

WISCONSIN LEGISLATIVE COUNCIL STAFF

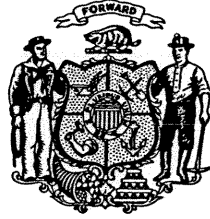
LCRC
FORM 2

JUN 28 REC'D

RULES CLEARINGHOUSE

Ronald Sklansky
Director
(608) 266-1946

Richard Sweet
Assistant Director
(608) 266-2982



David J. Stute, Director
Legislative Council Staff
(608) 266-1304

One E. Main St., Ste. 401
P.O. Box 2536
Madison, WI 53701-2536
FAX: (608) 266-3830

CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 99-083

AN ORDER to repeal chapters NR 40 and 41 and NR 45.11 (4) (h); to renumber NR 45.05 (3) (e); to amend NR 45.04 (3) (g), 45.09 (1) and (2), 45.10 (1) (a), (k) and (L), 45.12 (2) (a) 1. n. and 45.13 (14) (b) (intro.); to repeal and recreate chapter NR 45 (title) and NR 45.02; and to create NR 45.03 (21m), 45.04 (3) (m), (n) and (o), 45.05 (3) (e) 2., 45.06 (2m), 45.09 (7), 45.10 (4) (a) 5. and 45.11 (6) (m), relating to public use of department lands.

Submitted by **DEPARTMENT OF NATURAL RESOURCES**

05-11-99 RECEIVED BY LEGISLATIVE COUNCIL.

06-04-99 REPORT SENT TO AGENCY.

RS:JES:rv;jal

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS
[s. 227.15 (2) (e)]

Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached YES NO

WISCONSIN LEGISLATIVE COUNCIL STAFF

RULES CLEARINGHOUSE

Ronald Sklansky
Director
(608) 266-1946

Richard Sweet
Assistant Director
(608) 266-2982



David J. Stute, Director
Legislative Council Staff
(608) 266-1304

One E. Main St., Ste. 401
P.O. Box 2536
Madison, WI 53701-2536
FAX: (608) 266-3830

CLEARINGHOUSE RULE 99-083

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

4. Adequacy of References to Related Statutes, Rules and Forms

a. The analysis accompanying the rule cites s. 23.09 (2), Stats., as authorizing rule-making. The reference to sub. (2) is unduly broad as that subsection contains other provisions in addition to the authority to adopt rules; s. 23.09 (2) (intro.) should be cited.

b. The analysis accompanying the rule cites s. 23.09 (2), Stats., as one of the statutes interpreted by the rule. Since the rule does not address the subject matter in all 14 paragraphs in s. 23.09 (2), the department should identify in the analysis the specific paragraphs in sub. (2) that the rule interprets.

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. In the second paragraph of the analysis, the phrase "applies to Department owned, eased and leased land and facilities" should be replaced by the phrase "applies to land and facilities owned, acquired by easement or leased by the department."

b. In s. NR 45.02 (1) (c), the word "to" should be inserted after the word "easement."

c. Section NR 45.04 (3) (m) provides that no person may construct, place, occupy or use structures or store personal property on lands subject to ch. NR 45, except as authorized by the department. Presumably, the department envisions standards or guidelines by which

exceptions may be made. These standards or guidelines should be placed in the Wisconsin Administrative Code. [See also ss. NR 45.04 (3) (n) and 45.09 (7).]

d. In s. NR 45.06 (3m), the word "their" should be replaced by the phrase "the person's."

e. The department should review the phrase "except for blinds used exclusively for waterfowl hunting as provided in s. 29.327 (1) (a), Stats." in s. NR 45.09 (2) to ensure that the phrase is unambiguous. The reference in this phrase to s. 29.327 (1) (a), Stats., is to the statutory definition of "blind." Regulations governing the use of waterfowl blinds are given in s. 29.327 (2), Stats. Thus, it appears that the phrase should be modified to end either with "as provided in s. 29.327 (2), Stats." or "as defined in s. 29.327 (1) (a), Stats."

f. In s. NR 45.09 (7), the phrase "that are" should be inserted after the word "chapter."

g. In s. NR 45.10 (1) (a), does the phrase "when posted open to camping" apply to the entire series of properties mentioned in the first sentence or only to state-owned islands outside of state forest boundaries? This should be clarified.

h. The department should review the legal description of Ottawa Lake in s. NR 45.11 (6) (m) to ensure that it is complete. The reference to Ottawa Lake that is repealed by the rule in s. NR 45.11 (4) (h) states that this lake is in SECTIONS 27 and 33 as well as SECTION 34 in the specified town.

i. In s. NR 45.13 (14) (b) (intro.), the word "launches" should be replaced by the phrase "launching sites specified in par. (a)."

