



State of Wisconsin
Jim Doyle, Governor

Department of Agriculture, Trade and Consumer Protection
Rod Nilsestuen, Secretary

DATE: August 12, 2008

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FROM: Rodney J. Nilsestuen, Secretary
Department of Agriculture, Trade and Consumer Protection

SUBJECT: Animal Health and Disease Control; Final Draft Rule

The Department of Agriculture, Trade and Consumer Protection (“DATCP”) is transmitting this rule for legislative committee review, as provided in s. 227.19(2) and (3), Stats. DATCP will publish notice of this referral in the Wisconsin Administrative Register, as provided in s. 227.19(2), Stats.

This rule modifies existing DATCP rules related to animal health and disease control. Among other things, this rule:

- Establishes new rules related to viral hemorrhagic septicemia (VHS) in fish, and simplifies registration of fish farms. This “permanent” VHS rule is similar, but not identical, to the temporary “emergency” VHS rules previously adopted by DATCP.
- Modifies current rules related to farm-raised deer, including rules related to herd registration, disease control, imports, movement and condemnation. Changes are consistent with proposed federal rules.
- Modifies current rules related to cattle, including rules related to voluntary Johne’s disease testing and classification, tuberculosis import testing, and imports of cattle originating from Mexico.
- Modifies current rules related to poultry imports and enrollment in the national poultry improvement program.

Agriculture generates \$51.5 billion for Wisconsin

- Modifies current rules related to animal markets, dealers and truckers.
- Modifies current rules related to Wisconsin's livestock premises registration program. This rule extends the current registration period from one year to 3 years, for the convenience of registrants and to reduce program costs.
- Clarifies current disease indemnity appraisal procedures.

Makes minor drafting changes to update, clarify and correct current rules

Rule Contents

DATCP administers Wisconsin's animal health and disease control program. This rule modifies current DATCP rules under chs. ATCP 10 (animal diseases and movement), ATCP 12 (animal markets, dealers and truckers) and ATCP 17 (livestock premises registration).

Fish

Fish Farm Registrations

Under current rules, fish farm operators must register each fish farm as either a *type 1* or *type 2* fish farm, depending on the activities conducted at the fish farm. Under current rules, a fish farm operator may allow public fishing at a *type 1* or *type 2* fish farm, but may only sell or distribute fish from a *type 2* fish farm (there are limited exceptions).

This rule modifies the scope of a *type 2* fish farm registration, and creates a new *type 3* fish farm registration category. Under this rule:

- An operator may allow public fishing (including public fishing for a fee) at a *type 1*, *type 2* or *type 3* fish farm.
- An operator may not sell or distribute fish from a *type 1* fish farm (there are limited exceptions).
- An operator may sell or distribute fish from a *type 2* or *type 3* fish farm.
- An operator may not sell or distribute fish from a fish farm that receives any fish or fish eggs from wild sources unless that fish farm is registered as a *type 3* fish farm (there are limited exceptions).

This rule clarifies fish farm registrations:

- A fish farm registration is limited to a single fish farm location (a single land parcel or contiguous land parcels). All of the fish farm facilities on contiguous parcels may be registered as a single fish farm.
- Fish farms on non-contiguous land parcels must be registered as separate fish farms.
- A person may register 2 or more fish farms in a single application process.
- An operator may register 2 or more fish farms located on the same land parcel, or on contiguous land parcels, subject to the following conditions:
 - The fish farms must be “medically separated.” DATCP must inspect the fish farms to confirm that they are “medically separated” (DATCP will charge an inspection fee of \$400 per day of inspection).
 - Each fish farm is considered a separate fish farm for purposes of disease control and movement.
 - Fish or fish eggs moved between the fish farms must be accompanied by a fish health certificate, and the operator must keep a record of the movement.

Registrant Responsibility

This rule clarifies that a person who registers a fish farm is responsible for ensuring that fish farm operations comply with DATCP rules. However, this rule does not relieve other persons of liability for rule violations that they commit.

Viral Hemorrhagic Septicemia; Expanded Testing

VHS is a serious disease of fish. VHS has been found in Lake Michigan and the Lake Winnebago system, but has not yet been reported in any Wisconsin fish farm. The United States Department of Agriculture (USDA) has identified fish species that are known to be susceptible to VHS.

Current DATCP “permanent” rules require health certificates for all of the following:

- Fish and fish eggs (including bait) imported into Wisconsin.
- Fish and fish eggs stocked into Wisconsin public waters.
- Fish and fish eggs moved between Wisconsin fish farms.

Under current DATCP “permanent” rules, *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. However, current “permanent” rules do not require VHS testing 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.

