



State of Wisconsin
Governor Scott Walker

Department of Agriculture, Trade and Consumer Protection
Sheila E. Harsdorf, Secretary

DATE: May 10, 2018

TO: Board of Agriculture, Trade and Consumer Protection

FROM: Sheila Harsdorf, Secretary
Paul McGraw, DVM, Administrator, Division of Animal Health

SUBJECT: Animal Diseases and Movement, Wis. Admin. Code ch. ATCP 10 (Notice of Preliminary Public Hearing and Comment Period)

PRESENTED BY: Paul McGraw, DVM, Administrator, Division of Animal Health

REQUESTED ACTION:

At the May 24, 2018 Board meeting, the Department of Agriculture, Trade and Consumer Protection (DATCP) will ask the DATCP Board to approve a notice of preliminary public hearing and comment period on a proposed emergency scope statement pertaining to Wis. Admin. Code ch. ATCP 10 regarding farm-raised deer movement and fencing.

SUMMARY:

The Department submitted the emergency scope statement to the Governor, who approved the emergency scope statement on May 3, 2018. The Joint Committee for Review of Administrative Rules, pursuant to Wis. Stat § 227.136, directed DATCP to hold a preliminary public hearing and comment period on the proposed emergency scope statement.

Next Steps

The preliminary public hearing and comment period is a precursor to the presentation of the proposed emergency scope statement before the DATCP Board.

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**State of Wisconsin
Department of Agriculture, Trade and Consumer Protection**

NOTICE OF PRELIMINARY PUBLIC HEARING AND COMMENT PERIOD

Emergency Rule Regarding Farm-Raised Deer Movement and Fencing

The Wisconsin Department of Agriculture, Trade and Consumer Protection (“Department”) announces that, pursuant to Wis. Stat. § 227.136, it will hold a preliminary public hearing and comment period on a proposed emergency scope statement pertaining to Wis. Admin. Code ch. ATCP 10 regarding farm-raised deer movement and fencing.

The Department will hold the preliminary public hearing at the time and place shown below. The Department invites the public to attend the preliminary public hearing on the proposed emergency scope statement. The Department invites the public to comment on the proposed emergency scope statement during the comment period from May 30, 2018 until June 14, 2018. Written public comments may be sent to the Division of Animal Health, Department of Agriculture, Trade and Consumer Protection, P.O. Box 8911, Madison, WI 53708-8911 or by e-mail to michael.carlson@wisconsin.gov.

Hearing Date and Location:

June 7, 2018
9:00 am to 12:00 pm
Board Room 106, First floor
Department of Agriculture, Trade and Consumer Protection
2811 Agriculture Drive
Madison, WI 53718

You may obtain a free copy of the Statement of Scope for this proposed rule by contacting the Wisconsin Department of Agriculture, Trade and Consumer Protection, Office of the Secretary, 2811 Agriculture Drive, P.O. Box 8911, Madison, Wisconsin 53708. You may also obtain a copy by contacting DATCP Administrative Rules Coordinator, Attorney Michael Carlson, at michael.carlson@wisconsin.gov or by calling (608) 224-5029. Copies will also be available at the hearing. To view the statement of scope online, go to: http://docs.legis.wisconsin.gov/code/register/2018/749A1/register/ss/ss_049_18/ss_049_18

Comments or concerns relating to small business may also be addressed to the Department’s small business regulatory coordinator, Alex Girard, at the address above, by telephone at (608) 224-5114, or by email to alexanderc.girard@wisconsin.gov.

Hearing-impaired persons may request an interpreter for this hearing. Please make reservations for a hearing interpreter by June 5, 2018, by writing, calling, or emailing DATCP Administrative Rules Coordinator, Attorney Michael Carlson. The hearing facility is handicap accessible.

Dated this ____ day of _____, 2018

STATE OF WISCONSIN,
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By _____
Sheila Harsdorf, Secretary

STATEMENT OF SCOPE

Department of Agriculture, Trade and Consumer Protection (DATCP)

Rule No.: Wis. Admin. Code ch. ATCP 10 (Existing)

Relating to: Animal Diseases and Movement

Rule Type: Emergency

1. **Finding/nature of emergency:**

Chronic wasting disease (CWD) is a serious issue facing Wisconsin. Since its discovery in Wisconsin in 2002, 53 counties either have experienced a positive test for CWD or are within ten miles of a positive testing event. 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. CWD also threatens captive deer herds maintained by Wisconsin's deer farms. The situation warrants emergency rule-making because findings of CWD infection are likely to increase prior to the completion of the multi-year process of permanent rule-making.

