

EmR1319

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

WM-22-13(E)

The Wisconsin Natural Resources Board proposes an emergency order to amend Ch.'s NR 10.275 (Intro.) and 45.09 (1) and to create NR 10.13 (Note) and 10.275 (5) relating to hunting and trapping in state parks.

The statement of scope for this emergency rule, SS 083-13, was approved by the Governor on July 15, 2013, published in Register No. 691 on July 31, 2013 and approved by the Natural Resources Board on August 14, 2013.

This rule was approved by the Governor on October 31, 2013.

Analysis Prepared by the Department of Natural Resources

Statutory Authority and Explanation of Agency Authority: The state trails system and department responsibilities and powers are established in s. 23.175 Stats. State trails are described as part of the state park system in sub. (2) (a). The state park system is established in s. 27.01 Stats. and specific authority for the department to promulgate rules necessary to govern the conduct of state park visitors and for the protection of state parks is found in sub. (2) (j).

The department's authority to establish and maintain open and closed seasons for fish and game and any bag limits, size limits, rest days and conditions governing the taking of fish and game is established in s. 29.014 Stats.

These proposed rules use the statutory authority described above to interpret s. 29.089 Stats. related to trapping on land in state parks. This provision establishes that state parks are open to hunting and trapping and that the department may prohibit hunting or trapping in a park or portion of a park if necessary to protect public safety or a unique animal or plant community.

Pursuant to s. 227.24 (1) (a) Stats., the department finds that putting this rule into effect prior to the time it would take effect using the permanent rule process is necessary to protect the public safety and welfare.

Statutes Interpreted and Explanation: 23.175, 27.01, 29.014 and 29.089 Stats.

Related Statute or Rule: A similar permanent rule, WM-21-13, is also being promulgated by the department. The proposed permanent rule will contain language which is identical to this rule. The permanent rule will contain additional provisions which delete language that is no longer needed following the enactment of 2011 ACT 168 and to simplify hunting regulations.

Plain Language Rule Analysis: The objective of these rules will be to:

SECTION 1 creates a note in the section of Ch. NR 10 related to furbearing animals and trapping to alert readers that additional trapping regulations are established in the section related to hunting and trapping in state parks.

SECTIONS 2 and 3 establish that dry land trapping on lands which are part of the Wisconsin State Park System is limited to the use of dog proof traps in order to protect the public safety as established in s. 29.089 (1m) (b) 2. Stats., a provision created by 2011 ACT 168. Trapping on dry land will be allowed with the use of enclosed-trigger-type-traps. Raccoons are the primary species which are targeted with this trap type. Trapping will continue to be allowed using any type of trap that is otherwise legal if it is completely submerged under water.

SECTION 4 clarifies that it is illegal to discharge a firearm in an area of a state park where hunting is not allowed.

Federal Regulatory Analysis: Federal regulations allow states to manage the wildlife and property 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.

Comparison with rules in Adjacent States: These rule change proposals do not represent significant policy changes and do not differ significantly from surrounding states. All surrounding states have regulations and rules in place for the management and recreational use of public lands which are under their control.

Summary of Factual Data and Analytical Methodologies: Prior to 2011 ACT 168, state parks were statutorily closed to hunting unless the department had written rules specifically allowing a hunting opportunity at an individual state park. Statutes did not grant rule authority for the department to allow bear hunting. Statutes did not grant rule authority to allow trapping. Today, hunting and trapping are both allowed at state parks except where the Natural Resources Board has prohibited the activities in order to protect public safety or a unique plant or animal community. Under the ACT, the Department may prohibit hunting or trapping on lands within 100 yards of a designated use area. Examples of designated use areas include locations such as campgrounds, certain hiking trails and beaches.

The ACT allowed the department to prohibit hunting in designated use areas. For safety purposes, these rules would also prohibit the discharge of firearms, air-guns, bows, and crossbows from-or-across trails. For instance, under these rules, it would be illegal to discharge a firearm from an area where hunting is allowed to another area where hunting is allowed if the two areas are separated by a designated hiking trail.

