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#### Details:

(FORM UPDATED: 07/12/2010)

**WISCONSIN STATE LEGISLATURE ...  
PUBLIC HEARING - COMMITTEE RECORDS**

2005-06

(session year)

# Assembly

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(Assembly, Senate or Joint)

## Committee on ... Agriculture (AC-Ag)

## **COMMITTEE NOTICES ...**

- Committee Reports ... **CR**
  - Executive Sessions ... **ES**
  - Public Hearings ... **PH**
  - Record of Comm. Proceedings ... **RCP**

## **INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL**



(**ajr** = Assembly Joint Resolution)  
(**sir** = Senate Joint Resolution)

Rule 04-103 ?

Date ?

### Benefits of contracting services with WLIC

- WLIC is an industry-based, non-profit consortium formed more than 5 years ago by industry leaders. These leaders recognized that the United States was far behind its foreign competitors in premises and livestock tracking; a tool that they knew was going to be pivotal if they wanted to continue to compete in a world market. The consortium membership has grown to include 63 different agricultural organizations as active members. This was long before the first BSE animal was found in Washington State, and even before the September 11, 2001 attacks. Through WLIC, industry partnered with state and federal government agencies to develop a ~~livestock~~ premises registration model that has been recognized, copied and expanded upon across the country. **Without industry leadership in WLIC, premises registration would not have evolved to what it is today.**
- If DATCP is required to do the work internally, eight new staff would be necessary to carry-out the workload that WLIC has been doing for two years and are prepared to continue to do under the new program. WLIC staff have been instrumental in securing federal funding for the program. They will be critical partners in the future as the federal government moves towards a more comprehensive animal tracking system. As you heard at the hearing, other states are moving ahead of Wisconsin. Without WLIC's leadership and expertise, Wisconsin stands to be just one of 50 states in line for future federal resources, instead of being at the forefront. WLIC is at the table when decisions are being made on the National Animal Identification Plan (NAIS).

### Staffing needs handled by WLIC:

- Perform outreach and education on Act 229 and the department rules. This includes educational materials including fact sheets, brochures, informational mailings, press releases, presentations at meetings and other industry events (including related travel costs), trade shows and other written materials related to the program. This work is currently being done by WLIC. If DATCP is given the responsibility, new materials will need to be developed and distributed by DATCP staff. WLIC Staff will also provide information and outreach on the National Animal Identification Plan (NAIS).
- Register 70,000 premises annually, 50% of which are anticipated to be received electronically and 50% of which are anticipated be received by mailed paper forms. Staffing levels need to be sufficient to enter and process manually approximately 225 premises registrations and 32 premises exceptions each day.
- Work with DATCP to process applications and renewals for premises that are currently licensed by the department and to reconcile and integrate the premises number into the department's licensing database.

- Develop and process a confirmation letter that it will send to each registrant after the registrant's premises information is entered into the system. The confirmation letter will contain the pertinent information resulting from registering the premises including account number, online user ID, password and any premises identification and/or premises description. In addition a premises registration card will be sent to all registrants.

**The department does not have the resources, necessary hardware for hosting, back up and security or expertise related to the software developed for the premises registration system.**

Cost Analysis for Premises ID at DATCP				
<b>Positions</b>		<b>FTE</b>	<b>HR/Rate</b>	<b>Annual Salary</b>
Office Manager	1.00	25.58	53,206	
Section Chief	1.00	35.46	73,757	
IS Technical Services Prof	1.00	20.00	41,600	
Public Information Officer	1.00	20.45	42,536	
Program Assistant 2	4.00	12.91	26,853	
	8.00		237,952	
<b>Fringe</b>			107,316	
45.1%				
<b>Supplies and Services</b>		10,500	84,000	
<b>One-Time Costs</b>		5,650	45,200	
<b>Costs related to 8.0 FTE Positions</b>				<b>474,468</b>
<b>Development</b>			75,000	
<b>Systems Operations</b>			103,800	
<b>Outreach Program</b>			346,150	
<b>Premises Confirmation</b>			147,000	
<b>Other Costs related to Premises Program</b>				<b>671,950</b>
<b>ESTIMATED PROGRAM COSTS</b>				<b>1,146,418</b>



Rule 04-103?  
Date?