DATCP recently adopted temporary “emergency” rules to expand VHS testing requirements. This rule adopts those VHS testing requirements on a “permanent” basis. This rule is similar, but not identical, to the temporary emergency rules.

Under this 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* and were either (1) collected from a wild source in any state within the preceding 12 months, or (2) kept on a *type 3* fish farm in this state:

- 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 between Wisconsin fish farms, or from a Wisconsin fish farm to any other place (there are limited exemptions for fish shipped to food processing or retail food establishments).
- 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 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.

Fish Reintroduced to Same Water Body; Testing Exemption

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 a 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.

Operator Moving Fish between the Operator's Own Fish Farms; Testing and Health Certificate Exemption

This rule clarifies that, when an operator (including DNR) moves fish or fish eggs between the operator's own fish farms in this state, the operator is exempt from health certificate requirements, VHS testing requirements, and other disease testing requirements under this rule unless the operator does one of the following:

- Moves fish or fish eggs from a *type 3* fish farm to a *type 1* or *type 2* fish farm.
- Moves fish or fish eggs between fish farms that are required to be medically separated.

A fish farm operator must make a record of each movement of fish or fish eggs between the operator's fish farms, regardless of whether health certificate or testing requirements apply. An operator may not move fish or fish eggs 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.

VHS Test Reports

Under this rule, a veterinarian or fish health inspector who tests fish in this state for viral hemorrhagic septicemia (VHS) must report the test result to DATCP, regardless of whether the test result is positive or negative.

Farm-Raised Deer

Chronic Wasting Disease Test Reports

Under this rule, a veterinarian who tests a farm-raised deer in this state for chronic wasting disease must report the test result to DATCP, regardless of whether the test result is positive or negative.

Herd Registration; General

Under current rules, no person may keep farm-raised deer at any location in this state unless DATCP has issued a current annual registration certificate authorizing that person to keep farm-raised deer at that location. An annual registration certificate currently expires on December 31 of each year. This rule changes the annual expiration date to March 15, beginning with the first registration year beginning on or after the effective date of this rule.

One Registered Herd Kept at 2 or More Locations

This rule clarifies that a single registered farm-raised deer herd may include farm-raised deer kept at 2 or more locations, subject to the following conditions:

- All of the locations must be identified in the herd registration certificate.
- All of the herd locations must be actively enrolled in Wisconsin's chronic wasting disease herd status program.
- All farm-raised deer covered by the registration certificate must be treated as members of a single herd, for purposes of disease control and movement.

The registrant may move farm-raised deer between locations identified in the same herd registration certificate *without* a certificate of veterinary inspection if all of the following apply:

- Those farm-raised deer are identified with official individual identification.
- The registrant keeps a detailed record of the movement.

Two or More Registered Herds Kept at the Same Location

Under this rule, separately-registered farm-raised deer herds may be kept at the *same location* (even if they are owned by different registrants) subject to the following conditions:

- The registrant(s) must declare whether the herds are "medically separated" or not. "Medically separated" herds must be kept in separate enclosures, under conditions that effectively preclude disease transmission between the herds. DATCP must inspect "medically separated" herds to verify the separation. DATCP will charge an inspection fee of \$150 (\$200 after July 1, 2009), as provided in current rules.

- If the herds are “medically separated:”
 - Each herd is considered a separate herd for purposes of disease control, movement, and enrollment in Wisconsin’s chronic wasting disease herd status program.
 - Farm-raised deer moved between any of the herds must be accompanied by a certificate of veterinary inspection, and registrants must keep a detailed record of each movement.

- If the herds are *not* “medically separated:”
 - All of the farm-raised deer covered by the herd registrations are collectively treated as a single herd for purposes of disease control and movement, regardless of location or ownership, and regardless of whether they are part of the same registered herd.
 - Farm-raised deer may be moved between any of the herd locations identified on any of the herd registration certificates, without a certificate of veterinary inspection, provided that they are identified with official individual identification. Registrants must keep detailed records of the movements.
 - All of the herds, including all locations covered by the herd registration certificates, must be actively enrolled in Wisconsin’s chronic wasting disease herd status program.

Chronic Wasting Disease Tests

Under this rule, a chronic wasting disease test sample must be collected from a farm-raised deer within 7 calendar days after the animal dies, or is killed or slaughtered (or within 7 calendar days after the death is first discovered). Under this rule, as under the current rules, the test sample must be sent to an approved laboratory within 10 calendar days after it is collected.

