

STATEMENT OF SCOPE

Department of Natural Resources

Rule No.: WM-13-15 and WM-14-15(E)
Relating to: Captive deer farm fence regulations
Rule Type: Both permanent and emergency

1. Finding/nature of emergency (Emergency Rule only):

These rules will establish a way for certain deer farmers to legally and safely maintain ownership of their animals without meeting new federal and state herd health requirements 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 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.

2. Detailed description of the objective of the proposed rule:

The department will continue to maintain rule oversight of fences for farm-raised White-tailed deer but will, through these rule-making processes, investigate ways to eliminate what may be incentives to illegally release captive deer to the wild. One option may be to eliminate the DNR's requirement that farmers also be compliant with DATCP's herd status or the annual deer harvest plan programs even if they do not have double fences. Another option may be to eliminate that compliance requirement but to maintain some CWD testing and reporting requirements as a condition of fence certification.

Following the passage of 2001 ACT 56 related to captive wild animals, Wisconsin established its own CWD herd certification program known 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 export live farm raised deer, DNR rules mandate enrollment and compliance with the program in order to possess a fencing certificate for a farm with a single fence instead of a double fence. As such, DATCP does not obligate a farmer to be actively enrolled in the herd status program if they are not exporting live deer but DNR rules do, simply as a condition of having a fencing certificate.

Larger fenced areas (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 Program. Farms enrolled into this program have had the obligation to submit annually to the department a plan and test a percentage (either 5 or 10%) of their resident deer population for CWD (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 are not allowed to sell or transfer live animals and, under DNR 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.

3. Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:

Under the new federal regulations for herd health certification and interstate movement of captive cervids, all cervid farmers wishing to remain in the herd status program will be required to comply with all of the new rules and regulations by December 10, 2015. Regulations include requirements such as double identification for all deer on the premise and a complete physical census conducted by an approved veterinarian of all captive herds. Approximately 116 licensed farms 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 and 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 DNR rules, they would need to double-fence their properties (also a very costly alternative) if they have white-tailed deer. It has been cautioned that there could be risk associated with the new regulations if they resulted in clandestine, illegal release of captive deer to avoid the ramifications of non-compliance with the herd status program or our current rules for cervid farms that are not enrolled in the herd status program.

4. Detailed explanation of statutory authority for the rule (including the statutory citation and language):

The department is directed, in s. 90.21 Stats., to promulgate rules that establish requirements for fences for which fence inspection certificates are issued under that section. The department currently requires fence inspection certificates for all white-tailed deer farms.

5. Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule :

Department staff will spend approximately 160 hours preparing the emergency and permanent versions of these rules.

6. List with description of all entities that may be affected 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 be affected by the rule and would appreciate a likely benefit of maintaining the health of wild and captive white-tailed deer.

7. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule :

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 which are in addition to the requirements of Wisconsin's initial rules 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.

8. Anticipated economic impact of implementing the rule (note if the rule is likely to have a significant economic impact on small businesses):

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 rule. A notice for Solicitation of comments on this analysis will be posted on the department's website in late summer or early fall, 2015, and various interest groups will be contacted by email.

9. Anticipated number, month and locations of public hearings:

The Department anticipates holding two public hearings on a permanent version of these rules in the month of September 2015. Hearing cities will be spread geographically around the state.

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