

Clearinghouse Rule 09-024

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 renumber 19.73(3)(a)4.; to amend NR 10.01(3)(e)(2), 10.01(3)(ed)1.b., 10.01(3)(et)1.d.2., 10.07(2m)(e)1, 10.09(1)(c)2., 10.09(2), 10.105(4) and (6), 10.12(1)(h), 10.13(1)(b)6., 10.13(1)(b)12.(intro.), 10.13(1)(b)13.a., 10.40(5)(e), 10.41(3)(b)1., 19.025(2)(b) and (d), 19.71(10), 19.73(3)(d), and 19.78(4) relating to hunting, trapping and wildlife rehabilitation.

WM-03-09

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. 29.014, 29.089, 29.193, 29.197, 29.597, 169.085, 169.24, and 227.11, Stats. These sections grant rule making authority to the department to establish open and closed seasons for hunting and to establish other regulations for hunting, trapping, and wildlife rehabilitation. All rules promulgated under this authority are subject to review under ch. 227, Stats.

Statutes Interpreted and Explanation: In promulgating this rule, ss. 29.014, 29.089, 29.193, 29.197, 29.597, 169.085, 169.24, and 227.11, Stats., have been interpreted as providing the department with the authority to make these housekeeping clarifications.

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 and 19. These rule changes related to hunting, trapping and wildlife rehabilitation 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.

Section 1 clarifies that access permits are required of deer hunters at Lake Wissota state park.

Sections 2 and 3 clarify that the harvest of deer of either sex is allowed by archery and gun hunters who possess disabled hunting permits, making this regulation consistent with the law that applies to disabled hunters during firearm seasons.

Section 4 clarifies that, where it is legal to place bait for hunting deer, bait may be placed on the day before the archery season as is currently allowed on the day before the gun seasons.

Section 5 removes the prohibition of hunting deer with full metal jacketed, nonexpanding type bullets so that only nonexpanding type bullets are prohibited.

Section 6 establishes that the prohibition of hunting and firearm discharge on the day before the firearm deer season applies only to the traditional nine-day deer season.

Section 7 establishes that velvet antlers may be possessed in a CWD zone and clarifies that antlers being transported out of a CWD zone must be free of brain tissue but hair or hide does not need to be removed.

Section 8 incorporates by reference the definitions for a section of federal regulations that are already incorporated into Wisconsin code related to baiting migratory game birds.

Section 9 eliminates an unnecessary cross reference.

Section 10 eliminates confusing and unnecessary language and clarifies that, where body-gripping type traps from 60 to 75 square inches in size are prohibited, larger traps are also prohibited.

Section 11 eliminates an unnecessary gear requirement; relaxing mechanical locks are not needed on snares.

Section 12 eliminates a limit on participation by disabled hunters during turkey seasons that is no longer needed with only seven turkey management zones.

Section 13 corrects an omission in the name of a deer management unit.

Section 14 Includes trapping as an educational outdoor skills activity for which certain exemptions are available so that this rule language will be consistent with statute.

Sections 15 and 17 clarify that volunteer wildlife rehabilitators may only serve in a limited capacity on wildlife rehabilitation activities.

Section 16 corrects the number of a subdivision.

Section 18 updates wildlife rehabilitation code language so that it is consistent with proposed changes to the list of threatened and endangered species.

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.

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.

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.

Agency Contact Person: Scott Loomans, 101 South Webster St., PO BOX 7921, Madison, WI 53707-7921. (608) 267-2452, scott.loomans@wisconsin.gov

Deadline for Written Comments: The deadline for written comments is May 11, 2009. Comments may also be submitted electronically at the following internet site: <http://adminrules.wisconsin.gov>

Section 1. NR 10.01(3)(e)(2) is amended to read:

10.01(3)(e)(2) State parks and forests. No person may hunt deer with a firearm on the state-owned portions of state parks and recreation areas except as provided in this section. Portions of the properties listed may be posted closed to deer hunting. Additionally, no person may hunt deer with a firearm in Perrot, High Cliff, Lake Wissota, Peninsula, Wyalusing, Wildcat Mountain, Council Grounds, Rib Mountain, Harrington Beach, Kohler-Andrae, Brunet Island state parks or the Loew Lake Unit - Kettle Moraine state forest without first obtaining a permit which authorizes access to the park.

Section 2. NR 10.01(3)(ed)1.b. is amended to read:

NR 10.01(3)(ed)1.b. If after 2 consecutive years, as described in subd. 1. a., the department determines a third season, as described under subd. 1. a., is unlikely to reduce the deer population to within 20% of the overwinter population goal established in s. NR 10.104 for the same deer management unit or units in the subsequent year, hunters shall harvest or tag an antlerless deer in that unit or units

with either a bow or a gun during any deer season or with an agricultural shooting permit, before they may tag a buck with either weapon in that unit or units. One antlerless deer is required to authorize harvest of one buck in that unit or units, or in state parks with gun deer seasons that are within or adjoining these units, for each archery and gun deer license. Any person holding a Class A or Class C disabled permit under s. 29.193 stats., may harvest a buck during any season open to hunting of deer before first harvesting an antlerless deer. Deer harvested as described in this paragraph shall be transported in accordance with s. NR 10.105 (2).