Report to
Legislative Council Rules Clearinghouse
NR 40, 41 and 45, Wis. Adm. Code
Natural Resources Board Order No. LF-20-99

Wisconsin Statutory Authority

ss. 23.09(2), 23.28(3), 27.01(2)(j) and 227.11(2)(a), Stats., interpreting ss. 23.09(2), 23.28(3), 27.01(2)(l) and (j) and 28.03, Stats.

Federal Authority

N/A

Court Decisions Directly Relevant

None

Analysis of the Rule - Rule Effect - Reason for the Rule

Every two years, Department staff review ch. NR 45 and propose revisions. The proposed revisions are intended to protect the natural resources on properties, clarify existing rules and protect the health and safety of visitors. The proposed revisions are detailed in the analysis that is a part of the rule.

Agency Procedures for Promulgation

Public hearings, Natural Resources Board final adoption, followed by legislative review.

Description of any Forms (attach copies if available)

None

Name and Telephone Number of Agency Liaisons

Doug Fendry, Bureau of Facilities and Lands – 267-2764
Michael Lutz, Bureau of Legal Services – 267-7456
Carol Turner, Bureau of Legal Services - 266-1959

Submitted on May 11, 1999

LRB or Bill No./Adm. Rule No.
LF-20-99

Amendment No. if Applicable

ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

FISCAL ESTIMATE
DOA-2048 N(R10/94)

Subject
Revisions to Chapters NR 40, 41 and 45

Fiscal Effect

State: No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

- Increase Existing Appropriation Increase Existing Revenues
- Decrease Existing Appropriation Decrease Existing Revenues
- Create New Appropriation

Increase Costs - May be possible to Absorb Within Agency's Budget Yes No

Decrease Costs

Local: No local government costs

- 1. Increase Costs
 Permissive Mandatory
- 2. Decrease Costs
 Permissive Mandatory

- 3. Increase Revenues
 Permissive Mandatory
- 4. Decrease Revenues
 Permissive Mandatory

5. Types of Local Governmental Units Affected:

- Towns Villages Cities
- Counties Others _____
- School Districts WTCS Districts

Fund Sources Affected
 GPR FED PRO PRS SEG SEG-S

Affected Ch. 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate

SUMMARY OF ADMINISTRATIVE RULE REVISION - This rule package rescinds Chapter 40 and 41. The rule package includes revisions to Chapter NR 45, which are the regulations for the use of Department properties. The revisions include a revised description of the applicability of Chapter NR 45 to include lands owned, eased and leased by the Department, unless the Department waives jurisdiction; defines State Parks and State Forests as the land within the Natural Resources Board approved acquisition boundary; clarifies that it is illegal to possess someone's property without their permission; creates rules prohibiting placing structures, storing personal property or planting crops on Department lands except when authorized by the Department; prohibits possession of small amounts of marijuana (< 25 grams); prohibits use of bicycle tire chains and tire studs on trails; prohibits dogs, cats or other animals on observation towers; clarifies the posting requirements for special use areas closed to hunting; clarifies that blinds used for waterfowl hunting are the only blinds allowed on Department lands after closing hours; prohibits pursuing, driving or chasing animals in areas closed to hunting, except when authorized by the Department; limits camping to three days on the Lower Wisconsin State Riverway, and restricts camping to people who arrive by watercraft; limits the reservation period for indoor group camps to seven days in any four-week period, unless waived by the Department; allows use of electric motors at slow-no-wake speed in Ottawa Lake in Waukesha County; includes the Pinewoods Campground in the Southern Unit of the Kettle Moraine State Forest as a "Type A" campground; and modifies the current rule that restricts possession of containers (such as glass containers) from watercraft launched from designated launches on the Brule River State Forest - the new rule includes the restrictions when watercraft are removed from the launches.

FISCAL IMPACT - None. This rule package are revisions to administrative rules for the use of Department properties. They are enforced by existing Department staff as part of their normal job duties.

