1992, No. 440, eff. 9-1-92.

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.

History: Cr. Register, August, 1992, No. 440, eff. 9-1-92.

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 are eligible.

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

(b) Projects which use trees or supplies not procured from small businesses are ineligible 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.

History: Cr. Register, August, 1992, No. 440, eff. 9-1-92.

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 employee of a grantee participates in the selection, awarding or administration of a contract supported by this project and:

- a. The official or employee, or his or her spouse or partner, has an ownership interest in the firm selected for the contract; or
- b. A person identified in subd. 4. 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.

History: Cr. Register, August, 1992, No. 440, eff. 9-1-92.

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.

History: Cr. Register, August, 1992, No. 440, eff. 9-1-92.

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 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.

(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.

History: Cr. Register, August, 1992, No. 440, eff. 9-1-92.

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

History: Cr. Register, August, 1992, No. 440, eff. 9-1-92.

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 not-for-profit organizations for the purpose of funding urban and community forestry projects as authorized under the act and under s. 23.097, Stats.

History: Cr. Register, August, 1992, No. 440, eff. 9-1-92.

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.

History: Cr. Register, August, 1992, No. 440, eff. 9-1-92.

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

(3) "Municipal government" means a Wisconsin village, city or tribal government.

(4) "Not-for-profit organization" includes organizations that meet the requirements of section 501 (c) (3) of the United States internal revenue code of 1986 and other local community tree volunteer groups.

(5) "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.

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

(7) "Region" means one of the 5 regional field administrative units of the department.

(8) "Urban forestry" means tree management, operations and education within cities, villages and other concentrated development.

History: Cr. Register, August, 1992, No. 440, eff. 9-1-92; am. (4), Register, May, 1994, No. 461, eff. 6-1-94; renum. (2) to (7) to be (7) and (2) to (6) and am. (4) and (7), cr. (8), Register, May, 1999, No. 521, eff. 6-1-99.

NR 47.53 Application procedures. (1) An eligible applicant, described under s. NR 47.55 (1) may apply for a grant under this subchapter for the purposes specified under s. NR 47.55 (2).

(2) Applicants shall submit applications on the prescribed department forms to the regional office where the applicant is located or as otherwise described by the department.

(3) Applications shall be received by the department regional 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 not before the starting date listed on the project agreement.

History: Cr. Register, August, 1992, No. 440, eff. 9-1-92; correction in (1) made under s. 13.93 (2m) (b) 7., Stats., Register, May, 1998, No. 509; am. (2), (3) and (5), Register, May, 1999, No. 521, eff. 6-1-99.

NR 47.54 Grant calculation. (1) A grant under this subchapter shall be no more than 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) The department and the USDA forest service may annually negotiate limits on federal monies available for grants under this subsection that may be used to fund tree planting projects.

History: Cr. Register, August, 1992, No. 440, eff. 9-1-92; am. (3), Register, May, 1994, No. 461, eff. 6-1-94; am. (1) and (3), Register, May, 1999, No. 521, eff. 6-1-99.

NR 47.55 Eligibility. (1) ELIGIBLE APPLICANTS. (a) Municipal governments, towns, 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 county, town and 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 shall relate to urban forestry and may include, but are not limited to:

(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;
- (h) Demonstration planting or maintenance projects whose primary purpose is to provide education, technology transfer or information exchange in urban and community forestry management.
- (i) Urban forestry operations projects such as planting, pruning, removal and other tree maintenance.

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

- (a) Stump removal;
- (b) Land or boundary surveys or title search; and
- (c) Appraisals involving sale or exchange of real property.

History: Cr. Register, August, 1992, No. 440, eff. 9-1-92; am. (1) (d), Register, May, 1994, No. 461, eff. 6-1-94; am. (1) (a), (2) (intro.), (g) and (3) (a), cr. (2) (i), Register, May, 1999, No. 521, eff. 6-1-99.

