

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 repeal NR 8.52(1)(d)1.c., 10.01(3)(ef), 10.25(4)(f); to amend NR 8.04(2)(a)1., 8.52(1)(a)1.c. (Note), 8.52(3)(Note), 8.53(1)(Note), 8.54(1)(a)3., 10.01(3)(e)1.e., 10.01(3)(e)2., 10.01(3)(ed)1.a., 10.01(3)(em)4., 10.06(2)(b), 10.09(1)(c)2., 10.104(11)(b)3.b. and c., 10.105(2), 10.11(1)(f), 10.145(8), 10.40(3)(g), 10.40(4)(g), 10.40(3)(f), 12.10(1)(a)1.a, 12.10(1)(b)1.b., 12.16(4), 12.16(6), 17.02(3); to repeal and recreate NR 8.04(2)(a)2.; and to create NR 10.001(28), 12.10(1)(b)2. and 12.10(1)(b)7, relating to license and permit procedures, game and hunting, wildlife damage and nuisance control and dog trials and training.

WM-02-10

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. 29.011, 29.014, 29.024, 29.03, 29.053(3), 29.192, 29.193, 29.885, 169.21, 169.39 and 227.11, Stats. These sections grant rule making authority to the department to establish license and permit procedures, establish open and closed seasons for hunting and to establish other regulations for hunting, trapping, dog training, and the removal of nuisance animals. All rules promulgated under this authority are subject to review under ch. 227, Stats.

Statutes Interpreted and Explanation: In promulgating this rule, ss. 29.011, 29.014, 29.024, 29.03, 29.053(3), 29.192, 29.193, 29.324, 29.592, 29.885, 169.21, 169.39 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 8, 10, 12 and 17. 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.

Sections 1 and 2 allow customers to request free hard copies of turkey, pheasant, trout, or salmon stamps through the phone, a designated county clerk's office, or any department office that provides counter service.

Sections 3 to 7 update agency contact information and requirements for administration of the Wildlife Violator Compact Program.

Section 8 clarifies that a person who may only hunt with a mentor, and the mentor with whom they are hunting, can group hunt for deer even though they are only allowed to possess or control one firearm jointly. The season must be open for both hunters, they must be hunting within arms reach of one another, and both must possess the proper licenses and permits. This is consistent with s. 29.324, Stats., related to group hunting and simplifies the explanation of how this law applies during a mentored hunt.

Sections 9, 11 and 12 eliminate extraneous deer hunting season language and add a cross reference to update language following the 2006 sunset of a two-year experiment with seasons that did not include October antlerless only deer hunts.

Sections 10 and 13 eliminate the description of where hunting is allowed at Big Bay state park because it is unnecessary and the only state park for which such language is established in code.

Section 14 updates a cross reference related to the hours when hunting is allowed.

Sections 15 and 18 clarify that in addition to .410 shotguns, it is also illegal to hunt deer, bear or elk with handguns which fire .410 shotgun slugs.

Sections 16 and 17 update cross references related to deer registration and deer carcass tags in the CWD zone.

Section 19 clarifies that enforcement action can be taken against a person who fails to report bobcat harvest as required.

Section 20 repeals a redundant, unnecessary prohibition on hunting from a roadway specifically for wild turkeys.

Sections 21 and 23 clarify that when the assistant to a disabled hunter uses a firearm to aid in retrieval of a deer or turkey that has been shot by the disabled hunter, the assistant needs to possess a deer hunting license or any license that authorizes hunting when retrieving a turkey.

Section 22 clarifies that disabled hunters participating in special hunts may tag a deer of either sex with their gun buck carcass tag and additional antlerless deer if they possess valid tags for that unit.

Sections 24 through 26 move a provision to a more proper location in order to simplify code language about the removal of nuisance animals.

Section 27 clarifies that a federal permit for the removal of certain nuisance animals can serve as the state permit in order to reduce paperwork. The state could still review permits.

Section 28 clarifies that deer may be shot under the authority of nuisance permits on the day before the opening of nine day gun season in the CWD Management Zone where other firearm hunting is also allowed on that day. Outside the CWD Management Zone, hunting with firearms for species other than waterfowl would continue to be prohibited.

Section 29 clarifies that hunters under the authority of damage and nuisance program permits can retain more than one deer when authorized by the department.

