

WISCONSIN LEGISLATIVE COUNCIL STAFF

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FORM 2

APR 14 1999

RULES CLEARINGHOUSE

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CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 99-043

AN ORDER to repeal NR 19.27 (2) and (4) (b); to amend NR 19.26 (title) and (intro.); and to create NR 19.26, relating to the harvest, possession and sale of native amphibians, lizards and snakes.

Submitted by **DEPARTMENT OF NATURAL RESOURCES**

03-10-99 RECEIVED BY LEGISLATIVE COUNCIL.

04-06-99 REPORT SENT TO AGENCY.

RS:AS:jal;rv

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS
[s. 227.15 (2) (e)]

Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached YES NO

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CLEARINGHOUSE RULE 99-043

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

2. Form, Style and Placement in Administrative Code

a. The analysis of the rule contained in the cover letter to the Legislative Council's rules clearinghouse should be included in the analysis that is part of the rule package. This information is useful and the cover letter may not be received by various interested parties.

b. In s. NR 19.26, the introduction should simply state: "In this section:".

4. Adequacy of References to Related Statutes, Rules and Forms

Section NR 19.26 (8) (a) refers to reporting forms that will be provided by the department. The agency should ensure that the requirements of s. 227.14 (3), Stats., are met.

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. Section NR 19.26 (1) (b) would be clearer if the second sentence were deleted and the following clause were inserted after the word "state" in the first sentence: ", regardless of whether a particular specimen originates outside of this state."

b. Section NR 19.26 (2) should be rewritten to read: "this section applies to the taking, possession and sale of, and permit requirements regarding, native amphibians, lizards and snakes in Wisconsin."

c. In s. NR 19.26 (4) (a), it would be helpful to have a cross-reference to a definition or description of endangered or threatened amphibians, lizards and snakes.

d. In s. NR 19.26 (4) (c), may offspring be sold? If not, the second sentence should be more specific. Also, how will the department authorize a release?

e. In s. NR 19.26 (4) (e), "native 5" should be replaced with "5 native."

f. In s. NR 19.26 (5), "to" should be inserted after "nearest."

g. In s. NR 19.26 (7) (a), "a" preceding "sports license" should be deleted. Also, "will" should be replaced with "shall."

h. In s. NR 19.26 (7) (b), "on a calendar year basis" should be replaced with "for one calendar year."

i. In s. NR 19.26 (8), "the following information:" should be deleted and "Permittee's" should not be capitalized. Also, the colon after "harvest data including" should be deleted and "will" in the last sentence should be replaced with "shall." Finally, the use of the phrase "or both" in the last sentence is unclear. Is the record keeper given the option of reporting the number of species bought, number of species sold or the gross total of species bought and sold? Perhaps the phrase "or both" should be deleted and the phrase "bought or sold" should be replaced with the phrase "bought and sold."

j. In s. NR 19.26 (8) (b) the phrase "specified under par. (a)" should be inserted in the first sentence following the word "records."

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

The Wisconsin Natural Resources Board proposes a rule to repeal NR 19.27(2) and (4)(b), to amend NR 19.26(title) and (intro.) and to create NR 19.26 to regulate the harvest, possession and sale of native amphibians, lizards and snakes

ER-60-98

Analysis Prepared by the Department of Natural Resources

Statutory authority: ss. 29.039 and 227.11 (2)(a), Stats.

Statutes interpreted: s. 29.039 (1), Stats.

In this order:

SECTION 1 creates new language defining open seasons, harvest restrictions, possession limits, sale restrictions and permit requirements for native amphibians lizards and snakes.

SECTION 2 removes the reference to frogs from the crawfish seasons, limits and other restrictions.

SECTION 3 repeals the current language regulating the harvest of frogs.

SECTION 4 repeals the current language related to propagated frogs.

SECTION 1. NR 19.26 is created to read:

NR 19.26 Possession and sale of native amphibians, lizards and snakes. (1)

DEFINITIONS. As used in this section:

(a) "Amphibian" means cold-blooded, smooth-skinned vertebrates of the class Amphibia and includes egg, larval and adult forms.

(b) "Native" means indigenous and occurring or having occurred naturally within the boundaries of this state. It refers to species regardless of their state of origin.

(2) APPLICABILITY. This section applies to the taking, possession, ^{and of} sale and permit requirements for ~~native~~ amphibians, lizards and snakes in Wisconsin. *rewrite*

(3) POSSESSION. No person may take from the wild or possess any native amphibians, lizards or snakes, or their eggs, except as provided under sub. (4).

