

NATURAL RESOURCES BOARD AGENDA ITEM

SUBJECT: Adoption of Board Order WM-16-07, revisions to chs. NR 10, 12 and 16, the 2007 wildlife management housekeeping rule package

FOR: AUGUST **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Annually the department updates administrative code language to correct inconsistencies, update outdated language and provide clarification where appropriate.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 related to hunting, nuisance wild animal removal, and captive wild animals:

- Clarify that a disabled person is a person who holds a Class A, B or C disabled permit.
- Establish that the rabbit hunting season closes on the last day in February rather than February 28.
- Correct a cross reference in the firearm deer hunting season.
- Update the fisher zone map which is based on the recently updated Deer Management Zone Map.
- Relax bear carcass registration so that bear may be registered at stations that are adjacent to highways that form the boundary of the bear management zone in which it was killed.
- Correct drafting errors in the rule that establishes small game hunting in state parks.
- Clarify that landowners who are removing certain nuisance wild animals are not subject to hunting or trapping seasons.
- Update cross references and terminology so that DATCP's animal diseases and movement and DNR's captive wildlife rules are consistent.

RECOMMENDATION: Adoption of Board Order WM-16-07, modifications to chs. NR 10, 12, and 16, the 2007 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/	7/13/07
_____ Bureau Director, Tom Hauge, Wildlife Management	_____ Date
/S/	7/13/07
_____ Administrator, Laurie Osterndorf, Lands Division	_____ Date
/S/	7/16/07
_____ Secretary, Scott Hassett	_____ Date

- | | | |
|---------------------------|--|---------------------------------------|
| cc: Laurie J. Ross - AD/5 | Bob Manwell - CE/8 | Tom Van Haren - LE/5 |
| Laurie Ross - AD/5 | Regional Wildlife Supervisors - WM/6 - 5 | Regional LE Supervisors - LE/5 - 5 |
| Tim Andryk - LS/5 | Scott Loomans - WM/6 | Kurt Thiede - LS/5 |
| Carol Turner - LS/5 | Tom Hauge - WM/6 | Conservation Congress Exec. Comm. - 4 |
| GLIFWC & Tribes - 14 | Brad Koele - WM/6 | |

DATE: August 7, 2007

TO: Natural Resources Board Members

FROM: Scott Hassett

SUBJECT: Adoption of Board Order WM-16-07, revisions to chs. NR 10, 12 and 16, the 2007 Wildlife Management housekeeping rule package

Recommendation:

The department recommends adoption of WM-16-07, a housekeeping rule package pertaining to chapters NR 10, 12 and 16 Wis. Adm. Code.

Rule Summary:

Annually the department updates administrative code language to correct inconsistencies, update outdated language and provide clarification where appropriate. These technical rule changes are minor and non-controversial in nature. This year, the department is proposing the following changes related to hunting and nuisance wild animal removal:

- Clarify that a disabled person is a person who holds a Class A, B or C disabled permit.
- Establish that the rabbit hunting season closes on the last day in February rather than February 28.
- Correct a cross reference in the firearm deer hunting season.
- Update the fisher zone map which is based on the recently updated Deer Management Zone Map.
- Relax bear carcass registration so that bear may be transported to and registered at stations that are adjacent to highways that form the boundary of the bear management zone in which it was killed.
- Correct drafting errors in the rule that establishes small game hunting in state parks.
- Clarify that landowners who are removing certain nuisance wild animals are not subject to hunting or trapping season dates.
- Update cross references and terminology so that DATCP's animal diseases and movement and DNR's captive wildlife rules are consistent.

Background:Definition of a disabled person:

Under current law, most people who participate in a bear hunt need to possess either a Class B Bear License (pursuit license) or Class A Bear License (allows harvest), even if they are only helping or observing and not shooting. The assistant to a disabled person who is bear hunting, however, is not required to possess any license. For purposes of this law, the proposal would define that a disabled person is a person who possesses a Class A, B, or C disabled hunting permit which is the way current law is interpreted.

