

**Wisconsin Department of Natural Resources  
Natural Resources Board Agenda Item**

**SUBJECT:**

Request that the Board adopt Board Order FR-19-11, proposed rules affecting NR 47 subch. VII and subch. XII related to rule revision and rule creation of the Private Forest Landowner Grant Programs.

**FOR: October 2012 Board meeting**

**PRESENTER'S NAME AND TITLE:** Carol Nielsen, Private Forestry Specialist and Tom Boos, Forestry Invasive Plant Coordinator

**SUMMARY:**

The proposed rule addresses 1) revision to the current Wisconsin Forest Landowner Grant Program (WFLGP) for nonindustrial private forest (NIPF) landowners in subch. VII NR 47 Admin. Code and 2) the establishment of Weed Management Area Private Forest Grant Program (WMA-PFGP) in subch. XIII NR 47, Admin. Code.

A review of the 12 year old WFLGP was completed by the Division of Forestry's Private Land Management Specialist Team to identify ways to streamline administration, more efficiently use the dollars available and to continue to address landowner and forest resource needs. The team included internal forestry and wildlife staff, and external landowner, consulting forester and educator representatives. Revisions of subch. VII NR 47, Admin. Code are proposed to implement changes to the Wisconsin Forest Landowner Grant Program (WFLGP) for NIPF lands including practice description and priorities, grant calculation, allowable costs, and eligibility for applicants and practices.

As directed in 2007-09 Biennial Budget (2007 Wis. Act 20), the department is proposing to create subch. XIII NR 47 to establish the rules for administering and implementing a cost-share grant program for controlling invasive plants in weed management areas (WMA-PFGP). Creation of subch. XIII NR 47, Admin. Code will enable the department to award funds to weed management groups interested in controlling invasive plants on NIPF lands in weed management areas (WMA-PFGP), by defining application requirements, eligible practices and costs, and rules for administration.

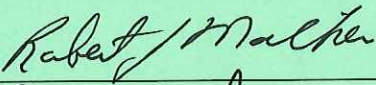


The Board has dealt with modifications to subch. VII of ch. NR 47 in 2002 (CR 02-074) and 2005 (CR 05-087) to establish and then modify the distribution of funds, to modify application deadlines (both times), to allow other state and federal funds to be distributed through WFLGP, and to modify the range for matching grants.

There will be no change to the current economic impact based on the proposed rule revisions to subch. VII as the amount of funding and eligibility are not changing. There will be a small positive impact with the implementation of subch. XIII with \$60,000.00 awarded annually. The impact will be to any party, organized landowner group or organization owning less than 500 acres of NIPF land wishing to apply for the grant.

**RECOMMENDATION:** That the Board adopt Board Order Board Order FR-19-11.

**LIST OF ATTACHED MATERIALS (check all that are applicable):**

- |   |   |
|---|---|
| <input checked="" type="checkbox"/> background memo   | <input type="checkbox"/> Attachments to background memo               |
| <input type="checkbox"/> Statement of scope   | <input type="checkbox"/> Governor approval of statement of scope      |
| <input checked="" type="checkbox"/> Fiscal estimate and economic impact analysis (EIA) form | <input type="checkbox"/> Environmental assessment or impact statement |
| <input checked="" type="checkbox"/> Response summary  | <input checked="" type="checkbox"/> Board order/rule                  |

Approved by	Signature	Date
Robert Mather, Bureau Director		9/11/2012
Paul DeLong, Administrator		9/14/12
Cathy Stepp, Secretary		10/2/12

cc: Board Liaison - AD/8  
Courtney Ripp - LE/8

Program attorney - LS/8

Department rule coordinator - LS/8

## CORRESPONDENCE/MEMORANDUM

DATE: September 10, 2012

TO: Natural Resources Board Members

FROM: Cathy Stepp

SUBJECT: Background memo on Board Order FR-19-11, relating to NR 47 subch. VII rule revision and subch. XIII rule creation of the Private Forest Landowner Grant Programs.

**Subject of Proposed Rule:**

The proposed rule addresses 1) revision to the current Wisconsin Forest Landowner Grant Program (WFLGP) for nonindustrial private forest (NIPF) landowners in subch. VII NR 47 Admin. Code and 2) the establishment of Weed Management Area Private Forest Grant Program (WMA-PFGP) in subch. XIII NR 47, Admin. Code.

**1. Why is the rule being proposed?**

A review of the 12 year old WFLGP was completed by the Division of Forestry's Private Land Management Specialist Team to identify ways to streamline administration, more efficiently use the dollars available and to continue to address landowner and forest resource needs. The team included internal forestry and wildlife staff, and external landowner, consulting forester and educator representatives.

As directed in 2007-09 Biennial Budget (*2007 Wis. Act 20*), the department is proposing to create subch. XIII NR 47 to establish the rules for administering and implementing a cost-share grant program for controlling invasive plants in weed management areas (WMA-PFGP).

**2. Summary of the rule.**

Revisions of subch. VII NR 47, Admin. Code are proposed to implement changes to the Wisconsin Forest Landowner Grant Program (WFLGP) for NIPF lands including practice description and priorities, grant calculation, allowable costs, and eligibility for applicants and practices.

Creation of subch. XIII NR 47, Admin. Code will enable the department to award funds to weed management groups interested in controlling invasive plants on NIPF lands in weed management areas (WMA-PFGP), by defining application requirements, eligible practices and costs, and rules for administration.

