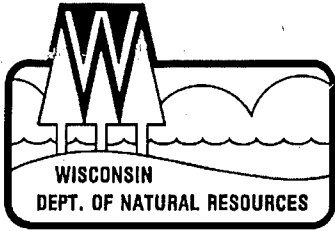


CR 93-75



George E. Meyer
Secretary

State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

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STATE OF WISCONSIN)
)
DEPARTMENT OF NATURAL RESOURCES) ss

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, George E. Meyer, Secretary of the Department of Natural Resources and custodian of the official records of said Department, do hereby certify that the annexed copy of Natural Resources Board Order No. CA-45-92 was duly approved and adopted by this Department on June 24, 1993. I further certify that said copy has been compared by me with the original on file in this Department and that the same is a true copy thereof, and of the whole of such original.



IN TESTIMONY WHEREOF, I have here-
unto set my hand and affixed the
official seal of the Department at
the Natural Resources Building in
the City of Madison, this 15th
day of September, 1993.

George E. Meyer
George E. Meyer, Secretary

(SEAL)

12-1-93



ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
CREATING RULES

IN THE MATTER of creating s. NR 50.21 of the
Wisconsin Administrative Code pertaining to the
national recreational trails program.

CA-45-92

Analysis Prepared by Department of Natural Resources

Statutory authority: s. 23.30(3)(a) and 227.11(2)(a), Stats.
Statutes interpreted: 16 USC ss. 1261, 1262 and 26 USC ss. 9503(6), 9511 and
ss. 15.347(16), 16.54(4) and 560.86(9), Stats.

Chapter NR 50 provides rules for the administration of a number of recreational grant programs. Section NR 50.21 will provide provisions that allow the implementation of the National Recreation Trails Program in Wisconsin.

The rule provides that eligible sponsors include towns, villages, cities, counties, tribal governments, school districts, state and federal agencies, and incorporated organizations. The Governor has designated the department of natural resources as the administering agency for the program. For the purposes of the Symms National Recreational Trails Program, state agencies other than the department are considered as potential grant sponsors.

The National Recreational Trails Act specifies that the state may use 7% of the funds available to the state for administration and 5% for the operation of environmental protection and education programs relating to the use of trails. Further the act specifies that 30% of the balance shall be used for motorized trails, 30% for non-motorized trails and 40% for trails that provide for the greatest number of compatible trail uses or that provide for innovative trail corridor sharing.

The proposed rule further divides the distribution of funds between grants to eligible sponsors and use by the department for trail construction and maintenance purposes. For the motorized portion, 80% is proposed for grants and 20% for direct department use; for the non-motorized portion, the distribution between grants and the department is the same as for the motorized portion. For the remaining 40% portion, 50% is directed to grants and 50% for department use. The proposed rule also provides for a procedure to utilize funds for either grants or department use at a given point in time.

The proposed rule also contains standard grant provisions, including a variance provision for requirements that are not elements of the federal statutes. The rule also lists eligible and ineligible projects and specifies the factors upon which project priority will be established. The rule also clarifies the role of the state trails council in administering the program.

SECTION 1. NR 50.21 is created to read:

NR 50.21 NATIONAL RECREATIONAL TRAILS PROGRAM. (1) PURPOSE. The purpose of this section is to establish standards for the administration of the Symms national recreational trails fund act of 1991, 16 USC ss. 1261, 1262 and 26 USC ss. 9503(6), 9511.

(2) APPLICABILITY. The provisions of this section are applicable to all towns, villages, cities, counties, tribal governing bodies, school districts, state agencies, federal agencies and incorporated organizations participating in the national recreational trails program.

(3) DEFINITIONS. As used in this section:

(a) "Applicant" means a town, village, city, county, tribal governing body as defined in s. 580.86(9), Stats., school district, state agency, federal agency or incorporated organization applying for a grant.

(b) "Incorporated organization" means an organization incorporated pursuant to s. 181.32, Stats., whose primary purpose is promoting, encouraging or engaging in outdoor recreational trail activities.

(c) "National recreational trails program" means the program created under 16 USC ss. 1621, 1262 and 26 USC ss. 9503(6) and 9511 with funds appropriated under ss. 20.370(1)(ky), 20.370(4)(bx) and 20.370(4)(im), Stats.

(d) "Recreational trail" means a thoroughfare or track across land or snow used for recreational purposes such as bicycling, cross country skiing, day hiking, equestrian activities, jogging or similar fitness activities, trail biking, overnight and long distance backpacking, snowmobiling, aquatic or water activity, and vehicular travel by motorcycle, 4-wheel drive or all-terrain off-road vehicles.

(e) "Sponsor" means a town, village, city, county, tribal government, school district, state agency, federal agency or incorporated organization receiving assistance.