Rule -

Mark P.:

Whatever we do, has to be done by the 15<sup>th</sup>. Can do one of three things.

① Do Nothing → Rule will go into effect

② Request modifications

- Agency has to agree to consider modifications. Does not commit them to making modifications.

Once rule is returned to us, we have 10 working days to act.

③ Object to part or all of the rule - goes to JCRAR.

\*Not necessarily a good thing.

Keeley -

Tell her know if we want anything specific in terms of modifications requests.



Date?  
Rule 04-103?

1. Eliminate need for annual registration.  
 the registration stays with the premises  
 and does not leave at the end of each  
 year. Include in initial instructions  
 that current owner must only re-register  
 when species are added or ~~or~~ eliminated.

Page 15 line 5 delete "A" to  
 line 6 "(c)"

Language may need to be included to  
 ensure that the registrant is informed of  
 his responsibility to renew registration when  
 adding or eliminating species

- 2) The summary indicates "The Legislature will  
 determine the funding source & amount". I  
 found NO reference to funding in the rule  
 thus I found nothing similar which should be  
 deleted. The statement in the summary  
 statement creates unnecessary opposition. If  
 they felt compelled to mention funding in the  
 summary it should have stated something  
 like "funding ~~is~~ shall be from within  
 DATCP biennial budget"

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## Ag Committees Send Livestock Premises ID Bill Back to DATCP

The Livestock Premises Identification Rule is now back in the hands of the Department of Agriculture, Trade and Consumer Protection (DATCP).

Members of both the Assembly Agriculture Committee and the Senate Agriculture and Insurance Committee who were present at the May 12 Joint Committee Hearing voted unanimously to return the rule to the department so changes could be made.

The hearing itself seemed a bit disjointed because committee members kept leaving the hearing room and then returning. They had valid reasons to do so, however, because the Senate was in session and other hearings were also going on. This is one of the busiest times for lawmakers because not only is the Joint Finance Committee (JFC) working on its budget, many committees are holding hearings on bills that have been assigned to them.

Committee members grilled DATCP representatives over enforcement provisions that were not part of the legislation, but that have shown up in the rule. The lawmakers also wanted direct answers to questions involving the amount of any possible fines or forfeitures - but direct answers were hard to come by.

Rep. Debi Towns (R-Janesville) wanted to know what would happen if "a 4-H kid brought a steer to a fair and the premises where the animal is kept is not a registered premises. Could there be a fine of up to \$5,000?" she asked.

Rep. Barbara Gronemus (D-Whitehall), who was the lead author of the livestock premises legislation, had a concern similar to that of Towns. "When we have a rule someone doesn't comply with (registering livestock premises) and a student, not of legal age, who wants to take an animal to the fair. His parents must register their premises to have one animal to go to the fair?"

Michelle McGuire, legal counsel from DATCP, said, "that (registering the premises) would be the obligation on that family."

But Gronemus wasn't finished making her point. "Then the DATCP will be the determining factor of whether the premises is registered - the intent of the author of the legislation will be interpreted by the DATCP. This needs to be clarified and the language in the rule must follow the intent of the law. This has to be done before the DATCP's Administrative Rule is published. Otherwise, it will be the intent of the agency (that is followed), rather than the intent of the drafter of the law. It is important that the intent of the drafter supersedes the interpretation of the agency."

But Rep. Al Ott (R-Forest Junction), chair of the Assembly Ag Committee, interjected "we need to be careful of splitting hairs. The department (DATCP) is our agent."

But another committee member, Rep. John Ainsworth (R-Shawano), had a warning as well. "We're already dealing with another agency where the same rule is interpreted differently in different counties - by someone who has not even graduated from college," Ainsworth said.

"Is it the intent of the drafter or the interpretation of the agency (that is most important)?" Gronemus demanded.

