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## JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES

### *Emergency Rule Extension Motion Form*

328 Northwest, State Capitol

1:00 PM

Moved by Robson, Seconded by  Schultz

THAT, pursuant to s. 227.24(2)(a), stats., the Joint Committee for Review of Administrative Rules extend the effective period of emergency rule TCB 1 by 60 days at the request of the Tobacco Control Board.

COMMITTEE MEMBER	Aye	No	Absent
1. Senator ROBSON	X		
2. Senator GROBSCHMIDT	X		
3. Senator HANSEN	X		
4. Senator SCHULTZ	X		
5. Senator COWLES	X		
6. Representative GROTHMAN		X	
7. Representative SERATTI	X		
8. Representative GUNDERSON	X		
9. Representative KREUSER			
10. Representative TURNER	X		
Totals			

Motion Carried

Motion Failed



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## JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES

### *Emergency Rule Extension Motion Form*

328 Northwest, State Capitol

1:00 PM

Moved by Grothman, Seconded by Gunderson

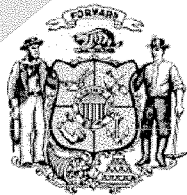
THAT, pursuant to s. 227.24(2)(a), stats., the Joint Committee for Review of Administrative Rules extend the effective period of emergency rule NR 47 by 60 days at the request of the Department of Natural Resources.

COMMITTEE MEMBER	Aye	No	Absent
1. Senator ROBSON	X		
2. Senator GROBSCHMIDT	X		
3. Senator HANSEN	X		
4. Senator SCHULTZ	X		
5. Senator COWLES	X		
6. Representative GROTHMAN	X		
7. Representative SERATTI	X		
8. Representative GUNDERSON	X		
9. Representative KREUSER			
10. Representative TURNER	X		
Totals			

Motion Carried

Motion Failed

MAR 05 2001



# Wisconsin Tobacco Control Board

**Earnestine Willis**

Chair  
Physician, Associate Professor  
Medical College of Wisconsin

**Dionna Austin**, Student  
Madison High School, Milwaukee

**John Benson**, Superintendent  
Wisconsin Department of Public Instruction

**Stuart Berger**, Medical Director  
Pediatric Heart Transplant Program  
Children's Hospital of Wisconsin

**Paul Carbone**, Professor Emeritus  
University of Wisconsin  
Comprehensive Cancer Center

**William J. Domina**  
Principle Assistant Corporation Counsel  
Waukesha County

**Bill Elliott**, Dean, College of Communication  
Marquette University

**Eric Englund**, President  
Wisconsin Insurance Alliance

**Kathleen L. Falk**, County Executive  
Dane County

**Patricia A. Finder-Stone**  
Registered Nurse/Community Volunteer  
De Pere

**Gary A. Gonczy**  
Director of Marketing/Advertising  
Kwik Trip, Inc.

**Cecelia I. Gore**  
Program Officer  
Jane B. Pettit Foundation

**Senator Robert Jauch**  
25<sup>th</sup> Senate District  
Wisconsin State Senate

**Todd Kirkpatrick**, Student  
University of Wisconsin, Platteville

**Representative Rob Kreibich**  
93<sup>rd</sup> Assembly District  
Wisconsin State Assembly

**Representative MaryAnn Lippert**,  
70<sup>th</sup> Assembly District  
Wisconsin State Assembly  
Health Educator

**Jack Lockhart**, President  
State Medical Society

**John E. Mielke**, Cardiologist  
Appleton Cardiology Associates, S.C.

**Kristi Morrissey**, Student  
Sun Prairie High School, Sun Prairie

**Brandon R. Scholz**, President  
Wisconsin Grocers Association

**Marian L. Sheridan**, Supervisor  
School Health Programs  
Fond du Lac School District

**Frank M. Sterner**, President and CEO  
E.R. Wagner Manufacturing Co., Inc.

**David Gundersen**, Executive Director  
Wisconsin Tobacco Control Board

March 5, 2001

The Honorable Judy Robson, Co-Chairperson  
Joint Committee for Review of Administrative Rules  
Room 15 South, State Capitol  
P.O. Box 7882  
Madison, Wisconsin 53707-7882

Dear Senator Robson:

The Tobacco Control Board has an emergency rulemaking order in effect that will expire before the emergency rules are replaced by permanent rules unless the effective period of the emergency order is extended. Pursuant to s. 227.24 (2), Stats., I ask the Joint Committee to extend the effective period of the emergency order by 60 days as indicated below. The emergency rule is as follows:

**Tobacco Control Board Activities.** The emergency rulemaking order creating rules was published and effective on November 7, 2000, and **will expire on April 6, 2001**, unless extended. The Board's rulemaking order provides the Board with criteria, procedures, requirements and conditions for the award of project grants from the appropriation under s. 20.436 (1) (tc), Stats., to organizations that operate or propose to operate programs reducing tobacco use by preventing tobacco use, promoting tobacco use cessation, and eliminating environmental tobacco smoke.

Replacement permanent rules were sent to the Legislative Council for review on December 8, 2000 and were the subject of a public hearing held on January 10, 2001. The Board intends to send the Legislative Report to the Presiding Officers of the Senate and Assembly during the week of March 5, 2001. Consequently, the Board will not be able to file the rules until at least April 12 for a June 1, 2001, effective date. Therefore, I request an extension of the effective period of the emergency rules by **60 days**, through June 5, 2001. If the effective period of the emergency rules is not extended, in the interim, the Board will not have the authority to administer its awarding of project grants.

A copy of the emergency rulemaking order is attached to this letter. If you have any questions about the rules, you may contact me at 267-0944.