Section 3. NR 10.01(3)(et)1.d.2. is amended to read:

NR 10.01(3)(et)1.d.2. Earn-a-buck control measures. If the department estimates that the deer population in a deer management unit or units located in a CWD management zone is at or above the overwinter population goal in s. NR 10.41 (3), the department may require that hunters shall first tag an antlerless deer in that deer management unit or units during the archery or firearm hunts, with either a bow or a gun during any deer season or with an agricultural shooting permit, before they may tag a buck with either weapon in that deer management unit or units during the either sex hunts listed in this paragraph. One antlerless deer is required to authorize harvest of one buck in that deer management unit or units, or in state parks with gun deer seasons that are within or adjoining these units, for each archery and gun deer license. Any person holding a Class A or Class C disabled permit under s. 29.193 stats., may harvest a buck during any season open to hunting of deer before first harvesting an antlerless deer. Deer harvested as described in this paragraph shall be transported in accordance with s. NR 10.105 (2).

Section 4. NR 10.07(2m)(e)1. is amended to read:

NR 10.07(2m)(e)1. During the closed season for hunting deer. For the purpose of this paragraph, the open season for hunting of deer includes the 24-hour period prior to the deer seasons established in s. NR 10.01(3)(e) and (es).

Section 5. NR 10.09(1)(c)2. is amended to read:

NR 10.09(1)(c)2. *'Deer or bear hunting.'* Hunt any deer or bear with any air rifle, rim-fire rifle, any center-fire rifle less than .22 caliber, any .410 bore or less shotgun or with ammunition loaded with ~~full metal jacket~~, nonexpanding type bullets.

Section 6. NR 10.09(2) is amended to read:

NR 10.09(2) SPECIAL ONE-DAY RESTRICTION. During the 24-hour period prior to the opening date for the ~~regular nine day~~ gun deer season established in s. NR 10.01 (3) (e), no person may possess a gun wherein there is an open season for deer with guns specified in s. NR 10.01 (3) (e), unless the gun is unloaded and enclosed within a carrying case. Exceptions:

Section 7. NR 10.105(4) and (6) are amended to read:

NR 10.105(4) TRANSPORTATION OF DEER FROM A CHRONIC WASTING DISEASE MANAGEMENT ZONE. The carcasses of deer harvested in a chronic wasting disease management zone identified in s. NR 10.28(3) may not be transported outside of that zone except for the following:

- (a) Carcasses transported into deer management units adjacent to the chronic wasting disease management zone.
- (b) Meat that is cut and wrapped, either commercially or privately.
- (c) Quarters or other portions of meat to which no part of the spinal column is attached.
- (d) Meat that has been deboned.
- (e) Hides with no head attached.
- (f) Finished taxidermy heads.

(g) Antlers with no meat or tissue attached except for velvet antlers with written permission from the department.

(h) Skulls with or without antlers attached ~~and with~~ which have no meat or brain tissue attached.

(i) Upper canine teeth.

(6) TRANSPORTATION OF MEMBERS OF THE FAMILY CERVIDAE FROM OTHER STATES AND COUNTRIES WHERE CWD HAS BEEN IDENTIFIED. The carcasses of cervid species harvested in a management unit or similarly identifiable area where CWD has been verified by a government agency in another state or country may not be transported into this state except for the following:

(a) Meat that is cut and wrapped, either commercially or privately.

(b) Quarters or other portions of meat to which no part of the spinal column is attached.

(c) Meat that has been deboned.

(d) Hides with no head attached.

(e) Finished taxidermy heads.

(f) Antlers with no meat or tissue attached except for velvet antlers with written permission from the department.

(g) Skulls with or without antlers attached ~~and with~~ which have no meat or brain tissue attached.

(h) Upper canine teeth.

Section 8. NR 10.12(1)(h) is amended to read:

NR 10.12(1)(h) *Baiting*. By the aid of baiting as described by the U.S. ~~fish and wildlife service~~ Fish and Wildlife Service in 50 CFR 20.11 and 20.21(i).

Section 9. NR 10.13(1)(b)6. and note are amended to read:

NR 10.13(1)(b)6. *Trap, snare, and cable restraint use.* 'Set, place, operate or possess while trapping, any trap other than a steel jawed trap, enclosed trigger trap, cage or box trap, body gripping trap, snare ~~{other than that defined in s. NR 10.001 (25e)}~~ or cable restraint as defined in s. NR 10.001 (5g) for the purpose of taking, capturing, or killing furbearing animals. Cage or box traps shall be constructed so that after an animal has been captured, no additional animals may enter the trap until the captured animal is removed and the trap is reset.

