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Tommy G. Thompson, Governor
Brenda J. Blanchard, Secretary

November 2, 1999

The Honorable Glenn Grothman
State Representative
15 N. State Capitol
Madison, WI 53707-8952

Dear Representative Grothman:

Deputy Secretary Phil Albert has shared your inquiry with me if we are interested in requesting an extension on the emergency rule related to ch. Comm 111 Certified Capital Companies (CAPCO) that will expire on December 19, 1999.

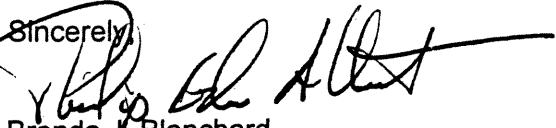
Please note that we are definitely interested in requesting an extension on the emergency rule and we sincerely appreciate your call and informing us that the Joint Committee for the Review of Administrative Rules will most likely not meet in December.

Please except this letter as our formal request for an extension of the emergency rule. On June 17, 1999, we held a public hearing on a proposed rule. The participants at that hearing overwhelmingly requested the agency to promulgate an emergency rule to begin implementation of the CAPCO program authorized by 1997 Wisconsin Act 215. The emergency rule was adopted in July after the hearing and took effect on July 23, 1999. A separate hearing on the emergency rule was held on August 17, 1999. The final rule is currently in legislative review, so we are unable to provide you with the exact number of days that will be need for the extension to provide coverage until the permanent rule becomes effective. However, we expect that review to end within the next few days at which time we will be able to confirm with you the exact number of days that will be needed for the extension.

This law was authored by Representative David Ward and Senator Gwendolynne and we have been working very closely with them to implement this very important legislation.

Once again, thank you thinking of us and for inquiring about the extension.

Sincerely,

for

Brenda J. Blanchard
Secretary

Cc. Senator Judith Robson
Senator Gwendolynne Moore
State Representative David Ward

DEPARTMENT OF COMMERCE

EMERGENCY RULE RELATING RELATING TO CERTIFIED CAPITAL COMPANIES

Finding of Emergency and Rule Analysis

The Department of Commerce finds that an emergency exists and that the adoption of the rule included in this order is necessary for the immediate preservation of public health, safety and welfare.

Analysis of Rules

Statutory Authority: ss. 560.31, 560.34 (1m) (b), and 227.24, Stats,

Statutes Interpreted: ss 560.31, 560.34 (1m) (b), and 227.24, Stats,

On June 17, 1999, the Department of Commerce (Commerce) held a public hearing on proposed rules in response to 1997 Wisconsin Act 215. That act provides tax credits to persons that make certain investments in certified capital companies that are certified by Commerce. Legislators and persons interested in the rules testified at the hearing and requested that Commerce adopt an emergency rule that would (1) allow persons to apply for certification to become certified as capital companies, (2) allow persons to apply to make a certified capital investment in a certified capital company, and (3) set forth the operational and reporting requirements of certified capital companies required under the law. Since then, articles in the newspaper as well as business journals have pointed out the lack of venture capital in the state hinders high-tech growth and making that capital available will benefit Wisconsin as it has done in other states. This emergency rule is necessary to begin implementation of the law and to place Wisconsin in a better position to make capital available to draw high-tech industries, create new businesses, and expand existing businesses that will ultimately create new jobs and benefit all its citizens. Pursuant to s. 227.24, Stats., the emergency rule takes effect on publication in Thin the newspaper.

Contact Person


Phillip Edw. Albert, Deputy Secretary,

608-267-0770

ORDER

The Department of Commerce hereby creates ch. Comm 111, relating to Certified Capital Companies.

Dated at Madison, Wisconsin, this 16
day of July, A.D. 1999,
By the Department of Commerce


Brenda J. Blanchard, Secretary

Chapter Comm 111

CERTIFIED CAPITAL COMPANIES

Section 1. ch. Comm 111 is created to read:

Comm 111.01 Purpose.

Comm 111.02 Definitions.

Comm 111.03 Certification of certified capital companies.

Comm 111.04 Investments in certified capital companies.

Comm 111.05 Qualified businesses.

Comm 111.06 Operation of certified capital companies.

Comm 111.07 Reporting requirements and fees.

Comm 111.08 Distributions.

Comm 111.09 Documents and record requirements.

Comm 111.10 Compliance reviews: decertification; disqualification.

CERTIFIED CAPITAL COMPANIES

Comm 111.01 Purpose. The purpose of this chapter is to establish the procedures for the administration of certified capital companies by the department of commerce, as provided by ss. 560.30 to 560.38, Stats.

Comm 111.02 Definitions. In this chapter,

(1) "Affiliate" has the meaning specified in s. 560.30 (1), Stats.

Note: S. 560.30 (1) "Affiliate" means with respect to a certified capital company or a certified investor, any of the following:

(a) A person who, directly or indirectly, owns, controls, or holds power to vote, 10% or more of the outstanding voting securities or other voting ownership interests of the certified capital company or certified investor.

(b) A person, 10% of whose outstanding voting securities or other voting ownership interests are directly or indirectly owned, controlled or held with power to vote by the certified capital company or certified investor.

(c) A person directly or indirectly controlling, controlled by, or under common control with, the certified capital company or certified investor.

(d) A partnership in which the certified capital company or certified investor is a general partner.

(e) A person who is an officer, director or agent of the certified capital company or certified investor, or is an immediate family member of such an officer, director or agent.

(2) "Affiliate of an insurance company" has the meaning specified in s. 560.30 (1), Stats.

(3) "Allowable organizational costs" means those direct costs incurred to organize and charter an entity, but does not mean pre-opening and development stage enterprise costs.

(4) "Certified capital company 'CAPCO'" has the meaning under s. 560.30 (2), Stats.

Note: s.560.30 (2) "Certified capital company" means a person that has been certified by the department under s. 560.31, Stats., and that has not been decertified under s. 560.37 (3) or (3m), Stats..

(5) "Certified capital company tax credit" has the meaning under s. 560.30 (3), Stats..

Note: s. 560.30 (3), Stats., "Certified Capital Company" means the tax credit under s. 76.635, Stats.

(6) "Certified capital investment" has the meaning under s. 560.30 (4), Stats.

Note: s. 560.30 (4), Stats., "Certified capital investment" means an investment in a certified capital company that is certified under s. 560.32 (2), Stats., and that fully funds either the investor's equity interest in a certified capital company, a qualified debt instrument that a certified capital company issues, or both.

(7) "Certified investor" has the meaning under s. 560.30 (5), Stats.

Note: s. 560.30 (5), Stats., "Certified investor" means a person who makes a certified capital investment.

(8) "Department" means the department of commerce.

(9) "Direct organizational costs" means, but are not limited to legal, accounting, consulting, and printing costs directly related to the chartering or incorporation process, pre-opening and development stage enterprise costs that may be capitalized under GAAP, and filing fees paid to chartering authorities.

(10) "Employee" means a full-time employe of the business, a person leased to the business, and a person from whom the business obtains services necessary to its day-to-day operations on an independent contractor basis.

(11) "Equity rights" means the receipt or creation of an equity interest in a qualified business.

(12) "Equity sale participation rights" means conversion options of debt, to convert all or a portion of the debt to the qualified Wisconsin business's stock or other ownership interest, then to participate in the sale of the stock or other ownership interest of the qualified Wisconsin business.

(13) "Equity security of a qualified business" means royalty rights, net profit interests, warrants for future ownership, equity sale participation rights, equity rights, or other similar rights as determined by the department.

(14) "Financial institution" means a state or national bank, trust company, savings bank, building and loan association, savings and loan association or credit union doing business in this state.

(15) "GAAP" means generally accepted accounting principles.

(16) "In need of venture capital" means that the qualified business requires debt or equity funds, or both, for working capital, expansion, research and development, sales growth, or modernization of current operations.

(17) "Investment in a CAPCO" for the purpose of earning tax credits or reductions under s. 76.635 (2), Stats., means a transaction that, in substance and in form, is the investment of cash in exchange for any of the following:

(a) Common stock, partnership or membership interest, preferred stock, or an equivalent ownership interest in a CAPCO, or

(b) A debt instrument that a certified capital company issues at par value or at a premium; that has an original maturity date of at least 5 years from the date on which it was issued; that has a repayment schedule that is no faster than a level principal amortization and, until the certified capital company may make distributions other than qualified distributions, the interest, distribution or payment features of which are not related to the certified capital company's profitability or the performance of its investment portfolio.