(4) POSSESSION EXEMPTIONS FOR NATIVE AMPHIBIANS, LIZARDS AND SNAKES. (a) Endangered and threatened amphibians, lizards and snakes, may only be possessed as provided under s. 29.604 (6), Stats. (5)

(b) A person may collect or possess up to 5 individuals or eggs of each species of native amphibian, lizard and snake, except as provided under pars. (c) to (i).

(c) A person may possess more than 5 specimens of any individual native lizard or snake species which result from live birth or eggs delivered while in captivity. All offspring that bring the possessed total for that species to more than 5 shall be given away within 3 months of their birth or hatching. The release of offspring to the wild is not allowed, except as authorized by the department. sell

(d) A person may collect or possess up to one native amphibian egg mass or the larvae from that egg mass. These may not be sold and shall be returned to the same body of water that they were taken from immediately after transforming to the adult form except that up to 5 transformed amphibians from the egg mass may be possessed. how?

(e) A person may collect or possess more than native 5 leopard frogs of the species *Rana pipiens*, 5 mudpuppies of the species *Necturus maculosus*, and 5 tiger salamanders of the species *Ambystoma tigrinum*, if authorized by the department by permit under sub. (7). ex Dr Cisun

(f) No person may take or possess more than 2 bullsnakes of the species *Pituophis malanoleucus sayi* regardless of origin.

(g) Publicly owned museums and zoos are exempt from possession limits.

(h) A person may possess more than 5 bullfrogs provided they are legally obtained from out of state and are possessed for research purposes or for sale for research purposes, if authorized by the department by permit under sub. (7). offspring?
par. (c)
not a
breed

(i) A person may possess more than 5 individual specimens of any native amphibian not listed as threatened or endangered, which are purchased or collected as part of a shipment of live bait by a licensed bait dealer or registered fish farmer.

(5) SEASON FOR FROGS. The open season for frogs runs from the Saturday nearest May 1 to December 31. No person may take frogs with the aid of a firearm. to (5)

(6) SALE OF NATIVE AMPHIBIANS, LIZARDS AND SNAKES. (a) The sale of native amphibians, lizards and snakes is prohibited except as provided in par. (b). - You mean - breed - them?

(b) Bullfrogs legally obtained from out of state and native leopard frogs, mudpuppies or tiger salamanders, as listed under sub. (4)(d), (h) and (i), may be sold if the person has been authorized, by commercial permit under sub. (7), to sell the species.

(7) PERMITS TO POSSESS AND SELL NATIVE AMPHIBIANS. (a) The department may issue commercial permits to take, possess and sell the species listed under sub. (4)(d), (h) and (i). To qualify for a permit, a person shall possess either a fishing license, small game license, a sports license or patrons license. Permits will be issued at no charge. (B)

(b) Commercial permits shall be issued on a calendar year basis and may be renewed annually. (S)

Note: Permits are available from the Department's Bureau of Endangered Resources, P. O. Box 7921, Madison, WI 53707, Phone (608)267-0849, Fax (608)266-2925.

(8) RECORDS AND REPORTING. (a) Commercial permittees shall keep complete and accurate records in the English language of all harvesting, selling and buying activities including the following information: Permittee's name, permit number, fishing or applicable hunting license number, address and all harvest data including: daily collection records, date of harvest, county or counties where harvest occurred, species harvested and the number of specimens harvested by species for snakes and lizards and pounds of specimens harvested by species for amphibians. All buying and selling records shall include the species bought or sold, the number of each reptile species bought or sold and the pounds of each amphibian species bought or sold, or both, the date of the transaction, and the name and address of the person or business bought from or sold to. Reporting forms will be provided by the department. (S)

(b) Commercial permittees shall submit copies of all records for the past calendar year. The records shall be submitted in person or by first class mail to the department address shown on the form so that it is received by the 15th day of January following the year of record. Failure to submit all records on time, or the submission of inaccurate or incomplete records, may result in a delay or denial of a permit renewal. Forms → specified under par. (a)

SECTION 2. NR 19.27(title) and (intro.) are amended to read:

NR 19.27 (title) **Seasons, limits, restrictions on taking crayfish.** (intro.) There is a closed season established for taking crayfish and frogs except when taken during the open season by the following methods: ch

SECTION 3. NR 19.27 (2) is repealed.

SECTION 4. NR 19.27 (4) (b) is repealed. → also must remember other provisions in (4): (2)

The foregoing rules were approved and adopted by the State of Wisconsin Natural Resources Board on _____.

