

Clearinghouse Rule 13-005

Report to
Legislative Council Rules Clearinghouse
NR18, Wis. Adm. Code
Natural Resources Board Order No. ER-19-10

Wisconsin Statutory Authority

Stats. 29.319(1) and 227.11(2), Stats. 29.014(1), 29.039.

Federal Authority

Migratory Bird Treaty Act (MBTA) (16 U.S.C. 703 *et seq.*), which implements conventions with Great Britain (for Canada), Mexico, Japan, and the Soviet Union (Russia). Raptors (birds of prey) are afforded Federal protection by the 1972 amendment to the Convention for the Protection of Migratory Birds and Game Animals, February 7, 1936, United States—Mexico, as amended; the Convention between the United States and Japan for the Protection of Migratory Birds in Danger of Extinction and Their Environment, September 19, 1974; and the Convention Between the United States of America and the Union of Soviet Socialist Republics (Russia) Concerning the Conservation of Migratory Birds and Their Environment, November 26, 1976. The taking and possession of raptors are strictly prohibited except as permitted under regulations implementing the MBTA. Regulations governing the issuance of permits for activities with migratory birds are authorized by the MBTA. They are in Title 50, Code of Federal Regulations, Parts 10, 13, 21, and 22. Federal authority also is based on the Bald and Golden Eagle Protection Act (16 U.S.C. 668-668d). The Eagle Act extends additional protections for bald eagles and golden eagles, and addresses some human activities that may affect these species. The Act specifies circumstances under which falconers may take golden eagles from the wild.

Comparison of Adjacent States

Iowa and Michigan have changed to state-only permitting governing the sport of falconry. Illinois and Minnesota (along with Wisconsin) are getting ready to make the changes in their regulations to comply with falconry standards set forth in the Federal Register in 2008 (Federal Register / Vol. 73, No. 196 / Wednesday, October 8, 2008 / Rules and Regulations).

Court Decisions Directly Relevant

None

Analysis of the Rule - Rule Effect - Reason for the Rule

Proposed changes to Chapter NR 18, governing the sport of falconry in Wisconsin, address requirements from the U.S. Fish and Wildlife Service to meet falconry standards set forth in the Federal Register in 2008 (Federal Register / Vol. 73, No. 196 / Wednesday, October 8, 2008 / Rules and Regulations). The U.S. Fish and Wildlife Service will no longer issue a permit to individuals engaged in falconry, and it has formulated revisions as to how falconry is to be conducted. Permits will be issued by states with oversight provided by the Service. The proposed rule makes the revisions to current code to ensure compliance with federal rules by January 1, 2014 – the compliance date set forth in the Federal Register. The rule will impact current and future holders of falconry permits only by moving management of the permitting program to the state. Significant changes to rule, in addition to defining or clarifying different falconry terms, conditions, and requirements, includes increasing the number of wild raptors a General and Master Class falconer can possess; specifies 5 working days as a period for notifying a falconer of a finding of improper facilities or improper care of a raptor; clarifies that a licensed Wisconsin falconer has legal title to a raptor taken from the wild in Wisconsin, except for an endangered or threatened species; clarifies that falconers may assist wildlife rehabilitators with conditioning of raptors for release to the wild; and clarifies that General and Master Class falconers may use raptors for educational purposes without an additional permit as long as the same raptors are also used for falconry. Chapter NR 18 of the Wisconsin Administrative Code was last revised in 2001 when the NR Board approved a public hearing and then approved the proposed rule. The proposed rule changes will have a minimal (Level 3) economic impact on small businesses. While an Environmental Assessment (EA) was originally contemplated though not required, the Department considers the environmental impacts to be so minimal that preparation of an EA would result in an unnecessary expenditure of resources, therefore, no EA will be completed.

Agency Procedures for Promulgation

Natural Resources Board (NRB) approval to go to public hearing (on proposed changes to NR18) granted on 12 December 2012. Public hearing to be held in February, 2013, followed by NRB Rule adoption of changes to NR18 in March, 2013. Pending approval by the Wisconsin Legislature, promulgation will occur by September 2013.

Description of any Forms (attach copies if available)

None

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