

## Report From Agency

### REPORT TO LEGISLATURE

NR 19, Wis. Adm. Code

Board Order No. WM-10-13  
Clearinghouse Rule No. CR-15-054

#### Basis and Purpose of the Proposed Rule

This subchapter was adopted in 2004 to establish consistent standards for the rehabilitation of wildlife, ensure that all persons engaged in wildlife rehabilitation are qualified, and to ensure that rehabilitators provide humane care and housing for wildlife being rehabilitated. These proposed revisions will clarify existing rules and establish new requirements for people licensed to rehabilitate wild animals based on what the department has learned after ten years of experience administering the subchapter.

#### Summary of Public Comments

The following is a summary of hearing testimony and written comments received during the comment period and at public hearings. They are grouped by subject area and many are paraphrased to represent similar or nearly identical comments from a number of people. The department's responses are in italics.

These babies need caring people, not a bunch of dumb rules that someone thinks need to be in place. Please do not make it more difficult for those who are licensed wildlife rehabilitators to rescue a wide array of animals in need.

*These rules were initially created in 2004 and it was mutually agreed that they were important. They are designed to assure that animals are cared for by qualified rehabilitators and are assured the best chance of success. We think it is appropriate to review and revise this subchapter following the first ten years of implementation.*

We are opposed to establishing that "the department", in addition to the wildlife rehabilitator under current rules, can make the determination that an animal is not capable of being released and having a chance of survival in the wild. The rehabilitator who admitted and treated the animal is surely the most qualified to decide. Those who know the situation best should decide and that decision should be final. It does not make sense to give the department broad and undefined authority to intervene at any time with any animal. The current language is the product of more than a decade-long discussion between the professional wildlife community and the department. The department intends to remove rehabilitator's decision-making authority. This promotes the notion of the "hobbyist rehabilitator" instead of rehabilitators as professionals. "Department" needs to be clarified - is it the secretary or the lowest staff person?

*The department agrees to strike this proposed new language in response to concerns expressed during the hearing process. It was intended to clarify statutes which establish that the title to wild animals belongs with the state.*

The rules establish that, if the department makes a determination that an animal is not able to be released or having a chance of surviving in the wild, "no person may fail to comply" with an order of the department determining an animal's disposition. The strange wording seems to eliminate the possibility of a discussion between the department and the licensee about the disposition of animals.

*This does not in any way prevent consideration and discussion between the department and a licensee about the condition of an animal before a determination is made. This language provides clarity on existing department authority, and does not give the department new powers or authority. The prohibition is consistent with legal drafting conventions and the phrase "no person may" is standard language.*

Before allowing a licensee to add a new species to their permit, the requirement to have 100 hours of experience with that species in a two-year period is too much. People will not be able to obtain that level of

experience because: some species are not regularly seen at rehabilitation facilities, this may require unrealistic amounts of travel, coursework is usually not species specific but rather covers multiple species. This favors large facilities but most rehabilitators are home based.

*The department recognizes that rehabilitating certain species may require less or more experience or knowledge, and that certain species are not as commonly admitted into rehabilitation centers, so the minimum hands-on experience may not be quickly obtained. However, state regulations cannot be less restrictive than federal regulations and since the US Fish and Wildlife Service requires a minimum of 100 hours of hands-on experience, gained over the course of at least 1 whole year, and up to 20 hours may be fulfilled by participation in migratory bird rehabilitation seminars and courses, the department will use these requirements when rehabilitators want to add migratory bird species to their license authority. For all other wildlife, the department will work with the Wildlife Rehabilitation Advisory Council and other experts in developing minimum requirements to add these species to a license authority. The reason for the initial recommendation of 100 hours experience within the past two years, with a maximum of 25 hours of seminar or coursework, was to maintain consistent standards for other species besides what is required for migratory birds on the federal permit.*

Before allowing a licensee to add a new species to their permit, the required experience should not be limited to hands-on and it should include observation, literature searches, seminars, or coursework and additional experience which does not need to be described in the rule.

*The department agrees and these rules already state that ‘25 of those hours may be fulfilled by participation in seminars or courses relating to the new species’.*

Contrary to the department’s statement that these rules will have no economic impact, it will increase associated costs related to continuing education, enclosures, travel and more.

