

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

The Wisconsin Natural Resources Board proposes an order to amend NR 10.105 (2), NR 10.105 (4) (intro), NR 10.105 (7) (a), and NR 16.45 (8) (intro); to repeal and recreate NR 10.105 (4) (a), NR 16.45 (2) (intro); and to create NR 16.45 (2) (c), (2e), (2m) (a) & (b), and (2s) relating to deer carcass transportation, deer farm fencing, and chronic wasting disease and affecting small business.

WM-11-18 (E)

Analysis Prepared by the Department of Natural Resources

1. Statute Interpreted: The chapter on wild animals and plants, in s. 29.014, “rule making for this chapter”, establishes that the department shall maintain open and closed seasons for fish and game and any limits, rest days, and conditions for taking fish and game.

Additionally, s. 29.063 grants the department broad authority to manage CWD in deer with subsections (3) and (4) allowing the department the ability to regulate the transportation, possession, control, storage or disposal of the carcass of a cervid in the state.

Finally, s. 90.21 (6) directs the department to promulgate rules for the fencing of deer farms that raise white-tailed deer.

2. Statutory Authority: Statutes that authorize the promulgation of this rule order includes sections 29.014, 29.063 and 90.21.

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

Section 29.063 specifically grants the department the ability to promulgate rules regulating the transportation and disposal of any cervid carcass in the state with limited exceptions.

In s. 90.21, the department is required by the legislature to promulgate rules that establish requirements for fences for which the department issues fence inspection certificates.

4. Related Statutes or Rules: This rule is related to, 17-R-02, a currently active rule being promulgated by the Department of Agriculture, Trade, and Consumer Protection. This proposed rule is related to enhanced fencing for cervid farms of all species.

5. Plain Language Analysis:

SECTION 1 removes prohibitions of quartering a deer in the field or leaving the carcass parts behind.

SECTION 2 restricts the ability for deer hunters who harvest a deer in a CWD-affected county to move that deer outside of the county that the deer was originally harvested.

SECTION 3 allows a hunter to remove a deer head from a CWD-affected county if the head is being

transported to an approved CWD sampling cooperator, kiosk, or staffed CWD testing center for testing the head for CWD.

SECTION 4 allows hunters to move a wild deer carcass with the head or spine attached out of a CWD-affected county if they take it to a licensed meat process or permitted taxidermist within 72 hours of leaving the county of harvest.

SECTIONS 5, 6 & 8 create enhanced fencing standards for deer farmers who raise white-tailed deer.

SECTION 7 removes language which allowed farm-raised white-tailed deer to be enclosed by a single perimeter fence.

SECTION 9 clarifies changes to fencing standards as a result of these rules do not apply to certain individuals and groups, who were already exempt from complying with the previous standards.

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

For deer hunting there are no related federal regulations. There is a federal herd status program, although participation in that program is voluntary. States possess inherent authority to manage the wildlife resources located within their boundaries, except insofar as preempted by federal treaties and laws, including regulations established in the Federal Register.

7. Comparison with Similar Rules in Adjacent States:

Iowa currently only requires a single 8-foot-high fence for deer farmers. They also restrict the movement of all wild or captive deer from CWD endemic areas outside the state but don't currently restrict movement of animals within the state.

Michigan requires mandatory testing of deer killed in townships where CWD is present within 72 hours of harvest. While the state does not currently restrict wild deer carcass movement, they are proposing additional regulations that would do so. One proposal would ban the movement of a deer carcass from a five-county area unless that deer has been tested for CWD. Michigan requires a single 10-foot-high exterior fence for farm raised white-tailed deer.

Illinois currently does not regulate the movement of deer carcasses within the state. Illinois does not currently have specific fencing requirements for white-tailed deer farms. They only require that all herd premises must have perimeter fencing adequate to prevent ingress and egress of cervids.

Finally, Minnesota does not allow any wild deer carcass to be removed from their CWD management area until after a CWD test has been completed, not even to a licensed meat processor or taxidermist. They define a CWD management area as any area within 10 miles of a known CWD positive. An individual that lives within that area may self-process their deer but they must keep the carcass parts in case the deer tests positive for CWD to be collected and disposed of by a digester. Minnesota currently only requires a single 8-foot fence, but they are exploring adopting rules which would require any deer farm within their CWD management area to double fence.

