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(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

2003-04

(session year)

Assembly

(Assembly, Senate or Joint)

Committee on Agriculture...

COMMITTEE NOTICES ...

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INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

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- Miscellaneous ... **Misc**

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



State of Wisconsin
Scott McCallum, Governor

Department of Agriculture, Trade and Consumer Protection
James E. Harsdorf, Secretary

PUBLIC NOTICE

FINAL DRAFT RULE TO LEGISLATURE

The Department of Agriculture, Trade and Consumer Protection announces that it is submitting the following rule for legislative committee review, pursuant to s. 227.19, Stats.:

CLEARINGHOUSE RULE #: **02-078**
SUBJECT: **Chronic Wasting Disease**
ADM. CODE REFERENCE: **ATCP 10-11**
DATCP DOCKET #: **99-R-07**

Dated this 2 day of January 2003.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE, TRADE AND
CONSUMER PROTECTION

By James E. Harsdorf
James E. Harsdorf
Secretary



State of Wisconsin
Scott McCallum, Governor

Department of Agriculture, Trade and Consumer Protection

James E. Harsdorf, Secretary

DATE: January 2, 2003

TO: The Honorable Fred Risser
President, Wisconsin State Senate
Room 220 South, State Capitol
P.O. Box 7882
Madison 53707-7882

The Honorable Scott R. Jensen
Speaker, Wisconsin State Assembly
Room 211 West, State Capitol
P.O. Box 8952
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FROM: James E. Harsdorf, Secretary *James E. Harsdorf*
Department of Agriculture, Trade and Consumer Protection

SUBJECT: **Chronic Wasting Disease; Final Draft Rule
(Clearinghouse Rule # 02-078)**

The Department of Agriculture, Trade and Consumer Protection is transmitting this rule for legislative committee review, as provided in s. 227.19(2) and (3), Stats. The department will publish a notice of this referral in the Wisconsin Administrative Register, as provided in s. 227.19(2), Stats.

Background

Chronic wasting disease is a contagious disease known to affect several species of the cervid family, including elk, white-tail deer, black-tailed deer, and mule deer. The disease affects the brains of infected animals, and is always fatal. At the present time, there is no scientific evidence to suggest that chronic wasting disease is transmitted to non-cervids or to humans. But there is limited scientific knowledge about the disease, and this lack of knowledge has contributed to public concerns.

Science does not understand how chronic wasting disease is spread. It is thought that infected cervids can transmit the disease to other cervids, either directly or by contaminating their environment. It appears that cervid-to-cervid contact facilitates the spread of the disease.

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On September 18, 2002, the United States Department of Agriculture (USDA) National Veterinary Services Laboratory (NVSL) confirmed the first case of chronic wasting disease in a captive deer in Wisconsin -- a white-tail deer shot on a hunting preserve in Portage County. Since that time, NVSL has confirmed a second positive test result on a captive white-tail deer, from a herd located in Walworth County. This herd was identified for testing based on an epidemiological investigation of the Portage County deer herd.

The Department of Agriculture, Trade and Consumer Protection (DATCP) currently registers approximately 300 "farm-raised deer" herds. This includes captive deer and elk, other than captive white-tail deer. DNR currently registers approximately 600 captive white-tail herds. A new law will transfer registration of white-tail herds from DNR to DATCP, effective January 1, 2003. On that date, captive white-tails will be classified as "farm-raised deer."

Persons importing deer and elk (including white-tail deer) to Wisconsin are currently required to obtain an import permit from DATCP. Importers must identify the herd of origin and the herd of destination. A veterinarian must certify that the deer and elk appear to be in good health, and that they have been tested for tuberculosis and brucellosis. There is no chronic wasting disease testing requirement, because there is no way to test live deer and elk for the disease. This rule, like the emergency rule, will strengthen Wisconsin's import requirements related to chronic wasting disease.

This rule will regulate the keeping of "farm-raised deer" including captive white-tail deer. This rule, like the emergency rule, will strengthen current regulations related to chronic wasting disease. It will also regulate the movement of farm-raised deer between herds in Wisconsin. This rule prohibits the movement of live farm-raised deer, except from herds that are enrolled in a chronic wasting disease monitoring program.