Condemnation of Farm-Raised Deer

This rule clarifies current rules related to DATCP condemnation of diseased or suspect farm-raised deer. Under this rule, a condemnation order may do all of the following:

- Specify a reasonable deadline for destruction of the condemned animals.
- Direct appropriate disease testing and disposition of the carcasses.
- Require the herd owner or custodian to enter into a “premises plan” as a condition to the payment of state indemnities. The “premises plan” may require the herd owner or custodian to clean and disinfect the herd premises, limit future cervid movement to and from the premises, or comply with other requirements that are reasonably designed to prevent the spread of disease. A “premises plan” may include a restrictive covenant, such as a fence maintenance requirement, that is binding on subsequent property owners for the duration of the agreement.

Under current rules, the owner of condemned farm-raised deer may apply for state indemnity payments. Under this rule, an application for indemnity payments must include proof of compliance with DATCP's condemnation order.

Chronic Wasting Disease Herd Status Program; Annual Census

Under current rules, no person may move farm-raised deer from a herd in this state unless the herd is enrolled in Wisconsin's chronic wasting disease herd status program. Enrollees must, among other things, submit an annual herd census to DATCP. Among other things, an annual herd census must report the number, species and sex of animals that have left the herd since the last annual census, and how those animals left the herd. Under this rule, an annual herd census must also include:

- A report of apparent escapes, including approximate escape dates and circumstances, and steps taken to prevent recurring escapes.
- An explanation and accounting for overall changes in herd population since the last annual census.
- Census verification by a Wisconsin certified veterinarian if required by the department.

Chronic Wasting Disease Herd Status Program; Failure to Comply with Testing Requirements

Under current rules, the owner of a herd enrolled in the chronic wasting disease herd status program must test every herd member, at least 16 months old, that dies or is slaughtered. Under current rules, DATCP may suspend a herd's enrollment if the herd owner willfully fails to test even a single test-eligible animal that dies or is slaughtered. However, some animals may die in wooded areas and not be discovered until it is too late to test them. In other cases, it may be hard to tell whether a missing animal died or escaped. So, absent evidence of a willful failure to test, DATCP normally applies an enforcement "tolerance" provided in current rules.

Under the current "tolerance," DATCP may summarily suspend a herd enrollment if the herd owner tested fewer than 92% of the farm-raised deer that died, escaped or were slaughtered in any 2 of the 5 preceding herd census years (including any farm-raised deer whose remains were not testable because of deterioration when found). This rule changes and clarifies the current "tolerance." Under this rule, DATCP may summarily suspend a herd enrollment if the herd owner does any of the following:

- Willfully fails to test any herd member, at least 16 months old, which dies or is slaughtered.
- Tests fewer than 90% of the farm-raised deer that die, escape or are slaughtered in *any* herd census year.

Under this rule, DATCP may reinstate a suspended herd enrollment if the herd owner does any of the following (DATCP may require other reinstatement conditions):

- Tests at least 95% of the deer that die, escape or are slaughtered in the *next* herd census year.
- Kills and tests, within 60 days of the summary suspension, a number of test-eligible animals equal to at least 90% of the number that the herd owner failed to test (during the census year in which the herd owner failed to meet the testing standard). An animal is test-eligible, for purposes of reinstatement testing, if it is at least 16 months old and has been in the herd for at least 120 days.

White-tailed Deer Herd; Fence Certificate

Under current law, fences for farm-raised white-tailed deer herds must be approved by DNR, and must comply with DNR rules. Under this rule, a person applying for a DATCP registration certificate to keep white-tailed deer must include, with the application, a copy of a valid DNR fence certificate for each registered location.

Hunting Preserves

Under current law, a person operating a farm-raised deer hunting preserve must hold a hunting preserve registration certificate from DATCP (a certificate is valid for 10 years). Current rules spell out hunting preserve registration standards and application requirements. Under this rule, an application for a hunting preserve registration certificate must also include all of the following:

- An estimate of the farm-raised deer population on the hunting preserve premises, by species, age and sex.
- The identification numbers of any farm-raised deer on the hunting preserve that bear identification numbers.

Under this rule, all non-natural additions to a hunting preserve must have 2 forms of official individual identification, one visible and one implanted.

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 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 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.

This rule also clarifies that DATCP may transfer a herd certification to a new herd owner, or grant equivalent certification status to a new herd created from an existing certified herd, if the herd meets certification standards and the owner applies for certification within 90 days of acquiring the farm-raised deer.

Tuberculosis in Farm-Raised Deer

Under current rules, a farm-raised deer must be slaughtered within 15 days if it is found to be a tuberculosis reactor, except that DATCP may extend the slaughter deadline by up to 15 days. Under this rule, DATCP may extend the slaughter deadline by up to 30 days.

