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☞ Details: Emergency Rule extension requests by Department of Natural Resources

(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

2003-04

(session year)

Joint

(Assembly, Senate or Joint)

Committee for Review of Administrative Rules...

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
(**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
(**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

* Contents organized for archiving by: Stefanie Rose (LRB) (August 2012)

APR 18 2003



State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

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Scott Hassett, Secretary

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April 15, 2003

Honorable Joseph Leibham, Chair
Joint Committee for Review of Administrative Rules
Room 409 South
State Capitol

Honorable Glenn Grothman, Chair
Joint Committee for Review of Administrative Rules
Room 15 North
State Capitol

Subject: Extension of Emergency Order No. WM-03-03(E)
relating to captive wildlife

Gentlemen:

The Department of Natural Resources, under s. 227.24(2), Stats., is requesting the Joint Committee for Review of Administrative Rules to extend natural Resources Board Emergency Order No. WM-03-03(E) for 60 days. This emergency order pertaining to captive wildlife took effect on January 1, 2003 and is to expire on May 31, 2003.

The extension of this emergency rule is needed to keep in effect the standards applicable to licenses issued under ch. 169, Stats. The Department held public hearings in January 2003 on permanent rules.

A copy of the emergency order is attached. If you have any questions, please contact Kurt Thiede, Bureau of Wildlife Management at 267-2452 or Michael Lutz, Bureau of Legal Services at 267-7456.

Sincerely,

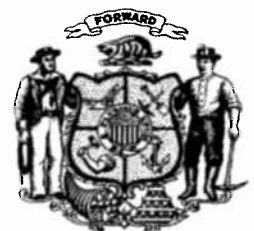
Scott Hassett
Secretary

cc: Presiding Officers
Kurt Thiede - WM/4
Michael Lutz - LS/5
Carol Turner - LS/5

Attach.



WISCONSIN STATE LEGISLATURE





State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Jim Doyle, Governor
Scott Hassett, Secretary

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July 3, 2003

Honorable Joseph Leibham, Chair
Joint Committee for Review of Administrative Rules
Room 409 South
State Capitol

Honorable Glenn Grothman, Chair
Joint Committee for Review of Administrative Rules
Room 15 North
State Capitol

Re: Extension of Emergency Order No. WM-03-03(E)

Gentlemen:

The Department of Natural Resources, under s. 227.24(2), Stats., is requesting the Joint Committee for Review of Administrative Rules to extend Natural Resources Board Emergency Order No. WM-03-03(E) for 60 days. This emergency order pertaining to captive wildlife took effect on January 1, 2003 and is to expire on July 29, 2003.

The extension of this emergency rule is needed so that the Department can continue to enforce these provisions while the permanent rules (Clearinghouse Rules No. 03-030 and 03-031) are being reviewed by legislature committees.

A copy of the emergency order is attached. If you have any questions, please contact Kurt Thiede, Bureau of Wildlife Management at 267-2452 or Michael Lutz, Bureau of Legal Services at 267-7456.

Sincerely,

Scott Hassett
Secretary

cc: Presiding Officers
Kurt Thiede – WM/4
Michael Lutz – LS/5
Carol Turner – LS/5

Attach.

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

The State of Wisconsin Natural Resources Board proposes an order to repeal NR 16.01 and 19.26 (7)(c) and (d); to amend NR 19.26 (6)(b) and (c), (7)(a) and (b), (8)(a),(b) and (c); and to create ch. NR 14 relating to captive wildlife.

WM-03-03(E)

Summary prepared by Department of Natural Resources

Statutory Authority: ss. 90.21(6), 169.11(1)(a), 169.15(5), 169.18(5), 169.19(6), 169.20(4), 169.21(3), 169.23(3), 169.25(6), 169.26(4), 169.27(4), 169.39(2) and (3), 227.11(2)(a) and 227.24, Stats.

Statutes Interpreted: ss. 90.21(2) and (5), 169.11(1), 169.12(1) and (4), 169.14(2), 169.15(4), 169.18(2) and (3), 169.19(2) and (3), 169.20(1),(2) and (3), 169.21(1) and (2), 169.23(2), 169.25(1),(2),(3),(4) and (5), 169.26(1),(2) and (3), 169.27(1),(2) and (3) and 169.31(1)(a), Stats.

2001 Wisconsin Act 56 enacted on April 3, 2003 removed Wisconsin's captive wildlife laws from ch. 29, Stats., and created ch. 169, Stats. As of January 1, 2003, the effective date of most of the provisions of ch. 169, Stats., game farms, fur farms and other holders of live captive wildlife will be subject to regulation under ch. 169, Stats. This will include to new license requirements and requirements of operation. While Wis. Act 56 provides for a transfer of ch. 29, Stats., licenses to ch. 169, Stats., licenses, it does not automatically transfer the rules for captive animals held under ch. 29, Stats., to rules applicable to captive animals held under ch. 169, Stats. This rule will create ch. NR 14 which will incorporate by reference most of the rules that were applicable to captive animals under ch. 29, Stats., and make it clear that those standards are now applicable to captive animals held under ch. 169, Stats.

In some areas the rule creates new standards. Section NR 14.01, while incorporating many of the deer farm fence standards from ch. NR 16, increases the required height of new fences from 8 feet to 10 feet. It also phases in a requirement that deer farms be double fenced unless the deer farm is enrolled in the chronic wasting disease herd monitoring or herd surveillance program. While the deadlines for the double fence regulations will likely not occur until after the expiration of this rule, they are included in order to put the public on notice of the requirements that will be proposed in the permanent rule proposal that will follow this emergency rule. A second area of change is in the fur farm rules where acreage requirements for new fur farms and tagging requirements for otter are created.

The rule creates a definition of sporting club for purposes of this fee waiver allowed for such groups. The rule also creates standards for the issuance of licenses for dog training clubs. This license did not exist previously and allows members of a dog training club to dog train on club premises under the authority of the club license. Without standards, it would be difficult if not impossible to implement this program.

Finally, the rule changes the license needed for commercial operations dealing in reptiles and amphibians from a commercial permit under ch. NR 19 to a captive wild animal license under ch. 169, Stats. This change is required by Wis. Act 56.

SECTION 1. Chapter NR 14 is created to read:

Chapter NR 14
Captive wildlife

NR 14.001 Definitions. In this chapter:

(1) "Department" means the department of natural resources.

(2) "Dog training" means the activity of teaching a dog to retrieve, point, flush, or track game for the purpose of hunting, dog trial competition or hunt testing for a recognized dog organization.

(3) "Dog training club" means an organization that owns or leases a total of at least 40 acres of land for the purpose of teaching a bird dog or hound dog to retrieve, point, flush or track game.

(4) "Dog trial" means any organized competitive field event involving sporting dog breeds which is sanctioned, licensed or recognized by a local, state, regional or national dog organization.

(5) "Farm-raised deer" has the meaning given in s. 95.001(1)(ag), Stats.

(6) "Heavily galvanized" means a zinc coating weight of 230 g/m² or 0.8 oz/ft².

(7) "High tensile" means a tensile strength of 1235 to 1450 mega pascals or 179000 to 210000 lb/in².

(8) "Medium tensile" means a tensile strength of 700 to 850 mega pascals or 101000 to 123000 lb/in².

(9) "Pen" means any cage, fenced-in plot or other enclosure in which animals are held.

(10) "Predator proof" means a fence that is buried 12 inches under ground or has a fence apron that is attached to the bottom of the fence and staked out onto the ground at 3 feet out from the fence.

(11) "Resident deer" means a deer 2 years of age or older that has resided in the licensed acreage area for not less than 2 years.

(12) "Solid fence" means a fence that meets all of the standards of s. NR 14.01(1)(a) to (g) that is covered with a fabric or other solid material that prevents deer on opposite sides of the fence from making visual or physical contact.

(13) "Sporting club" means a non-profit organization whose primary purpose is wildlife related outdoor education.

