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Details: Emergency Rules by Department of Agriculture, Trade and Consumer Protection.

(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

2007-08

(session year)

Joint

(Assembly, Senate or Joint)

Committee for Review of Administrative Rules...

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

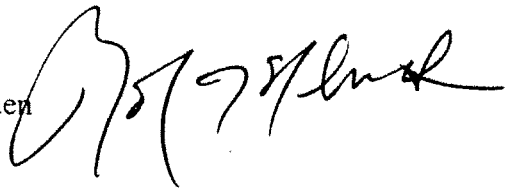
INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
 - (**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
 - (**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**



State of Wisconsin
Jim Doyle, Governor

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

DATE: January 12, 2007 1-12-07
TO: State Legislators
FROM: Rodney J. Nilsestuen
Secretary 
SUBJECT: **Emergency Rule – Credit Report Security Freezes**

Pursuant to s. 227.24(3), Stats., the Department of Agriculture, Trade and Consumer Protection (DATCP) is forwarding a copy of an emergency rule relating to the credit report security freezes. The emergency rule is needed to implement a new state law that took effect on January 1, 2007. The emergency rule defines what constitutes proper identification for a consumer who asks a credit reporting agency to create, release, or terminate a security freeze.

Background

Section 100.54, Stats., created by 2005 Wisconsin Act 140, regulates access to consumer credit reports. The law permits a consumer to create a “security freeze” on his or her consumer credit report. A security freeze limits the release and distribution of the consumer credit report. At any time after creating a security freeze, the consumer may ask the credit reporting agency to release the consumer’s credit report for a specified period of time, or to terminate the security freeze altogether.

A consumer who asks a credit reporting agency to create or release a security freeze must provide information to verify the consumer’s identity. Under s. 100.54(12), Stats., DATCP must adopt rules to define what constitutes proper identification.

On November 15, 2006, the DATCP Board authorized public hearings on a proposed “permanent” rule related to credit report security freezes. Those hearings are scheduled for January 18 and 19, 2007. The “permanent” rule will not take effect until sometime this summer. Pending adoption of a “permanent” rule, this emergency rule adopts portions of that proposed rule on an interim basis.

DATCP believes that an emergency rule is necessary to implement the new law, which took effect on January 1, 2007. Beginning on that date, credit reporting agencies must honor a consumer’s request for a security freeze. Since a “permanent” rule will not yet be in place for some time, credit reporting agencies will not know what identifying information they may require of consumers who request a security freeze under the new law. This emergency rule will identify, on an interim basis, the types of identifying information that they may require.

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Contents of this Emergency Rule

This emergency rule defines what constitutes proper identification for a consumer who wishes to place a security freeze on his or her credit report. DATCP believes that the rule is consistent with federal law related to proper identification. The emergency rule does all of the following:

- Spells out the information that a credit reporting agency may require of a consumer who asks the agency to create a security freeze, in order to verify the consumer's identity.
- Spells out the information that a credit reporting agency may require of a consumer who asks the agency to release or terminate a security freeze, in order to verify the consumer's identity. The agency may require the same information that it required to create the security freeze and may, in addition, require a password assigned to the consumer when the security freeze was created.

Unlike the proposed "permanent" rule, this emergency rule does not require a credit reporting agency to document the procedures that it will use to comply with the rule.

Hearing on Emergency Rule

The DATCP Board approved this emergency rule on January 10, 2007. The rule will take effect immediately, upon publication in the official state newspaper. DATCP has scheduled a follow-up hearing on the emergency rule for following date and time:

Monday, February 12, 2007
1:30 p.m. to 3:30 p.m.
Department of Agriculture, Trade and Consumer Protection
2811 Agriculture Drive, Board Room (CR-106)
Madison, Wisconsin, 53718-6777
Handicapped accessible

Questions or comments related to this emergency rule may be directed to:

Michelle Reinen
Department of Agriculture, Trade and Consumer Protection
P.O. Box 8911
Madison, WI 53708-8911
Telephone (608) 224-5160
E-Mail: michelle.reinen@datcp.state.wi.us

STATE OF WISCONSIN)
) SS
DEPARTMENT OF AGRICULTURE)
TRADE AND CONSUMER PROTECTION)

TO THE PEOPLE OF THE STATE OF WISCONSIN:

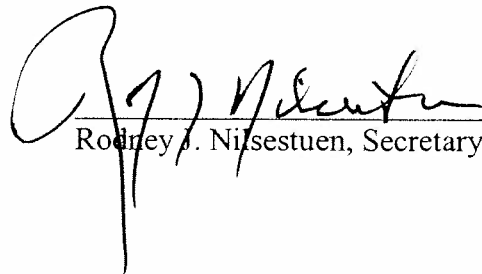
I, Rodney J. Nilsestuen, Secretary of the Wisconsin Department of Agriculture, Trade and Consumer Protection and custodian of its official records, certify all the following:

(1) The department adopted the attached emergency rule on 12 day of January, 2007. The emergency rule relates to credit report security freezes.

(2) The emergency rule takes effect upon publication in the official state newspaper.

(3) I have compared the attached copy of the emergency rule with the original kept by the department. The attached copy is a complete and accurate copy of the original.

Signed and sealed this 12 day of January, 2007, at the department offices in Madison, Wisconsin.


Rodney J. Nilsestuen, Secretary



**EMERGENCY RULE
DEPARTMENT OF AGRICULTURE, TRADE
AND CONSUMER PROTECTION**

1 The state of Wisconsin department of agriculture, trade and consumer protection hereby adopts
2 the following order to create s. ATCP 112 Wis. Adm. Code, relating to credit report security
3 freezes.

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

This emergency rule implements s. 100.54, Stats. (created by 2005 Wis. Act 140), related to credit report security freezes. This rule clarifies the information that credit reporting agencies may request in order to verify the identity of persons requesting credit report security freezes. Credit reporting agencies must adopt written procedures to comply with s. 100.54, Stats., and this rule.

