

Clearinghouse Rule 18-005

DRAFT #1

12/7/2017

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD RENUMBERING AND AMENDING AND AMENDING RULES

The Wisconsin Natural Resources Board proposes an order to **renumber and amend** NR 10.104 (9); to **amend** NR 10.001 (23b) (b), NR 10.01(e) 5., & (em) 3. a., 10.11 (2), 10.40 (3) (f) (note), 10.145 (5) (a) 1., 45.09 (2) (c), 10.104 (7) (a) 2., (b) 2., and (C) 2., and 10.28 (2) (a) and (g); to **repeal and recreate** NR 10.01 (3) (ep) 3.; and to **create** NR 10.12 (3) (em) relating to wildlife management, hunting opportunities for the physically disabled, and deer management unit boundaries.

WM-16-17

Analysis Prepared by the Department of Natural Resources

1. Statute Interpreted: In promulgating this rule, s. 29.014 and 29.053 Stats. have been interpreted as providing the department the authority to establish seasons and bag limits while ensuring public hunting and recreational opportunities and take a variety of actions in order to provide additional hunting opportunities for persons who are physically disabled.

In addition, s. 29.040 Stats. has been interpreted as granting the department the authority to establish County Deer Advisory Councils as part of the Deer Trustee Report of 2012. County Deer Advisory Councils (CDACs) establish deer population objective and deer management unit boundary recommendations

2. Statutory Authority: Statutes that authorize the promulgation of this rule order include sections 29.014, 29.053, 29.063, and 227.11 Stats.

3. Explanation of Agency Authority: The chapter on wild animals and plants, in s. 29.014, “rule making for this chapter”, establishes that the department shall maintain open and closed seasons for fish and game and any limits, rest days, and conditions for taking fish and game. This grant of rule-making authority allows the department to make changes related to hunting regulations.

In s. Ch. 29.053 Stats. the department is authorized to take a variety of actions in order to provide additional hunting opportunities for persons who are physically disabled. This includes establishing that antlerless deer hunting permits, which are normally valid only on public or on private lands, are valid on both public and on private land types for persons holding a hunting permit for disabled persons.

Sections 29.014, 29.063 and 227.11 Stats. grant rule-making authority to the department to establish seasons and bag limits for hunting that ensure continued hunting opportunities for citizens of the state and are compatible with the state’s chronic wasting disease (CWD) policies. All rules promulgated under this authority are subject to review under ch. 227, Stats.

4. Related Statutes or Rules: This rule is related to currently active Clearinghouse Rule CR 17-061 and department rules WM-07-17 (E) and WM-08-17.

5. Plain Language Analysis:

SECTION 1 revises a cross-reference where public land is defined related to the use of antlerless deer hunting permits. The stewardship public access law is cross-referenced but the reference should be to the stewardship program generally in Ch. 23 Stats.

SECTION 2 & 3 addresses the fact that additional metro subunits have been created and provides consistency between the archery and crossbow metro subunit seasons.

SECTION 4 AND 5 eliminates the requirement for elk hunters to wear a back tag and repeal other notes and references to the requirement for deer hunters to wear a back tag. The deer hunting back tag requirement was repealed by 2015 ACT 222.

SECTION 6 relaxes the requirement to register harvested furbearers within five days of the month of harvest. The proposal would require registration within seven days of the month of harvest which would always include a weekend day that may be more convenient for some hunters or trappers.

SECTION 7 would provide that blaze or fluorescent pink is a legal alternative to blaze orange for ground blinds placed on department lands during firearm deer seasons and revise other sections of code where blaze orange is referenced. These revisions are needed for consistency with 2015 ACT 131 which established that blaze or fluorescent pink may be worn as an alternative when blaze orange clothing is required.

SECTION 8, 9, 10 AND 11 may establish that an antlerless deer hunting permit issued to a disabled person who holds a hunting permit under s. 29.193 (2) Stats. is valid for harvesting an antlerless deer on either public lands or on private lands. This would address a resolution of the department's Disability Advisory Council.

SECTION 12 requires that on Lake Koshkonong, boats and blinds may be used to hunt waterfowl only if they are within 3 feet of naturally occurring emergent vegetation that provides at least 50% concealment.

SECTION 13 corrects a map error in the La Crosse area and Eau Claire area metropolitan deer management subunits.

