

1 3. An accredited veterinarian or certified fish inspector has issued an annual
2 health certificate for that fish farm under sub. (16), and has filed a copy of that certificate
3 with the department.

4 4. The importer has filed a copy of the annual fish farm health certificate with the
5 importer's permit application under sub. (9) or, if the state of Wisconsin department of
6 natural resources is the importer, the department of natural resources has filed a copy of
7 the annual fish farm health certificate with the department before importing fish to this
8 state in any calendar year.

9 (c) The import shipment consists solely of any of the following:

10 1. Live ornamental fish, or the eggs of ornamental fish, unless the ornamental fish
11 or fish eggs are commingled with non-ornamental fish or fish eggs, or are reared for bait,
12 human food or animal feed.

13 2. Live fish or fish eggs that will be held, for the remainder of their lives, in fully
14 enclosed buildings solely for purposes of display or research, provided that no untreated
15 water used to hold those fish or fish eggs is discharged to waters of the state.

16 3. Live fish imported directly to a food processing plant, retail food establishment
17 or restaurant where they will be held for not more than 30 days pending slaughter or sale
18 to consumers at that facility, provided that the facility does not discharge to waters of the
19 state any untreated water used to hold or process those fish or fish eggs.

1 4. Live fish or fish eggs imported and held for not more than 30 days in fully
2 enclosed buildings pending shipment out of this state, provided that no untreated water
3 used to hold those fish or fish eggs is discharged to waters of the state.

4 (15) HEALTH CERTIFICATE; INDIVIDUAL SHIPMENT. The following
5 requirements apply to a health certificate under sub. (14)(a):

6 (a) An accredited veterinarian or certified fish inspector shall issue the health
7 certificate in the state of origin, on a form provided by the department, based on a
8 personal inspection of the import shipment. The accredited veterinarian or certified fish
9 inspector shall use inspection, sampling and diagnostic methods specified by the
10 department on the certification form.

11 NOTE: To obtain a health certification form, contact the department at the
12 following address:

13
14 Wisconsin Department of Agriculture, Trade and Consumer Protection
15 Division of Animal Health
16 P.O. Box 8911
17 Madison, WI 53708-8911
18 Phone: (608) 224-4872

19 (b) The health certificate under par. (a) shall certify that the import shipment is
20 free of all the following:

- 21 1. Visible signs of infectious or contagious disease.
- 22 2. Infectious hematopoietic necrosis (IHN), viral hemorrhagic septicemia (VHS)
- 23 and whirling disease (*Myxobolus cerebralis*, or *WD*), if the import shipment includes
- 24 salmonids.

- 1 3. White sturgeon iridovirus (WSI) if the import shipment includes sturgeon.
2 4. Other diseases, if any, which the department specifies on the certification form.

3 (c) The accredited veterinarian or certified fish inspector who issues the health
4 certificate shall file the original certificate with the department, and shall provide at least
5 2 copies to the importer.

6 NOTE: A certification form which specifies disease inspection,
7 sampling and diagnostic procedures under sub. (15)(a), or additional
8 disease certification requirements under sub. (15)(b)4., constitutes an order
9 under s. 93.07(10), Stats., which is reviewable under ch. 227, Stats., and
10 ch. ATCP 1 unless the department adopts those requirements by rule.
11 If a health certification does not comply with instructions
12 on the certification form, the certification is invalid.
13

14 (16) FISH IMPORTED FROM FISH FARM; ANNUAL HEALTH

15 CERTIFICATE. The following requirements apply to an annual fish farm health
16 certificate under sub. (14)(b)3.:

17 (a) An accredited veterinarian or certified fish inspector shall issue the annual
18 health certificate in the state of origin, on a form provided by the department, based on a
19 personal inspection of the fish farm. The accredited veterinarian or certified fish
20 inspector shall use inspection, sampling and diagnostic methods specified by the
21 department on the certification form.

22 NOTE: To obtain a health certification form, contact the department at the
23 following address:

24
25 Wisconsin Department of Agriculture, Trade and Consumer Protection
26 Division of Animal Health
27 P.O. Box 8911
28 Madison, WI 53708-8911

1 Phone: (608) 224-4872

2 (b) The annual health certificate shall certify that the fish farm is free of all the
3 following:

4 1. Visible signs of infectious or contagious disease.

5 2. Infectious hematopoietic necrosis (IHN), viral hemorrhagic septicemia (VHS)
6 and whirling disease (*Myxobolus cerebralis*, or *WD*), if the health certificate is used for
7 imports of salmonids.

8 3. White sturgeon iridovirus (WSI) if the health certificate is used for imports of
9 sturgeon.

10 4. Other diseases, if any, which the department specifies on the certification form.

11 (c) The accredited veterinarian or certified fish inspector who issues the annual
12 health certificate shall file the original certificate with the department, and shall provide
13 at least 2 copies to the fish farm operator.

14 NOTE: A certification form which specifies disease inspection,
15 sampling and diagnostic procedures under sub. (16)(a), or additional
16 disease certification requirements under sub. (16)(b)4., constitutes an order
17 under s. 93.07(10), Stats., which is reviewable under ch. 227, Stats., and
18 ch. ATCP 1 unless the department adopts those requirements by rule. If a
19 health certification does not comply with instructions on the certification
20 form, the certification is invalid.
21

22 **ATCP 11.59 HEALTH STANDARDS FOR FISH INTRODUCED INTO**

23 **WATERS OF THE STATE.** (1) DEFINITIONS. In this section:

24 (a) "Certified fish inspector" means any of the following:

1 1. An individual who is currently certified by the American fisheries society as a
2 fish health inspector or fish pathologist.

3 2. An individual whom a state authorizes and the department approves to certify,
4 on behalf of that state, the health of fish in that state.

5 (b) "Fish farm" means a facility at which a person hatches fish eggs or holds live
6 fish.

7 (c) "Individual" means a natural person.

8 (d) "Person" means an individual, corporation, partnership, cooperative
9 association, limited liability company, trust, the state of Wisconsin or its agencies, or
10 other organization or entity.

11 (e) "Salmonid" means fish or fish eggs of the Salmonidae family. "Salmonidae"
12 means fish or fish eggs of the family that includes trout, salmon, grayling, char, Dolly
13 Vardon, whitefish, cisco and inconnu.

14 (f) "Waters of the state" has the meaning given in s. 29.53(1)(c), Stats.

15 (2) HEALTH CERTIFICATE REQUIRED. (a) No person may introduce live
16 salmonids into waters of the state after the effective date of this rule [**revisor inserts**
17 **effective date**], and no person may introduce other live fish or fish eggs into waters of the
18 state after December 31, 2001, unless an accredited veterinarian or certified fish inspector
19 does one of the following:

20 1. Issues a health certificate for those fish or fish eggs.

1 2. Issues a health certificate, not earlier than January 1 of the calendar year
2 preceding the year in which the fish are introduced into waters of the state, for the fish
3 farm from which those fish or fish eggs originate.

4 NOTE: See fish stocking regulations under s. 29.53, Stats. In addition to fish
5 stocked from private fish farms, this subsection also pertains to fish
6 stocked by the Wisconsin department of natural resources.

7 (b) A fish health certificate under par. (a) shall certify that the fish or fish eggs, or
8 the fish farm from which they originate, are free of all the following:

9 1. Visible signs of infectious or contagious disease.

10 2. Whirling disease (*Myxobolus cerebralis*, or *WD*), if the health certificate is
11 used for introducing salmonids.

12 3. Other diseases, if any, which the department specifies on the certification form.

13 (3) ISSUING A HEALTH CERTIFICATE. (a) An accredited veterinarian or
14 certified fish inspector shall issue a health certificate under sub. (2) on a form provided by
15 the department, based on a personal inspection of the fish or fish farm. The accredited
16 veterinarian or certified fish inspector shall use inspection, sampling and diagnostic
17 methods specified by the department on the certification form.

18 NOTE: To obtain a health certification form, contact the department at the
19 following address:

20
21 Wisconsin Department of Agriculture, Trade and Consumer Protection
22 Division of Animal Health
23 P.O. Box 8911
24 Madison, WI 53708-8911
25 Phone: (608) 224-4872

1 (b) An accredited veterinarian or certified fish inspector who issues a health
2 certificate under sub. (2) shall file the original certificate with the department, and shall
3 provide at least 2 copies to the person introducing the fish or fish eggs into waters of the
4 state.

5 NOTE: A certification form which specifies disease inspection,
6 sampling and diagnostic procedures under sub. (3)(a), or additional
7 disease certification requirements under sub. (2)(b)3., constitutes an order
8 under s. 93.07(10), Stats., which is reviewable under ch. 227, Stats., and
9 ch. ATCP 1 unless the department adopts those requirements by rule. If a
10 health certification does not comply with instructions on the certification
11 form, the certification is invalid.

12 (4) INTRODUCING DISEASED FISH. No person may introduce live fish or
13 fish eggs into waters of the state if that person knows, or has reason to know, that those
14 fish or fish eggs are infected or show clinical signs of any reportable disease under s.
15 ATCP 10.025.

16 **EFFECTIVE DATE:** The rules contained in this order shall take effect on the
17 first day of the month following publication in the Wisconsin administrative register, as
18 provided in s. 227.22(2)(intro.), Stats.

Dated this ____ day of _____, 19____.

