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☞ Details: Public hearing notices 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 ...

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INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

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- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
(**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
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- Miscellaneous ... **Misc**

* Contents organized for archiving by: Stefanie Rose (LRB) (August 2012)

Senator Robert Jauch
JCRAR Co-Chair
Room 118 South
State Capitol

ate of Wisconsin
Department of Agriculture, Trade, and Consumer Protection

NOTICE OF HEARING

Rule Related to Electronic Communication Services

The state of Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) announces that it will hold public hearings on a proposed amendment to chapter ATCP 123, Wis. Adm. Code, relating to Electronic Communication Services.

DATCP will hold a public hearing at the time and place shown below. DATCP invites the public to attend the hearing and comment on the proposed rule. Following the public hearing, the hearing record will remain open until Friday, June 13, 2008 for additional written comments. Comments may be sent to the Division of Trade and Consumer Protection at the address below, by email to michelle.reinen@wi.gov or online at:

<https://apps4.dhfs.state.wi.us/admrules/public/Home>

You may obtain a free copy of this rule by contacting the Wisconsin Department of Agriculture, Trade and Consumer Protection, Division of Trade and Consumer Protection, 2811 Agriculture Drive, P.O. Box 8911, Madison, WI 53708. You can also obtain a copy by calling (608) 224-5160 or emailing michelle.reinen@wi.gov. Copies will also be available at the hearings. To view the proposed rule online, go to:

<https://apps4.dhfs.state.wi.us/admrules/public/Home>

To provide comments or concerns relating to small business, please contact DATCP's small business regulatory coordinator Keeley Moll at the address above, by emailing to Keeley.Moll@wi.gov or by telephone at (608) 224-5039.

Hearing impaired persons may request an interpreter for these hearings. Please make reservations for a hearing interpreter by Thursday May 15, 2008, by writing to Michelle Reinen, Division of Trade and Consumer Protection, P.O. Box 8911, Madison, WI 53708-8911, telephone (608) 224-5160. Alternatively, you may contact the DATCP TDD at (608) 224-5058. Handicap access is available at the hearings.

Hearing Date and Location:

Wednesday, May 28, 2008
9:00 a.m. to 11:00 a.m.
Department of Agriculture, Trade and Consumer Protection
2811 Agriculture Drive, Board Room (CR-106)
Madison, Wisconsin, 53718-6777

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

The Department of Agriculture, Trade and Consumer Protection (DATCP) administers rules to protect consumers against unfair sales and billing practices related to telecommunications services, cable television services and satellite television services. Current rules are contained in ch. ATCP 123, Wis. Adm. Code.

This rule updates current rule coverage to reflect new service delivery methods and “bundling” practices, and to conform to law changes enacted in 2007 Wis. Act 42. This rule maintains current protection for video service subscribers, regardless of the method used to deliver the video service.

Statutes Interpreted

Statutes Interpreted: ss. 100.20 and 100.207, Wis. Stats.

Statutory Authority

Statutory Authority: ss. 93.07(1), 100.20(2), 100.207(6)(e) and 100.209(3), Wis. Stats.

Explanation of Statutory Authority

DATCP has general authority, under s. 93.07(1), Stats., to interpret laws under its jurisdiction. DATCP has authority, under s. 100.207, Stats., to regulate sales and billing practices related to telecommunications. DATCP also has broad authority, under s. 100.20, Stats., to regulate methods of competition and trade practices in business.

Related Rules or Statutes

The Wisconsin public service commission (PSC) regulates telecommunications service providers to the extent provided under chapter 196, Stats. The department of financial institutions (DFI) and local municipalities regulate video service providers to the extent provided in ch. 66, Stats.

2007 Wisconsin Act 42 changed the way that Wisconsin regulates cable television and other video services. The act provided for state, rather than local, franchising of video service providers. The act also changed prior definitions, and added a new definition of “video services.” This rule incorporates new statutory definitions, in order to maintain the coverage of current rules.

Rule Background

Current DATCP rules regulate unfair sales and billing practices related to telecommunications, cable television and satellite television provided to consumers on a subscription basis. The current rules do all of the following:

- Require providers to disclose subscription terms and conditions.
- Prohibit billing for unordered services.
- Prohibit the imposition of price increases without prior notice and opportunity to cancel.
- Prohibit unfair “negative option” billing practices.

Since DATCP adopted the current rules, business practices and technology have changed. For example, video services can now be delivered over telephone lines. Providers now offer “bundled” service packages that may include local telephone, long-distance telephone, wireless telephone, video, internet and other services. Consumers may receive a number of these services on one electronic device, and may receive one bill for all of the “bundled” services.

This rule updates current rule coverage to ensure that protection is afforded to video service consumers on an equal basis, regardless of the technology or method used to deliver the service. This rule does not make major changes in rule content, but does make minor content adjustments to address new service delivery methods and “bundling” practices.

Rule Content

This rule does all of the following:

- Retitles ch. ATCP 123 from “Telecommunications and Cable Television Services” to “Electronic Communication Services.”
- Defines “electronic communication service” to include telecommunications service, video service, broadband internet service and satellite television service provided on to consumers on a subscription basis. “Electronic communication service” also includes any good or service that a subscriber is required to purchase from the service provider in order to obtain the electronic communication service.
- Defines “video programming” and “video service,” consistent with current statutes.
- Changes “telecommunications service or cable television service” where it appears in the main body of the rule to “electronic communication service.”
- Changes other words in the rule text to reflect recent statutory definition changes (2007 Wisconsin Act 42).

Fiscal Impact

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

Business Impact

This rule will have few, if any, negative impacts on business. This rule simply updates the definitions and coverage of current rules to prevent the erosion of current consumer protection regulations. Some video service providers now use new electronic delivery methods that are not covered by current rules. This rule applies existing consumer protection standards to those new

delivery methods, so that consumers will continue to enjoy protection. This rule will help maintain fair competition between video service providers, regardless of the delivery method used. None of the video service providers using the new electronic delivery methods are small businesses.

Federal and Surrounding State Regulations

Federal Regulations

Congress and the federal communications commission have significantly reduced federal regulation of telecommunications service and video services. The federal government has left, to state governments, much of the responsibility for regulating the business practices of service providers.

