WISCONSIN STATUTES

AND

ADMINISTRATIVE CODE

RELATING TO THE PRACTICE OF VETERINARY MEDICINE AND VETERINARY TECHNICIANS

APRIL 2003

State of Wisconsin
Department of Regulation and Licensing
Veterinary Examining Board
1400 E. Washington Avenue
PO Box 8935
Madison WI 53708

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INTRODUCTION

The Veterinary Examining Board licenses, certifies and regulates veterinarians and veterinary technicians. The Veterinary Examining Board is composed of members of the profession and public members who are appointed by the Governor and confirmed by the Senate.

The Department of Regulation and Licensing is an umbrella agency providing administrative services to various professional boards. Within the department, the Bureau of Health Professions provides administrative services to the Veterinary Examining Board. Questions about board business may be directed to the examining board in care of the Bureau of Health Professions, 1400 E. Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708

This book contains statutes and rules relevant to the regulation and practice of veterinary medicine. These statutes and rules are part of the law of Wisconsin. To assist in using these materials a subject index is included at the end of the book. Only a limited number of statutes and rules are included in this book.

The development of the law in this area is ongoing. Therefore, these rules and statutes may be revised subsequent to the printing of this book. Most local libraries maintain current sets of the Wisconsin Administrative Code and the Wisconsin Statutes. These documents as well as other state publications are available from the Department of Administration, Document Sales Division, P.O. Box 7840, Madison, WI 53707.

All Wisconsin Statutes and Administrative Codes are available on the Internet at the following addresses:

Statutes: http://www.legis.state.wi.us/rsb/statutes.html

Rules: http://www.lenis.state.wi.us/rsb/code/codtoc.html

CHAPTER 15
STRUCTURE OF THE EXECUTIVE BRANCH

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SUBCHAPTER I
GENERAL PROVISIONS

15.001 Declaration of policy. (1) THREE BRANCHES OF GOVERNMENT. The "republican form of government" guaranteed by the U.S. constitution contemplates the separation of powers within state government among the legislative, the executive and the judicial branches of the government. The legislative branch has the broad objective of determining policies and programs and review of program performance for programs previously authorized, the executive branch carries out the programs and policies and the judicial branch has the responsibility for adjudicating any conflicts which might arise from the interpretation or application of the laws. It is a traditional concept of American government that the 3 branches are to function separately, without intermingling of authority, except as specifically provided by law.

(2) GOALS OF EXECUTIVE BRANCH ORGANIZATION. (a) As the chief administrative officer of the state, the governor should be provided with the administrative facilities and the authority to cany out the functions of the governor's office efficiently and effectively within the policy limits established by the legislature.

(b) The administrative agencies which comprise the executive branch should be consolidated into a reasonable number of departments and independent agencies consistent with executive capacity to administer effectively at all levels.

(c) The integration of the agencies in the executive branch should be on a functional basis, so that programs can be coordinated.

(d) Each agency in the executive branch should be assigned a name commensurate with the scope of its program responsibilities, and should be integrated into one of the departments or independent agencies of the executive branch as closely as the conflicting goals of administrative integration and responsiveness to the legislature will permit.

(3) GOALS OF CONTINUING REORGANIZATION. Structural reorganization should be a continuing process through careful executive and legislative appraisal of the placement of proposed new programs and the coordination of existing programs in response to changing emphasis or public needs, and should be consistent with the following goals:

(a) The organization of state government should assure its responsiveness to popular control. It is the goal of reorganization to improve legislative policy–making capability and to improve the administrative capability of the executive to cany out these policies.

(b) The organization of state government should facilitate communication between citizens and government. It is the goal of reorganization through coordination of related programs in function–oriented departments to improve public understanding of government programs and policies and to improve the relationships between citizens and administrative agencies.

(c) The organization of state government shall assure efficient and effective administration of the policies established by the legislature. It is the goal of reorganization to promote efficiency by improving the management and coordination of state services and by eliminating overlapping activities.

History: 1991 a. 316.

15.01 Definitions. In this chapter: **(Ig)** "Affiliated credentialing board" means a part–time body that meets all of the following conditions:

(a) **Is** attached to an examining board to regulate a profession that does not practice independently of the profession regulated by the examining board or that practices in collaboration with the profession regulated by the examining board.

(b) With the advice of the examining board to which it is attached, sets standards of professional competence and conduct for the profession under the affiliated credentialing board's supervision, reviews the qualifications of prospective new practitioners, grants credentials, takes disciplinary action against credential holders and performs other functions assigned to it by law.

(Ir) "Board" means a part–time body functioning as the policy–making unit for a department or independent agency **or** a part–time body with policy–making **or** quasi–judicial powers.

(2) "Commission" means a 3–member governing body in charge of a department or independent agency or of a division or other subunit within a department, except for the Wisconsin waterways commission which shall consist of 5 members, the parole commission which shall consist of 8 members, and the Fox River management commission which shall consist of 7 members. A Wisconsin group created for participation in a continuing interstate body, or the interstate body itself, shall be known as a "commission", but is not a commission for purposes of **s.** 15.06. The parole commission created under **s.** 15.145 (I) shall be known as a "commission", but is not a commission for purposes of s. 15.06. The sentencing commission created under **s.** 15.105 (27) shall be known as a "commission" but **is** not a commission for purposes of **s.** 15.06 **(1)** to (4m), (7), and (9).

(3) "Committee" means a part–time body appointed to study a specific problem and to recommend a solution or policy alternative with respect to that problem, and intended to terminate on the completion of its assignment. Because of their temporary nature, committees shall be created by session law rather than by statute.

(4) "Council" means a part–time body appointed to function on a continuing basis for the study, and recommendation of solutions and policy alternatives, of the problems arising in a specified functional area of state government, except the Wisconsin land council has the powers specified in s. 16.965 (3) and (5) and the powers granted to agencies under ch. 227, the Milwaukee River revitalization council has the powers and duties specified in **s.** 23.18, the council on physical disabilities has the powers and duties specified in **s.** 46.29 (1) and (2), and the state council on alcohol and other drug abuse has the powers and duties specified in **s.** 14.24.

(5) "Department" means the principal administrative agency within the executive branch of Wisconsin state government, but does not include the independent agencies under subch. III.

(6) "Division," "bureau," "section" and "unit" means the subunits of a department or an independent agency, whether specifically created by law or created by the head of the department or the independent agency for the more economic and efficient administration and operation of the programs assigned to the department or independent agency. The office of justice assistance in the department of administration and the office of credit unions in the

department of financial institutions have the meaning of "division" under this subsection. The office of the long– term care ombudsman under the board on aging and long–term care and the office of educational accountability in the department of public instruction have the meaning of "bureau" under this subsection.

(7) "Examining board" means a part–time body which sets standards of professional competence and conduct for the profession under its supervision, prepares, conducts and grades the examinations of prospective new practitioners, grants licenses, investigates complaints of alleged unprofessional conduct and performs other functions assigned to it by law. "Examining board" includes the board of nursing.

(8) "Head", in relation to a department, means the constitutional officer, commission, secretary or board in charge of the department. "Head", in relation to an independent agency, means the commission, commissioner or board in charge of the independent agency.

(9) "Independent agency" means an administrative agency within the executive branch created under subch. 111.

History: 1977 c. 29,274; 1979 c. 34; 1983 a. 27, 189, 371, 410, 538; 1985 a. 29, 120, 180; 1987 s. 27,342, 399; 1989 a. 31, 107,202; 1991 a. 39, 269,315; 1993 a. 16, 107, 210,215; 1995 a. 27 ss. 74 and 9145 (1); 1995 a. 442,462; 1997 a. 27,237; 2001 a. 16, 105, 109.

15.02 Offices, departments and independent agencies. The constitutional offices, administrative departments and independent agencies which comprise the executive branch of Wisconsin state government are structured as follows:

(1) SEPARATE CONSTITUTIONAL OFFICES. The governor, lieutenant governor, secretary of state and state treasurer each head a staff to be termed the "office" of the respective constitutional officer.

(2) PRINCIPAL ADMINISTRATIVE UNITS. The principal administrative unit of the executive branch is a "department" or an "independent agency". Each such unit shall bear a title beginning with the words "State of Wisconsin" and continuing with "department of..." or with the name of the independent agency. A department may be headed by a constitutional officer, a secretary, a commission or a board. An independent agency may be headed by a commission, a commissioner or a board.

(3) INTERNAL STRUCTURE. (a) The secretary of each department may, subject to sub.(4), establish the internal structure within the office of secretary so as to best suit the purposes of his or her department. No secretary may authorize the designation of "assistant secretary" as the official position title of any employee of his or her department.

(b) For field operations, departments may establish district or area offices which may cut across divisional lines of responsibility.

(c) For their internal structure, all departments shall adhere to the following standard terms, and independent agencies are encouraged to review their internal structure and to adhere as much as possible to the following standard terms:

1. The principal subunit of the department is the "division". Each division shall be headed by an "administrator". The office of justice assistance in the department of administration and the office of credit unions in the department of financial institutions have the meaning of "division" and the executive staff director of the office of justice assistance in the department of administration and the director of credit unions have the meaning of "administrator" under this subdivision.

2. The principal subunit of the division is the "bureau". Each bureau shall be headed by a "director". The office of the long– term care ombudsman under the hoard on aging and long–term care and the office of educational accountability in the department of public instruction have the meaning of "bureau" under this subdivision.

2m. Notwithstanding subds. 1. and 2., the principal subunit of the department of tourism is the "bureau", which shall be headed by a "director".

3. If further subdivision is necessary, bureaus may be divided into subunits which shall be known as "sections" and which shall be headed by "chiefs" and sections may be divided into subunits which shall be known as "units" and which shall be headed by "supervisors".

(4) INTERNAL ORGANIZATION AND ALLOCATION OF FUNCTIONS. The head of each department or independent agency shall, subject to the approval of the governor, establish the internal organization of the department or independent agency and allocate and reallocate duties and functions not assigned by law to an officer or any subunit of the department or independent agency to promote economic and efficient administration and operation of the department or independent agency. The head may delegate and redelegate to any officer or employee of the department or independent agency any function vested by law in the head. The governor may delegate the authority to approve selected organizational changes to the head of any department or independent agency.

History: 1971 c. 261; 1973 c. 12; 1975 c. 39; 1977 c. 29; 1979 c. 221; 1987 a. 27,399; 1993 a. 16, 184,215,491; 1995 a. 27 ss. 75, 76, 76c and 9145 (1); 1997a.27.

Limits of internal departmental reorganizationdiscussed. 61 Atty. Gen. 306.

15.03 Attachment for limited purposes. Any division, office, commission, council or board attached under this section to a department or independent agency or a specified division thereof shall be a distinct unit of that department, independent agency or specified division. Any division, office, commission, council or board so attached shall exercise its powers, duties and functions prescribed by law, including rule making, licensing and regulation, and operational planning within the area of program responsibility of the division, office, commission, council or board, independently of the head of the department or independent agency, but budgeting, program coordination and related management functions shall be performed under the direction and supervision of the head of the department or independent agency, except that with respect to the office of the commissioner of railroads, all personnel and biennial budget requests by the office of the commissioner of railroads shall be provided to the department of transportation as required under **s.** 189.02 (7) and shall be processed and properly forwarded by the public service commission without change except as requested and concurred in by the office of the commissioner of railroads.

History: 1981 c. 347; 1983 a. 27; 1993 a. 123; 1999 a. 9.

15.04 Heads of departments and independent agencies; powers and duties. (1) DUTIES. Each head of a department or independent agency shall:

(a) ***Supervision.*** Except as provided in **s. 15.03,** plan, direct, coordinate and execute the functions vested in the department or independent agency.

(b) ***Budget.*** Biennially compile a comprehensive program budget which reflects all fiscal matters related to the operation of the department or independent agency and each program, subprogram and activity therein.

(c)Advisory bodies. In addition to any councils specifically created by law, create and appoint such councils or committees as the operation of the department or independent agency requires. Members of councils and committees created under this general authority shall serve without compensation, but may be reimbursed for their actual and necessary expenses incurred in the performance of their duties and, if such reimbursement is made, such reimbursement in the case of an officer or employee of this state who represents an agency as a member of such a council or committee shall be paid by the agency which pays the officer's or employee's salary.

(d) ***Biennial report.*** On or before October **15** of each odd–numbered year, submit to the governor and the chief clerk of each house of the legislature, for distribution to the legislature under **s. 13.172** (2), a report on the performance and operations of the department or independent agency during the preceding biennium, and projecting the goals and objectives of the department or independent agency as developed for the program budget report. The secretary of administration may prescribe the format of the report and may require such other information deemed appropriate. Each department or independent agency shall provide a copy of its biennial report to legislators upon request. Any department or independent agency may issue such additional reports on its findings and recommendations as its operations require. A department or independent agency may, on or before October **15,** submit an annual report prepared by it, in place of the biennial report required under this paragraph, if the submission of the annual reports is approved by the secretary of administration.

(e) Seal. Have authority to adopt a seal for the department or independent agency.

(f) ***Bonds.*** Have authority to require that any officer or employee of the department or independent agency give an official bond under ch.

19, if the secretary of administration agrees that the position held by such officer or employee requires bonding.

(g) ***Discrimination review.*** In order to determine whether there is any arbitrary discrimination on the basis of race, religion, national origin, sex, marital status or sexual orientation as defined in s. 111.32 (13m), examine and assess the statutes under which the head has powers or regulatory responsibilities, the procedures by which those statutes are administered and the rules promulgated under those statutes. If the department or agency head finds any such discrimination, he or she shall take remedial action, including making recommendations to the appropriate executive, legislative or administrative authority.

(i) ***Records and forms management program.*** Establish and maintain a records and forms management program.

(j) ***Records and forms officer.*** Appoint a records and forms officer, who shall be responsible for compliance by the department or independent agency with all records and forms management laws and rules and who may prevent any form from being put into use.

(k) ***Form numbering andfiling system.*** Establish a numbering and filing system for forms.

(m) ***Notice on forms.*** See that each form used by the department or independent agency to seek information from municipalities, counties or the public contains on the first page of the form, or in the instructions for completing the form, a conspicuous notice of the authorization for the form, whether or not completing the form is voluntary, if it is not voluntary, the penalty for failure to respond and whether or not any personally identifiable information, as defined under s. 19.62 (5), requested in the form is likely to be used for purposes other than for which it is originally being collected. This paragraph does not apply to state tax forms.

(2) DEPUTY. Each secretary of a department or head of an independent agency under **s.** 230.08 (2) (L) may appoint a deputy who shall serve at the pleasure of the secretary or agency head outside the classified service. The deputy shall exercise the powers, duties and functions of the secretary or head in the absence of the secretary or head, and shall perform such other duties as the secretary or head prescribes. The adjutant general may appoint 2 deputies as provided in **s.** 21.18 (1). In this subsection "secretary" includes the attorney general and the state superintendent of public instruction.

(3) DEPUTY APPROVALS. Positions for which appointment is made under sub.(2) may be authorized only under **s.** 16.505.

History: **1971 c. 125; 1975 c. 94; 1977 c. 196,273,418, 447; 1979 c. 221; 1981 c. 112,350; 1981 c. 391 s. 210; 1983 a. 27,524; 1985 a. 29; 1985 a. 180 ss. 2 to 4, 30m; 1985 a. 332; 1987 a. 147 s. 25; 1987 a. 186; 1989 a. 248; 1991 a. 39, 189; 1995 a. 27; 1997 a. 73.**

15.05 Secretaries. (1) SELECTION. (a) If a department is under the direction and supervision of a secretary, the secretary shall be nominated by the governor, and with the advice and consent of the senate appointed, to serve at the pleasure of the governor.

(b) Except as provided in pars.(c) and (d), if a department is under the direction and supervision of a board, the board shall appoint a secretary to serve **at** the pleasure of the board outside the classified service. In such departments, the powers and duties of the board shall be regulatory, advisory and policy–making, and not administrative. All of the administrative powers and duties of the department are vested in the secretary, to be administered by him or her under the direction of the board. The secretary, with the approval of the board, shall promulgate rules for administering the department and performing the duties assigned to the department.

(c) The secretary of natural resources shall be nominated by the governor, and with the advice and consent of the senate appointed, to serve at the pleasure of the governor.

(d) The secretary of agriculture, trade and consumer protection shall be nominated by the governor, and with the advice and consent of the senate appointed, to serve at the pleasure of the governor.

(3) EXECUTIVE ASSISTANT. Each secretary may appoint an executive assistant to serve at his or her pleasure outside the classified service. The executive assistant shall perform duties as the secretary prescribes. In this subsection, "secretary" includes the attorney general, the adjutant general, the director of the technical college system and the state superintendent of public instruction.

(3m) FIELD DISTRICT OR FIELD AREA DIRECTORS. Each secretary may appoint a director under the classified service for each district or area office established in his or her department under s. 15.02 **(3)** (b).

(4) OFFICIAL OATH. Each secretary shall take and file the official oath prior to assuming office.

(5) EXECUTIVE ASSISTANT APPROVALS. Positions for which appointment is made under sub.(3) may be authorized only under s. 16.505.

History: **1973 c. 90; 1977 c. 4, 196; 1985 a. 18; 1985 a. 332 s. 251 (3); 1989 a. 31, 169; 1993 a. 399; 1995 a. 21.**

A secretary, appointed by the governor, could be removed only by the governor, even though the general appointment statute had been amended to provide that the secretary is appointed by a hoard to serve at the board's pleasure. Moses v. Board of Veterans Affairs, 80 Wis. **2d 41 1,259** N.W.2d **102 (1977).**

15.06 Commissions and commissioners. (1) SELECTION OF MEMBERS. (a) Except as otherwise provided in this subsection, the members of commissions shall be nominated by the governor, and with the advice and consent of the senate appointed, for staggered 6–year terms expiring on March 1 of the odd–numbered years.

(ag) Members of the Wisconsin waterways commission shall be nominated by the governor, and with the advice and consent of the senate appointed, for staggered 5–year terms.

(ar) The commissioner of railroads shall be nominated by the governor, and with the advice and consent of the senate appointed, for a 6–year term expiring on March 1 of an odd–numbered year.

(b) The commissioner of insurance shall be nominated by the governor, and with the advice and consent of the senate appointed, to serve at the pleasure of the governor. The governor may remove from office the commissioner of insurance who was appointed for a fixed term before August 1, 1987.

(d) The members of the personnel commission shall be nominated by the governor, and with the advice and consent of the senate appointed, for 5–year terms, subject to the following conditions:

1. At least one member shall be licensed to practice law in this state.

2. They shall possess some professional experience in the field of personnel or labor relations.

3. No member may hold any other position in state employment.

4. No member, when appointed or for 3 years immediately prior to the date of appointment, may have been an officer of a committee in any political party, partisan political club or partisan political organization or have held or been a candidate for any partisan elective public office. No member may become a candidate for or hold any such office.

5. At no time may more than 2 members be adherents of the same political party.

6. Each member of the commission shall be a **U.S.** citizen and shall have been a resident of this state for at least 3 years.

(2) SELECTION OF OFFICERS. Each commission may annually elect officers other than a chairperson from among its members as its work requires. Any officer may be reappointed or reelected. **At** the time of making new nominations to commissions, the governor shall designate a member or nominee of each commission to serve as the commission's chairperson for a 2–year term expiring on March 1 of the odd–numbered year except that:

(a) Commencing March 1, 1979, and thereafter, the labor and industry review commission shall elect one of its members to serve as the commission's chairperson for a 2–year term expiring on March 1 of the odd–numbered year.

(3) FULL-TIME OFFICES. (a) A commissioner may not hold any other office or position of profit or pursue any other business or vocation, but shall devote his or her entire time to the duties of his or her office. This paragraph does not apply to:

1. The commissioner of insurance.

3. The members of the Wisconsin waterways commission.

(b) The commissioner of insurance shall not engage in any other occupation, business or activity that is in any way inconsistent with the performance of the duties of the commissioner of insurance, nor shall the commissioner hold any other public office.

(4) CHAIRPERSON; ADMINISTRATIVE DUTIES. The administrative duties of each commission shall be vested in its chairperson, to be administered by the chairperson under the statutes and rules of the commission and subject to the policies established by the commission.

(4m) EXECUTIVE ASSISTANT. Each commission chairperson under **s.** 230.08 (2) (m) and each commissioner of the public service commission may appoint an executive assistant to serve at his or her

pleasure outside the classified service. The executive assistant shall perform duties as the chairperson or commissioner prescribes.

(5) FREQUENCY OF MEETINGS; PLACE. Every commission shall meet on the call of the chairperson or a majority of its members. Every commission shall maintain its offices in Madison, hut may meet or hold hearings at such other locations as will best serve the citizens of this state.

(6) QUORUM. A majority of the membership of a commission constitutes a quorum to do business, except that vacancies shall not prevent a commission from doing business. This subsection does not apply to the parole commission.

(7) REPORTS. Every commission attached to a department shall submit to the head of the department, upon request of that person not more often than annually, a report on the operation of the commission.

(8) OFFICIAL OATH. Every commissioner shall take and file the official oath prior to assuming office.

(9) EXECUTIVE ASSISTANT APPROVALS. Positions for which appointment is made under sub.(4m) may be authorized only under s. 16.505.

History: 1971 c. 193, 307; 1977 c. 29, 196, 274; 1981 c. 347; 1983 a. 27,371, 410, 538; 1985 a. 29; 1987 a. 27,403; 1989 a. 31; 1991 a. 39,269,316; 1993 a. 16, 123; 1995 a. 27; 1997 a. 27; 2001 a. 16.

A single member of the personnel commission is empowered to act as the commission when 2 of the 3 commission positions are vacant. 68 Atty. Gen. 323.

A commissioner designated as chairperson of the commission under sub.(2) is not appointed to a new position, and Art. IV, s. 26, precludes a salary increase based on that designation. 76 Atty. Gen. 52.

Sub.(3) (a) prohibits a commissioner from pursuing business interests that would prevent properly fulfilling the duties of the office. 77 Atty. Gen. 36.

15.07 Boards. (1) SELECTION OF MEMBERS. (a) If a department or independent agency is under the direction and supervision of a board, the members of the board, other than the members serving on the board because of holding another office or position, shall be nominated by the governor, and with the advice and consent of the senate appointed, to serve for terms prescribed by law, except:

1. Members of the higher educational aids board shall be appointed by the governor without senate confirmation.

2. Members of the elections board shall be appointed as provided in s. 15.61.

3. Members of the employee trust funds board appointed or elected under **s.** 15.16 (1) (a), (b), (d) and (f) shall be appointed or elected as provided in that section.

4. Members of the investment board appointed under **s.** 15.76 (3) shall be appointed as provided in that section.

5. The members of the educational communications board appointed under **s.** 15.57 (5) and (7) shall be appointed as provided in that section.

6. Members of the University of Wisconsin Hospitals and Clinics Board appointed under **s.** 15.96 (8) shall be appointed by the governor without senate confirmation.

(b) For each board not covered under par.(a), the governor shall appoint the members of the board, other than the members serving on the board because of holding another office or position and except as otherwise provided, for terms prescribed by law except that all members of the following boards, or all members of the following boards specified in this paragraph, other than the members serving on a board because of holding another office or position, shall be nominated by the governor, and with the advice and consent of the senate appointed, for terms provided by law:

1. Banking review board.
2. College savings program board.
3. Credit union review board.
5. Savings and loan review board.
8. Real estate board.
9. Board on aging and long–term care.
10. Land and water conservation board.
11. Waste facility siting board.
12. Prison industries board.
14. Deferred compensation board.
15. The 3 members of the lower Wisconsin state riverway board appointed under **s.** 15.445 (3) (b) 7.
15m. The members of the state fair park board appointed under **s.** 15.445 (4) (a) 3. to 5.
16. Land information board.

Note: Subd. 16. is **repealed eff. 9–1-03 by 1997** Wis. **Act 27.**

17. Real estate appraisers board.
18. Savings bank review board.
19m. Auctioneer board.
20. The 3 members of the Kickapoo reserve management board appointed under **s.** 15.445 (2) (b) 3.
22. Private employer health care coverage board.

Note: Subd. 22. is repealed eff. 1–1–10 by 1999 Wis. **Act 9.**

(c) Except as provided under par.(cm), fixed terms of members of boards shall expire on May 1 and, if the term is for an even number of years, shall expire in an odd–numbered year.

(cm) The term of one member of the ethics board shall expire on each May 1. The terms of 3 members of the development finance board appointed under **s.** 15.155 (1) (a) 6. shall expire on May 1 of every even–numbered year and the terms of the other 3 members appointed under s. 15.155 (1) (a) 6. shall expire on May 1 of every odd–numbered year. The terms of the 3 members of the land and water conservation board appointed under **s.** 15.135 (4) (b) 2. shall expire on January 1. The term of the member of the land and water conservation board appointed under **s.** 15.135 **(4)** (b) 2m. shall expire on May 1 of an even–numbered year. The terms of members of the real estate board shall expire on July 1. The terms of the appraiser members of the real estate appraisers board and the terms of the auctioneer and auction company representative members of the auctioneer board shall expire on May 1 in an even–numbered year.

(cs) No member of the auctioneer board, real estate appraisers board or real estate board may be **an** officer, director or employee of a private organization that promotes or furthers any profession or occupation regulated by that board.

(2) SELECTION OF OFFICERS. At its first meeting in each year, every board shall elect a chairperson, vice chairperson and secretary each of whom may be reelected for successive terms, except that:

(a) The chairperson and vice chairperson of the investment board shall be designated biennially by the governor.

(b) The chairperson of the board on health care information shall be designated biennially by the governor.

(d) The officers elected by the board of regents of the University of Wisconsin System and the technical college system board shall be known as a president, vice president and secretary.

(e) The representative of the department of justice shall serve as chairperson of the claims board and the representative of the department of administration shall serve as its secretary.

(f) The state superintendent of public instruction or his or her designated representative shall serve as chairperson of the school district boundary appeal board.

(g) **A** representative of the department of justice designated by the attorney general shall serve as nonvoting secretary to the law enforcement standards board.

(h) The chairperson of the state fair park board shall be designated annually by the governor from among the members appointed under s. 15.445 **(4)** (a) 3., 4. and 5.

(j) **At** its first meeting in each even–numbered year, the state capitol and executive residence board shall elect officers for 2–year terms.

(k) The governor shall serve as chairperson of the governor's work–based learning board.

(L) The governor shall serve as chairperson of the information technology management board and the chief information officer shall serve as secretary of that board.

(3) FREQUENCY OF MEETINGS. (a) If a department or independent agency is under the direction and supervision of a board, the board shall meet quarterly and may meet at other times on the call of the chairperson or a majority of its members. If a department or independent agency is under the direction and supervision of a board, the board shall, in addition, meet no later than August 31 of each even–numbered year to consider and approve a proposed budget of the department or independent agency for the succeeding fiscal biennium.

(b) Except as provided in par.(bm), each board not covered under par.(a) shall meet annually, and may meet at other times on the call of the chairperson or a majority of its members. The auctioneer board, the real estate board and the real estate appraisers board shall also meet on the call of the secretary of regulation and licensing or his or her designee within the department.

(bm) 1. The board on health care information shall meet 4 times each year and may meet at other times on the call of the chairperson or a majority of the board's members.

2. The environmental education board shall meet 4 times each year and may meet at other times on the call of the chairperson.

3. The auctioneer board shall meet at least 4 times each year.

4. The information technology management board shall meet at least 4 times each year and may meet at other times on the call of the chairperson.

(4) QUORUM. A majority of the membership of a board constitutes a quorum to do business and, unless a more restrictive provision is adopted by the board, a majority of a quorum may act in any matter within the jurisdiction of the board, This subsection does not apply to actions of the ethics board or the school district boundary appeal board as provided in **ss.** 19.47 (4) and 117.05 (2) (a).

(5) REIMBURSEMENT FOR EXPENSES; COMPENSATION. Except as provided in sub.(5m), the members of each board shall be reimbursed for their actual and necessary expenses incurred in the performance of their duties, such reimbursement in the case of an officer or employee of this state who represents an agency as a member of a board to be paid by the agency which pays the member's salary. The members shall receive no compensation for their services, except that the following members of boards, except full–time state officers or employees, also shall be paid the per diem stated below for each day on which they were actually and necessarily engaged in the performance of their duties:

(a) Members of the investment board, $50 per day.

(b) Members of the banking review board, $25 per day but not to exceed $1,500 per year.

(c) Members of the auctioneer board, $25 per day.

(d) Members of the board of agriculture, trade and consumer protection, not exceeding $35 per day as fixed by the board with the approval of the governor, but not to exceed $1,000 per year.

(e) In lieu of a per diem, the members of the technical college system board shall receive $100 annually.

(f) Members of the teachers retirement board, appointive members of the Wisconsin retirement board, appointive members of the group insurance board, members of the deferred compensation board and members of the employee trust funds board, $25 per day.

(g) Members of the savings and loan review board, $10 per day.

(gm) Members of the savings bank review board, $10 per day.

(h) Voting members of the land and water conservation board, $25 per day.

(i) Members of the educational approval board, $25 per day.

(j) Members of the state fair park board, $10 per day but not to exceed $600 per year.

(k) Members of the ethics board, $25 per day.

(L) Members of the school district boundary appeal board, $25 per day.

(n) Members of the elections board, $25 per day.

(o) Members of the burial sites preservation board, $25 per day.

(r) Members of the real estate board, $25 per day.

(s) Members of the credit union review board, $25 per day but not to exceed $1,500 per year.

(t) Members of the waste facility siting board who are town or county officials, $35 per day.

(w) Members of the lower Wisconsin state riverway board, $25 per day.

(x) Members of the real estate appraisers board, $25 per day.

(y) Members of the Kickapoo reserve management board, $25 per day.

(5m) LIMITATIONS ON SALARY AND EXPENSES. (b) *Lower Wisconsin state riverway board.* The members, except for the chairperson, of the lower Wisconsin state riverway board shall be reimbursed under sub.(5) for only their necessary and actual travel expenses incurred in the performance of their duties, or shall be paid $25 plus mileage incurred in the performance of their duties, whichever is greater. The chairperson of the lower Wisconsin state riverway board shall be reimbursed for all his or her actual and necessary expenses incurred in the performance of his or her duties. The lower Wisconsin state riverway board shall determine which expenses of the chairperson are actual and necessary before reimbursement.

(6) REPORTS. Every board created in or attached to a department or independent agency shall submit to the head of the department or independent agency, upon request of that person not more often than annually, a report on the operation of the board.

(7) OFFICIAL OATH. Each member of a board shall take and file the official oath prior to assuming office.

History: 1971 c. 100 s. 23; 1971 c. 125, 261, 270, 323; 1973 c. 90, 156, 299, 334; 1975 c. 39, 41, 422; 1977 c. 29 ss. 24, 26, 1650m (3); 1977 c. 203,277,418,427; 1979 c. 34, 110,221,346; 1981 c. 20, 62, 94, 96, 156,314,346,374,391; 1983 a. 27,282,403; 1985 a. 20, 29, 316; 1987a.27, 119,142,354,399,403;1989 a. 31, 102, 114,219,299, 340: 1991 a. 25.39. 116, 221, 269, 316; 1993 a. 16.75. 102, 184, 349, 399, 490; 1995 a. 27,216,247; 1997 a. 27; 1999 a. 9, 44, 181, 197; 2001 a. 16.

"Membership" as used in sub.(4) means the authorized number of positions and not the number of positions that are currently occupied. 66 Atty. Gen. 192.

15.08 Examining boards and councils. (1) SELECTION OF MEMBERS. All members of examining boards shall be residents of this state and shall, unless otherwise provided by law, be nominated by the governor, and with the advice and consent of the senate appointed. Appointments shall be for the terms provided by law. Terms shall expire on July 1. No member may serve more than 2 consecutive terms. No member of an examining board may be an officer, director. or employee of a private organization which promotes or furthers the profession or occupation regulated by that board.

(1m) PUBLIC MEMBERS. (a) Public members appointed under **s.** 15.405 or 15.407 shall have all the powers and duties of other members except they shall not prepare questions for or grade any licensing examinations.

(am) Public members appointed under s. 15.405 or 15.407 shall not be, nor ever have been, licensed, certified, registered or engaged in any profession or occupation licensed or otherwise regulated by the board, examining board or examining council to which they are appointed, shall not be married to any person so licensed, certified, registered or engaged, and shall not employ, be employed by or be professionally associated with any person so licensed, certified, registered or engaged.

(b) The public members of the chiropractic examining board, the dentistry examining board, the hearing and speech examining board, the medical examining board, perfusionists examining council, respiratory care practitioners examining council and council on physician assistants, the board of nursing, the nursing home administrator examining board, the veterinary examining board, the optometry examining board, the pharmacy examining board, the marriage and family therapy, professional counseling, and social work examining board, and the psychology examining board shall not be engaged in any profession or occupation concerned with the delivery of physical or mental health care.

(c) The membership of each examining board and examining council created in the department of regulation and licensing after June 1, 1975, shall be increased by one member who shall be a public member appointed to serve for the same term served by the other members of such examining board or examining council, unless the act relating to the creation of such examining board or examining council provides that **2** or more public members shall be appointed to such examining board or examining council.

(2) SELECTION OF OFFICERS. At its first meeting in each year, every examining board shall elect from among its members a chairperson, vice chairperson and, unless otherwise provided by law, a secretary. Any officer may be reelected to succeed himself **or** herself.

(3) FREQUENCY OF MEETINGS. (a) Every examining board shall meet annually and may meet at other times on the call of the chairperson or of a majority of its members.

(b) **The** medical examining board shall meet at least 12 times annually.

(c) The hearing and speech examining board shall meet at least once every 3 months.

(4) QUORUM. (a) A majority of the membership of an examining board constitutes a quorum to do business, and a majority of a quorum may act in any matter within the jurisdiction of the examining board.

(b) Notwithstanding par.(a), no certificate or license which entitles the person certified or licensed to practice a trade or profession shall be suspended or revoked without the affirmative vote of two–thirds of the voting membership of the examining board.

(5) GENERAL POWERS. Each examining board: (a) May compel the attendance of witnesses, administer oaths, take testimony and receive proof concerning all matters within its jurisdiction.

(b) Shall promulgate rules for its own guidance and for the guidance of the trade or profession to which it pertains, and define and enforce professional conduct and unethical practices not inconsistent with the law relating to the particular trade or profession.

(c) May limit, suspend or revoke, or reprimand the holder of, any license, permit or certificate granted by the examining board.

(6) **IMPROVEMENT OF THE PROFESSION.** In addition to any other duties vested in it by law, each examining board shall foster the standards of education or training pertaining to its own trade or profession, not only in relation of the trade or profession to the interest of the individual or to organized business enterprise, but also in relation to government and to the general welfare. Each examining board shall endeavor, both within and outside its own trade or profession, to bring about a better understanding of the relationship of the particular trade or profession to the general welfare of this state.

(7) COMPENSATION AND REIMBURSEMENT FOR EXPENSES. Each member of an examining board shall, unless the member is a full–time salaried employee of this state, be paid a per diem of $25 for each day on which the member was actually and necessarily engaged in the performance of examining board duties. Each member of an examining board shall be reimbursed for the actual and necessary expenses incurred in the performance of examining board duties.

(8) OFFICIAL OATH. Every member of an examining board shall take and file the official oath prior to assuming office.

(9) ANNUAL REPORTS. Every examining board shall submit to the head of the department in which it is created, upon request of that person not more often than annually, a report on the operation of the examining board.

(10) SEAL. Every examining board may adopt a seal.

History: 1971 c. 40; 1975 c. 86, 199; 1977 c. 418; 1979 c. 32; 1979 c. 34 ss. 32e to 32s, 2102 (45) (a); 1979 c. 221; 1981 c. 94; 1983 a. 403,524; 1985 a. 332,340; 1987 a. 399; 1989 a. 229, 316, 359; 1991 a. 39, 160, 316; 1993 a. 105, 107, 184, 490; 1995 a. 245; 1997 a. 175; 1999 a. 180; 2001 a. 80, 89, 105.

Selection and terms of officers **of regulatory and licensing boards are discussed. 75 Atty. Gen. 247 (1986).**

15.085 Affiliated credentialing boards. (1) SELECTION OF MEMBERS. All members of affiliated credentialing boards shall be residents of this state and shall, unless otherwise provided by law, be nominated by the governor, and with the advice and consent of the senate appointed. Appointments shall be for the terms provided by law. Terms shall expire on July 1. No member may serve more than 2 consecutive terms. No member of an affiliated credentialing board may be an officer, director or employee of a private organization which promotes or furthers the profession or occupation regulated by that board.

(1m) PUBLIC MEMBERS. (a) Public members appointed under s. 15.406 shall have all of the powers and duties of other members except that they shall not prepare questions for or grade any licensing examinations.

(am) Public members appointed under s. 15.406 shall not be, nor ever have been, licensed, certified, registered or engaged in any profession or occupation licensed or otherwise regulated by the affiliated credentialing board to which they are appointed, shall not be married to any person so licensed, certified, registered or engaged, and shall not employ, be employed by or be professionally associated with any person so licensed, certified, registered or engaged.

(b) The public members of the physical therapists affiliated credentialing board, podiatrists affiliated credentialing board or occupational therapists affiliated credentialing board shall not be engaged in any profession or occupation concerned with the delivery of physical or mental health care.

(2) SELECTION OF OFFICERS. At its first meeting in each year, every affiliated credentialing board shall elect from among its members a chairperson, vice chairperson and, unless otherwise provided by law, a secretary. Any officer may be reelected to succeed himself or herself.

(3) FREQUENCY OF MEETINGS. (a) Every affiliated credentialing board shall meet annually and may meet at other times on the call of the chairperson or of a majority of its members.

(b) The chairperson of an affiliated credentialing board shall meet at least once every 6 months with the examining board to which the affiliated credentialing board is attached to consider all matters of joint interest.

(4) QUORUM. (a) A majority of the membership of an affiliated credentialing board constitutes a quorum to do business, and a majority of a quorum may act in any matter within the jurisdiction of the affiliated credentialing board.

(b) Notwithstanding par.(a), no certificate or license which entitles the person certified or licensed to practice a trade or profession shall be suspended or revoked without the affirmative vote of two–thirds of the membership of the affiliated credentialing board.

(5) GENERAL POWERS. Each affiliated credentialing board:

(a) May compel the attendance of witnesses, administer oaths, take testimony and receive proof concerning all matters within its jurisdiction.

(b) Shall promulgate rules for its own guidance and for the guidance of the trade or profession to which it pertains, and define and enforce professional conduct and unethical practices not inconsistent with the law relating *to* the particular trade or profession. In addition to any other procedure under ch. 227 relating to the promulgation of rules, when promulgating a rule, other than an emergency rule under s. 227.24, an affiliated credentialing board shall do all of the following:

1. Submit the proposed rule to the examining board to which the affiliated credentialing board is attached. The proposed rule shall be submitted under this subdivision at least 60 days before the proposed rule is submitted to the legislative council staff under s. 227.15 (1).

2. Consider any comments on a proposed rule made by the examining board to which the affiliated credentialing board is attached, if the examining board submits the comments to the affiliated credentialing board within 30 days after a public hearing on the proposed rule under s. 227.18 or, if no hearing is held, within 30 days after the proposed rule is published under s. 227.16 (2) (e).

3. Include, in the report submitted to the legislature under s. 227.19 (2), any comments on the proposed rule submitted by the examining board under subd. 2. and the affiliated credentialing board's responses to those comments.

(c) May limit, suspend or revoke, or reprimand the holder of, any license, permit or certificate granted by the affiliated credentialing board.

(6) **IMPROVEMENT OF THE PROFESSION.** In addition to any other duties vested in it by law, each affiliated credentialing board shall foster the standards of education or training pertaining to its own trade or profession, not only in relation of the trade or profession to the interest of the individual or to organized business enterprise, but also in relation to government and to the general welfare. Each affiliated credentialing board shall endeavor, both within and outside its own trade or profession, to bring about a better understanding of the relationship of the particular trade or profession to the general welfare of this state.

(7) COMPENSATION AND REIMBURSEMENT FOR EXPENSES. Each member of an affiliated credentialing board shall, unless the member is a full–time salaried employee of this state, be paid a per diem of $25 for each day on which the member was actually and necessarily engaged in the performance of affiliated credentialing board duties. Each member of an affiliated credentialing board shall be reimbursed for the actual and necessary expenses incurred in the performance of affiliated credentialing board duties.

(8) OFFICIAL OATH. Every member of an affiliated credentialing board shall take and file the official oath prior to assuming office.

(9) ANNUAL REPORTS. Every affiliated credentialing board shall submit to the head of the department in which it is created, upon request of that person not more often than annually, a report on the operation of the affiliated credentialing board.

(10) SEAL. Every affiliated credentialing board may adopt a seal.

History: 1993 a. 107, 1997 a. 175, 1999 a. 180.

15.09 Councils. (1) SELECTION OF MEMBERS. (a) Unless otherwise provided by law, the governor shall appoint the members of councils for terms prescribed by law. Except as provided in par.(b), fixed terms shall expire on July 1 and shall, if the term is for an even number of years, expire in an odd–numbered year.

(b) The terms of the members of the council on recycling shall expire as specified under s. 15.347 (17) (c).

(2) SELECTION OF OFFICERS. Unless otherwise provided by law, at its first meeting in each year every council shall elect a chairperson,

vice chairperson and secretary from among its members. Any officer may be reelected for successive terms. For any council created under the general authority of s. 15.04 (1) (c), the constitutional officer or secretary heading the department or the chief executive officer of the independent agency in which such council is created shall designate an employee of the department or independent agency to serve as secretary of the council and to be a voting member thereof.

(3) LOCATION AND FREQUENCY OF MEETINGS. Unless otherwise provided by law, every council shall meet at least annually and shall also meet on the call of the head of the department or independent agency in which it is created, and may meet at other times on the call of the chairperson or a majority of its members. A council shall meet at such locations as may be determined by it unless the constitutional officer or secretary heading the department or the chief executive officer of the independent agency in which it is created determines a specific meeting place.

(4) QUORUM. Except as otherwise expressly provided, a majority of the membership of a council constitutes a quorum to do business, and a majority of a quorum may act in any matter within the jurisdiction of the council.