Statutory Authority

Statutory Authority: ss. 93.07(1) and 100.54(12), Stats.
Statutes Interpreted: s. 100.54, Stats.

The Wisconsin Department of Agriculture, Trade and Consumer Protection ("DATCP") has broad general authority, under s. 93.07(1), Stats., to interpret laws under its jurisdiction. Section 100.54(12), Stats., specifically requires DATCP to adopt rules related to identification required of consumers requesting credit report security freezes.

Background

Section 100.54, Stats., created by 2005 Wisconsin Act 140, regulates access to consumer credit reports. The law permits a consumer to create a "security freeze" on his or her consumer credit report. A security freeze limits the release and distribution of the consumer credit report. At any time after creating a security freeze, the consumer may ask the credit reporting agency to release the consumer's credit report for a specified period of time, or to terminate the security freeze altogether.

A consumer who asks a credit reporting agency to create or release a security freeze must provide information to verify the consumer's identity. Under s. 100.54(12), Stats., DATCP must adopt rules to define what constitutes proper identification.

Emergency Rule

The department is adopting this emergency rule pursuant to s. 100.54(12), Stats. Section 100.54, Stats., becomes effective on January 1, 2006. At that time, the credit reporting agencies must honor a consumer's request for a security freeze. Since a permanent rule will not be in place at the time the law takes effect, credit reporting agencies will not know what information they may use to identify consumers who request the security freeze unless this emergency rule is adopted. Adopting this emergency rule will enable credit reporting agencies to comply with the statute by defining the types of information they may use to identify consumers who request the security freeze.

This emergency rule does all of the following:

- Spells out the information that a credit reporting agency may require of a consumer who asks the agency to create a security freeze, in order to verify the consumer's identity.
- Spells out the information that a credit reporting agency may require of a consumer who asks the agency to release or terminate a security freeze, in order to verify the consumer's identity. The agency may require the same information that it required to create the security freeze and may, in addition, require a password assigned to the consumer when the security freeze was created.

Fiscal Impact

This emergency rule will have no significant fiscal impact on DATCP or local units of government.

Business Impact

This emergency rule only affects credit reporting agencies by regulating how the agency may identify consumers who request security freezes or changes to their security freeze status. The rule has no effect on a business that is not a credit reporting agency. Currently, there are only 3 credit reporting agencies operating in the United States. None of these are small businesses.

Federal and Surrounding State Programs

Federal Programs

The federal Fair Credit Reporting Act of 2003 allows consumers who are victims of identity theft to freeze their credit reports. If a consumer is not a victim of identity theft, they have no option under federal law to place a freeze on their credit report. For victims of identity theft, federal rules under 16 CFR § 614.1 spell out the information that a credit reporting agency may use to verify the identity of consumers who ask the agency to create or release a security freeze. Federal standards are consistent with the standards in s. 100.54, Stats., and this rule.

Surrounding State Programs

Approximately 17 states have enacted laws that require consumer credit reporting agencies to freeze consumer credit reports upon request. Under all of those laws, credit reporting agencies may require requesting consumers to submit information to verify their identity. Most states allow credit reporting agencies to demand "information generally deemed sufficient to identify a person." If that information is insufficient, some states allow the consumer reporting agency to request "additional information concerning the consumer's employment and personal or family history in order to verify his or her identity."

Of the states surrounding Wisconsin, Illinois and Minnesota have enacted security freeze legislation. Security freeze legislation has been introduced, but not yet enacted, in Iowa and Michigan.

The Minnesota law took effect on August 1, 2006 and the Illinois law will take effect on January 1, 2006. The Minnesota and Illinois laws, like most other state laws on the subject, allow credit reporting agencies to demand "information generally deemed sufficient to identify a person." If that information is insufficient, Illinois law allows the consumer reporting agency to request "additional information concerning the consumer's employment and personal or family history in order to verify his or her identity."

DATCP Contact

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

Michelle Reinen
Department of Agriculture, Trade and Consumer Protection
P.O. Box 8911
Madison, WI 53708-8911
Telephone (608) 224-5160
E-Mail: michelle.reinen@datcp.state.wi.us

FINDING OF EMERGENCY

- 1
- 2 (1) The Wisconsin department of agriculture, trade and consumer protection ("DATCP")
- 3 will administer s. 100.54, Stats. as of January 1, 2007. DATCP is required under s. 100.54(12),
- 4 Stats. to adopt rules related to identification required of consumers requesting credit report
- 5 security freezes.
- 6 (2) As of January 1, 2007, s. 100.54, Stats. will be in effect, however without an
- 7 emergency rule the statute will be unclear regarding what constitutes proper identification for

1 purposes of creating a security freeze, temporarily releasing a security freeze or permanently
2 removing a security freeze from a consumer credit report.

3 (3) DATCP is adopting this emergency rule for the sole purpose of allowing consumers
4 to clearly place a security freeze on their consumer credit report while the permanent rulemaking
5 process is completed.

6 EMERGENCY RULE

7 SECTION 1. Chapter ATCP 112 is created to read:

8 Chapter ATCP 112

9 CREDIT REPORT SECURITY FREEZES

10 ATCP 112.01 **Definitions.** In this chapter:

11 (1) "Consumer report" has the meaning given in 15 USC 1681a(d).

12 (2) "Consumer reporting agency" has the meaning given in s. 15 USC 1681a(f).

13 (3) "Security freeze" has the meaning given in s. 100.54(1)(e), Stats.

14 ATCP 112.02 **Proof of identity to create a security freeze.** A consumer reporting
15 agency may request the following information from an individual in order to confirm the
16 individual's identity for purposes of s. 100.54(2)(a)2., Stats.:

17 (1) The individual's full name, including first, last, and middle names and any suffix.

18 (2) Any name the individual previously used.

19 (3) The individual's current and recent full addresses, including street address, apartment
20 number if any, city, state, and ZIP code.

21 (4) The individual's social security number.

22 (5) The individual's date of birth.

1 (6) Copies of government-issued documents that identify the individual.

