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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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### CLEARINGHOUSE RULE 03-016

#### 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 October 2002.]**

#### 1. Statutory Authority

a. The statutes provide authorization for and limitations on the use of aircraft to hunt within the eradication zone (see s. 29.307 (2)). There are several differences between the proposed rule (s. NR 10.07 (1) (a)) and the statute. The Department of Natural Resources (DNR) should determine whether the following differences are intended, and whether the proposed rule is within the bounds of the statutory language:

- The statute provides that animals may be shot from aircraft only if the department considers “all” other alternatives. “All” is omitted from the rule.
- The rule requires consideration of other alternatives to “shooting and driving” animals from aircraft. The statute only requires all other alternatives to be considered before DNR authorizes shooting animals from aircraft.
- The statute authorizes only employees or agents of the state or federal government to hunt from aircraft. The rule does not contain this restriction.

#### 2. Form, Style and Placement in Administrative Code

a. There are several treatment clauses that end with a period, but should end with a colon. For example, see the treatment clauses for SECTIONS 2, 3, and 5 to 8.

b. In s. NR 10.001 (6p), (6t), and (11), “The” should be deleted. In s. NR 10.001 (6p), “means” should replace the first “is.” In s. NR 10.001 (11), “Herd” should replace “herd.”

c. As drafted, the definition of “shotgun hunt” in s. NR 10.001 (24m) will follow the current definition of “shotgun season” in sub. (24). Different numbering should be used so that the terms are in alphabetical order.

d. The provision regarding hunting from aircraft in s. NR 10.07 (1) (a) sunsets after June 30, 2004, pursuant to s. 29.307 (3), Stats. Presumably, the DNR intends for the current prohibition on hunting with the aid of an aircraft to continue after that sunset date. Therefore, it may be preferable to create a new paragraph in s. NR 10.07 (1) to authorize hunting with the aid of an aircraft for eradication zones, rather than adding that exemption to s. NR 10.07 (1) (a). This will allow a clear delineation of the portion of the rule that sunsets and the portion of the rule that continues in effect after June 30, 2004.

Also, it would be useful to add a note to the rule that refers to the sunset.

e. In s. NR 10.104 (13) (a), “Shall” should replace “will.”

f. In s. NR 10.105 (3), the introductory material should be merged with par. (a) since there is no par. (b). [See s. 1.03 (intro.), Manual.] The same change is needed in s. NR 12.06 (2).

g. Section NR 10.41 (3) (intro.) and (4) (intro.) are improperly drafted as introductory material since they do not end with colons and lead into the subunits that follow. [See s. 1.03 (8), Manual.] They could each be redrafted as par. (a) and subsequent paragraphs would be pars. (b) and (c).

h. Although SECTION 37 is titled “Initial Applicability,” the text of that rule provision has nothing to do with the initial applicability of the rule. It appears to be a factual finding or statement of purpose.

#### **4. Adequacy of References to Related Statutes, Rules and Forms**

A definition of “notice and information to the public that is adequate” is created in s. NR 10.001 (19e). Although this phrase is used in s. 29.063 (2), Stats., the entire phrase in the statute is substantially longer. This rule provision is intended to determine how the DNR gives public notice prior to the commencement of hunting in the eradication zone. The phrase is not used at any place in the proposed rule. Therefore, the standards for notice in s. NR 10.001 (19e) should be included with the substantive provisions of the rule, and should not be created as a definition. Also, the statutory cross-reference should be to s. 29.063 (2), Stats., rather than s. 29.063, Stats.

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

a. The eradication zone is identified on the basis of sections of land. The term “section of land” is defined in s. NR 10.001 (23m). This rule provision defines a section of land in part as a one square mile section. It should be noted that there are sections of land that are not one square mile. Further, the definition provides that a section of land consists of “platted land,” and it should be noted that most rural land is not platted. Finally, the definition provides that the

section of land must be “within a township.” All sections of land are within a township, so this provision adds nothing to the definition. It should be considered whether this definition is necessary at all.

b. Is it intended that the authorization to open state parks and other areas under s. NR 10.41 (2) is only for the purposes of hunting deer? If so, that should be stated. Also, in that same rule provision, the phrase “rule order” is unclear.

c. Section NR 10.41 (4) refers to “special CWD management zones.” Is a special CWD management zone simply a different name for one of the other defined zones (eradication, intensive harvest, and herd reduction) or is it yet another type of zone?

d. It is not clear what is the purpose of s. NR 10.42. The reference “to this chapter” applies this provision to all hunting regulations, not just to chronic wasting disease provisions. It is not clear what is the concern with this portion of the proposed rule. Which official duties are at issue?

e. Section NR 12.06 (2) refers to landowners, lessees, occupants, or “their duly authorized agent.” The rest of s. NR 12.06 does not refer to agents, but rather to those who might assist as a “participant” in the removal of deer. Does the reference to “agent” raise concerns regarding making the landowner, lessee, or occupant liable for actions of the person who assists as a participant in the hunt?

f. The second sentence in s. NR 12.06 (8) (a) is confusing. Does the exemption apply to blaze orange clothing regulations, or to something else? Is the DNR proposing to grant exceptions to local ordinances? If so, that could be more clearly stated. The phrase “identified in” in s. NR 12.06 (8) (b) should be changed to “under.”