(5) POWERS AND DUTIES. Unless otherwise provided by law, a council shall advise the head of the department or independent agency in which it is created and shall function on a continuing basis for the study, and recommendation of solutions and policy alternatives, of the problems arising in a specified functional area of state government.

(6) REIMBURSEMENT FOR EXPENSES. Members of a council shall not be compensated for their services, but members of councils created by statute shall be reimbursed for their actual and necessary expenses incurred in the performance of their duties, such reimbursement in the case of an elective or appointive officer or employee of this state who represents an agency as a member of a council to be paid by the agency which pays his or her salary.

(7) REPORTS. Unless a different provision is made by law for transmittal or publication of a report, every council created in a department or independent agency shall submit to the head of the department or independent agency, upon request of that person not more often than annually, a report on the operation of the council.

(8) OFFICIAL OATH. Each member of a council shall take and file the official oath prior to assuming office.

History: 1971 c. 211; 1977 c. 29; 1977 c. 196 s. 131; 1979 c. 34,346; 1983 a. 27,388, 410; 1985 a. 84; 1989 a. 335; 1991 a. 39, 189; 1993 a. 184.

SUBCHAPTER II
DEPARTMENTS

15.40 Department of regulation and licensing; creation.

There is created a department of regulation and licensing under the direction and supervision of the secretary of regulation and licensing.

History: 1971 c. 270 s. 104; 1975 c. 39; 1977 c. 29; 1977 c. 196 s. 131; 1977 c. 418 ss. 24 to 27.

15.405 Same; attached boards and examining boards.

(1) ACCOUNTING EXAMINING BOARD. There is created an accounting examining board in the department of regulation and licensing. The examining board shall consist of 7 members, appointed for staggered 4–year terms. Five members shall hold certificates as certified public accountants and be eligible for licensure to practice in this state. Two members shall be public members.

(2) EXAMINING BOARD OF ARCHITECTS, LANDSCAPE ARCHITECTS, PROFESSIONAL ENGINEERS, DESIGNERS AND LAND SURVEYORS. There is created an examining board of architects, landscape architects, professional engineers, designers and land surveyors in the department of regulation and licensing. Any professional member appointed to the examining board shall be registered to practice architecture, landscape architecture, professional engineering, the design of engineering systems or land surveying under ch. 443. The examining board shall consist of the following members appointed for 4–year terms: 3 architects, 3 landscape architects, 3 professional engineers, 3 designers, 3 land surveyors and 10 public members.

(a) In operation, the examining board shall be divided into an architect section, a landscape architect section, an engineer section, a designer section and a land surveyor section. Each section shall consist of the 3 members of the named profession appointed to the examining board and 2 public members appointed to the section. The examining board shall elect its own officers, and shall meet at least twice annually.

(b) All matters pertaining to passing upon the qualifications of applicants for and the granting or revocation of registration, and all other matters of interest to either the architect, landscape architect, engineer, designer or land surveyor section shall be acted upon solely by the interested section.

(c) All matters of joint interest shall be considered by joint meetings of all sections of the examining board or of those sections to which the problem is of interest.

(2m) EXAMINING BOARD OF PROFESSIONAL GEOLOGISTS, HYDROLOGISTS AND SOIL SCIENTISTS. (a) There is created in the department of regulation and licensing an examining board of professional geologists, hydrologists and soil scientists consisting of the following members appointed for 4–year terms:

1. Three members who are professional geologists licensed under ch. 470.
2. Three members who are professional hydrologists licensed under ch. 470.
3. Three members who are professional soil scientists licensed under ch. 470.
4. Three public members.

(b) In operation, the examining board shall be divided into a professional geologist section, a professional hydrologist section and a professional soil scientist section. Each section shall consist of the 3 members of the named profession appointed to the examining board and one public member appointed to the section. The examining board shall elect its own officers, and shall meet at least twice annually.

(c) All matters pertaining to passing upon the qualifications of applicants for and the granting or revocation of licenses, and all other matters of interest to either the professional geologist, hydrologist or soil, scientist section shall be acted upon solely by the interested section.

(d) All matters of joint interest shall be considered by joint meetings of all sections of the examining board or of those sections to which the matter is of interest.

(3) AUCTIONEER BOARD. (a) There is created in the department of regulation and licensing an auctioneer board consisting of the following members appointed for 4–year terms:

1. Four members, each of whom is registered under ch. 480 as an auctioneer, or is an auction company representative, as defined in s. 480.01 (3), of an auction company that is registered under ch. 480 as an auction company.
2. Three public members.

(b) No member of the board may serve more than 2 terms.

(5) CHIROPRACTIC EXAMINING BOARD. There is created a chiropractic examining board in the department of regulation and licensing. The chiropractic examining board shall consist of 6 members, appointed for staggered 4–year terms. Four members shall be graduates from a school of chiropractic and licensed to practice chiropractic in this state. Two members shall be public members. No person may be appointed to the examining board who is in any way connected with or has a financial interest in any chiropractic school.

(59) CONTROLLED SUBSTANCES BOARD. There is created in the department of regulation and licensing a controlled substances board consisting of the attorney general, the secretary of health and family services and the secretary of agriculture, trade and consumer protection, or their designees; the chairperson of the pharmacy examining board or a designee; and one psychiatrist and one pharmacologist appointed for 3–year terms.

(6) DENTISTRY EXAMINING BOARD. There is created a dentistry examining board in the department of regulation and licensing consisting of the following members appointed for 4–year terms:

(a) Six dentists who are licensed under ch. 447.

(b) Three dental hygienists who are licensed under ch. 447. Notwithstanding s. 15.08 (1m) (a), the dental hygienist members may participate in the preparation and grading of licensing examinations for dental hygienists.

(c) Two public members.

(6m) HEARING AND SPEECH EXAMINING BOARD. There is created a hearing and speech examining board in the department of regulation and licensing consisting of the following members appointed for 4–year terms:

(a) Three hearing instrument specialists licensed under subch. I of ch. 459.

(b) One otolaryngologist.

(c) 1. One audiologist registered under subch. III of ch. 459. This subdivision applies during the period beginning on December 1, 1990, and ending on June 30, 1993.

2. One audiologist licensed under subch. II of ch. 459. This subdivision applies after June 30, 1993.

(d) 1. One speech–language pathologist registered under subch. III of ch. 459. This subdivision applies during the period beginning on December 1, 1990, and ending on June 30, 1993.

2. One speech–languagepathologist licensed under subch. II of ch. 459. This subdivision applies after June 30, 1993.

(e) Two public members. One of the public members shall be a hearing aid user.

(7) MEDICAL EXAMINING BOARD. (a) There is created a medical examining board in the department of regulation and licensing.

(b) The medical examining board shall consist of the following members appointed for staggered 4–year terms:

1. Nine licensed doctors of medicine.

2. One licensed doctor of osteopathy.

3. Three public members.

(c) The chairperson of the patients compensation fund peer review council under s. 655.275 shall serve as a nonvoting member of the medical examining board.

(7c) MARRIAGE AND FAMILY THERAPY, PROFESSIONAL COUNSELING, AND SOCIAL WORK EXAMINING BOARD. (a) There is created a marriage and family therapy, professional counseling, and social work examining board in the department of regulation and licensing consisting of the following members appointed for 4–year terms:

1. Four social worker members who are certified or licensed under ch. 457.

2. Three mamage and family therapist members who are licensed under ch. 457.

3. Three professional counselor members who are licensed under ch. 457.

4. Three public members who represent groups that promote the interests of consumers of services provided by persons who are certified or licensed under ch. 457.

(am) The 4 members appointed under par.(a) 1. shall consist of the following:

1. One member who is certified under ch. 457 as an advanced practice social worker.

2. One member who is certified under ch. 457 as an independent social worker.

3. One member who is licensed under ch. 457 as a clinical social worker.

4. At least one member who is employed as a social worker by a federal, state or local governmental agency.

(b) In operation, the examining board shall be divided into a social worker section, a marriage and family therapist section and a professional counselor section. The social worker section shall consist of the 4 social worker members of the examining board and one of the public members of the examining board. The marriage and family therapist section shall consist of the 3 marriage and family therapist members of the examining board and one of the public members of the examining board. The professional counselor section shall consist of the 3 professional counselor members of the examining board and one of the public members of the examining board.

(c) All matters pertaining to granting, denying, limiting, suspending, or revoking a certificate or license under ch. 457, and all other matters of interest to either the social worker, mamage and family therapist, or professional counselor section shall be acted upon solely by the interested section of the examining board.

(d) All matters that the examining board determines are of joint interest shall be considered by joint meetings of all sections of the examining board or of those sections to which the problem is of interest.

(e) Notwithstanding **s.** 15.08 (4) (a), at a joint meeting of all sections of the examining board, a majority of the examining board constitutes a quorum to do business only if at least 8 members are present at the meeting. At a meeting of a section of the examining board or a joint meeting of 2 or more of the sections of the examining board, each member who is present has one vote, except as provided in par.(f).

(f) At a joint meeting of the social worker section and one or both of the other sections of the examining board, each member who is present has one vote, except that the social worker members each have three–fourths of a vote if all 4 of those members are present.

(7g) BOARD OF NURSING. There is created a board of nursing in the department of regulation and licensing. The board of nursing shall consist of the following members' appointed for staggered 4–year terms: 5 currently licensed registered nurses under ch. 441; 2 currently licensed practical nurses under ch. 441; and 2 public members. Each registered nurse member shall have graduated from a program in professional nursing and each practical nurse member shall have graduated from a program in practical nursing accredited by the state in which the program was conducted.

(7m) NURSING HOME ADMINISTRATOR EXAMINING BOARD. There is created a nursing home administrator examining board in the department of regulation and licensing consisting of 9 members appointed for staggered 4–year terms and the secretary of health and family services or a designee, who shall serve as a nonvoting member. Five members shall be nursing home administrators licensed in this state. One member shall be a physician. One member shall be a nurse licensed under ch. **441.** Two members shall be public members. No more than 2 members may be officials or full–time employees of this state.

(8) OPTOMETRY EXAMINING BOARD. There is created an optometry examining board in the department of regulation and licensing. The optometry examining board shall consist of 7 members appointed for staggered 4–year terms. Five of the members shall be licensed optometrists in this state. Two members shall be public members.

(9) PHARMACY EXAMINING BOARD. There is created a pharmacy examining board in the department of regulation and licensing. The pharmacy examining board shall consist of 7 members appointed for staggered 4–year terms. Five of the members shall be licensed to practice pharmacy in this state. Two members shall be public members.

(10m) PSYCHOLOGY EXAMINING BOARD. There is created in the department of regulation and licensing a psychology examining board consisting of 6 members appointed for staggered 4–year terms. Four of the members shall be psychologists licensed in this state. Each of the psychologist members shall represent a different specialty area within the field of psychology. Two members shall be public members.

(10r) REAL ESTATE APPRAISERS BOARD. (a) There is created a real estate appraisers board in the department of regulation and licensing consisting of the following members appointed for 4–year terms:

1. Three appraisers who are certified or licensed under ch. 458.

2. One assessor, as defined in **s.** 458.09 **(1).**

3. Three public members.

(b) Of the appraiser members of the board, one shall be certified under s. 458.06 as a general appraiser, one shall be certified under **s.** 458.06 as a residential appraiser and one shall be licensed under **s.** 458.08 as an appraiser. No public member of the board may be connected with or have any financial interest in an appraisal business or in any other real estate–related business. Section 15.08 (Im) (am) applies to the public members of the board. No member of the board may serve more than 2 consecutive terms.

(c) Notwithstanding **s.** 15.07 (4), a majority of the board constitutes a quorum to do business only if at least 2 of the members present are appraiser members and at least one of the members present **is** a public member.

(11) REAL ESTATE BOARD. There is created a real estate board in the department of regulation and licensing. The real estate board shall consist of 7 members appointed to staggered 4–year terms. Four of the members shall be real estate brokers or salespersons licensed in this state. Three members shall be public members. Section 15.08 (Im) (am) applies to the public members of the real estate board. No member may serve more than 2 terms. The real estate board does not have rule–making authority.

(12) VETERINARY EXAMINING BOARD. There is created a veterinary examining board in the department of regulation and licensing. The veterinary examining board shall consist of 8 members appointed for staggered 4–year terms. Five of the members shall be licensed veterinarians in this state. One member shall be a veterinary technician certified in this state. Two members shall be public

members. No member of the examining board may in any way be financially interested in any school having a veterinary department or a course of study in veterinary or animal technology.

(16) FUNERAL DIRECTORS EXAMINING BOARD. There is created a funeral directors examining board in the department of regulation and licensing. The funeral directors examining board shall consist of 6 members appointed for staggered 4–year terms. Four members shall be licensed funeral directors under ch. 445 in this state. Two members shall be public members.

(17) BARBERING AND COSMETOLOGY EXAMINING BOARD. There is created a barbering and cosmetology examining board in the department of regulation and licensing. The barbering and cosmetology examining board shall consist of **9** members appointed for 4–year terms. Four members shall be licensed barbers or cosmetologists, *2* members shall be public members, one member shall be a representative of a private school of barbering or cosmetology, one member shall be a representative of a public school of barbering or cosmetology and one member shall be a licensed electrologist. Except for the 2 members representing schools, no member may be connected with or have anv financial interest in a barbering or cosmetology school.

History: **1973** c. **90,156; 1975** c. **39, 86, 199, 200, 383, 422; 1977** c. **26, 29, 203; 1977** c. **418; 1979** c. **34** ss. **45, 47** to **52; 1979** c. **221, 304; 1981** c. **94** ss. **5, 9; 1981 c. 356; 1983** a. **27,403,485,538; 1985** a. **340; 1987** a. **257** s. **2; 1987** a. **264,265,316; 1989** a. **316, 340; 1991** *a.* **39, 78, 160, 189,269; 1993** a. **16, 102, 463, 465,491; 1995** a. **27** s. **9126 (19); 1995** a. **225; 1995** a. **305** s. **1; 1995** a. **321,417; 1997 a. 96,252,300; 2001** a. **16. 80.**

A medical school instructor serving without compensation is ineligible to serve on the board of medical examiners. **62** Atty. Gen. **193.**

An incumbent real estate examining board member is entitled to hold over in office until *a* successor is duly appointed and confirmed by the senate. The board was without authority to reimburse the nominee for expenses incurred in attending a meeting during an orientation period prior to confirmation. **63** Atty. Gen. **192.**

15.406 Same; attached affiliated credentialing boards.

(1) PHYSICAL THERAPISTS AFFILIATED CREDENTIALING BOARD. There is created in the department of regulation and licensing, attached to the medical examining board, a physical therapists affiliated credentialing board consisting of the following members appointed for &year terms:

(a) Three physical therapists who are licensed under subch. III of ch. 448.

(am) One physical therapist assistant licensed under subch. III of ch. 448.

Note: Par. (am) is **created** eff. 4–1–04 **by 2001 Wis. Act 70.**

(b) One public member.

(2) DIETITIANS AFFILIATED CREDENTIALING BOARD. There is created in the department of regulation and licensing, attached to the medical examining board, a dietitians affiliated credentialing board consisting of the following members appointed for 4–year terms:

(a) Three dietitians who are certified under subch. V of ch. 448.

(b) One public member.

(3) PODIATRISTS AFFILIATED CREDENTIALING BOARD. There is created in the department of regulation and licensing, attached to the medical examining board, a podiatrists affiliated credentialing board consisting of the following members appointed for 4–year terms:

(a) Three podiatrists who are licensed under subch. IV of ch. **448.**

(b) One public member.

(4) ATHLETIC TRAINERS AFFILIATED CREDENTIALING BOARD. There is created in the department of regulation and licensing, attached to the medical examining board, an athletic trainers affiliated credentialing board consisting of the following members appointed for &year terms:

(a) Four athletic trainers who are licensed under subch. VI of ch. 448 and who have not been issued a credential in athletic training by a governmental authority in a jurisdiction outside this state. One of the athletic trainer members may also be licensed under ch. 446 or 447 or subch. II, III or IV of ch. 448.

(b) One member who is licensed to practice medicine and surgery under subch. II of ch. 448 and who has experience with athletic training and sports medicine.

(c) One public member.

(5) OCCUPATIONAL THERAPISTS AFFILIATED CREDENTIALING BOARD. There is created in the department of regulation and licensing, attached to the medical examining board, an occupational therapists affiliated credentialing board consisting of the following members appointed for 4–year terms:

(a) Three occupational therapists who are licensed under subch. VII of ch. 448.

(b) Two occupational therapy assistants who are licensed under subch. VI of ch. 448.

(c) Two public members.

History: **1993** a. **107,443; 1997** a. **75,175; 1999** a. **9, 180;** 2001 a. **70.**

15.407 Same; councils.

(1m) RESPIRATORY CARE PRACTITIONERS EXAMINING COUNCIL. There is created a respiratory care practitioners examining council in the department of regulation and licensing and serving the medical examining board in an advisory capacity in the formulating of rules to be promulgated by the medical examining board for the regulation of respiratory care practitioners. The respiratory care practitioners examining council shall consist of 3 certified respiratory care practitioners, each of whom shall have engaged in the practice of respiratory care for at least 3 years preceding appointment, one physician and one public member. The respiratory care practitioner and physician members shall be appointed by the medical examining board. The members of the examining council shall serve 3–year terms. Section 15.08 (1) to (4) (a) and (6) to (10) shall apply to the respiratory care practitioners examining council.

(2) COUNCIL ON PHYSICIAN ASSISTANTS. There is created a council on physician assistants in the department of regulation and licensing and serving the medical examining board in an advisory capacity. The council's membership shall consist of:

(a) The vice chancellor for health sciences of the University of Wisconsin–Madison or the vice chancellor's designee.

(b) One public member appointed by the governor for a 2–year term.

(c) Three physician assistants selected by the medical examining board for staggered 2–year terms.

(2m) PERFUSIONISTS EXAMINING COUNCIL. There is created a perfusionists examining council in the department of regulation and licensing and serving the medical examining board in an advisory capacity, The council shall consist of the following members appointed for 3–year terms:

(a) Three licensed perfusionists appointed by the medical examining board.

(b) One physician who is a cardiothoracic surgeon or a cardiovascular anesthesiologist and who is appointed by the medical examining board.

(c) One public member appointed by the governor.

(3) EXAMINING COUNCILS; BOARD OF NURSING. The following examining councils are created in the department of regulation and licensing to serve the board of nursing in an advisory capacity. Section 15.08 (1) to (4) (a) and (6) to (10), applies to the examining councils.

(a) ***Registered nurses.*** There is created an examining council on registered nurses to consist of 4 registered nurses of not less than 3 years' experience in nursing, appointed by the board of nursing for staggered 4–year terms.

(b) ***Practical nurses.*** There is created an examining council on licensed practical nurses to consist of one registered nurse, 3 licensed practical nurses and one registered nurse who is a faculty member of an accredited school for practical nurses, appointed by the board of nursing for staggered 3–*year terms.* No member may be a member of the examining council on registered nurses.

(4) COUNCIL ON SPEECH–LANGUAGE PATHOLOGY AND AUDIOLOGY. There is created a council on speech–language pathology and audiology in the department of regulation and licensing and serving the hearing and speech examining board in an advisory capacity. The council shall consist of the following members appointed **for** 3–year terms:

(a) Three speech–language pathologists licensed under subch. II of ch. 459.

(b) Two audiologists licensed under subch. II of ch. 459.

(5) COUNCIL ON REAL ESTATE CURRICULUM AND EXAMINATIONS. There is created in the department of regulation and licensing a council on real estate curriculum and examinations consisting of 7 members appointed for 4–year terms. Five members shall be real estate brokers or salespersons licensed under ch. **452** and **2** members shall be public members. Of the real estate broker or salesperson members, one member shall be a member of the real estate board appointed by the real estate board, at least 2 members shall be

licensed real estate brokers with at least 5 years of experience as real estate brokers, and at least one member shall be a licensed real estate salesperson with at least 2 years of experience as a real estate salesperson. Of the 2 public members, at least one member shall have at least 2 years of experience in planning or presenting real estate educational programs. No member of the council may serve more than 2 consecutive terms.

(6) PHARMACIST ADVISORY COUNCIL. There is created a pharmacist advisory council in the department of regulation and licensing and serving the pharmacy examining board in an advisory capacity. The council shall consist of the following members appointed for 3–year terms:

(a) Two pharmacists licensed under ch. 450 appointed by the chairperson of the pharmacy examining board.

(b) One physician licensed under subch. II of ch. 448 appointed by the chairperson of the medical examining board.

(c) One nurse licensed under ch. 441 appointed by the chairperson of the board of nursing.

(7) MASSAGE THERAPY AND BODYWORK COUNCIL. (a) There is created a massage therapy and bodywork council in the department of regulation and licensing, serving the department in an advisory capacity. The council shall consist of 7 members, appointed for 4–year terms, who are massage therapists or bodyworkers certified under ch. 460 and who have engaged in the practice of massage therapy or bodywork for at least 2 years preceding appointment.

(b) In appointing members under par.(a), the governor shall ensure, to the maximum extent practicable, that the membership of the council is diverse, based on all of the following factors:

1. Massage or bodywork therapies practiced in this state.

2. Affiliation and nonaffiliation with a professional association for the practice of massage therapy or bodywork.

3. Professional associations with which massage therapists or bodyworkers in this state are affiliated.

4. Practice in urban and rural areas in this state.

Note: Sub. (7) is created eff. 3–1-03 by 2001 Wis. Act 74.

History: 1973 c. 149; 1975 c. 39.86, 199,383,422; 1977 c. 418; 1979 c. 34 ss. 46, 53; 1981 c. 390 s. 252; 1985 a. 332 s. 251 (1); 1987 a. 399; 1989 a. 229,316,341,359; 1991 a. 316; 1993 a. 105, 107; 1997 a. 68, 175; 1997 a. 237 s. 727m; 1999 a. 32, 180, 186; 2001 a. 74, 89.

CHAPTER 19
GENERAL DUTIES OF PUBLIC OFFICIALS

SUBCHAPTER II
PUBLIC RECORDS AND PROPERTY

19.34 Procedural information

19.34 Procedural information. (1) Each authority shall adopt, prominently display and make available for inspection and copying at its offices, for the guidance of the public, a notice containing a description of its organization and the established times and places at which, the legal custodian under **s.** 19.33 from whom, and the methods whereby, the public may obtain information and access to records in its custody, make requests for records, or obtain copies of records, and the costs thereof. This subsection does not apply to members of the legislature or to members of any local governmental body.

(2) (a) Each authority which maintains regular office hours at the location where records in the custody of the authority are kept shall permit access to the records of the authority at all times during those office hours, unless otherwise specifically authorized by law.

(b) Each authority which does not maintain regular office hours at the location where records in the custody of the authority are kept shall:

1. Permit access to its records upon at least **48** hours' written or oral notice of intent to inspect or copy a record; or

2. Establish a period of at least 2 consecutive hours per week during which access to the records of the authority is permitted. In such case, the authority may require 24 hours' advance written or oral notice of intent to inspect or copy **a** record.

(c) An authority imposing a notice requirement under par. (b) shall include a statement of the requirement in its notice under sub.(1), if the authority is required to adopt a notice under that subsection.

(d) If a record of an authority is occasionally taken to a location other than the location where records of the authority are regularly kept, and the record may be inspected at the place at which records of the authority are regularly kept upon one business day's notice, the authority or legal custodian of the record need not provide access to the record at the occasional location.

History: 1981 c. 335.

CHAPTER 94
PLANT INDUSTRY

94.67 Pesticides: definitions.
94.702 Veterinary **clinic** permit.

Cross–reference: See definitions in s. **93.01**

94.67 Pesticides; definitions. In ss. 94.67 to 94.71: **(1)** "Active ingredient'' means any ingredient which will:

(a) Prevent, destroy, repel or mitigate pests;

(b) Accelerate or retard the rate of growth or rate of maturation or otherwise alter the behavior of ornamental or crop plants or the product of the plants through physiological action;

(c) Cause the leaves or foliage to drop from a plant; or (d) Artificially accelerate the drying of plant tissue.

(2) "Agricultural commodity" means any plant or part of a plant, animal or animal product produced by a person primarily for sale, consumption, propagation or other use by humans or animals.

(3) "Animal" means all vertebrate and invertebrate species, including but not limited to persons and other mammals, birds, fish and shellfish.

(3m) "Business location" means any place from which a commercial application business operates on a regular basis as a commercial applicator for hire, except that it does not include a motor vehicle that contains a mobile telephone unit which is used to take pesticide application orders.

(4) "Certified applicator" means a private applicator certified by the department to use restricted–use pesticides or a commercial applicator certified by the department to use or direct the use of pesticides under s. 94.705.

(5)(a) "Commercial application business" means a corporation, limited liability company, cooperative association, partnership, natural person doing business as a sole proprietor or other nongovernmental business entity that does either of the following:

1. Operates as a commercial applicator for hire.

2. Uses or directs the use of a restricted–use pesticide as a commercial applicator, either directly or through an employee.

(b) "Commercial application business" does not include a veterinary clinic that uses or directs the use of a pesticide if the pesticide is used or directed to be used only by a veterinarian or veterinary technician while lawfully practicing within the scope of his or her license or certificate.

(6) "Commercial applicator" means a person, whether or not a private applicator with respect to some uses, who uses or directs the use of any pesticide, either directly or through an employee, for any purpose or on any property other than as a private applicator. "Commercial applicator" does not include:

(a) A person who applies a pesticide, other than a restricted–use pesticide, solely for household purposes in and around the person's residence.

(b) **A** person who contracts with a commercial applicator for hire to apply a pesticide for the person, if the person does not otherwise use or direct the use of a pesticide as a commercial applicator.

(c) A veterinarian or veterinary technician who uses or directs the use of a pesticide only while lawfully practicing within the scope of his or her license or certificate.

(7) "Commercial applicator for hire" means a commercial applicator who uses or directs the use of a pesticide as an independent contractor for hire, either directly or through an employee. "Commercial applicator for hire" does not include a provider of janitorial, cleaning or sanitizing services if the provider of the services uses no pesticides other than sanitizers, disinfectants and germicides, or a veterinarian or veterinary technician who uses a pesticide only while lawfully practicing within the scope of his or her license or certificate.

(8) "Dealer" means a person engaged in the sale of pesticides to consumers.

(9) "Defoliant" means any pesticide labeled, designed or intended for use in causing the leaves or foliage to drop from a plant with or without causing abscission.

(10) "Desiccant" means a pesticide labeled, designed or intended for use in artificially accelerating the drying of plant tissue.

(10m) "Directs the use" means to select a pesticide for use by another person or to instruct or control the application of a pesticide by another person and to be available if and when needed during that application. "Directs the use" may, but does not necessarily, mean to be physically present at the time and place a pesticide is being applied.

(11) "Distributor" means a person engaged in the sale of pesticides for resale and includes a person who sells at wholesale or retail.

(12) "Environment" includes water, air, land and all plants and persons and other animals living in or on the water, air or land and the interrelationships which exist among them.

(13) "Federal act" means the federal insecticide, fungicide, and rodenticide act, as amended (7 USC 136 et. seq.) and regulations issued under that act.

(14) "Fungus" means any non-chlorophyll–bearing plant of a lower order than mosses and liverworts (thallophyte), including but not limited to rusts, smuts, mildews, molds and yeasts except those on or in persons or other animals and those on or in processed food, beverages or pharmaceuticals.

(15m) (a) "Individual commercial applicator" means a natural person who does any of the following:

1. Personally uses or directs the use of any pesticide as a commercial applicator for hire, or as an employee of a commercial applicator for hire. This subdivision does not apply to a person performing janitorial, cleaning or sanitizing services if the person uses no pesticides other than sanitizers, disinfectants and germicides.

2. Personally uses a restricted–use pesticide as a commercial applicator.

3. Directs the use of a pesticide by a person specified under subd.1. or **2.**

(b) "Individual commercial applicator" does not include a veterinarian or veterinary technician who uses or directs the use of a pesticide only while lawfully practicing within the scope of his or her license or certificate.

(16) "Inert ingredient" means an ingredient which is not an active ingredient.

(17) "Ingredient statement" means a statement which contains the name and percentage of each active ingredient and the total percentage of all inert ingredients in the pesticide; and if the pesticide contains arsenic in any form, a statement of the percentages of total and water soluble arsenic, calculated as elementary arsenic.

(18) "Insect" means any of the numerous small invertebrate animals generally having the body segmented, usually belonging to the class insecta, comprising 6–legged, usually winged forms, including but not limited to beetles, bugs, bees and flies and other allied classes of arthropods whose members are wingless and usually have more than 6 legs, including but not limited to spiders, mites, ticks, centipedes and wood lice.

(19) "Label" means the written, printed, or graphic matter on, or attached to, the pesticide or any of its containers or wrappers.

(20) "Labeler" means a person who affixes his or her label **to** the pesticide or any of its containers or labeling.

(21) "Labeling" means all labels and all other written, printed or graphic matter accompanying the pesticide at any time or the matter to which reference is made on the label or in literature accompanying the pesticide, except current official publications of state agricultural colleges, experiment stations and extension services or any other state or federal agency authorized by law to conduct research in the field of pesticides.

(21m) "Licensee" means a person required to obtain a license under s. 94.68, 94.685, 94.703 or 94.704.

(22) "Nematode" means invertebrate animals of the phylum nemathelminthes and class nematoda, consisting of unsegmented worms with elongated fusiform or saclike bodies covered with cuticle and inhabiting soil, water, plants or plant parts. Nematodes may also be called nemas or eelworms.

(23) "Person of limited English language ability" means a person whose ability to use the English language is limited because of the use of a non–English language in his or her family or in his or her daily surroundings and who has difficulty performing in English as a result of limited English language ability.

(24) "Pest" means any insect, rodent, nematode, fungus, weed or any other form of terrestrial or aquatic plant or animal life or virus, bacteria or other micro–organism, except viruses, bacteria or other micro–organisms on or in living persons or other living animals, declared to be a pest under the federal act or rules of the department.

(25) "Pesticide" means any substance or mixture of substances labeled or designed or intended for use in preventing, destroying, repelling or mitigating any pest, or as a plant regulator, defoliant or desiccant.

(25m) "Pesticide product" means a pesticide, all of the containers in commerce of which are labeled with a unique combination of all of the following:

(a) The brand name.

(b) The pesticide registration number assigned to the pesticide under the federal act.

(c) The name of the pesticide labeler.

(26) "Plant regulator" means any pesticide labeled or designed or intended for use, through physiological action, in accelerating or retarding the rate of growth or maturation, or for otherwise altering the behavior of plants or the produce of the plant, but does not include substances to the extent labeled or designed or intended for use as plant nutrients, trace elements, nutritional chemicals, plant inoculants and soil amendments. The term also excludes nutrient mixtures or soil amendments commonly known as vitamin–hormone horticultural products intended for improvement, maintenance, survival, health and propagation of plants, if they are not labeled, designed or intended for use for pest destruction and are nontoxic and nonpoisonous in the undiluted packaged concentration.

(26m) "Private applicator" means a person who uses or directs the use of any pesticide for the purpose of producing any agricultural commodity on property owned or rented by the person or the person's employer, or on property of another person if the pesticide is used without compensation other than the trading of goods or services between producers of agricultural commodities on an exchange basis. "Private applicator" does not include a veterinarian or veterinary technician who uses a pesticide only while lawfully practicing within the scope of his or her license or certificate.

(27) "Produce" or "manufacture" means to manufacture, formulate, prepare, compound, propagate, package, label or process any pesticide.

(28) "Producer" or "manufacturer" means the person who produces or manufactures any pesticide.

(29) "Protect health and the environment" means protection against any unreasonable adverse effects on the environment.

(30) "Registrant" means a person who has registered any pesticide under the federal act or rules of the department.

(31) "Restricted–use pesticide" means a pesticide for which certain or all of its uses are classified as being for restricted use under the federal act.

(33) "Unreasonable adverse effects on the environment" means unreasonable risk to persons or the environment, taking into account the economic, social and environmental costs and benefits of the use of any pesticide.

(33m) "Veterinarian" means an individual who is licensed as a veterinarian under ch. 453.

(33t) "Veterinary technician" means an individual who is certified as a veterinary technician under ch. 453.

(34) "Weed" means any plant which grows where not wanted.

History: 1975 c. 94 s. 91 (10); 1977 c. 106,273; 1985 a. 135; 1987 a. 27; 1989 a. 279; 1993 a. 16, 112; 1995 a. 321.

Cross Reference: *See* also **chs.** ATCP 29, 30, and 31 and ss. **ATCP** 160.19 and 160.21, Wis. adm. **code.**

94.702 Veterinary clinic permit. (1) In this section, "clinic" means a veterinary clinic where pesticides are repackaged, used or directed to be used by a veterinarian or by a person under the direction or supervision of a veterinarian. Multiple business locations under common ownership and control constitute a single clinic.

(2) No person may own a clinic without a permit issued by the department under this section.

(3) Permits issued under this section shall expire on December 31 of each odd–numbered year. An application for a permit shall be submitted to the department on a form provided by the department and shall include a $25 permit fee. The application shall include all of the following information:

(a) The name and complete mailing address and street address of the clinic.

(b) The name of every person associated with or employed by the clinic who prescribes, handles or uses pesticides, including the license number of any such person licensed under s. 94.704.

(3m) The department shall deposit the fees collected under sub.

(3) in the agrichemical management fund.

(4) The department may suspend or revoke any permit issued under this section for a violation of ss. 94.67 to 94.71. **All** such violations shall also be referred to the veterinary examining board for action under s. 453.07.

History: 1989 a. 279; 1997 a. 27.

CHAPTER 95

ANIMAL HEALTH

95.001 Definitions.
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95.80 Humane slaughtering.
95.99 Penalties.

Cross–reference: See definitions in s. 93.01

95.001 Definitions. (1) As used in this chapter:

(ad) "Domestic animal" means any of the following:

1. An animal that is a member of a species that has been domesticated by humans.

2. A farm–raised deer, farm–raised game bird, or farm–raised fish.

3. An animal that is listed as a domestic animal by rule by the department.

(ag) "Farm–raised deer" means a cervid that is kept in captivity or a cervid that is present in the wild and that has an ear tag or other mark identifying it as being raised on a farm.

(ah) "Farm–raised fish" means any fish egg that is present on a fish farm or any fish that is reared on a fish farm.

(ai) "Farm–raised game bird" has the meaning given in s. 169.01 (12m).

(aj) "Fish farm" means a facility at which a person hatches fish eggs or rears fish for the purpose of introduction into the waters of the state, human or animal consumption, permitting fishing, use as bait or fertilizer or any other purpose specified by the department by rule or for sale to another person to rear for one of those purposes.

(am) "Net salvage value" means the salvage value of an animal plus any federal indemnity paid for the animal.

(b) "Official vaccinate" means any female bovine animal officially reported to the department as having been vaccinated by an approved veterinarian at an age and in accordance with the procedures the department prescribes and which was properly tattooed at the time of vaccination as required by law or rules of the department.

(c) "Paratuberculosis" means the disease of domestic ruminants, commonly known as Johne's disease, that is caused by mycobacterium paratuberculosis.

(2) The department shall promulgate rules defining the term "contagious or infectious diseases" as used in this chapter.

History: 1979 c. 129 s. 11; 1981 c. 20; 1983 a. 189; 1989 a. 277; 1995 a. 79.450; 2001 a. 56 ss. 119 to 122, 154.

95.01 Administration of drugs to horses. (1) No person may administer a drug to a horse, either internally or externally, for the purpose of altering the performance of the horse in a horse pulling contest.

(2) Persons in charge of a horse pulling contest may require as a condition of participation in the contest that the exhibitor submit the exhibitor's horse for examination by a licensed veterinarian to determine the presence of drugs under sub. (1).

History: 1973 c. 191; 1993 a. 492.

95.10 Feeding garbage to swine. (1) Beginning July 1, 1968, it is unlawful for any person to feed public or commercial garbage to swine, or to deposit or receive such garbage on any premises where swine are kept, and no swine having fed on such garbage may be sold or removed from the premises.

(3) "Public or commercial garbage" as used in this section means putrescible animal or vegetable wastes containing animal parts, resulting from the handling, preparation, processing, cooking or consumption of food and which is collected from any source, and includes dead animals as defined in s. 95.72 (1) (c). The term does not apply to private household wastes not removed from the premises where produced.

(4) No indemnity shall be paid to the owner of any swine condemned or destroyed because of any infectious or communicable disease if such swine were located, at any time, on any premises receiving public or commercial garbage. No person shall fail or refuse to conform with the department order specifying the manner of disposal of such infected swine. The definition of "communicable disease" in s. 990.01 (5g) does not apply to this subsection.

(5) No person shall remove or permit the removal of any swine from any premises where public or commercial garbage is received, except to federally inspected slaughtering establishments and other slaughtering establishments approved by the state to receive diseased animals, and only if such swine are accompanied by a certificate of veterinary inspection.

(6) No person shall bring into this state any raw public or commercial garbage for feeding purposes or for deposit on any prem-

ises where swine are kept. Any garbage from vehicles serving food to passengers, if deposited in this state, shall be incinerated.

History: 1981 **c. 66,291; 1981 c.** 3Y1 s. 210; **2001 a. 56.**

95.11 Livestock branding. (1) DEFINITIONS. As used in this section:

(a) "Brand" means an identification mark which is burned, tattooed or otherwise permanently marked onto livestock in accordance with department rules. A brand shall consist of a symbol, Icttcr, or combinations of symbols, letters or numbers in a specific location but does not include ear notches or similar disfigurement, a mark which is solely a numeral or a mark required by law for official identification in disease control programs.

(b) "Livestock" means cattle and horses.

(2) ADOPTION AND USE. Any person may adopt an exclusive brand by recording such brand under sub. ***(3)*.**

(3) RECORDING; FEES. (a) Any person desiring to adopt any brand, not the recorded brand of another person, shall forward to the department a facsimile of the desired brand, together with a written application and a recording fee. Upon receipt the department shall record the brand, unless the brand is of record as that of some other person or conflicts with the recorded brand of any person. **If** the brand does not qualify for recording, or there is a conflict between applications received on the same date, the facsimile and fee shall be returned to the applicant. If the brand is accepted, the ownership thereof shall vest from the date of filing.

(b) In 1954 and every 10th year thereafter, every owner of a brand shall rerecord the brand according to department rules. At the expiration of each recording period the department shall notify every owner of a brand at the owner's address of record that the brand has not been rerecorded and that the brand must be rerecorded within 90 days. Failure to rerecord the brand is an abandonment of the brand, and it can be recorded by another applicant thereafter.

(c) Any recorded brand is subject to transfer as personal property. Instruments evidencing transfer of a brand shall be recorded by the department upon payment of a transfer fee.

(d) The fee for initial recording is $20, and for rerecording and transfer is $10. When any brand is recorded, the owner is entitled to one certified copy of the recorded brand. Additional certified copies may be obtained upon the payment of $2 for each copy.

(4) SUIT BY OWNER. An owner of a recorded brand may sue for injunctive relief and damages arising from an unauthorized use of the owner's brand on livestock and a judgment in the owner's favor may include costs and reasonable attorney fees.

History: 1973 c. **239; 1993 a. 490,492;** 1995 **a. 225.**

Cross Reference: ***See* also ch. ATCP** 11, Wis. **adm. code.**

95.12 False pedigree. No person with intent to defraud shall obtain from any corporation, association, society or company organized for the purpose of improving breeds of domestic animals, a false certificate of registration of any such domestic animal in the herd or other register of any such corporation, association, society or company, or the transfer of any such certificate, or shall, with intent to defraud, give a false pedigree of any such domestic animal.

History: 2001 a. 56.

95.13 Misrepresenting breed of domestic animal. No person shall sell or barter or cause to be sold or bartered any domestic animal and represent, or cause to be represented that such domestic animal is a pure bred domestic animal, when in fact such domestic animal is not registered, or entitled to registry, in any pure breed registry maintained for such domestic animals; nor shall any person knowingly utter, pass or deliver to any person as true, any false, or altered pedigree; nor shall any person refuse to deliver proper certificate of registry for any domestic animal sold or transferred by the person, having represented at the time of sale or transfer, and as an inducement thereto, that such domestic animal was registered and that the person possessed and would deliver a certificate of registry as evidence thereof, or that such domestic animal was entitled to registry and that the person would secure such certificate and deliver the same.

History: I993 a. 492: 2001 a. 56.

95.14 Corporations to improve livestock. (1) Three or more adult persons of this state may form a corporation, without capital stock, to be managed and directed as herein provided, for the purpose of improving the breeding of livestock by such means and methods as may be deemed most advisable, and to receive and manage contributions therefor made from time to time by way of gifts, deed, devise, bequest or otherwise, and to expend the income thereof for the purpose of the corporation. The work of any such corporation shall be entirely educational and designed by practical work with the breeder upon the farm to result in a better understanding and practical application of the scientific and technical principles taught in agricultural colleges and experiment stations, so as to effect the greatest possible coordination between the science and the art or practice of breeding, but such work shall not be merged with the **work** of any educational instihition. Any corporation organized hereunder shall have authority to pay all necessary expenses properly incurred in carrying out the purposes of the corporation, including compensation to employees and to directors for services actually rendered in conducting the affairs of the corporation, but no pecuniary profit shall ever be paid to any incorporator or director.

(2) Any corporation organized under this section shall be managed and directed by a self–perpetuating board of directors of 5 members, consisting of the dean of the College of Agricultural and Life Sciences of the University of Wisconsin–Madison, who shall be permanent chairperson of the board, and 4 others to be appointed in the first instance by the incorporators; at least 3 of the 5 members shall always be representative livestock breeders of the state. If the dean of the College of Agricultural and Life Sciences fails to act as a member of the board by reason of refusal, disability, or vacancy in the chair of the dean, the remaining members of the board shall appoint a representative livestock breeder to act in his or her place on the board until the time as such refusal, disability, or vacancy in the chair ceases to exist. Whenever the dean of the College of Agricultural and Life Sciences becomes a member of the board of directors after any such interim, the dean shall automatically become chairperson of the board.