Long-Range Fiscal Implications
None.

3

Agency/Prepared by: (Name & Phone No.)
Joe Polasek, 266-2794

Authorized Signature/Telephone No.
Joe Polasek 266-2794

Date
3-24-99

FISCAL ESTIMATE WORKSHEET

1999 Session

Detailed Estimate of Annual Fiscal Effect
DOA-2047 (R10/94)

ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

LRB or Bill No./Adm. Rule No. LF-20-99	Amendment No.
---	---------------

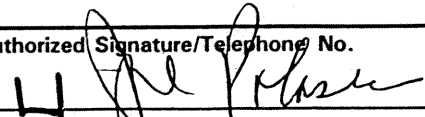
Subject
Revision to Chapters NR 40, 41 and 45 (LF-20-99)

I. One-Time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):
\$400 for new signs as needed to post properties.

II. Annualized Costs:	Annualized Fiscal impact on State funds from:	
	Increased Costs	Decreased Costs
A. State Costs by Category		
State Operations - Salaries and Fringes	\$	\$
(FTE Position Changes)	(FTE)	(- FTE)
State Operations - Other Costs		
Local Assistance		
Aids to Individuals or Organizations		
TOTAL State Costs by Category	\$ 0	\$ 0
B. State Costs by Source of Funds	Increased Costs	Decreased Costs
GPR	\$	\$
FED		
PRO/PRS		
SEG/SEG-S		
III. State Revenues: Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)	Increased Rev.	Decreased Rev.
GPR Taxes	\$	\$
GPR Earned		
FED		
PRO/PRS		
SEG/SEG-S		
TOTAL State Revenues	\$ 0	\$ 0

NET ANNUALIZED FISCAL IMPACT

	STATE	LOCAL
NET CHANGE IN COSTS	\$ 0	\$ 0
NET CHANGE IN REVENUES	\$ 0	\$ 0

Agency/Prepared by: (Name & Phone No.) Joe Polasek, 266-2794	Authorized Signature/Telephone No.  266-2794	Date 3-24-99
---	---	-----------------

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
REPEALING, RENUMBERING, AMENDING, REPEALING AND RECREATING,
AND CREATING RULES

The State of Wisconsin Natural Resources Board proposes an order to repeal chs. NR 40 and 41, NR 45.11(4)(h); to renumber NR 45.05(3)(e); to amend NR 45.04(3)(g), 45.09(1) and (2), 45.10(1)(a), (k) and (L), 45.12(2)(a)1.n., 45.13(14)(b)(intro.); to repeal and recreate ch. NR 45(title), 45.02; and to create NR 45.03(21m), 45.04(3)(m), (n) and (o), 45.05(3)(e)2., 45.06(3m), 45.09(7), 45.10(4)(a)5. and 45.11(6)(m) relating to public use of department lands

LF-20-99

Analysis Prepared by Department of Natural Resources

4-
AR
Authorizing Statutes: ss. 23.09 (2), 23.28(3), 27.01(2)(j) and 227.11(2)(a), Stats.
Statutes interpreted: ss. 23.09 (2), 23.28(3), 27.01(2) (i) and (j), and 28.03, Stats.

Chapters NR 40 and 41 contain legal descriptions of state forests and state parks. These chapters are no longer necessary since the Natural Resources Board has the authority to make property boundary revisions.

Chapter NR 45 contains the administrative rules for the use of Department properties. This chapter is reviewed and revisions proposed by Department staff every two years. This rule package includes a revision to clarify that ch. NR 45 applies to Department owned, eased and leased land and facilities, unless waived, such as on a bike trail managed by a local government. There is also a new rule which defines that state parks or state forests are those lands within the Natural Resources Board approved boundary, as opposed to those lands already in Department ownership. These revisions will clarify where the Department has authority in those limited situations in which it has jurisdiction over the entire property.

There are several additional revisions to the rules, such as a revision to add that it is illegal to possess someone's property without their permission. The current rule prohibits destroying, removing and molesting someone's property, but doesn't prohibit possession without permission. New rules will also allow Department staff to issue citations when people plant crops or refuse to remove their property from Department lands. This is needed since Department staff frequently find people planting crops or storing personal property on Department lands. The rule will not affect authorized uses such as camping, or recreational structures such as sun tents, canopies or volleyball nets placed in picnic areas provided they are removed at the end of the day.