NR 14.01 Farm-raised deer; white-tailed deer, specifications. (1) FENCING SPECIFICATION. Any person who keeps farm-raised deer that are white-tailed deer shall keep the deer enclosed by a fence that meets all of the following requirements:

(a) *Fencing height and material.* The fence shall be at least 10 feet high and shall be a high tensile fence that satisfies par. (b), a woven wire fence that satisfies par. (c) or, if made of other materials, is of a design and level of strength that provides equivalent retentive capacity. The top 2 feet of the fence may consist of 3 single strands of smooth high tensile wire with each strand being no more than 8 inches apart. Existing fences constructed and approved prior to January 1, 2003 need only be 7'10" in height.

(b) *High tensile fence.* A high tensile fence shall satisfy the requirements of this subsection if all the following apply:

1. The horizontal line wires are not less than 2.5 millimeters in size and are heavily galvanized medium tensile wire.

2. The vertical stay wires are not less than 2.5 millimeters in size and are heavily galvanized medium tensile wire.

3. The knot wire is not less than 2.24 millimeters in size and is heavily galvanized mild steel.

4. The distance between vertical stay wires is not more than 6 inches.

5. The distance between horizontal line wires is not more than 4 inches in the bottom foot of the fence, is not more than 6.5 inches in the next 2 feet of the fence and is not more than 8.5 inches in the rest of the fence.

6. The posts are not more than 20 feet apart.

(c) *Woven wire fence.* A woven wire fence shall satisfy the requirements of this subsection if all of the following apply:

1. The wire is 14½ gauge or heavier.

2. If the wire is 14½ gauge, the mesh is not larger than 36 square inches.

3. If the wire is heavier than 14½ gauge, the mesh is not larger than 48 square inches.

4. The distance between horizontal line wires is not more than 4 inches in the bottom foot of the fence, is not more than 6.5 inches in the next 2 feet of the fence and is not more than 8.5 inches in the rest of the fence.

5. The posts are not more than 12 feet apart.

(d) *Wooden posts.* If the fence is made of wood posts, all of the following shall apply:

1. The post shall be at least 14 feet long.

2. The top of the line posts shall, if rectangular, be at least 3.5 inches in the smallest dimension or, if round, at least 3.5 inches in diameter.

3. The top of the corner and gate posts shall, if rectangular, be at least 5.5 inches in the smallest dimension or, if round, at least 5.5 inches in diameter.

4. The wires shall be held securely to the posts, allowing for free movement of the horizontal line wires, using 9-gauge staples of at least 1.5 inch size.

(e) *Steel or iron posts.* If the fence is made with steel or iron posts, all of the following shall apply:

1. The posts shall be at least 14 feet long or, if the posts are of the type known as T post, the posts are at least 12 feet long.

2. The wires are installed on the side of the fence toward the farm-raised white-tailed deer except at corners.

(f) *Additions or expansion to fences.* Additions to or expansions of perimeter fencing that increase the size of the fenced area shall meet the 10' height requirement if constructed after January 1, 2003.

(g) *Gates.* All gates shall remain closed and secured except when persons or equipment are traveling through the gates.

(h) *Trees.* All new fences, additions or expansions that increase the size of the fenced area shall have a 25 foot corridor free from trees on both sides of the fence.

(2) SPECIAL FENCING REQUIREMENTS; DOUBLE OR SOLID FENCES. (a) *Farm-raised deer farms with perimeter fences less than 80 acres in size.* No person may possess captive farm-raised deer that are

white-tailed deer on any farm-raised deer farm with a perimeter fence less than 80 acres in size unless enrolled in the chronic wasting disease herd monitoring program established by s. ATCP 10.67 or unless captive farm-raised white-tailed deer are enclosed by double perimeter fences or at least one solid fence meeting the following standards:

1. Both fences shall meet the requirements established in s. NR 14.01(1)(a) to (g) except that the second fence need not exceed 8 feet and the 2 fences shall be at least 8 feet but not more than 12 feet apart.

2. Solid fences shall meet the requirements established in s. NR 14.01(1)(a) to (g) with a height requirement of 10 feet, the top 2 feet of the fence may consist of 3 horizontal strands of smooth high tensile wire with each strand being not more than 8 inches apart. The lower 7 feet of the fence shall be covered with solid material that prevents animals on opposite sides of the fence from making visual or physical contact. The solid perimeter fence shall contain at least one single strand electrified wire on the inside or the outside of the entire length of the perimeter fence at a height of 3 feet and shall be at a distance of 2 feet from the main fence.

(b) *Farm-raised deer farms with perimeter fences 80 acres or greater in size.* No person may possess captive farm-raised deer that are white-tailed deer on any farm-raised deer farm with a perimeter fence 80 acres or greater in size unless one of the following apply:

1. The farm-raised deer farm is enrolled in the hunting preserve chronic wasting disease surveillance program established by ch. ATCP 10.

2. The owner of a farm-raised deer farm files a deer harvest plan with the department to sample 10% of the resident deer population annually for chronic wasting disease over 3 consecutive years and 5% annually after the first 3 years.

3. Captive farm-raised white-tailed deer are enclosed by double perimeter fences or at least one solid perimeter fence meeting the following standards:

a. Both fences shall meet the requirements established in s. NR 14.01(1)(a) to (g) with a height requirement of 8 feet and the 2 fences shall be at least 8 feet but not more than 12 feet apart.

b. Solid fences shall meet the requirements established in s. NR 14.01(1)(a) to (g) with a height requirement of 10 feet, the top 2 feet of the fence may consist of 3 horizontal strands of smooth high tensile wire with each strand being not more than 8 inches apart. The lower 7 feet of the fence shall be covered with solid material that prevents animals on opposite sides of the fence from making visual or physical contact. The solid perimeter fence shall contain at least one single strand electrified wire on the inside or the outside of the entire length of the perimeter fence at a height of 3 feet and shall be at a distance of 2 feet from the main fence.

(3) **MINIMUM SIZE.** A farm-raised white-tailed deer farm fence may not enclose less than ½ acre or 21,780 square feet.

(4) **PREDATORS.** In order to be eligible for wolf damage payments, all outside perimeter fences shall be predator proof to prevent wolves from entering the facility.

(5) **EXCEPTIONS.** The use of materials, other than those specified in this section for farm-raised deer farm boundary fence construction may be permitted by the secretary of the department if found to exceed minimum specifications and sufficient to hold the deer inside the enclosure.

(6) **FENCING COMPLIANCE EXTENTION.** (a) *Time period to bring farm-raised deer farms with perimeter fences less than 80 acres in size fences into compliance with s. NR 14.01(2).* Farm-raised deer farms with white-tailed deer with perimeter fences less than 80 acres in size shall have until June 1, 2003

to enter the chronic wasting disease herd monitoring program established by s. ATCP 10.67 or file a fencing plan with the department on forms supplied by the department.

(b) *Time period to bring farm-raised deer farms with perimeter fences 80 acres or greater in size fences into compliance with s. NR 14.01(2).* Farm-raised deer farms with white-tailed deer with perimeter fences 80 acres or greater in size shall have until June 1, 2003 to enter the chronic wasting disease herd surveillance program established by ch. ATCP 10 or file a fencing plan with the department on forms supplied by the department.

(c) *Fencing plan.* The fencing plan shall include all of the following:

1. Name and address of the farm-raised white-tailed deer farmer.
2. Farm-raised white-tailed deer farm registration number.
3. Number of fenced acres containing white-tailed deer not in the chronic wasting disease herd monitoring program as established by s. ATCP 10.67 or surveillance program as established by ch. ATCP 10.
4. Plans for double or solid fencing of the property.
5. Signed statement that the double or solid fence will be installed by:
 - a. December 31st 2003 for perimeter fences less than 80 acres in size.
 - b. December 31st 2004 for perimeter fences 80 acres or greater in size.

(7) **REPORTING OF FENCE FAILURE.** Any time a fence required by s. 90.21, Stats., fails to contain farm-raised deer that are white-tailed deer, the person issued the fence certificate shall notify the department of the fence failure. The notification shall take place immediately if possible but not later than 48 hours after the person is aware the fence failure has occurred.

