

**ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
AMENDING AND REPEALING AND RECREATING RULES**

The Wisconsin Natural Resources Board proposes an order to amend ss. NR 10.104(11)(b)3.a., b. and c., 10.105(2), and 10.106(2)(g); and to repeal and recreate s. NR 10.01(3)(et) pertaining to deer hunting as it relates to the control and eradication of chronic wasting disease.

WM-11-06

Analysis Prepared by Department of Natural Resources

Statutory Authority and Explanation: Statutes that authorize the promulgation of this rule order include ss. 29.014, 29.063, 29.177 and 227.11, Stats. These sections grant rule making authority to the department to establish and maintain open and closed seasons for hunting and provides that all rules promulgated under this authority are subject to review under ch. 227, Stats. In addition, these sections authorize establishment of Chronic Wasting Disease (CWD) eradication zones to control the spread of the disease.

Statutes Interpreted and Explanation: In promulgating this rule ss. 29.063, 29.177 and 29.361, Stats., have been interpreted as allowing the department the authority to establish additional CWD zones and regulations for the control and eradication of the disease. These sections authorize the issuance of special deer hunting permits which the department is proposing to issue to hunters to assist in disease control seasons. Finally, the department is utilizing the authority granted to regulate the transportation and registration of deer to obtain samples for disease testing purposes.

Related Statute or Rule: None.

Plain Language Rule Analysis: Since the discovery of CWD in Wisconsin's free-roaming deer herd in February 2002, the Governor, the legislature, and the Natural Resources Board have given the Department of Natural Resources the directive to control the spread of CWD from its current known location and to eradicate the disease where it exists. Additionally, an Environmental Impact Statement completed in 2003, identified adaptive management as the preferred management alternative to manage and eventually eradicate the disease from the state. This rule, which is a follow-up rule to last year's CWD rule order, contains rule changes that adapt to current scientific knowledge gathered in previous seasons and through extensive research. The department recommends the following CWD hunting rules for 2006 and beyond:

1. Tagging Restrictions for Archery and Gun Seasons:

- Either-Sex regulation for all seasons for both the Herd Reduction Zone (HRZ) and the Disease Eradication Zones (DEZ).

Benefits of this proposal include: simplicity; consistent with the 2005 Conservation Congress Advisory Question Spring Hearing vote; no need for hunters to pass up bucks, which are desired by a majority of hunters; and it is what was in place for harvest regulations for most of the 2005 hunting seasons.

2. HRZ and DEZ Early Gun Deer Season:

- DEZ: 9 days beginning the Saturday preceding the Thursday nearest October 20
- HRZ: 4 days beginning the Thursday nearest Oct. 20

The most common concern of public hearing participants was the proposed increased length of the early gun season in the HRZ. This concern was most often heard from archers, many of whom do not like the early gun hunt already. However, some gun hunters also objected as they felt a 9-day early gun hunt would take away from the excitement of the traditional opener. Some even suggested returning to earn-a-buck rules rather than extending the early gun hunt in the HRZ, if they had to make a choice. Recreational interests were definitely a priority over CWD control for hearing participants. Some participants expressed their opinion that CWD control

was hopeless and that they didn't want to give up their recreational preferences for a hopeless cause. As a result of the public comments we have made the indicated changes to the HRZ early gun season. However, this is a risk, considering reduction in antlerless harvest this past hunting season and the apparent lack of reduction in deer herds in the DEZ and HRZ. This must be weighed against the dilemma of depending on hunter and landowner cooperation over the long haul to be successful, but with the potential of not having herd reduction and not having success if we go with what hunters and landowners want. It should be made clear that this is a trial year, and we will be recommending EAB and or longer early gun seasons in the DEZ/HRZ if herd reduction does not occur with these regulations, as allowed with the criteria in the proposed code.

