



State of Wisconsin  
Governor Tony Evers

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**Department of Agriculture, Trade and Consumer Protection**  
Secretary-designee Randy Romanski

**DATE:** September 24, 2020

**TO:** Board of Agriculture, Trade and Consumer Protection

**FROM:** Randy Romanski, Secretary-designee  
Darlene Konkle, DVM, MS, DACVIM, Administrator, Division of Animal Health

**SUBJECT: VE 1-11, Veterinarians and Veterinary Technicians**

**PRESENTED BY:** Melissa Mace, Executive Director of the Veterinary Examining Board

**REQUESTED ACTION:**

At the September 24, 2020, Board meeting, the Department will request approval of the attached scope statement SS 064-20, regarding chs. VE 1 through 11 (Veterinarians and Veterinary Technicians).

**SUMMARY:**

The objective of the proposed rule is to make chs. VE 1 through 11 easier to access and understand quickly. The proposed scope also includes evaluating the use of telehealth technologies in the practice of veterinary medicine.

This statement of scope requires approval by both the Veterinary Examining Board (VEB) and the Department of Agriculture, Trade and Consumer Protection (DATCP) Board. Wisconsin Statute s. 89.03 authorizes the VEB to promulgate rules regarding veterinarians and veterinary technicians. However, the authority to determine fees for veterinarians and veterinary technicians is vested in DATCP, pursuant to Wis. Stat. s. 89.063.

2015 Wisconsin Act 55 transferred the VEB from the Department of Safety and Professional Services (DSPS) to DATCP. Current rules refer to the fees required under Wis. Stat. ch. 440, which is in the DSPS portion of the statutes, and does not list the dollar amounts of the fees. DATCP has continued to use the same fee amounts that DSPS used, but these amounts are not stated in chs. VE 1 through 11. Fee amounts would not be changed as a part of this proposal. However, the scope statement includes proposing that existing fee amounts be stated in rule.

The Governor approved scope statement SS 064-20 on May 15, 2020. On June 16, 2020, the Joint Committee for Review of Administrative Rules directed the VEB to hold a preliminary public hearing and comment period, pursuant to Wis. Stat. s. 227.136 (1). The Department held the preliminary public hearing on August 19, 2020, with a written comment period through August 26, 2020. Please see the attached summary of public comments. The Department will also request that the VEB approve this statement of scope at the next VEB meeting.

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**Summary of Public Comments  
Statement of Scope SS 064-20  
Chapters VE 1-11  
Permanent Rule Regarding Licensing, Practice Scope, and Standards of Practice for Veterinarians and  
Veterinary Technicians**

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**Statement of Scope Preliminary Public Hearing  
Teleconference, 2:00 pm, August 19, 2020**

<b>Name/Organization</b>	<b>Position</b>	<b>Summary of Comments</b>
Chris Stokes, Sanimax	For Information	- Asked whether the administration of drugs includes euthanasia drugs.
John Holevoet, Dairy Business Association	Support	- Excited about the prospect of this rule being undertaken and appreciate the department's work on this matter. - Sees this as an opportunity for telehealth. - Optimistic that the end result will be a rule that provides more flexibility for farmers and veterinarians.

**Statement of Scope Preliminary Public Comment Period  
Written Comments Received through August 26, 2020**

<b>Name/Organization</b>	<b>Position</b>	<b>Summary of Comments</b>
Jordan Lamb on behalf of the Wisconsin Veterinary Medical Association (WVMA)	Support	- Supports the scope to revise and reorganize VE 1-11. - Supports that the scope has been revised to clearly allow the VEB to: (1) develop an administrative rule to address the use of telehealth technologies in the practice of veterinary medicine in Wisconsin and (2) allow the development of an administrative code amendment to address the circumstances under which a veterinarian may dispense a drug for a patient of another veterinarian.

# STATEMENT OF SCOPE

## Veterinary Examining Board

**Rule No.:** Chs. VE 1 to 11, Wis. Admin. Code (Revised)

**Relating to:** Licensing, Practice Scope, and Standard of Practice for Veterinarians and Veterinary Technicians

**Rule Type:** Permanent

### 1. Finding/nature of emergency (Emergency Rule only):

Not applicable.

### 2. Detailed description of the objective of the proposed rule:

The objective of the proposed rule is to make chs. VE 1 through 11 easier to access and understand quickly.