NR 14.02 Removal of wild white-tailed deer. (1) REMOVAL OF WILD DEER. Prior to the issuance of a fence inspection certificate as provided by s. 90.12(2), Stats., all wild white-tailed deer remaining in a fenced area after the fence surrounding the area is completely closed shall be killed in one of the following ways:

(a) *Permit.* A written permit issued to the landowner or persons designated by the department to shoot the wild white-tailed deer within the fence.

(b) *Department employees.* By department employees.

(2) **DISPOSAL OF WILD WHITE-TAILED DEER.** All deer killed shall be disposed of as directed by the department.

NR 14.03 Harmful wild animals. The following wild animals are designated harmful wild animals:

- (1) **URSIDAE.** Members of the family ursidae commonly known as bears.
- (2) **FELIDAE.** The species felis concolor commonly known as cougars.

NR 14.04 Captive wild animal farm licenses. For captive wild animal farm licenses issued under s. 169.15, Stats., the standards in ss. NR 16.02 (5)(e) and (7) and 16.10(4) and (6) to (11) shall apply.

NR 14.05 Nonprofit educational exhibitors licenses. For nonprofit educational exhibitors licenses issued under s. 169.26, Stats., the standards established in s. NR 16.10(4) and (6) to (11) shall apply.

NR 14.06 Nonresident temporary exhibitors licenses. For nonresident temporary exhibitors licenses issued under s. 169.27, Stats., the standards established in s. NR 16.10(4) and (6) to (11) shall apply.

NR 14.07 Stocking licenses. For stocking licenses issued under s. 169.23, Stats., the standards established in s. NR 19.05 shall apply.

NR 14.08 Scientific research licenses. For scientific research licenses issued under s. 169.25, Stats., the standards established in s. NR 19.11 shall apply.

NR 14.09 Wild fur farms. (1) ELIGIBILITY REQUIREMENTS. Except as authorized by s. 169.18(3)(b), Stats., in order to be eligible for a wild fur farm license, the applicant shall own or lease at least 40 acres of land in a single parcel. If multiple, noncontiguous parcels are sought to be licensed by an applicant, the applicant shall obtain a separate wild fur farm license for each parcel. No application may include parcels of land which are contiguous to a parcel which consists of 640 acres of land already licensed by the applicant or sought to be licensed in a separate application.

(2) **PUBLIC RIGHTS.** The issuance of a wild fur farm license does not affect any public right of hunting, fishing or navigation on navigable waters included within the licensed premises.

(3) **TAGGING.** Otter taken under authority of the wild fur farm license shall be tagged with tags provided by the department prior to being removed from the licensed premises. Live otter shall be tagged by attachment of the tag to the shipping pen. The tag shall be retained by the purchaser for 3 years and may not be returned to the seller.

(4) **AUTHORIZATION.** The wild fur farm license authorizes the taking of beaver, coyote, mink, muskrat, opossum, otter, raccoon and skunk only on the licensed premises.

(5) **LIMITATION.** The wild fur farm license does not authorize the taking or possession of badger, bobcat, fisher, fox, lynx, marten, weasel or wolf.

NR 14.10 Bird hunting preserve licenses. For bird hunting preserve licenses issued under s. 169.19, Stats., the standards established in s. NR 19.07(1), (5), (8)(b) and (c) shall apply except that provisions regarding contiguous lands and department certifications are not applicable.

NR 14.11 Dog trial licenses. For dog trial licenses issued under s. 169.21, Stats., the standards established under s. NR 17.01 shall apply.

NR 14.12 Dog training licenses. For dog training licenses issued under s. 169.20, Stats., the standards established under s. NR 17.02 shall apply.

NR 14.13 Dog club training licenses. (1) LICENSES. The licensee shall be subject to the following conditions:

(a) *Display of license.* Be in possession of a dog club training license at the clubhouse or training grounds while engaged in training activities. If a club member is engaged in training activities but not within physical proximity to the clubhouse, the member shall be in possession of a copy of the club training license. Club members shall make the license available to any authorized department agent upon request.

(b) *Area restrictions.* 1. Be an owner or lessee of lands designated on the license.

2. Train only in the areas identified on the license.

(2) **AUTHORITY.** A dog club training license authorizes the club members to possess and use for bird dog training, captive wild pheasants of the species *phasianus colchicus* or *symaticus reevesii*, quail of the subfamily *odontophorinae*, gray partridge, chukar partridge, red-legged partridge, and mallard duck that are bred in captivity. A dog club training license authorizes the club members to possess and use for hound dog training, captive wild raccoons and rabbits. The license does not authorize the use of captive bear, commercial shoots, dog trials, animal selling, breeding or propagation.

(a) *Proof of legal possession.* Any person using captive wild birds or wild animals for dog training shall possess a receipt or invoice meeting the requirements of s. NR 17.11 and showing the captive birds or animals were purchased from a licensed captive wild animal farm, wild fur farm or bird hunting preserve.

(b) *Care and treatment.* Captive wild birds, raccoons and rabbits possessed for dog training purposes shall be treated in a humane manner and confined under sanitary conditions with proper and adequate space, shade and fresh water. If birds or animals are severely injured they shall be humanely killed. Animals held in primary enclosures shall meet the standards in s. NR 16.10 (10) and (11).

(c) *Captive wild bird identification.* All captive wild birds except mallards identified as required under 50 CFR 21.13 (b) released and killed under the authority of a dog training license shall be marked around the leg with a permanent band supplied by the department prior to release.

(d) *Bird bands.* No person may have on their person while engaged in dog training any unused department dog training bird bands.

(e) *Licensed captive raccoons.* Captive raccoons used for dog training shall be tattooed on either ear with an identifying number, unless controlled by leash, cage or similar restraint.

SECTION 2. NR 16.01 is repealed.

SECTION 3. NR 19.26(6)(b) and (c) are amended to read:

NR 19.26(6)(b) Native leopard frogs of the species *Rana pipiens*, mudpuppies of the species *Necturus maculosus* or tiger salamanders of the species *Ambystoma tigrinum* collected within Wisconsin may be sold if the seller has been specifically authorized, by ~~commercial permit~~ a class A captive wild animal farm license issued under sub. (7), to sell those species.

(c) Native amphibians and reptiles legally collected out-of-state or purchased from out-of-state may only be sold to educational or research institutions in state. The seller shall possess a ~~commercial permit~~ class A captive wild animal farm license issued under sub. (7).

SECTION 4. NR 19.26(7)(a) and (b) are amended to read:

NR 19.26(7)(a) The department may issue ~~commercial herptile permits~~ a class A captive wild animal farm license to take, possess and sell amphibian species listed under sub. (4)(g).

(b) The department may issue ~~commercial herptile permits~~ a class A captive wild animal farm license to possess and sell native amphibians and reptiles legally collected out-of-state or purchased from out-of-state.

SECTION 5. NR 19.26(7)(c) and (d) is repealed.

SECTION 6. NR 19.26(8)(a), (b) and (c) are amended to read:

NR 19.26(8)(a) ~~Commercial permittees~~ Class A captive wild animal farm licensees shall keep complete and accurate records in the English language of all harvesting, selling and buying activities for all native species collected or obtained instate or from out-of-state. Records shall include: ~~permittee's~~ licensee's name, ~~permit number, fishing or applicable hunting~~ license number and address. Harvest data shall ~~included~~ include daily collection records, date of harvest, counties harvested, species and the pounds of each amphibian species harvested. All buying and selling records shall include the species bought and sold, the number of each reptile species bought and sold and the pounds of each amphibian species bought and sold, the date of the transaction, and the name and address of the person or business the ~~permittee~~ licensee is buying from and selling to. Reporting forms shall be provided by the department.

(b) ~~Commercial permittees~~ Class A captive wild animal farm licensees shall submit copies of all records specified under par. (a) for the past calendar year. The records shall be submitted in person or by first class mail to the department address shown on the form so that it is received by the 15th day of March following the year of record. Failure to submit all records on time, or the submission of inaccurate or incomplete records, may result in a delay or denial of a ~~permit~~ license renewal.

