

**Wisconsin Department of Natural Resources
Natural Resources Board Agenda Item**

SUBJECT:

Request that the Board authorize a preliminary public hearing and comment period for the statement of scope for Board Order PR-03-20, proposed rules affecting chapters NR 5, 10, 11, 15, 17, 20, 26, 27, 45 and 51 related to Wisconsin DNR property management regulations

FOR: October 2021 Board meeting

PRESENTER'S NAME AND TITLE: Brigit Brown, Recreation Management Section Chief

SUMMARY:


The Joint Committee for Review of Administrative Rules (JCRAR) has requested a preliminary public hearing and comment period on the scope statement for PR-03-20. If the preliminary hearing notice for PR-03-20 is approved, the department will hold a preliminary public hearing and comment period on the scope statement. After the hearing is held and the public comment period closes, the department will bring the scope statement before the Board for approval. As required by statute, the department may not begin work on the content of the proposed rule until the scope statement is approved. The 30-month time frame for submission of a final rule to the legislature for approval expires on February 29, 2024.

The rule resulting from this scope statement would address fee structures, vehicle and boat use on DNR-managed properties, camping policies, use of technology on department lands, pet policies, allowable recreational uses of DNR-managed lands, and property-specific regulations to meet public health and safety and resource management goals.

RECOMMENDATION: That the Board authorize a preliminary public hearing and comment period for the statement of scope for Board Order PR-03-20.

LIST OF ATTACHED MATERIALS (check all that are applicable):

- Background Memo
- Fiscal estimate and economic impact analysis (EIA) form
- JCRAR request for preliminary public hearing
- Public hearing notice
- Board order/rule
- Statement of Scope and Governor's approval

Approved by	Signature	Date
Diane Brusoe, FWP deputy division administrator		9/13/2021 5:08 PM CDT
Keith Warnke, FWP division administrator		9/14/2021 8:21 AM CDT
For Preston D. Cole, Secretary		9/16/2021 5:50 PM CDT

cc: Board Liaison - AD/8

Program attorney – LS/8

by Todd Ambos

Department rule officer – LS/8

DS
WR

This page was intentionally left blank.

STATEMENT OF SCOPE

Department of Natural Resources

Rule No.: PR-03-20

Relating to: Wisconsin DNR property management regulations in chs. NR 5, 10, 11, 15, 17, 20, 26, 27, 45 and 51

Rule Type: Permanent

1. Finding/nature of emergency (Emergency Rule only):

This will be a permanent rule.

2. Detailed description of the objective of the proposed rule:

Chapter NR 45, Wis. Admin. Code governs the conduct of visitors to the lands and facilities owned, eased, or leased by the department. The department reviews this chapter every 3-4 years. For this rule, the department's focus will remain on ch. NR 45, but the department may also consider revisions to department lands rules in other related chapters of administrative code to improve consistency and organizational structure between chapters, and other changes of a minor nature. This rule would update fee structures, vehicle and boat use regulations, camping rules and hours of operation, technology regulations, rules relating to the possession of animals, general property use rules and property-specific rules. This rule will also streamline language, minimize redundancy and clarify provisions in ch. NR 45 and related administrative codes.

3. Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:

This rule will include changes in the following categories.

Fee structures

This rule will consider fee structures on various properties that charge fees for camping, parking, boat docking, rentals or other purposes. Fee modifications may include updating fees to keep pace with factors such as public use and facility management expenses, eliminating certain fees, establishing fee areas described in property master plans or for meeting facilities, and modifying fee structures.

Vehicle and boat use

The department will consider adding or modifying areas in which vehicles may be used, and may clarify rules on whether ATVs/UTVs, snowmobiles, bicycles and segways can be used on roads and trails within properties. However, this rule process is not intended to be a comprehensive revision and would not revisit policies established by planning processes. This chapter contains regulations on the use of boats with motors, electric motors, or boating prohibitions on more than 70 individual water bodies within department lands. These rules may consolidate types of regulations in order to simplify them, eliminate regulations that are outdated, and will consider new regulations. This rule may also address vehicle rules that are now duplicative after the creation of additional administrative code chapters or statutes.

Camping and operating hours

The department will revise camping policies to bring them up to date with the new camping reservation system, and may allow or prohibit camping on certain types of department properties, such as wildlife areas, and change camping admission and facility rules and fees. This rule may also exempt hunters or trappers engaged in a legal, open season so that they can enter certain areas outside regular operating hours. This rule will also review quiet hours and hours that visitors may use the properties, and make changes if needed.