The rule package contains a rule to allow the Department to issue citations for possession and use of small amounts of marijuana (< 25 grams). This rule is the same as municipal ordinances prohibiting possession of small amounts of marijuana.

A new rule would prohibit studs or tire chains on bicycles using trails on Department lands since these devices damage the trails. Another new rule will prohibit pets on observation towers in order to ensure the health and safety of people on towers.

There is a revision to the rules regarding firearms and hunting on properties. The rule currently requires guns to be unloaded and encased, and bows and slingshots to be unstrung or in a carrying case in areas posted prohibiting the discharge of firearms. People with bows may not realize they must unstring their bows or put them in carrying cases if the notice simply states a prohibition to discharging firearms. Therefore, the posted notice portion of the rule is revised.

Section 29.327 (1)(a), Stats., allows hunters to build and leave blinds on Department properties for waterfowl hunting. Blinds for hunting other wildlife species, such as deer, must be removed at the end of the day. A rule revision clarifies that blinds must be used exclusively for waterfowl hunting in order to be left on the property during the waterfowl season.

A new rule will prohibit driving animals out of areas closed to hunting, unless authorized by the Department. Currently there is nothing to prevent people from going into areas closed to hunting and driving animals out of the area.

The current rules requires campers to use watercraft to access some areas open to camping on Department properties, and limits the length of stay. A rule revision would include the Lower Wisconsin State Riverway in the list of properties, and limits camping to 3 days.

Another rule revision will limit the length of stay for indoor group camps to 7 days unless waived. Cabins are very popular and people are reserving them for 2-week stays, which limits their availability for others.

A revision to rules regarding motors on lakes will allow people to use electric motors at slow-no-wake speeds at Ottawa Lake in Waukesha county. The current rule doesn't allow motors on this lake except when a boater has a physician's statement stating the person cannot paddle a boat.

This rule package adds Pinewoods campground in the Southern Unit of the Kettle Moraine State Forest to the list of Type A campgrounds. The type of campground determines the fee that is charged to use campsites in the campground, and it is appropriate to include Pinewoods as a Type A campgrounds since it has a new flush toilet/shower building.

Lastly, there is a revision to the rule prohibiting containers, such as glass bottles, in watercraft launched from designated launches on the Brule River State Forest. The revision would also prohibit the containers when watercraft are removed from the designated launches.

[Drafter's Note: This rule will be reconciled with Natural Resources Board Order No. PR-3-98 following public hearings.]

SECTION 1. Chapters NR 40 and 41 are repealed.

SECTION 2. Chapter NR 45 (title) is repealed and recreated to read:

CHAPTER NR 45

REGULATIONS FOR THE USE OF DEPARTMENT PROPERTIES

SECTION 3. NR 45.02 is repealed and recreated to read:

NR 45.02 Applicability. (1) Except when the context provides otherwise, this chapter applies to any of the following:

(a) All lands, structures and property owned by the department.

(b) Lands owned by the state of Wisconsin which are under the management, supervision and control of the department.

(c) Lands under easement^{to} or lease by the state of Wisconsin which are under the management, supervision and control of the department.

(2) On lands the department owns but are under the supervision, management and control of another entity pursuant to lease or easement, the department may, as part of the lease or easement, waive its jurisdiction in whole or in part under this chapter.

SECTION 4. NR 45.03 (21m) is created to read:

NR 45.03 (21m) "State park" or "state forest" means the area within the project boundary approved for the state park or state forest by the natural resources board.

SECTION 5. NR 45.04 (3) (g) is amended to read:

NR 45.04 (3) (g) *Destruction of property.* No person may destroy, molest, possess without permission, attempt to remove or remove the property of others.

SECTION 6. NR 45.04 (3) (m), (n) and (o) are created to read:

NR 45.04 (3) (m) Structures. Except as authorized by the department, no person may construct, place, occupy or use structures or store personal property on lands subject to this chapter. This paragraph does not apply to tents or canopies which are less than 100 square feet in area or other temporary structures which are used for recreational purposes and removed by 11:00 p.m. of the day they are placed on the property.

standards

(n) Crops. Except when authorized by the department, no person may plant or cultivate any crop on lands subject to this chapter.

standards

(o) Possession of marijuana. No person may possess 25 grams or less of marijuana or use marijuana as defined in s. 961.01 (14), Stats., unless the marijuana was obtained directly from, or pursuant to, a valid prescription or order of a practitioner, as defined in s. 961.01(19), Stats., while acting in the course of the practitioner's professional practice or except as otherwise authorized by ch. 961, Stats.