(18) "Investment date" has the meaning under s. 560.30 (6), Stats.

Note s. 560.30 (6), Stats., "Investment date" means, with respect to each investment pool, the date on which the last certified capital that is part of that investment pool was invested in the certified capital company.

(19) "Investment pool" has the meaning under s. 560.30 (7), Stats.

Note: s. 560.30 (7), Stats., "Investment pool" means the aggregate of all investments of certified capital in a certified capital company that are made as part of the same transaction, except that investments received more than 30 days apart may not be considered part of the same investment pool.

(20) "Marketable securities" means both debt and equity securities for which market quotations are available.

(21) "Net profit interests" means rights to receive a percent of operating or net profits that may be either fixed or variable, may provide for a minimum or maximum dollar amount per year or in total, may be for an indefinite or fixed period of time, and may be based upon operating or net profits in excess of a base amount.

(22) "Net worth" means assets minus liabilities in accordance with GAAP.

(23) "Pre-opening and development stage enterprise costs" means those costs that generally are not capitalized under GAAP, such as salaries and employment benefits, rent, depreciation, supplies, directors' fees, training, travel, expenses associated with the establishment of business relationships, postage and telephone fees.

(24) "Primary business activity" means the investment of a CAPCO's certified capital primarily in qualified investments in qualified businesses. Primary business activity is demonstrated by having at all times, a minimum of 50% of total certified capital of each investment pool, which has been collected in cash, available for investment in or having been invested as qualified investments in qualified businesses.

(25) "Principal business operations in Wisconsin" means a business that operates primarily in Wisconsin at the time of the initial investment and is in good standing with the Wisconsin department of financial institutions, if applicable, and meets one or more of the following:

(a) The business has more than 50 percent of its total assets located in Wisconsin;

(b) More than 50 percent of the business' net income is allocable or apportionable to Wisconsin in accordance with Wisconsin income tax law, but disregarding whether the business is taxable or tax exempt for Wisconsin income tax purposes;

(c) More than 50 percent of the total salaries, wages and other compensation of the business are paid to Wisconsin employees.

(26) "Qualified business" has the meaning under s. 560.30 (8), Stats.

Note: s. 560.30 (8), Stats., "Qualified business" means a business which is a qualified business under s. 560.33, Stats.

(27) "Qualified distribution" has the meaning under s. 560.30 (10), Stats.

Note: s. 560.30 (10), Stats., "Qualified distribution" means a distribution or payment by a certified capital company to its equity holders for any of the following:

(a) The costs of forming the certified capital company, including Allowable Organizational Costs.

(b) The costs of syndicating, managing or operating the certified capital company.

(c) An annual management fee that does not exceed 2.5% of the certified capital company's total certified capital.

(d) Reasonable and necessary fees paid for professional services related to the operation of the certified capital company.

(e) A projected increase in federal or state taxes, including penalties and interest on those taxes, of the equity owners of the certified capital company if those amounts are related to the certified capital company's ownership, management or operation.

(28) "Qualified investment" has the meaning under s. 560.30 (11), Stats.

Note: s. 560.30 (11) Stats., "Qualified investment" means an investment in a qualified business by a certified capital company that meets the requirements under s. 560.34, Stats.

(29) "Royalty rights" means rights to receive a percent of gross or net revenues that may be fixed or variable, may provide for a minimum or maximum dollar amount per year or in total, may be for an indefinite or fixed period of time, or may be based upon revenues in excess of a base amount.

(30) "Unable to obtain conventional financing" means the business has failed in an attempt to obtain funding for a loan from a financial institution as evidenced in writing from the financial institution.

(31) "Venture capital" means any type of debt financing or equity investment, or both.

(32) "Warrants for future ownership" means options on the stock or other ownership interests of the qualified business in which the qualified business may repurchase a call, or which

the qualified business may be required to repurchase a put, at some fixed amount or an amount based on a pre-agreed upon formula.

Comm 111.03 Certification of certified capital companies.

(1) APPLICATION TO BECOME A CAPCO.

(a) Any person seeking to become a CAPCO shall submit an application using the department's application form and shall provide the information specified in the application form.

(b) The application shall be submitted with a nonrefundable application fee of \$7,500.

(c) The application shall be received on a business day between July 15 and August 15 of each calendar year. In the event that August 15 is not a business day, applications shall be received by the first business day thereafter.

(d) If a submitted application is complete and meets the requirements of this chapter, the department shall grant or deny an application for certification within 30 business days of the date of application.

(e) If an application is determined by the department to be incomplete or additional information is needed, the department shall notify the applicant in writing within 20 business days of the receipt of the application.

1. If an application as specified in par. (a) is completed within 5 business days of the applicant's receipt of such notice, the completion of the application shall have no effect on the date by which the certification applied for must be granted or denied.

2. If an application as specified in par. (a) is not completed within 5 business days of the applicant's receipt of the notice, the date in which the application is completed shall be the date the completed application is resubmitted.

3. If such information is not supplied within 120 days of the applicant's receipt of the written notice, the application shall be deemed withdrawn and the department shall have no obligation to provide additional notices to the applicant.

(f) If the department denies certification, the department shall include with the denial a detailed description of the grounds for the refusal, including suggestions for removal of those grounds.

(g) Any person denied certification as a CAPCO may appeal to the secretary of the department within 30 business days of the denial. The appeal shall outline why the certification should be granted.

(2) REQUIREMENTS FOR CERTIFICATION. The department shall certify a person as a CAPCO if the department determines that all of the following conditions have been met:

(a) The person is a partnership, corporation, trust or limited liability company, whether organized for profit or not for profit, that has as its primary business activity the investment of cash in qualified businesses.

(b) The person has a net worth at the time of application, of at least \$500,000 and has at least \$500,000 in cash, cash equivalents and marketable securities.

(c) The directors, officers, general partners, trustees, managers or members or persons having a similar function are familiar with the requirements of this chapter and ss. 560.30 to 560.38, Stats.

(d) At least 2 officers, directors, general partners, trustees, managers or members each have at least 2 years of experience in the venture capital industry.

(e) The person has included, in any offering material involving the sale of securities, the statement required under s. Comm 111.04 (1).

(f) The person has paid a nonrefundable application fee of \$7,500.

(g) The person agrees to maintain an office and staff in the state of Wisconsin.

Comm 111.04 Investments in certified capital companies.

(1) REQUIRED DISCLOSURES IN SECURITIES OFFERINGS. A CAPCO shall include all of the following statements in any offering material involving the sale of securities:

(a) By authorizing the formation of a certified capital company, the state does not necessarily endorse the quality of management or the potential for earnings of the company and is not liable for damages or losses to a certified investor in the company. Use of the word "certified" in an offering is not a recommendation or endorsement of the investment by State of Wisconsin Department of Commerce.

(b) Investments in a prospective certified capital company prior to the time the company is certified are not eligible for a certified capital company investment credit under s.76.635, Stats. Investments in a certified capital company are not eligible for a certified capital company investment credit under s.76.635, Stats., unless the proposed investment is certified under s. 560.32 (2), Stats., before the investment is made. In the event that certain statutory provisions are violated, the state may require forfeiture of unused certified capital company investment credits and repayment of used certified capital company investment credits.

(2) CERTIFICATION OF CERTIFIED CAPITAL INVESTMENTS.

(a) A person may apply to make a certified capital investment in a CAPCO by providing notice under this paragraph to the department on a form specified by the department. The notice shall include the name of the person, the name of the CAPCO, the amount of the investment, as limited by par. (f), and any other information specified by the department. The notice shall also include an undertaking by the person to make the investment within 5 days after the department notifies the person that the investment has been certified. All such notices shall be submitted to the department by the CAPCO on behalf of the person making application.

(b) No CAPCO may submit applications under par. (a), the cumulative amount of the investments which exceeds the amount available for certification by the department as specified in par. (e).