(3) The term of office of all members of the board, except the pcnnanent chairperson, shall expire one each year by lot. The remaining members shall elect a member to succeed the person whose term shall have thus expired. Vacancies occumng during the year may be filled at once by the remaining members.

(4) Any such corporation shall have the general powers of other corporations and its articles of organization shall conform to s. **I8 1.0202** with such modifications as this section requires.

History: 1973 c. 335 s. 12; 1979 c. 32; 1993 a. 184; 1997 a. 79; 2001 a. 103.

95.17 Animal diseases; cooperation with United States. Whenever it is determined by the department and the state constitutional officers that it **is** necessary to combat dangerous diseases in animals in this state in cooperation with the U.S. department of agriculture and to destroy animals affected with or which have been exposed to any such disease or to destroy property in the disinfection of the premises or to do any other act or incur any other expense reasonably necessary in suppressing or combating such disease, the department may accept, on behalf of the state, the rules and regulations prepared by the U.S. department of agriculture under authority of an act of congress relating to the suppression of any such disease and cooperate with the authorities of the U.S. in the enforcement of their provisions; or it may follow such procedure as to inspection, vaccination, condemnation, appraisal, disinfection and other acts reasonably necessary in the suppression of such diseases as may be agreed upon and adopted by the department and the state constitutional officers with the representatives of the U.S. department of agriculture. Within the amount which may, subsequent to March 23,191 5, be appropriated for this purpose, the state shall pay such proportion

of the expense incurred in suppressing or combating any such disease and in compensating owners of animals slaughtered under this section as shall be determined by and mutually agreed upon with the U.S. department of agriculture.

History: **1975 c.** 308; **2001** a. 56.

95.18 Animals in transit. Animals in transit in the state are subject to all the provisions of law relating to contagious or infectious diseases of animals, and to the regulations and orders of the department.

95.19 Diseased animals. (1) DEFINITIONS. In this section, "knowingly" means that the actor believes that the specified fact exists.

(2) PROHIBITIONS. No person may do any of the following:

(a) Import, sell, transport or exhibit an animal that is exposed to a contagious or infectious disease, except as provided in sub. (3) (a).

(b) Import, sell, transport or exhibit an animal that is infected with a contagious or infectious disease, except as provided in sub. (3) (a).

(c) Knowingly conceal that an animal that is imported, sold, transported or exhibited has been exposed to or infected with a contagious or infectious disease.

(d) Knowingly misrepresent that an animal has not been exposed to or infected with a contagious or infectious disease.

(e) Knowingly permit an animal that has been exposed to or infected with a contagious or infectious disease to commingle with other animals under conditions that may cause the disease to spread to an animal owned by another person.

(3) RULE MAKING. The department may promulgate rules:

(a) Authorizing the transport under a department permit of an animal exposed to or infected with a contagious or infectious disease for slaughter or other purposes prescribed by the department.

(b) Specifying those contagious or infectious diseases to which the prohibitions of sub. (2), and the rules promulgated under par. (a), apply.

(4) DAMAGES. A person who violates this section is liable to any person injured for damages sustained as a result of the violation.

History: 1989 a. **271.**

Cross Reference: See **also** chs. ATCP 11 and **12,** Wis. adm. code.

95.195 Diseases; implied warranty in sale of animals. (1) DEFINITION. In this section, "covered disease" means a disease that the department specifies under sub. (4) (a) is covered by this section.

(2) WARRANTY. Except as provided in sub. (3), in every contract for the sale of an animal of a type specified by the department under sub. **(4)** (b), there is an implied warranty that the animal is not infected with a covered disease unless the seller discloses to the buyer in writing, prior to sale, all of the following:

(a) The management classification of the animal's herd with respect to the covered disease.

(b) If the animal is a reactor with respect to the covered disease, that the animal is a reactor.

(3) EXCEPTION. The warranty under sub. **(2)** does not apply to an animal sold directly to slaughter.

(4) RULES. The department shall promulgate rules that do all of the following:

(a) Specify covered diseases.

(b) Specify types of animals to which this section applies.

(c) Prescribe a system for determining management classifications of herds with respect to covered diseases.

History: 1989 **a. 277; 1999** a. **160.**

Cross **Reference: See also chs.** ATCP 11 and **12, Wis.** adm. code.

95.197 Financial assistance for paratuberculosis testing. (1) The department shall provide financial assistance to owners of livestock herds for conducting testing for paratuberculosis.

(2) The dcpartnicnt shall promulgate rules for providing financial assistance under sub. (1).

History: **1999 a.** Y.

95.20 Import and movement of animals. The department may prohibit or regulate the importing of animals into this state or the movement of animals within this state if the department has rcasonablc grounds to believe that regulation or prohibition is necessary to prevent the introduction or spread of a disease in this state that threatens the health of animals or of humans.

History: 1981 **c. 291:** 1981 c. **391** s. 210; **2001** a. **56.**

95.21 Rabies control program. (1) DEFINITIONS. As used in this section:

(a) "Humane officer" means an officer appointed under s. 173.03.

(am) "Isolation facility" means a humane society shelter, veterinary hospital, municipal pound or other place specified by an officer which is equipped with a pen or cage which isolates the animal from contact with other animals.

(b) "Officer" means a peace officer, local health officer, as defined in **s.** 250.01 (5), humane officer, warden, an employee designated by the department or other person designated by the governing body of the county, city, village or town.

(c) "Owner" includes a person who owns, harbors, keeps or controls an animal.

(d) "Peace officer" has the meaning designated under s. 939.22 (22).

(e) "Veterinarian" has the meaning designated under **s.** 453.02 (7).

(f) "Warden" has the meaning designated under **s.** 24.01 (11).

(2) RABIES VACCINATION REQUIRED FOR **DOGS.** (a) *Requirement for vaccination.* Except as provided in s. 174.054, the owner of a dog shall have the dog vaccinated against rabies by a veterinarian at no later than 5 months of age and revaccinated within one year after the initial vaccination. If the owner obtains the dog or brings the dog into this state after the dog has reached 5 months of age, the owner shall have the dog vaccinated against rabies within 30 days after the dog is obtained or brought into the state unless the dog has been vaccinated as evidenced by a current certificate of rabies vaccination from this state or another state. The owner of a dog shall have the dog revaccinated against rabies by a veterinarian before the date that the immunization expires as stated on the certificate of vaccination or, if no date is specified, within 3 years after the previous vaccination.

(b) *Issuance of certificate of rabies vaccination.* A veterinarian who vaccinates a dog against rabies shall complete and issue to the owner a certificate of rabies vaccination bearing a serial number and in the form approved by the department stating the owner's name and address, the name, sex, spayed or unspayed, neutered or unneutered, breed and color of the dog, the date of the vaccination, the type of rabies vaccine administered and the manufacturer's serial number, the date that the immunization expires as specified for that type of vaccine by the center for disease control of the U.S. department of health and human services and the city, village or town where the dog is required to be licensed.

(c) *Copies of certificate.* The veterinarian shall keep a copy of each certificate of rabies vaccination in a file maintained for this purpose until the date that the immunization expires or until the dog is revaccinated whichever occurs first.

(e) *Rabies vaccination tag.* After issuing the certificate of rabies vaccination, the veterinarian shall deliver to the owner a rabies vaccination tag of durable material bearing the same serial number as the certificate, the year the vaccination was given and the name, address and telephone number of the veterinarian.

(f) *Tag to be attached.* The owner shall attach the rabies vaccination tag or a substitute tag to a collar and a collar with the tag

attached shall be kept on the dog at all times but this requirement does not apply to a dog during competition or training, to a dog while hunting, to a dog securely confined indoors, to a dog securely confined in a fenced area or to a dog while actively involved in herding or controlling livestock if the dog is under the control of its owner. The substitute tag shall be of a durable material and contain the same information as the rabies vaccination tag. The requirements of this paragraph do not apply to a dog which is not required to be vaccinated under sub. (2) (a).

(g) *Duplicate tag.* The veterinarian may furnish a new rabies vaccination tag with a new serial number to an owner in place of the original tag upon presentation of the certificate of rabies vaccination. The veterinarian shall then indicate the new tag number on the certificate and keep a record in the file.

(h) *Cost.* The owner shall pay the cost of the rabies vaccination and the cost associated with the issuance of a certificate of rabies vaccination and the delivery of a rabies vaccination tag.

(3) DISTRICT QUARANTINE. (a) *Dogs confined.* If a district is quarantined for rabies. all dogs within the district shall be kept securely confined, tied, leashed or muzzled. Any dog not confined, tied, leashed or muzzled is declared a public nuisance and may be impounded. All officers shall cooperate in the enforcement of the quarantine. The clerk of every town, city or village wholly or partly within the quarantine district shall promptly post in at least 3 public places in the town, city or village, notices of quarantine furnished by the department for posting.

(b) *Exemption of vaccinated dog from district quarantine.* A dog which is immunized currently against rabies as evidenced by a valid certificate of rabies vaccination or other evidence is exempt from the district quarantine provisions of par. (a) if a rabies vaccination tag or substitute tag is attached to the dog's collar.

(4) QUARANTINE OK SACRIFICE OF AN ANIMAL SUSPECTED OF BITING A PERSON OR BEING INFECTED OK EXPOSED TO RABIES. (a) *Quarantine or sacrifice of dog or cat.* An officer shall order a dog or cat quarantined if the officer has reason to believe that the animal bit a person, is infected with rabies or has been in contact with a rabid animal. If a quarantine cannot be imposed because the dog or cat cannot be captured, the officer may kill the animal. The officer may kill a dog or cat only as a last resort or if the owner agrees. The officer shall attempt to kill the animal in a humane manner and in a manner which avoids damage to the animal's head.

(b) *Sacrifice of other animals.* An officer may order killed or may kill an animal other than a dog or cat if the officer has reason to believe that the animal bit a person or is infected with rabies. Except as provided in s. 95.36, if an animal of a species raised primarily to produce food for human consumption is killed under this paragraph, the owner is eligible for an indemnity payment in an amount equal to the indemnity provided under s. 95.31 (3). If the decision is made by an employee of the department, the indemnity shall be paid from the appropriation under s. 20.115 (2) (b). If the decision is made by another officer, the indemnity shall be paid from the dog license fund.

(c) *Sacrifice of a dog or cat.* An officer may order killed or may kill a dog or cat if the owner of the dog or cat violates sub. (5) (a), (b) or (c).

(5) QUARANTINE OF DOG OK CAT. (a) *Delivery to isolation facility or quarantine on premises of owner.* An officer who orders a dog or cat to be quarantined shall deliver the animal or shall order the animal delivered to an isolation facility as soon as possible but no later than 24 hours after the original order is issued or the officer may order the animal to be quarantined on the premises of the owner if the animal is immunized currently against rabies as evidenced by a valid certificate of rabies vaccination or other evidence.

(b) *Health risk to humans.* If a dog or cat is ordered to be quarantined because there is reason to believe that the animal bit a person, the custodian of an isolation facility or the owner shall keep the animal under strict isolation under the supervision of a veterinarian for at least 10 days after the incident occurred. In this paragraph, "supervision of a veterinarian" includes, at a minimum, examination of the animal on the first day of isolation, on the last day of isolation and on one intervening day. If the observation period is not extended and if the veterinarian certifies that the dog or cat has not exhibited any signs of rabies, the animal may be released from quarantine at the end of the observation period.

(c) *Risk to animal health.* 1. If a dog or cat is ordered to be quarantined because there is reason to believe that the animal has been exposed to a rabid animal and if the dog or cat is not currently immunized against rabies, the custodian of an isolation facility or the owner shall keep the animal leashed or confined for 180 days. The owner shall have the animal vaccinated against rabies between 155 and 165 days after the exposure to a rabid animal.

2. If a dog or cat is ordered to be quarantined because there is reason to believe that the animal has been exposed to a rabid animal but if the dog or cat is immunized against rabies, the custodian of an isolation facility or the owner shall keep the animal leashed or confined for 60 days. The owner shall have the animal revaccinated against rabies as soon as possible after exposure to a rabid animal.

(d) *Sacrifice of a dog or cat exhibiting symptoms of rabies.* If a veterinarian detemiines that a dog or cat exhibits symptoms of rabies during the original or extended observation period, the veterinarian shall notify the owner and the officer who ordered the animal quarantined and the officer or veterinarian shall kill the animal in a humane manner and in a manner which avoids damage to the animal's head. If the dog or cat is suspected to have bitten a person, the veterinarian shall notify the person or the person's physician.

(6) DELIVERY OF CAKCASS: PREPARATION; EXAMINATION BY LABORATORY OF HYGIENE. An officer who kills an animal shall deliver the carcass to a veterinarian or local health department, as defined in s. 250.01 (4). The veterinarian or local health department shall prepare the carcass, properly prepare and package the head of the animal in a manner to minimize deterioration, arrange for delivery by the most expeditious means feasible of the head of the animal to the state laboratory of hygiene and dispose of or arrange for the disposal of the remainder of the carcass in a manner which minimizes the risk of exposure to any rabies virus. The laboratory of hygiene shall examine the specimen and determine if the animal was infected with rabies. The state laboratory of hygiene shall notify the department, the veterinarian or local health department which prepared the carcass and, if the animal is suspected to have bitten a person, that person or that person's physician.

(7) COOPERATION OF VETERINARIAN. Any practicing veterinarian who is requested to be involved in the rabies control program by an officer is encouraged to cooperate in a professional capacity with the department, the laboratory of hygiene, the local health department, as defined in s. 250.01 (4), the officer involved and, if the animal is suspected to have bitten a person, the person's physician.

(8) RESPONSIBILITY FOR QUARANTINE AND LABORATORY EXPENSES. The owner of an animal is responsible for any expenses incurred in connection with keeping the animal in an isolation facility, supervision and examination of the animal by a veterinarian, preparation of the carcass for laboratory examination and the fee for the laboratory examination. If the owner is unknown, the county is responsible for these expenses.

(9) LOCAL PROGRAMS. (a) This section does not prohibit or restrict a county, city, village or town from imposing a rabies control program with more restrictive provisions.

(b) This section does not prohibit a county, city, village or town from imposing its own rabies control program if the department approves the program. The department may not approve a program unless it provides for at least 2 examinations of the quarantined animal by a veterinarian or a trained individual with veterinarian involvement during a 10-day isolation period. The department shall promulgate rules establishing criteria for the

approval of programs under this paragraph and defining "trained individual" and "veterinarian involvement".

(c) The department may provide training to persons who administer local rabies control programs or who conduct rabies examinations under those programs. The department may charge fees to cover the cost of training. The fees collected under this paragraph shall be credited to the appropriation under s. 20.115 (2) (j).

(10) PENALTIES. (a) *Failure to obtain rabies vaccination.* An owner who fails to have a dog vaccinated against rabies as required under sub. (2) (a) may be required to forfeit not less than $50 nor more than $100.

(b) *Refusal to comply with order or quarantine.* An owner who refuses to comply with an order issued under this section to deliver an animal to an officer, isolation facility or veterinarian or who does not comply with the conditions of an order that an animal be quarantined shall be fined not less than $100 nor more than $1,000 or imprisoned not more than 60 days or both.

(c) *Other violation.* A person who violates any provision of this section not specified under pars. (a) and (b) may be required to forfeit up to $50.

History: 1979 c. 129, 289, 357; 1981 c. 285; 1981 c. 314 s. 144; 1983 a. 189 s. 329 (18); 1983 a. 451; 1985 a. 135, 184; 1993 a. 27; 1995 a. 450; 1997 a. 192.217; 1999 a. 4.

Cross Reference: See also chs. ATCP 11 and 12 and s. ATCP 13.02, Wis. adm. code.

95.22 Reporting animal diseases. (1) A veterinarian and the department of natural resources shall report to the department of agriculture, trade and consumer protection any disease specified in the rules promulgated under sub. (2) (a) each time a veterinarian or the department of natural resources discovers that such a disease is present in any animal in this state.

NOTE: Sub. (1), as affected by 2001 Wis. Act 56, was renumbered to sub. (1) (a) by 2001 Wis. Act 109 and renumbered to sub. (1) by the revisor under s. 13.93 (1) (b).

(2) The department shall promulgate rules that specify all of the following:

(a) The diseases that a veterinarian or the department of natural resources must report under this section.

(b) For each disease specified in par. (a), the deadline for reporting the disease after the date of its discovery.

(c) The information that a veterinarian or the department of natural resources must include in his or her report.

(d) Procedures to be used in preparing and submitting the report.

NOTE: Sub. (2), as affected by 2001 Wis. Act 56, was renumbered to sub. (1) (b) by 2001 Wis. Act 109 and renumbered to sub. (2) by the Revisor under s. 13.93 (1) (b).

(3) The department of agriculture, trade and consumer protection shall notify the department of natural resources of the contents of any report submitted under sub. (1) by a veterinarian if the department of agriculture, trade and consumer protection determines that the disease that is the subject of the report may present a threat to any wild animals present in this state.

NOTE: Sub. (3), as affected by 2001 Wis. Act 56, was renumbered to sub. (1) (c) by 2001 Wis. Act 109 and renumbered to sub. (3) by the Revisor under s. 13.93 (1) (b).

(4) The department shall provide the reports of any communicable diseases under sub. (1) to the department of health and family services.

NOTE: Sub, (4) was created as sub. (2) by 2001 Wis. Act **109 and renumbered to sub. (4) by the revisor under s. 13.93 (1) (b).**

History: 1981 c. 291; 1981 c. **391** s. 210; **1993 a. 492;** 1999 **a 83; 2001 a. 56,109; s. 13.93** (1) (b).

Cross Reference: See also chs. **ATCP 11 and 12,** Wis. adm. code.

95.23 Disease investigation and enforcement. (1) Authorized inspectors and agents of the department may enter at reasonable times any premises, building or place to investigate the existence of animal diseases or to investigate violations of or otherwise enforce the laws relating to animal health. Any animals or materials suspected of being infected may be examined or tested. No person shall obstruct or interfere with such investigation or enforcement work, or attempt to do so, in any manner, by threat or otherwise.

(1m) (a) The department may conduct surveillance testing to determine whether animals have chronic wasting disease, if the department has reason to believe that the animals have been exposed to chronic wasting disease.

(b) The department shall indemnify the owner of an animal that must be killed in order to conduct testing under par. (a), if funds are available from the appropriation under s. 20.115 (2) (m) or (8) (ks) to pay the indemnity, in an amount equal to two–thirds of the differencc between the net salvage value and the appraised value of the animal but not more than $ 1,500 for one animal.

(2) Upon request of an authorized inspector or agent of the department, sheriffs and police officers shall assist in the enforcement of the laws relating to animal health.

(3) Upon reasonable notice from the department, owners or persons in charge of animals shall cause them to be restrained or confined so that they may be identified, examined and tested or otherwise treated or disposed of as authorized by law.

(4) When any animals or materials infected or suspected of being infected have been quarantined, no person shall remove them from the premises, or otherwise fail to comply with the terms of the quarantine, except upon written permit from the department.

History: 2001 **a. 108.**

Cross Reference: See also chs. **ATCP 11** and 12, Wis. adm. **code.**

95.232 Confidentiality of paratuberculosis records. Any information kept by the department that identifies the owners of livestock herds infected, or suspected of being infected, with paratuberculosis is not subject to inspection or copying under s. 19.35 except as the department determines is necessary to protect the public health, safety or welfare.

History: 1989 a. 31.

95.235 Sale of certain painted utensils. Any person who sells, for the purpose of feeding livestock, any utensil painted with a substance having a toxic effect upon livestock when taken orally shall be punished under s. 95.99 (1).

History: 1975 c. **41; 1979** c. **129** s. **15;** 1981 c. **66** s. **8.**

95.24 Living vaccine, hog cholera, anthrax, swine erysipelas. (1) No person shall have in his or her possession or **furnish** to another any live virus hog cholera vaccine, including vaccines produced from a modified or attenuated strain of hog cholera virus, except that such vaccines may be in the possession of a biological laboratory inspected and licensed by the federal government, persons having written approval from the department for its experimental use, or veterinarians having a permit from the department for its use in vaccinating or treating swine as necessary for export or for such other uses as are authorized **by** the department for the control of serious outbreaks of the disease.

(3) (a) No type of living vaccine for immunizing against anthrax or swine erysipelas may be administered to any domestic animal or sold or dispensed in this state without first having obtained the written approval of the chief veterinarian of the department. Approval to administer such vaccine shall be granted to licensed veterinarians only, and then only to qualify the domestic animal for export or in the event that any of the following has been established:

1. The domestic animals to be so treated are infected.

2. The domestic animals to be so treated are on premises known to be contaminated.

3. The domestic animals to be so treated have been exposed within 40 days to infection with the disease for which the living vaccine is prescribed as a proper immunizing agent.

(b) Every veterinarian who so administers such living vaccine shall render to the department a report of the use and the results thereof at such time and in such manner as it may require.

History: 1993 a. 213,492; 2001 a. 56.

95.25 Tuberculosis control program. (1) In order to detect and control bovine tuberculosis the department may test for tuberculosis those cattle where indication of possible infection is disclosed by means of the slaughter cattle identification program and any other cattle, farm-raised deer or other species the department has reason to believe may be infected or exposed or considers necessary to test for any other reason. Tuberculosis tests authorized by the department shall be made at such times and in such manner as the department dctennines, in the light of the latest and best scientific and practical knowledge and experience.

(2) Upon reasonable notice, the department, its authorized agents and all inspectors and persons appointed or authorized to assist in the work of applying the tuberculin test, may enter any buildings or enclosures where cattle, farm–raised deer or other species are, for the purpose of making inspection and applying the tuberculin test, and any person who interferes therewith or obstructs them in their work or attempts to obstruct or prevent by force the inspection and the testing shall, in addition to the penalty prescribed therefor, be liable for all damages caused thereby to the state or to any person lawfully engaged in the work of inspection and testing.

(2m) The owner or other person in possession of animals subject to inspection or testing under this section shall provide animal handling facilities to ensure the safety of the animals and the persons conducting the inspection or testing under this section.

(3) The department shall provide all the necessary equipment and supplies and inspectors and make all arrangements necessary for the carrying on and completion of the work authorized by this section. If any such equipment or supplies are no longer needed, they may be disposed of by the department of administration, and the proceeds derived from the sale shall be paid into the state treasury and credited to the appropriation for such testing.

(4) Retests of infected herds shall be made by the department at such intervals as the department deems necessary to protect the work already done and to preserve the modified accredited or tuberculosis free status of the state under the specifications and regulations of the U.S. department of agriculture and the agreements among the various states.

(4m) The department is not liable for injury to or death of animals during inspection or testing under this section unless negligence by the department causes the injury or death.

(5) For each animal of a species raised primarily to produce food for human consumption, including farm--raised deer, condemned and slaughtered, except as provided in s. 95.36, the owner shall receive and, upon certificate of the department, the state shall pay two–thirds of the difference between the net salvage value and the appraised value of the animal, but the payment may not exceed $1,500 for an animal.

(6) The department may, with the owner's consent, condemn animals which have been exposed to tuberculosis or which are suspected of being infected, although such animals have not reacted to the tuberculosis tests.

History: 1971 c. 125; 1975 c. 306; 1983 a. 361; 1991 a. 269; 1995 a. 79,225,450; 1997 a. 35.

95.26 Brucellosis control program. (1) In order to detect and control bovine brucellosis the department shall conduct milk and cream tests and blood tests as provided in this section. Milk and cream shall be tested by the brucellosis ring test, hereafter referred to as the B.R.T. test. Blood shall be tested by blood serum agglutination or other test methods approved by the department, hereafter referred to as the brucellosis test.

(2) All milk and cream received at every dairy plant shall be tested at not more than 6-month intervals by the B.R.T. test, and brucellosis tests shall be applied promptly to cattle when the milk or cream therefrom discloses a positive reaction to the B.R.T. test or to cattle and American bison when other indications of possible infection are disclosed. **All** cattle and American bison, except steers and spayed heifers, shall be subject to the brucellosis test, but official vaccinates not older than the maximum age prescribed by rules of the department need not be tested except when deemed necessary by the department or the attending veterinarian. Brucellosis tests and official vaccination provided for in this section shall be performed by a veterinarian approved by the department. When brucellosis tests are not conducted by any such veterinarian within 15 days of the date notice to test is mailed to the cattle or American bison owner, the department shall conduct such tests. Except where compensated by the federal government, approved veterinarians performing testing and vaccination under this section shall be paid by the state at uniform rates established by the department. Blood samples drawn for the brucellosis test shall be submitted to the department promptly for laboratory examination.

(3) If the existence of brucellosis within the state results in the termination of its status as a certified brucellosis–free area by the U.S. department of agriculture, the department shall request the release of funds by the joint committee on finance from the appropriation under s. 20.865 (4) (a) to pay for official vaccination, as provided in s. 95.46 (2), of all female calves located within any county where the incidence of brucellosis disqualifies it for such designation.

(4) Cattle and American bison that are classified as "reactors" to the brucellosis test, whether or not conducted pursuant to this section, shall be slaughtered. **A** report of any test disclosing reactors shall be mailed to the owner thereof. The reactors shall be identified by a reactor tag and permanent mark as prescribed by the department. The owner shall effect slaughter of the reactors within 15 days of the date they are so identified, except that the department, for cause shown, may extend the time an additional 15 days. If the owner of reactors fails to comply with this subsection within the time limited, the department shall cause the removal and slaughter of the reactors. No indemnity shall be paid on any reactors disposed of by the department. No milk shall be sold from any reactors or from any herd of cattle in which reactors are kept contrary to the provisions of this section.

(5) When reactors to any brucellosis test are disclosed in a herd of cattle or American bison the department shall quarantine the entire herd by serving written notice thereof, either personally or by mail, on the owner or person in charge, but such quarantine shall not be imposed if the department, upon the basis of the clinical history of the herd with respect to brucellosis and the recommendation of the attending veterinarian, determines it is improbable that the cattle or American bison will contract brucellosis. No cattle or American bison subject to the quarantine shall be removed from the premises where the cattle or American bison are quarantined, except upon written permit of the department. The quarantine shall remain in full force until removed by the department. Such retests shall be conducted as the department finds necessary to eliminate all reactors or other evidence of infection in the herd.

(5m) (a) The department may obtain blood or tissue samples from swine and farm–raised deer to test for brucellosis.

(b) The department may condemn swine and farm--raised deer that are reactors to the brucellosis test and may quarantine the herd from which the reactors come.

(6) The department may acquire, equip and maintain laboratories, including mobile units and promulgate rules and regulations not inconsistent with law so as to effectively execute its functions under the brucellosis control program.

(7) For each animal of a species raised primarily to produce food for human consumption, including farm.-raised deer, condemned and slaughtered, except as provided in ss. 95.36 and 95.48, the owner shall receive and, upon certificate of the department, the state shall pay two–thirds of the difference between the net salvage value and the appraised value of the animal, but the payment may not exceed $1,500 for an animal. With the consent

of the owner the department may condemn, in infected herds, animals which have been exposed and which are suspected of being infected, although the animals have not reacted to the brucellosis tests.

History: 1971 c. 125, 211; 1973 c. 333; 1975 c. 39, 308: 1977 c. 2Y; 1979 c. 34 s. 2102 (29) (a); 1981 c. 20; 1995 a. 450; 1999 a. 83.

Cross Reference: See also chs. ATCP 11 and 12, Wis. adm. code.

95.27 Pseudorabies control program; indemnities. (1) In order to detect, control and eradicate pseudorabies the department shall obtain blood or tissue samples from Wisconsin swine on a systematic basis. The department shall test the samples for pseudorabies.

(2) In the eradication and control of pseudorabies, the department may, whenever such action is necessary to prevent or reduce the spread of disease, quarantine or condemn and order the destruction of any swine which in the opinion of the department arc infected with or have been exposed to pscudorabies.

(3) The department may enter into cooperative agreements with the federal government or any department or other agency for the control and eradication of pseudorabies in this state, including the payment of indemnities authorized under this section.

(4) Subject to sub. (5) and s. 95.36, the department shall indemnify the owner of swine that have been condemned and destroyed under this section. The department shall pay to the owner for each animal destroyed the difference between the net salvage value and the appraised value of the animal, but the payment may not exceed $1,500 for an animal. State payments shall be made from the appropriation under s. 20.115 (2) (b).

(5) Indemnities may not be paid under this section unless the owner of affected swine enters into, and acts in accordance with, an agreement with the department for the eradication of pseudorabies. An agreement entered into under this section shall contain a plan for the eradication of pseudorabies and shall be based upon scientifically accepted methods. The department shall monitor the implementation of an agreement to determine compliance and to determine whether the agreement needs to be modified.

(6) The owner of any swine affected by this section may appeal an order made under this section by filing with the department a request for a hearing under s. 93.18 within 5 days after receipt of notice of the order.

(7) A person in control of any premises on which swine have died of pseudorabies shall promptly dispose of the carcasses as provided under s. 95.50 or have the carcasses removed by a renderer licensed under s. 95.72.

(8) The department may adopt rules that are necessary to administer this section.

History: 1983 a. 132; 1987 a. 399; 1989 a. 31; 1991 a. 39, 109: 1995 a. 450.

Cross Reference: See also chs. ATCP 11 and 12, Wis. adm. code.

95.30 Disposal of animals infected with tuberculosis. The owner of cattle or farm–raised deer tested and found to be afflicted with bovine tuberculosis shalt ship them under the direction of the department to some place designated by it for immediate slaughter under U.S. government inspection, or under the inspection approved by the department.

History: 1995 a 79.

95.31 Condemnation of diseased animals. (1) The department may condemn animals that are affected with or exposed to a contagious or infectious disease if the department determines that it is necessary to do so to prevent or control the spread of the disease. Condemned animals shall be slaughtered or destroyed as directed by the department.

(2) If the department determines that it is necessary to condemn an animal under sub. (1), the department shall, in all cases where the payment of indemnities is authorized under this chapter, appraise the animal as provided in s. 95.32 and shall notify the owner in writing of the appraised value. The notice shall include the number and description of the animals and the name of the owner.

(3) In addition to the indemnities for specific animal diseases provided under ss. 95.25, 95.26 and 95.27 or under special emergency programs and subject to s. 95.36, the department shall pay indemnities on livestock condemned and slaughtered or destroyed because of other diseases if the department determines that the condemnation and slaughter or destruction is necessary to protect public health or the livestock industry. The indemnity under this subsection shall be two-thirds of the difference between net salvage value and appraised value, but may not exceed $1,500 for an animal. As used in this subsection, "livestock" means animals of species raised primarily to produce food for human consumption, including farm–raised deer.

(4) In the event of a major or serious outbreak of a contagious or infectious disease that may affect public health or the health of animals and that requires special control measures, the department may request the joint committee on finance to release funds appropriated under s. 20.115 (2) (b) as needed to conduct emergency control programs independently or in cooperation with federal or local units of government and, subject to s. 95.36, to pay indemnities on animals of species raised primarily to produce food for human consumption, including farm–raised deer, condemned and slaughtered or destroyed under the emergency control programs. For all indemnities paid under this subsection, the state shall pay two–thirds of the difference between the net salvage value and the appraised value of an animal, except that no payment may exceed $1,500 for an animal.

History: 1977 c. 146; 1977 c. 449 s. 497; 1981 c. 20; 1989 a. 31; 1991 a. 269; 1995 a. 79.450:, 2001 a. 56.

Cross Reference: See also chs. ATCP 11 and 12, Wis. adm. code.

95.32 Appraised value. (1) The department shall determine the appraised value of an animal that is destroyed under s. 95.21 (4) (b), 95.23 (1m), 95.25, 95.26, 95.27 or 95.31 (3) or (4) if the animal's owner is eligible for an indemnity.

(2) Except as provided in sub. (3), the appraised value for an animal that is of an animal type that is frequently sold at public auction shall equal the average price paid for a commercial grade animal of the same animal type at public auction sales during a period specified by the department.

(3) The appraised value of a registered purebred animal of an animal type that is frequently sold at public auction shall equal 125% of the amount determined under sub. (2) for that animal type.

(4) Using a method specified under sub. (5) (c), the department shall determine the appraised value of an animal of an animal type that is not frequently sold at public auction.

(5) (a) The department shall promulgate rules specifying animal types for the purposes of this section. The animal types may be based on characteristics of animals that include species, gender and age. The rules shall specify whether each animal type is frequently sold at public auction.

(b) The department shall promulgate rules specifying the period of public auction sales that will be used in the appraisal of each animal type to which sub. (2) applies. The period may not begin more than 6 months before the date on which the department makes the appraisal.

(c) The department shall promulgate rules specifying methods for determining the appraised value of animals of animal types that are not frequently sold at public auction. The methods shall be as consistent as possible with the method under sub. (2).

History: 1977 c. 146; 1977 c. 449 s. 497; 1981 c. 20; 1995 a. 450: 2001 a. 108.

95.33 Tubercular animals that do not react. Whenever in the opinion of the department a bovine or farm.-raised deer is afflicted with tuberculosis, although failing to react to the tubercular test, such animal shall be condemned and the appraisal and all subsequent procedure shall be the same as in the case of reactors.

History: 1995 a. 79.

95.34 Slaughter on premises. The slaughter of diseased animals on the premises of the owner shall be made under the

supervision and direction of the department or an assistant. If upon inspection of the carcass it is found, according to rules of inspection of the U.S. department of agriculture, to be unfit for human food, the inspector shall destroy it or cause it to be buried and covered with a sufficient quantity of lime to destroy it. The hide shall be disinfected and otherwise cared for according to said rules. If the carcass is fit to be used for human food it may be disposed of in accordance with the provisions made by the department.

History: 1975 c. 308.

95.35 Scrapie eradication: indemnities. (3) The department may enter into cooperative agreements with the federal government or any department or other agency for the control and eradication of scrapie in this state.

(6) Every person in control of premises on which sheep or goats have died of scrapie shall promptly bury or dispose of the carcasses in accordance with rules prescribed by the department.

History: 1981 c. 20; 1995 a. 450.

Cross Reference: See also chs. ATCP 11 and 12, Wis. adm. code.

95.36 Indemnity not allowed. The owners of animals condemned and slaughtered under the provisions of this chapter shall receive no indemnity therefor in the following cases:

(1) Animals owned by the United States, this state or any county, city, town or village.

(2) Animals brought into this state contrary to any provisions of law.

(3) Animals which the owner at the time of coming into possession of them knew or had reason to believe to be afflicted with contagious or infectious disease.

(4) Animals diseased at the time of amval in this state.

(5) Animals which the owner has negligently or willfully exposed to contagious or infectious disease.

(6) Animals brought into this state that fail to pass successfully the retests subsequent to importation as required by regulation of the department.

(7) When the infected premises, have not been disinfected, to the satisfaction of the department in such manner as to prevent the further spread of the'disease.

(8) Unless the animal condemned and slaughtered was owned by the claimant at least 30 days prior to the test which discloses the reaction.

(9) Where the owner has received indemnity as a result of a former inspection or test, and has thereafter introduced into his or her herd any bovine contrary to law or the regulations of the department.

History: 1995 a. 225.

95.37 Claims for indemnity. (1) Claims against the state arising from the condemnation of animals shall be made by delivering to the department, to be forwarded to the department of administration, a request, giving the name and place of residence of the owner, the date on which the animals were condemned and the tag number of each animal, and also a statement of the salvage received and of the sum due from the state and any additional information that the department requires. The department shall promptly transmit all claims to the department of administration and accompany the same with a report of the sum due from the state and thereupon the claims may be audited and paid.

(2) Claims for indemnity based on condemnation and appraisal may be paid notwithstanding the death of the animal by means other than slaughter if satisfactory proof of death is filed with such claim.

History: 1977 c. 216; 1977 c. 449 s. 497: 1995 a. 450.

95.38 Altering records; tampering with ear tags. (1) It shall be unlawful for any person to in any manner change any test record, falsely record any test, misrepresent the identification of any animal or any other material fact on any test record, certificate of veterinary inspection, vaccination record, claim for indemnity, or any disease control report or application to the department. It shall be unlawful for any person to induce or to conspire with another, either directly or indirectly, to do any of the said prohibited acts.

(2) No person is permitted to in any way tamper with, insert or remove from the ear of any animal any ear tag or registration mark which is or may be used for identification in disease control work except upon authorization from the department.

(3) The department may adopt rules that are necessary to administer this section.

History: 1953 a. 132; 2001 a. 56.

Cross Reference: See also chs. ATCP 11 and 12, Wis. adm. code.

95.39 Biological products. (1) It is unlawful for any person to sell, furnish, give away or supply any tuberculin or any biological product containing Brucella organisms for use in this state unless all of the following conditions are met:

(a) The label on the container thereof states the name and address of the manufacturer and the date of expiration.

(b) The vendor, within 15 days, reports to the department the name of the recipient, the date and amount delivered.

(c) The products are sold or delivered only to veterinarians licensed to practice in this state.

(2) It shall be unlawful for any person to use or dispose of any tuberculin until assured in writing by the person from whom received that its sale or delivery to said person has been reported to the department.

(3) Biological products produced or packed outside this state for the treatment, diagnosis or prevention of animal diseases and licensed by the federal government under experimental or special licenses may be sold, distributed or used only under such conditions as the department prescribes. The department may make such rules governing the conditions of manufacture, sale, distribution or use of biological products for the treatment, diagnosis or prevention of animal diseases as are necessary for the protection of animal health, including permit requirements or other restrictions on the importation, sale or experimental use of such products.

History: 1995 a. 225.

95.40 Neutralizing tuberculosis test. (1) No person shall use or cause to be used tuberculin or any other agent upon cattle or farm–raised deer, by injection or otherwise, for the purpose of preventing a proper reaction when a tuberculin test is made.

(2) No person shall at any time or in any manner apply tuberculin to any animal except for the purpose of applying a tuberculin test. The result of every such test shall be reported to the department.

History: 1995 a. 79.

95.41 Tuberculin; ear tags. (1) The department shall furnish and distribute tuberculin and circulars containing the rules and regulations for applying the tuberculin test upon application to all persons authorized to make such test.

(2) The department shall provide ear tags to be used for identifying cattle and farm–raised deer tested for purposes of disease control, and shall distribute the tags to persons authorized by the department to identify cattle and farm–raised deer.

History: 1977 c. 216; 1979 c. 129: 1995 a. 79.

95.42 Revocation of permit to test. Only veterinarians approved by the department may apply the tuberculin test to cattle and farm–raised deer, and no veterinarian applying the test may tag or brand reactors except as specifically authorized or directed by the department. Any veterinarian who fails to comply with this section and the mles and instructions furnished by the department shall forfeit all right to apply the tuberculin test.

History: 1977 c. 216 1979 c. 129; 1995 a. 79.

Cross Reference: See also chs. ATCP 11 and 12, Wis. adm. code.

95.43 Application of brucellosis test. (1) The brucellosis test shall be applied only by approved veterinarians. Any veter-

inarian who fails to comply with the laws or regulations of the department relating to disease control may be denied such approval.

(2) Every veterinarian who applies the brucellosis test shall promptly reactor tag and permanently mark all reactors in conformity with the law and the regulations of the department, and shall promptly report the result of each test to the department. No person shall interfere in any way with the identification of reactors as required herein.

History: 1981 c. 20; 1995 a. 155.

Cross **Reference:** See also **chs. ATCP 11** and **12,** Wis. adm. code.

95.45 Certificates of veterinary inspection; tests for interstate shipment. (1) Tests to determine the health status of animals for the purpose of interstate shipment shall be made only by licensed graduate veterinarians approved by the department. Such Veterinarians shall report the results of every such test to the department in triplicate.

(4) (a) If the department requires that a certificate of veterinary inspection accompany an animal imported into this state, the veterinarian who issues the certificate shall file a copy of the certificate with the department.

(b) If a certificate of veterinary inspection is required for a wild animal under s. 169.04 (2) (d) and (3) (a) or 169.06 (1) (d) 1., the veterinarian who issues the certificate shall file a copy of the certificate with the department of agriculture, trade and consumer protection. The department of agriculture, trade and consumer protection shall provide a copy of the certificate to the department of natural resources.

(c) The department may promulgate rules to impose requirements on the form, issuance, and filing of certificates of veterinary inspection.

(5) Any certificate of veterinary inspection prepared under this chapter or ch. 169 shall comply with any rules that are promulgated by the department.

History: 2001 a. 56.

95.46 Brucellosis vaccination; official vaccinates. (1) It is unlawful for any person other than an approved veterinarian to treat any bovine animal with any biological product containing Brucclla organisms.

(2) No bovine animals may be vaccinated against brucellosis except calves within age ranges prescribed by department rules. Such calves may be vaccinated by approved veterinarians if officially reported to the department and permanently identified as official vaccinates **as** required under this section and rules of the department.

(3) All animals vaccinated by approved veterinarians shall be identified by a tattoo on the inner surface of the right ear of each such animal, using such symbols as the department by rule prescribes.

(4) All veterinarians shall use only vaccine provided under federal regulations or produced by or under the direction or supervision of the department. They shall identify the vaccinates as required in sub. (3) and record in triplicate on forms prepared by the department the information it requires. The veterinarian shall transmit one copy of the vaccination record to the department within 15 days after the date of vaccination, furnish one copy to the owner of the animals, and retain one copy for the veterinarian's own file.

(6) Official vaccinates need not be identified as reactors until they are past 20 months of age unless there is other evidence of infection in the herd.

History: 1973 c. 123; 1979 c. 129.

Cross **Reference:** See also chs. **ATCP 11** and **12,** Wis. adm. code.

95.48 Brucellosis indemnity restrictions. (1) No indemnity for brucellosis shall be paid:

(a) On steers.

(b) On any animal unless reactor tagged and permanently marked as required by department regulation and unless the claim is accompanied by such proof, as the department may require, of (1) slaughter within the time limited, (2) actual salvage and (3) cleaning and disinfection of the premises.

(c) On any animal vaccinated against brucellosis, other than official vaccinates, unless it can be established that such animal, subsequent to vaccination, returned to a negative status as established by a negative test conducted not less than 30 days prior to the test on which the claim is based but more than 30 days after vaccination.

(d) Except as provided in sub. (2), on any animal which was a member of a herd into which was introduced any animal which failed to first pass a completely negative brucellosis test prior to movement as required by s. 95.49.