SECTION 7. NR 45.05 (3) (e) is renumbered NR 45.05 (3) (e) 1.

SECTION 8. NR 45.05 (3) (e) 2. and 45.06 (3m) are created to read:

NR 45.05 (3) (e) 2. Bicycles operated on department trails may not have tire chains, studs or other devices to improve traction, except for the original rubber tread pattern formed when the tire was manufactured.

NR 45.06 (3m) No person may allow ^{the person's} ~~their~~ dog, cat or other animal on an observation tower.

SECTION 9. NR 45.09 (1) and (2) are 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 ~~prohibiting the discharge of firearms in these areas.~~

SK cite

(2) Except for blinds used exclusively for waterfowl hunting as provided in s. 29.327

defined in

vs sub (2) -> regulatio

(1) (a), Stats., no person may construct, occupy or use any elevated or ground blind or other elevated device except that portable tree stands and blinds may be used provided they are removed from the property each day at the close of hunting hours. No person may cause damage to trees by the placement or erection of portable tree stands or by any other manner while climbing or hunting from a tree. This subsection does not apply to the use of blinds constructed entirely of dead vegetation found on the property.

SECTION 10. NR 45.09 (7) is created to read:

5 ?

NR 45.09(7) Unless authorized by the department, no person may pursue, drive or chase animals on lands subject to this chapter ^{that are} closed to hunting.

Standard

SECTION 11. NR 45.10 (1) (a), (k) and (L) is amended to read:

NR 45.10 Camping (1) GENERAL. (a) Camping is prohibited except within designated camping areas, or on state-owned islands in the Mississippi river and on state-owned islands and sandbars in the Lower Wisconsin state riverway and on state-owned islands outside of state forest boundaries ~~(when posted open to camping)~~. No person may camp in

applies to?

designated camping areas without a permit and the payment of the prescribed fees, except when camping at designated watercraft campsites in the northern state forests, in the Turtle-Flambeau scenic waters area, or on the Chippewa flowage or on other designated state-owned islands outside state forest boundaries. Camping at designated watercraft campsites is restricted to persons and their equipment arriving by watercraft only waived elsewhere in this section.

2-02
S. Johnson

(k) Camping permits are not required and payment of camping fees are waived when camping on state-owned islands in the Mississippi river or state-owned islands or sandbars in the Lower Wisconsin state riverway, on state-owned islands outside state forest boundaries when posted open to camping, designated watercraft campsites in the northern state forests, Turtle-Flambeau scenic water area or Chippewa flowage.

5-1-2
0-2

(L) Camping is restricted to one day only at designated watercraft campsites in northern state forests, up to 3 days as posted on state-owned islands outside state forest boundaries, to 3 days on state-owned islands and sandbars in the Lower Wisconsin state riverway and to 10 days at designated watercraft campsites in on the Turtle-Flambeau scenic waters area and Chippewa flowage. Camping at these locations is restricted to persons and their equipment arriving by watercraft only.

SECTION 12. NR 45.10 (4) (a) 5. is created to read:

NR 45.10(4)(a)5. Unless waived by the department, no group may camp for a period greater than 7 days in any 4-week period in the indoor group camp ^{at?} in the property of registration.

AA

ck

SECTION 13. NR 45.11 (4) (h) is repealed.

2nd SR 27833
in 4/11

SECTION 14. NR 45.11 (6) (m) is created to read:

5-

NR 45.11(6)(m) Ottawa lake in Kettle Moraine state forest, section 34, T6N, R17E,
town of Ottawa, Waukesha county.

SECTION 15. NR 45.12(2)(a)1.n. and 45.13(14)(b)(intro.) is amended to read:

NR 45.12(2)(a)1.n. Ottawa lake and Pinewoods - southern unit Kettle Moraine state
forest

NR 45.13(14)(b) (intro.) No person may possess any of the following containers on
the Brule river within watercraft launched from or removed at designated launches on the
Brule river state forest:

launching sites in par. (a)

The foregoing rules were approved and adopted by the State of Wisconsin Natural
Resources Board on _____.