These rules restrict trapping to the use of dog proof traps only. The type of trap that meets the requirement of being a “dog proof trap” is an “enclosed trigger trap”. These are already defined by administrative rule as any trap with a pull-activated trigger, inside an enclosure, and recessed 1 1/4 inches or more, from an opening that is no greater than 1 3/4 inches in diameter. While these trap types are very effective for catching raccoons, they may be the only animal that is capable of activating the trigger and being captured. These rules allow all trap types which are normally allowed in locations where the traps are completely submerged under water.

The effective dates of this rule will be delayed so that the provisions will be in effect for as long as possible while permanent rules are being promulgated.

Anticipated Private Sector Costs and Economic Impact of Implementing the Rule: 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. These rules are applicable to individual sportspersons and impose no compliance or reporting requirements for small business, nor are any design or operational standards contained in the rule.

Significant policy decisions that could potentially result in increased use of state parks by some users or decreased use by other users were made with enactment of 2011 ACT 168 and again when the Natural Resources Board developed policies under authority of the ACT. These rules will not have significant additional impacts on the use of the state park system or the related economic activity of park users.

Effects on Small Business: These rules are applicable to individual sportspersons and impose no compliance or reporting requirements for small businesses, and no design or operational standards are contained in the rule. Because this rule does not add any regulatory requirements for small businesses, the proposed rules will not have a significant economic impact on a substantial number of small businesses under 227.24(3m).

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SECTION 1. NR 10.13 (Note) is created to read:

Note: Additional restrictions on trapping furbearing animals on department managed lands that are part of the Wisconsin State Park System are established in s. NR 10.275 (5). This section limits dry land trapping activities to the use of enclosed trigger traps.

SECTION 2. NR 10.275 (Intro.) is amended to read:

NR 10.275 (5) **State park trapping, small game and migratory game bird hunting.** No person may hunt game species listed in s. NR 10.01 (1), (2) (a), (c), (e), (g), (3) (a), (bt), (c), (f) or (h) on the state owned portions of state parks except as provided in this section. No person may trap on the state owned portions of state parks except as provided in this section. Portions of the properties listed may be posted closed to trapping and, small game and migratory bird hunting.

SECTION 3. NR 10.275 (5) is created to read:

TRAPPING. (a) *Purpose.* Section 29.089 (1m) (a) Stats. establishes that trapping is allowed in the state park system. This subsection is created because the board has determined under 29.089 (1m) (b) 2. that prohibiting trapping by certain methods and in certain locations is necessary to protect public safety.

(b) *Applicability.* The provisions of this subsection apply to state park system areas as established in ss. 23.17 (2), 23.175 (2) (a), 23.293 (1) (c), 27.01 and 29.089 Stats., when the property is owned by the department. When traversing another type of department property established under s 23.09 (2), portions

of state trails and other state park related properties are subject to the hunting and trapping rules of that property type unless otherwise posted.

(c) *Dry land trapping.* No person may place any trap on dry land or which is set or staked in such a manner as to permit the trap, snare or trapped animal to reach dry land on the state owned portions of state parks except if the trap is an enclosed trigger trap.

SECTION 4. NR 45.09 (1) is amended to read:

NR 45.09 Firearms and hunting. (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 device 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 ~~lee Age Trail~~ state trail corridor or other state park area which is not open to hunting.

SECTION 5. FINDING OF EMERGENCY. The department finds that putting this rule into effect prior to the time it would take effect using the permanent rule process is necessary to protect the public safety and welfare. By restricting gun and archery hunting to certain areas, and trapping to certain areas and methods, this rule will prevent those activities in locations where they may jeopardize the safety and welfare of visitors to the Wisconsin State Park System.

SECTION 6. EFFECTIVE DATE. This rule shall take effect on November 15, 2013 and following publication in the Wisconsin state paper pursuant to s. 227.24(1)(c).

SECTION 7. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on September 25, 2013.

Dated at Madison, Wisconsin _____.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Cathy Stepp, Secretary

(SEAL)