atcp010_EmR0822.pdf **Agriculture, Trade and Consumer Protection – Revises Ch. ATCP 10 – EmR0822**

EMERGENCY RULE
DEPARTMENT OF AGRICULTURE, TRADE
AND CONSUMER PROTECTION

The Wisconsin department of agriculture, trade and consumer protection hereby adopts the following emergency rulemaking order ***to amend*** ATCP 10.63(2), 10.64(1) and (2), and 10.65(1); ***to repeal and recreate*** ATCP 10.51(1) and (2), 10.65(4) and (4m), and 10.65(5)(b)4.; and ***to create*** ATCP 10.61(12) and (note), 10.64(3), 10.645 and (note), 10.65(4m)(note), and 10.655(3); ***relating to*** diseases of fish and farm-raised deer.

Analysis Prepared by the Department of Agriculture, Trade and Consumer Protection

The Department of Agriculture, Trade and Consumer Protection ("DATCP") administers Wisconsin's animal health and disease control programs, including programs to control diseases among fish and farm-raised deer. DATCP regulates fish farms, including fish farms operated by the Department of Natural Resources ("DNR"), and regulates the import, movement and disease testing of fish. DATCP also regulates farm-raised deer herds and the import, movement and disease testing of farm-raised deer.

This emergency rule modifies current health certification and disease testing requirements for fish and farm-raised deer. DATCP adopted an initial emergency rule on these issues on October 31, 2007, pending the adoption of a "permanent" rule. The first emergency rule expired on May 28, 2008. A second emergency rule is necessary, because the proposed "permanent" rule is not yet in effect.

This second emergency rule is similar but not identical to the initial emergency rule. Among other things, this rule creates a limited exemption from VHS testing requirements when fish or fish eggs are reintroduced to the same water body from which they were collected, for the purpose of increasing or rehabilitating a desirable sport fish population. The reintroduction must be approved by DNR and DATCP.

Statutes Interpreted
Statutes Interpreted: ss. 93.07(10), 95.55 and 95.60, Stats.

Statutory Authority
Statutory Authority: ss. 93.07(1) and (10), 95.55(6), 95.60(2)(c), (3), (4)(c) and (4s), and 227.24, Stats.

Explanation of Statutory Authority
DATCP has broad general authority, under s. 93.07(1), Stats., to adopt rules interpreting statutes under its jurisdiction. DATCP also has broad authority under s. 93.07(10), Stats., to adopt rules and issue orders to protect the health of animals, and to prevent, control and eradicate communicable diseases among animals. DATCP has specific authority, under ss. 95.55 and 95.60, Stats., to regulate farm-raised deer and fish.

Under s. 227.24, Stats., DATCP may adopt a temporary emergency rule, pending the adoption of "permanent" rules, if preservation of the public peace, health, safety or welfare makes it necessary to put the rule into effect before the "permanent" rule can take effect.

Rule Content
Overview
This emergency rule does all of the following.

- Adds new viral hemorrhagic septicemia (VHS) testing requirements for all of the following fish and fish eggs if they are of a known VHS-susceptible species and were either (1) collected from a wild source within the preceding 12 months, or (2) kept on a fish farm that received fish or eggs of *any* species collected from a wild source within the preceding 12 months:
  - Fish or fish eggs stocked into Wisconsin public waters. This rule provides a limited exemption for fish or fish eggs that are reintroduced to the same water body from which they were collected (see below).
  - Fish moved from Wisconsin fish farms, unless they are moving to a retail food establishment or restaurant, or between fish farms registered by the same person.

- Fish distributed by a bait dealer for use as bait. This rule also prohibits any person from selling bait fish if the seller has reason to know that the bait fish are affected with VHS or another reportable disease.

- This rule provides a limited exemption from VHS and other disease testing requirements for fish or fish eggs that are reintroduced to the same water body from which they were collected, provided that all of the following apply (a veterinarian or fish health inspector must still issue a fish health certificate based on a visual examination):
  - DATCP and DNR approve the reintroduction.
  - The fish or fish eggs are not commingled with fish or fish eggs from any other water source.
  - The fish or fish eggs are reintroduced into the same lake from which they were collected, or at the same point or a downstream point in the same river system from which they were collected.
  - The fish or fish eggs are reintroduced within 30 days after they are collected, or within 30 days after the fish eggs hatch, whichever is later.
  - The fish or fish eggs are reintroduced for the purpose of increasing or rehabilitating the population of a desirable sport fishing species.
- Clarifies that VHS and other routine fish disease testing requirements do not apply when fish farm operators (including DNR) move fish or fish eggs between Wisconsin fish farms registered by the same operator. Current rules will continue to prohibit an operator from moving fish between the operator's registered fish farms if the operator has reason to know that the fish are affected with VHS or another reportable disease.
- Provides that a fish health certificate covering a fish farm or fish shipment is automatically voided if fish or fish eggs not covered by a valid fish health certificate are added to the covered fish farm or fish shipment.
- Extends brucellosis-free certification of farm-raised deer herds, from 2 years to 3 years, consistent with tuberculosis-free herd certification. That allows participating herd owners to conduct simultaneous tests for both diseases.
- Reduces the number of whole herd tests required to certify a farm-raised deer herd as a brucellosis-free herd, from 3 whole herd tests to 2 whole herd tests, consistent with tuberculosis-free herd certification.

