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EMR1422

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

The statement of scope for this rule, SS 056-14, was published in Register No. 702, on June 14, 2014 and approved by the Natural Resources Board at its June 25, 2014 meeting.

This emergency rule was approved by the Governor on September 10, 2014.

The Wisconsin Natural Resources Board proposes an order to amend NR 10.104 (8) (a), and to create NR 10.001 (7p) and (7w), 10.104 (9m) (a) and (b), 10.104 (5) (b) 8. and 10.104 (5) (c) related to implementation of the Deer Management Assistance Program and County Deer Management Advisory Committee.

WM-08-14 (E)

Analysis Prepared by the Department of Natural Resources

Statutory Authority and Explanation of Agency Authority: The department's ability to promulgate emergency rules to implement recommendations of the deer trustee report is established in non-statutory provisions of 2013 ACT 20. The department is given authority to promulgate emergency rules that will implement recommendations of the assessment of this state's deer management plans and policies under s. 29.040 Stats. These emergency rules can remain in place until permanent rules are implemented. The department is not required to make a finding of emergency.

Additional authority related specifically to the issuance of hunting permits is found in s. 29.024 (2) (d) Stats. This statute establishes that it is illegal to transfer an approval or permit or allow its use by any other person. The law establishes limited exceptions and that the department can, by rule, allow the transfer of permits or approvals.

The primary authority to establish hunting regulations for deer and other species is established in s. 29.014 Stats. This section directs the department to establish and maintain open and closed seasons, bag limits, size limits, rest days, and other conditions for the taking of game that conserves the game supply and provides citizens with good hunting opportunities.

Statutes Interpreted and Explanation: Non-statutory provisions of 2013 ACT 20, ss. 29.024 (2) (d), and 29.014 Stats.

Related Statute or Rule: The Deer Management Assistance Program is designed to provide habitat and herd management assistance to landowners interested in managing their property for wildlife and is established by emergency rules currently in effect, SS 098-13 or Board Order WM-24-13(E).

Emergency rules currently in place, SS 098-13 or Board Order WM-24-13(E), establish County Deer Management Advisory Committees for the purpose of seeking comment from members of the public on the status of the deer herd at the county level beginning in 2015.

This rulemaking will modify provisions of the emergency rule SS 098-13 which the department refers to as Board Order WM-24-13 (E) for its own tracking purposes.

The department will promulgate permanent rules which are similar or identical to this emergency board order in WM-11-13, a comprehensive rule package implementing the recommendations of the 2012 White-tailed Deer Trustee's Report.

Plain Language Rule Analysis: Specifically, these rules would:

SECTIONS 1 and 2 establish definitions of an "authorized representative" and "primary contact" for purposes of the Deer Management Assistance Program.

SECTIONS 3 and 4 allow the sales of antlerless deer hunting permits to a landowner or primary contact who is enrolled in the Deer Management Assistance Program or their authorized representative. The permits could then be transferred, for no more than face value cost, to hunters who would be able to use the tags on the enrolled property.

SECTION 5 establishes that membership on a County Deer Management Advisory Committee may also include a participant in the Deer Management Assistance Program.

SECTION 6 clarifies that the department will establish guidance for the operation of County Deer Management Advisory Committees and that background checks of volunteer committee members may be conducted.

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.

Comparison with rules in Adjacent States: Michigan is implementing a Deer Management Assistance Program which is comparable to the program being established in Wisconsin. All of Wisconsin's surrounding states use hunting seasons to provide hunting opportunities and to manage white-tailed deer herds and involve the public establishing management goals hunting opportunities. Wisconsin's efforts at public involvement are likely more extensive than those in our surrounding states. However, deer are a common wildlife species and provide significant hunting opportunities in all of our surrounding states.

Summary of Factual Data and Analytical Methodologies: This emergency rule order will facilitate the issuance of antlerless deer permits through the Deer Management Assistance Program. Additionally, this order allows additional representation on County Deer Management Advisory Committees, committees which are established for the purpose of seeking comment from members of the public on the status of the deer herd at the county level.