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

Since its discovery in Wisconsin in 2002, 55 counties either have experienced a positive test for CWD or are within ten miles of a positive testing event. Of these counties 25 are designated as such due to having a wild CWD positive deer, 16 are within 10 miles of a wild CWD positive deer and 14 have a captive

CWD positive or are within 10 miles of a captive CWD positive deer. While the pathways for the transmission of CWD remain unclear, Wisconsin has made efforts to slow the progression of the disease by restricting baiting and feeding and by requiring additional fencing that restricts contact between wild deer and captive populations. These efforts have not prevented the spread of CWD. The progression of CWD threatens the welfare of Wisconsin's unique hunting culture as well as the multi-billion-dollar hunting industry within the state.

Current rule language only requires that a white-tailed deer farmer install a single perimeter fence that meets department specification. A double fence is also currently allowed, but not required. The second fence must meet the same specifications as the perimeter fence. This proposal will require all deer farms to install either a second 8-foot-high fence, a solid barrier that is at least 8 feet high, or enhanced electric fencing attached to the existing perimeter fence. Farms where there has been a positive CWD test would be required to install a double 8-foot-high fence or a solid barrier that is at least 8-feet-high at every point.

Carcass transportation movement (natural or human-assisted) of infected animals is a key pathway in the spread of CWD. The infectious nature of the CWD prion contributes to an increased risk of transmission not only where live animals are concentrated, but also where dead animals are transported to if not disposed of in a proper manner. Hunter harvested deer carcasses are often moved across geographic barriers. This human assisted movement of carcasses has the potential to cause the spread of CWD where it would otherwise be much less likely through the natural movements of deer in a wild population.

Carcass movement restrictions were put into place to prevent tissues most likely to contain chronic wasting disease (CWD) infectious agents (prions) from being introduced to areas of the state where CWD does not yet exist. From 2002-2013, the CWD management zone consisted of south-central deer management units (DMUs). Starting September 1, 2009, regulations were put into place that only allowed movement of whole carcasses within the management zone and adjacent management units unless the carcass was brought to a licensed taxidermist or meat processor within 72 hours.

In 2014, the deer management units were changed to mostly county-based units. The CWD management zone was changed to CWD-affected counties. A county was considered CWD-affected if a wild or captive cervid had tested positive for CWD in the county or in a county within 10 miles. The CWD-affected counties encompassed a much larger area than the CWD management zone, including areas outside the southern endemic CWD area. This allowed hunters to move a whole carcass to more areas of the state than previously permitted.

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

Wild Deer Carcass Transportation. While these rules may make it more difficult for individuals to home butcher their deer, the process will not be outright prohibited since statute allows the movement of specific parts of the deer to any area of the state.

Many of the state's deer hunters already take their deer to a licensed meat processor and current rules exempt the movement of deer out of a CWD affected county to any licensed meat processor. We anticipate any additional cost to sportsmen will be related to those who currently home butcher carcasses and who will elect to take their deer to a meat processor instead of moving the carcass in parts as currently permitted.

The average cost of meat processing is estimated to be about \$150. We do not know how many sportsmen will opt to process their carcass at a licensed meat processor. Based on our preliminary analysis, we do not anticipate a significant economic impact to individuals or groups. If there were to be any economic cost resulting from this rule, we anticipate that it would be very minimal to moderate (between \$50,000 to

\$370,000). The additional cost that will be attributable to additional sportsmen opting for a licensed meat processor will be a benefit transferred to meat processors within the economy.

Enhanced Fencing. Currently, the department has registered approximately 370 locations as having farm-raised deer. Some of these 370 locations are already enclosed with enhanced fencing. Of that total, approximately 244 have white-tailed deer and 120 have other species of cervid. Locations with white-tailed deer have approximately 30,300 acres.

Fencing costs will vary depending on the acreage and terrain of the land to be fenced, labor costs, and type of fence to be installed.

Fencing materials included 8' tall woven wire high tensile fence (2096-6) 20 horizontal wires with vertical stay wires 6" apart and 96" tall. Set post was 6" x 12' treated wood post, and corner braces post were 6" x 12' treated wood post with a 5" x 12' treated wood post as a brace and 12 ½ ga. brace wire. Line post was spaced 20' apart and were 4" x 12' treated wood posts. There were 4 gate openings 14' wide and 1-14' pipe frame gate and wire over the pipe for each opening.