Sincerely,

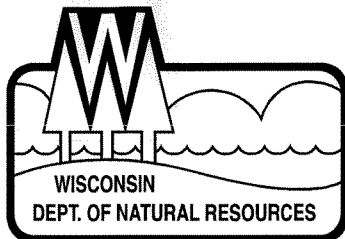
David Gundersen  
Executive Director

Senator Robson  
March 5, 2001  
Page 2

Attachments

cc Representative Grothman  
Senator Fred Risser  
Speaker Scott Jensen

MAR 19 2001



**State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES**

Scott McCallum, Governor  
Darrell Bazzell, Secretary

101 S. Webster St.  
Box 7921  
Madison, Wisconsin 53707-7921  
Telephone 608-266-2621  
FAX 608-267-3579  
TTY 608-267-6897

March 14, 2001

Honorable Glenn Grothman, Chair  
Joint Committee for Review of  
Administrative Rules  
Room 15 North  
State Capitol,

Honorable Judy Robson, Chair  
Joint Committee for Review of  
Administrative Rules  
Room 15 South  
State Capitol

Subject: Emergency Rule Extension for FR-41-00(E)


Dear Chairs:

The Department of Natural Resources, under s. 227.24(2), Stats., is requesting the Joint Committee for Review of Administrative Rules to extend Natural Resources Board Emergency Order No. FR-41-00(E) for 60 days. This emergency order pertaining to the federal cost sharing program to suppress gypsy moths took effect on November 10, 2000 and is to expire on April 9, 2001.

The extension of the emergency rule is needed so that the department can continue to make payments for administrative costs to the participating counties.

A copy of the emergency order is attached. If you have any questions, please contact Andrea Diss of the Bureau of Forestry at 264-9247.

Sincerely,

  
Darrell Bazzell  
Secretary

Attach.

cc: Andrea Diss – FR/4  
Carol Turner – LS/5

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD  
AMENDING AND CREATING RULES

The State of Wisconsin Natural Resources Board proposes an order to amend NR 47.005(1), 47.007(1) and 47.008(1); and to create subch. IX of ch. NR 47 relating to the federal cost sharing program to suppress gypsy moths

FR-41-00(E)

Analysis Prepared by Department of Natural Resources

Statutory authority: ss. 227.11(2) and 227.24, Stats.

Statutes interpreted: ss. 26.30, 28.01 and 28.07, Stats.

The purpose of this rule is to establish the administration and procedures for participation by landowners through counties in a voluntary, cooperative state suppression program for outbreaks in Wisconsin of a foreign pest, the gypsy moth. The suppression program will include an aerial insecticide treatment program (administered in partnership with the department of agriculture, trade and consumer protection) and administration of federal cost sharing for participants in that treatment program.

Gypsy moth is not native to Wisconsin but has become established in eastern counties of the state. Where this pest is established, it goes through periodic outbreaks in which the population of gypsy moth explodes and forests can be stripped of leaves in late June. The stress of heavy defoliation can cause the death of some trees and leaves surviving trees weak allowing attack by other pests and diseases. When outbreaks occur, the public typically becomes concerned and looks for ways to reduce the population of gypsy moth to tolerable levels. Treatments to kill large numbers of the pest can be expensive, at times damaging to our native insects and other animals, or even dangerous to the landowner when pesticides are not used according to directions. The department organized suppression program will provide the public with a safe, effective and affordable means to prevent damage to their trees.

The suppression program will be offered to landowners through counties and municipalities if the county in which they are located declines to participate. Participating counties or municipalities will provide a coordinator who will serve as the contact for the public and the department. The rule defines the tasks that will be performed by the participating counties and municipalities, how to apply for the program, criteria of eligible areas for treatment and cost sharing under the program and eligible costs that can be shared in the federal cost sharing program.

---

SECTION 1. NR 47.005(1) is amended to read:

NR 47.005(1) APPLICABILITY. The provisions of this section apply only to subchs. II, IV, V, and VIII and IX.

SECTION 2. NR 47.007(1) is amended to read:

NR 47.007(1) The provisions of this section apply only to subchs. II, IV, V, and VIII and IX.

SECTION 3. NR 47.008(1) is amended to read:

NR 47.008(1) The provisions of this section apply only to subchs. II, IV, V and IX.

SECTION 4. Subchapter IX of ch. NR 47 is created to read:

Subchapter IX  
Rules for Federal Cost Sharing Program to Suppress Gypsy Moth

**NR 47.910 Purpose.** The purpose of this subchapter is to establish procedures for participation in the state cooperative gypsy moth suppression program consistent with ss. 26.30(2) and (5) and 28.07, Stats., as an alternative to a control program under s. 26.30 (7) to (10) Stats. The suppression program will include awarding and administering federal cost sharing to counties and municipalities if the county in which they are located declines to participate, for the purpose of aerial insecticide treatment of gypsy moth outbreaks.

**NR 47.911 Applicability.** The provisions of this subchapter are applicable to all county and municipal governments applying for cost sharing under this subchapter.

**NR 47.912 Definitions.** In this subchapter:

(1) "Administrative cost" means eligible expenses associated with preparation of applications, notification of residents, collection of funds, maintenance of records and other activities dealing with the administration of the cost shared suppression program for gypsy moths.

(2) "Applicant" means a Wisconsin county or municipality that submits an application for inclusion in the state gypsy moth suppression program and cost sharing for the treatment of and associated administrative costs for suppression of gypsy moth outbreaks.

(3) An "application" is a department form, materials and maps for all areas being proposed for treatment and cost sharing in the state gypsy moth suppression program by an applicant.

(4) "Buffer zone" is 250 feet surrounding a treatment block or exclusion area within a treatment block.

(5) "Department" means the Wisconsin department of natural resources.

(6) "Forest service" means the U.S. department of agriculture, forest service.

(7) "Gypsy moth" refers to the foreign pest, *Lymantria dispar*.

(8) "Local coordinator" means the person designated to represent and act on behalf of a county or municipality for the purpose of applying for cost sharing under this subchapter.

(9) "Local cost share" refers to the portion of the cost of the project other than federal funds administered by the department.

