Wisconsin Department of Agriculture, Trade and Consumer Protection

Initial Regulatory Flexibility Analysis

Rule Subject:	**Animal Disease and Movement and Animal Markets, Truckers and Dealers**
Adm. Code Reference:	**ATCP 10 and 12**
Rules Clearinghouse #:	**Not yet assigned**
DATCP Docket #:	**13-R-01**

Rule Summary

This proposed rule will modify current animal health rules to align with federal regulations, state statutory requirements, and previous rule modifications. The proposed rule will also make various modifications to provide for flexibility, clarity and consistency.

Federal Regulations

Many of the programs regulated by state administrative rules are also regulated by federal rules. As federal rules change over time, state rules must also be modified so Wisconsin producers have consistent, non-conflicting requirements to comply with when moving livestock interstate. This rule modifies provisions relating to documentation required for horses and to official individual identification of certain animals to align with federal traceability rules. The rule also modifies provisions relating to the chronic wasting disease (CWD) herd status program to align with United States Department of Agriculture (USDA) rules that establish a Herd Certification Program (HCP) for CWD in farm-raised or captive cervids in the United States.

Documentation required for horses moving interstate

Current rule allows horses to be imported without a certificate of veterinary inspection (CVI) if the horse is not commingled with other horses and goes to slaughter within 10 days after arrival at an animal market. Federal regulations no longer allow for this CVI exemption. Therefore, this rule will eliminate this CVI exemption for horses to be consistent with federal regulations.

Official individual identification of animals

Current rule allows bovine animals to be officially identified with eartags approved by the federal bureau or the department, registration numbers, or tattoos. Federal rules now only allow official eartags to be used as official identification. The official eartags must adhere to the National Uniform Eartagging System, the Animal Identification Number System, or other identification system approved by the federal bureau and the department. In addition, federal rules now require the following bovine animals to have

official identification: all sexually intact cattle/bison over 18 months of age, all female dairy cattle of any age, all male dairy cattle born after March 11, 2013, and cattle/bison used for shows and exhibitions. The proposed rule modifies the definition of "official individual identification" and "official eartag" when applied to bovine animals to align with federal traceability requirements.

Current rule allows farm-raised deer enrolled in the CWD herd status program to be officially identified with a CWD status program registration tag or a premises tattoo provided the farm-raised deer also has a unique individual identification number. Federal rules now only allow official eartags to be used as official identification of these deer. The official eartags must adhere to the National Uniform Eartagging System, the Animal Identification Number System, or other identification system approved by the federal bureau and the department. The proposed rule modifies the definition of "official individual identification" and "official eartag" as applied to farm-raised deer to align with federal traceability requirements.

The current rule definition of "official individual identification," as it pertains to other animals, is unclear. The proposed rule modifies the definition of official individual identification for clarity when the term is applied to other animals.

Farm-raised deer enrolled in the CWD herd status program

Current rule requires a farm-raised deer keeper (FRDK) whose herd is enrolled in the CWD herd status program to conduct an annual herd census and file a report of that herd census with the department. To comply with new federal requirements under 9 CFR 55.23 (b) (4), the proposed rule requires that a physical herd inventory be completed by a herd veterinarian or department-authorized agent before a FRDK may enroll in the CWD herd status program. Similar physical herd inventories must be completed every three years thereafter to maintain enrollment. For FRDKs currently enrolled in the CWD herd status program, the proposed rule requires the first complete herd inventory to be submitted to the department by December 31, 2015, providing reasonable time to comply.

Current rule requires deer enrolled in the CWD herd status program to have one official identification. To comply with new federal requirements under 9 CFR 55.25 that became effective December 10, 2012, the proposed rule requires that two identifications (one official and the second either official or unique to the herd) be attached to farm-raised deer that are enrolled in the CWD herd status program. The proposed rule also requires the two identifications be recorded in the annual census report, as well as the physical herd inventory conducted every three years.

Current rule specifies that a farm-raised deer is CWD test-eligible if it is at least 16 months old, unless a different age is required under USDA rules. USDA rules, under 9 CFR 55.23 (b) (4), now requires herd owners enrolled in a CWD herd certification program to test deer aged 12 months or older for CWD upon death, including by slaughter or hunt (effective 12/10/12). The proposed rule clarifies that the age of test-

eligible deer enrolled in the CWD herd status program is 12 months of age or older in accordance with USDA regulations.

State Statutory Modifications

All of the programs regulated by state administrative rules are authorized by Wisconsin Statutes. As statutory modifications are made, state rules must also be modified to be in compliance with Wisconsin Statutes. To be in compliance with state statutes, the proposed rule modifies provisions relating to:

1. Establishing veteran fee waivers for farm-raised deer and fish farm registration (pursuant to 2011 Wisconsin Act 209).

