

ATCP 10.02 (98-123) - FISH FARMS

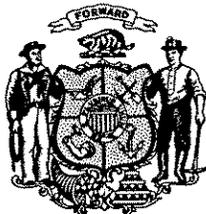
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FORM 2

RULES CLEARINGHOUSE

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CLEARINGHOUSE REPORT TO AGENCY

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

CLEARINGHOUSE RULE 98-123

AN ORDER to amend ATCP 10.02 (title) and (4); and to create ATCP 10.025, 10.68, 11.58 and 11.59, relating to fish farms, fish diseases and imports of live fish and fish eggs.

Submitted by **DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION**

08-28-98 RECEIVED BY LEGISLATIVE COUNCIL.
09-24-98 REPORT SENT TO AGENCY.

RS:DLL:jal;kjf

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CLEARINGHOUSE RULE 98-123

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

I. Statutory Authority

a. In addition to the authority in s. 95.60 (4s) (e), Stats., the rule appears to be exercising the rule-making authority in s. 95.60 (4s) (b) to (d), Stats. The analysis should reference all of these paragraphs in the list of statutes granting rule-making authority for the rule and should note whether consultation with the Department of Natural Resources (DNR) has occurred.

b. Through the definition of "person," the rule exempts the fish rearing activities of the DNR (or any other state agency) from all fish farm registration, importation and health inspection requirements. There are at least two lines of argument that this is an incorrect interpretation of the statutes.

First, of the several provisions of s. 95.60, Stats., applicable to any person, the Legislature explicitly exempted the DNR from one. The fact that the Legislature exempted the DNR from a provision applicable to any person strongly suggests that it viewed the DNR as being a person. The fact that the Legislature did not exempt the DNR from the other provisions even more strongly suggests that it intended those provisions to apply to the DNR.

Second, analysis of proposed s. 95.60, Stats., provided to the Legislature indicated that the regulations would apply to the DNR. In particular, a September 9, 1997 Legislative Council Staff memorandum to Senator Kevin Shibilski and Representative Sheryl Albers was distributed on the floor of the Assembly prior to that house's vote on an amendment to 1997 Assembly Bill 100, the 1997-99 Biennial Budget Bill, affecting the new fish farming regulations. That

memorandum states: "The draft explicitly makes the DNR's authority to import, raise and stock fish subject to compliance with DATCP health certification requirements." With regard to fish stocking, the memorandum states: "Again, the DNR is exempt from the permit requirement, but it must comply with the DATCP health certification requirement." The memorandum does not speak to the applicability of the registration requirement to the DNR. The distribution of this memorandum to all members of the Assembly prior to their vote on this subject strongly argues that the members of that house, at least, understood that they were creating a set of requirements that applied to the DNR, as well as to private fish farms.

c. Section 95.60, Stats., requires that a person who operates a fish farm register the fish farm with the Department of Agriculture, Trade and Consumer Protection (DATCP). Unlike a license or permit, a registration is not a precondition of engaging in an activity, but rather is a declaration of that activity. The Legislative Council Staff memorandum distributed to the Assembly, cited in the preceding comment, described the proposal to create s. 95.60, Stats., as follows: "Under the proposal, no license requirements would apply to fish farms; instead, fish farms would be required to register with the DATCP." In fact, the act creating s. 95.60, Stats., also repealed the previous DNR license program for private fish hatcheries.

Two provisions of the rule are contrary to this understanding of registration, and treat it instead as a license requirement. First, s. ATCP 10.68 (2) (intro.) states: ". . . no person may operate a fish farm . . . without a registration certificate for that fish farm." While the DATCP can seek the imposition of the penalties under s. 95.99, Stats., against a person who fails to register a fish farm, the agency does not appear to have the authority to prohibit the operation of the fish farm for failure to register. This provision should be modified to read as a simple registration requirement, parallel to that in s. 95.60 (3m), Stats.

In addition, s. ATCP 10.68 (10) establishes bases for denying, suspending or revoking registrations, which also treat registrations more like licenses, and uses the threat of denial of registration to enforce other regulatory requirements. Since a registration is just a declaration of an activity, the only reasons for denying the registration would seem to be an untrue or inaccurate registration and possibly the failure to pay a required registration fee. Section ATCP 10.68 (10) and related provisions should be modified to reflect the nature of registration as distinct from that of licensure.

In a similar provision, s. ATCP 10.68 (13) (a) states that a registration certificate will be denied if a fish health certificate is not obtained. Again, there is no connection between the requirements for registration and fish health certificates in s. 95.60, Stats. This provision should be modified to read as a simple requirement to obtain a fish health certificate.

Related to the preceding comments, the exemptions from DNR regulation that fish farms enjoy are not contingent on registration with the DATCP. The Note following s. ATCP 10.68 (2) should be modified to reflect this.

d. The creation of s. 95.60, Stats., took effect on October 14, 1997. That section does not include any delay in the applicability of the requirement that fish farms obtain fish health certificates, but s. ATCP 10.68 (13) (a) delays that requirement until January 1, 2002. This delay of more than four years appears unauthorized.

e. Section 95.60 (3), Stats., requires any person who operates a fish farm to obtain an annual fish health certificate, except that the types of fish farms that the rule calls type 1 may rely on health certificates obtained by their suppliers. The rule creates adequate requirements for type 2 fish farms to obtain fish health certificates, but is silent on the matter of type 1 fish farms. The rule should be modified to require that type 1 fish farms either obtain fish health certificates or provide evidence of sufficient fish health certificates provided by the supplier of the farm's fish.

f. Several provisions of the rule [ss. ATCP 10.68 (13) (b) 3. and 11.58 (15) (a) and (b) 4. and (16) (b)] refer to unspecified fish diseases or testing procedures that will be specified by the DATCP on forms. Notes following these provisions state that the specifications on forms constitute department orders. If the items so specified are determined on a case-by-case basis, they would appear to be orders, as the Notes indicate. However, if the items so specified become standard and are applied to an entire class of persons, as evidenced, for example, by being printed on the forms, they constitute policies and must be promulgated as rules. [See also open-ended requirements in ss. ATCP 10.68 (13) (a) and 11.58 (1) (e), (6) (e) and (16) (a).]

2. Form, Style and Placement in Administrative Code

- a. Section ATCP 11.58 (1) contains two paragraphs numbered "(b)."
- b. The usefulness of the Note following s. ATCP 11.58 (2) could be increased by including cross-references to the DNR rules regarding import and stocking permits.
- c. In s. ATCP 11.59 (1), par. (a) should be preceded by the introduction "In this section:".

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

a. Zoological terms ending in the suffix "-idae" are the latinate names of animal families. They are proper nouns and are capitalized. To form a common noun referring to a member of a family, one drops the "-ae" from the zoological family name and writes the word without capitalization; the resulting noun is pluralized by adding an "s." (Adjectives are formed in the same manner.) Thus, "Salmonidae" is the name of the family of fish including salmon and trout; a fish or species of fish of that family is referred to as a salmonid. (See, for example, *Webster's Third New International Dictionary, Unabridged* (1993).) In this rule, the term "salmonidae" should be replaced with the term "salmonid." (Related DATCP rules, such as those concerning cervids, should be similarly corrected. Note, however, that the term "ratite," also used in DATCP rules, derives from a suborder name, Ratitae.)

b. Section ATCP 10.68 (13) (b) 3. does not follow grammatically from the introductory language. It should be modified to read: "That fish at the fish farm are free from any other diseases that"

**PROPOSED ORDER OF THE STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION
ADOPTING RULES**

1 The state of Wisconsin department of agriculture, trade and consumer protection proposes
2 the following order to amend ATCP 10.02(title) and (4); and to create ATCP 10.025,
3 10.68 and 11.58 and 11.59; relating to fish farms, fish diseases and imports of live fish
4 and fish eggs.

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

Statutory authority: ss. 93.07(1), 95.60(4s)(e) and (5), Wis. Stats.

Statutes interpreted: ss. 93.07(10) and 95.60 Wis. Stats.

This rule implements s. 95.60, Stats., by doing all of the following:

- Establishing fish farm registration requirements.
- Regulating imports of live fish and fish eggs.
- Regulating the introduction of fish into the waters of the state.
- Requiring persons to report certain fish disease findings to the department.

Fish Farms

Annual Registration

Under s. 95.60, Stats., the department of agriculture, trade and consumer protection (DATCP) must annually register fish farms in Wisconsin. This new registration program replaces an annual licensing program previously administered by the department of natural resources (DNR).

Who Must Register

Under this rule, a person must hold an annual fish farm registration certificate from DATCP to do any of the following:

- Hatch fish eggs or hold live fish for any of the following purposes:
 - * Sale or distribution.
 - * Introduction into the waters of the state.
 - * Fishing.
 - * Use as bait or fertilizer.
 - * Use as human food or animal feed.
 - * Education, demonstration or research.
- Hold live fish or fish eggs owned by another person.

Exemptions

There are some exemptions to the fish farm registration requirement. Under this rule, a person may do any of the following without a fish farm registration certificate:

- Hatch or hold “ornamental” fish, including tropical fish, goldfish and koi.
- Hold bait fish under a bait dealer license issued by the Wisconsin department of natural resources (DNR).
- Hatch or hold fish in a fully enclosed building solely for purposes of demonstration, education or research within that building.
- Exhibit fish in a public forum for not more than 15 days in a calendar year, or for a longer period of time which the department authorizes in writing.
- Hold fish for not more than 30 days at a food processing plant, retail food establishment or restaurant pending slaughter or sale to consumers at that facility.
- Transport live fish or fish eggs to or from a fish farm.

