

Clearinghouse Rule 17-013

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

The statement of scope for this rule, SS 140-15, was approved by the Governor on January 27, 2017, published in Register No. on December 28, 2015 and approved by the Natural Resources Board on March 1. This permanent rule was approved by the Governor on _____.

The Wisconsin Natural Resources Board proposes an order to repeal NR 10.001 (17) and (18), 10.01 (4) (d) 2., 10.145 (2) (c), 10.25 (4) (a), 11.031 (11), 11.09 (2), and 19.025 (3) (d); and to amend NR 10.01 (c) (a), (d) 1. and (f), 10.145 (2) (a), 10.25 (1) (Intro.) and (e), and 12.05 (1); to repeal and recreate NR 10.01 (4) (dm), 10.04 (2), 10.09, 10.11 (1), 10.12 (5), and 10.36; and to create NR 10.01 (3) (ex) 3., 10.38, 15.022 (2) (a), and 15.022 (11), the 2017 wildlife management spring hearing rule related to hunting, trapping, refuges and closed areas, and wildlife nuisance control.

WM-03-17

Analysis Prepared by the Department of Natural Resources

Statutory Authority and Explanation of Agency Authority: 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 make changes related to deer, turkey, pheasant, and fisher seasons as well as allow hunting of collared doves. Additionally, this authority allows the department to simplify the zone configurations for fisher and otter management. Finally, this authority allows the department to establish or eliminate restrictions for education activities commonly referred to as learn-to-hunt events. Related to learn to hunt events, the department’s proposal may also interpret s. 29.197 which is the statute that establishes special educational events where certain hunting regulations may be waived.

Sections 23.095, 23.11 and 29.014, Stats. allow for the protection of natural resources, establish general department powers, and authority to establish hunting regulations on department managed lands and managing refuge areas.

The ability to establish, modify or eliminate game refuges is authorized in s. 23.09 (b) relating to the department’s ability to designate locations reasonably necessary for the purpose of providing safe retreats in which birds may rest and replenish adjacent hunting grounds.

Statutes Interpreted and Explanation: 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. Related to learn to hunt events, the department’s proposal may also interpret s. 29.197 which is the statute that establishes special educational events where certain hunting regulations may be waived.

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

Plain Language Rule Analysis: These rule changes will be the subject of voting at the 2017 spring fish and wildlife hearings held in each county. Specifically these rules would:

SECTION 1 repeals definitions for terms that are no longer used in a substantive way in the chapter.

SECTION 2 establishes that the pheasant, Hungarian partridge, and fall turkey seasons will be open through the New Year's Holiday weekend instead of closing on December 31.

SECTION 3 creates an option for county deer advisory councils to recommend extending the archery and crossbow deer seasons through January in farmland zone counties where a holiday firearm season has also been recommended.

SECTIONS 4 and 14 eliminate the central otter zone so that there would be only a north and a south zone which are divided by State Hwy. 64.

SECTIONS 5, 10 and 15 simplify the fisher management zone configuration so that there will be only a north and a south zone which are divided by State Hwy. 64. This section also establishes that the fisher trapping season will be open through the New Year's Holiday weekend instead of closing on December 31.

SECTION 6 establishes that Eurasian collared doves are an unprotected species.

SECTIONS 7 to 9 and 13 simplify firearm, bow, and ammunition requirements for hunting by repealing outdated provisions and consolidating information in one location.

SECTION 11 repeals the otter population management goal.

SECTION 12 establishes that the department can issue fall turkey hunting licenses over-the-counter, without utilizing a drawing process, for fall seasons when all hunters will receive a license.

SECTION 16 eliminates the Wolf River refuge in the town of Wolf River in Winnebago County consistent with a recently completed master plan's recommendation to evaluate its effectiveness. This refuge is also commonly known as the Rat River refuge.

SECTION 17 eliminates the beaver and otter trapping closed area at Van Loon Wildlife Management Area and some adjacent privately owned lands in La Crosse County.

SECTION 18 establishes that monk parrots causing depredation can be removed without the need for permission from the department or a hunting or trapping license.