The rules shall take effect on January 1, 2000, as provided by s. 227.22(2)(b),
Stats.

Dated at Madison, Wisconsin _____

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
George E. Meyer, Secretary

(SEAL)

State of Wisconsin
Department of Natural Resources

SEP 08 1999

SEP 08 REC'D

**NOTICE TO PRESIDING OFFICERS
OF PROPOSED RULEMAKING**

Pursuant to s. 227.19, Stats., notice is hereby given that final draft rules are being submitted to the presiding officer of each house of the legislature. The rules being submitted are:

Natural Resources Board Order No. LF-20-99

Legislative Council Rules Clearinghouse Number 99-083

Subject of Rules Public use of department lands.

Date of Transmittal to Presiding Officers September 7, 1999

Send a copy of any correspondence or notices pertaining to this rule to:

**Carol Turner, Rules Coordinator
DNR Bureau of Legal Services
LC/5, 101 South Webster**

266-1959

REPORT TO LEGISLATURE

NR 45, Wis. Adm. Code
Public Use of department lands

Board Order No. LF-20-99
Clearinghouse Rule No. 99-083

Statement of Need

The proposed rule package was developed through a process where Department staff review ch. NR 45 and propose revisions. This chapter contains the administrative rules for public use of Department properties. The proposed revisions are intended to protect the natural resources on Department properties, clarify existing rules, and protect the health and safety of visitors. The individual rule changes are detailed in the analysis that is a part of the rule.

Modifications as a Result of Public Hearing

The provision that would have prohibited bicycles with tire chains or studded tires on Department trails was removed. Department staff will monitor trail use to determine and document any damage from tire chains and studded tires, and work with bicycling organizations on public education efforts.

Appearances at the Public Hearings and Their Position

June 24, 1999 – Madison

In support – none
In opposition – none

As interest may appear:

Rita Nygren, Wisconsin Off Road Bicycling Association, 226 Koster, Madison, WI 53713

June 28, 1999 – Wausau – no appearances

June 29, 1999 – Milwaukee – no appearances

Response to Legislative Council Rules Clearinghouse Report

All Rules Clearinghouse recommendations were accepted, except for a recommendation affecting the provision that no person may construct, place, occupy or use structures or store personal property on lands subject to ch. NR 45, except as authorized by the Department. The Rules Clearinghouse recommends including standards or guidelines by which exceptions may be made. The Department will consider recommending a revision to this rule in the future to include standards or guidelines once we have experience implementing the rule.

Final Regulatory Flexibility Analysis

The proposed rule does not regulate small businesses; therefore, a final regulatory flexibility analysis is not required.

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
REPEALING, RENUMBERING, AMENDING, REPEALING AND RECREATING,
AND CREATING RULES

The State of Wisconsin Natural Resources Board proposes an order to repeal chs. NR 40 and 41, NR 45.11(4)(h); to amend NR 45.04(3)(g), 45.09(1) and (2), 45.10(1)(a), (k) and (L), 45.12(2)(a) 1.n., 45.13(14)(b)(intro.); to repeal and recreate ch. NR 45(title), 45.02; and to create NR 45.03(8m) and (21m), 45.04(3)(m), (n) and (o), 45.06(3m), 45.09(7) and 45.11(6)(m) relating to public use of department lands

LF-20-99

Analysis Prepared by Department of Natural Resources

Authorizing Statutes: ss. 23.09 (2) (intro.), 23.28(3), 27.01(2)(j) and 227.11(2)(a), Stats.
Statutes interpreted: ss. 23.09 (2) (intro.), 23.28(3), 27.01(2) (i) and (j), and 28.03, Stats.

Chapters NR 40 and 41 contain legal descriptions of state forests and state parks. These chapters are no longer necessary since the Natural Resources Board has the authority to make property boundary revisions.

Chapter NR 45 contains the administrative rules for the use of Department properties. This chapter is reviewed and revisions proposed by Department staff every two years. This rule package includes a revision to clarify that ch. NR 45 applies to land and facilities owned, acquired by easement or leased by the Department, unless waived, such as on a bike trail managed by a local government. There is also a new rule which defines that state parks or state forests are those lands within the Natural Resources Board approved boundary, as opposed to those lands already in Department ownership. These revisions will clarify where the Department has authority in those limited situations in which it has jurisdiction over the entire property.