The rules 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.

Dated at Madison, Wisconsin _____.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
George E. Meyer, Secretary

(SEAL)

State of Wisconsin
Department of Natural Resources

NOTICE TO PRESIDING OFFICERS
OF PROPOSED RULEMAKING

Pursuant to s. 227.19, Stats., notice is hereby given that final draft rules are being submitted to the presiding officer of each house of the legislature. The rules being submitted are:

Natural Resources Board Order No. ER-60-98

Legislative Council Rules Clearinghouse Number 99-043

Subject of Rules Harvest, possession and sale of native
amphibians, lizards and snakes

Date of Transmittal to Presiding Officers February 4, 2000

Send a copy of any correspondence or notices pertaining to this rule to:

Carol Turner, Rules Coordinator
DNR Bureau of Legal Services
LC/5, 101 South Webster

266-1959

REPORT TO LEGISLATURE

NR 19.26, Wis. Adm. Code
Harvest, possession and sale of native amphibians, lizards and snakes

Board Order No. ER-60-98
Clearinghouse Rule No. 99-043

Statement of Need

An ever-increasing demand for amphibians and reptiles for the pet industry in the United States and in international markets has created the need for greater protection for these animals. Existing regulations have no provisions to regulate the harvest or sale of the state's amphibians and reptiles, with the exception of the turtle regulations that became effective in March, 1997.

This rule adds three species (bullsnakes, black rat snakes and yellow-bellied racers) to the list of protected wild animals under s. NR 10.02, eliminates frogs from regulation under s. NR 19.27 and creates s. NR 19.26 which will regulate the harvest possession and sale of all amphibians, lizards and snakes which are not listed as threatened or endangered.

Modifications as a Result of Public Hearing

Section NR 10.02(10) was created to add bullsnakes, black rat snakes and racer snakes to the list of protected wild animals. The possession of these snakes, if taken in Wisconsin, is prohibited. Two of each may be possessed if legally obtained outside Wisconsin. The possession and sale of an unlimited number of atypically colored or patterned native amphibians and reptiles is allowed. Commercial permits will be issued to possess and sell native amphibians and reptiles legally collected out-of-state or purchased from out-of-state. Permits are issued at no charge, but possession of either a valid resident fishing license, small game license, sports license or patron license is required. Nonresident harvest or possession is not allowed. Accredited colleges, universities and other educational institutions are exempt from possession limits for research and education.

Appearances at the Public Hearings and Their Position

April 15, 1999

In support:

Noel Stanton, 218 S. Owen Drive, Madison, WI 53705
John Kivikoski, 2003 Frisch Road, Madison, WI 53711
Karen Etter Hale, Madison Audubon Society, 222 S. Hamilton St., Madison, WI 53703

In opposition:

Coleen Lemberger, Wm. A. Lemberger Co., P.O. Box 2482, Oshkosh, WI 54903
Lance Jungwirth, 2500 W. Waukau Avenue, Oshkosh, WI 54903
Gale Davy, Wis. Assoc. for Biomedical Research & Education, 750 N. 18th St., Milwaukee, WI

As interest may appear:

Bethany Nelson, 301 ½ N. Hamilton Street, Madison, WI 53703
William C. Zalenski, President, UW Stevens Point Herpetology Society, 1916 McCulloch St.,
Stevens Point, WI 54481
Neal Halstead, 3575 Bagnall Road, Sturgeon Bay, WI 54235
April Stank, 1916 McCulloch Street, Stevens Point, WI 54481

November 16, 1999

In support:

Noel Stanton, 218 S. Owen Drive, Madison, WI 53705
Rebecca Christoffer, 413 Columbia Avenue, DeForest, WI 53532
Tammie Dorsey, W204 N17075 Jackson Drive, Jackson, WI 53037
William C. Zelenski, President, UW Stevens Point Herpetology Society, 916 Michigan Avenue,
Stevens Point, WI 54481
Neal Halstead, 2035A Ellis Street, Stevens Point, WI 54481
Heather Davis, 2821 Atwood Avenue, Madison, WI 53704
Mike Dorsey, W204 N17075 Jackson Drive, Jackson, WI 53037
Shawn Miller, 152 Pray Hall, Stevens Point, WI 54481
John Kivikoski, 2003 Frisch Road, Madison, WI 53711

In opposition:

Lance Jungwirth, 2500 W. Waukau Avenue, Oshkosh, WI 54903
Coleen F. Lemberger, Wm. A. Lemberger Co., Inc., P.O. Box 2482, Oshkosh, WI 54903

Response to Legislative Council Rules Clearinghouse Report

The recommendations were accepted.

