

Report From Agency

REPORT TO LEGISLATURE
NR 45, Wis. Adm. Code

Board Order No. LF-05-10
Clearinghouse Rule No. CR10-042

Basis and Purpose of the Proposed Rule

Ch. NR 45 contains the Administrative Rules for the use of Department properties and applies to lands and facilities that are owned, acquired by easement, or leased by the Department. Every two years, Department staff review NR 45 and suggest revisions to ensure health and safety, protect natural resources, clarify existing regulations, and adjust fees.

Changes are being proposed to clarify, simplify or improve existing rules. A number of changes are proposed to improve visitor safety and resource protection. Some of these proposals would apply to all Department properties, and others are specific to individual properties where specific safety or other concerns have been identified. Increases are proposed in certain camping and other user fees for state parks and forests.

Summary of the Proposed Rule:

Proposals that would affect existing policy

The proposal allows removal of invasive plant species from state property without a permit designed to assist the Department in efforts to control the spread of these species and foster biodiversity.

Clarification that the collection of fruits and other edible plants is permitted for personal rather than commercial purposes is designed to avoid over-collection and resource depletion while still allowing individuals to pick plants such as berries, fruits, asparagus and mushrooms for personal consumption.

Under the current code, picking edible plants on state natural areas is generally prohibited. The proposed code change would also eliminate the prohibition on collecting edible fruits, nuts, mushrooms, and other specified edible plants from state natural areas for consistency among Department properties.

Prohibiting the collection of driftwood and other dead and down wood located below the ordinary high water mark for campfire usage on the Northern flowages is designed to retain wood on the beds of water bodies to protect habitat and natural scenic beauty.

The provision to limit camping numbers on the group campsites on the Turtle-Flambeau Scenic Waters Area will help protect the natural features of the sites and is consistent with the existing limits on other northern flowage properties.

The slow-no-wake proposal on the "narrows" of the Dells of the Wisconsin River State Natural Area is needed to protect public safety and provide consistency with the property's master plan. Since this area is part of a state natural area, authority for the creation of the slow-no-wake area comes from s. 23.28(3), Stats., which authorizes the state to control uses in designated state natural areas.

The proposal to prohibit the launching and removal of motorized watercraft at certain designated launch sites within Department properties is intended as a tool for implementing the property's master plan when the plan has determined that motorized watercraft are not consistent with the use of the area, and the ecological characteristics of the water body. Typically these water bodies are classified as wilderness or wild lakes during the planning process. Depending on the characteristics of the water body and surrounding area, the master plan may limit the prohibition to gasoline motors and still allow the

launching/removal of boats with electric motors. Nothing in this rule would prohibit the launching or removal of motor boats from non-Department owned landings.

A rule is being proposed which would allow the Department to designate roads within Northern state forest properties as ATV routes when the use is authorized in the property master plan. This would modify an existing established use on the Flambeau River State Forest, and establish future authority on other northern state forests if the route is established as part of the property master plan.

Park rangers currently can evict problem visitors or campers from their "individual property". As a result, evicted violators often leave one park only to enter or register to camp at another state park or forest and create law enforcement problems at that property. The amended code provision would state that person(s) that is evicted may not return to the property or any other state park, forest or recreation area for 48 hours or for the period of their camping permit, whichever is longer. This would stop the problem of just moving one problem group of day users or campers from one state property to another.

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. The Glacial Drumlin State Trail is considered to be part of the state park system under s. 23.175(2)(a), Stats. Where the trail is within or adjacent to lands that are part of the Lake Mills Wildlife Area, Jefferson County, this rule would allow a person to cross, but not hunt from, the Glacial Drumlin State Trail without having to unload or enclose their firearm, air gun, cross bow or bow in a carrying case. Allowing this practice will be a convenience to people who are engaged in legal hunting activities on either side of this trail and who want to cross.

Closed hours are being proposed for the recently acquired Gibraltar Rock State Natural Area due to a history of off-hours public use and injuries/deaths by falling from the sheer cliffs prior to state ownership.