1. If a CAPCO submits applications under par. (a), the cumulative amount of the investments which exceeds the amount available for certification by the department as specified in par. (e), the department shall, notwithstanding s. Comm 111.04 (2) (g), prorate the amount of the individual applicants' investments to reduce the cumulative amount of the investments to the amount available for certification by the department as specified in par. (e). These amounts may be subject to further proration under s. Comm 111.04 (2) (g).

(c) Applications for certification of certified capital investments shall not be accepted prior to October 1 of each calendar year. The amount requested in the application shall be subject to the limits provided for under par. (f).

(d) Investments shall be certified by the department in the order of the date received, not later than 15 business days after application. The department shall notify the person and the CAPCO who submitted the application for certified capital investment on behalf of the person of the amount of the investment that has been certified.

(e) The department may certify an investment under this subsection only if, after the certification, the department will not have certified a total of more than \$50,000,000 in investments under this subsection.

(f) Prior to August 1, 2000, the department may not certify an investment under this subsection if, after the certification, the investor, together with all affiliates of the investor, would have more than \$10,000,000 in certified capital investments.

(g) If, as a result of the limitations under par. (e) or (f), the department may not certify the full amount requested in applications for certified capital investments submitted under par. (a), the department shall allocate the amounts available for certification in order of priority based on the date on which the application was filed and not rejected or withdrawn.

1. If the amounts available for certification are insufficient to certify the full amount of all applications for certified capital investments that are submitted on the same day, the department shall prorate the available amount on the basis of the amount, up to \$10,000,000, prior to August 1, 2000, that the investor has committed to invest in the CAPCO under par. (a).

2. The pro rata amount certified for any one applicant shall be the product of a fraction, the numerator of which is the amount of the investment such person requested to be certified and the denominator of which is the total amount of the investments for which applications were filed on the same day, multiplied by the amount of investments that may be certified under s. 560.32(2)(b), Stats., after giving effect to all investments that have been certified or applications that have been filed with the department prior to such day.

(h) A CAPCO shall provide the department with evidence that it receives an investment of the certified capital in cash within 5 business days after the department notifies the person that the investment has been certified. In the event that a CAPCO does not receive an investment of capital equaling the amount of investment certified to an investor within 5 working days of the

CAPCO's receipt of notice from the department, the CAPCO shall so notify the department by overnight common carrier delivery service and the certified capital investment shall be forfeited. The forfeited certified capital investment amount shall be reallocated by the department to investment applications received on the same date as the forfeited investment application.

(3) **LIMITATION ON CERTIFIED INVESTOR INVESTMENT.** A certified investor may not, individually, or with or through one or more affiliates, own 10% or more of the equity securities in, be a general partner or manager of, or otherwise control the investment decision of the CAPCO. This subsection does not preclude a certified investor from exercising its legal rights and remedies, including interim management of a CAPCO, in the event that a CAPCO is in default of its statutory or contractual obligations to the certified investor.

Comm 111.05 Qualified businesses.

(1) **QUALIFICATIONS.** A business is a qualified business if all of the following requirements are met as of the time that a CAPCO, or any affiliate of the CAPCO, makes its first investment in the business:

(a) The business is headquartered in this state and its principal business operations are located in the state.

(b) The business is in need of venture capital and is unable to obtain conventional financing.

(c) The business has no more than 100 employees, at least 75% of whom are employed in this state.

(d) During its 2 most recent fiscal years, the business had, together with all of its consolidated affiliates, an average annual net income, after federal income taxes and excluding any carry-over losses, of not more than \$2,000,000, as determined in accordance with GAAP.

(e) The business has, together with its consolidated affiliates, a net worth that is not in excess of \$5,000,000 as determined in accordance with GAAP.

(f) The business is not predominantly engaged in professional services provided by accountants, lawyers or physicians.

(g) The business is not engaged in the development of real estate for resale.

(h) The business is not engaged in banking or lending and does not make any loans to, or investments in, certified capital companies.

(2) **DEPARTMENT OPINIONS.** A CAPCO may, prior to making an investment in a specific business, request a written opinion from the department that a business in which it proposes to invest is a qualified business. If the department determines that the business meets the requirements under sub. (1), the department shall issue a written opinion within 30 business days of the date of request stating that the business is a qualified business. In the event the department fails to issue an opinion that the business meets the requirements under sub. (1)

within 30 business days, the CAPCO may presume that the business meets the requirements of a qualified business.

Comm 111.06 Operation of certified capital companies.

(1) **QUALIFIED INVESTMENTS REQUIREMENTS.** In order for a CAPCO to prevent disqualification under s. Comm 111.10 of an investment pool, the CAPCO shall ensure that the investment pool makes qualified investments in accordance with the schedule under sub. (2). An investment is a qualified investment if the investment meets all of the following requirements:

(a) The investment is a cash investment in a qualified business for the purchase of any of the following:

1. An equity security of the qualified business.

2. A debt security of the qualified business if the debt has a maturity of at least 5 years and if one of the following conditions is met:

a. The debt is unsecured.

b. The debt is convertible into equity securities or equity participation instruments such as options or warrants.

c. The debt is unsecured and is issued in combination with an equity security of the qualified business.

(b) As a condition of the investment, the qualified business agrees not to use the proceeds from the investment for the purpose of relocating its operations.

(c) As a condition of the investment, the qualified business agrees, as long as the CAPCO continues to hold the investment, not to relocate its headquarters out of this state.

(d) As a condition of the investment, the qualified business agrees, as long as the CAPCO continues to hold the investment, to maintain at least 75% of its employees in this state.

(e) As a condition of the investment, the qualified business agrees, as long as the CAPCO continues to hold the investment, to maintain at least 75% of its employees at work sites that were maintained by the qualified business at the time that the investment was made, unless the qualified business obtains an exemption from the department under this paragraph. The department may grant an exemption unless it determines that the qualified business is locating the employees at new sites to take advantage of lower wage rates in the areas where the new sites are located.

1. The request for the exemption shall be made in writing to the department and outline the specific conditions of the request.

2. The department shall respond to the written request for an exemption within 30 business days after receipt of the written request. If the department fails to respond

affirmatively to the exemption in writing, it may be presumed that the exemption is acceptable.

(2) A QUALIFIED INVESTMENT SCHEDULE.

- (a) A CAPCO shall ensure that each of its investment pools makes qualified investments according to TABLE 111.06 -2A.

TABLE 111.06-2A

Investment Date for a Particular Investment Pool	Minimum % of the Investment Pool Placed in Qualified Investments
Within 3 years	at least 30%
Within 5 years	at least 50%

(b) The proceeds of all capital from a qualified investment returned to a CAPCO by a qualified business may be placed in new qualified investments:

1. The portion of the proceeds of all capital from a qualified investment returned to a CAPCO by a qualified business that are placed in new qualified investments shall count 100% towards the percentage requirements in TABLE 111.06-2A and placement of 100% of investments as qualified investments in s. Comm 111.08 (3) and Comm 111.10 (4) (a) 2.

2. The proceeds received from the sale of a qualified investment returned to a CAPCO that are placed in a new qualified investment in another qualified business shall count 100% towards the percentage requirements in TABLE 111.06-2A and placement of 100% of investments as qualified investments in ss. Comm 111.08 (3), and s. Comm 111.10 (4) (a) 2. except as follows:

a. The proceeds received from the sale of a qualified investment returned to a CAPCO within one year of the initial investment date, other than those sold a part of an initial public offering, that are placed in a new qualified investment, shall count 50% towards the percentage requirements contained in Table 111.06-2A and ss. Comm 111.08 (3), and s. Comm 111.10 (4) (a) 2. The reduction in the amount of an investment for terms of certain percentage requirements shall apply at all times until the CAPCO has been voluntarily decertified.

b. Proceeds from the sale of a qualified investment that are reinvested in that qualified business or an affiliate of that business shall not count towards the percentage requirements contained in TABLE 111.06-2A, and placement of 100% of the investments as qualified investments in ss. Comm 111.08 (3), s. Comm 111.10 (4) (a) 2, if such reinvestment is made within one year of the original investment's return to the CAPCO.