STATE OF WISCONSIN DEPARTMENT
OF AGRICULTURE, TRADE AND
CONSUMER PROTECTION

By _____

Ben Brancel, Secretary

FISCAL ESTIMATE DOA-2048 (R 10/94)	<input checked="" type="checkbox"/> ORIGINAL <input type="checkbox"/> UPDATED <input type="checkbox"/> CORRECTED <input type="checkbox"/> SUPPLEMENTAL	LRB or Bill No. / Adm. Rule No. ATCP 10 & 11 Amendment No. (If Applicable)
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Subject
Fish Farms


Fiscal Effect State: <input type="checkbox"/> No State Fiscal Effect Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation <input type="checkbox"/> Increase Existing Appropriation <input checked="" type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Decrease Existing Appropriation <input type="checkbox"/> Decrease Existing Revenues <input type="checkbox"/> Create New Appropriation	<input checked="" type="checkbox"/> Increase Costs - May be possible to Absorb Within Agency's Budget <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Decrease Costs
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Local: <input type="checkbox"/> No local government costs 1. <input type="checkbox"/> Increase Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory 2. <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	3. <input type="checkbox"/> Increase Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory 4. <input type="checkbox"/> Decrease Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	5. Types of Local Governmental Unit Affected: <input type="checkbox"/> Towns <input type="checkbox"/> Villages <input type="checkbox"/> Cities <input type="checkbox"/> Counties <input type="checkbox"/> Others _____ <input type="checkbox"/> School Districts <input type="checkbox"/> WTCS Districts
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Fund Source Affected <input checked="" type="checkbox"/> GPR <input type="checkbox"/> FED <input checked="" type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S	Affected Ch. 20 Appropriations 20.115 (2)(a) & (2)(ha)
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Assumptions Used In Arriving at Fiscal Estimate
 This rule proposal states how the Department of Agriculture, Trade and Consumer Protection (DATCP) will implement 1997 Wisconsin Act 27, which transfers the regulatory authority for fish farms to the department. This proposal will be effective for calendar year 1999 and beyond.
 For purposes of this fiscal estimate, it is estimated that 2,400 fish farms will register with the department during 1999. These farms will register under one of two types; it is estimated that 2,250 will register as Type 1 and 150 will register as Type 2. It is also estimated that 100 import permit applications for live fish or fish eggs will be processed by the department annually.
 This proposal will establish a registration fee of \$25.00 for a Type 1 registration and \$50.00 for a Type 2 registration. These fees are applicable as of January 1, 1999, for the calendar year 1999 and after. Any fish farm registered by the department in 1998 is eligible for renewal with the department in 1999. This proposal does not establish a fee at this time for an import permit for live fish or fish eggs. Revenues from fish farm registrations will be used to administer the fish farm program within the Division of Animal Health. In addition to these proposed program revenues, \$265,000 of GPR funds and 5.00 FTE have been appropriated to support the program within the division(for 1998-99, \$97,900 and 2.00 FTE are frozen).
 Per s. 95.60, Stats., a person who operates a fish farm must annually register the fish farm with the department and a person who brings any fish or fish eggs into Wisconsin must have an annual permit issued by the department. Besides maintaining a registry and an import processing system, the department is required to inspect fish farms and to ensure the health of fish and fish eggs. The fiscal impact on the department will be expenses incurred with establishing and maintaining a registration and an import permit process as proposed in this rule. Additional expense will be incurred by the department in providing veterinary services and fish related lab work, inspecting fish farms, performing investigatory and enforcement activities and in providing technical and educational assistance to the public by providing information on various aspects of the program, on statutory requirements related to fish farming and on aquaculture in general.
 Program annualized costs for 1999 and after are estimated to be \$328,800 and 5.00 FTE. On an ongoing basis, a veterinarian specialist-sr., microbiologist-sr., two animal consultants/inspectors and a program assistant will be required.

Long - Range Fiscal Implications
 Growth in fish farms is anticipated, along with a greater need for fish disease control and prevention. As proposed, registration fees will continue beyond 1999 to help support the fish farm program within the department.

Agency/prepared by: (Name & Phone No.) DATCP Lynn Jarzombek 608-224-4883	Authorized Signature/Telephone No.  Barbara Knapp (608) 224-4746	Date 7/20/98
--	--	----------------------------

FISCAL ESTIMATE WORKSHEET

1997 SESSION

Detailed Estimate of Annual Fiscal Effect
DOA-2047 (R10/94)

ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

LRB or Bill No./Adm. Rule No.
ATCP 10 & 11

Amendment No.

Subject

Fish Farms

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

II. Annualized Cost:

Annualized Fiscal Impact on State funds from:

A. State Costs by Category

Increased Costs

Decreased Costs

State Operations - Salaries and Fringes

\$ 207,800

\$ -

(FTE Position Changes)

(5.00 FTE)

(- FTE)

State Operations - Other Costs

121,000

-

Local Assistance

-

Aids to Individuals or Organizations

-

TOTAL State Costs by Category

\$ 328,800

\$ -

B. State Costs by Source of Funds

Increased Costs

Decreased Costs

GPR

\$ 265,000

\$ -

FED

-

PRO/PRS

63,800

-

SEG/SEG-S

-

III. State Revenues -

Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)

Increased Rev.

Decreased Rev.

GPR Taxes

\$

\$ -

GPR Earned

-

FED

-

PRO/PRS

63,800

-

SEG/SEG-S

-

TOTAL State Revenues

\$ 63,800

\$ -

NET ANNUALIZED FISCAL IMPACT

STATE

LOCAL

NET CHANGE IN COSTS

\$ 328,800

\$ _____

NET CHANGE IN REVENUES

\$ 63,800

\$ _____

Agency Prepared by: (Name & Phone No.)

Authorized Signature/Telephone No.

Date

DATCP
Lynn Jarzombek (608) 224-4883

Barbara Knapp
Barbara Knapp (608) 224-4746

7/17/98

Final Regulatory Flexibility Analysis

General Overview

This rule establishes policies and procedures for the department of agriculture, trade and consumer protection to implement 1997 Wisconsin Act 27 which transferred the primary authority for regulating fish farms from the department of natural resources to the department of agriculture, trade and consumer protection.

This rule will affect small businesses in Wisconsin. It includes provisions which relate to small businesses engaged in farming fish and importing live fish and fish eggs into Wisconsin.

Fish Farm Registration

The statute requires that any person who operates a fish farm must annually register the fish farm with the department. This rule identifies two categories of fish farms that must register and imposes annual registration fees, as follows:

- Type 1 (\$25 annual fee): The holder of a type 1 registration certificate may operate a fish farm. The operator may not sell or distribute live fish, except to a food processing plant, retail food establishment or restaurant. However, the operator may allow public fishing for a fee.
- Type 2 (\$50 annual fee): The holder of a type 2 registration certificate may operate a fish farm and may engage in any of the activities authorized under a type 1 certificate. In addition, the operator may sell or distribute live fish and fish eggs from the fish farm.

All private fish hatcheries previously licensed by the department of natural resources in 1997 were eligible for renewal with the department of agriculture, trade and consumer protection under the department's fish farm emergency rule in 1998. This rule establishes a permanent registration system for fish farms. In registering, fish farm operators will need to complete a form providing owner and custodian name and address and fish farm information such as the species of fish kept on the fish farm and a description of the fish farm.

The rule requires fish farm operators to maintain records for at least five years relating to all fish and fish eggs which the operator receives from or delivers to another person, including the names, addresses and fish farm registration numbers, if applicable, of the parties involved, the date and location of each transaction and the size or class, quantity and species of fish or fish eggs involved in each transaction.

The rule also requires that a person obtaining a registration certificate for any calendar year beginning after December 31, 2001, must have a health certificate issued by an accredited veterinarian or certified fish inspector for the fish farm not earlier than January 1 of the preceding calendar year. This annual health certificate must certify that the fish farm is free of all visible signs of infectious or contagious disease, whirling disease (*Myxobolus cerebralis*, or WD), if trout, salmon or other salmonidae are kept on the fish farm and any other disease which the department of agriculture, trade and consumer protection specifies on the health certification form. A type 1 fish farm may meet this requirement by obtaining health certificates, issued not earlier than January 1 of the preceding calendar year, for each fish farm from whom the type 1 fish farm operator received fish or fish eggs in the preceding calendar year.

About 2,400 fish farms scattered across Wisconsin will be affected by the fish farm requirements in this rule. These farms were previously licensed by the department of natural resources, by completing an annual license application form, paying an annual fee (\$5, \$25 or \$50 depending upon the classification) and submitting year end reports on business operations. Under the department of agriculture, trade and consumer protection, the proposed annual fees are \$25 for a type 1 and \$50 for a type 2 registration. Most small business fish farms will have no change in fees. Recordkeeping requirements will be less burdensome for fish farm operators since they will only be required to maintain records and not file yearend reports. Beginning in 2002, the requirement for an annual health certificate for all registered fish farms will increase the costs of operating a fish farm. The weight of this expense will be offset in the future with better fish health leading to increased production and marketability of product due to higher fish health standards.

Live Fish Imports

The statute requires any person who brings live fish or fish eggs into this state for the purpose of introduction into the waters of the state, of use as bait or of rearing in a fish farm to have an annual permit issued by the department of agriculture, trade and consumer protection. The permit may authorize multiple import shipments. A copy of the permit must accompany every import shipment. In addition, imports of non-native species must also be approved by the department of natural resources. There is no fee for an import permit.

In requesting an import permit, a person will need to complete a form providing name and address information of the requester, fish farm registration number, if applicable, the size or class, quantity and species of fish or fish eggs to be imported, the type of import recipient the fish will be imported to and source location information.

The rule requires a person who imports live fish or fish eggs to obtain a health certificate for each shipment of fish, if the fish originate from a wild source, or an annual health certificate, if the fish originate from an out-of-state fish farm. Issued by an accredited

veterinarian or certified fish inspector, the health certificate must certify that the shipment or fish farm is free of all the following:

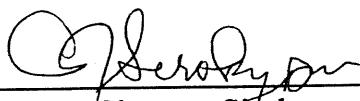
- Visible signs of infectious or contagious disease.
- Infectious hematopoietic necrosis (IHN), viral hemorrhagic septicemia (VHS) and whirling disease (*Myxobolus cerebralis*, or WD), if the health certificate is for salmonid imports.
- White sturgeon iridovirus (WSI) if the health certificate is for sturgeon imports.
- Other diseases, if any, which the department specifies on the health certification form.

The rule requires a person importing live fish or fish eggs to maintain records for at least five years relating to each import shipment, including the import source, the import date and destination, and the size or class, quantity and species of fish or fish eggs imported.

Under the department of natural resources a person importing live fish and fish eggs had to acquire a permit and for salmonid fish or fish eggs, had to provide health certification for five specific diseases. The department of agriculture, trade and consumer protection is requiring a permit and health certification for all imports of live fish or fish eggs. The fish or fish eggs must be certified free of the diseases listed above. The requirement of health certification might increase the cost of importing live fish and fish eggs from out-of-state fish farms and will increase the cost of importing from wild sources, since this requirement did not exist before. It is assumed the source of the fish and fish eggs will pass the cost of the certification on to the importer. Health certification for imports will offer some degree of assurance that a healthy product is being imported which will result in savings for fish farms in the long run and reduced risks of diseased fish being released into the waters of the state. The requirement to maintain import records will add minimal costs since these records are standard business operational records.