(10) "Municipality" includes cities, villages and towns.

(11) "One fortieth (1/40) acre, fixed radius survey" refers to an egg mass survey used to predict population size in the following spring.

(12) "Preferred hosts" includes tree species listed as Class I and II in the federal Environmental Impact Statement, Appendix G, Table 2-2.

(13) "Project period" means the period of time specified in a grant agreement during which all work shall be accomplished in order to eligible for reimbursement.

(14) "Residential land" means land with an average of one or more residences per 5 acres.

(15) "Rural land" means land with an average of less than one residence per 5 acres.

(16) "Treatment" refers to aerial application of insecticide.

(17) "Treatment block" means an eligible area identified under this subchapter for aerial treatment with insecticide.

**NR 47.913 Eligibility. (1) ELIGIBLE APPLICANTS.** (a) Counties may apply for participation in the state cost shared suppression program. Where a county declines to participate, municipalities within that county may apply for participation in the state cost shared suppression program during the period of November 2000 to July 2001.

(b) An applicant shall designate a local coordinator who will administer requests for treatment from and for residents. Training shall be provided by the department. Local coordinators shall:

1. Respond to requests for assistance from residents.
2. Determine if areas within a county or municipality are eligible for treatment.
3. Identify and map treatment blocks.
4. Complete and file applications with the department under this subchapter.
5. Collect local cost share moneys for treatments.
6. Conduct public awareness meetings in September, October or November each year and local notification meetings once blocks are determined to be eligible by the department.



7. Notify treatment residents within eligible treatment blocks and surrounding buffer zone by mail, publication of a class one legal notice in a local newspaper and a public meeting.

8. Accommodate spray objectors by revising or dropping treatment blocks.
9. Assist with observation of treatment.
10. Develop and submit requests for reimbursement for eligible administrative costs.
11. Maintain records and prepare an annual report to be filed with the department.

(2) ELIGIBLE TREATMENT BLOCKS. To be eligible for cost sharing under this subchapter, a proposed treatment block shall comply with the following criteria:

(a) Be of at least 40 contiguous acres in a compact and regular shape;

(b) Have a canopy coverage of either:

1. 25% or more on residential land;
2. 50% or more on rural land;
3. 50% or more of the canopy must be preferred hosts;

(d) Have the following minimum average number of egg masses per acre as determined by surveys consistent with subd. 3:

1. 500 egg masses per acre on residential land
2. 1000 egg masses per acre on rural land

3. Egg mass surveys shall be conducted using the 1/40<sup>th</sup> acre fixed radius survey method described in subd. 4. The number of survey plots taken to determine the average number of egg masses per acre shall be:

- |                   |  |
|-------------------|--|
| a. 40 -50 acres   | 3 survey plots   |
| b. 51-100 acres   | 4 survey plots   |
| c. 101-200 acres  | 6 survey plots   |
| d. over 200 acres | 6 survey plots plus an additional plot for each additional 100 acres |

4. The procedure for a survey is as follows:

- a. Select a location with forest cover representative of the area,
- b. Describe a circle with a radius of 18.5 feet with a rope and stake,
- c. Count all current year egg masses within the circle making sure to search all items within the circle thoroughly and searching the upper reaches of the trees using binoculars,

d. Multiply the number of current year egg masses found by 40 to determine the number of egg masses per acre as estimated from this plot.

**NR 47.914 Application procedures.** (1) An eligible applicant, described in s. NR 47.913 (1), may apply for participation in the statewide treatment program and cost sharing for aerial insecticide treatment and associated administrative costs for eligible blocks as described in s. NR 47.913 (2).

(2) Applicants shall submit locations of proposed treatment sites and an estimate of acreage to be treated at each site to the department staff designated in the application by November 30.

(3) Applicants shall submit applications for cost sharing on prescribed department forms to department staff, designated by the department and identified on the application, for the area of the state involved no later than January 3, along with a map of each proposed treatment block on a 7.5 minute quadrangle map to be eligible for participation in the treatment program for that year.

(4) Applicants shall submit a record of administrative costs incurred prior to and in preparation to submittal of the application to the department.

(5) The department shall review applications and recommend treatment for blocks determined to be eligible to the department of agriculture, trade and consumer protection for inclusion in the state treatment plan. If the department finds that a block is ineligible, the map and basis for the decision of ineligibility shall be identified by the department and returned to the applicant for revision. Revised proposed treatment blocks shall be reconsidered by the department if filed for reconsideration within 2 weeks of the date of service of the decision of ineligibility on the applicant.

(6) The applicant shall enter into an agreement with the department regarding cost sharing and continued eligibility under this subchapter to continue its eligibility.

(7) The department shall notify applicants of eligibility of proposed blocks.

(a) The applicant shall then notify landowners and tenants within the eligible proposed treatment blocks and buffer zones and provide information on insecticide to be used, approximate timing of treatment and how to register an objection to treatment. Notification requirements of applicants to landowners and tenants shall be detailed in the agreement and include:

1. A written notification of planned treatment mailed to persons owning or renting land in the treatment blocks or buffer zones. The mailing list shall be retained in the records of the applicant for 3 years subsequent to the treatment and submitted to the department upon its request.

2. Publication of a class 1 legal notice in a local newspaper at least 7 days prior to a deadline designated in the notice for registering an objection by a landowner or tenant to treatment on the land under the landowner's or tenant's control.

3. A public meeting conducted by the applicant and held at least 7 days prior to the objection deadline.

(b) Records of calls and notification mailings, meetings and publications shall be kept by the applicant and submitted to the department in accordance with the grant agreement. Failure to maintain and submit these records required herein and in the grant agreement shall result in cancellation of treatment blocks from that applicant.