3. HRZ and DEZ Late Gun Deer Season:

- Beginning with the traditional opener and ending 3 Sundays after Thanksgiving--Dec. 10

Benefits include: consistency between the HRZ and DEZ gun seasons provides less regulatory complexity for hunters; consistency with the deer gun opener in the rest of state, and consistent with herd control units (Zone T) at the end of the gun season; traditional opener after a long gap in the gun season is desired by many gun hunters; an earlier closing in response to landowner concerns; and landowner permits would still enable deer harvest with a gun through a later date if desired.

4. Preservation of Earn-a-buck (EAB) and additional deer hunting opportunities for the future, if needed:

- Create criteria that establish when the Department may use the EAB harvest regulations and/or add seven days to the early deer firearm season if EAB regulations are recommended for a unit, units, or a zone (HRZ or DEZ).

Criteria for reinstating EAB and/or adding 7 days to the early gun season in the HRZ or DEZ: If one or more of the following criteria are met, the Department may find that it is advisable to use the EAB regulation and may bring a recommendation of EAB to the Natural Resources Board who may decide to reinstate the EAB regulations in a DEZ or HRZ. The EAB rule would not be used if the overwinter population is estimated to be at or below 15 deer per square mile of deer range in recognition of the difficulty of finding and harvesting an antlerless deer at such low densities. Criteria include:

- 1) Harvest ratio of registered antlerless deer to antlered deer is less than 2.0:1 for the prior year, or
- 2) Estimated harvest rate of antlerless deer is less than 30% for the prior year, or
- 3) CWD prevalence in tested adult deer in the core area, a DEZ, or a portion of the HRZ remains unchanged or increases, or
- 4) Estimated deer population reduction is less than 20% for the prior year.

5. State park hunts:

- In the HRZ (Belmont Mound, Mirror Lake, Yellowstone, Rocky Arbor, Natural Bridge, Cadiz Springs, New Glarus Woods and Devil's Lake state parks) we propose no change from last year. These HRZ parks will have a 4-day early Oct. gun deer season beginning the Thursday nearest Oct. 27, with hunting hours ending at noon each day.
- In the DEZ (Blue Mound, Governor Dodge and Tower Hill state parks), we propose:
 - 1) Reducing the number of early gun hunting days in these parks to be consistent with the hunting season outside of the parks. Last year you may recall that October season ran from the Thursday nearest Oct. 20 and continued for 18 days, with hunting hours closing at noon during the first 4 days. This year, the early season in these parks would extend from the Saturday preceding the Thursday nearest October 20 and continue for 9 consecutive days, hunting hours would end at noon for the first 9 days. The late firearm season would begin on the weekend of the traditional 9-day season and continue through the 3rd Sunday following the Thanksgiving holiday.
 - 2) The archery season would open with the firearm hunt in these parks and continue until the end of the outstate archery season.

Federal Regulatory Analysis: Provided state rules and statutes do not relieve individuals from the restrictions, requirements and conditions of Federal statutes and regulations, regulation of hunting and trapping of wild animals has been delegated to state fish and wildlife agencies. Other than Federally listed migratory game birds, no Federal regulations regarding feeding or baiting of other wild animals exist. Additionally, none of the proposed rules exceed the authorities granted the states in 50 CFR 10.

State Regulatory Analysis:

Illinois: Illinois first discovered CWD in November of 2002. The state agencies charged with developing and implementing a comprehensive response strategy have taken an approach very similar to that of Wisconsin. Prior to the 2003 deer hunting season, their Governor signed legislation allowing the Illinois Department of Natural Resources the authority to establish special hunting seasons to stem the spread of wildlife diseases that stand to threaten deer populations. The law provides flexibility in efforts to contain transmissible diseases such as CWD and Bovine Tuberculosis. This authority was deemed necessary to provide wildlife managers with the tools necessary to address the risks posed by the discovery of CWD. The ability to harvest deer in specific, targeted locations is a critical component of efforts to reduce transmission rates and to prevent the further spread of such diseases. Illinois has also increased deer permit availability and allowed the use of firearms that were previously restricted in areas of known infection. These management decisions were made to benefit hunters in an effort to harvest more deer than during traditional seasons. These allowances have made significant contributions towards achieving the management goals of the resource agencies involved.