There are several additional revisions to the rules, such as a revision to add that it is illegal to possess someone's property without their permission. The current rule prohibits destroying, removing and molesting someone's property, but doesn't prohibit possession without permission. New rules will also allow Department staff to issue citations when people plant crops or refuse to remove their property from Department lands. This is needed since Department staff frequently find people planting crops or storing personal property on Department lands. The rule will not affect authorized uses such as camping, or recreational structures such as sun tents, canopies or volleyball nets placed in picnic areas provided they are removed at the end of the day. The rule includes a definition of crops.

The rule package contains a rule to allow the Department to issue citations for possession and use of small amounts of marijuana (< 25 grams). This rule is the same as municipal ordinances prohibiting possession of small amounts of marijuana. A new rule would also prohibit pets on observation towers in order to ensure the health and safety of people on towers.

There is a revision to the rules regarding firearms and hunting on properties. The rule currently requires guns to be unloaded and encased, and bows and slingshots to be unstrung or in a carrying case in areas posted prohibiting the discharge of firearms. People with bows may not realize they must unstring their bows or put them in carrying cases if the notice simply states a prohibition to discharging firearms. Therefore, the posted notice portion of the rule is revised.

Section 29.327 (2), Stats., allows hunters to build and leave blinds on Department properties for waterfowl hunting. Blinds for hunting other wildlife species, such as deer, must be removed at the end of

the day. A rule revision clarifies that blinds must be used exclusively for waterfowl hunting in order to be left on the property during the waterfowl season.

A new rule will prohibit driving animals out of areas closed to hunting, unless authorized by the Department. Currently there is nothing to prevent people from going into areas closed to hunting and driving animals out of the area.

The current rule requires campers to use watercraft to access some areas open to camping on Department properties, and limits the length of stay. A rule revision would include the Lower Wisconsin State Riverway in the list of properties, and limit camping to three days.

A revision to rules regarding motors on lakes will allow people to use electric motors at slow-no-wake speeds at Ottawa Lake in Waukesha county. The current rule doesn't allow motors on this lake except when a boater has a physician's statement stating the person cannot paddle a boat.

This rule package adds Pinewoods campground in the Southern Unit of the Kettle Moraine State Forest to the list of Type A campgrounds. The type of campground determines the fee that is charged to use campsites in the campground, and it is appropriate to include Pinewoods as a Type A campground since it has a new flush toilet/shower building.

Lastly, there is a revision to the rule prohibiting containers, such as glass bottles, in watercraft launched from designated launches on the Brule River State Forest. The revision would also prohibit the containers when watercraft are removed from the designated launches.

SECTION 1. Chapters NR 40 and 41 are repealed.

SECTION 2. Chapter NR 45 (title) is repealed and recreated to read:

CHAPTER NR 45

REGULATIONS FOR THE USE OF DEPARTMENT PROPERTIES

SECTION 3. NR 45.02 is repealed and recreated to read:

NR 45.02 Applicability. (1) Except when the context provides otherwise, this chapter applies to any of the following:

- (a) All lands, structures and property owned by the department.
- (b) Lands owned by the state of Wisconsin which are under the management, supervision and control of the department.
- (c) Lands under easement to or lease by the state of Wisconsin which are under the management, supervision and control of the department.

(2) On lands the department owns but are under the supervision, management and control of another entity pursuant to lease or easement, the department may, as part of the lease or easement, waive its jurisdiction in whole or in part under this chapter.

SECTION 4. NR 45.03 (8m) and (21m) are created to read:

NR 45.03 (8m) "Crops" means any vegetation planted as an agricultural commodity or for other use as part of a farming operation, or vegetation planted for personal consumption or aesthetics, such as a vegetable or flower garden.

(21m) "State park" or "state forest" means the area within the project boundary approved for the state park or state forest by the natural resources board.

SECTION 5. NR 45.04 (3) (g) is amended to read:

NR 45.04 (3) (g) *Destruction of property.* No person may destroy, molest, possess without permission, attempt to remove or remove the property of others.