Labor costs will presumably be less if the owner installs the fence. Using fencing materials provided by Kencove.com, the department estimates fencing costs to be as follows per one square acre:

1. A second fence would cost approximately \$1,556 per square acre (\$1.85 per foot), not including labor, gates or shipping and handling, calculated and using materials as follows:
 - Using Fastlock Deer Fence, 20 horizontal lines, 96 inch height, 6 inch vertical spacing, 12.5 gauge high tensile wire, 330' roll (\$363.50 per roll) and 5" x 12' tapered pine wood post (\$15.15 per post).
 - One square acre would require 836 feet of fencing or 2.53 rolls of fence (\$919.65) + 42 posts (20 ft spacing) (42 x \$15.15 = \$636.30) for a total of \$1,556 per square acre.
2. Three strands of electric fence would cost approximately \$75.96, or \$350 per square acre (\$.09 or \$.41 per foot), not including labor, insulators, electric power unit, electricity, or shipping and handling, calculated using materials as follows:
 - Using 14 gauge ¼ mile (1,320 feet) electric fence wire (\$31.99 per roll) and 5' steel T posts (\$5.95 per post).
 - One square acre would require 836 feet of electric fencing x 3 strands (\$31.99 x 3 = \$99.97) + 42 posts (20 ft spacing) (42 x \$5.95 = \$250) for a total of \$350. If the electric wire is attached directly to the existing fence posts, T posts would not have to be purchased and the total cost would be \$75.96 per square acre.

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

The department estimates that the enhanced fencing portion of the rule will have a moderate economic impact on certain small businesses, particularly white-tailed deer farmers. However, these rules offer flexibility to deer farmers regarding the options that are available to them to install enhanced fencing. Landowners can choose a minimal cost option or can defray that cost by installing the fencing themselves.

Additionally, these rules may provide an economic impact to certain small businesses. Fencing installers may gain additional revenue as well as licensed meat processors.

Alternative to not imposing these rules is that CWD will continue to spread throughout the state. This could cause a drop-in participation in white-tailed deer hunting which contributes more than \$1 billion dollars to the state's economy. These rules will benefit landowners and small businesses who rely on

deer hunting for revenue.

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

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

Written comments were submitted at the public hearings, by regular mail and email to:

Scott Karel

Department of Natural Resources

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608-267-2452

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Written comments were also submitted to the Department at

DNRAAdministrativeRulesComments@wisconsin.gov.

SECTION 1. NR 10.105 (2) is amended to read:

NR 10.105 (2) CARCASS CONDITION AND TRANSPORTATION. No person may possess a ~~deer~~, bear, or elk carcass that is not completely intact while in the field or during transportation from the field, except that:

(a) The entrails may be removed and disposed of while afield by field dressing.

(b) ~~Deer~~, ~~b~~Bear, and elk may be skinned, and the lower legs of ~~a deer~~ an elk from the hooves up to the tarsus joint on the hind legs and from the hooves up to the carpus joint on the front legs may be removed. All parts must be removed from the field. If in-person registration is required, the hide and lower legs must accompany the ~~deer~~, bear, or elk until the time of registration. After in-person or electronic registration has been completed, and the ~~deer~~, bear, or elk has been removed from the field, all parts not retained shall be disposed of in a manner in compliance with s. 287.81 (2), Stats.

(c) A ~~deer~~, bear, or elk may be divided into not more than 5 parts, not including the hide and the lower legs, only to facilitate removal from the field. The head and neck of the bear or elk shall remain attached to one of the other parts of the animal, not including the hide. A person who divides a ~~deer~~, bear, or elk while afield:

1. May not allow the ~~deer~~, bear, or elk to be stored or transported with any other ~~deer~~ elk or bear that has been divided while afield.

2. May not divide any bear in a manner that does not keep one part of the bear intact to allow it to be measured in a straight line from the tip of the nose to the base of the tail, to determine it was an adult bear of 42 inches or greater.

3. Must remove all parts from the field.

4. Shall exhibit all parts at the time of registration when in-person registration is required by the department.

5. Must dispose of all parts not retained in a manner that is in compliance with s. 287.81 (2), Stats., but such disposal may only occur after in-person or electronic registration has been completed, and the ~~deer~~, bear, or elk has been removed from the field.