(c) The department may issue ~~permit~~ license renewals contingent on the receipt of complete and accurate paper records from the prior year.

SECTION 7. STATEMENT OF EMERGENCY. 2001 Wisconsin Act 56 was not enacted until April of 2002. It required standards for captive animals held under licenses issued under ch. 169, Stats., to be in place by January 1, 2003, the effective date of the change from licensing under ch. 29, Stats., to ch. 169, Stats. As the use of the permanent rule process would not allow these standards to be in place by January 1, 2003, the Department had no choice but to use the emergency rule procedures. Failure to have standards in place would result in the lack of humane care standards for wild animals held in captivity and the lack of pen standards necessary to prevent the interactions between captive and wild animals.

SECTION 8. EFFECTIVE DATE. This rule shall take effect on January 1, 2003.

SECTION 9. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on December 4, 2002.

Dated at Madison, Wisconsin December 6, 2002

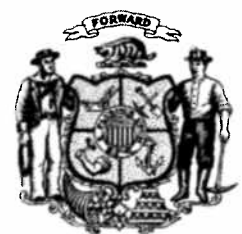
STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By Darrell Bazzell
Darrell Bazzell, Secretary

(SEAL)



WISCONSIN STATE LEGISLATURE



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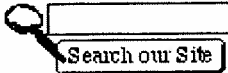
Manitowoc Weather



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Hi: 81 °F
Lo: 62 °F

LOCAL NEWS

Posted July 30, 2003



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- ▣ [Packers](#)
- ▣ [Business](#)
- ▣ [Features](#)
- ▣ [Opinions](#)
- ▣ [Obituaries](#)
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Committee extends DNR deer fence rules

MADISON — A legislative committee voted Tuesday to extend the Department of Natural Resources' emergency rules on deer-farm fences to keep chronic wasting disease from spreading.

The Joint Committee on Review of Administrative Rules voted 9-0 to extend the rules for 60 days. One committee member was absent.

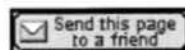
The DNR drafted the emergency rules to keep wild deer from mingling with captive deer and perhaps spreading the disease. The Assembly Natural Resources Committee is scheduled to consider making the rules permanent Aug. 6.

The emergency rules require deer farmers to enroll their deer in a chronic wasting disease monitoring program or to build double fences around their farms to prevent escapes, said Kurt Thiede, a rules specialist with the DNR's wildlife management bureau.

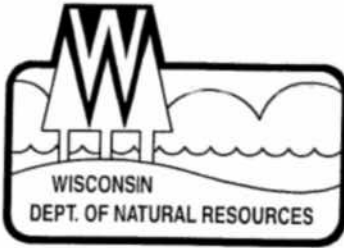
The emergency rules also increase the minimum fence height from nearly 8 feet to 10 feet. But Thiede said the DNR in practice will require them to be only 8 feet because the permanent rules will require them to be that height. Thiede said few deer are able to leap over 10-foot-tall fences.

Chronic wasting disease was discovered in Wisconsin's wild deer herd in southwestern Wisconsin in February 2002, the first time the disease was found east of the Mississippi River. The disease causes holes in deers' brains. Deer then grow thin, act abnormally and eventually die.

[Back to Top](#)







State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Jim Doyle, Governor
Scott Hassett, Secretary

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January 5, 2004

Honorable Joseph Leibham, Chair
Joint Committee for Review of Administrative Rules
Room 409 South
State Capitol

Honorable Glenn Grothman, Chair
Joint Committee for Review of Administrative Rules
Room 15 North
State Capitol

JAN 06 2004

Re: Request for the extension of WM-37-03(E), an emergency rule that prohibits deer baiting and feeding in counties determined to be at the highest risk for CWD, TB and infectious disease transmittance and establishment.

Gentlemen:

The Department of Natural Resources, under s. 227.24(2), Stats., is requesting the Joint Committee for Review of Administrative Rules to extend Natural Resources Board Emergency Order No. WM-37-03(E). This request is for two consecutive 60-day extensions for a total of 120 days. This order is scheduled to expire on February 7, 2004 unless this request is granted.

The department is requesting these consecutive extensions to protect those areas of the state at highest risk for CWD (see attached memo). The current emergency rule serves as a stop-gap measure to protect the wild deer herd and domestic livestock from additional exposure to infected animals, and to assist the department with their disease control efforts until such a time that legislation and permanent rules can be implemented. However, in light of the delay in proceeding with follow-up permanent rules (currently on hold pending the outcome of proposed legislation, AB -519) we request that both 60-day emergency rule extensions be granted at this time rather than require a second 60-day extension request in April. This will help to make the transition from emergency rule to permanent rule less complicated for citizens of the state.

Your consideration of this request is appreciated. If you have any questions, please contact Tim Andryk of the Bureau of Legal Services at 264-9228.

Sincerely,

Scott Hassett
Secretary

Cc. Presiding Officers
Tom Hauge - WM/4
Kurt Thiede - WM/4
Tim Andryk - LS/5
Carol Turner - LS/5
Paul Heinen - AD/5

DATE: January 5, 2003

TO: Senator Joseph Leibham, co-chair, Joint Committee for Review of Administrative Rules
 Representative Glenn Grothman, co-chair, Joint Committee for Review of Administrative Rules

FROM: Tom Hauge, director, Department of Natural Resources, Bureau of Wildlife Management

SUBJECT: Request for the extension of WM-37-03(E), an emergency rule that prohibits deer baiting and feeding in counties determined to be at the highest risk for CWD, TB and infectious disease transmittance and establishment.

On September 4, 2003 the Natural Resources Board adopted emergency rule order WM-37-03(E) which prohibits deer baiting and feeding practices in any county where the entire county or any portion of the county is included in a CWD Management Zone (CWD eradication zone, CWD intensive harvest zone or herd reduction zone) or any county within a 10-mile radius of a captive or free-roaming, domestic or wild animal that has been confirmed to have CWD or TB since January 1, 1998. The rule was implemented on September 11, 2003 and will lapse on February 7, 2004, unless an extension is granted by your committee. Since legislation has not passed and permanent rules are not yet in place, an extension of this emergency rule is important to protect those areas of the state at highest risk for CWD.

The department realizes the risk with allowing these practices to continue, especially in those areas where CWD and TB have been identified. The current emergency rule serves as a stop-gap measure to protect the wild deer herd and domestic livestock from additional exposure to infected animals, and to assist the department with their disease control efforts. Therefore, the department requests the Joint Committee for the Review of Administrative Rules (JCRAR) grant an extension of emergency rule (WM-37-03(E)) to continue prohibiting the practices of deer baiting and feeding in those areas of the state that the department has identified as being at the greatest risk for CWD or TB.

Additionally, in light of the delay in proceeding with follow-up permanent rules (currently on hold pending the outcome of proposed legislation, AB-519) we request that both 60-day emergency rule extensions be granted at this time rather than delay the second 60-day extension request. This will help to make the transition from emergency rule to permanent rule less complicated for citizens of the state. Also, since the legislation will take precedence over the emergency rule at anytime. There is no risk in extending the emergency rule for 120 days. Regardless of the length of time that the emergency rule shall remain effect, statutorily, the department's legislative authority to regulate feeding of wildlife lapses after June 30, 2004. It is the department's intent to seek the maximum length of extensions (120 days) that would allow the ban to remain in effect until mid-June, or until legislation and rules are passed that would replace this emergency rule.

