

SUBJECT: Request adoption of Board Order WM-03-09, modifications to chs. NR 10 and 19, the 2009 Wildlife Management housekeeping rule package

FOR: AUGUST, 2009 **BOARD MEETING**

TO BE PRESENTED BY: Scott Loomans, Wildlife Regulation Policy Specialist

SUMMARY:

Annually the department updates administrative code language to correct inconsistencies, update outdated language and provide clarification where appropriate. This year, the department is proposing the following changes:

- Clarify that access permits are required of deer hunters at Lake Wissota state park.
- Allow harvest of deer of either sex by disabled archers to be consistent with firearm regulations.
- Clarify that deer bait may be placed on the day before the archery season as well as the day before the gun seasons.
- Clarify that hunting deer with full metal jacketed bullets is legal.
- Update a cross reference so that hunting is prohibited only on the day before the 9-day deer season.
- Incorporate by reference the definitions for a section of federal regulations that are already incorporated in NR code.
- Eliminate an unnecessary cross reference.
- Clarify that, where body-gripping type traps from 60 to 75 square inches are prohibited, larger traps are also prohibited.
- Eliminate an unnecessary gear requirement; relaxing mechanical locks are not needed on snares.
- Eliminate a limit on participation by disabled hunters during special turkey hunts.
- Correct an omission in the name of a deer management unit.
- Include trapping as an educational outdoor skills activity for which certain exemptions are available.
- Clarify that volunteer wildlife rehabilitators may only serve in a limited capacity on wildlife rehabilitation activities.
- Correct the number of a subdivision.
- Update wildlife rehabilitation code to be consistent with changes to the list of threatened and endangered species.

RECOMMENDATION: Adoption of Board Order WM-03-09, modifications to chs. NR 10 and 19, the 2009 Wildlife Management housekeeping rule package

LIST OF ATTACHED MATERIALS:

- | | | | | | |
|----|-------------------------------------|-------------------------------------------------------|-----|-------------------------------------|----------|
| No | <input type="checkbox"/> | Fiscal Estimate Required | Yes | <input checked="" type="checkbox"/> | Attached |
| No | <input checked="" type="checkbox"/> | Environmental Assessment or Impact Statement Required | Yes | <input type="checkbox"/> | Attached |
| No | <input type="checkbox"/> | Background Memo | Yes | <input checked="" type="checkbox"/> | Attached |

APPROVED:

_____/s/
Bureau Director, Tom Hauge, Wildlife Management

Date 7/03/09

_____/s/
Administrator, Laurie Osterndorf, Lands Division

Date 7/03/09

_____/s/
Secretary, Matt Frank

Date 7/06/09

cc: Laurie J. Ross - AD/8

Scott Loomans - WM/6

Tom Hauge - WM/6

DATE: July 2, 2009

TO: Natural Resources Board Members

FROM: Matthew Frank

SUBJECT: Adoption of Board Order WM-03-09, modifications to chs. 10 and 19, the 2009 Wildlife Management housekeeping rule package

I am requesting that the Natural Resources Board adopt WM-03-09, the wildlife management housekeeping rule package pertaining to chapters NR 10 and 19 Wis. Adm. Code.

These technical rule changes are minor and non-controversial in nature and can most effectively be handled through wildlife management's annual housekeeping rule package. 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. The policy issues affected by this rule are ones which have already been addressed by previous rulemaking.

Rule Summary:

This year, the department is proposing the following changes related to hunting, trapping and wildlife rehabilitation:

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 all hunters who possess Class A and C disabled hunting permits.

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 to be consistent with the gun and muzzleloader seasons.

Section 5 removes language that could be viewed as a prohibition of hunting deer with full metal jacketed bullets.

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 incorporates by reference the definitions for a section of federal regulations that is already incorporated into Wisconsin code.

Section 8 eliminates an unnecessary cross reference.

Section 9 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 10 eliminates an unnecessary gear requirement; relaxing mechanical locks are not needed on snares.

Section 11 eliminates a limit on participation by disabled hunters during turkey seasons that is no longer needed with only seven turkey management zones.

Section 12 corrects an omission in the name of a deer management unit.

