

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD CREATING RULES

The Wisconsin Natural Resources Board proposes an order to create NR 10.275(4) and 45.09(10) relating to hunting in state parks, including department managed portions of state trails.

WM-04-08

Analysis prepared by the Department of Natural Resources

Statutes Interpreted and Explanation of Agency Authority: The department has interpreted the following statutes as establishing the state trail system, which includes State Ice Age trail areas, as part of the state park system and providing the authority to promulgate rules regarding hunting and the use of state trails: ss. 27.01 and 29.089, Stats.

Statutory Authority and Explanation of Agency Authority: Statutes which establish that Ice Age trail areas are part of the state park system and which authorize the promulgation of rules that allow hunting in state parks include ss. 29.089 and 27.01 Stats. These statutes specifically provide the department with authority to promulgate rules necessary to govern the conduct of state park visitors and to establish hunting seasons in state parks. These statutes also establish that Ice Age trail areas are included as part of the state park system. All rules promulgated under this authority are subject to review under ch. 227, Stats.

Related Statute or Rule: With the passage of 2007 ACT 20 the department has been directed to promulgate administrative rules which will establish conditions under which access to department lands for nature-based recreation, hunting included, may be prohibited. Rules established under the authority of Act 20 will determine the public access policy for a variety of property-types which are purchased with funds from the stewardship program including Ice Age trail areas. The department has determined that it is necessary to continue with this proposal at this time because these provisions are necessary in order to allow hunting on property which is also part of the state park system. In order to be consistent with future rule-making, the language in this proposal borrows language from ACT 20 to establish when access to an area may be prohibited.

Plain Language Analysis: Legal interpretations have described State Ice Age trail area properties and other trails as falling under the definition of state parks. Under s. 29.089, Stats., hunting is prohibited in state parks unless authorized by rule. This rule proposal would authorize hunting on state-owned portions of State Ice Age trail areas except where hunting is prohibited by posted notice and on the footpath or within 50 feet of the center of the footpath. At other state trails hunting would continue to be prohibited except where allowed by administrative rule.

Prior to the determination that State Ice Age trail areas are state parks, hunting has occurred at certain properties. The authority proposed in this rule is necessary in order for hunting to continue on these areas. Additionally, some newly acquired properties may be suitable for hunting and people have expressed a desire to allow that activity. This rule change gives the department the ability to be more responsive in managing hunting at State Ice Age trail areas.

Hunting is currently allowed at some state parks and trails by rule but, where it is not allowed, all firearms must be unloaded and enclosed in carrying case. This proposal would allow a person who is hunting on adjoining public or private property to cross the footpath of the State Ice age trail or other state trail in an area where hunting is not allowed without casing their firearm, airgun or bow. The firearm, airgun or bow must be unloaded.

Summary of, and Comparison with, Existing or Proposed Federal Regulations: Federal regulations allow states to manage the wildlife 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.

The Ice Age trail system was authorized by Congress in 1980 as a component of the National Trails System. A portion of funding for property acquisition is federal but actual property acquisition, trail planning, development and management is conducted by the department and partners. Federal statutes do not place any restrictions on the use of Ice Age Trail properties for hunting.

Comparison with rules in adjacent states: These proposed rule changes will result in regulations and policies that are consistent with the management of recreational trails in surrounding states. All of Wisconsin's surrounding states administer recreational trail systems that are used by hikers, bicyclists, and others. In all surrounding states, partnerships exist with local governments and friends groups who may conduct actual trail maintenance. The availability of hunting opportunities varies significantly even within each state.

Michigan's state trails are generally open to hunting and trapping but certain stretches are closed to hunting, especially in or near municipalities. Michigan informs trail users that hunting may be occurring in an area by posting signs at access points. Minnesota manages an extensive state trail system where hunting is generally allowed except that firearms discharge from or across the tread-way, the portion of the trail designed for travel, is prohibited. Iowa's trail system is administered by their DNR and transportation department and consists mostly of linear corridors. Hunting and trapping are allowed along specific stretches of Iowa trails which are described on the department's website and by posting of signs at trail intersections. Illinois provides significant hunting opportunities on designated park properties where there are hiking trails. Those hunting opportunities are available only on specific portions of those properties. Some portions of Illinois trails are closed to hiking during the firearm deer season and hikers are encouraged to wear orange during the squirrel season.

Summary of Factual Data and Analytical Methodologies: The rule changes included in this order do not deviate from current department policy on the management of trails or hunting in state parks and hunting in general.

Wisconsin provides more than 2,000 miles of trails that are designed primarily for hiking. This rule specifically addresses State Ice Age trail areas which are owned by the department and managed under the authority of "State trails" under s. 23.175, Stats., and "Ice Age trail" under s. 23.17, Stats. State trails are also state parks under 23.175(2)(a), Stats.