Dated this 30th day of November, 1998.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By 
Dr. Clarence Siroky
Administrator,
Animal Health Division

MAY 25 2000



State of Wisconsin
Tommy G. Thompson, Governor

Department of Agriculture, Trade and Consumer Protection
Ben Brancel, Secretary

DATE: May 15, 2000
TO: State Legislators
FROM: Ben Brancel, Secretary *Ben Brancel*
SUBJECT: Swine Import and Required Tests;
Emergency Rule

Pursuant to s. 227.24(3), Stats., the Department of Agriculture, Trade and Consumer Protection is forwarding a copy of an emergency rule, together with the fiscal estimate, which imposes import restrictions on swine imported from pseudorabies stage I, II and III states and authorizes the Department to perform disease testing at the owners' expense if the owner does not have required tests performed.

Background

Pseudorabies is a highly contagious disease of swine and other livestock. The economic impact of the disease is substantial.

Wisconsin initiated its pseudorabies control program in 1976. Since then, producers have worked with the Department to prevent the spread of the disease and to eradicate it from the herds in which it was found. Owners of infected herds suffered substantial financial losses, only part of which were recouped through state indemnity payments.

Wisconsin's fight against this disease is nearing success. If there are no incidents of pseudorabies before October, 2000, the state will be designated free of the disease. This is a testament to the efforts of the pork industry to achieve this status. Members of the industry will reap rewards through more efficient production and more access to export markets for swine and pork products.

Why an Emergency Rule is Needed

There is currently an outbreak of pseudorabies in Iowa. In addition, Minnesota and Illinois are experiencing an increase in the number of reported pseudorabies cases. Significant numbers of swine are regularly imported into Wisconsin from these three states.

Emergency Rule Provisions

The emergency rule requires importers to obtain import permits from the department for nearly all swine that originate from a pseudorabies stage I, II or III state. If the swine originate from a pseudorabies stage I or II state, the importer must have a herd plan on

file with the Department before an import permit can be issued. It is anticipated that developing the herd plan will help educate the importer about reducing the disease threat.

Under the emergency rule, swine that originate from a pseudorabies stage I or II state must originate from a pseudorabies qualified negative herd or a pseudorabies qualified negative grow-out herd. If the swine originate from a pseudorabies stage III state, they must meet one of the following:

- Originate from a pseudorabies qualified negative herd or a pseudorabies qualified negative grow-out herd.
- Be imported directly to a slaughtering establishment for slaughter.
- Be imported for feeding for slaughter.
- Be breeder swine or show pigs and have tested negative for pseudorabies on a test conducted not more than 30 days before import.

Under current rules breeder swine that originate from a pseudorabies stage I, II or III state must be isolated and tested for pseudorabies not less than 30 days nor more than 45 days after being imported. This emergency rule retains this requirement, and adds a testing requirement for show pigs and pigs imported for feeding for slaughter. The testing requirement for show pigs is identical to that for breeder pigs. The rule requires all swine imported for feeding for slaughter to be isolated from other swine on the premises and for a representative statistical sample of each shipment to be tested for pseudorabies not less than 30 days not more than 45 days after import. The swine may not be released from isolation until the required tests produce negative results.

At the present time, Iowa is a pseudorabies stage II state. Under this emergency rule, slaughter swine that originate from Iowa must be shipped direct to a slaughter establishment in a sealed vehicle and must be accompanied by either a USDA permit for movement of restricted animals (form VS-127) or a Wisconsin import for slaughter form completed by a person approved by the Department.

Under current rules, the Department is authorized to order destruction of animals or removal of animals from the state, if the owner does not complete disease testing required by law. This emergency rule retains the Department's authority to order destruction or removal, and authorizes the Department to perform disease control testing at the expense of animal owners, if the owners have failed to complete testing that is required by law.

Public Hearing

A public hearing on this emergency rule has been scheduled for June 29, 2000 at 2:00 p.m. in the Prairie Oak State Office Building, Room 172, 2811 Agriculture Drive, Madison, WI.

SENATOR JUDITH B. ROBSON
CO-CHAIR

P.O. BOX 7882
MADISON, WI 53707-7882
(608) 266-2253



REPRESENTATIVE GLENN GROTHMAN
CO-CHAIR

P.O. BOX 8952
MADISON, WI 53708-8952
(608) 264-6486

JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES

September 20, 2000

BY INTER-D

Secretary Ben Brancel
Department of Agriculture, Trade and Consumer Protection
2811 Agriculture Drive
Madison, WI 53718

Re: Emergency Rule ATCP 11.20 (relating to swine import and required tests)

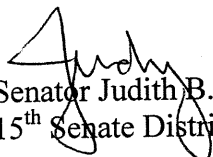
Dear Secretary Brancel:


We are writing to inform you that the Joint Committee for the Review of Administrative Rules (JCRAR) held a public hearing and executive session on September 20, 2000. At that meeting, the JCRAR received public testimony regarding Emergency Rule ATCP 11.20, relating to swine import and required tests.

Based on that testimony, the committee adopted a motion extending the effective period of Emergency Rule ATCP 11.20 for 60 days. The committee approved the motion on a 9 to 0 vote.

Pursuant to § 227.24(2)(c), *Stats.*, we are notifying the Secretary of State and the Revisor of Statutes of the Committee's action through copies of this letter.

Sincerely,


Senator Judith B. Robson
15th Senate District


Representative Glenn Grothman
59th Assembly District

JBR:GG:da



State of Wisconsin
Tommy G. Thompson, Governor

AUG 14 2000

Department of Agriculture, Trade and Consumer Protection
Ben Brancel, Secretary

August 4, 2000

The Honorable Judy Robson, Co-Chair
Joint Committee for the Review of Administrative Rules
15 South State Capitol
Madison, WI. 53702

The Honorable Glenn Grothman, Co-Chair
Joint Committee for the Review of Administrative Rules
15 North State Capitol
Madison, WI 53702

Dear Senator Robson and Representative Grothman:

The Department of Agriculture, Trade and Consumer Protection hereby requests the Joint Committee for the Review of Administrative Rules to extend the Department's emergency rule relating to swine import and required tests for an additional 60 days, until December 15, 2000. Without the extension, the emergency rule will expire on October 16, 2000.

This rule is needed to control and prevent pseudorabies, a contagious disease of swine. Over the past 20 years Wisconsin swine producers have sacrificed greatly, the Department has worked very hard and the state has paid significant indemnities to eradicate this disease. Within months Wisconsin will be designated pseudorabies free by the USDA, provided the disease is not reintroduced. The pseudorabies free designation improves Wisconsin producer's access to interstate and international markets and increases the value of swine raised in Wisconsin.

This year several pseudorabies stage I, II and III states have reported a significant increase in pseudorabies cases. In the past, Wisconsin pork producers have imported many swine from states which are now experiencing an increase in pseudorabies. This emergency rule requires pre-import and, in some cases, post-import pseudorabies testing for animals that originate in states that are designated pseudorabies stage I, II and III states. The increased testing is needed to prevent the importation of pseudorabies and to protect the industry.

Copies of the emergency rule and fiscal estimate are attached. The Department conducted a public hearing on the emergency rule on June 29, 2000. The Department did not receive any written or oral comments on the emergency rule.

The Department referred a permanent rule to the Legislature on July 5, 2000 (Clearinghouse rule number 99-168). We anticipate this rule will be published either November 1, 2000 or December 1, 2000. The extension is needed to continue the testing requirements until the permanent rule is published.

Sincerely,

A handwritten signature in cursive script that reads "Ben Brancel". The signature is written in dark ink and is positioned above the typed name.

Ben Brancel
Secretary

enclosure

**EMERGENCY ORDER
OF THE STATE OF WISCONSIN DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION
ADOPTING RULES**

- 1 The state of Wisconsin department of agriculture, trade and consumer protection hereby
2 adopts the following emergency rule to repeal and recreate ATCP 11.20 and to create
3 ATCP 11.01(11m) and 11.73, relating to swine import and required tests.
-

Analysis prepared by the Department of Agriculture,
Trade and Consumer Protection

Statutory authority: ss. 93.07(1), (10) and 95.27(8)
Statutes interpreted: ss. 93.07(10), 95.23 and 95.27

This emergency rule modifies current animal health rules related to the import of swine and the prevention and control of pseudorabies in Wisconsin. This rule does the following:

- Under current rules, if a person imports animals without complying with disease testing requirements, the department may summarily order that the animals be destroyed or removed from this state. This rule retains the department's authority to order destruction or removal. This rule also authorizes the department to perform the required tests and charge the owner for the tests.
- Swine imported from pseudorabies stage I or II states must originate from a pseudorabies qualified negative herd or qualified negative grow-out herd that qualifies on the basis of monthly testing.
- Breeder swine or show pigs imported from a pseudorabies stage III state must meet one of the following requirements:
 - * They must originate from a pseudorabies qualified negative herd or qualified negative grow-out herd that qualifies on the basis of monthly testing.
 - * They must test negative on a pseudorabies test conducted not more than 30 days before the animals are imported into Wisconsin.
- The person who imports swine from a pseudorabies stage I, II or III state must obtain an import permit from the department. If the swine originate from a pseudorabies stage I or II state, the department may not issue the permit until the person receiving the import shipment enters into a herd plan with the department.

- All breeder swine and all show pigs imported from a pseudorabies stage I, II or III state must be tested for pseudorabies not less than 30 nor more than 45 days after import.
- A person receiving swine (other than breeder swine or show pigs) from a pseudorabies stage I, II or III state must test a representative statistical sample of those swine for pseudorabies not less than 30 nor more than 45 days after import.
- All slaughter swine originating from a pseudorabies stage I or II state must be shipped directly to a slaughter establishment in a sealed vehicle, and must be accompanied by a USDA permit (Form VS 1-27) or a Wisconsin import for slaughter form completed by a person approved by the department.
- No swine imported from a pseudorabies stage I or II state for feeding prior to slaughter may be removed from the feeding premises except for shipment directly to slaughter.
- A veterinarian issuing a certificate of veterinary inspection for swine imported from a pseudorabies stage I, II or III state must submit the certificate to DATCP by fax or electronic transmission within 24 hours.

FINDING OF EMERGENCY

The state of Wisconsin department of agriculture, trade and consumer protection (department) finds that an emergency exists and that the following emergency rule is necessary to protect public health, safety and welfare. The facts constituting the emergency are as follows:

- Pseudorabies is a highly contagious disease of swine and other livestock. Wisconsin initiated its pseudorabies program in 1976. Since that time, the department has worked diligently, pork producers have sacrificed significantly and the state has paid substantial costs to eradicate the disease. In 1997, the National Pseudorabies Control Board recognized Wisconsin as a pseudorabies stage IV state. If there are no incidents of pseudorabies in the state before October, 2000, the state will be classified as a pseudorabies stage V state (free of the disease) at that time. Classification as a pseudorabies stage IV or V state creates significant benefits in the swine export market.
- There has been a significant increase in pseudorabies cases reported in several pseudorabies stage II and III states. In the past, Wisconsin pork producers have imported many swine from the pseudorabies stage II and III states which are now experiencing an increase in pseudorabies.
- If pseudorabies spreads to Wisconsin, the Wisconsin pork industry will be hampered in its ability to produce and export swine and pork products.