2. Eliminating certain record keeping requirements for persons who operate a fish farm but sell fish to an individual for the individual's personal use as food or bait (pursuant to 2011 Wisconsin Act 207).

3. Eliminating the requirement that a person have an import permit when bringing fish or fish eggs from a fish farm in another state to a fish farm in this state if he or she has a valid fish health certificate that covers the fish or fish eggs (pursuant to Wisconsin Act 207).

4. Eliminating the DNR exemption from the requirement to obtain a permit from the department to bring fish into this state (pursuant to 2011 Wisconsin Act 207).

Flexibility, Clarity, and Consistency

The proposed rule makes the following modifications to provide for flexibility, clarity and consistency:

1. Definitions and terms.

   Replacing the term "American association of zoological parks and aquariums" with "association of zoos and aquariums," the current title of the entity.

   Changing the definition of "feeder cattle" in ch. ATCP 10 to be consistent with the definition of feeder cattle in ch. ATCP 12.

   Modifying the definition of "individual" for clarity.

   Creating the definition of "immediate family member" to clarify what individuals are eligible to collect a CWD test sample once properly trained.

   Creating a definition of "salvage value" to clarify that payment received from any source, other than state or federal indemnifications, are considered part of the salvage value of an animal.

Defining the new term "new world camelids" to allow vicunas to be classified as, and have the same import requirements as, llamas, alpacas and guanacos, rather than classified as an exotic ruminant with additional import requirements.

2. Blanket import permit.

   Creating a blanket import permit system to be used when the department is not open for business. An accredited veterinarian or a Wisconsin importer who anticipates a possible purchase of an animal from an out-of-state farm or sale at a time the department is not open for business may apply for a blanket import permit, by providing some specifics, and following up with the details on the first business day.

3. Johne's program.

   Clarifying that reimbursements under the Johne's program are made only when funds are available. Funds for the Johne's program are eliminated in the 2013-15 biennial budget.

4. Bovine.

   Eliminating the requirement that official individual identification of bovine animals be inserted in the *right* ear of the animal.

5. Swine.

   Eliminating the requirement that a certificate of veterinary inspection (CVI) include a statement that no pseudorabies vaccine has been used on a swine imported into Wisconsin. In the alternative, the proposed rule requires that a statement disclosing the porcine reproductive and respiratory syndrome status (PRRS) of the herd of origin, if known, be included on the CVI of an imported swine. This change was made in consultation with the swine industry which felt the genetics of the hogs bred in Wisconsin were in need of protection from the disease of PRRS.

6. Equine.

   Changing the timing of the required negative equine infectious anemia (EIA) test result from "during the current calendar year" to "within 12 months" of the purchase, sale transfer or import of the equine into this state. This will make Wisconsin's EIA testing intervals consistent with other states, facilitating interstate movement.

7. Poultry.

   Eliminating the turkey commingling prohibitions to benefit small poultry farmers.

8. Farm-raised deer.

   Eliminating a provision on deer moving to a tuberculosis isolation and testing facility as such facilities no longer exist.

Requiring that FRDKs include in their records the circumstances which resulted in an escape consistent with the information reported to the department whenever a farm-raised deer escapes a registered herd. Whatever is *reported* to the department must be *recorded* in herd records.

Requiring that FRDKs keep a record of where a carcass is buried or otherwise disposed of, consistent with record keeping requirements for deer killed on a hunting preserve.

Clarifying that all farm-raised deer that are killed intentionally, including escaped deer, must be tested for CWD if they are test-eligible.

Eliminating the requirement that the livestock premises code be included in the herd records of farm-raised deer added to a herd under the CWD herd status program.

Establishing training requirements for FRDKs, their immediate family members, and their employees to be qualified to collect CWD test samples. The proposed rule also establishes a fee for becoming a qualified CWD test sample collector.

Clarifying that official individual identification numbers be included on a certificate of veterinary inspection for farm-raised deer imported or moving in Wisconsin.

9. Fish.

Clarifying when a valid fish health certificate must accompany any fish and fish eggs moved from a fish farm that has registered two or more fish farms at a single location. Current rules require a valid health certificate accompany *any* fish or fish eggs moved between *any* of the registered fish farms. The proposed rule will require a valid health certificate accompany *only* fish or fish eggs of a species found to be susceptible to VHS, moving from a type 3 fish farm.

Eliminating the record keeping requirements for sales of farm-raised fish or fish eggs sold directly to a consumer for bait or food.

10. Appendices to ch. ATCP 10.

The current rule requires a person who diagnoses, or obtains, credible diagnostic evidence of a disease listed in Appendix A report that finding to the department within one day. The proposed rule removes Mycoplasma meleagridis from Appendix A and adds it to Appendix B which requires the listed diseases to be reported to the department within 10 days.