(8) Applicants shall contact objectors who register an objection before the deadline, determine the cause for objection and attempt to resolve it. If objections cannot be resolved, local coordinators shall work with the department's designated staff to remove the property and a 250 foot surrounding buffer zone from treatment. If a block is removed, the local coordinator shall notify residents and return money that has been collected from the landowners or tenants. Any objections on the basis of payment shall be resolved by the applicant and the applicant is responsible for the entire local share of costs of treatment for blocks under his or her jurisdiction. Properties will be removed from treatment due to nonpayment of the cost share by the applicant.

(9)(a) The department shall provide an estimate of per acre cost for treatment and administration to local coordinators no later than February 15th of each year. The applicant shall enter into an agreement with the department to pay the local cost share as determined under s. NR 47.915. The applicant shall collect the estimated local cost share and pay its share to the department by April 1 unless otherwise provided on the application. Once the local cost share for treatment blocks has been received, the boundaries of these treatment blocks shall be considered fixed. Alteration or cancellation of a treatment block may only then occur in the event of an irreconcilable conflict with a federally listed threatened or endangered species or where the contractor for pesticide application determines treatment of the block to be hazardous to the contractor. If a block is removed, the local coordinator shall notify residents and return money that has been collected from the landowners or tenants.

(b) The department shall under cooperative agreement work with the department of agriculture, trade and consumer protection to coordinate treatments.

(10) Applicants shall submit no later than April 1 of each year a list of telephone contacts associated with each treatment block to the designated department staff specified in the application. Required contacts for each block include; all schools and licensed daycare providers within a treatment block, local government officials, health, police, sheriff and fire departments within whose jurisdiction a treatment block occurs, hospital emergency rooms in the area of treatment blocks, persons requesting 24-hour notification and other concerned parties as needed. These lists will be used by department staff to provide daily notification during the aerial treatments.

(11) Applicants shall submit a bill for eligible expenditures to the department no later than June 30<sup>th</sup> of each year for eligible expenditures incurred for the project period.

**NR 47.915 Grant calculation.** (1) A grant under this subchapter shall be no more of the eligible costs of treatment and administration than the maximum for the appropriate category described in pars. (a) to (d) and be based on the amount of cost share funding received from the forest service.

(a) Privately owned lands under 500 acres per owner may be cost shared up to 50%.

(b) Private lands of over 500 acres per owner may be cost shared at up to 33%.

(c) Publicly owned lands may be cost shared at up to 25%.

(2) If full funding to cover the maximum share of treatment and administrative expenditures of the applicants is not available, the federal funding received shall first be applied to the cost of the treatment. If funds are not adequate to cover the maximum share for the cost of treatment, federal funds will be applied to treatment costs on a pro-rata basis based on acreage per applicant. Federal funding remaining after payment of the maximum share of the cost of treatment shall be paid on a pro-rata basis to the applicants to be applied to administration costs. Applicants are responsible for all treatment and administration costs that exceed the amount reimbursed.

**NR 47.916 Grant awards. (1) GRANT AWARDS.** Grants shall be awarded subject to execution of the department's grant agreement by both the department and the grant applicant.

(2) **PAYMENT.** Grant payments may be made only upon approval of a claim supported by evidence of cost that the reimbursable work has been completed and scheduled match has been met.

(3) **FINAL AUDIT.** All payments are contingent upon final audit. Financial records including all documentation to support entries in the accounting records shall be kept for review by the department auditors for a period of 4 years after final payment.

**NR 47.917 Eligible and ineligible costs. (1) ELIGIBLE COSTS.** Applicant expenditures eligible for reimbursement under this subchapter shall be documented and provided to the department with any request for cost-share reimbursement. Eligible costs from July 1 to June 30 of each year are subject to cost share reimbursement under this subchapter. The following items are eligible for cost share reimbursement under this program only if aerial treatments are conducted and the costs are eligible under this subchapter and as identified in the grant agreement. Eligible costs of treatment and administration of a block shall be no more than the maximum for the appropriate category for the block as described in s. NR 47.915 (1) (a) to (c).

(a) Topographic maps, aerial photos, weather monitoring equipment and personal safety equipment.

(b) Contracts for specialized equipment, including the rental of 2-way radios identified in the agreement between the department and the applicant.

(c) Communication supplies, including the rental of communication equipment used to coordinate the aerial treatment. Costs incurred for cellular phone service is limited to the period of April 20<sup>th</sup> through June 10<sup>th</sup> if the expenses are directly related to aerial treatments.

(d) Landowner notification supplies, including supplies and postage for notification letters, costs of publication of legal notices, costs associated with the public meeting to discuss specific proposed spray blocks, phone bills and documented proportion of office rental.

(e) Educational materials, including the costs of producing or reprinting publications, literature and maps necessary to inform the public about the suppression program.

(f) Newspaper advertisements, including the announcement of the fall scoping meeting and the winter public meetings.

(g) Personnel costs, including salary/wage and benefits for time administering the cost sharing program for treated blocks for personnel including the county coordinator, secretarial support, temporary employees and tax office support.

(h) Travel, including mileage accrued in vehicles used in preparation of sprayed blocks and during suppression activities is reimbursable but must be no more than the DOT standard rates.

(i) Post-suppression evaluation costs.

(2) INELIGIBLE COSTS. Costs associated with treatment blocks which are not sprayed are ineligible for cost sharing. The cost of capital equipment that is not directly necessary or dedicated to the completion of the suppression project and identified in the agreement with the department is ineligible for cost sharing.

An emergency rule is necessary in order to make the cost shared gypsy moth suppression program available for aerial treatments in May 2001. Given the survival of caterpillars this summer, the department expects that populations of gypsy moth will be high enough in some localities in 2001 to necessitate suppression to protect tree health. In order to offer participation in the aerial treatment project and cost sharing from the U.S. Forest Service, it is necessary that preparatory work be done this fall and winter to define treatment blocks. When gypsy moth outbreaks occur, the public typically becomes concerned and looks for ways to reduce the population of gypsy moth to tolerable levels. Treatments to kill large numbers of the pest can be expensive, at times damaging to our native insects and other animals, or even dangerous to the landowner and others when pesticides are not used according to directions. The Department organized suppression program will provide the public with a safe, effective and affordable means to prevent damage to their trees.