2 (7) Copies of the individual's utility bills.

3 (8) Identifying information, readily known by the individual in whose name the security
4 freeze is requested but not generally known by others, which the consumer reporting agency
5 lawfully obtained before receiving the security freeze request.

6 **ATCP 112.03 Proof of identity to release a credit report or remove a security**
7 **freeze.** A consumer credit reporting agency may require any of the following information from
8 an individual as proof of identity for purposes of ss. 100.54(4)(a)2. and 100.54(6)(a)2., Stats.:

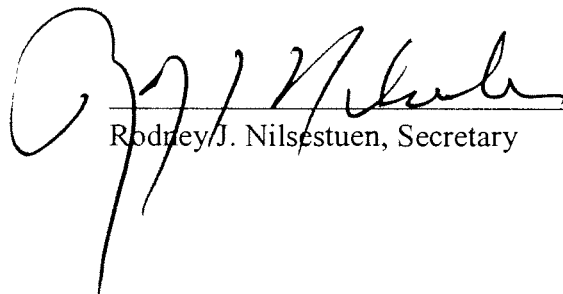
9 (1) Any of the information listed in ss. ATCP 112.02(1) to (8).

10 (2) A unique personal identification number, password or other device that the consumer
11 credit reporting agency has assigned to the individual for that purpose, as provided in s.
12 100.54(2)(b)2, Stats.

13 **EFFECTIVE DATE:** This emergency rule takes effect upon publication, and remains in
14 effect for 150 days. The department may seek to extend this emergency rule as provided in s.
15 227.24, Stats.

Dated this 12 day of January, 2007.

STATE OF WISCONSIN DEPARTMENT
OF AGRICULTURE TRADE AND
CONSUMER PROTECTION



Rodney J. Nilsestuen, Secretary

Wisconsin Department of Agriculture, Trade and Consumer Protection

Business Impact Analysis

Rule Subject:	Credit Report Security Freezes
Adm. Code Reference:	ATCP 112
Rules Clearinghouse #:	Not yet assigned
DATCP Docket #:	06-R-14

This emergency rule interprets part of a state statute related to consumer credit report “security freezes” (s. 100.54, Stats., created by 2005 Wis. Act 140), and requires a consumer credit reporting agency to implement written compliance procedures. This rule applies only to consumer credit reporting agencies. Currently there are only 3 credit reporting agencies operating in the United States. The statute and rule will therefore apply to a very small number of businesses, none of which are small businesses. This rule:

- Spells out the information that a credit reporting agency may require of a consumer who asks the agency to create a security freeze, in order to verify the consumer’s identity. This information is consistent with requirements under federal credit reporting law pertaining to proper identification.
- Spells out the information that a credit reporting agency may require of a consumer who asks the agency to release or terminate a security freeze, in order to verify the consumer’s identity. The agency may require the same information that it required to create the security freeze and may, in addition, require a password assigned to the consumer when the security freeze was created. This information is consistent with requirements under federal credit reporting law pertaining to proper identification.

Business Impact

This emergency rule will have a generally positive impact on business. This rule will have few, if any, negative impacts on business. Negative impacts, if any, will be limited. This rule only affects the following businesses in the following ways, none of these are “small businesses”:

- **Credit Reporting Agencies.** Currently, there are only 3 credit reporting agencies operating in the United States. This rule will regulate how a credit reporting agency may identify consumers who request security freezes or changes to their security freeze status. It regulates what information a consumer credit reporting agency may request of an individual in order to confirm the individual’s identity for the purposes of creating a security freeze, releasing a security freeze or removing a security freeze.

Steps to Assist Small Business

None of the businesses affected by this rule are "small businesses." This rule does not make special exceptions for "small businesses,"

Conclusion

This emergency rule will help protect Wisconsin consumers from becoming victims of identity theft. This rule will help consumer credit reporting agencies understand what information they can request of an individual wanting to place a security freeze on their account, release an existing security freeze or remove a security freeze.

Negative effects, if any, will be few and limited. This rule will not have a significant adverse effect on "small business," and is not subject to the delayed "small business" effective date provided in s. 227.22(2)(e), Stats.

Under 2003 Wis. Act 145, DATCP and other agencies must adopt rules spelling out their rule enforcement policy for small businesses. DATCP has not incorporated a small business enforcement policy in this rule, but will propose a separate rule on that subject. DATCP will, to the maximum extent feasible, seek voluntary compliance with this rule.

Dated this 19th day of December, 2006.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By JJK
Janet Jenkins, Administrator,
Division of Trade & Consumer Protection

FISCAL ESTIMATE

DOA-2048 N(R10/98)

 ORIGINAL UPDATED CORRECTED SUPPLEMENTAL

LRB No. and Bill/Adm. Rule No.

Ch. ATCP 112

Amendment No. If Applicable

Subject

Credit Report Security Freezes

Fiscal Effect**State:** No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum certain appropriation

- Increase Existing Appropriation
 Decrease Existing Appropriation
 Create New Appropriation

- Increase Existing Revenues
 Decrease Existing Revenues

 Increase Costs - May be possible to Absorb Within Agency's Budget Yes No Decrease Costs**Local:** No Local Government Costs

1. Increase Costs
 Permissive Mandatory
 2. Decrease Costs
 Permissive Mandatory

3. Increase Revenues
 Permissive Mandatory
 4. Decrease Revenues
 Permissive Mandatory

5. Types of Local Governmental Units Affected:
 Towns Villages Cities
 Counties Others
 School Districts WTCS Districts

Fund Sources Affected GPR FED PRO PRS SEG SEG-S**Affected Ch. 20 Appropriations****Assumptions Used in Arriving at Fiscal Estimate**

This emergency rule will have no significant fiscal impact on DATCP or local units of government.

Background

The restricting release of credit reports statute (2005 Wisconsin act 140) requires the Department to administer the law which allows an individual to prohibit a consumer reporting agency from releasing the individual's consumer report for any purpose related to the extension of credit without the individual's prior authorization. The statute also requires the Department to specify by rule what constitutes proper identification.