Closing date of the rabbit hunting season:

Currently the rabbit hunting season closes on February 28 each year. To reduce confusion during leap years, this proposal would close the rabbit hunting season on the last day of February each year.

Firearm deer hunting season cross references:

This section corrects a cross reference in the deer hunting seasons rule.

Fisher management zone update:

Fisher management zones are based on deer management units. This change updates fisher zone A to reflect the elimination of DMU 5 which occurred in 2004. The actual fisher zone boundaries will not change.

Bear carcass registration:

This rule clarifies that successful bear hunters can register their animals at registration stations that are not in the bear management unit of the kill if that registration station is adjacent to a highway that is a boundary of the unit.

State park small game hunting corrections:

A major update of state park hunting rules was recently undertaken. This change corrects drafting errors that came out of that complicated process.

Nuisance wild animal removal update:

This proposed change clarifies that hunting and trapping seasons do not apply to landowners who are removing nuisance wild animals which is how the current rule has been interpreted.

Captive deer farm language update:

The Department of Agriculture, Trade, and Consumer Protection recently updated portions of ATCP 10 related to animal diseases and movement. This proposal updates cross-references and terminology in NR 16 related to captive wildlife so that the two chapters are consistent.

Public Hearing:

A hearing was held in Madison on Tuesday, May 15. No members of the public attended that hearing and no written public comments were received.

Proposed Modifications to the Initial Proposed Rule Making Order

No modifications were made as a result of the public hearings.

Rule Development:

These rules were developed with the assistance of the Bureaus of Law Enforcement, Parks and Recreation and Legal Services.

Small Business and Initial Regulatory Flexibility Analysis:

The revisions to chs. NR 10 and 12, Wis. Adm. Code, pertain to hunting and nuisance wild animal removal. These rules are applicable to individual sportspersons 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.

Legislative Council Rules and Clearinghouse Report:

Comments from the Legislative Council Clearinghouse were minor and, with one exception, have been incorporated in this rule order. People who assist a disabled bear hunter are exempt from having to possess a bear pursuit license and the clearinghouse questioned whether-or-not it is necessary to define who is a "disabled person" as this rule proposal does. Department staff people have opted to keep the definition of a "disabled person" in this rule in order to be consistent with the way the term is used at other locations in NR 10 as well as for the primary purpose of clarifying that a disabled person is someone who possesses a disabled hunting permit.

Fiscal Estimate — 2007 Session

<input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected <input type="checkbox"/> Supplemental	LRB Number Bill Number	Amendment Number if Applicable Administrative Rule Number WM-16-07
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Subject

Housekeeping rule package modifying chapters NR 10 and 12 related to hunting and nuisance wild animal removal

Fiscal Effect

State: No State Fiscal Effect
 Indeterminate

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

Increase Existing Appropriation Increase Existing Revenues
 Decrease Existing Appropriation Decrease Existing Revenues
 Create New Appropriation

Increase Costs — May be possible to absorb within agency's budget.

Yes No

Decrease Costs

Local: No Local Government Costs

Indeterminate

1. Increase Costs
 Permissive Mandatory
 2. Decrease Costs
 Permissive Mandatory

3. Increase Revenues
 Permissive Mandatory
 4. Decrease Revenues
 Permissive Mandatory

5. Types of Local Governmental Units Affected:

Towns Villages Cities
 Counties Others
 School Districts WTCS Districts

Fund Sources Affected

GPR FED PRO PRS SEG SEG-S

Affected Chapter 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate

These technical rule changes are minor and non-controversial in nature and should not have any fiscal impact. We are proposing changes that provide clarifications to current rules, update definitions, relax limits on bear carcass registration, and correct drafting errors. Specifically, these rules will:

- Clarify that a disabled person is a person who holds a Class A, B or C disabled permit.
- Establish that the rabbit hunting season closes on the last day in February rather than February 28.
- Correct a cross reference in the firearm deer hunting season.
- Update the fisher zone map which is based on the recently updated Deer Management Zone Map.
- Relax bear carcass registration so that bear may be registered at stations that are adjacent to highways that form the boundary of the bear management zone in which it was killed.
- Correct drafting errors in the rule that establishes small game hunting in state parks.
- Clarify that landowners who are removing certain nuisance wild animals are not subject to hunting or trapping seasons.

