

**ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
REPEALING, RENUMBERING AND AMENDING, AMENDING, AND CREATING RULE**

The statement of scope for this rule, SS 140-15, was approved by the Governor on December 17, 2015, Register No. 720B on December 28, 2015 and approved by the Natural Resources Board on January 27, 2017. A permanent rule was approved by the Governor on March 7, 2017.

The Wisconsin Natural Resources Board proposes an order to repeal Ch. NR 10.11 (6); to renumber NR 45.09 (2) (a); and to amend NR 10.06 (Index), 10.06 (title), (1), (2) (title), (a) (intro.), (5) (intro.), (6) (intro.), and (7) to (9), 10.07 (2) (b) 3. and 4., 10.12 (3) (d), 10.22 (3) (d), 10.23 (6) (b), 10.24 (4) (f) and (6) (b), (c) (intro.) and (d), 10.275 (2), 13.30 (2) (f), 13.42 (3), 18.04 (4), 45.04 (2) (a) 2.; and to create NR 45.09 (2) (a) 1. to 4., (d), (e) and (Note), the wildlife management spring hearing rule related to tree stand use on department managed lands and shooting hours.

WM-02-16

Analysis Prepared by the Department of Natural Resources

Statutory Authority and Explanation of Agency Authority: Related to the overnight placement of tree stands on department managed lands, the agency is generally charged with the care, protection, and supervision of state lands by s. 23.11 Stats. Under s. 23.09 (2) (d) related to conservation and department lands, the agency is directed to provide an adequate and flexible system for the use of outdoor resources in this state and may promulgate such rules as are necessary.

The chapter on wild animals and plants, in s. 29.014, “rule making for this chapter”, establishes that the department shall maintain open and closed seasons for fish and game and any limits, rest days, and conditions for taking fish and game. This grant of rule-making authority allows the department to establish the periods of time during the day when hunting is allowed.

Statutes Interpreted and Explanation: Related to the overnight placement of tree stands on department managed lands, the agency is generally charged with the care, protection, and supervision of state lands by s. 23.11 Stats. Under s. 23.09 (2) (d) related to conservation and department lands, the agency is directed to provide an adequate and flexible system for the use of outdoor resources in this state and may promulgate such rules as are necessary.

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Related Statute or Rule: There are no directly related rules currently being promulgated and enacted statutory direction.

SECTION 4 repeals a cross reference to the hunting hours for elk which may be superfluous language considering that similar cross references to the section establishing all hunting hours are not found in the regulations for other species are established.

SECTIONS 14 to 17 allow the unattended, overnight placement of portable stands and blinds on department owned and managed lands in areas North of State Highway 64 from September 1 through the following January 31.

Federal Regulatory Analysis: Federal regulations allow states to manage the wildlife resource lands located within their boundaries provided they do not conflict with regulations established in the Federal Register. None of these rule changes violate or conflict with the provisions established in the Federal Code of Regulations.

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 furbearers and for the use of state owned lands for public hunting which are established based on needs that are unique to those state's resources and public desires.

Summary of Factual Data and Analytical Methodologies: Currently the overnight, unattended placement of tree stands and ground blinds for hunting is not allowed on department managed lands. This regulation is designed to prevent the "staking out" or making advance claims to hunting locations and to prevent a first-come-first served practice. However the overnight placement of stands is allowed on other public lands which are not managed by DNR and may also be practical on department lands.

Allowing stands to remain placed overnight would provide the convenience of not having to camp and place a tree stand or blind for each hunt. This may especially be appreciated by what is an aging demographic of hunters. Some hunters have observed that competition for hunting locations in the area north of Hwy. 64 is already reduced compared to times when people felt that deer were more abundant.

Hunters would be limited to the placement of two stands or blinds placed in a county.

Under these rules, unattended tree stands would need to be marked with the owner's department identification number or name and address. It would be illegal to cause damage to a tree, but careful pruning of limbs less than 1 inch in diameter would not be considered causing damage to the tree if the stand is placed in. This would not permit cutting trees, brush and other vegetation for shooting purposes.

The department would survey hunter's opinions and evaluate concerns that are identified during the implementation period.