Type 1 or Type 2 Registration

This rule establishes 2 types of fish farm registration:

- Type 1: The holder of a type 1 registration certificate may operate a fish farm. The operator may not sell or distribute live fish, except to a food processing plant, retail food establishment or restaurant. However, the operator may allow public fishing for a fee.
- Type 2: The holder of a type 2 registration certificate may operate a fish farm, and may engage in any of the activities authorized under a type 1 certificate. In addition, the operator may sell or distribute live fish from the fish farm.

Annual Expiration Date

A fish farm registration certificate expires on December 31 of the calendar year for which it is issued.

Persons Operating 2 or More Fish Farms

A person who operates 2 or more fish farms must obtain a separate registration certificate for each fish farm. A person may register 2 or more fish farms by filing a single annual application and paying a single annual fee. There is no additional fee for additional fish farms.

why not?

Applying for a Registration Certificate

To obtain or renew a registration certificate, a fish farm operator must file an application with DATCP. The application must include:

- The name, address and telephone number of the fish farm operator.
- The fish farm location.
- The required fee (see below).
- The name, address and telephone number of the individual responsible for administering the fish farm on behalf of the operator, if other than the operator.
- Each species of fish hatched or kept at the fish farm.
- A description of the fish farm, including fish farm facilities and activities.

- A statement indicating whether the operator seeks a type 1 or type 2 registration certificate. To obtain a type 2 registration certificate, the applicant must pay a higher fee and provide a fish farm health certificate (see below).

DATCP must grant or deny an application for a fish farm registration certificate within 30 days after the department receives a complete application.

Registration Fees

An operator must pay the following fee to register one or more fish farms:

- A total fee of \$25 if the operator registers all of the fish farms as type 1 fish farms.
- A total fee of \$50.00 if the operator registers any of the fish farms as a type 2 fish farm.

The following persons are exempt from fish farm registration fees:

- A bona fide scientific research organization that is operating a fish farm solely for the purpose of scientific research.
- A primary or secondary school.

A person applying for a fish farm registration certificate must pay, in addition to the normal annual registration fee, a surcharge equal to the amount of that fee if DATCP determines that, within 365 days prior to submitting that application, the applicant operated a fish farm without a required registration certificate.

Type 2 Fish Farm; Annual Health Certificate

Under this rule, no person may obtain a type 2 fish farm registration certificate for any calendar year beginning after December 31, 2001 unless a fish inspector or accredited veterinarian issues a health certificate for that fish farm not earlier than January 1 of the preceding calendar year.

The fish inspector or accredited veterinarian must issue the annual health certificate on a form provided by the department, based on a personal inspection of the fish farm. The fish inspector or accredited veterinarian must use inspection, sampling and diagnostic methods specified by the department on the certification form.

An annual health certificate must certify that the fish farm is free of all of the following:

- Visible signs of disease.
- Whirling disease (*Myxobolus cerebralis*, or *WD*) if trout, salmon or other salmonidae are hatched or kept at the fish farm.
- Other diseases, if any, which the department specifies on the certification form.

The fish inspector or accredited veterinarian who issues an annual health certificate must file the original certificate with the department, and must provide at least 2 copies to the fish farm operator. The fish farm operator must include a copy with the operator's application for a type 2 fish farm registration certificate.

Denying, Suspending or Revoking a Registration Certificate

DATCP may deny, suspend or revoke a fish farm registration certificate for cause. Grounds include:

- Filing an incomplete or fraudulent application, or misrepresenting any information on an application.
- Violating ch. 95, Stats., or department rules.
- Violating the terms of the registration certificate.
- Interfering with inspection.
- Failing to keep or provide required records.

Recordkeeping

A fish farm operator must keep the following records related to fish or fish eggs which the operator ships from or receives at the fish farm:

- The name, address, and fish farm registration number if any, of the person from whom the operator received, or to whom the operator delivered, fish or fish eggs. ~~X~~
- The date on which the operator received or delivered the fish or fish eggs.
- The location at which the operator received or delivered the fish or fish eggs.
- The size, quantity and species of fish or fish eggs received or delivered.

An operator must retain these records for at least 5 years, and must make them available to the department, upon request, for inspection and copying.

Misrepresenting Fish Source or Disposition

Under this rule, no person selling or distributing fish or fish eggs may misrepresent, directly or by implication, the source or disposition of those fish or fish eggs.

Live Fish Imports

Annual Import Permit Required

Under this rule, a person importing live fish or fish eggs into this state for any of the following purposes must have an annual import permit from DATCP:

- Introducing the live fish or fish eggs into waters of the state.
- Using the live fish or fish eggs as bait.
- Holding the live fish or hatching the fish eggs at a fish farm for which a registration certificate is required under this rule.
- Selling or distributing the live fish or fish eggs for any of the above purposes.

Import Permit; Exemptions

There are some exemptions to this import permit requirement. No permit is required to import any of the following:

- Live ornamental fish, or the eggs of ornamental fish.
- Live fish or fish eggs that will be held, for the remainder of their lives, in fully enclosed buildings solely for purposes of display or research.
- Live fish imported directly to a food processing plant, retail food establishment or restaurant where they will be held for not more than 30 days pending slaughter or sale to consumers at that facility.

Issuing an Import Permit

The department may issue an import permit for all or part of a calendar year, based on a permit application from the importer. An importer may, at any time, apply for an amendment to an annual import permit.

Import Shipments

A single annual permit authorizes multiple import shipments, as long as the importer complies with the terms of the permit. A copy of the annual permit must accompany each import permit.

why both?

Import Recipients

A person holding an import permit may import live fish or fish eggs to the following persons, and no others:

- A person holding a current DATCP fish farm registration certificate.
- A person holding a current DNR fish stocking permit.
- A person holding a current DNR bait dealer license.
- Other persons identified by DATCP in the import permit.

Import Permit: Contents

An import permit must specify all of the following:

- The expiration date of the import permit. An import permit expires on December 31 of the year for which it is issued, unless DATCP specifies an earlier expiration date.
- The name, address and telephone number of the permit holder.
- Each species of fish or fish eggs that the permit holder may import under the permit.
- The size of fish of each species, and quantity of fish or fish eggs of each species, that the permit holder may import under the permit.
- The sources from which the permit holder may import fish or fish eggs under the permit. The permit may incorporate, by reference, sources identified in the permit application.

Applying for an Annual Import Permit

A person must apply for an annual import permit on a form provided by DATCP. There is no fee. A permit application must include all of the following:

- The applicant's name, address and telephone number.
- Each species of fish or fish eggs that the applicant proposes to import.
- The size of fish of each species, and the quantity of fish or fish eggs of each species, that the applicant proposes to import.
- Every wild source from which the applicant proposes to capture and import fish or fish eggs.
- The name, address and telephone number of every fish farm from which the applicant proposes to import fish or fish eggs, and a copy of any annual health certificate issued for that out-of-state fish farm under this rule (see below).

Action on Permit Application

DATCP must grant or deny an import permit application within 30 days after it receives a complete application.

Denying, Suspending or Revoking an Import Permit

DATCP may deny, suspend or revoke an import permit for cause, including any of the following:

- Filing an incomplete or fraudulent permit application, or misrepresenting any information on a permit application.
- Violating ch. 95, Stats., or DATCP rules.
- Violating the terms of the import permit.
- Interfering with inspection.
- Failing to keep or provide required records.

Import Records

A person importing fish or fish eggs under a DATCP permit must keep all of the following records related to each import shipment:

- The date of the import shipment.
- The wild source, if any, from which the importer obtained the imported fish or fish eggs.
- The name, address and telephone number of the fish farm, if any, from which the importer obtained the imported fish or fish eggs.
- The name, address and telephone number of the person receiving the import shipment if that person is not the importer. The importer must also record the recipient's fish farm registration number, stocking permit number and bait dealer license number, if any.
- The location at which the import shipment was received in this state.
- The size, quantity and species of fish or fish eggs included in the import shipment.

An importer must retain these records for at least 5 years, and must provide them to DATCP upon request. DATCP may suspend or revoke an import permit if the importer fails to provide the required records.

Health Certificate Required

Under this rule, no person may import any shipment of live fish or fish eggs into this state unless one of the following applies:

- The import shipment is accompanied by a health certificate issued for that particular shipment (see below).
- The import shipment originates from a fish farm and all of the following apply:
 - * The shipment is labeled with the name and address of that fish farm.
 - * No fish or fish eggs in the import shipment were ever collected from a wild source.
 - * A fish inspector or accredited veterinarian has issued an annual health certificate for that fish farm (see below), and has filed a copy with DATCP.
 - * The importer has included a copy of the annual fish farm health certificate with the importer's application for an annual import permit.

Health Certificate for Individual Import Shipment

A health certificate issued for an individual import shipment must comply with all of the following:

- A fish inspector or accredited veterinarian must issue the health certificate in the state of origin, on a form provided by the department, based on a personal inspection of the import shipment. The fish inspector or accredited veterinarian must use inspection, sampling and diagnostic methods specified by the department on the certification form.
- The health certificate must certify that the import shipment is free of all the following:
 - * Visible signs of disease.
 - * Infectious hematopoietic necrosis (IHN), viral hemorrhagic septicemia (VHS) and whirling disease (*Myxobolus cerebralis*, or *WD*), if the import shipment includes salmonidae.
 - * Iridovirus (white sturgeon disease) if the import shipment includes sturgeon.
 - * Other diseases, if any, which the department specifies on the certification form.
- The fish inspector or accredited veterinarian who issues the health certificate must file the original certificate with the department, and must provide at least 2 copies to the importer. The importer must include a copy with the import shipment.