For the most part, this rule does not apply to wild deer or elk regulated by DNR. However, this rule does apply to deer or elk that DNR keeps in a fenced area. This rule also regulates *imports* of wild deer and elk, just as it regulates imports of farm-raised deer. Under this rule, a person must report to DATCP whenever a farm-raised deer *or a wild deer or elk* tests positive for chronic wasting disease.

Rule Contents

Farm-Raised Deer; Herd Registration

Under current rules, no person may keep a herd of farm-raised deer in this state without an annual registration certificate from DATCP. This rule modifies current registration requirements. Under this rule:

- Captive white-tail deer herds are considered farm-raised deer herds, and must be registered with DATCP. This implements the recent captive wildlife legislation, which classifies captive white-tails as “farm-raised deer” effective January 1, 2003.
- A person may register herds kept at 2 locations as a single herd, *provided that* the person is enrolled in the chronic wasting disease monitoring program and every farm-raised deer is identified with an official individual identification before it is moved between the jointly-registered locations. The herd keeper need not comply with other intra-state movement requirements when moving farm-raised deer between jointly-registered locations. But if a disease is found at one location, *all* of the farm-raised deer at *all* of the jointly-registered locations will be treated as a single herd for disease control purposes.
- A person may register separate herds at the same location if there is “medically significant separation” of the herds. There must be adequate fencing and facilities to maintain the separation, and the herd owner must comply with intra-state movement regulations (see below) when moving farm-raised deer between the herds. A person might choose to register separate herds at the same location if, for example, the person maintains a breeding operation (from which live animals are shipped) and a separate hunting operation (from which no live animals are shipped) at that location.
- A person keeping separate herds at the same location must register each herd separately, and pay registration fees for each herd. Before DATCP registers separate herds at the same location, DATCP must inspect the premises to determine whether the facilities and fencing are adequate to maintain “medically significant separation” of the herds. The herd owner must pay, in addition to the normal registration fees, a \$150 inspection fee to cover the inspection cost. This rule does not change any other herd registration fees.
- Under current rules, DATCP must grant or deny registration within 30 days after DATCP receives a complete application. Under this rule, if DATCP must inspect to ensure that there is “medically significant separation” between herds kept at the same location, DATCP must grant or deny the registration within 60 days after receiving a complete application.

Duties of Herd Owners

A person keeping farm-raised deer must comply with this rule. The person must do all the following:

- Keep complete herd records, including records related to animals entering or leaving the herd.

- Refrain from adding any cervid to the herd unless the cervid is imported in compliance with this rule, or moved from another registered herd in compliance with this rule.
- Refrain from accepting into the herd, on a temporary or permanent basis, any cervid from a wild herd.
- Report any escapes of farm-raised deer to DATCP, within 48 hours after the escape.
- Notify a certified veterinarian within 24 hours if the person observes any signs or symptoms of chronic wasting disease in the herd.
- Officially identify every farm-raised deer or farm-raised deer carcass before it leaves the herd premises.

DATCP may deny, suspend or revoke a registration certificate for cause, including violations of this rule.

Deer and Elk Imports

Under this rule, no deer, elk or other cervid may be imported into Wisconsin unless an accredited veterinarian certifies one of the following:

- The cervid originates from a herd monitored for at least 5 years under a state-approved chronic wasting disease herd certification program that complies with federal uniform methods and rules.
- The cervid originates from a herd that meets all the following criteria:
 - Herd members have all been born in the herd or kept in the herd for at least one year.
 - Herd members have not been added from any outside source, or exposed to cervids from any outside source, in the past year.
 - There have been no clinical signs of chronic wasting disease in the herd for the past 5 years.
 - Animal health officials in the state of origin have access to herd records for the past 5 years, including records of cervid deaths and causes of death.
 - The herd of origin is enrolled in a state-approved chronic wasting disease monitoring program that complies with federal uniform methods and rules. The required length of enrollment will increase over time.

Moving Farm-Raised Deer in Wisconsin

Under this rule, no person may move a farm-raised deer from a herd in Wisconsin unless the herd is enrolled in the chronic wasting disease herd monitoring program (see below)

and the herd is an accredited tuberculosis free herd or a tuberculosis qualified herd. This does not apply to:

- An animal moved directly to slaughter if the animal is tested for chronic wasting disease.
- An animal moved between registered zoos.