3. For purposes of satisfying the percentage requirements of TABLE 111.06-2A, and placement of 100% of investments ss. Comm 111.08 (3), and ss. Comm 111.10 (4) (a) 2., the cumulative amount of qualified investments made by the CAPCO shall be considered.

(c) The date funds are placed in accordance with Table 111.06-2A is the date funds are received by the qualified Wisconsin business from the CAPCO, as evidenced by the date of a

check or other means of funds transfer. The CAPCO shall submit all of the following information to the department within thirty days of the dates specified in TABLE 111.06-2A:

1. The amount of certified capital placed in qualified investments as of the date specified in par. (a); and

2. The amount of the total certified capital provided by investors to the CAPCO as of the date specified in TABLE 111.06-2A.

(3) **NONQUALIFIED INVESTMENTS.** All certified capital investments in a CAPCO that are not invested in qualified investments may be held or invested by the CAPCO as it considers appropriate, except that a CAPCO may not invest certified capital investments in an insurance company or in an affiliate of an insurance company.

(4) **DIVERSIFICATION REQUIREMENT.** A CAPCO may not make a qualified investment in a person if, at the time of the investment, more than 15% of the total certified capital of the CAPCO would be invested in that person and affiliates of that person.

(5) **RESTRICTIONS ON MANAGEMENT.** No CAPCO may be managed or controlled by, or have a general partner that is, an insurance company or an affiliate of an insurance company. This subsection does not preclude a certified investor or an affiliate of the certified investor from exercising its legal rights and remedies, including interim management of a CAPCO, in the event that a CAPCO is in default of its statutory or contractual obligations to the certified investor.

Comm 111.07 Reporting requirements and fees.

(1) **RECEIPTS OF CERTIFIED CAPITAL.** As soon as practicable after the receipt of a certified capital investment, a CAPCO shall report all of the following to the department:

(a) The name of the certified investor from which the certified capital was received, including the certified investor's tax identification number.

(b) The amount of the certified capital investment.

(c) The date on which the certified capital investment was received by the CAPCO.

(d) The investment date for the investment pool of which the certified capital will be a part.

(2) **VIOLATIONS OF AGREEMENTS BY QUALIFIED BUSINESSES.** As soon as practicable after the receipt of information by the CAPCO that a qualified business has violated an agreement made under s. Comm 111.06 (1)(b) to (e), the CAPCO shall notify the department of the violation and the facts giving rise to the violation.

(3) **ANNUAL REPORTS.** On or before January 31 annually, a CAPCO shall report all of the following to the department:

(a) The amount of the CAPCO's certified capital at the end of the preceding year.

(b) Whether the CAPCO has invested more than 15% of its total certified capital in any one person.

(c) All qualified investments that the CAPCO has made during the previous calendar year and the investment pool from which each qualified investment was made.

(4) FINANCIAL STATEMENTS. Within 90 days of the end of the CAPCO's fiscal year, the CAPCO shall provide to the department a copy of its annual audited financial statements, including the opinion of an independent certified public accountant. The audit shall indicate the methods of operation and conduct of the business of the CAPCO to determine whether the certified capital company is complying with the rules under this chapter, including whether certified capital has been invested in the manner required under ss. 111.06 and 560.34, Stats. The financial statements provided under this subsection shall be segregated by investment pool and shall be audited on that basis to allow the department to determine whether the CAPCO is in compliance with s. 560.34 (1m), Stats.

(5) FEES. Annually, on or before January 31, a CAPCO shall pay a nonrefundable certification fee of \$5,000 to the department, unless January 31 falls within 6 months of the date on which the CAPCO was certified under s. Comm 111.03.

(6) EXEMPTIONS FROM RIGHTS OF INSPECTION AND COPYING. If the department determines that a document submitted by a CAPCO under this section contains a trade secret, as defined in s. 134.90 (1) (c), Stats., that document shall not be subject to the right of inspection and copying under s. 19.35, Stats.

Comm 111.08 Distributions. A CAPCO may make a distribution only if one of the following conditions is met:

(1) QUALIFIED DISTRIBUTION. The distribution is a qualified distribution. Allowable organization costs shall be limited to 25% of capitalization, before any reduction for disallowed organizational costs. The allowable organization costs may be capitalized and amortized over a period not to exceed five years. Direct costs associated with the offering and issuance of capital stock may not be considered to be organizational costs and shall not be capitalized; these costs shall be deducted from the proceeds in recording initial capitalization.

(2) WRITTEN DETERMINATION. The department made a written determination that the distribution may be made without adversely affecting the ability of the CAPCO to place, in qualified investments, an amount equal to 100% of the certified capital in the investment pool from which the distribution is to be made.

(3) PLACEMENT OF 100% OF INVESTMENTS IN QUALIFIED INVESTMENTS. The certified capital company has placed in qualified investments an amount equal to 100% of the certified capital investments in the investment pool.

(4) DEBT PAYMENTS. The distribution is a payment of principal or interest owed and due to a debt holder of a CAPCO, even if the debt holder is also a holder of equity and even if the indebtedness is a certified capital investment.

Comm 111.09 Documentation and Records Requirements. Each CAPCO shall prepare and maintain on a current basis the following records and make them available to the department:

(1) A complete executed copy of the application in accordance with s. Comm 111.03, any amendments thereto and the attached schedules;

(2) Files for each director and principal of the CAPCO containing evidence that at least two of the principals meet the requirements of s. 560.31(2)(d), Stats. and s. Comm 111.03 (2)(d) and (g).

(3) Records concerning all securities issued by the CAPCO which include each of the following:

(a) The type of the security issued;

(b) The name, address, and telephone number of the investor;

(c) The date of the transaction;

(d) The total dollar amount invested;

(e) Copies of any prospectus or offering material used in connection with the sale of securities by the CAPCO;

(f) Evidence that the offering security contains the statements required by s. Comm 111.04 (1).

(4) Records relating to each certified investor of the CAPCO which include each of the investor's state and federal tax identification numbers and premium tax identification number.

(5) Records relating to each qualified business invested in by the CAPCO which includes the following:

(a) The name of the business;

(b) The location of the headquarters and principal business operations of the business;

(c) A description of the type of business engaged in;

(d) Evidence that the business meets the definition of a qualified business as defined by s. Comm 111.05.

(e) A copy of any contractual agreement entered into between the CAPCO and the business;

(f) The amount of investment made in the business;

(g) The type of investment made along with supporting documentation;

(h) The date of the investment;

(i) A due diligence file on the business for inspection, upon request;

(j) Copies of any prospectus or offering material used in connection with the sale of securities by the business to the CAPCO;

(k) A summary listing all investments made in qualified businesses as of the end of each calendar year.

(l) The number of jobs created each calendar year by the qualified business.

(6) Organizational documents of the CAPCO, and any amendments to these documents, as are applicable, based upon the type of organizational structure. These documents shall include the following, as applicable:

(a) Articles of incorporation;

(b) Articles of organization;

(c) Certificate of limited partnership;

(d) Partnership agreement;

(e) Operating agreement;

(f) Bylaws; and

(g) Evidence of registration with the department of financial institutions.

(7) Records relating to the certified capital of the CAPCO which is not invested in qualified businesses.

(8) Records relating to all distributions by the CAPCO which includes each of the following:

(a) The date of the distribution;

(b) The amount of the distribution;

(c) To whom the distribution was paid;

(d) The purpose of the distribution;

(e) A statement describing how each distribution is permitted under s. 560.36, Stats. and s. Comm 111.08.

(9) Financial records, prepared in accordance with GAAP, which include each of the following:

(a) A journal or journals, including cash receipts and disbursements records, and any other records of original entry forming the basis of entries in any ledger;

(b) General and auxiliary, or other comparable records; reflecting asset, liability, reserve, capital, and income and expense accounts;

(c) All bills or statements, or copies thereof; paid and unpaid, relating to the business of the CAPCO.

(10) Records required by this section shall be preserved for a period of not less than 10 years while effectively certified with the department, nor for less than 5 years after decertification as a CAPCO at the office located in this state.

Comm 111.10 Compliance reviews; decertification; disqualification.