Section 13 Includes trapping as an educational outdoor skills activity for which certain exemptions are available so that this rule language will be consistent with statute.

Section 14 clarifies that volunteer wildlife rehabilitators may only serve in a limited capacity on wildlife rehabilitation activities.

Section 15 corrects the number of a subdivision.

Section 16 updates wildlife rehabilitation code language so that it is consistent with changes to the list of threatened and endangered species.

Background:

Access permits for deer hunters at Lake Wissota state park.

Access permits are required at all of the state parks for which an individual deer management unit is established. Hunter's Choice permits served this function in the past. This language update makes Lake Wissota consistent with other parks.

Harvesting deer of either sex by archery hunters who possess disabled hunting permits.

This rule change will make archery hunting regulations consistent with a similar statutory provision that applies to firearm deer hunters with disabled hunting permits.

Allow the placement of bait for deer hunting beginning on the day before the archery season.

The intent of current rules is that, where baiting is legal, it may be placed beginning on the day before the season. Due to an incorrect cross reference, that is not actually allowed on the day before the archery season.

Remove language that could be viewed as a prohibition of hunting deer with full metal jacketed bullets.

Full metal jacketed bullets are being recommended to deer hunters because of the reduced potential for lead contamination of meat. The rule change will clarify that bullets with full metal jackets are legal to use but that they must still be designed to expand upon impact.

Limit the prohibition of hunting and firearm discharge on the day before the firearm deer season so that it applies only to the traditional nine-day deer season.

This section updates a cross-reference so that this long-established regulation continues to apply only on the day before the traditional nine-day gun season and not December or October hunts.

Incorporate by reference the definitions for a section of federal regulations that are already incorporated into Wisconsin code.

This would correct and complete the department's cross-reference with federal regulations related to baiting migratory birds.

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

Body gripping traps of the size commonly referred to as a "220 Conibear" are prohibited in places such as within three feet of culverts on public roads for safety reasons. A larger type of body gripping trap such as the 330 size Conibear is not specifically prohibited in this section. Both traps may be used in this situation, however, if they are completely submerged. This change will reduce confusion by simply making this section applicable to all body gripping traps that are larger than 60 square inches.

Eliminate an unnecessary gear requirement for trappers who use snares.

Since snares are used only in the water and primarily as sets which are designed to kill the targeted furbearers, relaxing mechanical locks are not needed on these devices. Relaxing mechanical locks would still be required on cable restraints which function differently and are not designed to kill the targeted animal.

Eliminate the limit of 50 turkey hunting permits per unit for participation in special turkey hunting events for disabled people.

Participation in special turkey hunting events for disabled people is currently limited to no more than 50 individuals in a turkey management zone. The number of turkey management zones has since been reduced from 47 to 7 and the limit is no longer relevant or needed.

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

This statutory authority is used to allow trapping outside of normal seasons and without licenses as part of the trapper education course of instruction. Specifically mentioning trapping in the administrative rule will reduce confusion.

Clarify that volunteer wildlife rehabilitators may only serve in a limited capacity on wildlife rehabilitation activities.
This section states clearly that the supervision of a licensed wildlife rehabilitator is needed when working with wild animals.

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

Eliminating species names and simply referring to threatened and endangered species will prevent this section from needing updates in the future.

Public Participation and Modifications as a Result of Hearings:

The department held a hearing in Madison on May 11, 2009. One person appeared at the hearing and made a general statement of support on behalf of Whitetails of WI, WI Commercial Deer & Elk Farmers, WI Game Preserve Association and the Blind Hunters & Sportsmen Coalition.

Deer Carcass Transportation

As initially proposed, the rule would have clarified that velvet antlers may be possessed in a CWD zone and clarified that antlers being transported out of a CWD zone must be free of brain tissue only. One written comment was received from a representative of the Wisconsin Taxidermist Association (WTA). The WTA requested that the department expand a provision of the initial rule proposal so that deer carcasses or parts of deer can be transported out of the CWD Management Zone directly to a licensed taxidermist.

