

**Wisconsin Department of Natural Resources
Natural Resources Board Agenda Item**

SUBJECT: Request that the board adopt Board Order WM-13-15, proposed rules modifying Ch. NR 16 related to captive deer farm fence regulations.

FOR: August 2016 Board meeting

TO BE PRESENTED BY: Todd Schaller, Chief Warden

SUMMARY:

These rules will establish a way for certain deer farmers to legally and safely maintain ownership of their animals following changes to federal and state regulations which are effective beginning on December 10, 2015.

This will eliminate what some people are concerned will be an incentive to release captive deer to the wild as an inexpensive way to dispose of them. Preventing the release or co-mingling of wild and captive deer will reduce the risk of transmitting diseases such as Chronic Wasting Disease (CWD) and is necessary for the preservation of public peace, health, safety or welfare.

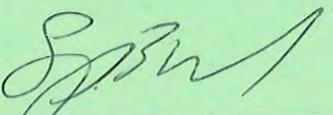
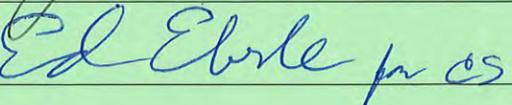
These rules would eliminate the requirement for white-tailed deer farms to comply with either of the following as a condition of their fence certificate: 1) enrollment in the chronic wasting disease herd status program which is administered by the Department of Agriculture, Trade, and Consumer Protection or, for farms greater than 80 acres in size, 2) 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.

RECOMMENDATION: Adoption of Board Order WM-13-15, proposed rules modifying Ch. NR 16 related to captive deer farm fence regulations.

LIST OF ATTACHED MATERIALS (check all that are applicable):

- | | |
|---|---|
| <input checked="" type="checkbox"/> Background memo | <input checked="" type="checkbox"/> Fiscal/Economic Impact Analysis |
| <input checked="" type="checkbox"/> Board Order | <input checked="" type="checkbox"/> Rules Clearinghouse Report |

Approved by	Signature	Date
Todd Schaller, Bureau Director		7/14/16
Sanjay Olson, Administrator		7/17/16
Cathy Stepp, Secretary		7/18/16

DATE: July 12, 2016

TO: Natural Resources Board Members

FROM: Cathy Stepp

SUBJECT: Adoption of Board Order WM-13-15 related to deer farm fences

I am requesting Natural Resources Board adoption of Board Order WM-13-15, a rule package to amend Ch. NR 16, Wis. Admin. Code, related to captive deer farm fence regulations.

Background:

These rules will establish a way for certain deer farmers to legally and safely maintain ownership of their animals following changes to federal and state regulations which are effective beginning on December 10, 2015.

Under current department regulations, the type of fencing a licensed deer farmer is required to maintain depends upon whether the licensee is enrolled in the Department of Agriculture, Trade and Consumer Protection's herd status program. New USDA regulations have been adopted which will change herd status eligibility criteria. Individuals who are currently enrolled in the herd status program must comply with the new eligibility criteria to maintain their fences as is. Individuals who are unable to meet the new eligibility criteria will be required to install double or solid fencing. Both options could result in significant costs to licensees. Farmers who are not able to comply with new USDA/DATCP regulations and are not able to build an additional fence may have limited options for disposing of their deer. The department is concerned about the illegal release of deer.

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 is necessary for the preservation of public peace, health, safety or welfare.

Summary of rule:

These rules would eliminate the requirement for white-tailed deer farms to comply with either of the following as a condition of their fence certificate: 1) enrollment in the chronic wasting disease herd status program which is administered by the Department of Agriculture, Trade, and Consumer Protection or, 2) for farms greater than 80 acres in size, testing 10% of deer that die annually and submitting 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 the state agriculture department would continue to be ineligible to export live deer.

Public Participation

Hearing appearances

A hearing on the permanent rule was held on the evening of March 9, 2016 and one person was in attendance.

A hearing on an identical emergency rule was held in Portage on the evening of November 18, 2016. Department representatives presented a summary of the related issues and the proposed solution and a representative of the Department of Agriculture, Trade and Consumer Protection was also present for informational purposes. Two members of the public were in attendance and written comments were submitted by two additional people.