The foregoing rules were approved and adopted by the State of Wisconsin Natural Resources Board on October 25, 2000

The rules shall take effect on November 10, 2000.

Dated at Madison, Wisconsin November 2, 2000

STATE OF WISCONSIN  
DEPARTMENT OF NATURAL RESOURCES

By George E. Meyer  
George E. Meyer, Secretary

(SEAL)

ORDER OF THE  
TOBACCO CONTROL BOARD  
CREATING RULES

The Wisconsin Tobacco Control Board finds that an emergency exists and that this rulemaking order is necessary for the immediate preservation of the health, safety and welfare of Wisconsin residents, particularly youth and current smokers. A statement of the facts constituting the emergency is as follows:

Analysis Prepared by the Tobacco Control Board

The health and fiscal impact of tobacco use are well documented. In Wisconsin alone, 7,800 deaths occur each year from tobacco-related disease. In addition, Wisconsin government, residents and health care providers pay over \$1.3 billion annually for health care costs associated with tobacco use.

While tobacco's effects are in individuals' futures, immediate action is required to reverse the recent trend toward rising youth addiction and resulting long-term negative health effects of tobacco use. According to the Centers for Disease Control and Prevention, over 3,000 youths begin smoking every day in the United States. In Wisconsin alone, there has been a 19 percent increase in high school tobacco use since 1993, with over 38 percent of high school youth smoking a cigarette in the last month. This increase in youth tobacco use is particularly threatening since over 90 percent of current smokers began smoking before the age of 18. Of the current 1 million smokers in Wisconsin, half will die from tobacco-related diseases such as emphysema, lung cancer, heart disease and stroke.

In addition, tobacco use among specific populations continues to present an ongoing threat to the health of Wisconsin citizens. Wisconsin has a rate of tobacco use among pregnant women that is 30 percent higher than the national average. In addition, the national smoking rate among African-American youth doubled from 14 percent in 1993 to 28 percent in 1997. Finally, the 48% smoking rate of Medicaid recipients is twice the rate of the general population.

The ongoing and emerging health impacts and costs associated with tobacco use necessitate the immediate implementation of the comprehensive initiative to address tobacco use in Wisconsin.

The Board, through this order, is creating chapter TCB 1 relating to the Board's administering and awarding grants for tobacco control and establishing criteria for recipients of the grants. The rule is being promulgated under the authority of s. 255.15 (1m), Stats., for the purpose of establishing criteria, procedures, requirements and conditions for the award of project grants from the appropriation under s. 20.436 (1) (tc), Stats., to organizations that operate or propose to operate programs reducing tobacco use by preventing tobacco use, promoting tobacco use cessation and eliminating environmental tobacco smoke.

ORDER

Pursuant to authority vested in the Tobacco Control Board by ss. 255.15 (1m), 227.11 (2) and 227.24 (1) and (3), Stats., the Tobacco Control Board hereby creates rules interpreting s. 255.15 (1m), Stats., as follows:

SECTION 1. TCB 1 is created to read:

## CHAPTER TCB 1

### TOBACCO CONTROL BOARD ACTIVITIES

TCB 1.01	Authority and purpose.
TCB 1.02	Applicability.
TCB 1.03	Definitions.
TCB 1.04	Project eligibility.
TCB 1.05	Application.
TCB 1.06	Grant awards.
TCB 1.07	Restrictions.

**TCB 1.01 Authority and purpose.** This chapter is promulgated under the authority of ss. 255.15 (1m), Stats., for the purpose of establishing criteria, procedures, requirements and conditions for the award of project grants from the appropriation under s. 20.436 (1) (tc), Stats., to organizations that operate or propose to operate programs reducing tobacco use by preventing tobacco use, promoting tobacco use cessation, and eliminating environmental tobacco smoke.

**TCB 1.02 Applicability.** This chapter applies to the tobacco control board, to applicants for grants awarded by the board, and to organizations that have been awarded grants by the board.

**TCB 1.03 Definitions.** In this chapter:

(1) "Administrative costs" means indirect or direct costs, such as the provision of office space, telephone service and any existing employees associated with implementing grant objectives and activities.

(2) "Applicant" means an organization that applies for a grant from the tobacco control board to operate a program reducing tobacco use by preventing tobacco use, promoting tobacco use cessation, and eliminating environmental tobacco smoke.

(3) "Continuation grant" means a grant awarded by the board to an applicant who received an initial grant for the current funding year and who proposes to continue to operate the same program, or that program as modified in consultation with the board, in the new funding year.

(4) "Evaluation committee" means a committee of board members and other persons invited by board members that reviews and evaluates applications.

(5) "Funding year" means the 12-month period beginning July 1.

(6) "Governmental body" means a state or local agency, board, committee, council, department or public body created by constitution, statute, ordinance, rule or other.

(7) "Grant" means a monetary award made by the board from the appropriation under s. 20.436 (1) (tc), Stats., to an applicant to help the applicant establish or support a program reducing tobacco use by preventing tobacco use, promoting tobacco use cessation, and eliminating environmental tobacco smoke.

(8) "Initial grant" means a grant awarded for the first time to an applicant.

(9) "Public agency" has the meaning prescribed in s. 46.93 (1m) (e), Stats., namely, a county, city, village, town or school district, an agency of Wisconsin state government or an agency of a county, city, village, town or school district.

(10) "Request for proposals" or "RFP" means a document that describes a grant program, invites applications for the grant and specifies who may apply, application procedures, criteria for awarding grants and conditions and restrictions that accompany grant awards.

(11) "Tobacco control board" or "board" means the 21-member tobacco control board established under s. 15.195 (1), Stats., to carry out the responsibilities set out in s. 255.15 (1m), Stats., namely, to award and monitor grants to applicant organizations for reducing tobacco use by preventing tobacco use, promoting tobacco use cessation and eliminating environmental tobacco smoke.