(e) Except as provided in sub. (2), on any animal other than an official vaccinate which was a part of a herd any member of which, when above the maximum qualifying age for official vaccination, was treated with any biological product containing Brucella organisms.

(2) Notwithstanding the provisions of sub. (1) (d) and (e), indemnity shall be paid on such animals if the reaction is disclosed on any test conducted subsequent to the elimination without claim of all reactors disclosed on a complete herd test conducted after the time of making any addition or treating any animal as therein described.

Cross Reference: See also **chs. ATCP 11** and 12, Wis. adm. code.

95.49 Movement; sale. (1) No person may sell or move from one place to another any American bison, or animal of another species identified by the department by rule, born on or after June 1, 1984, unless it is accompanied by a report of complete negative brucellosis test conducted within 30 days prior to movement, but this subsection does not apply to the following:

[a) Official vaccinates.

(b) Neutered males and spayed females.

(c) Animals consigned directly to slaughter establishments if the animals are moved and held in conformity with department rules.

(d) Male animals under 6 months of age and female animals under the maximum age allowable for vaccination as defined by rule.

(e) Animals not known to be reactors moved to the premises of an animal market operator licensed under s. 95.68 or an animal dealer licensed under **s.** 95.69, for sale and removal as provided in sub. (2).

(f) Animals which are moved for exhibition purposes if accompanied by a report of a negative brucellosis test conducted within 90 days.

(g) Animals moved by the owner between farm premises owned or operated by him or her.

(1m) If this state is not designated Class Free under 9 CFR 78.41 or if this state is so designated but the department has promulgated rules under sub. (2m), no person may sell or move from one place to another any cattle born on or after June 1, 1984, unless it is accompanied by a report of complete negative brucellosis test conducted within 30 days before movement. This subsection does not apply to any of the following:

(a) Official vaccinates.

(b) Steers and spayed heifers.

(c) Animals consigned directly to slaughter establishments if the animals are moved and held in conformity with department rules.

(d) Male animals under 6 months of age and female animals under the maximum age allowable for vaccination as defined by rule.

(e) Animals not known to be reactors moved to the premises of an animal market operator licensed under **s.** 95.68 or an animal

dealer licensed under s. 95.69, for sale and removal as provided in sub. (2).

(f) Animals which are moved for exhibition purposes if accompanied by a report of a negative brucellosis test conducted within 90 days.

(g) Animals moved by the owner between farm premises owned or operated by him or her.

(h) Feeder cattle sold or moved to an approved feedlot if the cattle are moved and held in conformity with department rules.

(i) Female beef breed cattle under one year of age if sold or moved for feeding purposes.

(2) Animals moved to the premises of an animal market or animal dealer pursuant to the exemption from brucellosis test in sub. (1) (e) or (1m) (c) may be removed only in compliance with the brucellosis test requirements in sub. (1) or (1m).

(2m) The department may promulgate emergency rules upon the outbreak in this state of brucellosis to prevent the movement and sale of cattle unaccompanied by reports of complete negative brucellosis tests.

(3) This section shall not be construed to authorize the movement of any animals in violation of any other provision of this chapter or of any quarantine or animal health regulation issued by the department as authorized by law.

History: 1973 c. 123; 1981 c. 390 s. 252; 1983 a. 127; 1993 a. 16; 1995 a. 155; 2001 a. 56.

Cross Reference: See also chs. ATCP 11 and 12, Wis. adm. code.

95.50 Disposition of carcasses. (1) No person shall deposit or throw or allow to be deposited or thrown into any stream, lake or swale, or leave or deposit or cause to be left or deposited upon any public highway or other place the carcass of any animal; nor deposit or leave or permit to be deposited or left upon any premises under that person's control any dead animal exposed in such manner as to be reached by dogs or wild animals for a longer period than 24 hours in the months of April to November, or 48 hours during the months of December to March. The owner of such a carcass or any other person may report to the proper county officials or the contracting private rendering plant pursuant to s. 59.54 (21) for removal and burial or other disposition of a carcass within the time specified in this subsection.

(2) No person shall transport, haul or drag or permit to be transported. hauled or dragged along any public highway in this state the carcass of any animal suspected of having died from anthrax, blackleg, foot and mouth disease, sleeping sickness or glanders or any other disease which the department may designate as highly dangerous. All such carcasses shall be burned or be buried at least 6 feet below the surface of the ground and shall be completely covered so as to prevent their being reached by wild animals or dogs. Whenever it is necessary to transport any such carcass across any public highway for burial, it shall be transported in such manner as not to contaminate any part of the public highway. The carcasses of animals dying from other communicable diseases may be transported to and disposed of under such regulations as are prescribed by the department. The definition of "communicable disease" in s. 990.01 (5g) does not apply to this subsection.

(3) Any dead animal found upon a public highway or other public place shall, in case the owner of the animal cannot be found, be buried or otherwise disposed of at public expense by the local health department, as defined in s. 250.01 **(4)**(a) 1. or **3.** or **(b),** in whose jurisdiction the animal is found. This subsection applies if a county does not cxercisc its authority under s. 59.54 (21).

(4) In a county which does not exercise its authority under s. 59.54 (21), the owner of a carcass is obligated to dispose of it as specified in this section.

History: 1981 c. 291; 1981 c. 391 s. 210; 1993 a. 27,492; 1995 a. 201.

95.55 Farm–raised deer. (1) REGISTRATION. (a) Except as provided in par. (b), no person may keep farm–raised deer unless the person is registered with the department under this section.

(b) 1. Establishments licensed under s. 97.42 may keep live farm–raised deer for slaughtering purposes for up to 72 hours without being registered under this section.

2. The department may promulgate rules to exempt groups of persons or species of farm–raised deer from the registration requirement under this section.

(2) APPLICATION. A person shall register under this section using a form provided by the department. The form shall be accompanied by the fee specified under sub. (3).

(3) FEE. The department shall, by rule, specify the fee for registration under this section.

(3m) AUTHORIZATION. A person who is registered under this section may do any of the following:

(a) Possess, propagate, purchase, sell, hunt, kill, and exhibit farm–raised deer.

(b) Hunt or sell or offer to sell the opportunity to hunt farm–raised deer that the person owns.

(4) ANIMAL HANDLING FACILITIES. A person required to register under this section shall provide animal handling facilities to ensure the safety of fann–raised deer during handling and of the persons handling the farm–raised deer.

(5) HUNTING. (a) A person hunting farm–raised deer is exempt from having any hunting approval issued under ch. 29 and is exempt from any closed season restrictions or bag limits established by the department of natural resources. In order to regulate the hunting of farm–raised deer, the department of agriculture, trade and consumer protection may promulgate rules to establish tagging requirements or other methods for identifying dead farm–raised deer that have been legally hunted or killed and to impose other conditions or requirements regulating the hunting of farm–raised deer. Section 29.3 14 applies to the hunting of farm–raised deer.

(b) No owner of fan—raised deer may sell, or offer to sell, the opportunity to hunt farm· raised deer unless the farm.-raised deer to be hunted are confined in an area of 80 contiguous acres or more.

(c) The department of natural resources and the department of agriculture, trade and consumer protection shall cooperate with each other with respect to the hunting of farm–raised deer.

(6) RULES. (a) The department shall promulgate rules to regulate persons who keep farm–raised deer. The rules shall establish disease testing requirements for bovine tuberculosis and chronic wasting disease and may establish testing requirements for other diseases.

(b) The rules promulgated under this subsection may include any of the following:

1. Standards to be followed by persons keeping farm–raised deer to prevent the spread of disease.

2. Provisions requiring that registration under this section be on an annual basis.

3. Exemptions from any annual registration requirements established under subd. 2.

History: 1995 a. 79; 2001 a. 56.

95.57 Poultry and farm–raised game birds; national poultry improvement program. (1) PARTICIPATION IN PROGRAM. The department may promulgate rules to require that any of the following originate from a flock of a person participating in the national poultry improvement plan under 9 CFR part 145:

(a) Poultry, including their eggs, that are used for breeding purposes.

(b) Farm–raised game birds. including their eggs, that are used for breeding purposes.

(2) FEES. The department shall promulgate a rule to set any fee that it imposes on a person for participation in the national poultry improvement plan.

History: 2001 a. 56.

95.60 Importing fish; fish farms. (1) In this section, "waters of the state'' has the meaning given in s. 281.01 (18).

(2) (a) No person may bring any fish or fish eggs into this state for the purpose of introduction into the waters of the state, of use as bait or of rearing in a fish farm without an annual permit issued by the department.

(b) No person may bring any fish or fish eggs of the family salmonidae into this state for the purpose of introduction into the waters of the state unless the fish are certified, as provided in the rules promulgated under sub. (4s) (d), to be free of the diseases specified under sub. (4s) (d).

(c) The department may require a person who is subject to par. (a) or (b) to notify the department before bringing fish or fish eggs into this state.

(d) The department of natural resources is exempt from par. (a).

(3) A person who operates a fish farm shall obtain an annual health certificate from a veterinarian licensed under ch. 453 or from a person who is qualified to issue fish health certificates under sub. (4s) (c) for any fish eggs present or any fish reared on the fish farm, except that a fish farm operator who does not sell, distribute or release live fish or fish eggs from the fish farm may rely upon health certificates under this subsection that are obtained by the person from whom the fish farm operator receives fish or fish eggs.

(3m) A person who operates a fish fann shall annually register the fish farm with the department. The person registering the fish farm shall provide evidence of the health certificate required under sub. (3) and shall identify the activities that will be engaged in, the species of fish that will be used and the facilities that will be used on the fish farm.

(4) (a) The department shall inspect a fish farm upon initial registration under sub. (3m). The department may inspect a fish farm at any other time.

(b) The department may inspect fish and fish eggs subject to subs. *(2)* and (3) and the rules under sub. (4s) (b) to ensure the health of the fish and fish eggs. The inspection may include removal of reasonable samples of the fish and fish eggs for biological examination.

(c) A person who operates a fish farm shall keep records on purchases, sales and production of fish and fish eggs and any other records required by the department by rule. The department may inspect these records upon request.

(4m) The department shall maintain a registry of fish farms.

(4s) The department shall do all of the following:

(a) In consultation with the department of natural resources, promulgate rules specifying requirements for the labeling and identification, in commerce, of fish reared in fish farms.

(b) In consultation with the department of natural resources, promulgate rules specifying fish health standards and requirements for certifying that fish meet those standards for the purpose of s. 29.736.

(c) In consultation with the department of natural resources, promulgate rules specifying the qualifications that a person who is not a veterinarian must satisfy in order to issue fish health certificates.

(d) In consultation with the department of natural resources, promulgate rules specifying diseases and requirements for certifying that fish are free of those diseases for the purposes of sub. (2) (b).

(e) Promulgate rules establishing the period for which a record required under sub. (4) (c) must be retained.

(5) The department shall, by rule, specify the fees for permits, certificates, registration and inspections under this section.

(6) (a) No person, except the department of natural resources, may rear lake sturgeon in a fish farm.

(c) The department, in consultation with the department of natural resources, shall study regulatory options that would enable commercial rearing of lake sturgeon while protecting the wild lake sturgeon population. The department shall submit the results of the study to the legislature under s. 13.172 (2) no later than December 31,2000.

(7) Any information kept by the department that identifies the type or number of fish or fish eggs bought, raised or sold by a privately owned fish farm or the supplier or purchaser of those fish or fish eggs is not subject to inspection or copying under s. 19.35 (1) except as the department determines is necessary to protect fish health or prevent the spread of disease.

(8) The department may provide training to veterinarians and other persons who issue fish health certificates for the purposes of this section. The department may charge fees to recover the cost of providing the training.

History: 1997 a. 27,237; *1999* a. 32; 2001 a. 16. 56.

95.65 Intrastate transportation of white–tailed deer. (1) In this section, "cervid" means a member of the family of animals that includes deer and moose.

(2) The department shall impose the same requirements on the intrastate transportation of white–tailed deer that it imposes on the intrastate transportation of other cervids.

History: 2001 a. 109.

95.67 Proper use of animal care and disease control products. No person may use chemical, biological or disease control products in the treatment or care of food producing animals without substantially complying with instructions, warnings and directions for use on the product label. No animal or food product including milk of the animal shall be marketed for processing or use as food prior to the time specified on the label of a product used in the treatment or care of the animal. This section applies neither to licensed veterinarians who prescribe or administer drugs in conformity with federal restrictions nor to persons using drugs in a manner prescribed by a licensed veterinarian. This section shall not prevent a farmer from administering animal disease control products to livestock in compliance with instructions on the product label.

History: 1971 c. 240.

95.68 Animal markets. (1) DEFINITIONS. In this section:

(ag) "Animal market" means any premises which are open to the public for the purpose of trading in livestock or wild animals and on which facilities are maintained for their yarding, feeding and watering prior to sale.

(ai) "Animal transport vehicle" has the meaning given in s. 95.71 (1) (dm).

(am) "Equine animal" means a horse, mule, zebra, donkey or ass.

(b) "Equine market" means an animal market that is open to the public solely for the purpose of trading in equine animals.

(d) "Livestock" means bovine animals, sheep, goats, swine, farm–raised deer and equine animals.

(g) "Wild animal" means a wild animal that is subject to regulation under ch. 169.

(2) LICENSE. Except as provided in sub. (2m), no person may operate an animal market without an annual license from the department. An animal market license expires on June 30 annually. A separate license is required for every animal market. A license is not transferable between persons or locations.

(2m) EXEMPTIONS. (a) A person is not required to obtain a license under sub. (2) to operate an occasional auction sale sponsored by a livestock breeder association or a youth agricultural organization if records of the transactions at the sale are maintained by an auctioneer registered under ch. 480 or by an animal dealer licensed under **s.** 95.69.

(b) The department may promulgate rules to exempt groups of persons from the licensing requirement under sub. *(2)* or the registration requirement under sub. *(7)* or both.

(3) APPLICATION. An application for a license under sub. (2) shall be made on a form provided by the department and shall include information reasonably required by the department for licensing purposes. An application shall be accompanied by the applicable fees and surcharges required under subs. (4) and *(5)*.

(4) FEES. Unless the department specifies a different fee by rule, the fee for a license issued under this section is the following amount:

(a) For an animal market that is not an equine market and that conducted sales at the market on at least 5 days during the year immediately preceding the year for which the license is issued, $150.

(b) For an animal market that is not an equine market and that conducted sales on fewer than 5 days during the year immediately preceding the year for which the license is issued, $75.

(c) For an animal market other than one described in par. (a) or (b), $100.

(5) SURCHARGE AND PAST FEES. (a) An applicant for a license under sub. *(2)* shall pay a license fee surcharge of $100 if the department determines that within 365 days prior to submitting the license application the applicant did any of the following:

1. Operated an animal market without a license in violation of sub. (2).

1m. Operated a livestock market, as defined in s. 95.68 (1) (e), 1999 stats., without a license in violation of **s.** 95.68 (2), 1999 stats.

2. Operated an unregistered animal transport vehicle in violation of sub. (7).

2m. Operated **an** unregistered livestock vehicle. as defined in s. 95.71 (1) (g), 1999 stats., in violation of **s.** 95.68 (7), 1999 stats.

(b) *In* addition to the surcharge under par. (a), an applicant for a license under sub. (2) shall pay the fees due for the year in which the applicant was in violation.

(c) The payment of the surcharge and fees under this subsection does not relieve the applicant of other civil or criminal liability that may result from the failure to obtain a license or from the operation of an unregistered vehicle, but does not constitute evidence of a violation of a law.

(6) LICENSE CONTINGENT ON FEES. The department may not issue or renew a license under sub. (2) unless the applicant pays all fees and surcharges that are due under subs. (4) and (5) as set forth in a statement from the department. The department shall refund a fee or surcharge paid under protest if the department determines that the fee or surcharge was not due as a condition of licensing under this section. If a fee or surcharge is paid by check, a license issued in reliance upon that check is void if the check **is** not honored.

(7) ANIMAL TRANSPORT VEHICLE REGISTRATION. No animal market operator may operate an animal transport vehicle unless the animal transport vehicle is registered with the department in the name of the animal market operator. The animal transport vehicle shall be registered on a form provided by the department. The registration shall include a description and the serial number of the animal transport vehicle.

(8) RULES. The department may promulgate rules to specify license fees under sub. (4) or to regulate the operation of animal markets, including rules related to market operator qualifications, market construction and maintenance, construction and maintenance of animal transport vehicles, identification of animal transport vehicles, disease sanitation; humane treatment of animals, identification of animals, record keeping, reports to the department and compliance with applicable financial security requirements under state or federal law.

(9) PENALTIES. A person conducting a business regulated by this section after revocation of his or her license shall be fined not less than $500 nor more than $1,000 or imprisoned not to exceed 6 months or both.

History: *1993* a. 16; ***1995*** a. 79, 95; 2001 a. **56.**
Cross Reference: ***See*** **also** ch. ATCP **12.** Wis. adm. code.

95.69 Animal dealers. (1) DEFINITIONS. In this section:

(c) "Animal dealer" means a person who, as principal or agent, engages in the business of buying for resale or for slaughter, selling or exchanging livestock or wild animals. " Animal dealer" does not include any of the following:

1. An animal dealer employee.

2. The operator of a farm who sells livestock if the operator keeps them on the farm solely for dairy, breeding or feeding purposes and the operator is not otherwise engaged in the business of buying them for resale, slaughter, sale or exchange.

2m. A person holding a license issued under **s.** 169.15, 169.18, 169.19, or 169.26 who sells wild animals if the person keeps them solely for breeding or feeding purposes and the person is not otherwise engaged in the business of buying them for resale, slaughter, sale or exchange.

3. An auctioneer registered under ch. 480 who conducts any of the following:

a. A farm sale at which no livestock is sold on a consignment basis.

b. A sale conducted at a state, county or district fair or a breeder association show.

c. A sale conducted by a youth agricultural organization.

(d) " Animal dealer employee" means an employee of a licensed animal dealer, who does business in the name of the licensed animal dealer.

(e) "Animal market" has the meaning given in s. 95.68 (1) (ag).

(f) " Animal transport vehicle" has the meaning given in **s.** 95.71 (1) (dm).

(g) "Livestock" has the meaning given in **s.** 95.68 (1) (d).

(h) "Wild animal" has the meaning given in **s.** 95.68 (1) (g).

(2) LICENSE. No person may operate as an animal dealer without an annual license from the department, except that no license is required of a person licensed as an animal market operator under s. 95.68. An animal dealer license expires on June 30 annually. An animal dealer license is not transferable.

(2m) EXEMPTION. The department may promulgate rules to exempt groups of persons from the licensing requirement under sub. (2) or the registration requirement under sub. (7) or both.

(3) APPLICATION. An application for a license under sub. *(2)* shall be made on a form provided by the department and shall include information reasonably required by the department for licensing purposes. An application shall be accompanied by the applicable fees and surcharges required under subs. (4) and (5).

(4) FEES. Unless the department specifies a different fee by rule, the fee for an animal dealer license is $75.

(5) SURCHARGE AND PAST FEES. (a) An applicant for a license under sub. (2) shall pay a license fee surcharge of $100 if the department determines that within 365 days prior to submitting the license application the applicant did any of the following:

1. Operated as an animal dealer without a license in violation of sub. *(2)*.

1m. Operated as a livestock dealer, as defined in s. 95.69 (1) (c), 1999 stats., without a license in violation of **s.** 95.69 (2), 1999 stats.

2. Operated an unregistered animal transport vehicle in violation of sub. (7).

2m. Operated an unregistered livestock vehicle, as defined in s. 95.71 (1) (g), 1999 stats., in violation of s. 95.69 (7), 1999 stats.

(b) In addition to the surcharge under par. (a), an applicant for a license under sub. (2) shall pay the fees due for the year in which the applicant was in violation.

(c) The payment of the surcharge and fees under this subsection docs not relieve the applicant of other civil or criminal liability that may result from the failure to obtain a license or from the operation of an unregistered vehicle but does not constitute evidence of a violation of a law.

(6) LICENSE CONTINGENT ON FEES. The department may not issue or renew a license under sub. *(2)* unless the applicant pays all fees and surcharges that are due under subs. (4) and (5) as set forth in a statement from the department. The department shall refund a fee or surcharge paid under protest if the department determines that the fee or surcharge was not due as a condition of licensing under this section. If a fee or surcharge is paid by check, a license issued in reliance upon that check is void if the check is not honored.

(7) ANIMAL TRANSPORT VEHICLE REGISTRATION. No animal dealer may operate an animal transport vehicle unless the animal transport vehicle is registered with the department in the name of the animal dealer. The animal transport vehicle shall be registered in the name of the animal dealer on a form provided by the department. The registration shall include a description and the serial number of the animal transport vehicle.

(8) RULES. The department may promulgate rules to specify license fees under sub. (4) or to regulate animal dealers, including rules related to animal dealer qualifications, construction and maintenance of animal transport vehicles, identification of animal transport vehicles, disease sanitation, humane treatment of animals, identification of animals, record keeping, reports to the department and compliance with applicable financial security requirements under state or federal law.

(8m) TRANSACTION RECORDS. *An* auctioneer registered under ch. 480 who sells livestock or wild animals and who is not required to obtain a license under this section shall make records of the sales available to the department upon request for disease investigation purposes.

(9) PENALTIES. A person conducting a business regulated by this section after revocation of his or her license shall be fined not less than $500 nor more than $1,000 or imprisoned not to exceed 6 months or both.

History: **1993** a. 16; **1995** a. **95**; 2001 a. **56.**
Cross Reference: See also ch. ATCP 12, Wis. adm. code.

95.71 Animal truckers. (1) DEFINITIONS. In this section:

(dm) "Animal transport vehicle" means any vehicle used to transport livestock or wild animals.

(e) "Animal trucker" means a person engaged in the business of transporting for hire, by means of an animal transport vehicle, livestock and wild animals, except that "animal trucker" does not include an animal trucker employee.

(f) "Animal trucker employee" means the employee of a person who holds an animal trucker license if the employee, in the name of the licensed animal trucker, operates an animal transport vehicle which is registered by the animal trucker and on which the name and the business address of the licensed animal trucker are prominently displayed.

(h) "Livestock" has the meaning given in s. 95.68 (1) (d).

(i) "Wild animal" has the meaning given in s. 95.68 (1) (g).

(2) LICENSE. No person may operate as an animal trucker without an annual license issued by the department. An animal trucker license authorizes an animal trucker to operate only those animal transport vehicles that are registered by the animal trucker under sub. (4). A license expires on June 30 annually. An animal trucker license is not transferable.

(3) APPLICATION. An application for an animal trucker license under sub. (2) shall be made on a form provided by the department. The application shall include information reasonably required by the deparhnent for licensing purposes. As part of the application, the applicant shall register every animal transport vehicle operated by the applicant as provided under sub. (4). An application shall be accompanied by the applicable fees and surcharges required under subs. (5) and (6).

(4) ANIMAL TRANSPORT VEHICLE REGISTRATION. No animal trucker may operate an animal transport vehicle unless the animal transport vehicle is registered with the department in the name of the animal trucker. The animal transport vehicle shall be registered on a form provided by the department. The registration shall include a description and the serial number of the animal transport vehicle.

(5) FEES. (a) Unless the department specifies different fees by rule, an applicant for an animal trucker license shall pay a fee in an amount equal to $20 plus $5 for each animal transport vehicle registered with the applicant's license application under sub. (3).

(b) If during any license year an animal trucker registers an animal transport vehicle that was not registered with the animal trucker's annual license application under sub. (3), the animal trucker shall, at the time of the additional registration, pay a registration fee of $5 for each animal transport vehicle registered.

(6) SURCHARGE AND PAST FEES. (a) An applicant for an animal trucker license shall pay a license fee surcharge of $100 if the department determines that within 365 days prior to submitting the license application the applicant did any of the following:

1. Operated as an animal trucker without a license in violation of sub. *(2)*.

1m. Operated as a livestock trucker, as defined in s. 95.71 (1) (e), 1999 stats., without a license in violation of s. 95.71 (2), 1999 stats.

2. Operated an unregistered animal transport vehicle in violation of sub. **(4).**

2m. Operated an unregistered livestock vehicle, as defined in s. 95.71 (1) (g), 1999 stats., in violation of s. 95.71 (4), 1999 stats.

(b) In addition to the surcharge under par. (a), an applicant for a license under sub. *(2)* shall pay the fees due for the year in which the applicant was in violation.

(c) The payment of the surcharge and fees under this subsection does not relieve the applicant of other civil or criminal liability that may result from the failure to obtain a license or to register a vehicle but does not constitute evidence of a violation of a law.

(7) LICENSE CONTINGENT ON FEES. The department may not issue or renew a license under sub. *(2)* unless the license applicant pays all fees and surcharges that are due under subs. (5) and (6). The department shall refund a fee or surcharge paid under protest if the department determines that the fee or surcharge was not due as a condition of licensing under this section. If a fee or surcharge is paid by check, a license issued in reliance upon that check is void if the check is not honored.

(8) RULES. The department may promulgate rules to specify license fees under sub. (5) or to regulate animal truckers, including rules related to animal trucker qualifications, construction and maintenance of animal transport vehicles, identification of animal transport vehicles, disease sanitation, humane treatment of animals, identification of animals, record keeping, reports to the department and compliance with applicable financial security requirements under state or federal law.

(9) PENALTIES. A person conducting a business regulated by this section after revocation of his or her license shall be fined not less than $500 nor more than $1,000 or imprisoned not to exceed 6 months or both.

History: 1993 a. 16; 2001 a. **56,105.**
Cross Reference: See also ch. ATCP 12, Wis. adm. code.

95.715 Feed lots and veal lots. (1) DEFINITIONS. In this section:

(a) "Feeder cattle" means bovine animals that are kept for the sole purpose of feeding prior to slaughter, that are not more than 18 months old as evidenced by the absence of permanent teeth and that are one of the following:

1. Nonspayed females that are not parturient or postparturient.

2. Spayed heifers.

3. Steers

(b) "Feed lot" means a facility at which feeder cattle arc assembled for feeding prior to slaughter.

(c) "Veal calf' means a bovine animal of either sex that is not more than 120 days old and that is kept for the sole purpose of feeding prior to slaughter for veal.

(d) "Veal lot" means a facility at which veal calves are assembled for feeding prior to slaughter.

(2) APPROVED FEED LOT. (a) The department may issue an annual permit designating a feed lot as an approved feed lot. **A** feed lot operator is not required to hold an approved feed lot permit.

(b) If a person imports feeder cattle directly to an approved feed lot in this state, the department may by rule exempt that person from import rules and preimport testing rules promulgated by the department that apply to persons who import feeder cattle into this state.

(c) Unless specifically authorized by the department, no person may remove feeder cattle or cattle commingled with feeder cattle from an approved feed lot except to a slaughtering establishment for slaughter.

(d) The department may promulgate rules to specify permit fees under par. (a) and to regulate feed lots. The rules may include requirements related to the construction and maintenance of approved feed lots, the segregation of imported feeder cattle and record–keeping requirements related to feeder cattle.

(3) APPROVED VEAL LOT. (a) The department may issue an annual permit designating a veal lot as an approved veal lot. **A** veal lot operator is not required to hold an approved veal lot permit.

(b) If a person imports veal calves directly to an approved veal lot in this state, the department may by rule exempt that person from import rules and preimport testing rules promulgated by the department that apply to persons who import veal calves into this state.

(c) Unless specifically authorized by the department, no person may remove veal calves or cattle commingled with veal calves from an approved veal lot except to a slaughtering establishment for slaughter.

(d) The department may promulgate rules to regulate approved veal lots. The rules may include requirements related to the construction and maintenance of approved veal lots, the segregation of imported veal calves and record–keeping requirements related to veal calves.

History: 1993 a. 16.

Cross Reference: ***See*** **also s. ATCP** 11.14, **Wis. adm. code.**

95.72 Transportation, processing and disposal of dead animals. (1) DEFINITIONS. In this section:

(a) "Animal food processor" means a person, other than a renderer, engaged in the business of slaughtering animals or collecting or receiving dead animals in a raw or uncooked state for processing into animal food.

(b) "Collector" means a person engaged only in the business of collecting or receiving dead animals for sale or delivery to a renderer, animal food processor, grease processor or operator of a fur farm and who does not otherwise process the dead animals.

(c) "Dead animal":

1. Means any dead animal or part of a dead animal other than an animal slaughtered as food for humans.

2. Means an animal slaughtered as food for humans but which becomes unsuitable as food for humans.

3. Includes animals slaughtered or processed as food for animals and all inedible parts and by–products of animals slaughtered or processed as food for humans.

4. Does not include commercial feed as defined under s. 94.72 (1) (b) or fully rendered products of dead animals.

(cm) "Grease processor" means any person engaged in the business of collecting or receiving and melting or refining previously cooked materials containing dead animal fat or tallow or a combination of dead animal fat or tallow and vegetable oil to produce grease.

(d) "Renderer" means a person engaged in the business of collecting or receiving dead animals for rendering or processing into grease or other products.

(e) "Rendering or processing plant" means a plant or facility for slaughtering animals or collecting dead animals and rendering or processing them to produce grease or other products or a plant or facility for collecting or receiving and melting or refining previously cooked materials containing dead animal fat or tallow or a combination of dead animal fat or tallow and vegetable oil to produce grease.

(2) LICENSES; FEES. (a) ***Requirement.*** Except as provided in par. (b), no person may engage in the business of collecting or processing dead animals as a renderer, animal food processor, grease processor or collector unless the person pays a license fee and is issued an annual license by the department for that specific type of business operation.

(b) ***Exemptions.*** 1. A license is not required for a person who operates a slaughtering establishment licensed under s. 97.42 or inspected .under the federal meat and poultry inspection acts if the establishment renders or disposes of offal or dead animals resulting from its operations only, but a person who operates a slaughtering establishment is subject to the transportation requirements under sub. (7) (b).

2. **A** license is not required for a person who operates a fur farm which collects or receives dead animals as food for fur–bearing animals produced by the fur farm, but a person who operates a fur farm is subject to transportation requirements under sub. (7) (b) and (c).

3. A license is not required for a person who is engaged solely in the collection or disposal of public or commercial garbage without the separate collection or retrieval of dead animals or dead animal parts for further sale, use or processing.

4. **A** license is not required for a person who collects or receives individual animal parts exclusively for the manufacture of glue, gelatin, pharmaceuticals or other specialty products.

5. **A** license is not required for a person who collects, receives or processes hides.

6. An animal food processor, grease processor or collector license is not required for a person who is licensed as a renderer.

7. **A** grease processor or collector license is not required for a person who is licensed as an animal food processor.

8. **A** collector license is not required for a person who is licensed as a grease processor.

9. **A** renderer or animal food processor license is not required for a person who is licensed as a grease processor if he or she does not render or process dead animals other than incidental solid animal parts that are commingled with previously cooked materials containing dead animal fat or tallow or a combination of dead animal fat or tallow and vegetable oil.

(c) *Application;* ***fees; expiration; renewal.*** 1. An applicant for a license shall submit a completed application form prescribed by the department which states the type of operation for which a license is desired, the business or plant location where operations are to be conducted and other information required by the department.

2. An applicant for a license as a renderer, grease processor or an animal food processor shall submit a fee of $200 for each separate plant where processing operations are to be conducted, and an applicant for an initial license shall submit the inspection fee required under par. (e).

3. An applicant for a license as a collector shall submit a fee of $100 for each separate business location from which operations are to be conducted.

4. Each license expires on February 28.

5. Subject to s. 93.135, a person may renew a license by submitting the required license fee and renewal form.

(d) *Issuance; standards.* The department may not issue a liccnsc unless the applicant's plant or business location is suitably located, constructed and equipped for the type of operation for which a license is required, all vehicles, facilities and equipment are maintained in a clean and sanitary condition and all processing and other operations are conducted in compliance with this section and rules promulgated under sub. (5).

(e) *Inspection; fee.* An applicant for an initial license as a renderer. grease processor or animal food processor shall submit an inspection fee of $25 for each separate plant to be operated by the applicant. The department may grant a temporary permit pending final action on the application, but the department may not issue the license unless it finds that the applicant's plant, premises, facilities and cquipment are in compliance with the requirements of this section and rules promulgated under sub. (5). The department may not refund the inspection fee if the application is denied. Inspection fees are not required for the annual renewal of a license.

(f) *Nontransferable.* No license issued under this section is transferable. In the case of any transfer of ownership of a plant or business for which a license is issued, the new owner shall apply for a new license.

(3) RENDERING OR PROCESSING PLANT LOCATION. No person may establish a rendering or processing plant within one–eighth mile of a dwelling, other than a dwelling associated with the rendering or processing plant, or within one-eighth mile of a public or private business building, but a rendering or processing plant is not required to cease operations because a dwelling or business building is constructed closer than one–eighth mile to an existing plant. This subsection does not prohibit the continued operation of the plant of a renderer, animal food processor or grease processor in existence on November *26,* 1981, or the erection of new or improved rendering or processing plant facilities on the existing premises subject to provisions of any local ordinances.

(4) RENDERING AND PROCESSING PLANTS; CONSTRUCTION AND OPERATION. (a) *New plants.* No person may construct a rendering or processing plant unless it is constructed and equipped according to rules promulgated under sub. (5). No person may operate a rendering or processing plant unless the plant has sewage facilities and floor drains, all areas of the building and premises on which the plant is situated are kept in a clean and sanitary condition. and all opcrations are conducted to prevent the creation of a nuisance.

(b) *Closed* ***vessels.*** **A** person who operates a rendering or processing plant shall conduct all rendering in closed vessels.

(c) *Disposal of dead animals.* 1. **A** person who operates a rendcring or processing plant shall deposit all dead animals received for rendering or processing within the plant or other enclosed structure immediately upon their arrival.

2. **A** person who operates a rendering or processing plant shall dispose of an animal within 24 hours after its arrival during the days of Sunday to Friday, or within 48 hours after its arrival on a Saturday or a Sunday followed by a holiday, unless any of the following occurs:

a. The department issues a permit allowing a longer amount of time.

b. The carcass is received in a frozen condition and is disposed of within a reasonable period of time.

c. Disposal of the animal within the time period is impossible and the department is so notified by telephone.

(d) *Diseased or contaminated animals.* The department may detain or hold for further inspection dead animals or animal hides it suspects are affected with a highly contagious or infectious discase, or any dead animal products suspected of containing any poisonous or deleterious substance which may render the products unfit for use as food for animals. The department shall order the destruction of dead animals or any animal hides or products determined to be infected with a highly contagious or infectious disease or unfit for use as food for animals.

(5) RULES. The department shall promulgate rules governing the collection, transportation, processing, rendering and disposal of dead animals, entrails and paunch materials, the slaughtering of animals for animal food processing or rendering, the location, construction and maintenance of all buildings, facilities and equipment used in collecting, slaughtering and processing operations. the sale or use of dead animal products as food for animals, the issuance of licenses or permits and other rules for the conduct of operations subject to a license under this section.

(6) INSPECTION. (a) *Initial inspection.* Upon receipt of an application for an initial license as a renderer, grease processor or animal food processor. the department shall inspect the plant, premises, facilities and equipment to be used in conducting the business.

(b) *Annual inspection.* The department shall inspect all plants, premises, facilities, equipment and transport vehicles used by each licensee at least once each year, and more often if necessary, to ensure that the licensee conducts the business operations in conformity with this section and rules promulgated under sub. (5).

(c) *Deficiencies.* If the department finds that any of the applicant's or licensee's plants, premises, facilities, equipment or transport vehicles do not comply with the requirements of this section or rules promulgated under sub. (5), it shall notify the applicant or licensee in writing of the deficiencies and shall order the applicant or licensee to make appropriate changes. The department shall allow a reasonable time not exceeding 90 days for the applicant or licensee to make the changes. The department shall conduct a reinspection to determine compliance with the department's order or the need to order further changes. The department may allow an additional *90* days if it is necessary for the applicant or licensee to correct deficiencies discovered during the reinspection. Failure to correct deficiencies within the time allowed is grounds for the denial, suspension or revocation of the license or temporary permit.

(7) TRANSPORTATION OF DEAD ANIMALS. (a) *License requirement.* No person may transport dead animals on public highways in this state without a license issued under this section. **A** licensee may not transport dead animals under conditions not authorized by the license. This paragraph does not apply to persons exempt from obtaining a license under this section, a farmer transporting dead animals raised on his or her farm, the transportation of hides or fully rendered or processed dead animal products, the transportation of dead animals by government agencies or private agencies engaged in scientific research, persons transporting dead animals for destruction or burial, or animal truckers transporting animals which have died in transit if the dead animals are transported directly to a licensed renderer, animal food processor or collector.

(b) *Enclosure or covering of dead animals.* No person may transport a dead animal on a public highway unless it is transported in a closed vehicle or container or unless it is completely covered with a tarpaulin or other suitable material. Vehicles or containers used for the transportation of dead animals shall be leakproof to prevent spilling or dripping of liquid waste. This paragraph does not apply to the transportation of animal hides or to a farmer transporting dead animals raised on his or her farm.

(c) *Permit.* No licensee or fiir farmer may operate any vehicle for the transportation of dead animals unless the person is issued

a vehicle permit by the department. There is no charge for this permit. An applicant for a vehicle permit shall submit a completed application form prescribed by the department which states the applicant's name and address, vehicle identification and other information required by the department. The permit holder shall keep the permit with the vehicle for which it was issued.

(d) *Interstate transport.* Except as provided in reciprocal agreements between this state and contiguous states, no dead animals or parts of dead animals which are raw or unrendered, except green or salted hides, may be transported into this state unless the requirements of this subsection and rules promulgated under sub. *(5)* relating to the transportation of dead animals are complied with.

(8) TRUCK TRANSFER STATIONS: PERMITS. No person may own or operate a truck transfer station for the unloading or reloading of dead animals unless the person is issued a permit by the department. The department shall issue permits only to persons licensed under this section. Truck transfer stations may be used only for unloading or reloading dead animals for delivery to licensees under this section. No person may operate a truck transfer station unless the building is constructed, maintained and operated according to rules promulgated under sub. *(5)* and water and sewerage facilities are provided on the premises.

(9) MISREPRESENTATION. No person may represent that he or she is engaged in or offer to provide services in connection with an activity for which a license is required under this section unless the person holds a license or permit for the activity issued under this section. All advertising by a person licensed under this section shall specify the activity for which the license was issued.

(10) HUMANE HANDLING. Live downer animals picked **up** for animal food processing or rendering shall be slaughtered before loading for transport to a processing or rendering plant. Slaughtering shall be done by humane methods as defined in s. 95.80 (1) (a).

(11) PENALTIES. Any person who violates this section or any rule promulgated under this section shall forfeit not less than $500 nor more than $1,000.

History: 1981 c.66.314; 1983 a. 111, 115; 1983 a. 189 s. 329 (20); 1989 a. 56; 1991 a. 39; 1995 a. 102; 1997 a. 191; 2001 a. 56.

95.80 Humane slaughtering. (1) DEFINITIONS. **As** used in this section:

(a) "Humane method" means:

1. Any method of slaughtering livestock which normally causes animals to be rendered insensible to pain by a single blow or shot of a mechanical instrument or by electrical, chemical or other means that is rapid and cffcctive, before being shackled, hoisted, thrown. cast, or cut; or

2. The method of slaughtering, including handling and other preparation for slaughtering, required by or used in connection with the ritual of any religious faith, whereby the animal suffers loss of consciousness by anemia of the brain caused by the simultaneous and instantaneous severance of the carotid arteries with a sharp instrument.

(b) "Livestock" means cattle, horses, swine, sheep, goats, farm–raised deer and other species of animals susceptible of use in the production of meat and meat products.

(c) "Slaughterer" means any person operating a slaughterhouse licensed under s. 97.42, or registered under **s.** 97.44.

(2) PROHIBITION. No slaughterer may slaughter livestock except by a humane method.

History: 1971 c. 40 s. 93; 1973 c. 206; 1983 a. 111, 189; 1995 a. 79.

95.99 Penalties. (1) Any person who violates this chapter, or an order issued or a rule adopted under this chapter, for which **a** specific penalty is not prescribed shall, for the first offense, be fined not more than $1,000; and for any subsequent offense fined not less than $500 nor more than $1,000, or imprisoned not more than *6* months or both.

(2) The department may seek an injunction restraining any person from violating this chapter or any rule promulgated under this chapter.

(3) A person who violates this chapter or any rule promulgated or order issued under this chapter, for which a specific penalty is not prescribed, may be required to forfeit not **less** than $200 nor more than $5,000 for the first offense and may be required to forfeit not less than $400 nor more than $5,000 for the 2nd or subsequent offense committed within *5* years of an offense for which a penalty has been assessed under this section. **A** forfeiture under this subsection is in lieu of a criminal penalty under sub. (1).

History: 1977 c. 216; 1979 c. 129; 1981 c. 66 ss. 4, 6; 1983 a. 111; 1995 a. 450.

CHAPTER 440
DEPARTMENT OF REGULATION AND LICENSING

SUBCHAPTER I
GENERAL PROVISIONS

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Cross reference: See also RL, Wis. adm. code.

SUBCHAPTER I
GENERAL PROVISIONS

440.01 Definitions. (I) In chs. 440 to 480, unless the context requires otherwise:

(a) "Department" means the department of regulation and licensing.

(am) "Financial institution" has the meaning given in s. 705.01 (3).

(b) "Grant" means the substantive act of an examining board, section of an examining board, affiliated credentialing board or the department of approving the applicant for credentialing and the preparing, executing, signing or sealing of the credentialing.

(c) "Issue" means the procedural act of the department of transmitting the credential to the person who is credentialed.

(d) "Limit", when used in reference to limiting a credential, means to impose conditions and requirements upon the holder of the credential, and to restrict the scope of the holder's practice.

(dm) "Renewal date" means the date on which a credential expires and before which it must be renewed for the holder to maintain without interruption the rights, privileges and authority conferred by the credential.

(e) "Reprimand" means to publicly warn the holder of a credential.

(f) "Revoke", when used in reference to revoking a credential, means to completely and absolutely terminate the credential and all rights, privileges and authority previously conferred by the credential.