SECTIONS 19 and 20 reduce the size of the wildlife refuge at Theresa Marsh Wildlife Management Area in Washington and Dodge counties, consistent with the recommendation of a recently concluded management planning process.

SECTION 21 repeals the one time limit on participation in learn-to-hunt events conducted under the authority of Ch. NR 19 where seasons, licensing, and other requirements can be waived.

Federal Regulatory Analysis: Federal regulations allow states to manage the wildlife resources and 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 furbearer species 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: All of the policies in this rule are generally consistent with past board policies of regulating fish and game harvest and managing department lands for conservation purposes and authorizing the removal of nuisance wild animals in certain situations.

A number of these proposals are recommendations of the Wisconsin Conservation Congress to the Natural Resources Board and initiating a process to promulgate those rules fulfills a role of the board and the congress established in s 15.348 Stats.

This proposal would simplify the season framework and expand opportunities by establishing that the fall turkey and pheasant hunting seasons as well as the fisher trapping season are always open on the New Year's Holiday weekend. These seasons currently close on December 31. The archery deer season was historically among the seasons that closed on December 31. The current Sunday nearest January 6 closure was a recommendation of the Deer Management for 2000 and Beyond effort and it was first in effect for the 2002 season. Presumably, the change was made to expand hunting opportunities by assuring that the archery deer season would always be open on the New Year's Holiday weekend. We do not think extending these seasons by a handful of days will have any impact on pheasants, turkeys, or fisher populations. This is a time of year when hunting and trapping pressure is low. In particular, fisher harvest is controlled by permit issuance and, if a noticeable amount of new harvest were to occur, it would be automatically accounted for in future years permit levels. This will provide additional opportunity for the limited number of people who will take advantage of it at a time when many people do have vacation or leave from work.

Providing the option for an extended archery season in certain units is a recommendation of the Conservation Congress. Current regulations provide for archery and cross deer season that run continuously from the Saturday nearest September 15 through the Sunday nearest January 6. Current rule also provides Farmland Zone County Deer Advisory Councils (CDACs) the option of recommending an antlerless only Holiday Hunt from December 24 through January 1. The proposed rule modification would provide CDACs with the option of recommending that the archery and crossbow seasons run through January 31 in any unit where they also recommended a Holiday Hunt season framework.

Eurasian collared doves are currently a protected species in Wisconsin because that is the default status for any species which is not otherwise listed. Collared doves are present in the state and have been

encountered by mourning dove hunters. Classifying them as unprotected species would allow harvest of this exotic species. Monk parrots are not known to present at this time but they have become established in Chicago and could naturally colonize in Wisconsin cities. Monk parrots are listed as a prohibited species under Ch. NR 40, Invasive Species Identification, Classification and Control. In most situations, the possession, transportation, transfer and introduction of monk parrots is prohibited. The department can give permission to people who wish to remove animals. This proposal would eliminate the requirement that people first get the department's permission to destroy monk parrots.

Under current law, there are a number of complex and historic provisions which regulate the use of weapons and ammunition for hunting. These provisions increase regulation complexity despite there being little evidence, other than anecdotal, that they are necessary and appropriate. In general, the current regulations seem to be a mix of "hunting ethics" and safety; a new proposal would balance those interests while creating an adaptable framework for future weapon innovations in an overall simplified framework. For instance, this proposal could eliminate various handgun barrel length restrictions, eliminate restrictions on use of .410 shotguns, and eliminate pellet gun caliber restrictions.

The proposal may allow the department to issue antlerless deer hunting permits directly to hunters who have access to public lands which are enrolled in the Deer Management Assistance Program and for which antlerless permits are available under the program. Currently, tags are sold to a landowner or authorized representative who must distribute the tags. The current distribution method, used primarily by private landowners for private lands, may not be an efficient distribution method for owners of larger properties such as industrial forest that is open to the public for deer hunting.

This proposal could consolidate fisher management zones from the current six so that there would be only two zones. The extensive zone configuration was important when the species was still expanding its range but is no longer needed now that fishers are well established and distributed.