(1) ANNUAL COMPLIANCE REVIEW. The department shall conduct an annual review of each CAPCO to determine if the CAPCO is complying with the requirements of this chapter and ss. 560.30 to 560.38, Stats., to advise the CAPCO regarding the status of its investments as qualified investments and to ensure that no investment has been made in violation of this chapter. The cost of the annual review shall be paid by each CAPCO according to a reasonable fee schedule adopted by the department.

(2) DISQUALIFICATION. Any material violation of s. 560.34 (1m), Stats., is a ground for disqualification of the noncomplying investment pool. If the department determines that the CAPCO is not in compliance with s. 560.34 (1m), Stats. and s. 111.06 (2) Stats., with respect to an investment pool, it shall send a written notice to the CAPCO and the commissioner of insurance stating that the investment pool has been disqualified.

(3) DECERTIFICATION OF A CERTIFIED CAPITAL COMPANY.

(a) Any material violation of s. 560.34 (1m),(2), (3) or (4), or s. 560.35 (1), (2), (3) or (4), Stats., is a ground for decertification of the noncomplying CAPCO. If the department determines that the CAPCO is not in compliance with s. 560.34 (1m), (2), (3) or (4), or s. 560.35 (1), (2), (3) or (4),Stats., the department shall send a written notice to the CAPCO that the CAPCO may be subject to decertification 120 days from the date on which the notice was mailed, unless the CAPCO brings itself into full compliance with ss. 560.34(1m), (2), (3) or (4) and 560.35 (1), (2), (3) and (4), Stats. by such date. If at the end of the 120-day period, the CAPCO is not in full compliance with ss. 560.34(1m), (2), (3) or (4) and 560.35 (1), (2), (3) and (4), Stats., the department shall send a notice to the CAPCO and the commissioner of insurance stating that the CAPCO has been decertified.

(b) The department may also decertify a CAPCO if the department determines that the applicant, or any principal or director of the CAPCO, has:

1. Violated any material provision of this chapter;

2. Made a material misrepresentation or false statement or concealed any essential or material fact from any person during the application process or with respect to information and reports required of CAPCOs under this section;

3. Been convicted of, or entered a plea of guilty or nolo contendere to, a crime under the laws of this state or any other state or the United States or any other country or government, involving a fraudulent act in connection with the operation of a CAPCO, or in connection with the performance of fiduciary duties in another capacity; or

4. Been adjudicated liable in a civil action on grounds of fraud, breach of fiduciary trust, embezzlement, misrepresentation, or deceit.

(c) If the department determines that the CAPCO has committed any of the item in par. (b), the department shall send a written notice to the CAPCO that the CAPCO may be subject to decertification in 120 days from the date on which the notice was mailed, unless the CAPCO brings itself into full compliance. If at the end of the 120-day period the CAPCO is not in compliance, the department shall send a notice to the CAPCO and the commissioner of insurance stating that the CAPCO has been decertified. For decertification under this paragraph, the certified investment is not subject to recapture and forfeiture.

(4) VOLUNTARY DECERTIFICATION.

(a) A CAPCO may voluntarily decertify itself as a CAPCO if any of the following conditions are met:

1. It has been at least 10 years since the last certified capital investment was made in the certified capital company.

2. The CAPCO has placed in qualified investments an amount equal to 100% of the certified capital investment in the CAPCO.

(b) A CAPCO wishing to decertify itself under this subsection shall send a notice to the department certifying that it is eligible for decertification under par. (a). The decertification is effective on the date that the notice under this paragraph is received by the department.

(5) EFFECT OF DECERTIFICATION. Decertification of a CAPCO or disqualification of an investment pool has the effects specified in s. 76.635 (4), Stats.

(6) NOTICES TO CERTIFIED INVESTORS. The department shall notify a certified investor when the CAPCO tax credit arising from a certified investment is no longer subject to recapture and forfeiture under s. 76.635 (4), Stats.

(END)

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 March, 1999

Date 11-18-99 Location Room 411 South
 Moved by Robson, Seconded by Grobschmidt

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 Comm 111 by 42 days, at the request of the Department of Commerce.

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

*polled by phone
 paper ballot

Motion Carried

Motion Failed

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

November 18, 1999

Ms. Brenda Blanchard
Secretary, Department of Commerce
P.O. Box 7970
Madison, WI 53707-7970

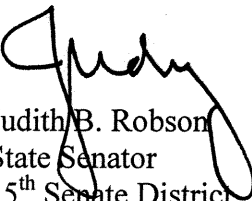
Dear Secretary Blanchard:


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 18, 1999. At that meeting, the JCRAR took the following action:

The committee voted to extend the effective period of Emergency Rule Comm 111 by 42 days.

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.

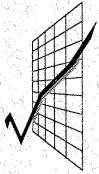
Sincerely,


Judith B. Robson
State Senator
15th Senate District


Glenn Grothman
State Representative
59th Assembly District

JBR:da

cc: Secretary of State La Follette
Revisor of Statutes Gary Poulson



Venture Investors Management LLC

Manager of Early Stage Venture Capital Funds

November 16, 1999

Judith Robson
State Senator
15 South
State Capital
P.O. Box 7882
Madison, WI 53707-7882

Dear Senator Robson,

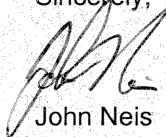
I am writing to request your support to extend the Department of Commerce's extension of the emergency rule on Comm. 111, related to Certified Capital Companies at the meeting of the Joint Committee for Review of Administrative Rules on November 18, 1999.

Final rules for this legislation have been passed and the Department of Commerce informs me that they expect the final rules to be published and become effective around February 1, 2000. Extension of the emergency rule is necessary to bridge the gap until that publication date.

The Certified Capital Company (CAPCO) program is a cornerstone of our State's efforts to encourage the formation of venture capital to assist our most promising entrepreneurs. As managers of funds raised by Advantage Capital Wisconsin Partners I, one of the three groups that was successful in raising capital from the insurance industry under this legislation, we want to stress the importance of conveying a message of stability to the investors in this nascent program. You can contribute to the CAPCO program's success by supporting the extension.

Thank you for your assistance.

Sincerely,



John Neis
Partner

Roger H. Ganser
John Neis, CFA

University Research Park
505 South Rosa Road
Madison, WI 53719

T 608.441.2700
F 608.441.2727

roger@ventureinvestors.com
john@ventureinvestors.com

www.ventureinvestors.com

State Senator
GWENDOLYNNE MOORE



Capitol Office:
P. O. Box 7882, Madison, WI 53707-7882
Phone: (608) 266-5810 Fax: (608) 267-2353
District Telephone: (414) 442-3080
Toll-free Legislative Hotline: 1-800-362-9472
E-Mail: sen.moore@legis.state.wi.us
Member: Joint Finance Committee
Board Member: Wisconsin Housing and
Economic Development Authority

TO: Members of the Joint Committee For Review of Administrative Rules
FROM: Senator Gwendolynne S. Moore
DATE: November 17, 1999
SUBJECT: Extension of CAPCO emergency rules

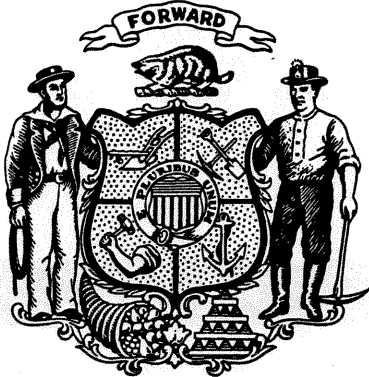
At tomorrow's hearing of the Joint Committee For Review of Administrative Rules (JCRAR), the Department of Commerce will be requesting for an extension of an emergency rule on Comm 111 relating to the Certified Capital Company (CAPCO) Program--which was created as a result of legislation I authored in the 1997 legislative session. The emergency CAPCO rule is set to expire on December 19, 1999.

I urge you to approve the Department's request for an extension. As you may know, the permanent CAPCO rule was reported out of both the Senate Committee on Economic Development, Housing, and Government Operations and the Assembly Committee on Financial Institutions. The Department of Commerce adopted the rule on November 10, 1999.

Unfortunately, the permanent rule needs additional time for publishing and distribution and will therefore not be effective until February 1, 2000. In the meantime, it is essential that the emergency CAPCO rules be extended so this program can continue without any unnecessary glitches.