**Proposed revisions of subch. VII NR 47 Forest Landowner Grant Program**

These recommendations were developed through a review of the existing program and are recommended to provide greater flexibility in meeting landowner and program goals, more efficient use of funding, and to address current and future resource needs identified in the Statewide Forest Strategy.

- **Modify rule to allow the department to annually set funding levels and priorities.** Currently funding levels for practices are set in rule. This change would allow the department to be more responsive to changing forest resources concerns, address statewide forest strategies and respond to private forest landowner needs.

- **Modify application deadlines from four to two and allow for additional dates to be established on the application.** This will allow the department to be more responsive to landowner needs as the deadlines for other related programs change (e.g., MFL application deadline).
- **Modify rule to limit matching grants to not more than 75% of actual costs.** Currently matching grants cannot be less than 50% nor more than 65%. Providing for up to 75% will allow for focusing funding on higher priority resource and landowner needs (e.g., recovery after a catastrophic event).
- **Modify grant period from 18 to 24 months.** The grant period is being expanded to respond to landowner needs to implement the practices and to decrease the dollars that may otherwise be returned when a practice is not fully implemented.
- **Create a waiting period (24 months) for individuals who fail to use any portion of the funds awarded before the grant expires.** Since this grant program is not a continuing appropriation, any grants awarded in a biennium and not used cannot be given out again. This revision would encourage landowners who are awarded a grant to complete the practice or return the money earlier so it can be awarded to another landowner. This would not be applied when circumstances are beyond the landowner's control.
- **Update practice descriptions to reflect changes in practice components and purposes.**
- **Modify language to allow for the use of nonprofit organization funding similar to federal funding currently provided for in the rule.**

**Creation of subch. XIII NR 47 Weed Management Area Private Forest Grant Program**

- **Define eligible and ineligible applicants.** Weed management groups (WMG), non-profit organizations, government entities may be applicants as long as funds are being used on NIPF land. A WMG consists of 3 or more persons of which at least one must be a person participating.
- **Define eligible practices.** Education and outreach if it pertains to invasive plants; inventory, control, and monitoring of invasive plants; development of long-term management plans; and establishing a WMG are all eligible practices under this grant program.
- **Define eligible costs and ineligible costs.** Eligible costs are those identified in the application and are associated with implementing eligible practices. Ineligible costs are those incurred before grant is awarded; practices that have not been approved by the department; costs to repair damages caused by implementing a practice, work on industrial forests; work on public land and travel to and from sites.
- **Create grant criteria.** The department will review applications to determine if the practice is needed and feasible, that there is evidence of at least one participation agreement at the time of application, and that there is a person participating who owns 500 acres or less of NIPF land.
- **Create grant selection criteria.** Preference will be given to projects which accomplish one or more of the following criteria: work on prohibited invasive plants, work on early detection species, protect sustainability of forest lands, applicants have a long-term management plan, work on forested land that is not heavily infested with invasive plants, or forest land where invasive plant species may be contained or eradicated.
- **Define rapid response practices.** These practices aid the department in allowing for control of prohibited or early detection invasive plant populations. Grant applications for rapid response practices are accepted at any time of year to offer more flexibility with prohibited or early detection invasive plant control. The department may cover up to 100% of the eligible costs for rapid response practices.
- **Create requirements for payment, reconsideration, and enforcement.** Reports detailing work completed are due before payment will be awarded. If grant extensions are needed due to conditions beyond the applicant's control, the department can award up to a one year extension. If

funds are used for ineligible practices or costs, reimbursement may be withheld.

- **Allow** for other state, federal, or non-profit organization funds to be distributed through this program.

### 3. How does this proposal affect existing policy?

The proposed revisions to subch. VII are mostly administrative and will update eligible practices and streamline existing procedures. The proposed creation of subch. XIII does not have any related existing policies.

### 4. Hearing Synopsis and Summary of Changes.

Three hearings were held on Friday, July 20, 2012 at the DNR Service Centers in Fitchburg, Rhinelander (remote) and Eau Claire (remote). Three members of the public attended and one gave oral testimony on behalf of the Wisconsin Woodland Owners Association (WOOA) approving of the changes to WFLGP in regards to extending grants when conditions are beyond the applicant's control, work on invasive plants, and reissuing money from those grant recipients who withdraw their application.

One written comment was received by the department during the comment period which ended July 31, 2012. The comment addressed a couple of recommendations that will be addressed in the handbook including what is considered "heavily infested" and allowing in-kind labor to be used as a match. The comment also mentioned the acreage limitation of 500 acres or less may exclude certain projects, however, the acreage limitation is set by s. 26.38 (2m) (a), Wis. Stats., not administrative code.

#### **Response to and modification based on comments from the Wisconsin Legislative Council Rules Clearinghouse**

Statutory Authority – How does the department reconcile s. NR 47.962 (17) and s. NR 47.964 (1) (b) with the requirement in s. 26.38 (2m) (a), Stats., that the "department shall award the grants only to persons owning 500 acres or less of nonindustrial private forest land in this state or to groups in which each person participating owns 500 acres or less of nonindustrial private forest land in this state"?