Disease Testing of Fish

Viral Hemorrhagic Septicemia
VHS is a serious disease of fish. VHS was first reported in Wisconsin on May 11, 2007, after the Wisconsin Veterinary Diagnostic Laboratory confirmed positive samples from freshwater drum (sheepshead) in Little Lake Butte des Mortes (part of the Lake Winnebago system). VHS was subsequently found in Lake Winnebago, and in Lake Michigan near Green Bay and Algoma and Milwaukee. The source of VHS in these wild water bodies is not known. VHS has not yet been reported in any Wisconsin fish farms.

Current DATCP rules require health certificates for (1) fish and fish eggs (including bait) imported into the state, (2) fish and fish eggs stocked into Wisconsin public waters, and (3) fish and fish eggs moved between Wisconsin fish farms. *Import* health certificates must include VHS testing if the import shipment includes salmonids (salmon, trout, etc.) or originates from a state or province where VHS is known to occur. VHS testing is *not* currently required for any of the following:

- Fish or fish eggs stocked into Wisconsin public waters from *Wisconsin* sources.
- Bait fish or fish eggs originating from *Wisconsin* sources.
- Fish or fish eggs moved *between Wisconsin* fish farms.
- Non-salmonids imported from states (such as Minnesota) where VHS has not yet been found.

Because VHS has now been found in Wisconsin public waters, it is necessary to expand current VHS testing requirements. Because of the urgent need to minimize the spread of VHS in this state, it is necessary to add VHS testing requirements by emergency rule, pending the adoption of a "permanent" rule.

This emergency rule expands current VHS testing requirements. Under this emergency rule, a fish health certificate and VHS testing are required for all of the following fish and fish eggs if they are of a *known VHS-susceptible species* identified by the United States department of agriculture (USDA) and were either (1) collected from a wild source in any state within the preceding 12 months, or (2) kept on a fish farm that received fish or fish eggs of *any* species collected from a wild source in any state within the preceding 12 months:

- Fish or fish eggs stocked into Wisconsin public waters. There is a limited exemption (see below) for fish or fish eggs reintroduced to the same water body from which they are collected.
- Fish moved from Wisconsin fish farms, unless they are moved to a retail food establishment or restaurant, or between fish farms registered by the same person.
- Fish or fish eggs distributed by a bait dealer for use as bait. The bait fish testing requirement will initially apply to emerald shiners (a known VHS-susceptible species), but will *not* initially apply to other major bait species such as fathead minnows, white suckers and golden shiners (which are not yet known to be VHS-susceptible). However, it could eventually apply to other species if USDA finds that those species are also VHS-susceptible. A retail bait dealer is not required to conduct duplicate tests on fish previously tested by a wholesale bait dealer.

This emergency rule also does the following:

- Prohibits any person from selling bait fish *of any kind* if the seller has reason to know that the bait is affected with VHS or another reportable disease.
- Provides that a fish health certificate covering a fish farm or fish shipment becomes immediately void if fish or fish eggs not covered by a valid fish health certificate are added to the covered fish farm or fish shipment.

Reintroducing Fish to Waters of the State
Under this rule, fish or fish eggs reintroduced to the same public water body from which they are collected are exempt from VHS and other disease testing requirements if all of the following apply (a veterinarian or fish health inspector must still issue fish health certificate based on a visual examination):

- DATCP issues a permit for the reintroduction.
- DNR approves the collection and reintroduction.
- The fish or fish eggs are not commingled with fish or fish eggs from any other water source.
- The fish or fish eggs are reintroduced into the same lake from which they were collected, or at the same point or a downstream point in the same river system from which they were collected.
- The fish or fish eggs are reintroduced within 30 days after they are collected, or within 30 days after the fish eggs hatch, whichever is later.
- The fish or fish eggs are reintroduced for the purpose of increasing or rehabilitating the population of a desirable sport fishing species.

Operators Moving Fish Between Their Own Fish Farms
This emergency rule clarifies that VHS and other routine disease testing requirements do not apply when fish farm operators (including DNR) are moving fish or fish eggs between their own registered fish farms. However, current DATCP rules continue to prohibit such movement if the operator knows or has reason to know that the fish or fish eggs are affected with a reportable disease such as VHS. DATCP may also issue quarantine and other disease control orders to individual fish farm operators, as necessary.

Disease-Free Certification of Farm-Raised Deer

Certification Period
Under current rules, DATCP may certify a herd of farm-raised deer as brucellosis-free or tuberculosis-free, or both, based on herd test results provided by the herd owner. Participation is voluntary, but disease-free herd certification facilitates the sale and movement of farm-raised deer. Herd certification is generally governed by federal rules (uniform methods and rules) that DATCP has incorporated by reference in its rules.

