

## **APPENDIX 1**

# Wisconsin Administrative Register

No. 562



Publication Date: October 31, 2002

Effective Date: November 1, 2002



Revisor of Statutes Bureau  
Suite 800, 131 West Wilson Street  
Madison, Wisconsin 53703-3233

Workforce Development:	<u>Unemployment Insurance, Chs. DWD 100-150</u> Rules relating to extension of the time period allowed for filing an initial claim for unemployment insurance benefits.
<b>Scope statements.</b>	<b>Pages 13 to 16</b>
Agriculture, Trade and Consumer Protection:	Rules relating to retail food establishments.
Athletic Trainers Affiliated Credentialing Board:	Rules relating to continuing education requirements.
Health and Family Services:	Rules relating to the screening of newborn infants for congenital disorders.
Marriage & Family Therapy, Professional Counseling & Social Worker Examining Board:	Rules relating to the Social Worker Section to accept from applicants for social worker certification a foreign degree to be equivalent to an accredited school. Rules to establish criteria for licensees of the board to treat alcohol or substance dependency or abuse as a specialty. Rules relating to the Professional Counselor examination.
Natural Resources:	Rules relating to ch. NR 25, commercial trap netting in Lake Michigan and commercial harvest limits for smelt in Lake Michigan. Rules relating to ch. NR 45, administrative rules for the use of department properties. Rules relating to ch. NR 10, eradication, management and control of Chronic Wasting Disease (CWD) in Wisconsin. Revisions to chs. NR 419, 422, 431, 439, 445, 447, 448, 449 and 484, to clarify compliance related rule provisions.
Psychology Examining Board:	Rules relating to licensees engaging in psychometric testing.
<b>Submittal of rules to the legislative council clearinghouse.</b>	<b>Page 17</b>
Corrections:	Relating to medical, dental and nursing copayment charge.
Employee Trust Funds:	Relating to participation in the variable division of the trust fund.
Natural Resources:	Relating to ch. NR 191, lake protection and classification grants.
Psychology Examining Board:	Relating to examinations, supervised experience, qualifications and responsibilities of supervisors, licensure by comity, reciprocity, holders of the certificate of professional qualification and senior psychologists, continuing education, renewal and professional conduct.
Regulation and Licensing:	Relating to music, art and dance therapists who practice psychotherapy.
<b>Rule-making notices.</b>	<b>Pages 18 to 24</b>
Agriculture, Trade and Consumer Protection:	Hearings to consider revisions to rules relating to plant inspection and pest control.
Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors:	Hearing to consider revisions to rules relating to architectural interns.
Corrections:	Hearings relating to medical, dental and nursing copayment charge.

**Policy Analysis**

Under new law effective November 1, 2002, Licensed Professional Counselors may practice psychotherapy independently. In order to ensure that LPCs are qualified to practice psychotherapy independently, the Professional Counselor Section wishes to require all new applicants for licensure to pass the national clinical exam, the NCMHCE. Without this change, there will be less certainty that Professional Counselors are qualified to practice psychotherapy, and requiring passage of the NCMHCE will ensure greater protection of the public.

**Statutory authority**

Sections 15.08 (5) (b), 227.11 (2), and 457.03 (1), Stats.

**Staff time required**

150 hours

**Natural Resources****Subject**

Section NR 25.09, pertaining to commercial trap netting in Lake Michigan and s. NR 25.06, pertaining to commercial harvest limits for smelt in Lake Michigan.

**Policy Analysis**

Trap Netting. Commercial trap netters fishing in Lake Michigan are required to remove trap nets from the area south of Algoma during the period starting June 28 and ending on Labor Day each year. The purpose of this requirement is to minimize physical interference between commercial nets and sport trollers. In waters open to trap net fishing north of Algoma, trap nets may remain in the water all year (although they are typically removed by October 26, the start of the whitefish closed season). Commercial fishers in the area south of Algoma have repeatedly requested that the trap netting season be extended. Some sport fishers in the Sheboygan area, including the Sheboygan Area Great Lakes Sport Fishermen, have supported this request. Others, especially in the Manitowoc-Two Rivers area have vigorously opposed it. Opposition to any change is based primarily on concern for the safety of sport trollers who might be at risk if their gear became entangled with a trap net. Department staff have attempted to find a generally acceptable compromise, but without success. Now the Department is proposing a compromise solution to the controversy. It would open the trap netting season during the summer in all areas south of Algoma, with exception of the area between Manitowoc and Two Rivers. In addition: a) it would limit the number of trap nets that could be set by each commercial fishing license holder, and b) it would establish additional net-marking requirements to help sport trollers avoid the trap nets. This will be controversial.