1 4. If sub. (3)(a) applies, the identification number of the pseudorabies qualified
2 negative herd or pseudorabies qualified negative grow-out herd from which the swine
3 originates, and the date of the last herd qualifying test.

4 5. If sub (4)(a) applies, a report of a negative brucellosis test conducted not
5 more than 30 days before the swine enters this state.

6 6. Any other information required under this section.

7 (b) *Exemptions.* Paragraph (a) does not apply to any of the following:

8 1. Swine imported directly to a slaughtering establishment for slaughter.

9 2. Swine imported directly to a federally approved livestock import market.

10 3. Micro pigs imported directly to a laboratory pursuant to a written import
11 permit under sub. (9).

12 (c) *Prompt delivery to department.* Within 24 hours after a veterinarian issues
13 a certificate of veterinary inspection for swine that are being imported from a
14 pseudorabies stage I, II or III state to this state, the veterinarian shall deliver a copy of
15 that certificate to the department. The veterinarian may deliver the certificate by fax or
16 other electronic transmission.

17 (2) IMPORT PERMIT. (a) *Requirement.* Except as provided in par. (b), no
18 person may import any swine into this state unless the person obtains an import permit
19 from the department. The department may issue an import permit in writing, by
20 telephone, or by fax or other electronic communication.

21 (b) *Exemptions.* Paragraph (a) does not apply to any of the following:

22 1. An animal imported directly to a slaughtering establishment for slaughter.

1 2. An animal imported directly to a federally approved livestock import
2 market.

3 3. An animal originating from a pseudorabies stage IV or V state.

4 4. Micro pigs imported directly to a laboratory pursuant to a written import
5 permit under sub. (9).

6 (c) *Permit application.* A person may apply for an import permit under par. (a)
7 in writing, by telephone, or by fax or other electronic communication. The applicant
8 shall identify the importer, the state from which the import shipment originates and the
9 person receiving the import shipment in this state. If sub. (3)(a) applies, the applicant
10 shall also provide the department with the following information:

11 1. The identification number of the pseudorabies qualified negative herd or
12 pseudorabies qualified negative grow-out herd from which the swine originate.

13 2. The date of the last herd test that qualified the herd of origin as a
14 pseudorabies qualified negative herd or pseudorabies qualified negative grow-out herd.

15 (d) *Herd Plan.* The department may not issue an import permit under (a) for
16 animals originating from a pseudorabies stage I or II state unless the person receiving
17 the import shipment has entered into a herd plan with the department.

18 (3) SWINE MUST ORIGINATE FROM A PSEUDORABIES QUALIFIED NEGATIVE HERD.

19 (a) *Requirement.* Except as provided in par. (b), no person may import a swine into
20 this state unless the swine originates from a pseudorabies qualified negative herd or, if
21 the swine originates from an off-site facility, a pseudorabies qualified negative grow-out
22 herd that qualifies on the basis of monthly testing.

23 (b) *Exemptions.* Paragraph (a) does not apply to any of the following:

- 1 1. Swine imported directly to a slaughtering establishment for slaughter.
- 2 2. Swine imported directly to a federally approved livestock import market.
- 3 3. Swine originating from a pseudorabies stage IV or V state.
- 4 4. Swine originating from a pseudorabies stage III state that are imported for
5 feeding for slaughter.
- 6 5. Breeder swine or show pigs that originate from a pseudorabies stage III state
7 and have tested negative for pseudorabies on a test conducted not more than 30 days
8 before the swine enters this state.
- 9 6. Micro pigs imported directly to a laboratory pursuant to a written import
10 permit under sub. (9).

11 (4) BRUCELLOSIS TEST. (a) *Requirement*. Except as provided in par. (b), no
12 person may import a swine into this state unless the swine tests negative on a pre-
13 import brucellosis test conducted not more than 30 days before the swine enters this
14 state.

15 (b) *Exemptions*. Paragraph (a) does not apply to any of the following:

- 16 1. Swine imported directly to a slaughtering establishment for slaughter.
- 17 2. Swine imported directly to a federally approved livestock import market.
- 18 3. Swine originating from a brucellosis stage III state, unless testing is required
19 under s. ATCP 11.03(1)(b).
- 20 4. Swine originating from a validated brucellosis-free herd.
- 21 5. Feeder swine.
- 22 6. Micro pigs imported directly to a laboratory pursuant to a written permit
23 under sub. (9).

1 (5) PSEUDORABIES VACCINATES; IMPORTS PROHIBITED. (a) *Prohibition.* Except
2 as provided in par. (b), no person may import into this state any swine that has been
3 vaccinated for pseudorabies.

4 (b) *Exemptions.* Paragraph (a) does not apply to any of the following:

- 5 1. Swine imported directly to a slaughtering establishment for slaughter.
- 6 2. Micro pigs imported directly to a laboratory pursuant to a written permit
7 under sub (9).

8 (6) IMPORTED SWINE; ISOLATION AND PSEUDORABIES TESTING. (a)
9 *Requirement.* Except as provided in par. (b), a person receiving imported swine in this
10 state shall do all the following:

- 11 1. Isolate the imported swine from all other swine on the premises until the
12 imported swine test negative for pseudorabies.
- 13 2. Have all the imported swine tested for pseudorabies not less than 30 days nor
14 more than 45 days after the swine enter this state.

15 (b) *Exemptions.* Paragraph (a) does not apply to any of the following:

- 16 1. Swine imported directly to a slaughtering establishment for slaughter.
- 17 2. Swine imported directly to a federally approved livestock import market.
- 18 3. Swine originating from a pseudorabies stage IV or V state, unless testing is
19 required under s. ATCP 11.03(1)(b).
- 20 4. An import shipment of swine that includes no breeder swine or show pigs, if
21 the person receiving that shipment tests a representative statistical sample of these swine
22 for pseudorabies. The person shall test the statistical sample not less than 30 days nor

1 more than 45 days after the swine enter this state. The person shall isolate all of the
2 imported swine until the sample swine test negative for pseudorabies.

3 5. Micro pigs imported directly to a laboratory pursuant to a written permit
4 under sub. (9).

5 (7) SLAUGHTER SWINE IMPORTED FROM PSEUDORABIES STAGE I OR II STATE. No
6 person may import slaughter swine from a pseudorabies stage I or II state unless the
7 swine are shipped in a sealed vehicle directly to a slaughter establishment, and are
8 accompanied by a USDA permit for movement of restricted animals, form VS 1-27 or a
9 Wisconsin import for slaughter form completed by a person approved by the department.

10 (8) FEEDER SWINE AND OTHER SWINE IMPORTED FROM PSEUDORABIES STAGE I OR
11 II STATE. (a) *Separate from breeding stock.* All feeder swine and other swine that are
12 imported for finish feeding prior to slaughter that originate from a pseudorabies stage I
13 or II state shall at all times be kept separate from breeding stock.

14 (b) *Movement restricted.* No feeder swine or other swine that is imported for
15 finish feeding prior to slaughter that originates from a pseudorabies stage I or II state
16 may be removed from the farm at which it was received except for shipment direct to
17 slaughter.

18 (c) *Commingled swine.* Swine that are shipped to a farm after being
19 commingled with imported feeder swine or other swine that are imported for finish
20 feeding prior to slaughter at a federally approved livestock import market are
21 considered imported feeder swine under this subsection.

1 (9) LABORATORY IMPORT PERMIT. The department may issue a written import
2 permit under s. ATCP 11.03 authorizing the import of micro pigs directly to a
3 laboratory in this state, subject to the following conditions stated in the permit:

4 (a) The laboratory shall use the micro pigs for bona fide scientific research,
5 studies or tests.

6 (b) The micro pigs shall be imported to the laboratory in a closed, biologically
7 controlled environment that keeps the pigs biologically isolated from other swine.

8 (c) The micro pigs shall be confined in the laboratory so they are biologically
9 isolated from other swine.

10 (d) The laboratory operator shall euthanize all of the micro pigs at the end of the
11 study, test or experiment, and shall dispose of all carcasses in a manner that prevents
12 biological exposure to other swine.

13 (10) GARBAGE-FED SWINE; IMPORT PROHIBITED. Swine fed on raw commercial
14 garbage may not be imported into this state for slaughter or any other purpose. Swine
15 fed on cooked commercial garbage may not be imported into this state unless the
16 department first issues a written import permit under s. ATCP 11.03 that identifies the
17 imported swine as swine fed on cooked commercial garbage.

18 **SECTION 3.** ATCP 11.73 is created to read:

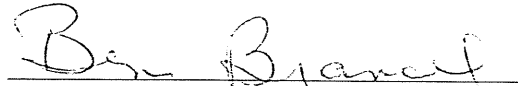
19 **ATCP 11.73 Animals imported without required tests; department testing.**

20 If an animal is moved or imported without being tested according to this chapter, the
21 department may perform the required test at the owner's expense. Department testing
22 does not relieve any person from other penalties or remedies that may apply because of
23 the illegal import or movement.

1 **EFFECTIVE DATE.** The emergency rule contained in this order shall take
2 effect upon publication, and shall remain in effect for 150 days. The department may
3 seek to extend this emergency rule as provided in s. 227.24, Stats.

Dated this 22 day of May, 2000.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION


Ben Brancel, Secretary

FISCAL ESTIMATE

DOA-2048 N(R 10/98)

ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

LRB or Bill No. / Adm. Rule No.
 Emergency Rule
 ATCP 11
 Amendment No. (If Applicable)

Subject

DATCP emergency rule changes to chs. ATCP 11 relating to swine import and required tests.