*We acknowledge that there will be fiscal impacts of the rule for individuals who are regulated by Ch. NR 19 but predict that those impacts can be managed. The rules provide flexibility, such as online courses as an alternative to travelling for continuing education and applying new standards for enclosures only to new enclosures. The statutorily required economic impact analysis that agencies prepare for all administrative rules is a review of impacts on specific businesses, business sectors, public utility ratepayers, local governmental units, and the state’s economy as a whole. It is not an analysis of fiscal impacts on individual wildlife rehabilitators.*

The rules establish that volunteers, who are not licensed, may only provide basic care. Basic care should be defined.

*The department agrees and will incorporate a definition of basic care that states: “basic care” means the feeding, watering, and cleaning to provide for an animal’s basic needs, and does not include tasks such as performing admittance exams and triage, or euthanasia*

I don’t think that I should have to list volunteers under my license. What if they are just shoveling snow or mowing the lawn and do not want to provide their name?

*The intent is for only animal care volunteers to be listed under a license. The department does not regulate routine activities not related to animal care.*

“Limited capacity,” refers to the care that an unlicensed volunteer can provide under another person’s license and this term should be defined.

*The term “limited capacity” is used when describing ‘subpermittee’, which is authorized under an advanced rehabilitation license (NR 19.73 (3) (e)). The requirements written in this section describe the limited authority of subpermittees, however the department will add the following two provisions in this section to further describe their limited authority. 1) No subpermittee may admit animals except if they are admitted directly from the advanced licensee. 2) No subpermittee may perform euthanasia or advanced medical treatments or procedures.*

The requirement that a consulting veterinarian sign a licensee’s application, to verify the applicant’s experience, is an unreasonable burden to place on the veterinarian. The veterinarian is not, and is not required to be, providing hands-on oversight of the rehabilitation activities, making it unreasonable to insist that they sign off on the experience history of the applicant.

*It is a requirement of licensing that a rehabilitator have a consulting veterinarian. The veterinarian may be able to provide additional information for the evaluation of the licensee. This also gives the veterinarian the opportunity to know that the licensee is applying for the next level of wildlife rehabilitation license.*

Continuing education credits are required prior to license renewal, "continuing education credits" should be defined. Instead of requiring that the credit be obtained during the previous license period, a time period of five years should be established.

*Continuing education credits are defined as classes, conferences or workshops sponsored by the National Wildlife Rehabilitators Association, International Wildlife Rehabilitation Council, or Wisconsin Wildlife Rehabilitator's Association. The definition also includes participation in research projects, coursework, specialized rehabilitation care, or other activities approved by the department. License periods are established in statute and they are effective for three years and, for consistency, the department also recommends that continuing education credit also be required on a 3-year time frame.*

Continuing education credits are classes, conferences or workshops sponsored by the National Wildlife Rehabilitators Association, International Wildlife Rehabilitation Council, or Wisconsin Wildlife Rehabilitator's Association. This should be broadened to include all recognized state wildlife rehabilitation organizations and the Willowbrook Wildlife Center in Illinois. These are excellent offerings and would make the credits easier to obtain. The department should make something available through webinars.

*The rules establish flexibility so that "other activities which have been approved by the department" can meet continuing education requirements. These might include educational opportunities offered from other states' wildlife rehabilitation organizations, rehabilitation centers, or other entities.*

To require continuing education credits of volunteers is unreasonable.

*This is not a requirement for volunteers.*

Initial licensees need to score 80% or better on a written exam. The department needs to provide additional feedback, at least in general terms, what areas of the exam they answered incorrectly.

*Although this is not part of the rule package, it is a good suggestion to provide more feedback about exam results to those who take the exam. The department will consider modifying the letter that provides exam results, to include a general description of categories or areas that the individual can improve or learn more about.*

Initial licensees need to pass a written exam that covers all species but rehabilitators may only work with certain ones. To require advanced knowledge of all species, while restricting licensees from working with other species, is unreasonable.