(12) "Tobacco prevention and control" means anti-tobacco activities including but not limited to comprehensive efforts in prevention, cessation, policy advocacy, media and countermarketing, evaluation, monitoring and administrative activities.

**TCB 1.04 Project eligibility.** (1) The board shall do all of the following:

- (a) Fund projects that have prevention and control of tobacco use as their primary goal.
- (b) Make funds available to community coalitions such that each county of the state has the opportunity to have at least one anti-tobacco coalition ensuring tobacco prevention and control activities within its geographic borders.
- (c) Fund only programs or projects that are culturally sensitive.
- (d) Fund media activities that are conducted and evaluated according to media industry standards as identified by the board, its subcommittee, or advisory group. The standards include performance-based outcomes related to media message awareness, attitude change and behavior change. Specific performance-based standards shall be identified in each grant contract based on the scope and content of the media campaign.
- (e) Fund only programs or projects that demonstrate plans and progress toward achieving program quality criteria and indicators of success specified in the grant RFP and the board strategic plan.
- (f) Fund only programs or projects that maintain administrative costs below 10% of total costs.
- (g) Fund only programs and projects that demonstrate independence from the influence of the tobacco industry.

(2) The board may provide funding to governmental organizations performing or providing support for tobacco prevention and reduction activities, including tobacco education, cessation services, policy development, policy advocacy, monitoring, evaluation, resource distribution, program planning or project monitoring.

**TCB 1.05 Application.** (1) WHO MAY APPLY. (a) An applicant may be any of the following:



1. A public agency.
2. A legally-formed organization.
3. A coalition of organizations under the auspices of a public agency or a legally-formed organization.
4. The tribal governing body of a federally recognized Wisconsin tribe or band of Indians, or an American Indian organization appointed by the tribal governing body.

(2) SOLICITATION. (a) The board shall solicit applications for initial grants by preparing one or more RFPs, publishing a legal notice of the availability of each RFP at least twice in the official state newspaper no later than 3 weeks before the application deadline, and distributing copies of an RFP on request.

(b) Based upon satisfactory performance and availability of funds, the board may solicit applications annually for continuation grants from current grantees. The board's solicitations shall be published as a legal notice at least twice in the official state newspaper no later than 3 weeks before the application deadline. The board shall provide details of the continuation grant to interested parties upon request.

**Note:** Persons interested in the Board's solicitation of one or more continuation grants may request details of the solicitation by writing the Tobacco Control Board, 1 West Wilson Street, Room 250, P.O. Box 1190, Madison, Wisconsin 53701-1190.

(3) MAKING APPLICATION. (a) *Initial grants.* 1. An application for an initial grant shall be made on forms included in the RFP.

**Note:** Interested persons may ask to be placed on a mailing list of parties to be sent future RFPs by writing the Tobacco Control Board, 1 West Wilson Street, Room 250, PO Box 1190, Madison, Wisconsin 53701-1190.

2. The RFP shall specify a date by which the applicant must apply.
  3. The application shall be submitted to the board in accordance with the deadline and processes indicated in the RFP.
- (b) *Continuation grants.* 1. The board may solicit applications for continuation grants from currently-funded projects in a form determined by the board to be appropriate for the projects.
2. The continuation solicitation shall specify a date by which the applicant must apply.
  3. The application shall be submitted to the board in accordance with the deadline, required format and content specifications indicated in the continuation solicitation.

(4) CONTENT OF APPLICATION. An application for an initial grant shall include all of the following:

- (a) An application summary sheet.
- (b) The application checklist included in the RFP.

- (c) An abstract that briefly describes the project and highlights the project's purpose.
- (d) A summary of the budget request.
- (e) A justification of the proposed budget detailing cost estimates used in compiling the budget request.
- (f) A narrative description of the program.
- (g) A statement of assurance of compliance with applicable federal statutes and regulations and state statutes and rules, including the requirements of this chapter and the RFP.

(5) REVIEW OF APPLICATIONS. (a) *Applications for initial grants.* 1. Preliminary review. All initial grant applications shall include all of the application contents specified in sub. (4) and, if applicable, the RFP. The board or its designated review committee shall review each application for compliance with the format and content specifications of sub. (4) and the RFP. Applications that fail to meet all of the criteria may not be approved by the board. Rejection of an application for failure to meet form and content specifications is not subject to appeal.

2. Evaluation criteria. The board or its designated evaluation committee shall evaluate initial grant applications that receive a favorable preliminary review as specified in subd. 1. against criteria specified in this subdivision and the RFP. The criteria shall include all of the following:

- a. The applicant's organizational and programmatic capacity to implement the proposed project.
- b. The applicant's understanding and ability to communicate the needs of the target population.
- c. The applicant's stated purpose and objectives for the program and methods and timetable for implementing the program.
- d. The extent to which the applicant's proposed budget is clear and justified.
- e. An evaluation plan for the project.

(b) *Criteria for evaluating continuation applications.* The board or its designated evaluation committee shall evaluate continuation grant applications against all of the following criteria:

- 1. The applicant's understanding and capacity to communicate the needs of the target population.
- 2. The applicant's timetable for implementing the continuation of the current program.
- 3. The quality of the program as measured by program objectives and methodology, evaluation methodology and outcomes, fiscal management, documentation of program services, and the involvement of community partners.

(6) RANKING APPLICATIONS. (a) *Ranking applications for initial grants.* 1. The board or its designated evaluation committee shall weight the importance of each evaluation criterion by assigning points to it. The criteria weighting shall be provided in the RFP.

2. Using the evaluation criteria specified in subs. (4) and (5), the board or its designated evaluation committee shall evaluate each application against each applicable criterion and assign points signifying the degree to which the application meets each criterion up to the maximum number of points specified in the RFP. The total points assigned to the application for all applicable criteria will be the score for each application.