6. Summary of, and Comparison with, Existing or Proposed Federal Statutes and Regulations:

Federal regulations allow states to manage the wildlife resources located within their boundaries provided they do not conflict with regulations established in the Federal Register. None of these rule changes violate or conflict with the provisions established in the Federal Code of Regulations.

7. Comparison with Similar 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. Also, all of Wisconsin's neighboring states have established management units for the purpose of managing deer populations.

8. Summary of Factual Data and Analytical Methodologies Used and How Any Related Findings Support the Regulatory Approach Chosen:

Current language establishes that privately owned lands purchased in part with assistance from the stewardship program are considered to be public lands for purposes of issuing and using antlerless deer

permits and established harvest quotas in a unit. As the rule is currently, someone might be able to argue that stewardship purchases from the first version of the program established in the late 80's are technically not public lands. The cross reference in NR 10 is narrower than it should be, referring to statutory public access requirements and lands purchased in previous two versions of the stewardship program.

This proposed rule would repeal the requirement for the department to issue back tags along with elk hunting licenses. The requirement to wear a back tag while hunting elk, as well as while hunting deer or bear, have already been repealed by 2015 ACT 222.

Currently, trappers are required to register their bobcat, fisher, or otter pelts with a conservation warden or trained wildlife staff person within 5 days after the month of catch. Some wardens try to have a consistent fur registration day on the first Saturday of each month to provide consistency with the trapping public and alleviate numerous individual appointments during a busy time of year. Sometimes the first Saturday of the month lies on the 6th or 7th day after the month of harvest.

This proposal would make administrative code consistent with the new statute that allows bright pink or fluorescent pink at times when blaze orange has been required in the past.

Presently, when disabled hunters purchase their license they must designate which type of land, public or private, they will be hunting when they receive a bonus antlerless tag. However, many disabled hunters run into an issue because they may be hunting private land for the special gun hunt for hunters with disabilities but public land for the nine-day deer gun season. If that hunter failed to get a doe on private land during the October disabled gun deer hunt, they are currently prohibited from harvesting a doe on public land during the gun season. This proposed change would allow disabled hunters to use either public or private land to harvest a doe.

This provision is proposed to help resolve hunter and landowner conflicts that has been persisting while still maintaining rules in the rest of the state and impacting few hunters.

9. Analysis and Supporting Documents Used to Determine the Effect on Small Business or in Preparation of an Economic Impact Report:

These rules, and the legislation which grants the department rule-making authority, do not have fiscal effects on the private sector or small businesses. No costs to the private sector or small businesses are associated with compliance to these rules.

10. Effect on Small Business (initial regulatory flexibility analysis):

These rules are applicable to individual sportspersons and impose no compliance or reporting requirements for small businesses, and no design standards are contained in the rule.

11. Agency Contact Person: Scott Karel, 101 South Webster Str., PO BOX 7921, Madison, WI 53707-7921. (608) 267-2452, scottr.karel@wisconsin.gov.

12. Place where comments are to be submitted and deadline for submission:

Written comments may be submitted at the public hearings, by regular mail, fax or email to:
Scott Karel
Department of Natural Resources
P.O. Box 7921

Madison, WI 53707
Scott.karel@wisconsin.gov
 608-267-2452
 608-267-7857 (fax)

Written comments may also be submitted to the Department at
DNRAdministrativeRulesComments@wisconsin.gov.

Hearing dates and the comment submission deadline are to be determined.

SECTION 1. NR 10.001 (23b) (b) is amended to read:

NR 10.001 (23b) (b) Acquired in whole or in part with funding from the stewardship program pursuant to s. 23.0916, Stats. established under Ch. 23 Stats.

SECTION 2. NR 10.01 (table (3)) (e) 5., & (em) 3. a. is amended to read:

(e) Gun deer season except as established in s. NR 10.01 (3) (ex).		
5. Metropolitan deer management subunits LaCrosse, Hudson, Superior, Green Bay, Milwaukee, and Madison as described under s. NR 10.28 (2).	Firearm season beginning on the Saturday immediately preceding the Thanksgiving holiday and continuing for 19 consecutive days.	One buck deer with a gun buck deer carcass tag and one antlerless deer for each antlerless tag issued under s. NR 10.104.