Smelt Harvest Limits. Participants in the 2002 Conservation Congress spring hearings voted overwhelmingly in favor of closing commercial trawling in Green Bay. We asked our citizen advisory group, the Lake Michigan Fisheries Forum, to discuss the issue and advise the Department. Following initial discussions there, it appears that a compromise recommendation might be developed by the Forum. The Department would like to hold open the option of advancing a compromise recommendation regarding smelt, in combination with the trap net rule change summarized above. This will also be controversial.

**Statutory authority**

Sections 29.041, 29.014 (1), 29.519 (1) (b) and 227.11 (2) (a), Stats.

**Staff time required**

Approximately 15 hours will be needed by the Department.

**Natural Resources****Subject**

Revision to Chapter NR 45 which contains the administrative rules for the use of Department properties. Department staff review Chapter NR 45 every two years and suggest revisions designed to ensure the health and safety of people using Department properties, and propose use regulations necessary for the protection of natural resources on the properties.

**Policy Analysis**

Many of the proposed changes are for the purpose of clarifying existing rules or increasing consistency between properties. There is also a rule being proposed to protect cultural resources (no sledding, skiing, snowboarding on the Indian Mounds at Aztalan) and a proposed requirement for dog sledders to obtain permits. Fee increases are being proposed for items such as trail passes, group camping and electrical services at campgrounds. An increase in the number of Type "A" campgrounds is being proposed which would result in increased fees. It has been over 10 years since the last camping fee increase. The increases are needed to help offset the continued rising cost of providing quality services and to offset the GPR reductions that all bureaus and agencies are facing. Local market conditions in the public and private sector indicate that such an increase is supportable.

**Statutory authority**

Statutory Authority: ss. 23.09 (2), 23.28 (3), 27.01 (2) (j) and 227.11 (2) (a), Stats.

**Staff time required**

Approximately 110 hours will be needed by the Department.

**Natural Resources****Subject**

Creation of a permanent rule to eradicate, manage and control Chronic Wasting Disease (CWD) in Wisconsin,

**Policy Analysis**

In February 2002, the department was informed three deer samples that were collected in Western Dane County during the 2001 November gun season tested positive for CWD. Since this discovery, intensive sampling and special landowner hunts have resulted in the discovery of a total of 31 CWD positive deer in the CWD surveillance area (Eradication Zone). Significant public involvement, discussion with national experts, other states and staff recommendations led to the development of the original CWD Emergency Rule which will expire on September 1, 2003. Since CWD is a disease that the state of Wisconsin will be dealing with for many years, the need for permanent rules to help control and eradicate this disease will be required. This rule package is the department's recommendation to deal with CWD in the state and request the Board approve the package for public comment.

The permanent rule would replace the measures that were approved by the Natural Resources Board in June 2002 as part

of the CWD Emergency Rule Package. Components of the permanent rule vary only slightly from the emergency rule and include provisions for the department to establish special deer hunting zones, reduce the deer herd through aggressive hunting seasons, landowner permits and department authorities. Also included are provisions for registration of deer, restrictions on deer baiting and wildlife feeding.

Groups likely impacted will be landowners in close proximity to CWD positive cases, deer hunters, meat processors and other businesses.

**Statutory authority**

Sections 29.014, 29.063, 29.307, 29.335 and 167.31, Stats.

**Staff time required**

Approximately 246 hours will be needed by the Department.

**Natural Resources**

**Subject**

Revisions to chs. NR 419, 422, 431, 439, 445, 447, 448, 449 and 484, Wis. Adm. Code, to clarify compliance related rule provisions.

**Policy Analysis**

The changes are necessitated by changes in federal reference test methods, updates of provisions incorporated by reference, errors in the current chapters and clarification language for existing rules which are not clear.

**Statutory authority**

Section 285.11 (6), Stats.

**Staff time required**

Approximately 115 hours will be needed by the Department.