Importing Farm-Raised Deer

Farm-raised deer imported to this state must meet standards specified in current rules. Among other things, the imported animal must meet one of several alternative requirements related to tuberculosis status. This rule modifies current import standards, based on current federal standards for interstate movement. This rule eliminates current requirements for post-import testing.

Moving Farm-Raised Deer Within Wisconsin

Farm-raised deer may not be moved from a registered herd in this state unless they meet standards specified in current rules (there are limited exemptions, including an exemption for animals shipped directly to slaughter). Among other things:

- The herd must have been continuously enrolled in Wisconsin's chronic wasting disease herd status program for at least 5 years. Under this rule, if 2 or more wild deer found or killed within 5 miles of the enrolled herd test positive for chronic wasting disease, the enrolled herd must also be enclosed by a DATCP-approved double fence to prevent contact with infected wild deer.
- The farm-raised deer must meet one of several alternative requirements related to tuberculosis status. Under *one* of the alternatives (other alternatives are available), a farm-raised deer may qualify for movement if it tests negative on 2 tuberculosis tests, where the 2nd test is performed within 360 days prior to movement. Under this rule, the second test under *this alternative* must be conducted within 90 days prior to movement.

Returning Escaped Farm-Raised Deer to a Herd

Under current rules, an escaped farm-raised deer must be reported within 24 hours. This rule clarifies that the herd owner must report the escape within 24 hours after the herd owner knows or has reason to know of the escape. The report must include the location of the escape, the apparent date and time of the escape, and the circumstances that resulted in the escape.

Under this rule, if an escaped farm-raised deer is returned to the herd, the herd owner must also report the return within 24 hours after it occurs. The report must include the apparent number of hours that elapsed between the escape and the return. If an escaped farm-raised deer is returned to the herd more than 72 hours after it escapes (24 hours if it escapes to a wild deer disease control area designated by DNR), it loses any status that it may have had under a herd certification or status program, and is treated as a new addition to the herd. That may affect the overall certification status of the herd (if an escaped animal is not returned to the herd, the herd's certification status is not affected).

Cattle

Johne's Disease Testing and Herd Classification

DATCP currently administers a voluntary herd testing and classification program related to Johne's disease in cattle. Herd testing and classification is conducted according to federal standards adopted by USDA. This rule incorporates the latest version (2006) of the USDA standards.

Under current rules, Johne's disease test samples must be collected by an accredited veterinarian, by an individual working under direct supervision of an accredited veterinarian who submits the sample for testing, or by an authorized DATCP or USDA employee or agent. Under this rule, a milk sample for Johne's disease testing may also be collected by a Dairy Herd Improvement Association (DHIA) authorized technician or a certified veterinary technician.

Imported Cattle and Bison; TB Test Exemption

Current rules exempt imported bovine animals (cattle and bison) from the requirement of a pre-import tuberculosis test if the animals originate from a state that USDA has classified as "TB-free" if that state accepts Wisconsin animals without a TB test. Under this rule, the exemption does not apply if the state of origin has a confirmed TB-positive herd (until that herd is depopulated and all epidemiologically-linked herds have tested negative for TB).

Cattle and Bison from Mexico

Under this rule, no person may import an "M-branded" bovine animal (cattle or bison) to this state, except directly to slaughter. "M-branded" animals are animals branded with the letter "M" to signify that they have been imported from Mexico.

Poultry

National Poultry Improvement Plan Enrollment

Under current rules, a poultry flock owner may enroll the flock in the national poultry improvement program (DATCP administers the program in this state). Enrollment facilitates the sale and movement of poultry. Under this rule, a flock may not be enrolled in the program unless the flock premises have been registered under Wisconsin's livestock premises registration program (the premises ID number must be included on the enrollment application).

Showing Poultry

This rule clarifies that poultry enrolled in the National Poultry Improvement Plan or in the Wisconsin Tested Flock program may attend shows and exhibitions without losing status as long as all poultry at the show or exhibition have tested negative for pullorum, fowl typhoid and (in the case of turkeys) *Mycoplasma gallisepticum*.

Poultry Imports

Under current rules, poultry may not be imported to Wisconsin unless they are accompanied by a valid certificate of veterinary inspection that certifies *all* of the following:

- They originate from flocks enrolled in the national poultry improvement plan.
- They originate from flocks classified as “U.S. pullorum-typhoid clean” and, in the case of turkeys and turkey eggs, “Mycoplasma gallisepticum clean” under the national poultry improvement plan.