Summary of hearing comments and the department's response

Hearing testimony, written comments, and the department's responses are summarized below.

Comment: These rules will be good for the business person because there will be less of the duplicative paperwork for them and for the department to track and are sensible in that respect.

Response: We agree.

Comment: I am opposed to any liberalization of deer farm fence regulations.

Response: We would also be opposed if we were certain that these proposed changes would increase the distribution or frequency of CWD in wild or captive white-tailed deer and would not characterize this as a liberalization.

For example, farmers must still abide by DATCP's regulations for animal movements, testing and overall health management practices as they have in the past. Also, farmers must still build a fence that conforms to the rules and specifications as outlined by law. The only significant change is that the department is proposing to unhook the requirement that mandates if the farmer builds a single configured fence that they also do not need to meet the requirement of also being enrolled in the herd status program. However, by eliminating the herd status requirement the department is recognizing that the farmer will not be able to export live deer. Not having the ability to move live deer off of a farm essentially makes the farm an end point for live movements which in turn decreases distribution opportunities.

Comment: If these small farms are not financially able, why should the department's job be to keep them in place?

Response: Keeping farm-raised deer is a legal activity in this state under current law and our rules need to both recognize that as well as protect the health of wild and captive deer by assuring that owners maintain good fences.

Comment: I am very concerned about CWD and we should do anything we can to stop the spread.

Response: We are also very concerned about CWD and believe we should do as much as reasonably possible to stop its spread while still recognizing that keeping farm-raised deer is a legal activity.

Comment: We favor the proposed rule changes

Response: Thank you.

Comment: As to the fear that animals will be released, why not look at more significant penalties for unauthorized releases? There is already evidence of unauthorized releases and or escapes.

Response: As the comment observes, there is a need to be concerned over intentional releases. The department's ability to manage intentional releases is conditioned upon its ability to enforce the regulations of introductions, stocking and release of wild animals in s. 169.06. Farm-raised deer are statutorily defined as domestic animals and not recognized in the definition of a "wild animal". Modifications would require statutory changes.

As for escape accountability, the farmer must simply notify the department of the escape within 24 hours after becoming aware of the incident. For non-compliance to occur with this rule, the department must show that the farmer was aware of the incident and that they failed to notify the department within the 24 hour allotted timeframe. So regardless of the amount of time expired surrounding an incident, a farmer unaware of a breach has not violated any rule obligations.

Each year breaches in fences or movement mishaps result in escapes. One of the causes for these unfortunate events is human error. Regardless of the number fences in place or how they are configured, escapes will likely continue to occur.

Comment: The department has never really enforced the requirement to double fence certain farms and is looking for a way out of doing so.

Response: The comment neither accurately reflects the actions of the department nor does it value the intricacies of regulating on the basis of how another agency manages its program. For instance, DATCP oversees the herd status program. If a farmer fails to meet herd status requirements, DATCP can either suspend or revoke the farmer's status. DATCP may also reinstate a herd's enrollment in the herd status program. DATCP laws also allow reinstatement of enrollment to be retroactive following a valid suspension, as it deems appropriate. DATCP's policy of re-instating deer farmers creates a problem for the department's enforcement of the herd status condition. While both conditions (suspended or revoked) theoretically constitute reasonable cause for the department to intervene, because DATCP authorities allow retroactive reinstatement the department could find itself amidst the enforcement and process of gaining compliance for an infraction that no longer exists. As a result, the department has asked DATCP for clarification as to when they interpret a herd status program enrollee to no longer be in compliance. DATCP has advised that once a farmer has been revoked or if a farmer has never been satisfactorily enrolled, DATCP considers the farmer to no longer be in compliance with the program. The department has asked DATCP to notify the department staff when program enrollees fail to meet their consideration for compliance. The department is periodically notified by DATCP about noncompliant herd status enrollees. In turn, the department proceeds in contacting these farmers and applying measures to which the farmer can attain some means of compliance.

Comment: How will this new proposal deal with escapes? I think escapes are probably more of a danger than releases.

Response: This emergency rule does not change regulations or department policy related to deer that escape from deer farms. We do take escapes from deer farms very seriously. We respond to all reported escapes and have issued the appropriate citations. The permanent version of this rule or perhaps a separate rule making process may be a better process if there is a need to change the way the department responds to escapes. The scope of this emergency rule is intentionally narrow so that we can address a specific concern in a timely way.