Hunting and trapping are not allowed in state parks but hunting may be allowed by the department by rule. Small game, turkey and deer hunting are currently allowed at many traditional state parks by rule in ch. NR 10, Wis. Adm. Code. Specific rule authority to allow deer hunting at two state trails is also established in ch. NR 10, Wis. Adm. Code. Prior to the determination that state trails are also state parks, hunting has occurred at other state trail properties. Enactment of these rules will allow hunting to continue at State Ice Age trail areas.

There are 54 individual properties which are identified as State Ice Age trail areas. Properties range in size from one acre to 1,200 acres with an average size of approximately 80 acres. Hunting currently occurs on a number of properties but not others because of their proximity to urban development or small size. While these are primarily trail properties intended for pedestrian travel on a trail tread, many properties do contain acreage that is not part of a linear trail and which may be suitable for hunting activities.

Under the proposed rule, new land that is acquired as an Ice Age trail area will be open to hunting immediately upon purchase. This provides flexibility so that hunting can occur when new parcels are acquired rather than upon the completion of the rule making process which can take more than a year. If, through a process such as master planning, it is decided that hunting is not appropriate, the trail may be posted closed to hunting. If it is decided that hunting should be allowed but seasons should be different than the statewide seasons, rules that are specific to that property would have to be promulgated.

The department would also be able to post certain portions of an Ice Age trail property as closed to hunting in order to protect public safety, protect a unique animal or plant community, or to accommodate usership patterns. Further defining these conditions will be a subject of separate rule-making by the department as required by 2007 ACT 20.

This rule does not affect hunting on other types of state trail property. Properties which are not Ice Age trail areas would remain closed to hunting unless opened by the department by administrative rule. These properties are often established on abandoned railroad beds and tend to be linear trails which are less suitable for hunting.

In places the Ice Age trail traverses other department properties that are managed as public hunting or fishing grounds or for some other purpose. This rule would not change the types of activities that are currently allowed on those properties or on a trail where it traverses that property. 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. This rule would allow a person to cross a state trail while hunting without requiring them to enclose their firearm, air gun or bow in a carrying case even if hunting is not allowed on the trail that they are crossing. The firearm or air gun must be unloaded. Allowing this practice will be a convenience to people who are engaged in legal hunting activities on either side of a trail and who want to cross the trail. This convenience will be afforded to anyone who is hunting adjacent to a state trail, whether on adjacent public or private lands where hunting is allowed.

Analysis and Supporting Documents Used to Determine Effect on Small Business or in Preparation of Economic Impact Report: 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.

Effects on Small Businesses: These rules are applicable to individual sportspersons and impose no compliance or reporting requirements for small business, nor are any design or operation standards contained in the rule.

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Deadline for Written Comments: The deadline for written comments is April 25, 2008. Comments may also be submitted electronically at the following internet site: <http://adminrules.wisconsin.gov>

Section 1. NR 10.275(4) is created to read:

NR 10.275(4) ICE AGE TRAIL. (a) *Applicability.* The provisions of this subsection apply to the Ice Age trail as established in s. 23.17, Stats., when the property is owned by the department.

(b) *Ice Age trail -traveled portions.* No person may hunt or discharge a firearm or airgun or shoot a bolt or an arrow from a bow or crossbow from or across the footpath of the Ice Age trail or within 50 feet of the center of the footpath. This section does not apply to individuals identified in s. 167.31(4), Stats.

(c) *Ice Age trail - non-traveled portions.* Hunting is allowed under the seasons established in s. NR 10.01 on State Ice Age trail areas except where posted closed to hunting.

(d) *Posting of state Ice Age trail areas.* The department may prohibit public access by posted notice for one or more nature-based outdoor activities, as defined in s. 23.0916(1)(b) Stats., if it determines that it is necessary to do so in order to do any of the following:

1. Protect public safety.

2. Protect a unique animal or plant community.
3. Accommodate usership patterns, as defined by rule by the department.

(e) *Exception.* When traversing another department property, portions of the Ice Age trail are subject to the hunting and trapping rules of that property, unless otherwise posted.

Section 2. NR 45.09(10) is created to read:

NR 45.09(10) Nothing in this section shall prohibit the possession of an uncased bow or uncased and unloaded firearm or air gun for the purpose of crossing a state trail.

Section 3. Effective dates. These rules shall take effect on September 1, 2008.

Section 4. Board adoption. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on _____.

Dated at Madison, Wisconsin _____.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Matthew J. Frank, Secretary

(SEAL)