This rule changes current poultry import requirements. Under this rule, poultry may not be imported to Wisconsin unless they are accompanied by a valid certificate of veterinary inspection that certifies *at least one* of the following:

- They originate from flocks enrolled in the national poultry improvement plan.
- They originate from flocks classified as “U.S. pullorum-typhoid clean” and, in the case of turkeys and turkey eggs, “Mycoplasma gallisepticum clean” under the national poultry improvement plan or under an equivalent plan approved by DATCP.
- All test-eligible birds have tested negative for pullorum, fowl typhoid and, in the case of turkeys, Mycoplasma gallisepticum within 90 days prior to import. Tested birds must bear official individual identification, and there may be no change of ownership between the test sampling date and the import date.

Llamas and Alpacas

Under this rule, a llama or alpaca imported to Wisconsin must be accompanied by a certificate of veterinary inspection that includes the official individual identification of the llama or alpaca.

Illegally Moved Animals

Under current rules, DATCP may issue a temporary animal holding order whenever DATCP has reason to believe that animals may have been illegally imported. DATCP may also order the destruction of an illegally imported animal. Under this rule, DATCP may also order temporary holding orders and destruction orders for animals that are illegally moved within this state.

Animal Markets

General

This rule does all of the following:

- Eliminates the current requirement for animal market operators to pass a test before being initially licensed by DATCP.
- Requires animal market operators to transport and handle animals in a safe and humane manner.
- Clarifies animal transport vehicle registration requirements.

- Requires animal market operators to record the official individual identification of goats, if the goats bear official individual identification.
- Requires animal market operators to record the livestock premises code, if any, of each premises from which the operator receives or to which the operator ships livestock.

Federally-Approved Livestock Import Markets

Under current rules, certain livestock imported to a federally-approved livestock import market in this state are exempt from Wisconsin import requirements, provided that they meet those requirements before *leaving* the market. Under this rule, before the animals leave the market, the market operator must also disclose the animals' state of origin to the animal purchaser.

Animal Dealers

This rule does all of the following:

- Eliminates the current requirement for animal dealers to pass a test before being initially licensed by DATCP.
- Requires animal dealers to transport and handle animals in a safe and humane manner.
- Clarifies animal transport vehicle registration requirements.
- Requires animal dealers to record the official individual identification of goats, if the goats bear official individual identification.
- Requires animal dealers to record the livestock premises code, if any, of each premises from which the dealer receives or to which the dealer ships livestock.

Animal Truckers

This rule does all of the following:

- Eliminates the current requirement for animal truckers to pass a test before being initially licensed by DATCP.
- Eliminates the current license exemption for animal truckers that haul animals for other persons fewer than 6 times per license year.
- Requires animal truckers to transport and handle animals in a safe and humane manner.
- Clarifies animal transport vehicle registration requirements.

- Requires animal truckers to record the livestock premises code, if any, of each premises from which the trucker receives or to which the trucker ships livestock.

Slaughter Establishments

Under current rules, no person may remove livestock from a slaughter establishment after the livestock have been weighed and purchased by the slaughter establishment. Under this rule, no person may remove livestock from a slaughter establishment after they have been off-loaded at the slaughter establishment.

Disease Indemnities

Under current law, DATCP may condemn and order the destruction of animals to prevent the spread of serious diseases. In some cases, the owner of the diseased animals may be eligible for state indemnity payments. Under this rule, if the owner of a diseased animal is eligible for state indemnities, and if the animal is of a type not frequently sold at public auction, DATCP must appoint a knowledgeable independent appraiser to determine the value of the animal. The appraiser must determine appraised value based on the animal's size, species, sex, and grade or quality, and by relevant information related to prevailing market prices for animals of that size, species, sex, and grade or quality.

Reportable Diseases

Under current rules, whenever certain diseases are diagnosed in this state, they must be reported to DATCP. Some diseases must be reported within one day, while other diseases must be reported within 10 days. This rule modifies the current list of diseases that must be reported within 10 days. The new list:

- Consolidates, but does not alter, the list of fish diseases that must be reported within 10 days. Some reportable fish diseases are currently listed in the rule text, while others are listed in an appendix. This rule consolidates all of them in the appendix.
- Corrects an error in the current list (Marek's disease is an avian disease, not a mollusk disease).

Prohibited Practices

This rule prohibits any person from selling, moving or disposing of a live animal that has been tested for a reportable disease, before the results of that disease test are known.

Livestock Premises Registration

Registration Renewal Period

Under current law, a person keeping livestock in this state must register each location where those livestock are kept. “Livestock” includes bovine animals, equine animals, goats, poultry, sheep, swine other than wild hogs, farm-raised deer, captive game birds, camelids, ratites and fish.