Surrounding State Regulations



No surrounding states regulate the subscription and billing practices of telecommunication and video service providers in a manner similar to Wisconsin. The surrounding states approach the regulation of this industry by focusing on specific trade practices, such as the unauthorized switching of long-distance services or consumer protection for users of coin-operated phones. Wisconsin is the only state that has comprehensive regulation providing standards for subscription and billing practices that apply equally to all competing providers.

Data and Analytical Methodologies

This rule does not depend on any complex analysis of data. This rule merely updates current rules to address changes in business practices and technology, and to incorporate new definitions created under 2007 Wisconsin ACT 42.

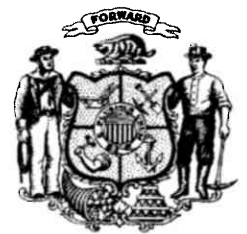
Dated this 8th day of April, 2008

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

By 
 Rodney J. Nilsestuen, Secretary



WISCONSIN STATE LEGISLATURE



State of Wisconsin
Department of Agriculture, Trade, and Consumer Protection

HEARING NOTICE

“Buy Local” Grant Program Rules

The Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) announces that it will hold a public hearing on rules relating to the “buy local” grant program created under s. 93.48, Stats. DATCP adopted a temporary emergency rule effective February 22, 2008, and is also proposing a “permanent” rule. The hearing will cover the “emergency” rule as well as the proposed “permanent” rule.

DATCP will hold the public hearing at the time and location shown below. DATCP invites the public to attend the hearing and comment on the rules. Following the hearing, the hearing record will remain open until Wednesday, June 11, 2008 for additional written comments. Comments may be sent to the Division of Agricultural Development at the address below, by email to datcpBLBW@wisconsin.gov or online at <https://apps4.dhfs.state.wi.us/admrules/public/Home>.

You may obtain free copies of the temporary “emergency” rule and proposed “permanent” rule by contacting the Wisconsin Department of Agriculture, Trade and Consumer Protection, Division of Agricultural Market Development, 2811 Agriculture Drive, P.O. Box 8911, Madison, WI 53708. You may also obtain copies by calling (608) 224-5017 or emailing datcpBLBW@wisconsin.gov. Copies will also be available at the hearing. To view the proposed rule online, go to: <https://apps4.dhfs.state.wi.us/admrules/public/Home>.

To provide comments or concerns relating to small business, you may also contact DATCP’s small business regulatory coordinator Keeley Moll at the address above, or by emailing to Keeley.Moll@wisconsin.gov or by telephone at (608) 224-5039.

Hearing impaired persons may request an interpreter for these hearings. Please make reservations for a hearing interpreter by May 23, by writing to Shirley Schultz, Division of Agricultural Market Development, P.O. Box 8911, Madison, WI 53708-8911, Shirley.schultz@wisconsin.gov, telephone (608) 224-5129. Alternatively, you may contact the DATCP TDD at (608) 224-5058. Handicap access is available at the hearings.

Hearing Date and Location:

May 30, 2008
1:00 p.m. to 2:00 p.m.
WI Department of Agriculture, Trade & Consumer Protection
2811 Agriculture Drive – Board Room, 1st Floor
Madison, WI 53704

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

This rule implements the “buy local” grant program created under s. 93.48, Stats., by 2007 Wisconsin Act 20 (biennial budget act). Under s. 93.48, Stats., the Department of Agriculture, Trade and Consumer Protection (“DATCP”) is authorized to award grants for projects designed to increase local purchases of Wisconsin agricultural products. The budget act appropriated \$225,000 for this grant program in the FY 2007-09 fiscal biennium.

This rule does all of the following:

- Authorizes DATCP to make grant awards and distribute grant funds appropriated for the “buy local” grant program.
- Spells out the procedures and criteria that DATCP will use to evaluate grant proposals, make grant awards and distribute grant payments.
- Spells out the purposes for which grant funds may be used, subject to the terms of the grant contract.

This rule is identical to the temporary emergency rule that DATCP adopted effective February 22, 2008, except for one minor difference noted below.

Statutes Interpreted

Statutes Interpreted: s. 93.48, Stats., and section 9103(3i) of 2007 Wisconsin Act 20 (biennial budget act).

Statutory Authority

Statutory Authority: ss. 93.48(1) and 93.07 (1), Stats., and section 9103(3i) of 2007 Wisconsin Act 20 (biennial budget act).

Explanation of Statutory Authority

DATCP has general authority under 93.07(1), Stats., to interpret laws under its jurisdiction. Section 93.48(1), Stats., specifically requires DATCP to adopt rules for the “buy local” grant program.

Related Rules or Statutes

There are no directly related rules or statutes, other than those cited above. DATCP rules for the “buy local” grant program will be incorporated as a subchapter of ch. ATCP 161, Wis. Adm. Code (agricultural development and market promotion).

Rule Content

The “buy local” grant program is designed to increase local sales of Wisconsin agricultural products. The biennial budget act appropriated \$225,000 in grant funding for the FY 2007-09 fiscal biennium. This rule spells out grant procedures and criteria. Under this rule, the “buy local” grant program will focus mainly on food products, rather than other agricultural products such as timber, feed, fiber or nursery products (it may incidentally benefit those other products).

Grant Purposes

Under this rule, DATCP may award grants for projects that are designed to increase the sale of Wisconsin food products to local purchasers. For example, DATCP may award grants for projects to create, expand, diversify or promote any of the following:

- Local food marketing systems and market outlets.
- Local food and cultural tourism trails.
- Production, processing, marketing and distribution of Wisconsin food products for sale to local purchasers.

Grant Limits

Under this rule, no individual grant award may exceed \$50,000. DATCP may not make more than one grant award to the same person in the same state fiscal biennium. Once DATCP makes a grant award, DATCP may make the actual grant payments over a contract period of up to 2 years. DATCP may extend the contract term for up to one additional year upon request.

Matching Requirement

To qualify for a grant under this rule, a grant recipient must make a matching commitment equal to at least 33% of the grant amount. A matching commitment may include a commitment of capital, land, labor, equipment or cash related to the grant project. Under this rule, matching funds may include grant funds received from sources other than DATCP (this is a change from the temporary “emergency” rule that took effect on February 22, 2008).

Use of Grant Funds

Under this rule, grant funds may be used to reimburse any of the following expenses if those expenses are a reasonable and necessary part of the grant project:

- Operating expenses, including expenses for salaries and wages, contract and consulting services, travel, supplies and public information.
- Real estate and equipment rental.
- The purchase of equipment whose full value is ordinarily depreciable within one year.
- Reasonable depreciation expense incurred, for capital equipment, during the term of the grant contract.