In statewide voting on a comparable advisory proposal at 2015 spring fish & wildlife hearings, support was strong with results of Ayes, 1,814; Noes, 1,687. The county vote included 45 in support, 2 in opposition, and a tie in one. For counties with area north of State Hwy 64, support was stronger and included 5 support, 5 opposed, and a tie vote in one.

hunting blind or stand after hunting hours in order to observe game or prevent spooking game from area as long as the person does not shoot.

Anticipated Private Sector Costs and Economic Impact of Implementing the Rule: No private sector costs or economic impacts are anticipated. The hunting regulations proposed in this rule related to the times when hunting is allowed and the use of department managed lands will not be significantly different than those in place during previous seasons. These rules are applicable to individual hunters and impose no compliance or reporting requirements for small business, nor are any design or operational standards contained in the rule.

Pursuant to the Governor's Executive Order 50, Section II, this is a level 3 economic impact analysis for this permanent rule. A notice for Solicitation of comments on this analysis was posted on the department's website and the state's administrative rules site on February 26 2016. No comments were received.

Effects on Small Business: No effects on small businesses are anticipated. The hunting regulations proposed in this rule related to the times when hunting is allowed and the use of department managed lands will not be significantly different than those in place during previous seasons. These rules are applicable to individual hunters and impose no compliance or reporting requirements for small business, nor are any design or operational standards contained in the rule.

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Deadline for Written Comments: The deadline for written comments was April 11, 2016

SECTION 1. NR 10 (Index) is amended to read:

NR 10.06 ~~Hunting~~ Shooting hours

SECTION 2. NR 10.06 (title.), (1) (2) (title), (a) (intro) to (6) (intro.), and (b), (5) (intro.), (6) (intro.), and (7) to (9) are amended to read:

NR 10.06 ~~Hunting~~ Shooting hours. (1) GENERAL HUNTING. All ~~hunting~~ shooting hours specified in this chapter, mean Central Standard Time, and the daily opening (a.m.) and closing hours listed shall apply to the entire state.

(2) ~~HUNTING~~ SHOOTING ZONES.

(a) *General.* Two general ~~hunting~~ shooting hour areas are established as follows: Northern area: all of the following counties and all counties north of them; Pierce, Dunn, Eau Claire, Clark, Marathon, Shawano, Oconto, and Door. Southern area: remainder of state. In addition, the following zones are established across the northern and southern areas:

(b) *General prohibition.* Except as provided in subs. (6) to (9), no person may ~~hunt or~~

through 7:00 p.m. except on the first day when hunting shooting hours begin at 9:00 a.m. All hunting shooting starts at 9:00 a.m. on the first day of the pheasant hunting season established in s. NR 10.01 (2) (c). The department shall establish the specific opening and closing times annually in the hunting regulations pamphlets. Opening and closing times for zone A southern and northern areas shall be based on astronomical data collected by the U.S. naval observatory, Washington D.C., 20392-5. The hunting shooting hours for the zones shall be obtained by adding minutes to the Zone A a.m. and p.m. columns as follows:

(6) PHEASANT HUNTING. Except as provided in this subsection, pheasant hunting shooting hours are those hunting hours established for small game in sub. (5). Pheasant hunting shooting hours shall close at 2:00 p.m. on weekdays within the posted boundaries of the following state wildlife areas beginning the third day of the pheasant hunting season established in s. NR 10.01 (2) (c) and continuing through November 3:

(7) WILD TURKEY HUNTING. The hunting shooting hours for pursuing wild turkeys shall be the same as the hours established in sub. (5) except that spring season hunting shooting hours shall close at sunset daily.

(8) EXCEPTIONS. There are no hunting shooting hour restrictions for pursuing coyote, raccoon and all wild animals for which no closed season is established except as follows:

(a) *Bear, deer, and elk seasons.* Hunting Shooting hours established in sub. (5) shall apply to archers and crossbow hunters pursuing any species during the black bear season established in s. NR 10.01 (3) (g), during the archery and crossbow deer seasons established in s. NR 10.01 (3) (em) and during the elk season established in s. NR 10.01 (3) (i).