Technology

This rule will establish policies and restrictions for drone use on or over department lands. Use of paintball guns is currently regulated on department lands and this rule may also propose regulations for the use of newer types of weapons, such as air soft guns.

Animals

This rule will evaluate and potentially revise areas of properties, including facilities, where pets are allowed on and off-leash. The rule may modify restrictions on equine animals to include other non-equine, large hoofed animals, and may also revise policies on the use of equine and hoofed animals on roads open to motor vehicles. This rule will also codify rules prohibiting feeding wildlife in certain areas such as beaches.

General property use

This rule will address allowable uses of department-managed properties to limit detrimental uses and encourage recreational use in line with the management strategies of each property. The rule may modify regulations for gathering edible and non-edible natural materials for personal use. Chapter NR 45 contains the

regulations for use of firearms and other weapons in designated use areas. These regulations will be reviewed and may be modified. These rules may clarify policies for recreational activities such as rock climbing to protect safety and property, and review policies on multi-use trails and property accessibility. The department may also review and update solicitation restrictions, review noise level rules, and update rules for certain structures placed on state lands, such as trail cameras and artificial hives or swarm traps. This rule will review closures on properties or parts of properties during part of or the entire year, and may consolidate closures into one section for simplification. This rule will also make minor changes and clarifications to language to reduce confusion and facilitate law enforcement efforts.

Property-specific regulations

The department will address regulations to meet a variety of public health, safety and welfare and land and resource management goals on state-owned and -managed properties. The department may update rules specific to individual properties, or may consolidate rules that currently apply to individual properties into a different section or structure. The department may pursue additional property regulations that are reasonably related to the use or management of department lands.

No action to update these rules could result in uses of department properties that are detrimental to public safety and welfare or incompatible with property management goals, fee structures that do not keep pace with demand and funding needs, reduced recreational opportunities, and regulatory uncertainty for the purposes of law enforcement.

4. Detailed explanation of statutory authority for the rule (including the statutory citation and language):

The department has the authority under s. 23.09 (2) to promulgate rules and establish plans and projects for conservation, including establishing game and fish refuges, acquiring lands, and maintaining lands for conservation, habitat, research, scenic, historical and recreational purposes.

Section 23.091, Stats. authorizes the department to acquire, develop, operate and maintain state recreation areas and establish use zones and associated rules within state recreation areas.

Section 23.11, Stats. grants the department jurisdiction over department lands.

In s. 23.115, Stats., the department is directed to designate trails, campgrounds, picnic areas and other special use areas, and roads on department properties.

Section 23.117, Stats. allows the department to post trails as open to use by bicycles, electric scooters or electric personal assistive mobility devices, and requires the department to regularly patrol trails in state parks and the Kettle Moraine state forest.

Section 23.28, Stats. authorizes the department to designate and regulate state natural areas, and restricts the department from allowing uses of state natural areas that are incompatible with the natural value of those areas.

The department is authorized under s. 23.305, Stats. to lease state park or state forest land to towns, villages or counties for outdoor spectator sports purposes.

Section 23.33, Stats. authorizes the department to regulate all-terrain vehicles and utility terrain vehicles in a manner consistent with the rules established in this section of statutes.

The state park system is established in s. 27.01, Stats., and this section grants the department acquisition, development and administration authority for the state park system. This includes authority in s. 27.01 (2) (j), Stats. to promulgate rules regulating the use of state parks. Furthermore, s. 27.01 (10) (b), Stats. allows the department to establish and operate campgrounds on department lands, and s. 27.01 (11), Stats. authorizes the department to establish a campground reservation system and promulgate rules associated with it.

Section 29.014, Stats. grants the authority for the department to establish open and closed seasons, bag limits, size limits, rest days and other conditions for taking fish and game to conserve fish and game and ensure continued opportunities for good fishing, hunting and trapping.

According to s. 29.335, Stats., the department shall promulgate rules regulating feeding of wildlife.

In s. 29.617, Stats., authority is granted to the department to acquire, lease, develop and maintain public hunting and fishing grounds.

In addition, general authority is granted by s. 227.11 (2) (a), Stats. to implement and interpret its statutory authority.

5. Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:

The department estimates that development of the rule, including meetings to discuss code revisions and holding public hearings, will require 400 hours of staff time.

