

Clearinghouse Rule 16-026

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

The statement of scope for this rule, SS 101-15, was approved by the Governor on September 14, 2015, published in Register No. 717A3 on September 21, 2015 and approved by the Natural Resources Board on October 28, 2015. This permanent rule was approved by the Governor on _____.

The Wisconsin Natural Resources Board proposes an order to repeal Ch. NR 16.45 (2) (b) and (c), (5), and (6) (h); and to amend NR 16.45 (2) (Intro.) and (a); and to repeal and recreate NR 16.45 (2) (a) 1., wildlife management rules relating to fences for farm-raised white-tailed deer.

WM-13-15

Analysis Prepared by the Department of Natural Resources

Statutory Authority and Explanation of Agency Authority: The department is directed by s. 90.21 Stats., the chapter that establishes laws on fences, to establish requirements for fences which are used to confine farm-raised white-tailed deer.

Statutes Interpreted and Explanation: The department is directed by s. 90.21 Stats., the chapter that establishes laws on fences, to establish requirements for fences which are used to confine farm-raised white-tailed deer.

Related Statute or Rule: An identical emergency rule, EmR1604 which is referred to by the department as Board Order WM-14-15(E), was adopted by the natural resources board in December 2015 and published on January 15, 2016.

Keepers of farm-raised white-tailed deer are also regulated by ATCP 10. Requirements primarily related to the health, movement, and hunting of farm-raised white-tailed deer are established in Subchapter XII of ATCP 10.

Plain Language Rule Analysis: These rule changes are proposed in order to provide options for licensed deer farms which are also regulated by Federal and Wisconsin DATCP regulations. The rule change eliminates duplication of health rules and clearly aligns the department's fence authority per 2001 passage of ACT 56. Preventing the illegal release or co-mingling of wild and captive deer will reduce the risk of transmitting diseases such as Chronic Wasting Disease (CWD) and are necessary for the preservation of public peace, health, safety or welfare.

SECTIONS 1 to 3 and 5 of these rules eliminate the requirement for white-tailed deer farms to comply with either of the following as a condition of their fence certificate: enrollment in the chronic wasting disease herd status program which is administered by the Department of Agriculture, Trade, and Consumer Protection or, for farms greater than 80 acres in size, testing 10% of deer that die annually and submit those results to the natural resources department. The Department would still issue fence certificates, which would indicate whether a facility was enclosed by a single fence, doubled fence, or solid fence,

according to standards already established in NR16. The chronic wasting disease and other testing requirements established under ATCP 10 would still be in effect. Farms not participating in the herd status program administered by agriculture department would not be allowed to export live deer.

Farms would still be required to have a certificate from the department for their fence and fences would have to meet the requirements currently in place to be 8 feet high and with special requirements for woven wire versus high tensile material, wood versus steel posts, gates, and corridors. The chronic wasting disease and other testing requirements established under ATCP 10 would still be in effect. Farm not participating in the herd status program administered by agriculture department would not be allowed to export live deer.

Section 4 repeals deadlines for deer farms to come in compliance with certain requirements of this chapter because those deadlines passed in 2004 and the language is no longer relevant.

Federal Regulatory Analysis: New regulations in 9 CFR Parts 55 and 81, for herd health certification and interstate movement of captive cervids are in effect and all cervid farmers wishing to remain in the herd status program will be required to meet all of the new rules and regulations by December 10, 2015. Federal requirements include double identification for all deer on the premise and a complete physical census conducted by an approved veterinarian of all captive herds. Wisconsin's Department of Agriculture, Trade & Consumer Protection has adopted similar rules as necessary for consistency.

Comparison with rules in Adjacent States: Wisconsin's surrounding states have comparable regulations for deer farming because of the overarching federal regulations which are in effect nationally.

Summary of Factual Data and Analytical Methodologies: The policies in this rule are generally consistent with past board policies of regulating fences which contain farm-raised white-tailed deer.

The department will continue to maintain rule oversight of fences for farm-raised White-tailed deer but will eliminate the mandate that obligates farmers also be compliant with the herd status or the ADHP programs.

Following the passage of 2001 ACT 56 related to captive wild animals, Wisconsin established its own CWD herd certification program known effectively as herd status. This program has been administered by the Department of Agriculture, Trade & Consumer Protection (DATCP). While DATCP regulates the herd status program as a condition to move live farm raised deer, Department rules mandate enrollment and compliance within this program in order to possess a fencing certificate for a single fenced farming areas. In other words, although DATCP may not obligate a farmer to be actively enrolled in the herd status program because a farmer is not exporting live deer from within the farmer's herd, Department rules do, simply as a condition of having a fencing certificate.