(f) "State trails council" means the 9 member council created under s. 15.347(16), Stats.

(4) ALLOCATION OF FUNDS. (a) National recreational trails program funds allocated to Wisconsin each fiscal year shall be divided as follows:

1. An amount not exceeding 7% of the amount received by the state to the department for the costs of administering the national recreational trails program.

2. An amount not to exceed 5% of the amount received by the state to the department for the operation of environmental protection and education programs relating to the use of recreational trails.

3. After the reductions of subs. 1. and 2., the amount received by the state shall be allocated by the department in the following manner:

a. At least 30% shall be reserved for uses relating to motorized trail recreation. Of this amount, 80% shall be used for grants to applicants under sub. (3)(c) and 20% shall be used by the department for trail purposes. Funds not encumbered before the first day of the 4th quarter of the state fiscal year may be used for either grants or use by the department for motorized trail purposes.

b. At least 30% shall be reserved for uses relating to non-motorized trail recreation. Of this amount, 80% shall be used for grants to applicants under sub. (3)(c) and 20% shall be used by the department for trail purposes. Funds not encumbered before the first day of the 4th quarter of the state fiscal year may be used for either grants or use by the department for non-motorized trail purposes.

c. Not less than 40% for uses that provide for the greatest number of compatible recreational trail uses or that provide for innovative recreational trail corridor sharing to accommodate motorized and non-motorized recreational trail use. Of this amount, 50% shall be used for grants to applicants under sub. (3)(c) and 50% shall be used by the department for trail purposes. Funds not encumbered before the first day of the 4th quarter of the state fiscal year may be used for either grants or use by the department for diversified trail purposes.

(b) Funds allocated to the state but not encumbered in projects shall remain allocated to the state during subsequent state fiscal years. These funds shall remain allocated under the respective motorized, non-motorized and diversified categories.

(5) GENERAL PROVISIONS. Unless otherwise noted, the general conditions of s. NR 50.05 also apply:

(a) Eligible applicants may receive a state grant for up to 100% of the total project costs of a recreational trail project.

(b) Any use of national recreational trail program funds for trails on private lands shall be accompanied by a written easement or other legally binding agreement that ensures public access to the trail improvements.

(c) When a corridor to be developed is obtained through an easement or subject to other legally binding agreement, the degree of control over the corridor by the sponsor and the period of time that the written easement or legally binding agreement continues shall be factors in determining the amount of national recreational trails program funds to be granted to the project.

(d) National recreational trails program funds are to be used on trails and trail related projects which have been identified in or which further a specific goal of a trail plan included or referenced in a statewide comprehensive outdoor recreation plan required by LAWCON.

(e) Cost overruns beyond the original grant award may be allowed for good cause. Awarding of cost overruns shall be contingent upon funds available and review by department staff.

(f) Acquisition of real property shall be in accordance with state and federal guidelines for preparation of appraisals and relocation assistance.

Note: Guidelines for the preparation of appraisals are available from the Bureau of Community Assistance, Department of Natural Resources, Box 7921, Madison, WI, 53707. Guidelines for relocation assistance is available from the Relocation Services Unit, Equal Rights Division, Department of Labor, Industry and Human Relations, Box 8928, Madison, WI, 53707.

(g) Administrative costs of acquiring lands or land rights including the cost of appraisal, relocation payments, title insurance and recording fees are not eligible costs for reimbursement.

(h) A grant may not be made to share costs for land acquisition, planning or engineering costs incurred prior to approval of a grant application.

(i) Title to lands or rights in land acquired under this section shall vest in the sponsor, but the lands purchased may not be converted to uses inconsistent with this section without the prior approval of the department. Proceeds from the sale or other disposal of the lands shall be used to promote the objectives of this section.

(j) Project agreements with incorporated organizations for the acquisition of land shall incorporate a special condition that should the sponsoring incorporated organization be dissolved, the title to property acquired with national recreational trails program funds shall revert to the department.

(k) Actual fringe benefits paid as part of the direct labor costs claimed are eligible expenses for all governmental sponsors.

(l) Claims for payment shall be submitted by the sponsor within 6 months of the project termination date.

(m) Claims for payment shall be paid on a cost reimbursement basis.

(n) Trail grooming rates shall be established by the department. These rates will reflect the operating costs of tractor units and attached grooming devices.

(o) Rates for equipment used for maintenance, rehabilitation or development activities performed by a sponsor may not exceed the county machinery agreement rate established annually with each county by the state department of transportation. All hand tools necessary to carry out a project are the responsibility of the sponsor.

Note: Copies of the county machinery agreements are available from the county highway departments.