In 2004, sampling of hunter harvested deer was conducted during the archery season in select northern Illinois counties and during the firearm seasons in a number of counties throughout the state. In the 2005-06 deer hunting season, sampling efforts have continued in the deer firearm and archery seasons. Also, hunters with unfilled 2005 firearm, muzzleloader, or archery deer permits valid in target counties were able to use those to hunt in a CWD Deer Season (Jan. 13-15, 2006) to help control deer densities and the spread of chronic wasting disease.

Iowa: Iowa is not known to have any wild deer or elk test CWD-positive. The discovery of CWD in Wisconsin alarmed many natural resources agencies from adjacent states and all of them have subsequently instituted disease surveillance programs in an effort to determine whether or not CWD is present within their borders. The Iowa Department of Natural Resources has tested thousands of deer for CWD throughout each of the past two hunting seasons. Monitoring efforts have been primarily focused upon game management units immediately adjacent to the Wisconsin and Illinois borders. Because CWD has yet to be discovered in Iowa, many of the actions taken and rules instituted have been proactive and preventative, aimed at limiting the risk of CWD transmission to animals within the state. Iowa has limited the movement of captive deer and elk and placed restrictions on what deer and elk products may be brought into the state from areas where CWD is known to exist.

Michigan: Michigan, like Iowa, is not known to have any wild deer or elk test CWD-positive. However, more than perhaps any of our adjacent states, Michigan has taken many proactive and preventative management efforts to limit the risk of CWD transmission to animals within the state. In early 2003, their Governor used her authority to issue an executive order creating the CWD Task Force to address the threats that the discovery of the disease may pose to Michigan. This group was charged with reviewing existing state efforts regarding CWD prevention, developing and making recommendations to implement a comprehensive and coordinated state CWD prevention plan, making clarifications of enforcement authority to prevent the spread of CWD into Michigan, and if ever detected in Michigan, to prevent the spread of CWD within the state.

In late 2003, the CWD Task Force made 12 recommendations to the Governor, many of these recommendations have already been implemented in Wisconsin in previous rule orders, statutes or in this specific rule order. Included in those recommendations was the urging to continue the statewide surveillance program and to act promptly to kill infected or exposed animals if CWD is ever discovered. The task force supported efforts to quickly identify CWD and to take immediate action to prevent transmission and eradicate the disease. Specifically, if CWD were ever detected in Michigan, the CWD Task Force supported intensive surveillance

efforts in the immediate area of infection, as is the practice in Wisconsin. In the event of a CWD-positive animal a 5-mile radius surveillance area would be established. Within this 5-mile radius, approximately 300 deer older than 18 months of age would be harvested and tested. If other positives were to be discovered, full-scale control efforts would be initiated including the development of 5-mile radius zones with the management objective of deer depopulation and the establishment of larger zones to continue surveillance efforts. This 5-mile radius area is similar in scope to Wisconsin's Disease Eradication Zone. The group recommended cooperative efforts with landowners to harvest deer in areas of infection to both prevent transmission and to gauge prevalence levels. Efforts should also be made to access and harvest deer from properties where landowners decide not to cooperate with the agency's management objectives. Finally, testing of deer carcasses should be made mandatory in areas where CWD-positive animals have been detected.

The administrative rules currently in place in Michigan are primarily preventative. However, an infrastructure exists to create and implement rules immediately following the discovery of a CWD-positive deer or elk.

In April 2004, The Governor transferred responsibility for overseeing captive elk and deer herds from the Department of Agriculture to the Department of Natural Resources. Her executive order allowed for the auditing of more than 500 private deer and elk herds statewide to try to keep any cases of chronic wasting disease from cropping up in Michigan. The audit found an approximate 33-percent noncompliance rate of state rules mostly involving gaps under fences or gates that could possibly allow domestic and wild animals to pass back and forth and mingle with one another, and in a lack of adequate documentation of domestic cervid movement

During the 2004 deer season, as part of the state's ongoing Chronic Wasting Disease (CWD) Surveillance Plan, 60 deer heads from each county were to be collected from volunteers for submission to Michigan State University for CWD testing. Currently, no CWD has been found in the state of Michigan.

