

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
REPEALING, AMENDING, REPEALING AND RECREATING, AND CREATING RULES

The Wisconsin Natural Resources Board proposes an order to repeal 10.13(1)(b)13.b.; to amend NR 10.001(1r), 10.106(2)(f), 10.111(7), 10.12(5)(a), 15.024(4)(a) and 19.001(5); and to create NR 10.001(pm) 19.001(5)(note) and 45.04(3)(m)1. relating to game and hunting, game refuges, miscellaneous fur, fish, game and outdoor recreation, and the use of department properties.

WM-02-11

Analysis Prepared by the Department of Natural Resources

Statutory Authority and Explanation of Agency Authority: Statutes that authorize the promulgation of this rule order include ss. 23.09(b), 29.011, 29.014, 29.063(3), 29.335, 29.361, and 227.11, Stats. These sections grant rule making authority to the department to manage department lands, establish open and closed seasons for hunting and to establish other regulations for hunting and trapping. All rules promulgated under this authority are subject to review under ch. 227, Stats.

Statutes Interpreted and Explanation: In promulgating this rule, ss. 23.09(b), 29.011, 29.014, 29.063(3), 29.335, 29.361 and 227.11, Stats., have been interpreted as providing the department with the authority to make these housekeeping clarifications. Statutes establish trap tagging requirements, which were updated by 2009 ACT 38, and provisions in administrative code are no longer needed.

Related Statute or Rule: There are no state rules or statutes currently under promulgation that directly relate to the provisions that are proposed in this administrative order.

Plain Language Rule Analysis: The Bureau of Wildlife Management recommends promulgating administrative rules that modify sections of chs. NR 10, 15, 19 and 45. These rule changes related to hunting, trapping and the management of public lands are minor and unlikely to be controversial. The intent of these rule changes is to correct drafting errors, provide clarification to existing rules, simplify regulations, and update administrative code language and references. Policy issues affected by this rule are ones which have already been addressed by previous rulemaking.

SECTIONS 1, 2, and 8 clarify that the definitions of “animal part or animal byproduct” and “carcass” apply to bear baiting regulations as well as to deer baiting and feeding. These sections also clarify that eggs are not legal to use as bear bait and milk is, consistent with current interpretation. Lastly, this proposal clarifies that the term carcass includes domestic as well as wild animal carcasses.

SECTION 3 relaxes the deer registration requirement in the CWD management zone so that it is consistent with the registration requirements for archery hunters in the rest of the state.

SECTION 4 eliminates the April 10 elk permit application deadline in order to allow more time for people to submit applications. A new deadline will not be established by rule but is expected to be June 1.

SECTION 5 allows the use of no. 8 gauge shotguns for waterfowl hunting as long as the gun is modified so that the chamber cannot hold cartridges larger than no. 10 gauge and no larger cartridges are possessed.

SECTION 6 repeals trap tagging information that is unnecessary because there is a specific statutory requirement and because 2009 ACT 38 allowed use of a department issued customer identification number instead of name and address information.

SECTION 7 corrects the location information of Vernon Marsh Wildlife Management area in Waukesha County to include acreage in an additional township.

SECTION 8 clarifies that the prohibition on the placement of personal property on department lands also applies to items left out to mark or “reserve” trap locations if the season is not open.

Federal Regulatory Analysis: These state rules and statutes do not relieve individuals from the restrictions, requirements and conditions of federal statutes and regulations. Regulating the hunting and trapping of native species has been delegated to state fish and wildlife agencies. Additionally, none of the proposed rules exceed the authorities granted to states in 50 CFR 10.

Comparison with rules in Adjacent States: These rule change proposals do not represent significant policy changes and do not differ significantly from surrounding states. All surrounding states have regulations and rules in place for the management and recreational use of wild game and furbearer species that are established based on needs that are unique to that state’s resources and public desires.

The current definition of “animal part of byproduct” has been used universally for all baiting regulations. A cross reference in this section to laws on baiting deer could be read as limiting this definition to applying only in deer baiting situations. This proposal eliminates the cross reference to clarify that the definition applies in other situations. These sections also clarify in a note that milk is legal to use, a question that bear hunters occasionally ask.

Minnesota has established that no trap, either set or unset, may be placed or staked, and no flag, stake, or other device may be placed to mark or pre-empt a trapping site before the opening of any trapping season. Additionally, markers may not be placed while Minnesota’s muskrat season is open unless the marker is accompanied by a set trap. Iowa has a similar prohibition that applies on state game management areas.

Summary of Factual Data and Analytical Methodologies: This rule order is necessary to correct inconsistencies created through the promulgation of other rules and statutes, update code language, correct previous drafting errors, and to clarify existing administrative code language. The rule changes included in this order do not deviate from current department policy on the management of wildlife and the regulation of hunting and trapping.

This rule would clarify that the definition of “animal part or animal byproduct” and “carcass” apply to bear and other baiting regulations as well as for deer. There is only one definition of these terms and so it is used universally and the reference to deer baiting is not needed. These proposals also establish that eggs are included in the definition of carcass and establish, by note, that milk is not, consistent with current interpretations of both. These two provisions will reduce questions from field staff. Finally, this proposal clarifies that the term carcass includes domestic as well as wild animal carcasses.