*The exam that initial licensees take does not require advanced knowledge of all species. The initial exam is intended to test the basic wildlife rehabilitation knowledge of individuals interested in becoming licensed.*

When adding species to the list of animals a rehabilitator can work with, the department is allowed to establish additional conditions for species that are sensitive or difficult to rehabilitate. Species which are "sensitive or difficult" should be listed in the rule and wildlife rehabilitation experts should be involved in establishing this list.

*We agree that consultation with wildlife rehabilitators, including through the Wildlife Rehabilitation Advisory Council, will be important in determining which species are sensitive or difficult. Developing this list may be a long-term project and the department will work with partners, including the council and other outside experts, to establish this guidance. We recommend greater flexibility to make modifications in response to new information and changes to best practices for animal care.*

The rules require that basic licensees have a year of experience before volunteers can assist them, but many basic licensees have animal experience and should be able to have volunteers.

*We recognize that basic license applicants may already have animal care experience, but some applications do not have this experience, and the applicants that do have great variability in the amount and type of animal care experience. As a result, the recommendation of one year of experience is recommended so that the new licensee can become familiar with the wildlife rehabilitation program, work closely with the advanced license sponsor, and improve wildlife rehabilitation skills for when they're able to train others to assist them.*

There should be a minimum age for volunteers and subpermittees because working with wildlife exposes a person to disease or potential injury.

*The department understands the reasons for this suggestion, but thinks that an age requirement is something that should be at the discretion of the licensee and parents or guardians. Some rehabilitation facilities could have volunteer jobs that are suitable for young people. There is no minimum age established in statute for volunteers, however for licensees the statutorily established minimum age is 18 but, with a parent or guardian's approval, they may be younger.*

The department should not allow volunteers to work under the "indirect" supervision of an advanced licensee. At minimum the rules should define what activities an unqualified/unlicensed person is allowed to perform with and without supervision.

*Current regulations allow volunteers to assist advanced licensed rehabilitators and the department has not proposed a change in these rules. In both the existing chapter and with these proposed rules, the department has tried to provide a balance of allowing people to assist rehabilitators whenever possible but still assuring that high quality care will be provided. Indirect supervision in this rule proposal refers to subpermittees, and since they can be authorized at a location other than the licensee's address, they would not be operating under direct supervision. The department agrees to add two provisions to the subpermittee section that further describes the activities a subpermittee can or cannot do. 1) No subpermittee may admit animals except if they are admitted directly from the advanced licensee. 2) No subpermittee may perform euthanasia or advanced medical treatments or procedures.*

The rules establish that licensees "accept responsibility" for any violations by volunteers. I question how this can be.

*This is also in current rules related to advanced licenses and is not a new provision. We think that if the licensee chooses to have volunteers and/or subpermittees assist them with wildlife rehabilitation activities, that they should assure that volunteers/subpermittees have appropriate facilities and caging, and are providing appropriate care to wildlife, in accordance with the other requirements listed in NR 19.73 (2) and (3) (d) and NR 19.73 (3) (e).*

The requirement that subpermittees be located within 60 miles of the advanced licensee seems to be random. This will be a burden in areas of the state where there is a shortage of licensed rehabilitators. With modern technology, a wildlife rehabilitator can be in constant contact with their subpermittee at any distance.

*Establishing a maximum distance of 60 miles requires the subpermittee to be located within a reasonable distance from the licensee so that in-person communication, guidance, and consultation may occur within a reasonable amount of time. Under these proposed rules, subpermittees are authorized only to admit animals directly from the advanced licensee, and they are not authorized to perform euthanasia or advanced medical treatments or procedures. If euthanasia or medical treatment was needed for an animal under the care of the subpermittee, the licensee would need to have the ability to respond within a reasonable amount of time. This distance requirement applies only to subpermittees and is not a distance requirement for sponsorships.*

Basic licensees are not allowed to perform euthanasia without supervision of an advanced licensee or veterinarian – their volunteers should not be able to do so either. It should be clarified, for instance, that volunteers be limited to hand feeding and cleaning of enclosures.