Fee proposals

Changes to state park and forest camping fees and fee structure- There is a proposal to categorize all state forest campgrounds as Type "A" campgrounds to align more closely with state park camping fees for forest campgrounds with similar amenities to those provided within the park system. This will allow for an increase in fees per s. 27.01(10), Stats. There are also proposals to add Rock Island State Park and five high use campgrounds with greater amenities within the Northern Highland American Legion State Forest and Black River State Forest into the high demand category resulting in an additional \$3.00 per campsite per night charge.

There is also a proposal to repeal the specified rates for renting entire campgrounds at Devil's Lake State Park and utilize the fee authority in s. 27.01(10), Stats. This provision was originally promulgated to provide a reduced rate to a specific user group. The group continues to use the campground once per year but the use has expanded considerably and the nature of the event has changed. Eliminating the existing NR 45 language will provide more flexibility to the Department so that fees charged can vary depending upon the number of campsites and accommodations required by this group and give the Department the ability to rent out any remaining sites not used by the group. The Department will likely be able to better accommodate specific needs of the group by utilizing a special events/use license which would contain specific details on the concessions and amenities that the group requires.

It is likely that any resulting increase in fees will be able to be absorbed by the group as the fees paid in a given year will be tied to occupancy levels and accommodations needed.

Other proposed fee increases:

A code revision is being proposed to increase the commercial use permit fee from \$30.00 to \$50.00.

Also being proposed is a fee structure for use of the new outdoor group camp at Council Grounds State Park and an increase in fees for use of the indoor group camp at Wyalusing State Park.

A fee structure for boat moorage and special events at the newly established Lakeshore State Park is also included in this rule revision proposal.

Fees are also being proposed for special event permits and boat moorage at Lakeshore State Park.

Other miscellaneous changes

Create rules for Straight Lake State Park required for implementing provisions of the recently adopted master plan including a ban on glass containers, prohibition of motorboats on Straight Lake and Rainbow Lake, and a prohibition on gasoline powered ice augers on the property
Add the Coulee Experimental Forest to the definition of northern forest properties per NR 45.03(15) and amend a rule to prohibit fires on the Coulee Experimental Forest.

Modify the existing practice of requiring a vehicle admission sticker at Parfrey's Glen State Natural Area.

Eliminate code language relating to fee waivers for state park admission for holders of the National Park Service pass program. Waivers would be given utilizing general statutory authority and guidance found in internal policy documents

Modify the current rules posted at Yellowstone Lake Wildlife Area's shooting range.
Create rules governing marina operation and boat mooring at Lakeshore State Park

Prohibit target shooting within the Thornapple River Sturgeon Spawning property in Rusk County for public safety.

Amend a rule governing use of Parfrey's Glen State Natural Area to allow people to explore beyond the end of the designated trail to address the loss of an established trail due to flooding.

Add a technical correction to clarify that concessions or special events are covered by contractual agreements rather than commercial use permits.

Update the list of fee areas on the state forests (adding some, and deleting others).

Allow camping on sandbars on the Lower Chippewa River within a specified geographic area, require that camping be accessible by water only, and create length of stay restrictions.

Modify the existing rules for operating the marina at Lakeshore State Park

Summary of Public Comments

At the March 2010 meeting, the Natural Resources Board gave approval to hold public hearings on this rule package related to the use of Department properties. The Department held the public hearings in May in Madison and Woodruff. Comments were also solicited utilizing the Department's internet site, pertinent "Gov delivery" distribution lists, and through the Administrative Rules web site system.

Camping fee increase proposals and the slow-no-wake proposal on the Wisconsin River received media coverage.

The two public hearings were very lightly attended with seven people registering at the Madison hearing, and two in Woodruff. Fifteen additional comments were received on the rule package.

