

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

The State of Wisconsin Natural Resources Board proposes an order to repeal NR 47.914(3) and (7)(a); to renumber NR 47.912(7) and (8), 47.914(7)(intro.) and (b) to (d), (8) to (11), to amend NR 47.910, 47.913(1) and (2)(a), (b)1. and (d)1., 47.914(2), (4) and (6); and to create NR 47.914(7) and 47.917(2)(am) relating to the gypsy moth suppression program

FR-05-05

Analysis Prepared by Department of Natural Resources

Statutory authority: ss. 26.30(6m) and 227.11(2), Stats.

Statutes interpreted: ss. 26.30, 28.01 and 28.07, Stats.

Authority to promulgate rule: Section 26.30(6m), Stats., states that if the department establishes a cost-shared suppression program for gypsy moth, the department shall promulgate rules to implement the program.

Related statute or rule: There are no related statutes or rules.

Plain language analysis of rule: 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 many 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.

Summary and comparison with federal regulation addressing activities to be regulated by rule :

The USDA Forest Service under the Cooperative Forestry Assistance Act of 1978 (appendix A) as amended (P.L. 95-313) and the 1990 Farm Bill offers a cost sharing program to states for the suppression of gypsy moth outbreaks. Their objective is to assist state agencies in protecting forest resources by preventing defoliation in residential, recreational and timber production lands. Cost share is made available to state cooperators who have established an acceptable integrated pest management strategy for the gypsy moth as determined by the Forest Service. The cost share from the Forest Service can be used to pay for the treatment and preparatory work for the treatment including monitoring, administration, and public notification. The current maximum federal share of project costs is 50% for private landowners of less than 500 acres, 33.3% for private landowners of more than 500 acres, and 25% for non-federal public lands. The Forest Service cost-share rate, however, may be adjusted downwards to meet annual

federal budget limitations. The Forest Service requires that the treatments that receive cost sharing be voluntary.

Comparison of similar rules in adjacent states: Only Michigan of the adjacent states has a suppression program for gypsy moth. The Department of Agriculture takes it's authority to run the suppression program from the Insect Pest and Plant Disease Act 189 of 1931. There are no legislative rules governing the Michigan suppression program, however. Like Wisconsin's program, Michigan receives cost sharing from the USDA Forest Service so requirements described above apply to both. The two states suppression programs are similar in many ways though in Wisconsin all land uses are allowed to apply to the program and there is no prioritization of treatment for different land uses as there is in the Michigan program.

Summary of data and analysis to support regulatory approach of rule: Not applicable to this rule as it is not regulatory.

Supporting documentation on effect on small business or used in an economic impact report: Not applicable to this rule as it is not regulatory.

Anticipated costs to private sector: The program is a voluntary one and is only done at resident's request or agreement so we do not expect any involuntary expenses. We expect that this program will provide cost savings for private businesses facing losses from damage to their property by gypsy moth. Private businesses may apply to the suppression program for treatment as can any other resident or community. The program provides access to a cost-effective aerial spray treatment that may not be available in that area and also provides cost sharing from the federal government reducing costs for participants.

Effect on small businesses: The effect on small business is expected to be positive as the suppression program will make avoidance of losses from gypsy moth less expensive than other options.

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SECTION 1. NR 47.910 is amended to read:

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 (6m) 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.

SECTION 2. NR 47.912(7) is amended to read:

NR 47.912(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.

SECTION 3. NR 47.912(8) is renumbered NR 47.912(3m) and, as renumbered, is amended to read:

NR 47.912(3m) "~~Local County~~ coordinator" means the person designated to represent and act on behalf of ~~a county~~ an applicant for the purpose of applying for cost sharing and executing an agreement

binding his or her principal, either by duly adopted resolution or otherwise, as detailed under this subchapter.

SECTION 4. NR 47.913(1), (2)(a), (b)1. and (d)1. are amended to read:

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

(b) An applicant shall designate a ~~local county coordinator~~ who ~~will~~ shall 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:~~ A county coordinator, or his or her designee, shall complete all of the following tasks:

1. Respond to requests for assistance from residents of the county.
2. Determine if areas requested for treatment within a county are eligible for treatment.
3. Identify areas for treatment and map treatment blocks.
4. Complete and file applications with the department under this subchapter.
5. Collect local cost share moneys for treatments and distribute federal reimbursement.
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.~~ Notify county residents of the availability of the suppression program and how to apply for treatment. Notification may be accomplished by a press release, a public meeting or other cost-effective means of alerting the public.
7. Notify residents within eligible treatment blocks and surrounding areas determined by the applicant by ~~mail~~, publication of a class one legal notice under ch. 985, Stats., in a local newspaper at least 10 days before a deadline, a press release and a public meeting. The county coordinator, or his or her designee, shall conduct the public meeting.
8. Accommodate residents within the proposed spray block who object to treatment of their property by revising or dropping treatment blocks. If other resident's properties are dropped from a suppression block due to accommodating an objector, the county coordinator shall notify affected residents.
9. ~~Attend training as a ground observer of the Wisconsin aerial spray program and assist~~ Assist as an a ground observer during treatment or provide observers as required by the department during the aerial treatment or both. All observers shall attend observer training provided by the department.
10. Perform a post treatment evaluation ~~as described in the grant agreement~~ of defoliation within blocks identified by the department. The department shall provide the procedure for evaluation.
11. Develop and submit requests for reimbursement for eligible administrative costs.
12. Maintain records and ~~prepare file with the department materials requested for an annual report to be filed with the department.~~

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

(b)1. 25% or more on residential or high use, ~~public~~ recreational land.

(d)1. 500 egg masses per acre on residential or high use, ~~public~~ recreational land.

SECTION 5. NR 47.914(2) is amended to read:

NR 47.914 (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 4~~ the first Friday in December, along with a digitized map of each proposed treatment block ~~on a 7.5 minute quadrangle map in the format specified on the application form~~ to be eligible for participation in the treatment program for that year. ~~Applications~~ Application forms 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.~~

Note: The address for the program manager for the gypsy moth grant program is Bureau of Community Financial Assistance, P.O. Box 10448, Green Bay, WI 54307-0448.

SECTION 6. NR 47.914(3) is repealed.

SECTION 7. NR 47.914(4) and (6) are amended to read:

NR 47.914(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 and the department staff and applicant shall work together to produce an acceptable revision no later than January 15th. If an acceptable revision cannot be agreed upon the block shall be dropped from the program.~~

(6) The applicant shall enter into an agreement with the department regarding cost sharing and continued eligibility under this subchapter to continue its eligibility. The grant agreement shall be signed no later than April 1.

SECTION 8. NR 47.914(7)(intro.) is renumbered NR 47.914(8)(intro.) and, as renumbered, is amended to read:

NR 47.914(8)(intro.) 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~~ shall 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~~ county coordinator. Notification requirements of applicants to landowners and tenants shall include:

SECTION 9. NR 47.914(7)(a) is repealed.

SECTION 10. NR 47.914(7)(b) to (d) are renumbered NR 47.914(8)(a) to (c), respectively.

SECTION 11. NR 47.914(7) is created to read:

NR 47.914(7) The applicant shall designate a county-wide deadline for residents of proposed spray blocks to register their objection to treatment and also the method for registering an objection.

SECTION 12. NR 47.914 (8) to (10) are renumbered NR 47.914(9) to (11), respectively, and subs. (10) and (11)(a), as renumbered, are amended to read:

NR 47.914(10) Applicants County coordinators 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 county coordinators shall work with the department's designated staff to remove the property and a 250 foot surrounding buffer zone from treatment add any buffer strip necessary to avoid treatment of the property. The buffer strip may not exceed 250 feet. If a treatment block is canceled because accommodating objectors makes the block untreatable in the judgment of the contractor for pesticide application, the local county 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~~ shall be removed from the program due to nonpayment of the cost share by the applicant.

(11)(a) The department shall provide an estimate of per acre cost for treatment to local county 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. If payment is not received by the deadline, the block shall be dropped from the program. 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 county coordinator shall notify residents and return money that has been collected for the spray treatment ~~from the landowners or tenants.~~

SECTION 13. NR 47.914(11) is renumbered NR 47.914(3) and, as renumbered, is amended to read:

NR 47.914(3) Applicants shall submit ~~no later than April 1 of each year~~ with the application an electronic list of telephone, facsimile, mailing address and email contacts associated with each treatment block to the designated department staff specified in the application and in the format provided by the department. 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~~ necessary. These lists ~~will~~ shall be used by department staff to provide daily prior notification during of aerial treatments.

SECTION 14. NR 47.917(1)(intro.), (f) and (l) are amended to read:

NR 47.917(1)(intro.) 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 Reimbursement for treatment and administration of a block may not be more than the maximum for the appropriate category for the block or portion thereof 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:

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

(i) Post-suppression defoliation evaluation costs.

SECTION 15. NR 47.917(2)(am) is created to read:

NR 47.917(2)(am) Costs associated with treatments other than the state organized aerial suppression program. Such ineligible treatments include spray treatments from the ground, oiling egg masses, and use of barrier or collection bands.

SECTION 16. EFFECTIVE DATE. This rule shall take effect the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22(2)(intro.), Stats.

SECTION 17. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on June 22, 2005.

Dated at Madison, Wisconsin _____.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Scott Hassett, Secretary

(SEAL)