Fiscal Effect

State: No State Fiscal Effect

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

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

Decrease Costs

Increase Existing Appropriation Increase Existing Revenues

Decrease Existing Appropriation Decrease Existing

Revenues

Create New Appropriation

Local: No local government
 costs

1. Increase Costs
 Permissive Mandatory

2. Decrease Costs
 Permissive Mandatory

3. Increase Revenues
 Permissive Mandatory

4. Decrease Revenues
 Permissive Mandatory

5. Types of Local Governmental Unit
 Affected:

Towns Villages Cities

Counties Others _____

School Districts WTCS
 Districts

Fund Source Affected

GPR FED PRO PRS SEG SEG-S

Affected Ch. 20 Appropriations
 s. 20.115(2)(a) and (ha)

Assumptions Used in Arriving at Fiscal Estimate

This emergency rule changes swine import health requirements for stage I, II, III states for pseudorabies control. This rule will require a pre-entry import permit and a herd plan prior to importation of any swine from stage I or II states. Imports from stage III states will not need a herd plan. It is estimated that a total of 25 herd plans will be written per year. Each plan will require approximately 2 hours of staff time. This time can be accommodated with existing staff and through reprioritization of work assignments in the field. It also requires retesting of imported swine at owners expense after importation. Slaughter swine imported to WI from stage I or II states must be accompanied by a USDA VS 1-27 or Wisconsin import permit.

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

DATCP Clarence Siroky 608-224-4872

Authorized Signature/Telephone No.

Barbara Knapp
 Barbara Knapp (608) 224-4746

Date

5/11/00

FISCAL ESTIMATE WORKSHEET

1999 SESSION

Detailed Estimate of Annual
Fiscal Effect
DOA-2047 (R10/94)

ORIGINAL **UPDATED**
 CORRECTED SUPPLEMENTAL

LRB or Bill No/Adm.Rule No. Emergency Rule ATCP 11	Amendment No.
--	---------------

Subject

Swine import and required testing.

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

II. Annualized Cost:

Annualized Fiscal Impact on State funds from:

A. State Costs by Category

Increased Costs

Decreased Costs

State Operations - Salaries and Fringes

\$ 1500

\$ -

(FTE Position Changes)

(FTE)

(- FTE)

State Operations - Other Costs

Local Assistance

Aids to Individuals or Organizations

TOTAL State Costs by Category

\$

\$ -

B. State Costs by Source of Funds

Increased Costs

Decreased Costs

GPR

\$ 1500

\$ -

FED

PRO/PRS

SEG/SEG-S

III. State Revenues -

Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)

Increased Rev.

Decreased Rev.

GPR Taxes

\$

\$ -

GPR Earned

FED

PRO/PRS

SEG/SEG-S

TOTAL State Revenues

\$

\$ -

NET ANNUALIZED FISCAL IMPACT

STATE

LOCAL

NET CHANGE IN COSTS

\$ 1500

\$

NET CHANGE IN REVENUES

\$

\$

Agency Prepared by: (Name & Phone No.)

Authorized Signature/Telephone No.

Date

DATCP Clarence Siroky 608-224-4872

Barbara Knapp
Barbara Knapp (608) 224-4746

5/11/00

SENATOR JUDITH B. ROBSON
 CO-CHAIR
 PO BOX 7882
 MADISON, WI 53707-7882
 (608) 266-2253



REPRESENTATIVE GLENN GROTHMAN
 CO-CHAIR
 PO BOX 8952
 MADISON, WI 53708-8952
 (608) 264-8486

**JOINT COMMITTEE FOR
 REVIEW OF ADMINISTRATIVE RULES**

Emergency Rule Extension Motion Form

Last Modified May 2000

Date 9/20/00 Location ZOI SE
 Moved by Robson, Seconded by Welch

THAT, pursuant to § 227.24(2)(a), *Wisconsin State Statutes*, the Joint Committee for the Review of Administrative Rules extend the effective period of Emergency Rule ATCP 11.20 by 60 days, at the request of the Department of Agriculture, Trade and Consumer Protection.

COMMITTEE MEMBER	Aye	No	Absent
1. Senator ROBSON	✓		
2. Senator GROBSCHMIDT	✓		
3. Senator SHIBLISKI			✓
4. Senator WELCH	✓		
5. Senator SCHULTZ	✓		
6. Representative GROTHMAN	✓		
7. Representative GUNDERSON	✓		
8. Representative SERATTI	✓		
9. Representative KREUSER	✓		
10. Representative BLACK	✓		
Totals			

Motion Carried

Motion Failed

SENATOR JUDITH B. ROBSON
CO-CHAIR
P.O. BOX 7882
MADISON, WI 53707-7882
(608) 266-2253



REPRESENTATIVE GLENN GROTHMAN
CO-CHAIR
P.O. BOX 8952
MADISON, WI 53708-8952
(608) 264-6486

JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES

September 20, 2000

BY INTER-D

Senator Fred Risser
Senate President
Room 220 South

Representative Scott Jensen
Speaker of the Assembly
Room 211 West

Re: Emergency Rule ATCP 11.20
Emergency Rule HFS 103
Emergency Rule WGC 61

Dear Senator Risser and Representative Jensen:

We are writing pursuant to § 227.24(2)(c), *Stats.*, to inform you that the Joint Committee for the Review of Administrative Rules (JCRAR) held a public hearing and executive session on September 20, 2000. At that meeting, the JCRAR received public testimony regarding the following emergency rules:

Emergency Rule ATCP 11.20, relating to swine import and required tests;
Emergency Rule HFS 103, relating to the Medicaid Purchase Plan; and
Emergency Rule WGC 61, relating to the implementation and maintenance of the retailer performance program of the Wisconsin lottery.

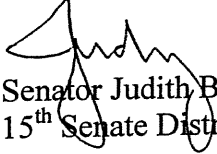
Based on the public testimony at the hearing, the committee adopted a motion extending Emergency Rule ATCP 11.20 for 60 days. The committee approved the motion on a 9 to 0 vote.


Based on the public testimony at the hearing, the committee adopted a motion extending Emergency Rule HFS 103 for 48 days. The committee approved the motion on a 9 to 0 vote.

Based on the public testimony at the hearing, the committee adopted a motion extending Emergency Rule WGC for 33 days. The committee approved the motion on an 8 to 1 vote.

We are giving you this notice of the committee's action pursuant to § 227.24(2)(c), *Stats.*, and we ask that you notify the appropriate standing committees of each house of the legislature of the JCRAR's actions.

Sincerely,


Senator Judith B. Robson
15th Senate District


Representative Glenn Grothman
59th Assembly District

JBR:GG:da

OCT 12 2000



State of Wisconsin
Tommy G. Thompson, Governor

Department of Agriculture, Trade and Consumer Protection
Ben Brancel, Secretary

October 11, 2000

The Honorable Judy Robson, Co-Chair
Joint Committee for
the Review of Administrative Rules
15 South State Capitol
Madison, WI. 53702

The Honorable Glenn Grothman, Co-Chair
Joint Committee for
the Review of Administrative Rules
15 North State Capitol
Madison, WI 53702

Dear Representatives Robson and Grothman:

I am requesting that the Joint Committee for the Review of Administrative Rules extend the Department's emergency rule relating to an implied warranty that cattle and goats are free of paratuberculosis (also known as Johne's disease) for an additional 30 days, until December 29, 2000. Without the extension, the emergency rule will end on November 29, 2000.

This emergency rule implements 1999 Wis. Act 160, which modified the "implied warranty" law. This emergency rule maintains the current coverage of the law by clarifying that the law applies to paratuberculosis (Johne's disease) in cattle and goats. This emergency rule does not expand the coverage of the current law.

The original emergency order, including the finding of emergency, fiscal estimate and the notice of hearing is attached. The Department conducted a public hearing on the emergency rule on July 27, 2000. The Department did not receive any written or oral comments on the emergency rule.

The permanent rule that incorporates the provisions of this emergency rule (Clearinghouse rule number 99-168) was signed by the Secretary of the department on September 12, 2000. It was delivered to the Revisor of the Statutes and all other appropriate places on September 12, 2000. The mid-month administrative register that was published this week indicates an anticipated effective date of December 1, 2000. If JCRAR extends the emergency rule for 30 days as requested, the implied warranty will remain in effect until the permanent rule is published.

Sincerely,

A handwritten signature in cursive script that reads "Ben Brancel".

Ben Brancel
Secretary

Enclosures

**ORDER OF THE STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION
ADOPTING EMERGENCY RULES**

1 The state of Wisconsin department of agriculture, trade and consumer protection hereby
2 adopts the following emergency rule to create ss. ATCP 10.21(1m) and 10.63(1m) relating to
3 an implied warranty that cattle and goats are free of paratuberculosis (also known as Johne's
4 disease).

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

Statutory authority: ss. 93.07(1) and 95.195 as affected by 1999 Wis. Act. 160, Stats.

Statutes interpreted: s. 95.195 as affected by 1999 Wis. Act 160, Stats.

The department of agriculture, trade and consumer protection administers the "implied warranty" law under s. 95.195, Stats., related to sales of animals. This emergency rule implements 1999 Wis. Act 160, which modified the "implied warranty" law. This emergency rule maintains the current coverage of the law by clarifying that the law applies to paratuberculosis (Johne's disease) in cattle and goats. This emergency rule does not expand the coverage of the current law.

Background

Paratuberculosis, also known as Johne's disease, is a serious and widespread disease of cattle and goats. The disease is slow to develop, and an infected animal may go for years without showing symptoms. An infected animal, which is free of symptoms at the time of sale, may spread the disease to a buyer's herd. The disease has a serious impact on milk production, and is ultimately fatal to infected animals.

1989 Wis. Act 277 established a Johne's disease "implied warranty" in the sale of cattle and goats. Under the "implied warranty" law, a seller implicitly warrants to a buyer that cattle and goats are free of Johne's disease *unless* the seller complies with certain testing and disclosure requirements. If cattle or goats are infected with Johne's disease at the time of sale, and the seller has *not* complied with those testing and disclosure requirements, the buyer may sue the seller for damages under the "implied warranty."

The "implied warranty" law protects buyers, and gives sellers an incentive to test their animals for Johne's disease. A seller may avoid the "implied warranty" by testing and disclosing. Testing is important for controlling this serious disease.

1999 Wis. Act 160 changed the “implied warranty” law, effective July 1, 2000. It changed prior testing and disclosure requirements to make the law more effective and workable. It also authorized DATCP to cover *other* diseases and animal species by rule. DATCP must implement the new law by rule. The “implied warranty” will no longer apply to *any* animals or diseases (including Johne’s disease in cattle or goats) unless DATCP identifies those animals and diseases by rule.

DATCP, the livestock industry and the Legislature intended that the new law would apply, at a minimum, to Johne’s disease in cattle and goats. DATCP has in fact adopted new Johne’s disease rules for cattle and goats, in anticipation of the July 1, 2000 effective date of the new law. However, the new rules are technically flawed, in that they imply but do not *explicitly state* that the new law applies to Johne’s disease in cattle and goats. This emergency rule remedies that technical flaw on a temporary basis, pending the adoption of “permanent” remedial rules. This emergency rule does not change the substance or intended application of DATCP’s Johne’s disease rules.