Fish Imported from Fish Farm; Annual Health Certificate

An annual health certificate issued for an out-of-state fish farm, to justify import shipments from that fish farm, must comply with all the following:

- A fish inspector or accredited veterinarian must issue the annual health certificate in the state of origin, on a form provided by the department, based on a personal inspection of the fish farm. The fish inspector or accredited veterinarian must use inspection, sampling and diagnostic methods specified by the department on the certification form.
- The annual health certificate must certify that the fish farm is free of all the following:
 - * Visible signs of disease.

- * Infectious hematopoietic necrosis (IHN), viral hemorrhagic septicemia (VHS) and whirling disease (*Myxobolus cerebralis*, or *WD*), if the health certificate is used for imports of salmonidae.
 - * Iridovirus (white sturgeon disease) if the health certificate is used for imports of sturgeon.
 - * Other diseases, if any, which the department specifies on the certification form.
- The fish inspector or accredited veterinarian who issues the annual health certificate must file the original certificate with the department, and must provide at least 2 copies to the fish farm operator. The importer must include a copy with the importer's application for an annual import permit.

Fish Introduced Into Waters of the State

This rule prohibits any person from introducing live fish or fish eggs into waters of the state unless one of the following applies:

- The fish or fish eggs originate from a fish farm registered as a type 2 fish farm under this rule.
- The fish or fish eggs are imported in compliance with this rule.

This rule prohibits any person from introducing live fish or fish eggs into waters of the state if that person knows, or has reason to know, that those fish or fish eggs are infected with or have been exposed to any reportable disease (see below).

Reportable Diseases

Under this rule, a person who diagnoses or finds evidence of any of the following diseases must report that diagnosis or finding to DATCP, in writing or by telefax, within 10 days:

- Any aquatic animal disease that is foreign or exotic to Wisconsin.
- Channel catfish virus (CCV).
- Enteric septicemia of catfish (ESC).
- Infectious hematopoietic necrosis virus (IHN).
- Iridovirus (white sturgeon disease).

- Myctobacteriosis infection.
 - Proliferative kidney disease.
 - *Streptococcus iniae*.
 - Viral hemorrhagic septicemia (VHS).
 - Whirling disease (*Myxobolus cerebralis*, or *WD*).
-

1 **SECTION 1.** ATCP 10.02(title) is amended to read:

2 **ATCP 10.02(title) REPORTABLE DISEASES; GENERAL.**

3 **SECTION 2.** ATCP 10.02(4) is amended to read:

4 ATCP 10.02(4) This section does not require a veterinarian to report a diagnosis
5 or finding made by the department or the Wisconsin department of health and ~~social~~
6 family services.

7 **SECTION 3.** ATCP 10.025 is created to read:

8 **ATCP 10.025 REPORTABLE DISEASES; FISH.** (1) REPORT
9 REQUIRED. A person who diagnoses or finds evidence of any of the following diseases
10 in this state shall report that diagnosis or finding to the department, in writing or by
11 telefax, within 10 days after making the diagnosis or finding:

12 (a) Any aquatic animal disease that is foreign or exotic to Wisconsin.

13 (b) Channel catfish virus (CCV).

14 (c) Enteric septicemia of catfish (ESC).

15 (d) Infectious hematopoietic necrosis virus (IHN).

16 (e) Iridovirus (white sturgeon disease).

- 1 (f) Mycobacteriosis infection.
- 2 (g) Proliferative kidney disease (PKD).
- 3 (h) *Streptococcus iniae*.
- 4 (i) Viral hemorrhagic septicemia (VHS).
- 5 (j) Whirling disease (*Myxobolus cerebralis*, or *WD*).

6 (2) EXEMPTION. Subsection (1) does not require a person to report a diagnosis
7 or finding made by the department or the Wisconsin department of health and family
8 services.

9 SECTION 4. ATCP 10.68 is created to read:

10 ATCP 10.68 FISH FARMS. (1) DEFINITIONS. In this section:

②
28 March 2011
A.P. Price
Int. Dept.

11 (a) "Fish farm" means a facility at which a person hatches fish eggs or holds live
12 fish.

13 (b) "Fish inspector" means any of the following:

14 1. An individual who is currently certified by the American fisheries society as a
15 fish health inspector or fish health pathologist.

16 2. An individual whom a state ^{other than WI?} authorizes to certify, on behalf of that state, the
17 health of fish in that state.

18 (c) "Food processing plant" means a facility licensed under s. 97.29, Stats.

19 (d) "Individual" means a natural person.

20 (e) "Operator" means a person who owns or controls a fish farm. "Operator"
21 includes the operator's employees and agents.

22 (f) "Ornamental fish" means tropical fish, goldfish, koi and other fish which the
23 department designates in writing.

②

1 NOTE: You may obtain a current list of fish designated as "ornamental fish" by
2 contacting the department at the following address:

3
4 Wisconsin Department of Agriculture, Trade and Consumer Protection
5 Division of Animal Health
6 P.O. Box 8911
7 Madison, WI 53708-8911
8 Phone: (608) 224-4872
9

10 (g) "Person" means an individual, corporation, partnership, cooperative
11 association, limited liability company, trust, or other organization or entity. "Person"
12 does not include the state of Wisconsin or its agencies.

13 (h) "Retail food establishment" means a facility licensed under s. 97.30, Stats.

14 (i) "Restaurant" means a facility licensed under s. 254.64, Stats.

15 (j) "Salmonidae" means fish or fish eggs of the family that includes trout,
16 salmon, grayling, char, Dolly Vardon, whitefish, cisco and inconnu.

17 (k) "Waters of the state" has the meaning given in s. 281.01(18), Stats.

18 (2) REGISTRATION CERTIFICATE REQUIRED. Except as provided in sub.

19 (3), no person may operate a fish farm for any of the following purposes without a
20 registration certificate for that fish farm:

21 (a) Hatching fish eggs or holding live fish for any of the following purposes:

- 22 1. Sale or distribution.
23 2. Introduction into the waters of the state.
24 3. Fishing.
25 4. Use as bait or fertilizer.
26 5. Use as human food or animal feed.
27 6. Education, demonstration or research.

12
not need to
registration
direct

- 1 (b) Holding live fish or fish eggs owned by another person.
- 2 NOTE: A person is not required to obtain any of the following permits from the
- 3 state of Wisconsin department of natural resources (DNR) for activities
- 4 conducted at a fish farm ~~registered under sub. (2):~~
- 5
- 6
 - A fish stocking permit.
 - 7
 - 8
 - An aquatic management permit, unless the fish farm has an inlet from
 - 9 or outlet to waters of the state.
 - 10
 - 11
 - A sport fishing license. Fishing at a fish farm is also exempt from
 - 12 DNR sport fishing regulations, including regulations related to fishing
 - 13 season, fish size and bag limits.
 - 14

15 (3) EXEMPTIONS. A person may do any of the following without a registration
16 certificate under sub. (2):

- 17 (a) Hold, rear, sell or distribute live ornamental fish, or hatch the eggs of
- 18 ornamental fish.
- 19 (b) Hold live bait fish under a bait dealer's license issued by the state of
- 20 Wisconsin department of natural resources under s. 29.137, Stats.
- 21 (c) Hold or rear live fish, or hatch fish eggs, in a fully enclosed building solely
- 22 for purposes of display or research within that building.
- 23 (d) Exhibit live fish in a public forum for not more than 15 days in a calendar
- 24 year, or for a longer period of time which the department authorizes in writing for a
- 25 specific exhibit.
- 26 (e) Hold live fish or fish eggs for not more than 30 days at a food processing
- 27 plant, retail food establishment or restaurant pending slaughter or sale to consumers at

1 that facility, provided that the facility does not discharge to waters of the state any
2 untreated water used to hold or process those fish or fish eggs.

3 (f) Transport live fish or fish eggs to or from a fish farm.

4 (4) TYPE 1 OR TYPE 2 REGISTRATION CERTIFICATE. (a) Except as
5 provided in par. (b), a person required to hold a fish farm registration certificate under
6 sub. (2) may hold either a type 1 or type 2 registration certificate.

7 (b) A person may not sell or distribute live fish or fish eggs from a fish farm
8 without a type 2 registration certificate, except that a person holding a type 1 registration
9 certificate may do any of the following:

10 1. Allow fishing at the fish farm, including public fishing for a fee.

11 2. Sell or distribute live fish or fish eggs to a food processing plant, retail food
12 establishment or restaurant at which the fish or fish eggs are held for not more than 30
13 days pending slaughter or sale to consumers at that facility, provided that the facility does
14 not discharge to waters of the state any untreated water used to hold or process those fish
15 or fish eggs.

16 3. Move live fish between type 1 fish farms which that person operates in this
17 state.

18 NOTE: A person holding a type 1 registration certificate may, at any time during
19 the registration year, convert that certificate to a type 2 certificate by
20 paying the additional fee under sub. (8) and complying with health
21 certification requirements under sub. (13).
22

23 (5) ANNUAL EXPIRATION DATE. A fish farm registration certificate under
24 sub. (2) expires on December 31 of the calendar year for which it is issued.