11. Animal markets, dealers and truckers.

Clarifying that Class A animal markets may conduct livestock and wild animal sales and auctions on any number of days during the license year.

Clarifying that Class B animal markets may conduct livestock sales on any number of days during the license year but may hold auctions on no more than 4 days during the license year.

Clarifying that any person, *as principal or agent*, engaged in the business of animal dealing must hold an animal dealer license. This language aligns the rule with Wisconsin Statutes.

Clarifying the language regarding the identification of bovine animals for sale or shipment to slaughter.

Clarifying, in a note, that if an animal dealer or trucker hauls bovine animals or swine direct to slaughter or to a slaughter sale held at a licensed market, an official backtag is adequate identification for the animal.

Clarifying that for animal trucker records, the individual backtags do not need to be recorded for animals being moved from a licensed dealer or market direct to slaughter. Also, clarifying that the owner of each animal must be included in animal trucker records.

Small Businesses Affected

The majority of these rule modifications are technical and have no fiscal effect or have already been implemented by the division due to prior changes in state law. Many of the rule modifications will ease program requirements and may reduce costs to small business. The rule modifications that may have a greater economic impact on small business are changes required to align with federal USDA regulations relating to farm-raised deer enrolled in the CWD herd status program.

The entities that may be affected by this rule modification include the following:

1. Wisconsin importers.

   Vicunas. The import requirements for vicunas will be less costly and those reduced costs may be realized by the recipient of the vicuna. However, the number of vicunas imported into the state of Wisconsin is negligible and cost savings indeterminate.

   Swine. The import costs for swine will most likely remain the same as the CVI content requirement for swine imports has replaced the pseudorabies vaccine statement with a statement regarding PRRS status of the herd of origin.

2. Poultry farmers.

   Small poultry farmers have benefited from the elimination of turkey commingling prohibitions in the proposed rule. The department has already issued a waiver from this rule prohibition so any cost savings from this rule modification have already been realized.

3. Farm-raised deer keepers (FRDKs) with herds enrolled in the CWD herd status program.

   CWD test samples (State changes). Farm-raised deer keepers may realize a significant cost savings if they, their employees or their immediate family members choose to complete department-approved training and become qualified by the department to collect CWD test samples.

   The qualification will allow the FRDK (or his/her employee or immediate family member) to collect CWD test samples rather than hiring a veterinarian to do so at an estimated $75 per deer (depending on the number of deer tested at one time, this cost could be lower). This change is significant as 100 percent of all farm-raised deer aged 12 months or older enrolled in a CWD herd status program must be tested for CWD upon death, including those sent to slaughter. In addition, for non-enrolled herds for deer 16 months of age or older, 100 percent that are killed intentionally or die by accidental death or natural causes must be tested, 25 percent sent to slaughter must be tested and 50 percent that are intentionally killed while on a hunting preserve must be tested. Cost savings for non-enrolled herds could also be significant.

   The training for this qualification will first be provided in the summer of 2013 (before promulgation of this rule) and will be free of charge. The proposed rule will require a nonrefundable application fee of $50 every five years per applicant so the department can recover some of the cost in the future of providing the CWD test training and qualification program.

   Beginning June 30, 2018, veterinarians will also be required to take CWD test sample training to refresh their sampling techniques and to become qualified collectors. This will be a new cost to veterinarians who choose to collect CWD test samples.

   Two forms of identification (Federal changes). Keepers of farm-raised deer enrolled in the CWD herd status program will have to apply two forms of identification to each deer that is 12 months of age or older and provide a complete herd inventory every three years by a veterinarian or department-authorized agent.

   Participation in the CWD herd status program is voluntary. There are approximately 330 farm-raised deer keepers with 14,225 deer (elk, red deer, white-tailed deer, fallow, sika, reindeer, muntjac, moose, and mule deer) enrolled in the CWD herd status program in Wisconsin.

   Approximately 50 of those FRDKs currently move their deer interstate and likely already have two identifications attached to each deer. These individuals also have their herds certified as tuberculosis-free since it is a requirement to move deer. A tuberculosis-free herd must be re-certified every three years by testing deer 12 months of age or older by a veterinarian. The newly required complete herd inventory can coincide with the tuberculosis testing every three years but must be done for *all* deer in the herd (including deer *under* 12 months of age). Because the herd inventory includes all deer (including deer *under* 12 months of age) and the tuberculosis testing

includes only deer *over* 12 months of age, there will be an increase in cost to FRDKs having young deer under 12 months of age. The cost for a veterinarian to provide tuberculosis testing is approximately $100 to $200 per hour. The number of additional hours needed and costs will vary depending on the number of deer under 12 months of age that will need to be inventoried in each herd. It is unknown how many herds will have deer under 12 months of age.