Long-Range Fiscal Implications

None.

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 — 2007 Session

Page 2 Assumptions Narrative Continued

LRB Number	Amendment Number if Applicable
Bill Number	Administrative Rule Number WM-16-07

Assumptions Used in Arriving at Fiscal Estimate – Continued

Fiscal Estimate Worksheet — 2007 Session
 Detailed Estimate of Annual Fiscal Effect

Original Updated
 Corrected Supplemental

LRB Number	Amendment Number if Applicable
Bill Number	Administrative Rule Number WM-16-07

Subject

Housekeeping rule package modifying chapters NR 10 and 12 related to hunting and nuisance wild animal removal.

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		\$ 0	\$ - 0
(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		Increased Costs	Decreased Costs
GPR		\$ 0	\$ - 0
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		\$ 0	\$ - 0
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:	Telephone No.	Agency
Joe Polasek	266-2794	Department of Natural Resources
Authorized Signature	Telephone No.	Date (mm/dd/ccyy)
	266-2794	



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 07-035

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 January 2005.]

1. Statutory Authority

Reference to s. 29.104, Stats., should be changed to s. 29.014, Stats.

2. Form, Style and Placement in Administrative Code

Section NR 16.45 (2) (b) 2. should be removed from the list of amended provisions in the introductory clause, since it is repealed.

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

a. In s. NR 10.001 (8e), the phrase “as defined under this section” is unnecessary and should be deleted. Also, what is the purpose of including this definition? Noting that the term “disabled person” for the purposes of s. 29.814 (5) (b), Stats., means a person who holds a current Class A or Class B permit is something of a tautology given the contents of the statute itself. Also, a computer search of ch. NR 10 reveals that the term “disabled person” is used in s. NR 10.12 (1) (c), (4) (a), and (5) (a) Note. Will there be any correlation between the new definition and the use of this term elsewhere in ch. NR 10?

b. The final version of s. NR 16.45 (5) (b) should read: “...to enter the chronic wasting disease herd status program..., or to enter the deer harvest plan...or file a fencing plan...”

c. In s. NR 16.45 (5) (c) 4. and (6) (h), the retention of the comma after the reference to s. ATCP 10.53 is not necessary and should be deleted.

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

The Wisconsin Natural Resources Board proposes an order to repeal NR 16.45(2)(b)2.; to amend NR 10.01(3)(c)2., (ed)1.b. and (4)(dm)1., 10.106(2)(e), 10.275(1)(b)1., (2)(b)1. and 2., 12.10(3)(intro.), 16.45(2)(a)1., (b)1. and 2., (5)(a)(intro) and, (c)4. and (6)(h); and to create NR 10.001(8e), relating to hunting, nuisance wild animal removal and captive wildlife.

WM-16-07

Analysis Prepared by the Department of Natural Resources

Statutory Authority and Explanation: Statutes that authorize the promulgation of this rule order include sections 29.014 and 227.11, Stats. These sections grant rule making authority to the department to establish and maintain open and closed seasons for hunting and that all rules promulgated under this authority are subject to review under ch. 227, Stats.

Statutes Interpreted and Explanation: In promulgating this rule, section 29.014, Stats., has been interpreted as providing the department with the authority to make these housekeeping clarifications.

Related Statute or Rule: None.