Grant funds may not reimburse any of the following expenses:

- Real estate purchases.
- Repayment of loans or mortgages.
- Rent or contract payments for time periods extending beyond the term of the grant contract.
- Equipment purchases, except for certain equipment purchases and depreciation expenses specifically authorized by this rule.
- Administrative or overhead costs that are not direct costs of the grant project.

Grant Proposals

Under this rule, DATCP must issue at least one request for grant proposals in each state fiscal biennium (DATCP may issue more frequent requests, if it chooses to do so). The request for applications must describe the required form and content of grant proposals, and must specify a deadline for submitting grant proposals. Grant applicants must submit grant proposals to DATCP, in the manner prescribed by DATCP's request for applications.

Grant Awards

Under this rule, DATCP must evaluate grant proposals and issue its grant awards within 90 days after the grant application deadline. DATCP must clearly identify each award recipient, the amount of the award, and the purposes for which the award is given. DATCP must consider all of the following criteria when evaluating grant proposals and making grant awards:

- The extent to which a proposed project will increase local purchases of Wisconsin food products.
- Whether the proposal complies with DATCP's request for proposals.
- Whether the proposed project meets the standards prescribed in this rule.
- The viability of the proposed project.
- Additional project benefits for Wisconsin agriculture or tourism.
- The management and technical qualifications of the grant applicant.
- The qualifications of the persons who will carry out the project.
- The financial capacity of the grant applicant to complete the project as proposed.
- The adequacy of the project plan and budget.
- Whether the grant proposal adequately identifies the nature of project expenses to be reimbursed under the proposed grant.

Grant Contracts

Under this rule, DATCP must enter into a grant contract with a grant recipient before distributing any grant funds to that recipient. The contract must spell out grant terms and conditions, including performance requirements, reporting requirements and payment terms.

Grant Payments

Under this rule, DATCP may distribute grant funds in one or more payments, based on documented progress toward completion of the grant project. The grant contract must describe payment terms and conditions. DATCP may require a grant recipient to file progress reports and submit expense documentation as necessary to support grant payments.

Fiscal Impact

This rule will have a fiscal impact on DATCP operations. Under this rule, DATCP must issue at least one request for grant proposals in each state fiscal biennium for which funding is available. DATCP staff must review grant applications, recommend grant awards, administer grants, and ensure compliance with applicable requirements. DATCP staff will also provide technical assistance to grant recipients, as appropriate.

Program administration will occupy at least 2.0 FTE staff in DATCP's Division of Agricultural Development (this does not include legal, managerial, DATCP central accounting, or other indirect staff support). The combined total cost for those 2.0 FTE staff will be \$147,000 per year, including salary, fringe benefits and support costs (there will be a smaller proportionate cost for the remainder of the current fiscal year). The biennial budget act authorized 1.0 new FTE staff position, including staff funding of \$42,700 GPR for the current fiscal year and \$64,100 GPR for FY 2008-09. In the short term, DATCP will try to fill remaining staffing needs by shifting current staff from other agricultural development programs.

The budget act also provided funding (but no staff positions) for training, marketing, data tracking and information technology for the "buy local" program. Funding for those purposes is \$110,000 GPR in the current fiscal year and \$165,000 in FY 2008-09.

Business Impact

The "buy local" grant program will benefit farmers, businesses and communities that participate in production, distribution or marketing of locally produced foods. Grant recipients will benefit directly, while others will benefit indirectly from the creation of stronger local food networks and systems. This rule will establish standards and procedures for the "buy local" grant program to ensure that the program is effective and accountable.

Federal and Surrounding State Programs

Federal Programs

The United States Department of Agriculture (USDA) administers a farmers' market promotion program. That program offers grants to help improve and expand domestic farmers markets, roadside stands, community-supported agriculture programs and other direct farmer-to-consumer marketing mechanisms.

USDA also provides food assistance programs for pregnant women, women with infants, children up to 5 years old, and seniors who are at nutritional risk. Those programs provide or promote fresh, locally grown foods to program participants.

Surrounding State Programs

Wisconsin's "buy local" program is the first state program of its kind in the nation. However, surrounding states provide various types and levels of support for local food systems. For example, Michigan's state procurement policy encourages purchases from local farmers and businesses. Iowa provides over \$3 million in annual funding for local food and sustainable agriculture programs at Iowa State University- Extension (Leopold Center).

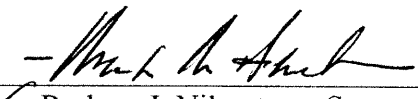
DATCP Contact

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

Amy Bruner Zimmerman
Department of Agriculture, Trade and Consumer Protection
P.O. Box 8911
Madison, WI 53708-8911
Telephone (608) 224-5017
E-Mail: datcpBLBW@wisconsin.gov

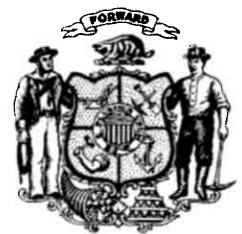
Dated this 29th day of April, 2008.

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

By 
Rodney J. Nilsestuen, Secretary



WISCONSIN STATE LEGISLATURE



State of Wisconsin
Department of Agriculture, Trade, and Consumer Protection

NOTICE OF HEARING

Emergency Rule Related to Animal Health and Disease Control

The Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) announces that it will hold a public hearing on an emergency rule to amend chapter ATCP 10, Wis. Adm. Code, relating to diseases of fish and farm raised deer.

DATCP will hold one public hearing at the time and place shown below. DATCP invites the public to attend the hearing and comment on the emergency rule. Following the public hearing, the hearing record will remain open until Friday, August 8, 2008 for additional written comments. Comments may be sent to the Division of Animal Health at the address below, by email to Melissa.mace@wi.gov or online at <https://apps4.dhfs.state.wi.us/admrules/public/Home>

You may obtain a free copy of this rule by contacting the Wisconsin Department of Agriculture, Trade and Consumer Protection, Division of Animal Health, 2811 Agriculture Drive, P.O. Box 8911, Madison, WI 53708. You can also obtain a copy by calling (608) 224-4883 or emailing Melissa.mace@wi.gov. Copies will also be available at the hearings. To view the proposed rule online, go to:

<https://apps4.dhfs.state.wi.us/admrules/public/Home>

To provide comments or concerns relating to small business, please contact DATCP's small business regulatory coordinator Keeley Moll at the address above, by emailing to Keeley.Moll@datcp.state.wi.us or by telephone at (608) 224-5039.