(b) *Gun deer season.* Hunting Shooting hours established in sub. (5) shall apply to state wild archer, crossbow and gun hunters pursuing any species, except migratory game birds listed in s. NR 10.01 (1), during the period beginning on the Saturday preceding the Thanksgiving day holiday and continuing for 9 consecutive days in the central farmland and forest deer management zones established in s. NR 10.28 (4).

Note: The shooting hours for deer hunting with firearms ~~hours~~ do not apply to persons hunting coyote, raccoon, or other wild animals for which no closed season has been established during the muzzleloader season, an extended gun deer season or the extended gun season dates following the 9-day deer gun season in a metro deer management unit or in the southern farmland deer management zone.

(9) DAILY MIGRATORY BIRD REST PERIOD.

(a) Hunting Shooting hours for certain species shall close at 1:00 p.m. daily within the boundaries of the following state wildlife areas on the following dates:

1. George W. Mead Wildlife Area (Wood, Portage, and Marathon Counties) for waterfowl beginning on the third day of the duck hunting season in s. NR 10.01 and continuing for 16 days.

2. Zeloski Unit of the Lake Mills Wildlife Area (Jefferson County) for migratory birds beginning on Sept 1 and continuing through the 16th day after the opening weekend of the duck season established in s. NR 10.01 except that normal statewide hunting shooting hours apply on the opening weekend of the duck season.

elk, and scents shall be removed daily at the end of hunting shooting hours for deer established in s. NR 10.06 (5).

4. Two ounces or less of scent may be placed, used or deposited in any manner for hunting and does not need to be removed daily at the end of hunting shooting hours.

SECTION 4. NR 10.11 (6) is repealed.

SECTION 5. NR 10.12 (3) (d) is amended to read:

NR 10.12 (3) (d) *Blind removal.* All open water blinds shall be removed at the close of shooting hours each day.

SECTION 6. NR 10.22 (3) (d) is amended to read:

NR 10.22 (3) (d) *Hunting Shooting hours.* The hunting shooting hours for all species shall be the hours established in s. NR 10.06.

SECTION 7. 10.23 (4) (b) and (6) (b) are amended to read:

NR 10.23 (4) (b) Registration station hours shall begin one hour before the start of hunting shooting hours. Hunters shall report to such station immediately after the close of hunting shooting hours each day as established in sub. (6).

(6) SEASON AND HUNTING SHOOTING HOURS. (b) The commencement of the daily hunting shooting hours shall conform to those in s. NR 10.06 except that hunting shooting hours shall begin at noon each day unless otherwise indicated by signs posted at the registration station.

SECTION 8. NR 10.24 (4) (f) and (6) (b), (c) (intro.) and (d) are amended to read:

NR 10.24 (4) (f) *Check-in deadline.* Any person who obtains a hunting permit reservation and arrives at the department's check-in station after the opening of hunting shooting hours shall forfeit the reservation. Any person with a waterfowl hunting permit reservation shall report at the department's check-in station no later than one-half hour before the opening of hunting shooting hours or forfeit the reservation. Any person may obtain a daily permit on a first-come, first-served basis provided a permit is available.

(6) (b) *Waterfowl and deer hours.* The daily opening of hunting shooting hours for waterfowl and deer are established in s. NR 10.06.

(c) *Pheasant season exception.* The daily opening of hunting shooting hours shall be in accordance with ss. NR 10.01 and 10.06 except during the pheasant season. During the pheasant season the daily opening of hunting shooting hours shall be as follows:

(d) *Special closure.* The daily closing of hunting shooting hours for all species is established in s. NR 10.06 except during pheasant season when all hunting shooting except for waterfowl south of highway 142 and archery deer shall end at 2:00 p.m. after the Saturday nearest October 17.

(a) Except as provided under pars. (b) and (c), the ~~hunting~~ shooting hours for pursuing game at Governor Dodge, Mill Bluff and Mirror Lake state parks shall be the same as the hours established in s. NR 10.06 (5) except that ~~hunting~~ shooting hours will close at 12:00 noon daily when the Natural Resources Board has made a determination to generally prohibit hunting at all state parks under s. 29.089 (1m) (b) 2., Stats. Hunting is allowed under the specific season framework for these parks established in s. NR 10.01.