*The department agrees and has addressed these concerns by establishing a definition of 'basic care' that would apply to volunteers and to subpermittees under NR 19.73 (3) (e) 8. Under the definition, "basic care" means the feeding, watering, and cleaning to provide for an animal's basic needs and does not include tasks such as performing admittance exams and triage or euthanasia. Additional description of the role of volunteers is established by the following two provisions which have been added to the rule order; 1) No subpermittee may admit animals except if they are admitted directly from the advanced licensee. 2) No subpermittee may perform euthanasia or advanced medical treatments or procedures.*

Why is it that title to a wild animal in a rehabilitator's care remains with the state and not the rehabilitator who assists the animals directly, provides education, and provides a public service which benefits thousands of people annually who demand an alternative to euthanasia of wild animals who are injured or orphaned?

*This is established by statute and is not a subject of this rulemaking.*

Current rehabilitators should not have to upgrade existing facilities to meet new standards.

*The department will only be requiring that wildlife rehabilitators licensed after the effective date of these rules will need to comply with new pen standards/caging requirements.*

Other people who have captive wildlife, such as fur farmers, bird shooting preserves, falconers, and other hobbyists should have standards for the housing of their animals and for minimum levels of training experience.

*Statutes and rules have established separate standards for housing most other captive wildlife that is covered under our regulatory authority. In most cases, these are not free-ranging animals from the wild, but are captive bred animals which are the property of the owners.*

Incorporation of the National Wildlife Rehabilitator Association minimum standards is good. Enclosures should meet or exceed these minimum standards.

*The department agrees and this is accomplished for new facilities with these rules.*

The department should allow the rehabilitation of wolves and wolf-dog hybrids.

*The department's policy has been not to allow the rehabilitation of wolves and wolf-dog hybrids. This board order contains an explanatory note describing that policy but it is not a provision of administrative rule. We did not re-evaluate that policy in drafting these rules but could in the future, without new rulemaking, if new information became available.*

The state should pay for wildlife rehabilitation just as it does for the registration of harvested deer, wildlife biologists, and licensing phone banks.

*The department does not have statutory authority to do this and it is not a subject of this rulemaking.*

While I don't like wildlife hoarding, it should be legal for anyone to take possession of an injured or orphaned animal and keep it without fear.

*The situations where a person can take possession of an animal from the wild are established by statute. Generally allowing people to acquire live animals from the wild is not something that the department has authority to authorize.*

We do need rules and parameters for wildlife rehabilitation to give the best care to wildlife in need, but please to not make it one sided to favor one entity over another or make wildlife rehabilitation impossible to obtain and maintain.

*We agree. To develop rules and parameters that guide optimum care to wildlife, both the original subchapter and this ten-year revision have been developed through a public process, with the ten-year revisions also reviewed by the Wildlife Rehabilitation Advisory Council.*

Wildlife rehabilitators have specialized knowledge and extensive experience. The department should reexamine their approach to the wildlife rehabilitation community in order to ensure that this important human resource will be motivated to continue its contributions for the good of wild and human communities in Wisconsin.

*We appreciate the wildlife rehabilitation community. This is evidenced by the department's establishment of a Wildlife Rehabilitation Advisory council (WRAC) in 2014 which is a new iteration of rehabilitator community involvement per the prior Wildlife Rehabilitation Advisory Committee process. The council is a body appointed by the Secretary to advise the department on wildlife rehabilitation program development, regulations, research and education, as well as captive wildlife topics. The purpose/goals of the council are to: 1) advise the department on matters relating to wildlife rehabilitation, wildlife health and captive wildlife, as needed, 2) help the department define public outreach and continuing education on wildlife rehabilitation, wildlife health and captive wildlife topics, and 3) assist the department with facility inspections required as part of the wildlife rehabilitation license.*

Wildlife rehabilitators do this out of their own pockets because they deeply care for the animals in their care. There are only a select few who will take on the responsibility. Costs are not borne by the government and rehabilitators do not profit from a public resource.

*Thank you.*

Modifications Made

Following the hearing process and comment period, the department has considered a number of recommendations. The following changes were made based on those recommendations.

These rules would have clarified that the department, as well as wildlife rehabilitators, can make the determination that an animal is not capable of being released and having a chance of survival in the wild. The department's authority is already established in Ch. 169 Stats. but was re-stated in these rules to provide clarity. The department agrees to strike this proposed new language in response to concerns expressed during the hearing process that the department was expanding its regulatory role in wildlife rehabilitation too much or getting too involved in the day-to-day activities of rehabilitators.

