

Natural Resources – Revises Ch. NR 64 - EmR1205

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Hearing Date: June 25, 2012

EMERGENCY ORDER OF THE STATE OF WISCONSIN  
NATURAL RESOURCES BOARD  
RENUMBERING, AMENDING, AND CREATING RULES  
CF-26-11 (E)

The statement of scope for this rule, SS 046-11, was approved by the governor on December 2, 2011, published in Register No. 672 on December 31, 2011 and approved by the Natural Resources Board on February 22, 2012.

This emergency rule was approved by the Governor on April 26, 2012.

The Wisconsin Department of Natural Resources proposes an emergency order to ch. NR 64, All-Terrain Vehicles, as follows: to renumber NR 64.14 (9)(d); to amend NR 64.12 (7)(a) and NR 64.14 (9) (a) 1.; and to create NR 64.02 (9m), NR 64.02 (15), NR 64.12 (7)(am), NR 64.14 (2r)(a) and (b), and NR 64.14 (9)(d), relating to the all-terrain vehicle grant programs and trail-route combinations.

Analysis Prepared by the Department of Natural Resources

- 1. Statutory Authority:** Sections 23.09(26), 23.33(8)(a), 23.33(9)(b)3 to 5, and 227.11, Stats.
- 2. Statutes Interpreted:** Sections 23.33(8)(a), 23.33(9)(b)3 to 5 and 227.11, Stats.
- 3. Explanation of Agency Authority:** Sections 23.33(8)(a), 23.33(9)(b)3 to 5, and 227.11, Stats., authorizes the Department to promulgate rules for the development and maintenance of all-terrain vehicle routes or all-terrain vehicle trails and the administration of state all-terrain vehicles grant program and related costs. Section 227.11, Stats., authorizes the department to promulgate rules for the general administration of department programs.
- 4. Related Statute or Rule:** Section 23.33(9)(b)4, Stats., allows for development and maintenance of a snowmobile or off-road motorcycle trails if the trail is open for use by all- terrain vehicles (ATVs).
- 5. Plain Language Analysis:** Chapter NR 64, Wis. Adm. Code, establishes standards for the implementation of an ATV grant program, including a trail aid program.

The Department proposes to revise ch. NR 64, Wis. Adm. Code, by creating a new trail + route category eligible for ATV grant funding (also referred to as a hybrid trail but commonly referred to as a “troute”).

Section-by-section details of this rule order are outlined below:

SECTION 1 defines a hybrid trail, commonly referred to as a “troute”, or ATV trail and route combination in ch. NR 64, Wis. Adm. Code.

SECTION 2 defines a trail connector.

SECTION 3 amends signage requirements for ATV routes to include hybrid trails.

SECTION 4 adds hybrid trails to signage requirements for ATV routes.

SECTION 5 creates a subsection that describes the maintenance grant funding available for ATV hybrid trails.

SECTION 6 amends reimbursement for trail rehabilitation to include hybrid trails.

SECTION 7 rennumbers a paragraph of the rule.

SECTION 8 creates criteria for grant funding for hybrid trail rehabilitation.

SECTION 9 provides information on effective dates of this rule.

SECTION 10 provides information on Board adoption.

**6. Summary of, and comparison with, existing or proposed federal regulations:** The federal government has one program that is somewhat similar to the Wisconsin ATV grant program: the Recreational Trails Act (RTA) grants. This federal program provides grant funds for the acquisition, development, rehabilitation of trails and structures (such as bridges and culverts) and maintenance of motorized, non-motorized, and mixed-use trails. The Department has received RTA funds for many years and often matches RTA grant funds from the motorized subprogram to Wisconsin ATV grant awards. In the RTA program, maintenance and rehabilitation activities are the two highest priority categories for grant funding; these priorities are shared by the Wisconsin ATV grant program. The WI ATV grant program can make grant awards for 100% of eligible project costs. However, in order to stretch state grant funds farther, the Department often matches a 50% grant from its ATV grant programs with a 50% RTA grant.

There is no current requirement for trail – route combination in the RTA program.

**7. Comparison with Rules in Adjacent States:** Minnesota, Michigan, Iowa, and Illinois all have ATV trail grant programs. Only Michigan allows ATVs on both trails and routes.