Minnesota: Minnesota is currently one of nine states to have identified CWD in a captive facility. Intensive surveillance efforts have failed to detect any positive cases in the wild cervid population. In mid 2002, their Governor signed into law House File 3183 related to controlling the threat of CWD in Minnesota. This measure supported placing restrictions on the farmed deer and elk industry and furthering surveillance efforts among both captive and wild cervid populations. Like many other states, Minnesota has instituted a number of preventative measures to limit the spread of CWD to animals within the state. Current rules prevent the importation of certain deer and elk parts from areas where CWD is known to occur. The Minnesota Department of Natural Resources has also made CWD sample collection mandatory in specially designated areas where more information is deemed necessary. Minnesota resource professionals are aware of the threats posed by CWD. If CWD were ever to be discovered within the state's wild deer population immediate action would be taken to adopt rules similar to those in place in Wisconsin. In an effort to complete its three-year statewide surveillance for Chronic Wasting Disease (CWD) in Minnesota's wild deer population, the Department of Natural Resources (DNR) is offering incentives and streamlining its collection process for hunters who bring their deer in for testing.

For more than three years, the DNR has been testing "suspect" deer that are found sick or displaying symptoms consistent with CWD. The DNR has also tested wild deer from the area around the Aitkin County elk farm where a CWD-positive elk was found in August 2002 and none were positive. The MN DNR will continue to test "suspect deer" indefinitely. The completion of hunter-harvested surveillance and ongoing suspect deer testing will provide DNR biologists with a base for early detection of the disease in Minnesota. However, The Minnesota Department of Natural Resources will not be testing for Chronic Wasting Disease in 2005

Late in 2005, a suspected case of Bovine TB was encountered in northwestern Minnesota. The deer was in an area where several cattle herds were diagnosed with bovine TB earlier this year. At the writing of this report, confirmation was still pending.

Summary of Factual Data and Analytical Methodologies:

Objectives for 2006 deer hunting regulation recommendations:

- 1) Continue reduction of herds in DEZs and HRZ units toward goals (less than 5 and 10 per square mile of deer range, respectively)
- 2) Address greatest concerns of hunters and landowners as much as possible without adverse impacts on Objective #1
- 3) Establish the simplest, enforceable regulations that will accomplish Objectives #1 and #2
- 4) Establish regulations that may be sustainable for at least 3 years (i.e. acceptable enough to wildlife managers and the public that changes are not needed)

The modifications to ch. NR 10 were based on a desire to:

- 1) Keep up the deer harvest rate as much as possible;
- 2) Offer more gun hunting days than we did prior to CWD when seasons were inadequate for herd control;
- 3) Give hunters a chance to show that they can do the job without earn-a-buck regulations;
- 4) Recognize that it is more difficult to shoot an antlerless deer first with lower deer population densities;
- 5) Increase the harvest rate on bucks, because they have higher prevalence of CWD at older ages than do antlerless deer;
- 6) Continue to encourage antlerless deer harvest;
- 7) Make it possible for cooperators who are willing to shoot many deer to continue to do so;
- 8) Simplify the regulations and tagging requirements;
- 9) Address the concern of landowners regarding long gun seasons;
- 10) Increase hunter excitement regarding the traditional opening day of the gun season; and
- 11) Design a set of regulations that may be sustainable for several years.

Anticipated Private Sector Costs: Neither these rules, nor the legislation which grants the department rule making authority, have a significant fiscal effect on the private sector. Additionally, no significant costs are associated with compliance to these rules.

Effects on Small Businesses: The proposed revisions to NR 10, Wis. Adm. Code, pertaining to CWD herd control activities and zone boundaries, impose no compliance or reporting requirements for small businesses, nor are there any design or operational standards contained within the proposed rule.