Hearing impaired persons may request an interpreter for these hearings. Please make reservations for a hearing interpreter by July 18, 2008, by writing to Melissa Mace, Division of Animal Health, P.O. Box 8911, Madison, WI 53708-8911, telephone (608) 224-4883. Alternatively, you may contact the DATCP TDD at (608) 224-5058. Handicap access is available at the hearings.

Hearing Date and Location:

Friday August 1, 2008

1:30 p.m. to 2:30 p.m.

Department of Agriculture, Trade and Consumer Protection
2811 Agriculture Drive, First Floor – Room 106 (Boardroom)
Madison, Wisconsin 53718

**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.

X 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.

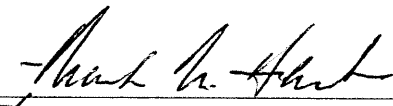
Surrounding State Programs

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.

Dated this 30th day of June, 2008

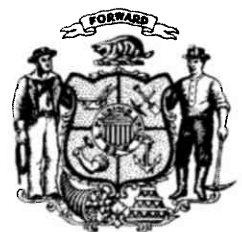
STATE OF WISCONSIN,
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By


Rodney J. Nilsestuen, Secretary



WISCONSIN STATE LEGISLATURE



State of Wisconsin
Department of Agriculture, Trade, and Consumer Protection

NOTICE OF HEARING

Rule Related to Customer Access to Subscription Video Services

The state of Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) announces that it will hold public hearings on a proposed amendment to chapter ATCP 123, Wis. Adm. Code, relating to Customer Access to Subscription Video Services.

DATCP will hold a public hearing at the time and place shown below. DATCP invites the public to attend the hearing and comment on the proposed rule. Following the public hearing, the hearing record will remain open until Friday, September 12, 2008 for additional written comments. Comments may be sent to the Division of Trade and Consumer Protection at the address below, by email to michelle.reinen@wi.gov or online at <https://apps4.dhfs.state.wi.us/admrules/public/Home>

You may obtain a free copy of this rule by contacting the Wisconsin Department of Agriculture, Trade and Consumer Protection, Division of Trade and Consumer Protection, 2811 Agriculture Drive, P.O. Box 8911, Madison, WI 53708. You can also obtain a copy by calling (608) 224-5160 or emailing michelle.reinen@wi.gov. Copies will also be available at the hearings. To view the proposed rule online, go to:

<https://apps4.dhfs.state.wi.us/admrules/public/Home>

To provide comments or concerns relating to small business, please contact DATCP's small business regulatory coordinator Keeley Moll at the address above, by emailing to Keeley.Moll@datcp.state.wi.us or by telephone at (608) 224-5039.

Hearing impaired persons may request an interpreter for these hearings. Please make reservations for a hearing interpreter by Monday, August 18, 2008, by writing to Michelle Reinen, Division of Trade and Consumer Protection, P.O. Box 8911, Madison, WI 53708-8911, telephone (608) 224-5160. Alternatively, you may contact the DATCP TDD at (608) 224-5058. Handicap access is available at the hearings.

Hearing Date and Location:

Tuesday, August 26, 2008
Commence at 1:00 p.m.
Department of Agriculture, Trade and Consumer Protection
2811 Agriculture Drive, Board Room (CR-106)
Madison, Wisconsin, 53718-6777

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

2007 Wisconsin Act 42 regulates providers of subscription video services. Among other things, the act regulates customer access to video services, and prohibits discrimination in the provision of video services based on race or income. This rule interprets and clarifies those regulations.

Statutes Interpreted

Statutes Interpreted: s. 66.0420(8), Stats.

Statutory Authority

Statutory Authority: ss. 66.0420(13)(a) and 93.07(1), Stats.

Explanation of Statutory Authority

2007 Wisconsin Act 42 eliminates municipal franchising of cable television services and creates a new state system for franchising and regulating “video service providers” (including but not limited to cable television service providers). The act regulates subscription video services provided, under a state franchise, via cable or local telephone lines. Among other things, the act does all of the following (see s. 66.0420(8), Stats.):

- Prohibits a state-franchised video service provider from denying access to a “group” of potential customers based on race or income. A provider has a defense against a claim of discrimination based on income if, within 3 years after the provider first offered video services, at least 30% of the households with access to the provider’s video service are “low-income households.” The Department of Agriculture, Trade and Consumer Protection (“DATCP”) may extend the applicable time period, at the request of a video service provider.
- Requires a state-franchised “large telecommunications video service provider” to do all of the following, unless DATCP grants a waiver or extension:
 - Provide video service access to at least 35 percent of the households in each of the provider’s basic local exchange service areas within the state franchise area no later than 3 years after the provider first offers video service.
 - Provide video service access to at least 50 percent of the households within each basic local exchange service area not more than 5 years after the provider first offers video service in that area, or not more than 2 years after at least 30 percent of the households with access have subscribed for at least 6 consecutive months, whichever occurs later.
- Requires a state-franchised “large telecommunications service provider” to file an annual report with DATCP regarding the provider’s progress in complying with minimum access requirements.

- Allows a video service provider to satisfy access requirements with an alternative technology (other than satellite service) that offers the same basic service, function and content features offered by the provider's normal video service network.
- Provides that a telecommunications video service provider is not required to provide video service outside its basic local exchange service area.
- Provides that an incumbent cable service provider is not required to provide video service outside the area in which it provided cable television service when it first received a state franchise.

Act 42, as passed by the Legislature, gave DATCP very limited authority to adopt rules interpreting the access and anti-discrimination provisions of the new video services law. The Governor's partial veto effectively expanded DATCP's rulemaking authority to interpret those provisions. In his veto message, the Governor stated: "It is imperative that the state agencies responsible for ...enforcing the anti-discrimination provisions have the ability to interpret these statutes through administrative rule."