FINDING OF EMERGENCY

1 (1) Paratuberculosis, also known as Johne’s disease, is an infectious and
2 communicable disease of cattle and goats. The disease is slow to develop, and an
3 infected animal may go for years without showing symptoms. An infected animal, which
4 is free of symptoms at the time of sale, may spread the disease to a buyer’s herd. The
5 disease has a serious impact on milk production, and is ultimately fatal to infected
6 animals.

7 (2) 1989 Wis. Act 277 established a Johne’s disease “implied warranty” in the
8 sale of cattle and goats. Under the “implied warranty” law, s. 95.195, Stats., a seller
9 implicitly warrants to a buyer that cattle and goats are free of Johne’s disease *unless* the
10 seller complies with certain testing and disclosure requirements. If cattle or goats are
11 infected with Johne’s disease at the time of sale, and the seller has *not* complied with
12 applicable testing and disclosure requirements, the buyer may sue the seller for damages
13 under the “implied warranty.”

1 (3) The “implied warranty” law protects buyers of cattle and goats, and gives
2 sellers an incentive to test their animals for Johne’s disease. A seller may avoid the
3 “implied warranty” by testing and disclosing. Testing is important for the ultimate
4 control of this serious disease.

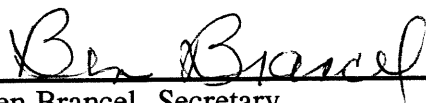
5 (4) 1999 Wis. Act 160 changed the “implied warranty” law, effective July 1,
6 2000. It changed prior testing and disclosure requirements to make the law more
7 effective and workable. It also authorized the department of agriculture, trade and
8 consumer protection (“DATCP”) to cover *other* diseases and animal species by rule.
9 DATCP must implement the new law by rule. The “implied warranty” no longer applies
10 to *any* animals or diseases (including Johne’s disease) unless DATCP identifies those
11 animals and diseases by rule.

12 (5) DATCP, the livestock industry and the Legislature intended that the new law
13 would apply, at a minimum, to Johne’s disease in cattle and goats. The Legislature, in a
14 related action, appropriated \$100,000 in grant funds to help herd owners pay for Johne’s
15 disease testing in FY 2000-2001. DATCP has also adopted new Johne’s disease rules for
16 cattle and goats, in anticipation of the July 1, 2000 effective date of the new law. The
17 new rules, contained in ss. 10.21 and 10.63, Wis. Adm. Code, clearly indicate DATCP’s
18 understanding and intent that the new law would apply to Johne’s disease in cattle and
19 goats. However, the new rules are technically flawed, in that they fail to state *explicitly*
20 that the new law applies to Johne’s disease in cattle and goats. This emergency rule
21 remedies that technical flaw on a temporary basis, pending the adoption of “permanent”
22 remedial rules.

1 **EFFECTIVE DATE.** This emergency rule shall take effect on July 1, 2000,
2 and shall remain in effect for 150 days. The department may seek to extend this
3 emergency rule as provided in s. 227.24, Stats.

Dated this 26 day of June, 2000.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE, TRADE
AND CONSUMER PROTECTION



Ben Brancel, Secretary

FISCAL ESTIMATE DOA-2048 N(R 10/98)	<input checked="" type="checkbox"/> ORIGINAL <input type="checkbox"/> UPDATED <input type="checkbox"/> CORRECTED <input type="checkbox"/> SUPPLEMENTAL	<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="padding: 2px;"> LRB or Bill No. / Adm. Rule No. - ATCP 10.21(1m) 10.63(1m) </td> </tr> <tr> <td style="padding: 2px;"> Amendment No. (If Applicable) </td> </tr> </table>	LRB or Bill No. / Adm. Rule No. - ATCP 10.21(1m) 10.63(1m)	Amendment No. (If Applicable)
LRB or Bill No. / Adm. Rule No. - ATCP 10.21(1m) 10.63(1m)				
Amendment No. (If Applicable)				

Subject
 Implied Warranty that cattle and goats are free of Johnes disease.

Fiscal Effect State: <input checked="" type="checkbox"/> No State Fiscal Effect Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation <input type="checkbox"/> Increase Existing Appropriation <input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Decrease Existing Appropriation <input type="checkbox"/> Decrease Existing Revenues <input type="checkbox"/> Create New Appropriation	<input type="checkbox"/> Increase Costs - May be possible to Absorb Within Agency's Budget Yes <input type="checkbox"/> No <input type="checkbox"/> Decrease Costs
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Local: <input checked="" type="checkbox"/> No local government costs 1. <input type="checkbox"/> Increase Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory 2. <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	3. <input type="checkbox"/> Increase Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory 4. <input type="checkbox"/> Decrease Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	5. Types of Local Governmental Unit Affected: <input type="checkbox"/> Towns <input type="checkbox"/> Villages <input type="checkbox"/> Cities <input type="checkbox"/> Counties <input type="checkbox"/> Others _____ <input type="checkbox"/> School Districts <input type="checkbox"/> WTCS Districts
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Fund Source Affected <input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S	Affected Ch. 20 Appropriations
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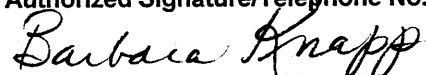
Assumptions Used in Arriving at Fiscal Estimate

1999 Wis. Act 160 changed the "implied warranty" law, effective July 1, 2000. It changed prior testing and disclosure requirements to make the law more effective and workable. It also authorized DATCP to cover other diseases and animal species by rule. DATCP must implement the new law by rule. The "implied warranty" will no longer apply to any animals or diseases (including Johnes's disease in cattle or goats) unless DATCP identifies those animals and diseases by rule.

DATCP, the livestock industry and the Legislature intended that the new law would apply, at a minimum, to Johnes's disease in cattle and goats. DATCP has in fact adopted new Johnes's disease rules for cattle and goats, in anticipation of the July 1, 2000 effective date of the new law. However, the new rules are technically flawed, in that they imply but do not explicitly state that the new law applies to Johnes's disease in cattle and goats. This emergency rule remedies that technical flaw on a temporary basis, pending the adoption of "permanent" remedial rules. This emergency rule does not change the substance or intended application of DATCP's Johnes's disease rules.

There is no anticipated fiscal impact from this rule. Any remedy under the "implied warranty" would be a civil action.

Long - Range Fiscal Implications

Agency/prepared by: (Name & Phone No.) DATCP Clarence J. Siroky 608-224-4872	Authorized Signature/Telephone No.  Barbara Knapp (608) 224-4745	Date 6-27-00
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STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION

NOTICE OF HEARING

The State of Wisconsin Department of Agriculture, Trade and Consumer Protection announces it will hold a public hearing on its emergency rule (ss. ATCP 10.21(1m), and 10.63(1m)) relating to an implied warranty that cattle and goats are free of paratuberculosis (also known as Johne's disease). The public hearing will be held on **Thursday, July 27, 2000 at 2:00 p.m.** at the following location:

Department of Agriculture, Trade and Consumer Protection
Prairie Oak State Office Building
Room 172
2811 Agriculture Drive
Madison, Wisconsin

Public comment is being sought on the Department's emergency rule, pursuant to s. 227.24(4), Stats., which requires that a public hearing be held within 45 days after an emergency rule is adopted. Following the public hearing, the hearing record will remain open until **August 4, 2000** to receive additional written comments.

An interpreter for the hearing impaired will be available on request for this public hearing. Please make reservations for a hearing interpreter by **July 20, 2000** either by writing to Dr. Robert Ehlenfeldt, Division of Animal Health, P.O. Box 8911, Madison, WI 53708-8911 (telephone 608-224-4880) or by calling the Department TDD at 608-224-5058.

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

Statutory authority: ss. 93.07(1) and 95.195 as affected by 1999 Wis. Act. 160, Stats.
Statutes interpreted: s. 95.195 as affected by 1999 Wis. Act 160, Stats.

The department of agriculture, trade and consumer protection administers the "implied warranty" law under s. 95.195, Stats., related to sales of animals. This emergency rule implements 1999 Wis. Act 160, which modified the "implied warranty" law. This emergency rule maintains the current coverage of the law by clarifying that the law applies to paratuberculosis (Johne's disease) in cattle and goats. This emergency rule does not expand the coverage of the current law.

Background

Paratuberculosis, also known as Johne's disease, is a serious and widespread disease of cattle and goats. The disease is slow to develop, and an infected animal may go for years without showing symptoms. An infected animal, which is free of symptoms at the time of sale, may spread the disease to a buyer's herd. The disease has a serious impact on milk production, and is ultimately fatal to infected animals.

1989 Wis. Act 277 established a Johne's disease "implied warranty" in the sale of cattle and goats. Under the "implied warranty" law, a seller implicitly warrants to a buyer that cattle and goats are free of Johne's disease *unless* the seller complies with certain testing and disclosure requirements. If cattle or goats are infected with Johne's disease at the time of sale, and the seller has *not* complied with those testing and disclosure requirements, the buyer may sue the seller for damages under the "implied warranty."

The "implied warranty" law protects buyers, and gives sellers an incentive to test their animals for Johne's disease. A seller may avoid the "implied warranty" by testing and disclosing. Testing is important for controlling this serious disease.

1999 Wis. Act 160 changed the "implied warranty" law, effective July 1, 2000. It changed prior testing and disclosure requirements to make the law more effective and workable. It also authorized DATCP to cover *other* diseases and animal species by rule. DATCP must implement the new law by rule. The "implied warranty" will no longer apply to *any* animals or diseases (including Johne's disease in cattle or goats) unless DATCP identifies those animals and diseases by rule.

DATCP, the livestock industry and the Legislature intended that the new law would apply, at a minimum, to Johne's disease in cattle and goats. DATCP has in fact adopted new Johne's disease rules for cattle and goats, in anticipation of the July 1, 2000 effective date of the new law. However, the new rules are technically flawed, in that they imply but do not *explicitly state* that the new law applies to Johne's disease in cattle and goats. This emergency rule remedies that technical flaw on a temporary basis, pending the adoption of "permanent" remedial rules. This emergency rule does not change the substance or intended application of DATCP's Johne's disease rules.