Under current federal rules, tuberculosis-free herd certification is good for 3 years, while brucellosis-free herd certification is good for only 2 years. USDA proposes to harmonize the certification terms, but has not yet adopted the necessary rule changes. USDA has authorized DATCP to harmonize the terms in Wisconsin by state rule.

This emergency rule extends brucellosis-free herd certification from 2 years to 3 years (a herd owner may request a shorter term), consistent with tuberculosis-free herd certification. That will allow herd owners to conduct simultaneous tests for both diseases. Simultaneous testing will reduce testing costs and limit stress on tested deer.

Testing for Certification
Under current federal rules, 2 whole herd tests are required in order to certify a farm-raised deer herd as a tuberculosis-free herd, while 3 whole herd tests are required in order to certify a farm-raised deer herd as a brucellosis-free herd. USDA proposes to harmonize the testing requirements, but has not yet adopted the necessary rule changes. USDA has authorized DATCP to harmonize the testing requirements in Wisconsin by state rule.

This emergency rule reduces the number of whole herd tests required in order to certify a farm-raised deer herd as a brucellosis-free herd, from 3 whole herd tests to 2 whole herd tests, consistent with the testing requirement for tuberculosis-free herd certification.

Fiscal Impact
Disease Testing of Fish
Effect on DNR
This emergency rule will have a fiscal impact on DNR fish hatchery and stocking operations. Under this rule, all VHS-susceptible fish and fish eggs (including VHS-susceptible bait species) must be tested for VHS before being stocked to Wisconsin public waters if they were either (1) collected from a wild source within the preceding 12 months or (2) kept on a fish farm that received fish or fish eggs of *any* species collected from a wild source within the preceding 12 months. This emergency rule provides a limited exemption for fish or fish eggs that are reintroduced to the same waters from which they are collected (see below).

Under current rules, a veterinarian or other qualified fish health inspector must issue a fish health certificate for fish or fish eggs stocked into Wisconsin public waters. The inspector must issue the health certificate on a form prescribed by DATCP. Under this emergency rule, if the fish are of a VHS-susceptible species, and were either (1) collected from a wild source within the preceding 12 months or (2) kept on a fish farm that received fish of any species collected from a wild source within the preceding 12 months, the fish health certificate must certify that the fish are VHS-free. The certification must be based on VHS tests conducted according to approved methods (the American Fisheries Society test or the World Organization for Animal Health test) that DATCP identifies on the health certificate form.

VHS tests must be conducted on a statistically representative test sample of fish drawn from the tested species or farm. The average cost to test and certify a single lot of fish is approximately $500 (actual costs vary depending on test method, number of fish in the lot, number of different species in the lot, etc.). A single fish farm might need to test from 1-30 lots per year, depending on the source and species of the fish, the number of separate fish lots kept on the fish farm, and the purposes for which the fish are kept and distributed.

DNR annually registers approximately 100 fish farms with DATCP. Thirteen of those fish farms are state-owned fish hatcheries. The remainder are registered by DNR but owned by private DNR "cooperators" (as registrant, DNR assumes legal responsibility for compliance with fish health rules). DATCP estimates that DNR will need to conduct VHS tests on a combined total of approximately 120 lots of fish per year (including fish at state hatcheries and "cooperator" fish farms registered by DNR).

Assuming an average test cost of $500 per lot, the total cost to DNR would be approximately $60,000 per year. However, DNR has already implemented a number of internal controls and VHS testing protocols, so the added cost of this rule will be less than $60,000. DNR costs may increase if USDA finds that additional fish species are susceptible to VHS (the amount of the increase will depend on which fish species are found to be susceptible).

Under this emergency rule, fish and fish eggs are exempt from VHS and other fish health testing requirements if they are reintroduced into the same body of water from which they were collected, for the purpose of increasing or rehabilitating a desireable sport fish population. (DATCP and DNR must approve the reintroduction, and a veterinarian or fish health inspector must still issue a fish health certificate based on a visual inspection.) This exemption will make it easier for DNR, local governments and others to continue programs (including so-called "walleye wagon" programs) to supplement the natural reproduction of important sport fish species.

Effect on DATCP
DATCP will incur added costs to administer and enforce the fish health testing requirements under this emergency rule (and any subsequent "permanent" rule). DATCP will need *at least* 2.0 FTE additional staff to review and process a large volume of fish health certificates in a timely manner; to train fish health inspectors to collect samples for VHS testing; to

provide compliance information and respond to industry inquiries; to conduct inspections and monitor compliance; to conduct investigations of possible law violations; and to initiate enforcement actions if necessary.

The 2.0 FTE staff will have a combined total cost of at least $120,000 per year, including salary, fringe benefits and support costs. DATCP will attempt to absorb these costs in the short term by shifting staff from other important disease control responsibilities, but DATCP will not be able to do so indefinitely without putting other livestock sectors at unacceptable risk. DATCP will seek federal grant funds to cover some of the costs, but federal funding is not guaranteed.

