

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
CREATING RULES

The Wisconsin Natural Resources Board proposes an order to amend 45.09(1) and to create NR 10.275(4) and 45.09(11) relating to hunting in state parks, including department managed portions of State Ice Age Trail areas.

WM-04-08

Analysis prepared by the Department of Natural Resources

Statutes Interpreted and Explanation of Agency Authority: The department has interpreted the following statutes as establishing the state trail system, which includes State Ice Age trail areas, as part of the state park system and providing the authority to promulgate rules regarding hunting and the use of state trails: ss. 23.17(2), 23.175(2)(a), 23.293(1)(c), 27.01 and 29.089, Stats.

Statutory Authority and Explanation of Agency Authority: Statutes which establish that Ice Age trail areas are part of the state park system and which authorize the promulgation of rules that allow hunting in state parks include ss. 23.17(2), 23.175(2)(a), 23.293(1)(c), 27.01, and 29.089 Stats. These statutes specifically provide the department with authority to promulgate rules necessary to govern the conduct of state park visitors and to establish hunting seasons in state parks. These statutes also establish that Ice Age trail areas and other trails are included as part of the state park system. All rules promulgated under this authority are subject to review under ch. 227, Stats.

Related Rule or Statute: There are no state rules or statutes currently under promulgation that directly relate to the provisions that are proposed in this administrative order. 2007 ACT 20 requires the department to promulgate administrative rules that establish conditions for access to lands purchased with stewardship funding for nature-based recreation, however, state park properties are exempt from that requirement.

Plain Language Analysis: Legal interpretation describes State Ice Age trail area properties and other trails as falling under the definition of state parks. Under s. 29.089, Stats., hunting is prohibited in state parks unless authorized by rule. Because of this determination, the authority proposed in this rule is necessary in order for hunting to continue on areas where it has been an accepted activity. This proposal would let the department authorize hunting on newly purchased property, without writing individual rules, after considering factors to determine the suitability of that activity. The proposal does not require that hunting be allowed. This rule change gives the department the ability to be very responsive in allowing hunting at State Ice Age trail area properties when a determination is made to allow it.

Prior to allowing hunting, the department must consider five factors which are established in the rule. The rule establishes that hunting may occur during any season established by the department for deer, elk, turkeys or small game, or that hunting may occur only during certain deer seasons or at certain times of the year.

This rule would allow opening portions of an Ice Age Trail area property so that hunting could occur only in those areas.

At state trails which are not part of the Ice Age Trail area system, hunting would continue to be prohibited except where allowed by administrative rule.

Hunting is currently allowed at some state parks and trails by rule but, where it is not allowed, all firearms must be unloaded and enclosed in carrying case. This proposal would allow a person who is hunting on adjoining lands to cross the travelled portion of the Ice Age Trail, even if hunting is not allowed from the trail, without casing or unloading their firearm, airgun or bow.

Summary of, and Comparison with, Existing or Proposed Federal Regulations: Federal regulations allow states to manage the wildlife resources located within their boundaries provided they do not conflict with regulations established in the Federal Register. None of these rule changes violate or conflict with the provisions established in the Federal Code of Regulations.

The Ice Age trail was authorized by Congress in 1980 as a component of the National Trails System. A portion of funding for property acquisition is federal but actual property acquisition, trail planning, development and management is conducted by the department and partners. Federal statutes do not place specific restrictions on the use of Ice Age Trail properties for hunting.

Comparison with rules in adjacent states: These proposed rule changes will result in regulations and policies that are consistent with the management of recreational trails in surrounding states. All of Wisconsin's surrounding states administer recreational trail systems that are used by hikers, bicyclists, and others. In all surrounding states, partnerships exist with local governments and friends groups who may conduct actual trail maintenance. The availability of hunting opportunities varies significantly even within each state.