State Veterinarian Bob Ehlenfeldt responded saying, "the DATCP only has 4 to 6 forfeitures a year. Our department's compliance policy is progressive based on education, rather than forfeiture. We do not have citation authority, so we require support from district attorneys to carry through."

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There was another angle to the 4-H animal taken to a fair issue that Rep. Amy Sue Vruwink (D-Milladore) wanted to pursue. "What about the animal kept on a different premises than the owner's? Who is responsible - is it the student who is liable if the owners of the premises do not register?"

Ehlenfeldt's response was that "someone has to register those premises. It can be the property owner (where the animal is kept.) Once registered, the land would have the number. Animals have to be kept on a registered premises and anyone can do the registration. Liability would come down to legal interpretation. Probably it would be the animal owner or there could be joint liability."

#### Amish concerns

About two dozen men from the Amish community were present during the hearing. Clarence Schlabach, Dalton, and Jonas Troyer, Loganville, were spokespersons for the Amish delegation. Their testimony came about half way through the hearing.

"We have concerns," Schlabach began. "Listening to all of this, it is more confusing to me than before. We're very concerned about animal identification and we're very much opposed to the use of computer chips."

(Before the hearing began, Robert Fourdraine, chief operating officer of the Wisconsin Livestock Identity Consortium, delivered an update on premises identification and also talked about USDA's plans for the eventual National Animal Identification System. Fourdraine spoke of the use of radio frequency identification tags that would use computer chips.)

Schlabach wanted to know why a combination of existing fire numbers and zip codes could not be used for livestock and/or animal identification purposes. When fire numbers were first put in place, Amish farmers did not actively apply for the numbers. Ultimately, local authorities assigned fire numbers to Amish farms.

"If we go along with livestock premises identification, this is just one step. We do not want to be a party in animal identification if it comes to computer chip identification methods. We will have to back out," Schlabach told the committee.

"We are not here to tell you what to do," Schlabach emphasized. "We want to be law abiding as long as it doesn't go against our religion."

Senator Dan Kapanke (R-La Crosse), chair of Senate Agriculture and Insurance Committee, responded to Schlabach's comments by saying, "we appreciate your being here. Animal identification is down the road - hopefully we can arrive at a solution to your situation."

At this point Fourdraine interjected that "not every site will have an address. In cases of a pasture, we'll use GPS coordinates." Nevertheless, Fourdraine pointed out, any exceptions to the identification number systems "would have to be accepted nationally."

Several committee members reacted to the concerns of the Amish farmers, but finally Ott spelled out the difference between the two identification systems. "Premises registration is the duty of the state; individual animal identification numbers are the concern of the federal government."

Any waiver for federal ID numbers would have to come from the federal government, Ott added.

The state's purpose for identifying livestock premises is about being able to trace backs in the event of a disease outbreak. "The state just wants to know where animals are kept in case of a disease outbreak," Ott said.

Both Ott and Kapanke assured Schlabach and Troyer they would "do our best to address your concerns when it comes to talking to the federal government."

"You will have an impact - not just in our state - but also other states where Amish live," Ott said. "We'll do all we can to be sure the federal government understands your views."

"We will do everything we can to accommodate your beliefs," Kapanke added.

The solution may be more complicated than it first appeared. Rep. Gabe Loeffelholz (R-Platteville) noted that Amish farmers "are going to haul their animals to slaughter plants where computers are used. Is there a backup system when computers are down?" he asked, suggesting a backup system that doesn't require computers to read tags might be put in play when Amish owners bring in their animals.

Ehlenfeldt responded, "if computers are down, it all depends on how redundant the system is."

Schlabach, responding to a query from Moleske, said there are between 800 and 900 Amish farms in Wisconsin.

Other testimony

Deb Reinhart, New Holstein, chose to testify as a producer and not in her capacity as chair of WLIC.

"To maintain our industry, we have to protect it," Reinhart told the committee. "I view premises registration as an insurance policy against disease," she said.

Reinhart said she'd been at a conference where a veterinarian had said in the event of foot and mouth disease in Florida "nothing would move off my dairy for two weeks. We couldn't survive that."