(em) Archery deer season except as established in s. NR 10.01 (3) (ex).		
3. Metropolitan deer management subunits		
a. Metropolitan deer management subunits LaCrosse, Hudson, Superior, Green Bay, Milwaukee, and Madison as described under s. NR 10.28 (2).	Beginning on the Saturday nearest September 15 and continuing through January 31.	One buck deer with an archery buck deer carcass tag and one antlerless deer for each antlerless tag issued under s. NR 10.104, except that no person may harvest a buck in an area of the state where an antlerless only firearm deer hunting season established under s. NR 10.01 (3) (e) is open.

SECTION 3. NR. 10.01 (table (3)) (ep) 3. is repealed and recreated to read:

3. Metropolitan deer management subunits described under s. NR 10.28 (2).	Beginning on the Saturday nearest September 15 and continuing through January 31.	One buck deer with an archery buck deer carcass tag and one antlerless deer for each antlerless tag issued under s. NR 10.104, except that no person may harvest a buck in an area of the state where an antlerless only firearm deer hunting season established under s. NR 10.01 (3) (e) is open.
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SECTION 4. NR 10.11 (2) is amended to read:

NR 10.11(2) TAGS. A ~~back~~ and carcass tag shall be issued with each hunting license. While hunting, no person may possess a validated carcass tag unless it is attached to a legally killed elk.

SECTION 5. NR 10.40 (3) (f) (note) is amended to read:

NR 10.40 (3) (f) (note) Note: Blaze orange clothing meeting the requirements of s. 29.301 (2), Stats., must be worn by all disabled hunters and accompanying persons. Participants must use their regular gun deer season license, ~~backtag,~~ and carcass tag.

SECTION 6. NR 10.145 (5) (a) 1 is amended to read:

NR 10.145 (5) (a) 1. ‘Bobcat, fisher and otter.’ Unless authorized by the department, each person who has killed a bobcat, fisher or otter during the respective open season shall exhibit the pelt, separated from the rest of the carcass, to an authorized department representative no later than ~~5 days~~ 7 days after the month of harvest.

SECTION 7. NR 45.09 (2) (c) is amended to read:

NR 45.09 (2) (c) Hunt from any ground blind during any open season or special hunt for hunting deer with firearms unless the outside of the blind displays a minimum of 144 square inches of material that is a solid highly visible color commonly referred to as blaze orange, florescent orange, or florescent blaze orange, or commonly referred to as bright pink or fluorescent pink and is visible 360 degrees around the blind. Blinds that are left unoccupied shall have the owner's customer identification number or name and address written in the English language attached to the outside of the blind in a conspicuous location near the entrance to the blind and be kept legible at all times.

SECTION 8. NR 10.104 (7) (a) 2, as affected by CS-03-16, is amended to read:

NR 10.104 (7) (a) 2. Licenses that authorize the hunting of deer with a bow and arrow, and not with a firearm or crossbow, may include one or more carcass tags that are valid for the taking of one antlerless deer in a management zone, unit, or portion of a unit specified on the tag that is in a farmland zone or a metropolitan deer management subunit established in ss. NR 10.28 (2) and (4) except that, where the department has established an objective to increase or maintain the deer population under s. NR 10.104 (4), the department may establish that the antlerless tags under this subdivision are not valid. This antlerless deer carcass tag is not weapon or season specific, but the holder must possess the correct license for the method of harvest and season. This tag is valid statewide for a person holding a Class A or Class C disabled permit issued under s. 29.193 (2) (b), Stats., or a person who obtains the tag while under 18 years of age except that, in units where the department has not established a quota allowing the harvest of antlerless deer, the department may establish that tags obtained under this subdivision by people who are under 18 years of age are not valid. These carcass tags are valid as indicated on the permit only for harvesting antlerless deer on public access lands or only for harvesting antlerless deer on private land as defined in ss. NR 10.001 (23a) and (23b), except that a person holding a Class A, Class B which authorizes shooting from a vehicle that is issued for more than one year, Class C, or Class D disabled permit under s. 29.193 (2) (b), Stats., may use any valid deer tag to hunt statewide regardless of deer management unit on both public access land or private land. A person who has already been issued a license authorizing deer hunting with a crossbow during a season established under s. 29.014 (1m) (b), Stats., or s. NR 10.01 (3) (ep) will not receive the carcass tag established in this subdivision. A person may use any carcass tags issued with a license authorizing hunting with a crossbow during a crossbow deer season established under s. NR 10.01 (3) (ep) under the authority of an archer hunting license during the archery deer season established in s. NR 10.01 (3) (em).