Plain Language Rule Analysis: These hunting and trapping-related rule changes are minor and non-controversial in nature. The intent of these rule changes is to provide clarification to existing rules, simplify regulations, and update administrative code language and references. Specifically, these rules will; correct management unit boundaries, relax bear carcass registration requirements, clarify nuisance animal removal requirements, clarify what is meant by the term “disabled hunter” for the purposes of assisting a bear hunter, correct cross-references and drafting errors, and update cross references and terminology so that NR 16 is current and compatible with ATCP 10.

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.

State Regulatory Analysis: These housekeeping rule changes do not represent policy or significant rule changes that may differ from surrounding states. All surrounding states have regulations and rules in place for the management of upland, migratory and furbearing species, however, these proposed rule changes to the Wisconsin Administrative code are not relevant to or comparable to any known similar housekeeping initiatives in surrounding states.

Summary of Factual Data and Analytical Methodologies: This rule order is based solely on the need to correct inconsistencies created through the promulgation of other rules and statutes and to serve as a vehicle to provide clarification to existing code.

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 17, 2007. Comments may also be electronically submitted at the following Internet site: <http://adminrules.wisconsin.gov>

Section 1. NR 10.001(8e) is created to read:

NR 10.001(8e) "Disabled person" for the purposes of s. 29.184(5)(b), Stats., means a person who holds a current Class A, B or C permit.

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

Kind of animal and locality	Open season (all dates inclusive)	Limit
NR 10.01(3)(c)2. Cottontail		
a. All that part of Wisconsin lying north of U. S. highway 10 from Prescott to Waupaca and state highway 54 from Waupaca to Algoma	Beginning on the Saturday nearest September 15 and continuing through <u>the last day in</u> February 28 .	Daily bag 3; possession 6
b. Governor Dodge, Mill Bluff and Mirror Lake state parks.	Nov. 1 - Dec. 15.	Daily bag 3; possession 6
c. In addition, there shall be an open season for hunting cottontails, except with the use of firearms, in Milwaukee county	All year	None
d. In all other parts of the state	Beginning on the Saturday nearest October 17 at 12:00 noon and continuing through <u>the last day in</u> February 28 .	Daily bag 3; possession 6

Section 3. 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. or par. (ez) 1. a. and am., 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. Deer harvested as described in this paragraph shall be transported in accordance with s. NR 10.105 ~~(3)~~ (2).

Section 4. NR 10.01(4)(dm)1. is amended to read:

Kind of animal and locality	Open season (all dates inclusive)	Limit
NR 10.01(4)(dm)1. Management zone A-- Deer management units 1, 2, 3, 4, 5 , 8, 9, 10, 11, 12, 15, 16, 17, 22, 78 and 79 as described in s. NR 10.28	Beginning on the Saturday nearest October 17 and continuing through December 31.	The possession limit corresponds to the number of pelt tags issued.

Section 5. NR 10.106(2)(e) is amended to read:

NR 10.106(2)(e) *Bear license (bow and gun)*. Bear shall be registered within the county in which the bear was killed or adjoining county; and within the black bear management zone or at registration stations that are adjacent to highways forming the boundary of the zone in which it was killed no later than 5:00 p.m. of the day after it was killed.

Section 6. NR 10.275(1)(b)1. is amended to read:

NR 10.275(1)(b) *Migratory game birds* 1. Migratory game bird hunting for the species specified in s. NR 10.01 (1) is allowed in Governor Dodge, and Mill Bluff state parks from November 1 through December 15 or until the seasons established in s. NR 10.01 (1) conclude, whichever occurs first.

Section 7. NR 10.275(2)(b) 1. and 2. are amended to read:

NR 10.275(2)(b) *Hunting hours*. 1. The hunting hours for pursuing small game at Governor Dodge, Mill Bluff, and Mirror Lake ~~and Newport~~ state parks shall be the same as the hours established in s. NR 10.06 (5) except that hunting hours will close at 12:00 noon daily.