Modifications after Hearings and Legislative Council Rules and Clearinghouse Report:

The department has made modifications which were recommended in the report prepared by Legislative Council Rules Clearinghouse. Those changes are related to form, style, and placement in administrative code. A copy of the report is included in this green sheet package.

Effect on existing policy:

These rules are consistent with current department policy, established in s. NR 1.18, which establishes that the department will authorize possession of captive wildlife or captive game farm birds and mammals and require permittees to implement control measures which minimize disease and potential threats to wildlife.

These rules are consistent with the provisions of Ch. 169 Wis. Stats., (Captive Wildlife), Ch. 90 Wis. Stats., (Fences), and Ch. 95 Wis. Stats., (Animal Health) which establish that farm-raised deer are domestic animals. These chapters establish regulatory authority for the department related to fences used to contain farm-raised white-tailed deer and additional authority to be administered by the Department of Agriculture, Trade, and Consumer Protection for other regulatory functions primarily related to herd health.

Previous board action:

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.

Administrative rules regulating deer farm fences were initially promulgated by the department and went into effect in November, 2003. Cross references with chapters of DATCP were updated and program name changes were made and went into effect on May 1, 2008.

People impacted by the proposed rule:

Deer farmers are a primary entity who will be affected by the proposed rules. However, anyone who is interested in wild white-tailed deer may also be interested in the regulation of captive white-tailed deer because both can be impacted by the same diseases. People would presumably be interested in maintaining the health of both wild and captive animals and the transmission of diseases between them.

Environmental Analysis:

The rulemaking process for Board Order WM-14-15(E) constitutes an equivalent analysis action under s. NR 150.20 (2) (b), Wis. Adm. Code and additional environmental analysis is not required.

Anticipated economic impact of implementing the rule and small business analysis:

The department anticipates no significant economic impact as a result of these rules. It is anticipated that most farm owners will make the farm updates necessary to maintain their status in the CWD Herd Certification Program and these rules will not apply.

These proposed rules would benefit some smaller farms which are certified under current rules but for whom recertification or double fencing are not economically feasible. Benefits to the overall economy will be minimal but important to individual farm owners. While they would not be certified and could not sell or transfer live deer, they would be able to continue owning the deer and could continue to realize financial benefit from activities such as game farm hunting.

These rules will not create new compliance or reporting requirements for small businesses. 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 was a level 3 economic impact analysis for the permanent rule. A notice for solicitation of comments on this analysis was posted on the department's website beginning on February 22.

Rule Development:

These rules were developed with assistance from the bureaus of law enforcement, wildlife management, and legal services, and in cooperation with the Department of Agriculture, Trade and Consumer Protection.

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

1. Type of Estimate and Analysis

Original Updated Corrected

2. Administrative Rule Chapter, Title and Number

NR Ch. 16, Captive Wildlife

3. Subject

Emergency and permanent rules relating to fences for farm-raised white-tailed deer, Natural Resources Board Orders WM-13-15 and WM-14-15(E).

4. Fund Sources Affected

GPR FED PRO PRS SEG SEG-S

5. Chapter 20, Stats. Appropriations Affected

None

6. Fiscal Effect of Implementing the Rule

No Fiscal Effect Increase Existing Revenues Increase Costs
 Indeterminate Decrease Existing Revenues Could Absorb Within Agency's Budget
 Decrease Cost

The provisions of this rule proposal will not have a fiscal impact on the department. Currently, and under these proposed rules, staff people from the bureau of law enforcement are primarily involved in fence certification. Staff people in the bureau of customer services conduct the financial transactions and maintain records. Wildlife management staff may also be involved with certifying that wild deer have been removed prior to licensure for captive deer or other activities. The department would continue to administer the program to inspect and certify the fences for white-tailed deer farms. The department would continue to inspect new fences, and the fences for farms which are being recertified at the end of the term of licensure. The department would continue to respond to calls about breaches of white-tailed deer farm fences and other maintenance issues as it has in the past. No new expenses or revenues are anticipated as a result of this proposal.