Final Regulatory Flexibility Analysis

Two biological supply businesses will be minimally impacted by the loss of some sales of native reptiles for pets. This is not considered to be a hardship since we are continuing to allow the sale of the primary native herptile species in which they deal. A large percentage of their business is generated by the sale of non-native species that are not impacted by these rules. The few pet stores that sell native herptiles should experience minimal losses since the vast majority of their herptile sales comprise non-native species.

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

The Wisconsin Natural Resources Board proposes a rule to repeal NR 19.27(2) and (4)(b); to amend NR 19.27(title) and (intro); and to create NR 10.02(10) and 19.26 to regulate the harvest, possession and sale of native amphibians and reptiles.

ER-60-98

Analysis Prepared by the Department of Natural Resources

Statutory authority: s. 29.039 and 227.11 (2)(a), Stats.

Statutes interpreted: s. 29.039 (1), Stats.

An ever-increasing demand for herptiles for the pet industry in the United States and in international markets makes this rule proposal necessary, especially since existing regulations have no provisions to regulate harvest or sale of the state's amphibians and reptiles, with the exception of the turtle regulations that became effective in March, 1997.

The rule package will eliminate frogs from NR 19.27 and creates NR 19.26 which will regulate the harvest, possession limits and sale of all amphibians and reptiles which are not listed as endangered or threatened. The rule package will also create s. NR 10.02(10) to add three snakes to the list of protected wild animals.

These regulations will affect at least two biological supply dealers in the state by limiting the number of species that they can collect and sell within the state. These businesses will be regulated by permit so that the Department can begin to acquire data on the herptile biological trade, which is currently lacking. Some bait dealers and aquaculturists may also need permits. Permits will be issued free of charge. Some pet stores and individuals may lose a small amount of sales by limiting their instate sales of herptiles to species non-native to Wisconsin.

SECTION 1. NR 10.02 (10) is created to read:

NR 10.02(10) Bullsnares *Pituophis melanoleucus sayi*, black rat snakes *Elaphe obsoleta* and the racer snakes *Coluber constrictor*.

SECTION 2. NR 19.26 is created to read:

NR 19.26 Possession and sale of native amphibians and reptiles. (1)

DEFINITIONS. In this section:

(a) "Amphibian" means cold-blooded, smooth-skinned vertebrates of the class Amphibia and includes all life stages.

(b) "Herptile" means amphibians and reptiles collectively.

(c) "Native" means indigenous and occurring or having occurred naturally within the boundaries of this state regardless of whether a particular specimen originates outside of this state.

(d) "Reptile" means cold-blooded, scaled vertebrates of the class Reptilia and includes all life stages.

(2) **APPLICABILITY.** This section applies to the taking, possession and sale of, and permit requirements regarding, live native amphibians and reptiles in Wisconsin.

(3) **POSSESSION.** No person may take from the wild or possess any native amphibians, lizards or snakes, or their eggs, except as provided under sub. (4).

Note: Section NR 19.275 (2) contains the turtle possession limits.

(4) **POSSESSION EXEMPTIONS FOR NATIVE AMPHIBIANS, LIZARDS AND SNAKES.** (a) Endangered and threatened amphibians and reptiles may only be possessed as provided under s. 29.604 (6), Stats.

(b) A person may take or possess up to 5 individuals or eggs of each species of native amphibian, lizard and snake, except as provided under pars. (c) to (k).

(c) No person may take or possess bullsnakes of the species *Pituophis melanoleucus sayi*, racers of the species *Coluber constrictor* or black rat snakes of the species *Elaphe obsoleta obsoleta* from within the borders of the state. Persons may possess up to 2 of each of these species if legally obtained from out-of-state.

(d) A person may take and possess up to 2 individuals of the following snake species: Fox snakes of the species *Elaphe vulpina vulpina* and eastern milk snakes of the species *Lampropeltis triangulum triangulum*.

(e) A person may possess more than the legal possession limit of lizards or snakes that result from live birth or eggs delivered while in captivity. All offspring that bring the possessed total for that species to more than the legal possession limit shall be given away within 3 months of their birth or hatching. These offspring may not be sold, bartered or traded. The release of offspring to the wild is not allowed unless a written request to release is submitted to the department and a permit is issued by the department as provided under s. 29.745 (1), Stats.