Fee amounts would not be changed as a part of this proposal. However, the Veterinary Examining Board (VEB) will propose that existing fee amounts be stated in rule to make this information easier to access.

The VEB may propose that the existing eleven rule chapters be consolidated into as few as three chapters, to make it easier to access information for veterinarians, veterinary technicians, and the veterinary professional assistance program.

The VEB proposes that a new chapter be added, to include procedures on discipline that were part of Department of Safety and Professional Services (DPS) rules pertaining to all DPS boards but were not transferred to the Department of Agriculture, Trade and Consumer Protection (DATCP) in chs. VE 1 through 11.

The VEB proposes to evaluate rule provisions and language for clarity, consistency, and ease of use, including evaluating procedures and processes, technical changes and updates, delegation of veterinary medical acts, references to relevant statutory requirements, and terminology.

The VEB proposes to evaluate rule language to fulfill the requirements in Wis. Stat. s. 89.078 (2), which requires the VEB to determine by rule what information and documentation a credential holder shall include with a written notice of a conviction.

In response to public comments received during the preliminary public hearing and comment period for SS 125-19, the VEB proposes to evaluate rule language to address the use of telehealth technologies in veterinary medicine and evaluate the circumstances under which a veterinarian may dispense a drug for a patient of another veterinarian.

### 3. Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:

#### *Existing Policies Relevant to the Rule*

- The current rules, consisting of chs. VE 1 through 11, are denominated as follows:
  1. Authority and Definitions
  2. Examinations

3. Licensure by Examination for Veterinarians
  4. Licensure by Endorsement for Veterinarians
  5. Practice Related to Veterinary Schools
  6. Temporary Consulting Permits
  7. Standards of Practice and Unprofessional Conduct for Veterinarians
  8. Certification for Veterinary Technicians
  9. Standards of Practice and Unprofessional Conduct for Veterinary Technicians
  10. Continuing Veterinary Education for Veterinarians and Veterinary Technicians
  11. Veterinary Professional Assistance Program
- 2015 Wisconsin Act 55 transferred the VEB from DSPS to DATCP. However, most of the general licensing requirements did not transfer to DATCP in the current chs. VE 1 through 11. This includes rules specifying the procedures and requirements for all boards under DSPS, as well as the fee amounts for VEB fees.
  - Current rules refer to the fees required under Wis. Stat. ch. 440, which is the DSPS portion of the statutes, and does not list the dollar amounts of the fees. DATCP has continued to use the same fee amounts that DSPS used, but these amounts are not stated in chs. VE 1 through 11.
  - Wis. Stat. s. 89.03 (1) requires the VEB to review the rules at least once every 5 years to determine whether they are consistent with current practice.

*New Policies Proposed to be Included in the Rule*

- Evaluating whether to state the current fee amounts in rule. Fee amounts would not change.
- Evaluating whether to consolidate the existing eleven chapters.
  - o This could include evaluating whether to consolidate the existing rules into as few as three chapters: one for veterinarians, one veterinary technicians, and one for the professional assistance program. Consolidation could make the rules easier to access quickly.
- Evaluating whether to add a chapter for relevant disciplinary procedures that did not transfer in rule from DSPS to DATCP in chs. VE 1 through 11.
- Evaluating whether to make changes regarding procedures and processes.
  - o For example, evaluating whether to document a review process for the annual review of colleges and technical schools referenced in ss. VE 1.02 (1e) and 8.01 (1), remove the reference to the review being annual, or make no change.
  - o For example, evaluating whether to expand the process under s. VE 3.05 to include applicants who are scheduled to take or are awaiting results from the examination on state laws and rules, document a separate process, or make no change.
- Evaluating whether to make technical changes and updates.
  - o For example, evaluating whether to add the denial of a license to the list of reasons for a temporary permit to expire under s. VE 3.05 (6).
  - o For example, evaluating whether to permit the electronic submission of the certification of graduation through an online system managed by the American Association of Veterinary State Boards.
  - o For example, evaluating whether to provide additional direction in the rules to assure the requirements for access to health care records required in Wis. Stat. s. 89.075 are clear and consistently applied.