1 (6) PERSONS OPERATING 2 OR MORE FISH FARMS. A person who
2 operates 2 or more fish farms shall obtain a separate registration certificate under sub. (2)
3 for each fish farm. A person may obtain annual registration certificates for 2 or more fish
4 farms by filing a single annual application under sub. (7) and paying a single annual fee
5 under sub. (8). There is no additional charge for additional fish farms. A registration
6 certificate is not transferable between persons or locations.

7 NOTE: A person registering 2 or more fish farms may choose to register those
8 fish farms as type 1 or type 2 fish farms. The applicant submits only one
9 annual application and pays only one annual fish farm registration fee.
10 There is no additional charge to register additional fish farms. If any of
11 the fish farms is registered as a type 2 fish farm, the applicant must pay the
12 type 2 registration fee.
13

14 (7) APPLYING FOR A REGISTRATION CERTIFICATE. To obtain or renew a
15 fish farm registration certificate under sub. (2), a fish farm operator shall file an
16 application with the department. The operator shall file an application on a form
17 provided by the department. An operator may, by filing a single application form, obtain
18 registration certificates for 2 or more fish farms. The application shall include all of the
19 following:

20 (a) The name, address and telephone number of the fish farm operator.

21 (b) The location of each fish farm for which the operator seeks a registration
22 certificate. The location shall include the county, township, section number and fire
23 number of the fish farm.

24 (c) For each fish farm under par. (b), a statement indicating whether the operator
25 seeks a type 1 or type 2 registration certificate.

26 (d) The fee required under sub. (8).

1 (e) The name, address and telephone number of the individual responsible for
2 administering each of the fish farms under par. (b) on behalf of the operator, if the
3 individual administering that fish farm is not the operator.

4 (f) The species of fish hatched or kept at each fish farm under par. (b).

5 (g) A description of each fish farm under par. (b), including fish farm facilities
6 and activities.

7 (h) A copy of each health certificate required under sub. (13) for a type 2 fish
8 farm. If an operator is registering a fish farm for the first time, the department may issue
9 a type 2 registration certificate without a prior health certification, provided that the
10 operator obtains and files the required health certification within 30 days after the
11 department issues the registration certificate.

12 (i) Other relevant information required by the department.

13 NOTE: You may obtain a registration form by contacting the department at the
14 following address:

15
16 Wisconsin Department of Agriculture, Trade and Consumer Protection
17 Division of Animal Health
18 P.O. Box 8911
19 Madison, WI 53708-8911
20 Phone: (608) 224-4872
21

22 A fish farm operator may also need certain permits from the Wisconsin
23 department of natural resources (DNR). Contact DNR to find out about
24 DNR permit requirements.
25

26 (8) REGISTRATION FEES. (a) Except as provided in par. (b), an operator shall
27 pay the following annual fee to obtain registration certificates for one or more fish farms:

28 1. A total fee of \$25 if the fish farms are all type 1 fish farms.

29 2. A total fee of \$50 if any of the fish farms is a type 2 fish farm.

1 (b) The following persons are exempt from registration fees under this
2 subsection:

3 1. A bona fide scientific research organization that is operating a fish farm solely
4 for the purpose of scientific research.

5 2. A primary or secondary school.

but still must register

6 (c) A fish farm operator shall pay the full annual registration fee for a fish farm
7 registered for less than a full calendar year.

8 (d) An applicant for an annual fish farm registration certificate under sub. (2)
9 shall pay, in addition to the annual registration fee prescribed by this subsection, a
10 surcharge equal to the amount of that fee if the department determines that, within 365
11 days prior to submitting that application, the applicant operated a fish farm without a
12 registration certificate in violation of sub. (2) or (4)(b). Payment of the surcharge does
13 not relieve the applicant of any other penalty or liability that may result from the
14 violation, but does not constitute evidence of a violation.

15 (9) ACTION ON REGISTRATION APPLICATION. The department shall grant
16 or deny a registration application within 30 days after the applicant files a complete
17 application under sub. (7).

18 (10) DENYING, SUSPENDING OR REVOKING A REGISTRATION
19 CERTIFICATE. The department may deny, suspend or revoke a fish farm registration
20 certificate for cause, including any of the following:

not needed, is registration certificate

21 (a) Filing an incomplete or fraudulent application, or misrepresenting any
22 information on an application.

1 (b) Violating applicable provisions of ch. 95, Stats., this chapter, or ch. ATCP 11.

2 (c) Violating the terms of the registration certificate.

3 (d) Preventing a department employe from performing his or her official duties,

4 or interfering with the lawful performance of his or her duties.

5 (e) Physically assaulting a department employe while the employe is performing

6 his or her official duties.

7 (f) Refusing or failing, without just cause, to produce records under sub. (11) or

8 respond to a department subpoena.

9 (g) Paying a registration fee with a worthless check.

10 NOTE: The denial, suspension or revocation of a registration certificate is subject
11 to a right of hearing under ch. 227, Stats., and ch. ATCP 1, Wis. Adm.
12 Code. The department will not deny registration to a new owner of a fish
13 farm merely because ownership has changed.
14

15 (11) RECORDKEEPING. (a) A fish farm operator shall keep all of the

16 following records related to fish or fish eggs which the operator ships from or receives at
17 the fish farm:

18 1. The name, address, and fish farm registration number if any, of the person

19 from whom the operator received, or to whom the operator delivered, fish or fish eggs. X

20 2. The date on which the operator received or delivered the fish or fish eggs.

21 3. The location at which the operator received or delivered the fish or fish eggs.

22 4. The size, quantity and species of fish or fish eggs received or delivered.

23 (b) An operator required to keep records under par. (a) shall retain those records

24 for at least 5 years and shall make them available to the department, upon request, for

25 inspection and copying.

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1 (12) MISREPRESENTING FISH SOURCE OR DISPOSITION. No person
2 selling or distributing fish or fish eggs may misrepresent, directly or by implication, the
3 source or disposition of those fish or fish eggs.

4 (13) TYPE 2 FISH FARM; ANNUAL HEALTH CERTIFICATE. (a) No
5 person may obtain a type 2 fish farm registration certificate for any calendar year
6 beginning after December 31, 2001 unless a fish inspector or accredited veterinarian
7 issues a health certificate for that fish farm not earlier than January 1 of the preceding
8 calendar year. The fish inspector or accredited veterinarian shall issue the health
9 certificate on a form provided by the department, based on a personal inspection of the
10 fish farm. The fish inspector or accredited veterinarian shall use inspection, sampling and
11 diagnostic methods specified by the department on the certification form.

①
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authorized

②
need health
certificate
requirements
for Type 1
fish farms

} ? rules?

12 NOTE: To obtain a health certification form, contact the department at the
13 following address:

14
15 Wisconsin Department of Agriculture, Trade and Consumer Protection
16 Division of Animal Health
17 P.O. Box 8911
18 Madison, WI 53708-8911
19 Phone: (608) 224-4872

20 (b) A health certificate under par. (a) shall certify all of the following:

- 21 1. That fish at the fish farm is free of visible signs of disease.
- 22 2. That salmonidae at the fish farm are free of whirling disease (*Myxobolus*
23 *cerebralis*, or *WD*), if any salmonidae are hatched or kept at the fish farm.

24 3. Other diseases, ~~if any~~, which the department specifies on the certification form.

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1 (c) A fish inspector or accredited veterinarian who issues a health certificate
2 under this subsection shall file the original certificate with the department, and shall
3 provide at least 2 copies to the fish farm operator. A fish farm operator shall include a
4 copy of the certificate with the operator's application for an annual fish farm registration
5 certificate under sub. (7).

6 NOTE: A certification form which specifies disease inspection,
7 sampling and diagnostic procedures under sub. (13)(a), or additional
8 disease certification requirements under sub. (13)(b)3., constitutes an order
9 under s. 93.07(10), Stats., which is reviewable under ch. 227, Stats., and
10 ch. ATCP 1. If a health certification does not comply with instructions on
11 the certification form, the certification is invalid.
12

13 SECTION 5. ATCP 11.58 and 11.59 are created to read:

(2)

14 ATCP 11.58 FISH IMPORTS. (1) DEFINITIONS. In this section, ^{and s. ATCP 11.59}

15 (a) "Fish farm" means a facility at which a person hatches fish eggs or holds live
16 fish.

17 (b) "Fish inspector" means any of the following:

18 1. An individual who is currently certified by the American fisheries society as a
19 fish health inspector or fish health pathologist.

20 2. An individual whom a state authorizes to certify, on behalf of that state, the
21 health of fish in that state.

X

22 (b) "Food processing plant" means a facility licensed under s. 97.29, Stats.

23 (c) "Individual" means a natural person.

24 (d) "Operator" means a person who owns or controls a fish farm. "Operator"
25 includes the operator's employees and agents.

1 (e) "Ornamental fish" means tropical fish, goldfish, koi and other fish which the
2 department designates in writing. *put in rule*

3 NOTE: You may obtain a current list of fish designated as "ornamental fish" by
4 contacting the department at the following address:

5
6 Wisconsin Department of Agriculture, Trade and Consumer Protection
7 Division of Animal Health
8 P.O. Box 8911
9 Madison, WI 53708-8911
10 Phone: (608) 224-4872
11

12 (f) "Person" means an individual, corporation, partnership, cooperative
13 association, limited liability company, trust or other organization or entity. "Person" does
14 not include the state of Wisconsin or its agencies.