Based on information from other states that have similar legislation, it is believed a small percentage of consumers will place a credit freeze on their information, approximately .02% or 820 consumers.

Historically we can assume that at least 5% of the consumers who place a security freeze on their account would contact the Department for information and 2% will file a formal written complaints that require mediation. Based on these assumptions the Department believes we will be able to absorb the increase in workload the statute creates.

Impact of the Proposed Emergency Rule on State Government

This rule will have no significant fiscal impact on DATCP or other state government because the purpose of the rule is to create a definition for what constitutes proper identification. Therefore the rule itself has no fiscal impact on DATCP.

Impact of the Proposed Emergency Rule on Local Government

This rule will have no fiscal impact on local government.

Long-Range Fiscal Implications

Agency/Prepared by: (Name & Phone No.)

Dept of Agriculture, Trade & Consumer Protection

Authorized Signature/Telephone No.

Barbara Knapp

Date

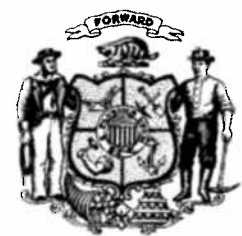
DATCP / Michelle Reinen (608) 2 224-5160

Barbara Knapp (608) 224-4746

12/1/2006



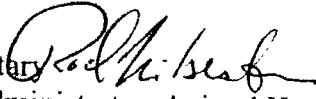
WISCONSIN STATE LEGISLATURE





State of Wisconsin
Jim Doyle, Governor

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

DATE: June 27, 2008
TO: State Legislators
FROM: Rodney J. Nilsestuen, Secretary 
Robert Ehlenfeldt DVM, Administrator, Animal Health Division
**SUBJECT: Diseases of Fish and Farm-Raised Deer;
Emergency Rule**

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

Much of this emergency rule is aimed at controlling the spread of viral hemorrhagic septicemia (VHS), a serious fish disease. This second emergency rule is similar but not identical to the initial emergency rule, which established new VHS testing requirements for moving and stocking fish. This second emergency rule creates a limited exemption from VHS testing requirements when fish or fish eggs are reintroduced to the same water body from which they were collected, for the purpose of increasing or rehabilitating a desirable sport fish population. The reintroduction must be approved by DNR and DATCP.

Emergency Rule Contents

The emergency rule does all of the following (see additional details in the "plain language analysis" that accompanies the rule):

Disease Testing of Fish

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

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- Fish moved from Wisconsin fish farms, unless they are moving to a retail food establishment or restaurant, or between fish farms registered by the same person.
- Fish distributed by a bait dealer for use as bait. This rule also prohibits any person from selling bait fish if the seller has reason to know that the bait fish are affected with VHS or another reportable disease.
- Provides a limited exemption from VHS and other disease testing requirements for fish or fish eggs that are reintroduced to the same water body from which they were collected, provided that all of the following apply (a veterinarian or fish health inspector must still issue a fish health certificate based on a visual examination):
 - DATCP and DNR approve the reintroduction.
 - The fish or fish eggs are not commingled with fish or fish eggs from any other water source.
 - The fish or fish eggs are reintroduced into the same lake from which they were collected, or at the same point or a downstream point in the same river system from which they were collected.
 - The fish or fish eggs are reintroduced within 30 days after they are collected, or within 30 days after the fish eggs hatch, whichever is later.
 - The fish or fish eggs are reintroduced for the purpose of increasing or rehabilitating the population of a desirable sport fishing species.
- Clarifies that VHS and other routine fish disease testing requirements do not apply when fish farm operators (including DNR) move fish or fish eggs between Wisconsin fish farms registered by the same operator. Current rules will continue to prohibit an operator from moving fish between the operator's registered fish farms if the operator has reason to know that the fish are affected with VHS or another reportable disease.
- Provides that a fish health certificate covering a fish farm or fish shipment is automatically voided if fish or fish eggs not covered by a valid fish health certificate are added to the covered fish farm or fish shipment.

Disease-Free Certification of Farm-Raised Deer

- Extends brucellosis-free certification of farm-raised deer herds, from 2 years to 3 years, consistent with tuberculosis-free herd certification. That allows participating herd owners to conduct simultaneous tests for both diseases.
- Reduces the number of whole herd tests required to certify a farm-raised deer herd as a brucellosis-free herd, from 3 whole herd tests to 2 whole herd tests, consistent with tuberculosis-free herd certification.

Fiscal Impact

This emergency rule will have the following fiscal effects on state and local government (see additional details in the accompanying *Fiscal Estimate*):

Disease Testing of Fish

Effect on DNR

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

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

Effect on DATCP

DATCP will incur added costs to administer and enforce the fish health testing requirements under this emergency rule (and any subsequent "permanent" rule). DATCP will need *at least* 2.0 FTE additional staff to review and process a large volume of fish health certificates in a timely manner; to train fish health inspectors to collect samples for VHS testing; to provide compliance information and respond to industry inquiries; to conduct inspections and monitor compliance; to conduct investigations of possible law violations; and to initiate enforcement actions if necessary.

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

Effect on University of Wisconsin

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

Effect on Local Governments

This emergency rule will not have a significant fiscal effect on local government. This emergency rule exempts local governments from VHS and other fish health testing requirements when they reintroduce sport fish or fish eggs into the same body of water from which they were collected, for the purpose of increasing or rehabilitating the fish population. (DATCP and DNR must approve the reintroduction, and a veterinarian or fish health inspector must issue a fish health certificate based on a visual inspection.) This exemption will make it easier for local governments to continue current programs (including so-called "walleye wagon" programs) to supplement the natural reproduction of important sport fish species.

Disease-Free Certification of Farm-Raised Deer

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

Business Impact

This emergency rule will have the following impact on affected businesses (for additional detail, see the attached *Business Impact Analysis*).