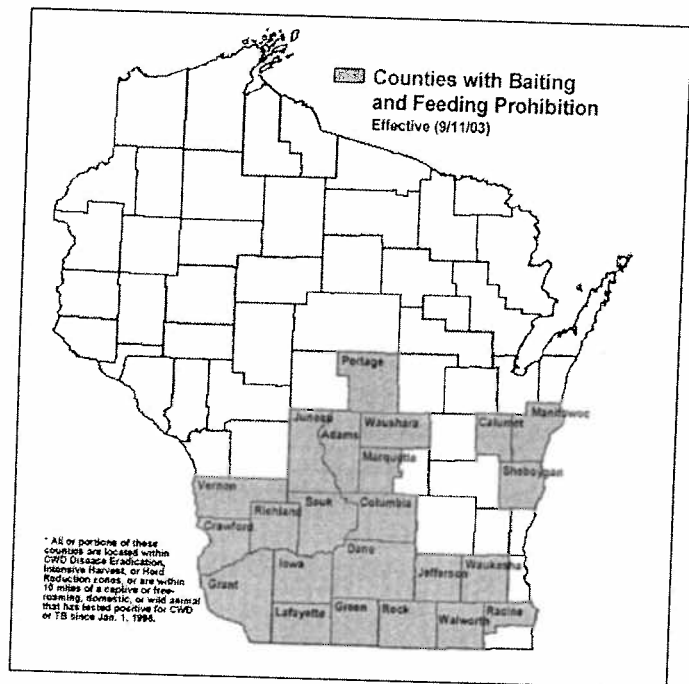


Figure 1. Counties included in a baiting and feeding ban.

Although we realize that the risk of disease transmission and establishment exists statewide, we feel the extension of this emergency rule will protect those areas of the state where we know that disease exists and the surrounding areas.

Current Emergency Rule:

Under the current emergency rule, the department imposes the same baiting and feeding regulations adopted by the NRB in April 2003 on a smaller geographic area (Attachment 1). The ban is in effect in any county where the entire county or any portion of the county is included in a CWD Management Zone (CWD eradication zone, CWD intensive harvest zone or herd reduction zone) or any county within a 10-mile radius of a captive or free-roaming, domestic or wild animal that has been confirmed to have CWD or TB since January 1, 1998 (Figure 1).

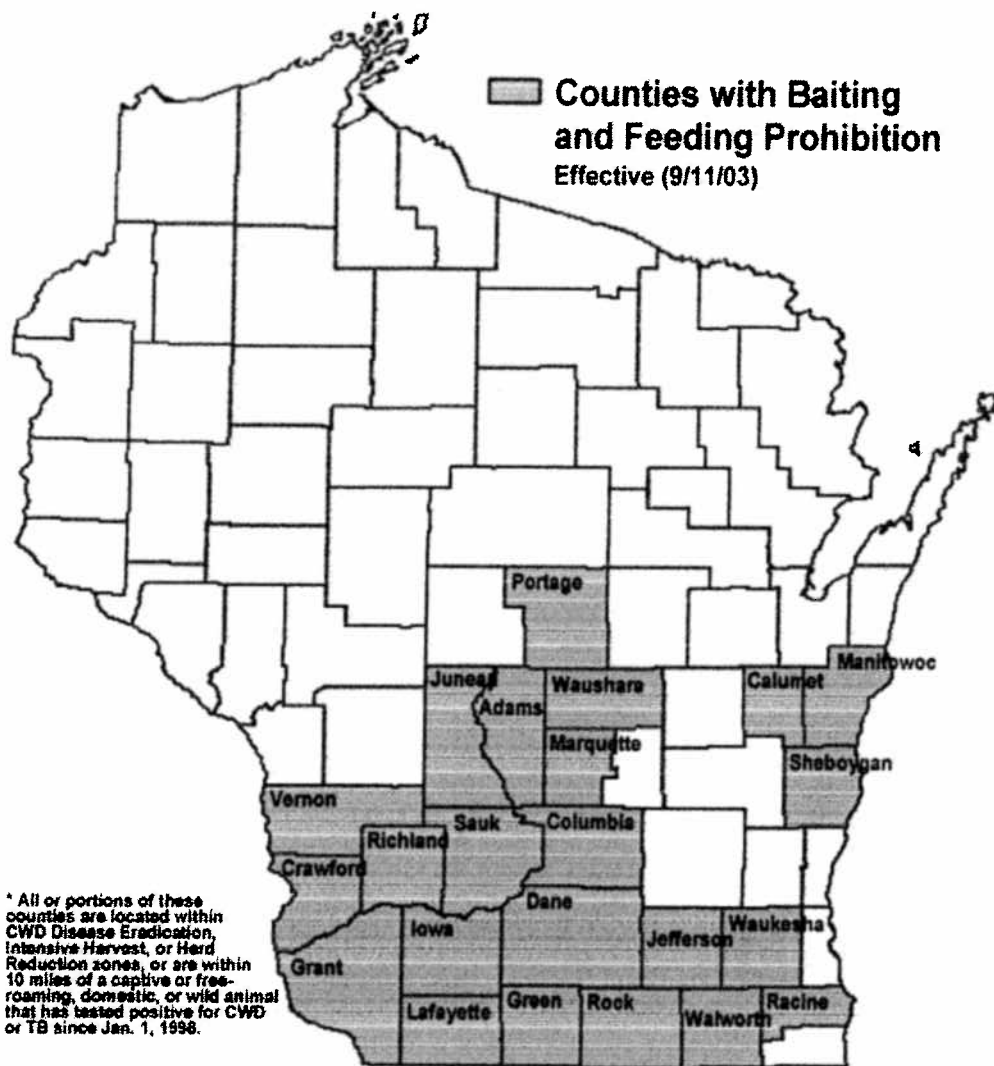
This description identifies the current known areas of highest risk in Wisconsin. In addition to CWD, Bovine TB has been added to the potential diseases of risk, since current research would suggest that this disease poses the most potential risk to Wisconsin's agriculture industry.

Although this description is fairly explanatory, the inclusion of counties within a 10-mile radius may need further clarification. The 10-mile radius was chosen as it is believed to be a conservative estimate of the distance a deer is likely to travel based on research in the Midwest. Although longer dispersals have been noted, 10 miles actually encompasses an average dispersal distance.

In addition to the prohibitions on baiting and feeding, this rule clarifies that the existing regulations pertaining to baiting (s. NR10.07(1)(g)) remain in effect in the counties not included in the ban.

The department continues to support a statewide ban on baiting and feeding as suggested by the scientific community as an important measure to prevent the spread of the disease or the potential establishment of the disease into new areas. However, if a statewide ban is not supported by the legislature, this emergency rule is the best alternative currently available until such a time that a permanent rule can be implemented.

2003 – 2004 Wildlife Baiting and Feeding Regulations



Affected Area:

On September 11, 2003 a prohibition on baiting and feeding went into effect in 22 southern Wisconsin counties (shaded). The counties included in the prohibition include Adams, Calumet, Columbia, Crawford, Dane, Grant, Green, Iowa, Jefferson, Juneau, Lafayette, Marquette, Portage, Racine, Richland, Rock, Sauk, Sheboygan, Vernon, Walworth, Waukesha, and Waushara in the remaining counties (non-shaded), there are no restrictions on feeding, and baiting for deer hunting is allowed but regulated. Please see below for an explanation of the regulations in place for your county.

Definitions:

"Bait" means any material used to attract wildlife including liquid scent.

"Bird feeding devices and structures" means any device or structure that has the primary purpose of attracting or feeding birds or small mammals.

"Liquid" means a substance, neither solid or gaseous, that flows freely and takes the shape of its container at a temperature of 70°F.

"Liquid scent" means any liquid material except honey used to attract wild animals solely by its odor.

"Scent" means any material except honey, used to attract wild animals solely by its odor.

"Small mammals" mean all mammals other than bear, deer and elk.

Counties where baiting and feeding is prohibited (shaded counties):

Baiting

Except as provided in number 3. below, or as authorized as a condition listed in a CWD landowner shooting permit, no person may hunt with the aid of bait, or place or use bait for the purpose of hunting wild animals or training dogs.

- No person may hunt or pursue animals in an area baited in violation of this subsection or in violation of the feeding prohibitions listed below, unless the area is completely free of bait or feed material for at least 10 consecutive days prior to hunting, pursuing animals or dog training.