(g) "Secretary" means the secretary of regulation and licensing.

(h) "Suspend", when used in reference to suspending a credential, means to completely and absolutely withdraw and withhold for a period of time all rights, privileges and authority previously conferred by the credential.

(2) In this subchapter: (a) "Credential" means a license, permit, or certificate of certification or registration that is issued under chs. 440 to 480.

(b) "Credentialing" means the acts of an examining board, section of an examining board, affiliated credentialing board or the department that relate to granting, issuing, denying, limiting, suspending or revoking a credential.

(bm) "Credentialing board" means an examining board or an affiliated credentialing board in the department.

(c) "Examining board" includes the board of nursing.

(cs) "Minority group member" has the meaning given in s. 560.036 (1) (f).

(cv) "Psychotherapy" has the meaning given in s. 457.01 (8m).

(d) "Reciorocal credential" means a credential granted by an examining board, section of an examining board, affiliated credentialing board or the department to an applicant who holds a credential issued by a governmental authority in a jurisdiction outside this state authorizing or qualifying the applicant to perform acts that are substantially the same as those acts authorized by the credential granted by the examining board, section of the examining board, affiliated credentialing board or department.

History: 1977 c. 418; 1979 c. 34; 1979 c. 175 s. 53; '1979 c. 221 s. 2202 (45); 1991 a. 39; 1993 a. 102, 107; 1995 a. 233, 333; 1997 a. 35 s. 448; 1997 a. 237 ss. 532, 539m; 1999 a. 9 s. 2915; 2001 a. 80.

Procedural due process and the separation of functions in state occupational licensing agencies. 1974 WLR 833.

440.02 Bonds. Members of the staff of the department who are assigned by the secretary to collect moneys shall be bonded in an amount equal to the total receipts of the department for any month.

440.03 General duties and powers of the department.

(1) The department may promulgate rules defining uniform procedures to be used by the department, the real estate board, the real estate appraisers board, and all examining boards and affiliated credentialing boards attached to the department or an examining board, for receiving, filing and investigating complaints, for commencing disciplinary proceedings and for conducting hearings.

(lm) The department may promulgate rules specifying the number of business days within which the department or any examining board or affiliated credentialing board in the department must review and make a determination on an application for a permit, as defined in s. 560.41. (2), that is issued under chs. 440 to 480.

(2) The department may provide examination development services, consultation and technical assistance to other state agencies, federal agencies, counties, cities, villages, towns, national or regional organizations of state credentialing agencies, similar credentialing agencies in other states, national or regional accrediting associations, and nonprofit organizations. The department may charge a fee sufficient to reimburse the department for the costs of providing such services. In this subsection, "nonprofit organization" means a nonprofit corporation as defined in s. 181.0103 (17), and an organization exempt from tax under 26 USC 501.

(3) If the secretary reorganizes the department, no modification may be made in the powers and responsibilities of the examining boards or affiliated credentialing boards attached to the department or an examining board under s. 15.405 or 15.406.

(3m) The department may investigate complaints made against a person who has been issued a credential under chs. 440 to 480.

(3q) Notwithstanding sub.(3m), the department of regulation and licensing shall investigate any report that it receives under s. 146.40 (4r) (am) 2. or (em).

(4) The department may issue subpoenas for the attendance of witnesses and the production of documents or other materials prior to the commencement of disciplinary proceedings.

(5) The department may investigate allegations of negligence by physicians licensed to practice medicine and surgery under ch. 448.

(5m) The department shall maintain a toll–free telephone number to receive reports of allegations of unprofessional conduct, negligence or misconduct involving a physician licensed under subch. II of ch. 448. The department shall publicize the toll– free telephone number and the investigative powers and duties of the department and the medical examining board as widely as possible

in the state, including in hospitals, clinics, medical offices and other health care facilities.

(6) The department shall have access to any information contained in the reports filed with the medical examining board, an affiliated credentialing board attached to the medical examining board and the board of nursing under s. 655.045, as created by 1985 Wisconsin Act 29, and s. 655.26.

(7) The department shall establish the style, content and format of all credentials and of all forms for applying for any credential issued or renewed under chs. 440 to 480. All forms shall include a place for the information required under sub.(11m) (a). Upon request of any person who holds a credential and payment of a $10 fee, the department may issue a wall certificate signed by the governor.

(7m) The department may promulgate rules that establish procedures for submitting an application for a credential or credential renewal by electronic transmission. Any rules promulgated under this subsection shall specify procedures for complying with any requirement that a fee be submitted with the application. The rules may also waive any requirement in chs. 440 to 480 that an application submitted to the department, an examining board or an affiliated credentialing board be executed, verified, signed, sworn or made under oath, notwithstanding ss. 440.26 (2) (b), 440.42 (2) (intro.), 440.91 (2) (intro.), 443.06 (1) (a), 443.10 (2) (a), 445.04 (2), 445.08 (4), 445.095 (1) (a), 448.05 (7), 450.09 (1) (a), 452.10 (1) and 480.08 (2m).

(8) The department may promulgate rules requiring holders of certain credentials to do any of the following:

(a) Display the credential in a conspicuous place in the holder's office or place of practice or business, if the holder is not required by statute to do so.

(b) Post a notice in a conspicuous place in the holder's office or place of practice or business describing the procedures for filing a complaint against the holder.

(9) The department shall include all of the following with each biennial budget request that it makes under s. 16.42:

(a) A recalculation of the administrative and enforcement costs of the department that are attributable to the regulation of each occupation or business under chs. 440 to 480 and that are included in the budget request.

(b) A recommended change to each fee specified under s. 440.05 (1) for an initial credential for which an examination is not required, under s. 440.05 (2) for a reciprocal credential and under s. 440.08 (2) (a) for a credential renewal if the change is necessary to reflect the approximate administrative and enforcement costs of the department that are attributable to the regulation of the particular occupation or business during the period in which the initial or reciprocal credential or credential renewal is in effect and, for purposes of the recommended change to each fee specified under s. 440.08 (2) (a) for a credential renewal, to reflect an estimate of any additional moneys available for the department's general program operations, during the budget period to which the biennial budget request applies, as a result of appropriation transfers that have been or are estimated to be made under s. 20.165 (1) (i) prior to and during that budget period.

(11) The department shall cooperate with the department of health and family services to develop a program to use voluntary, uncompensated services of licensed or certified professionals to assist the department of health and family services in the evaluation of community mental health programs in exchange for continuing education credits for the professionals under ss. 448.40 (2) (e) and 455.065 (5).

(11m) (a) Each application form for a credential issued or renewed under chs. 440 to 480 shall provide a space for the department to require each of the following, other than an individual who does not have a social security number and who submits a statement made or subscribed under oath or affirmation as required under par.(am), to provide his or her social security number:

1. *An* applicant for an initial credential or credential renewal. If the applicant is not an individual, the department shall require the applicant to provide its federal employer identification number.

2. An applicant for reinstatement of an inactive license under s. 452.12 *(6)*(e).

(am) If an applicant specified in par.(a) 1. or 2. is an individual who does not have a social security number, the applicant shall submit a statement made or subscribed under oath that the applicant does not have a social security number. The form of the statement shall be prescribed by the department of workforce development. A credential or license issued in reliance upon a false statement submitted under this paragraph is invalid.

(b) The department shall deny an application for an initial credential or deny an application for credential renewal or for reinstatement of an inactive license under s. 452.12 (6) (e) if any information required under par.(a) is not included in the application form or, in the case of an applicant who is an individual and who does not have a social security number, if the statement required under par.(am) is not included with the application form.

(c) The department of regulation and licensing may not disclose a social security number obtained under par.(a) to any person except the coordinated licensure information system under s. 441.50 **(7);** the department of workforce development for purposes of administering s. 49.22; and, for a social security number obtained under par.(a) 1., the department of revenue for the sole purpose of requesting certifications under s. 73.0301.

(12m) The department of regulation and licensing shall cooperate with the departments of justice and health and family services in developing and maintaining a computer linkup to provide access to information regarding the current status of a credential issued to any person by the department of regulation and licensing, including whether that credential has been restricted in any way.

(13) The department may conduct an investigation to determine whether an applicant for a credential issued under chs. 440 to 480 satisfies any of the eligibility requirements specified for the credential, including whether the applicant does not have an arrest or conviction record. In conducting an investigation under this subsection, the department may require an applicant to provide any information that is necessary for the investigation **or,** for the purpose of obtaining information related to an arrest or conviction record of an applicant, to complete forms provided by the department of justice or the federal bureau of investigation. The department shall charge the applicant any fees, costs or other expenses incurred in conducting the investigation under this subsection.

(14) (a) 1. The department shall grant a certificate of registration as a music therapist to a person if all of the following apply:

a. The person is certified, registered or accredited **as** a music therapist by the Certification Board for Music Therapists, National Music Therapy Registry, American Music Therapy Association or by another national organization that certifies, registers or accredits music therapists.

b. The organization that certified. registered or accredited the person under subd. 1. a. is approved by the department.

c. The person pays the fee specified in s. 440.05 (1) and files with the department evidence satisfactory to the department that he or she is certified, registered or accredited as required under subd.1. a.

2. The department shall grant a certificate of registration as an art therapist to a person if all of the following apply:

a. The person is certified, registered or accredited as an art therapist by the *Art* Therapy Credentials Board or by another national organization that certifies, registers or accredits art therapists.

b. The organization that certified, registered or accredited the person under subd.2. a. is approved by the department.

c. The person pays the fee specified in s. 440.05 (1) and files with the department evidence satisfactory to the department that he or she is certified, registered or accredited as required under subd.2. a.

3. The department shall grant a certificate of registration as a dance therapist to a person if all of the following apply:

a. The person is certified, registered or accredited **as** a dance therapist by the American Dance Therapy Association or by another national organization that certifies, registers or accredits dance therapists.

b. The organization that certified, registered or accredited the person under subd.3. a. is approved by the department.

c. The person pays the fee specified in s. 440.05 (1) and files with the department evidence satisfactory to the department that

he or she is certified, registered or accredited as required under subd.3. a.

(am) The department may promulgate rules that establish requirements for granting a license to practice psychotherapy to a person who is registered under par.(a). Rules promulgated under this paragraph shall establish requirements for obtaining such a license that are comparable to the requirements for obtaining a clinical social worker, marriage and family therapist, or professional counselor license under ch. 457. If the department promulgates rules under this paragraph, the department shall grant a license under this paragraph to a person registered under par.(a) who pays the fee specified in s. 440.05 (1) and provides evidence satisfactory to the department that he or she satisfies the requirements established in the rules.

(b) A person who is registered under par.(a) shall notify the department in writing within 30 days if an organization specified in par.(a) 1. a., 2. a. or 3. a. revokes the person's certification, registration, or accreditation specified in par.(a) 1. a., 2. a., or 3. a. The department shall revoke a certificate of registration granted under par.(a) if such an organization revokes such a certification, registration, or accreditation. If the department revokes the certificate of registration of a person who also holds a license granted under the rules promulgated under par.(am), the department shall also revoke the license.

(c) The renewal dates for certificates granted under par.(a) and licenses granted under par.(am) are specified in s. 440.08 (2) (a). Renewal applications shall be submitted to the department on a form provided by the department and shall include the renewal fee specified in s. 440.08 (2) (a) and evidence satisfactory to the department that the person's certification, registration, or accreditation specified in par.(a) 1. a., 2. a. or 3. a. has not been revoked.

(d) The department shall promulgate rules that specify the services within the scope of practice of music, art, or dance therapy that a person who is registered under par.(a) is qualified to perform. The rules may not allow a person registered under par.(a) to perform psychotherapy unless the person is granted a license under the rules promulgated under par.(am).

Cross reference: See also chs. RL 140, 141, and 142, Wis. adm. code.

(e) Subject to the rules promulgated under sub.(1), the department may make investigations and conduct hearings to determine whether a violation of this subsection or any rule promulgated under par.(d) has occurred and may reprimand a person who is registered under par.(a) or holds a license granted under the rules promulgated under par.(am) or may deny, limit, suspend, or revoke a certificate of registration granted under par.(a) or a license granted under the rules promulgated under par.(am) if the department finds that the applicant or certificate or license holder has violated this subsection or any rule promulgated under par.(d).

(f) A person who is registered under par.(a) or holds a license granted under the rules promulgated under par.(am) who violates this subsection or any rule promulgated under par.(d) may be fined not more than $200 or imprisoned for not more than 6 months or both.

(15) The department shall promulgate rules that establish the fees specified in ss. 440.05 (10) and 440.08 (2) (d).

(16) Annually, the department shall distribute the form developed by the medical and optometry examining boards under 2001 Wisconsin Act 16, section 9143 (3c), to all school districts and charter schools that offer kindergarten, to be used by pupils to provide evidence of eye examinations under s. 118.135.

History: 1977 c. 418 ss. 24, 792; 1979 c. 34, 221, 337; 1981 c. 94; 1985 a. 29, 340; 1989 a. 31,340: 1991 a. 39; 1993 a. 16. 102, 107, 443, 445, 490, 491; 1995 a. 27 ss. 6472, 6472j, 9126 (19); 1995 a. 233; 1997 a. 27, 75, 79; 1997 a. 191 ss. 312,313, 318; 1997 a. 231,237; 1997 a. 261 ss. 1 to 4, 7, 10, 13; 1997 a. 311; 1999 a. 9, 32; 2001 a. 16, 66, 80.

Cross reference: *See* also RL, Wis. adm. code.

440.035 General duties of examining boards and affiliated credentialing boards. Each examining board or affiliated credentialing board attached to the department or an examining board shall:

(1) Independently exercise its powers, duties and functions prescribed by law with regard to rule–making, credentialing and regulation.

(2) Be the supervising authority of all personnel, other than shared personnel, engaged in the review, investigation or handling of information regarding qualifications of applicants for credentials, examination questions and answers, accreditation, related investigations and disciplinary matters affecting persons who are credentialed by the examining board or affiliated credentialing board, or in the establishing of regulatory policy or the exercise of administrative discretion with regard to the qualifications or discipline of applicants or persons who are credentialed by the examining board, affiliated credentialing board or accreditation.

(3) Maintain, in conjunction with their operations, in central locations designated by the department, all records pertaining to the functions independently retained by them.

(4) Compile and keep current a register of the names and addresses of all persons who are credentialed to be retained by the department and which shall be available for public inspection during the times specified in s. 230.35 (4) (a). The department may also make the register available to the public by electronic transmission.

History: 1977 c. 418 ss. 25, 793, 929 (41); 1979 c. 32 s. 92 (1); 1979 c. 34; 1989 a. 56 s. 259; 1991 a. 39; 1993 a. 107; 1997 a. 27,191,237.

440.04 Duties of the secretary. The secretary shall: **(1)** Centralize, at the capital and in such district offices as the operations of the department and the attached examining boards and affiliated credentialing boards require, the routine housekeeping functions required by the department, the examining boards and the affiliated credentialing boards.

(2) Provide the bookkeeping, payroll, accounting and personnel advisory services required by the department and the legal services, except for representation in court proceedings and the preparation of formal legal opinions, required by the attached examining boards and affiliated credentialing boards.

(5) With the advice of the examining boards or affiliated credentialing boards:

(a) Provide the department with such supplies, equipment, office space and meeting facilities as are required for the efficient operation of the department.

(b) Make all arrangements for meetings, hearings and examinations.

(c) Provide such other services as the examining boards or affiliated credentialing boards request.

(6) Appoint outside the classified service an administrator for any division established in the department and a director for any bureau established in the department as authorized in s. 230.08 (2). The secretary may assign any bureau director appointed in accordance with this subsection to serve concurrently as a bureau director and a division administrator.

(7) Unless otherwise specified in chs. 440 to 480, provide examination development, administration, research and evaluation services as required.

(8) Collect data related to the registration of speech–language pathologists and audiologists under subch. III of ch. 459 and, on January 15, 1993, report the data and recommendations on whether the licensure of speech–language pathologists and audiologists under subch. II of ch. 459 is appropriate to the chief clerk of each house of the legislature for distribution in the manner provided under s. 13.172 (2).

(9) Annually prepare and submit a report to the legislature under s. 13.172 (2) on the number of minority group members who applied for licensure as a certified public accountant under ch. 442, the number who passed the examination required for licensure as a certified public accountant and the number who were issued a certified public accountant license under ch. 442, during the preceding year.

History: 1977 c. 418 s. 26; 1979 c. 34; 1981 c. 20; 1985 a. 29; 1987 a. 27; 1989 a. 316; 1991 a. 39; 1993 a. 102,107; 1995 a. 333.

440.042 Advisory committees. (1) The secretary may appoint persons or advisory committees to advise the department and the boards, examining boards and affiliated credentialing boards in the department on matters relating to the regulation of credential holders. The secretary shall appoint an advisory committee to advise the department on matters relating to carrying out the duties specified in s. 440.982 and making investigations, conducting hearings and taking disciplinary action under s. 440.986. A person or an advisory committee member appointed under this subsection shall serve without compensation, but may be reimbursed for his

or her actual and necessary expenses incurred in the performance of his or her duties.

(2) Any person who in good faith testifies before the department or any examining board, affiliated credentialing board or board in the department or otherwise provides the department or any examining board, affiliated credentialing board or board in the department with advice or information on a matter relating to the regulation of a person holding a credential is immune from civil liability for his or her acts or omissions in testifying or otherwise providing such advice or information. The good faith of any person specified in this subsection shall be presumed in any civil action and an allegation that such a person has not acted in good faith must be proven by clear and convincing evidence.

History: 1993 a. 16 ss. 3269, 3299; 1993 a. 107; 1997 a. 156; 1999 a. 32.

440.045 Disputes. Any dispute between an examining board or an affiliated credentialing board and the secretary shall be arbitrated by the governor or the governor's designee after consultation with the disputants.

History: 1977 c. 418 s. 27; 1979 c. 34; 1993 a. 107.

The relationship between the department, cosmetology examining board, and governor is discussed. 70 Atty. Gen. 172.

440.05 Standard fees. The following standard fees apply to all initial credentials, except as provided in ss. 440.42, 440.43, 440.44, 440.51, 444.03, 444.05, 444.11, 447.04 **(2)** (c) 2., 449.17, 449.18 and 459.46:

(1) (a) Initial credential: $53. Each applicant for an initial credential shall pay the initial credential fee to the department when the application materials for the initial credential are submitted to the department.

(b) Examination: If an examination is required, the applicant shall pay an examination fee to the department. If the department prepares, administers, or grades the examination, the fee to the department shall be an amount equal to the department's best estimate of the actual cost of preparing, administering, or grading the examination. If the department approves an examination prepared, administered, and graded by a test service provider, the fee to the department shall be an amount equal to the department's best estimate of the actual cost of approving the examination, including selecting, evaluating, and reviewing the examination.

(2) Reciprocal credential, including any credential described in s. 440.01 (2) (d) and any credential that permits temporary practice in this state in whole or in part because the person holds a credential in another jurisdiction: The applicable credential renewal fee under s. 440.08 (2) (a) and, if an examination is required, an examination fee under sub.(1).

(6) Apprentice, journeyman, student or other temporary credential, granted pending completion of education, apprenticeship or examination requirements: $10.

(7) Replacement of lost credential, name or address change on credential, issuance of duplicate credential or transfer of credential: $10.

(9) Endorsement of persons who are credentialed to other states: $10.

(10) Expedited service: If an applicant for a credential requests that the department process an application on an expedited basis, the applicant shall pay a service fee that is equal to the department's best estimate of the cost of processing the application on an expedited basis, including the cost of providing counter or other special handling services.

History: 1977 c. 29,418; 1979 c. 34; 1979 c. 175 s. 53'; 1979 c. 221 s. 2202 (45); 1983 a. 27; 1985 a. 29; 1987 a. 264.265. 329. 399. 403: 1989 a. 31.229.307. 316. 336.340. 341. 359: 1991 a. 39,269,278,315; 1993 a. 16; 1995 a. 27; 1997 a. 27, 96; 1999 a. 9; 2001 a. 16.

Cross reference: See also ch. RL 4, Wis. adm. code

440.055 Credit card payments. (2) If the department permits the payment of a fee with use of a credit card, the department shall charge a credit card service charge for each transaction. The credit card service charge shall be in addition to the fee that is being paid with the credit card and shall be sufficient to pay the costs to the department for providing this service to persons who request it, including the cost of any services for which the department contracts under sub.(3).

(3) The department may contract for services relating to the payment of fees by credit card under this section.

History: 1995 a. 27; 1999 a. 9.

440.06 Refunds and reexaminations. The secretary may establish uniform procedures for refunds of fees paid under s. 440.05 or 440.08 and uniform procedures and fees for reexaminations under chs. 440 to 480.

History: 1977 c. 418; 1979 c. 175 s. 53; 1979 c. 221 s. 2202 (45); 1991 a. 39; 1993 a. 102.

Cross reference: See also ch. RL 4, Wis. adm code.

440.07 Examination standards and services. (1) In addition to the standards specified in chs. 440 to 480, examinations for credentials shall reasonably relate to the skills likely to be needed for an applicant to practice in this state at the time of examination and shall seek to determine the applicant's preparedness to exercise the skills.

(2) The department, examining board or affiliated credentialing board having authority to credential applicants may do any of the following:

(a) Prepare, administer and grade examinations.

(b) Approve, in whole or in part, an examination prepared, administered and graded by a test service provider.

(3) The department may charge a fee to an applicant for a credential who fails an examination required for the credential and requests a review of his or her examination results. The fee shall be based on the cost of the review. No fee may be charged for the review unless the amount of the fee or the procedure for determining the amount of the fee is specified in rules promulgated by the department.

History: 1987 a. 27; 1991 a. 39; 1993 a. 102, 107.

Cross reference: See also ch. RL 4, Wis. adm. code. Department of Regulation and Licensing test scores were subject to disclosure under the open records law. Munroe v. Braatz, 201 Wis. 2d 442, 549 N.W.2d 452 (Ct. App. 1996).

440.08 Credential renewal. (1) NOTICE OF RENEWAL. The department shall give a notice of renewal to each holder of a credential at least 30 days prior to the renewal date of the credential. Notice may be mailed to the last address provided to the department by the credential holder or may be given by electronic transmission. Failure to receive a notice of renewal is not a defense in any disciplinary proceeding against the holder or in any proceeding against the holder for practicing without a credential. Failure to receive **a** notice of renewal does not relieve the holder from the obligation to pay a penalty for late renewal under sub.(3).

(2) RENEWAL DATES, FEES AND APPLICATIONS. (a) Except as provided in par.(b) and in ss. 440.51, 442.04, 444.03, 444.05, 444.11, 448.065, 447.04 (2) (c) 2., 449.17, 449.18 and 459.46, the renewal dates and renewal fees for credentials are as follows:

1. Accountant, certified public: January 1 of each even–numbered year; $59.

3. Accounting corporation or partnership: January **1** of each even–numbered year; $56.

4. Acupuncturist: July 1 of each odd–numbered year; $70.

4m. Advanced practice nurse prescriber: October 1 of each even–numbered year; $73.

5. Aesthetician: July 1 of each odd–numbered year; $87.

6. Aesthetics establishment: July 1 of each odd–numbered year; $70.

7. Aesthetics instructor: July 1 of each odd–numbered year; $70.

8. Aesthetics school: July 1 of each odd–numbered year; $115.

9. Aesthetics specialty school: July 1 of each odd–numbered year; $53.

11. Appraiser, real estate, certified general: January 1 of each even–numbered year; $162.

11m. Appraiser, real estate, certified residential: January 1 of each even–numbered year; $167.

12. Appraiser, real estate, licensed: January 1 of each even--numbered year; $185.

13. Architect: August 1 of each even–numbered year; $60.

14. Architectural or engineering firm, partnership or corporation: February 1 of each even–numbered year; $70.

14f. Athletic trainer: July 1 of each even–numbered year; $53.

14g. Auction company: January 1 of each odd–numbered year; $56.

14r. Auctioneer: January 1 of each odd–numbered year; $174.

15. Audiologist: February 1 **of** each odd–numbered year; $106.

16. Barbering or cosmetology establishment: July 1 of each odd–numbered year; $56.

17. Barbering or cosmetology instructor: July 1 of each odd–numbered year; $91.
18. Barbering or cosmetology manager: July 1 of each odd–numbered year; $71.
19. Barbering or cosmetology school: July 1 of each odd–numbered year; $138.
20. Barber or cosmetologist: July 1 of each odd–numbered year; $63.
21. Cemetery authority: January 1 of each odd–numbered year; $343.
22. Cemetery preneed seller: January 1 of each odd–numbered year; $61.
23. Cemetery salesperson: January 1 of each odd–numbered year; $90.
23m. Charitable organization: August 1 of each year; $15.
24. Chiropractor: January 1 of each odd–numbered year; $168.
25. Dental hygienist: October 1 of each odd–numbered year; $57.
26. Dentist: October 1 of each odd–numbered year; $131.
26m. Dentist, faculty member: October 1 of each odd–numbered year; $131.
27. Designer of engineering systems: February 1 of each even–numbered year; $58.
27m. Dietitian: November 1 of each even–numbered year; $56.
28. Drug distributor: June 1 of each even–numbered year; $70.
29. Drug manufacturer: June 1 of each even–numbered year; $70.
30. Electrologist: July 1 of each odd–numbered year; $76.
31. Electrology establishment: July 1 of each odd–numbered year; $56.
32. Electrology instructor: July 1 of each odd–numbered year; $86.
33. Electrology school: July 1 of each odd–numbered year; $71.
34. Electrology specialty school: July 1 of each odd–numbered year; $53.
35. Engineer, professional: August 1 of each even–numbered year; $58.
35m. Fund–raising counsel: September 1 of each even–numbered year; $53.
36. Funeral director: January 1 of each even–numbered year; $135.
37. Funeral establishment: June 1 of each odd–numbered year; $56.
38. Hearing instrument specialist: February 1 of each odd–numbered year; $106.
38g. Home inspector: January 1 of each odd–numbered year; $53.
38m. Landscape architect: August 1 of each even–numbered year; $56.
39. Land surveyor: February 1 of each even–numbered year; $77.
42. Manicuring establishment: July 1 of each odd–numbered year; $53.
43. Manicuring instructor: July 1 of each odd–numbered year; $53.
44. Manicuring school: July 1 of each odd–numbered year; $118.
45. Manicuring specialty school: July 1 of each odd–numbered year; $53.
46. Manicurist: July 1 of each odd–numbered year; $133.
46m. Marriage and family therapist: July 1 of each odd–numbered year; $84.
46r. Massage therapist or bodyworker: March 1 of each odd–numbered year; $53.
NOTE: Subd. 46r. is created eff. 3–1–03 by 2001 Wis. Act 74.
48. Nurse, licensed practical: May 1 of each odd–numbered year; $69.
49. Nurse, registered: March 1 of each even–numbered year; $66.
50. Nurse–midwife: March 1 of each even–numbered year; $70.
51. Nursing home administrator: July 1 of each even–numbered year; $120.
52. Occupational therapist: November 1 of each odd–numbered year; $59.
53. Occupational therapy assistant: November 1 of each odd–numbered year; $62.
54. Optometrist: January 1 of each even–numbered year; $65.
54m. Perfusionist: November 1 of each odd–numbered year; $56.
55. Pharmacist: June 1 of each even–numbered year; $97.
56. Pharmacy: June 1 of each even–numbered year; $56.
57. Physical therapist: November 1 of each odd–numbered year; $62.
57m. Physical therapist assistant: November 1 of each odd–numbered year; $44.
NOTE: Subd. 57m. is created eff. 4–1–04 by 2001 Wis. Act 70.
58. Physician: November 1 of each odd–numbered year; $106.
59. Physician assistant: November 1 of each odd–numbered year; $72.
60. Podiatrist: November 1 of each odd–numbered year; $150.
61. Private detective: September 1 of each even–numbered year; $101.
62. Private detective agency: September 1 of each even–numbered year; $53.
63. Private practice school psychologist: October 1 of each odd–numbered year; $103.
63g. Private security person: September 1 of each even–numbered year; $53.
63m. Professional counselor: July 1 of each odd–numbered year; $76.
63t. Professional fund–raiser: September 1 of each even–numbered year; $93.
63u. Professional geologist: August 1 of each even–numbered year; $59.
63v. Professional geology, hydrology or soil science firm, partnership or corporation: August 1 of each even–numbered year; $53.
63w. Professional hydrologist: August 1 of each even–numbered year; $53.
63x. Professional soil scientist: August 1 of each even–numbered year; $53.
64. Psychologist: October 1 of each odd–numbered year; $157.
65. Real estate broker: January 1 of each odd–numbered year; $128.
66. Real estate business entity: January 1 of each odd–numbered year; $56.
67. Real estate salesperson: January 1 of each odd–numbered year; $83.
67m. Registered interior designer: August 1 of each even–numbered year; $56.
67q. Registered massage therapist or bodyworker: March 1 of each odd–numbered year; $53.
NOTE Subd. 67q. is repealed eff. 3–1–03 by 2001 Wis. Act 74.
67v. Registered music, art or dance therapist: October 1 of each odd–numbered year; $53.
67x. Registered music, art, or dance therapist with psychotherapy license: October 1 of each odd–numbered year; $53.
68. Respiratory care practitioner: November 1 of each odd–numbered year; $65.
68d. Social worker: July 1 of each odd–numbered year; $63.
68h. Social worker, advanced practice: July 1 of each odd–numbered year; $70.
68p. Social worker, independent: July 1 of each odd-numbered year; $58.
68t. Social worker, independent clinical: July 1 of each odd–numbered year; $73.
68v. Speech–language pathologist: February 1 of each odd–numbered year; $63.
69. Time–share salesperson: January 1 of each odd–numbered year; $119.
70. Veterinarian: January 1 of each even–numbered year; $105.
71. Veterinary technician: January 1 of each even–numbered year; $58.

(b) The renewal fee for an apprentice, journeyman, student or temporary credential is $10. The renewal dates specified in par.(a) do not apply to apprentice, journeyman, student or temporary credentials.

(c) Except as provided in sub.(3), renewal applications shall include the applicable renewal fee specified in pars.(a) and (b).

(d) If an applicant for credential renewal requests that the department process an application on an expedited basis, the

applicant shall pay a service fee that is equal to the department's best estimate of the cost of processing the application on an expedited basis, including the cost of providing counter or other special handling services.

(3) LATE RENEWAL. (a) Except as provided in rules promulgated under par. (b), if the department does not receive an application to renew a credential before its renewal date, the holder of the credential may restore the credential by payment of the applicable renewal fee specified in sub. (2) (a) and by payment of a late renewal fee of $25.

(b) The department or the interested examining board or affiliated credentialing board, as appropriate, may promulgate rules requiring the holder of a credential who fails to renew the credential within 5 years after its renewal date to complete requirements in order to restore the credential, in addition to the applicable requirements for renewal established under chs. 440 to 480, that the department, examining board or affiliated credentialing board determines is necessary to protect the public health, safety or welfare. The rules may not require the holder to complete educational requirements or pass examinations that are more extensive than the educational or examination requirements that must be completed in order to obtain an initial credential from the department, the examining board or the affiliated credentialing board.

(4) DENIAL OF CREDENTIAL RENEWAL. (a) ***Generally.*** If the department or the interested examining board or affiliated credentialing board, as appropriate, determines that an applicant for renewal has failed to comply with sub. (2) (c) or (3) or with any other applicable requirement for renewal established under chs. 440 to 480 or that the denial of an application for renewal of a credential is necessary to protect the public health, safety or welfare, the department, examining board or affiliated credentialing board may summarily deny the application for renewal by mailing to the holder of the credential a notice of denial that includes a statement of the facts or conduct that warrant the denial and a notice that the holder may, within 30 days after the date on which the notice of denial is mailed, file a written request with the department to have the denial reviewed at a hearing before the department, if the department issued the credential, or before the examining board or affiliated credentialing board that issued the credential.

(b) ***Applicability.*** This subsection does not apply to a denial of a credential renewal under s. 440.12 or 440.13 (2) (b).

History: 1991 a. 39 ss. 3305, 3313; 1991 a. 78, 160, 167, 269, 278, 315; 1993 a. 3, 16, 102, 105, 107, 443, 463, 465; 1993 a. 490 ss. 228 to 230, 274, 275; 1995 a. 27, 233, 321, 322, 461; 1997 a. 27, 75, 81, 96, 156, 191, 237, 261, 300; 1999 a. 9, 32; 2001 a. 16, 70, 74, 80, 89.

440.11 Change of name or address. (1) An applicant for or recipient of a credential who changes his or her name or moves from the last address provided to the department shall notify the department of his or her new name or address within 30 days of the change in writing or in accordance with other notification procedures approved by the department.

(2) The department or any examining board, affiliated credentialing board or board in the department may serve any process, notice or demand on the holder of any credential by mailing it to the last-known address of the holder as indicated in the records of the department, examining board, affiliated credentialing board or board.

(3) Any person who fails to comply with sub. (1) shall be subject to a forfeiture of $50.

History: 1987 a. 27; 1991 a. 39; 1993 a. 107; 1997 a. 27.

440.12 Credential denial, nonrenewal and revocation based on tax delinquency. Notwithstanding any other provision of chs. 440 to 480 relating to issuance or renewal of a credential, the department shall deny an application for an initial credential or credential renewal or revoke a credential if the department of revenue certifies under s. 73.0301 that the applicant or credential holder is liable for delinquent taxes, as defined in s. 73.0301 (1) (c).

History: 1997 a. 237.

Cross reference: See also ch. RL 9, Wis. adm. code.

440.13 Delinquency in support payments; failure to comply with subpoena or warrant. (1) In this section:

(b) "Memorandum of understanding" means a memorandum of understanding entered into by the department of regulation and licensing and the department of workforce development under s. 49.857.

(c) "Support" has the meaning given in s. 49.857 (1) (g).

(2) Notwithstanding any other provision of chs. 440 to 480 relating to issuance of an initial credential or credential renewal, as provided in the memorandum of understanding:

(a) With respect to a credential granted by the department, the department shall restrict, limit or suspend a credential or deny an application for an initial credential or for reinstatement of an inactive license under s. 452.12 ***(6)*** (e) if the credential holder or applicant is delinquent in paying support or fails to comply, after appropriate notice, with a subpoena or warrant issued by the department of workforce development or a county child support agency under s. 59.53 (5) and related to support or paternity proceedings.

(b) With respect to credential renewal, the department shall deny an application for renewal if the applicant is delinquent in paying support or fails to comply, after appropriate notice, with a subpoena or warrant issued by the department of workforce development or a county child support agency under s. 59.53 (5) and related to support or paternity proceedings.

(c) With respect to a credential granted by a credentialing board, a credentialing board shall restrict, limit or suspend a credential held by a person or deny an application for an initial credential when directed to do so by the department.

History: 1997 a. 191, 237.

440.14 Nondisclosure of certain personal information.

(1) In this section: (a) "List" means information compiled or maintained by the department or a credentialing board that contains the personal identifiers of 10 or more individuals.

(b) "Personal identifier" means a name, social security number, telephone number, sheet address, post-office box number or 9-digit extended zip code.

(2) If a form that the department or a credentialing board requires an individual to complete in order to apply for a credential or credential renewal or to obtain a product or service from the department or the credentialing board requires the individual to provide any of the individual's personal identifiers, the form shall include a place for the individual to declare that the individual's personal identifiers obtained by the department or the credentialing board from the information on the form may not be disclosed on any list that the department or the credentialing board furnishes to another person.

(3) If the department or a credentialing board requires an individual to provide, by telephone or other electronic means, any of the individual's personal identifiers in order to apply for a credential or credential renewal or to obtain a product or service from the department or a credentialing board, the department or the credentialing board shall ask the individual at the time that the individual provides the information if the individual wants to declare that the individual's personal identifiers obtained by telephone or other electronic means may not be disclosed on any list that the department or the credentialing board furnishes to another person.

(4) The department or a credentialing board shall provide to an individual upon request a form that includes a place for the individual to declare that the individual's personal identifiers obtained by the department or credentialing board may not be disclosed on any list that the department or credentialing board furnishes to another person.

(5) (a) The department or a credentialing board may not disclose on any list that it furnishes to another person a personal identifier of any individual who has made a declaration under sub. (2), (3) or (4).

(b) Paragraph (a) does not apply to a list that the department or a credentialing board furnishes to another state agency, a law enforcement agency or a federal governmental agency. In addition, par. (a) does not apply to a list that the department or the board of nursing furnishes to the coordinated licensure information system under s. 441.50 (7). A state agency that receives a list from the department or a credentialing board containing a personal identifier of any individual who has made a declaration under sub. (2), (3) or (4) may not disclose the personal

identifier to any person other than a state agency, a law enforcement agency or a federal governmental agency.

History: 1999 a. 88; 2001 a. 66.

440.142 Reporting potential causes of public health emergency. (1) A pharmacist or pharmacy shall report to the department of health and family services all of the following:

(a) An unusual increase in the number of prescriptions dispensed or nonprescription drug products sold for the treatment of medical conditions specified by the department of health and family services by rule under s. 252.02 **(7).**

(b) An unusual increase in the number of prescriptions dispensed that are antibiotic drugs.

(c) The dispensing of a prescription for treatment of a disease that is relatively uncommon or may be associated with bioterrorism, as defined in s. 166.02(1r).

(2) (a) Except as provided in par.(b), a pharmacist or pharmacy may not report personally identifying information concerning an individual who is dispensed a prescription or who purchases a nonprescription drug product as specified in sub.(1) (a), (b), or (c).

(b) Upon request by the department of health and family services, a pharmacist or pharmacy shall report to that department personally identifying information other than a social security number concerning an individual who is dispensed a prescription or who purchases a nonprescription drug product as specified in sub.(1) (a), (b), or (c).

History: 2001 a. 109.

440.20 Disciplinary proceedings. (1) Any person may file a complaint before the department or any examining board, affiliated credentialing board or board in the department and request the department, examining board, affiliated credentialing board or board to commence disciplinary proceedings against any holder of a credential.

(3) The burden of proof in disciplinary proceedings before the department or any examining board, affiliated credentialing board or board in the department is a preponderance of the evidence.

(4) In addition to any grounds for discipline specified in chs. 440 to 480, the department or appropriate examining board, affiliated credentialing board or board in the department may reprimand the holder of a credential or deny, limit, suspend or revoke the credential of any person who intentionally violates s. 252.14 (2) or intentionally discloses the results of a blood test in violation of s. 252.15 (5) (a) or (5m).

History: 1977 c. 418; 1979 c. 34; 1985 a. 29; 1989 a. 31,201; 1991 a. 39; 1993 a. 16, 27, 102, 107, 490.

The constitutionality of sub.(3) is upheld. Gandhi v. Medical Examining Board, 168 Wis. 2d 299,483 N.W.2d 295 (Ct. App. 1992).

A hearing is not required for a complaint tiled under this section. 68 Atty. Gen. 30.

The "preponderance of the evidence" burden of proof under sub.(3) does not violate the due process rights of a licensee. 75 Atty. Gen. 76.

440.205 Administrative warnings. If the department or a board, examining board or affiliated credentialing board in the department determines during an investigation that there is evidence of misconduct by a credential holder, the department, board, examining board or affiliated credentialing board may close the investigation by issuing an administrative warning to the credential holder. The department or a board, examining board or affiliated credentialing board may issue an administrative warning under this section only if the department or board, examining board or affiliated credentialing board determines that no further action is warranted because the complaint involves a first occurrence of a minor violation and the issuance of an administrative warning adequately protects the public by putting the credential holder on notice that any subsequent violation may result in disciplinary action. If an administrative warning is issued, the credential holder may obtain a review of the administrative warning through a personal appearance before the department, board, examining board or affiliated credentialing board that issued the administrative warning. Administrative warnings do not constitute an adjudication of guilt or the imposition of discipline and may not be used as evidence that the credential holder is guilty of the alleged misconduct. However, if a subsequent allegation of misconduct by the credential holder is received by the department or a board, examining board or affiliated credentialing board in the department, the matter relating to the issuance of the administrative warning may be reopened and disciplinary proceedings may be commenced on the matter, or the administrative warning may be used in any subsequent disciplinary proceeding as evidence that the credential holder had actual knowledge that the misconduct that was the basis for the administrative warning was contrary to law. The record that an administrative warning was issued shall be a public record. The contents of the administrative warning shall be private and confidential. The department shall promulgate rules establishing uniform procedures for the issuance and use of administrative warnings.

History: 1997 a. 139.

Cross reference: See also ch. RL 8, Wis. adm. code.

440.21 Enforcement of laws requiring credential. (1) The department may conduct investigations, hold hearings and make findings as to whether a person has engaged in a practice or used a title without a credential required under chs. 440 to 480.

(2) If, after holding a public hearing, the department determines that a person has engaged in a practice or used a title without a credential required under chs. 440 to 480, the department may issue a special order enjoining the person from the continuation of the practice or use of the title.

(3) In lieu of holding a public hearing, if the department has reason to believe that a person has engaged in a practice or used a title without a credential required under chs. 440 to 480, the department may petition the circuit court for a temporary restraining order or an injunction as provided in ch. 813.

(4) (a) Any person who violates a special order issued under sub.(2) may be required to forfeit not more than $10,000 for each offense. Each day of continued violation constitutes a separate offense. The attorney general or any district attorney may commence an action in the name of the state to recover a forfeiture under this paragraph.

(b) Any person who violates a temporary restraining order or an injunction issued by a court upon a petition under sub.(3) may be fined not less than $25 nor more than $5,000 or imprisoned for not more than one year in the county jail or both.

History: 1991 a. 39; 1993 a. 102.

Cross referenee: *See* also ch. RL 3, Wis. adm. code.

440.22 Assessment of costs. (1) In this section, "costs of the proceeding" means the compensation and reasonable expenses of hearing examiners and of prosecuting attorneys for the department, examining board or affiliated credentialing board, a reasonable disbursement for the service of process or other papers, amounts actually paid out for certified copies of records in any public office, postage, telephoning, adverse examinations and depositions and copies, expert witness fees, witness fees and expenses, compensation and reasonable expenses of experts and investigators, and compensation and expenses of **a** reporter for recording and transcribing testimony.