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. Equipment costing more than \$5,000 per unit is not eligible. 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.
- (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. Direct costs shall be supported by time sheets, vouchers or similar documentation reflecting specific assignment to the project. Actual fringe benefits may not exceed the current department fringe rate percentage of the direct labor costs claimed. The rate is established biennially by the department of administration and is available from the department urban forestry coordinators. Equipment rental rates may not exceed the county equipment rates established annually by the department of transportation and published in chapter 5 of the state highway maintenance manual. These rates are also available from the department urban forestry coordinators.
- (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. 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. 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:

(a) Fines and penalties due to violations of, or failure to comply with, federal, state or local laws or regulations;

(b) Ordinary operating expenses of local government applicants, also known as indirect costs, such as salaries and expenses of a mayor or city council members, that are not directly related to the project;

(c) Costs for which payment has been or will be received under another federal or state financial assistance program except that community development block grants may be used to match urban forestry grants only when it can be demonstrated to the department's satisfaction that there is a local commitment to, and involvement in, the project;

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

1. The official or employee, or his or her spouse or partner, has an ownership interest in the firm selected for the contract; or
2. A person identified in subd. 1. receives a contract, gratuity or favor from the award of the contract.

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

(f) Capital purchases that exceed \$5,000.

History: Cr. Register, August, 1992, No. 440, eff. 9-1-92; am. (1) (b), (d) and (2), renum. (3) (a) and (b) to be (3) (intro.) to (d) and (e) and am. (3) (b) and (c), cr. (3) (f), Register, May, 1999, No. 521, eff. 6-1-99.

NR 47.57 Grant selection process. Projects selected for grants under this subchapter, shall relate to urban forestry. When selecting projects, the department may give priority to the following listed in no particular order:

(1) Applicants with an administrative unit, 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.

(12) Projects that involve or stimulate cooperation with other local governments, organizations, schools or businesses.

History: Cr. Register, August, 1992, No. 440, eff. 9-1-92; am. (intro), cr. (12), Register, May, 1994, No. 461, eff. 6-1-94; am. (intro.) and (1), Register, May, 1999, No. 521, eff. 6-1-99.

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

(2) PAYMENT. (a) Not-for-profit organizations may request an advance payment of no more than 50% of the grant upon the awarding of the grant.

(b) Each grantee shall submit to the department a final accounting claim for reimbursement, supported by evidence of cost, within 90 days after the grant expiration date.

(c) Final balance payments for not-for-profit organizations that received an advance, and grant payments for all other grantees, shall be made upon approval of the final report and the final accounting claim.

(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.

History: Cr. Register, August, 1992, No. 440, eff. 9-1-92; r. and recr. (2), Register, May, 1999, No. 521, eff. 6-1-99.

Subchapter VI — County Forests

NR 47.60 County forest project loans. (1) PURPOSE.

The purpose of this section is to implement and administer project loans under s. 28.11 (8) (b) 2., Stats., pertaining to county forest operations.

(2) APPLICABILITY. This section is applicable to those counties which have land entered under s. 28.11 (4), Stats., as county forest and which apply for a county forest project loan.

(3) ELIGIBILITY. To be eligible for a county forest project loan:

(a) Projects shall be economically productive forest operations, including land acquisition.

(b) Projects shall be consistent with the county's 10 year comprehensive land use plan under s. 28.11, Stats.

(c) Loans may not be used for construction of recreational facilities or for fish or wildlife management projects.

(4) APPLICATION PROCEDURES. (a) A county may apply for project loans under this section for the purposes described in sub. (3). The application shall include but is not limited to:

1. An approved county board resolution specifying the county's decision to apply for a county forest project loan.

2. The project specifications including: maps, a short narrative, and an estimated cost breakdown including any county contributions.

3. Any other information the department feels necessary and requests within 20 days following receipt of the application.

4. Applications shall be filed by the county with the department of natural resources, bureau of forestry.

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

(5) APPLICATION DEADLINE; DECISIONS ON APPLICATIONS. (a) Project loans shall be awarded annually on a fiscal year basis and applications shall be accepted during the application periods in this section. The first application period shall be from July 1 to August 15. Decisions on those applications shall be made in accordance with sub. (6) no later than the following September 15.

(b) The second application period shall be from August 16 to December 1. Decisions on those applications shall be made no later than the following January 1.

(c) Notwithstanding sub. (6), all other applications received from December 2 to June 30 shall be approved on a first-come, first-serve basis.

(d) A county may apply more than once in any given calendar year.

(6) SELECTION CRITERIA. (a) Preference shall be given to projects as follows:

1. First preference: Land acquisition

2. Second preference: Land management activities including but not limited to:

a. Tree planting;

b. Direct seeding;

c. Site preparation for regeneration;

d. Noncommercial thinnings of forest stands;

e. Release from competing vegetation (conifers or hardwoods both artificially or naturally regenerated).

f. Land management equipment including tree planters, scarifier and other management equipment.

g. Pruning.