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Section 1. NR 10.01(3)(et) is repealed and recreated to read:

| Kind of animal and locality | Open season (all dates inclusive) | Limit |
|---|---|--|
| <i>(et) Special disease control hunts.</i> | | |
| 1.Herd reduction zone. a. In the portions of deer management units included in the herd reduction zone established in s. NR 10.28(3), except as established in subdivision paragraph b. | <i>Archery hunt.</i> An archery deer hunt beginning on the Saturday nearest September 15 and continuing through the last day of the late archery season in par. (em)1. | One deer of either sex per unused deer carcass tag or permit described under s. NR 10.104(11). |
| | <i>Early firearm hunt.</i> A firearm deer hunt beginning on the Thursday nearest October 20 and continuing for 4 consecutive days. Allowable types of guns are those authorized on the first day of the regular gun deer season under s. NR 10.01(3)(e). | One deer of either sex per unused deer carcass tag or permit described under s. NR 10.104(11). |
| | <i>Late firearm hunt.</i> A firearm deer hunt beginning on the Saturday immediately preceding the Thanksgiving holiday and continuing through the 3 rd Sunday following the Thanksgiving holiday. Allowable types of guns are those authorized on the first day of the regular gun deer season under s. NR 10.01(3)(e). | One deer of either sex per unused deer carcass tag or permit described under s. NR 10.104(11). |
| b. Belmont Mound, Mirror Lake, Yellowstone, Rocky Arbor, Natural Bridge, Cadiz Springs, New Glarus Woods and Devil's Lake state parks. | <i>Early firearm hunt.</i> A firearm deer hunt beginning on the Thursday nearest October 20 and continuing for 4 consecutive days. Allowable types of firearms are those authorized on the first day of the regular gun deer season under s. NR 10.01(3)(e). Legal hunting hours are the same as those established in s. NR 10.06(5) except that hunting hours shall close at 12:00 p.m. daily. | One deer of either sex per unused deer carcass tag or permit described under s. NR 10.104(11). |
| | <i>Late firearm hunt.</i> A firearm deer hunt beginning on the Saturday immediately preceding the Thanksgiving holiday and continuing through the 3 rd Sunday following the Thanksgiving holiday. Allowable types of guns are those authorized on the first day of the regular gun deer season in the surrounding county under s. NR 10.01(3)(e). | One deer of either sex per unused deer carcass tag or permit described under s. NR 10.104(11). |
| | <i>Archery hunt.</i> An archery deer hunt beginning on the Saturday immediately preceding the Thanksgiving holiday and continuing through the last day of the late archery season in par. (em)1. | One deer of either sex per unused deer carcass tag or permit described under s. NR 10.104(11). |

| Kind of animal and locality | Open season (all dates inclusive) | Limit |
|---|--|--|
| 2. Disease eradication zone. a. In the CWD eradication zone as established in s. NR 10.28(3), except as established in subdivision paragraph b. | <i>Archery hunt.</i> An archery hunt beginning on the Saturday nearest September 15 and continuing through the last day of the late archery season in par. (em)1. | One deer of either sex per unused deer carcass tag or permit described under s. NR 10.104(11). |
| | <i>Early firearm hunt.</i> A firearm deer hunt beginning on the Saturday preceding the early firearm hunt in subd. 1.a. and continuing for 9 consecutive days. | One deer of either sex per unused deer carcass tag or permit described under s. NR 10.104(11). |
| | <i>Late firearm hunt.</i> A firearm deer hunt beginning on the Saturday immediately preceding the Thanksgiving holiday and continuing through the 3 rd Sunday following the Thanksgiving holiday. | One deer of either sex per unused deer carcass tag or permit described under s. NR 10.104(11). |
| b. Blue Mound, Governor Dodge and Tower Hill state parks. | <i>Early firearm hunt.</i> A firearm deer hunt beginning on the Saturday preceding the early firearm hunt in subd. 1.a. and continuing for 9 consecutive days. Legal hunting hours are the same as those established in s. NR 10.06(5) except that hunting hours will close at 12:00 p.m. daily. | One deer of either sex per unused deer carcass tag or permit described under s. NR 10.104(11). |
| | <i>Late firearm hunt.</i> A firearm deer hunt beginning on the Saturday immediately preceding the Thanksgiving holiday and continuing through the 3 rd Sunday following the Thanksgiving holiday. | One deer of either sex per unused deer carcass tag or permit described under s. NR 10.104(11). |
| | <i>Archery hunt.</i> An archery hunt beginning on the Saturday preceding the early firearm hunt in subd. 1.a. and continuing through the last day of the late archery season in par. (em)1. Legal hunting hours are the same as those established in s. NR 10.06(5) except that hunting hours will close at 12:00 p.m. daily during the first 9 days of this season. | One deer of either sex per unused deer carcass tag or permit described under s. NR 10.104(11). |