Section 30 clarifies that pen standards for captive coyote, fox and rabbit, possessed with a hound dog training license under Ch. NR 17, apply when being transported or for the purpose of health care or treatment and special handling needs. These standards already apply for animals possessed under the authority of Ch. NR 16 related to captive wildlife and to bear, bobcat and raccoon possessed under the authority of Ch. NR 17, dog trials and training.

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 was June 8, 2010.

Section 1. NR 8.04(2)(b)1. is amended to read:

NR 8.04(2)(b)1. Presenting the approval in person at a department ~~service center~~ office where counter services are provided or at a designated county clerk's office.

Section 2. NR 8.04(2)(b)2. is repealed and recreated to read:

NR 8.04(2)(b)2. Submitting a request to the department through the mail, electronically or by phone.

Section 3. NR 8.52(1)(a)1.c. (Note) is amended to read:

Note: Notices may be mailed to the: Department of Natural Resources, Wildlife Violator Compact Administrator, ~~401 S. Webster St. P.O. Box 7921~~, Madison, WI 53707-7921, or by FAX at ~~(608) 266-3696~~ (608) 264-6130. An e-mail address for the Compact Administrator may be obtained by calling the department's ~~Bureau of Law Enforcement at (608) 266-2144~~ call center at 1-888-936-7463.

Section 4. NR 8.52(1)(a)3.(Note) is amended to read:

Note: Notifications may be mailed to the: Department of Natural Resources, Wildlife Violator Compact Administrator, ~~401 S. Webster St. P.O. Box 7921~~, Madison, WI 53707-7921, or by FAX at ~~(608) 266-3696~~ (608) 264-6130. An e-mail address for the Compact Administrator may be obtained by calling the department's ~~Bureau of Law Enforcement at (608) 266-2144~~ call center at 1-888-936-7463.

Section 5. NR 8.52(1)(d)1.c. is repealed.

Section 6. NR 8.53(1)(Note) is amended to read:

Note: Notices may be mailed to the: Department of Natural Resources, Wildlife Violator Compact Administrator, ~~401 S. Webster St. P.O. Box 7921~~, Madison, WI 53707-7921, or by FAX at ~~(608) 266-3696~~

(608) 264-6130. An e-mail address for the Compact Administrator may be obtained by calling the department's ~~Bureau of Law Enforcement~~ at (608) 266-2141 call center at 1-888-936-7463.

Section 7. NR 8.54(1)(a)3. is amended to read:

NR 8.54(1)(a)3. ~~Mail~~ If the violator is a Wisconsin Resident, mail a notice to the violator to inform the violator which ch. 29, Stats., privileges and approvals have been revoked in this state as a result of the violator's revocation in the participating state.

Section 8. NR 10.001(28) is created to read:

NR 10.001(28) "Using firearms" for the purpose of s. 29.324(1)(b), Stats. means being in possession or control of a separate, individual firearm except that a mentor and the person for whom they are serving as a mentor as required under s. 29.592(3), Stats., who jointly possess only one firearm, shall each be considered to be using a firearm.

Section 9. NR 10.01(3)(e)1.e. is amended to read:

Kind of animal and locality	Open season (all dates inclusive)	Limit
NR 10.01(3)(e)1.e.		
<p>Except for areas identified in subds. 2. and 3., this season may be implemented in deer management units that meet the criteria established in par. (ed) 2., if the harvest resulting from the permit issuance procedures established in par. (ed) 1. a. in a deer management region does not meet the performance measures established in par. (ef).</p>	<p>Firearm <u>Gun</u> deer season beginning on the Thursday nearest October 15 and continuing for 4 consecutive days. The firearm type in a deer management unit is the same as <u>Allowable types of guns are those</u> authorized during the seasons listed in subdivision paragraphs a. and b., <u>and subd.5.</u></p>	<p>One antlerless deer per antlerless deer permit issued under s. NR 10.104.</p>

Section 10. NR 10.01(3)(e)2.b. is amended to read:

Kind of animal and locality	Open season (all dates inclusive)	Limit
NR 10.01(3)(e)2.b.		
<p>The following state parks and trails: the portion of Big Bay state park located on Madeline Island west of a north-south line beginning at the park entrance on Haines road, Governor Thompson, Elroy-Sparta, Hartman Creek, Interstate, the Plum Island portion of Grand Traverse Islands, Mill Bluff, Newport, Rock Island, Straight Lake, Wyalusing (73A) and Tuscobia-Park Falls.</p>	<p>Firearm season beginning on the Saturday immediately preceding the Thanksgiving holiday and continuing for 9 consecutive days. The firearm type is the same as authorized for the surrounding deer management unit.</p>	<p>One buck deer and additional antlerless deer as authorized by antlerless deer permits issued under s. NR 10.104.</p>