3. Third preference: Land information activities including but not limited to:

a. Vegetative/animal inventories;

b. Geographic information systems including computer hardware, software and digitizing of forest management information;

c. Aerial photo purchases.

4. Fourth preference: Capital purchases/improvements including but not limited to:

a. Roads/access construction and maintenance;

b. Buildings construction and maintenance.

(b) Within a preference category, projects shall be prioritized in ascending order, with projects in counties that have most recently received project loans given lowest priority and projects in counties that have not received loans previously given highest priority.

(c) For applications in the same preference category except as provided under par. (b), preference shall be selected by lottery.

(d) If after ranking a project loan application in accordance with pars. (b) and (c) only partial funding is available due to insufficient funds, the department shall offer the applicant the choice of receiving partial funding for the project up to the amount of available funding or withdrawing the application.

(7) APPROVED PROJECT MODIFICATIONS. Project loans may be modified regarding the type of activities to be funded and the date and type of loan disbursements with written approval from the department. Requests for an increase in the loan amount shall be accompanied by a county board resolution authorizing the request.

(8) FUNDING RATES AND CONSTRAINTS. (a) Payment of all loans shall be made at project completion unless an advance payment has been made by the department.

(b) An advance payment of not more than 75% of the loan amount may be paid upon mutual agreement of the applicant and department.

(c) The recipient shall submit information requested by and satisfactory to the department demonstrating project completion.

(d) A loan may be approved with payments in 2 consecutive fiscal years as long as the payment in each year does not exceed 25% of the total available funds for the year, except funding may exceed the 25% limit by applying all funds not applied for and remaining available following April 15 of each year not to exceed the application total.

Note: A loan in the amount of \$100,000 each year is approved even though the application was for \$200,000 each year. If after April 15 the account balance is \$100,000, that money would be sent to fulfill that year of application amount.

(9) PROJECT COMPLETION ACCOUNTABILITY AND AUDIT PROCEDURES. (a) Project loan funds may be spent only on project identified costs and in compliance with the provisions of the loan agreement.

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

(c) An approved project may not exceed 2 years in length unless written approval is obtained from the department.

(10) PROJECT AGREEMENT. Recipients of project loans under this section shall enter into and comply with a project loan agreement containing provisions consistent with s. 28.11 (8) (b) 2., Stats., this section and mutual obligations with regard to a portion or all of a specific project.

History: Cr. Register, August, 1995, No. 476, eff. 9-1-95.

NR 47.70 County forest administrator grant program. (1) PURPOSE. The purpose of this section is to establish standards and procedures for implementation of a grant program to contribute funds toward payment of the salary and fringe bene-

fits of a professional forester in the position of administrator or assistant administrator of a county forest.

(2) DEFINITIONS. As used in this section:

(a) "Annual plan of work" means a listing of work projects and activities agreed to by the department and the county to be performed in the upcoming calendar year in the county which involves the management of the forest resources and its attributes.

(b) "Annual salary" means the total annualized compensation paid to a county employee excluding the cost of any fringe benefits.

(c) "Cost shared administrator" means any department employee who is presently performing the duties of county forest administrator by mutual agreement of the county and the department.

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

(e) "Forester" has the meaning given in s. NR 1.21 (2) (e) or who is employed as a county forest administrator or assistant county forest administrator in the administration of county forests as of August 12, 1993.

(f) "Fringe benefits" means the total annualized costs of a county for an employee excluding any salary.

(g) "Grant year" means the calendar year to which the grant payment applies.

(h) "Independent consulting forester" means a forester as described in par. (e), who provides a variety of professional forestry services on a contract or fee basis and is employed by a county.

(3) APPLICATION AND GRANT PROCEDURE. (a) A county may apply for a grant under the county forest administrator grant program. A county shall include in an application a county board resolution authorizing the application. A county shall file the application with the department no later than January 31 of the grant year.

(b) A county that has received an initial grant under par. (a), shall file an application and resolution, as set forth in par. (a), to obtain a grant for each succeeding year unless the county has entered into a written agreement with the department.

(c) Except as provided in par. (d), a grant shall be limited to funding annual salary and fringe benefits for a forester employed by a county.

(d) A grant under this section may be awarded to a county to contribute to the funding of an independent consulting forester or the salary of a forester shared between 2 counties.

