

Report From Agency

REPORT TO LEGISLATURE

NR 45 and 51 Wis. Adm. Code
Relating to public use of department properties and implementation and administration of the
stewardship grant program.

Board Order No. LF-02-15
Clearinghouse Rule No. 16-001

Basis and Purpose of the Proposed Rule

Chapter NR 45 is the principal rule governing the conduct of visitors to the properties and facilities owned, acquired by easement, or leased by the Department. This chapter is reviewed and revisions are proposed on a regular basis. Proposals seek to update fee structures, provide camping guidance, and address a variety of general and specific property uses governed by rule. A few rule changes are also included to implement recent statutory changes or to improve rule clarity. Chapter 51 relates to the administration of the Stewardship grant program. The language is updated regarding the purpose of the state trail network, water trails are defined, and a state water trail is added to the list of state trails making that project eligible for funding under the Stewardship program.

The proposed rules will:

1. Amend the definition of "Bicycle" to be consistent with state law and amends the definition of "Physically disabled person" to be consistent with the definition in federal law. Definitions for "Shooting Range", "Special event" and "Water trail" are created. (Sections 1 and 2)
2. Modify a rule that allows, by posted notice, the closure of land, structures, or property for safety and/or protection of resources. The only option under current rules is to close areas for all public use, and this may restrict use more than is necessary. The rule establishes flexibility to restrict access for one or more activities in order to preserve opportunities which are not a safety hazard or in conflict with management goals. The proposal codifies that the closures are to be authorized by the department secretary or designee.

The same section also clarifies that wood collection for legally authorized campfires does not require a forest product permit and adds the Rainbow Flowage property to the list of properties where driftwood and other dead and downed wood located below the ordinary high water mark may not be removed or destroyed without written permission. (Section 3)

3. Create a mechanism to authorize and regulate "special events". This will help ensure that these events do not have significant adverse impacts to public safety, other authorized uses of the property, and/or natural resources. Property management staff have experienced an increase in requests for special events on Department properties in the past several years. (Section 4)
4. Amend the regulations on the possession of firewood by eliminating the reference to where the firewood is intended to be used. This amendment provides clarity for enforcement of this provision aimed at slowing the spread of invasive species. For clarity, "lumber" is removed from the definition of firewood because NR 45.045 (3) already specifies that dimensional lumber that is debarked, kiln dried and smoothed is exempt from the requirements regarding firewood possession. (Section 5)

5. Create provisions for the cutting and gathering of firewood for home use as authorized under a valid forest products permit. Currently no administrative rule or statute allows for enforcement of forest product permit conditions for firewood gathering. (Section 6)
6. Clarify that permit authorization for use of a motorized vehicle is restricted to individuals with a disability that impairs mobility. This section also specifies the requirements for proof of disability and provides that up to two additional people may accompany the permittee. These sections also codify that the department may establish permit requirements for motorized vehicle use by an individual with a mobility disability. Permits conditions are established to protect public safety and property resources. Codifying the provision creates an enforcement mechanism if the permit conditions are violated.

This section also authorizes the use of motor bicycles on linear state trails open to bicycles provided that the motor is not engaged, or is operating at less than 15 MPH if the electric motor is engaged. It also includes requirements establishing when motor bicycles would be permitted on other trails, or sections of trails. (Sections 7 and 8)

7. Establish that the requirements that currently apply to bicycles on designated state trails also apply to motor bicycles. The rules require stopping at stop signs and prohibit riding in a reckless manner that endangers life, property or people.

This section also clarifies the department's authority to establish ATV routes on department roads as authorized in a property's master plan. Under current rules, the department only has this authority on northern state forest lands. The revision eliminates the specific reference to northern state forests and generalizes the language to state that the department may establish ATV routes on department lands over department roads. It further reflects recent legislative direction in s. 23.116 to evaluate motorized access. (Section 9)

8. Modernize language related to hunting in state parks to reflect that hunting is now generally allowed in parks under current rules and by statute. These sections eliminate prohibitions on the possession of and requirement to enclose in a carrying case firearms, air guns, bows and crossbows on certain property types and on department lands in certain counties. These prohibitions have not been enforced since enactment of laws allowing concealed carry of weapons and elimination of statutory statewide requirements to enclose firearms and bows in a carrying case. The discharge of firearms in certain areas remains illegal under these rules but an exception is created which enables the department to issue a special use permit to facilitate hunter education, civil war reenactments, interpretive programs, and similar events.