FINDING OF EMERGENCY

(1) Paratuberculosis, also known as Johne's disease, is an infectious and communicable disease of cattle and goats. The disease is slow to develop, and an infected animal may go for years without showing symptoms. An infected animal, which is free of symptoms at the time of sale, may spread the disease to a buyer's herd. The

disease has a serious impact on milk production, and is ultimately fatal to infected animals.

(2) 1989 Wis. Act 277 established a Johne's disease "implied warranty" in the sale of cattle and goats. Under the "implied warranty" law, s. 95.195, Stats., a seller implicitly warrants to a buyer that cattle and goats are free of Johne's disease *unless* the seller complies with certain testing and disclosure requirements. If cattle or goats are infected with Johne's disease at the time of sale, and the seller has *not* complied with applicable testing and disclosure requirements, the buyer may sue the seller for damages under the "implied warranty."

(3) The "implied warranty" law protects buyers of cattle and goats, and gives sellers an incentive to test their animals for Johne's disease. A seller may avoid the "implied warranty" by testing and disclosing. Testing is important for the ultimate control of this serious disease.

(4) 1999 Wis. Act 160 changed the "implied warranty" law, effective July 1, 2000. It changed prior testing and disclosure requirements to make the law more effective and workable. It also authorized the department of agriculture, trade and consumer protection ("DATCP") to cover *other* diseases and animal species by rule. DATCP must implement the new law by rule. The "implied warranty" no longer applies to *any* animals or diseases (including Johne's disease) unless DATCP identifies those animals and diseases by rule.

(5) DATCP, the livestock industry and the Legislature intended that the new law would apply, at a minimum, to Johne's disease in cattle and goats. The Legislature, in a related action, appropriated \$100,000 in grant funds to help herd owners pay for Johne's

disease testing in FY 2000-2001. DATCP has also adopted new Johne's disease rules for cattle and goats, in anticipation of the July 1, 2000 effective date of the new law. The new rules, contained in ss. 10.21 and 10.63, Wis. Adm. Code, clearly indicate DATCP's understanding and intent that the new law would apply to Johne's disease in cattle and goats. However, the new rules are technically flawed, in that they fail to state *explicitly* that the new law applies to Johne's disease in cattle and goats. This emergency rule remedies that technical flaw on a temporary basis, pending the adoption of "permanent" remedial rules.

(6) This emergency rule is needed to resolve any possible challenge or uncertainty related to the coverage of the new "implied warranty" law. This emergency rule clarifies that the "implied warranty" law applies to Johne's disease in cattle and goats. This emergency rule is needed to protect the public peace, health, safety and welfare. This emergency rule will help to control a serious disease of cattle and goats, will protect buyers of cattle and goats, will promote certainty in commercial transactions, and will prevent unnecessary litigation related to the applicability of the "implied warranty" law.

EMERGENCY RULEMAKING ORDER

SECTION 1. ATCP 10.21(1m) is created to read:

ATCP 10.21(1m) IMPLIED WARRANTY. Section 95.195, Stats., covers paratuberculosis in cattle and applies to sales of cattle.

SECTION 2. ATCP 10.63(1m) is created to read:

(d) ATCP 10.63(1m) IMPLIED WARRANTY. Section 95.195, Stats., covers paratuberculosis in goats and applies to sales of goats.

EFFECTIVE DATE. This emergency rule shall take effect on July 1, 2000, and shall remain in effect for 150 days. The department may seek to extend this emergency rule as provided in s. 227.24, Stats.

Fiscal Estimate

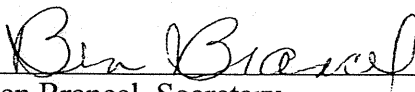
The department does not expect this emergency rule to have any fiscal effect on state or local governments

Regulatory Flexibility Analysis

This emergency rule will have little or no impact on small businesses. It does not change the extent of coverage of the implied warranty rule. It merely makes explicit the coverage which was previously only implied in the Johne's disease rules.

Dated this 26 day of June, 2000.

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



Ben Brancel, Secretary

SENATOR JUDITH B. ROBSON
CO-CHAIR
P.O. BOX 7882
MADISON, WI 53707-7882
(608) 266-2253



REPRESENTATIVE GLENN GROTHMAN
CO-CHAIR
P.O. BOX 8952
MADISON, WI 53708-8952
(608) 264-6486

JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES

November 16, 2000

BY INTER-D

Secretary Ben Brancel
Department of Agriculture, Trade and Consumer Protection
2811 Agriculture Drive
Madison, Wisconsin

Re: Emergency Rule ATCP 10.21
Emergency Rule ATCP 16
Emergency Rule ATCP 134.06(3)

Dear Secretary Brancel:

We are writing to inform you that the Joint Committee for the Review of Administrative Rules (JCRAR) held a public hearing and executive session on November 15, 2000. At that meeting, the JCRAR received public testimony regarding the following emergency rules:

- Emergency Rule ATCP 10.21, relating to an implied warranty that cattle and goats are free of paratuberculosis (also known as Johne's disease);
- Emergency Rule ATCP 16, relating to importing bovine animals, goats or cervids from a state designated by USDA as a tuberculosis "non-modified accredited" state; and
- Emergency Rule ATCP 134.06(3), relating to residential rental practices (security deposits and carpet cleaning).

Based on that testimony, the committee adopted a motion extending the effective period of Emergency Rule ATCP 10.21 for 30 days; a motion extending the effective period of Emergency Rule ATCP 16 for 60 days; and a motion extending the effective period of Emergency Rule ATCP 134.06(3) for 60 days.

The committee approved all of these motions on a 9 to 0 vote.

Pursuant to § 227.24(2)(c), *Stats.*, we are notifying the Secretary of State and the Revisor of Statutes of the Committee's action through copies of this letter.

Sincerely,



Senator Judith B. Robson
15th Senate District



Representative Glenn Grothman
59th Assembly District

JBR:GG:da

SENATOR JUDITH B. ROBSON
 CO-CHAIR
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REPRESENTATIVE GLENN GROTHMAN
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**JOINT COMMITTEE FOR
 REVIEW OF ADMINISTRATIVE RULES**

Emergency Rule Extension Motion Form

Last Modified May 2000

Date 11/15/00 Location 201 SE
 Moved by Robson, Seconded by Seratti

THAT, pursuant to § 227.24(2)(a), *Wisconsin State Statutes*, the Joint Committee for the Review of Administrative Rules extend the effective period of Emergency Rule ATCP 10.21 by 30 days, at the request of the Department of Agriculture, Trade and Consumer Protection.

COMMITTEE MEMBER	Aye	No	Absent
1. Senator ROBSON	✓		
2. Senator GROBSCHMIDT	✓		
* 3. Senator SHIBLISKI	✓		✓
* 4. Senator WELCH	✓		✓
* 5. Senator SCHULTZ	✓		✓
6. Representative GROTHMAN	✓		
7. Representative GUNDERSON	✓		
8. Representative SERATTI	✓		
9. Representative KREUSER			✓
10. Representative BLACK	✓		
Totals			

Motion Carried

Motion Failed

* by polling



State of Wisconsin
Tommy G. Thompson, Governor

JUN 29 2000

Department of Agriculture, Trade and Consumer Protection
Ben Brancel, Secretary

DATE: June 26, 2000
TO: State Legislators
FROM: Ben Brancel, Secretary *Ben Brancel*
SUBJECT: Johne's Disease in Cattle and Goats; Emergency Rule

Pursuant to s. 227.24(3), Stats., the Department of Agriculture, Trade and Consumer Protection ("DATCP") is hereby providing you with a copy of DATCP's emergency rule related to Johne's disease (paratuberculosis) in cattle and goats. A fiscal estimate is also enclosed.

This emergency rule implements the "implied warranty" law under s. 95.195, Stats., as modified by 1999 Wis. Act 160. This emergency rule maintains the current coverage of the law, and prevents any unintended lapse in coverage, by clarifying that the law applies to Johne's disease in cattle and goats. This emergency rule does not expand the coverage of the current law. This emergency rule remedies a technical flaw in DATCP's recently-adopted Johne's disease rules, but does not change the substance or intended application of those rules.

Background

Paratuberculosis, also known as Johne's disease, is a serious and widespread disease of cattle and goats. The disease is slow to develop, and an infected animal may go for years without showing symptoms. An infected animal, which is free of symptoms at the time of sale, may spread the disease to a buyer's herd. The disease has a serious impact on milk production, and is ultimately fatal to infected animals.

1989 Wis. Act 277 established a Johne's disease "implied warranty" in the sale of cattle and goats. Under the "implied warranty" law, a seller implicitly warrants to a buyer that cattle and goats are free of Johne's disease *unless* the seller complies with certain testing and disclosure requirements. If cattle or goats are infected with Johne's disease at the time of sale, and the seller has *not* complied with those testing and disclosure requirements, the buyer may sue the seller for damages under the "implied warranty."

The "implied warranty" law protects buyers, and gives sellers an incentive to test their animals for Johne's disease. A seller may avoid the "implied warranty" by testing and disclosing. Testing is important for controlling this serious disease.

1999 Wis. Act 160 changed the "implied warranty" law, effective July 1, 2000. It changed prior testing and disclosure requirements to make the law more effective and workable. It also authorized DATCP to cover *other* diseases and animal species by rule. DATCP must implement the new law by rule. The "implied warranty" will no longer apply to *any* animals or diseases (including Johne's disease in cattle or goats) unless DATCP identifies those animals and diseases by rule.

DATCP, the livestock industry and the Legislature intended that the new law would apply, at a minimum, to Johne's disease in cattle and goats. DATCP has in fact adopted new Johne's disease rules for cattle and goats, in anticipation of the July 1, 2000 effective date of the new law. However, the new rules are technically flawed, in that they imply but do not *explicitly state* that the new law applies to Johne's disease in cattle and goats.

Emergency Rule

This emergency rule remedies that technical flaw, and prevents any unintended lapse in coverage. The emergency rule explicitly states that the "implied warranty" under s. 95.195, Stats., applies to Johne's disease and to the sale of cattle and goats. The emergency rule makes no other changes to the Johne's disease law or rules.

DATCP has adopted this emergency rule, and submitted it for publication in the official state newspaper. The emergency rule will take effect upon publication. DATCP will hold a public hearing on the emergency rule on Thursday, July 27, 2000 at 2:00 p.m. in the Prairie Oak State Office Building, Room 172, 2811 Agriculture Drive, Madison.

**ORDER OF THE STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION
ADOPTING EMERGENCY RULES**

1 The state of Wisconsin department of agriculture, trade and consumer protection hereby
2 adopts the following emergency rule to create ss. ATCP 10.21(1m) and 10.63(1m) relating to
3 an implied warranty that cattle and goats are free of paratuberculosis (also known as Johne's
4 disease).