| Kind of animal and locality | Open season (all dates inclusive) | Limit |
|--|-----------------------------------|-------|
| <p>3. Earn-a-buck control measures. If the department estimates that the deer population in a deer management unit or units located in a CWD eradication or herd reduction zone is at or above 15 deer per square mile of deer range, and the department determines that a deer management unit or units meets any of the criteria established in subdivision paragraphs . a. to d., the department may require that hunters shall first tag an antlerless deer in that deer management unit or units during the archery or firearm hunts, 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 deer management unit or units. One antlerless deer is required to authorize harvest of one buck in that deer management 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(2).</p> | | |
| <p>a. The harvest ratio of registered antlerless deer to antlered bucks is less than 2:1 for the prior year. b. The estimated harvest rate of antlerless deer is less than 30% for the prior year. c. The CWD prevalence in tested adult deer in a disease eradication zone, or portion of a disease eradication zone or herd reduction zone remains unchanged or increases compared to previous years. d. The estimated deer population reduction is less than 20% for the prior year.</p> | | |
| <p>4. The department may, upon making any of the findings in subd. 3. a. to d., add 7 days to the early firearm hunt in subd. 1.a. or 2.a.</p> | | |

Section 2. NR 10.104(11)(b)3.a., b. and c. are amended to read:

NR 10.104(11)(b)3.a. ~~Early and late either sex archery~~ Archery or ~~early and late either sex firearm hunts in units that do not meet the criteria established in s. NR 10.01(3)(et)3., or~~

b. ~~Earn-a-buck archery~~ Archery or ~~earn-a-buck firearm hunts in units where earn-a-buck regulations established in s. NR 10.01(3)(et)3. 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. or in a CWD eradication or herd reduction zone identified in s. NR 10.28(3), or

c. ~~Earn-a-buck archery~~ Archery or ~~earn-a-buck firearm hunts in units where earn-a-buck regulations established in s. NR 10.01(3)(et)3. 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 3. 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) (ez) 1. d., or ~~in the CWD eradication or herd reduction zones, during the earn-a-buck archery or earn-a-buck firearm hunts (et)3.~~ 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) (ez) 1. d., or ~~in the CWD eradication or herd reduction zones (et)3.~~ Deer may only be transported outside of the unit of kill or adjoining unit after they have been registered.

Section 4. NR 10.106(2)(g) is amended to read:

NR 10.106(2)(g) *Earn-a-buck units.* No person may use or attempt to use an antlerless deer to earn the ability to harvest more than one buck or to receive more than one antlerless deer registration verification in any unit designated as an earn-a-buck unit under s. NR 10.01(3)(ed)1.b. or (ez) 1.d. or ~~during the early earn-a-buck archery and firearm hunts in a CWD eradication or herd reduction zone identified in s. NR 10.28(3)(et)3.~~

Section 5. Effective date. This rule shall take effect the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22(2)(intro.), Stats.

Section 6. Board adoption. The foregoing rules were approved and adopted by the State of Wisconsin Natural Resources Board on April 26, 2006

Dated at Madison, Wisconsin _____

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Scott Hassett, Secretary

(SEAL)