(f) A person may take or possess up to one native amphibian egg mass or the larvae from that egg mass. These may not be sold and shall be returned to the same body

of water that they were taken from immediately after transforming to the adult form except that up to 5 transformed amphibians may be possessed.

(g) A person may take or possess more than 5 native leopard frogs of the species *Rana pipiens*, 5 mudpuppies of the species *Necturus maculosus*, and 5 tiger salamanders of the species *Ambystoma tigrinum*, if authorized by the department by permit under sub. (7).

(h) Publicly owned museums and American Zoo and Aquarium Association accredited institutions are exempt from possession limits.

(i) Accredited colleges, universities and other educational institutions are exempt from possession limits for research and education.

(j) A person may possess more than 5 individual specimens of any native amphibian not listed as threatened or endangered, which are purchased or collected as part of a shipment of live bait by a licensed bait dealer or registered fish farmer.

(k) No nonresident harvest or possession is allowed.

(l) A person may possess an unlimited number of atypically colored or patterned native amphibians and reptiles (e.g. albinos, striped snakes that are typically blotched).

(5) SEASON FOR FROGS. The open season for frogs runs from the Saturday nearest to May 1 to December 31. No person may take frogs with the aid of a firearm.

(6) SALE OF NATIVE AMPHIBIANS AND REPTILES. (a) The sale of native amphibians and reptiles is prohibited except as provided in pars. (b) and (c).

(b) Native leopard frogs of the species *Rana pipiens*, mudpuppies of the species *Necturus maculosus* or tiger salamanders of the species *Ambystoma tigrinum* collected within Wisconsin may be sold if the seller has been specifically authorized, by commercial permit issued under sub. (7), to sell those species.

(c) Native amphibians and reptiles legally collected out-of-state or purchased from out-of-state may only be sold to educational or research institutions in state. The seller shall possess a commercial permit issued under sub. (7).

(d) Dead turtles and their parts may be sold during the open season established under NR 19.275, 21.13 and 22.13.

(e) The sale of atypically colored or patterned native amphibians and reptiles is allowed without restriction and without permit.

(7) PERMITS TO POSSESS AND SELL NATIVE AMPHIBIANS AND REPTILES. (a) The department may issue commercial herptile permits to take, possess and sell amphibian species listed under sub. (4)(g).

(b) The department may issue commercial herptile permits to possess and sell native amphibians and reptiles legally collected out-of-state or purchased from out-of-state.

(c) To qualify for a commercial herptile permit, a person shall possess either a valid resident fishing license, resident small game license, resident sports license or resident patrons license.

(d) All commercial permits shall be issued at no charge. Permits shall be issued for one calendar year and may be renewed annually.

Note: Permits are available from the Department's Bureau of Endangered Resources, P. O. Box 7921, Madison, WI 53707, Phone (608) 267-0849, Fax (608) 266-2925.

(8) RECORDS AND REPORTING. (a) Commercial permittees shall keep complete and accurate records in the English language of all harvesting, selling and buying activities for all native species collected or obtained instate or from out-of-state. Records shall include: permittee's name, permit number, fishing or applicable hunting license number and address. Harvest data shall include daily collection records, date of harvest, counties harvested, species and the pounds of each amphibian species harvested. All buying and selling records shall include the species bought and sold, the number of each reptile species bought and sold and the pounds of each amphibian species bought and sold, the date of the transaction, and the name and address of the person or business the permittee is buying from and selling to. Reporting forms shall be provided by the department.

Note: Forms may be obtained from the Bureau of Endangered Resources, P. O. Box 7921, Madison, Wisconsin 53707.

(b) Commercial permittees shall submit copies of all records specified under par. (a) for the past calendar year. The records shall be submitted in person or by first class mail to the department address shown on the form so that it is received by the 15th day of March following the year of record. Failure to submit all records on time, or the submission of inaccurate or incomplete records, may result in a delay or denial of a permit renewal.

(c) The department may issue permit renewals contingent on the receipt of complete and accurate paper records from the prior year.

SECTION 3. NR 19.27 (title) and (intro.) is amended to read:

NR 19.27 (title) Seasons, limits, restrictions on taking crayfish and frogs.
(intro.) There is a closed season established for taking crayfish ~~and frogs~~ except when taken during the open season by the following methods:

SECTION 4. NR 19.27 (2) is repealed.

SECTION 5. NR 19.27 (4) (b) is repealed.

The foregoing rules were approved and adopted by the State of Wisconsin Natural Resources Board on January 26, 2000.

The rules 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.

Dated at Madison, Wisconsin _____.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
George E. Meyer, Secretary

(SEAL)