

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

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

FR-42-00

Analysis Prepared by Department of Natural Resources

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

Analysis of Rule NR 47, subchapter IX

The purpose of this rule is to establish the administration and procedures for participation by landowners through counties in a voluntary, cooperative state suppression program for outbreaks in Wisconsin of a foreign pest, the gypsy moth. The suppression program will include an aerial insecticide treatment program (administered in partnership with the department of agriculture, trade and consumer protection) and administration of federal cost sharing for participants in that treatment program.

Gypsy moth is not native to Wisconsin but has become established in eastern counties of the state. Where this pest is established, it goes through periodic outbreaks in which the population of gypsy moth explodes and forests can be stripped of leaves in late June. The stress of heavy defoliation can cause the death of some trees and leaves surviving trees weak allowing attack by other pests and diseases. When outbreaks occur, the public typically becomes concerned and looks for ways to reduce the population of gypsy moth to tolerable levels. Treatments to kill large numbers of the pest can be expensive, at times damaging to our native insects and other animals, or even dangerous to the landowner when pesticides are not used according to directions. The department organized suppression program will provide the public with a safe, effective and affordable means to prevent damage to their trees.

The suppression program will be offered to landowners through counties. Participating counties will provide a coordinator who will serve as the contact for the public and the department. The rule defines the tasks that will be performed by the participating counties, how to apply for the program, criteria of eligible areas for treatment and cost sharing under the program and eligible costs that can be shared in the federal cost sharing program.

SECTION 1. NR 47.005(1) is amended to read:

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

SECTION 2. NR 47.007(1) is amended to read:

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

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

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

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

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

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

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

NR 47.912 Definitions. In this subchapter:

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

(2) "Applicant" means a Wisconsin county that submits an application for inclusion in the state gypsy moth suppression program and cost sharing for the treatment of and associated administrative costs for suppression of gypsy moth outbreaks.

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

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

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

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

(7) "High use, public recreational land" means land that is publicly owned, used primarily for recreation and where trees are at a similar density, stress level and individual value to those in residential areas. This category includes campgrounds, urban parks, playgrounds, picnic areas and golf courses.

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

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

(10) "Preferred hosts" means tree species listed as Class I and II in the Gypsy Moth Management in the United States: a cooperative approach, Environmental Impact Statement, Appendix G, Table 2-2. This document can be obtained from the USDA Forest Service, Northeastern Area State and Private Forestry, 1992 Folwell Ave., St. Paul, MN 55108.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) Applicants shall submit applications for cost sharing to department staff, identified on the application for the area of the state involved, no later than December 1, along with a map of each proposed treatment block on a 7.5 minute quadrangle map to be eligible for participation in the treatment program for that year. Applications can be obtained by writing to the program manager for the gypsy moth grant program, bureau of community financial assistance, PO Box 7921, Madison, WI 53707-7921

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

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

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

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

(7) The applicant shall notify landowners and tenants within the eligible proposed treatment blocks and an area surrounding those blocks to be determined by the applicant. All notices will provide information on location of proposed treatment blocks, insecticide to be used, approximate timing of treatment, how to register an objection to treatment of property and the name, address and phone number of the local coordinator. Notification requirements of applicants to landowners and tenants shall include:

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

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

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

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

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

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

(10) (a) The department shall provide an estimate of per acre cost for treatment to local coordinators no later than February 15th of each year. The applicant shall collect the entire estimated cost for treatment of the blocks the applicant applied for and pay it to the department by April 1 unless otherwise provided on the application. Once the payment for treatment blocks has been received, the boundaries of these treatment blocks shall be considered fixed. Alteration or cancellation of a treatment block may only occur in the event of an irreconcilable conflict with a federally listed threatened or endangered species or where the contractor for pesticide application determines treatment of the block to be hazardous to the contractor. If a block is removed, the department shall return the payment for that treatment block and the local coordinator shall notify residents and return money that has been collected for the spray treatment from the landowners or tenants.

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

(11) Applicants shall submit no later than April 1 of each year a list of telephone contacts associated with each treatment block to the designated department staff specified in the application. Required contacts for each block include all schools and licensed daycare providers within a treatment block, local government officials, health, police, sheriff and fire departments within whose jurisdiction a treatment block exists, hospital emergency rooms in the area of treatment blocks, persons requesting 24-hour notification and other concerned parties as needed. These lists will be used by department staff to provide daily notification during the aerial treatments.

(12) Applicants shall submit a record of administrative costs incurred in the project period of July 1 through June 30 to the department by July 15.

NR 47.915 Grant calculation. (1) A grant under this subchapter shall be no more of the eligible costs of treatment and administration than the maximum for the appropriate category described in the following paragraphs and be based on the amount of cost share funding received from the forest service:

- (a) Privately owned lands under 500 acres per owner may be cost shared up to 50%.
- (b) Private lands of over 500 acres per owner may be cost shared at up to 33%.
- (c) Publicly owned lands may be cost shared at up to 25%.

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

reimbursement of federal cost share is distributed once it is received by the county. Any funds recovered in excess of total program expenses shall be returned to the source of local cost share.

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

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

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

NR 47.917 Eligible and ineligible costs. (1) ELIGIBLE COSTS. Applicant expenditures eligible for reimbursement under this subchapter shall be documented and provided to the department with any request for cost-share reimbursement. Eligible costs from July 1 to June 30 of each year are subject to cost share reimbursement under this subchapter. Eligible costs of treatment and administration of a block may not be more than the maximum for the appropriate category for the block as described in s. NR 47.915 (1) (a) to (c). The following items are eligible for cost share reimbursement under this subchapter only if aerial treatments are conducted and the costs are eligible under this subchapter and as identified in the grant agreement:

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

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

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

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

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

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

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

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

(i) Post-suppression evaluation costs.

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

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

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

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

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

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

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

Dated at Madison, Wisconsin _____

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Darrell Bazzell, Secretary

(SEAL)