Disease Testing of Fish

Effect on Private Fish Farm Operators

DATCP estimates that the new VHS testing requirements under this rule will affect 30-40 private fish farms, not counting DNR "cooperator" fish farms registered by DNR (see above). Many of the affected fish farms are "small businesses." The *combined total cost to all affected private fish farm operators* will be approximately \$20,000 per year. However, some of those affected fish farmers are already performing VHS tests in order to meet federal requirements for shipping fish in interstate commerce, so the net impact of this rule may be less than \$20,000. Fish farm costs may increase if USDA finds that additional fish species are susceptible to VHS (the amount of the increase will depend on which fish species are found to be susceptible).

Effect on Bait Dealers

Wisconsin bait dealers are licensed by DNR. This rule will impose VHS testing requirements on many bait dealers. However, this rule applies only to bait species that are known to be susceptible to VHS. Of the major bait species in Wisconsin (fathead minnow, white sucker, golden shiner and emerald shiner), only one species (emerald shiner) is currently known to be susceptible to VHS.

Emerald shiners are obtained exclusively by wild harvesting, while other major bait species can be hatched and raised on farms. At this time, DATCP estimates that emerald shiners represent less than 10% of the overall bait market in Wisconsin (the market for wild-harvested emerald shiners has already diminished as a result of federal VHS testing requirements for emerald shiners moved in interstate commerce).

DATCP estimates that approximately 25 Wisconsin bait dealers are currently harvesting emerald shiners from the wild. The combined total cost to all 25 of those bait dealers would be about \$75,000 per year. That figure does *not* include added costs to hold the emerald shiners for 4 weeks while testing is completed.

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

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

Accommodation for Small Business

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

Disease-Free Certification of Farm-Raised Deer

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

Environmental Impact

This emergency rule will have a positive impact on the environment, by helping to limit the spread of VHS in waters of the state and between fish farms. This rule will not have any negative environmental impact.

Next Steps

The rule will take effect upon publication in the official state newspaper, and will remain in effect for 150 days. DATCP will hold a public hearing on this emergency rule (date, time and place to be announced). DATCP may ask the Legislature's Joint Committee for Review of Administrative Rules to extend the rule for up to 120 days.

DATCP will ask the DATCP Board to approve a final draft "permanent" rule in August, 2008 (as part of a larger update of animal health rules), and will submit that final draft "permanent" rule for legislative committee review before September 1, 2008. If the Legislature takes no action to stop the rule, DATCP will adopt the final draft rule with a projected effective date in early 2009.

STATE OF WISCONSIN)
) SS
DEPARTMENT OF AGRICULTURE)
TRADE AND CONSUMER PROTECTION)

TO THE PEOPLE OF THE STATE OF WISCONSIN:

I, Rodney J. Nilsestuen, Secretary of the Wisconsin Department of Agriculture, Trade and Consumer Protection and custodian of its official records, certify all the following:

(1) The department adopted the attached emergency rule on June 30, 2008. The emergency rule relates to Diseases of Fish and Farm-Raised Deer.

(2) The emergency rule takes effect upon publication in the official state newspaper.

(3) I have compared the attached copy of the emergency rule with the original kept by the department. The attached copy is a complete and accurate copy of the original.

Signed and sealed this 30 day of June, 2008, at the department offices in Madison, Wisconsin.



Rodney J. Nilsestuen, Secretary



**EMERGENCY RULE
DEPARTMENT OF AGRICULTURE, TRADE
AND CONSUMER PROTECTION**

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

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

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

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

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

Statutes Interpreted

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

Statutory Authority

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

Explanation of Statutory Authority

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

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

Rule Content

Overview

This emergency rule does all of the following.

- Adds new viral hemorrhagic septicemia (VHS) testing requirements for all of the following fish and fish eggs if they are of a known VHS-susceptible species and were either (1) collected from a wild source within the preceding 12 months, or (2) kept on a fish farm that received fish or eggs of *any* species collected from a wild source within the preceding 12 months:
 - Fish or fish eggs stocked into Wisconsin public waters. This rule provides a limited exemption for fish or fish eggs that are reintroduced to the same water body from which they were collected (see below).
 - Fish moved from Wisconsin fish farms, unless they are moving to a retail food establishment or restaurant, or between fish farms registered by the same person.
 - Fish distributed by a bait dealer for use as bait. This rule also prohibits any person from selling bait fish if the seller has reason to know that the bait fish are affected with VHS or another reportable disease.
- This rule provides a limited exemption from VHS and other disease testing requirements for fish or fish eggs that are reintroduced to the same water body from which they were collected, provided that all of the following apply (a veterinarian or fish health inspector must still issue a fish health certificate based on a visual examination):

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

Disease Testing of Fish

Viral Hemorrhagic Septicemia

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

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

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

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

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

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

This emergency rule also does the following:

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

Reintroducing Fish to Waters of the State

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

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

Operators Moving Fish Between Their Own Fish Farms

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

Disease-Free Certification of Farm-Raised Deer

Certification Period

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

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

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

Testing for Certification

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

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

Fiscal Impact

Disease Testing of Fish

Effect on DNR

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

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

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

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

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

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

Effect on DATCP

DATCP will incur added costs to administer and enforce the fish health testing requirements under this emergency rule (and any subsequent "permanent" rule). DATCP will need *at least* 2.0 FTE additional staff to review and process a large volume of fish health certificates in a timely manner; to train fish health inspectors to collect samples for VHS testing; to provide compliance information and respond to industry inquiries; to conduct inspections and monitor compliance; to conduct investigations of possible law violations; and to initiate enforcement actions if necessary.

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

Effect on University of Wisconsin

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

Effect on Local Governments

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

Disease-Free Certification of Farm-Raised Deer

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

Business Impact

Disease Testing of Fish

Effect on Private Fish Farm Operators

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

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

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

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

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

Effect on Bait Dealers

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

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

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

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

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

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

Accommodation for Small Business

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

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

Disease-Free Certification of Farm-Raised Deer

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

Federal and Surrounding State Programs

Federal Programs

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

Surrounding State Programs

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

DATCP Contact

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

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P.O. Box 8911
Madison, WI 53708-8911
Telephone (608) 224-4883
E-Mail: hearingcommentsAH@datcp.state.wi.us

FINDING OF EMERGENCY

1
2 **(1)** The Wisconsin department of agriculture, trade and consumer protection (“DATCP”)
3 administers Wisconsin’s animal health and disease control programs, including programs to
4 control diseases of fish and farm-raised deer.