(e) A grant may not be awarded to any county receiving services from a department cost shared administrator.

(f) Grants shall be distributed no later than April 15 of the grant year.

(4) GENERAL PROVISIONS. (a) An annual grant award to a county may not exceed 50% of the position's annual salary and fringe benefits. Fringe benefit costs may not exceed 40% of the forester's salary.

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

(c) Any grant funds not spent on salary or fringe benefit costs in the grant year shall be identified and deducted from the next year's request. If a county does not participate or is not eligible for the grant the next year, the funds shall be returned to the department.

(d) If the total amount of grants which the counties are eligible for under this section exceeds funds available, the grants shall be prorated prior to distribution.

(e) The department may not make a grant to a county under this section unless all the following apply:

1. An annual plan of work is jointly developed by the department and the county.

2. The annual plan of work is consistent with the county forest 10-year comprehensive land use plan for the county.

3. The annual plan of work is approved by the county and the department.

History: Cr. Register, June, 1994, No. 462, eff. 7-1-94; am. (1), (3) (a), (c), (f) and (4) (a), renum. (2) (f) and (g) and (4) (c) and (d) to be (2) (g) and (h) and (4) (d) and (e) and am. (4) (e) 1. and 3., cr. (2) (f) and (4) (c), r. and recr. (4) (b), Register, May, 1999, No. 521, eff. 6-1-99.

NR 47.75 Sustainable forestry grant for county forests. **(1) PURPOSE.** The purpose of this section is to establish standards and procedures for implementation of a grant program to contribute funds to sustainable forestry practices on county forests under s. 28.11 (5r), 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 a sustainable forest management grant.

(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, s. 28.11 (5), Stats.

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

(c) "County forest time standards" refers 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 at July 1 and ending on June 30.

(e) "Forester" has the meaning given in s. NR 1.21 (2) (e).

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

(g) "Annual adjustment category" means that part of the county forest time standards that identifies time needed to complete short term projects in excess of the required minimum core hours. The quantity of these hours is adjusted annually by mutual agreement of the department and the county.

(4) ELIGIBLE PROJECTS. To be eligible for a sustainable forestry grant:

(a) Projects shall promote sustainable forestry on the county forest and may include, but are not limited to any of the following:

1. Salvage, treatment or reforestation operations stemming from storms, insects, disease or fire.
2. Initial reconnaissance of new acquisitions.
3. Initial geographic information system development.
4. Integrated planning efforts between county forests.
5. Efforts to improve marketing.
6. Short-term, accelerated efforts at timber marking, reconnaissance, regeneration harvest establishment or timber stand improvement to reduce backlogs of overdue practices.
7. Biotic inventories.
8. Timber theft prevention.
9. Development and implementation of road access plans.
10. Initial gathering of global positioning system data.
11. Forest certification efforts.
12. Other projects fitting eligibility in pars. (b) and (c).

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

(c) Projects shall be suitable as a short term and unanticipated workload item as identified in the annual adjustment category of the county forest time standards.

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

(5) INELIGIBLE PROJECTS. (a) Ineligible projects include, but are not limited to:

1. Land acquisition.
2. Permanent staff salary or benefits.
3. Upgrade or replacement of existing computer software and hardware.
4. Land surveying.

(b) Grants may not be used to fund work required by the department as part of its obligation under the county forest time standards.

(c) Grants may not be used to fund projects that are ongoing in nature and a regular inclusion in an annual work plan.

(6) APPLICATION AND GRANT PROCEDURE. (a) Other than as provided in par. (c), a county may apply for a sustainable forestry grant under this section for the 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 sustainable forestry grant.

2. The project description including: maps, an estimated cost breakdown and a short narrative to be signed and approved by the county forest administrator and the department liaison forester.

3. Other information the department feels necessary and requests within 20 days following receipt of the application.

(b) Grant applications shall be for a minimum of \$1000.00 with a maximum not to exceed 25% of the total available funds in any one year. 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. Current management or internal policy is in opposition to the county forest land use plan.
2. Previous unexpended funds from this grant program are owed the department as described in sub. (9) (e).
3. A county fails to comply within 3 years to department forestry audit recommendations.

(7) GRANT SELECTION PROCESS. (a) Grants shall be awarded on a fiscal year basis and applications shall be accepted during the application periods in this section as follows:

1. The first application period shall be from July 1 to August 15. Decisions on those applications shall be made no later than the following September 15 in accordance with par. (b).