Consolidating the current three otter management zones so that there would be two would make the zone configuration consistent with the current bobcat and the proposed fisher management zones. Eliminating the 13,000 animal population goal for otters is recommended because population estimates may not be precise enough to assist with species management.

This proposal would eliminate or reduce the size of wildlife refuges on wildlife management areas which are no longer needed for conservation purposes. Changes being considered include eliminating what is commonly known as the Rat River refuge in Winnebago County and the Van Loon beaver/otter closed area in La Crosse County. The proposal would reduce the size of the Theresa Marsh no entry refuge in Washington and Dodge counties.

Current regulations prevent novice hunters, anglers, and trappers from participating in more than one training event that involves waivers of regulations. This change is a recommendation of the Conservation Congress and would allow someone to participate in more than one learn-to-hunt event. Some novice hunters feel the need for additional training before becoming a license purchaser. The availability of these courses may allow participation in more than one event while still meeting demand from first-time participants and may increase the recruitment of new hunters.

Fall turkey permits are currently allocated through a drawing and hunters are required to apply for a permit in advance. Fall harvest levels and hunting pressure may be low enough that a drawing is no longer needed in order to maintain a safe harvest level. If the drawing were eliminated, each hunter would receive one fall permit with the purchase of their license, which would be valid in the zone of their choice. With this simplification, hunters would no longer need to remember to apply for a fall turkey permit by a certain deadline, and would no longer have to pay a \$3.00 application fee.

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 will not be significantly different 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 will be a level 3 economic impact analysis for this permanent rule. A notice for Solicitation of comments on this analysis will be posted on the department's website in February 2017 and various interest groups may be contacted by email.

Effects on Small Business: No effects on small businesses are anticipated. The hunting regulations proposed in this rule will not be significantly different 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 is April 10, 2017

SECTION 1. NR 10.001 (17) and (18) are repealed.

SECTION 2. NR 10.01 (c)1.a., (d) 1. and (f) are amended to read:

Kind of animal and locality	Open season (all dates inclusive)	Limit
<i>(c) Pheasants. 1. Cocks only</i>		
a. In all counties of the state except the properties specified in subds. 1. b. and 2. and s. NR 10.24.	Early season—Beginning on the Saturday nearest October 17 at 9:00 a.m. and continuing for 2 consecutive days	Daily bag 1; possession 2
	Late season—Beginning on the day immediately after the season described above and continuing through December 31 <u>the Sunday nearest January 6.</u>	Daily bag 2; possession 6
<i>(d) Gray (Hungarian) partridge.</i>		
1. In all counties of the state except in the areas listed in subd. 2.	Beginning on the Saturday nearest October 17 at 9:00 a.m. and continuing through December 31 <u>the Sunday nearest January 6.</u>	Daily bag 3; possession 9
2. Clark, Marathon and Taylor counties.	None	None
<i>NR 10.01 (2) (f) Wild turkey.</i>		
2. All wild turkey hunting zones as described in s. NR10.29 and the Mill Bluff state park portion of zone 1, excluding all other state parks, for which a quota has been established under s. NR 10.25 (5). Wild turkey hunting zones 1–5, as described in s. NR 10.29 and the Mill Bluff state park portion of zone 1, excluding all other state parks, for which a quota has been established under s. NR 10.25 (5).	Fall season beginning on the Saturday nearest September 15 and continuing through the Friday immediately preceding the Thanksgiving holiday. Fall season reopening on the Saturday immediately preceding the Thanksgiving holiday and continuing through December 31 <u>the Sunday nearest January 6.</u>	Either sex of turkey may be killed. The possession limit corresponds to the number of carcass tags issued. Either sex of turkey may be killed. The possession limit corresponds to the number of carcass tags issued.

SECTION 3. NR 10.01 (3) (ex) 3. is created to read:

NR 10.01 (3) (ex) 3. The department may modify the archer and crossbow season dates so that those seasons continue through January 31 in a farmland zone unit where it has also modified the season dates as established under subd. par. 2.

