

NATURAL RESOURCES BOARD AGENDA ITEM

SUBJECT: Request approval of the Statement of Scope and to proceed with drafting of Emergency Board Order CF-26-11(E), a proposal to revise ch. NR 64 to establish a trail-route combination for all-terrain vehicles (ATV)

FOR: FEBRUARY 2012 BOARD MEETING

TO BE PRESENTED BY / TITLE: Diane Conklin, Snowmobile & All-Terrain Vehicle Grant Manager

SUMMARY:

This emergency rule will establish a new category of all-terrain vehicle (ATV) trails under ch. NR 64, Wis. Adm. Code, called a "troute" or a trail - route combination that provides a trail connector and allow grant funding for said troutes.

Nature of Emergency: An emergency rule is needed to bridge the gap between the effective date of permanent revisions of ch. NR 64 now underway (CF-16-11) and the anticipated date of the next grant award cycle. Having an emergency rule will mean that project sponsors do not lose a construction season (summer 2012) and that troutes can be funded with ATV trail grants in July 2012. Without funding, trail maintenance will suffer and could create unsafe trail conditions.

Parties impacted by the proposed changes include county and municipal sponsors in the all-terrain vehicle grant program and the contractors that work with the local units of government. No known controversy.

RECOMMENDATION: Approve the scope statement and to proceed with emergency rule development.

LIST OF ATTACHED MATERIALS:

- | | | | |
|--|---|---|----------|
| No <input checked="" type="checkbox"/> | Fiscal Estimate Required | Yes <input type="checkbox"/> | Attached |
| No <input checked="" type="checkbox"/> | Environmental Assessment or Impact Statement Required | Yes <input type="checkbox"/> | Attached |
| No <input type="checkbox"/> | Background Memo | Yes <input checked="" type="checkbox"/> | Attached |

APPROVED:



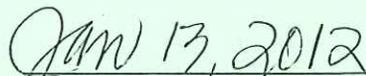
Bureau Director,



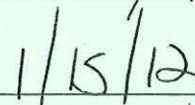
Administrator,



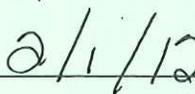
Secretary, Cathy Stepp



Date



Date



Date

cc: NRB Liaison
DNR Rules Coordinator

STAFF REVIEW - DNR BOARD AGENDA ITEM

REMINDER

Have the following questions been answered under the summary section of this form?

- Why is the rule needed?
- What are the significant changes?
- What are the key issues/controversies?
- What was the last action of the Board?

LIST OF ATTACHED REFERENCE MATERIAL REQUIRED FOR RULE PROPOSALS:

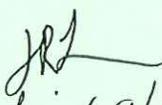
Hearing authorization:

Background Memo (if needed)*
 Fiscal Estimate
 Environmental Assessment (if needed)
 Rule

Final adoption:

Background Memo (if needed)*
 Response Summary
 Fiscal Estimate
 Environmental Assessment (if needed)
 Rule

* If all the questions listed in the REMINDER section above can be adequately summarized on the Green Sheet (and a second sheet if needed), the Background Memo may be omitted.

Unit	Reviewer	Date	Comments
Management and Budget		1-17-12	
Legal Services -Program Attorney -DNR Rules Coordinator	 	1/17/12 2-1-12	
Other (if applicable)			



SCOTT WALKER
OFFICE OF THE GOVERNOR
STATE OF WISCONSIN

P.O. Box 7863
MADISON, WI 53707

December 2, 2011

Cathy Stepp
Secretary
Wisconsin Department of Natural Resources
101 South Webster St.
P.O. Box 7921
Madison, WI 53707-7921

RE: Statement of Scope for Emergency Rule Modifying to NR 64

Dear Secretary Stepp,

I hereby approve the revised statement of scope submitted on November 29, 2011, pursuant to Wisconsin Statutes § 227.135, in regards to modifications to NR 64. You may send the scope statement to LRB for publication pursuant to Wisconsin Statutes § 227.24(1)(e)1d.

Sincerely,

A handwritten signature in black ink, appearing to be "Scott Walker", written over a horizontal line.

Scott Walker
Governor

STATEMENT OF SCOPE

Department of Natural Resources

Rule No.: CF-26-11 (E)

Relating to: Emergency Rule for Chapter NR 64, Wis. Adm. Code, to Establish a Trail / Route Combination for All-Terrain Vehicles

1. Description of the objective of the rule:

This emergency rule will establish a new category of all-terrain vehicle (ATV) trails under ch. NR 64, Wis. Adm. Code, called a "troute" or a trail/route combination that provides a trail connector and allow grant funding for said troutes.