(b) The ~~hunting~~ shooting hours for pursuing migratory game birds at Governor Dodge Bluff state parks shall be the same as the hours established in s. NR 10.06 (5) except that ~~hunting~~ shooting hours shall close at 12:00 noon daily at times when the Natural Resources Board has made a determination to generally prohibit hunting under s. 29.089 (1m) (b) 2., Stats. Hunting is allowed under the specific season frameworks for these parks established in s. NR 10.01.

(c) The ~~hunting~~ shooting hours for pursuing migratory game birds at Mirror Lake state parks shall be the same as the hours established in s. NR 10.06 (5).

SECTION 10. NR 13.30 (2) (f) is amended to read:

NR 13.30 (2) (f) Section NR 10.06 ~~Hunting~~ Shooting hours.

SECTION 11. NR 13.42 (3) is amended to read:

NR 13.42 (3) HUNTING SHOOTING HOURS. No ~~hunting~~ shooting hours apply for any activity authorized by this chapter from March 1 through August 31.

SECTION 12. NR 18.04 (Note) is amended to read:

NR 18.04

Note: Daily kill and possession limits, ~~hunting~~ shooting hours, and other small game rules established by chs. NR 10, 11, and 15 and ch. 29 Stats., apply.

SECTION 13. NR 45.04 (2) (a) 2. is amended to read:

NR 45.04 (2) (a) 2. Hunters or trappers entering department lands during an open hunting or trapping season on the land, provided the entry is no earlier than ~~one hour prior to the opening or trapping hours established in ch. NR 10~~ 90 minutes prior to sunrise. If the department has not established hunting hours on the land, hunters may enter the land no earlier than one hour prior to sunrise.

SECTION 14. NR 45.09 (2) (a) is renumbered (a) (intro.) and amended to read:

NR 45.09 (2) (a) ~~Except as provided in subd. (1) to (4), construct~~ Construct, occupy, place, or use any elevated or ground blind or other elevated device except: ~~that portable tree stands and blinds used provided they are removed from the property each day at the close of hunting hours. No elevated tree stands shall have the owner's department customer identification number or the owner's name, address, written in the English language attached to the tree stand in a manner so it is clearly visible to any person standing on the ground, and kept legible at all times.~~

NR 45.09 (2) (a) 1. On any land open to hunting not identified in subds. 2. or 3., portable tree stands and blinds may remain placed only during the daily timeframe beginning one hour prior to and ending one hour after, the shooting hours established in s. NR 10.06.

2. On any land not part of the state park system, open to hunting and located north of Highway 64, portable tree stands and blinds may remain placed throughout the timeframe beginning September 1 and ending January 31.

3. On any land that is part of the state park system, open to hunting, and located north of Highway 64, portable tree stands and blinds may remain placed throughout the timeframe beginning seven days prior to, and ending seven days after, an established fall hunting period.

4. Portable tree stands and blinds may be occupied and used while lawfully placed under subds. 1. to 3.

SECTION 16. NR 45.09 (2) (b) is amended to read:

NR 45.09 (2) (b) Cause damage to trees by the placement or erection of portable tree stands by any other manner while climbing or hunting from a tree. Careful pruning, flush with the trunk of tree, of limbs less than 1 inch in diameter on a tree in which a tree stand is used shall not be considered causing damage to the tree.

SECTION 17. NR 45.09 (2) (d), (e) and (Note) are created to read:

NR 45.09 (2) (d) Place, use, or own an unoccupied tree stand unless the owner's department identification number, or the owner's name and address, is written in the English language attached to the tree stand in a manner so it is clearly visible to a person standing on the ground, legible at all times.

(e) Place more than two portable tree stands or blinds on department lands located in the county.

Note: Section NR 45.04 (3) (g) prohibits any person from destroying, molesting, possessing without permission, removing or attempting to remove the property of another.

SECTION 18. EFFECTIVE DATE. 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 19. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Resources Board on January 25, 2017 Dated at Madison, Wisconsin.