**Psychology Examining Board**

**Subject**

*Objective of the Rule.* To establish rules under which licensees of the Marriage and Family Therapy, Professional Counseling and Social Work Examining Board may engage in psychometric testing.

**Policy Analysis**

2001 Wisconsin Act 80 authorized the Psychology Examining Board and the Marriage and Family Therapy, Professional Counseling and Social Work Examining Board to promulgate rules under which licensees of the latter board may engage in psychometric testing. Non-promulgation will bar licensed clinical social workers, licensed marriage and family therapists and licensed professional counselors from performing psychometric testing.

**Statutory authority**

Sections 15.08 (5) (b), 227.11 (2) and 457.033, Stats.

**Staff time required**

150 hours.

## **APPENDIX 2**

## Clearinghouse Rule 03-017

### Rule Sent to Clearinghouse

#### 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), 19.001(4) and (15m), and 19.60 relating to the regulation of baiting and feeding to control and manage chronic wasting disease.

WM-09-03

#### Analysis Prepared by Department of Natural Resources

Statutory Authority: § 29.014, 29.033, 29.335 and 227.11, Stats.

Statutes Interpreted: § 29.033 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 and 6.** Prohibits the use of bait statewide for hunting and 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.** Defines bird feeding devices and structures.

**Section 8.** Defines small mammals.

**Section 9.** Prohibits feeding of wildlife and outlines exceptions for birds and small mammals.

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

(b) *Exceptions.* 1. Bait may be placed in compliance with par. (c) between April 15 and the close of the bear season, for hunting bear or training bear dogs during the open season's for these activities, provided when the bait is placed and when the bait site is checked or re-baited, that 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. Baiting for purposes of trapping is regulated by ss. NR 10.13(1)(b), 19.27, 19.275 and this section.

5. Baiting for waterfowl is regulated by s. NR 10.12(1)(h) and not this section.

6. This subsection does not prohibit hunting over crops planted and left standing as wildlife food plots.

7. 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 animals.

8. 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.

9. 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).

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

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 6., 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 bear harvest permit.

5. 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.

**Section 7. 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 8. NR 19.001(15m) is created to read.**

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

**Section 9. NR 19.60 is created to read.**

**NR 19.60 Feeding of wild animals.** (1) 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.

(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.

Note: Elevated feeders that are designed to deposit food on the ground are prohibited.



(2) EXCEPTIONS. This paragraph does not prohibit:

(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.

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.

**Section 10. INITIAL APPLICABILITY.** 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 poses 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.

**Section 11. EFFECTIVE DATE.** The rules shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22(2)(intro.), Stats.

**Section 12. BOARD ADOPTION.** The foregoing rules were approved and adopted by the State of Wisconsin Natural Resources Board on \_\_\_\_\_.

Dated at Madison, Wisconsin \_\_\_\_\_

STATE OF WISCONSIN  
DEPARTMENT OF NATURAL RESOURCES

By \_\_\_\_\_  
Scott Hassett, Secretary

(SEAL)

## **APPENDIX 3**



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**WISCONSIN LEGISLATIVE COUNCIL  
RULES CLEARINGHOUSE**

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**Ronald Sklansky**  
*Clearinghouse Director*

**Richard Sweet**  
*Clearinghouse Assistant Director*

**Terry C. Anderson**  
*Legislative Council Director*

**Laura D. Rose**  
*Legislative Council Deputy Director*

**CLEARINGHOUSE REPORT TO AGENCY**

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

**CLEARINGHOUSE RULE 03-017**

AN ORDER to repeal NR 10.07 (1) (g); to amend NR 10.001 (2) and (14); and to create NR 10.001 (7e), (23e), 10.07 (2), 19.001 (4) and (15m) and 19.60, relating to the regulation of baiting and feeding to control and manage chronic wasting disease.

Submitted by **DEPARTMENT OF NATURAL RESOURCES**

02-10-2003 RECEIVED BY LEGISLATIVE COUNCIL.

03-10-2003 REPORT SENT TO AGENCY.