6. List with description of all entities that may be affected by the proposed rule:

Nearly all users of Department of Natural Resource's managed properties can be affected. A wide variety of groups and individuals will be interested in this proposed rule. Some groups include: Wisconsin Association of Campground Owners, Friends of Wisconsin State Parks, The Wisconsin ATV-UTV Association, Wisconsin Conservation Congress, National Rifle Association, Non-motorized Recreation and Transportation Trails Council and Wisconsin Wildlife Federation.

7. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:

Federal regulations do not directly apply to the management of Department of Natural Resources lands.

8. Anticipated economic impact of implementing the rule (note if the rule is likely to have an economic impact on small businesses):

The department anticipates an annual economic impact of over \$50,000 (moderate impact) due to potential fee increases. An economic impact analysis will be conducted as part of rule development.

9. Anticipated number, month and locations of public hearings:

The department anticipates holding five public hearings in the month of June 2021. The department anticipates holding one hearing in Madison with a simultaneous broadcast to DNR regional offices to obtain statewide comments.

The department will hold these hearings in these locations to provide an opportunity for department property users in different parts of the state to attend a hearing and provide input.

Contact Person: Brigit Brown, 608-266-2183, Brigit.Brown@wisconsin.gov

DocuSigned by:

Todd Ambs

6793A7BA427C4CD...

For

Preston D. Cole, Secretary

2/7/2021 | 3:50 PM CST

Date Submitted

Notice of Preliminary Hearing on Statement of Scope

The Department of Natural Resources announces that it will hold a preliminary public hearing on Statement of Scope SS 074-21 which affects ch. NR 5, 10, 11, 15, 17, 20, 26, 27, 45 and 51, and is related to DNR property management regulations, at the virtual time and place shown below.

Hearing Information

Date: November 9, 2021

Time: 6 p.m.

Virtual Location Link: Online by [Zoom](#) or by phone at 1-312-626-6799, Meeting ID 844 8989 8931

Rule Information: This is a statement of scope for a proposed permanent rule; no specific rules have yet been proposed. Chapter NR 45, Wis. Admin. Code governs the conduct of visitors to the lands and facilities owned, eased, or leased by the department. The department reviews this chapter every 3-4 years. For this rule, the department's focus will remain on ch. NR 45, but the department may also consider revisions to department lands rules in other related chapters of administrative code to improve consistency and organizational structure between chapters, and other changes of a minor nature in those chapters. This rule would update fee structures, vehicle and boat use regulations, camping rules and hours of operation, technology regulations, rules relating to the possession of animals, general property use rules and property-specific rules. This rule will also streamline language, minimize redundancy and clarify provisions in ch. NR 45 and related administrative codes.

Accessibility

For the hearing or visually impaired, non-English speakers, or those with other personal circumstances which might make communication at the meeting/hearing difficult, DNR will, to the maximum extent possible and with reasonable advance notice, provide aids including an interpreter, or a non-English, large-print, or recorded version of hearing documents. To access these resources, please contact the email address or phone number listed below as soon as possible.

Appearances at the Hearing and Submittal of Written Comments

The public has the opportunity to testify at the hearing. Registration will take place at the hearing by completing a Hearing Appearance form, which is available here:

<https://dnr.wi.gov/files/pdf/forms/8300/8300-014.pdf>. Pre-registration is strongly encouraged if you plan to provide spoken comments during the hearing. To pre-register, please download and complete the fillable [Hearing Appearance form](#) and send it to Brigit.Brown@wisconsin.gov.

Comments on the proposed scope statement must be received on or before November 11, 2021. Written comments may be submitted by U.S. mail, E-mail, or through the internet and will have the same weight and effect as oral statements presented at the public hearing.

Written comments and any questions on the proposed scope statement should be submitted to:

Department of Natural Resources
Attn: Brigit Brown
P.O. Box 7921
101 S. Webster Street,
Madison, WI 53707-7921

The scope statement may be viewed at: <https://dnr.wi.gov/news/input/ProposedPermanent.html>

Comments can be made at: DNRAAdministrativeRulesComments@wisconsin.gov

The scope statement may be reviewed, and comments made at:
https://docs.legis.wisconsin.gov/code/scope_statements/comment.

Initial Regulatory Flexibility Analysis: The department anticipates an annual economic impact of over \$50,000 (moderate impact) due to potential fee increases. An economic impact analysis will be conducted as part of rule development.