SECTION 9. NR 10.104 (7) (b) 2, as affected by CS-03-16 is amended to read:

NR 10.104 (7) (b) 2. Licenses that authorize the hunting of deer with a firearm may include one or more carcass tags that are valid for taking one antlerless deer in a management zone, unit, or portion of a unit specified on the tag that is in a farmland zone or in a metropolitan deer management subunit established in s. NR 10.28 (2) and (4) except that, where the department has established an objective to increase or maintain the deer population under s. NR 10.104 (4), the department may establish that the antlerless tag under this subdivision is not valid. This antlerless deer carcass tag is not weapon or season specific, but the holder must possess the correct license for the method of harvest and season. This carcass tag is valid for the taking of one antlerless deer in any unit statewide by a person holding a Class A or Class C disabled permit issued under s. 29.193 (2) (b), Stats., or a person who obtains the tag while under 18 years of age except that, in units where the department has not established a quota allowing the harvest of antlerless deer, the department may establish that tags obtained under this subdivision by people who are under 18 years of age are not valid. These carcass tags are valid as indicated on the tag only for harvesting antlerless deer on public access lands or only for harvesting antlerless deer on private land as defined in ss. NR 10.001 (23a) and (23b). 2m, except that a person holding a Class A, Class B which authorizes shooting from a vehicle that is issued for more than one year, Class C, or Class D disabled permit under s. 29.193 (2) (b), Stats., may use any valid deer tag to hunt statewide regardless of deer management unit on both public access land or private land.

SECTION 10. NR 10.104 (7) (c) 2, as affected by CS-03-16 is amended to read:

NR 10.104 (7) (c) 2. Licenses that authorize the hunting of deer with a crossbow, and not with a firearm or bow and arrow, may include one or more carcass tags that are valid for the taking of one antlerless deer in a management zone, unit, or portion of a unit specified on the tag that is in a farmland

zones or a metropolitan deer management subunit established in s. ss. NR 10.28 (2) and (4) except that, when the department has established an objective to increase or maintain the deer population under s. NR 10.104 (4), the department may establish that the antlerless tags under this subdivision are not valid. This antlerless deer carcass tag is not weapon or season specific, but the holder must possess the correct license for the method of harvest and season. This tag is valid statewide for a person holding a Class A or Class C disabled permit issued under s. 29.193 (2) (b), Stats., or a person who obtains the tag while under 18 years of age except that, in units where the department has not established a quota allowing the harvest of antlerless deer, the department may establish that tags obtained under this subdivision by people who are under 18 years of age are not valid. These carcass tags are valid as indicated on the tag only for harvesting antlerless deer on public access lands or only for harvesting antlerless deer on private land as defined in ss. NR 10.001 (23a) and (23b). A person who has already been issued a license authorizing deer hunting with a bow and arrow during an archery-only deer season established under s. NR 10.01 (3) (em) will not receive the carcass tag established in this subdivision. A person may use any antlerless deer carcass tag issued with a license authorizing hunting with a bow and arrow during an archery-only deer season established under s. NR 10.01 (3) (em) under the authority of a crossbow hunting license during the crossbow deer season established in s. NR 10.01 (3) (ep), except that a person holding a Class A, Class B which authorizes shooting from a vehicle that is issued for more than one year, Class C, or Class D disabled permit under s. 29.193 (2) (b), Stats., may use any valid deer tag to hunt statewide regardless of deer management unit on both public access land or private land.

SECTION 11. NR 10.104 (9) is renumbered and amended to read:

NR 10.104 (9) TAG AUTHORITY. Except as provided in par. (a), ~~No~~ no person may hunt antlerless deer unless the hunter possesses a current valid antlerless deer carcass tag or bonus antlerless deer permit for the deer management unit or subunit or a portion thereof in that the person is hunting, or as authorized when group hunting with a firearm as established in s. 29.324, Stats. Except as provided in par. (a), No person may hunt antlerless deer under the authority of an antlerless deer carcass tag or bonus antlerless deer carcass tag or permit on public access lands or on private lands unless the hunter possesses a current valid bonus antlerless deer permit that is valid for the type of land, either public access lands or private land, upon which the person is hunting.