RS:REL

**LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT**

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]  
Comment Attached            YES             NO
2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]  
Comment Attached            YES             NO
3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]  
Comment Attached            YES             NO
4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS  
[s. 227.15 (2) (e)]  
Comment Attached            YES             NO
5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]  
Comment Attached            YES             NO
6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL  
REGULATIONS [s. 227.15 (2) (g)]  
Comment Attached            YES             NO
7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]  
Comment Attached            YES             NO



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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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### CLEARINGHOUSE RULE 03-017

#### Comments

**[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 2002.]**

#### **1. Statutory Authority**

The analysis cites s. 29.033, Stats., as one of the statutes providing authority for the rule and one of the statutes being interpreted by the rule. However, it appears that this statute does not exist. Is the notation a typographical error?

#### **2. Form, Style and Placement in Administrative Code**

a. In s. NR 10.001 (7e), the word “may” should be replaced by the word “does.”

b. Section NR 10.07 (2) (b) and (c) need to be rewritten. First, titles are not substantive parts of rule text. The following introduction in par. (b) would make the provision more clear: “A person may hunt with the aid of bait or place or use bait in any of the following circumstances:”. Second, par. (b) subds. 4., 5., 8., and 9. should not be included in the paragraph. Subdivisions 4., 5., and 9. are more appropriately placed in a note and subd. 8. should be an additional exception stated in par. (a). Next, the introduction to sub. (2) (c) would be more clear as follows: “No person may engage in any of the following activities when bear hunting or bear dog training:”.

c. In s. NR 19.60 (1), the note is substantive and either should be placed in the rule text or a cross-reference should be placed in the note to indicate to the reader where the prohibition is contained in current rule text. [See also the note to sub. (2).]

d. In s. 19.60 (2), the introduction should read: “This section does not prohibit any of the following activities:”.

e. In s. NR 19.60 (2) (b) (intro.), the phrase “if any of the following apply” or “if all of the following apply” should be added after the word “allowed.”

**4. Adequacy of References to Related Statutes, Rules and Forms**

a. In s. NR 10.07 (2) (c) 4., the rule should specify under which statute or rule section an unused bear harvest permit is issued.

b. Section NR 19.60 (1) (a) references s. NR 12.06 (11), which does not appear to exist in the current administrative rules. Where is this rule located?

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

a. In s. NR 10.001 (14), the comma should be deleted.

b. In s. NR 10.07 (2) (a), the word “or” should be added between the second comma and the word “place.” In sub. (2) (b) 1., the first comma should be removed, and the word “season’s” should be changed to “seasons.” Also, in sub. (2) (b) 1., the word “that,” should be inserted after the word “provided” and the word “that” before the phrase “the bait” should be deleted. In sub. (2) (b) 4., “section” should be changed to “subsection.” In sub. (2) (c) 3., the second comma should be deleted.

c. In the Initial Applicability section, “it’s” should be changed to “its.”

## **APPENDIX 4**

## **Report From Agency**

### REPORT TO LEGISLATURE

NR 10 and 19, Wis. Adm. Code  
Regulation of baiting and feeding to control and manage chronic wasting disease

Board Order No. WM-09-03  
Clearinghouse Rule No. 03-017

#### Statement of Need

Chronic wasting disease (CWD) is an infectious, abnormal protein that is passed from deer to deer both directly and indirectly. All deer with CWD will die.

The proposed rule puts into place regulations that will replace emergency rules adopted in June, 2002 to help control CWD. The proposed rule provisions are:

**Baiting Prohibition** – Baiting for any hunting purpose would be banned statewide to reduce the chance that a disease would become established and spread in local deer herds once it was introduced. An exemption would be granted for baiting for bear in a manner that the bait is not available to deer (i.e., in a hole or hollow stump with log or rock cap). Foods produced as a result of normal agricultural practices, standing crop food plots and natural vegetation are not considered bait in this regulation.

**Feeding Prohibition** – Wildlife feeding would be prohibited where the feed is accessible to deer statewide to reduce the chance that a disease would become established and spread in local deer herds once it was introduced. This rule would not prohibit bird and small mammal feeding where the feed is inaccessible to deer. The rule would also continue to allow feeding of wildlife by people attending the feed as long as they remove the feed when they left the site. Devices that are designed to cast feed to the ground would be prohibited.

**Use of Scents** – The rule proposes that scents be restricted the same as bait if they are placed for consumption. Solid scents could be used if they are not placed for consumption and they are removed at the end of each hunt each day. Liquid scents would be limited to 2 ounces.

#### Modifications as a Result of Public Hearing

No modifications were made as a result of the public hearings.