(2) In any disciplinary proceeding against a holder of a credential in which the department or an examining board, affiliated credentialing board or board in the department orders suspension, limitation or revocation of the credential or reprimands the holder, the department, examining board, affiliated credentialing board or board may, in addition to imposing discipline, assess all or part of the costs of the proceeding against the holder. Costs assessed under this subsection are payable to the department. Interest shall accrue on costs assessed under this subsection at a rate of 12% per year beginning on the date that payment of the costs are due as ordered by the department, examining board, affiliated credentialing board or board. Upon the request of the department of regulation and licensing, the department of justice may commence an action to recover costs assessed under this subsection and any accrued interest.

(3) In addition to any other discipline imposed, if the department, examining board, affiliated credentialing board or board assesses costs of the proceeding to the holder of the credential under sub.(2), the department, examining board, affiliated credentialing board or board may not restore, renew or otherwise issue any credential to the holder until the holder has made payment to the department under sub.(2) in the full amount assessed, together with any accrued interest.

History: 1987 a. 27; 1991 a. 39; 1993 a. 107; 1997 a. 27.

The collection of costs assessed under this section may not be pursued in an independent action for a money judgment. The costs may be collected only as a

condition of reinstatement of the disciplined practitioner's credentials. State v. Dunn, 213 Wis. 2d 363,570 N.W.2d 614 (Ct. App. 1997).

440.23 Cancellation of credential; reinstatement. **(1)** If the holder of a credential pays a fee required under s. 440.05 (1) or (6), 440.08, 444.03, 444.05, 444.11 or 459.46 (2) (b) by check or debit or credit card and the check is not paid by the financial institution upon which the check is drawn or if the demand for payment under the debit or credit card transaction is not paid by the financial institution upon which demand is made, the department may cancel the credential on or after the 60th day after the department receives the notice from the financial institution, subject to sub.(2).

(2) At least 20 days before canceling a credential, the department shall mail a notice to the holder of the credential that informs the holder that the check or demand for payment under the debit or credit card transaction was not paid by the financial institution and that the holder's credential may be canceled on the date determined under sub.(1) unless the holder does all of the following before that date:

(a) Pays the fee for which the unpaid check or demand for payment under the credit or debit card transaction was issued.

(b) If the fee paid under par.(a) is for renewal and the credential has expired, pays the applicable penalty for late renewal specified in s. 440.08 (3).

(c) Pays the charge for an unpaid draft established by the depository selection board under s. 20.905 (2).

(3) Nothing in sub.(1) or (2) prohibits the department from extending the date for cancellation to allow the holder additional time to comply with sub.(2) (a) to (c).

(4) A cancellation of a credential under this section completely terminates the credential and all rights, privileges and authority previously conferred by the credential.

(5) The department may reinstate a credential that has been canceled under this section only if the previous holder complies with sub.(2) (a) to (c) and pays a $30 reinstatement fee.

History: 1989 a. 31; 1991 a. 39, 189,269, 278,315; 1993 a. 16; 1995 a. 27; 1999 a. 9.

440.25 Judicial review. The department may seek judicial review under ch. 227 of any final disciplinary decision of the medical examining board or affiliated credentialing board attached to the medical examining board. The department shall be represented in such review proceedings by an attorney within the department. Upon request of the medical examining board or the interested affiliated credentialing board, the attorney general may represent the board. If the attorney general declines to represent the board, the board may retain special counsel which shall be paid for out of the appropriation under s. 20.165 (1) (g).

History: 1985 a. 340; 1993 a. 107.

CHAPTER 450
PHARMACY EXAMINING BOARD

450.01 Definitions.
450.10 Disciplinary proceedings; immunity; orders
450.11 Prescription drugs and prescription devices

450.01 Definitions. In this chapter:

(7) "Dispense" means to deliver a prescribed drug or device to an ultimate user or research subject by or pursuant to the prescription order of a practitioner, including the compounding, packaging or labeling necessary to prepare the prescribed drug or device for delivery.

450.10 Disciplinary proceedings; immunity; orders.

(1) (a) In this subsection, "unprofessional conduct" includes, but is not limited to:

1. Making any materially false statement or giving any materially false information in connection with an application for a license or for renewal or reinstatement of a license.

2. Violating this chapter or, subject to s. 961.38 (4r), ch. 961 or any federal or state statute or rule which substantially relates to the practice of the licensee.

3. Practicing pharmacy while the person's ability to practice is impaired by alcohol or other drugs or physical or mental disability or disease.

4. Engaging in false, misleading or deceptive advertising.

5. Making a substantial misrepresentation in the course of practice which is relied upon by another person.

6. Engaging in conduct in the practice of the licensee which evidences a lack of knowledge or ability to apply professional principles or skills.

7. Obtaining or attempting to obtain compensation by fraud or deceit.

8. Violating any order of the board. (b) Subject to subch. II of ch. 111 and the rules adopted under s. 440.03 (1), the board may reprimand the licensee or deny, revoke, suspend or limit the license or any combination thereof of any person licensed under this chapter who has:

1. Engaged in unprofessional conduct.

2. Been adjudicated mentally incompetent by a court.

3. Been found guilty of an offense the circumstances of which substantially relate to the practice of the licensee.

(2) In addition to or in lieu of a reprimand or denial, limitation, suspension or revocation of a license under sub. (1), the board may, for the violations enumerated under sub. (1), assess a forfeiture of not more than $1,000 for each separate offense. Each day of violation constitutes a separate offense.

(3) (a) In this subsection, "health care professional" means any of the following:

1. A pharmacist licensed under this chapter.

2. A nurse licensed under ch. 441.

3. A chiropractor licensed under ch. 446.

4. A dentist licensed under ch. 447.

5. A physician, physician assistant, podiatrist, physical therapist, occupational therapist or occupational therapy assistant licensed under ch. 448.

NOTE: Subd. 5. is amended eff. 4–1–04 by 2001 Wis. Act 70 to read: 5. A physician, physician assistant, podiatrist, physical therapist, physical therapist assistant, occupational therapist, or occupational therapy assistant licensed under ch. 448.

5m. A dietitian certified under subch. V of ch. 448.

5q. An athletic trainer licensed under subch. VI of ch. 448.

6. An optometrist licensed under ch. 449.

7. An acupuncturist certified under ch. 451.

8. A veterinarian licensed under ch. 453.

9. A psychologist licensed under ch. 455.

10. A social worker, marriage and family therapist, or professional counselor certified or licensed under ch. 457.

NOTE: Subd. 10. is shown as amended eff. 11–1–02 by 2001 Wis. Act 80. Prior *to* 11–1-02 it reads: 10. A social worker, marriage and family therapist or professional counselor certified under ch. 457.

11. A speech–language pathologist or audiologist licensed under subch. II of ch. 459 or a speech and language pathologist licensed by the department of public instruction.

(b) Any health care professional who in good faith provides another health care professional with information concerning a violation of this chapter or ch. 961 by any person shall be immune from any civil or criminal liability that results from any act or omission in providing such information. In any administrative or court proceeding, the good faith of the health care professional providing such information shall be presumed.

(4) (a) The secretary may, in case of the need for emergency action, issue general and special orders necessary to prevent or correct actions by any pharmacist under this section that would be cause for suspension or revocation of a license.

(b) Special orders may direct a pharmacist to cease and desist from engaging in particular activities.

History: 1985 a. 146; 1987 a. 264,399; 1989 a. 31,316; 1991 a. 39, 160; 1993 a. 222,443; 1995 a. 27 s. 9145 (1); 1995 a. 448; 1997 a. 27, 67, 75, 175; 1999 a. 9, 32, 180; 2001 a. 70, 80.

Cross Reference: *See* **also ch. Phar 10, Wis. adm. code.**

450.11 Prescription drugs and prescription devices.

(1) DISPENSING. No person may dispense any prescribed drug or device except upon the prescription order of a practitioner. All prescription orders shall specify the date of issue, the name and address of the patient, the name and address of the practitioner, the name and quantity of the drug product or device prescribed, directions for the use of the drug product or device and, if the order is written by the practitioner, the signature of the practitioner. Any oral prescription order shall be immediately reduced to writing by the pharmacist and filed according to sub. (2).

(1m) ELECTRONIC TRANSMISSION. Except as provided in s. 453.068 (1) (c) 4., a practitioner may transmit a prescription order electronically only if the patient approves the transmission and the prescription order is transmitted to a pharmacy designated by the patient.

(2) PRESCRIPTION ORDER FILE. Every prescription order shall be filed in a suitable book or file and preserved for at least 5 years. Subject to s. 961.38 (2), prescription orders transmitted electronically may be filed a

CHAPTER 453

VETERINARY EXAMINING BOARD

453.02 Definitions.
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Cross-reference: See definitions in s. 440.01.
Cross Reference: See also VE. Wis. adm. code.

453.02 Definitions. As used in this chapter, unless the context requires otherwise:

(1g) "Administer", when used in reference to administering a drug to an animal, means directly applying the drug, whether by injection, ingestion or any other means, to the body of the animal.

(1m) "Animal" means any animal except a human being.

(3) "Client" means the person who owns or who has primary responsibility for the care of a patient.

(39) "Dispense" means the act of delivering a drug to a person who may lawfully possess the drug, including the compounding, packaging or labeling necessary to prepare the drug for delivery.

(3r) "Drug" has the meaning given in s. 450.01 (10).

(4) "Examining board" means the veterinary examining board.

(4e) "Extra-label use" means use of a drug in a manner that is not in accordance with the directions for use that are contained on the label affixed to the container in which the drug is dispensed.

(4m) "Food-producing animal" means an animal that is raised to produce food for human consumption.

(4s) "Patient" means an animal that is examined or treated by a veterinarian.

(5) "Pesticide" has the meaning specified in s. 94.67 (25).

(5m) "Pharmacist" means an individual who is licensed as a pharmacist under ch. 450.

(6) To "practice veterinary medicine" means to examine into the fact or cause of animal health, disease or physical condition, or to treat, operate, prescribe or advise for the same, or to undertake, offer, advertise, announce, or hold out in any manner to do any of said acts, for compensation, direct or indirect, or in the expectation thereof.

(6m) "Prescription" means a written, oral or electronic order from a veterinarian to a pharmacist or to another veterinarian that authorizes the pharmacist or other veterinarian to dispense a drug, or from a veterinarian to a client that authorizes the client to make extra-label use of a drug.

(7) "Veterinarian" means a practitioner of veterinary medicine who is duly licensed by the examining board.

(8) "Veterinarian-client-patient relationship" means a relationship between a veterinarian, a client and the patient in which all of the following apply:

(a) The veterinarian has assumed the responsibility for making medical judgments regarding the health of the patient and the patient's need for medical treatment, and the client has agreed to accept those medical judgments and to follow the related instructions of the veterinarian.

(b) The veterinarian has sufficient knowledge of the patient to initiate a general or preliminary diagnosis of the medical condition of the patient because the veterinarian has recently examined the patient or has made medically appropriate and timely visits to the premises on which the patient is kept.

(c) The veterinarian is readily available for follow-up treatment of the patient if the patient has an adverse reaction to veterinary treatment.

(9) "Veterinary drug" means any of the following:

(a) A drug that is recognized as a drug for animal use in the official U.S. pharmacopoeia or the official national formulary or any supplement to either of them.

(b) A drug that is intended for use in the diagnosis: cure, mitigation, treatment or prevention of disease in an animal.

(c) A drug that is intended to affect the structure or function of the body of an animal, including medicated feed or a growth-promoting implant, but not including feed that does not contain a drug.

(d) A substance that is intended for use as a component of a drug described in par. (a), (b) or (c).

(ej A drug that is produced and intended for human use but that is prescribed by a veterinarian for animal use.

(10) "Veterinary over-the-counterdrug" means a drug that is labeled for animal use, that may be dispensed without a prescription and that is not required to bear the label statement: "CAUTION: Federal law restricts this drug to use by or on the order of a licensed veterinarian.".

(11) 'Veterinary prescription drug" means a drug that may not be dispensed without the prescription of a veterinarian.

(12) "Veterinary technician" means a person duly certified by the examining board to work under the direct supervision of a licensed veterinarian.

History: 1975 c. 309; 1983 a. 189; 1987 a. 39; 1989 a. 279; 1991 a. 306; 1993 a. 213; 1995 a. 321; 1997 a. 27.

The termination of the life of an animal by injection is not the practice of veterinary medicine. 65 Atty. Gen. 231.

453.03 Rules. (1) The examining board shall promulgate rules, within the limits of the definition under s. 453.02 (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, certificate 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 use, handling, distribution and disposal of pesticides.

History: 1987 a. 39; 1989 a. 279; 1995 a. 321.
Cross Reference: See also VE, Wis. adm. code.

453.04 Violations. The chairperson of the examining board shall institute actions for violations of this chapter by any person and for violations of ch. 450 or 961 by veterinarians. The district attorney of the county in which the offense is committed shall

promptly prosecute any such violation upon being informed thereof, from any source.

History: 1985 a. 146; 1993 a. 184; 1995 a. 448.

453.05 Practice; penalties. (1) Except as provided under sub. (2), no person may offer to practice, advertise to practice or practice veterinary medicine, or use, in connection with his or her name, any title or description which may convey the impression that he or she is a veterinarian, without a license or temporary permit from the examining board. For purposes of this subsection, a person who makes extra–label use of a drug on an animal without a prescription or in any manner not authorized by that prescription is considered to be practicing veterinary medicine.

(2) No veterinary license or temporary permit is required for the following activities or persons:

(a) Artificial insemination, or for continuing the practice of pregnancy examinations of animals when such practice was engaged in prior to February 11, 1968.

(b) Castrating male dogs, cats, horses, pigs, goats, sheep or cattle or for dehorning or branding animals.

(c) Students at a veterinary college approved by the examining board.

(d) Certified veterinary technicians while working under the direct supervision of a veterinarian.

(e) Employees of the federal government while engaged in their official duties.

(f) Employees of an educational or research institution while engaged in teaching or research. This paragraph does not apply to employees of a school of veterinary medicine in this state who practice veterinary medicine on privately owned animals.

(g) Employees of a school of veterinary medicine in this state who practice veterinary medicine on privately owned animals only as a part of their employment and who are licensed under s. 453.06 (2m).

(h) Graduates of schools outside the United States and Canada who are enrolled in the educational commission for foreign veterinary graduates certification program of the American Veterinary Medical Association while completing the required year of clinical assessment under the supervision of a veterinarian.

(3) Any person violating this section may for the first offense be fined not more than $1,000, and for any 2nd offense within 3 years be fined not more than $3,000.

History: 1975 c. 309; 1977 c. 418; 1979 c. 337; 1981 c. 125; 1987 a. 39; 1991 a. 306; 1995 a. 321.

A license under sub. (2) (a) is not required for person to engage in artificial insemination of animals but is required for persons engaged in pregnancy examinations who were not engaged in practice prior to February 11. 1968. 78 Atty. Gen. 236.

453.06 Licensure. (1) Except as provided under s. 453.072, veterinary licenses shall be issued only to persons who successfully pass an examination conducted by the examining board and pay the fee specified in s. 440.05 (1). *An* applicant for an initial license shall be a graduate of a veterinary college which has been approved by the examining board or have successfully completed the educational commission for foreign veterinary graduates certification program of the American Veterinary Medical Association. Persons who qualify for examination may be granted temporary permits to engage in the practice of veterinary medicine in the employment and under the supervision of a veterinarian until the results of the next examination conducted by the examining board are available. In case of failure at any examination, the applicant shall have the privilege of taking subsequent examinations, upon the payment of another fee for each examination.

(2) The renewal date and renewal fee for veterinary licenses are specified under s. 440.08 **(2)** (a).

(2m) (a) Upon application, the examining board may issue a veterinary faculty license to an employee of a school of veterinary medicine in this state who has received the degree of doctor of veterinary medicine from a veterinary college approved by the examining board or if the examining board determines that the person possesses substantially equivalent qualifications. A person holding a veterinary faculty license may practice veterinary medicine on privately owned animals only within the scope of the person's employment at the school.

(b) Upon application, the examining board may grant a veterinary postgraduate training permit to a person undertaking intern or resident training at a school of veterinary medicine in this state. The only purpose of the veterinary postgraduate training permit is to provide opportunities in this state for the postgraduate education of persons who have received the degree of doctor of veterinary medicine or an equivalent degree but who have not yet met the requirements for licensure in this state. Issuance of a postgraduate training permit does not modify in any respect the requirements for licensure to practice veterinary medicine in this state, and a permit holder may practice veterinary medicine on privately owned animals only within the scope of the permit holder's internship or residency program. Violation of this restriction or of any applicable provision of this chapter constitutes cause for revocation of the permit.

(c) A license issued under this subsection expires upon termination of the licensee's employment at a school of veterinary medicine in this state. A postgraduate training permit expires upon termination of the permit holder's internship or residency program.

(3) A veterinary technician certification may be issued only to a person who is at least 18 years of age and has either:

(a) Successfully completed a 4–semester course of study in animal technology or its equivalent, at a technical school or college approved by the examining board, and has passed an examination, administered by the examining board, which establishes that the applicant's knowledge of animals and their treatment is sufficient to qualify the applicant as a veterinary technician; or

(b) Been an employee of a veterinarian for a total of 2 years and has passed an examination, administered by the examining board, which establishes that the applicant's knowledge of animals and their treatment is sufficient to qualify the applicant as a veterinary technician. The 2–year employment requirement of this paragraph shall include at least 50% of the applicant's time spent in practical field experience and the remainder of the applicant's time spent in laboratory work, office procedure, and technical veterinary training with a veterinarian.

(4) The renewal date and renewal fee for veterinary technician certifications are specified under s. 440.08 (2) (a).

History: 1971 c. 213 s. 5; 1975 c. 309; 1977 c. 29, 418; 1979 c. 34 s. 2102 (58) (b); 1981 c. 125; 1985 a. 182 s. 57; 1987 a 39; 1991 a 39; 1995 a. 321; 2001 a. 76.

Cross Reference: See also chs. VE 3, 4, 5, 6, 8, **and** 10, **Wis. adm. code.**

The examining board lacks authority to condition the renewal of licenses upon either reexamination or continuing education. 65 Atty. Gen. 35.

453.065 Examinations. (1) Examinations under this chapter shall be designed to determine whether an applicant is competent to engage in the practice of veterinary medicine and shall be administered at least once annually. Examinations shall be objective and reliable, reasonably related to the skills likely to be needed by an applicant and seek to determine the applicant's preparedness to exercise such skills.

(2) The examining board may require passage of a nationally recognized examination if the examination meets basic standards of objectivity. The examining board may administer a state written examination in elements of practice that are not covered in a national examination. The examining board may administer a practical or oral examination if such an examination tests knowledge and skills that cannot be measured or tested in a written examination.

(3) The passing score on examinations for licensure and certification shall be determined by the examining board to repre-

sent a standard of minimum competency in the profession, as established by the examining board by rule.

History: 1987 a. 39.

Cross Reference: *See* also ch. VE 2, Wis. adm. code.

453.068 Drugs for animal use. (1) PRESCRIBING: DISPENSING. (a) *Extra label use on animal; prescription required.* No person may make extra label use of a drug on an animal without a prescription or in any manner not authorized by that prescription.

(b) *Form of prescription.* A prescription shall include all of the following:

1. The name and address of the veterinarian and, if the prescription is a written order, the signature of the veterinarian.

2. The name and address of the client.

3. The species and identity of the patient for which the prescription is issued.

4. The name, strength and quantity of the drug prescribed.

5. The date on which the prescription is issued.

6. The directions for administering the drug.

7. If the patient is a food–producing animal, the withdrawal time for the veterinary drug.

8. If the prescription authorizes extra--label use, the manner in which the client may use the drug.

9. Any cautionary statements required by law.

(c) *Prescribing, dispensing and administering requirements for veterinarian.* A veterinarian may not do any of the following:

1. Prescribe for or dispense to a client a veterinary prescription drug or a drug for extra–label use without personally examining the patient unless a veterinary–client–patient relationship exists between the veterinarian, client and patient and the veterinarian determines that the client has sufficient knowledge to administer the drug properly.

2. Prescribe or dispense a veterinary prescription drug to a client unless the veterinarian indicates in the appropriate records described under sub. (3), within 72 hours after the prescription is issued or the drug is dispensed, that the prescription has been issued or that the drug has been dispensed.

3. Prescribe a drug to a client for extra–label use on a patient unless all of the following apply:

a. A veterinary–client–patient relationship exists between the veterinarian, client and patient and the veterinarian has made a careful medical diagnosis of the condition of the patient within the context of that veterinarian–client–patient relationship.

b. The veterinarian determines that there is no drug that is marketed specifically to treat the patient's diagnosed condition, or determines that all of the drugs that are marketed for that purpose are clinically ineffective.

c. The veterinarian recommends procedures for the client to follow to ensure that the identity of the patient will be maintained.

d. If the patient is a food.--producing animal, the veterinarian prescribes a sufficient time period for drug withdrawal before the food from the patient may be marketed.

4. Transmit a prescription electronically unless the client approves the transmission and the prescription is transmitted to a pharmacist or veterinarian designated by the client.

(2) LABELING. A veterinarian or pharmacist may not dispense a drug that has been prepared, mixed, formulated or packaged by the veterinarian or pharmacist unless the veterinarian or pharmacist affixes to the container in which the drug is dispensed a label containing all of the information specified in sub. (1) (b), except the address of the client. A veterinarian or pharmacist may not dispense a veterinary prescription drug that has been prepackaged by its manufacturer for dispensing unless the veterinarian or pharmacist affixes to the container in which the drug is dispensed a label containing all of the information specified in sub. (1) (b), except the address of the client. A veterinarian or pharmacist may dispense a veterinary over–the–counter drug without affixing any information to the container in which the drug is dispensed if a label that has been affixed to the container by its manufachirer provides adequate information for its use.

(3) PRESCRIPTION RECORDS. A veterinarian shall maintain complete records of each veterinary prescription drug that the veterinarian receives, prescribes, dispenses or administers, and of each prescription issued by the veterinarian that authorizes extra--label use. Records of each vctcrinary prescription drug shall include the name of each veterinary prescription drug that is received, the name and address of the person from whom the drug is received and the date and quantity received, the name and address of the person to whom the drug is dispensed and the date and quantity dispensed and, if the veterinarian prescribes or administers the drug, the information specified in sub. (1) (b). Records of each prescription authorizing extra–label use shall include the information specified in sub. (1) (b). A veterinarian shall maintain records of each veterinary prescription drug under this subsection for not less than 3 years after the date on which the veterinarian prescribes, dispenses or administers the drug or extra–label use.

(4) ENFORCEMENT. [a) *Inspections.* Except as provided in par. (b), if the examining board has reason to believe that a person is violating or has violated this section, the examining board, the attorney general or the district attorney of the proper county may do any of the following:

1. Inspect the premises on which the person possesses, prescribes, dispenses, labels or administers veterinary drugs.

2. Inspect pertinent records, equipment, materials, containers or facilities that are relevant to determining whether the person is violating or has violated this section.

3. Collect relevant samples of veterinary drugs.

(b) *Records exempt from inspection.* The examining board, attorney general or district attorney may not inspect a person's financial, pricing, personnel or sales records under this subsection, other than the records described under sub. (3).

History: 1991 a. *306;* 1997 a. 27.

453.07 Discipline. (1) In this section, "unprofessional conduct" includes, but is not limited to:

(a) Making any materially false statement or giving any materially false information in connection with an application for a license or for renewal or reinstatement of a license or in making a report to the examining board.

(b) Violating this chapter or ch. 440 or any federal or state statute or rule which substantially relates to the practice of veterinary medicine.

(c) Practicing veterinary medicine while the person's ability to practice is impaired by alcohol or other drugs or physical or mental disability or disease.

(d) Engaging in false, misleading or deceptive advertising.

(e) Making a substantial misrepresentation in the course of practice which is relied upon by a client.

(f) Engaging in conduct in the practice of veterinary medicine which evidences a lack of knowledge or ability to apply professional principles or skills.

(fm) Handling, distributing, using or disposing of pesticides in violation of ss. 94.67 to 94.71 or the rules promulgated under ss. 94.67 to 94.11.

(g) Obtaining or attempting to obtain compensation by fraud or deceit.

(h) Violating any order of the examining board.

(2) Subject to subch. II of ch. 111 and the rules adopted under s. 440.03 (1), the examining board may, by order, reprimand any person holding a license, certificate or permit under

this chapter or deny, revoke, suspend, limit or any combination thereof, the person's license, certificate or permit if the person has:

(a) Engaged in unprofessional conduct.

(b) Been adjudicated mentally incompetent by a court.

(c) Been found guilty of an offense the circumstances of which substantially relate to the practice of veterinary medicine.

(3) In addition to or in lieu of a reprimand or denial, limitation, suspension or revocation of a license, certificate or permit under sub. (2), the examining board may assess against the applicant for or the holder of the license, certificate or permit a forfeiture of not more than $5,000 for each violation of **s. 453.068.**

History: 1987 **a.** 39; 1989 **a. 279;** 1991 a. 306.
Cross Reference: ***See* also** ch. VE 7 **and** 9. Wis. adm. **code.**

453.072 Licensees of other jurisdictions. (1) Upon application and payment of the fee specified in s. 430.05 (2), the examining board may issue a license to practice veterinary medicine to any person licensed to practice veterinary medicine in another state or territory of the United States or in another country if the applicant is not currently under investigation and has never been disciplined by the licensing authority in the other state, territory or country, has not been found guilty of a crime the circumstances of which are substantially related to the practice of veterinary medicine, is not currently a party in pending litigation in which it is alleged that the applicant is liable for damages for acts committed in the course of practice and has never been found liable for damages for acts committed in the course of practice which evidenced a lack of ability or fitness to practice.

(2) Upon application and payment of the fee specified in s. 440.05 (6), the examining board may issue a temporary consulting permit to practice veterinary medicine in this state for **up** to 60 days per year to any nonresident licensed to practice veterinary medicine in another state or territory of the United States or in another country.

History: 1987 **a.** 39.

453.075 Access to health care records. The owner of any animal patient of a veterinarian, or any other person who submits to the veterinarian a statement of written informed consent signed by the owner, may, upon request to the veterinarian:

(1) Receive a copy of the animal patient's health care records upon payment of reasonable costs.

(2) Have the animal patient's X–rays referred to another veterinarian of the owner's choice upon payment of reasonable costs.

History: 1987 **a.** 39.

453.08 Injunctive relief. If it appears upon complaint to the examining board by any person, or if it is known to the examining board, that any person is practicing veterinary medicine without a license, the examining board, the attorney general or the district attorney of the proper county may investigate and may, in addition to any other remedies, bring an action in the name and on behalf of the state against the person to enjoin the person from such practice.

History: 1987 **a.** 39.

CHAPTER 961

UNIFORM CONTROLLED SUBSTANCES ACT

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961.001 Declaration of intent. The legislature finds that the abuse of controlled substances constitutes a serious problem for society. **As** a partial solution, these laws regulating controlled substances have been enacted with penalties. The legislature, recognizing a need for differentiation among those who would violate these laws makes this declaration of legislative intent:

(1g) Many of the controlled substances included in this chapter have useful and legitimate medical and scientific purposes and are necessary to maintain the health and general welfare of the people of this state.

(1m) The manufacture, distribution, delivery, possession and use of controlled substances for other than legitimate purposes have a substantial and detrimental effect on the health and general welfare of the people of this state.

(1r) Persons who illicitly traffic commercially in controlled substances constitute a substantial menace to the public health and safety. The possibility of lengthy terms of imprisonment must exist as a deterrent to trafficking by such persons. Upon conviction for trafficking, such persons should be sentenced in a manner which will deter further trafficking by them, protect the public from their pernicious activities, and restore them to legitimate and socially useful endeavors.

(2) Persons who habitually or professionally engage in commercial trafficking in controlled substances and prescription drugs should, upon conviction, be sentenced to substantial terms of imprisonment to shield the public from their predatory acts. However, persons addicted to or dependent on controlled substances should, upon conviction, be sentenced in a manner most likely to produce rehabilitation.

(3) Upon conviction, persons who casually use or experiment with controlled substances should receive special treatment geared toward rehabilitation. The sentencing of casual users and experimenters should be such as will best induce them to shun further contact with controlled substances and to develop acceptable alternatives to drug abuse.

History: 1971 c. 219; 1995 a. 448 ss. 107 to 110, 462, 463; Stats. 1995 s. 961.001.

SUBCHAPTER I

DEFINITIONS

961.01 Definitions. As used in this chapter:

(1) "Administer", unless the context otherwise requires, means to apply a controlled substance, whether by injection, inhalation, ingestion or any other means, to the body of a patient or research subject by:

(a) A practitioner or, in the practitioner's presence, by the practitioner's authorized agent; or

(b) The patient or research subject at the direction and in the presence of the practitioner.

(2) "Agent", unless the context otherwise requires, means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor or dispenser. "Agent" does not include

a common or contract carrier, public warehouse keeper or employee of the carrier or warehouse keeper while acting in the usual and lawful course of the carrier's or warehouse keeper's business.

(2m) (a) "Anabolic steroid" means any drug or hormonal substance, chemically or pharmacologically related to testosterone, except estrogens, progestin, and corticosteroids, that promotes muscle growth. The term includes all of the substances included in s. 961.18 (7), and any of their esters, isomers. esters of isomers, salts and salts of esters, isomers and esters ofisomcrs, that are theoretically possible within the specific chemical designation, and if such esters, isomers, esters of isomers, salts and salts of esters, isomers and esters of isomers promote muscle growth.

(b) Except as provided in par. (c), the term does not include an anabolic steroid which is expressly intended for administration through implants to cattle or other nonhuman species and which has been approved by the United States Secretary of Health and Human Services for such administration.

(c) If a person prescribes, dispenses or distributes such steroid for human use, such person shall be considered to have prescribed, dispensed or distributed an anabolic steroid within the meaning of par. (a).

(4) "Controlled substance" means a drug, substance or immediate precursor included in schedules I to V of subch. II.

(4m) (a) "Controlled substance analog" means a substance the chemical structure of which is substantially similar to the chemical structure of a controlled substance included in schedule I or II and

1. Which has a stimulant, depressant, narcotic or hallucinogenic effect on the central nervous system substantially similar to the stimulant, depressant, narcotic or hallucinogenic effect on the central nervous system of a controlled substance included in schedule I or II; or

2. With respect to a particular individual, which the individual represents or intends to have a stimulant, depressant, narcotic or hallucinogenic effect on the central nervous system substantially similar to the stimulant, depressant, narcotic or hallucinogenic effect on the central nervous system of a controlled substance included in schedule I or II.

(b) "Controlled substance analog" does not include:

1. A controlled substance;

2. A substance for which there is an approved new drug application;

3. A substance with respect to which an exemption is in effect for investigational use by a particular person under 21 USC 355 to the extent that conduct with respect to the substance is permitted by the exemption; or

4. Any substance to the extent not intended for human consumption before an exemption takes effect with respect to the substance.

(5) "Counterfeit substance" means a controlled substance which, or the container or labeling of which, without authorization, bears the trademark, trade name or other identifying mark, imprint, number or device, or any likeness thereof, of a manufacturer, distributor or dispenser other than the person who in fact manufactured, distributed or dispensed the substance.

(6) "Deliver" or "delivery", unless the context otherwise requires, means the actual, constructive or attempted transfer from one person to another of a controlled substance or controlled substance analog, whether or not there is any agency relationship.

(7) "Dispense" means to deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling or compounding necessary to prepare the substance for that delivery.

(8) "Dispenser.' means a practitioner who dispenses.

(9) "Distribute" means to deliver other than by administering or dispensing a controlled substance or controlled substance analog.

(10) "Distributor" means a person who distributes.

(10m) "Diversion" means the transfer of any controlled substance from a licit to an illicit channel of distribution or use.

(11) (a) "Drug" means any of the following:

1. A substance recognized as a drug in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States or official National Formulary or any supplement to any of them.

2. A substance intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in humans or animals.

3. A substance, other than food, intended to affect the structure or any function of the body of humans or animals.

4. A substance intended for use as a component of any article specified in subd. 1., 2. or 3.

(b) "Drug" does not include devices or their components, parts or accessories.

(11m) "Drug enforcement administration" means the drug enforcement administration of the U.S. department of justice or its successor agency.

(12) "Immediate precursor" means a substance which the controlled substances board has found to be and by rule designates as being the principal compound commonly used or produced primarily for use, and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail or limit manufacture.

(12g) "Isomer" means an optical isomer, but in ss. 961.14 (2) (er) and (qs) and 961.16 (2)(b) 1. "isomer" includes any geometric isomer; in ss. 961.14 (2) (cg), (tg) and (xm) and 961.20 (4)(am) "isomer" includes any positional isomer; and in ss. 961.14 (2) (rj) and (4) and 961.18 (2m) "isomer" includes any positional or geometric isomer.

(12m) "Jail or correctional facility" means any of the following:

(a) A Type 1 prison, as defined in s. 301.01 (5).

(b) A jail, as defined in s. 302.30.

(c) A house of correction.

(d) A Huber facility under s. 303.09.

(e) A lockup facility, as defined in s. 302.30.

(f) A work camp under s. 303.10.

(13) "Manufacture" means the production, preparation, propagation, compounding, conversion or processing of, or to produce, prepare, propagate, compound, convert or process, a controlled substance or controlled substance analog, directly or indirectly, by extraction from substances of natural origin, chemical synthesis or a combination of extraction and chemical synthesis, including to package or repackage or the packaging or repackaging of the substance, or to label or to relabel or the labeling or relabeling of its container. "Manufacture" does not mean to prepare, compound, package, repackage, label or relabel or the preparation, compounding, packaging, repackaging, labeling or relabeling of a controlled substance:

(a) By a practitioner as an incident to the practitioner's administering or dispensing of a controlled substance in the course of the practitioner's professional practice; or

(b) By a practitioner. or by the practitioner's authorized agent under the practitioner's supervision, for the purpose of, or as an incident to, research, teaching or chemical analysis and not for sale.

(14) "Marijuana" means all parts of the plants of the genus Cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture or preparation of the plant,

its seeds or resin, including tetrahydrocannabinols. "Marijuana" does include the mature stalks if mixed with other parts of the plant, but does not include fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil or cake or the sterilized seed of the plant which is incapable of germination.

(14m) "Multiunit public housing project" means a public housing project that includes 4 or more dwelling units in a single parcel or in contiguous parcels.

(15) "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(a) Opium and substances derived from opium, and any compound, derivative or preparation of opium or substances derived from opium, including any of their salts, isomers and salts of isomers that are theoretically possible within the specific chemical designation. The term does not include the isoquinoline alkaloids of opium.

(bm) Synthetic opiate, and any derivative of synthetic opiate, including any of their isomers, esters, ethers, esters and ethers of isomers, salts and salts of isomers, esters, ethers and esters and ethers of isomers that are theoretically possible within the specific chemical designation.

(c) Opium poppy, poppy straw and concentrate of poppy straw.

(d) Any compound, mixture or preparation containing any quantity of any substance included in pars. (a) to (e).

(16) "Opiate" means any substance having an addiction–forming or addiction–sustaining liability similar to morphine or being capable of conversion into a drug having addiction–forming or addiction–sustaining liability. "Opiate" includes opium, substances derived from opium and synthetic opiates. "Opiate" does not include, unless specifically scheduled as a controlled substance under s. 961.11, the dextrorotatory isomer of 3–methoxy–N–methylmorphinan and its salts (dextromethorphan). "Opiate" does include the racemic and levorotatory forms of dextromethorphan.

(17) "Opium poppy" means any plant of the species Papaver somniferum **L.,** except its seeds.

(18) "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.

(19) "Practitioner" means:

(a) A physician, advanced practice nurse, dentist, veterinarian, podiatrist, optometrist, scientific investigator or, subject to s. 448.21 (3), a physician assistant, or other person licensed, registered, certified or otherwise permitted to distribute, dispense, conduct research with respect to, administer or use in teaching or chemical analysis a controlled substance in the course of professional practice or research in this state.

(b) A pharmacy, hospital or other institution licensed, registered or otherwise permitted to distribute, dispense, conduct research with respect to or administer a controlled substance in the course of professional practice or research in this state.

(20) "Production'', unless the context otherwise requires, includes the manufacturing of a controlled substance or controlled substance analog and the planting, cultivating, growing or harvesting of a plant from which a controlled substance or controlled substance analog is derived.

(20g) "Public housing project" means any housing project or development administered by a housing authority, as defined in s. 16.30 (2).

(20h) "Public transit vehicle" means any vehicle used for providing transportation service to the general public.

(20i) "Scattered- site public housing project" means a public housing project that does not include 4 or more dwelling units in a single parcel or in contiguous parcels.

(21) "Ultimate user" means an individual who lawfully possesses a controlled substance for that individual's own use or for the use of a member of that individual's household or for administering to an animal owned by that individual or by a member of that individual's household.

(21m) "Vehicle" has the meaning given in s. 939.22 (44).

(22) "Youth center" means any center that provides, on a regular basis, recreational, vocational, academic or social services activities for persons younger than 21 years old or for those persons and their families.

History: 1971 c. 219; 1979 c. 89; 1981 c. 200,206; 1983 a. 500 s. 43; 1989 a. 31; CSB 2.21; 1993 a. 87,129.138, 184,281.482; 1995 a. 281 s. 2; 1995 a. 448 ss. 112 to 143,247,248,464 to 468; Stats. 1995 s. 961.01; 1997 a. 35 s. 338; 1997 a. 67; 1999 a. 85.

A constructive delivery under sub. (6) may be found if a single actor leaves a substance somewhere for later retrieval by another. State v. Wilson, 180 Wis. 2d 414, 509 N.W.2d 128 (Ct. App. 1993).

Day care centers are a subset of 'youth centers" as defined in s. 961.01(22) and come within the definition of places listed in s. 961.49 (2). State v. Van Riper, 222 Wis. 2d 197,586 N.W.2d 198 (Ct. App. 1998).

SUBCHAPTER II

STANDARDS AND SCHEDULES

961.11 Authority to control. (1) The controlled substances board shall administer this subchapter and may add substances to or delete or reschedule all substances listed in the schedules in ss. 961.14, 961.16, 961.18, 961.20 and 961.22 pursuant to the rule–making procedures of ch. 227.

(1m) In making a determination regarding a substance, the board shall consider the following:

(a) The actual or relative potential for abuse;

(b) The scientific evidence of its pharmacological effect, if known;

(c) The state of current scientific knowledge regarding the substance;

(d) The history and current pattern of abuse;

(e) The scope, duration and significance of abuse;

(f) The risk to the public health;

(g) The potential of the substance to produce psychological or physical dependence liability; and

(h) Whether the substance is an immediate precursor of a substance already controlled under this chapter.

(1r) The controlled substances board may consider findings of the federal food and drug administration or the drug enforcement administration as prima facie evidence relating to one or more of the determinative factors.

(2) After considering the factors enumerated in sub. (1m), the controlled substances board shall make findings with respect to them and promulgate a rule controlling the substance upon finding that the substance has a potential for abuse.

(3) The controlled substances board, without regard to the findings required by sub. *(2)* or ss. 961.13, 961.15, 961.17, 961.19 and 961.21 or the procedures prescribed by subs. (1), (1m), (1r) and (2), may add an immediate precursor to the same schedule in which the controlled substance of which it is an immediate precursor is included or to any other schedule. If the board designates a substance as an immediate precursor, substances which are precursors of the controlled precursor shall not be subject to control solely because they are precursors of the controlled precursor.

(4) If a substance is designated, rescheduled or deleted as a controlled substance under federal law and notice thereof is given to the controlled substances board, the board by affirmative action shall similarly treat the substance under this chapter after the expiration of 30 days from the date of publication in the federal register of a final order designating the substance as a controlled substance or rescheduling or deleting the substance or from the date of issuance of an order of temporary scheduling under 21 USC 811

(h), unless within that 30-day period, the board or an intcrcstcd party objects to the treatment of the substance. If no objection is made, the board shall promulgate, without making the determinations or findings required by subs. (1), (lm), (lr) and (2) or s. 961.13, 961.15, 961.17, 961.19 or 961.21, a final rule, for which notice of proposed rule making is omitted, designating, rescheduling, temporarily scheduling or deleting the substance. If an objection is made the board shall publish notice of receipt of the objection and the reasons for objection and afford all intcrcsted parties an opportunity to be heard. At the conclusion of the hearing, the board shall make a determination with respect to the treatment of the substance as provided in subs. (1), (1m), (lr) and (2) and shall publish its decision. which shall be final unless altered by statute. Upon publication of an objection to the treatment by the board, action by the board under this chapter is stayed until the board promulgates a rule under sub. *(2)*.

(4m) The controlled substances board, by rule and without regard to the requirements of sub. (lm), may schedule a controlled substance analog as a substance in schedule **I** regardless of whether the substance is substantially similar to a controlled substance in schedule I or II, if the board finds that scheduling of the substance on an emergency basis is necessary to avoid an imminent hazard to the public safety and the substance is not included in any other schedule or no exemption or approval is in effect for the substance under 21 USC 355. Upon receipt of notice under **s.** 961.25, the board shall initiate scheduling of the controlled substance analog on an emergency basis under this subsection. The scheduling of a controlled substance analog under this subsection expires one year after the adoption of the scheduling rule. With respect to the finding of an imminent hazard to the public safety, the board shall consider whether the substance has been scheduled on a temporary basis under federal law or factors under sub. (lm) (d), (e) and (f), and may also consider clandestine importation, manufacture or distribution, and, if available, information concerning the other factors under sub. (lm). The board may not promulgate a rule under this subsection until it initiates a rule-making proceeding under subs. (1), (lm), (Ir) and *(2)* with respect to the controlled substance analog. **A** rule promulgated under this subsection lapses upon the conclusion of the rule-making proceeding initiated under subs. (I), (Im), (lr) and (2) with respect to the substance.

(5) The authority of the controlled substances board to control under this section does not extend to intoxicating liquors, as defined in **s.** 139.01 (3), to fermented malt beverages as defined in **s.** 125.02, or to tobacco.

(6) (a) The controlled substances board shall not have authority to control a nonnarcotic substance if the substance may, under the federal food, drug and cosmetic act and the laws of this state, be lawfully sold over the counter without a prescription.