*The Legislature has not defined by statute what a person participating means. The department, exercising its rule making authority, and consistent with the intent and the plain language of the statute, has provided the mechanism to allow groups of interested parties to receive grants for projects to control invasive plants in weed management areas. Under a plain language statutory construction analysis, as part of 2007 Wisconsin Act 20 amendment, the clause "and to award grants to groups of interested parties for projects to control invasive plants in weed management areas," was added at the same time (in para materia) as the clause "or to groups in which each person participating owns 500 acres or less of NIPF lands in this state" to s. 26.38 (2m) (a), Stats. This makes it clear that the Legislature intended to award grants to groups of interested parties not to simply groups of landowners.*

*In addition, the second clause in the last sentence of s. 26.38 (2m) (a), Stats., is superfluous without the department's definition of "person participating." Prior to 2007 Wisconsin Act 20, there was nothing in statute that prevented groups where each member of the group owned 500 acres or less of NIPF land in this state from being eligible for grants under the prior s. 26.38 (2m) (a), Stats. Statutes should not be read in any way that makes them superfluous.*

*This is consistent with both the Legislative history of this provision and the structure of existing weed management groups that this Legislative change was designed to give assistance to.*

Form, Style and Placement - *Incorporated all recommendations.*

Adequacy of References to Related Statutes, Rules and Forms - *Their recommendation to repeal subch. III of ch. NR 47 is being addressed by the small business ombudsman as part of the department wide review of outdated administrative rules.*

Clarity, Grammar, Punctuation and Use of Plain Language - *Incorporated all recommendations.*

**5. Has Board dealt with these issues before?**

The Board has dealt with modifications to subch. VII of ch. NR 47 in 2002 (CR 02-074) and 2005 (CR 05-087) to establish and then modify the distribution of funds, to modify application deadlines (both times), to allow other state and federal funds to be distributed through WFLGP, and to modify the range for matching grants.

**6. Who will be impacted by the proposed rule? How?**

Subch. VII –

NIPF landowners wishing to apply for grants to create a forest stewardship plan or implement a forestry practice on their land, cooperating foresters, and resource managers or other private businesses that may be hired by a landowner to implement a practice under the grant program have been positively impacted by this voluntary cost-share grant program from its inception.

Subch. XIII –

The impact will be to any party, organized landowner group, or organization owning less than 500 acres of NIPF land wishing to apply for a grant for the control of invasive plants; federal, state, and local agencies interested in the control of invasive plants on NIPF land; and any cooperating forester, restoration/landscape consultant, farm coop or other private businesses that may be hired to implement a practice under the grant program.

**7. Soliciting public input on economic impact synopsis**

One comment was received from a cooperating forester stating that there would not be an economic impact associated with the proposed rule change and rule creation.

**8. Environmental Analysis**

Department staff has determined that the proposed rule changes do not require an environmental analysis. The issues addressed in the rule changes primarily affect administrative efficiency and as such, would fall under s. NR 150.03 (6) (a) 3.b. as a Type III action, which does not require and environmental analysis.

**9. Small Business Analysis**

The total amount of funding from the WFLGP appropriation under s. 20.370 (5) (av), Stats., is not changing from the past amounts; therefore the overall secondary effect on small businesses will be the same as it has been in the past. The only change is to shift \$60,000 of the WFLGP funds to be awarded through WMA-PFGP; this shift in funds will have a positive secondary impact on small businesses that provide services or equipment for controlling terrestrial invasive plants.

**ADMINISTRATIVE RULES  
 FISCAL ESTIMATE AND  
 ECONOMIC IMPACT ANALYSIS**

Type of Estimate and Analysis

Original     Updated     Corrected

Administrative Rule Chapter, Title and Number

NR 47 Subchapter VII— The Private Forest Landowner Grant Program, and Subchapter XIII – The Weed Management Area Private Forest Grant Program. FR-19-11

Subject

NR 47 Subch. VII – Rule revision and Subch. XIII – Rule creation.

Fund Sources Affected

GPR     FED     PRO     PRS     SEG SEG-S

Chapter 20, Stats. Appropriations Affected

s. 20.370 (5) (av), Stats.

Fiscal Effect of Implementing the Rule

No Fiscal Effect  
 Indeterminate

Increase Existing Revenues  
 Decrease Existing Revenues

Increase Costs  
 Could Absorb Within Agency's Budget  
 Decrease Costs

The Rule Will Impact the Following (Check All That Apply)

State's Economy

Local Government Units

Specific Businesses/Sectors

Public Utility Rate Payers

Would Implementation and Compliance Costs Be Greater Than \$20 million?

Yes     No

Policy Problem Addressed by the Rule

Wis. Stats. 26.38 Forest Grant Program (2m) (a) The Department of Natural Resources shall establish a program to award grants for developing and implementing forest stewardship management plans by owners of nonindustrial private forest (NIPF) land and award grants to groups of interested parties for projects to control invasive plants in weed management areas.

Subch. VII revisions will amend policy issues and implement updates and improvements to the program related to the implementation and administration, including practice description and priorities, grant calculations, allowable costs, funding sources, and eligibility of applicants who previously failed to use or misused grant funds.

Subch. XIII rule development will implement a cost-sharing grant program for controlling invasive plants in weed management areas on NIPF lands. This includes administration, practice description and priorities, grant calculations, allowable costs, and eligibility for applicants and practices.

Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)

Subch. VII – There will be no change to the current economic impact based on the proposed rule revisions as the amount of funding and eligibility are not changing. NIPF landowners wishing to apply for grants to create a forest stewardship plan or implement a forestry practice on their land, cooperating foresters, and resource managers or other private businesses that may be hired by a landowner to implement a practice under the grant program have been positively impacted by this voluntary cost-share grant program from its inception.