Under current DATCP rules, a person must renew a livestock premises registration every year. This rule extends the current renewal period, for the convenience of registrants and to reduce state costs. Under this rule, a registrant will only be required to renew a registration once every 3 years.

Who May Register

Under current rules, if *person A* feeds and cares for livestock owned by *person B*, on premises owned by *person C*, any of those persons may register the premises (the others need not). However, if the premises are part of an operation (such as a dairy farm) that DATCP licenses under other applicable law, current rules provide that *only the license holder* may register the premises. This rule eliminates that restriction, so that any eligible person (including, but not limited to, the license holder) may register the premises. This rule retains a current rule provision which allows an applicant for an initial license (such as an initial dairy farm license) to register the livestock premises as part of that initial license application.

Other Changes

This rule makes a number of other minor drafting changes designed to update, clarify and correct current rules.

Public Hearings

DATCP held 3 public hearings on this rule. DATCP held the hearings on January 7, 2008 in Appleton, January 8, 2008 in Madison and January 10, 2008 in Eau Claire. Written comments were accepted until January 25, 2008. The hearings were well attended: 41 people testified or registered. DATCP also received a large number of written comments. A large share of the comments opposed a livestock premises registration provision that has been *removed* from this final draft rule (see tally and explanation below):

| Topic | Position | Registered | Testified | Written* | TOTALS |
|------------------|-------------------------------|------------|-----------|----------|--------|
| Premises | Opposed | 1 | 22 | 153 | 176 |
| | Support | 1 | | 4 | 5 |
| NAIS | Opposed | 1 | | 6 | 7 |
| | Support | | | | 0 |
| All | Opposed | 5 | 2 | 23 | 30 |
| | Support | | | | 0 |
| Fish Health | Opposed | | | 2 | 2 |
| | Support | | | | 0 |
| | Information/suggested changes | 1 | 2 | 3 | 6 |
| Johne's | Opposed | | | | 0 |
| | Support w/Amendment | | 1 | 3 | 4 |
| Farm-Raised Deer | Opposed | | 1 | | 1 |
| | Support w/Amendment | | 1 | | 1 |
| | Suggested changes | | | 4 | 4 |
| Poultry | Opposed | | 1 | | 1 |
| | Support w/Amendment | 1 | | | 1 |
| | Information Only | 1 | | | 1 |
| TOTALS | | 11 | 30 | 198 | 235 |

* Some comments were on multiple topics

A full summary of hearing comments is attached. Comments generally fell into the following categories:

Livestock Premises Registration

- Completely opposed to Wisconsin's livestock premises registration law, and anything related to the proposed National Animal Identification System (NAIS).
- Opposed provision that would allow DATCP to register premises without the owner's express authorization. (*NOTE: this provision has been removed from the final draft rule.*)
- Opposed the requirement for animal markets, dealers and truckers to record premises registration numbers of livestock shipment source and destination points. (*NOTE: The rule only requires livestock markets, dealers and truckers to record premises codes if available. It does not prohibit the handling of animals whose premises codes are not available.*)

Johne's Disease

- Supported the rule, including provision allowing DHIA technicians to collect milk samples for testing. (*NOTE:* In response to hearing testimony, the final draft rule also allows certified veterinarian technicians to collect milk samples for testing.)

Fish Health

- Opposed VHS testing requirements, especially for small fish farms.
- Asked DATCP to limit or modify VHS testing requirements.
- Asked DATCP to expand VHS testing requirements.

(*NOTE:* The final draft rule retains VHS testing requirements with slight modifications. The final draft “permanent” rule is similar, but not identical to the temporary “emergency” rules already adopted. The final draft reduces testing requirements for fish returned to the same wild source from which they were collected – to facilitate sport fish enhancement programs.)

Farm- raised deer

- Opposed changing chronic wasting disease test-eligible population from deer at least 16 months old to deer at least 8 months old. (*NOTE:* the final draft retains the current 16-month-old testing threshold, but allows for change to 8-months-old if mandated by USDA.)
- Opposed requirement to have a veterinarian certify the required annual herd census. (*NOTE:* the final draft does not require veterinarian certification in every case, but DATCP may require it as needed – for example, if there are discrepancies or if USDA requires veterinarian certification.)
- Supported changes to tuberculosis-free and brucellosis-free herd certification procedures, and asked for further changes to brucellosis-free herd certification procedures. (*NOTE:* the final draft makes further suggested changes.)
- Opposed changes in TB testing requirements for farm-raised deer imports. (*NOTE:* the final draft rule is consistent with USDA standards for interstate movement, and eliminates post-import testing requirements.)

Poultry

- Requested technical clarification related to National Poultry Improvement Program. (*NOTE:* the final draft rule includes the requested clarification.)