If you have any questions about this request, please feel free to contact my office at 266-5810. Thank you for your consideration of this important matter.

END



END



State of Wisconsin

Tommy G. Thompson, Governor

Department of Agriculture, Trade and Consumer Protection

Ben Brancel, Secretary

October 24, 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 importing bovine animals, goats or cervids from a state designated by USDA as a tuberculosis "non-modified accredited" state for an additional 60 days, until March 9, 2001. Without the extension, the emergency rule will end on January 8, 2001.

This emergency rule creates ATCP 16, which controls importing bovine animals, goats or cervids from a state designated by USDA as a tuberculosis "non-modified accredited" state. This rule protects humans and other warm-blooded animals from TB (bovine tuberculosis) by restricting the importation of animals from states that have diagnosed cases of TB in animals.

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 September 19, 2000. There were a total of seven people who attended the public hearings. The Department received one written and four oral comments requesting a relaxation of the pre-import testing requirements for young calves and animals intended for slaughter. The department is considering making changes to the permanent rule based on public testimony of the emergency rule. In the interim, the division of animal health is conducting a case by case review and issuing special import permits when appropriate.

The hearing draft of the permanent rule that incorporates the provisions of this emergency rule was delivered to the Legislative Council "Rules Clearinghouse" for their review on October 20, 2000. Public hearings have been scheduled for late November.

We plan to submit a final draft rule for DATCP Board approval in January, 2001. If the DATCP Board approves the final draft rule, we will refer it to the Legislature for review. Because of the time required for legislative review, promulgation and publication, the department will need to request a further extension before this extension expires.

Sincerely,

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

Ben Brancel
Secretary

Enclosures



State of Wisconsin
Tommy G. Thompson, Governor

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

DATE: August 11, 2000

TO: State Legislators

FROM: Ben Brancel
Secretary

SUBJECT: **Emergency Rule; Importing Bovine Animals, Goats or Cervids from
"Non-modified Accredited" States**

Pursuant to s. 227.24(3), Stats., the Department of Agriculture, Trade and Consumer Protection is forwarding a copy of an emergency rule, to control imports of bovine animals, goats and cervids from states the United States Department of Agriculture (USDA) designates as tuberculosis "non-modified accredited" states. We are also enclosing a fiscal estimate on the emergency rule.

Background

Bovine tuberculosis (TB) is an infectious disease caused by *Mycobacterium bovis* (*M. bovis*). It is generally described as a chronic debilitating disease of cattle but it may have an acute, rapidly progressive course. It can cause disease in most warm-blooded vertebrates, including humans. If TB becomes established in Wisconsin, it will pose a significant threat to the health of domestic animals and humans in the state.

The department administers a TB eradication program in cooperation with the United States Department of Agriculture (USDA). After several decades of intense effort, the disease was nearly eradicated in the United States. But recently, the USDA reclassified Michigan from "accredited-free" to "non-modified accredited" because TB was confirmed in several cattle herds and in several native white-tailed deer.

TB is easily transmitted. Wisconsin imports a substantial number of animals from Michigan, and the last known incident of TB in a bovine animal in Wisconsin involved an animal from Michigan. For these reasons, Wisconsin needs to regulate imports from "non-modified accredited" states.

Why an Emergency Rule is Needed

If bovine tuberculosis becomes established in Wisconsin, it will pose a significant threat to the health of domestic animals and humans in the state. Loss of "accredited free" status for Wisconsin would have a significant negative impact on the interstate and international movement of Wisconsin cattle and other livestock. This emergency rule is needed to protect the public peace, health, safety and welfare. This emergency rule will help to

control a serious disease in cattle, goats and cervids and will help protect the marketability of Wisconsin raised animals...The emergency rule will regulate imports until the department can adopt a "permanent" rule.

Pre-Import Requirements

Under this emergency rule, bovine animals, goats and cervids imported to Wisconsin from a tuberculosis "non-modified accredited" state must be accompanied by a certificate of veterinary inspection. The importer must obtain an import permit from the department.

The veterinarian who completes the certificate of veterinary inspection must certify that the animal originates from a herd in which a whole herd TB test has been completed within the last 12 months. The veterinarian must certify that the whole herd test included every animal over 6 months of age in the herd, and that all test results were negative.

An imported animal must be individually tested for tuberculosis within 60 days (90 days for a cervid) prior to the import date, unless the animal is less than 6 months old on the import date. The test may be performed as part of a whole herd test if the whole herd test is performed within 60 days (90 days for a cervid) prior to the import date.

Post-Import Testing

An animal imported to Wisconsin from a tuberculosis non-modified accredited state must be tested for tuberculosis not less than 90 days nor more than 120 days after it is imported. This testing requirement does not apply to feeder cattle that are confined to the receiving premises until they are shipped to slaughter. (The feeder cattle, when shipped to slaughter, must be accompanied by USDA form VS1-27.)

Post-Import Confinement

Animals imported to Wisconsin from a tuberculosis non-modified accredited state may not be commingled with any other animals in this state, or removed from the premises at which they are first received in this state, until they test negative for tuberculosis or are shipped to slaughter.

Exception

This emergency rule does not apply to animals that are imported directly to a slaughtering establishment for slaughter.

Public Hearing

A public hearing on this emergency rule has been scheduled for September 19, 2000 at 2:00 p.m. in the Prairie Oak State Office Building, Room 172, 2811 Agriculture Drive, Madison, WI.


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

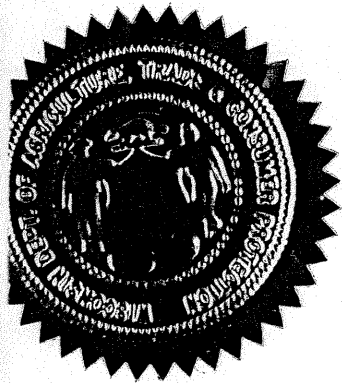
TO THE PEOPLE OF THE STATE OF WISCONSIN:

I, Ben Brancel, Secretary of the Wisconsin Department of Agriculture, Trade and Consumer Protection, and custodian of the official records of said Department, do hereby certify that the annexed order adopting emergency rules relating to importing bovine animals, goats or cervids from a state designated by USDA as a tuberculosis "non-modified accredited" state was duly adopted by the Department on August 7, 2000.

I further certify that said copy has been compared by me with the original in the Department and that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Department at the Department offices in the City of Madison, this 7th day of August, 2000.


Ben Brancel
Secretary



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 May2000

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 16 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

* by polling

**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 create ATCP 16 relating to importing bovine
3 animals, goats or cervids from a state designated by USDA as a tuberculosis “non-
4 modified accredited” state.

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

Statutory Authority: s. 93.07(1), Stats.

Statutes Interpreted: ss. 93.07(10), 95.20 and 95.25, Stats.

In order to protect the public from bovine tuberculosis, this emergency rule restricts the importation of animals from states that the United States department of agriculture (USDA) has classified as “non-modified accredited.”

Background

Bovine tuberculosis (TB) is an infectious disease caused by *Mycobacterium bovis* (*M. bovis*). It is generally described as a chronic debilitating disease of cattle but it may have an acute, rapidly progressive course. It can cause disease in most warm-blooded vertebrates, including humans. If TB becomes established in Wisconsin, it will pose a significant threat to the health of domestic animals and humans in the state.

The TB eradication program is administered jointly by the Wisconsin department of agriculture, trade and consumer protection (department) and the USDA. After several decades of intense effort, the disease was nearly eradicated in the United States. Recently the USDA reclassified Michigan from “accredited-free” to “non-modified accredited” because TB was confirmed in several cattle herds and in several native white-tailed deer. Because of the ease of transmission of TB; the substantial number of animals imported to Wisconsin; and because the last known incident of TB in a bovine animal in Wisconsin involved a bovine that was imported from Michigan, the department has determined that

Wisconsin needs to regulate the import of animals that originate from “non-modified accredited” states.

Pre-Import Requirements

Under this emergency rule, bovine animals, goats and cervids imported to Wisconsin from a tuberculosis “non-modified accredited” state must be accompanied by a certificate of veterinary inspection. The importer must obtain an import permit from the department.