3. The board shall numerically rank each application for each RFP and for continuation grants.

(b) *Ranking applications for continuation grants.* 1. Using evaluation criteria specified in sub. (5) (b), the board or its designated evaluation committee shall evaluate each application through a non-competitive process.

2. The board or its designated evaluation committee shall award continuation grants based upon the applicant's demonstration of effective grant administration and achievement of program outcomes during the previous funding period.

**TCB 1.06 Grant awards.** (1) **MAKING AWARDS.** (a) *Initial grants.* For a given RFP, the board shall award a grant to the applicant with the highest numerical score pursuant to s. TCB 1.05 (6), except that:

1. The board or its designated evaluation committee may reject any application failing to meet the content specifications under s. TCB 1.05 (4). Rejection of an application for failure to meet the content specifications under s. TCB 1.05 (4) is not subject to appeal.

2. The board may negotiate the amount of an award, authorized budget items and programmatic goals and objectives before awarding a grant to an applicant.

3. The board or its designated evaluation committee may reject applications submitted by organizations that or individuals who have a contractual, corporate, organizational or business responsibility to promote or assist in the promotion of, the use of or the sale of tobacco products for a company involved in the production, distribution or marketing of tobacco products.

(b) *Continuation grants.* The board may negotiate the amount of an award, authorized budget items and programmatic goals and objectives before awarding a continuation grant to an applicant.

(c) *Intergovernmental procurements.* In accordance with s. 16.75 (a) and (b), Stats., the board may perform an intergovernmental procurement for purchases of supplies, materials, equipment or contractual services other than printing and stationary, from the federal government, from another state, or from county, city, village, town or other governmental body in the state.

(2) **NOTIFICATION.** The board shall notify all applicants, in writing, within 60 days of the deadline stated in the RFP for an initial grant, or within 30 days of the expiration of an existing grant, of awards for the new funding agreement.

(3) **APPEAL.** An applicant for either an initial grant or a continuation grant may appeal to the board an adverse decision of the board. The appeal shall be in writing and shall fully identify all contested issues. The appeal shall be filed with the board within 10 working days of the date on which the notice of awards is postmarked.

(4) **CONTRACT.** The board shall make all grant awards through a contract between the board and each applicant selected to receive a grant.

(5) **AVAILABILITY OF FUNDS.** (a) The board shall decide in advance of the funding year the amount of funds available for grants from the expected appropriation under s. 20.436 (1) (tc), Stats., and shall announce the availability of funds in one or more RFPs.

(b) All funding decisions shall be contingent upon availability of funds under s. 20.436 (1) (tc), Stats. Any changes in the amount of funds available which were unforeseen at the time of the board's release of an RFP or continuation grant materials shall be accommodated by the board, as appropriate, by means of reduction, elimination or increase in existing awards, by awarding of funds to applicants previously denied due to insufficient funds, or by release of a new RFP or new continuation grant application materials.

(c) The board may reallocate any funds that become available due to any of the following reasons:

1. The board denies an award to a selected grantee as a result of failure of the selected grantee to sign the required agreement.
2. Termination of a project by the board or grantee.
3. A selected grantee refuses a grant or returns grant monies.
4. The board withdraws grant monies.

**TCB 1.07 Restrictions.** (1) **PROHIBITED USE OF FUNDS.** The following activities are prohibited under any grant awarded by the tobacco control board:

- (a) Purchasing tobacco use cessation medications.
- (b) Developing, implementing and evaluating of non-tobacco related activities and programs.
- (c) Supplanting existing anti-tobacco resources and activities.

(2) **VIOLATION OF PROHIBITED ACTIVITIES.** If a grantee conducts prohibited activities, the board may terminate the grant and recover funds previously paid to the grantee for that funding period on a recoupment schedule specified in the grant contract.

(3) **GRANTEE ADMINISTRATION.** (a) A grantee may not use grant funds to supplant existing employe salaries. Grant funds may be used to hire a person who will work 40 or fewer hours per week or to increase the hours of existing employes currently working less than 40 hours per week.

(b) A grantee may not use grant funds to purchase capital equipment without the prior written approval of the board, although funds may be used to rent capital equipment. In this paragraph, "capital equipment" means equipment having a value greater than \$5000 and a useful life of more than one year.

(c) Grant recipients shall annually furnish the board with an independent certified audit of grant expenses within 30 days after receipt of the report from the audit firm but no later than 90

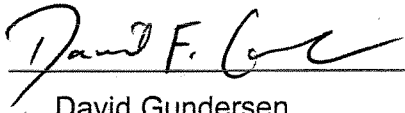
days after completion of the grant recipient's fiscal year. The cost of the audit may be included in an applicant's budget.

(d) Grant recipients shall maintain records and provide information to the board as required by the board for purposes of program and fiscal audits and, at the request of the board, shall appear before the board to respond to any questions about the project and use of the grant monies.

The rules contained in this order shall take effect as emergency rules upon publication in the official state newspaper as provided in s. 227.24 (1) (c), Stats.

Wisconsin Tobacco Control Board

Dated: November 3, 2000

By:   
David Gundersen  
Executive Director

SEAL:

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

February 21, 2001

BY INTER-D

Secretary Jim Harsdorf  
Department of Agriculture, Trade and Consumer Protection  
2811 Agriculture Drive  
Madison, WI

Re: Emergency Rule ATCP 16

Dear Secretary Harsdorf:

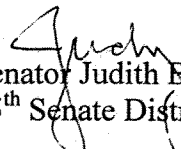
We are writing to inform you that the Joint Committee for Review of Administrative Rules (JCRAR) held a public hearing and executive session on February 20, 2001.


At that meeting, the JCRAR received public testimony regarding 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.