Rule Content

This rule incorporates and clarifies certain video service access and anti-discrimination provisions contained in Act 42. This rule does all of the following:

- Clarifies that a "group" means 2 or more households. A video service provider denies access to a "group" if it denies access to all of the households comprising that "group."
- Defines "household" consistent with current statutes.
- Defines "low-income household" as a household with a combined annual income equal to less than 200% of the federal poverty level for a family of 3.
- Clarifies that a video service provider provides video service "access" to a household if the provider is able to provide video service to that household using the provider's normal service network or an equivalent alternative technology, regardless of whether any customer has ordered the service.
- Spells out the procedure by which a video service provider may ask DATCP to waive or extend the deadline for complying with a minimum access requirement:
 - A provider must submit a request in writing, in hard-copy and electronic form. The request must justify the proposed waiver or extension, based on statutory criteria, and must include facts and evidence supporting the justification. DATCP may request relevant supplementary information.
 - Within 30 business days after DATCP receives a written request, it must issue a proposed order granting the request, denying the request, or granting the request in modified form.

DATCP must issue a press release announcing the proposed order and inviting public comment. DATCP may hold one or more public hearings on the proposed order.

- Within 60 business days after DATCP issues a proposed order, DATCP must issue a final order. If the final order differs from the proposed order, DATCP must explain the reasons for difference.
- Clarifies that a “large telecommunications service provider” must file its required annual progress report with DATCP by January 31 of each calendar year, beginning with the first calendar year after the provider first provides video service under a state franchise. The provider must provide annual progress reports for at least 5 years, unless DATCP makes an earlier written determination that the provider has met applicable minimum access requirements.

In a separate rule-making proceeding (*Clearinghouse Rule No. 08-027*), DATCP has proposed a definition of “video service” that would also apply to this rule. That definition is identical to the definition in s. 66.0420(1)(y), Stats.

Fiscal Impact

This rule will have no significant fiscal impact on DATCP or local units of government. A complete *Fiscal Estimate* is attached.

Business Impact

2007 Act 42 will have a major impact on video service providers in Wisconsin. This rule interprets and clarifies portions of Act 42 related to customer access to video services, and discrimination in providing access. This rule does not add any substantive requirements or prohibitions, beyond what is already contained in Act 42.

None of the video service providers affected by Act 42 or this rule are small businesses, so this rule will have no impact on small business. For the most part, this rule will have a positive impact on video service providers, because it will clarify requirements and procedures under Act 42. A complete *Business Impact Analysis* is attached.

Federal and Surrounding State Regulation

Federal Regulation

Federal law regulates cable television service, including cable ownership, use of cable channels, and cable franchising. Federal law also regulates video services provided by telephone companies.

State and local governments may regulate video services, as long as the regulations do not conflict with federal law. Federal law imposes consumer protection and customer service obligations on cable television service providers, but does not prevent states from imposing more stringent requirements.

Federal law does not establish minimum access requirements. Federal law does prohibit discrimination against a "group" of customers based the income of residents of the "local area" in which the "group" resides. Federal law does not define "group" or "local area."

Surrounding State Regulation

During 2007, Illinois, Michigan and Iowa enacted laws that create a new state system for franchising and regulating video service providers. Minnesota has yet to adopt such a law. The laws adopted by Illinois, Michigan and Iowa are similar in relevant respects to the Wisconsin law, but are not identical to the Wisconsin law.

Illinois

The Illinois law does the following:

- Prohibits a video service provider from denying access to any potential residential providers because of race or income of the residents in the local area in which the potential subscribers reside; and does *not* provide the video service provider with an affirmative defense to an allegation of discrimination.
- Requires a large video service provider to provide access to 25% of the households in its telecommunication service area within 3 years after it began providing video service, and 35% within 5 years after it began providing video service. The provider is not required to meet the 35% requirement until 2 years after at least 15% of the households with access to the provider's video service subscribe to the service for at least 6 months.
- Requires, within 3 years after the video service provider is granted a franchise, that 30% of the households with access to the video service shall be low-income.
- Requires the video service provider to file with the state an annual report describing factors related to the access requirements.
- Allows the video service provider to assert as a defense to a violation of the access requirements a need for an extension of the time requirements based on stated factors.
- Defines "low-income household" as those residential households within the video service provider's existing local exchange area where the average annual household income is less than \$35,000 based on United States Census Bureau estimates adjusted annually.
- Defines "access" to mean that the video service provider is capable of providing broadband Internet capability and video programming at the household address using any technology except satellite television regardless of whether any customer has ordered the service.

Michigan

The Michigan law does the following:

- Prohibits a video service provider from denying access to service to any group of potential residential subscribers because of the race or income of the residents in the local area in which the group resides.
- Provides the video service provider with a defense to an allegation of discrimination where it can show either of the following:
 - Within 3 years after it began providing video service at least 25% of the households with access to the provider's video service are low-income households.
 - Within 5 years after it began providing video service and from that point forward at least 30% of the households with access to the provider's video service are low-income households.
- Requires a large video service provider to provide access to 25% of households in its telecommunication service area within 3 years after it began providing video service, and 50% within 6 years after it began providing video service. The provider is not required to meet the 50% requirement until 2 years after at least 30% of the households with access to the provider's video service subscribe to the service for at least 6 months.
- Allows the video service provider to apply for a waiver or extension of time of the access requirements based on stated factors.
- Requires the video service provider to submit to the Michigan public service commission any information necessary for the commission to prepare an annual report.
- Defines "low-income household" as a household with an average annual household income of less than \$35,000.00 as determined by the most recent decennial census.
- Does *not* define "access."

Iowa

The Iowa law does the following:

- Prohibits a video service provider from denying access to any group of potential residential providers because of the income of the residents in the local area in which the potential subscribers reside. This law does *not* prohibit denying access based on race, and does *not* provide the video service provider with an affirmative defense to an allegation that it violated this law.

- Requires a large video service provider to extend its system to a potential subscriber located within its authorized service area if all of the following occur:
 - At least 250 dwelling units are located within 2,500 feet of a remote terminal.
 - The dwelling units do not have cable service or video service available from another provider.
 - The video service provider is providing cable service and video service to over 50% of all cable service or video service subscribers in the potential subscribers franchise area.
- Does *not* specify any reporting requirements for the video service providers.

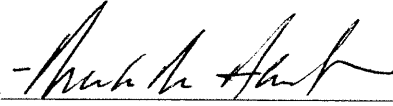
Data and Analytical Methodologies

This rule does not depend on any complex analysis of data. The definition of “low-income household” is based on the official poverty line defined by the federal Office of Management and Budget based on the most recent data available from the United States Bureau of the Census. The definition of “access” is based on industry practices and consumer experience.