3. A person may hunt with the aid of bait or place or use bait in any of the following circumstances:
 - a. Scent may be used for hunting deer or elk provided the scent is not placed or deposited in a manner that it is accessible for consumption by deer or elk. Non-liquid scents shall be removed daily by the end of hunting hours for deer. Two ounces or less of liquid scent may be placed or deposited in any manner for hunting game.
 - b. Hunting with the aid of material deposited by natural vegetation or material found solely as a result of normal agricultural or gardening practices is allowed.
 - c. Hunting over crops planted and left standing as wildlife food plots is allowed.
 - d. Bait may be placed in compliance with number 4. between April 15 and the close of the bear season for hunting bear or training bear dogs during the open seasons for these activities, provided that when the bait is placed and when the bait site is checked or re-baited, the bait is totally enclosed in a hollow log, a hole in the ground or stump which is capped with logs, rocks or other naturally occurring and unprocessed substances which prevents deer from accessing the material. Liquid scent used for hunting of bear or training bear dogs from April 15 to the end of bear season does not need to be enclosed in a hollow log, a hole in the ground or stump.
4. When hunting bear or bear dog training, no person may:
 - a. Place, use or hunt with the aid of bait material, in excess of 10 gallons for attracting wild animals or containing honey, bones, fish, meat, solid animal fat or parts of animal carcasses.
 - b. Place, use or hunt with the aid of bait material, other than scent, which is contained within or containing metal, paper, plastic, glass, wood or other similar processed materials. Use of hollow logs or stumps is permitted.
 - c. Place, use or hunt with the aid of bait material within 50 yards of any trail, road or a campsite used by the public.
 - d. Hunt with the aid of bait material, other than scent, without possessing a valid unused class A or a class B bear license.

Feeding

1. Except as provided in number 5. Below, or as a condition of a CWD landowner shooting permit, no person may place, deposit or allow the placement of any material to feed or attract wild animals.
2. Any person placing material or feed to attract wild animals other than permitted in number 5. Below, shall remove all food or other material illegally placed or deposited when ordered by the department to do so.
3. Landowners, lessees or occupants of any property where feeding is occurring, other than permitted in number 5. below, shall remove all food or other material illegally placed or deposited upon notification by the department of the illegal activity.
4. Elevated feeders that are designed to deposit food on the ground are prohibited.
5. The following activities are allowed:
 - a. Material placed solely for the purpose of attracting and feeding wild birds and small mammals when placed in bird feeding devices and structures at a sufficient height or design to prevent access by deer and only when the structures and devices are no further than 50 yards from a dwelling devoted to human occupancy. If wild deer are utilizing bird feeding devices or structures, the devices or structures shall be enclosed or elevated higher to prevent access by deer.
 - b. Feeding of wild animals, other than deer, elk or bear, by hand is allowed if:
 - Feed is placed not more than 30 feet away from the person doing the feeding, and
 - The person doing the feeding makes all reasonable attempts to clean up the unconsumed food before moving a distance greater than 30 feet from the deposited food.
 - c. Food deposited by natural vegetation or found solely as a result of normal agricultural or gardening practices.
 - d. Standing crops planted and left standing as wildlife food plots that may be used by wild animals.
 - e. Food material placed for bear hunting or bear dog training as specified in numbers 3. and 4. under baiting above.
 - f. Food material placed for trapping as specified in the 2003 Trapping Regulations.
 - g. The use of decoys for non-hunting purposes.
 - h. The placement of plain water for drinking or for bird baths.
 - i. The use of scents provided the material is not accessible for consumption by deer or elk.
 - j. Food or bait material placed or used for fish, reptiles, amphibians or arthropods provided the material is not accessible to bear, deer or elk.

Note: These feeding rules do not apply to captive wild animals held and licensed under ch. 169, Stats.

Remaining parts of the state not included in the baiting and feeding ban (non-shaded counties):

Baiting

It is illegal to:

1. place, use or hunt over bait contained within or containing metal, paper, plastic, glass, wood (other than hollow stumps) or other nondegradable materials.
2. use mechanical feeders for the purpose of hunting.
3. use any baiting material, liquid or scent for attracting wild animals containing honey, bones, fish, meat, solid animal fat (which includes bacon grease) or parts of animal carcasses.
4. place or hunt over baiting material, liquid or scent within 50 yards of any trail, road or campsite used by the public.
5. hunt over baiting material, liquid or scent during the archery season without possessing a valid, unused bear harvest permit or archery deer tag.
6. place more than 10 gallons of bait material or liquid scent in a baited area or hunt over a baited area containing more than 10 gallons of bait material or liquid scent. Note: You may hunt over material deposited by natural vegetation or found solely as a result of normal agricultural practices.

Clarification: It is illegal to hunt deer in an area that was baited in violation of 1., 2., 3. or 6. (above) from July 1 to January 31 unless the area is completely free of all baiting material for at least 10 consecutive days prior to hunting. The fact that the illegal bait is removed, allowing the area to be hunted after 10 consecutive days, does not alter any liability for the initial illegal placement of the bait.

Feeding

There are no limitations or restrictions on feeding wildlife in these counties. However, considering that the risks associated with CWD and Bovine TB may exist statewide, the Department of Natural Resources is requesting that individuals in these counties refrain from feeding deer. The activity of feeding results in an unnatural concentration of deer that can act as a method by which infectious diseases can be spread.

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

The Wisconsin Natural Resources Board proposes an order to repeal NR 10.07(1)(g), amend NR 10.001(2) and (14); and to create NR 10.001 (7e), (23e), 10.07(2) and (2m), 19.001(4) and (15m), and 19.60 relating to the regulation of baiting and feeding to control and manage chronic wasting disease and bovine tuberculosis.

WM-37-03(E)

Analysis Prepared by Department of Natural Resources

Statutory Authority: § 29.014 , 29.063, 29.335, 227.11 and 227.24, Stats.

Statutes Interpreted: § 29.063 and 29.335, Stats.

Sections 1. Amends the definition of bait.

Section 2. Defines decoy.

Section 3. Amends the definition of liquid scent.

Section 4. Defines scent.

Sections 5. Repeals the existing baiting language.

Section 6. Prohibits the use of bait in an entire county if the county or portion of that county is in a CWD zone, in counties where animals have tested positive for CWD or Bovine TB, or counties within a 10-mile radius of animals that have tested positive for CWD or Bovine TB. Provides exceptions for landowners in the eradication zone and for bear hunting by imposing bait site, permit and date restrictions, and also allows the use of liquid scents for deer hunting.

Section 7. Creates baiting regulations for areas outside of the areas described in section 6. These regulations were previously located in NR 10.07(1)(g), but repealed to better organize the chapter.

Section 8. Defines bird feeding devices and structures.

Section 9. Defines small mammals.

Section 10. Prohibits feeding in an entire county if the county or portion of that county is in a CWD zone, in counties where animals have tested positive for CWD or Bovine TB, or counties within a 10-mile radius of animals that have tested positive for CWD or Bovine TB. Outlines exceptions for birds and small mammals.

Section 1. NR 10.001(2) is amended to read.

NR 10.001(2) For the purposes of this chapter, "bait" means ~~honey and any solid or nonliquid~~ any material attractive used to attract wildlife including liquid scent.

Section 2. NR 10.001(7e) is created to read.

NR 10.001(7e) "Decoy" means the replica of an animal used to attract wild animals for the purpose of hunting, but does not include any food materials that can be consumed by any wild animal.

Section 3. NR 10.001(14) is amended to read.

NR 10.001(14) "Liquid scent" means ~~any nonsolid~~ liquid material except honey used to attract wild animals solely by its odor.

Section 4. NR 10.001(23e) is created to read.

NR 10.001(23e) "Scent" means any material except honey, used to attract wild animals solely by its odor.

Section 5. NR 10.07(1)(g) is repealed.

Section 6. NR 10.07(2) is created to read.

NR 10.07(2) BAITING PROHIBITED. (a) *Affected area*. This subsection applies to an entire county if:

1. CWD eradication zones, CWD intensive harvest zones or herd reduction zones have been established in the county or a portion of the county, or
2. A CWD or bovine tuberculosis positive captive or free-roaming, domestic or wild animal has been confirmed since January 1, 1998 from the county, or
3. The county or portion of the county is within a 10 mile radius of a captive or free-roaming, domestic or wild animal that has been tested and confirmed to be positive for CWD or bovine tuberculosis since January 1, 1998.