Ehlenfeldt explained that a "Florida outbreak could affect Wisconsin producers in a number of ways. First, the USDA could invoke a national Stop Movement order until we know what we have to deal with. I think that step would be unlikely, but if it were found in Wisconsin or surrounding states or if the disease outbreak was intentional (terrorism) a Stop Movement order could happen here."

"Any place foot and mouth would happen in the U.S. would affect every producer because the entire world would close their borders to U.S. animal products. That single cow in the state of Washington has cost the U.S. \$1.2 billion so far," Ehlenfeldt added.

Mike Wehler, Wisconsin Pork Producers, said his organization supported the rule. "What happened in Wisconsin with pseudorabies eradication has now been duplicated around the nation," Wehler said.

"The last thing we want is a Grand Plan without funding. Pork producers around the nation have been selling individual animal ID for the past 15 years," Wehler said.

The primary issue for pork producers, he continued, is the requirement in the rule for annual premises registration. "If a premises is given a permanent number, I don't understand why we have to annually register our premises," he said.

Jay Mattison, CEO and administrator of the National Dairy Herd Improvement Association, said close attention needed to be paid to the economic impact of the rule to producers/growers and the public. "Has the economic impact of doing nothing on this issue ever been talked about?" he asked.

"Yes, Wisconsin is a leader in premises identification, but don't believe you are out in front. You are not. Other states are also aboard in premises and animal ID," Mattison said. He also urged lawmakers and anyone involved in ID issues to "not be overly sensitive on fees."

Mattison had a unique perspective on the importance of premises and animal identification. That's because in February of 2001, two days after he received a call about the outbreak of foot and mouth disease in Britain, he was in London.

"I was a witness to the devastation and the destruction this caused to the country and what it does to the common good. We need controls in place to

deal with disease outbreaks. We need to be proactive and have a system in place to address a situation that may happen and may not. Disease does not spare any species or any size of farm. Knowing the location and where the premises are will save both time and money," he said.

Tom Lyon, livestock consultant to DATCP Secretary Rod Nilsenstuen, whose prepared testimony indicated he had not anticipated any "substantial change" in the rule, said "animal diseases do not discriminate between herds of one or 100. One does not want to underestimate the rapidity of change within the industry."

While the program is still voluntary, "all arrows point in the direction of USDA making livestock identification a key priority," Lyon said. Not only is livestock identity important from the standpoint of food safety, security, consumer confidence, it is also a must "to have the U.S. product compete globally. One then assumes there will be funding to assist in meeting these needs, as there was with brucellosis and tuberculosis eradication programs."

Bill Oemichen, president and CEO of Wisconsin Federation of Cooperatives (WFC), presented testimony in support of the rule. "Today, 47 states have committed to premises registration efforts, of which 35 are following the Wisconsin model, the 'standardized premises registration system,'" he noted. While WFC supports annual registration, Oemichen indicated WFC would not oppose amending the rule to provide every other year registration.

Jeff Lyon, director, governmental relations for the Wisconsin Farm Bureau Federation (WFBF), was generally supportive of the rule, "WFBF remains concerned about how the program will be funded when federal funds are no longer available. WFBF opposes registration fees being imposed solely on producers.

"While the rule is being put in place to protect human health, WFBF is concerned that the rule could be used by individuals or groups wanting to advance different agendas. Under the rule, DATCP is authorized to disclose otherwise confidential information 'if the department believes that the release is necessary to prevent or control disease or to protect public health, safety or welfare. WFBF would like to see 'public health' changed to 'human health' to better protect producers against allegations based on concerns that are unrelated to animal health issues. Some people out there with different agendas may want 'human health' to apply to other things as well," Lyon said.

Attorney Mark Patronskey, Wisconsin Legislative Council, explained, "ordinarily public health includes human health. It is 'welfare' that gets to environment."

Questioned by committee members, Lyon said he was thinking of a nuisance lawsuit a northern Wisconsin cranberry grower was facing. "The attorney general's lawsuit cites 'public health' issues. We just want to be sure farmers and their Right to Farm are protected," Lyon said.