#### Appearances at the Public Hearings and Their Response

The Department held 17 hearings on the proposed CWD rules and associated EIS on March 17, 18 and 19. A total of 1,225 individuals attended. A hearing summary and a list of appearances is attached. Also attached is a listing of the public appearances before the Natural Resources Board at their meeting on April 23, 2003.

#### Response to Legislative Council Rules Clearinghouse Report

The recommendations were accepted.

#### Final Regulatory Flexibility Analysis

The proposed revisions to chs. NR 10 and 19, Wis. Adm. Code, pertain to the rules relating to the control and eventual eradication of Chronic Wasting Disease from the state's deer herd and impose no



compliance or reporting requirements for small businesses, nor are there any design or operational standards contained within the proposed rule. However, these rules relating to the use of food for the feeding and baiting of deer will have an indirect impact on small businesses as the sale of feeding materials which may have a significant economic impact on a number of small businesses.

In accordance with s. 227.114, Stats., the Department has considered the possible implications of these rules on small business; however, under the authority of s. 227.114(3), Stats., any modification of the rules pertaining to baiting and feeding would undermine the effectiveness of the rule. In addition, the department has weighed the economic impact of a potential collapse of the deer herd, which is an increased risk under continued baiting and feeding, to the state of Wisconsin against the economic burden that is placed on feed mills in the state with the baiting and feeding ban.

Many small businesses are highly dependent on sales of corn and other supplements to those that bait and feed deer and would certainly experience economic losses with any prohibition of baiting and feeding. While no studies have been conducted to date to determine the economic impact of bait and feed sales for deer in Wisconsin, estimates have been made in neighboring states. In Michigan, for instance, the total estimated economic impact of both baiting and feeding exceeds \$50 million.

In addition, there are potential economic impacts to farmers who sell deer corn. Agricultural industry spokespersons have indicated that the prohibition of baiting and feeding would have the effect of forcing export from Wisconsin of 3 million bushels of corn annually with a profitability loss of 50 cents per bushel. Despite their strong economic interest in the alternative market that deer feeding provides for agricultural products (cull potatoes, carrots, apples, sugar beets, etc.), the Farm Bureaus in both Michigan (in 1999 and 2002) and Wisconsin (in 2002) have endorsed prohibitions on deer feeding. Their primary concern is protecting the health of agricultural animals from deer-borne diseases.

However, when you compare the economic benefits that a healthy deer herd brings to the state of Wisconsin, the economic impacts on small business and farmers are much less. Deer are one of the favorite wild animals in Wisconsin. In addition to deer hunting, which in 2001 alone generated over \$925 million, an estimated 2.4 million people participated in wildlife watching activities in Wisconsin in 2001 contributing approximately \$1.3 billion to the state economy (IAFWA 2001). A separate estimate of economic impact specific to out-state tourists was not made.

The Department has considered alternatives, but these alternatives are not feasible, and would be contrary to the statutory objective of disease control and eradication and in light of the significant economic impact deer watching and hunting has to the state of Wisconsin by way of tourism, quality of life and recreation, the Department feels both economically and ultimately biologically a ban on deer feeding and baiting is in the best interest of Wisconsin.

**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), 19.001(4) and (15m), and 19.60 relating to the regulation of baiting and feeding to control and manage chronic wasting disease.

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Analysis Prepared by Department of Natural Resources

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

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**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 ~~non-solid~~ 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. (a) *General prohibition.* 1. Except as provided in par. (b) 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.

(b) *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. (c) 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 waterfowl is regulated by s. NR 10.12(1)(h) and not this section. 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).

(c) *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.

**Section 7. 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 8. NR 19.001(15m) is created to read.**

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

**Section 9. NR 19.60 is created to read.**

NR 19.60 **Feeding of wild animals.** (1) 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) is 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.

(2) 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.

**Section 10. Finding.** 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 poses 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.

**Section 11. Review.** The Department of Natural Resources will conduct a review and evaluation of this rule order two years following the effective date of these rules. The review will utilize the best available science to analyze the effectiveness of these rules to control and eradicate Chronic Wasting Disease in Wisconsin's free-ranging white-tailed deer herd. This results of this review and evaluation will be presented to the Natural Resources Board.