(a)Any person holding a Class A, Class B which authorizes shooting from a vehicle that is issued for more than one year, Class C, or Class D disabled permit under s. 29.193 (2) (b), Stats., may use any valid deer tag to hunt statewide regardless of deer management unit on both public access land or private land

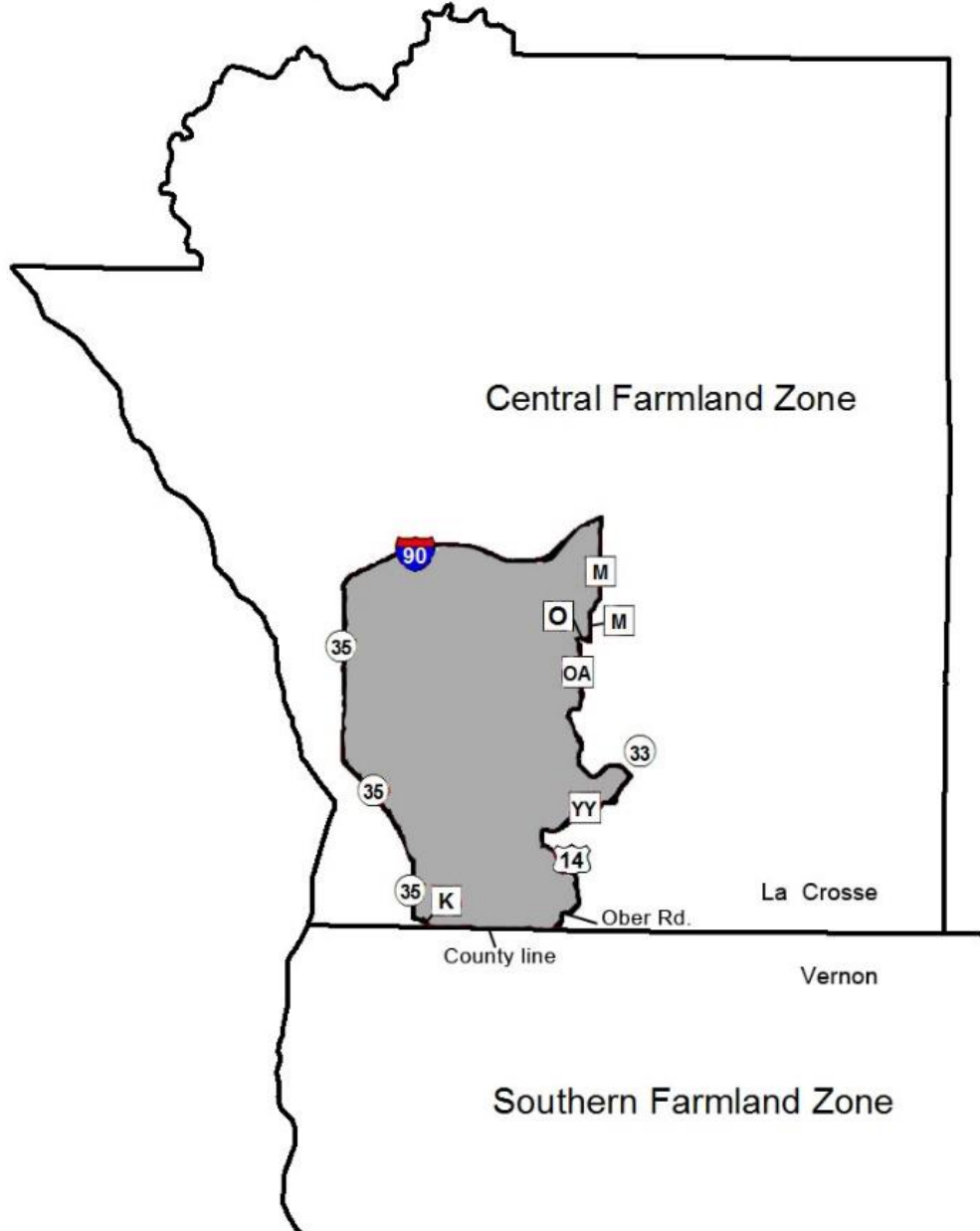
SECTION 11. NR 10.12 (3) (em) is created to read:

NR 10.12 (3) (em) Lake Koshkonong. Only if a part of the boat, blind, or similar device is located within 3 feet of a naturally occurring, un-manipulated growth of vegetation rooted to the navigable waterway's bed or shoreline and of sufficient height and density to conceal at least 50% of the hunter and the boat, blind, or similar device when viewed from at least one direction beyond the vegetation providing the concealment. For determining if the vegetation provides the minimum 50% concealment, the viewing shall occur from a height approximately the same as height of the boat, blind or similar device being used by the hunter.

