

Report From Agency

REPORT TO LEGISLATURE

NR 18, Wis. Adm. Code,
Relating to the sport of falconry

Board Order Number: ER-19-10
Clearinghouse Rule Number: CR 13-005

This rule is not subject s. 227.185, Wis. Stats. The statement of scope for this rule, published in Register No. 652 on April 14, 2010, was sent to the Legislative Reference Bureau prior to the effective date of 2011 Wisconsin Act 21.

BASIS AND PURPOSE OF THE PROPOSED RULE

Proposed changes to ch. NR 18, governing the sport of falconry in Wisconsin, address requirements from the U.S. Fish and Wildlife Service to meet falconry standards set forth in the Federal Register in 2008. The Service will no longer issue a permit to individuals engaged in falconry, and it has formulated revisions as to how falconry is to be conducted. Permits will be issued by states with oversight provided by the Service. The proposed rule makes the revisions to current code to insure compliance with federal rules by January 1, 2014, the compliance date set forth in the Federal Register.

The proposed rule will impact current and future holders of falconry permits only by moving management of the permitting program to the state. Significant changes to the rule, in addition to defining or clarifying different falconry terms, conditions, and requirements, include increasing the number of wild raptors a General and Master Class falconer can possess; specifies 5 working days as a period for notifying a falconer of a finding of improper facilities or improper care of a raptor; clarifies that a licensed Wisconsin falconer has legal title to a raptor taken from the wild in Wisconsin, except for an endangered or threatened species; clarifies that falconers may assist wildlife rehabilitators with conditioning of raptors for release to the wild; and clarifies that General and Master Class falconers may use raptors for educational purposes without an additional permit as long as the same raptors are also used for falconry.

SUMMARY OF PUBLIC COMMENTS AND AGENCY RESPONSE

A public hearing (attended by 16 members of the public) was held on February 12, 2013, at the DNR Fitchburg Service Center to solicit comments on proposed revisions to Chapter NR 18, Wisconsin's administrative falconry code. Representing the Department was Hearing Examiner and Attorney Michael Kowalkowski, Bureau of Endangered Resources (BER) Director Erin Crain, BER Avian Ecologist Sumner Matteson, and BER Falconry Coordinator Stacy Rowe. Mr. Matteson gave a powerpoint presentation on exactly what the proposed revisions entailed. The tone of the hearing was highly supportive and complimentary of the DNR role in shaping falconry rule revisions that comprised the proposed rule.

Sixteen members of public turned in hearing appearance slips and eight of those made oral statements, all of which were in support of the proposed rule. Seven of the remaining 8 members of the public indicated support of the proposed rule revision on their hearing appearance slips.

There was no opinion indicated on the final hearing appearance slip. Recommendations from each of the eight individuals making oral statements covered the following points:

- 1) Under section NR 18.15 (2), it was recommended that the following sentence from the proposed rule revision be modified: “Release of hybrids to the wild is illegal.” The new suggested wording: “Permanent release of hybrids to the wild is illegal.”
- 2) It was suggested that the time period for submitting the falconry reporting form, 3-186A, be uniform throughout the proposed rule revision (varies from 3 to 5 to 10 days) and adhere to the same time period recommended by the U.S. Fish and Wildlife Service: 10 days.
- 3) Under section NR 18.12 (4) (b), it was recommended that the following sentence from the proposed rule revision be modified: “A permittee shall attach the marker to the raptor immediately upon acquisition.” The new suggested wording: “A permittee shall attach the marker to the raptor within 48 hours of acquisition.”
- 4) Under section NR 18.10 (2) (b), it was recommended that the following sentence from the proposed rule revision be modified: “A general class permittee may not possess more than 3 wild raptors and may not obtain more than 2 raptors from the wild during any 12-month period, August 1 to July 31. The new suggested wording: “A general class permittee may not possess more than 3 wild or captive-bred raptors and may not obtain more than 2 raptors from the wild during any 12-month period, August 1 to July 31.”

The department agrees with the above recommended changes to the proposed rule revision, and staff has made the necessary changes to the proposed rule.

One public participant expressed concern that he would not possess more than one peregrine falcon for falconry use because the bird was still listed as endangered or threatened. Under the proposed rule revision, a Master falconer can possess a captive-bred peregrine, and if he or she possesses a Wisconsin endangered species permit, he or she may take, transport, or possess a passage (first-year migrant) peregrine falcon. So it remains a distinct possibility that a Master falconer can possess more than one peregrine falcon.

Another public participant suggested that the \$75 annual fee for a state resident falconry permit was too low given the time needed to work on the state’s falconry program. Department staff responded that the matter of an increased fee would be thoroughly reviewed, and if the finding demonstrated that the falconry fee should be increased, the issue would be addressed in a future rule revision.

Department staff received 2 letters—both highly supportive of the proposed rule revision.

MODIFICATIONS MADE TO THE PROPOSED RULE AS A RESULT OF PUBLIC COMMENT OR TESTIMONY RECEIVED

Modifications made by the Department in response to public comments are detailed in the previous Summary of Public Comments and Agency Response section.

PERSONS APPEARING OR REGISTERING AT PUBLIC HEARINGS

Sixteen persons filed a hearing appearance as follows:

In support: 15

In opposition: None
As interest may appear: None
No position declared: 1

Of the 15 persons filing in support, 8 also made statements in support.

CHANGES TO RULE ANALYSIS AND FISCAL ESTIMATE

In the Summary of Factual Data and Analytical Methodologies section of the analysis in the rule order, the total number of Wisconsin resident falconers affected by the proposed rule was reduced from 100 to 98.

No changes were made to the fiscal estimate.

RESPONSE TO LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

The Legislative Council Rules Clearinghouse made 17 comments or suggested changes addressing Form, Style, and Placement in Administrative Code; 2 comments or suggestions addressing Adequacy of References to Related Statutes, Rules and Forms; and 9 comment or suggestions addressing Clarity, Grammar, Punctuation, and Use of Plain Language. All comments and suggested changes have been accepted and the proposed rule order revised accordingly.

FINAL REGULATORY FLEXIBILITY ANALYSIS

A final regulatory flexibility analysis was not prepared since the proposed rule only affects private individuals and has no effect on small businesses.