(b) If the board finds that any nonnarcotic substance barred from control under this chapter by par. (a) is dangerous to or is being so used as to endanger the public health and welfare, it may request the department of justice in the name of the state to seek a temporary restraining order or temporary injunction under ch. 813 to either ban or regulate the sale and possession of the substance. The order or injunction shall continue until the adjournment of the legislature convened next following its issuance. In making its findings as to nonnarcotic substances under this paragraph, the board shall consider the items specified in sub. (Im).

History: 1971 **c.** 219,307; **Sup.** Ct. Order, 67 Wis. 2d 585,774 (1975); 1981 c. 79 s. 18; i983 a 189 s. 329 (13); 1995 a. 448 ss. 145 to 152, 469, 470; Stats. 1995 s.961.11.

Cross Reference: See also CSB, Wis. adm. code.

961.115 Native American Church exemption. This chapter does not apply to the nondrug use of peyote and mescaline in the bona fide religious ceremonies of the Native American Church.

History: 1971 c. **219;** 1995 a. 448 s. 153; Stats. 1995 s. 961.1 15.

Because the exemption is based upon the unique cultural heritage of Native Amencans, it is not an unconstitutional classification. State **v.** Peck, 143 Wis. 2d 624,422 N.W.2d 160 (Ct. App. 1988).

961.12 Nomenclature. The controlled substances listed in or added to the schedules in ss. 961.14, 961.16, 961.18, 961.20 and 961.22 may be listed or added by any official, common, usual, chemical or trade name used for the substance.

History: 1971 c 219; 1995 a 448 s 154; Stats 1995 s 961 12

961.13 Schedule I tests. (Im) The controlled substances board shall add a substance to schedule I upon finding that the substance:

(a) Has high potential for abuse;

(b) Has no currently accepted medical use in treatment in the United States; and

(c) Lacks accepted safety for use in treatment under medical supervision.

(2m) The controlled substances board may add a substance to schedule I without making the findings required under sub. (1m) if the substance is controlled under schedule I of 21 USC 812 (c) by a federal agency as the result of an international treaty, convention or protocol.

History: 1971 c 219, 1995 a 448 ss 155, 156, 471; Stats 1995 s. 961 13

961.14 Schedule I. Unless specifically excepted by state or federal law or regulation or more specifically included in another schedule, the following controlled substances are listed in schedule I:

(2) ***SYNTHETIC OPIATES*** Any material, compound, mixture or preparation which contains any quantity of any of the following synthetic opiates, including any of their isomers, esters, ethers, esters and ethers of isomers, salts and salts of isomers, esters, ethers and esters and ethers of isomers that are theoretically **possible** within the specific chemical designation:

(a) Acety-alpha-methyl fentanyl (N-[1-(1-methyl-2-phenylethyl)-4-piperidinyl]-N-phenylacetamide);

(ag) Acetylmethadol;

(am) Allylprodine;

(b) Alphacetylmethadol (except levo-alphacetylmethadol (LAAM));

(bm) Alphameprodine;

(c) Alphamethadol;

(cd) Alpha-methylfentanyl (N-[1-(1-methyl-2-phenylethyl)-4-piperidinyll-N-phenylpropanamide);

(cg) Alpha-methylthiofentanyl (N-{1-[1-methyl-2-(2-thienyl)ethyl]-4-piperidinyl}-N-phenylpropanamide);

(cm) Benzethidine;

(d) Betacetylmethadol;

(dg) Beta-hydroxyfentanyl (N-[1-(2-hydroxy-2-phenylethyl)-4-piperidinyl]-N-phenylpropanamide);

(dm) Betameprodine;

(e) Betamethadol;

(em) Betaprodine;

(er) Beta-hydroxy-3-methylfentanyl (N-[1-(2-hydroxy-2-phenylethyl)-3-methyl-4-piperidinyl]-N-phenylpropanamide);

(f) Clonitazene;

(fm) Dextromoramidc;

(gm) Diampromide;

(h) Diethylthiambutene;

(hg) Difenoxin;

(hm) Dimenoxadol;

(j) Dimephcptanol;

(jm) Dimethylthiambutene;

(k) Dioxaphetyl butyrate;

(km) Dipipanone;

(m) Ethylmethylthiambutene;

(mm) Etonitazene;

(n) Etoxeridine;

(nm) Furethidine;
(p) Hydroxypethidine;
(pm) Ketobemidone;
(q) Levomoramide:
(qm) Levophenacylmorphan;
(qs) 3–methylfentanyl (N–[3–methyl–1–(2–phenylethyl)–4–piperidinyl]–N–phcnylpropanamide);
(r) Morphendinc;
(rg) MPPP (1-methyl4phenyl–4–propionoxypiperidine);
(rj) 3–methylthiofentanyl (N–{3–methyl–1–[2–(2–thienyl)ethyl]–4–piperidinyl}–N–phenylpropanamide);
(rm) Noracymethadol;
(s) Norlevorphanol;
(sm) Normethadone;
(t) Norpipanone;
(tg) Para–fluorofentanyl (N–[1–(2–phenylethyl)–4–piperidinyl]–N–(4–fluorophenyl)propanamide);
(tm) Phenadoxone;
(u) Phenampromide;
(um) Phenomorphan;
(v) Phenoperidinc;
(vg) PEPAP (1–(2–phenylethyl)–4–phenyl–4–acetoxypiperidine);
(vm) Piritramide;
(w) Proheptazine;
(wm) Properidine:
(wn) Propiram;
(x) Racemoramide;
(xm) Thiofentanyl (N–{1–[2–(2–thienyl)ethyl]–4–piperidinyl}–N–phenylpropanamide);
(xr) Tilidine;
(y) Trimeperidine.

(3) SUBSTANCES DERIVED FROM OPIUM. Any material, compound, mixture or preparation which contains any quantity of any of the following substances derived from opium, including any of their salts, isomers and salts of isomers that are theoretically possible within the specific chemical designation:

(a) Acetorphine;
(b) Acetyldihydrocodeine;
(e) Benzylmorphine;
(d) Codeine methylbromide;
(e) Codeine–N–oxide;
(f) Cyprenorphine;
(g) Desomorphine;
(h) Dihydromorphine;
(hm) Drotebanol;
(j) Etorphine, except its hydrochloride salts;
(k) Heroin;
(m) Hydromorphinol;
(n) Methyldesorphine;
(p) Methyldihydromorphine;
(q) Morphine methylbromide;
(r) Morphine methylsulfonate;
(s) Morphine–N-oxide;
(t) Myrophine;
(u) Nicocodeine;
(v) Nicomorphine;
(w) Normorphine;
(x) Pholcodine;
(y) Thebacon.

(4) HALLUCINOGENIC SUBSTANCES Any material. compound, mixture or preparation which contains any quantity of any of the following hallucinogenic substances, including any of their salts, isomers and salts of isomers that are theoretically possible within the specific chemical designation, in any form including a substance, salt, isomer or salt of an isomer contained in a plant, obtained from a plant or chemically synthesized:

(a) 3,4–methylenedioxyamphetamine, commonly known as "MDA":
(ag) 3,4–methylenedioxyethylamphetamine, commonly known as "MDE";
(am) 3,4-methylenedioxymethamphetamine, commonly known as "MDMA";
(ar) N–hydroxy–3,4–methylenedioxyamphetamine;
(b) 5–methoxy–3,4–methylenedioxyamphetamine;
(bm) 4-ethyl–2,5- dimethoxyamphetamine, commonly known as "DOET";
(c) 3,4,5–trimethoxyamphetamine;
(cm) Alpha-ethyltryptamine;
(d) Bufotenine;
(e) Diethyltryptamine;
(f) Dimethyltryptamine;
(g) 4–methyl–2,5–dimethoxyamphetamine, commonly known as "STP";
(h) Ibogaine;
(j) Lysergic acid diethylamide, commonly known as "LSD;
(m) Mescaline, in any form, including mescaline contained in peyote, obtained from peyote or chemically synthesized;
(mn) Parahexyl (3–hexyl–1–hydroxy–7, 8, 9, 10–tetrahydro–6, 6, 9–trimethyl–6H–dibenzo(b, d)pyran);
(n) Phencyclidine, commonly known as "PCP";
(p) N-ethyl–3–piperidyl benzilate;
(q) N–methyl–3–piperidyl benzilate;
(r) Psilocybin;
(s) Psilocin;
(t) Tetrahydrocannabinols, commonly known as "THC", in any form including tetrahydrocannabinols contained in marijuana, obtained from marijuana or chemically synthesized;
(u) 1–[1–(2–thienyl)cyclohexyl]piperidine, which is the thiophene analog of phencyclidine;
(ud) 1–[1–(2–thienyl)cyclohexyl]pyrrolidine, which is the thiophene pyrrolidine analog of phencyclidine;
(ug) N–ethyl–1–phenylcyclohexylamine, which is the ethylamine analog of phencyclidine;
(ur) 1–(1–phenylcyclohexyl)pyrrolidine, which is the pyrrolidine analog of phencyclidine;
(v) 2,5–dimethoxyamphetamine;
(w) 4–bromo–2,5–dimethoxyamphetamine, commonly known as "DOB;
(wg) 4–bromo–2,5–dimethoxy–beta–phenylethylamine, commonly known as "2C–B" or "Nexus";
(x) 4–methoxyamphetamine.

(5) DEPRESSANTS. Any material, compound, mixture or preparation which contains any quantity of any of the following substances having a depressant effect on the central nervous system, including any of their salts, isomers and salts of isomers that are theoretically possible within the specific chemical designation:

(ag) Gamma–hydroxybutync acid (commonly known as gamma hydroxybutyrate or "GHB") and gamma–butyrolactone.
(am) Mecloqualone.
(b) Methaqualone

(6) IMMEDIATE PRECURSORS. Any material, compound, mixture or preparation which contains any quantity of any of the following substances or their salts:

(a) Immediate precursors to phencyclidine:
1. I–phenylcyclohexylamine.
2. 1–piperidinocyclohexanecarbonitrile.

(7) STIMULANTS. Any material, compound, mixture or preparation which contains any quantity of any of the following substances having a stimulant effect on the central nervous system, including any of their salts, isomers and salts of isomers that are theoretically possible within the specific chemical designation:

(ag) Cathinone.

(am) Aminorex.

(b) Fenethylline.

(c) N–ethylamphetamine.

(d) 4–methylaminorex.

(e) N,N–dimethylamphetamine.

(L) Methcathinone.

(p) 4–methylthioamphetamine, commonly known as "4–MTA."

History: 1971 c. 219; 1981 c. 206; CSB 2.16, 2.15, 2.17, 2.18, 2.19, 2.20; **1989 a. 121; CSB2.21; 1993 a. 98.** 118; CSB 2.22; **1995 a. 225; 1995 a.** 448 ss. 157 *to* **165; Stats. 1995 s. 961.14;** 1997 **a. 220;** 1999 **a. 21: 2001 a. 16.**

NOTE: See 1979–80 Statutes and 1993–94 Statutes for notes on actions by controlled substances board under s. 161.11 (1), 1993 Stats.

A chemical test need not he *specifically* **for marijuana in order** *to* **be probative beyond a reasonable** doubt. **State v.** Wind, **60** Wis. 2d **267,208** N.W.2d **357 (1973).**

THC is properly classified as Schedule I **substance. State v.** Olson, **127 Wis.** 2d **412,380** N.W.2d **375 (Ct. App. 1985).**

Stems **and** branches **supporting marijuana leaves or buds are** not **"mature stalks" under sub. (14). State v. Martinez, 21 0** Wis. **2d 397,563** N.W.2d **922** (Ct. **App.** 1997).

961.15 Schedule II tests. (1m) The controlled substances board shall add a substance to schedule II upon finding that:

(a) The substance has high potential for abuse;

(b) The substance has currently accepted medical use in treatment in the United States, or currently accepted medical use with severe restrictions; and

(c) The abuse of the substance may lead to severe psychological or physical dependence.

(2m) The controlled substances board may add a substance to schedule II without making the findings required under sub. (1m) if the substance is controlled under schedule II of 21 USC 812 *(c)* by a federal agency as the result of an international treaty, convention or protocol.

History: 1971 **c. 219; 1995 a. 448 ss. 166, 167,472; Stats. 1995 s. 961.15.**

961.16 Schedule II. Unless specifically excepted by state or federal law or regulation or more specifically included in another schedule, the following controlled substances are listed in schedule 11:

(2) SUBSTANCES OF PLANT ORIGIN. Any material, compound, mixture or preparation which contains any quantity of any of the following substances in any form, including **a** substance contained in a plant, obtained from a plant, chemically synthesized or obtained by a combination of extraction from a plant and chemical synthesis:

(a) Opium and substances derived from opium, and any salt, compound, derivative or preparation of opium or substances derived from opium. Apomorphine, dextrorphan, nalbuphine, butorphanol, nalmefene, naloxone and naltrexone and their respective salts and the isoquinoline alkaloids of opium and their respective salts are excluded from this paragraph. The following substances, and any of their salts, isomers and salts of isomers that are theoretically possible within the specific chemical designation, are included in this paragraph:

1. Opium, including raw opium, opium extracts, opium fluid extracts, powdered opium, granulated opium and tincture of opium.

2. Opium poppy and poppy straw.

3. Concentrate of poppy straw, which is the crude extract of poppy straw in either liquid, solid or powder form containing the phenanthrenc alkaloids of the opium poppy.

4. Codeine.

4m. Dihydrocodeine.

4r. Dihydroetorphine.

5. Ethylmorphine.

6. Etorphinc hydrochloride.

7. Hydrocodone, also known as dihydrocodeinonc.

8. Hydromorphonc, also known as dihydromorphinone.

9. Metopon.

10. Morphine.

11. Oxycodonc.

12. Oxymorphonc.

13. Thebaine.

(b) Coca leaves and any salt, compound, derivative or preparation of coca leaves. Decocainized coca leaves or extractions which do not contain cocaine or ccgonine are excluded from this paragraph. The following substances and any of their salts, esters, isomers and salts of esters and isomers that are theoretically possible within the specific chemical designation, are included in this paragraph:

1. Cocaine.

2. Ecgonine.

(3) SYNTHETIC OPIATES Any material, compound, mixture or preparation which contains any quantity of any of the following synthetic opiates, including any of their isomers, esters, ethers, esters and ethers of isomers, salts and salts of isomers, esters, ethers and esters and ethers of isomers that are theoretically possible within the specific chemical designation:

(a) Alfentanil;

(am) Alphaprodinc;

(bj Anileridine;

(c) Bezitramide;

(cm) Carfentanil;

(e) Diphenoxylate;

(f) Fentanyl;

(g) Isomethadone;

(gm) Levo–alphacetylmethadol (LAAM);

(h) Levomethorphan;

(j) Levorphanol;

(k) Meperidine, also known as pethidine;

(m) Mcperidine — Intermediate — A, 4–cyano–1–methyl–4–phenylpiperidine;

(n) **Meperidine — Intermediate — B,** ethyl–4–phenylpiperidine– 4–carboxylate;

(p) Meperidine—Intermediate—C, 1–methyl–4–phenylpiperidine–4–carboxylic acid;

(q) Metazocine;

(r) Methadone;

(s) Methadone—-Intermediate, 4–cyano–2- dimethylamino--4, 4–diphenylbutane;

(t) Moramide — Intermediate, 2–methyl–3–morpholino-1, **1-diphenylpropanecarboxylic** acid;

(u) Phenazocine;

(v) Piminodine;

(w) Racemethorphan;

(xj Racemorphan;

(xm) Remifentanil;

(y) Sufentanil.

(5) STIMULANTS. Any material, compound, mixture, or preparation which contains any quantity of any of the following substances having a stimulant effect on the central nervous system, including any of their salts, isomers and salts of isomers that are theoretically possible within the specific chemical designation:

(a) Amphetamine.

(b) Methamphetamine.

(c) Phenmetrazine.

(d) Methylphenidate.

(7) DEPRESSANTS. Any material, compound, mixture, or preparation which contains any quantity of any of the following substances having a depressant effect on the central nervous system, including any of their salts, isomers and salts of isomers that are theoretically possible within the specific chemical designation:

(a) Amobarbital;

(am) Glutethimide;

(b) Pentobarbital;

(c) Secobarbital.

(8) IMMEDIATE PRECURSORS. Any material, compound, mixture or preparation which contains any quantity of the following substances:

(a) An immediate precursor to amphetamine or methamphetamine:

1. Phenylacetone, commonly known as "P2P".

(10) HALLUCINOGENIC SUBSTANCES. (b) Nabilone (another name for nabilone is (+)–trans–3– (1,1–dimethylheptyl)–6, 6a, 7, 8, 10, 10a–hexahydro–1–hydroxy –6, 6–dimethyl–9H–dibenzo [b,d] pyran–9–one).

History: 1971 c. 219; **1981 c. 6,206;** CSB 2.16, 2.17, 2.19; 1989 a. **121;** CSB **2.21;** 1993 a. 98: CSB **2.22: 1995** a. **448** ss. 168 **to 178,473;** Stats. **1995 s. 961.16;** CSB **2.25:** CSB **2.26.**

NOTE: See 1979–80 Statutes and 1993–94 Statutes for notes on actions by controlled substances board under s. 161.11 (1), 1993 Stats.

At a preliminary hearing, **the state must** show that **a substance was probably** l–cocaine **rather** than d–cocaine. **State v. Russo,** 101 Wis. 2d **206,303** N.W.2d **846** (Ct. **App. 1981).**

961.17 Schedule III tests. (1m) The controlled substances board shall add a substance to schedule III upon finding that:

(a) The substance has a potential for abuse less than the substances included in schedules I and II;

(b) The substance has currently accepted medical use in treatment in the United States; and

(c) Abuse of the substance may lead to moderate or low physical dependence or high psychological dependence.

(2m) The controlled substances board may add a substance to schedule III without making the findings required under sub. (1m) if the substance is controlled under schedule III of 21 USC 812 (c) by a federal agency as the result of an international treaty, convention or protocol.

History: 1971 **c. 219; 1995 a. 448 ss. 179, 180,474; Stats. 1995 s. 961.17.**

961.18 Schedule III. Unless specifically excepted by state or federal law or regulation or more specifically included in another schedule, the following controlled substances are listed in schedule III:

(2m) STIMULANTS. Any material, compound, mixture, or preparation which contains any quantity of any of the following substances having a stimulant effect on the central nervous system, including any of their salts, isomers and salts of isomers that are theoretically possible within the specific chemical designation:

(a) Benzphetamine;

(b) Chlorphentermine;

(c) Clortermine;

(e) Phendimetrazine.

(3) DEPRESSANTS. Any material, compound, mixture or preparation which contains any quantity of any of the following substances having a depressant effect on the central nervous system, including any of their salts, isomers and salts of isomers that are theoretically possible within the specific chemical designation:

(a) Any substance which contains a derivative of barbituric acid;

(b) Chlorhexadol;

(d) Lysergic acid;

(e) Lysergic acid amide;

(f) Methyprylon;

(h) Sulfondiethylmethane;

(j) Sulfonethylmethane;

(k) Sulfonmethane;

(km) Tiletamine and Zolazcpam in combination;

(m) Any compound, mixture, or preparation containing any of the following drugs and one or more other active medicinal ingredients not included in any schedule:

1. Amobarbital.
2. Secobarbital.
3. Pentobarbital.

(n) Any of the following drugs in suppository dosage form approved by the federal food and drug administration for marketing only as a suppository:

1. Amobarbital.
2. Secobarbital.
3. Pentobarbital.

(4) OTHER SUBSTANCES Any material, compound, mixture or preparation which contains any quantity of any of the following substances, including any of their salts, isomers and salts of isomers that are theoretically possible within the specific chemical designation:

(ak) Ketamine.

(an) Nalorphine.

(4m) HALLUCINOGENIC SUBSTANCES. Dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in a U.S. food and drug administration approved drug product. (Other names for dronabinol are (6aR–trans)–6a, 7, 8, 10a–tetrahydro–6, 6. 9–trimethyl–3–pentyl–6H–dibenzo(b, d)pyran–1–ol, and (–) –delta–9–(trans)–tetrahydrocannabinol.)

(5) NARCOTIC DRUGS. Any material, compound, mixture or preparation containing any of the following narcotic drugs or their salts, isomers or salts of isomers, calculated as the free anhydrous base or alkaloid, in limited quantities as follows:

(a) Not more than 1.8 grams of codeine per 100 milliliters or per 100 grams or not more than 90 milligrams per dosage unit, with **an** equal or greater quantity of an isoquinoline alkaloid of opium.

(b) Not more than 1.8 grams of codeine per 100 milliliters or per 100 grams or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(c) Not more than 300 milligrams of hydrocodone per 100 milliliters or per 100 grams or not more than 15 milligrams per dosage unit, with a four–fold or greater quantity of an isoquinoline alkaloid of opium.

(d) Not more than 300 milligrams of hydrocodone per 100 milliliters or per 100 grams or not more **than** 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(e) Not more than 1.8 grams of dihydrocodeine per 100 milliliters or per 100 grams or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(f) Not more than 300 milligrams of ethylmorphine per 100 milliliters or per 100 grams or not more than 15 milligrams per dosage unit, with one or more ingredients in recognized therapeutic amounts.

(g) Not more than 500 milligrams of opium per 100 milliliters or per 100 grams, or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(h) Not more than *50* milligrams of morphine per 100 milliliters or per 100 grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(6) EXCEPTIONS. The controlled substances board may except by rule any compound, mixture or preparation containing any stimulant or depressant substance included in sub. (2m) or (3)

from the application of all or any part of this chapter if the compound, mixture or preparation contains one or more active medicinal ingredients not having a stimulant or depressant effect on the central nervous system, and if the admixtures are included therein in combinations, quantity, proportion or concentration that vitiate the potential for abuse of the substances which have a stimulant or depressant effect on the central nervous system.

(7) ANABOLIC STEROIDS. Any material, compound, mixture, or preparation containing any quantity of any of the following anabolic steroids, including any of their esters, isomers, esters of isomers, salts and salts of esters, isomers and esters of isomers that are theoretically possible within the specific chemical designation:

(a) Boldenone;
(b) 4–chlorotestosterone, which is also called clostebol;
(c) Dehydrochloromethyltestosterone;
(d) 4–dihydrotestosterone, which is also called stanolone;
(e) Drostanolone;
(f) Ethylestrenol;
(g) Fluoxymesterone;
(h) Formebulone, which is also called fromebolone;
(i) Mesterolone;
(j) Methandienone, which is also called methandrostenolone;
(k) Methandriol;
(L) Methenolone;
(m) Methyltestosterone;
(n) Mibolerone;
(o) Nandrolone;
(p) Norethandrolone;
(q) Oxandrolone;
(r) Oxymesterone;
(s) Oxymetholone;
(t) Stanozolol;
(u) Testolactone;
(v) Testosterone;
(w) Trenbolone.

History: 1971 c. 219; 1981 c. 6; 1981 c. 206 ss. 32 to 40, 57; CSB **2.19, 2.21; 1995 a. 448 ss. 181 to 200,475,476; Stats. 1995 s. 961.18; 1997 a. 220;** CSB **2.25.**

NOTE: See 1993–94 Statutes for notes on actions by controlled substances board under s. 161.11 (1), 1993 Stats.

961.19 Schedule IV tests. (1m) The controlled substances board shall add a substance to schedule IV upon finding that:

(a) The substance has a low potential for abuse relative to substances included in schedule III;

(b) The substance has currently accepted medical use in treatment in the United States; and

(c) Abuse of the substance may lead to limited physical dependence or psychological dependence relative to the substances included in schedule III.

(2m) The controlled substances board may add a substance to schedule IV without making the findings required under sub. (1m) if the substance is controlled under schedule IV of 21 USC 812 (c) by a federal agency as the result of an international treaty, convention or protocol.

History: 1971 c. 219. 1995 a. 448 ss. 201,202,477; Stats. **1995 s. 961.19.**

961.20 Schedule IV. Unless specifically excepted by state or federal law or regulation or more specifically included in another schedule, the following controlled substances are listed in schedule IV:

(2) DEPRESSANTS Any material, compound, mixture or preparation which contains any quantity of any of the following substances having a depressant effect on the central nervous system, including any of their salts, isomers and salts of isomers that are theoretically possible within the specific chemical designation:

(a) Alprazolam;
(am) Barbital;
(ar) Bromazepam;
(av) Camazepam;
(b) Chloral betaine;
(c) Chloral hydrate;
(cd) Clobazam;
(cg) Clotiazepam;
(cm) Chlordiazepoxide;
(cn) Clonazepam;
(co) Cloxazolam;
(cp) Clorazcpate;
(cq) Delorazepam;
(cr) Diazepam;
(cs) Dichloralphenazone;
(cu) Estazolam;
(d) Ethchlorvynol;
(e) Ethinamate;
(ed) Ethyl loflazepate;
(eg) Fludiazepam;
(ej) Flunitrazepam;
(em) Flurazepam;
(eo) Halazepam;
(ep) Haloxazolam;
(eq) Ketazolam;
(er) Lorazepam;
(es) Loprazolam;
(eu) Lormetazepam;
(ew) Mebutamate;
(ey) Medazepam;
(f) Methohexital;
(g) Meprobamate;
(h) Methylphenobarbital, which is also called mephobarbital;
(hg) Midazolam;
(hh) Nimetazepam;
(hj) Nitrazepam;
(hk) Nordiazepam;
(hm) Oxazepam;
(hr) Oxazolam;
(j) Paraldehyde;
(k) Petrichloral;
(m) Phenobarbital;
(md) Pinazepam;
(mg) Prazepam;
(mm) Quazepam;
(n) Temazepam;
(ng) Tetrazepam;
(nm) Triazolam;
(o) Zaleplon;
(p) Zolpidem.

(2m) STIMULANTS. Any material, compound, mixture, or preparation which contains any quantity of any of the following substances having a stimulant effect on the central nervous system, including any of their salts, isomers and salts of isomers that are theoretically possible within the specific chemical designation:

(a) Diethylpropion.
(ad) Cathine.
(ag) N,N–dimethyl–1,2–diphenylethylamine, commonly known as "SPA".
(ak) Ephedrine, if ephedrine is the only active medicinal ingredient or if there are only therapeutically insignificant quantities of another active medicinal ingredient.
(ar) Fencamfamine.

(at) Fenproporex.

(bm) Mazindol.

(brj Mefenorex.

(bu) Modafinil.

(c) Pemoline, including its organometallic complexes and chelates.

(d) Phcntermine.

(e) Pipradrol.

(f) Sibutramine.

(3) NARCOTIC DRUGS CONTAINING NONNARCOTIC ACTIVE MEDICINAL INGREDIENTS. Any compound, mixture or preparation containing any of the following narcotic drugs or their salts, isomers or salts of isomers, in limited quantities as set forth below, calculated as the free anhydrous base or alkaloid, which also contains one or more nonnarcotic, active medicinal ingredients in sufficient proportion to confer upon the compound, mixture or preparation valuable medicinal qualities other than those possessed by the narcotic drug alone:

(a) Not more than 1.0 milligrams of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.

(4) OTHER SUBSTANCES. Any material, compound, mixture or preparation which contains any quantity of any of the following substances or their salts:

(a) Dextropropoxyphene (Alpha-(+)-4-dimethylamino-1, 2-diphenyl-3-methyl-2-propionoxybutane).

(am) Fenfluramine, including any of its isomers and salts of isomers.

(b) Pentazocine, including any of its isomers and salts of isomers.

(c) Butorphanol, including any of its isomers and salts of isomers.

(5) EXCEPTIONS. The controlled substances board may except by rule any compound, mixture or preparation containing any depressant substance included in sub. **(2)** from the application of all or any part of this chapter if the compound, mixture or preparation contains one or more active medicinal ingredients not having a depressant effect on the central nervous system, and if the admixtures are in combinations, quantity, proportion or concentration that vitiate the potential for abuse of the substances which have a depressant effect on the central nervous system.

History: 1971 c. 219; 1979 c. 32; 1981 c. 206 ss. 34m, 41 to 52; CSB 2.15, 2.19, 2.21; 1993 a. 468; 1995 a. 448 ss. 203 to 220, 478, 479; Stats. 1995 s. 961.20; CSB 2.24, 2.25, 2.28.

NOTE: **See 1979-80 Statutes and** 1993-94 **Statutes for notes on actions by controlled substances board under s.** 161.11 **(1),** 1993 **Stats.**

961.21 Schedule V tests. (Im) The controlled substances board shall add a substance to schedule **V** upon finding that:

(a) The substance has low potential for abuse relative to the controlled substances included in schedule IV;

(b) The substance has currently accepted medical use in treatment in the United States; and

(c) The substance has limited physical dependence or psychological dependence liability relative to the controlled substances included in schedule IV.

(2m) The controlled substances board may add a substance to schcdule V without making the findings required by sub. (1m) if the substance is controlled under schedule **V** of 21 USC 811 (c) by a federal agency as the result of an international treaty, convention or protocol.

History: 1971 **c. 219,** 1995 a. 438 ss. 221, 222,450: Stats. 1995 s. 961.21.

961.22 Schedule V. Unless specifically excepted by state or federal law or regulation or more specifically included in another schedule, the following controlled substances are listed in schednlc V

(Im) NARCOTIC DRUGS. Any material, compound, mixture or preparation containing any quantity of any of the following substances, including any of their salts, isomers and salts of isomers that are theoretically possible within the specific chemical designation:

(a) Buprenorphine.

(2) NARCOTIC DRUGS CONTAINING NONNARCOTIC ACTIVE MEDICINAL INGREDIENTS. Any compound, mixture or preparation containing any of the following narcotic drugs or their salts, isomers or salts of isomers, in limited quantities as set forth below, calculated as the free anhydrous base or alkaloid, which also contains one or more nonnarcotic, active medicinal ingredients in sufficient proportion to confer upon the compound, mixture or preparation, valuable medicinal qualities other than those possessed by the narcotic drug alone:

(a) Not more than 200 milligrams of codeine per 100 milliliters or per 100 grams.

(b) Not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams.

(c) Not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams.

(d) Not more than **2.5** milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit.

(e) Not more than 100 milligrams of opium per 100 milliliters or per 100 grams.

(f) Not more than 0.5 milligrams of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.

(3) STIMULANTS. Any material, compound, mixture or preparation which contains any quantity of any of the following substances having a stimulant effect on the central nervous system, including any of their salts, isomers and salts of isomers that are theoretically possible within the specific chemical designation:

(a) Pyrovalerone.

History: 1971 c. 219; 1981 c. 206; CSB 2.15; 1985 a. 135; CSB 2.17; 1995 a. 448 ss. 223 to 227, 481; Stats. 1995 s. 961.22.

961.23 Dispensing of schedule V substances. The dispensing of schedule **V** substances is subject to the following conditions:

(1) That they be dispensed and sold in good faith as a medicine, and not for the purpose of evading this chapter.

(2) That they be sold at retail only by a registered pharmacist when sold in a retail establishment.

(3) That, when sold in a retail establishment, they bear the name and address of the establishment on the immediate container of said preparation.

(4) That any person purchasing such a substance at the time of purchase present to the seller that person's correct name and address. The seller shall record the name and address and the name and quantity of the product sold. The purchaser and the seller shall sign the record of this transaction. The giving of a false name or false address by the purchaser shall be prima facie evidence of a violation of s. **961.43** (1) (a).

(5) That no person may purchase more than 8 ounces of a product containing opium or more than **4** ounces of a product containing any other schedule V substance within a 48-hour period without the authorization of a physician, dentist or Veterinarian nor may more than 8 ounces of a product containing opium or more than **4** ounces of a product containing any other schedule V substance be in the possession of any person other than a physician, dentist, veterinarian or pharmacist at any time without the authorization of a physician, dentist or veterinarian.

History: 1971 c. 219; 1973 c. 12 s. 37; 1981 c. 206; 1993 a. 482; 1995 a. 448 s. 228; Stats. 1995 s. 961.23.

961.24 Publishing of updated schedules. The controlled substances board shall publish updated schedules annually. The failure of the controlled substances board to publish an updated schedule under this section is not a defense in any administrative or judicial proceeding under this chapter.

History: 1971 c. 219; 1993 a. 213; 1995 a. 448 s. 229; Stats. 1995 s. 961.24.

961.25 Controlled substance analog treated as a schedule I substance. A controlled substance analog, to the extent it is intended for human consumption, shall be treated, for the purposes of this chapter, as a substance included in schedule I, unless a different treatment is specifically provided. No later than 60 days after the commencement of a prosecution concerning a controlled substance analog, the district attorney shall provide the controlled substances board with information relevant to emergency scheduling under s. 961.11 (4m). After a final determination by the controlled substances board that the controlled substance analog should not be scheduled, no prosecution relating to that substance as a controlled substance analog may be commenced or continued.

History: 1995 a. **448.**

SUBCHAPTER III

REGULATION OF MANUFACTURE, DISTRIBUTION **AND** DISPENSING OF CONTROLLED SUBSTANCES

961.31 Rules. The pharmacy examining board may promulgate rules relating to the manufacture, distribution and dispensing of controlled substances within this state.

History: 1971 c. 219; 1995 a. 448 s. 231; Stats. 1995 s. 961.31.

Cross Reference: See also ch. Phar 8, Wis. adm. code.

961.32 Possession authorization. (1) Persons registered under federal law to manufacture, distribute, dispense or conduct research with controlled substances may possess, manufacture, distribute, dispense or conduct research with those substances in this state to the extent authorized by their federal registration and in conformity with the other provisions of this chapter.

(2) The following persons need not be registered under federal law to lawfully possess controlled substances in this state:

(a) An agent or employee of any registered manufacturer, distributor or dispenser of any controlled substance if the agent or employee is acting in the usual course of the agent's or employee's business or employment;

(b) A common or contract carrier or warehouse keeper, or an employee thereof, whose possession of any controlled substance is in the usual course of business or employment;

(c) An ultimate user or a person in possession of any controlled substance pursuant to a lawful order of a practitioner or in lawful possession of a schedule V substance.

(d) Any person exempted under federal law, or for whom federal registration requirements have been waived.

History: 1971 c. 219, 336; 1983 a. 500 s. 43; 1993 a 482; 1995 a. 448 s. 232; Stats. 1995 s. 961.32.

A doctor or dentist who dispenses drugs to a patient within the course of professional practice is not subject to criminal liability. State v. Townsend, 107 Wis. 2d 24, 318 N.W.2d 361 (1982).

961.335 Special use authorization. (1) Upon application the controlled substances board may issue a permit authorizing a person to manufacture, obtain, possess, use, administer or dispense a controlled substance for purposes of scientific research, instructional activities, chemical analysis or other special uses, without restriction because of enumeration. No person shall engage in any such activity without a permit issued under this section, except that an individual may be designated and authorized to receive the permit for a college or university department, research unit or similar administrative organizational unit and students, laboratory technicians, research specialists or chemical analysts under his or her supervision may be permitted possession and use of controlled substances for these purposes without obtaining an individual permit.

(2) A permit issued under this section shall be valid for one year from the date of issue.

(3) The fee for a permit under this section shall be an amount detennined by the controlled substances board but shall not exceed *$25.* No fee may be charged for permits issued to employees of state agencies or institutions.

(4) Permits issued under this section shall be effective only for and shall specify:

(a) The name and address of the permittee.

(b) The nature of the project authorized by the permit.

(c) The controlled substances to be used in the project, by name if included in schedule **I,** and by name or schedule if included in any other schedule.

(d) Whether dispensing to human subjects is authorized.

(5) A permit shall be effective only for the person, substances and project specified on its face and for additional projects which derive directly from the stated project. Upon application, a valid permit may be amended to add a further activity or to add further substances or schedules to the project permitted thereunder. The fee for such amendment shall be determined by the controlled substances board but shall not exceed $5.

(6) Persons who possess a valid permit issued under this section are exempt from state prosecution for possession and distribution of controllcd substances to the extent of the authorization.

(7) The controlled substances board may authorize persons engaged in research on the use and effects of controlled substances to withhold the names and other identifying characteristics of individuals who are the subjects of research. Persons who obtain this authorization are not compelled in any civil, criminal, administrative, legislative or other proceeding to identify or to identify to the board the individuals who are the subjects of research for which the authorization was obtained.

(8) The controlled substances board may promulgate rules relating to the granting of special use permits including, but not limited to, requirements for the keeping and disclosure of records other than those that may be withheld under sub. (7), submissions of protocols, filing of applications and suspension or revocation of permits.

(9) The controlled substances board may suspend or revoke a permit upon a finding that there is a violation of the rules of the board.

History: 1971 c. 219, 3975 c. 110,199; 1977 c. 26, 1995 a. 448 s. 233; Stats. 1995 s 961 335.

961.34 Controlled substances therapeutic research. Upon the request of any practitioner, the controlled substances board shall aid the practitioner in applying for and processing an investigational drug permit for marijuana under 21 USC *355* (i). If the federal food and drug administration issues an investigational drug permit, the controlled substances board shall approve which pharmacies can distribute the marijuana to patients upon written prescription. Only pharmacies located within hospitals are eligible to receive the marijuana for distribution. The controlled substances board shall also approve which practitioners can write prescriptions for the marijuana.

History: 1981 c. 193; 1983 a. 189 s. 329 (18); 1985 a. 146 s. 8; 1995 a. 448 ss. 16 to 19; Stats. 1995 s. 961.34.

961.36 Controlled substances board duties relating to diversion control and prevention, compliance with controlled substances law and advice and assistance. (1) The controlled substances board shall regularly prepare and make available to state regulatory, licensing and law enforcement agencies descriptive and analytic reports on the potential for diversion and actual patterns and trends of distribution, diversion and abuse within the state of certain controlled substances the board selects that are listed in s. 961.16, 961.18, 961.20 or 961.22.

(1m) At the request of the department of regulation and licensing or a board, examining board or affiliated credentialing board in the department of regulation and licensing, the controlled substances board shall provide advice and assistance in matters

related to the controlled substances law to the department or to the board, examining board or affiliated credentialing board in the department making the request for advice or assistance.

(2) The controlled substances board shall enter into written agreements with local, state and federal agencies to improve the identification of sources of diversion and to improve enforcement of and compliance with this chapter and other laws and regulations pertaining to unlawful conduct involving controlled substances. An agreement must specify the roles and responsibilities of each agency that has information or authority to identify, prevent or control drug diversion and drug abuse. The board shall convene periodic meetings to coordinate a state diversion prevention and control program. The board shall assist and promote cooperation and exchange of information among agencies and with other states and the federal government.

(3) The controlled substances board shall evaluate the outcome of its program under this section and shall annually submit a report to the chief clerk of each house of the legislature, for distribution to the legislature under s. 13.172(3), on its findings with respect to its effect on distribution and abuse of controlled substances, including recommendations for improving control and prevention of the diversion of controlled substances.

History: 1981 c. 200; 1987 a. 186; 1995 a. 305 ss. 2, 3; 1995 a. 448 s. 234; Stats. 1995 s. 961.36; 1997 a. 35 s. 339.

961.38 Prescriptions. (Ig) In this section, "medical treatment" includes dispensing or administering a narcotic drug for pain, including intractable pain.

(1r) Except when dispensed directly by a practitioner, other than a pharmacy, to an ultimate user, no controlled substance included in schedule II may be dispensed without the written prescription of a practitioner.

(2) In emergency situations, as defined by rule of the pharmacy examining board, schedule II drugs may be dispensed upon oral or electronic prescription of a practitioner, reduced promptly to writing and filed by the pharmacy. Prescriptions shall be retained in conformity with rules of the pharmacy examining board promulgated under s. 961.31. No prescription for a schedule II substance may be refilled.

(3) Except when dispensed directly by a practitioner, other than a pharmacy, to an ultimate user, a controlled substance included in schedule III or IV, which is a prescription drug, shall not be dispensed without a written, oral or electronic prescription of a practitioner. The prescription shall not be filled or refilled except as designated on the prescription and in any case not more than 6 months after the date thereof, nor may it be refilled more than 5 times, unless renewed by the practitioner.

(4) A substance included in schedule V may be distributed or dispensed only for a medical purpose, including medical treatment or authorized research.

(4g) A practitioner may dispense or deliver a controlled substance to or for an individual or animal only for medical treatment or authorized research in the ordinary course of that practitioner's profession.

(4r) A pharmacist is immune from any civil or criminal liability and from discipline under s. 450.10 for any act taken by the pharmacist in reliance on a reasonable belief that an order purporting to be a prescription was issued by a practitioner in the usual course of professional treatment or in authorized research.

(5) No practitioner shall prescribe, orally, electronically or in writing, or take without a prescription a controlled substance included in schedule I, II, III or IV for the practitioner's own personal use.

History: 1971 c. 219; 1975 c. 190,421; 1977 c. 203; 1995 a. 448 ss. 235 to 240, 483 to 485; Stats. 1995 s. 961.38; 1997 a. 27.

961.39 Limitations on optometrists. An optometrist who is certified under s. 449.18:

(1) May not prescribe or administer a controlled substance included in schedule I or II.

(2) May prescribe or administer only those controlled substances included in schedules III, IV and V that are permitted for prescription or administration under the rules promulgated under s. 449.18 (8).

(3) Shall include with each prescription order all of the following:

(a) A statement that he or she is certified under s. 449.18.

(b) The indicated use of the controlled substance included in schedule III, IV or V so prescribed.

(4) May not dispense other than by prescribing or administering.

History: 1989 a. 31; 1995 a. 448 s. 241; Stats. 1995 s. 961.39.

961.395 Limitation on advanced practice nurses. (I) An advanced practice nurse who is certified under s. 441.16 may prescribe controlled substances only as permitted by the rules promulgated under s. 441.16 (3).

(2) An advanced practice nurse certified under s. 441.16 shall include with each prescription order the advanced practice nurse prescriber certification number issued to him or her by the board of nursing.

(3) An advanced practice nurse certified under s. 441.16 may dispense a controlled substance only by prescribing or administering the controlled substance or as otherwise permitted by the rules promulgated under s. 441.16 (3).

History: 1995 a. 448.