Disease Testing of Fish

5
6 **(2)** DATCP regulates fish farms, including fish farms operated by the Wisconsin
7 Department of Natural Resources (“DNR”). DATCP also regulates the import, movement and
8 disease testing of fish.

1 may certify a farm-raised deer herd as brucellosis-free or tuberculosis-free, or both, based on
2 herd test results provided by the farm-raised deer keeper. Certification is voluntary, but
3 facilitates sale and movement of farm-raised deer.

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

12 EMERGENCY RULE

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

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

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

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

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

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

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

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

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

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

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

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

23
24 **SECTION 3.** ATCP 10.63(2) is amended to read:

25 ATCP 10.63(2) DISEASED FISH. No person may introduce live fish or fish eggs into
26 waters of the state or distribute live fish or fish eggs for sale as bait if that person knows, or has

1 reason to know, that those fish or fish eggs are infected with or show clinical signs of any
2 reportable disease under s. ATCP 10.66.

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

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

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

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

15 ATCP 10.64(3) EXEMPTIONS. Subsection (1) does not apply to any of the following:

16 (a) Fish or fish eggs moved between fish farms that are registered under s. ATCP 10.61 by the
17 same person, provided that the person keeps a complete record of the movement under s. ATCP
18 10.61(10).

19 (b) Fish or fish eggs moved to a food processing plant, retail food establishment or restaurant
20 pending slaughter or sale to consumers provided that all of the following apply:

- 21 1. The receiving facility does not hold any of the fish or fish eggs for more than 30 days.
- 22 2. The fish or fish eggs are not commingled with fish or fish eggs that will be used for any other
23 purpose.

1 3. The receiving facility does not discharge to waters of the state any untreated water used to
2 hold or process any of the fish or fish eggs.

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

4 **ATCP 10.645 Bait fish from wild sources.** No bait dealer who is required to hold a
5 license under s. 29.509, Stats., may distribute for use as bait any of the following fish or fish
6 eggs of a species that the federal bureau has found to be susceptible to viral hemorrhagic
7 septicemia (VHS) unless the fish or fish eggs are covered by a valid fish health certificate that
8 complies with s. ATCP 10.65:

9 (1) Fish or fish eggs collected from a wild source within the 12 month period
10 immediately preceding the distribution date.

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

14 **NOTE:** A “wild source” under s. ATCP 10.645 includes a wild source in this state or
15 outside this state. Fish and fish eggs imported from other states (including bait
16 fish and fish eggs) must also comply with import requirements under s. ATCP
17 10.62. Species that the federal bureau has found to be susceptible to viral
18 hemorrhagic septicemia are listed at www.aphis.usda.gov/vs/aqua/. Section
19 ATCP 10.645 applies to additional species if and when the federal bureau finds
20 that those species are susceptible. DATCP will identify susceptible species (per
21 USDA findings) in the fish health certificate form under s. ATCP 10.65.

22
23 **SECTION 7.** ATCP 10.65(1) is amended to read:

24 ATCP 10.65(1) GENERAL. ~~A fish health certificate~~ Fish health certificates under ss.
25 ATCP 10.62(3)(f), 10.63(1), ~~or~~ 10.64(1) and 10.645 shall comply with this section.

26 **SECTION 8.** ATCP 10.65(4) and (4m) are repealed and recreated to read:

1 ATCP 10.65(4) CERTIFICATE CONTENTS. (a) A fish health certificate under s. ATCP
2 10.62(3)(f) shall certify that the fish and fish eggs in the inspected shipment, or at the inspected
3 fish farm, are free of all of the following:

4 1. Visible signs of contagious or infectious disease.
5 2. Infectious hematopoietic necrosis, viral hemorrhagic septicemia (VHS) and whirling
6 disease (*Myxobolus cerebralis*) if an import shipment covered by the health certificate includes
7 salmonids.

8 3. White sturgeon iridovirus if an import shipment covered by the health certificate
9 includes sturgeon.

10 4. Viral hemorrhagic septicemia (VHS) if an import shipment covered by the health
11 certificate includes fish or fish eggs from a state or province where that disease is known to
12 occur.

13 5. Other diseases, if any, specified on the certificate form. The certificate form shall
14 identify the species for which, and circumstances under which, the disease-free certification is
15 required.

16 (b) Except as provided in s. ATCP 10.655, a fish health certificate issued under s. ATCP
17 10.63(1) shall certify that the fish and fish eggs in the inspected shipment or at the inspected fish
18 farm are free of all of the following:

19 1. Visible signs of contagious or infectious disease.
20 2. Whirling disease (*Myxobolus cerebralis*) if a shipment covered by the health
21 certificate includes salmonids.

1 3. Viral hemorrhagic septicemia (VHS) if a shipment covered by the health certificate
2 includes any of the following fish or fish eggs of a species that the federal bureau has found to be
3 susceptible to viral hemorrhagic septicemia (VHS):

4 a. Fish or fish eggs collected from a wild source within the 12 month period immediately
5 preceding the shipment.

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

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

17 4. Other diseases, if any, specified on the certificate form. The certificate form shall
18 identify the species for which, and circumstances under which, the disease-free certification is
19 required.
20

21 (c) A fish health certificate issued under s. ATCP 10.64(1) shall certify that the fish and
22 fish eggs in the inspected shipment, or at the inspected fish farm, are free of all of the following:

23 1. Visible signs of contagious or infectious disease.

24 2. Viral hemorrhagic septicemia (VHS) if a shipment covered by the health certificate
25 includes any of the following fish or fish eggs of a species that the federal bureau has found to be
26 susceptible to viral hemorrhagic septicemia (VHS):

27 a. Fish or fish eggs collected from a wild source within the 12 month period
28 immediately preceding the shipment.