15 (g) "Retail food establishment" means a facility licensed under s. 97.30, Stats.

16 (h) "Restaurant" means a facility licensed under s. 254.64, Stats.

17 (i) "Salmonidae" means fish or fish eggs of the family that includes trout,
18 salmon, grayling, char, Dolly Vardon, whitefish, cisco and inconnu.

19 (j) "Waters of the state" has the meaning given in s. 281.01(18), Stats.

20 (2) ANNUAL IMPORT PERMIT REQUIRED. Except as provided in sub. (3),
21 no person may import live fish or fish eggs into this state for any of the following
22 purposes except under an annual import permit from the department:

23 (a) Introducing the live fish or fish eggs into waters of the state.

24 (b) Using the live fish or fish eggs as bait.

25 (c) Holding the live fish or hatching the fish eggs at a fish farm for which a
26 registration certificate is required under s. ATCP 10.68(2).

1 (d) Selling or distributing the live fish or fish eggs for any of the purposes under
2 pars. (a) to (c).

3 NOTE: A person importing any of the following must also obtain a permit from
4 the state of Wisconsin department of natural resources (DNR):
5

- 6 • Live fish or fish eggs of fish species that are not native to Wisconsin.
- 7 • Live rough fish or rough fish eggs harvested from the wild, except
8 goldfish, dace and suckers.
9

10 X- (P.T.)
11 DNR rules -
12 An application for an import permit under this section also serves as an
13 application for a DNR permit. The department will forward the permit
14 application to DNR.

15 No person may use imported fish or fish eggs to stock waters of the state
16 without a stocking permit from DNR (unless the stocking is subject to an
17 exemption under s. 29.53, Stats.). An import permit application under this
18 section does not serve as an application for a DNR stocking permit.

19 (3) EXEMPTIONS. No permit is required under sub. (2) to import any of the
20 following:

21 (a) Live ornamental fish, or the eggs of ornamental fish.

22 (b) Live fish or fish eggs that will be held, for the remainder of their lives, in
23 fully enclosed buildings solely for purposes of display or research.

24 (c) Live fish imported directly to a food processing plant, retail food
25 establishment or restaurant where they will be held for not more than 30 days pending
26 slaughter or sale to consumers at that facility, provided that the facility does not discharge
27 to waters of the state any untreated water used to hold or process those fish or fish eggs.

28 (4) ISSUING AN ANNUAL IMPORT PERMIT. The department may issue an
29 import permit under sub. (2) for all or part of a calendar year, based on an application

1 under sub. (9). A permit holder may, at any time, apply under sub. (9) for an amendment
2 to an existing permit.

3 (5) COPY MUST ACCOMPANY IMPORT SHIPMENT. Every import
4 shipment under sub. (2) shall be accompanied by a copy of the import permit which
5 authorizes that shipment.

6 (6) IMPORT RECIPIENTS. A person holding an import permit under sub. (2)
7 may import live fish or fish eggs to the following persons, and no others:

8 (a) A person holding a current fish farm registration certificate, under s. ATCP
9 10.68, which authorizes that person to hold live fish or fish eggs of the type imported.

10 (b) The state of Wisconsin department of natural resources.

11 (c) A person holding a current fish stocking permit, under s. 29.53, Stats., which
12 authorizes that person to hold live fish or fish eggs of the type imported.

13 (d) A person holding a current bait dealer license under s. 29.137, Stats., which
14 authorizes that person to hold live fish or fish eggs of the type imported.

15 (e) Other persons identified by the department in the permit.

why? - r/les

16 (7) UNAUTHORIZED IMPORTS. No person holding an import permit under
17 sub. (2) may violate the terms of the permit or exceed the authorization granted in the
18 permit. A permit is not transferable between importers.

1 (8) IMPORT PERMIT; CONTENTS. An import permit under sub. (2) shall
2 include all of the following:

3 (a) The expiration date of the import permit. An import permit expires on
4 December 31 of the year for which it is issued, unless the department specifies an earlier
5 expiration date.

6 (b) The name, address and telephone number of the permit holder.

7 (c) Each species of fish or fish eggs that the permit holder may import under the
8 permit.

9 (d) The size of fish of each species, and the quantity of fish or fish eggs of each
10 species, that the permit holder may import under the permit.

11 (e) The sources from which the importer may import live fish or fish eggs under
12 the permit. The permit may incorporate, by reference, sources identified in the permit
13 application under sub. (9).

14 (9) APPLYING FOR A PERMIT. A person seeking an import permit under sub.
15 (2) shall apply on a form provided by the department. There is no fee. A permit
16 application shall include all of the following:

17 (a) The applicant's name, address and telephone number.

18 (b) Each species of fish or fish eggs that the applicant proposes to import.

1 (c) The size of fish of each species, and quantity of fish or fish eggs of each
2 species, that the applicant proposes to import.

3 (d) Every wild source from which the applicant proposes to capture and import
4 fish or fish eggs.

5 (e) The name, address and telephone number of every fish farm from which the
6 applicant proposes to import fish or fish eggs, and a copy of any health certificate issued
7 for that fish farm under sub. (16).

8 NOTE: You may obtain an application form by contacting the department at the
9 following address:

10
11 Wisconsin Department of Agriculture, Trade and Consumer Protection
12 Division of Animal Health
13 P.O. Box 8911
14 Madison, WI. 53708-8911
15 Phone: (608) 224-4872

16 (10) ACTION ON PERMIT APPLICATION. The department shall grant or
17 deny a permit application under sub. (9) within 30 days after the department receives a
18 complete application.

19 NOTE: The department may impose conditions on an import permit, pursuant to
20 s. 93.06(8), Stats.

21
22 (11) DENYING, SUSPENDING OR REVOKING AN IMPORT PERMIT. The
23 department may deny, suspend or revoke an import permit under sub. (2) for cause,
24 including any of the following:

25 (a) Filing an incomplete or fraudulent permit application, or misrepresenting any
26 information on a permit application.

1 (b) Violating applicable provisions of ch. 95, Stats., this chapter or ch. ATCP 10.

2 (c) Violating the terms of the import permit, or exceeding the import

3 authorization granted by the permit.

4 (d) Preventing a department employe from performing his or her official duties,

5 or interfering with the lawful performance of his or her duties.

6 (e) Physically assaulting a department employe while the employe is performing

7 his or her official duties.

8 (f) Refusing or failing, without just cause, to produce records under sub. (12) or

9 respond to a department subpoena.

10 NOTE: The denial, suspension or revocation of an import permit is subject
11 to a right of hearing under ch. 227, Stats., and ch. ATCP 1, Wis. Adm.
12 Code.
13

14 (12) IMPORT RECORDS. (a) A person importing fish or fish eggs under sub.

15 (2) shall keep all of the following records related to each import shipment:

16 1. The date of the import shipment.

17 2. The wild source, if any, from which the importer obtained the imported fish or
18 fish eggs.

19 3. The name, address and telephone number of the fish farm from which the
20 importer obtained the imported fish or fish eggs, if the importer obtained them from a fish
21 farm.

22 4. The name, address and telephone number of the person receiving the import
23 shipment if that person is not the importer. The importer shall also record the recipient's

1 fish farm registration number under s. ATCP 10.68, stocking permit number under s.
2 29.53, Stats., or bait dealer license number under s. 29.137, Stats., if any.

3 NOTE: See sub. (6).

4 5. The location at which the import shipment was received in this state.

5 6. The size, quantity and species of fish or fish eggs included in the import
6 shipment.

7 (b) A person required to keep records under par. (a) shall retain those records for
8 at least 5 years and shall make them available to the department, upon request, for
9 inspection and copying.

10 NOTE: An import permit holder must keep and provide records under sub. (12),
11 regardless of whether the importer is located in this state or another state.
12 The department may deny, suspend or revoke an import permit under sub.
13 (11) if the importer fails to keep records, or fails to provide them to the
14 department upon request.

15
16 (13) IMPORTING DISEASED FISH. No person may import any live fish or fish
17 eggs into this state if that person knows, or has reason to know, that those fish or fish
18 eggs are infected with or have been exposed to any reportable disease under s. ATCP
19 10.025.

20 (14) HEALTH CERTIFICATE REQUIRED. No person may import any
21 shipment of live fish or fish eggs into this state unless one of the following applies:

22 (a) The import shipment is accompanied by a health certificate issued for that
23 shipment under sub. (15).

1 (b) The import shipment originates from a fish farm and all of the following
2 apply:

- 3 1. The import shipment is labeled with the name and address of that fish farm.
4 2. No fish or fish eggs in the import shipment were ever collected from a wild
5 source.

6 3. A fish inspector or accredited veterinarian has issued an annual health
7 certificate for that fish farm under sub. (16), and has filed a copy of that certificate with
8 the department.

9 4. The importer has filed, with the importer's import permit application under
10 sub. (9), a copy of the annual fish farm health certificate under sub. (16).

11 (c) The import shipment consists solely of any of the following:

12 1. Live ornamental fish, or the eggs of live ornamental fish.

13 2. Live fish or fish eggs that will be held, for the remainder of their lives, in fully
14 enclosed buildings solely for purposes of display or research.