Changes from Hearing Draft

Following public hearings, DATCP made a number of changes to the hearing draft rule:

Fish Health

- The final draft clarifies fish farm registration requirements and procedures:
 - Creates a *type 3* fish farm registration category (fish farms that obtain fish from wild sources, and sell or distribute fish from the fish farm).
 - Clarifies procedures for registering fish farms at multiple locations (fish farms on non-contiguous land parcels must be registered as separate fish farms, but that can be done with a single application).
 - Allows an operator to register more than one fish farm at a single location, if the fish farms are medically separated.
- The final draft clarifies fish health certificate and VHS testing requirements, including requirements for fish moved from or between fish farms in this state (there are exemptions for certain movements between fish farms registered by the same operator, and for shipments to certain food processing and food retail facilities).
- The final draft exempts, from VHS testing requirements, fish that are returned to the same wild source from which they were collected in order to enhance sport fish populations (a DATCP permit is required).

Farm-Raised Deer

- The final draft clarifies chronic wasting disease testing requirements for farm-raised deer. Under this rule, *as under current rules*, animals at least 16 months old (*not* 8 months old, unless required by USDA) must be tested for CWD when they die or are slaughtered. Under this rule, test samples must be collected within 7 days after the animal dies or is slaughtered, or within 7 days after the death is first discovered. Under this rule, *as under the current rule*, test samples must be submitted for testing within 10 days after they are collected.
- The final draft clarifies that DATCP may suspend a herd's enrollment in the chronic wasting disease herd status program if the herd owner willfully fails to test any test-eligible animal, or fails for any reason to test at least 90% of test-eligible animals in any census year. The final draft specifies conditions under which DATCP may reinstate a suspension.
- The final draft clarifies annual herd census and escape reporting requirements. If an escaped animal is returned to the herd, the herd owner must report the return (a delayed return may affect the herd's disease-free certification or status).
- The final draft simplifies testing requirements under the brucellosis-free herd certification program.

- The final draft allows continued enrollment, in the chronic wasting disease herd status program, of herds located in wild deer chronic wasting disease control areas designated by DNR (enrollment permits deer movement from the herd). However, if 2 or more wild deer found or killed within 5 miles of the farm-raised deer herd test positive for chronic wasting disease, enrollment will be suspended unless the herd is enclosed within a double fence that effectively prevents contact with diseased wild deer.

Livestock Premises Registration

- The final draft deletes a hearing draft provision that would have authorized DATCP to register livestock premises without the owner's explicit authorization.

Other Changes

The final draft also makes the following changes to the hearing draft:

- Allows certified veterinary technicians to collect milk samples for Johne's disease testing.
- Clarifies standards under the National Poultry Improvement Program, including flock commingling standards (NPIP flocks can be commingled with other tested birds at shows and exhibitions).

Response to Rules Clearinghouse Comments

DATCP modified the final draft rule to address all of the comments from the Legislative Council Rules Clearinghouse.

Fiscal Impact

This rule will not have a significant state or local fiscal impact, except that the fish health provisions of this rule will have the following impact on DNR and DATCP (a complete fiscal estimate is attached):

Impact on DNR

This 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 *type 3* fish farm in this state.

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 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 desirable 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.

Impact on DATCP

DATCP expects to incur added costs to administer and enforce the fish health testing requirements under this rule. DATCP estimates that 2.0 FTE positions will be needed 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 approximately \$120,000 per year, including salary, fringe benefits and support costs. DATCP will 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 has received some federal grant funds to cover some of the costs, but federal funding is not guaranteed to continue.

Business Impact

Aquaculture

Effect on Private Fish Farm Operators

DATCP estimates that VHS testing requirements under this rule will affect 30-40 private fish farms, not counting DNR “cooperator” fish farms registered by DNR (see state fiscal impact above). 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

The VHS testing requirements under this rule will have an immediate impact on approximately 25 Wisconsin bait dealers who are currently harvesting emerald shiners from the wild (emerald shiners are the only bait species known to be susceptible to VHS at this time). VHS testing costs may deter wild harvesting of emerald shiners for sale as bait, but affected bait dealers may still harvest and sell other types of bait (emerald shiners comprise only about 10% of the bait market).

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, this rule could have a more dramatic impact on bait dealers. The impact will depend on the species that are affected.

Farm-Raised Deer Keepers

This rule will help control chronic wasting disease and other diseases, for the benefit of the entire farm-raised deer industry, and will make state rules consistent with federal rules. This rule will have minimal impact on most individual operators, and will reduce costs and facilitate deer farm operations in many cases. Some operators may have slight increased costs for fencing, record keeping or animal identification, but fencing costs may be reimbursed by USDA.