Based on the number of comments, the slow-no-wake proposal is the issue of greatest public interest. This summary includes comments on the proposed rule as well as those in response to the recent adoption of the emergency rule. Support for the slow-no-wake zone included correspondence from City of Wisconsin Dells Mayor Eric Helland, the Juneau County Sheriffs Office Boat Patrol Program, an Adams County Supervisor, from the "Stewards of the Dells of the Wisconsin River," which contained multiple signatures in support of the slow-no-wake proposal as well as an oral statement. Three other individuals sent letters of support. Two individuals sent letters opposing the creation of the slow-no-wake zone. One of the individuals expressed preference for a speed limit instead and the other expressed concern stating

that a slow-no-wake zone would be dangerous during storm conditions.

Nine comments were received at the emergency rule hearing for the slow-no-wake area in Wisconsin Dells on June 22, with six individuals in support, and three with concerns that were satisfied.

The proposed rule pertaining to the slow no wake provision on the Wisconsin River has been changed from 3,100 feet to 3,700 feet and the GPS coordinates have been adjusted based on more accurate mapping data. The proposed permanent rule language, and the distance and the coordinates of the slow-no-wake area are consistent with the emergency rule currently in effect.

A total of six comments were received in response to the proposed camping fee increases. Three individuals supported the increase; three were opposed. One commenter expressed support for a fee differential and preferential reservation for in-state residents. Non-resident differential was not proposed in the hearing draft or discussed at hearings and is a matter beyond the scope of this rulemaking. One of the comments against the fee increase was specific to the increased fee for Rock Island State Park; however, due to the remote location of the park and the need to ship in all materials and staff by boat, this is the most expensive state park to operate. The selective increases in this rule proposal make fees more equitable as well as helping to avoid more general fee increases affecting a larger number of users. The fact that so few comments were received on a fee increase for such a popular recreational pursuit may be an indication that there is recognition that users need to contribute as necessary to help offset costs and that camping in state parks and forests still represent a relatively affordable recreation experience.

As a result, the department continues to recommend the selective fee increases as proposed.

A few comments were also received in support of the provision which would allow picking of invasive plants without a permit. One individual spoke at the Madison hearing in favor of the proposed rules for the shooting range at the Yellowstone Lake Wildlife Area, and three others registered in support of the range rules.

A sentence in the proposed rule designed to prevent driftwood collection on northern flowage properties was revised based on a suggestion received during the public comment period. This wording change provides clarity regarding collection of firewood for campfires from upland areas.

Modifications Made

The Department evaluated all comments. Only one change was made to the rule package based on public comment and this was a minor wording change related to campfire wood collection (Section 8.). The only other changes made to the proposed rule after approval to hold public hearings, were changes to the slow-no-wake provision. These changes involved a change in distance of the area covered from 3,100 feet to 3,700 feet and the corresponding adjustments to the GPS coordinates. This was based on more accurate data from computer based mapping. These changes are consistent with the language promulgated in the emergency rule which is now in effect.

Appearances at the Public Hearings

DNR Central Office, Madison, WI May 17,2010. Seven people attended

In Support:

Bill Federbusch, Red Wing, MN

Mike Gould, Darlington, WI

As interest may appear:

James Kinder, Wisconsin Dells, WI

Colin Sweeney, Madison, WI

Dave Breunig, Darlington, WI

Barry King, Darlington, WI

Brenda Syvrud, Blanchardville, WI

Woodruff Town Hall, Woodruff, WI May 18, 2010. Two people attended

In Opposition to fee increases only:

Ed Fuhrman, Hazelhurst, WI

Jan Fuhrman, Hazelhurst, WI

Changes to Rule Analysis and Fiscal Estimate

No changes were made to the rule analysis or fiscal estimate as a result of the public hearing process.

Response to Legislative Council Rules Clearinghouse Report

All required technical changes have been made.

Final Regulatory Flexibility Analysis

This is a Type III action under Chapter 150, Wis. Adm. Code, and neither an environmental impact statement nor an environmental assessment is required.