SECTION 4. NR 10.01 (4) (d) 2. is repealed.

SECTION 5. NR 10.01 (4) (dm) is repealed and recreated to read:

Kind of animal and locality	Open season (all dates inclusive)	Limit
<i>(c) Fisher trapping.</i>		
1. North zone as described in s. NR 10.38.	Beginning on the Saturday nearest October 17 and continuing through the Sunday nearest January 6.	The possession limit corresponds to the number of pelt tags issued.
1. South zone as described in s. NR 10.38.	Beginning on the Saturday nearest October 17 and continuing through the Sunday nearest January 6.	The possession limit corresponds to the number of pelt tags issued.

SECTION 6. NR 10.04 (2) is repealed and recreated to read:

NR 10.04 (2) Chukar partridge, coturnix quail, English sparrows, Eurasian collared doves and starlings.

SECTION 7. NR 10.09 is repealed and recreated to read:

NR 10.09 Weapons and ammunition. (1) WEAPONS. No person may:

(a) Hunt with any means other than a rifle, shotgun, handgun, bow and arrow, crossbow, or falconry.

(b) Hunt with a machine gun or other fully automatic weapon.

(c) Hunt a game bird with or while in possession of a shotgun larger than 10 gauge.

(d) Hunt a deer during a muzzleloader-only hunt, such as described in s. NR 10.01 (3)(es), with any gun other than a rifle, shotgun, or handgun that is a firearm with a solid breech plug attached with threads and capable of being loaded only from the muzzle.

(e) Hunt a migratory bird with any shotgun capable of holding more than 3 shells unless the magazine has been cut off or plugged with a one-piece filler that cannot be removed without disassembling the gun and which reduces the capacity of the gun to not more than 3 shells at one time in the magazine and chamber combined.

(2) AMMUNITION. No person may:

(a) Use, possess, or have under control while hunting

1. shot shells containing shot larger than T.

2. any tracer or incendiary ammunition that is not a distress flare.

3. any bullet, arrow, or bolt that is designed or modified to explode or deliver poisons or drugs.

(b) Hunt a game bird with any ammunition other than an arrow, bolt, or shot shell that consists of more than one projectile.

(c) Hunt a deer, bear, or elk with any ammunition other than an arrow, bolt, or bullet that is a single projectile of an expanding design.

(d) While hunting waterfowl, snipe, rails, moorhens and coot within any areas of the state, or mourning doves on lands which are under the management, supervision and control of the department,

1. take, catch, kill or pursue waterfowl, mourning doves, snipe, rails, moorhens, and coot with any shot, either in shot shells or as loose shot for muzzle-loading, other than non-toxic shot.

2. possess any shot shell or muzzle-loading firearm loaded with any material other than non-toxic shot.

(3) REASONABLE EQUIPMENT. No person may hunt with any weapon or ammunition that is of inherent design, or used in such a manner, as to not be reasonably capable of reducing a target wild animal to possession. The following are prima facie reasonable equipment:

(a) a firearm with a caliber of at least .22.

(b) a bow with a minimum draw weight of 30 pounds.

(c) a crossbow with a minimum draw weight of 100 pounds.

(d) a raptor, as defined in s. NR 18.01(10).

(e) commercially manufactured or similar hand-loaded or re-loaded ammunition

(f) an arrow or bolt with a sharpened broad-head blade

SECTION 8. NR 10.11 (1) is repealed and recreated to read:

NR 10.11 (1) No person may hunt elk with the aid of dogs.

SECTION 9. NR 10.12 (5) is repealed and recreated to read:

NR 10.12 (5) No person may hunt any migratory bird with a trap, snare, cable restraint, net, swivel gun, punt gun, battery gun, fishhook, poison, drug, explosive, or stupefying substance.

SECTION 10. NR 10.145 (2) (a) is amended to read:

NR 10.145 (2) (a) Fisher. The preharvest population goal for the north and south fisher management zones ~~A, B, C, and D~~ described under s. NR 10.01 (4) ~~(dm)~~ s. NR 10.38 is one fisher per 2 square miles of fisher range.