Mandatory Testing in Wisconsin

This rule requires chronic wasting disease testing of farm-raised deer. There is no test available for live farm-raised deer. Tests must be conducted on brain tissue collected from dead animals. Tests are only effective on animals at least 16 months old. This rule requires herd owners to have all the following tested for chronic wasting disease:

- All farm-raised deer at least 16 months old that are shipped to slaughter.
- All farm-raised deer at least 16 months old that die or are killed on the herd premises.

Test Standards and Reports

This rule spells out standards for official chronic wasting disease tests needed to comply with this rule. Under this rule:

- Test samples must be collected by a DATCP-certified veterinarian, a DATCP employee, an employee of the animal and plant health inspection service (APHIS) United States department of agriculture, or another person approved by DATCP. The person must complete training approved by DATCP.
- Test samples must be collected according to standard veterinary procedure, and tested at a laboratory approved by DATCP or APHIS.

Persons must report to DATCP if test results are positive for chronic wasting disease. This reporting requirement applies to all chronic wasting disease tests, regardless of whether the tests are required under this rule.

Quarantine and Condemnation

Under this rule, if a farm-raised deer tests positive for chronic wasting disease, DATCP must quarantine the herd. DATCP may condemn animals exposed to the disease, and may direct the disposition of their carcasses. The herd owner may apply for statutory indemnity payments. If a herd owner is eligible, indemnities will normally cover 2/3 of the appraised value (less salvage value) of the condemned animals, but not more than \$1500 for each animal.

If DATCP condemns a herd because of exposure to or infection with chronic wasting disease, DATCP will provide information to the herd owner explaining actions the herd owner must take to clean and disinfect the premises. DATCP will also explain the conditions under which the herd owner may be allowed to establish a new herd on the premises where the infected or exposed animals were kept. This information will be provided at the time the herd is condemned and will reflect the latest scientific knowledge and understanding of the disease.

Herd Monitoring Program

This rule establishes a herd monitoring program for chronic wasting disease. No live farm-raised deer may be shipped from a herd (except to slaughter) unless the herd is enrolled in the monitoring program. A herd owner who wishes to enroll in the program must do all the following:

- Complete an application form.
- Provide a report of a herd census completed not more than 30 days before the application date.
- Provide a statement from the herd veterinarian. The veterinarian must certify that no farm-raised deer in the herd has shown any clinical signs of chronic wasting disease in the past 12 months.

DATCP must grant or deny the application within 30 days. A herd is enrolled in the program when DATCP accepts the herd owner's application. The herd owner must do all the following to remain in the program:

- Identify each farm-raised deer in the herd, with official individual identification, before the animal is one year old.
- Test every farm-raised deer that dies or is shipped to slaughter, if that animal is at least 16 months old. This testing requirement applies, regardless of whether the animal's carcass leaves the herd premises.
- Notify the herd veterinarian within 24 hours after the herd owner observes any signs or symptoms of chronic wasting disease.
- Provide an annual statement from the herd veterinarian. The herd veterinarian must certify that no animal in the herd has shown any clinical signs of chronic wasting disease since the last annual statement.
- File a report of an annual herd census. Among other things, the annual census report must indicate:

- The number, species and sex of farm-raised deer in the herd, and the official individual identification of each animal that is at least one year old.
- The number, species and sex of farm-raised deer added to the herd since the last reported herd census. The report must indicate whether these new animals were born into the herd or added from another source. If animals were added from another source, the report must identify the source from which they were obtained.
- The number of animals that died or left the herd since the last reported herd census. The report must explain how each animal left the herd, including all the following:
 - * Whether the animal died on the premises, was shipped to slaughter, or was shipped live other than to slaughter.
 - * If the animal was shipped live other than to slaughter, the name of the person to whom it was shipped and the place to which it was shipped.
 - * If the animal died on the premises, the animal's age and the disposition of its carcass. If the carcass left the premises, the report must identify the carcass destination or recipient. If the animal was at least 16 months old, the report must include a chronic wasting disease test report.
 - * If the animal was shipped to slaughter, the animal's age and the name and address of the slaughter establishment. If the animal was at least 16 months old, the report must include a chronic wasting disease test report.
- Refrain from adding farm-raised deer to the monitored herd, except from other monitored herds. Imported animals must originate from herds that are monitored under a state-recognized chronic wasting disease monitoring program that complies with federal uniform methods and rules.
- Notify DATCP within 14 days whenever the herd owner adds, to the monitored herd, a farm-raised deer originating from a herd that has been monitored for a shorter period than the receiving herd. The owner must provide the following information to DATCP:
 - The official individual identification of the farm-raised deer.
 - The date on which the farm-raised deer was added to the herd.
 - The keeper and location of the farm-raised deer's herd of origin, and the date on which that herd was enrolled in an approved herd monitoring program.
- Maintain all the following records for at least 5 years, and make those records available to DATCP for inspection and copying upon request:

- A record of each farm-raised deer added to the herd from another source, including:
 - * The species, age and sex of the animal.
 - * The name and address of the person from whom the animal was obtained.
 - * The address of the herd from which the animal was obtained.

- A record of each farm-raised deer leaving the herd, including all the following:
 - * Whether the animal died on the premises, was shipped to slaughter, or was shipped live other than to slaughter.
 - * If the animal was shipped live other than to slaughter, the name of the person to whom it was shipped and the place to which it was shipped.
 - * If the animal died on the premises, the apparent cause of death, the animal's age, and the disposition of the animal's carcass. If the carcass left the premises, the record must identify the carcass destination or recipient.
 - * If the animal was shipped to slaughter, the animal's age and the name and address of the slaughter establishment.

- A copy of all records received from the herd veterinarian related to veterinary services provided to the herd.

- A farm-raised deer herd is enrolled in the monitoring program when DATCP accepts the herd owner's enrollment application, except that:
 - If the owner of a monitored herd adds an animal from a source herd that has been monitored for a shorter length of time than the receiving herd, the monitoring enrollment date of the source herd becomes the monitoring enrollment date of the receiving herd.

If an owner assembles a new herd solely from herds that are already monitored, the latest monitoring enrollment date for any of the source herds becomes the monitoring enrollment date of the new herd if the herd owner of the new herd meets certain conditions specified in the rule.

Hearings

The department held four public hearings on this rule. The hearing were held in Fond Du Lac, Eau Claire, Madison, and Wausau on July 16, 18, 22, and 25, 2002 respectively. 174 people attended the hearings, 61 register or testified. The table below illustrates the responses.

Totals	Opposed	Supported	Neither	Total
Registered	16	7	10	33
Testified	15	9	4	28
Total	31	16	14	61
Attendees	174			

In addition 159 written comments were submitted including 136 signed copies of a form letter with comments circulated by a group called United Deer Farmers. A hearing summary is attached.

Rule Changes After Public Hearing

Based on hearing comments, DATCP made a number of changes in the final draft rule. Key changes may be summarized as follows:

Registering Farm-Raised Deer Herds

The hearing draft would have required a herd owner keeping farm-raised deer at 2 or more locations would to register each location as a separate herd. The final draft allows a herd owner to register 2 or more locations as a single herd, *provided* that the herd owner:

- Enrolls the entire herd in the chronic wasting disease monitoring program.
- Identifies every animal (regardless of age) with official individual identification before moving that animal between any of the jointly-registered herd locations.

This change will make it possible for herd owners to move animals between jointly-registered locations without a certificate of veterinary inspection. Under the final draft rule, *all* of the animals at *all* of the jointly-registered herd locations will be treated as a single herd for disease control purposes.

Herd Owner Reports

The final draft rule adds the following reporting requirements for herd owners:

- A herd owner must report to DATCP, within 48 hours, every escape of a farm-raised deer.
- A herd owner must report to a certified veterinarian, within 24 hours, any signs or symptoms of chronic wasting observed by the herd owner.

Moving Live Farm-Raised Deer from Herds in Wisconsin

Under the hearing draft rule, no farm-raised deer could be moved from a Wisconsin herd unless a Wisconsin certified veterinarian first certified that the farm-raised deer had tested negative on 2 tuberculosis tests conducted at least 90 days and no more than 150 days apart (there were some exceptions). The second test was to be conducted no more than 90 days prior to the animal movement.