Effect on University of Wisconsin
This emergency rule may have a slight fiscal impact on University of Wisconsin research facilities and some local governments, to the extent that they may operate fish farms or procure fish from farms affected by this rule. However, the effect will likely be minimal unless those entities are engaged in distributing VHS-susceptible fish or fish eggs from wild sources.

Effect on Local Governments

This emergency rule exempts local governments from VHS and other fish health testing requirements when they reintroduce sport fish or fish eggs into the same body of water from which they were collected, for the purpose of increasing or rehabilitating the fish population. (DATCP and DNR must approve the reintroduction, and a veterinarian or fish health inspector must issue a fish health certificate based on a visual inspection.) This exemption will make it easier for local governments to continue current programs (including so-called "walleye wagon" programs) to supplement the natural reproduction of important sport fish species.

Disease-Free Certification of Farm-Raised Deer
This emergency rule extends brucellosis-free herd certification from 2 years to 3 years (a herd owner may request a shorter term), and reduces the required number of certification tests from 3 whole herd tests to 2 whole herd tests, consistent with tuberculosis-free herd certification. That will allow herd owners to conduct simultaneous tests for both diseases. Simultaneous testing will reduce testing costs and limit stress on tested deer. The change will have no fiscal impact on DATCP, on other agencies of state government, or on local government.

Business Impact
Disease Testing of Fish
Effect on Private Fish Farm Operators
DATCP estimates that this rule will affect 30-40 private fish farms, not counting DNR "cooperator" fish farms registered by DNR (see above). Many of the affected fish farms are "small businesses," and many of them will be substantially affected by this rule. VHS testing requirements may force some fish farm operators to curtail all or part of their operations. However, some fish farms already conduct VHS tests in order to meet federal requirements for interstate movement of fish.

Fish farm operators may incur added testing requirements under this rule if they keep VHS-susceptible fish or fish eggs that were either (1) collected from any wild source within the preceding 12 months, or (2) kept on a fish farm that received fish or fish eggs (of *any* species) collected from any wild source within the preceding 12 months. Operators must test those VHS-susceptible fish or fish eggs before they distribute them for bait, for stocking to Wisconsin public waters, or for delivery to other fish farms (other than those registered by the same operator).

A veterinarian or other qualified fish health inspector must certify that the fish or fish eggs are VHS-free, based on tests using approved methods (the American Fisheries Society test or the World Organization for Animal Health test) that DATCP has identified on the health certificate form.

VHS tests must be conducted on a statistically representative sample of fish drawn from the tested species or farm. The average cost to test and certify a single lot of fish is approximately $500 (actual costs vary depending on test method, number of fish in the lot, number of fish species in the lot, etc.). A single fish farm might need to test from 1-30 lots per year, depending on the source and species of the fish, the number of separate fish lots kept on the fish farm, and purposes for which the fish are kept and distributed.

DATCP estimates that approximately 30-40 private fish farm operators will need to conduct VHS tests, and that they will conduct those tests on a combined total of approximately 40 lots of fish per year. Assuming an average cost of $500 per test per lot, the *combined total cost to all affected private fish farm operators* will be approximately $20,000 per year. However, some of those affected fish farmers are already performing VHS tests in order to meet federal requirements for shipping fish in interstate commerce, so the net impact of this rule may be less than $20,000. Fish farm costs may increase if USDA finds that additional fish species are susceptible to VHS (the amount of the increase will depend on which fish species are found to be susceptible).

Effect on Bait Dealers
Wisconsin bait dealers are licensed by DNR. This rule will affect licensed bait dealers in the following ways:

- If bait dealers buy VHS-susceptible bait species that originate from wild sources, their purchase costs may reflect the seller's added cost of VHS testing under this rule.
- If bait dealers collect VHS-susceptible bait species from wild sources, they will need to conduct VHS tests before reselling or distributing the bait. They will also need to withhold the bait from distribution for at least 4 weeks pending the completion of VHS tests. That will add costs, and may not be practically feasible for affected bait dealers.

This rule applies only to bait species that are known to be susceptible to VHS. Of the major bait species in Wisconsin (fathead minnow, white sucker, golden shiner and emerald shiner), only one species (emerald shiner) is currently known to be susceptible to VHS. Emerald shiners are obtained exclusively by wild harvesting, while other major bait species can be hatched and raised on farms. At this time, DATCP estimates that emerald shiners represent less than 10% of the overall bait market in Wisconsin (the market for wild-harvested emerald shiners has already diminished as a result of federal VHS testing requirements for emerald shiners moved in interstate commerce).