(b) *General prohibition*. 1. Except as provided in par. (c) or as authorized by a permit issued under s. NR 12.06(11), no person may hunt with the aid of bait, or place or use bait for the purpose of hunting wild animals or training dogs.

2. No person may hunt or pursue animals in an area baited in violation of this subsection or in violation of the feeding prohibitions of s. NR 19.60, unless the area is completely free of bait or feed material for at least 10 consecutive days prior to hunting, pursuing animals or dog training.

Note: Removal of unlawfully placed bait or other feeding material does not preclude the issuance of a citation for the original placement of the unlawful baiting or feeding material.

(c) *Exceptions*. A person may hunt with the aid of bait or place or use bait in any of the following circumstances:

1. Bait may be placed in compliance with par. (d) between April 15 and the close of the bear season for hunting bear or training bear dogs during the open seasons for these activities, provided that when the bait is placed and when the bait site is checked or re-baited, the bait is totally enclosed in a hollow log, a hole in the ground or stump which is capped with logs, rocks or other naturally occurring and unprocessed substances which prevents deer from accessing the material.
2. Liquid scent used for hunting of bear or training bear dogs from April 15 to the end of bear season does not need to be enclosed in a hollow log, a hole in the ground or stump.
3. This subsection does not prohibit hunting with the aid of material deposited by natural vegetation or material found solely as a result of normal agricultural or gardening practices.
4. This subsection does not prohibit hunting over crops planted and left standing as wildlife food plots.
5. Scent may be used for hunting deer or elk provided the scent is not placed or deposited in a manner that it is accessible for consumption by deer or elk and non-liquid scents shall be removed daily at the end of hunting hours for deer established in s. NR 10.06(5). Two ounces or less of liquid scent may be placed or deposited in any manner for hunting game.
6. This subsection does not prohibit hunting in accordance with s. 29.337, Stats., with the aid of feed material placed in compliance with s. NR 19.60.

Note: Baiting for purposes of trapping is regulated by ss. NR 10.13(1)(b), 19.27, 19.275 and not this subsection, baiting for migratory birds is regulated by s. NR 10.12(1)(h) and not this subsection. This subsection does not prohibit hunting with the use of decoys except as already prohibited under ss. NR 10.12(1)(f) and (g) and 10.25(4)(d).

(d) *Additional prohibitions for bear hunting and bear dog training*. No person may when hunting bear or bear dog training:

1. Place, use or hunt with the aid of bait material, in excess of 10 gallons for attracting wild animals or containing honey, bones, fish, meat, solid animal fat or parts of animal carcasses.
2. Except as allowed by par. (b) 1. and 5., place, use or hunt with the aid of bait material, other than scent, which is contained within or containing metal, paper, plastic, glass, wood or other similar processed materials.
3. Place, use or hunt with the aid of bait material within 50 yards of any trail, road or a campsite used by the public.
4. Hunt with the aid of bait material, other than scent, without possessing a valid unused class A or a class B bear license under s. 29.184, Stats.

(e) *Inclusion of additional counties.* 1. The department may include a county under this sub. if the county meets the criteria established in par. (a)1., 2. or 3.

2. The prohibitions and exemptions in this subsection shall become effective upon issuance of an order and publication in the official state newspaper. In addition, a notice of the order shall be provided to newspapers, legislators, hunting license outlets in the area affected, and the department's internet web site at www.dnr.state.wi.us.

Section 7. NR 10.07(2m) is created to read.

NR 10.07(2m) BAITING AUTHORIZED. This subsection applies statewide, except for those areas defined under sub. (2)(a).

1. Place, use or hunt over bait contained within or containing metal, paper, plastic, glass, wood other than hollow stumps or other nondegradable materials.
2. Except as established in s. NR 10.12 (1) (h), for the purpose of hunting or training dogs, place, use or hunt over bait for attracting wild animals containing honey, bones, fish, meat, solid animal fat or parts of animal carcasses, or in excess of 10 gallons of bait in a baited area.
3. Place or hunt over bait within 50 yards of any trail, road or campsite used by the public.
4. Hunt over bait during the archery season without possessing a valid, unused bear harvest permit or archery deer tag.
5. Hunt or pursue animals, or train dogs, in an area baited in violation of subd. 1. or 2. from July 1 through January 1 unless the area is completely free of bait for at least 10 consecutive days prior to hunting, pursuing animals or dog training.
6. This paragraph does not prohibit hunting over bait materials deposited by natural vegetation or found solely as a result of normal agricultural practices.
7. Hunt using bait during the closed hours for hunting small game, as established in s. NR 10.06 (5), unless the hunting involves the release of trailing dogs.

Section 8. NR 19.001(4) is created to read.

NR 19.001(4) "Bird feeding devices and structures" means any device or structure that has the primary purpose of attracting or feeding birds or small mammals.

Section 9. NR 19.001(15m) is created to read.

NR 19.001(15m) "Small mammals" mean all mammals other than bear, deer and elk.

Section 10. NR 19.60 is created to read.

NR 19.60 Feeding of wild animals. (1) AFFECTED AREA. This subsection applies to entire counties if they meet the criteria in s. NR 10.07(2)(a)1., 2. or 3.

(2) PROHIBITIONS. (a) Except as provided in this section or by permit issued under s. NR 12.06(11), no person may place, deposit or allow the placement of any material to feed or attract wild animals.

[Drafter's Note: NR 12.06(11) was created in Clearinghouse Rule No. 03-016]

(b) Any person placing material or feed to attract wild animals in violation of this section shall remove all food or other material illegally placed or deposited when ordered by the department to do so.

(c) Landowners, lessees or occupants of any property where feeding in violation of this section occurs shall remove all food or other material illegally placed or deposited upon notification by the department of the illegal activity.

(d) Elevated feeders that are designed to deposit food on the ground are prohibited.

(3) EXCEPTIONS. This paragraph does not prohibit any of the following activities:

(a) Material placed solely for the purpose of attracting and feeding wild birds and small mammals when placed in bird feeding devices and structures at a sufficient height or design to prevent access by deer and only when the structures and devices are no further than 50 yards from a dwelling devoted to human occupancy. If the department determines that wild deer are utilizing bird feeding devices or structures, the devices or structures shall be enclosed or elevated higher to prevent access by deer.

(b) Feeding of wild animals, other than deer, elk or bear, by hand is allowed if:

1. Feed is placed not more than 30 feet away from the person feeding, and
2. The person feeding makes all reasonable attempts to clean up the unconsumed food before moving a distance greater than 30 feet from the deposited food.

(c) Food deposited by natural vegetation or found solely as a result of normal agricultural or gardening practices.

- (d) Standing crops planted and left standing as wildlife food plots that may be used by wild animals.
- (e) Food material placed for bear hunting or bear dog training as specified in s. NR 10.07(2).
- (f) Food material placed for trapping as specified in s. NR 10.13.
- (g) The use of decoys for non-hunting purposes.
- (h) The placement of plain water for drinking or for bird baths.
- (i) The use of scents provided the material is not accessible for consumption by deer or elk.
- (j) Food or bait material placed or used for fish, reptiles, amphibians or arthropods provided the material is not accessible to bear, deer or elk.

Note: These feeding rules do not apply to captive wild animals held and licensed under ch. 169, Stats.

(4) INCLUSION OF ADDITIONAL COUNTIES. (a). The department may include a county under this section if the county meets the criteria established in s. NR 10.07(2)(a)1., 2. or 3.

(b) The prohibitions and exemptions in this section shall become effective upon issuance of an order and publication in the official state newspaper. In addition, a notice of the order shall be provided to newspapers, legislators, hunting license outlets in the area affected, and the department's internet web site at www.dnr.state.wi.us.