Agency Small Business Regulatory Coordinator:

Emma Esch (608) 266-1959

emma.esch@wisconsin.gov



Tony Evers

Office of the Governor | State of Wisconsin

July 29, 2021

By Electronic Mail Only

Dear Secretaries and Agency Heads:

On this day, I approved the following statements of scope pursuant to Wis. Stat. § 227.135(2):

- A statement of scope by the Department of Natural Resources, submitted March 1, 2021, relating to Wisconsin DNR property management regulations (Wis. Admin. Code chs. NR 5, 10, 11, 15, 17, 20, 26, 27, 45 and 51); and
- A statement of scope by the Labor and Industry Review Commission, submitted February 8, 2021, relating to procedural rules for filing petitions for commission review and commission review of cases (Wis. Admin. Code chs. LIRC 1-4).

On this day, I approved the following proposed administrative rule pursuant to Wis. Stat. § 227.185:

- A proposed emergency rule by the Department of Health Services, submitted July 23, 2021, relating to requirements for adult long-term care (Wis. Admin. Code ch. DHS 10).

Please direct any questions about this letter to my policy director, Jenni Dye.

Sincerely,

A handwritten signature in black ink that reads 'Tony Evers'.

Tony Evers
Governor

cc: Ryan Nilsestuen, chief legal counsel (ryan.nilsestuen1@wisconsin.gov)
Jenni Dye, policy director (jenni.dye@wisconsin.gov)
DOA State Budget Office (SBOAdminRules@spsmail.wi.gov)
Emma Esch, DNR (emma.esch@wisconsin.gov)
Jackson Keuler, DHS (jackson.keuler@dhs.wisconsin.gov)
Anita Krasno, LIRC (anita.krasno@wisconsin.gov)

Penthorn, Meredith C - DNR

From: Kennedy, Sean P - DNR
Sent: Wednesday, September 08, 2021 4:59 PM
To: Brown, Brigit E - DNR; Penthorn, Meredith C - DNR; Winandy, Joseph E - DNR; Sparks, Craig C - DNR
Cc: Esch, Emma G - DNR; Allness, Michele M - DNR (Shelly)
Subject: FW: JCRAR Directive to Hold Preliminary Hearing on Scope Statement SS 074-21

Please see the below directive from JCRAR.

Thank you,

We are committed to service excellence.

Visit our survey at <http://dnr.wi.gov/customersurvey> to evaluate how I did.

Sean Kennedy

Legislative Liaison
Wisconsin Department of Natural Resources
Cell Phone: (608) 400-2115
seanp.kennedy@wisconsin.gov



From: Sen.Nass - LEGIS <Sen.Nass@legis.wisconsin.gov>
Sent: Wednesday, September 8, 2021 4:25 PM
To: Cole, Preston D - DNR <preston.cole@wisconsin.gov>
Cc: Kennedy, Sean P - DNR <seanp.kennedy@wisconsin.gov>; Sen.Nass - LEGIS <Sen.Nass@legis.wisconsin.gov>; Rep.Neylon - LEGIS <Rep.Neylon@legis.wisconsin.gov>; Grosz, Scott A - LEGIS <scott.grosz@legis.wisconsin.gov>; Kauffman, Jill - LEGIS <jill.kauffman@legis.wisconsin.gov>; Duchek, Mike - LEGIS <michael.duchek@legis.wisconsin.gov>
Subject: JCRAR Directive to Hold Preliminary Hearing on Scope Statement SS 074-21

September 8, 2021

Preston Cole, Secretary
Department of Natural Resources
101 S. Webster St. (GEF 2)
P.O. Box 7921
Madison, WI 53707-7921

RE: SS 074-21 – DNR Property Management Regulations

Dear Secretary Cole:

As co-chairperson of the Joint Committee for Review of Administrative Rules (JCRAR) and pursuant to s. 227.136 (1), Stats., I write to direct the Department of Natural Resources (DNR) to hold a preliminary public

hearings and comment periods on Scope Statement SS 074-21, which was published in the Wisconsin Administrative Register on August 30, 2021.

Additionally, pursuant to s. 227.135 (2), Stats., please note that a scope statement may not be approved by the Secretary of the Department of Natural Resources (DNR) or other boards and individuals within the department until after the preliminary public hearing and comment period are held by the agency, and accordingly, no activity may be conducted in connection with the drafting of a proposed rule until after such hearing and approval have occurred.

Please confirm receipt of this letter directing a preliminary hearing and comment period on the above scope statement.

Sincerely,

Steve Nass

Senator Steve Nass
Co-Chair, JCRAR

– Sent via e-mail –