Subch. XIII – There will be a small positive impact with the implementation of this new voluntary cost-share grant program, with \$60,000.00 awarded annually. The impact will be to any party, organized landowner group, or organization owning less than 500 acres of NIPF land wishing to apply for a grant for the control of invasive plants; federal, state, and local agencies interested in the control of invasive plants on NIPF land; and any cooperating forester, restoration/landscape consultant, farm coop or other private businesses that may be

hired to implement a practice under the grant program.

For both subchapters, there are administration costs that will be absorbed by the department.

During the solicitation period, one comment was received from a cooperating forester stating that there would not be an economic impact associated with the proposed rule change and rule creation.

**Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule**

Subch. VII – Implementing the rule changes would allow needed improvements and efficiencies in the implementation and administration of the program. The alternative is to continue with the program as is.

Subch. XIII – Benefits of implementing this rule would be to the interested parties who want to control invasive plants or implement a practice for invasive plants. There are currently very limited funds available to persons for controlling invasive plants. Implementing this rule would be well received by all interested parties. If this rule is not implemented, NIPF landowners will either continue paying for the control of invasive plants or they will choose not to control due to cost restrictions.

**Long Range Implications of Implementing the Rule**

Subch. VII – Increased efficiency in administering the grant program and increased understanding by partners and landowners.

Subch. XIII – Development of a cost-sharing grant program benefits weed management groups who have interest in controlling invasive plants on NIPF land.

**Compare With Approaches Being Used by Federal Government**

There are no known federal rules or programs that apply directly to the control of invasive plants on NIPF lands. There are several programs that provide cost-sharing for development and implementation of forest stewardship plans on NIPF lands. However, the programs were developed for, and primarily focus on agricultural lands, and the funding is inconsistent. Programs include USDA-Natural Resource Conservation Service (NRCS): Environmental Quality Incentives Program (EQIP) and Conservation Stewardship Program (CSP); and USDA-Farm Service Agency (FSA), Conservation Reserve Program (CRP).

**Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)**

There are no known programs in neighboring states regarding cost-sharing grants for invasive plant control. Michigan, Minnesota, Illinois, and Iowa primarily use federal cost-sharing programs for development and implementation of forest stewardship plans on NIPF lands. Programs include USDA-NRCS: EQIP and CSP; and USDA-FSA, CRP. Illinois is the only one with a state funded cost-sharing program for NIPF lands. The program covers practices similar to WFLGP and is funded from a timber harvest fee.

**Name and Phone Number of Contact Person**

Carol Nielsen (608) 267-7508 and Thomas Boos II (608) 266-9276

**ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD  
REPEALING, RENUMBERING, AMENDING, REPEALING AND RECREATING, AND CREATING  
RULES**

The Wisconsin Natural Resources Board proposes an order to repeal NR 47.84 (2) (b) 8. and NR 47.87 (6); to amend NR 47.80, NR 47.82 (4), NR 47.83, NR 47.84 (1) (c), NR 47.86 (1) (a), NR 47.86 (3) (a), NR 47.86 (3) (e) 8., NR 47.87 (1) and (3), and NR 47.895 (2) and (3); to repeal and recreate NR 47.84 (2) (b) 4. to 7. and NR 47.86 (3) (c); and to create NR 47.82 (2m), and NR 47.84 (1m) relating to the administration of the Wisconsin Forest Landowner Grant Program and to create NR 47 subchapter XIII relating to the administration of the Weed Management Area Private Forest Grant Program.

FR-19-11

Analysis Prepared by the Department of Natural Resources

**1. Statutes interpreted:** Section 26.38, Stats.

**2. Statutory authority:** Sections 26.38 and 227.11 (2) (a), Stats.

**3. Explanation of agency authority:**

Section 26.38, Stats. directs the department to establish a program to award grants for developing and implementing forest stewardship management plans by owners of nonindustrial private forest (NIPF) land (WFLGP) and to award grants to groups of interested parties for projects to control invasive plants on NIPF lands in weed management areas (WMA-PFGP). More specifically, s. 26.38 (3), Stats., provides authority to promulgate rules to implement and administer WFLGP and WMA-PFGP. The department has general authority to promulgate rules under s. 227.11 (2) (a), Stats., that interprets the specific statutory authority granted in s. 26.38 (3), Stats.

**4. Related statutes or rules:** Section 23.2355, Stats., Weed Management Grants was created to disperse federal dollars that are no longer available. Under subch. III NR 47, Admin. Code, , the Stewardship Incentives Program was created to disperse federal dollars that are no longer available.

**5. Plain language analysis:** The proposed rules address 1) revision to the current Wisconsin Forest Landowner Grant Program (WFLGP) for NIPF landowners in subch. VII NR 47 Admin. Code and 2) the establishment of WMA-PFGP in subch. XIII NR 47, Admin. Code.

Revisions of NR 47 are proposed to implement changes to the Wisconsin Forest Landowner Grant Program (WFLGP) for NIPF lands and to create WMA-PFGP to award weed management groups interested in controlling invasive plants on NIPF lands.

A review of the 12 year old WFLGP was completed by the Division of Forestry's Private Land Management Specialist Team to identify ways to streamline administration, more efficiently use the dollars available and to continue to address landowner and forest resource needs. The team includes internal forestry and wildlife staff, and external landowner, consulting forester and educator representatives.

Creation of subch. XIII NR 47, Admin. Code will enable the department to award funds to control invasive plants on NIPF lands in WMA-PFGPs, by defining application requirements, eligible practices and costs, and rules for administration.