Michigan's state trails are generally open to hunting and trapping but certain stretches are closed to hunting, especially in or near municipalities. Michigan informs trail users that hunting may be occurring in an area by posting signs at access points. Minnesota manages an extensive state trail system where hunting is generally allowed except that firearms discharge from or across the tread-way, the portion of the trail designed for travel, is prohibited. Iowa's trail system is administered by their DNR and transportation department and consists mostly of linear corridors. Hunting and trapping are allowed along specific stretches of Iowa trails which are described on the department's website and by posting of signs at trail intersections. Illinois provides significant hunting opportunities on designated park properties where there are hiking trails. Those hunting opportunities are available only on specific portions of those properties. Some portions of Illinois trails are closed to hiking during the firearm deer season and hikers are encouraged to wear orange during the squirrel season.

Summary of Factual Data and Analytical Methodologies: The rule changes included in this order do not deviate from current department policy on the management of trails or hunting in state parks and hunting in general. Wisconsin provides more than 2,000 miles of trails that allow a variety of uses. This rule specifically addresses State Ice Age trail areas which are owned by the department and managed under the authority of "State trails" under s. 23.175, Stats., and "Ice Age trail" under s. 23.17, Stats. State trails are also state parks under 23.175(2)(a), Stats. Other types of department lands, such as wildlife or fishery areas, or Ice Age Trail area property that is operated under a lease or agreement with other individuals or units of government are not affected.

There are approximately 70 individual properties which are identified as State Ice Age trail areas. Properties range in size from one acre to 1,200 acres with an average size of approximately 80 acres. Hunting currently occurs on a number of properties but not others because of their proximity to urban development or small size. While these are primarily trail properties intended for pedestrian travel on a trail tread, many properties do contain acreage that is not part of a linear trail and which may be suitable for hunting activities.

Under this proposal, Ice Age Trail area properties would be closed to hunting unless a decision to open them is made either upon acquisition or later as part of the master planning process under Ch. NR 44. Properties which are already owned by the department and where hunting is already occurring could remain open. This rule provides greater flexibility for Ice Age Trail area properties than the department currently has at state parks, where a separate administrative rule must be promulgated each time a new hunting opportunity is created.

This proposal directs the department to consider several factors when deciding to allow hunting at an Ice Age Trail area property. These criteria are provided so that the possibility of separating users by space

can be considered. Other criteria include whether the lands are in an area where hunting is already occurring safely or if the property is located in a highly developed area. The specific criteria are:

- The primary purpose for the project.
- User incompatibility and how this incompatibility may lead to the primary purpose of the project being significantly altered or curtailed.
- The complexity, feasibility, practicality and cost effectiveness of separating activities by time and space or any other manner that might mitigate user incompatibility and or reduce the need for enforcement.
- The size, shape and location of the property as well as surrounding land uses, including the use of public lands immediately adjacent to the property which may or may not have been funded with stewardship funds. The use of adjacent lands shall not be used as the sole factor in making a determination.
- The mix of activities at the location of the property that, to the extent practicable, will provide a quality experience for all compatible users and uses.

This proposal creates several options for providing hunting opportunities where it is determined that hunting will be allowed. During the period prior to master planning for a property, one of the following options may be selected to allow hunting for deer, elk, turkeys or small game:

- Hunting is allowed during all of the seasons established in s. NR 10.01.
- Hunting is allowed during all deer hunting seasons which occur beginning on the Saturday immediately preceding the Thanksgiving holiday and continuing through the close of the late archery season.
- Archery deer hunting is allowed during the period beginning on November 1 and continuing through the remainder of the statewide archery deer season.
- Hunting for any species for which a season is open during the period beginning on November 1 and ending on March 31.