(p) The department may approve a variance from the requirements of this section that are not elements of the federal statutes, 16 USC ss. 1261, 1262, upon request of a sponsor when the department determines that the variance is essential to effect necessary grant actions or program objectives, and where special circumstances make the variance in the best interest of the program. Before granting a variance, the department shall take into account factors such as good cause and circumstances beyond the control of the sponsor.

Note: The following provisions of the rule are elements of the federal statutes: ss. NR 50.21(2); (3)(i); (4)(a)1 and 2; (5)(b) to (d), (g), (q); (6); and (7). The remaining provisions are not elements of the federal statutes.

(6) ELIGIBLE PROJECTS. Projects eligible for funding under this section include:

- (a) Development of urban trail linkages near homes and workplaces;
- (b) Maintenance of existing recreational trails, including the grooming and maintenance of trails across snow;
- (c) Restoration of areas damaged by use of recreational trails;
- (d) Development of trailside and trail head facilities;
- (e) Provision of features which facilitate the access and use of trails by persons with disabilities.
- (f) Acquisition of easements for trails, or for trail corridors identified in a state trail plan;

(g) Acquisition of fee simple title to property from a willing seller when the objective of the acquisition cannot be accomplished by acquisition of an easement or by other means;

(h) Construction of new trails on state, county, municipal or private lands where a recreational need for this construction is shown;

(i) Construction of new trails crossing federal lands only where necessary and required by the state comprehensive outdoor recreation plan, approved by the department and the administering federal agency or agencies charged with administering all impacted lands and consistent with applicable federal land management plans and policies.

(7) INELIGIBLE PROJECTS. National recreational trails program funds may not be used for the following:

(a) Condemnation of any kind of interest in property;

(b) Construction of any motorized trail on national forest lands unless the lands have been allocated for uses other than wilderness by a forest land and resource management plan approved by the U. S. forest service or have been released to uses other than wilderness by an act of congress and the construction is consistent with management direction in the national forest land and resource management plan.

(c) Upgrading, expanding or otherwise facilitating motorized use or access to trails predominately used by non-motorized trail users, and as of May 1, 1991 motorized use is either prohibited or has not occurred.

(d) As otherwise noted in 16 USC s. 1261(e)(2).

(8) PRIORITIES. The department shall establish a project priority list based on the following factors to select projects for financial assistance:

(a) For motorized projects;

1. The type of trail project is given preference in the following ranked order: trail rehabilitation project, trail maintenance project, trail development project and trail acquisition project.

2. The trail sponsor has or can demonstrate the ability to carry out a trail project.

3. The trail project will promote safe trail use.

4. The degree to which the trail project will utilize volunteer or non-traditional labor and donations of materials and equipment.

5. The trail provides for more than one motorized activity.

6. The trail provides for year around trail use.

7. The trail links with other trails to form a trail system or leads to a trail system.

8. The trail project is located on land where control of the trail corridor is long term.

(b) For non-motorized projects;

1. The type of trail project is given preference in the following ranked order: trail rehabilitation project, trail maintenance project, trail development project and trail acquisition project.

2. The trail sponsor has or can demonstrate the ability to carry out a trail project.

3. The trail project will promote safe trail use.

4. The degree to which the trail project will utilize volunteer or non-traditional labor and donations of materials and equipment.

5. The trail project is located close to high population areas.

(c) For multiple or compatible use projects;

1. The type of trail project is given preference in the following ranked order: trail rehabilitation project, trail maintenance project, trail development project and trail acquisition project.

2. The trail project will promote safe trail use.

3. The degree to which the trail project will utilize volunteer or non-traditional labor and donations of materials and equipment.

4. The trail project will provide for the greatest number of compatible trail uses.

5. The trail project will provide for the greatest number of other outdoor recreational uses in addition to trail use.

6. The trail project will resolve conflict between historically conflicting trail uses.

7. The trail project will provide for innovative recreational trail corridor sharing to accommodate motorized and non-motorized trail use.

8. The trail project is located close to high population areas.

(9) APPLICATIONS AND GRANT AWARD PROCEDURES. (a) Applicants for national recreational trails program funds shall submit applications on the prescribed department form to the appropriate district office by May 1 of each year.

Note: Application forms and instructions are available from department district offices.

(b) The department shall evaluate completed applications to determine which applicants will receive grants according to priorities in sub. (8).

(c) Successful applicants shall be notified by the department and sent a project agreement. Development or maintenance work under the project agreement may not proceed until the agreement is signed by the department and the applicant.

(10) ROLE OF STATE TRAILS COUNCIL. The state trails council shall provide guidance on the administration of the national recreational trails program and rules to implement the program.

The foregoing rule was approved and adopted by the State of Wisconsin Natural Resources Board on June 24, 1993.

The 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.

Dated at Madison, Wisconsin September 15, 1993

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By George E. Meyer
George E. Meyer, Secretary

(SEAL)