15 3. Live fish imported directly to a food processing plant, retail food establishment
16 or restaurant where they will be held for not more than 30 days pending slaughter or sale
17 to consumers at that facility, provided that the facility does not discharge to waters of the
18 state any untreated water used to hold or process those fish or fish eggs.

(B)
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have to file w/
importer?
does so?

1 (15) HEALTH CERTIFICATE; INDIVIDUAL SHIPMENT. The following

2 requirements apply to a health certificate under sub. (14)(a):

3 (a) A fish inspector or accredited veterinarian shall issue the health certificate in
4 the state of origin, on a form provided by the department, based on a personal inspection
5 of the import shipment. The fish inspector or accredited veterinarian shall use inspection,
6 sampling and diagnostic methods specified by the department on the certification form.

7 NOTE: To obtain a health certification form, contact the department at the
8 following address:

9
10 Wisconsin Department of Agriculture, Trade and Consumer Protection
11 Division of Animal Health
12 P.O. Box 8911
13 Madison, WI 53708-8911
14 Phone: (608) 224-4872

15 (b) The health certificate under par. (a) shall certify that the import shipment is
16 free of all the following:

17 1. Visible signs of disease.

18 2. Infectious hematopoietic necrosis (IHN), viral hemorrhagic septicemia (VHS)
19 and whirling disease (*Myxobolus cerebralis*, or *WD*), if the import shipment includes
20 salmonidae.

21 3. Iridovirus (white sturgeon disease) if the import shipment includes sturgeon.

22 ④ Other diseases, if any, which the department specifies on the certification form. rule?

23 (c) The fish inspector or accredited veterinarian who issues the health certificate
24 shall file the original certificate with the department, and shall provide at least 2 copies to
25 the importer.

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1 NOTE: A certification form which specifies disease inspection,
2 sampling and diagnostic procedures under sub. (15)(a), or additional
3 disease certification requirements under sub. (15)(b)4., constitutes an order
4 under s. 93.07(10), Stats., which is reviewable under ch. 227, Stats., and
5 ch. ATCP 1. If a health certification does not comply with instructions
6 on the certification form, the certification is invalid.
7

8 (16) FISH IMPORTED FROM FISH FARM; ANNUAL HEALTH
9 CERTIFICATE. The following requirements apply to an annual fish farm health
10 certificate under sub. (14)(b)3.:

11 (a) A fish inspector or accredited veterinarian shall issue the annual health
12 certificate in the state of origin, on a form provided by the department, based on a
13 personal inspection of the fish farm. The fish inspector or accredited veterinarian shall
14 use inspection, sampling and diagnostic methods specified by the department on the
15 certification form.

16 NOTE: To obtain a health certification form, contact the department at the
17 following address:

18
19 Wisconsin Department of Agriculture, Trade and Consumer Protection
20 Division of Animal Health
21 P.O. Box 8911
22 Madison, WI 53708-8911
23 Phone: (608) 224-4872

24 (b) The annual health certificate shall certify that the fish farm is free of all the
25 following:

26 1. Visible signs of disease.

1 2. Infectious hematopoietic necrosis (IHN), viral hemorrhagic septicemia (VHS)
2 and whirling disease (*Myxobolus cerebralis*, or *WD*), if the health certificate is used for
3 imports of salmonidae.

4 3. Iridovirus (white sturgeon disease) if the health certificate is used for imports
5 of sturgeon.

6 4. Other diseases, if any, which the department specifies on the certification form. X

7 (c) The fish inspector or accredited veterinarian who issues the annual health
8 certificate shall file the original certificate with the department, and shall provide at least
9 2 copies to the fish farm operator.

10 NOTE: A certification form which specifies disease inspection,
11 sampling and diagnostic procedures under sub. (16)(a), or additional
12 disease certification requirements under sub. (16)(b)4., constitutes an order
13 under s. 93.07(10), Stats., which is reviewable under ch. 227, Stats., and
14 ch. ATCP 1. If a health certification does not comply with instructions on
15 the certification form, the certification is invalid.
16

17 **ATCP 11.59 FISH INTRODUCED INTO WATERS OF THE STATE.** (1) X

18 DEFINITIONS. ^{In this section:} (a) "Fish farm" means a facility at which a person hatches fish eggs or
19 holds live fish.

20 (b) "Person" means an individual, corporation, partnership, cooperative
21 association, limited liability company, trust or other organization or entity. "Person" does
22 not include an agency of the state of Wisconsin.

23 (c) "Waters of the state" has the meaning given in s. 29.53(1)(c), Stats.

24 (2) FISH SOURCES. No person may introduce live fish or fish eggs into waters
25 of the state unless one of the following applies:

1 (a) The fish or fish eggs originate from a fish farm registered as a type 2 fish farm
2 under s. ATCP 10.68.

3 (b) The fish or fish eggs are imported in compliance with s. ATCP 11.58.

4 NOTE: See fish stocking regulations under s. 29.53, Stats. Fish and fish eggs
5 which the state of Wisconsin department of natural resources
6 introduces into waters of the state must comply with health testing
7 requirements equivalent to those that apply to fish or fish eggs produced or
8 imported under s. ATCP 10.68 or this section.

9 (3) INTRODUCING DISEASED FISH. No person may introduce live fish or
10 fish eggs into waters of the state if that person knows, or has reason to know, that those
11 fish or fish eggs are infected with or have been exposed to any reportable disease under s.
12 ATCP 10.025.

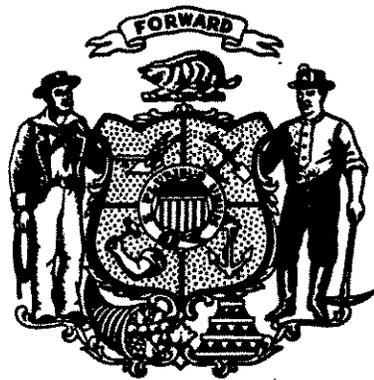
13 **EFFECTIVE DATE:** The rules contained in this order shall take effect on the
14 first day of the month following publication in the Wisconsin administrative register, as
15 provided in s. 227.22(2)(intro.), Stats.

Dated this _____ day of _____, 19_____.

STATE OF WISCONSIN DEPARTMENT
OF AGRICULTURE, TRADE AND
CONSUMER PROTECTION

By _____
Ben Brancel, Secretary

END



END

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

RULES RELATED TO FISH FARMS

The State of Wisconsin Department of Agriculture, Trade and Consumer Protection announces that it will hold public hearings on a proposed department rule related to fish farms and live fish and fish egg imports (proposed chapters ATCP 10 and 11, Wis. Adm. Code). The hearings will be held at the times and places shown below. The public is invited to attend the hearings and make comments on the proposed rule. Following the public hearings, the hearing record will remain open until October 30, 1998, for additional written comments. An interpreter for the hearing impaired will be available on request for these hearings. Please make reservations for a hearing interpreter by October 5, 1998, either by writing to Lynn Jarzombek, P. O. Box 8911, Madison, WI 53708-8911, or by calling 608-224-4883. TTY users call 608-224-5058.

Three hearings are scheduled:

Tuesday, October 13, 1998, commencing at 5:30 p.m.
Department of Agriculture, Trade and Consumer Protection
Board Room
2811 Agriculture Drive
Madison, WI
Handicapped accessible

Wednesday, October 14, 1998, commencing at 5:30 p.m.
Department of Natural Resources
1125 North Military Avenue
Green Bay, WI
Handicapped accessible

Thursday, October 15, 1998, commencing at 5:30 p.m.
Department of Agriculture, Trade and Consumer Protection
3610 Oakwood Hills Parkway
Eau Claire, WI
Handicapped accessible

Written comments will be accepted until October 30, 1998.

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

Statutory authority: ss. 93.07(1), 95.60(4s)(e) and (5), Wis. Stats.

Statutes interpreted: ss. 93.07(10) and 95.60 Wis. Stats.

This rule implements s. 95.60, Stats., by doing all of the following:

- Establishing fish farm registration requirements.
- Regulating imports of live fish and fish eggs.
- Regulating the introduction of fish into the waters of the state.
- Requiring persons to report certain fish disease findings to the department.

Fish Farms

Annual Registration

Under s. 95.60, Stats., the department of agriculture, trade and consumer protection (DATCP) must annually register fish farms in Wisconsin. This new registration program replaces an annual licensing program previously administered by the department of natural resources (DNR).

Who Must Register

Under this rule, a person must hold an annual fish farm registration certificate from DATCP to do any of the following:

- Hatch fish eggs or hold live fish for any of the following purposes:
 - * Sale or distribution.
 - * Introduction into the waters of the state.
 - * Fishing.
 - * Use as bait or fertilizer.
 - * Use as human food or animal feed.
 - * Education, demonstration or research.
- Hold live fish or fish eggs owned by another person.

Exemptions

There are some exemptions to the fish farm registration requirement. Under this rule, a person may do any of the following without a fish farm registration certificate:

- Hatch or hold “ornamental” fish, including tropical fish, goldfish and koi.
- Hold bait fish under a bait dealer license issued by the Wisconsin department of natural resources (DNR).
- Hatch or hold fish in a fully enclosed building solely for purposes of demonstration, education or research within that building.
- Exhibit fish in a public forum for not more than 15 days in a calendar year, or for a longer period of time which the department authorizes in writing.
- Hold fish for not more than 30 days at a food processing plant, retail food establishment or restaurant pending slaughter or sale to consumers at that facility.
- Transport live fish or fish eggs to or from a fish farm.