Under the proposal, hunting must be re-evaluated as part of a property master plan. The master planning process established in ch. NR 44, Wis. Admin. Code is an opportunity for more significant public involvement and professional evaluation of the management of recreational use for a property. Master plans must be approved and may be amended by the Natural Resources Board under ch. NR 44.04(3) Wis. Admin. Code. Plans are re-evaluated and may be amended. As part of the master planning process, a prohibition of hunting could be re-established, hunting could be prohibited, or it could be allowed for deer, elk, turkeys, or small game. The options for allowing hunting which may be adopted as part of a property master plan are:

- Hunting is allowed during all of the seasons established in s. NR 10.01.
- Hunting may be limited to the period beginning on November 1 and continuing through March 31 for all species for which there is an open season.
- Hunting may be limited to deer during seasons which occur beginning on the Saturday immediately preceding the Thanksgiving holiday and continuing through the close of the late archery season.
- Hunting may be limited to the use of archery gear only during all of the seasons established in s. NR 10.01 except that it may only occur during the period beginning on November 1 and continuing through March 31.
- Hunting may be limited to portions of a property by posted notice.
- Hunting may be prohibited on the travelled portion of the trail.
- Hunting may be prohibited on the travelled portion of the trail and within 50 feet of the center of the travelled portion.
- Deer Hunting may be allowed during the four day October firearm deer seasons established in s. NR10.01(3)(e) and (et).
- Turkey hunting may be allowed during the first three spring turkey hunting periods in s. NR 10.01(2)(f).

The selection of a liberal hunting season option is anticipated in situations where little or no user conflict is anticipated and there will be little need to separate property users by time. In order to preserve the primary use of Ice Age Trail Area properties, it may be necessary to separate users by providing some of the more limited hunting opportunities listed above. For example, it would be possible immediately upon purchase or after master planning to allow hunting but limit it to the firearm and archery deer hunting that occurs beginning with the traditional November firearm deer season and continuing through the close of the late archery season. Limiting hunting to only those seasons occurring during the period beginning on November 1 and continuing through March 31 is an example of an option which could be selected to prevent user conflict. Other options which could only be selected through the master planning process include allowing firearm deer hunting during the October season or limiting hunting to archery-only for all species. Allowing turkey hunting during the first three of the six spring turkey hunting periods is consistent with management of traditional state park properties. It may ultimately be possible to offer hunting opportunities on more properties by providing as many options as possible rather than forcing managers to choose between recommending all hunting or none.

This rule also provides flexibility to avoid user conflict by separating property users by space. Under the proposal, portions of individual properties could be closed to hunting upon acquisition or as part of a property's master plan. This flexibility is consistent with current practice in traditional state parks, where hunting is not allowed in areas such as campgrounds.

In places the Ice Age trail traverses other department properties that are managed as public hunting or fishing grounds or for some other purpose. This rule would not change the types of activities that are currently allowed on those properties or on a trail where it traverses that property.

It is currently illegal to possess a firearm, air gun or bow at state parks unless the gun is unloaded and enclosed in a carrying case or a person is engaged in a legal hunting activity at that park. This proposal establishes an exemption from that requirement for hunters who are crossing the Ice Age Trail even if hunting is not allowed on the trail tread where it is being crossed. This exemption is limited to the Ice Age Trail and does not apply to other state trails.

Analysis and Supporting Documents Used to Determine Effect on Small Business or in Preparation of Economic Impact Report: These rules, and the legislation which grants the department rule making authority, do not have a significant fiscal effect on the private sector or small businesses.

Effects on Small Businesses: These rules are applicable to individual sportspersons and impose no compliance or reporting requirements for small business, nor are any design or operation standards contained in the rule.

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Section 1. NR 10.275(4) is created to read:

NR 10.275(4) ICE AGE TRAIL. (a) *Purpose.* Section 23.175(2)(a) Stats., requires the department to designate department owned lands purchased for the Ice Age Trail as a state park. The State Ice Age Trail areas are managed primarily as a footpath for pedestrian use. Where s. 29.089, Stats., prohibits hunting in state parks unless the department has authorized hunting by rule, this subsection is created to establish a procedure to determine when portions of state ice age trail areas may be opened to hunting including the factors to be considered in making these determinations.

(b) *Applicability.* The provisions of this subsection apply to State Ice Age Trail areas as established in s. 23.17, Stats., when the property is owned by the department.