DATCP estimates that approximately 25 Wisconsin bait dealers are currently harvesting emerald shiners from the wild. DATCP estimates that each of those bait dealers would need to test an average of 6 lots of wild-harvested emerald shiners each year, before distributing the emerald shiners for sale. Assuming an average cost of $500 per test lot, the average annual cost for an individual bait dealer would be about $3,000 per year, and the combined total cost to all 25 of those bait dealers would be about $75,000 per year. That figure does *not* include added costs to hold the emerald shiners for 4 weeks while testing is completed. It is extremely difficult to hold emerald shiners for extended periods, so it may not even be possible for most bait dealers to hold them for the required 4 weeks.

The difficulty of holding emerald shiners for 4 weeks, combined with the added cost of testing emerald shiners, may drive many bait dealers out of the business of harvesting wild emerald shiners for sale as bait. However, those bait dealers may still be able to harvest and sell other types of bait that are not affected by this rule.

Bait dealers that are not currently harvesting emerald shiners will not be substantially affected by this rule unless USDA finds that additional bait species are susceptible to VHS. If USDA finds that other major bait species are susceptible to VHS, this rule could have a more dramatic impact on bait dealers. The impact will depend on the species that are affected.

Accommodation for Small Business
This rule will have a limited effect on most private fish farms and bait dealers. But in some cases (especially in the case of bait dealers that harvest emerald shiners from wild sources for sale as bait), this rule may impose substantial added costs. If USDA finds that additional fish or bait fish species are susceptible to VHS, this rule may have a more dramatic impact on fish farm operators or bait dealers, or both. Many of the affected entities are small businesses.

This emergency rule is needed to protect the health of wild and farm-raised fish populations in this state. Effective disease control is important for the entire aquaculture industry in this state. Although this rule may increase costs for some fish farm operators and bait dealers, the costs are currently outweighed by the need to prevent and control the spread of disease. DATCP has not exempted small businesses, or adopted more lenient VHS testing requirements for small business, because the risk of disease spread is unrelated to business size.

Disease-Free Certification of Farm-Raised Deer

This rule will have no negative effects on farm-raised deer keepers, and will reduce testing costs for some farm-raised deer keepers. Actual cost savings will depend on herd size and current test schedules. By facilitating simultaneous testing for brucellosis and tuberculosis, this rule will also avoid some stress on tested deer.

Federal and Surrounding State Programs

Federal Programs

DATCP administers animal disease control programs in cooperation with USDA. USDA has issued federal orders in response to the discovery of VHS in the United States and Canada. The orders limit interstate and international shipments of VHS-susceptible fish from states and provinces that border the Great Lakes, and require negative VHS testing to permit movement. This rule supplements current federal rules by establishing testing requirements for *intrastate* movement and stocking of wild source fish and fish eggs (including bait species) in Wisconsin.

Surrounding State Programs

Michigan and Minnesota require VHS testing on salmonids stocked into state waters. On June 7, 2007, Michigan also announced a one-year moratorium on state hatchery production of walleye, northern pike and muskellunge using eggs collected from wild sources in Michigan during 2007. Illinois and Iowa have no VHS testing requirements for intrastate movement or stocking of fish.

DATCP Contact

Questions and comments related to this rule may be directed to:

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FINDING OF EMERGENCY

(1) The Wisconsin department of agriculture, trade and consumer protection ("DATCP") administers Wisconsin's animal health and disease control programs, including programs to control diseases of fish and farm-raised deer.

Disease Testing of Fish

(2) DATCP regulates fish farms, including fish farms operated by the Wisconsin Department of Natural Resources ("DNR"). DATCP also regulates the import, movement and disease testing of fish.

(3) Viral hemorrhagic septicemia (VHS) is a serious disease of fish. VHS was first reported in Wisconsin on May 11, 2007, after the Wisconsin Veterinary Diagnostic Laboratory confirmed positive samples from freshwater drum (sheepshead) in Little Lake Butte des Mortes (part of the Lake Winnebago system). VHS was subsequently found in Lake Winnebago, and in Lake Michigan near Green Bay and Algoma. The source of VHS in these wild water bodies is not known. VHS has not yet been reported in any Wisconsin fish farms. VHS can be fatal to fish, but is not known to affect human beings.

(4) Current DATCP rules require health certificates for fish and fish eggs (including bait) imported into this state, for fish and fish eggs stocked into waters of the state, and for fish and fish eggs (including bait species) moved between fish farms in this state. *Import* health certificates must include VHS testing if the import shipment includes salmonids (salmon, trout, etc.) or originates from a state or province where VHS is known to occur. VHS testing is *not* currently required for fish or fish eggs stocked into waters of the state from Wisconsin sources, for bait fish or eggs originating from Wisconsin sources, for fish or fish eggs moved between fish farms in Wisconsin, or for non-salmonids imported from states where VHS has not yet been found.

(5) Because VHS has now been found in waters of the state, it is necessary to expand current VHS testing requirements. Because of the urgent need to minimize the spread of VHS in this state, it is necessary to adopt VHS testing requirements by emergency rule, pending the adoption of a "permanent" rule.