SECTION 11. NR 10.145 (2) (c) is repealed.

SECTION 12. NR 10.25 (1) (c) (Intro.) and (e) are amended to read:

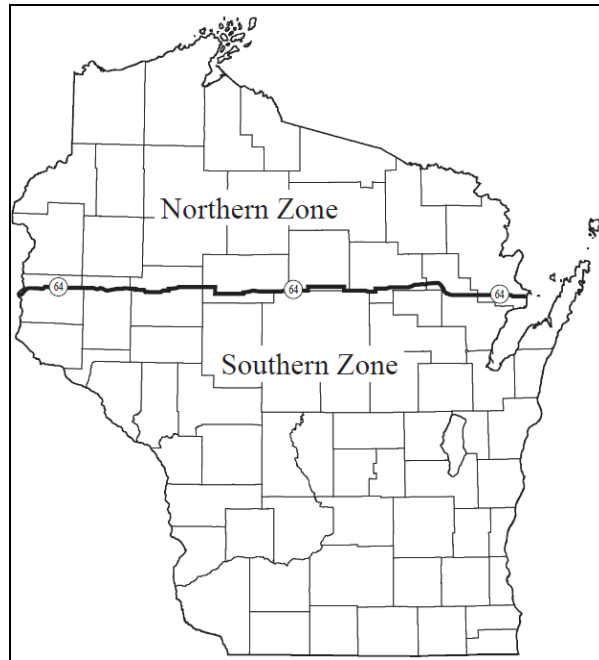
NR 10.25 (1) (c) License application procedures. Persons applying to hunt wild turkeys on the Ft. McCoy military reservation shall apply to that facility. During a fall season when the department will issue at least one license to all applicants, it is not necessary to apply for authorization to purchase a fall turkey hunting license. All other applicants shall apply for a turkey hunting license as follows:

(e) *License purchase requirement.* Except for persons who purchase a license in accordance with par. (f) 2. or during a fall season when the department will issue at least one license to all applicants, no person may purchase a turkey hunting license without presenting the license vendor with the department-issued purchase authorization.

SECTION 13. NR 10.25 (4) (a) is repealed.

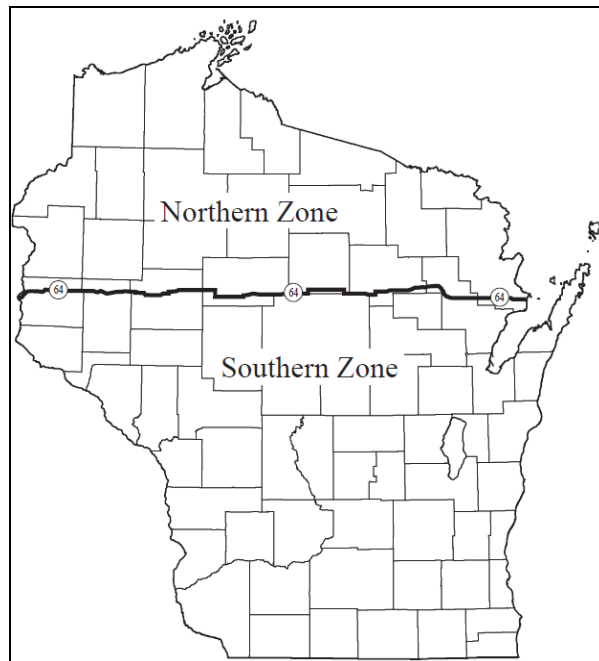
SECTION 14. NR 10.36 is repealed and recreated to read:

NR 10.36 Otter zones.



SECTION 15. NR 10.38 is created to read:

NR 10.38 Fisher zones.



SECTION 16. NR 11.031 (11) is repealed.