**Proposed revisions of subch. VII NR 47 Forest Landowner Grant Program**

These recommendations were developed through a review of the existing program and are recommended to provide greater flexibility in meeting landowner and program goals, more



efficient use of funding, and to address current and future resource needs identified in the Statewide Forest Strategy.

- **Modify rule to allow the department to annually set funding levels and priorities.** Currently funding levels for practices are set in rule. This change would allow the department to be more responsive to changing forest resources concerns, address statewide forest strategies and respond to private forest landowner needs.
- **Modify application deadlines from four to two and allow for additional dates to be established on the application.** This will allow the department to be more responsive to landowner needs as the deadlines for other related programs change (e.g., MFL application deadline).
- **Modify rule to limit matching grants to not more than 75% of actual costs.** Currently matching grants cannot be less than 50% nor more than 65%. Providing for up to 75% will allow for focusing funding on higher priority resource and landowner needs (e.g., recovery after a catastrophic event).
- **Modify grant period from 18 to 24 months.** The grant period is being expanded to respond to landowner needs to implement the practices and to decrease the dollars that may otherwise be returned when a practice is not fully implemented.
- **Create a waiting period (24 months) for individuals who fail to use any portion of the funds awarded before the grant expires.** Since this grant program is not a continuing appropriation, any grants awarded in a biennium and not used cannot be given out again. This revision would encourage landowners who are awarded a grant to complete the practice or return the money earlier so it can be awarded to another landowner. This would not be applied when circumstances are beyond the landowner's control.
- **Update practice descriptions to reflect changes in practice components and purposes.**
- **Modify language to allow for the use of nonprofit organization funding similar to federal funding currently provided for in the rule.**

#### **Creation of subch. XIII NR 47 Weed Management Area Private Forest Grant Program**

- **Define eligible and ineligible applicants.** Weed management groups (WMG), non-profit organizations, government entities may be applicants as long as funds are being used on NIPF land. A WMG consists of 3 or more persons of which at least one must be a person participating.
- **Define eligible practices.** Education and outreach if it pertains to invasive plants; inventory, control, and monitoring of invasive plants; development of long-term management plans; and establishing a WMG are all eligible practices under this grant program.
- **Define eligible costs and ineligible costs.** Eligible costs are those identified in the application and are associated with implementing eligible practices. Ineligible costs are those incurred before grant is awarded; practices that have not been approved by the department; costs to repair damages caused by implementing a practice, work on industrial forests; work on public land and travel to and from sites.
- **Create grant criteria.** The department will review applications to determine if the practice is needed and feasible, that there is evidence of at least one participation agreement at the time of application, and that there is a person participating who owns 500 acres or less of NIPF land.
- **Create grant selection criteria.** Preference will be given to projects which accomplish one or more of the following criteria: work on prohibited invasive plants, work on early detection species, protect sustainability of forest lands, applicants have a long-term management plan, work on forested land that is not heavily infested with invasive plants, or forest land where invasive plant species may be contained or eradicated.
- **Define rapid response practices.** These practices aid the department in allowing for control of prohibited or early detection invasive plant populations. Grant applications for rapid response practices are accepted at any time of year to offer more flexibility with prohibited or early detection invasive plant control. The department may cover up to 100% of the eligible costs for rapid response practices.

- **Create requirements for payment, reconsideration, and enforcement.** Reports detailing work completed are due before payment will be awarded. If grant extensions are needed due to conditions beyond the applicant's control, the department can award up to a one year extension. If funds are used for ineligible practices or costs, reimbursement may be withheld.
- **Allow for other state, federal, or non-profit organization funds to be distributed through this program.**

**6. Summary and comparison with existing and proposed federal regulations.** There are no known federal regulations that apply to the Wisconsin Forest Landowner Grant Program or the Weed Management Area Private Forest Grant Program. Federal funds distributed through subch. VII and subch. XIII are subject to the rules of the specific program.

**7. Comparison of similar rules in adjacent states:**

There are no known programs in adjacent states regarding cost-sharing grants for invasive plant control. Michigan, Minnesota, Illinois, and Iowa primarily use federal cost-sharing programs for development and implementation of forest stewardship plans on NIPF lands. Programs include USDA-Natural Resource Conservation Service (NRCS): Environmental Quality Incentives Program (EQIP) and Conservation Stewardship Program (CSP); and USDA-Farm Service Agency (FSA), Conservation Reserve Program (CRP). Illinois is the only one with a state funded cost-sharing program for NIPF. This program covers practices similar to WFLGP and is funded from a timber harvest fee.

**8. Summary of factual data and analytical methodologies:**

The Department of Natural Resources Private Land Management Team completed a program review of WFLGP policies and procedures which was referenced during the rule revision.

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

The total amount of funding from the WFLGP appropriation under s. 20.370 (5) (av), Wis Stats. is not changing from the past amounts; therefore the overall secondary effect on small businesses will be the same as it has been in the past. The only change is to shift \$60,000 of the WFLGP funds to be awarded through WMA-PFGP total \$60,000.00; this shift in funds will have a positive secondary impact on small businesses that provide services or equipment for controlling terrestrial invasive plants.

**10. Effect on small business:**

This rule positively affects small business as a secondary benefit, specifically contractors (restoration consultants, cooperating foresters, loggers) and retailers who provide services or equipment for controlling terrestrial invasive plants or forest stewardship plan development and implementation.

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

Not applicable.