Disease-Free Herd Certification of Farm-Raised Deer Herds

(6) DATCP registers farm-raised deer herds in this state. DATCP also regulates the import, movement and disease testing of farm-raised deer. Under current DATCP rules, DATCP may certify a farm-raised deer herd as brucellosis-free

or tuberculosis-free, or both, based on herd test results provided by the farm-raised deer keeper. Certification is voluntary, but facilitates sale and movement of farm-raised deer.

(7) Under current rules, a tuberculosis-free herd certification is good for 3 years, but a brucellosis-free herd certification is good for only 2 years. There is no compelling veterinary medical reason for the difference. A rule change (extending the brucellosis-free certification term from 2 to 3 years) is needed to harmonize the certification terms, so that farm-raised deer keepers can conduct simultaneous tests for both diseases. Simultaneous testing will reduce testing costs and limit stress on tested deer. An emergency rule is needed to avoid some unnecessary costs for farm-raised deer keepers this year, pending the adoption of permanent rules.

EMERGENCY RULE

SECTION 1. ATCP 10.51(1) and (2) are repealed and recreated to read:

ATCP 10.51(1) INITIAL CERTIFICATION. (a) The department may certify a herd of farm-raised deer as a brucellosis-free herd based on 2 negative whole herd tests conducted 9 to 15 months apart. A whole herd test shall include all sexually intact farm-raised deer in the herd that are at least 6 months old at the time of the test.

(b) The department may certify a herd of farm-raised deer as a brucellosis monitored herd if the herd qualifies for that certification under the brucellosis uniform methods and rules.

(2) MAINTAINING CERTIFICATION. (a) Except as provided in par. (b) or (c), a herd certification under sub. (1) expires 36 months after the date on which it is issued.

(b) The department may change the expiration date under par. (a) if all of the following apply:

1. The farm-raised deer keeper requests the change.
2. The new expiration date occurs before the original expiration date.
3. All test-eligible farm-raised deer in the herd test negative for brucellosis within 3 months before or after the new expiration date.

(c) The department may renew a herd certification under sub. (1) for a 36-month period beginning immediately after the applicable herd certification expiration date under par. (a) or (b) if the farm-raised deer keeper submits proof that all test-eligible farm-raised deer in the herd have tested negative for brucellosis within 3 months before or after that expiration date.

(d) Test methods and procedures under pars. (b) and (c) shall comply with the brucellosis uniform methods and rules.

(e) Except as provided in pars. (a) to (c), a herd certification under sub. (1) is contingent upon compliance with the brucellosis uniform methods and rules.

SECTION 2. ATCP 10.61(12) and (note) are created to read:

ATCP 10.61(12) REGISTRANT RESPONSIBILITY. A person who registers a fish farm under sub. (1) is responsible for ensuring that fish farm operations comply with relevant provisions of this chapter. This subsection does not relieve other persons of liability for violations of this chapter.

> ***NOTE:*** If the Wisconsin Department of Natural Resources (DNR) registers as the operator of a privately-owned "cooperator" fish farm under sub. (1), DNR is responsible for ensuring that all operations of that fish farm comply with this chapter (the private operator may also be held responsible if that operator violates this chapter).

SECTION 3. ATCP 10.63(2) is amended to read:

ATCP 10.63(2) DISEASED FISH. No person may introduce live fish or fish eggs into waters of the state <u>or distribute live fish or fish eggs for sale as bait</u> if that person knows, or has reason to know, that those fish or fish eggs are infected <u>with</u> or show clinical signs of any reportable disease under s. ATCP 10.66.

SECTION 4. ATCP 10.64(1) and (2) are amended to read:

ATCP 10.64(1) VALID HEALTH CERTIFICATE REQUIRED. ~~No~~ <u>Except as provided in sub. (3), no</u> person may move any live fish or fish eggs between fish farms in this state <u>or from a fish farm to any other location in this state,</u> unless those fish or fish eggs are covered by a valid health certificate under s. ATCP 10.65. A qualified fish health inspector shall issue the health certificate based on an inspection of the fish or fish eggs, or of the farm from which they originate. A health certificate does not cover a movement that occurs after the health certificate expires.

(2) DISEASED FISH. No person may move any live fish or fish eggs between fish farms in this state<u>, or from a fish farm to any other location in this state,</u> if that person knows~~,~~ or has reason to know~~,~~ that those fish or fish eggs are infected <u>with</u> or show clinical signs of any reportable disease under s. ATCP 10.66.

SECTION 5. ATCP 10.64(3) is created to read:

ATCP 10.64(3) EXEMPTIONS. Subsection (1) does not apply to any of the following:
(a) Fish or fish eggs moved between fish farms that are registered under s. ATCP 10.61 by the same person, provided that the person keeps a complete record of the movement under s. ATCP 10.61(10).
(b) Fish or fish eggs moved to a food processing plant, retail food establishment or restaurant pending slaughter or sale to consumers provided that all of the following apply:
1. The receiving facility does not hold any of the fish or fish eggs for more than 30 days.
2. The fish or fish eggs are not commingled with fish or fish eggs that will be used for any other purpose.
3. The receiving facility does not discharge to waters of the state any untreated water used to hold or process any of the fish or fish eggs.