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

Statutory authority: ss. 93.07(1) and 95.195 as affected by 1999 Wis. Act. 160,
Stats.

Statutes interpreted: s. 95.195 as affected by 1999 Wis. Act 160, Stats.

The department of agriculture, trade and consumer protection administers the "implied warranty" law under s. 95.195, Stats., related to sales of animals. This emergency rule implements 1999 Wis. Act 160, which modified the "implied warranty" law. This emergency rule maintains the current coverage of the law by clarifying that the law applies to paratuberculosis (Johne's disease) in cattle and goats. This emergency rule does not expand the coverage of the current law.

Background

Paratuberculosis, also known as Johne's disease, is a serious and widespread disease of cattle and goats. The disease is slow to develop, and an infected animal may go for years without showing symptoms. An infected animal, which is free of symptoms at the time of sale, may spread the disease to a buyer's herd. The disease has a serious impact on milk production, and is ultimately fatal to infected animals.

1989 Wis. Act 277 established a Johne's disease "implied warranty" in the sale of cattle and goats. Under the "implied warranty" law, a seller implicitly warrants to a buyer that cattle and goats are free of Johne's disease *unless* the seller complies with certain testing and disclosure requirements. If cattle or goats are infected with Johne's disease at the time of sale, and the seller has *not* complied with those testing and disclosure requirements, the buyer may sue the seller for damages under the "implied warranty."

The "implied warranty" law protects buyers, and gives sellers an incentive to test their animals for Johne's disease. A seller may avoid the "implied warranty" by testing and disclosing. Testing is important for controlling this serious disease.

1999 Wis. Act 160 changed the “implied warranty” law, effective July 1, 2000. It changed prior testing and disclosure requirements to make the law more effective and workable. It also authorized DATCP to cover *other* diseases and animal species by rule. DATCP must implement the new law by rule. The “implied warranty” will no longer apply to *any* animals or diseases (including Johne’s disease in cattle or goats) unless DATCP identifies those animals and diseases by rule.

DATCP, the livestock industry and the Legislature intended that the new law would apply, at a minimum, to Johne’s disease in cattle and goats. DATCP has in fact adopted new Johne’s disease rules for cattle and goats, in anticipation of the July 1, 2000 effective date of the new law. However, the new rules are technically flawed, in that they imply but do not *explicitly state* that the new law applies to Johne’s disease in cattle and goats. This emergency rule remedies that technical flaw on a temporary basis, pending the adoption of “permanent” remedial rules. This emergency rule does not change the substance or intended application of DATCP’s Johne’s disease rules.

FINDING OF EMERGENCY

1 (1) Paratuberculosis, also known as Johne’s disease, is an infectious and
2 communicable disease of cattle and goats. The disease is slow to develop, and an
3 infected animal may go for years without showing symptoms. An infected animal, which
4 is free of symptoms at the time of sale, may spread the disease to a buyer’s herd. The
5 disease has a serious impact on milk production, and is ultimately fatal to infected
6 animals.

7 (2) 1989 Wis. Act 277 established a Johne’s disease “implied warranty” in the
8 sale of cattle and goats. Under the “implied warranty” law, s. 95.195, Stats., a seller
9 implicitly warrants to a buyer that cattle and goats are free of Johne’s disease *unless* the
10 seller complies with certain testing and disclosure requirements. If cattle or goats are
11 infected with Johne’s disease at the time of sale, and the seller has *not* complied with
12 applicable testing and disclosure requirements, the buyer may sue the seller for damages
13 under the “implied warranty.”

1 (3) The “implied warranty” law protects buyers of cattle and goats, and gives
2 sellers an incentive to test their animals for Johne’s disease. A seller may avoid the
3 “implied warranty” by testing and disclosing. Testing is important for the ultimate
4 control of this serious disease.

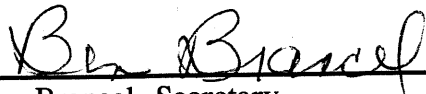
5 (4) 1999 Wis. Act 160 changed the “implied warranty” law, effective July 1,
6 2000. It changed prior testing and disclosure requirements to make the law more
7 effective and workable. It also authorized the department of agriculture, trade and
8 consumer protection (“DATCP”) to cover *other* diseases and animal species by rule.
9 DATCP must implement the new law by rule. The “implied warranty” no longer applies
10 to *any* animals or diseases (including Johne’s disease) unless DATCP identifies those
11 animals and diseases by rule.

12 (5) DATCP, the livestock industry and the Legislature intended that the new law
13 would apply, at a minimum, to Johne’s disease in cattle and goats. The Legislature, in a
14 related action, appropriated \$100,000 in grant funds to help herd owners pay for Johne’s
15 disease testing in FY 2000-2001. DATCP has also adopted new Johne’s disease rules for
16 cattle and goats, in anticipation of the July 1, 2000 effective date of the new law. The
17 new rules, contained in ss. 10.21 and 10.63, Wis. Adm. Code, clearly indicate DATCP’s
18 understanding and intent that the new law would apply to Johne’s disease in cattle and
19 goats. However, the new rules are technically flawed, in that they fail to state *explicitly*
20 that the new law applies to Johne’s disease in cattle and goats. This emergency rule
21 remedies that technical flaw on a temporary basis, pending the adoption of “permanent”
22 remedial rules.

1 **EFFECTIVE DATE.** This emergency rule shall take effect on July 1, 2000,
2 and shall remain in effect for 150 days. The department may seek to extend this
3 emergency rule as provided in s. 227.24, Stats.

Dated this 26 day of June, 2000.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE, TRADE
AND CONSUMER PROTECTION



Ben Brancel, Secretary

FISCAL ESTIMATE

LRB or Bill No. / Adm. Rule No.
ATCP 10.21(1m) 10.63(1m)
Amendment No. (If Applicable)

DOA-2048 N(R 10/98) ORIGINAL UPDATED

CORRECTED SUPPLEMENTAL

Subject
Implied Warranty that cattle and goats are free of Johnes disease.

Fiscal Effect
State: No State Fiscal Effect
Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation

<input type="checkbox"/> Increase Existing Appropriation <input type="checkbox"/> Increase Existing Revenues	<input type="checkbox"/> Increase Costs - May be possible to Absorb Within Agency's Budget <input type="checkbox"/>
<input type="checkbox"/> Decrease Existing Appropriation <input type="checkbox"/> Decrease Existing Revenues	Yes <input type="checkbox"/> No
<input type="checkbox"/> Create New Appropriation	<input type="checkbox"/> Decrease Costs

Local: <input checked="" type="checkbox"/> No local government costs	3. <input type="checkbox"/> Increase Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	5. Types of Local Governmental Unit Affected: <input type="checkbox"/> Towns <input type="checkbox"/> Villages <input type="checkbox"/> Cities <input type="checkbox"/> Counties <input type="checkbox"/> Others _____ <input type="checkbox"/> School Districts <input type="checkbox"/> WTCS Districts
1. <input type="checkbox"/> Increase Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	4. <input type="checkbox"/> Decrease Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	
2. <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory		

Fund Source Affected
 GPR FED PRO PRS SEG SEG-S

Affected Ch. 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate

1999 Wis. Act 160 changed the "implied warranty" law, effective July 1, 2000. It changed prior testing and disclosure requirements to make the law more effective and workable. It also authorized DATCP to cover other diseases and animal species by rule. DATCP must implement the new law by rule. The "implied warranty" will no longer apply to any animals or diseases (including Johnes's disease in cattle or goats) unless DATCP identifies those animals and diseases by rule.

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There is no anticipated fiscal impact from this rule. Any remedy under the "implied warranty" would be a civil action.

Long - Range Fiscal Implications

Agency/prepared by: (Name & Phone No.) DATCP Clarence J. Siroky 608-224-4872	Authorized Signature/Telephone No. <i>Barbara Knapp</i> Barbara Knapp (608) 224-4746	Date 6-27-00
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SENATOR JUDITH B. ROBSON
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REPRESENTATIVE GLENN GROTHMAN
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JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES

November 16, 2000

Senator Fred Risser
Senate President
Room 220 South

Representative Scott Jensen
Speaker of the Assembly
Room 211 West

Re: Emergency Rule ATCP 10.21
Emergency Rule ATCP 16
Emergency Rule ATCP 134.06(3)
Emergency Rule NR 168
Emergency Rule HFS 119

Dear Senator Risser and Representative Jensen:

We are writing pursuant to § 227.24(2)(c), *stats.*, to inform you that the Joint Committee for the Review of Administrative Rules (JCRAR) held a public hearing and executive session on November 15, 2000. At that meeting, the JCRAR received public testimony regarding the following emergency rules:

- Emergency Rule ATCP 10.21, relating to an implied warranty that cattle and goats are free of paratuberculosis (also known as Johne's disease);
- Emergency Rule ATCP 16, relating to importing bovine animals, goats or cervids from a state designated by USDA as a tuberculosis "non-modified accredited" state;
- Emergency Rule ATCP 134.06(3), relating to residential rental practices (security deposits and carpet cleaning);
- Emergency Rule NR 168, relating to the brownfield site assessment grant program administration; and
- Emergency Rule HFS 119, relating to Health Insurance Risk-Sharing Plan (HIRSP) premium rates.

Based on the public testimony at the hearing, the committee adopted a motion extending Emergency Rule ATCP 10.21 for 30 days. The committee approved the motion on a 9 to 0 vote.

Based on the public testimony at the hearing, the committee adopted a motion extending Emergency Rule ATCP 16 for 60 days. The committee approved the motion on a 9 to 0 vote.


Based on the public testimony at the hearing, the committee adopted a motion extending Emergency Rule ATCP 134.06(3) for 60 days. The committee approved the motion on a 9 to 0 vote.


Based on the public testimony at the hearing, the committee adopted a motion extending Emergency Rule NR 168 for 60 days. The committee approved the motion on a 9 to 0 vote.

Based on the public testimony at the hearing, the committee adopted a motion extending Emergency Rule HFS 119 for 34 days. The committee approved the motion on a 9 to 0 vote.

We are giving you this notice of the committee's action pursuant to § 227.24(2)(c), *stats.*, and we ask that you notify the appropriate standing committees of each house of the legislature of the JCRAR's actions.

Sincerely,


Senator Judith B. Robson
15th Senate District


Representative Glenn Grothman
59th Assembly District

JBR:GG:da