- Evaluating whether to allow licensed veterinarians to delegate any additional veterinary medical acts to certified veterinary technicians and/or unlicensed assistants.
  - o For example, evaluating whether to modify s. VE 7.02 to allow unlicensed assistants to administer an IV catheter under the direct supervision of a veterinarian present on the premises, per requests from stakeholders.
- Evaluating for consistency and ease of use the places in which rule requirements repeat, or refer to requirements under Wis. Stat. ch. 89. This could include evaluating whether to remove repetitive rule language, refer to the relevant section of statute within the rule text, and use notes to alert the reader to related requirements in the statute, or make no change.
  - o For example, unprofessional conduct is listed in Wis. Stat. s. 89.07 and Wis. Admin. Code s. VE 7.06. The rule language repeats some of the items that are listed in statute, but not all. For items that are not repeated, the rule does not refer the reader to the statute through either the rule text or a note. This partial repetition and partial absence can make the rule unnecessarily complex to understand.
  - o For example, evaluating the circumstances under which a veterinarian may dispense a drug for a patient of another veterinarian. This would include evaluating when a veterinarian could fill a prescription for the client of another veterinarian.
- Evaluating whether to modify terminology for clarity and consistency.
  - o For example, evaluating whether to rename temporary permits (s. VE 3.05) and/or temporary consulting permits (ch. VE 6) to make it easier to distinguish between the different types of permits.
  - o For example, evaluating whether to use the word "dispense" rather than "sell" to be more consistent with statutory language and definitions to make the language clearer and easier to understand.
- Evaluating new language to fulfill the requirements of Wis. Stat. s. 89.078 (2), which requires the VEB to determine by rule what information and documentation a credential holder shall include with a written notice of a conviction. The rules do not currently state what information and documentation is required.
- Evaluating new language to address the use of telehealth technologies in veterinary medicine. This would include evaluating under what circumstances it may be appropriate to utilize telehealth technologies in the practice of veterinary medicine versus an in-person physical examination.

#### *Analysis of Policy Alternatives*

- Rule Proposal: The existing rules would be evaluated for clarity and ease of use. The fee amounts would remain the same but could be stated in rule to make them readily accessible. Restructuring the chapters could make the rules easier to read and reference quickly. Adding a chapter for relevant procedures could make those procedures clearer and more accessible for credential holders. Evaluating procedures and processes, technical changes and updates, delegation of veterinary medical acts, references to relevant statutory requirements, and terminology could make the rules more consistent and easier to understand. Adding rule language to determine what information and documentation is required in a written notice of conviction from a credential holder would fulfill the requirements of Wis. Stat. s. 89.078 (2). The rule proposal could reduce the burden to veterinarians, veterinary technicians, and consumers of veterinary services, as the rules may become easier to read and understand quickly. The rule proposal would also allow the VEB to respond to public interest to address the use of telehealth technologies in veterinary medicine.
- No Change: Should the VEB not modify the existing rules, the rules would remain unnecessarily difficult to understand. The amounts of fees would continue to be unspecified in rule. Current

requirements relating to veterinarians and veterinary technicians would remain scattered across multiple rule chapters. Some of the board's procedures and processes would remain unclear. The board would not be able to evaluate technical changes and updates or the delegation of veterinary medical acts. References to relevant statutory requirements would remain inconsistent. Some terminology would continue to be unclear and confusing, such as language regarding dispensing versus selling. The rules would continue to not state what information and documentation is required in a written notice of conviction from a credential holder as required by Wis. Stat. s. 89.078 (2). Each of these concerns makes the current rules unnecessarily difficult to understand. The VEB would also not be able to evaluate and respond to public interest to address the use of telehealth technologies in veterinary medicine.

**4. Detailed explanation of statutory authority for the rule (including the statutory citation and language):**

Section 89.03, Stats., authorizes the VEB to promulgate rules as follows:

**89.03 Rules.**

- (1) The examining board shall promulgate rules, within the limits of the definitions under s. 89.02 (6), establishing the scope of practice permitted for veterinarians and veterinary technicians and shall review the rules at least once every 5 years to determine whether they are consistent with current practice. The examining board may promulgate rules relating to licensure qualifications, denial of a license, certification, or temporary permit, unprofessional conduct, and disciplinary proceedings.
- (2) The examining board shall promulgate rules requiring training and continuing education sufficient to assure competency of veterinarians and veterinary technicians in the practice of veterinary medicine, except that the board may not require training or continuing education concerning the use, handling, distribution, and disposal of pesticides other than for disciplinary purposes.
- (3) The examining board shall promulgate rules specifying a procedure for addressing allegations that a person licensed or certified by the veterinary examining board under this chapter has practiced as a veterinarian or veterinary technician while impaired by alcohol or other drugs or that his or her ability to practice is impaired by alcohol or other drugs, and for assisting a person licensed by the veterinary examining board under this chapter who requests to participate in the procedure or who requests assistance in obtaining mental health services. In promulgating rules under this subsection, the examining board shall seek to facilitate early identification of chemically dependent veterinarians or veterinary technicians and encourage their rehabilitation. The rules promulgated under this subsection may be used in conjunction with the formal disciplinary process under this chapter. The examining board may contract with another entity to administer the procedure specified under the rules promulgated under this subsection.