**12. Agency Contact Person:**

Carol K. Nielsen, Private Lands Forestry Specialist  
Ph: (608) 267-7508  
E-mail: carol.nielsen@wisconsin.gov

Thomas Boos II, Forestry Invasive Plants Coordinator  
Ph: (608) 266-9276  
E-mail: Thomas.boos@wisconsin.gov

**13. Place where comments are to be submitted and deadline for submission.**

Bureau of Forest Management  
Wisconsin Department of Natural Resources  
PO Box 7921  
Madison, WI 53707-7921

Deadline for submittal of comments: 10 days following final public hearing.

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**Section 1.** NR 47.80 is amended to read:

**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., and to distribute other available state, and federal, and nonprofit organization funds 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.

**Section 2.** NR 47.82 (2m) is created to read:

**NR 47.82 (2m)** "Nonprofit organization" means an organization described in section 501 (c) (3) to (7) of the Internal Revenue Code and is exempt from federal income tax under section 501 (a) of the Internal Revenue Code.

**Section 3.** NR 47.82 (4) is amended to read:

**NR 47.82 (4)** "Program" means the private forest landowner grant program established by the act authorized under s. 26.38, Stats.

**Section 4.** NR 47.83 is amended to read:

**NR 47.83 Program administration.** The department shall administer the program, within the guidance provided by the authorizing statute. Additional guidance may accompany federal funding, nonprofit organization funding and state funding other than that provided through s. 20.370 (5) (av), Stats.

**Section 5.** NR 47.84 (1) (c) is amended to read:

**NR 47.84 (1) (c)** Eligibility for federal funding or nonprofit organization funding may be defined in the grant agreement through which federal the funding is provided. Further, additional eligibility criteria may accompany state funding other than that provided through s. 20.370 (5) (av), Stats.

**Section 6.** NR 47.84 (1m) is created to read:

**NR 47.84 (1m) INELIGIBLE APPLICANTS.** The following applicants shall be ineligible for a grant awarded under this subchapter:

(a) An owner who did not receive any payment under s. NR 47.87 for a grant awarded under this subchapter which ended within the 24 months prior to the date the application was submitted, unless the owner ended that grant within 12 months of the award.

(b) An owner who has violated s. NR 47.89 (1) or (2).

**Section 7.** NR 47.84 (2) (b) 4. to 7. are repealed and recreated to read:

**NR 47.84 (2) (b) 4.** Wetland and riparian protection and improvement which includes the management, protection, and improvement of wetlands and riparian areas to maintain water quality, protect and improve wetlands and riparian areas, reduce sedimentation and enhance or improve habitat for fish or wildlife species.

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

**6.** Forest historic cultural and archeological site protection.

7. 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.  
**Section 8.** NR 47.84 (2) (b) 8. is repealed.

**Section 9.** NR 47.86 (1) is amended to read:

**NR 47.86 (1) (a)** A matching grant provided through s. 20.370 (5) (av), Stats., or other state funds ~~shall may not be not less than 50% nor more than 65%~~ 75% of the actual eligible costs depending on availability of funds. If a federal or nonprofit organization grant agreement provides for cost-share limitations different from those specified in this subsection, the cost-share rate from funds provided through the federal or nonprofit organization grant agreement may apply.

**(b)** An annual grant under the program may not exceed \$10,000 or be less than \$100 for any individual, person or project.

**Section 10.** NR 47.86 (3) (a) is amended to read:

**NR 47.86 (3) (a)** Application deadlines are as follows unless otherwise provided on the application, and are contingent upon availability of funds: ~~February 1, May 1, and August 1 and November 1.~~ State funds for this program other than those provided through s. 20.370 (5) (av), Stats., and federal funds awarded pursuant to a federal grant agreement and nonprofit organization funds awarded pursuant to a nonprofit organization grant agreement may specify other application deadlines.

**Section 11.** NR 47.86 (3) (c) is repealed and recreated to read:

**NR 47.86 (3) (c) 1.** Annually, the department may designate a percentage of the total annual funds for any of the following:

a. A statewide forestry emergency, as designated by the chief state forester. A statewide forestry emergency includes, but is limited to natural and man-made events which cause large areas of forest mortality due to wind, ice, hail, flooding, forest fires, forest insect or disease.

b. Practices that accomplish objectives or groups of objectives identified under sub.

(2)(a).

2. If funds are available following distribution under subd. 1. a. and b., the funds may be distributed on a first-come-first-serve basis to any approved applications awaiting funding.

**Section 12.** NR 47.86 (3) (e) 8. is amended to read:

**NR 47.86 (3) (e) 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.

**Section 13.** NR 47.87 (1) and (3) are amended to read:

**NR 47.87 (1)** A landowner shall complete each practice within ~~48~~ 24 months of approval. However, if a practice is not completed in 24 ~~48~~ months due to conditions beyond the landowner's control, the department may grant an extension ~~a 6-month extension period may be granted by the department.~~

**(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 ~~48~~ 24 months following approval to implement the practice, unless an extension is justified as provided in sub. (1).

**Section 14.** NR 47.87 (6) is repealed.

**Section 15.** NR 47.895 (2) and (3) are amended to read:

**NR 47.895 (2)** Other state, ~~or federal~~ nonprofit organization funds appropriated for the purpose of encouraging private forest landowners to manage lands in a manner that benefits this state's forest and related resources and the people of the state, provided the practice or practices identified for the funding are consistent with any identified in this subchapter as eligible for

funding

(3) Other state, or federal or nonprofit organization funds distributed through this subchapter shall be distributed to practices or projects consistent with the appropriation.