Dated this 27th day of June, 2008

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

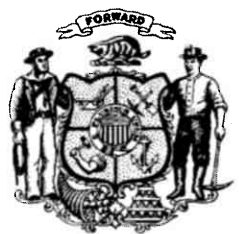
By



Rodney J. Nilsestuen, Secretary



WISCONSIN STATE LEGISLATURE



State of Wisconsin
Department of Agriculture, Trade, and Consumer Protection

NOTICE OF HEARING

Rule Related to Technical Rule Changes

The State of Wisconsin Department of Agriculture, Trade and Consumer Protection announces that it will hold public hearings on proposed rules that make minor remedial drafting changes to a number of department rules.

DATCP will hold a public hearing at the time and place shown below. DATCP invites the public to attend the hearing and comment on the proposed rule. Following the public hearing, the hearing record will remain open until Friday, September 5, 2008 for additional written comments. Comments may be sent to the Office of Legal Counsel at the address below, by email to Karen.schultz@wisconsin.gov or online at:

<https://apps4.dhfs.state.wi.us/admrules/public/Home>

You may obtain a free copy of this rule by contacting the Wisconsin Department of Agriculture, Trade and Consumer Protection, Office of Legal Counsel, 2811 Agriculture Drive, P.O. Box 8911, Madison, WI 53708. You can also obtain a copy by calling (608) 224-5023 or emailing Karen.schultz@wisconsin.gov. Copies will also be available at the hearings. To view the proposed rule online, go to:

<https://apps4.dhfs.state.wi.us/admrules/public/Home>

To provide comments or concerns relating to small business, please contact DATCP's small business regulatory coordinator Keeley Moll at the address above, by emailing to Keeley.Moll@wi.gov or by telephone at (608) 224-5039.

Hearing impaired persons may request an interpreter for these hearings. Please make reservations for a hearing interpreter by Friday, August 22, 2008, by writing to Karen Schultz, Office of Legal Counsel, P.O. Box 8911, Madison, WI 53708-8911, telephone (608) 224-5023. Alternatively, you may contact the DATCP TDD at (608) 224-5058. Handicap access is available at the hearing.

Hearing Date and Location:

Tuesday, August 26, 2008
1:00 p.m. to 3:00 p.m.
Department of Agriculture, Trade and Consumer Protection
2811 Agriculture Drive, Room 472
Madison, WI 53718

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

This rule makes minor or technical changes to a number of current rules administered by the department of agriculture, trade and consumer protection ("DATCP").

Statutes Interpreted

Statutes Interpreted: ss. 91.80, ch. 92, 93.06(1n), 93.23, 94.64(3r)(b) and (4a)5., 94.645, 94.681(3), 94.685(3)(a)2., 94.69, 94.703(3)(a)2., 94.704(3)(a)2., 95.55(6), 97.02, 97.03, 97.09(4), 97.20, 97.22, 97.24, 97.30, 97.42, 97.43, 97.52, 98.03(2), 98.18(2), 98.07, 98.26(1), 100.20, 100.45, 160.19, 160.21, 160.23, 160.25, 281.16, 344.576(3)(a), 345.285(5w)(a)1., Stats.

Statutory Authority

Statutory Authority: ss. 92.05(3)(c) and (k), 92.14(8), 92.15(3)(b), 92.16, 92.18(1), 93.06(1n)(c), 93.07(1), 94.645(3), 94.69(1), 95.55(6), 97.09(4), 97.20(4), 97.22(8), 97.24(3), 97.30(5), 97.42(4), 97.52, 98.03(2), 98.07(4), 98.18(2), 100.20(2), 100.45(5) and (5)(e), 160.19(2), 160.21(1), 281.16(3)(b) and (c), 344.576(3)(c), 345.285(5x), Stats.

Explanation of Statutory Authority

DATCP has general authority, under s. 93.07(1), Stats., to adopt rules to interpret laws under its jurisdiction. DATCP also has specific rulemaking authority under the statutes listed above. This rule makes minor changes to a wide range of rules administered by the DATCP. The rule changes are, for the most part, adopted under the same authority used to adopt the existing rules.

Related Rules or Statutes

This rule is not substantially affected by other statutes or rules, other than those identified in this rule.

Rule Contents

This rule makes minor or technical changes to a number of current DATCP rules. This rule does all of the following:

Electronic Processing of License Applications; Cost Recovery

- Authorizes DATCP to assess a \$3 fee for electronic licensing transactions (in addition to other license fees), to cover DATCP's electronic licensing costs. Electronic processing, if offered, is offered as a voluntary option for license applicants.

Agricultural Chemical Cleanup Program; Surcharge Adjustment

- Reduces current agricultural chemical cleanup program surcharges paid by pesticide and fertilizer license holders, consistent with 2007 Wisconsin Act 20 (biennial budget act). DATCP has already implemented the reduced statutory surcharges (this rule merely conforms current rules to the new statutory amounts).

Atrazine Use Regulations

- Revises the format of current maps showing some of the land areas where application of atrazine pesticides is currently prohibited by rule (this rule does not change the actual prohibition areas).
- Restores a provision inadvertently deleted from the atrazine rule in 1993, when the rule was modified for other reasons. The restored provision allows farmers to apply an additional 0.5 lbs. of atrazine per acre on medium- or fine-textured soils (up to 1.5 lbs. per acre rather than 1.0 lb. per acre), if no atrazine was applied in the preceding year. The restored provision is consistent with how DATCP has always administered the atrazine rule, so there will be no change in actual use practices.

Land and Water Conservation Program

- Updates technical standards incorporated by reference in current land and water conservation rules (ATCP 50). This rule does not substantially alter current standards or requirements.
- Gives DATCP more latitude to extend land and water conservation funding for county cost-share contracts with landowners that were signed, but not completed, during the preceding year (extends signing deadline from December 1 to December 31).
- Extends the current mid-year deadline for counties to file cost-share reimbursement requests with DATCP (from June 1 to July 1).
- Updates current standards for the certification of agricultural engineering practitioners under the land and water conservation program, consistent with current standards published by the United States Department of Agriculture, Natural Resource Conservation Service ("NRCS").
- Updates current standards used by certified soil testing laboratories under the land and water conservation program, consistent with updated standards published by the University of Wisconsin-Extension and University of Wisconsin-Madison.

Meat Inspection

- Corrects erroneous cross-references to federal meat inspection regulations in state meat inspection rules.

Dairy Inspection

- Changes, from 7 days to 14 days, the time period within which dairy plants must report high somatic cell counts in goat milk and take follow-up samples related to high bacterial counts.