**8. Summary of factual data and analytical methodologies:**

The Department is aware that several ATV trails in Wisconsin overlap existing roads. From the onset of the program, these overlapping paths were identified as trails, signed accordingly, and were eligible to receive ATV grant funds. A few years ago, the ORV Advisory Council and WI County Forestry Association proposed that the Department revise ch. NR 64 to accommodate paths used by both ATVs and motor vehicles. These trail-route combinations – also called hybrid trails but commonly referred to as “troutes” – will be eligible for future maintenance grant funding at the current rate if it can be shown that the hybrid trails (“troute”) existed prior to the effective date of this rule.

This emergency rule will establish a new category of all-terrain trail commonly called a "troute", or a trail-route combination, that provides a connector between trails and allows grant funding for these unique trails. An emergency rule is needed because we anticipate that the permanent rule revisions to ch. NR 64 that will include troutes will not be effective until Sept 2012, at the earliest. Without this emergency rule, DNR will not be able to award grants to project sponsors for ATV "troutes" in July 2012, as is our practice. About one-third of the trails in northern Wisconsin are "troutes" and have been funded as trails since the program started. Our partners count upon grant funds for troute maintenance.

Without this Emergency Rule, the integrity and safety of troutes could be severely compromised. Our partners may be forced to close troutes without grant funding to maintain them until the permanent rule is effective. If troutes are closed, riders could be stranded in an unfamiliar location or be forced to turn around and ride back the same way they came instead of continuing onto their destination.

**9. Analysis and supporting documents used to determine effect on small business or in preparation of economic impact report:**

Include new trail-route category in ATV grant program. The Department expects that this emergency rule will have no negative fiscal effect on small business. Trail-route combinations already exist and are part of the ATV program, but

identified only as trails. DNR legal counsel had earlier opined that a new ATV category be created to recognize trail-route hybrids thereby making program administration more consistent.

Positive Economic Impact of the ATV Grant Program in Wisconsin. A March 2004 Executive Summary of the Economic & Demographic Profile of Wisconsin's ATV Users Report by the WI Division of Tourism in conjunction with the Wisconsin ATV Association (WATVA) and the University of Wisconsin – Madison Extension Department of Urban & Regional Planning, showed \$295.3 million was spent by ATV trail users during the period of June through October 2003. The report showed that 86% of ATV trail users were from Wisconsin. The total annual spending in Wisconsin by out-of-state ATVer was \$34.7 million. Using the Consumer Price Index (CPI) to adjust, ATVer spending could be as high as \$362.2 million and spending by out-of-state ATVer as high as \$42.6 million during 2011. Specific information from the report is as follows:

**ATVer Expenditures per Trip  
During June through October 2003  
(Daily Average Spending = \$200.62)**

<u>Category</u>	<u>ATVer</u>
<b>Food/beverage:</b>	\$107.52
<b>Entertainment:</b>	\$50.98
<b>Shopping:</b>	\$87.15
<b>Gas/Transportation:</b>	\$100.72
<b>Convenience Stores:</b>	\$36.35
<b>Lodging:</b>	\$144.78
<b>Gaming:</b>	\$47.12
<b>Other:</b>	\$67.38
<b>Total:</b>	\$642.00

**10. Effect on Small Business:** ATV grants assist with the cost of construction, development, and maintenance of specific trails. Those trails draw riders and their disposable income. Small businesses located in the area of ATV trails benefit when trail users make the following purchases: fuel and other items at convenience stores; retail items; accommodations or lodging; sales of replacement vehicle parts; repair or maintenance of snowmobiles or ATVs; rider clothing, protective gear, and accessories; food and drink at restaurants and other establishments.

**11. Agency Contact:**

Diane Conklin, Grant Manager  
All-Terrain Vehicle and Snowmobile Grant Programs  
Phone: (715) 822-8583  
E-mail: [Diane.Conklin@wisconsin.gov](mailto:Diane.Conklin@wisconsin.gov)

**12. Submit comments by US Postal Service or e-mail as follows:**

Mailing address: Diane Conklin, Grant Manager  
All-Terrain Vehicle and Snowmobile Grant Programs  
WI Department of Natural Resources  
P.O. Box 397  
1341 2nd Avenue  
Cumberland, WI 54829  
E-mail Address: [Diane.Conklin@wisconsin.gov](mailto:Diane.Conklin@wisconsin.gov)

**SECTION 1. NR 64.02 (9m) is created to read:**

**NR 64.02 (9m)** “Hybrid Trail (Troute)” means an all-terrain vehicle trail and route combination that allows all-terrain vehicles and motor vehicles to utilize the same linear surface and the combination is used as a trail connector as defined in sub. (15).