Based on that testimony, the committee adopted a motion extending the effective period of Emergency Rule ATCP 16 for 60 days. The committee approved the motion on a 10 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  
15<sup>th</sup> Senate District

  
Representative Glenn Grothman  
59<sup>th</sup> Assembly District

JBR:GG:da

**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 case 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 VSI-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.

---

### EMERGENCY RULEMAKING ORDER

1 SECTION 1. Chapter ATCP 16 is created to read:

2 CHAPTER ATCP 16

3 IMPORTING ANIMALS FROM TUBERCULOSIS

4 "NON-MODIFIED ACCREDITED" STATES

5 ATCP 16.01 Definitions. In this chapter:

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

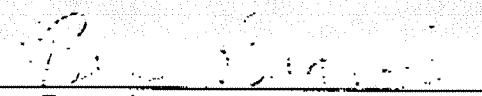
1           (3) POST-IMPORT CONFINEMENT. Cervids imported from a non-modified  
 2 accredited state may not be commingled with any other animals in this state until the  
 3 cervid tests negative for tuberculosis under sub. (2).

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**

DOA-2048 N(R 10/98)

**2000 Session**

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

ORIGINAL     UPDATED  
 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 Existing Appropriation     Increase Existing Revenues  
 Decrease Existing Appropriation     Decrease Existing Revenues  
 Create New Appropriation

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

Decrease Costs

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

70-115 (G.A.)

**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 <b>Imports from non-modified accredited TB states</b>		
I. One-time Cost or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect): \$2,000		
<b>II. Annualized Cost:</b>		<b>Annualized Fiscal Impact on State funds from:</b>
<b>A. State Costs by Category</b>	<b>Increased Costs</b>	<b>Decreased Costs</b>
State Operations - Salaries and Fringes		\$ -
(FTE Position Changes)	( FTE)	(- FTE)
State Operations - Other Costs		-
Local Assistance		-
Aids to Individuals or Organizations		-
<b>TOTAL State Costs by Category</b>		<b>\$ -</b>
<b>B. State Costs by Source of Funds</b>	<b>Increased Costs</b>	<b>Decreased Costs</b>
GPR	\$ 2,000	\$ -
FED		-
PRO/PRS		-
SEG/SEG-S		-
<b>III. State Revenues -</b>	<b>Increased Rev.</b>	<b>Decreased Rev.</b>
<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		-
<b>TOTAL State Revenues</b>	<b>\$</b>	<b>\$ -</b>

**NET ANNUALIZED FISCAL IMPACT**

	<u>STATE</u>	<u>LOCAL</u>
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. <i>Barbara Knapp</i> Barbara Knapp (608) 224-4746	Date 8/0/00
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State of Wisconsin  
Tommy G. Thompson, Governor

JAN 25 2001

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

January 23, 2001

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 grant another extension for 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 May 7, 2001. Without the extension, the emergency rule will end on March 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.

A copy of the original emergency order, including the finding of emergency, fiscal estimate and the notice of hearing is attached. Also attached is a copy of the extension request dated October 24, 2000.

The final draft of the permanent rule that incorporates the provisions of this emergency rule was approved by the DATCP Board on January 16, 2001.

We plan to submit the final draft rule for Legislative review by February 1, 2001. Because of the time required for legislative review, promulgation and publication, the department is requesting this extension.

Sincerely,

Ben Brancel  
Secretary

Enclosures

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

February 21, 2001

Senator Fred Risser  
Senate President  
Room 220 South

Representative Scott Jensen  
Speaker of the Assembly  
Room 211 West

Re: Emergency Rule ATCP 16  
Emergency Rule PSC 2.06

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 February 20, 2001. At that meeting, the JCRAR received public testimony regarding the following emergency rules:

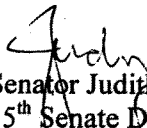
- Emergency Rule ATCP, relating to importing bovine animals, goats or cervids from a state designated by USDA as a tuberculosis "non-modified accredited" state; and
- Emergency Rule PSC 2.06, relating to procedures for the confidential treatment of documents.


Based on the public testimony at the hearing, the committee adopted a motion extending Emergency Rule ATCP for 60 days. The committee approved the motion on a 10 to 0 vote.

Based on the public testimony at the hearing, the committee adopted a motion extending Emergency Rule PSC 2.06 for 60 days. The committee approved the motion on a 10 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  
15<sup>th</sup> Senate District

  
Representative Glenn Grothman  
59<sup>th</sup> Assembly District

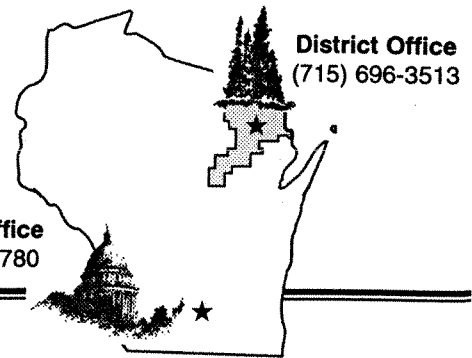
JBR:GG:da

LORRAINE M.  
**SERATTI**

STATE REPRESENTATIVE  
36TH ASSEMBLY DISTRICT

P.O. Box 8953, State Capitol • Madison, Wisconsin 53708-8953  
Toll-Free: (888) 534-0036 • Fax: (608) 282-3636 • Rep.Seratti@legis.state.wi.us

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February 19, 2001

Representative Glen Grothman and Senator Judy Robson, Co-Chairs  
Joint Committee for Review of Administrative Rules

Dear Representative Grothman and Senator Robson,

Please excuse my absence from the February 20<sup>th</sup> JCRAR hearing. This past Friday I became a grandmother for the first time. I will be flying out to be with my daughter and new grandson, Michael Julian Tate, in Philadelphia for most of the week.

I appreciate your understanding in this matter.

Thank you,

A handwritten signature in cursive script that reads "Lorraine M. Seratti".

Lorraine M. Seratti  
State Representative  
36<sup>th</sup> Assembly District