2. The second application period shall be from August 16 to December 1. Decisions on these applications shall be made in accordance with par. (b) no later than January 1.

3. All other applications received from December 2 to June 30 shall be approved on a first-come, first-serve basis.

(b) In selecting projects for grants under this section, the department shall give priority to eligible projects as follows:

1. First preference:
 - a. Storm-related projects.
 - b. Hiring of temporary staff to address short-term workload items identified in sub. (4).
2. Second preference: All other projects eligible under sub. (4).

(c) Within a preference category, projects in counties that have received grants the most recently shall be given lowest priority.

(d) If, after ranking a project in accordance with pars. (a) and (b), full funding is not available due to insufficient funds to provide grants applied for in the first 2 application periods, the department shall offer the applicants the choice of receiving pro-rated funding for the project up to the amount of available funding or withdrawal of the application.

(e) No less than 25% of the annual funds shall be kept available for appropriation during the second application period.

(f) 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).

(g) No county may have more than 2 open projects at any one time.

(8) FUNDING RATES AND CONSTRAINTS. (a) Payment of all grants shall be made at project completion unless an advance payment has been made by the department.

(b) An advance payment of not more than 50% of the grant amount may be paid upon mutual agreement of the county and the department.

(c) The county shall submit information requested by and satisfactory to the department demonstrating project completion.

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

(d) A county may apply more than once in any given calendar year although no county will receive a second grant until all pending initial projects from other counties that meet the criteria in sub. (4) are funded.

(e) An individual county may not be awarded grants totaling more than 25% of total available funds in one fiscal year.

(9) PROJECT COMPLETION ACCOUNTABILITY AND AUDIT PROCEDURES. (a) Grant funds may be spent only on project identified costs.

(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) An approved project may not exceed 2 years in length unless written approval is obtained from the department.

(e) Any grant funds not spent on project identified costs or not used by the termination date of the project shall be returned to the department. Failure to return the funds shall render a county ineligible for any future grants under this section.

History: CR 01-146: cr. Register May 2002 No. 557, eff. 6-1-02.

Subchapter VII — The Private Forest Landowner Grant Program

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

History: Cr. Register, March, 1999, No. 519, eff. 4-1-99.

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

History: Cr. Register, March, 1999, No. 519, eff. 4-1-99.

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

(1) "Afforestation" means establishing a forest on land not previously forested due to past land use, e.g., agricultural use.

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

(3) "Person" has the meaning in s. 990.01 (26), Stats.

(3m) "Practice" means a stewardship activity or conservation measure consistent with the landowner forest stewardship plan to accomplish the landowner's desired management objectives.

(4) "Program" means the private forest landowner grant program established by the act.

(5) "Reforestation" means establishing a forest on lands that were previously forested but where cover has been lost due to

recent harvesting, land conversions, natural disasters or other destructive agents.

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

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

History: Cr. Register, March, 1999, No. 519, eff. 4-1-99.

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

History: Cr. Register, March, 1999, No. 519, eff. 4-1-99.

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

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

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

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

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

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

1. Reforestation and afforestation which includes establishment or reestablishment of diverse stands of native forest trees

through natural regeneration, planting or direct seeding for conservation purposes and sustainable timber production.

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

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

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

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

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

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

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

History: Cr. Register, March, 1999, No. 519, eff. 4-1-99.

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

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

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

Note: See s. NR 47.86 for eligible practices.

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

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

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

(b) Except as authorized by the department, grant assistance may not be paid for repeating practices on the same site by the same landowner which have been implemented under the forestry

incentives program or any other federal, state or local government programs, except where the practices are repeated due to a failure of a prior practice without fault of the landowner.

History: Cr. Register, March, 1999, No. 519, eff. 4-1-99.

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

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

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

1. Establish or reestablish forests through various methods of regeneration, including planting, direct seeding or natural regeneration.

2. Improve forest stand productivity, stand vigor, forest health, and the value and quality of wood products.

3. Encourage sustainability of forest lands.

4. Provide protection of soil and water resources.

5. Include additional land under written forest stewardship management plans.

6. Provide protection and enhancement of riparian area and wetlands.

7. Provide protection and enhancement of terrestrial wildlife habitat.

8. Provide endangered, threatened or rare species habitat enhancement and natural community habitat maintenance and enhancement.