The veterinarian who completes the certificate of veterinary inspection must certify that the animal originates from a herd in which a whole herd TB test has been completed within the last 12 months. The veterinarian must certify that the whole herd test included every animal over 6 months of age in the herd, and that all test results were negative.

An imported animal must be individually tested for tuberculosis within 60 days (90 days for a cervid) prior to the import date, unless the animal is less than 6 months old on the import date. The test may be performed as part of a whole herd test if the whole herd test is performed within 60 days (90 days for a cervid) prior to the import date.

Post-Import Testing

An animal imported to Wisconsin from a tuberculosis non-modified accredited state must be tested for tuberculosis not less than 90 days nor more than 120 days after it is imported. This testing requirement does not apply to feeder cattle that are confined to the receiving premises until they are shipped to slaughter. (The feeder cattle, when shipped to slaughter, must be accompanied by USDA form VS1-27.)

Post-Import Confinement

Animals imported to Wisconsin from a tuberculosis non-modified accredited state may not be commingled with any other animals in this state, or removed from the premises at which they are first received in this state, until they test negative for tuberculosis or are shipped to slaughter.

Exception

This emergency rule does not apply to animals that are imported directly to a slaughtering establishment for slaughter.

FINDING OF EMERGENCY

(1) Bovine tuberculosis is a contagious, infectious and communicable disease caused by *Mycobacterium bovis* (*M. bovis*). It affects cattle, bison, deer, elk, goats and

- 1 (1) "Bovine animal" has the meaning given in s. ATCP 11.01(11).
- 2 (2) "Certificate of veterinary inspection" has the meaning given in s. ATCP
- 3 11.01(17).
- 4 (3) "Cervid" has the meaning given in s. ATCP 11.01(18m).
- 5 (4) "Federal bureau" has the meaning given in s. ATCP 11.01(30).
- 6 (5) "Feeder cattle" has the meaning given in s. ATCP 11.01(31)
- 7 (6) "Herd" has the meaning given in s. ATCP 11.01(37).
- 8 (7) "Non-modified accredited state" means a state that the federal bureau has
- 9 classified as a bovine tuberculosis non-modified accredited state.
- 10 (8) "Originates from a herd" has the meaning given in s. ATCP 11.01(58).
- 11 (9) "Originates from a state" has the meaning given in s. ATCP 11.01(58m).
- 12 (10) "Slaughtering establishment" has the meaning given in s. ATCP 11.01(71).
- 13 (11) "State veterinarian" has the meaning given in s. ATCP 11.01(74).
- 14 (12) "Tuberculosis" has the meaning given in s. ATCP 11.01(80).
- 15 (13) "Whole herd test" means a test in which every animal 6 months of age or
- 16 older in a herd is tested for tuberculosis using an approved test.

17 **ATCP 16.02 Bovine animals.** (1) PRE-IMPORT REQUIREMENTS. No person may
18 import to this state any bovine animal that originates from a non-modified accredited
19 state unless all the following apply:

20 (a) The animal is accompanied by a valid certificate of veterinary inspection that
21 complies with ss. ATCP 11.02 and 11.11(1). The certificate shall include all the
22 following information:

- 23 1. The identification number of the import permit required under par. (b).

1 2. The whole herd test result required under par. (c).

2 3. The individual test result required under par. (d).

3 (b) The department issues an import permit under s. ATCP 11.03.

4 (c) The animal originates from a herd that has tested negative on a whole herd
5 test conducted within 12 months prior to the import date.

6 (d) The animal has tested negative on a tuberculosis test conducted within 60
7 days prior to the import date, or is less than 6 months old on the import date.

8 **NOTE:** USDA rules for interstate shipment of animals may specify a different
9 time period for tuberculosis testing prior to interstate shipment. An
10 importer must comply with USDA rules; however, compliance with
11 USDA rules does not excuse a violation of par. (d).
12

13 (2) POST-IMPORT TESTING. A bovine animal imported to this state from a non-
14 modified accredited state shall be tested for tuberculosis not less than 90 days nor more
15 than 120 days after it is imported. This testing requirement does not apply to feeder
16 cattle imported for feeding prior to slaughter if all the following apply:

17 (a) The feeder cattle are confined to the premises at which they are first received
18 in this state, until they are shipped to slaughter.

19 (b) The feeder cattle, when shipped to slaughter, are accompanied by a USDA
20 form VS1-27.

21 (3) POST-IMPORT CONFINEMENT. Bovine animals imported from a non-modified
22 accredited state may not be commingled with any other animals in this state, or removed
23 from the premises at which they are first received in this state, until one of the following
24 occurs:

25 (a) The animals test negative for tuberculosis under sub. (2).

26 (b) The animals are shipped to a slaughtering establishment for slaughter.

1 (4) EXEMPTION. This section does not apply to animals that are imported directly
2 to a slaughtering establishment for slaughter.

3 **ATCP 16.03 Goats.** (1) PRE-IMPORT REQUIREMENTS. No person may import to
4 this state any goat that originates from a non-modified accredited state unless all the
5 following apply:

6 (a) The goat is accompanied by a valid certificate of veterinary inspection that
7 complies with s. ATCP 11.02. The certificate shall include all the following information:

- 8 1. The identification number of the import permit required under par. (b).
- 9 2. The whole herd test result required under par. (c).
- 10 3. The individual test result required under par. (d).

11 (b) The department issues an import permit under s. ATCP 11.03.

12 (c) The goat originates from a herd that has tested negative on a whole herd test
13 conducted within 12 months prior to the import date.

14 (d) The goat has tested negative on a tuberculosis test conducted within 60 days
15 prior to the import date, or is less than 6 months old on the import date.

16 **NOTE:** USDA rules for interstate shipment of animals may specify a different
17 time period for tuberculosis testing prior to interstate shipment. An
18 importer must comply with USDA rules; however, compliance with
19 USDA rules does not excuse a violation of par. (d).
20

21 (2) POST-IMPORT TESTING. A goat imported from a non-modified accredited
22 state shall be tested for tuberculosis not less than 90 days nor more than 120 days after it
23 is imported.

24 (3) POST-IMPORT CONFINEMENT. Goats imported from a non-modified accredited
25 state may not be commingled with any other animals in this state, or removed from the

1 premises at which they are first received in this state, until the goat tests negative for
2 tuberculosis under sub. (2).

3 (4) EXEMPTION. This section does not apply to goats that are imported directly
4 to a slaughtering establishment for slaughter.

5 **ACTP 16.04 Cervids.** (1) PRE-IMPORT REQUIREMENTS. No person may import
6 to this state any cervid that originates from a non-modified accredited state unless all the
7 following apply:

8 (a) The cervid is accompanied by a valid certificate of veterinary inspection that
9 complies with s. ATCP 11.02. The certificate shall include all the following information:

10 1. The identification number of the import permit required under par. (b).

11 2. The whole herd test result required under par. (c).

12 3. The individual test result required under par. (d).

13 (b) The department issues an import permit under s. ATCP 11.03.

14 (c) The cervid originates from a herd that has tested negative on a whole herd test
15 conducted within 12 months prior to the import date.

16 (d) The cervid has tested negative on a tuberculosis test conducted within 90 days
17 prior to the import date, or is less than 6 months old on the import date.

18 **NOTE:** USDA rules for interstate shipment of animals may specify a different
19 time period for tuberculosis testing prior to interstate shipment. An
20 importer must comply with USDA rules; however, compliance with
21 USDA rules does not excuse a violation of par. (d).
22

23 (2) POST-IMPORT TESTING. A cervid imported from a non-modified accredited
24 state shall be tested for tuberculosis not less than 90 days nor more than 120 days after it
25 is imported.

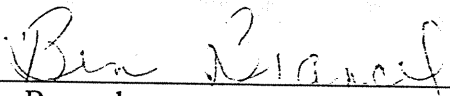
1 (3) POST-IMPORT CONFINEMENT. Cervids imported from a non-modified
2 accredited state may not be commingled with any other animals in this state until the
3 cervid tests negative for tuberculosis under sub. (2).

4 (4) EXEMPTION. This section does not apply to cervids that are imported directly
5 to a slaughtering establishment for slaughter.