Section 89.063, Stats., authorizes the Department to determine by rule the fees as follows:

**89.063 Fees.** The department shall determine by rule the fees for each initial license, certification, and permit issued under ss. 89.06, 89.072, and 89.073, and, if applicable, for renewal of the license, certification, or permit, including late fees, based on the department's administrative and enforcement costs under this chapter. The department shall notify the holder of each such license, certification, or permit of any fee adjustment under this subsection that affects that license, certification, or permit holder.

Section 89.078 (2), Stats., authorizes the VEB to determine by rule what information and documentation a credential holder shall include with a written notice of a conviction:

**89.078 (2)** A person holding a license, certification, or permit issued under s. 89.06, 89.072, or 89.073 who is convicted of a felony or misdemeanor anywhere shall send a notice of the conviction by 1<sup>st</sup> class mail to the examining board within 48 hours after the entry of the judgement of conviction. The examining board shall by rule determine what information and documentation the person holding the credential shall include with the written notice.

**5. Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:**

The Department estimates that it will use approximately .5 FTE staff to develop this rule. That calculation includes time required for investigation and analysis, drafting the rule, preparing related documents, coordinating advisory committee meetings, holding public hearings, and communicating with affected persons and groups. The Department will use existing staff to develop this rule.

**6. List with description of all entities that may be affected by the proposed rule:**

The proposed rule would directly affect Wisconsin licensed veterinarians and certified veterinary technicians. Most veterinary practices are small businesses. Current fee amounts would not change.

The proposed rule may indirectly affect pet and livestock owners who are consumers of veterinary services.

Adjustments to make rule language and structure clearer, and to simplify processes where possible, may reduce the burden to each of these affected entities, by making the rules easier to access and understand quickly.

The VEB held a public hearing on SS 125-19 on February 17, 2020, in Madison, WI. The hearing record remained open until February 24, 2020. The VEB received three comments. All three comments requested that the statement of scope be expanded to address the use of telehealth technologies in the practice of veterinary medicine. One comment also requested that the statement of scope address the circumstances under which a veterinarian may dispense a drug for a patient of another veterinarian. This statement of scope is revised to include both of these topics. No additional entities would be impacted as a result of this revision. Evaluating language regarding telehealth technologies may reduce the economic burden to veterinarians and animal owners in certain circumstances, especially in rural areas.

**7. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:**

Pursuant to 9 CFR 160 to 162, a veterinarian must be specifically authorized by the United States Department of Agriculture – Animal and Plant Health Inspection Service to perform animal disease eradication and control functions under federal animal health laws.

Licensure requirements to practice veterinary medicine are established by each state and should not be affected by federal requirements.

**8. Anticipated economic impact of implementing the rule (note if the rule is likely to have a significant economic impact on small businesses):**

The Department expects the proposed rule to have minimal to no economic impact. No fee amounts will be changed in the proposed rule.

Most veterinary practices are small businesses. Adjustments to make rule language and structure clearer may reduce the burden to veterinarians, veterinary technicians, and consumers of veterinary services, as the rules may become easier to access and understand quickly.

Evaluating new language regarding telehealth technologies may reduce the economic burden to veterinarians and animal owners in certain circumstances, in rural areas for example.

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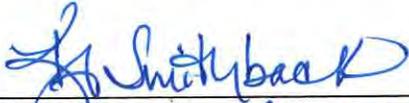
Signed this 1 day of April 2020

*Melissa Mace, Exec Director VER, on behalf of*

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Dr. Robert Forbes, DVM  
Chair  
State of Wisconsin Veterinary Examining Board

Signed this 6<sup>th</sup> day of April 2020



*for* Randy Romanski  
Interim Secretary  
State of Wisconsin Department of Agriculture,  
Trade and Consumer Protection

*KELLY SMITHBACK  
DMS ADMINISTRATOR*