Section 11. NR 10.01(3)(ed)1.a. is amended to read:

NR 10.01(3)(ed)1.a. The department may, upon making the findings in subd. 2. modify the deer permit issuance procedures as described in this paragraph and implement the October hunt described in subd. 1.e. for any deer management unit to reduce the deer population nearer to the overwinter population goals established in s. NR 10.104. Under this paragraph special permits for antlerless deer under s. 29.177, Stats., may be issued free of charge at the rate of one permit per license authorizing deer hunting or 2 permits per conservation patron license. The permits may be used to hunt and tag deer during any of that year's deer seasons for the units specified under subd. 2. Additional special permits for antlerless deer shall be issued at no charge, except for a handling fee authorized under s. 29.556, Stats., and s. NR 19.02.

Section 12. NR 10.01(3)(ef) is repealed.

Section 13. NR 10.01(3)(em)4.b. is amended to read:

Kind of animal and locality	Open season (all dates inclusive)	Limit
NR 10.01(3)(em)4.b.		
<p>The portion of Big Bay state park located on Madeline Island west of a north-south line beginning at the park entrance on Haines road, Mill Bluff state park and Rock Island state park.</p>	<p>Beginning on Oct. 15 and continuing for the remainder of the early archery season and the entire late archery season described in subd. 1.</p>	<p>One buck and one antlerless deer as authorized by the appropriate carcass tag and additional antlerless deer as authorized by antlerless permits issued under s. NR 10.104.</p>

Section 14. NR 10.06(2)(b) is amended to read:

NR 10.06(2)(b) General prohibition. Except as provided in subs. (6), ~~(7) and (8)~~ to (9), no person may hunt or shoot any game species ~~or~~ for which an open season is prescribed on any day during the open season before the a.m. times or after the p.m. times established in sub. (5).

Section 15. NR 10.09(1)(c)2., as affected by CR- 09-024, 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 handgun loaded with .410 shotgun shell ammunition or with ammunition loaded with nonexpanding type bullets or ammunition loaded with shot other than a single slug or projectile.

Section 16. NR 10.104(11)(b)3.b. and c. are amended to read:

NR 10.104(11)(b)3.b. Archery or firearm hunts in units where earn-a-buck regulations established in s. NR 10.01 (3)(et) ~~3. 2.~~ are in effect if the hunter possesses an antlerless deer registration verification earned in a unit designated under s. NR 10.01(3) ~~(ez)1.d.~~ (ed)1.b. or in a CWD management zone identified in s. NR 10.28(3), or

c. Archery or firearm hunts in units where earn-a-buck regulations established in s. NR 10.01(3) (et) ~~3. 2.~~ are in effect if an antlerless deer has been legally harvested and tagged prior to the harvest of the buck deer, and the antlerless deer accompanies the buck deer until each is registered.

Section 17. NR 10.105(2) is amended to read:

NR 10.105(2) In deer management units with deer seasons modified under s. NR 10.01 (3) (ed) 1. b. or (et) ~~3. 2.~~, no person may transport a buck deer from the time it is killed to the time it is registered under s. NR 10.106 unless accompanied by the antlerless deer or antlerless deer registration verification which authorized the taking of the buck deer. An antlerless deer may be used only by the hunter who tagged it to secure authorization for that hunter to tag one buck deer in the unit or units modified under s. NR 10.01 (3) (ed) 1. b. or (et) ~~3. 2.~~ Deer may only be transported outside of the unit of kill or adjoining unit after they have been registered.

Section 18. NR 10.11(1)(f) is amended to read:

NR 10.11(1)(f) Handguns. With a handgun that is loaded with a .410 shotgun shell loaded with a single slug or projectile, a centerfire cartridge .22 caliber or smaller or has a minimum barrel length that is less than 5 1/2 inches measured from the muzzle to the firing pin with the action closed.