6 **EFFECTIVE DATE:** This emergency rule shall take effect on the day it is
7 published and shall remain in effect for 150 days. The department may seek to extend
8 this emergency rule as provided in s. 227.24, Stats.

Dated this 7 day of August, 2000.

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



Ben Brancel
Secretary

FISCAL ESTIMATE

LRB or Bill No. / Adm. Rule No.

DOA-2048 N(R 10/98)

ORIGINAL UPDATED

ATCP 16

CORRECTED SUPPLEMENTAL

Amendment No. (If Applicable)

Subject

DATCP emergency rule changes to chs. ATCP 16 relating to imports from non-modified accredited TB states.

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

Increase Existing Appropriation Increase Existing Revenues

Decrease Existing Appropriation Decrease Existing Revenues

Decrease Costs

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

50.115 (302)

Assumptions Used in Arriving at Fiscal Estimate

This emergency rule changes cattle, goat and Cervidae import health requirements for non-modified accredited states for tuberculosis. This rule will require a pre-entry import permit. This emergency rule also requires a whole herd negative TB test on the herd of origin within 12 months prior to import into WI. The rule also requires retesting of imported animals at owner's expense after importation. Animals will be quarantined until retesting is completed.

It is estimated that up to 20 alleged illegal import cases may require investigation and resolution during the period this emergency rule is in affect. Each case is expected to require 4.5 hours of employee time. Total cost will be approximately \$2,000. This time can be accommodated with existing staff and through reprioritization of work assignments in the field

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

DATCP Clarence Siroky 608-224-4872

Authorized Signature/Telephone No.

Barbara Knapp (608) 224-4746

Date

8/8/00

FISCAL ESTIMATE WORKSHEET

2000 SESSION

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

ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

LRB or Bill No./Adm.Rule No.
ATCP 16

Amendment No.

Subject

Imports from non-modified accredited TB states

I. One-time Cost or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):
\$2,000

II. Annualized Cost:

Annualized Fiscal Impact on State funds from:

A. State Costs by Category	Increased Costs	Decreased Costs
State Operations - Salaries and Fringes		\$ -
(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	\$ 2,000	\$ -
FED		-
PRO/PRS		-
SEG/SEG-S		-
III. State Revenues -	Increased Rev.	Decreased Rev.
<small>Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)</small>		
GPR Taxes	\$	\$ -
GPR Earned		-
FED		-
PRO/PRS		-
SEG/SEG-S		-
TOTAL State Revenues	\$	\$ -

NET ANNUALIZED FISCAL IMPACT

	STATE	LOCAL
NET CHANGE IN COSTS	\$ 2,000	\$
NET CHANGE IN REVENUES	\$	\$

Agency Prepared by: (Name & Phone No.) DATCP Clarence Siroky 608-224-4872	Authorized Signature/Telephone No. Barbara Knapp (608) 224-4746	Date 8/8/00
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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 (ch. ATCP 16) relating to importing bovine animals, goats or cervids from a state designated by USDA as a tuberculosis "non-modified accredited" state. The public hearing will be held on **Tuesday, September 19, 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 **September 25, 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 **September 7, 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: s. 93.07(1), Stats.

Statutes Interpreted: ss. 93.07(10), 95.20 and 95.25, Stats.

In order to protect the public from bovine tuberculosis, this emergency rule restricts the importation of animals from states that the United States department of agriculture (USDA) has classified as "non-modified accredited."

Background

Bovine tuberculosis (TB) is an infectious disease caused by *Mycobacterium bovis* (*M. bovis*). It is generally described as a chronic debilitating disease of cattle but it may have an acute, rapidly progressive course. It can cause disease in most warm-blooded

vertebrates, including humans. If TB becomes established in Wisconsin, it will pose a significant threat to the health of domestic animals and humans in the state.

The TB eradication program is administered jointly by the Wisconsin department of agriculture, trade and consumer protection (department) and the USDA. After several decades of intense effort, the disease was nearly eradicated in the United States. Recently the USDA reclassified Michigan from "accredited-free" to "non-modified accredited" because TB was confirmed in several cattle herds and in several native white-tailed deer. Because of the ease of transmission of TB; the substantial number of animals imported to Wisconsin; and because the last known incident of TB in a bovine animal in Wisconsin involved a bovine that was imported from Michigan, the department has determined that Wisconsin needs to regulate the import of animals that originate from "non-modified accredited" states.

Rule Contents

Pre-Import Requirements

Under this emergency rule, bovine animals, goats and cervids imported to Wisconsin from a tuberculosis "non-modified accredited" state must be accompanied by a certificate of veterinary inspection. The importer must obtain an import permit from the department.

The veterinarian who completes the certificate of veterinary inspection must certify that the animal originates from a herd in which a whole herd TB test has been completed within the last 12 months. The veterinarian must certify that the whole herd test included every animal over 6 months of age in the herd, and that all test results were negative.

An imported animal must be individually tested for tuberculosis within 60 days (90 days for a cervid) prior to the import date, unless the animal is less than 6 months old on the import date. The test may be performed as part of a whole herd test if the whole herd test is performed within 60 days (90 days for a cervid) prior to the import date.

Post-Import Testing

An animal imported to Wisconsin from a tuberculosis non-modified accredited state must be tested for tuberculosis not less than 90 days nor more than 120 days after it is imported. This testing requirement does not apply to feeder cattle that are confined to the receiving premises until they are shipped to slaughter. (The feeder cattle, when shipped to slaughter, must be accompanied by USDA form VS1-27.)

Post-Import Confinement

Animals imported to Wisconsin from a tuberculosis non-modified accredited state may not be commingled with any other animals in this state, or removed from the premises at which they are first received in this state, until they test negative for tuberculosis or are shipped to slaughter.

Exception

This emergency rule does not apply to animals that are imported directly to a slaughtering establishment for slaughter.

FINDING OF EMERGENCY

(1) Bovine tuberculosis is a contagious, infectious and communicable disease caused by *Mycobacterium bovis* (*M. bovis*). It affects cattle, bison, deer, elk, goats and other species, including humans. Bovine tuberculosis in infected animals and humans manifests itself in lesions of the lung, bone, and other body parts. Bovine tuberculosis causes weight loss and general debilitation, and can be fatal.

(2) Wisconsin is currently classified by the United States Department of Agriculture (USDA) as “accredited-free” for tuberculosis.

(3) The USDA recently reclassified Michigan from “accredited-free” to “non-modified accredited,” reflecting a higher risk of bovine tuberculosis.

(4) A significant number of bovine animals, goats and cervids are imported to Wisconsin from Michigan each year.

(5) The last known case of bovine tuberculosis in cattle in Wisconsin was confirmed in an animal imported from Michigan.

(6) If bovine tuberculosis becomes established in Wisconsin, it will pose a significant threat to the health of domestic animals and humans in this state.

(7) This emergency rule is needed to protect the public peace, health, safety and welfare. This emergency rule will help to control a serious disease in cattle, goats and cervids and will help protect the marketability of Wisconsin-raised animals.

Fiscal Estimate

The department anticipates costs to the department of approximately \$2000 as a result of this emergency rule. The department can accommodate these costs in its current budget. The department does not anticipate any additional costs to counties or other local governments.

Regulatory Flexibility Analysis

This emergency rule may have some financial impact on small business people who import bovine animals, goats or cervids. If these people import animals from states designated tuberculosis "non-modified" accredited, these people may incur additional costs associated with post-import testing of the animals. However, they may avoid additional testing costs by refraining from importing animals that originate from tuberculosis non-modified accredited states.

Despite the potential costs associated with testing, the rule is needed because the costs that would be incurred by small business people if bovine tuberculosis is imported to Wisconsin far exceeds any additional costs associated with testing animals that originate from tuberculosis non-modified accredited states.

Copies of the Emergency Rule

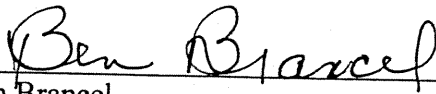
A copy of the emergency rule to be considered may be obtained free of charge from:

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

(608) 224.4883

Dated this 11 day of August, 2000.

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



Ben Brancel
Secretary