Type 1 or Type 2 Registration

This rule establishes 2 types of fish farm registration:

- Type 1: The holder of a type 1 registration certificate may operate a fish farm. The operator may not sell or distribute live fish, except to a food processing plant, retail food establishment or restaurant. However, the operator may allow public fishing for a fee.
- Type 2: The holder of a type 2 registration certificate may operate a fish farm, and may engage in any of the activities authorized under a type 1 certificate. In addition, the operator may sell or distribute live fish from the fish farm.

Annual Expiration Date

A fish farm registration certificate expires on December 31 of the calendar year for which it is issued.

Persons Operating 2 or More Fish Farms

A person who operates 2 or more fish farms must obtain a separate registration certificate for each fish farm. A person may register 2 or more fish farms by filing a single annual

application and paying a single annual fee. There is no additional fee for additional fish farms.

Applying for a Registration Certificate

To obtain or renew a registration certificate, a fish farm operator must file an application with DATCP. The application must include:

- The name, address and telephone number of the fish farm operator.
- The fish farm location.
- The required fee (see below).
- The name, address and telephone number of the individual responsible for administering the fish farm on behalf of the operator, if other than the operator.
- Each species of fish hatched or kept at the fish farm.
- A description of the fish farm, including fish farm facilities and activities.
- A statement indicating whether the operator seeks a type 1 or type 2 registration certificate. To obtain a type 2 registration certificate, the applicant must pay a higher fee and provide a fish farm health certificate (see below).

DATCP must grant or deny an application for a fish farm registration certificate within 30 days after the department receives a complete application.

Registration Fees

An operator must pay the following fee to register one or more fish farms:

- A total fee of \$25 if the operator registers all of the fish farms as type 1 fish farms.
- A total fee of \$50.00 if the operator registers any of the fish farms as a type 2 fish farm.

The following persons are exempt from fish farm registration fees:

- A bona fide scientific research organization that is operating a fish farm solely for the purpose of scientific research.
- A primary or secondary school.

A person applying for a fish farm registration certificate must pay, in addition to the normal annual registration fee, a surcharge equal to the amount of that fee if DATCP determines that, within 365 days prior to submitting that application, the applicant operated a fish farm without a required registration certificate.

Type 2 Fish Farm; Annual Health Certificate

Under this rule, no person may obtain a type 2 fish farm registration certificate for any calendar year beginning after December 31, 2001 unless a fish inspector or accredited veterinarian issues a health certificate for that fish farm not earlier than January 1 of the preceding calendar year.

The fish inspector or accredited veterinarian must issue the annual health certificate on a form provided by the department, based on a personal inspection of the fish farm. The fish inspector or accredited veterinarian must use inspection, sampling and diagnostic methods specified by the department on the certification form. An annual health certificate must certify that the fish farm is free of all of the following:

- Visible signs of disease.
- Whirling disease (*Myxobolus cerebralis*, or *WD*) if trout, salmon or other salmonidae are hatched or kept at the fish farm.
- Other diseases, if any, which the department specifies on the certification form.

The fish inspector or accredited veterinarian who issues an annual health certificate must file the original certificate with the department, and must provide at least 2 copies to the fish farm operator. The fish farm operator must include a copy with the operator's application for a type 2 fish farm registration certificate.

Denying, Suspending or Revoking a Registration Certificate

DATCP may deny, suspend or revoke a fish farm registration certificate for cause. Grounds include:

- Filing an incomplete or fraudulent application, or misrepresenting any information on an application.
- Violating ch. 95, Stats., or department rules.
- Violating the terms of the registration certificate.
- Interfering with inspection.
- Failing to keep or provide required records.

Recordkeeping

A fish farm operator must keep the following records related to fish or fish eggs which the operator ships from or receives at the fish farm:

- The name, address, and fish farm registration number if any, of the person from whom the operator received, or to whom the operator delivered fish or fish eggs.
- The date on which the operator received or delivered the fish or fish eggs.
- The location at which the operator received or delivered the fish or fish eggs.
- The size, quantity and species of fish or fish eggs received or delivered.

An operator must retain these records for at least 5 years, and must make them available to the department, upon request, for inspection and copying.

Misrepresenting Fish Source or Disposition

Under this rule, no person selling or distributing fish or fish eggs may misrepresent, directly or by implication, the source or disposition of those fish or fish eggs.

Live Fish Imports

Annual Import Permit Required

Under this rule, a person importing live fish or fish eggs into this state for any of the following purposes must have an annual import permit from DATCP:

- Introducing the live fish or fish eggs into waters of the state.
- Using the live fish or fish eggs as bait.
- Holding the live fish or hatching the fish eggs at a fish farm for which a registration certificate is required under this rule.
- Selling or distributing the live fish or fish eggs for any of the above purposes.

Import Permit; Exemptions

There are some exemptions to this import permit requirement. No permit is required to import any of the following:

- Live ornamental fish, or the eggs of ornamental fish.
- Live fish or fish eggs that will be held, for the remainder of their lives, in fully enclosed buildings solely for purposes of display or research.
- Live fish imported directly to a food processing plant, retail food establishment or restaurant where they will be held for not more than 30 days pending slaughter or sale to consumers at that facility.

Issuing an Import Permit

The department may issue an import permit for all or part of a calendar year, based on a permit application from the importer. An importer may, at any time, apply for an amendment to an annual import permit.

Import Shipments

A single annual permit authorizes multiple import shipments, as long as the importer complies with the terms of the permit. A copy of the annual permit must accompany each import permit.

Import Recipients

A person holding an import permit may import live fish or fish eggs to the following persons, and no others:

- A person holding a current DATCP fish farm registration certificate.
- A person holding a current DNR fish stocking permit.
- A person holding a current DNR bait dealer license.
- Other persons identified by DATCP in the import permit.

Import Permit: Contents

An import permit must specify all of the following:

- The expiration date of the import permit. An import permit expires on December 31 of the year for which it is issued, unless DATCP specifies an earlier expiration date.
- The name, address and telephone number of the permit holder.
- Each species of fish or fish eggs that the permit holder may import under the permit.
- The size of fish of each species, and quantity of fish or fish eggs of each species, that the permit holder may import under the permit.

- The sources from which the permit holder may import fish or fish eggs under the permit. The permit may incorporate, by reference, sources identified in the permit application.

Applying for an Annual Import Permit

A person must apply for an annual import permit on a form provided by DATCP. There is no fee. A permit application must include all of the following:

- The applicant's name, address and telephone number.
- Each species of fish or fish eggs that the applicant proposes to import.
- The size of fish of each species, and the quantity of fish or fish eggs of each species, that the applicant proposes to import.
- Every wild source from which the applicant proposes to capture and import fish or fish eggs.
- The name, address and telephone number of every fish farm from which the applicant proposes to import fish or fish eggs, and a copy of any annual health certificate issued for that out-of-state fish farm under this rule (see below).

Action on Permit Application

DATCP must grant or deny an import permit application within 30 days after it receives a complete application.

Denying, Suspending or Revoking an Import Permit

DATCP may deny, suspend or revoke an import permit for cause, including any of the following:

- Filing an incomplete or fraudulent permit application, or misrepresenting any information on a permit application.
- Violating ch. 95, Stats., or DATCP rules.
- Violating the terms of the import permit.
- Interfering with inspection.
- Failing to keep or provide required records.

Import Records

A person importing fish or fish eggs under a DATCP permit must keep all of the following records related to each import shipment:

- The date of the import shipment.
- The wild source, if any, from which the importer obtained the imported fish or fish eggs.
- The name, address and telephone number of the fish farm, if any, from which the importer obtained the imported fish or fish eggs.
- The name, address and telephone number of the person receiving the import shipment if that person is not the importer. The importer must also record the recipient's fish farm registration number, stocking permit number and bait dealer license number, if any.
- The location at which the import shipment was received in this state.
- The size, quantity and species of fish or fish eggs included in the import shipment.

An importer must retain these records for at least 5 years, and must provide them to DATCP upon request. DATCP may suspend or revoke an import permit if the importer fails to provide the required records.

Health Certificate Required

Under this rule, no person may import any shipment of live fish or fish eggs into this state unless one of the following applies:

- The import shipment is accompanied by a health certificate issued for that particular shipment (see below).
- The import shipment originates from a fish farm and all of the following apply:
 - * The shipment is labeled with the name and address of that fish farm.
 - * No fish or fish eggs in the import shipment were ever collected from a wild source.
 - * A fish inspector or accredited veterinarian has issued an annual health certificate for that fish farm (see below), and has filed a copy with DATCP.

- * The importer has included a copy of the annual fish farm health certificate with the importer's application for an annual import permit.

Health Certificate for Individual Import Shipment

A health certificate issued for an individual import shipment must comply with all of the following:

- A fish inspector or accredited veterinarian must issue the health certificate in the state of origin, on a form provided by the department, based on a personal inspection of the import shipment. The fish inspector or accredited veterinarian must use inspection, sampling and diagnostic methods specified by the department on the certification form.
- The health certificate must certify that the import shipment is free of all the following:
 - * Visible signs of disease.
 - * Infectious hematopoietic necrosis (IHN), viral hemorrhagic septicemia (VHS) and whirling disease (*Myxobolus cerebralis*, or *WD*), if the import shipment includes salmonidae.
 - * Iridovirus (white sturgeon disease) if the import shipment includes sturgeon.
 - * Other diseases, if any, which the department specifies on the certification form.
- The fish inspector or accredited veterinarian who issues the health certificate must file the original certificate with the department, and must provide at least 2 copies to the importer. The importer must include a copy with the import shipment.