Furthermore, larger fenced areas (those in excess of 80 acres) have also had the option to enroll their single fenced farming areas into a program known effectively as the Annual Deer Harvest Plan (ADHP) Program. Farms enrolled into this program have had the obligation to submit annually to the department a plan and a percentage (either 5 or 10%) of CWD tests from their resident deer population (a resident deer is defined as a White-tailed deer that is a minimum of 2 years old and has resided in the fenced area for not less than 2 years). This program had been a duplicative effort for most farmers who already have to abide by DATCP's standards of testing 50% percent of all deer that are test eligible (test eligible deer are deer that are 18 months or older) that have been intentionally killed while being kept on a hunting preserve.

As a result of federal rulemaking, beginning on December 10, 2015, owners of captive white-tailed deer farms will be subject to additional regulations such as completing a physical herd inventory conducted by a licensed veterinarian and multiple forms of animal identification. Failure to meet federal requirements will result in ineligibility for the herd status program. Deer farms which are not certified under the herd status program are not allowed to sell or transfer live animals and, under department rules, the enclosure must have a double fence. New requirements may be difficult or costly for smaller deer farmers to comply with. Farmers who are not able to comply with new regulations may have limited options for disposing of their deer. These rules would allow possession of captive deer in enclosures which meet state standards in place in 2014. The sales or transfer of live deer, other than to slaughter, would not be allowed under DATCP or federal rules already in place.

Anticipated Private Sector Costs and Economic Impact of Implementing the Rule: The department anticipates no significant economic impact as a result of these rules. These proposed rules would benefit some smaller farms which are certified under current rules but for whom continued certification or double fencing are not economically feasible.

These rules will not create new compliance or reporting requirements for small business. The design and operational standards for deer farms contained in the rule will be a simplification from current federal and state rules.

Pursuant to the Governor's Executive Order 50, Section II, this will be a level 3 economic impact analysis for the permanent version of this rule. For the comparable permanent rule, a notice for Solicitation of comments on this analysis will be posted on the department's website in February 2016 and various interest groups may be contacted by email.

Effects on Small Business: These rules do not have a significant fiscal effect on the private sector or small businesses. For certain individual deer farmers, these rules would have the impact of reducing the economic impact of new federal regulations.

New regulations in 9 CFR Parts 55 and 81, for herd health certification and interstate movement of captive cervids are in effect and all cervid farmers wishing to remain in the herd status program will be required to meet all of the new rules and regulations by December 10, 2015. Federal requirements include double identification for all deer on the premise and a complete physical census conducted by an approved veterinarian of all captive herds. Wisconsin's Department of Agriculture, Trade & Consumer Protection has adopted similar rules as necessary for consistency. These new requirements could have an impact on approximately 116 licensed farms which are small operations that may decide to not continue enrollment in the programs because they may not have the infrastructure or funds to build the needed infrastructure or pay veterinarians to complete the censuses (which will be needed every three years). If these facilities do not enroll in the new herd status program, according to department rules currently in place, they would need to double-fence their properties (also a very costly alternative) if they have white-tailed deer.

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SECTION 1. NR 16.45 (2) (Intro.) and (a) are amended to read:

NR 16.45 (2) SPECIAL FENCING FENCE REQUIREMENTS; ~~DOUBLE FENCES.~~

(a) ~~Deer farms with perimeter fences less than 80 acres in size.~~ No person may maintain a perimeter fence ~~that encloses less than 80 acres~~ that contains farm-raised white-tailed deer unless one of the following applies:

SECTION 2. NR 16.45 (2) (a) 1. is repealed and recreated to read:

NR 16.45 (2) (a) 1. The farm-raised white-tailed deer are enclosed by a perimeter fence that meets the requirements established in sub. (1) (a) to (i);

SECTION 3. NR 16.45 (2) (b) and (c) are repealed.

SECTION 4. NR 16.45 (5) is repealed.

SECTION 5. NR 16.45 (6) (h) is repealed.

SECTION 6. EFFECTIVE DATE. 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 7. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on

_____.

Dated at Madison, Wisconsin _____.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Cathy Stepp, Secretary

(SEAL)