Section 19. NR 10.145(8) is amended to read:

NR 10.145(8) REPORTS. (a) Harvest reports. The department may require each successful bobcat permit applicant to submit a harvest report in a manner prescribed by the department within 24 hours of harvesting a bobcat. If the department requires a person who has been issued a bobcat harvest permit to report the harvest under this section, the person shall make the report in the manner required by the department within 24 hours of the time the person kills the bobcat.

Section 20. NR 10.25(4)(f) is repealed.

Section 21. NR 10.40(3)(g) is amended to read:

NR 10.40(3)(g) Authorizations to assistant. The designated assistant of the special gun deer hunt participant may use a firearm while retrieving a deer shot by a participant provided the assistant possesses a current valid deer hunting license.

Section 22. NR 10.40(3)(f) is amended to read:

NR 10.40(3) (f) *Rule compliance.* Unless otherwise provided by the department, all disabled hunters and accompanying persons shall comply with all hunting rules and laws applicable to the regular gun deer season specified under s. NR 10.01 (3) (e). The bag limit is one deer of either-sex per valid gun buck deer carcass tag and additional antlerless deer per current valid antlerless deer permit issued under s. NR 10.104, and per special permit issued under s. NR 10.01 (3) (ed) or (et). Other hunters, hunting on the lands described on the application during the special gun deer hunt, shall comply with the blaze orange clothing requirements in s. 29.301 (2), Stats., except waterfowl hunters.

Section 23. NR 10.40(4)(g) is amended to read:

NR 10.40(4)(g) Authorizations to assistants. The designated assistant of the special spring turkey hunt participant shall possess a valid hunting license for hunting of any species and may use a the participant's firearm in compliance with s. NR 10.09 (1) while retrieving a turkey shot by a participant.

Section 24. NR 12.10(1)(a)1.(intro.) is amended to read:

12.10 (1)(a)1. Destroy any wild animal, provided that all game and furbearing animals are disposed of as directed by the department, which is classified as:

Section 25. NR 12.10(1)(b)1.b. is amended to read:

NR 12.10(1)(b)1.b. Any bird causing depredation under s. NR 12.05; or ~~provided that all game and furbearing animals are disposed of as directed by the department;~~

Section 26. NR 12.10(1)(b)2. is created to read:

NR 12.10(1)(b)2. The department may prescribe the manner of disposal for animals destroyed under this paragraph.

Section 27. NR 12.10(1)(b)7 is created to read:

NR 12.10(1)(b)7. Destroy birds defined under s. 29.001(33) and (39) and permitted for removal by the U.S. fish and wildlife service under a federal depredation permit, provided the permit has been reviewed and approved by the department and removal activities are in compliance with the restrictions, requirements and conditions as described by the U.S. fish and wildlife service in 50 CFR 21.49 and this section.

Section 28. NR 12.16(4) is amended to read:

NR 12.16 (4) EFFECTIVE DATES. Authorization to kill deer commences the date of permit receipt by the permittee and continues through the open season for the appropriate zone described in s. NR 10.01 (3) (e) and (em), except that no deer may be killed during the 24 hour period prior to the open season for hunting deer with gun November firearm deer season in the area of the state outside of the CWD management zone in s. NR 10.28(3).

Section 29. NR 12.16(6) is amended to read:

NR 12.16(6) CARCASS ~~SALE AND PRICE CARE AND DISPOSITION.~~ The department shall offer the permittee and each participant the opportunity to retain at least one deer killed under the deer shooting permit. All deer not retained under this subsection shall be disposed of as directed by the department.

Section 30. NR 17.02(3)(a) is amended to read:

NR 17.02(3)(a) Captive coyote, fox and rabbit. Captive coyote, fox and rabbit obtained in accordance with s. NR 17.047 and possessed for dog training purposes may only be kept within a hound dog training enclosure that is permitted and that meets the requirements established under s. NR 17.045-, except that these species may be confined or controlled on a temporary basis in accordance with ss. NR 16.30 and 16.38 for the purpose of health care or treatment, transportation from one enclosure to another or special handling needs when not being used for training dogs. For special handling needs and transportation, coyote, fox and rabbit shall be housed in accordance with ss. NR 16.30 and 16.38.

Section 31. 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 32. Board adoption. This rule order was approved and adopted by the State of Wisconsin Natural Resources Board on August 11, 2010.

Dated at Madison, Wisconsin _____.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Matthew J. Frank, Secretary

(SEAL)