Of the remaining 280 FRDKs, approximately 190 are enrolled in the CWD herd status program and many move their deer intra-state. Approximately 150 of these FRDKs have their herds certified as tuberculosis-free. These FRDKs will have the same fiscal costs as those described in the previous paragraph. The FRDKs that do not have herds certified as tuberculosis-free may incur the fiscal costs described in the following paragraphs.

Approximately 90 of the 280 FRDKs who don't move interstate are enrolled in the CWD herd status program but do not move live deer, do not have their herds certified as tuberculosis-free, and likely do not have two identifications attached to their adult deer. These FRDKs may choose to stop participation in the CWD herd status program. However, they will then need to comply with fencing requirements specified by the Department of Natural Resources under NR 16.45 (2), Wis. Admin. Code. The DNR rule requires white-tailed deer farms with perimeter fences less than 80 acres to be either enclosed by a double or solid fence (unless the deer farm is enrolled in the CWD herd status program).

The rules will have a greater fiscal impact on these FRDKs as they probably do not currently have facilities to catch deer in order to apply the required identification or to complete a physical herd inventory every three years. Depending on the animal, each deer may need to be chemically immobilized (tranquilized) in order to conduct the inventory, causing a greater risk of death, injury, and cost to the owner.

It is important to note that if these rule modifications are not promulgated to comply with federal regulations, Wisconsin may jeopardize its approval from USDA on implementing its herd certification program which allows keepers of farm-raised deer enrolled in the CWD herd status program to move deer interstate. No USDA approval means there is no interstate movement of deer.

4. Fish farmers.

   Type 1 and 2 fish farmers may realize a cost savings as they will no longer have to have a veterinarian prepare a valid health certificate for fish or fish eggs moving from any of the registered fish farms at the same location. It is unknown how many type 1 and 2 fish farms move fish or fish eggs among the registered fish farms at the same location. Therefore, any savings are indeterminate.

5. Owners of rodeo and exhibition cattle.

Owners of rodeo and exhibition cattle will have to apply eartags to their cattle to improve traceability. However, because these eartags are free, any fiscal impact should be minimal.

6. Animal markets.

   Owners of animal markets in Wisconsin selling equine may experience a slight decrease in costs as federal rules now require that horses imported to markets have a certificate of veterinary inspection (CVI) before entering the market. Current state rule allows horses to be imported to markets without a CVI if shipped directly to slaughter within 10 days of arrival but if the horse then leaves the market other than for slaughter or is commingled with other equine, the market owner must then have a Wisconsin certified veterinarian issue a CVI for that horse. Under the proposed rule, the equines would come to market *with* a CVI. It is unknown how many markets this provision may affect and any cost savings are indeterminate.

Reporting, Bookkeeping and other Procedures

This rule modifies bookkeeping requirements of farm-raised deer keepers and fish farmers, as follows:

1. Farm-raised deer keepers (FRDKs).

   Currently, FRDKs must maintain records relating to any farm-raised deer that escape from the herd. The records must include the date of the escape and the date of return of the farm-raised deer, if applicable. To be consistent with other reporting requirements, the proposed rule will also require that any circumstances which may have resulted in the escape of a farm-raised deer be included in the record. This requirement is minimal as basic escape information must already be provided in the herd's record and this simply requires more details. Any costs related to this requirement should be minimal.

   Currently, FRDKs must maintain records of any farm-raised deer that dies, or is killed or slaughtered, on the herd premises. Those records must include the disposition of the carcass. To be consistent with record keeping requirements for FRDKs on hunting preserves, the proposed rule will require that if the carcass is buried or otherwise disposed of, the record will identify the disposal method and location. This additional requirement is minimal as death information must already be provided in the herd's record. Any costs related to this requirement should be minimal.

   Farm-raised deer keepers are no longer required to include the livestock premises code in the herd records of farm-raised deer added to a herd under the CWD herd status program. Any cost savings related to this requirement should be minimal.

2. Fish farmers.

Fish farmers who sell fish or fish eggs in a retail sale directly to a consumer for bait or food are no longer required to keep records relating to the species and quantity of fish or fish eggs sold, the date on which the fish or fish eggs were sold, the location at which the fish or fish eggs were sold, etc. The cost savings relating to fewer record keeping requirements is indeterminate. All other sale records are still required.

Professional Skills Required

To the extent that this rule requires changes in professional skills, the department's analysis is included in the prior sections covering impacts on owners or keepers of farm-raised deer.

Accommodation for Small Business

Many of the businesses affected by this rule are "small businesses." For the most part, this rule does not make special exceptions for small business, because disease does not differentiate or respect business size.

The rule provisions that may have a more significant fiscal effect are those required by federal USDA regulations that, again, do not differentiate by business size.

Finally as the "business impact" section describes above, there are several provisions that will benefit small businesses.

Conclusion

This rule will generally benefit affected businesses, including "small businesses." 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.

Dated this 27 day of June, 2013.

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