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

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

10
11 3. Other diseases, if any, specified on the certificate form. The certificate form shall
12 identify the species for which, and circumstances under which, the disease-free certification is
13 required.

14 (d) A fish health certificate issued under s. ATCP 10.645 shall certify that the fish and
15 fish eggs in the inspected shipment, or at the inspected fish farm, are free of all of the following

- 16 1. Visible signs of contagious or infectious disease.
- 17 2. Viral hemorrhagic septicemia (VHS).
- 18 3. Other diseases, if any, specified on the certificate form. The certificate form shall
19 identify the species for which, and circumstances under which, the disease-free certification is
20 required.

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

- 24 • Fish or fish eggs collected from a wild source (in Wisconsin or elsewhere)
25 within the 12 month period immediately preceding the distribution date.
- 26 • Fish or fish eggs kept at a fish farm that received fish or fish eggs of any
27 species collected from a wild source within the 12 month period
28 immediately preceding the distribution date.
- 29
- 30
- 31

1 (e) A fish health certificate shall include test results from a qualified laboratory to
2 confirm the statements under pars. (a) to (d) if those test results are required by the certificate
3 form.

4 (f) Fish egg inspection under this subsection may be based on brood stock inspection
5 and, if testing is required by the certificate form, testing of the brood stock.

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

11 (4m) EXPIRATION DATE. (a) Except as provided in par. (b):

12
13 1. A health certificate based on an inspection under sub. (3)(a) expires 30 days after it is
14 issued unless the department by written notice specifies a different expiration date.

15 2. A health certificate based on an inspection under sub. (3)(b) expires one year after it is
16 issued unless the department by written notice specifies a different expiration date.

17 (b) A health certificate covering a fish farm, or covering a shipment of fish or fish eggs,
18 is automatically voided if any fish or fish eggs not covered by a valid health certificate are
19 added to that fish farm or shipment.

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

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

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

25
26 ATCP 10.65(5)(b)4. Special disease concerns that are not adequately addressed by the
27 health certificate. These may include special disease concerns related to the species of fish or
28 fish eggs, or the source from which the fish or fish eggs originate.

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

2 **ATCP 10.655 Fish reintroduced into their original wild source. (1) HEALTH**

3 **CERTIFICATE CONTENTS; EXEMPTION.** Sections ATCP 10.65(4)(b)2. and 3. do not apply to the
4 reintroduction of fish or fish eggs to the same lake from which they or the eggs from which they
5 are hatched were collected, or to the same point or a downstream point in the same river system
6 from which they or the eggs from which they are hatched were collected, if all of the following
7 apply:

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

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

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

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

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

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

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

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

- 1 (b) The location from which the fish or fish eggs were collected.
- 2 (c) The location to which the fish or fish eggs will be reintroduced.
- 3 (d) The purpose for the reintroduction.
- 4 (e) Documentation showing that the Wisconsin department of natural resources has
- 5 approved the collection and reintroduction under sub. (1)(b).
- 6 (f) Documentation indicating that the reintroduction will comply with other requirements
- 7 under sub. (1)(c) to (e).
- 8 (g) Other relevant information required by the department.

9 **(4) PERMIT RECORD.** The department shall keep, for at least 5 years, a record of each

10 permit issued under sub. (2).

11 **EFFECTIVE DATE:** This emergency rule takes effect upon publication, and remains in

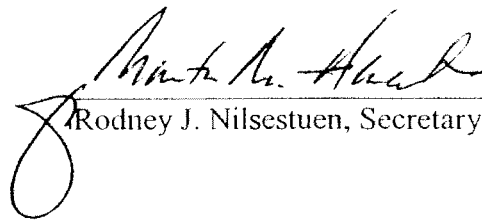
12 effect for 150 days. The department may seek to extend this emergency rule as provided in s.

13 227.24, Stats.

14

Dated this 30th day of June, 2008.

STATE OF WISCONSIN DEPARTMENT
OF AGRICULTURE TRADE AND
CONSUMER PROTECTION


Rodney J. Nilsestuen, Secretary

FISCAL ESTIMATE

DOA-2048 N(R10/98)

- ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

Adm. Rule No.

ATCP 10

Amendment No. If Applicable

Subject**Emergency Rule - VHS Testing Requirements****Fiscal Effect****State:** No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum certain appropriation

- Indeterminate
 Increase Existing Appropriation Increase Existing Revenues
 Decrease Existing Appropriation Decrease Existing Revenues
 Create New Appropriation

- Increase Costs - May be possible to Absorb Within Agency's Budget Yes No
 Decrease Costs

Local: No Local Government Costs

1. Increase Costs
 Permissive Mandatory
2. Decrease Costs
 Permissive Mandatory
3. Increase Revenues
 Permissive Mandatory
4. Decrease Revenues
 Permissive Mandatory
5. Types of Local Governmental Units Affected:
 Towns Villages Cities
 Counties Others
 School Districts WTCS Districts

Fund Sources Affected**Affected Ch. 20 Appropriations**

- GPR FED PRO PRS SEG SEG-S 20.115 (2)(a) and (2)(ha)

Assumptions Used in Arriving at Fiscal Estimate

DATCP will incur added costs to administer and enforce the fish health testing requirements under this emergency rule. DATCP will need a minimum of 2.0 FTE staff to review and process a large volume of fish health certificates in a timely manner; to train fish health inspectors to conduct VHS sample collection; to provide compliance information and respond to industry inquiries; to conduct inspections and monitor compliance; to conduct investigations of possible law violations; and to initiate enforcement actions if necessary. The 2.0 FTE staff will have a combined total cost of at least \$120,000 per year, including salary, fringe benefits and support costs. DATCP will attempt to absorb these costs in the short term by shifting staff from other important disease control responsibilities, but DATCP will not be able to do so indefinitely without putting other livestock sectors at unacceptable risk. DATCP will seek federal grant funds to cover some of the costs, but federal funding is not guaranteed.