7. The Rule Will Impact the Following (Check All That Apply)

State's Economy Specific Businesses/Sectors
 Local Government Units Public Utility Rate Payers
 Small Businesses (if checked, complete Attachment A)

8. Would Implementation and Compliance Costs Be Greater Than \$20 million?

Yes No

9. Policy Problem Addressed by the Rule

These rules will establish a way for certain deer farmers to legally and safely maintain ownership of their animals following changes to federal and state regulations which are effective beginning on December 10, 2015.

Under current Department regulations, the type of fencing a licensed deer farmer is required to maintain depends upon whether the licensee is enrolled in DATCP's herd status program. New USDA regulations have been adopted which will change herd status eligibility criteria. Individuals who are currently enrolled in the herd status program must comply with the new eligibility criteria to maintain their fences as is. Individuals who are unable to meet the new eligibility criteria will be required to install double or solid fencing. Both options could result in significant costs to licensees. Farmers who are not able to comply with new USDA/DATCP regulations and are not able to build an additional fence may have limited options for disposing of their deer.

These rules would eliminate the requirement for white-tailed deer farms to comply with either of the following as a condition of their fence certificate: 1) 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, 2) testing 10% of deer that die annually and submit those results to the natural resources department.

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

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.

10. Summary of the businesses, business sectors, associations representing business, local governmental units, and individuals that may be affected by the proposed rule that were contacted for comments.

Deer farmers are a primary entity who will be affected by the proposed rules. However, anyone who is interested in wild white-tailed deer may also be interested in the regulation of captive white-tailed deer because both can be impacted the same diseases and people would presumably be interested in maintaining the health of both wild and captive animals.

Pursuant to the Governor's Executive Order 50, Section II, this is a level 3 economic impact analysis. A notice for solicitation of comments on this analysis was posted on the department's website during a 14 day period beginning on February 22, 2016.

11. Identify the local governmental units that participated in the development of this EIA.

Pursuant to the Governor's Executive Order 50, Section II, this is a level 3 economic impact analysis. A notice for solicitation of comments on this analysis was posted on the department's website during a 14 day period beginning on February 22.

12. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)

The department anticipates no significant economic impact as a result of these rules. Many farm owners, will make the farm updates necessary to maintain their status in the CWD Herd Certification Program and these rules will not apply.

These proposed rules would benefit some smaller farms which are certified under current rules but for whom recertification or double fencing are not economically feasible. The economic benefits will be minimal but important to individual farm owners. While they would not be certified and could not sell or transfer live deer, they would be able to continue owning the deer and could continue to realize financial benefit from activities such as game farm hunting.

State and federal agencies do collect detailed information on the certification of deer farms and compile reports of agricultural statistics in general. However the USDA's census of agriculture only collects information for deer in a category of "other animal products and animal sales" and does not differentiate between white-tailed deer and other species. This data source is of limited use for estimating the impact of these proposed rules. We continue to believe there will be no significant overall impact from these rules because only a subset of white-tailed deer farmers would be impacted.

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.

These rules are not expected to significantly affect currently available outdoor opportunities and no impacts to the economic activities of hunters, trappers, or outdoor recreation enthusiasts are expected.

13. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

These proposals will contribute to the maintenance of the current economic activity generated by people who are engaged in deer farming.

Under current Department regulations, the type of fencing a licensed deer farmer is required to maintain depends upon whether the licensee is enrolled in DATCP's herd status program. New USDA regulations have been adopted which will change herd status eligibility criteria. Individuals who are currently enrolled in the herd status program must comply with the new eligibility criteria to maintain their fences as is. Individuals who are unable to meet the new eligibility criteria will be required to install double or solid fencing. Both options could result in significant costs to licensees. Farmers who are not able to comply with new USDA/DATCP regulations and are not able to build an additional fence may have limited options for disposing of their deer.

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

14. Long Range Implications of Implementing the Rule

The long range implications of this rule proposal will be the same as the short term impacts. These proposals will contribute to the maintenance of the current economic activity generated by people who are engaged in deer farming.