Section 11. Finding. The emergency rule procedure, pursuant to s. 227.24, Stats., is necessary and justified in establishing rules to protect the public health, safety and welfare. The state legislature has delegated to the department rule - making authority in 2001 Wisconsin Act 108 to control the spread of Chronic Wasting Disease (CWD) in Wisconsin. CWD, bovine tuberculosis and other forms of transmissible diseases pose a risk to the health of the state's deer herd and citizens and is a threat to the economic infrastructure of the department, the state, its citizens and businesses. These restrictions on deer baiting and feeding need to be implemented through the emergency rule procedure to help control and prevent the spread of CWD, bovine tuberculosis and other forms of transmissible diseases in Wisconsin's deer herd.

Section 12. Effective date. The rules shall take effect upon publication in the official state newspaper.

Section 13. Board adoption. The foregoing rules were approved and adopted by the State of Wisconsin Natural Resources Board on September 8, 2003.

Dated at Madison, Wisconsin

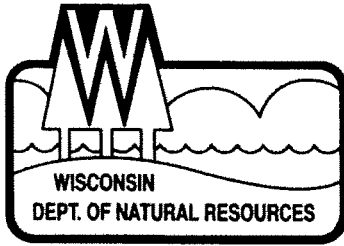
8 SEPT 2003

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By Scott Hassett
Scott Hassett, Secretary

(SEAL)





State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Jim Doyle, Governor
Scott Hassett, Secretary

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February 26, 2004

Honorable Joseph Leibham, Chair
Joint Committee for Review of Administrative Rules
Room 409 South
State Capitol

Honorable Glenn Grothman, Chair
Joint Committee for Review of Administrative Rules
Room 15 North
State Capitol

Re: Request for the extension of WM-37-03(E), an emergency rule that prohibits deer baiting and feeding in counties determined to be at the highest risk for CWD, TB and infectious disease transmittance and establishment.

Gentlemen:

The Department of Natural Resources, under s. 227.24(2), Stats., is requesting the Joint Committee for Review of Administrative Rules to extend Natural Resources Board Emergency Order No. WM-37-03(E). The Department requests that these emergency orders be extended 60-days, through June 6, 2004. This order is scheduled to expire on April 7, 2004 unless this request is granted.

The department is requesting these consecutive extensions to protect those areas of the state at highest risk for CWD (see attached memo). The current emergency rule serves as a stop-gap measure to protect the wild deer herd and domestic livestock from additional exposure to infected animals, and to assist the department with their disease control efforts until such a time that legislation and permanent rules can be implemented.

Your consideration of this request is appreciated. If you have any questions, please contact Tim Andryk of Bureau of Legal Services at 264-9228.

Sincerely,

Scott Hassett
Secretary

Cc. Presiding Officers
Tom Hauge – WM/4
Kurt Thiede – WM/4
Tim Andryk – LS/5
Carol Turner – LS/5
Paul Heinen – AD/5

CORRESPONDENCE/MEMORANDUM

State of Wisconsin

DATE: February 26, 2004

TO: Senator Joseph Leibham, co-chair, Joint Committee for Review of Administrative Rules
Representative Glenn Grothman, co-chair, Joint Committee for Review of Administrative Rules

FROM: *Tom* Tom Hauge, director, Department of Natural Resources, Bureau of Wildlife Management

SUBJECT: Request for a 60-day extension of WM-37-03(E), an emergency rule that prohibits deer baiting and feeding in counties determined to be at the highest risk for CWD, TB and infectious disease transmittance and establishment.

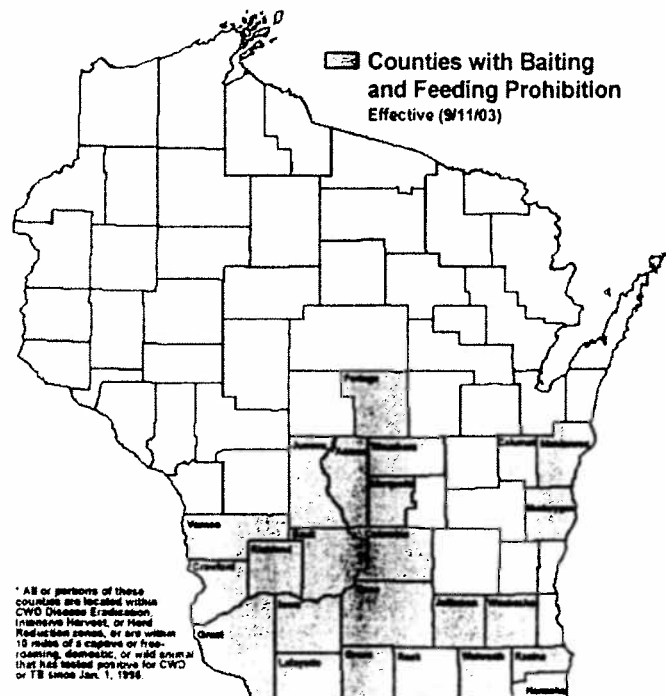
On September 4, 2003 the Natural Resources Board adopted emergency rule order WM-37-03(E) which prohibits deer baiting and feeding practices in any county where the entire county or any portion of the county is included in a CWD Management Zone (CWD eradication zone, CWD intensive harvest zone or herd reduction zone) or any county within a 10-mile radius of a captive or free-roaming, domestic or wild animal that has been confirmed to have CWD or TB since January 1, 1998. The emergency rule was implemented on September 11, 2003 and will lapse on April 7, 2004, unless a 60-day extension is granted by your committee. Since legislation has not passed and permanent rules are not yet in place, an extension of this emergency rule is important to protect those areas of the state at highest risk for CWD.

The department realizes the risk with allowing these practices to continue, especially in those areas where CWD and TB have been identified. The current emergency rule serves as a stop-gap measure to protect the wild deer herd and domestic livestock from additional exposure to infected animals, and to assist the department with their disease control efforts. Therefore, the department requests the Joint Committee for the Review of Administrative Rules (JCRAR) grant an extension of emergency rule (WM-37-03(E)) to continue prohibiting the practices of deer baiting and feeding in those areas of the state that the department has identified as being at the greatest risk for CWD or TB.

Although we realize that the risk of disease transmission and establishment exists statewide, we feel the extension of this emergency rule will protect those areas of the state where we know that disease exists and the surrounding areas.

Current Emergency Rule:

Under the current emergency rule, the department imposes the same baiting and feeding regulations adopted by the NRB in April 2003 on a smaller geographic area (Attachment 1). The ban is in effect in any county where the entire county or any portion of the county is included in a CWD Management Zone (CWD eradication zone, CWD intensive harvest zone or herd reduction zone) or any county within a 10-mile radius of a captive or free-roaming, domestic or wild animal that has been confirmed to have CWD or TB since January 1, 1998 (Figure 1).



This description identifies the current known areas of risk in Wisconsin. In addition to CWD, Bovine TB has been added to the potential diseases of risk, since current research would suggest that this disease poses the most potential risk to Wisconsin's agriculture industry.

Although this description is fairly explanatory, the inclusion of counties within a 10-mile radius may need further clarification. The 10-mile radius was chosen as it is believed to be a conservative estimate of the distance a deer is likely to travel based on research in the Midwest. Although longer dispersals have been noted, 10 miles actually encompasses an average dispersal distance.

The reason entire counties have been chosen, is for ease of application and understanding. Since this rule affects hunters and non-hunters alike, county boundaries are the logical choice as a majority of people are more familiar with county boundaries than the alternatives of deer management unit boundaries or township boundaries. In addition, there are a number of counties, such as Manitowoc and Sheboygan Counties that have enacted or are considering enacting a county ordinance that prohibits the feeding of deer.

In addition to the prohibitions on baiting and feeding, this rule clarifies that the existing regulations pertaining to baiting (s. NR10.07(1)(g)) remain in effect in the counties not included in the ban.

The department continues to support a statewide ban on baiting and feeding as suggested by the scientific community as an important measure to prevent the spread of the disease or the potential establishment of the disease into new areas. However, if a statewide ban is not supported by the legislature, this emergency rule is the best alternative currently available until such a time that a permanent rule can be implemented.