The department agrees with WTA's suggestion to allow the transport of deer carcasses or parts from the CWD Management Zone directly to a licensed taxidermist because of the likelihood that taxidermists will dispose of carcasses in ways that do not present a danger of spreading CWD. It is unlikely, however, that this rule would be in effect prior to the 2009 firearm deer season. This rule change will not be in effect prior to publication of hunting regulations pamphlets.

The department proposes instead to remove from this rule its original proposed modification to carcass transportation requirements. The department will address its original housekeeping proposal and the concerns of the WTA in future rulemaking for the 2010 hunting season. Additionally, the department will consider allowing anyone who shoots a deer in the CWD Management Zone to transport that carcass directly to any licensed meat processor. Licensed meat processors are subject to carcass disposal regulations administered by the Dept. of Agriculture, Trade & Consumer Protection which may be sufficient to prevent the spread of disease.

The department agrees that there are ways to ease the burden of carcass transportation restrictions while still preventing the spread of infection agents through disposed animal parts. Modifications of this nature represent a significant change to carcass transportation rules that may be more appropriately addressed in comprehensive rulemaking than in this housekeeping rule package.

Wildlife Rehabilitation

As initially proposed, this rule would have clarified that volunteer wildlife rehabilitators can serve only in limited roles in part by establishing that each animal taken in to a rehabilitation center needs to be examined by a person who holds an advanced license prior to being placed in care. The department is no longer recommending this provision. Operators of larger rehabilitation facilities expressed concern that examination of each animal prior to initiating basic care would be a significant workload challenge for the license holder. An

advanced license holder may not be present at a facility at all times when an animal is brought to a center. Volunteers help by increasing the time that a facility is open and currently accept and stabilize animals that can be evaluated by a license holder at a later time. Wildlife rehabilitation volunteers will still need to be on record with the license holder, possess a copy of the advance license holder's license, and the license holder is responsible for any violations of ch. 169, Stats. or s. NR 19.77 Wis. Admin. Code. Language explaining that volunteers may act only in a "limited capacity" is still contained in this rule proposal.

Rule Development:

These rules were developed with assistance from the bureaus of Law Enforcement, Legal Services, Customer Service & Licensing, Facilities and Lands, Endangered Resources and Parks & Recreation.

Legislative Council Rules and Clearinghouse Report

All comments the department received from Legislative Council Clearinghouse have been incorporated (see attached report) with one exception. A provision which would have modified restriction on the transportation of deer carcasses from the CWD Management zone to other areas has been removed from the proposal and those comments are no longer relevant.

Small Business and Initial Regulatory Flexibility Analysis:

These revisions to chs. NR 10 and 19, Wis. Adm. Code, pertain to hunting, trapping and wildlife rehabilitation. These rules are applicable to individual sportspersons and wild animal rehabilitators and impose no compliance or reporting requirements for small businesses, nor are any design or operational standards contained in the rule. Therefore, under s. 227.19 (3m), Stats., a final regulatory flexibility analysis is not required.

Environmental Analysis:

Bureau of Integrated Science Services has determined that these rule revisions are a Type III action under Chapter 150, Wis. Adm. Code, and no environmental analysis is required.

Fiscal Estimate — 2009 Session

| | | | |
|------------------------------------|---------------------------------------------|-------------|----------------------------------------|
| <input type="checkbox"/> Original | <input checked="" type="checkbox"/> Updated | LRB Number | Amendment Number if Applicable |
| <input type="checkbox"/> Corrected | <input type="checkbox"/> Supplemental | Bill Number | Administrative Rule Number WM-03-09 |

Subject
 Housekeeping rule package modifying chapters NR 10 and 19 related to hunting, trapping and wildlife rehabilitation.

Fiscal Effect
 State: No State Fiscal Effect
 Indeterminate

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

| | |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <input type="checkbox"/> Increase Existing Appropriation <input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Decrease Existing Appropriation <input type="checkbox"/> Decrease Existing Revenues <input type="checkbox"/> Create New Appropriation | <input type="checkbox"/> Increase Costs — May be possible to absorb within agency's budget. <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Decrease Costs |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