Testifying on behalf of the Wisconsin Cattlemen's Association, Terry Quam said he supported the measure because "of human health and safety. Think of the economic burden that would be imposed if foot and mouth disease were to break out. We couldn't bear the burden."

"On funding, we want to be sure that obligation is shared equally. We don't want to see producers end up with 100 percent of it. As a farmer, I know what it feels like to be at the end of the food chain. I take my products to market and I take what I'm offered - I have no ability to add to that price. I agree with WFBF on changing 'public health' to human health," Quam added.

What's next?

After more than four hours of testimony, questions and debate, committee members said they could not accept the DATCP's rule in its current form.

Special rules then come in play which means only one committee, in this case it was the Assembly Agriculture Committee that had a majority of its members present, has to vote to send the rule back to the agency for changes before the rule can take effect.

However the agency had to agree to consider modifications. On May 16, the committees were notified DATCP was willing to consider modifications to the rule and was looking forward to discussing it with the two agriculture committees.

This means, literally, that the time clock for when livestock premises identification would become mandatory has stopped.

This keeps the rule under the jurisdiction of the two legislative committees where there will be continuing dialog between the committees and DATCP.

Among the issues committee members want DATCP to consider modifying are these:

- Annual registration renewal - is this really necessary?
- Amish concerns
- Statutory inconsistencies
- Registration of up to three secondary locations
- How far ahead of other states should Wisconsin be in the matter of premises registration and animal ID?

There is no deadline by when DATCP must bring the rule back for legislative committee review. The department will likely want to review any modifications with the DATCP board. It is unknown if additional hearings may be needed.

What can be said is that the rule remains under the control of the Legislature's two agriculture committees and that there is no deadline by which DATCP must bring the rule back to those committees.



Rule 04-103?



## 'Livestock Premises' Concerns Fielded

Pr

**By Jane Fyksen, Crops Editor**

The chairmen of two legislative committees recently shared committee members' concerns with the Wisconsin Department of Agriculture, Trade and Consumer Protection over the department's final draft rule that would implement Wisconsin's livestock premises registration law - the first of its kind in the nation.

The Wisconsin Livestock Identification Consortium (WLIC) has already registered some 10,000 Wisconsin live premises under a voluntary registration program. The DATCP rule will make registration mandatory. DATCP is negotiating a contract with WLIC to administer much of the program for the department. The registration process will also be coordinated with DATCP's current licensing system and database.

Al Ott, chairman of the Assembly Ag Committee, and Dan Kapanke, chairman of the Senate Committee on Ag and Insurance, forwarded members' comments on the livestock premises registration rule to DATCP staff, who briefed the department's citizen oversight board of the legislators' concerns during a teleconference last week. The state ag board approved a DATCP "response." Presumably, the legislators' concerns arise from a public hearing held May on the draft rule. The joint hearing was part of legislative review of the DATCP's proposed rule.

The two committees took no formal action. According to DATCP staff, they believe they've been able to reach agreement with legislatures and successful waylay concerns. It's the view of the two chairmen that the rule will move along.

Farmers tracking this issue will get further insights on the more controversial portions of livestock premises registration from committee members' comments and the DATCP's responses presented here:

**Comment:** No fee should be imposed on farmers to support the livestock premises registration program.

**Response:** DATCP doesn't have any authority to impose a fee and hasn't done so in the rule. Neither does the premises registration law authorize the DATCP to charge a fee. The program is currently funded by federal grants and DATCP has applied for continuation of that funding.

**Comment:** Remove penalties for failing to register.

**Response:** This rule doesn't create any penalties. Those are set by statute and can't be changed or eliminated. The rule, DATCP has a "longstanding reputation for sound enforcement discretion and for working cooperatively with the affected industry to achieve voluntary compliance."

**State veterinarian Bob Ehlenfeldt** promised the department will work with producers failing to register, recognizing that public education will be needed at the outset.

**Comment:** Eliminate the requirement for annual registration renewal and go to every other year or even longer when there's been a change in the operation, like a species added or eliminated.