SECTION 6. NR 45.04 (3) (m), (n) and (o) are created to read:

NR 45.04 (3) (m) *Structures.* Except as authorized by the department, no person may construct, place, occupy or use structures or store personal property on lands subject to this chapter. This paragraph does not apply to tents or canopies which are less than 100 square feet in area or other temporary structures which are used for recreational purposes and removed by 11:00 p.m. of the day they are placed on the property.

(n) *Crops.* Except when authorized by the department, no person may plant or cultivate any crop on lands subject to this chapter.

(o) *Possession of marijuana.* No person may possess 25 grams or less of marijuana or use marijuana as defined in s. 961.01 (14), Stats., unless the marijuana was obtained directly from, or pursuant to, a valid prescription or order of a practitioner, as defined in s. 961.01(19), Stats., while acting in the course of the practitioner's professional practice or except as otherwise authorized by ch. 961, Stats.

SECTION 7. NR 45.06 (3m) is created to read:

NR 45.06 (3m) No person may allow the person's dog, cat or other animal on an observation tower.

SECTION 8. NR 45.09 (1) and (2) are 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 ~~prohibiting the discharge of firearms in these areas.~~

(2) Except for blinds used exclusively for waterfowl hunting as provided in s. 29.327 (2), Stats., no person may construct, occupy or use any elevated or ground blind or other elevated device except that portable tree stands and blinds may be used provided they are removed from the property each day at the close of hunting hours. No person may cause damage to trees by the placement or erection of portable tree stands or by any other manner while climbing or hunting from a tree. This subsection does not apply to the use of blinds constructed entirely of dead vegetation found on the property.

SECTION 9. NR 45.09 (7) is created to read:

NR 45.09 (7) Unless authorized by the department, no person may pursue, drive or chase animals on lands subject to this chapter that are closed to hunting.

SECTION 10. NR 45.10 (1) (a), (k) and (L) is amended to read:

NR 45.10 Camping (1) GENERAL. (a) Camping is prohibited except within designated camping areas, ~~or~~ on state-owned islands in the Mississippi river ~~and~~, on state-owned islands and sandbars in the Lower Wisconsin state riverway, and on state-owned islands outside of state forest boundaries when the

island is posted open to camping. No person may camp in designated camping areas without a permit and the payment of the prescribed fees, except when camping at designated watercraft campsites in the northern state forests, in the Turtle-Flambeau scenic waters area, or on the Chippewa flowage or on other designated state-owned islands outside state forest boundaries. Camping at designated watercraft campsites is restricted to persons and their equipment arriving by watercraft only waived elsewhere in this section.

(k) Camping permits are not required and payment of camping fees are waived when camping on state-owned islands in the Mississippi river or state-owned islands or sandbars in the Lower Wisconsin state riverway, on state-owned islands outside state forest boundaries when the island is posted open to camping, designated watercraft campsites in the northern state forests, Turtle-Flambeau scenic water area or Chippewa flowage.

(L) Camping is restricted to one day only at designated watercraft campsites in northern state forests, up to 3 days as posted on state-owned islands outside state forest boundaries, to 3 days on state-owned islands and sandbars in the Lower Wisconsin state riverway and to 10 days at designated watercraft campsites ~~in~~ on the Turtle-Flambeau scenic waters area and Chippewa flowage. Camping at these locations is restricted to persons and their equipment arriving by watercraft only.

SECTION 11. NR 45.11 (4) (h) is repealed.

SECTION 12. NR 45.11 (6) (m) is created to read:

NR 45.11(6)(m) Ottawa lake in Kettle Moraine state forest, section 34, T6N, R17E, town of Ottawa, Waukesha county.

SECTION 13. NR 45.12 (2) (a) 1. n. and 45.13 (14) (b) (intro.) is amended to read:

NR 45.12(2)(a)1.n. Ottawa lake and Pinewoods - southern unit Kettle Moraine state forest

NR 45.13(14)(b)(intro.) No person may possess any of the following containers on the Brule river within watercraft launched from or removed at designated launching sites specified in par. (a) on the Brule river state forest:

The foregoing rules were approved and adopted by the State of Wisconsin Natural Resources Board on August 25, 1999.

The rules shall take effect on January 1, 2000, as provided by s. 227.22(2)(b), Stats.

Dated at Madison, Wisconsin _____

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
George E. Meyer, Secretary

(SEAL)