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

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

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

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

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

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

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

2. The practice is needed and feasible.

3. The practice is eligible under this subchapter.

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

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

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

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

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

History: Cr. Register, March, 1999, No. 519, eff. 4-1-99.

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

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

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

(4) Where performance actually rendered does not meet the minimum specifications for the practice due to factors beyond the landowner's control, the department may approve grant payment under one of the following conditions:

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

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

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

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

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

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

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

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

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

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

History: Cr. Register, March, 1999, No. 519, eff. 4-1-99.

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

History: Cr. Register, March, 1999, No. 519, eff. 4-1-99.

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

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

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

History: Cr. Register, March, 1999, No. 519, eff. 4-1-99.

Subchapter VIII — Forest Fire Protection Grant Program

NR 47.90 Purpose. The purpose of this subchapter is to implement and administer forest fire protection grants to municipal fire departments and other fire suppression organizations, as authorized under s. 26.145, Stats. The purpose of the grant funding is to expand the use of local fire departments to augment and strengthen the department's overall initial attack fire suppression capabilities on forest fires.

History: Cr. Register, May, 1998, No. 509, eff. 6-1-98.

NR 47.901 Applicability. The provisions of this subchapter are applicable to certain municipalities and not-for-profit organizations of the state who apply for forest fire protection grants under this subchapter.

History: Cr. Register, May, 1998, No. 509, eff. 6-1-98.

NR 47.902 Definitions. In this subchapter:

(1) "Applicant" means the Wisconsin municipality, fire department or fire suppression organization that submits an application for grants under this subchapter.

(2) "Fire department" has the meaning contained in s. 213.08, Stats.

(3) "Fire suppression organization" means a not-for-profit organization whose primary purpose and activities support fire protection or suppression and that represents a majority of fire departments in a county or region that serve forest fire control areas established in ss. NR 30.01 and 30.02.

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

(5) "Municipality" means a Wisconsin city, village, town or county.

(6) "Project" means the practice or activity for which funds are applied under this subchapter.

History: Cr. Register, May, 1998, No. 509, eff. 6-1-98.

NR 47.903 Application procedures. (1) Applicants shall submit applications on the prescribed department forms to the address shown on the application form. An applicant may not submit more than one application for grant funding in any single funding period as provided in subs. (2) and (3). The department shall send notice of the availability of application forms and instructions to all eligible fire departments in the state.

Note: Application forms are available from the Bureau of Forestry, 101 S. Webster St., P.O. Box 7921, Madison WI 53707.

(2) Applicants for grant funding for the period which ends on June 30, 1998 shall submit their applications no later than April 15, 1998.

(3) Beginning in 2002, applications shall be submitted no later than July 1 of each year unless otherwise provided for on the application.

(4) No application from a fire suppression organization may be for more than \$25,000 or less than \$5,000 in grant funding.

(5) No application from a fire department may be for more than \$10,000 or less than \$750 in grant funding.

(6) Applicants who have been selected to receive grants shall be notified by the department and sent a grant agreement for signature and return. No project work may be done or cost incurred until the grant agreement has been signed by the department.

(7) The department may require a fire suppression organization to file with the department a charter, constitution, bylaws or similar documents which describe the organization's objectives and activities in forest fire protection.

(8) Applications submitted after the deadline date or containing incorrect or inaccurate information will not be considered.

History: Cr. Register, May, 1998, No. 509, eff. 6-1-98; **CR 01-146: am. (3) and (6) Register May 2002 No. 557, eff. 6-1-02.**

NR 47.904 Grant calculation. (1) A grant under this subchapter shall be 50% of actual eligible cost. The estimated value of "in-kind" or donated labor, materials or equipment may not be considered actual eligible cost.

(2) Grant applications will be funded in priority rank order. The last application for which funds are available may be offered less funding than the full amount requested. Copies of the standards are available for inspection at the offices of the revisor of statutes and the secretary of state. Individual copies may be obtained from the bureau of forestry, DNR, P.O. Box 7921, Madison WI 53707.

History: Cr. Register, May, 1998, No. 509, eff. 6-1-98.

NR 47.905 Eligibility. (1) ELIGIBLE APPLICANT. An eligible applicant is:

(a) A fire department that provides service to a municipality that has executed a forest fire suppression agreement to assist the department in suppression of forest fires.