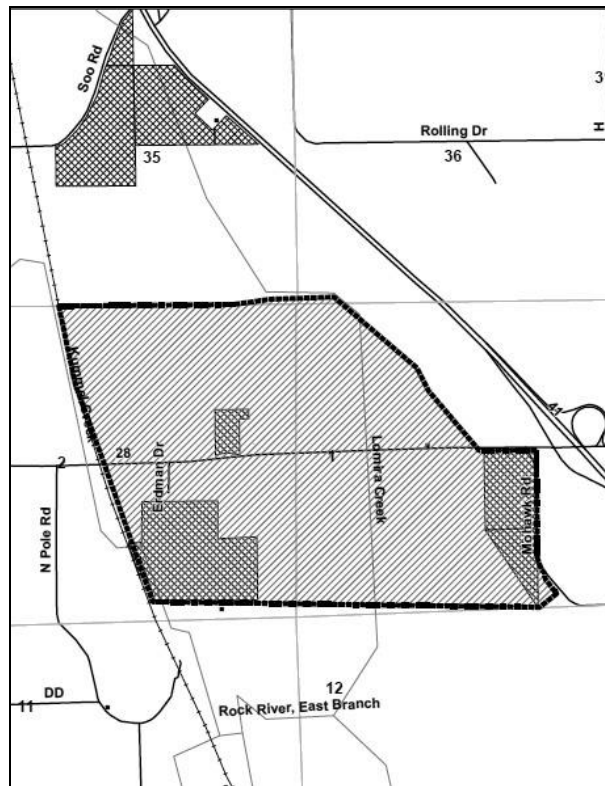
SECTION 17. NR 11.09 (2) is repealed.

SECTION 18. NR 12.05 (1) is amended to read:

NR 12.05 (1) FINDINGS. The natural resources board finds that unlimited shooting or trapping of cowbirds, crows, grackles, house sparrows, monk parrots, starlings, and red-winged blackbirds is necessary when causing depredation.

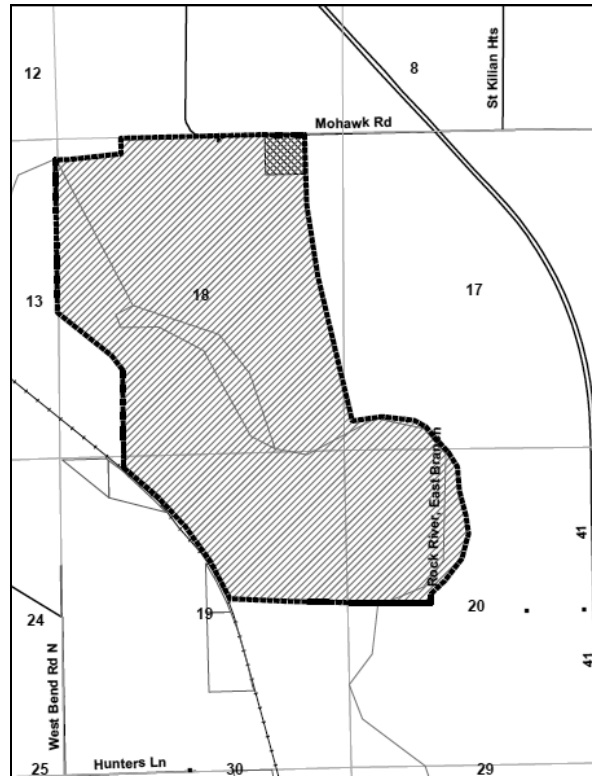
SECTION 19. NR 15.022 (2) (a) is repealed and recreated to read:

NR 15.022 (2) (a) DODGE COUNTY. (a) *Theresa Marsh*. Township 12 north, range 17 east, town of Theresa, and township 13 north, range 17 east, town of Lomira.



SECTION 20. NR 15.022 (11) is repealed and recreated to read:

NR 15.022 (11) WASHINGTON COUNTY. (a) *Theresa Marsh*. Township 12 north, range 18 east, town of Wayne.



SECTION 21. NR 19.025 (3) (d) is repealed.

SECTION 22. 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 23. BOARD ADOPTION. This rule 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 _____
Cathy Stepp, Secretary

(SEAL)