This emergency rule will have a fiscal impact on DNR fish hatchery and stocking operations. Under this rule, all VHS-susceptible fish must be tested for VHS before being stocked to Wisconsin public waters if they were either (1) collected from a wild source within the preceding 12 months or (2) kept on a fish farm that received fish of any species collected from a wild source within the preceding 12 months.

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

The re-introduction permit created in the rule will allow for the DNR and local governments to continue using a technique known as 'walleye wagons' to supplement the natural reproduction of important sport fish bolstering their local economies. Additionally it will allow for the DNR to continue with rehabilitation efforts that pose a low risk of disease spread.

Agency/Prepared by: (Name & Phone No.)

Dept of Agriculture, Trade & Consumer Protection

Authorized Signature/Telephone No.

Barbara Knapp

Date

6-20-08

Melissa Mace (608) 224-4883

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

DNR annually registers approximately 100 fish farms with DATCP. Thirteen of those fish farms are state-owned fish hatcheries. The remainder are registered by DNR but owned by private DNR "cooperators" (as registrant, DNR assumes legal responsibility for compliance with fish health rules). DATCP estimates that DNR will need to conduct VHS tests on a combined total of approximately 120 lots of fish per year (including fish at state hatcheries and "cooperator" fish farms registered by DNR). Assuming an average test cost of \$500 per lot, the total cost to DNR will be approximately \$60,000 per year. DNR may also incur some related administrative costs. However, currently the state hatcheries internal protocol and best management practices include significant testing for VHS, so the net impact of this rule will be less than \$60,000. DNR costs may increase if USDA finds that additional fish species are susceptible to VHS (the amount of the increase will depend on which fish species are found to be susceptible).

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

Long-Range Fiscal Implications

FISCAL ESTIMATE WORKSHEET

Detailed Estimate of Annual Fiscal Effect ORIGINAL UPDATED CORRECTED SUPPLEMENTAL

LRB No. and Bill/Adm. Rule No. Amendment No.

DOA-2047 (R10/98) ATCP 10

Subject
Emergency Rule - VHS Testing Requirements

I One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):

II. Annualized Costs:		Annualized Fiscal Impact on State Funds from:	
A. State Costs by Category		Increased Costs	Decreased Costs
State Operations - Salaries and Fringes		\$100,700	
(FTE Position Changes)	FTE	2.00	
State Operations - Other Costs		\$19,600	
Local Assistance			
Aids to Individuals and Organizations			
TOTAL State Costs by Category		\$120,300	
B. State Costs by Source of Funds		Increased Costs	Decreased Costs
GPR		\$120,300	
FED			
PRO/PRS			
SEG/SEG-S			
III. State Revenues		Increased Rev.	Decreased Rev.
Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)			
GPR Taxes			
GPR Earned			
FED			
PRO/PRS			
SEG/SEG-S			
TOTAL State Revenues			

NET ANNUALIZED FISCAL IMPACT

	STATE	LOCAL
NET CHANGE IN COSTS	\$120,300	
NET CHANGE IN REVENUES		

Dept. of Agriculture, Trade & Consumer Protection Melissa Macer (608) 224-4883	Authorized Signature/Telephone No. <i>Barbara Knapp</i> Barbara Knapp (608) 224-4746	Date 6-20-08
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Wisconsin Department of Agriculture, Trade and Consumer Protection

Business Impact Analysis

<i>Rule Subject:</i>	Diseases of Fish and Farm-Raised Deer; Emergency Rule
<i>Adm. Code Reference:</i>	ATCP 10
<i>Rules Clearinghouse #:</i>	Not applicable
<i>DATCP Docket #:</i>	08-R-06

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

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

This emergency rule does the following:

- Adds new viral hemorrhagic septicemia (VHS) testing requirements for all of the following fish and fish eggs if they are of a known VHS-susceptible species and were either (1) collected from a wild source within the preceding 12 months, or (2) kept on a fish farm that received fish or eggs of *any* species collected from a wild source within the preceding 12 months:
 - Fish or fish eggs stocked into Wisconsin public waters. This rule provides a limited exemption for fish or fish eggs that are reintroduced to the same water body from which they were collected (see below).
 - Fish moved from Wisconsin fish farms, unless they are moving to a retail food establishment or restaurant, or between fish farms registered by the same person.
 - Fish distributed by a bait dealer for use as bait. This rule also prohibits any person from selling bait fish if the seller has reason to know that the bait fish are affected with VHS or another reportable disease.
- This rule provides a limited exemption from VHS and other disease testing requirements for fish or fish eggs that are reintroduced to the same water body from which they were collected, provided that all of the following apply (a veterinarian or

fish health inspector must still issue a fish health certificate based on a visual examination):

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

Business Impact

Disease Testing of Fish

Effect on Private Fish Farm Operators

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

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

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

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

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

Effect on Bait Dealers

Wisconsin bait dealers are licensed by DNR. This rule will affect licensed bait dealers in 2 ways:

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

This rule applies only to bait species that are known to be susceptible to VHS. Of the major bait species in Wisconsin (fathead minnow, white sucker, golden shiner and emerald shiner), only one species (emerald shiner) is currently known to be susceptible to

VHS. Emerald shiners are obtained exclusively by wild harvesting, while other major bait species can be hatched and raised on farms. At this time, DATCP estimates that emerald shiners represent less than 10% of the overall bait market in Wisconsin (the market for wild-harvested emerald shiners has already diminished as a result of federal VHS testing requirements for emerald shiners moved in interstate commerce).

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

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

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

Disease-Free Certification of Farm-Raised Deer

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

Accommodation for Small Business

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


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

Conclusion

This rule will have an adverse economic impact on some fish farms and bait dealers. However, these testing requirements are necessary to contain and prevent the spread of viral hemorrhagic septicemia to fish farms and other public waters.

Dated this 30 day of June, 2008

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By 
Robert G. Ehlenfeldt, DVM, Administrator,
Division of Animal Health