**Section 12. Effective date.** The rules shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22(2)(intro.), Stats.

**Section 13. Board adoption.** The foregoing rules were approved and adopted by the State of Wisconsin Natural Resources Board on April 23, 2003.

Dated at Madison, Wisconsin \_\_\_\_\_

STATE OF WISCONSIN  
DEPARTMENT OF NATURAL RESOURCES

By \_\_\_\_\_  
Scott Hassett, Secretary

(SEAL)

## **APPENDIX 5**

Motions relating to Clearinghouse Rule 03-017

1. Pursuant to s. 227.19 (5) (b) 2., Stats., the Joint Committee for Review of Administrative Rules recommends that the Department of Natural Resources (DNR) modify Clearinghouse Rule 03-017 by providing that the rule will not apply after June 30, 2004.
2. Pursuant to s. 227.19 (5) (b) 2., Stats., the Joint Committee for Review of Administrative Rules recommends that DNR modify Clearinghouse Rule 03-017 by providing that:
  - a. Baiting for the purpose of hunting deer be allowed only when all of the following conditions have been met:
    - (1) Baiting occurs during an open season for hunting deer.
    - (2) Baiting occurs outside of a chronic wasting disease eradication zone, a chronic wasting disease management zone, or an intensive harvest zone.
    - (3) No more than two gallons of bait are spread daily by a scattering method or a broadcast method at no more than two sites in a 40 acre parcel. The two gallon limit is a daily limit at both sites so that no more than four gallons may be spread in a 40 acre parcel.
  - b. Feeding for the purpose of viewing deer be allowed only when all of the following conditions have been met:
    - (1) Feeding occurs north of state highway 54.
    - (2) Feeding occurs outside of a chronic wasting disease eradication zone, a chronic wasting disease management zone, or an intensive harvest zone.
    - (3) No more than two gallons of feed are spread daily by a scattering method or a broadcast method within 50 yards of an owner occupied residence.
3. If DNR fails to indicate in writing, by 5:00 on Friday, August 29, 2003, that it will make the recommended modifications described in Motions 1 and 2, then, pursuant to s. 227.19 (4) (d) 5. and 6. and (5), Stats., the Joint Committee for Review of Administrative Rules objects to Clearinghouse Rule 03-017.

## **APPENDIX 6**



CR03-17

CLEARINGHOUSE RULE 03-17

AN ORDER to repeal NR 10.07 (1) (g); to amend NR 10.001 (2) and (14); and to create NR 10.001 (7e), (23e), 10.07 (2), 19.001 (4) and (15m) and 19.60, relating to the regulation of baiting and feeding to control and manage chronic wasting disease.

Submitted by DEPARTMENT OF NATURAL RESOURCES

02-10-03. Received by Legislative Council.

03-10-03. Report sent to Agency.

ASSEMBLY ACTION

04-29-03. Report received from Agency. . . . .	183
05-06-03. Referred to committee on Natural Resources. . . . .	183
05-14-03. Public hearing held.	
05-28-03. Executive session held.	
05-28-03. Modifications requested, Ayes 6, Noes 4.	
05-28-03. Modifications requested, Ayes 6, Noes 4.	
05-28-03. Modifications requested, Ayes 10, Noes 0.	
06-30-03. Modifications received.	
07-09-03. Executive session held.	
07-15-03. Report objection recommended by committee on Natural Resources, Ayes 7, Noes 4. . . . .	305
07-15-03. Referred to joint committee for review of Administrative Rules. . . . .	305
08-19-03. Public hearing held.	
08-19-03. Executive session held.	
08-19-03. Modifications requested.	
08-29-03. Agency refused to make modifications.	
08-29-03. Report concurrence in objection, Ayes 6, Noes 4. . . . .	345

SENATE ACTION

04-29-03. Report received from Agency. . . . .	156
05-01-03. Referred to committee on Environment and Natural Resources. . . . .	156
05-14-03. Public hearing held.	
05-28-03. Modifications requested, Ayes 3, Noes 2. . . . .	201
07-10-03. Report objection recommended, Ayes 3, Noes 2. . . . .	271
07-16-03. Referred to joint committee for review of Administrative Rules. . . . .	271
08-19-03. Public hearing held.	
08-20-03. Modifications requested.	
08-29-03. Agency refused to make modifications.	
09-02-03. Report objection recommended, Ayes 6, Noes 4. . . . .	375