

Report From Agency

REPORT TO LEGISLATURE
NR 10, 11, 15 & 19 Wis. Adm. Code

Board Order No. WM-01-10
Clearinghouse Rule No. CR 10-020

Basis and Purpose of the Proposed Rule

Annually, the department submits rule change proposals relating to hunting, trapping and game management. The statewide Spring Fish and Wildlife Hearings which were held on April 12, 2010, are the vehicle for citizen input. The origins of these rule change proposals are 1) department staff specialists from the bureaus of law enforcement, wildlife management, endangered resources and customer service and licensing, or; 2) Conservation Congress advisory questions from previous years that were forwarded by the congress' executive council. All of these proposals were reviewed by department staff prior to inclusion as proposals in this rule order.

The department recommended modifications to chapters NR 10, 11, 12 and 19, Wis. Adm. Code, relating to hunting, trapping, closed areas and game refuges. The rule changes are proposed for inclusion in the 2010 Spring Hearing Questionnaire. Specifically, these proposals do the following:

Sections 1, 22, 23 and 24 allow the use of colony traps for muskrats and establish size standards and regulations.

Sections 2 through 6, 26 and 27 eliminate the Burnett County and Rock Prairie Canada Goose Management Subzones.

Sections 7 and 25 establish turkey hunting seasons at Hartman Creek, Straight Lake, and the Glacial Heritage Area State Parks.

Sections 8 and 9 establish a single, consistent raccoon season opener for residents and non-residents.

Section 10 allows firearm deer hunting at Nelson Dewey state park during the traditional seasons in November.

Section 11 allows deer hunting on newly acquired lands at Buckhorn state park during all normal firearm deer hunting seasons.

Section 12 allows muzzleloader deer hunting at Big Bay state park during the normal statewide muzzleloader season that follows the traditional November firearm season.

Section 13 establishes firearm and archery deer hunting seasons at proposed Glacial Heritage Area state parks that are consistent with other CWD Management Zone state park hunting seasons.

Section 14 establishes a single, consistent statewide opening date for fox hunting and trapping, and coyote trapping.

Section 15 eliminates the 2:00 p.m. pheasant hunting closure at Scuppernong River Habitat Management Area in Waukesha County and allows pheasant hunting all day.

Section 16 allows the use of magnifying scopes on muzzleloading firearms during the muzzleloader-only deer hunting season.

Section 17 provides that all deer hunting licenses which are issued to 10 year-olds to 17 year-olds will include a carcass tag that is valid for an antlerless deer in any unit statewide.

Sections 18 and 19 allow the transportation of whole deer carcasses from the CWD zone to other areas if they are taken to a licenses meat processor or taxidermist.

Sections 20 and 21 allow dividing a deer into five parts prior to registration in order to facilitate removal from the field. These sections also repeal provisions which allow quartering bear and elk and allow dividing them into five parts in order to more easily facilitate removal from the field.

Sections 28 through 30 increase the penalty for violation of animal damage abatement program requirements by clarifying that program participation can be denied for the following program year in addition to the current year.

Sections 31 and 32 clarify the definition of “novice participant” for learn to hunt programs.

Minnesota allows quartering deer in the field and requires that the head of the deer remains attached to one of the quarters. Iowa requires deer to remain intact until the animal is processed for consumption. Wisconsin’s other surrounding states do not prohibit quartering deer in the field to facilitate removal.

Colony traps are legal in Minnesota but not allowed in Illinois. In Iowa and Michigan, colony traps are legal only for muskrats and must be entirely submerged.

Summary of Public Comments

Statewide, attendees favored all of the Wildlife Management Bureau proposals except for one that would allow participation in the youth deer hunting season by 16 and 17 year olds. Appendix B summarizes all of the voting results. Please see appendix B, which is attached at the end of this report.

Written Comments

In addition to vote tallies from the Spring Hearing, the department received a handful of written comments (Table 1). Most were simply “yes” or “no” comments and not elaborate position statements.