Local: No Local Government Costs
 Indeterminate

| | | |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. <input type="checkbox"/> Increase Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory 2. <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory | 3. <input type="checkbox"/> Increase Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory 4. <input type="checkbox"/> Decrease Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory | 5. Types of Local Governmental Units Affected: <input type="checkbox"/> Towns <input type="checkbox"/> Villages <input type="checkbox"/> Cities <input type="checkbox"/> Counties <input type="checkbox"/> Others _____ <input type="checkbox"/> School Districts <input type="checkbox"/> WTCS Districts |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

| | |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------|
| Fund Sources Affected <input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S | Affected Chapter 20 Appropriations |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------|

Assumptions Used in Arriving at Fiscal Estimate

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. The department anticipates no fiscal effect from these proposed rule changes. Specifically, these rules will:

- Clarify that access permits are required of deer hunters at Lake Wissota state park.
- Allow harvest of deer of either sex by disabled archers to be consistent with firearm regulations.
- Clarify that deer bait may be placed on the day before the archery season as well as the day before the gun seasons.
- Clarify that hunting deer with full metal jacketed bullets is legal.
- Update a cross reference so that hunting is prohibited only on the day before the 9-day deer season.
- Incorporate by reference the definitions for a section of federal regulations that are already incorporated in NR code.
- Eliminate an unnecessary cross reference.
- Clarify that, where body-gripping type traps from 60 to 75 square inches are prohibited, larger traps are also prohibited.
- Eliminate an unnecessary gear requirement; relaxing mechanical locks are not needed on snares.
- Eliminate a limit on participation by disabled hunters during special turkey hunts.
- Correct an omission in the name of a deer management unit.
- Include trapping as an educational outdoor skills activity for which certain exemptions are available.
- Correct the number of a subdivision.
- Update wildlife rehabilitation code to be consistent with changes to the list of threatened and endangered species.

Long-Range Fiscal Implications

No long range fiscal implications are anticipated.

| | | |
|----------------------|---------------|---------------------------------|
| Prepared By: | Telephone No. | Agency |
| Joe Polasek | 266-2794 | Department of Natural Resources |
| Authorized Signature | Telephone No. | Date (mm/dd/ccyy) |
| | 266-2794 | |

Fiscal Estimate — 2009 Session

Page 2 Assumptions Narrative Continued

| | |
|-------------|--------------------------------|
| LRB Number | Amendment Number if Applicable |
| Bill Number | Administrative Rule Number |

Assumptions Used in Arriving at Fiscal Estimate – Continued

Fiscal Estimate Worksheet — 2009 Session
 Detailed Estimate of Annual Fiscal Effect

Original Updated
 Corrected Supplemental

| | |
|-------------|----------------------------------------|
| LRB Number | Amendment Number if Applicable |
| Bill Number | Administrative Rule Number WM-03-09 |

Subject

Housekeeping rule package modifying chapters NR 10 and 19 related to hunting, trapping and wildlife rehabilitation.

One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):

None.

| Annualized Costs: | | Annualized Fiscal Impact on State Funds from: | |
|------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------|-------------------|
| | | Increased Costs | Decreased Costs |
| A. State Costs by Category | | | |
| State Operations — Salaries and Fringes | | \$ | \$ - |
| (FTE Position Changes) | | (FTE) | (- FTE) |
| State Operations — Other Costs | | | - |
| Local Assistance | | | - |
| Aids to Individuals or Organizations | | | - |
| Total State Costs by Category | | \$ 0 | \$ - 0 |
| B. State Costs by Source of Funds | | | |
| GPR | | \$ | \$ - |
| FED | | | - |
| PRO/PRS | | | - |
| SEG/SEG-S | | | - |
| State Revenues | Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.) | Increased Revenue | Decreased Revenue |
| GPR Taxes | | \$ | \$ - |
| GPR Earned | | | - |
| FED | | | - |
| PRO/PRS | | | - |
| SEG/SEG-S | | | - |
| Total State Revenues | | \$ 0 | \$ - 0 |

Net Annualized Fiscal Impact

| | <u>State</u> | <u>Local</u> |
|------------------------|--------------|--------------|
| Net Change in Costs | \$ 0 | \$ 0 |
| Net Change in Revenues | \$ 0 | \$ 0 |

| | | |
|-----------------------------|---------------------------|-------------------------------------------|
| Prepared By: Joe Polasek | Telephone No. 266-2794 | Agency Department of Natural Resources |
| Authorized Signature | Telephone No. 266-2794 | Date (mm/dd/ccyy) |



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Ronald Sklansky
Clearinghouse Director

Richard Sweet
Clearinghouse Assistant Director

Terry C. Anderson
Legislative Council Director

Laura D. Rose
Legislative Council Deputy Director

CLEARINGHOUSE RULE 09-024

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated September 2008.]