The final draft rule changes this tuberculosis certification requirement, so that the requirement is consistent with federal requirements for interstate movement of farm-raised deer. Under the final draft rule, a Wisconsin certified veterinarian must certify one of the following:

- The farm-raised deer originates from a herd that qualifies as an “accredited tuberculosis free herd,” based on a herd test completed within 24 months prior to the animal movement.
- The farm-raised deer originates from a herd that qualifies as a “tuberculosis qualified herd” based on a herd test completed within 90 days prior to the animal movement.
- The farm-raised deer originates from a herd that qualifies as a “tuberculosis qualified herd” based on a herd test completed at least 91 days and not more than 365 days prior to the animal movement, and the farm-raised deer tested negative on a tuberculosis test conducted within 90 days prior to movement.

The hearing draft rule also required the veterinarian to certify that:

- No farm-raised deer in the herd of origin has shown clinical signs of chronic wasting disease in the last 12 months.
- The herd of origin has been enrolled in the chronic wasting disease monitoring program for a specified length of time. The required length of enrollment increases over time. Ultimately, starting in 2008, the herd must have been enrolled for at least 5 years before movement is permitted.

The final draft rule retains these pre-movement certification requirements. The final draft rule also provides that, if a new herd is assembled on premises where a prior herd was depopulated because of chronic wasting disease infection or exposure, no farm-raised deer may be moved from the new herd until the herd has been enrolled in the chronic wasting disease monitoring program for at least 5 years.

The hearing draft rule exempted, from intra-state movement requirements, farm-raised deer that are moved by DNR. The final draft rule eliminates this exemption.

Mandatory Testing in Wisconsin

The final draft rule strengthens mandatory testing of farm-raised deer herds for chronic wasting disease. Under the hearing draft rule, a herd owner was required to test each animal over 16 months old that died on the herd premises *if any part of the carcass left the premises*. The final draft rule requires the herd owner to test each animal over 16 months old that dies on the herd premises, *regardless of whether any part of the carcass leaves the premises*.

Quarantine and Condemnation

Under the hearing draft rule, if a farm-raised deer tests positive for chronic wasting disease, DATCP must quarantine the herd and conduct an epidemiological evaluation to determine the appropriate disposition of the herd. DATCP may condemn farm-raised deer exposed to chronic wasting disease. The final draft rule adds a provision prohibiting the herd owner from repopulating the premises, except under conditions prescribed by DATCP in the condemnation order.

Herd Monitoring Program

This rule creates a chronic wasting disease herd monitoring program. No person may move a live farm-raised deer from a herd in this state unless the herd is enrolled in the monitoring program. The hearing draft rule spelled out the terms and conditions of the monitoring program. The final draft rule adds the following provisions:

- A herd owner may not add farm-raised deer to a monitored herd, except from other monitored herds. Imported animals must originate from herds that are monitored under a state-recognized chronic wasting disease monitoring program that complies with federal uniform methods and rules.
- A herd owner must notify DATCP within 14 days whenever the herd owner adds, to the monitored herd, a farm-raised deer originating from a herd that has been monitored for a shorter period than the receiving herd. The owner must provide the following information to DATCP:
 - The official individual identification of the farm-raised deer.
 - The date on which the farm-raised deer was added to the herd.
 - The keeper and location of the farm-raised deer's herd of origin, and the date on which that herd was enrolled in an approved herd monitoring program.
- A farm-raised deer herd is enrolled in the monitoring program when DATCP accepts the herd owner's enrollment application, except that:

- If the owner of a monitored herd adds an animal from a source herd that has been monitored for a shorter length of time than the receiving herd, the monitoring enrollment date of the source herd becomes the monitoring enrollment date of the receiving herd.
- If an owner assembles a new herd solely from herds that are already monitored, the latest monitoring enrollment date for any of the source herds becomes the monitoring enrollment date of the new herd if the herd owner does all the following:
 - Completes an enrollment application within 90 days after acquiring the first farm-raised deer.
 - Provide the following supplementary information in the initial herd census:
 - The official individual identification of each farm-raised deer that is less than 1 year of age.
 - The name and address of the keeper of the herd from which each farm-raised deer originated.
 - The date each farm-raised deer was added to the new herd.
 - Test, for chronic wasting disease, any farm-raised deer (over 16 months old) that dies or is killed before the new herd is accepted into the chronic wasting disease monitoring program.
 - Complies with other herd monitoring requirements under this rule.