(b) A Wisconsin fire suppression organization that agrees to assist the department in the suppression of forest fires.

(2) **ELIGIBLE USES OF GRANT FUNDS.** Requests for grant assistance are limited to materials, supplies and equipment which are primarily and directly associated with forest fire protection and suppression. Examples of eligible projects include:

(a) Forest fire protective clothing that meets NFPA Standard 1977.

(b) Tools and small diameter hose used for forest fire suppression, foam and portable foam delivery equipment, dry hydrants, vehicle slip-on pumping units.

(c) Communication equipment that is used for forest fire protection and suppression activities, such as radios, pagers, base station and repeater towers.

(d) Rural fire mapping and numbering and materials, supplies and equipment and direction or location devices such as global positioning system devices.

(e) Off-road vehicles such as all-wheel drive trucks of 1 to 5 ton capacity which are used primarily for forest fire suppression. Grant assistance for vehicles is limited to applications from individual fire departments.

(f) Forest fire prevention supplies.

(g) Forest fire training materials.

History: Cr. Register, May, 1998, No. 509, eff. 6-1-98; CR 01-146: cr. (2) (f) and (g) Register May 2002 No. 557, eff. 6-1-02.

NR 47.906 Eligible and ineligible costs. (1) ELIGIBLE COSTS. (a) Reasonable project costs which are necessary for and directly related to accomplishment of the approved project objectives and incurred during the project period are eligible for grant reimbursement.

(b) Eligible costs are limited to actual costs incurred and paid by the grantee and do not include "in-kind" costs or the estimated value of donated labor, materials or equipment.

(2) INELIGIBLE COSTS. (a) Costs not directly associated with and necessary for accomplishment of the approved project objectives are not eligible for grant reimbursement.

(b) Costs incurred before or after the project period are not reimbursable under the grant.

(c) Costs for which payment has been or will be received under another federal or state financial assistance program are not reimbursable under the grant.

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

1. The official or employee, or her or his spouse or partner, has an ownership interest in the firm selected for the contract; or
2. An official or employee of a grantee receives a contract, gratuity or favor from the award of the contract.

History: Cr. Register, May, 1998, No. 509, eff. 6-1-98.

NR 47.907 Grant selection process. In selecting grant application projects, the department shall give priority to the following factors which are listed in no particular order:

(1) Eligible fire departments serving areas within organized forest fire control areas established under ss. NR 30.01 and 30.02.

(2) Fire departments that provide initial attack response to wildfires within their jurisdictions at no cost to the department.

(3) Fire departments with the majority of their members meeting NFPA 1051 standards for wildland fire fighter training.

(4) Other applications or projects.

History: Cr. Register, May, 1998, No. 509, eff. 6-1-98.

NR 47.908 Grant awards; payment. (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. Final payment shall be made upon approval of the completed project by the department's regional fire management officer and approval of the completed claim for reimbursement from the grantee. Interim payment may be requested by the grantee and approved by the department where a financial hardship would be imposed by waiting until the project had been completed.

Note: It is expected that interim payments would more often be made to fire suppression organizations who have large grants and limited capacity to pay vendor bills before they receive reimbursement from the department.

(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 department auditors for a period of 3 years after final payment.

History: Cr. Register, May, 1998, No. 509, eff. 6-1-98.

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.

History: Emerg. cr. eff. 11-10-00; CR 00-177: cr. Register July 2001, No. 547 eff. 8-1-01.

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

History: Emerg. cr. eff. 11-10-00; CR 00-177: cr. Register July 2001, No. 547 eff. 8-1-01.

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.

History: Emerg. cr. eff. 11-10-00; CR 00-177: cr. Register July 2001, No. 547 eff. 8-1-01.

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.

History: Emerg. cr. eff. 11-10-00; CR 00-177; cr. Register July 2001, No. 547 eff. 8-1-01.

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 sub. (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.

History: Emerg. cr. eff. 11-10-00; CR 00-177: cr. Register July 2001, No. 547 eff. 8-1-01.

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.

History: Emerg. cr. eff. 11-10-00; CR 00-177: cr. Register July 2001, No. 547 eff. 8-1-01.

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.

History: Emerg. cr. eff. 11-10-00; CR 00-177: cr. Register July 2001, No. 547 eff. 8-1-01.

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.

History: Emerg. cr. eff. 11-10-00; CR 00-177: cr. Register July 2001, No. 547 eff. 8-1-01.