Weights and Measures

- Updates technical standards incorporated by reference in current packaging and labeling and weights and measures rules (ATCP 90 & 92), including the latest standards published by the National Institute of Standards and Technology.

Car Rental Notices

- Incorporates statutory provisions requiring car rental companies to notify prospective renters if the rental company may charge the renter's credit card for forfeitures and other costs incurred but not paid by the renter for nonmoving traffic violations (parking tickets).

Mobile Home Park Rent Disclosures

- Clarifies, but does not change, current rules related to disclosure of rent and related charges in mobile home parks. This rule clarifies that park operators may disclose charges by means of a price schedule, rate or formula, provided that the renter can readily determine the amount to be paid.

Fair Premium Aids

- Authorizes DATCP to pay county and district fair premium aids based on total county and district fair premiums paid (current rule requires payment based on total premiums less entry fees).

Other Technical Changes

- Modifies current *notes* to reflect the fact that rules and related documents are now filed with the legislative reference bureau, not the revisor of statutes or secretary of state (the revisor of statutes office was eliminated by 2007 Wis. Act 20).
- Corrects minor errors in current rules.
- Makes minor organizational, drafting and terminology changes.

Fiscal Impact

This rule will have no significant fiscal impact on the department or local units of government.

- This rule will allow the department to charge license applicants an additional \$3 for electronic processing of licenses, if applicants choose that option. However, that option is not currently available except on a few simple licenses.
- This rule adjusts current agricultural chemical cleanup program surcharges paid by fertilizer and pesticide license holders to conform to the new (lower) amounts specified by statute. However, DATCP has already implemented the new amounts, so this rule will not change the surcharge amounts currently being paid.
- This rule will not have a substantial impact on DATCP administrative or operating costs.

Business Impact

This rule will not have any significant impact on small business or other business. This rule makes minor and technical “housekeeping” changes that will not have a significant impact on business standards, costs or operations.

Environmental Impact

This “housekeeping” rule will have no significant environmental impact.

Federal and Surrounding State Programs

Federal Programs

Some of the rules affected by this rule are based on federal regulations or standards including:

- Soil and water conservation standards published by NRCS.
- Regulations under the federal meat inspection program. State standards must be at least “equal to” the federal standards.
- Dairy standards under the Interstate Pasteurized Milk Ordinance (PMO)
- Weights and measures standards issued by the national institute of standards and technology.

This rule is consistent with relevant federal regulations and standards.

Surrounding States

Surrounding states have programs similar to some of the programs affected by this rule, including cooperative state-federal programs related to soil and water conservation, meat inspection, dairy regulation, and weights and measures regulation. Current Wisconsin programs in these areas are substantially equivalent to programs in surrounding states. This rule does not have a significant impact on programs in this state or other states, or create any significant disparity between this state and other states.

Standards Incorporated by Reference

This rule updates references to certain technical standards that are incorporated by reference in current rules. Updated technical standards include the following:

- Soil and water conservation practice standards published by NRCS (see ch. ATCP 50 *Appendix G* attached).
- Weights and measures standards published by NIST, including the 2008 editions of NIST Handbooks 44 and 130.

Pursuant to s. 227.21, Stats., DATCP has requested permission from the Department of Justice to incorporate the updated technical standards by reference in this rule. Copies of the updated standards that are incorporated by reference in this rule will be kept on file with DATCP and the Legislative Reference Bureau.

Data and Analytical Methodologies

This rule does not depend on any complex analysis of data. This rule merely makes minor or technical changes to current rules.

Agency Contact for Submitting Comments

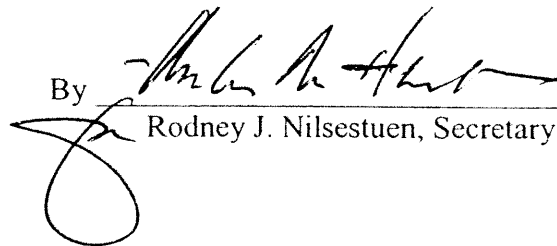
Questions or comments related to this rule may be sent to the following address:

Karen Schultz
Department of Agriculture, Trade and Consumer Protection
2811 Agriculture Drive
Madison, WI 53718
Telephone: (608) 224-5023
Karen.Schultz@wisconsin.gov

Dated this 25th day of July, 2008.

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

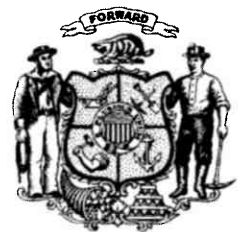
By



Rodney J. Nilsestuen, Secretary



WISCONSIN STATE LEGISLATURE



State of Wisconsin
Department of Agriculture, Trade, and Consumer Protection

HEARING NOTICE

Pesticide Product Restrictions; Atrazine Pesticides

The Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) announces that it will hold a public hearing on rules expanding and joining two current atrazine prohibition areas near Poynette in Columbia County.

DATCP will hold the public hearing at the time and location shown below. DATCP invites the public to attend the hearing and comment on the rules. Following the hearing, the hearing record will remain open until November 7, 2008 for additional written comments. Comments may be sent to the Division of Agricultural Resource Management at the address below, by email to Rick.Graham@wisconsin.gov or online at <https://apps4.dhfs.state.wi.us/admrules/public/Home>.

You may obtain free copies of the proposed rule by contacting the Wisconsin Department of Agriculture, Trade and Consumer Protection, Division of Agricultural Resource Management, 2811 Agriculture Drive, P.O. Box 8911, Madison, WI 53708. You may also obtain copies by calling (608) 224-4502 or emailing Rick.Graham@wisconsin.gov. Copies will also be available at the hearing. To view the proposed rule online, go to: <https://apps4.dhfs.state.wi.us/admrules/public/Home>.

To provide comments or concerns relating to small business, you may also contact DATCP's small business regulatory coordinator Keeley Moll at the address above, or by emailing to Keeley.Moll@wisconsin.gov or by telephone at (608) 224-5039.

Hearing impaired persons may request an interpreter for these hearings. Please make reservations for a hearing interpreter by October 16, by writing to Claire Fried, Division of Agricultural Resource Management, P.O. Box 8911, Madison, WI 53708-8911, Claire.Fried@wisconsin.gov, telephone (608) 224-4523. Alternatively, you may contact the DATCP TDD at (608) 224-5058. Handicap access is available at the hearings.