15. Compare With Approaches Being Used by Federal Government

Federal regulations allow states to manage farm-raised deer operations located within their boundaries provided they do not conflict with regulations established in the Federal Register. Owners of farm-raised white-tailed deer are not required to participate in federal programs except that, if they wish to sell or transfer live deer, they must be certified under the federal/state herd status program. None of these rule changes violate or conflict with the provisions established in the Federal Code of Regulations.

16. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

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 that are consistent with federal regulations.

<h3>17. Contact Name</h3>	<h3>18. Contact Phone Number</h3>
Scott Loomans, Wildlife Regulations Policy Specialist	608-267-2452

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WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Scott Grosz
Clearinghouse Director

Margit Kelley
Clearinghouse Assistant Director

Terry C. Anderson
Legislative Council Director

Jessica Karls-Ruplinger
Legislative Council Deputy Director

CLEARINGHOUSE RULE 16-026

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated December 2014.]

2. Form, Style and Placement in Administrative Code

a. In the introductory clause for the proposed rule, each reference to “ch.” should be revised to “s.”. [s. 1.03 (1) (Example), Manual.]

b. Also in the introductory clause for the proposed rule, the phrase “wildlife management rules” that appears before the phrase “relating to” should be removed. The placement of the phrase is out of order within the relating clause, and is unnecessary as the remaining phrase is a concise statement of the subject matter. [s. 1.02 (1) (a) and (Example), Manual.]

c. In both the introductory clause for the proposed rule and the treatment clause for SECTION 1 of the proposed rule, the designations within the citation to s. “NR 16.45 (2) (Intro.) and (a)” should be corrected to s. “NR 16.45 (2) (title) and (a) (intro.)”. [ss. 1.03 (3) and 1.05 (3) (a), Manual.]

d. A heading and entry should be inserted in the rule summary for the analysis and supporting documents used to determine the effect on small business or in preparation of an economic impact analysis. [s. 1.02 (2) (a) 9., Manual.]

e. A heading and entry should be inserted at the end of the rule summary to specify the place where comments are to be submitted and the deadline for submission. [s. 1.02 (2) (a) 13., Manual.]

f. SECTIONS 3 to 5 of the proposed rule could be combined. When two or more subunits of the same rule section are affected by the same treatment, and any intervening subunits are

unaffected, they may be included in the same SECTION of the proposed rule. [s. 1.04 (2) (a) 4., Manual.]

5. Clarity, Grammar, Punctuation and Use of Plain Language

In the rule summary's description of related statutes or rules, first paragraph, the word "by" should be inserted after the word "adopted".

**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 NR 16.45 (2) (b) and (c), (5), and (6) (h); and to amend NR 16.45 (2) (title.) and (a) (intro.); and to repeal and recreate NR 16.45 (2) (a) 1., 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: In the chapter that establishes laws related to fences, the department is directed by s. 90.21 Stats., to establish requirements for fences which are used to confine farm-raised white-tailed deer.

Statutes Interpreted and Explanation: In the chapter that establishes laws related to fences, the department is directed by s. 90.21 Stats., 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 United States Department of Agriculture and Wisconsin Department of Agriculture, Trade and Consumer Protection regulations. The rule changes eliminate duplication of health rules and clearly align the department's fence authority per the 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 and are necessary for the preservation of public peace, health, safety or welfare.

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 the agriculture department would continue to be ineligible 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. Farms not participating in the herd status program administered by the state agriculture department would not be allowed to export live deer.

These rule changes also repeal 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 chronic wasting disease herd certification program known effectively as herd status. This program has been administered by the Department of Agriculture, Trade & Consumer Protection. While that agency regulates the herd status program as a condition to move live farm raised deer, natural resources department rules mandate enrollment and compliance in the program in order to possess a fencing certificate for a single fenced farming areas. In other words, although the agriculture department does 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, natural resources 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 chronic wasting disease 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 state agriculture department or federal rules already in place.

Analysis and documentation used in support of determining effects on small businesses and in preparation of the economic impact analysis: The department anticipates no 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 was a level 3 economic impact analysis. For this permanent rule, a notice for Solicitation of comments on this analysis was posted on the department's website beginning on February 22, 2016 and continuing for 14 days.

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.

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 March 9, 2016

SECTION 1. NR 16.45 (2) (title) and (a) (intro.) 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), (5), and (6) (h) are repealed.

SECTION 4. 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 5. 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)