Under current rules and statutes, with limited exceptions, deer hunting permits can only be used by the individual to whom the permit is issued. During the winter and spring of 2014 the department has been

working with stakeholders to develop the Deer Management Assistance Program which was a recommendation of the 2012 White-tailed Deer Trustee's Report. During program development, the department has identified a need for more flexibility in the way that permits are issued and used in order to implement the program efficiently and to best serve customers.

These rules would allow sales of antlerless deer hunting permits to a landowner or primary contact for landowners who are enrolled in the Deer Management Assistance Program or their authorized representative. In the case of a cooperative, which is a number of properties enrolled and managed as a group, permits would be issued to the primary contact for the group. The permits could then be transferred, for no more than face value cost, to hunters who would be able to use the tags on the enrolled property. These rules would not change existing requirements that the tags can only be used during the normal deer hunting seasons and in ways that are consistent with all other deer hunting regulations.

The Deer Management Assistance Program is designed to provide habitat and herd management assistance to landowners interested in managing their property for wildlife. The program is identified and defined under Wis. Stat. § 29.020 and Wis. Admin. Code NR § 10.70. Objectives of the program are to; promote sound land stewardship practices, provide outreach and educational information to landowners about wildlife habitat management practices, provide a means for site-specific deer management, and to improve relationships.

The program objective to provide site-specific deer management alternatives will benefit property managers in obvious ways by allowing them to work with the department to establish very specific harvest levels based on localized information.

Site specific deer management will benefit all hunters and people impacted by deer at the much larger management unit level as well. An example is that, in some situations, deer numbers that prevent forest regeneration or result in agricultural damage could be managed at a local, property specific level. This would eliminate a need to compromise with unit-wide antlerless deer permit levels that address pockets of over-abundance only minimally and which might also be perceived as allowing too much harvest of antlerless deer in other areas of the unit or county.

Maintaining the landowner's control over the use of permits by allowing the landowner, primary contact, or their authorized representative to distribute them may be an important feature to make participation attractive to property managers or owners. Allowing permit transfers creates efficiency for the department because we would not need to establish rules or automated license system processes to assure that permits are distributed in a manner preferred by the landowner. Only one contact with the department is all that would be needed to purchase all antlerless permits for a property. It is possible that a landowner would not be a hunter - but someone who would be interested in purchasing and distributing the permits to family, friends, and others. Simplicity, value, and good success rates in the use of these antlerless deer permits will make an important contribution to the objective of site-specific deer management.

Emergency rules currently in place establish county deer management advisory committees for the purpose of seeking comment from members of the public on the status of the deer herd at the county level beginning in 2015. Membership on these committees, in the ceded territory as defined by s. NR 13.02 (1), may include a representative of Wisconsin Chippewa bands and, statewide, a representative of; agriculture, forestry, tourism, transportation, local government, and a local organization representing hunting interests. These rules establish that committee membership may also include a participant in the Deer Management Assistance Program. The membership of a Deer Management Assistance Program participant may be important to provide information from the perspective of properties where habitat and deer herd conditions have been evaluated in detail.

This emergency rule will also clarify that the department is responsible for establishing the rules of operation for the county deer management advisory committees. Finally, the rule authorizes the department to conduct criminal background checks for people who apply to be committee members. It may be important that members are viewed as being in good standing to work with other members of the public to manage resources which are statutorily held in the public trust.

Analysis and supporting documents used to determine effect on small business or in preparation of an economic impact analysis: Because the hunting season frameworks and regulations proposed in this rule will be comparable to those in place under current rules, no economic impacts are anticipated. These rules are applicable to individual hunters and people who are interested in white-tailed deer management and impose no compliance or reporting requirements for small business, nor are any design or operational standards contained in the rule.

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 costs are associated with compliance to these rules.

Effects on Small Business: These rules are applicable to individual sportspersons or others who are interested in deer management at a very local level. They impose no compliance or reporting requirements for small businesses, and no design or operational standards are contained in the rule. Because this rule does not add any regulatory requirements for small businesses, the proposed rules will not have a significant economic impact on a substantial number of small businesses under 227.114(6) or 227.14(2g).