Nature of Emergency

An emergency rule is needed to bridge the gap between the effective date of permanent revisions of ch. NR 64 now underway (CF-16-11) and the anticipated date of the next funding cycle. Having an emergency rule will mean that project sponsors do not lose a construction/maintenance season (summer 2012) and that troutes can be funded with ATV trail grants in July 2012.

2. Description of existing policies relevant to the rule and of new policies proposed to be included in the rule and an analysis of policy alternatives; the history, background and justification for the proposed rule:

The Department is aware that several all-terrain vehicle (ATV) paths exist that also allow motor vehicle traffic. From the onset of the program, these paths were identified as trails and signed accordingly. The Off Road Vehicle Council and the Wisconsin County Forestry Association propose that the Department revise ch. NR 64 to accommodate paths used by both ATV and motor vehicles and are used as trail connectors.

These trail/route combinations – often called "troutes" – will be eligible for existing grant funding if it can be shown that the troute existed prior to the effective date of this rule. Revisions to ch. NR 64 will include a definition of a troute. Grant funding will be possible for routes that are used as trail connectors, as defined in s. NR 64.02 (3), Wis. Adm. Code, if the trail connector is proposed after the effective date of this rule. Signage requirements will be needed for troutes. The purpose of the troute combination is so that roads are not used in lieu of ATV trails.

In the absence of the emergency rule, the Department would not be able to fund trail maintenance for over one-third of the ATV trails in the state until the permanent rule becomes effective. This would mean the loss of one year of grant funding and the needed trail maintenance for general upkeep and for repair from potential storm damage. Not having established the troute category could impact tourism in ATV trail areas as ATV riders may not be able to ride on continuous trails as the troutes act as trail connectors. Further, decreased maintenance may mean that some ATV riders may chose not to ride on poorly maintained trails and some trail segments may be closed if safety concerns exist due to lack of needed maintenance. Also, this may impact some snowmobile riders as some ATV trails are used year round, including by snowmobiles.

ATVs' use of trails causes soils to shift, creating rough conditions and pockets for standing water. Disrepair of trails creates more difficult riding conditions. Without ongoing maintenance, these pockets grow deeper. Trail ruts pose a safety threat, especially among less-skilled riders including children. ATVs can be used by children as young as twelve years of age if they have completed an ATV safety course.

If ruts are allowed to freeze, they pose a similar safety threat to snowmobiles. Snowmobiles' ski method of traversing the ground requires that the ground be smoothed before the ground freezes to maintain trail safety.

The maintenance and availability of these trout trails also plays a key safety role by offsetting the need for ATV users to travel along roads with higher vehicular traffic in attempt to reach their destination. Consistent trail maintenance is therefore crucial component to the safety and welfare of those recreating in the state.

3. Statutory authority for the rule (including the statutory citation and language):

Section 23.33(8)(a), Stats., directs the department to encourage and supervise a system of all-terrain vehicle routes and trails. Likewise, section 23.33(9)(b) sets forth the various all-terrain vehicle projects eligible for funding. The department seeks to continue the funding of those projects by the implementation of this emergency rule.

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

The Department estimates that approximately 60 hours of existing staff time will be needed to develop this emergency rule.

5. Description of all entities that may be impacted by the rule:

- Counties or municipalities that apply for grants and work with contractors on trails – Minimal. If a county does not have the funds to maintain their trails, they will most likely close the trail segments that cannot be maintained. Therefore, they would see minimal impact beyond the complaints and questions that they would have to respond to.
- Contractors that assist with the construction, development, and maintenance of specific trails or small businesses that create trail signs - Moderate. Contractors in some portions of the state rely on the business they received from development projects on these trails such as bridge construction, grading contracts, etc.
- Local ATV clubs that rely on this maintenance work to pay for equipment purchased. – Significant. Without the maintenance dollars that these clubs receive by providing the majority of labor to maintain, brush, and sign these trails, they would probably dissolve. Approximately 75-90% of the dollars spent are to reimburse clubs for the equipment and labor they provide.

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

The Department is not aware of any counterpart existing or proposed federal regulations that would govern the current or proposed ATV rules.

7. Estimated Economic Impact:

The Department anticipates level 3, minimal or no economic impact from the emergency rule.