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**Section 16.** Subchapter XIII is created to read:

**NR 47 Subchapter XIII - Weed Management Area Private Forest Grant Program**

**NR 47.960 Purpose and scope.** The purpose of this subchapter is to establish procedures and standards for the administration of the private forest landowner grant program for weed management areas as authorized under s. 26.38 (2m) (a), Stats., and to distribute other available state and federal funds through grants for the purpose of encouraging private forest landowners and weed management groups to control invasive plant species on nonindustrial private forest land in weed management areas in a manner that benefits the state's forest and related resources and the people of the state.

**NR 47.961 Applicability.** This subchapter is applicable to weed management groups applying for or receiving grants under this subchapter.

**NR 47.962 Definitions.** In addition to definitions in s. NR 47.002, the following definitions apply to this subchapter:

- (1) "Invasive plant species" means a plant that is an invasive species.
- (2) "Invasive species" has the meaning given in s. NR 40.02 (24).
- (3) "Inventory" includes surveying and mapping for invasive plant occurrences.
- (4) "Long term management plan" includes a written prioritization plan for management of invasive plants within a WMA.
- (5) "Monitor" or "monitoring" includes post-activity documentation of management activity results using methods approved by the department.
- (6) "Non-profit organizations" has the meaning given in s. NR 47.82 (2m).
- (7) "Person" has the meaning in s. 990.01 (26), Stats.
- (8) "Person participating" means a person who owns 500 acres or less of nonindustrial private forest land in the state on which a practice or portion of a practice under the grant will be implemented.
- (9) "Plant" has the meaning in s. NR 40.02 (38).
- (10) "Practice" means an activity or conservation measure intended to control invasive plant species.
- (11) "Program" means the weed management area private forest grant program authorized under s. 26.38, Stats.
- (12) "Prohibited invasive plant species" means a plant that is a prohibited invasive species.
- (13) "Prohibited invasive species" or "prohibited species" has the meaning given in s. NR 40.02 (41).
- (14) "Rapid response practice" means a practice to control or eradicate prohibited invasive plants and those invasive plants new to the state or to a region of the state as determined by the chief state forester.
- (15) "Reforestation" has the meaning given in s. NR 47.82 (5).
- (16) "Weed management area" or "WMA" means a geographic unit defined by a weed management group.
- (17) "Weed management group" or "WMG" includes persons that are concerned about invasive plants within a WMA.

**NR 47.963 Program administration.** The department shall administer the program, within the guidance provided by the authorizing statute. Additional guidance may accompany federal funding, non-profit organization funding, and state funding other than that provided through s. 20.370 (5) (av), Stats.

**NR 47.964 Eligibility. (1) ELIGIBLE APPLICANTS.** (a) All nonindustrial private forest lands that meet the program requirements in this subchapter are eligible for assistance under the program.

(b) A WMG is eligible for assistance under the program if it consists of 3 or more persons of which at least one person shall be a person participating.

(c) Eligibility for federal funding, or non-profit organization funding, may be defined in the grant agreement through which the funding is provided. Further, additional eligibility criteria may accompany state funding other than that provided through s. 20.370 (5) (av), Stats.

(d) Non-profit organizations and government entities may be applicants as long as the funding is used on nonindustrial private forested land.

**(2) INELIGIBLE APPLICANTS.** The following applicants shall be ineligible for a grant awarded under this subchapter:

(a) An applicant that did not receive payment under s. NR 47.967 for a grant awarded under this subchapter which ended within the 24 months prior to the date the application was submitted, unless the owner ended that grant within 12 months of the award.

(b) An applicant who has violated s. NR 47.969 (1), (2) or (4).

**(3) ELIGIBLE PRACTICES.** ~~(a) Practices.~~ All of the following practices are eligible for grants under this subchapter. However, additional eligible practices may accompany funding for this program other than that provided through s. 20.370 (5) (av), Stats.:

(a) Education, information and outreach including publications, field days, websites, demonstrations, trainings, and planning workshops.

(b) Coordinating a WMG, which includes one-time start-up costs, a WMG coordinator salary for up to one grant cycle, assisting a WMG in the formation of partnerships, goals, and objectives for the management of the WMA.

(c) Inventory of invasive plant species occurrences.

(d) Control of invasive plant species that impact nonindustrial private forest land.

(e) Monitoring.

(f) Practices under s. NR 47.84(2)(b) if they pertain to invasive plant management.

(g) Long term management plan development.

**NR 47.965 Costs. (1) ELIGIBLE COSTS.** (a) Grants under the program shall be used to distribute available state, federal or nonprofit funds for the purpose of encouraging invasive plant management in weed management areas.

(b) Eligible costs are all those identified in an application under s. NR 47.966 (3) and associated with the preparation or implementation of one or more eligible practices as approved by the chief state forester.

**(2) INELIGIBLE COSTS.** ~~(a)~~ 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, rule, regulation or other authority, except for a practice required in the managed forest law program under ch. 77, Stats., and except for a practice required under ch. NR 40 for prohibited and restricted terrestrial plant species.

(c) A practice not approved by the department in writing, or changes to a previously approved practice, unless authorized by the department in writing.

(d) Costs to repair damage caused by implementing a practice.

(e) Costs associated with work on public lands.

(f) Costs associated with work on industrial forests.

(g) Costs in excess of \$5,000 for equipment purchase.

(h) Costs associated with traveling to and from the site.