SECTION 6. ATCP 10.645 and (note) are created to read:

ATCP 10.645 Bait fish from wild sources. No bait dealer who is required to hold a license under s. 29.509, Stats., may distribute for use as bait any of the following fish or fish eggs of a species that the federal bureau has found to be susceptible to viral hemorrhagic septicemia (VHS) unless the fish or fish eggs are covered by a valid fish health certificate that complies with s. ATCP 10.65:
(1) Fish or fish eggs collected from a wild source within the 12 month period immediately preceding the distribution date.
(2) Fish or fish eggs kept at a fish farm that received fish or fish eggs of any species collected from a wild source within the 12 month period immediately preceding the distribution date.

> ***NOTE:*** A "wild source" under s. ATCP 10.645 includes a wild source in this state or outside this state. Fish and fish eggs imported from other states (including bait fish and fish eggs) must also comply with import requirements under s. ATCP 10.62. Species that the federal bureau has found to be susceptible to viral hemorrhagic septicemia are listed at www.aphis.usda.gov/vs/aqua/. Section ATCP 10.645 applies to additional species if and when the federal bureau finds that those species are susceptible. DATCP will identify susceptible species (per USDA findings) in the fish health certificate form under s. ATCP 10.65.

SECTION 7. ATCP 10.65(1) is amended to read:
ATCP 10.65(1) GENERAL. ~~A fish health certificate~~ Fish health certificates under ss. ATCP 10.62(3)(f), 10.63(1), ~~or~~ 10.64(1) and 10.645 shall comply with this section.

SECTION 8. ATCP 10.65(4) and (4m) are repealed and recreated to read:
ATCP 10.65(4) CERTIFICATE CONTENTS. (a) A fish health certificate under s. ATCP 10.62(3)(f) shall certify that the fish and fish eggs in the inspected shipment, or at the inspected fish farm, are free of all of the following:
1. Visible signs of contagious or infectious disease.
2. Infectious hematopoietic necrosis, viral hemorrhagic septicemia (VHS) and whirling disease (*Myxobolus cerebralis*) if an import shipment covered by the health certificate includes salmonids.
3. White sturgeon iridovirus if an import shipment covered by the health certificate includes sturgeon.
4. Viral hemorrhagic septicemia (VHS) if an import shipment covered by the health certificate includes fish or fish eggs from a state or province where that disease is known to occur.
5. Other diseases, if any, specified on the certificate form. The certificate form shall identify the species for which, and circumstances under which, the disease-free certification is required.

(b) Except as provided in s. ATCP 10.655, a fish health certificate issued under s. ATCP 10.63(1) shall certify that the fish and fish eggs in the inspected shipment or at the inspected fish farm are free of all of the following:
1. Visible signs of contagious or infectious disease.
2. Whirling disease (*Myxobolus cerebralis*) if a shipment covered by the health certificate includes salmonids.
3. Viral hemorrhagic septicemia (VHS) if a shipment covered by the health certificate includes any of the following fish or fish eggs of a species that the federal bureau has found to be susceptible to viral hemorrhagic septicemia (VHS):
a. Fish or fish eggs collected from a wild source within the 12 month period immediately preceding the shipment.
b. Fish or fish eggs kept at a fish farm that received fish or fish eggs of any species collected from a wild source within the 12 month period immediately preceding the distribution date.

> ***NOTE:*** A "wild source" under subd. 3. includes a wild source in this state or outside this state. Fish and fish eggs imported from other states (including bait fish and fish eggs) must also comply with import requirements under s. ATCP 10.62. Species that the federal bureau has found to be susceptible to viral hemorrhagic septicemia are listed at www.aphis.usda.gov/vs/aqua/. Subdivision 3. applies to additional species if and when the federal bureau finds that those species are susceptible. DATCP will identify susceptible species (per USDA findings) in the fish health certificate form under s. ATCP 10.65.

4. Other diseases, if any, specified on the certificate form. The certificate form shall identify the species for which, and circumstances under which, the disease-free certification is required.
(c) A fish health certificate issued under s. ATCP 10.64(1) shall certify that the fish and fish eggs in the inspected shipment, or at the inspected fish farm, are free of all of the following:
1. Visible signs of contagious or infectious disease.
2. Viral hemorrhagic septicemia (VHS) if a shipment covered by the health certificate includes any of the following fish or fish eggs of a species that the federal bureau has found to be susceptible to viral hemorrhagic septicemia (VHS):
a. Fish or fish eggs collected from a wild source within the 12 month period immediately preceding the shipment.
b. Fish or fish eggs kept at a fish farm that received fish or fish eggs of any species collected from a wild source within the 12 month period immediately preceding the distribution date.

NOTE: A "wild source" under subd. 2. includes a wild source in this state or outside this state. Fish and fish eggs imported from other states (including bait fish and fish eggs) must also comply with import requirements under s. ATCP 10.62. Subdivision 2. applies to additional species if and when the federal bureau finds that those species are susceptible. DATCP will identify susceptible species (per USDA findings) in the fish health certificate form under s. ATCP 10.65.