Finally, these sections clarify that it is legal to use a firearm to kill an animal that has lawfully been trapped in a state park. Trapping has been allowed in state parks since the enactment of 2011 Act 168. (Sections 10 to 14 and 31 to 33)

9. Create general rules for department shooting ranges. Presently most shooting ranges on department lands have no codified rules, making enforcement difficult. (Section 15)
10. Add restrictions on the number of days that camping is permitted on state-owned islands on the Mississippi River, and requirements that the campsites must be occupied daily and that camping property may not be left unattended for over 24 hours. The rule is written to be consistent with island camping regulations on the Upper Mississippi National Fish and Wildlife Refuge. (Section 16)
11. Place restrictions on canceling camping reservations made at the maximum window, 11 months prior to arrival, to prevent customers from abusing the reservation system by

keeping control of their desired site by cancelling and rebooking camping site reservations until they get their desired dates.

This section also creates provisions related to equestrian campgrounds to ensure priority is given to camping parties that intend to ride an equine and use equine related amenities in the campgrounds. A campsite may be registered by a camping party not accompanied by an equine if that camping party is camping with another camping party with an equine which is being used by both camping parties. The rule also gives the property manager the authority to allow any registered camper to stay in the equestrian campground if no other family camping is available and the equestrian campground is not full. (Section 17)

12. Add Puckett's Pond, in Harington Beach state park to the list of properties that do not allow the operation of motorboats. This rule is consistent with other urban fishing locations. (Section 18)
13. Remove Robinson Creek Pond, in the Black River state forest, Jackson County from the list of properties where all boats are prohibited. Boats were restricted from Robinson Creek Pond use due to its popularity as a designated swimming beach. Due to years of declining use, the beach was undesignated for swimming in 2010. The pond represents a good location for beginning kayakers and canoeists. (Section 19)
14. Amend the description of one of the state forest vehicle admission fee areas within the Black River state forest from East Fork horse campgrounds to East Fork group camp to reflect the change in use of that site following plan amendments which have been adopted.

This section also amends two state forest vehicle admission areas within the Northern Highland state forest to eliminate fee collection at the beach and picnic areas at Clear Lake and Sandy Beach campgrounds. These changes will reduce administrative costs and will not result in a change to administrative or management practices. (Section 20)

15. Require vehicle admission stickers in four new areas. The Dells of the Wisconsin River state natural area – Cambrian Overlook is being proposed as a vehicle admission sticker location because it is a heavily used, park-like setting requiring regular maintenance and staffing.
Straight Lake state park and Menominee River state park and recreation area are new properties administered by the state park program and are being added consistent with other state park and recreation area properties.

The Glacial Drumlin state trail – Sandhill Station's property designation was changed from a wildlife area to a state park property and, consistent with other state park properties, a vehicle admission sticker is required. (Section 21)

16. Increase the fee to use the swimming pool at Blue Mounds State Park in Dane and Iowa counties from \$2 to \$3 for adults and from \$1 to \$2 for children 2-12 years of age. The proposal creates a season pass to the pool which would be \$45 for adults and \$30 for children. (Section 22)
17. Adjust the fees for certain enclosed shelters to better reflect market conditions and the level of amenities. The fee for the enclosed shelters on the northern state forests is reduced from \$70 to \$40 for non-electric and from \$80 to \$45 for electric. The shelters are currently underutilized.

This section also increases the rate for the use of a dump station by non-registered campers from \$3.00 to \$10.00. (Section 23)

18. Establish that the department may collect a base fee and receive compensation for anticipated costs of a special event and identifies criteria that may be used to assess fees. (Section 24)
19. Repeal two prohibitions on the consumption or possession of alcohol. Big Foot Beach state park is one of the few parks where this prohibition exists. The prohibition is no longer necessary for governing the conduct of visitors at this park. Due to a recent statutory change, alcohol is now permitted on the golf course and clubhouse at Peninsula state park. (Section 25)
20. Update a provision related to the operation of powered ice augers at Straight Lake state park to reference combustion engine powered rather than gas powered ice augers. This addresses the use of propane augers which are becoming more popular. The prohibition on power augers is contained within the property's master plan. (Section 26)
21. Repeal the rules for the shooting range at Yellowstone Lake wildlife area. These rules are no longer needed because of the general shooting range rules included in this administrative rule package. (Section 27)
22. Require that unopened or empty beverage containers and litter be secured in a container fastened to watercraft that is launched or removed from designated launching sites on the Flambeau River state forest. This is similar to provisions on the Brule River within the Brule River state forest. (Sections 28 and 29)
23. Repeal shooting range rules which are specific to the McMiller Sports Center in the southern unit Kettle Moraine state forest as this rule package contains general rule provisions for all shooting ranges on department owned or managed properties. (Section 30)
24. Establish the ability to close areas within Kohler Andre state park in Sheboygan County to swimming and scuba diving. This rule is needed to ensure visitor safety and prevent disturbance to park visitors who want to fish in the urban fishing pond.