**NR 47.966 Grants. (1) GRANT CALCULATION.** (a) A matching grant provided through s. 20.370 (5) (av), Stats., or other state funds shall be no more than 75% of the actual eligible costs

depending on the availability of funds, except under par. (c). If a federal or nonprofit organization grant agreement provides for cost-share limitations different from those specified in this subsection, the cost-share rate from funds provided through the federal or nonprofit organization grant agreement may apply.

(b) A grant under the program may not exceed \$15,000.00 to any WMG excluding a rapid response practice.

(c) A grant or portion of a grant awarded for work on prohibited species or early detection species may be up to 100% of the actual eligible costs depending on the availability of funds.

**(2) GRANT SELECTION SYSTEM.** (a) In selecting practices for grant assistance, the department shall give preference to projects which include the following, which are not listed in order of priority:

(a) Work on the control of prohibited invasive plant species as identified in ch. NR 40.

(b) Work on the control of invasive plant species.

(c) Nonindustrial private forest land not heavily infested with invasive plant species.

(d) Nonindustrial private forest land where invasive plant species identified in the application may be contained or eradicated.

(e) Long term management plan use or development.

(f) A WMA includes more than the land owned by one person participating.

**(3) APPLICATION AND APPROVAL.** (a) The application deadline is April 1 unless otherwise provided on the application form and is contingent upon availability of funds. State funds for this program other than those provided through s. 20.370 (5) (av), Stats., federal funds awarded pursuant to a federal grant agreement and nonprofit funds awarded pursuant to a nonprofit organization grant agreement may specify other application deadlines. Applications for rapid response practices can be applied for at any time.

**Note:** Applications can be obtained from the department of natural resources Forestry Invasive Plant Coordinator, P.O. 7921, Madison, WI 53707-7921 and on line at <http://dnr.wi.gov/>

(b) The department shall make basic eligibility determinations upon receipt of an application, including whether the person participating meets nonindustrial private forest land ownership criteria and maximum acreage criteria. The department determines the amount awarded to each applicant.

(c) A WMG may only apply once per year, except that a WMG may apply any number of times per year for a rapid response practice.

(d) Annually, the department may designate a percentage of the total annual funds for:

1. Rapid response practices.

2. Practices that accomplish objectives or groups of objectives identified under sub(2)(a).

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

1. The practice is needed and feasible.

2. The practice is eligible under this subchapter.

3. The practice cost is determined to be at least \$200 or more.

(f) Applications will be approved provided grant funds are available. Department approval of an application shall constitute an agreement between the state and the WMG.

(g) Upon approval of a practice, the landowner shall be notified in writing by the department or its agent.

(h) Grant awards will be determined by the department based on eligibility and availability of funds.

(i) The department shall determine the award date upon approval.

**NR 47.967 Payment.** (1) A WMG shall complete each practice within the period specified by the department. The department shall specify a period of up to 24 months. However, if a practice is not completed in the specified time due to conditions beyond the control of the WMG, the department may grant an extension.

(2) Upon certification by the department that a practice has been completed in accordance with specifications, including timely submittal of reports required and determined by the department, the grant payment shall be calculated by the department and disbursed to the WMG by or at the direction of the department.

(3) A WMG may receive partial payment for an incomplete practice, with approval of the department forester, on the condition that the WMG agrees to complete the practice within the time period specified by the department, not to exceed the approved grant period, following approval to implement the practice, unless an extension is justified as provided in sub. (1).

(4) Where completion of an approved practice does not meet the minimum specifications for the practice due to factors beyond the control of the WMG control, the department may approve grant payment under either of the following conditions:

(a) The WMG repeats a practice previously implemented or establishes an additional eligible practice under terms and conditions the department approves to the extent that is needed to meet the objectives of the approved grant.

(b) The WMG establishes to the satisfaction of the department that all of 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 approved grant.

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

(6) Start-up costs as identified in s. NR 47.964 (3) (a) 2. and costs for practices to control prohibited invasive plant species or other invasive plant species identified by the department may be awarded after grant approval.

(7) The WMG shall submit evidence of the participation agreement for each person participating, including expressed permission for WMG to enter upon land of person participating.

(8) Matching funds may not be required for grants awarded for work on prohibited invasive plant species or other invasive plant species identified by the department.

**NR 47.968 Reconsideration.** A WMG that is dissatisfied with any determination made under the program may request reconsideration by the chief 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.

**NR 47.969 Enforcement.** (1) If any WMG 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 WMG takes any action or fails to take reasonable action as determined by the department which results in the failure, non-completion, destruction or impairment of a practice for the duration of the approved grant period, 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.

(4) If the applicant has not utilized grant money appropriately as determined by the department, additional pending cost-share grants under this subchapter shall be withheld or a refund of all or part of any program payments otherwise due or paid shall be secured.

**NR 47.970 Funding.** Funding for grants under these rules includes:

(1) Funds appropriated for the grant program established under s. 26.38, Stats.

(2) Other state, federal, or non-profit organization funds available to the department for the purpose of encouraging WMGs to manage lands in a manner that benefits this state's forest and related resources and the people of the state, provided the practice or practices identified for the funding are consistent with practices identified in this subchapter as eligible for funding.



**Section 17. EFFECTIVE DATE.** This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22 (2) (intro.), Stats

**Section 18. BOARD ADOPTION.** This rule was approved and adopted by the State of Wisconsin Natural Resources Board on \_\_\_\_\_.

Dated at Madison, Wisconsin \_\_\_\_\_.

STATE OF WISCONSIN  
DEPARTMENT OF NATURAL  
RESOURCES

By \_\_\_\_\_  
Cathy Stepp, Secretary

(SEAL)