Contact Person:

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Department Head Signature

Date Submitted

CORRESPONDENCE/MEMORANDUM

DATE: November 2, 2011

TO: David Clausen, Chair
Natural Resources Board

FROM: Cathy Stepp, Secretary
Department of Natural Resources

SUBJECT: **Scope Statement Relating to Emergency Rule for Chapter NR 64, Wis. Adm. Code, to Establish a Trail / Route Combination for All-Terrain Vehicles**

1. Description of the Objective of the Rule:

This emergency rule will establish a new category of all-terrain vehicle (ATV) trails under ch. NR 64, Wis. Adm. Code, called a "troute" or a trail/route combination that provides a trail connector and allow grant funding for said troutes.

Nature of Emergency

An emergency rule is needed to bridge the gap between the effective date of permanent revisions of ch. NR 64 now underway (CF-16-11) and the anticipated date of the next funding cycle. Having an emergency rule will mean that project sponsors do not lose a construction season (summer 2012) and that troutes can be funded with ATV trail grants in July 2012. There is also a safety concern for not maintaining these troutes.

2. Description of Existing Policies Relevant to the Rule and of New Policies Proposed to Be Included in the Rule and an Analysis of Policy Alternatives:

The Department is aware that several all-terrain vehicle (ATV) paths exist that also allow motor vehicle traffic. From the onset of the program, these paths were identified as trails and signed accordingly. The Off Road Vehicle Council and the Wisconsin County Forestry Association propose that the Department revise ch. NR 64 to accommodate paths used by both ATV and motor vehicles and are used as trail connectors.

These trail/route combinations – often called "troutes" – will be eligible for existing grant funding if it can be shown that the troute existed prior to the effective date of this rule. Revisions to ch. NR 64 will include a definition of a troute. Grant funding will be possible for routes that are used as trail connectors, as defined in s. NR 64.02 (3), Wis. Adm. Code, if the trail connector is proposed after the effective date of this rule. Signage requirements will be needed for troutes. The purpose of the troute combination is so that roads are not used in lieu of ATV trails.

In the absence of the emergency rule, the Department would not be able to fund trail maintenance for over one-third of the ATV trails in the state until the permanent rule becomes effective. This would mean the loss of one year of grant funding and the needed trail maintenance for general upkeep and for repair from potential storm damage. Not having established the troute category could impact tourism in ATV trail areas as ATV riders may not be able to ride on continuous trails as the troutes act as trail connectors. Further, decreased maintenance may mean that some ATV riders may chose not to ride on poorly maintained trails and some trail segments may be closed if safety concerns exist due to lack of needed maintenance. Also, this may impact some snowmobile riders as some ATV trails are used year round, including by snowmobiles.

ATVs' use of trails causes soils to shift, creating rough conditions and pockets for standing water. Disrepair of trails creates more difficult riding conditions. Without ongoing maintenance, these pockets grow deeper. Trail ruts pose a safety threat, especially among less-skilled riders including children. ATVs can be used by children as young as twelve years of age if they have completed an ATV safety course.

If ruts are allowed to freeze, they pose a similar safety threat to snowmobiles. Snowmobiles' ski method of traversing the ground requires that the ground be smoothed before the ground freezes to maintain trail safety.

The maintenance and availability of these trout trails also plays a key safety role by offsetting the need for ATV users to travel along roads with higher vehicular traffic in attempt to reach their destination. Consistent trail maintenance is therefore crucial component to the safety and welfare of those recreating in the state.

3. Statutory Authority for the Rule:

Section 23.33(8)(a), Stats., directs the department to encourage and supervise a system of all-terrain vehicle routes and trails. Likewise, section 23.33(9)(b) sets forth the various all-terrain vehicle projects eligible for funding. The department seeks to continue the funding of those projects by the implementation of this emergency rule.

4. 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 approximately 60 hours of existing staff time will be needed to develop this emergency rule. No other additional resources will be needed to develop the rule.

5. Description of All Entities that May be Affected by the Rule:

- Counties or municipalities that apply for grants and work with contractors on trails
- Contractors that assist with the construction, development, and maintenance of specific trails or small businesses that create trail signs

6. 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:

The Department is not aware of any counterpart existing or proposed federal regulations that would govern the current or proposed ATV rules.

7. Economic Impact:

Level 3 – Little to no economic impact expected. A positive economic impact will occur for businesses located in the area of ATV trails when ATV riders make purchases during their stay in the area.

Agency Contact Person:

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Natural Resources Board

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- C: Diane Conklin - Cumberland
- Jane Landretti – LS/8
- Linda Haddix – LS/8
- Laurie Ross – LS/8
- Mary Teves – CF/2
- Patrick Kirsop – CF/2