Fish Imported from Fish Farm: Annual Health Certificate

An annual health certificate issued for an out-of-state fish farm, to justify import shipments from that fish farm, must comply with all the following:

- A fish inspector or accredited veterinarian must issue the annual health certificate in the state of origin, on a form provided by the department, based on a personal inspection of the fish farm. The fish inspector or accredited veterinarian must use inspection, sampling and diagnostic methods specified by the department on the certification form.
- The annual health certificate must certify that the fish farm is free of all the following:

- * Visible signs of disease.
 - * Infectious hematopoietic necrosis (IHN), viral hemorrhagic septicemia (VHS) and whirling disease (*Myxobolus cerebralis*, or *WD*), if the health certificate is used for imports of salmonidae.
 - * Iridovirus (white sturgeon disease) if the health certificate is used for imports of sturgeon.
 - * Other diseases, if any, which the department specifies on the certification form.
- The fish inspector or accredited veterinarian who issues the annual health certificate must file the original certificate with the department, and must provide at least 2 copies to the fish farm operator. The importer must include a copy with the importer's application for an annual import permit.

Fish Introduced Into Waters of the State

This rule prohibits any person from introducing live fish or fish eggs into waters of the state unless one of the following applies:

- The fish or fish eggs originate from a fish farm registered as a type 2 fish farm under this rule.
- The fish or fish eggs are imported in compliance with this rule.

This rule prohibits any person from introducing live fish or fish eggs into waters of the state if that person knows, or has reason to know, that those fish or fish eggs are infected with or have been exposed to any reportable disease (see below).

Reportable Diseases

Under this rule, a person who diagnoses or finds evidence of any of the following diseases must report that diagnosis or finding to DATCP, in writing or by telefax, within 10 days:

- Any aquatic animal disease that is foreign or exotic to Wisconsin.
- Channel catfish virus (CCV).
- Enteric septicemia of catfish (ESC).
- Infectious hematopoietic necrosis virus (IHN).

- Iridovirus (white sturgeon disease).
 - Myctobacteriosis infection.
 - Proliferative kidney disease.
 - *Streptococcus iniae*.
 - Viral hemorrhagic septicemia (VHS).
 - Whirling disease (*Myxobolus cerebralis*, or *WD*).
-

Fiscal Estimate

The complete fiscal note is available on request.

For purposes of this fiscal estimate, it is estimated that 2,400 fish farms will register with the department during 1999. These farms will register under one of two types; it is estimated that 2,250 will register as type 1 and 150 will register as type 2.

Revenue:

Per s. 95.60, Stats., the department shall specify the fee for registration of a fish farm. This proposal would establish a 1999 registration fee of \$25 for a type 1 registration and \$50 for a type 2 registration. These fees are applicable as of January 1, 1999, for the calendar year 1999 and after. Any fish farm registered by the department in 1998 is eligible for renewal with the department in 1999. Revenue for 1999 is estimated at \$63,800. Revenues from the fish farm registrations will be used to administer the fish farm program within the Division of Animal Health. In addition to these proposed program revenues, \$265,000 of GPR funds and 5.0 FTE positions have been appropriated to support the program within the division (for 1998-99, \$97,900 and 2.0 FTE are frozen).

Expense:

Administrative expense will be incurred by the department in providing a fish farm/aquaculture program. The department will register fish farms, issue permits for the importation of live fish or fish eggs, provide veterinary services and fish related lab work, inspect fish farms, perform investigatory and enforcement activities and provide educational and technical assistance to the public by providing information on various aspects of the program, on rules and regulations related to fish farming and on

aquaculture in general. Expenses for 1998 are estimated at \$328,800 with 5.0 FTE positions.

Initial Regulatory Flexibility Analysis

General Overview

This rule establishes policies and procedures for the department of agriculture, trade and consumer protection to implement 1997 Wisconsin Act 27 which transferred the primary authority for regulating fish farms from the department of natural resources to the department of agriculture, trade and consumer protection.

This rule will affect small businesses in Wisconsin. It includes provisions which relate to small businesses engaged in farming fish and importing live fish and fish eggs into Wisconsin.

Fish Farm Registration

The statute requires that any person who operates a fish farm must annually register the fish farm with the department. This rule identifies two categories of fish farms that must register and imposes annual registration fees, as follows:

- Type 1 (\$25 annual fee): The holder of a type 1 registration certificate may operate a fish farm. The operator may not sell or distribute live fish, except to a food processing plant, retail food establishment or restaurant. However, the operator may allow public fishing for a fee.
- Type 2 (\$50 annual fee): The holder of a type 2 registration certificate may operate a fish farm and may engage in any of the activities authorized under a type 1 certificate. In addition, the operator may sell or distribute live fish and fish eggs from the fish farm.

All private fish hatcheries previously licensed by the department of natural resources in 1997 were eligible for renewal with the department of agriculture, trade and consumer protection under the department's fish farm emergency rule in 1998. This rule establishes a permanent registration system for fish farms. In registering, fish farm operators will need to complete a form providing owner and custodian name and address and fish farm information such as the species of fish kept on the fish farm and a description of the fish farm.

The rule requires fish farm operators to maintain records for at least five years relating to all fish and fish eggs which the operator receives from or delivers to another person,

including the names, addresses and fish farm registration numbers, if applicable, of the parties involved, the date and location of each transaction and the size, quantity and species of fish or fish eggs involved in each transaction.

The rule also requires that a person obtaining a type 2 registration certificate for any calendar year beginning after December 31, 2001, must have a health certificate issued by an accredited veterinarian or a fish inspector for the fish farm not earlier than January 1 of the preceding calendar year. This annual health certificate must certify that the fish on the fish farm are free of all visible signs of disease, whirling disease (*Myxobolus cerebralis*, or WD), if trout, salmon or other salmonidae are kept on the fish farm and any other disease which the department of agriculture, trade and consumer protection specifies on the health certification form.

About 2,400 fish farms scattered across Wisconsin will be affected by the fish farm requirements in this rule. These farms were previously licensed by the department of natural resources, by completing an annual license application form, paying an annual fee (\$5, \$25 or \$50 depending upon the classification) and submitting year end reports on business operations. Under the department of agriculture, trade and consumer protection, the proposed annual fees are \$25 for a type 1 and \$50 for a type 2 registration. Most small business fish farms will have no change in fees. Recordkeeping requirements will be less burdensome for fish farm operators since they will only be required to maintain records and not file yearend reports. Beginning in 2002, the requirement for an annual health certificate for all type 2 registered fish farms will increase the costs of operating a fish farm. The weight of this expense will be offset in the future with better fish health leading to increased production and marketability of product due to higher fish health standards.

Live Fish Imports

The statute requires any person who brings live fish or fish eggs into this state for the purpose of introduction into the waters of the state, of use as bait or of rearing in a fish farm to have an annual permit issued by the department of agriculture, trade and consumer protection. The permit may authorize multiple import shipments. A copy of the permit must accompany every import shipment. In addition, imports of non-native species must also be approved by the department of natural resources. There is no fee for an import permit.

In requesting an import permit, a person will need to complete a form providing name and address information of the requester, fish farm registration number, if applicable, the size, quantity and species of fish or fish eggs to be imported and source location information.

The rule requires a person who imports live fish or fish eggs to obtain a health certificate for each shipment of fish, if the fish originate from a wild source, or an annual health certificate, if the fish originate from an out-of-state fish farm. Issued by an accredited

veterinarian or a fish inspector, the health certificate must certify that the shipment or fish farm is free of all the following:

- Visible signs of disease.
- Infectious hematopoietic necrosis (IHN), viral hemorrhagic septicemia (VHS) and whirling disease (*Myxobolus cerebralis*, or WD), if the health certificate is for salmonidae imports.
- Iridovirus (white sturgeon disease) if the health certificate is for sturgeon imports.
- Other diseases, if any, which the department specifies on the health certification form.

The rule requires a person importing live fish or fish eggs to maintain records for at least five years relating to each import shipment, including the import source, the import date and destination, and the size, quantity and species of fish or fish eggs imported.

Under the department of natural resources a person importing live fish and fish eggs had to acquire a permit and for salmonidae fish or fish eggs, had to provide health certification for five specific diseases. The department of agriculture, trade and consumer protection is requiring a permit and health certification for all imports of live fish or fish eggs. The fish or fish eggs must be certified free of the diseases listed above. The requirement of health certification might increase the cost of importing live fish and fish eggs from out-of-state fish farms and will increase the cost of importing from wild sources, since this requirement did not exist before. It is assumed the source of the fish and fish eggs will pass the cost of the certification on to the importer. Health certification for imports will offer some degree of assurance that a healthy product is being imported which will result in savings for fish farms in the long run and reduced risks of diseased fish being released into the waters of the state. The requirement to maintain import records will add minimal costs since these records are standard business operational records.

Notice of the proposed rule has been delivered to the department of development, as required by s. 227.114(5), Stats.

A copy of the rule to be considered may be obtained, free of charge, from:

Animal Health Division
Wis. Dept. of Agriculture, Trade & Consumer Protection
P. O. Box 8911
Madison, WI 53708-8911

Dated this 26 day of Aug, 1998.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By Ben Brancel
Ben Brancel, Secretary