Cattle and Goat Producers

This rule allows dairy herd improvement technicians and certified veterinarian technicians to collect milk samples that are used as Johne's disease test samples. That will make it easier, and less costly, for many dairy farmers to participate in the Johne's disease herd testing and management program.

This rule clarifies and strengthens some cattle import restrictions, for the protection of Wisconsin's livestock industry. Import rules will not have significant adverse effects on the livestock industry.

Poultry Producers

This rule will have no adverse effects on poultry producers. It will give poultry importers and exhibitors more flexible movement options, without weakening disease protection.

Animal Markets, Dealers and Truckers

This rule will simplify licensing of animal market operators, dealers and truckers, by eliminating current knowledge testing requirements. This rule will require some animal market operators, dealers and truckers to make minor changes in recordkeeping and operating procedures. Recordkeeping changes will improve disease control and traceback capability, for the benefit of the entire livestock industry. This rule will not have any significant adverse effect on animal market operators, dealers or truckers.

Persons Keeping Livestock; Premises Registration

Under current law, a person who keeps livestock at a location in this state is required to register that location with DATCP. This rule does not expand or modify current registration requirements, except that this rule will make it easier and more convenient to register. Among other things, this rule will extend the registration renewal period from one year to 3 years. This rule will not increase costs or compliance requirements for livestock operators.

Other Affected Businesses

This rule will not have any significant adverse impact on other affected businesses. This rule will clarify current rules, and improve disease control, for the benefit of the entire livestock industry.

Small Business Accommodation

DATCP has not exempted small businesses from this rule, because the risk of disease spread is unrelated to business size.

Environmental Impact

This will have a positive impact on the environment, by helping to prevent the spread of serious diseases, including diseases like tuberculosis, VHS and CWD, which affect wild animal populations and public resources. This rule will not have any negative environmental impact.

Federal and Surrounding State Programs

Federal Programs

DATCP administers animal disease control programs in cooperation with USDA. USDA has well-established control programs for historically important diseases such as tuberculosis and brucellosis. Federal rules for these programs spell out standards for disease testing, disease control, international and interstate movement of animals, certifying the disease status of states, and certifying the disease status of individual herds.

USDA operates national veterinary diagnostic laboratories, and coordinates multi-state responses to major disease epidemics. USDA exercises disease control authority, including quarantine and condemnation authority, and provides funding for indemnity payments to certain owners of condemned animals. USDA operates state and regional offices, and coordinates field operations with states.

USDA has less well-developed programs for new or localized diseases, or emerging animal-based industries. States often take a lead role in developing programs to address new animal health issues and disease threats (farm-raised deer and fish diseases, for example), particularly if those issues or threats have a more local or regional focus. Wisconsin's program related to fish and farm-raised deer are perhaps the leading programs in the nation, and have provided models for proposed federal programs.

USDA may provide grant funding, regulatory incentives, or other assistance in support of state programs and regulation. For example, USDA provides funding for voluntary Johne's disease testing and herd management, based on federal program standards.

States have independent authority to regulate animal health and movement, including imports from other states. However, states strive for reasonable consistency, based on standards spelled out in federal regulations. Where well-established federal standards and procedures exist, state disease control programs typically incorporate those federal standards. However, states may independently address new and emerging disease issues, especially if those issues have a state or regional focus and are not a priority for USDA.

Surrounding State Programs

General

Surrounding state animal health programs are broadly comparable to those in Wisconsin, but vary in a variety of ways. Differences in disease regulations and control programs may reflect differences in animal populations, animal-based industries, and disease threats in the different states. Programs for historically important diseases, such as tuberculosis and brucellosis, tend to be fairly similar between states and are based on well-established federal standards. Programs for newer forms of agriculture, such as farm-raised deer and aquaculture, tend to be more variable.

Aquaculture

All of the surrounding states regulate aquaculture, to some degree:

- Minnesota requires fish import permits, and licenses fish farms and fish dealers. Health certification is required for fish imports, but not for fish farms. Bait imports are prohibited.
- Iowa requires fish import permits, and licenses fish farms. Health certification is required for fish imports, but not for fish farms.

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- Illinois licenses fish farms and fish dealers. An import permit and health certification is required for certain fish imports (salmonids). There is limited regulation of fish transport vehicles.
- Michigan licenses fish farms. Health certification is required for fish imports.

Johne's Disease

All of the surrounding states (Illinois, Michigan, Iowa and Minnesota) have adopted a voluntary Johne's disease testing and herd management program, based on the federal program. Wisconsin has a similar program, which it is updating under this rule.