Agency Contact Person: Scott Loomans, 101 South Webster St., PO BOX 7921, Madison, WI 53707-7921. (608) 267-2452, scott.loomans@wisconsin.gov

SECTION 1. NR 10.001 (7p) is created to read:

NR 10.001 (7p) “Deer Management Assistance Program Authorized Representative” The person a landowner has designated to act and make decisions on the landowner’s behalf for purposes of the program, including but not limited to, granting access to the landowner’s property for department staff to conduct on-site consultation visits.

SECTION 2. NR 10.001 (7w) is created to read:

NR 10.001 (7w) “Deer Management Assistance Program Primary Contact” means a person who is primarily responsible for submitting program enrollment applications and fees, scheduling meetings with department staff, and sharing information with landowners or their authorized representatives in a group cooperative or when there is more than one owner of an individual property.

SECTION 3. NR 10.104 (8) (a), as affected by SS 098-13 (WM-24-13E), is amended to read:

NR 10.104 (8) (a) *General issuance.* The department may issue bonus antlerless deer tags on a first-come, first-served basis to individuals who possess a valid deer hunting license. No person may purchase more than 1 bonus antlerless deer carcass tag per day except as established in sub. (9m).

SECTION 4. NR 10.104 (9m) (a) and (b) are created to read:

NR 10.104 (9m) (a) CARCASS TAG DISTRIBUTION. A landowner or their authorized representative for an individually enrolled property may distribute the carcass tags to persons who are authorized to hunt on the enrolled property or portion of the property or may retain the carcass tags for their own use. The primary contact or authorized representative for a cooperative or an individually enrolled property with multiple owners may distribute the carcass tags to persons who are authorized to hunt on the enrolled property or portion of the property and may retain a portion of the allotted carcass tags for their own use. A landowner, primary contact for a cooperative, or authorized representative may not charge a fee for permits which are distributed except for an amount sufficient to recover the actual cost of the permit.

(b) CARCASS TAG REPORTING. Each landowner, primary contact, or their authorized representative who distributes carcass tags shall keep a current, correct and complete record of all carcass tags distributed as required by the department on forms furnished by the department. Records of carcass tag distribution shall be provided to the department by required deadlines or upon request.

Note: The number of carcass tags distributed will be agreed upon following a site visit by a wildlife biologist and a forester. Permits are available only to Level 2 and Level 3 participants in the Deer Management Assistance Program established in NR 10.72. Deer Management Assistance Program enrollees are exempt from the restriction of purchasing no more than one bonus permit daily on a first-come-first-served basis which is established in NR 10.104 (8) (a).

SECTION 5. NR 10.104 (5) (b) 8. is created to read:

NR 10.104 (5) (b) 8. A person who is enrolled as a participant in the Deer Management Assistance Program as established under subch. II

SECTION 6. NR 10.104 (5) (c) is created to read:

NR 10.104 (5) (c). *Operation of county deer management advisory committees.* 1. The department shall establish guidance for the operation of county deer management advisory committees. Guidance may include, but is not limited to, any conditions which are necessary for the operation of meetings, selecting members, and establishing terms of service for members.

2. Whenever application is made to the department by a person interested in becoming a member of a committee, the bureau of law enforcement may conduct a criminal history, character and background check on the applicant. Upon becoming aware of information indicating prior illegal activity, the department shall make appropriate inquiry into criminal history and character of applicants for committee membership and determine their suitability for the proposed activity.

SECTION 7. FINDING OF EMERGENCY. The department is not required to make a finding of emergency before promulgating these rules. The department is directed to promulgate these rules in s. Ch. 29.040 Stats., established by 2013 ACT 20 and is exempted from making a finding of emergency under non-statutory provisions in SECTION 9132 of the ACT.

SECTION 8. EFFECTIVE DATE. This rule shall take effect upon publication in the Wisconsin state paper pursuant to s. 227.24(1)(c).

SECTION 9. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on August 13, 2014.

Dated at Madison, Wisconsin _____.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Cathy Stepp, Secretary

(SEAL)