Table 1. 2010 Spring Hearing Written Comments

	Question	Support	Oppose
1	Atlatls for small game hunting		2
2	Violating animal damage abatement program	2	
3	Colony traps for muskrats	1	1
4	Raccoon season opener; residents and non-residents	1	
5	Participation youth deer season; 16, 17 year olds		2
6	Participation youth turkey season;16, 17 year olds		2
7	Definition of “novice participant”	2	
8	Scopes on muzzleloaders, muzzleloader season	3	
9	Definition of normal ag. or gardening practice		
10	Transport deer carcasses from CWD MZ to tax./meat processors	1	1
11	Deer licenses to 10-17 year olds include antlerless carcass tags	2	
12	Dividing deer, bear, and elk in five parts	1	1
13	Consistent opener for fox, coyote hunting and trapping	2	
14	Deer season at Nelson Dewey State Park	1	1
15	Turkey season at Hartman Creek State Park	1	1
16	Muzzleloader season at Big Bay State Park	1	1
17	Deer season at Buckhorn State Park	1	1
18	Eliminate 2 pm pheasant hunting close, Scuppernong	1	1
19	Turkey hunting season at Straight Lake State Park	1	1
20	Eliminate Rock Prairie Canada Goose Mgmt Subzone	1	1
21	Eliminate Burnett County Canada Goose Mgmt Subzone	1	1

Modifications Made

Allow participation in youth deer and turkey seasons by 16 and 17 year olds.

Voting on these proposals was essentially tied; the youth deer season proposal lost by 101 statewide voting and the youth turkey season proposal won by 63 votes. The proposals do have a history of support as Conservation Congress advisory proposals in 2009 (proposals won the popular vote by 291, both seasons addressed in one question). However, given the closeness of the popular vote and voting against both proposals by the full Conservation Congress as its statewide convention on May 7th, the department recommends not adopting them.

The department recommends against both proposals in order to avoid having different ages for participation in the seasons. Federal regulations establish a maximum age of 15 for youth waterfowl hunts, so the age for participation in all three youth seasons will stay consistent.

Allow the use of atlatls for small game hunting. (Appendix 1, question 1).

Recently passes legislation (2009 Wis. ACT 119, effective 2-26-10) has the effect of taking away DNR's ability to allow atlatls or methods of hunting other than firearms, air guns, bows and crossbows by rule. In the future, adding additional new methods of harvesting game will need to be established legislatively by statute. The intent of ACT 119 was to allow hunting with a crossbow under all the different hunting licenses, except the gun deer license, by both residents and nonresidents who have attained the age of 65 years. The bill also restated current DNR rules, that firearms, bows and air guns may be used for hunting certain game under appropriate licenses.

Define exceptions to the prohibition on hunting over bait - normal agricultural and gardening practices (Appendix 1, Question 9)

The department has decided to disregard this proposal and redraft it at a later time. Votes on question 9 were not tabulated. Prior to the April 12 hearings, it became clear that this proposal did not provide clear enough guidance on the difference between baiting and a normal agricultural practice. As a result we informed hearing attendees that the question would not be tabulated.

The proposal intended to address the fact that normal agriculture and baiting practices are not defined in administrative code. Under current regulations these practices are not considered baiting. For the purposes of enforcing current prohibitions of baiting and feeding wild animals this proposal more specifically defined a normal agricultural or gardening practice by clarifying that, once a crop is harvested, it is considered to be bait if it is placed back on the landscape. This definition also clarified that harvested crops placed in a confined area, such as fenced pasture for the purpose of feeding livestock, are not considered to be bait.

Two people have successfully argued in local courts that, for instance, removing pumpkins from the garden and placing them in the woods or in a hayfield and hunting over them is not baiting. In one situation, they argued that it is important to remove waste material from the garden so it doesn't become diseased and affect next year's crop and so it falls under our exemption for a "normal gardening practice." These were not precedent setting cases and we would not expect this outcome in most situations, but courts and DA's offices have recommended that the term Normal Agricultural or Gardening Practice be more clearly defined.

We plan to work with the Conservation Congress to come up with a better definition and proposal for next year.

Appearances at the Public Hearing

2010 Attendance: 4,360, statewide.

Changes to Rule Analysis and Fiscal Estimate

Four provisions, described in “modifications made” were removed from the rule order prior to adoption. Changes made to the rule analysis and fiscal estimate reflect those modifications.

Response to Legislative Council Rules Clearinghouse Report

All comments the department received from the Legislative Council Clearinghouse have been incorporated.

Final Regulatory Flexibility Analysis

The revisions to Ch. NR 10, 11, 12 and 19, Wis. Admin. Code, relating to hunting, trapping, closed areas and game refuges are applicable to individual sportspersons and impose no compliance or reporting requirements for small businesses, nor are any design or operational standards contained in the rule. Therefore, under s. 227.19 (3m) Stats., a final regulatory flexibility analysis is not required.

Environmental Analysis:

The department has determined that these rule revisions are a Type III action under Chapter 150, Wis. Adm. Code, and no environmental analysis is required.