~~Note: Subd. 6. is shown as amended eff. 2-1-09 by CR 08-011. The bracketed language was dropped from CR 08-011 without being shown as stricken. The department intends to reinsert the dropped language in a future rule order. Prior to 2-1-09 it reads:~~

~~6. 'Trap, snare, and cable restraint use.' Set, place, operate or possess while on or adjacent to waters of this state, any trap other than a steel jawed trap, live trap, body gripping trap, snare other than that defined in s. NR 10.001 (25e) or cable restraint as defined in s. NR 10.001 (5g) for the purpose of taking, capturing, or killing furbearing animals. Live traps shall be constructed so that not more than one animal can be taken or captured in any single trap setting.~~

Section 10. NR 10.13(1)(b)12. (intro) is amended to read:

NR 10.13(1)(b)12. *Trap placement.* 'Set, place or operate any body-gripping type trap greater than 60 square inches ~~or less than 75 square inches~~ measured from the maximum outside points on the width and height of the jaws of a trap that has not been set, or any snare or cable restraint regardless of the size of the noose, in the following locations:

Section 11. NR 10.13(1)(b)13.a. is amended to read:

NR 10.13(1)(b)13.a. All snares and cable restraints shall be non-spring activated, constructed of galvanized aircraft cable and include a ~~relaxing mechanical lock and swivel~~.

Section 12. NR 10.40(5)(e) is amended to read:

NR 10.40(5)(e) *Hunter participation limits*. The department may not authorize disabled turkey hunts ~~when~~ once the number of participating hunters ~~will exceeds~~ 50 in any one wild turkey management zone or a total of 1,000 statewide in a calendar year. The department shall approve applications in the sequence in which they are received.

Section 13. NR 10.41(3)(b)1. is amended to read:

NR 10.41(3)(b)1. The deer goal for the CWD management units is as follows:

54B CWD	20
70 CWD	20
70A CWD.....	20
70B CWD.....	24
70E CWD	24
70G CWD	24
71 CWD	20
73B CWD	16
73E CWD	18
75A CWD	16
75C CWD	16
75D CWD	16
76 CWD	16
76A CWD	20
76M CWD	10
77A CWD	16
77B CWD.....	15
77C CWD.....	15

Section 14. NR 19.025(2)(b) and (d) are amended to read:

NR 19.025(2)(b) "Educational outdoor skills activity" means a course to teach novice participants how to hunt, trap or fish.

NR 19.025(2)(d) "Novice participant" means for hunting any person who is 10 years old or older, who has had less than 2 years of hunting experience. For fishing, it means any person who is 5 years of age or older who has less than 2 years of fishing experience. For trapping, it means a person who has no prior trapping experience as a Wisconsin licensed trapper.

Section 15. NR 19.71(10) is amended to read:

NR 19.71(10) "Volunteer" means any person, including interns, working in a limited capacity under the supervision of an advanced licensee on wildlife rehabilitation activities.

Section 16. NR 19.73(3)(a)4. is renumbered to NR 19.73(3)(a)3.

Section 17. NR 19.73(3)(d) is amended to read:

NR 19.73(3)(d) *Volunteers*. Volunteers may be authorized to assist with the rehabilitation of wildlife under the authority of an advanced licensee's license provided that all of the following conditions apply:

1. An updated list of volunteers assisting the advanced licensee is retained by the advanced

- licensee, and shall be provided to a department agent upon request.
2. Volunteers operating at a location other than the advanced licensee's facility shall retain a copy of the advanced licensee's license which shall be provided to a department agent upon request.
 3. Advanced licensees accept responsibility for the actions and activities of volunteers and shall be responsible for any violations by volunteers in violation of this chapter or ch. 169, Stats.
 4. Advanced licensees that utilize volunteers that are not assisting with wildlife rehabilitation activities under the direct supervision of the advanced licensee shall be responsible for the volunteer's facilities meeting the standards defined in s. NR 19.77.
 5. Wildlife must be examined by the advanced licensee prior to being placed in the care of a volunteer.

Section 18. NR 19.78(4) is amended to read:

NR 19.78(4) ~~Peregrine falcons, bald or golden eagles, and any other f-~~ Federally endangered or threatened migratory birds, may only be euthanized and disposed of under the direction of the migratory bird permit office, United States ~~fish and wildlife service~~ Fish and Wildlife Service, and the department.

Section 19. 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 20. Board adoption. This rule order was approved and adopted by the State of Wisconsin Natural Resources Board on _____.

Dated at Madison, Wisconsin _____.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Matthew J. Frank, Secretary

(SEAL)