2. **Description of the objective of the rule:**

This proposed rule is intended to prevent or slow the spread of CWD by requiring the installation of enhanced fencing around all populations of captive deer. Enhanced fencing is conceptualized as consisting of at least one of the following barriers around the entire perimeter of any deer farm or hunting preserve: a double fence; a solid barrier that is at least 8 feet high; or three strands of electrified wire on the inside or the outside of the entire length of the perimeter fence.

Secondly, the rule would institute a ban on movement of farm-raised deer in any county that is affected by CWD.

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

The status quo

Currently, a herd in which CWD is detected must be quarantined for 5 years. DATCP may order the destruction of the herd, may require the disinfection of the premises, and may require the herd owner to enter into an agreement including a covenant to maintain fencing at the premises. DATCP maintains a chronic wasting disease herd status program that requires participants to engage in a variety of testing regimens, keep records, and install safeguards including the installation of enhanced fencing in cases where wild deer test positive for CWD in the vicinity of the captive herd. The program includes requirements concerning the movement of deer and additions to the herd.

Justification for proposed rule.

The reasons for the proposed rule are (a) the severity of CWD and (b) existent policy has not arrested the spread of CWD.

Policy Alternatives.

The alternatives are to remain with the status quo or to promulgate measures that are more restrictive than the status quo but less restrictive than the proposed rule.

4. Statutory authority for the rule (including the statutory citation and language):

DATCP has specific rulemaking authority over the farm-raised deer industry under s. 95.55 (6), Stats., including the authority to promulgate “[s]tandards to be followed by persons keeping farm-raised deer to prevent the spread of disease.” DATCP also has authority under s. 95.20, Stats., to prohibit or regulate the movement of animals if there are reasonable grounds to believe it is necessary to prevent the introduction or spread of disease. Additionally, under s. 93.07, Stats., DATCP is obligated to make regulations that are necessary and proper to the enforcement of statutes including chap. 93, and to establish and enforce animal quarantines.

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

DATCP estimates that it will use approximately 0.10 FTE staff to develop this rule, which includes time required for the investigation and analysis, financial assistance criteria, rule drafting, preparing related documents, and communicating with affected persons and groups. DATCP will use existing staff to develop this rule.

6. Description of all entities that may be impacted by the rule:

The rule will have an impact on keepers of farm-raised deer and on hunting preserves maintaining herds of captive deer.

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

There is a federal CWD-monitoring program, and federal regulations restrict the interstate movement of captive deer. The USDA Animal and Plant Health Inspection Services (APHIS) is in the process of updating their Chronic Wasting Disease Herd Certification Program Standards. Federal legislation has been introduced to provide additional funding for CWD research and control efforts, upgrade diagnostic laboratories and create a National Chronic Wasting Disease Clearinghouse. [Note: this paragraph has been modified from an earlier version of this document.]

8. Anticipated economic impact

The proposed rule will have a moderate to significant economic impact on keepers of farm-raised deer and on hunting preserves. Few of these locations currently have enhanced fencing. The cost of additional fencing consists of the cost of the materials plus the cost of labor. Both of these will vary based on the size and dimensions of the farm or preserve. The proposed rule is anticipated to include the option of electrified fencing, which is cheaper than existent options for enhanced fencing. It is anticipated that many keepers of smaller premises would perform the labor themselves. Most deer farms are small, less than 10 acres. The proposed limitation on the movement of captive deer will have a potentially moderate to significant impact on keepers of farm-raised deer.

Contact Person: Bill Cosh, DATCP; phone (608) 224-5020.

Sheila Harsdorf, Secretary
Department of Agriculture, Trade and Consumer Protection

Date



SCOTT WALKER
OFFICE OF THE GOVERNOR
STATE OF WISCONSIN

P.O. Box 7863
MADISON, WI 53707

May 3, 2018

Sheila Harsdorf
Secretary
Wisconsin Department of Agriculture,
Trade, and Consumer Protection
2811 Agriculture Drive
P.O. Box 8911
Madison, WI 53708-8911

RE: Scope Statement for Emergency Rule modifying ATCP 10 relating to animal disease and movement

Dear Secretary Harsdorf,

I hereby approve the statement of scope submitted on May 2, 2018 to SBO, pursuant to Wisconsin Statutes § 227.135, in regards to an emergency rule modifying Chapter ATCP 10 of the Wisconsin Administrative Code. You may send the scope statement to the Legislative Reference Bureau for publication pursuant to Wisconsin Statutes § 227.24(1)(e)1d.

Sincerely,

Scott Walker
Governor