2. Form, Style and Placement in Administrative Code

a. The proposed changes in SECTION 3 should list s. NR 10.01 (3) (et) 2. as the affected provision.

b. Individual letters in a word should not be stricken or underscored. Therefore, in SECTION 12, “will exceed” should be stricken and “exceeds” should follow all of the stricken material. In SECTION 18, “federally” should be stricken and “Federally” should follow it.

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

a. In SECTIONS 2 and 3, the added language could be interpreted to require a Class A or C permit holder to harvest an antlerless deer after harvesting an antlered deer. The department should consider replacing the added language with “A person holding a Class A or Class C disabled permit under s. 29.193, Stats., is not required to harvest or tag an antlerless deer in that unit or units before the person may tag a buck.”

b. In the plain language analysis of the rule proposal, SECTION 7 is described to clarify that possession of velvet antlers is allowed in a chronic wasting disease (CWD) zone and to clarify that antlers being transported out of a CWD zone must be free of brain tissue but that hair or hide does not need to be removed. However, the changes under SECTION 7 do not expressly allow possession of velvet antlers in a CWD zone. It might be inferred that possession of velvet antlers must be allowed if one can transport them from the deer management unit but, if so, the

c. In SECTION 15, the “limited capacity” under which volunteers may work on wildlife rehabilitation activities should be explained or reference should be made to the limits under s. NR 19.73 (3) (d), or this definition could be removed as it may be redundant as compared to s. NR 19.73 (3) (d).

d. The comma after the word “birds” in the second line of SECTION 18 should be removed.

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), 10.12(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), (d) and (e), 19.71(10), 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 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 8 eliminates an unnecessary cross reference.

Section 9 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 10 eliminates an unnecessary gear requirement; relaxing mechanical locks are not needed on snares.

Section 11 eliminates a limit on participation by disabled hunters during turkey seasons that is no longer needed with only seven turkey management zones.

Section 12 corrects an omission in the name of a deer management unit.

Section 13 Includes trapping as an educational outdoor skills activity for which certain exemptions are available so that this rule language will be consistent with statute.

Section 14 clarifies that volunteer wildlife rehabilitators may only serve in a limited capacity on wildlife rehabilitation activities.

Section 15 corrects the number of a subdivision.

Section 16 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. A person holding a Class A or Class C disabled permit under s. 29.193, Stats., is not required to harvest or tag an antlerless deer in that unit or units before the person may tag a buck. 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)2. is amended to read:

NR 10.01(3)(et)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. A person holding a Class A or Class C disabled permit under s. 29.193, Stats., is not required to harvest or tag an antlerless deer in that unit or units before the person may tag a buck. 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 gun deer season established in ~~s. NR 10.01(3)(e)~~ s. NR 10.01(3)(e)1.a., b. and 5., 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 10.12(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 in 50 CFR 20.11 and 20.21(i).

Section 8. 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 off. 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 9. 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 10. 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 11. 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 exceed~~ ~~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 12. 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 13. NR 19.025(2)(b), (d) and (e) 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.

NR 19.025(2)(e) "Substantial loss of revenue" means a loss of fishing, trapping and hunting license fees from persons who are not novice participants.

Section 14. NR 19.71(10) is amended to read:

NR 19.71(10) "Volunteer" means any person, including interns, working in a limited capacity subject to the limits under s. NR 19.73(3)(d) and under the supervision of an advanced licensee on wildlife rehabilitation activities.

Section 15. NR 19.73(3)(a)4. is renumbered to NR 19.73(3)(a)3.

Section 16. NR 19.78(4) is amended to read:

NR 19.78(4) ~~Peregrine falcons, bald or golden eagles, and any other federally~~ 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, and the department.

Section 17. 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 18. 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)