This section allows the department to prohibit swimming and scuba diving in Quarry Lake and Puckett's Pond within Harrington Beach state park. This rule is needed to prevent user conflicts on these small ponds and because the steep, rocky conditions are not conducive for safe entrance and egress to the water.

Finally, this section establishes that jumping or diving into the waterway contrary to posted notice along the Red Cedar trail is prohibited. Codifying this allows for enforcement authority and will help to deter this unsafe activity. (Section 34)
25. Update the language regarding the state trail system to be consistent the state statute regarding who the state trail system serves. The language eliminates the perception that use of trails on department lands is limited to equine and bike riders, cross-country skiers and hikers. (Section 35)
26. Create a definition for water trails. This provides structure for the new state water trail program approved by the Natural Resources Board. (Section 36)
27. Consolidate the list of state trails so that it includes the Ice Age trail. The Ice Age trail was listed separately in s. 51.73(2), Stats. (Section 37)
28. Codify the Lake Michigan Water Trail, the first designated state water trail, as part of the state trail system. (Section 38)

Summary of Public Comments

November 1 hearing on the modified rule:

One attendee was primarily interested in firearms related aspects of the rule. The individual expressed support for the modified shooting range rules, sharing that a simpler list is an easier list to learn and follow. The attendee was also supportive of making administrative rules consistent with statutes governing the possession of firearms.

Four attendees expressed concerns related to the process for reserving campsites. They were supportive of the proposed modifications which would even the playing field by preventing a technique used by certain customers in which they cancel and rebook their preferred campsite in order to keep control of the site until they are able to book their preferred dates.

One attendee testified primarily for informational purposes only.

February 1 hearing and comment period:

Approximately 40 individuals and stakeholder groups submitted comments. The majority of the comments were specific to the provision that authorizes the use of motor bicycles on trails open to bicycles, under specified conditions. Many of those commenters expressed concern that the draft rule language did not adequately consider that motor bicycles would not be suitable on all trail types where bicycles are permitted. Many of these comments were in response to an Action Alert sent out by the International Mountain Bicycle Association (IMBA). There was one comment from a disabled individual that has difficulty riding a standard bicycle and owns a motor bicycle in support of the rule as well as two commenters that did not support the rule. Two individuals asked that the proposed allowed speed for electric motor bicycles in the code be increased. There was also some interest in the development of more elaborate rules similar to what some other states including California have enacted.

In response to the comments received, the motor bicycle rule language and corresponding plain language analysis has been modified so it is clear that the primary focus of authorization for motor bicycles is for those trails that are part of the state trail system, listed in NR51. These trails are typically former railroad grades that are wide, relatively level and are typically surfaced with compacted stone or paved. The code also allows for considering motor bicycles on other trails, open to bicycles, if that use is authorized in the property's master plan. The proposed 15 mph speed limit for electric motor bicycles was the subject of, or included in some of the comments. Although a few individuals expressed interest in a faster allowable speed since many e-bicycles are capable of greater speeds, we also heard concerns about potential use conflicts between bicyclists and the motor bicyclists related to speed. In consideration of the primary purpose of the department's trails being that of recreation, and because of concerns about potential conflicts with bicyclists and other recreationists including walkers, the 15 mph speed limit has been retained. In response to the comments related to inclusion of a classification system for motorized bicycles such as exists in California, it is the department's opinion that would be most appropriately undertaken at the statutory level, and that would likely fall under the purview of the Wisconsin Department of Transportation.

There were a few comments expressing concern about the provision related to establishing ATV routes on department roads. The wording of the plain language analysis made it appear that this rule change would broaden the department's authority to establish ATV routes. The wording of the plain language analysis was revised to clarify that the department currently has the authority to consider establishment of ATV routes on roads on all department properties and not just the northern state forests. The rule proposal being advanced remains unchanged and could be viewed as a clarification of existing authority.

There were two comments expressing concern about the proposed change which removed state parks from the general prohibition in NR 45.09(1) which restricts hunting, trapping, and possession of firearms and other specified devices in the areas listed. One of the comments was from the Friends of Wisconsin State Parks which stated its continued opposition to hunting and

trapping on state parks and trails. The other was from a cross country skier concerned about the expansion of hunting limiting opportunities for skiing. No change was made in response to these comments as removing state parks from the general exception was a technical clean-up in response to a change in statute which allows for expanded hunting in State Parks.