Following the hearings, we have added a definition of basic care. "Basic care" means the feeding, watering, and cleaning to provide for an animal's basic needs, and does not include tasks such as performing admittance exams and triage, or euthanasia. The rules establish that volunteers, who are not licensed, may only provide basic care. At the hearings, attendees requested that we define this, and the department agrees.

We have also added a definition of working in a "Limited capacity," which refers to the work that a subpermittee can do for an advanced license holder, including work at a location where there is not direct supervision by the advanced license holder. This definition more thoroughly describes a subpermittee's role by clarifying that: 1) no subpermittee may admit animals except if they are admitted directly from the advanced licensee and that, 2) no subpermittee may perform euthanasia or advanced medical treatments or procedures.

Before allowing a licensee to add a new species to their permit, the original proposal required a licensee to have 100 hours of experience and knowledge with that species in a two-year period. As modified, for non-migratory species, the department will have the flexibility to require less than 100 hours when that is appropriate. The department would work with the wildlife rehabilitation advisory council to develop appropriate minimum requirements to add certain species to license authority. For migratory birds under a federal permit, 100 hours experience within the past two years, with a maximum of 25 hours of seminar or coursework, is still required for consistency with federal requirements.

#### Appearances at the Public Hearing

The department conducted hearings in Eau Claire, Rhinelander, Fitchburg and Green Bay from August 24 through September 1, 2015. None of the hearing attendees indicated they were representatives of a small business as defined by s. 227.114, Wis. Stats. Attendance at the hearings is summarized below.

	Speaking in support	Registering in support	Speaking in Opposition	Registering in Opposition	As Interest may Appear
Eau Claire					1
Rhinelander					1
Fitchburg			2		9
Green Bay			3		2

A number of people indicated that they were appearing "as interest may appear" instead of checking that they supported or opposed the rule. This is likely because they may have supported certain elements of the rule but had concerns with others. Most hearing attendees did provide testimony that specifically described their views. A detailed summary of written comments and hearing testimony, as well as the department's responses, is provided in Appendix 1 at the end of this memo. The department received written comments or written hearing testimony from 41 people.

#### Changes to Rule Analysis and Fiscal Estimate

No changes were made to the rule analysis or fiscal estimate through the public comment process. One comment was received which suggested that, contrary to the department's statement that these rules will have no economic impact, it will increase associated costs related to continuing education, enclosures, travel and more. The department's response is to acknowledge that there will be fiscal impacts of the rule for individuals who are regulated by Ch. NR 19 but predict that those impacts can be managed. The rules provide flexibility, such as online courses as an alternative to travelling for continuing education and applying new standards for

enclosures only to new enclosures. The statutorily required economic impact analysis that agencies prepare for all administrative rules is a review of impacts on specific businesses, business sectors, public utility ratepayers, local governmental units, and the state's economy as a whole. It is not an analysis of fiscal impacts on individual wildlife rehabilitators.

#### Response to Legislative Council Rules Clearinghouse Report

The Legislative Council Rules Clearinghouse submitted comments on August 19, 2015. The LCRC provided comments on the form, style and placement in administrative code and the clarity, grammar, punctuation and use of plain language.

Changes to the proposed rule were made to address all recommendations by the Legislative Council Rules Clearinghouse.

#### Final Regulatory Flexibility Analysis

The department has made a determination that these rules will have no economic impact locally or statewide. In preparing the final analysis of economic impacts, the department posted a notice soliciting comments on the preliminary analysis in July 2015. ~~No comments were received.~~

Wildlife rehabilitation is typically performed by non-profit organizations or individuals who are not reimbursed by government funding or by fees paid for services. These rules, and the legislation which grants the department rule making authority, will have no economic effect on small businesses. These rules are applicable to individual wildlife rehabilitators and impose no compliance or reporting requirements for small business, nor are any design or operational standards contained in the rule.

The department observes that wildlife rehabilitators contribute to the economy through their purchases of veterinary and animal husbandry related products and services. The department anticipates that these economic impacts will continue to occur under the proposed rules at the same level at which they occur under current rules.

#### Response to Small Business Regulatory Review Board Report

The Small Business Regulatory Review Board did not prepare a report on this rule proposal.