Response to Rules Clearinghouse Comments

The Legislative Council Rules Clearinghouse made several editorial comments on the hearing draft rule. DATCP incorporated these comments, with the following exceptions.

- The Clearinghouse suggested that, the second sentence of both s. ATCP 10.66 (1) (a) and (b) are redundant with s ATCP 10.66 (3) and (4) and so should be omitted. DATCP believes the second sentence clarifies requirements and makes it easier for the public to understand the requirement, so DATCP did not delete the sentence.
- The Clearinghouse questioned if the substance of s. ATCP 11.56 (2)(g) that was created in an earlier rule, Clearinghouse Rule 02-054, was included in the repealed and recreated s. ATCP 11.56 (2). DATCP concluded that this rule changes the requirements the 11.56 (2) (g) addressed making it no longer necessary. Therefore, DATCP included particular instructions to the Revisor of

the Statutes to assure that the treatment of ATCP 11.56(2) in this rule supersedes the treatment in Clearinghouse Rule 02.054.

- The Clearinghouse suggested that, ATCP 10.61 (4) (a), which refers to medically significant separation of herds and adequate fencing, should be further clarified. The Clearinghouse recommended that the rule should either define the terms or provide standards to make the requirements of the rule clear. DATCP did not define the terms or provide standards because DATCP is trying to allow the greatest flexibility possible to the deer farmer. If DATCP designates, by definition or by further expansion of the rule, an acceptable means of establishing medically significant separation of the herds, DATCP may prevent deer farmers from utilizing existing structures or improvements that don't meet the rule definition. By leaving the rule as drafted, DATCP allows the deer farmer to obtain advice from his or her veterinarian about effective ways of preventing contact between the animals or spread of disease among the animals. Together they may be able to identify a cost-effective means of providing adequate separation for medical purposes. If the DATCP veterinarian who inspects the premises agrees, this could save the herd owner time and money.
- The Clearinghouse suggested that the rule establish a deadline for submitting registration renewal applications under s. ATCP 10.61 (5). DATCP did not create a deadline for submitting renewal applications because DATCP believes s. 93.21(5)(b), Stats., establishes a requirement that renewals must be submitted before the expiration of the registration. This rule, s. ATCP 10.61(2) establishes the expiration date as December 31 and the renewal notice DATCP sends to the registrant clearly advises the registrant that the registration expires on December 31. Therefore, DATCP does not believe it is necessary to establish a deadline for submitting registration renewal applications by rule.
- The Clearinghouse questioned if the reference to the State of Wisconsin home page in s. ATCP 10.61 (5) (note) could be changed to a reference to the form itself or to a page that contains a link to the form. DATCP did not change the note because DATCP believes the purpose of having one State of Wisconsin home page was to facilitate people gaining access to any government service using one address.
- The Clearinghouse questioned the use of the "valid" in ATCP 10.67 (2) (e) 1. and (4) (f) 1. refer to valid veterinarian-client and veterinarian-patient relationships. They question what would qualify as a "valid" relationship and if the word "valid" is necessary. DATCP believes it is necessary that for participation in the chronic wasting disease monitoring program that the veterinarian and the client actually have established a veterinarian-client relationship. DATCP also believes it is necessary that the veterinarian actually

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establish a veterinary-patient relationship with the deer (that is, the veterinarian must actually observe, evaluate and, if needed, treat the deer). If the veterinarian is simply hired to be the veterinarian of record and does not actually have these relationships, the information the veterinarian will provide to DATCP will not serve the desired purpose. Therefore, DATCP believes that the word "valid" should remain in the rule.

Fiscal Estimate

This rule will have a major fiscal effect on the department. A fiscal estimate is attached.

Small Business Analysis

This rule will have a significant impact on small businesses in this state. Overall, this rule will benefit small businesses by preventing the spread of a serious disease. But this rule will impose additional costs on owners of farm-raised deer herds. A small business analysis ("final regulatory flexibility analysis") is attached.