3. Other diseases, if any, specified on the certificate form. The certificate form shall identify the species for which, and circumstances under which, the disease-free certification is required.
(d) A fish health certificate issued under s. ATCP 10.645 shall certify that the fish and fish eggs in the inspected shipment, or at the inspected fish farm, are free of all of the following
1. Visible signs of contagious or infectious disease.
2. Viral hemorrhagic septicemia (VHS).
3. Other diseases, if any, specified on the certificate form. The certificate form shall identify the species for which, and circumstances under which, the disease-free certification is required.

NOTE: A fish health certificate is required under s. ATCP 10.645 whenever a bait dealer distributes as bait any of the following fish or fish eggs of a species that the federal bureau has found to be susceptible to VHS:

- Fish or fish eggs collected from a wild source (in Wisconsin or elsewhere) within the 12 month period immediately preceding the distribution date.

- Fish or fish eggs kept at a fish farm that received fish or fish eggs of any species collected from a wild source within the 12 month period immediately preceding the distribution date.

(e) A fish health certificate shall include test results from a qualified laboratory to confirm the statements under pars. (a) to (d) if those test results are required by the certificate form.
(f) Fish egg inspection under this subsection may be based on brood stock inspection and, if testing is required by the certificate form, testing of the brood stock.

NOTE: A certificate form that includes requirements under par. (a)5., (b)4., (c)3., (d)3., (e) or (f) constitutes an order under s. 93.07(10), Stats., which is subject to review in a contested case hearing under ch. 227, Stats., and ch. ATCP 1 unless the department adopts those requirements by rule. If a health certificate does not comply with instructions on the certificate form, the health certificate is invalid.

(4m) EXPIRATION DATE. (a) Except as provided in par. (b):
1. A health certificate based on an inspection under sub. (3)(a) expires 30 days after it is issued unless the department by written notice specifies a different expiration date.
2. A health certificate based on an inspection under sub. (3)(b) expires one year after it is issued unless the department by written notice specifies a different expiration date.
(b) A health certificate covering a fish farm, or covering a shipment of fish or fish eggs, is automatically voided if any fish or fish eggs not covered by a valid health certificate are added to that fish farm or shipment.

SECTION 9. ATCP 10.65(4m)(note) is created to read

NOTE: A shipment of fish or fish eggs that is covered by more than one fish health certificate must be delivered prior to the expiration of ANY of the fish health certificates covering fish or fish eggs in that shipment.

SECTION 10. ATCP 10.65(5)(b)4. is repealed and recreated to read:

ATCP 10.65(5)(b)4. Special disease concerns that are not adequately addressed by the health certificate. These may include special disease concerns related to the species of fish or fish eggs, or the source from which the fish or fish eggs originate.

SECTION 11. ATCP 10.655(3) is created to read:

ATCP 10.655 Fish reintroduced into their original wild source. (1) HEALTH CERTIFICATE CONTENTS; EXEMPTION. Sections ATCP 10.65(4)(b)2. and 3. do not apply to the reintroduction of fish or fish eggs to the same lake from which they or the eggs from which they are hatched were collected, or to the same point or a downstream point in the same river system from which they or the eggs from which they are hatched were collected, if all of the following apply:

(a) The state veterinarian issues a permit under sub. (2) authorizing the reintroduction.

(b) The collection and reintroduction are approved, in writing, by the Wisconsin department of natural resources.

(c) The reintroduction is designed to increase or rehabilitate a population of desirable sport fish species.

(d) The fish or fish eggs are reintroduced within 30 days after they are collected, or within 30 days after the fish are hatched, whichever is later.

(e) The fish or fish eggs are not commingled with fish or fish eggs from any other source.

(2) PERMIT. A permit under sub. (1)(b) may authorize one or more reintroductions under sub. (1), subject to conditions specified in the permit. A permit shall be based on a complete application under sub. (3). The state veterinarian shall grant or deny an application under sub. (3) within 30 days after the department receives a complete application.

(3) PERMIT APPLICATION. A person applying for a permit under sub. (2) shall submit the application in writing. The application shall include all of the following:

(a) The correct legal name and address of the applicant.

(b) The location from which the fish or fish eggs were collected.

(c) The location to which the fish or fish eggs will be reintroduced.

(d) The purpose for the reintroduction.

(e) Documentation showing that the Wisconsin department of natural resources has approved the collection and reintroduction under sub. (1)(b).

(f) Documentation indicating that the reintroduction will comply with other requirements under sub. (1)(c) to (e).

(g) Other relevant information required by the department.

(4) PERMIT RECORD. The department shall keep, for at least 5 years, a record of each permit issued under sub. (2).

EFFECTIVE DATE: This emergency rule takes effect upon publication, and remains in effect for 150 days. The department may seek to extend this emergency rule as provided in s. 227.24, Stats.