SECTION 12. NR 10.28 (2) (g) is amended to read:

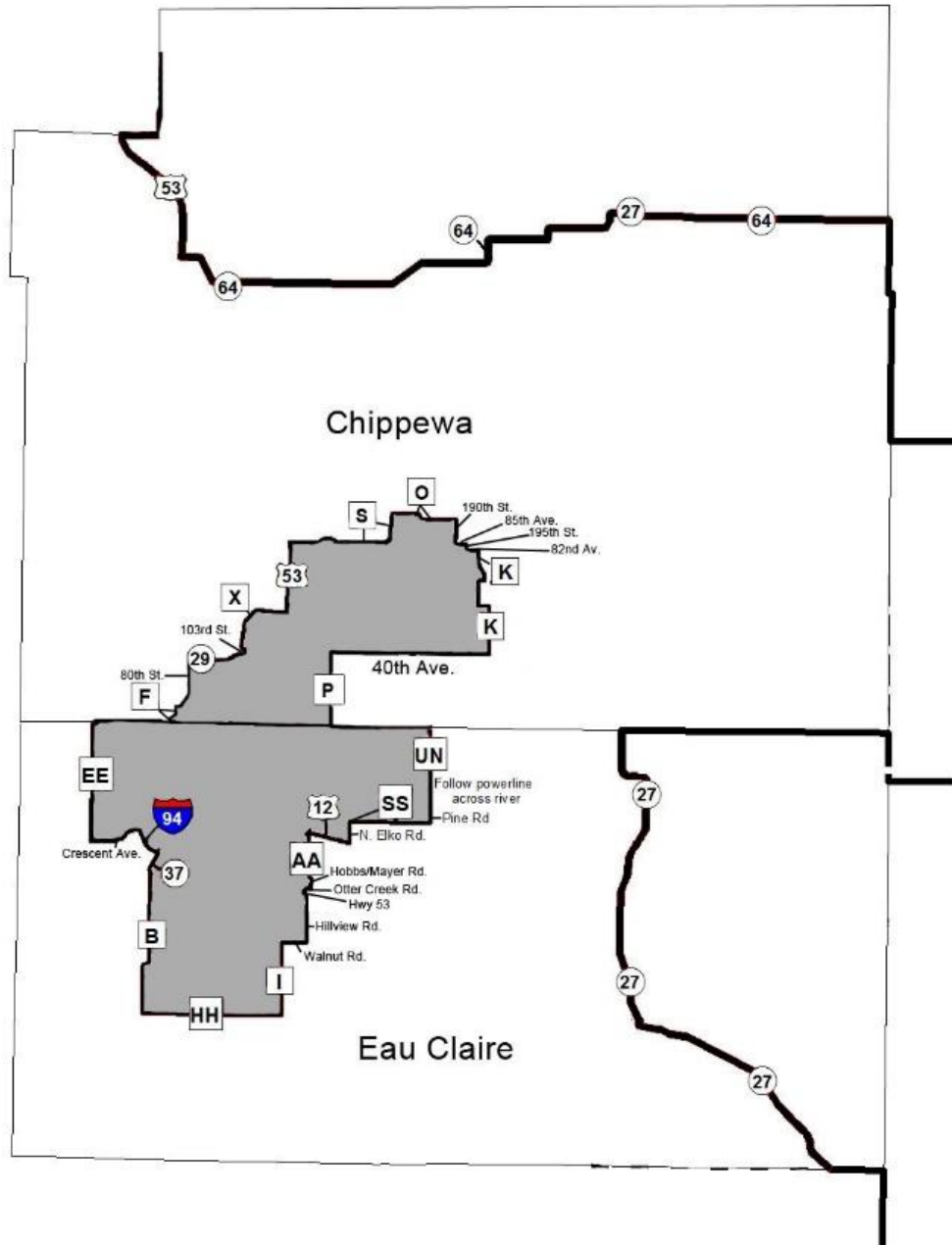
10.28 (2) (a) La Crosse area

La Crosse Metro Subunit



10.28 (2) (g) Eau Claire area.

Eau Claire Metro Subunit



SECTION 13. EFFECTIVE DATE. This rule takes 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 14. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on _____.

Dated at Madison, Wisconsin _____.

STATE OF Wisconsin DNR

DEPARTMENT OF NATURAL RESOURCES

BY _____

Daniel L. Meyer, Secretary

(SEAL)