We received one or two comments supporting each of the following: the establishment of rules for special event permits, the proposed change to the camping reservation system, changes to the equestrian campground rules, and updates to the purpose statement of the state trail system.

A question was asked during the comment period about whether there could be potential negative impacts to hunting associated with the new state water trail designation. The answer is no. In order for the department to restrict or close an area to hunting that is otherwise authorized, the land (and waters) would have to be directly under the department's authority and within an established project boundary. The designation does not create a project and therefore does not impact hunting or other activities or uses.

Comments received that were not within the scope of the rule or were not within the department's rule authority, have not been included in this summary.

Modifications Following Hearings and Response to Legislative Council Rules Clearinghouse Report

All comments the department received from the Legislative Council Clearinghouse (LCC) were incorporated after the first hearing in February and before the second hearing held in November, 2016. In addition to modifications in response to public comments, described in the section above, the Department also made a few additional clarifications and corrections within the plain language analysis sections and the code. All substantive changes are explained in this section.

Possession of firearms on various types of department lands

Following the first hearing in February, these rules have been modified to eliminate prohibitions on the possession, and requirement to enclose in a carrying case, firearms, air guns, bows and crossbows on certain property types and on department lands in certain counties. These prohibitions have not been enforced since enactment of laws allowing concealed carry of weapons and elimination of statutory statewide requirements to enclose firearms and bows in a carrying case. The approach is to simply eliminate the historical prohibitions. Actually discharging firearms in these areas would continue to be prohibited in much the same way that municipal ordinances typically regulate firearms in certain places for safety related purposes. This language was a subject for consideration at the November hearing on these rules.

Shooting range rules

The proposal creates general rules for department shooting ranges. Following the first hearing in February, the regulatory approach is scaled back to 16 provisions instead of 28 in the initial proposal. Presently most shooting ranges on department lands have no codified rules. The revised list of regulations is found on page 13 in Section 15 of the board order which is part of this rule package. This language was a subject for consideration at the November hearing on these rules.

Blue Mounds State Park pool

A provision of this rule would increase the fee to use the swimming pool at Blue Mounds State Park in Dane and Iowa counties from \$2 to \$3 for adults and from \$1 to \$2 for children 2-12 years of age. The proposal creates a season pass to the pool which would be \$45 for adults and \$30 for children. The new fee will be slightly lower than the fee for other facilities in the area. The department made a significant investment and renovations to the facility in 2015. This language was a subject for consideration at the November hearing on these rules.

Property closures

Related to implementing closure of certain areas on department lands, the language “carry out department management objectives” was added to the list of potential reasons to close a location to public access. The intent of the rule revision is to allow for partial closures when it is not necessary to close an area or property to all activities or use. The potential reasons that the department may have for closing an area have not changed, and this language helps clarify that intent. This language was a subject for consideration at the November hearing on these rules.

Personal mobility assistance devices

A provision is relaxed compared to the first hearing. Initially, the rule would have prohibited people from riding with a person who holds a permit to use a personal mobility assistance device on department lands except for the sole purpose of assisting the permit holder. As modified, people are allowed to ride with a permit holder for the primary purpose of being an assistant - the assistant is not prohibited from participating in an activity such as fishing or hunting with the permit holder. This language was developed with the advice of the Disabled Advisory Council. This language was a subject for consideration at the November hearing on these rules.

Informational note

Related to areas which are closed to hunting and trapping within state parks, an informational note was added which directs individuals to the appropriate property maps on the DNR website. This language was a subject for consideration at the November hearing on these rules.

Changes to Rule Analysis and Fiscal Estimate

The rule analysis and fiscal estimate were modified to reflect the changes described in the section above related to modifications following hearings and response to Legislative Council Rules Clearinghouse Report.

The department has determined that these rules will have no significant economic impact locally or statewide. Notice soliciting comments on potential economic impacts of the rule were posted on the DNR website and on the Administrative Rules Website on November 25, 2015. No comments were received.

Final Regulatory Flexibility Analysis

These rules and the legislation which grants the department rulemaking authority do not have a significant fiscal effect on the private sector or small businesses. These rules are applicable to individual users and groups of individuals using department properties and impose no compliance or reporting requirements for small business, nor are there any design or operational standards contained in the rule. Therefore, under s. 227.19(3m)Stats., a final regulatory flexibility analysis is not required.

Response to Small Business Regulatory Review Board Report

The Small Business Regulatory Review Board did not prepare a report on this rule proposal.