**SECTION 2. NR 64.02 (15) is created to read:**

**NR 64.02 (15)** “Trail Connector” means an all-terrain vehicle trail that connects one trail to another trail or services.

**SECTION 3. NR 64.12 (7) (a) is amended to read:**

**NR 64.12 (7)** Signs for all-terrain vehicle routes on highways, hybrid trails, and sidewalks designated for use by the governmental unit having jurisdiction as authorized under s. 23.33 (8), Stats., shall meet the following requirements:

(a) The all-terrain vehicle route sign shall have a reflectorized white symbol, border and message on a reflectorized green background. ~~The standard and minimum size of this sign shall be 24" x 18".~~ The sign, including the stylized all-terrain vehicle symbol and the word message "ATV ROUTE", shall conform to the standard design on file in the department of transportation.

**SECTION 4. NR 64.12 (7) (am) is created to read:**

**NR 64.12 (7) (am)** The standard and minimum size of an all-terrain vehicle route sign shall be:

1. For an all-terrain vehicle route sign on a hybrid trail that is not receiving gas tax funding: no smaller than 6" x 6" and no larger than 24" by 18".
2. For all other all-terrain vehicle route signs not identified in subd. 1., the minimum size shall be 24" by 18".

**SECTION 5. NR 64.14 (2r) is created to read:**

**NR 64.14 (2r) MAINTENANCE FUNDING OF HYBRID TRAILS (“TROUTES”).** (a) Hybrid trails *existing before* July 1, 2012. The department may provide state aid of up to 100% of the per-mile rate listed in sub. (2). Any hybrid trail that received funding under this chapter prior to July 1, 2012, and is posted with signs as a hybrid trail, shall continue to be eligible to receive the per-mile maintenance reimbursement rate under sub. (2) (a) or sub. (2) (b) or both. Any hybrid trail that received funding under this chapter prior to July 1, 2012, and is posted with signs as a hybrid trails, shall be eligible for rehabilitation costs of up to 100% of costs.

(b) *Hybrid trails existing on* July 1, 2012, *or later*. All hybrid trails developed on July 1, 2012, or later, shall be posted with signs as hybrid trails and are eligible for funding under this chapter as follows:

1. For eligible applicants not receiving gas tax for a road on which all-terrain vehicles will also be traveling, not more than 50% of the per-mile rate as identified in sub. (2)
2. For eligible applicants receiving gas tax for a road on which all-terrain vehicles will also be traveling, the per-mile rate identified in sub. (2) minus the gas tax received, not to exceed 50% of rate in sub. (2).

**SECTION 6. NR 64.14 (9) (a) 1. is amended to read:**

NR 64.14(9) (a) 1. Reimbursement of costs of development of all-terrain vehicle areas and trails shall be up to 100% of approved eligible project costs. Reimbursement of costs of development of hybrid trails existing before July 1, 2012, shall be up to 100% of approved eligible project costs. Sponsors may request an advance payment of up to 75% of the signed contract amount for development.

**SECTION 7. NR 64.14 (9) (d) is renumbered as s. NR 64.14 (9) (dg)**

**SECTION 8. NR 64.14 (9) (d) is created to read:**

**NR 64.14 (9) (d)** Rehabilitation of hybrid trails *existing after* July 1, 2012, and not receiving gas tax for a road on which all-terrain vehicles will also be traveling, at 50%, excluding structures.

**SECTION 9. Effective Date.** This rule shall take effect upon June 15, 2012, after publication in the official state newspaper, as provided in s. 227.24 (1)(c), Stats.

**SECTION 10. Board Adoption.** This rule was approved and adopted by the State of Wisconsin Natural Resources Board on March 28, 2012.

Dated in Madison, Wisconsin \_\_\_\_\_ .

STATE OF WISCONSIN  
DEPARTMENT OF NATURAL RESOURCES

(SEAL)

BY \_\_\_\_\_  
Cathy Stepp, Secretary