**Response:** "Experience in other programs has shown that annual registration is important for maintaining up-to-date premises information that may be critical in the event of a serious disease outbreak," contends DATCP, promising to simplify renewals by preprinting existing registration information on each farm, so the producer won't have to provide new information unless prior information has changed. It was also noted that nearly all department licenses and registrations are annual, and that the livestock premises program is designed to dovetail with those annual cycles. After several years (by then a national program will likely be in place), DATCP will reconsider whether annual registration is still needed.

**Comment:** Delay rule promulgation until the federal government fully implements individual animal ID.

**Response:** Wisconsin's premises registration law has already specified an effective date of Nov. 1, 2005 for live

premises registration. DATCP can't do anything to change that and doesn't believe further delays are warrant

Livestock premises registration is a first preliminary step toward an animal identification program. USDA has a national strategic plan for animal ID. Although that plan proposes to implement individual animal ID by 200 for premises registration by the end of this year. Wisconsin is in step with the national plan, although farmers understand that this draft rule addresses only premises registration and not individual animal identification.

Comment: Remove the requirement to register premises that temporarily house a small number of "fair anim

Response: DATCP says disease outbreaks often originate from premises that keep small numbers of livestock Ehlenfeldt notes that fairs and shows are particularly susceptible to transmission of disease. From a disease c standpoint, it's especially important the locations of show and fair animals are registered. The Wisconsin Assoc County and District Fairs already backs the proposed rule, too.

Comment: Change the term "public health" to "human health" in the proposed rule.

Response: The livestock premises registration law (directing the department to adopt this rule) specifically us term "public health." Consistency between state statute and department administration rule is important. (It's the concern stems from the Attorney General's lawsuit pending against a cranberry grower that alleges public might have precipitated this concern.)

Comment: Remove provisions that allow a contract agent to register premises on behalf of the department.

Response: Registration information belongs to the department, not the contract agent. The rule contains exte provisions to ensure confidentiality of producers' information. As noted, it's expected WLIC will act as the stat in registering premises. WLIC represents a broad consortium of Wisconsin ag and livestock groups, that have interest in ensuring a "well-run registration program that protects the confidentiality of registrants." Staff will sign individual confidentiality agreements with the department.

Comment: Clarify the applicability of the rule to "game birds."

Response: The rule is clear that captive game birds are covered.

There were other concerns forwarded to the DATCP, which in turn, shared them with the state ag board last v during a teleconference. Though not included in the written committee member comments, these were raised committee hearing or by Legislative Council staff.

How this rule applies to Amish livestock producers was brought up. DATCP doesn't believe it's authorized to e Amish producers and isn't inclined to do so. Ehlenfeldt says Amish livestock are no less susceptible to disease other farmers' livestock.

"While Amish producers expressed concerns about registering their premises with the state, it should be note Amish dairy farms are already licensed by the department," DATCP responded. "The department is sensitive t concerns and will, to the maximum extent feasible, work with Amish representatives to implement registratio requirements in a manner that is compatible with Amish beliefs." The department will provide outreach and e to the Amish community by meeting with church elders and offering personal assistance to complete premise registration applications.

Legislative Council staff identified an apparent inconsistency between the statute and the proposed rule as it release of "aggregate" information by a contract agent (presumably WLIC). DATCP plans to revise the propos eliminate that inconsistency. (The proposed rule had permitted a contract agent to release aggregate informa department approval; that's contrary to the law. The rule will be changed so as to state that any release of a information would have to come from the department.)

The state ag board approved the above responses to the legislative committees. However, as noted, it's dout there'll be any sort of formal action by the Legislature.

The state ag board was about to hear from Ag Secretary Rod Nilsestuen with his usual "secretary's report," w Nilsestuen (who was participating in the teleconference from the Washington County fairgrounds) said someo notified him that a gas line had been hit and he and others should leave the premises. The secretary immedi up. Nobody was hurt.

The ag board next meets Aug. 9 and 10 in conjunction with the Wisconsin State Fair. The ag board plans to a progress made on its vision statement and earlier discussed primary goals. Members also discussed how well the teleconferencing concept, instead of always meeting face to face. The informal consensus was that there be more ag board teleconferences.

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