2. The hunting hours for pursuing migratory game birds at Governor Dodge, and Mill Bluff ~~and Newport~~ state parks shall be the same as the hours established in s. NR 10.06 (5) except that hunting hours shall close at 12:00 noon daily.

Section 8. NR 12.10(3)(intro.) is amended to read:

NR 12.10(3) RULE COMPLIANCE AND PARTICIPATION BY OTHERS. (intro.) The landowner, lessee, occupant or other persons assisting in the removal of wild animals causing damage or nuisance shall comply with all hunting and trapping rules specified under ch. NR 10 or ch. 29, Stats., except the open and closed seasons established in ch. NR 10 or unless otherwise provided under this chapter, ch. 29, Stats. , or by permit. Permittees and participants who fail to comply shall be subject to the penalty applicable to the appropriate ch. NR 10 or ch. 29, Stats. , violation. Persons other than the landowner, lessee or occupant, may assist in the removal of wild animals causing damage or nuisance in accordance with this subsection.

Section 9. NR 16.45(2)(a)1. is amended to read:

NR 16.45(2)(a)1. The deer farm is enrolled in the chronic wasting disease herd ~~monitoring status~~ program established by s. ATCP ~~40.67~~ 10.53.

Section 10. NR 16.45(2)(b)1. is amended to read:

NR 16.45(2)(b)1. The deer farm is enrolled in the chronic wasting disease herd ~~monitoring status~~ program established by s. ATCP ~~40.67~~ 10.53.

Section 11. NR 16.45(2)(b)2. is repealed.

Section 12. NR 16.45(5)(a)(intro) and (b) are amended to read:

NR 16.45(5) FENCING COMPLIANCE EXTENSION. (a) *Time period to bring deer farms with perimeter fences less than 80 acres in size ~~fences~~ into compliance with sub. (2)*. Farm-raised deer farms with white-tailed deer with perimeter fences less than 80 acres in size shall have until January 1, 2004 to enter the chronic wasting disease herd ~~monitoring status~~ program established by s. ATCP ~~40.67~~ 10.53 or to file a fencing plan with the department on forms supplied by the department and until June 30, 2004 to comply with the fencing plan.

Note: Forms may be obtained from the Department's Bureau of Customer Service and Licensing, P. O. Box 7924, Madison, WI 53707, Phone (608) 266-2621, Fax (608) 264-6130.

(b) *Time period to bring deer farms with perimeter fences 80 acres or greater in size fences into compliance with sub. (2).* Farm-raised deer farms with white-tailed deer with perimeter fences 80 acres or greater in size shall have until January 1, 2004 to enter the chronic wasting disease monitoring herd status program established by s. ATCP ~~10.67~~ 10.53, ~~herd surveillance program established by ch. ATCP 10,~~ or to ~~enter the file a~~ deer harvest plan established in sub. (2) (b) 3. with the department, or file a fencing plan with the department on forms supplied by the department and until December 31, 2004 to comply with the fencing plan.

Note: Forms may be obtained from the Department's Bureau of Customer Service and Licensing, P.O. Box 7924, Madison, WI 53707, Phone (608) 266-2621, Fax (608) 264-6130.

Section 13. NR 16.45(5)(c)4. is amended to read:

NR 16.45(5)(c)4. Number of fenced acres containing white-tailed deer not in the chronic wasting disease herd monitoring status program as established by s. ATCP ~~10.67~~, 10.53 ~~surveillance program as established by ch. ATCP 10~~ or a deer harvest plan established in sub. (2) (b) 3.

Section 14. NR 16.45(6)(h) is amended to read:

NR 16.45(6)(h) Status of enrollment in chronic wasting disease herd monitoring status program as established by s. ATCP ~~10.67~~, 10.53 ~~surveillance program as established by ch. ATCP 10~~ or a deer harvest plan established in sub. (2) (b) 3.

Section 15. Effective dates. These rules shall take effect on February 1, 2008.

Section 16. 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 _____
Scott Hassett, Secretary

(SEAL)