Deer harvested in a CWD Management Zone currently must be registered by 5:00 p.m. on the day after harvest. This allows hunters less time than in other areas because the department was interested in obtaining fresh samples for disease testing. The shorter deadline is no longer seen as needed because there are no summer deer hunting seasons and there have been few problems with collecting viable samples.

This proposal eliminates the April 10 elk permit application deadline in order to allow more time for people to submit applications. Under current rules, there will not be sufficient time between making the population estimate that triggers the first season and the application deadline. A new deadline will not be established by rule.

Federal regulations prohibit hunting waterfowl with ammunition larger than no. 10 gauge. Shotguns larger than no. 10 gauge, when fitted with chamber inserts for no. 10 gauge ammunition, are legal under federal rules.

Currently, no person may place or use structures or store personal property on department managed lands unless the objects are removed daily. The department interprets this prohibition to include items used to pre-stake trapping locations when the season is not open. This proposal explicitly states that personal property includes items used to mark trapping locations if they are placed prior to the season opener or are not accompanied by a legally placed and set trap. Trappers, who requested this change through the Conservation Congress spring hearing process, hope to reduce territorialism over trapping locations which results in conflict and dispute in the field. For some people, this conflict detracts from enjoyment of the activity and discourages new trappers. Pre-staking is done by some trappers in hopes that others will avoid trapping in those locations. Stakes used as markers are often cut willow poles that are carried onto department lands, placed to mark a future trap site and are left out overnight.

Anticipated Private Sector Costs: These rules, and the legislation which grants the department rule making authority, do not have a significant fiscal effect on the private sector. Additionally, no significant costs are associated with compliance to these rules.

Effects on Small Business: These rules are applicable to individual sportspersons and impose no compliance or reporting requirements for small businesses, and no design or operational standards are contained in the rule.

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Deadline for Written Comments: The deadline for written comments is June 29, 2011.

SECTION 1. Amend s. NR 10.001(1r) and create a note to read:

NR 10.001(1r) "Animal part or animal byproduct", ~~for the purposes of s. 29.336 (3) (d) and (4) (d), Stats.,~~ means honey, bones, fish, meat, solid animal fat, animal carcass or parts of animal carcasses, but does not include liquid scents.

Note: Milk is not considered to be a part of an animal carcass or an animal byproduct for the purposes of this chapter.

SECTION 2. Create s. NR 10.001(5pm) to read:

NR 10.001(5pm) "Carcass" for the purpose of this chapter has the meaning given in s. NR 19.001 (5).

SECTION 3. NR 10.106(2)(f) is amended to read:

NR 10.106(2)(f) *CWD management zone*. Any deer harvested in the CWD management zone shall be registered at registration stations designated by the department no later than 5:00 p.m. on the day after it was killed, third day after it was killed, or by 5:00 P.M. on the day after the close of the season during which it was killed, as described in s. NR 10.01 (3) (et), whichever is earlier, unless otherwise authorized by the department.

SECTION 4. NR 10.111(7) is amended to read:

NR 10.111(7) APPLICATION PROCEDURE. Applications for elk licenses shall be on forms provided by the department. Applications shall be postmarked no later than ~~April 10 or received by a department service center location no later than April 10.~~ the deadline dates indicated on the form or received by a department service center location no later than those dates to be considered for selection.

SECTION 5. NR 10.12(5)(a) is amended to read:

NR 10.12(5)(a) *Guns and devices*. With a trap, snare, cable restraint, net, rifle, pistol, crossbow other than as authorized in ss. 29.171 and 29.193 (2) (cr) 2. and 3., Stats., swivel gun, punt gun, battery gun, machine gun, fishhook, poison, drug, explosive, stupefying substance ~~or shotgun of a larger bore,~~ shotgun chambered for a shell that is larger than a no. 10 gauge, or while in possession of a shell that is larger than no. 10 gauge.

SECTION 6. NR 10.13(1)(b)13.b. is repealed.

SECTION 7. NR 15.024(4)(a) is amended to read:

NR 15.024(4)(a) *Vernon wildlife area*. Township 5 north, range 18 east, town of Mukwonago, Township 5 north, range 19 east, town of Vernon and township 6 north, range 19 east, town of Waukesha.

SECTION 8. Amend s. NR 19.001(5) and create a note to read:

NR 19.001(5) "Carcass" means the dead body of any ~~wild animal to which it refers,~~ including the head, hair, skin, plumage, skeleton, eggs, or any other part thereof.

Note: Milk is not considered to be a part of an animal carcass or an animal byproduct for the purposes of this chapter.

SECTION 9. NR 45.04(3)(m)1. is created to read:

NR 45.04(3)(m)1. Personal property includes stakes, markers, or any other object which is placed with the intent of marking the location of a trap site except when the season established in s. NR 10.01 for that species is open and a lawfully set trap is placed with the stake or marker.

SECTION 10. Effective dates. This rule shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22(2)(intro.), Stats.

SECTION 11. Board adoption. This rule order was approved and adopted by the State of Wisconsin Natural Resources Board on April 27, 2011.

Dated at Madison, Wisconsin _____.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Cathy Stepp, Secretary

(SEAL)