Hearing Date and Location:

Thursday, October 23, 2008
3:00 p.m. to 5:00 p.m. and 6:00 p.m. to 8:00 p.m.
MacKenzie Environmental Center
Badger Den Conference Room
W7303 Co. HWY CS
Poynette, WI 53955

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

In order to protect Wisconsin groundwater, the Department of Agriculture, Trade and Consumer Protection (“DATCP”) administers rules that limit atrazine herbicide application rates throughout the state, and prohibit atrazine applications in areas where groundwater contamination levels attain or exceed state enforcement standards adopted by the Department of Natural Resources. Based on new groundwater test data, this rule will expand and join two current atrazine prohibition areas in Columbia County.

Statutes Interpreted

Statutes interpreted: ss. 94.69, 160.19(2), and 160.21(1), Stats.

Statutory Authority

Statutory authority: ss. 93.07(1), 94.69(1), 160.19(2), and 160.21(1), Stats.

Explanation of Statutory Authority

DATCP has broad authority, under s. 93.07(1), Stats., to adopt rules to implement programs under its jurisdiction. DATCP has authority to adopt pesticide rules under s. 94.69(1), Stats. Under ss. 160.19(2) and 160.21(1), Stats., DATCP must regulate pesticide use, as necessary, to prevent groundwater contamination and restore groundwater quality.

Related Rules or Statutes

Under the state groundwater law, ch. 160, Stats., DATCP must regulate pesticide use as necessary to prevent groundwater contamination and restore groundwater quality. DATCP has adopted general rules for its groundwater protection program under ch. ATCP 31, Wis. Adm. Code. DNR has adopted groundwater enforcement standards and preventive action limits for atrazine and its metabolites under NR 140, Wis. Adm. Code.

This rule is consistent with the state groundwater law (ch. 160, Stats.) and DATCP’s general groundwater protection rules (ATCP 31), and is designed to attain compliance with the groundwater enforcement standards and preventive action limits specified by DNR rules (NR 140).

Background

Atrazine is a widely used agricultural herbicide that has been found in groundwater throughout the state. Current DATCP rules under ch. ATCP 30, Wis. Adm. Code, limit atrazine application rates throughout the state to ½ the current federal label rate. The current rules also *prohibit* the

use of atrazine where atrazine contamination of groundwater has attained or exceeded the state groundwater enforcement standard under ch. NR 140, Wis. Adm. Code. Current rules prohibit atrazine use in 102 designated areas, including major prohibition areas in the lower Wisconsin River Valley and much of Dane and Columbia counties.

Rule Content

Based on new groundwater sampling data, this rule expands and joins two current atrazine prohibition areas in Columbia County. The expansion will increase the total statewide acreage of atrazine prohibition areas by approximately 1,830 acres. By joining two prohibition areas, this rule will reduce the total number of prohibition areas from 102 to 101. This rule includes maps describing the revised prohibition areas.

Within every prohibition area, atrazine applications are prohibited. Atrazine mixing and loading operations are also prohibited unless conducted over a spill containment surface that complies with s. ATCP 29.45, Wis. Adm. Code.

Fiscal Impact

Administration and enforcement of this rule will involve some new costs for DATCP. Staff time will be needed to monitor compliance (0.1 FTE, cost approximately \$7,800). Compliance monitoring will be coordinated with current compliance monitoring activities. Soil sampling and testing may be used to monitor compliance, and may require an estimated \$1,000 in analytical services.

Total costs are estimated at \$8,800. DATCP expects to absorb these costs within its current budget. There will be no additional costs to any other state agencies or local governments.

Business Impact

This rule will affect four or five farmers, in the expanded prohibition areas, who currently use atrazine to control weeds in corn. Those farmers, who are "small businesses," will no longer be able to use atrazine. However, other effective weed control products are available, so the rule will not have a significant impact on the affected farmers. This rule may also have a slight impact on distributors and applicators of atrazine herbicides, crop consultants and equipment dealers, but the impact will not be significant.

This rule will not have a significant adverse impact on small business, and is not subject to the delayed small business effective date provided in s. 227.22(2)(e), Stats.

Federal and Surrounding State Programs

Pesticides and pesticide labels must be registered with the federal Environmental Protection Agency ("EPA"). Persons may not use pesticides in a manner inconsistent with the federal label.

The maximum atrazine application rate in Wisconsin is ½ of the maximum federal rate. However, the current federally-registered atrazine label suggests that atrazine should not be used on permeable soils with groundwater near the soil surface. Wisconsin has clear, definite restrictions on atrazine use, based on actual findings of groundwater contamination in this state.

EPA is proposing federal rules that would require states to have pesticide management plans for pesticides that have the potential to contaminate groundwater. Wisconsin's current regulatory scheme for atrazine pesticides would likely comply with the proposed federal rules.

Wisconsin atrazine regulations are stronger than those in adjacent states:

- Iowa restricts atrazine application rates to 1/2 the federal label rate in 23 counties (7 with county-wide restrictions and 16 with restrictions in some townships).
- Minnesota has a program of voluntary use limitations when surface water or groundwater contamination exceeds a level of concern. This program suggests pesticide use restrictions or management practices to reduce surface water or groundwater contamination. To date, this program has not been implemented anywhere in Minnesota.
- Illinois and Michigan have no atrazine regulations.

Data and Analytical Methodologies.

This rule is based on groundwater sample results for atrazine and atrazine metabolites obtained from the affected areas during the past year. Groundwater samples contained atrazine contamination in excess of 3.0 ug/L (the state enforcement standard established by DNR groundwater rules under ch. NR 140, Wis. Adm. Code).

Preliminary contamination findings were based on groundwater samples analyzed by the University of Wisconsin – Stevens Point. DATCP confirmed the existence of groundwater contamination, in excess of the state enforcement standard, based on DATCP analysis of groundwater samples collected by DATCP. DATCP collected and analyzed the samples using official collection and analytical methods.

DATCP Contact

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

Rick Graham

Department of Agriculture, Trade and Consumer Protection

P.O. Box 8911

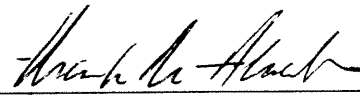
Madison, WI 53708-8911

Telephone (608) 224-4502

E-Mail: rick.graham@wisconsin.gov

Dated this 10th day of September, 2008

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

By 

Rodney J. Nilsestuen, Secretary