SECTION 2. NR 10.105 (4) (intro) is amended to read:

NR 10.105 (4) TRANSPORTATION OF CERVID ANIMALS FROM A CHRONIC WASTING DISEASE AFFECTED AREA. Unless otherwise authorized by the department, the carcasses of deer harvested in a chronic wasting disease affected area identified by the department may not be transported outside of ~~that area~~ the county of harvest except for any of the following, or as provided under sub. (7):

SECTION 3. NR 10.105 (4) (a) is repealed and recreated to read:

NR 10.105 (4) (a) A deer head being transported to an approved CWD sampling cooperator, kiosk, or staffed CWD testing center for the purpose of testing the head for CWD.

SECTION 4. NR 10.105 (7) (a) is amended to read:

NR 10.105 (7) (a) That part of the carcass which includes the head and spinal column shall be submitted to a licensed meat processor or permitted taxidermist within 72 hours of entering this state if the carcass originated from out of state, or within 72 hours from the time of registration the carcass leaves the county of harvest if the carcass originated from the chronic wasting disease affected area in this state.

SECTION 5. NR 16.45 (2) (intro) is repealed and recreated to read:

NR 16.45 (2) FENCE REQUIREMENTS. Except as specified under sub. (2m), farm-raised white-tailed deer herds registered under s. ATCP 10.46 shall be enclosed by enhanced fencing that includes one of following systems, or a combination of any of the following systems, that fully encloses a farm-raised deer herd and is approved by the department:

SECTION 6. NR 16.45 (2) (a) is repealed

SECTION 7. NR 16.45 (2) (c) & (2e) are created to read:

NR 16.45 (2) (c) The farm raised white-tailed deer are enclosed by a perimeter fence, at least 8 feet high at every point, that has at least three strands of electrified wire on the inside or the outside of the entire length of the perimeter fence, including gates, at heights ranging from 6 inches to 48 inches from the ground. The fence must be all of the following:

1. Electrified at all times except when power must be turned off for maintenance or other normal practices.
2. Constructed so that each strand is attached individually, each with its own insulators, to the perimeter fence.
3. Designed to exclude deer.
4. Maintained in a way that avoids the likelihood of electrical ground-out.

(2e) EFFECTIVE DATE. An enhanced fence under this sub (2) shall be completed within one year of the effective date of this rule. The department may inspect the fence under this section. Upon request by the department, the farm raised deer keeper shall provide transportation to inspect the fence.

SECTION 8. NR 16.45 (2m) (a) (b) & (2s) are created to read:

NR 16.45 (2m) FENCE REQUIREMENTS FOR CERTAIN WHITE-TAILED DEER FARMS. Farm-raised white-tailed deer herds registered under s. ATCP 10.46 that have had a positive chronic wasting disease test result for any deer residing in that herd, and if the herd does not depopulate all deer within the fence annually, shall be enclosed by enhanced fencing which includes one of following systems, or a combination of any of the following systems, which fully encloses a farm-raised deer herd and is approved by the department:

(a) The farm-raised white-tailed deer are enclosed by double perimeter fences in which both shall meet the requirements established in sub. (1) (a) to (i) and the 2 fences shall be at least 8 feet but not more than 16 feet apart.; or

(b) The farm-raised white-tailed deer are enclosed by one solid perimeter fence that shall meet the requirements established in sub. (1) (a) to (i) and 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.

(2s) EFFECTIVE DATE A double fence or solid barrier under sub (2m) shall be completed within one year of the effective date of this rule. The department may inspect the fence under this section. Upon request by the department, the farm-raised deer keeper shall provide transportation to inspect the fence.

SECTION 9. NR 16.45 (8) (intro) is amended to read:

NR 16.45 (8) EXEMPTIONS FOR CERTAIN PERSONS, ZOOS AND INSTITUTIONS. Each of the following is exempt from the requirements under sub. (1) (a) if approved by the department and subs. (2), (2e), (2m), (2s), (3), and (6):

SECTION 10. STATEMENT OF EMERGENCY. The department finds that an emergency rule is necessary to prevent the further spread of Chronic Wasting Disease (CWD) so that the state can continue the proper management of the deer population in a way that preserves the public welfare. A healthy deer herd and quality deer hunting are a critical component of Wisconsin's culture, economy and identity.

SECTION 11. EFFECTIVE DATE. This rule takes effect on the first day of the month following publication in the official state newspaper, as provided in s. 227.24(1) (c), Stats.

SECTION 12. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on [DATE].