(c) Prior to adoption of a master plan for a State Ice Age Trail area property under ch. NR 44, the natural resources board may authorize hunting pursuant to s. 29.089(3) on a property or portion of a property by posted notice by selecting one of the options established in subd. 1. after considering the factors in subd 2.

1. *Times when hunting may be allowed.*
 - a. during all of the seasons established in s. NR 10.01.
 - b. deer hunting may be allowed during seasons which occur beginning on the Saturday immediately preceding the Thanksgiving holiday and continuing through the close of the late archery season.
 - c. deer hunting may be allowed during archery deer hunting seasons except that hunting may only occur during the period beginning on November 1.
 - d. during the period beginning on November 1 and ending on March 31 for all species that have open seasons.

2. *Factors to be considered.*
 - a. The primary purpose for the project.
 - b. User incompatibility and how this incompatibility may lead to the primary purpose of the project being significantly altered or curtailed.
 - c. The complexity, feasibility, practicality and cost effectiveness of separating activities by time and space or any other manner that might mitigate user incompatibility and/or reduce the need for enforcement.
 - d. The size, shape and location of the property as well as surrounding land uses, including the use of public lands immediately adjacent to the property which may or may not have been funded with stewardship funds. The use of adjacent lands shall not be used as the sole factor in making a determination.
 - e. The mix of activities at the location of the property that, to the extent practicable, will provide a quality experience for all compatible users and uses.

(d) Upon approval of the master planning process under ch. NR 44, the natural resources board may:

1. Close to hunting a property that was opened prior to adoption of a master plan, continue a closure that has already been established, or may authorize hunting pursuant to s. 29.089(3) on the property or a portion of the property under the seasons established in s. NR 10.01 after considering the factors in par. (c) and the impact of hunting on other users of the property.
2. Establish one or more of the following conditions for hunting on a property:
 - a. hunting may be limited to the period beginning on November 1 and continuing through March 31 for all species that have an open season.
 - b. deer hunting may be allowed during seasons which occur beginning on the Saturday immediately preceding the Thanksgiving holiday and continuing through the close of the late archery season.
 - c. hunting may be limited to the use of archery gear only during all of the seasons established in s. NR 10.01 except that it may only occur during the period beginning on November 1 and continuing through March 31.
 - d. hunting may be limited to portions of a property by posted notice.
 - e. hunting may be prohibited on the travelled portion of the trail.
 - f. hunting may be prohibited on the travelled portion of the trail and within 50 feet of the center of the travelled portion.
 - g. deer hunting may be allowed during the four day October firearm season established in s. NR10.01(3)(e) and (et).
 - h. turkey hunting may be allowed during the first three spring turkey hunting periods in s. NR 10.01(2)(f).

(e) When traversing another department property, portions of the Ice Age trail are subject to the hunting and trapping rules of that property unless otherwise posted.

Section 2. NR 45.09(1) is amended to read:

NR 45.09(1) No person may take, catch, kill, hunt, trap or pursue any wild animal or bird, or discharge any firearm, or have in possession or under control any firearm or air gun as defined in s. 939.22, Stats., unless it is unloaded and enclosed in a carrying case, or any bow, slingshot or spring-load devise designed for shooting a projectile unless the same is unstrung or enclosed in a carrying case while in any state park, fish hatchery, or within 100 yards of any state campground, picnic area or other special use area designated by the department by posted notice. No person may discharge a firearm, bow, crossbow, or airgun from, on, or across any Ice Age Trail corridor which is not open to hunting.

Section 3. NR 45.09(11) is created to read:

NR 45.09(10) Nothing in this section shall prohibit the possession of an uncased bow, cocked and unloaded cross bow, or uncased and loaded firearm or air gun for the purpose of crossing the travelled portion of the Ice Age Trail within State Ice Age Trail areas by the shortest route possible.

Section 4. Effective dates. 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 5. Board adoption. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on August 11, 2010.

Dated at Madison, Wisconsin _____.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Matthew J. Frank, Secretary

(SEAL)