SUBCHAPTER IV

OFFENSES AND PENALTIES

961.41 Prohibited acts A—penalties. (1) MANUFACTURE, DISTRIBUTION OR DELIVERY. Except as authorized by this chapter, it is unlawful for any person to manufacture, distribute or deliver a controlled substance or controlled substance analog. Any person who violates this subsection is subject to the following penalties:

(a) ***Schedule I and II narcotic drugs generally.*** Except as provided in par. (d), if a person violates this subsection with respect to a controlled substance included in schedule I or II which is a narcotic drug, or a controlled substance analog of a controlled substance included in schedule I or II which is a narcotic drug, the person is guilty of a Class E felony.

(b) ***Schedule I, II, and III nonnarcotic drugs generally.*** Except as provided in pars. (cm) and (e) to (hm), if a person violates this subsection with respect to any other controlled substance included in schedule I, II, or III, or a controlled substance analog of any other controlled substance included in schedule I or II, the person is guilty of a Class H felony.

(cm) ***Cocaine and cocaine base.*** If the person violates this subsection with respect to cocaine or cocaine base, or a controlled substance analog of cocaine or cocaine base, and the amount manufactured, distributed, or delivered is:

Ig. One gram or less, the person is guilty of a Class G felony.

1r. More than one gram but not more than 5 grams, the person is guilty of a Class F felony.

2. More than 5 grams but not more than 15 grams, the person is guilty of a Class E felony.

3. More than 15 grams but not more than 40 grams, the person is guilty of a Class D felony.

4. More than 40 grams, the person is guilty of a Class C felony.

(d) ***Heroin.*** If the person violates this subsection with respect to heroin or a controlled substance analog of heroin and the amount manufactured, distributed or delivered is:

1. Three grams or less, the person is guilty of a Class F felony.

2. More than 3 grams but not more than 10 grams, the person is guilty of a Class E felony.

3. More than 10 grams but not more than *50* grams, the person is guilty of a Class D felony.

4. More than *50* grams, the person is guilty of a Class C felony.

(e) *Phencyclidine, amphetamine, methamphetamine, and methcathinone.* If the person violates this subsection with respect to phencyclidine, amphetamine, methamphetamine, or methcathinone, or a controlled substance analog of phencyclidine, amphetamine. methamphetamine, or methcathinone, and the amount manufactured, distributed, or delivered is:

1. Three grams or less, the person is guilty of a Class F felony.

2. More than *3* grams but not more than 10 grams, the person is guilty of a Class E felony.

3. More than 10 grams but not more than *50* grams, the person is guilty of a Class D felony.

4. More than 50 grams, the person is guilty of a Class C felony.

(f) *Lysergic acid diethylamide.* If the person violates this subsection with respect to lysergic acid diethylamide or a controlled substance analog of lysergic acid diethylamide and the amount manufactured, distributed, or delivered is:

1. One gram or less, the person is guilty of a Class G felony.

2. More than one gram but not more than *5* grams, the person is guilty of a Class F felony.

3. More than **5** grams, the person is guilty of a Class E felony.

(g) *Psilocin and psilocybin.* If the person violates this subsection with respect to psilocin or psilocybin, or a controlled substance analog of psilocin or psilocybin, and the amount manufactured, distributed or delivered is:

1. One hundred grams or less, the person is guilty of a Class G felony.

2. More than 100 grams but not more than 500 grams, the person is guilty of a Class F felony.

3. More than *500* grams, the person is guilty of a Class E felony.

(h) *Tetrahydrocannabinols.* If the person violates this subsection with respect to tetrahydrocannabinols, included under s. 961.14 **(4)** (t), or a controlled substance analog of tetrahydrocannabinols, and the amount manufactured, distributed or delivered is:

1. Two hundred grams or less, or 4 or fewer plants containing tetrahydrocannabinols, the person is guilty of a Class I felony.

2. More than *200* grams but not more than 1,000 grams, or more than 4 plants containing tetrahydrocannabinols but not more than *20* plants containing tetrahydrocannabinols, the person is guilty of a Class H felony.

3. More than 1,000 grams but not more than *2,500* grams, or more than *20* plants containing tetrahydrocannabinols but not more than *50* plants containing tetrahydrocannabinols, the person is guilty of a Class G felony.

4. More than *2,500* grams but not more than 10,000 grams, or more than *50* plants containing tetrahydrocannabinols but not more than *200* plants containing tetrahydrocannabinols, the person is guilty of a Class F felony.

5. More than 10,000 grams, or more than *200* plants containing tetrahydrocannabinols, the person is guilty of a Class E felony.

(hm) *Certain other schedule I controlled substances and ketamine.* If the person violates this subsection with respect to gamma–hydroxybutyric acid, gamma–butyrolactone, 3,4–methylenedioxymethamphetamine, 4–bromo–2,5–dimethoxy–beta– phenylethylamine, 4–methylthioamphetamine, ketamine, or a controlled substance analog of gamma–hydroxybutyric acid, gamma–butyrolactone, 3,4–methylenedioxymethamphetamine, 4–bromo–2,5–dimethoxy–beta–phenylethylamine, or 4–methylthioamphetamine and the amount manufactured, distributed, or delivered is:

1. Three grams or less, the person is guilty of a Class F felony.

2. More than 3 grams but not more than 10 grams, the person is guilty of a Class E felony.

3. More than 10 grams but not more than *50* grams, the person is guilty of a Class D felony.

4. More than *50* grams. the person is guilty of a Class C felony.

(i) *Schedule IV drugs* ***generally*** Except as provided in par. (im), if a person violates this subsection with respect to a substance included in schedule IV, the person is guilty of a Class H felony.

(im) *Flunitrazepam.* If a person violates this subsection with respect to flunitrazepam and the amount manufactured, distributed, or delivered is:

1. Three grams or less, the person is guilty of a Class F felony.

2. More than 3 grams but not more than 10 grams, the person is guilty of a Class E felony.

3. More than 10 grams but not more than *50* grams, the person is guilty of a Class D felony.

4. More than *50* grams, the person is guilty of a Class C felony.

(j) *Schedule V drugs.* If a person violates this subsection with respect to a substance included in schedule V, the person is guilty of a Class I felony.

(1m) POSSESSION WITH INTENT TO MANUFACTURE, DISTRIBUTE OR DELIVER Except as authorized by this chapter, it is unlawful for any person to possess, with intent to manufacture, distribute or deliver, a controlled substance or a controlled substance analog. Intent under this subsection may be demonstrated by, without limitation because of enumeration, evidence of the quantity and monetary value of the substances possessed, the possession of manufacturing implements or paraphernalia, and the activities or statements of the person in possession of the controlled substance or a controlled substance analog prior to and after the alleged violation. Any person who violates this subsection is subject to the following penalties:

(a) *Schedule I and II narcotic drugs generally.* Except as provided in par. (d), if a person violates this subsection with respect to a controlled substance included in schedule I or II which is a narcotic drug or a controlled substance analog of a controlled substance included in schedule I or II which is a narcotic drug, the person is guilty of a Class E felony.

(b) *Schedule I, II, and III nonnarcotic drugs generally.* Except as provided in pars. (cm) and (e) to (hm), if a person violates this subsection with respect to any other controlled substance included in schedule I, II, or III, or a controlled substance analog of any other controlled substance included in schedule I or II, the person is guilty of a Class H felony.

(cm) *Cocaine and cocaine base.* If a person violates this subsection with respect to cocaine or cocaine base, or a controlled substance analog of cocaine or cocaine base, and the amount possessed, with intent to manufacture, distribute or deliver, is:

1g. One gram or less, the person is guilty of a Class G felony.

1r. More than one gram but not more than 5 grams, the person is guilty of a Class F felony.

2. More than **5** grams but not more than 15 grams, the person is guilty of a Class E felony.

3. More than 15 grams but not more than 40 grams, the person is guilty of a Class D felony.

4. More than 40 grams, the person is guilty of a Class C felony.

(d) *Heroin.* If a person violates this subsection with respect to heroin or a controlled substance analog of heroin and the amount possessed, with intent to manufacture, distribute or deliver, is:

1. Three grams or less, the person is guilty of a Class F felony.

2. More than 3 grams but not more than 10 grams, the person is guilty of **a** Class E felony.

3. More than 10 grams but not more than 50 grams, the person is guilty of a Class D felony.

4. More than *50* grams, the person is guilty of a Class C felony.

(e) *Phencyclidine, amphetamine, methamphetamine, and methcathinone.* If a person violates this subsection with respect to phencyclidine, amphetamine, methamphetamine, or methca-

thinone, or a controlled substance analog of phencyclidine, amphetamine, methamphctaminc, or methcathinone, and the amount possessed. with intent to manufacture. distribute, or deliver, is:

1. Three grams or less, the person is guilty of a Class F felony.

2. More than 3 grams but not more than 10 grams, the person is guilty of a Class E felony.

3. More than 10 grains but not more than 50 grams, the person is guilty of a Class D felony.

4. More than 50 grams, the person is guilty of a Class C felony.

(f) *Lysergic acid diethylamide.* If a person violates this subsection with respect to lysergic acid diethylamide or a controlled substance analog of lysergic acid diethylamide and the amount possessed, with intent to manufacture, distribute or deliver, is:

1. One gram or less, the pcrson is guilty of a Class G felony.

2. More than one gram but not more than 5 grams, the person is guilty of a Class F felony.

3. More than 5 grams, the person is guilty of a Class E felony.

(g) *Psilocin and psilocybin.* If a person violates this subsection with respect to psilocin or psilocybin, or a controlled substance analog of psilocin or psilocybin, and the amount possessed, with intent to manufacture, distribute or deliver, is:

1. One hundred grams or less, the person is guilty of a Class G felony.

2. More than 100 grams but not more than 500 grams, the person is guilty of a Class F felony.

3. More than 500 grams, the person is guilty of a Class E felony.

(h) *Tetrahydrocannabinols.* If a pcrson violates this subsection with respect to tetrahydrocannabinols, included under s. 961.14 (4)(t), or a controlled substance analog of tetrahydrocannabinols, and the amount possessed, with intent to manufacture, distribute, or deliver, is:

1. Two hundred grams or less, or 4 or fewer plants containing tetrahydrocannabinols, the person is guilty of a Class I felony.

2. More than 200 grams but not more than 1,000 grams, or more than 4 plants containing tetrahydrocannabinols but not more than 20 plants containing tetrahydrocannabinols, the person is guilty of a Class H felony.

3. More than 1,000 grams but not more than 2,500 grams, or more than 20 plants containing tetrahydrocannabinols but not more than 50 plants containing tetrahydrocannabinols, the person is guilty of a Class G felony.

4. More than 2,500 grams but not more than 10,000 grams, or more than 50 plants containing tetrahydrocannabinols but not more than 200 plants containing tetrahydrocannabinols, the person is guilty of a Class F felony.

5. More than 10,000 grams, or more than 200 plants containing tetrahydrocannabinols, the person is guilty of a Class E felony.

(hm) *Certain other schedule I controlled substances and ketamine.* If the person violates this subsection with respect to gamma–hydroxybutyric acid, gamma–butyrolactone, 3,4–methylenedioxymethamphetamine 4–bromo–2,5–dimethoxy-beta-phenylethylamine, 4–methylthioamphetamine, ketamine, or a controlled substance analog of gamma–hydroxybutyric acid, gamma–butyroiactone, 3,4–methylenedioxymethamphetamine 4–bromo–2,5–dimethoxy–beta–phenylethylamine, or 4–methylthioamphetamine is subject to the following penalties if the amount possessed, with intent to manufacture, distribute, or deliver is:

1. Three grams or less, the person is guilty of a Class F felony.

2. More than 3 grams but not more than 10 grams, the person is guilty of a Class E felony.

3. More than 10 grams but not more than 50 grams, the person is guilty of a Class D felony.

4. More than 50 grams, the person is guilty of a Class C felony.

(i) *Schedule IV drugs generally.* Except as provided in par. (im), if a person violates this subsection with respect to a substance included in schedule IV, the person is guilty of a Class H felony.

(im) *Flunitrazepam.* If a person violates this subsection with respect to flunitrazepam and the amount possessed, with intent to manufacture, distribute, or deliver, is:

1. Three grams or less, the person is guilty of a Class F felony.

2. More than 3 grams but not more than 10 grams, the person is guilty of a Class E felony.

3. More than 10 grams but not more than 50 grams, the person is guilty of a Class D felony.

4. More than 50 grams, the pcrson is guilty of a Class C felony.

(j) *Schedule V drugs.* If a person violates this subsection with respect to a substance included in schedule V, the person is guilty of a Class I felony.

(1n) PIPERIDINE POSSESSION (a) No person may possess any quantity of piperidine or its salts with the intent to use the piperidine or its salts to manufacture a controlled substance or controlled substance analog in violation of this chapter.

(b) No person may possess any quantity of piperidine or its salts if he or she knows or has reason to know that the piperidine or its salts will be used to manufacture a controlled substance or controlled substance analog in violation of this chapter.

(c) A person who violates par. (a) or (b) is guilty of a Class F felony.

(1q) PENALTY RELATING TO TETRAHYDROCANNABINOLS IN CERTAIN CASES. Under s. 961.49(2), 1999 stats., and subs. (1)(h) and (1m) (h), if different penalty provisions apply to a person depending on whether the weight of tetrahydrocannabinols or the number of plants containing tetrahydrocannabinols is considered, the greater penalty provision applies.

(1r) DETERMINING WEIGHT OF SUBSTANCE. In determining amounts under s. 961.49 (2) (b), 1999 stats., and subs. (1) and (1m), an amount includes the weight of cocaine, cocaine base, heroin, phencyclidine, lysergic acid diethylamide, psilocin, psilocybin, amphetamine, methamphetamine, methcathinone or tetrahydrocannabinols or any controlled substance analog of any of these substances together with any compound, mixture, diluent, plant material or other substance mixed or combined with the controlled substance or controlled substance analog. In addition, in determining amounts under subs. (1) (h) and (1m) (h), the amount of tetrahydrocannabinols means anything included under s. 961.14 (4)(t) and includes the weight of any marijuana.

(1x) CONSPIRACY. Any person who conspires, as specified in s. 939.31, to commit a crime under sub. (1) (cm) to (h) or (Im) (cm) to (h) is subject to the applicable penalties under sub. (1) (cm) to (h) or (Im) (cm) to (h).

(2) COUNTERFEIT SUBSTANCES. Except as authorized by this chapter, it is unlawful for any person to create, manufacture, distribute, deliver or possess with intent to distribute or deliver, a counterfeit substance. Any person who violates this subsection is subject to the following penalties:

(a) *Counterfeit schedule I and II narcotic drugs.* If a person violates this subsection with respect to a counterfeit substance included in schedule I or II which is a narcotic drug, the person is guilty of a Class E felony.

(b) *Counterfeit schedule I, II, III, and IV drugs.* Except as provided in pars. (bm) and (cm), if a person violates this subsection with respect to any other counterfeit substance included in schedule I, II, III, or IV, the person is guilty of a Class H felony.

(bm) A counterfeit substance that is a counterfeit of phencyclidine, methamphetamine, lysergic acid diethylamide, gamma–hydroxybutyric acid, gamma–butyrolactone, 3,4–methylenedioxymethamphetamine 4–bromo–2,5–dimethoxy–beta–phenylethyl– amine, 4–methylthioamphetamine, or ketamine is punishable by the applicable fine and imprisonment for manufacture, distribution, delivery, or

possession with intent to manufacture, distribute, or deliver, of the genuine controlled substance under sub. (1) or (1m).

(cm) *Counterfeit flunitrazepam.* A counterfeit substance which is flunitrazepam, is punishable by the applicable fine and imprisonment for manufacture, distribution, delivery, or possession with intent to manufachire, distribute, or deliver, of the genuine controlled substance under sub. (1) or (1m).

(d) *Counterfeitschedule Vdrugs.* If a person violates this subsection with respect to a counterfeit substance included in schedule V, the person is guilty of a Class I felony.

(3g) POSSESSION. No person may possess or attempt to possess a controlled substance or a controlled substance analog unless the person obtains the substance or the 'analog directly from, or pursuant to a valid prescription or order of, a practitioner who is acting in the course of his or her professional practice, or unless the person is otherwise authorized by this chapter to possess the substance or the analog. Any person who violates this subsection is subject to the following penalties:

(am) *Schedule I and II narcotic drugs.* If a person possesses a controlled substance included in schedule I or II which is a narcotic drug, or possesses a controlled substance analog of a controlled substance included in schedule I or II which is a narcotic drug, the person is guilty of a Class I felony.

(b) *Other drugs generally.* Except as provided in pars. (c), (d), (e) and (f), if the person possesses or attempts to possess a controlled substance or controlled substance analog, other than a controlled substance included in schedule I or II that is a narcotic drug or a controlled substance analog of a controlled substance included in schedule I or II that is a narcotic drug, the person is guilty of a misdemeanor, punishable under s. 939.61.

(c) *Cocaine and cocaine base.* If a person possess or attempts to possess cocaine or cocaine base, or a controlled substance analog of cocaine or cocaine base, the person shall be fined not more than $5,000 and may be imprisoned for not more than one year in the county jail upon a first conviction and is guilty of a Class I felony for a 2nd or subsequent offense. For purposes of this paragraph, an offense is considered a 2nd or subsequent offense if, prior to the offender's conviction of the offense, the offender has at any time been convicted of any felony or misdemeanor under this chapter or under any statute of the United States or of any state relating to controlled substances, controlled substance analogs, narcotic drugs, marijuana, or depressant, stimulant, or hallucinogenic drugs.

(d) *Certain hallucinogenic and stimulant drugs.* If a person possesses or attempts to possess lysergic acid diethylamide, phencyclidine, amphetamine, methamphetamine, methcathinone, psilocin or psilocybin, or a controlled substance analog of lysergic acid diethylamide, phencyclidine, amphetamine, methamphetamine, methcathinone, psilocin or psilocybin, the person may be fined not more than $5,000 or imprisoned for not more than one year in the county jail or both upon a first conviction and is guilty of a Class I felony for a 2nd or subsequent offense. For purposes of this paragraph, an offense is considered a 2nd or subsequent offense if, prior to the offender's conviction of the offense, the offender has at any time been convicted of any felony or misdemeanor under this chapter or under any statute of the United States or of any state relating to controlled substances, controlled substance analogs, narcotic drugs, marijuana, or depressant, stimulant, or hallucinogenic drugs.

(e) *Tetrahydrocannabinols.* If a person possesses or attempts to possess tetrahydrocannabinols included under s. 961.14 (4) (t), or a controlled substance analog of tctrahydrocannabinols, the person may be fined not more than $ 1,000 or imprisoned for not more than 6 months or both upon a first conviction and is guilty of a Class I felony for a 2nd or subsequent offense. For purposes of this paragraph, an offense is considered a 2nd or subsequent offense if, prior to the offender's conviction of the offense, the offender has at any time been convicted of any felony or misdemeanor under this chapter or under any statute of the United States or of any state relating to controlled substances, controlled substance analogs, narcotic drugs, marijuana, or depressant, stimulant, or hallucinogenic drugs.

(f) *Gamma–hydroxybutyric acid, gamma–butyrolactone, ketamine, or flunitrazepam.* If a person possesses or attempts to possess gamma–hydroxybutyric acid, gamma–butyrolactone, ketamine or flunitrazepam, the person is guilty of a Class H felony.

(4) IMITATION CONTROLLED SUBSTANCES (am) 1. No person may knowingly distribute or deliver, attempt to distribute or deliver or cause to be distributed or delivered a noncontrolled substance and expressly or impliedly represent any of the following to the recipient:

a. That the substance is a controlled substance.

b. That the substance is of a nature, appearance or effect that will allow the recipient to display, sell, distribute, deliver or use the noncontrolled substance as a controlled substance, if the representation is made under circumstances in which the person has reasonable cause to believe that the noncontrolled substance will be used or distributed for use as a controlled substance.

2. Proof of any of the following is prima facie evidence of a representation specified in subd. 1. a. or b.:

a. The physical appearance of the finished product containing the substance is substantially the same as that of a specific controlled substance.

b. The substance is unpackaged or is packaged in a manner normally used for the illegal delivery of a controlled substance.

c. The substance is not labeled in accordance with 21 **USC** 352 or 353.

d. The person distributing or delivering, attempting to distribute or deliver or causing distribution or delivery of the substance to be made states to the recipient that the substance may be resold at a price that substantially exceeds the value of the substance.

3. A person who violates this paragraph is guilty of a Class I felony.

(bm) It is unlawful for any person to agree, consent or offer to lawfully manufacture, deliver, distribute or dispense any controlled substance to any person, or to offer, arrange or negotiate to have any controlled substance unlawfully manufactured, delivered, distributed or dispensed, and then manufacture, deliver, distribute or dispense or offer, arrange or negotiate to have manufactured, delivered, distributed or dispensed to any such person a substance which is not a controlled substance. Any person who violates this paragraph may be fined not more than $500 or imprisoned for not more than 6 months or both.

(5) DRUG ABUSE PROGRAM IMPROVEMENT SURCHARGE. (a) When a court imposes a fine for a violation of this section, it shall also impose a drug abuse program improvement surcharge in an amount of 50% of the fine and penalty assessment imposed.

(b) The clerk of the court shall collect and transmit the amount to the county treasurer as provided in s. 59.40 (2) (m). The county treasurer shall then make payment to the state treasurer as provided in s. 59.25 (3) (f) 2.

(c) All moneys collected from drug surcharges shall be deposited by the state treasurer in and utilized in accordance with s. 20.435 (6) (gb).

History: 1971 c. 219,307; 1973 c. 12; 1981 c. 90,314; 1985 a. 328; 1987 a. 339, 403; 1989 a. 31, 56,121; 1991 a. 39; 138; 1993 a 98,118,437,482; 1995 a. 201; 1995 a. 448 ss. 243 to 266, 487 to 490; Stats. 1995 s. 961.41; 1997 a. 220, 283; 1999 a. 21, 32, 48, 57; 2001 a. 16, 109.

An inference of **intent could be drawn** from **possession of hashish with a street value of $2,000 to $4,000 and opium with a street value** of **520,000 to $24,000. State v. Trimhell. 64 Wis. 2d 379.219 N.W.2d 369 (1974).**

No **presumption of intent to deliver is raised by sub.** (1m). **The statute merely** lists **evidence from which intent may be inferred. State ex rel. Bena v. Hon. John J. Crosetto, 73 Wis. 2d 261,243 N.W.2d 442 (1976).**

Evidence of a defendant's possession of a pipe containing burnt residue of marijuana was insufficient to impute knowledge to the defendant of possession of a controlled substance. Kabat v. State. 76 Wis. 2d 224,251 N.W.2d 38 (1977).

This section prohibits the act of **manufacture, as defined in 161.01 (13) [now 961.01** (13)]. **Possession of a controlled substance created by an accused is not required for conviction. This section is not unconstitutionally vague. State ex rel. Bell v. Columbia County Ct. 82 Wis. 2d 401, 263 N.W.2d 162 (1978).**

A conviction under sub. (1m) was upheld when the defendant possessed 1/3 gram of cocaine divided into 4 packages and evidence of defendant's prior sales of other drugs was admitted under s. 904.04 (2) as probative of intent to deliver the cocaine. Peasley v. State, 83 Wis. 2d 224, 265 N.W.2d 506 (1978).

Testimony that weapons were found at the accused's home was admissible as part of the chain of facts relevant to the accused's intent to deliver heroin State v. Wedgeworth, 100 Wis. 2d 514, 302 N.W.2d 810 (1981).

Being a procuring agent of the buyer is not a valid defense to a charge under this section. By facilitating a drug deal, the defendant was party to the crime. State v. Hecht, 116 Wis. 2d 605, 342 N.W.2d 721 (1984).

When police confiscated a large quantity of drugs from an empty home and the next day searched the defendant upon his return to the home, confiscating a small quantity of the same drugs, the defendant's conviction for the lesser-included offense of possession and the greater offense of possession with intent to deliver did not violate double jeopardy. State v. Stevens, 123 Wis. 2d 303, 367 N.W.2d 788 (1985).

The defendant was properly convicted of attempted delivery of cocaine even though a noncontrolled substance was delivered. State v. Cooper, 127 Wis. 2d 429, 380 N.W.2d 383 (Ct. App. 1985).

Possession is not a lesser included offense of manufacturing. State v. Peck, 143 Wis. 2d 624, 422 N.W.2d 160 (Ct. App. 1988).

Identification of a controlled substance can be established by circumstantial evidence such as lay experience based on familiarity through prior use, trading, or law enforcement. State v. Anderson, 176 Wis. 2d 196, N.W.2d (Ct. App. 1993).

A conspiracy under sub. (1x) must involve at least 2 people with each subject to the same penalty for the conspiracy. If the buyer of drugs is guilty of misdemeanor possession only, a felony conspiracy charge may not be brought against the buyer. State v. Smith, 189 Wis. 2d 496, 525 N.W.2d 264 (1995).

The state is not required to prove that a defendant knew the exact nature or precise chemical name of a possessed controlled substance. The state must only prove that the defendant knew or believed that the substance was a controlled substance. State v. Sartin, 200 Wis. 2d 47, 546 N.W.2d 449 (1996).

A delivery conspiracy under sub. (Ix) requires an agreement between a buyer and a seller that the buyer will deliver at least some of the controlled substance to a 3rd party. State v. Cavallari, 214 Wis. 2d 42, 571 N.W.2d 176 (Ct. App. 1997).

Standing alone, the presence of drugs in someone's system is insufficient to support a conviction for possession, but it is circumstantial evidence of prior possession. Evidence that the defendant was selling drugs is irrelevant to a charge of simple possession. Evidence that the defendant had money but no job does not have a tendency to prove possession. State v. Griffin, 220 Wis. 2d 371, 584 N.W.2d 127 (Ct. App. 1998)

Double jeopardy was not violated when the defendant was convicted of separate offenses under s. 161.41 [now 961.41] for simultaneous delivery of different controlled substances. Leonard v. Warden, Dodge Correctional Inst. 631 F. Supp. 1403 (1986).

961.42 Prohibited acts &penalties. (1) It is unlawful for any person knowingly to keep or maintain any store, shop, warehouse, dwelling, building, vehicle, boat, aircraft or other structure or place, which is resorted to by persons using controlled substances in violation of this chapter for the purpose of using these substances, or which is used for manufacturing, keeping or delivering them in violation of this chapter.

(2) Any person who violates this section is guilty of a Class I felony.

History: 1971 c. 219; 1995 a. 448 s. 267; Stats. 1995 s. 961.42; 1997 a. 283; 2001 a. 109.

"Keeping" a substance under sub. (1) means more than simple possession; it means keeping for the purpose of warehousing or storage for ultimate manufacture or delivery. State v. Brooks, 124 Wis. 2d 349, 369 N.W.2d 183 (Ct. App. 1985).

961.43 Prohibited acts C—penalties. (1) It is unlawful for any person:

(a) To acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception or subterfuge;

(b) Without authorization, to make, distribute or possess any punch, die, plate, stone or other thing designed to print, imprint or reproduce the trademark, trade name or other identifying mark, imprint or device of another or any likeness of any of the foregoing upon any drug or container or labeling thereof so as:

1. To make a counterfeit substance; or

2. To duplicate substantially the physical appearance, form, package or label of a controlled substance.

(2) Any person who violates this section is guilty of a Class H felony.

History: 1971 c. 219, 1981 c. 90; 1995 a. 448 s. 268; Stats. 1995 s. 961.43; 1997 a. 283: 2001 a. 109.

961.435 Specific penalty. Any person who violates s. 961.38 (5) may be fined not more than $500 or imprisoned not more than 30 days or both.

History: 1975 c. 190; 1995 a. 448 s. 26Y; Stats. 1995 s. 961.435.

961.437 Possession and disposal of waste from manufacture of methamphetamine. (1) In this section:

(a) "Dispose of" means discharge, deposit, inject, dump, spill, leak or place methamphetamine manufacturing waste into or on any land or water in a manner that may permit the waste to be emitted into the air, to be discharged into any waters of the state or otherwise to enter the environment.

(b) "Intentionally" has the meaning given in s. 939.23 (3).

(c) "Methamphetamine manufacturing waste" means any solid, semisolid, liquid or contained gaseous material or article that results from or is produced by the manufacture of methamphetamine or a controlled substance analog of methamphetamine in violation of this chapter.

(2) No person may do any of the following:

(a) Knowingly possess methamphetamine manufacturing waste.

(b) Intentionally dispose of methamphetamine manufacturing waste.

(3) Subsection (2) does not apply to a person who possesses or disposes of methamphetamine manufacturing waste under all of the following circumstances:

(a) The person is storing, treating or disposing of the methamphetamine manufacturing waste in compliance with chs. 287, 289, 291 and 292 or the person has notified a law enforcement agency of the existence of the methamphetamine manufacturing waste.

(b) The methamphetamine manufacturing waste had previously been possessed or disposed of by another person in violation of sub. (2).

(4) A person who violates sub. (2) is subject to the following penalties:

(a) For a first offense, the person is guilty of a Class H felony.

(b) For a 2nd or subsequent offense, the person is guilty of a Class F felony.

(5) Each day of a continuing violation of sub. (2) (a) or (b) constitutes a separate offense.

History: 1999 a. 129; 2001 a. 109.

961.44 Penalties under other laws. Any penalty imposed for violation of this chapter is in addition to, and not in lieu of, any civil or administrative penalty or sanction otherwise authorized by law.

History: 1971 c. 219; 1995 a. 448 s. 271; Stats. 1995 s. 961.44.

961.45 Bar to prosecution. If a violation of this chapter is a violation of a federal law or the law of another state, a conviction or acquittal under federal law or the law of another state for the same act is a bar to prosecution in this state.

History: 1971 c. 219; 1995 a. 448 s. 272; Stats. 1995 s. 961.45.

Under this section, a "prosecution" is to be equated with a conviction or acquittal. The date on which a sentence is imposed is not relevant to the determination of whether a "prosecution" has occurred. State v. Petty, 201 Wis. 2d 337, 548 N.W.2d 817 (1996).

This section bars a Wisconsin prosecution under ch. 961 for the same conduct on which a prior federal conviction is based. The restriction is not limited to the same crime as defined by its statutory elements. State v. Hansa 2001 WI 53, 243 Wis. 328, 627 N.W. 2d 195.

961.455 Using a child for illegal drug distribution or manufacturing purposes. (1) Any person who has attained the age of 17 years who knowingly solicits, hires, directs, employs or uses a person who is under the age of 17 years for the purpose of violating s. 961.41 (1) is guilty of a Class F felony.

(2) The knowledge requirement under sub. (1) does not require proof of knowledge of the age of the child. It is not a defense to a prosecution under this section that the actor mistakenly believed that the person solicited, hired, directed, employed or used under sub. (1) had attained the age of 18 years, even if the mistaken belief was reasonable.

(3) Solicitation under sub. (1) occurs in the manner described under s. 939.30, but the penalties under sub. (1) apply instead of the penalties under s. 939.30.

(4) If the conduct described under sub. (1) results in a violation under s. 961.41 (1), the actor is subject to prosecution and conviction under s. 961.41 (1) or this section or both.

History: 1989 a. 121; 1991 a. 153; 1995 a. 27; 1995 a. 448 ss. 273 to 275; Stats. 1995 s. 961.455; 1997 a. 283; 2001 a. 109.

961.46 Distribution to persons under age 18. If a person 17 years of age or over violates s. 961.41 (1) by distributing or delivering a controlled substance or a controlled substance analog to a person 17 years of age or under who is at least 3 years his or her junior, the applicable maximum term of imprisonment prescribed under s. 961.41 (1) for the offense may be increased by not more than 5 years.

History: 1971 c. 219; 1985 a. 328; 1987 a. 339; 1989 a. 121; 1993 a. 98, 118, 490; 1995 a. 27; 1995 a. 448 ss. 276 to 279; Stats. 1995 s. 961.46; 1999 a. 48, 57; 2001 a. 109.

961.47 Conditional discharge for possession or attempted possession as first offense. (1) Whenever any person who has not previously been convicted of any offense under this chapter, or of any offense under any statute of the United States or of any state or of any county ordinance relating to controlled substances or controlled substance analogs, narcotic drugs, marijuana or stimulant, depressant or hallucinogenic drugs, pleads guilty to or is found guilty of possession or attempted possession of a controlled substance or controlled substance analog under s. 961.41 (3g) @), the court, without entering a judgment of guilt and with the consent of the accused, may defer further proceedings and place him or her on probation upon terms and conditions. Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as otherwise provided. Upon fulfillment of the terms and conditions, the court shall discharge the person and dismiss the proceedings against him or her. Discharge and dismissal under this section shall be without adjudication of guilt and is not a conviction for purposes of disqualifications or disabilities imposed by law upon conviction of a crime, including the additional penalties imposed for 2nd or subsequent convictions under s. 961.48. There may be only one discharge and dismissal under this section with respect to any person.

(2) Within 20 days after probation is granted under this section, the clerk of court shall notify the department of justice of the name of the individual granted probation and any other information required by the department. This report shall be upon forms provided by the department.

History: 1971 c. 219; 1985 a. 29; 1989 a. 121; 1991 a. 39; 1995 a. 448 s. 285; Stats. 1995 s. 961.47.

A disposition of probation without entering a judgment of guilt. was not appealable because there was no judgment. If a defendant desires either a final judgment or order in the nature of a final judgment for appeal purposes, he or she has only to withhold consent. State v. Ryback, 64 Wis. 2d 574, 219 N.W.2d 263 (1974).

The reference to s. 161.41 (3) [now 961.41 (3g) (b)] in sub. (1) means that proceedings may only be deferred for convictions for crimes encompassed by s. 161.41 (3) [now 961.41 (3g) (b)]. State v. Boyer, 198 Wis. 2d 837, 543 N.W.2d 562 (Ct. App. 1995).

961.472 Assessment; certain possession *or* attempted possession offenses. (1) In this section, "facility" means an approved public treatment facility, as defined under s. 51.45 (2) (c).

(2) Except as provided in sub. (5), if a person pleads guilty or is found guilty of possession or attempted possession of a controlled substance or controlled substance analog under s. 961.41 (3g) (am), (c), or (d), the court shall order the person to comply with an assessment of the person's use of controlled substances. The court's order shall designate a facility that is operated by or pursuant to a contract with the county department established under s. 51.42 and that is certified by the department of health and family services to provide assessment services to perform the assessment and, if appropriate, to develop a proposed treatment plan. The court shall notify the person that noncompliance with the order limits the court's ability to determine whether the treatment option under s. 961.475 is appropriate. The court shall also notify the person of the fee provisions under s. 46.03 (18) (fm).

(3) The facility shall submit an assessment report within 14 days to the court. At the request of the facility, the court may extend the time period by not more than 20 additional workdays. The assessment report may include a proposed treatment plan.

(4) The court shall consider the assessment report in determining whether the treatment option under s. 961.475 is appropriate.

(5) If the court finds that a person under sub. (2) is already covered by or has recently completed an assessment under this section or a substantially similar assessment, the court is not required to make the order under sub. (2).

History: 1985 a. 328; 1987 a. 339; 1989 a. 121; 1993 a. 118; 1995 a. 27 s. 9126 (19); 1995 a. 448 s. 286; Stats. 1995 s. 961.472; 1999 a. 48; 2001 a. 109.

961.475 Treatment option. Whenever any person pleads guilty to or is found guilty of possession or attempted possession of a controlled substance or controlled substance analog under s. 961.41 (3g), the court may, upon request of the person and with the consent of a treatment facility with special inpatient or outpatient programs for the treatment of drug dependent persons, allow the person to enter the treatment programs voluntarily for purposes of treatment and rehabilitation. Treatment shall be for the period the treatment facility feels is necessary and required, but shall not exceed the maximum sentence allowable unless the person consents to the continued treatment. At the end of the necessary and required treatment, with the consent of the court, the person may be released from sentence. If treatment efforts are ineffective or the person ceases to cooperate with treatment rehabilitation efforts, the person may be remanded to the court for completion of sentencing.

History: 1971 c. 219, 336; 1985 a. 328; 1987 a. 339; 1989 a. 121; 1993 a. 118; 1995 a. 448 s. 287; Stats. 1995 s. 961.375.

961.48 Second or subsequent offenses. (1) If a person is charged under sub. (2m) with a felony offense under this chapter that is a 2nd or subsequent offense as provided under sub. (3) and the person is convicted of that 2nd or subsequent offense, the maximum term of imprisonment for the offense may be increased as follows:

(a) By not more than 6 years, if the offense is a Class C or D felony.

(b) By not more than 4 years, if the offense is a Class E, F, G, H, or I felony.

(2m) (a) Whenever a person charged with a felony offense under this chapter may be subject to a conviction for a 2nd or subsequent offense, he or she is not subject to an enhanced penalty under sub. (1) unless any applicable prior convictions are alleged in the complaint, indictment or information or in an amended complaint, indictment or information that is filed under par. (b) 1. A person is not subject to an enhanced penalty under sub. (1) for an offense if an allegation of applicable prior convictions is withdrawn by an amended complaint filed under par. (b) 2.

(b) Notwithstanding s. 971.29 (1), at any time before entry of a guilty or no contest plea or the commencement of a trial, a district attorney may file without leave of the court an amended complaint, information or indictment that does any of the following:

1. Charges an offense as a 2nd or subsequent offense under this chapter by alleging any applicable prior convictions.

2. Withdraws the charging of an offense as a 2nd or subsequent offense under this chapter by withdrawing an allegation of applicable prior convictions.

(3) For purposes of this section, a felony offense under this chapter is considered a 2nd or subsequent offense if, prior to the offender's conviction of the offense, the offender has at any time been convicted of any felony or misdemeanor offense under this chapter or under any statute of the United States or of any state relating to controlled substances or controlled substance analogs,

narcotic drugs, marijuana or depressant, stimulant or hallucinogenic drugs.

History: 1971 c. 219; 1985 a. 328; 1987 a. 339; 1989 a. 121; 1993 a. 98,118,482, 490; 1995 a. 402; 1995 a. 448 s. 288; Stats. 1995 s. 961.48; 1997 a. 35 ss. 340, 584; 1997 a. 220; 1999 a. 48: 2001 a. 109.

The trial court erred in imposing a 2nd sentence on a defendant convicted of a 2nd violation of 161.41(1) (a) and 161.14 (3) (k) [now 961.41 (1) (a) and 961.14 (3) (k)]. While the repeater statute, 161.48 [now 961.481, allows imposition of a penalty not exceeding twice that allowable for a 1st offense, it does not of itself create a crime and cannot support a separate and independent sentence. Olson v. State, 69 Wis. 2d 605.230 N.W.2d 634.

For offenses under ch. I61 [now 961], the court may apply this section or s. 939.62, but not both. State v. Ray, 166 Wis. 2d 855,481 N.W.2d 288 (Ct. App. 1992).

In sentencing a defendant when the maximum sentence is doubled under this section, the court considers the same factors it considers in **all** sentencing, including prior convictions. State v. Canadeo, 168 Wis. 2d 559,484 N.W.2d 340 (Ct. App. 1992).

Sentencing under this section was improper when the defendant did not admit a prior conviction and the state did not offer proof of one. State v. Coolidge, 173 Wis. 2d 783,496 N.W.2d 701 (Ct. App. 1993).

Sub. (4) sets forth a limitation on the 2nd or subsequent offense; the previous offense may be any conviction under ch. 161 [now 961]. State v. Robertson, 174 Wis. 2d 36,496 N.W.2d 221 (Ct. App. 1993).

This section is self-executing; a prosecutor may not prevent the imposition of the sentences under this section by not charging the defendant as a repeater. State v. Young. 180 Wis. 2d 700,511 N.W.2d 309 (Ct. App. 1993).

Conviction under this section for a second or subsequent offense does not require proof of the prior offense at trial beyond a reasonable doubt. State v. Miles, 221 Wis. 2d 56,584 N.W.2d 704 (Ct. App. 1998).

A conviction for possessing drug paraphernalia under s. 961.573 qualifies as a prior offense under sub. (3). State v. Moline, 229 Wis. 2d 38, 598 N.W.2d 929 (Ct. App. 1999).

961.49 Distribution of or possession with intent to deliver a controlled substance on or near certain places. If any person violates s. 961.41 (1) (cm), (d), (e), (f), (g) or (h) by delivering or distributing, or violates s. 961.41 (1m) (cm), (d), (e), (f), (g) or (h) by possessing with intent to deliver or distribute, cocaine, cocaine base, heroin, phencyclidine, lysergic acid diethylamide, psilocin, psilocybin, amphetamine, methamphetamine, metheathinone or any form of tetrahydrocannabinols or a controlled substance analog of any of these substances and the delivery, distribution or possession takes place under any of the following circumstances, the maximum term of imprisonment prescribed by law for that crime may be increased by 5 years:

(1) While the person is in or on the premises of a scattered.-site public housing project.

(2) While the person is in or on or otherwise within 1,000 feet of any of the following:

(a) A state, county, city, village or town park.

(b) A jail or correctional facility.

(c) A multiunit public housing project.

(d) A swimming pool open to members of the public.

(e) A youth center or a community center.

(f) Any private or public school premises.

(g) **A** school bus, as defined in s. 340.01 (56).

(3) While the person is in or on the premises of an approved treatment facility, as defined in s. 51.01 (2), that provides alcohol and other drug abuse treatment.

(4) While the person is within 1,000 feet of the premises of an approved treatment facility, as defined in s. 51.01 (2), that provides alcohol and other drug abuse treatment, if the person knows or should have known that he or she is within 1,000 feet of the premises of the facility or if the facility is readily recognizable as a facility that provides alcohol and other drug abuse treatment.

History: 1985 a. 328 1987 a. 332,339,403; 1989 a. 31, 107, 121; 1991 a. 39 1993 a. 87, 98, 118,281,490,491: 1995 a. 448 s. 289, 491; Stats. 1995 s. 961.49; 1997 a. 283,327; 1999 a. 32, 48, 57; 2001 a. 109.

Scienter is not an element of this section. State v. Hermann, 164 Wis. 2d 269,474 N.W.2d 906 (Ct. App. 1991).

A university campus is not a "school" within the meaning of s. 161.49 [now 961.49]. State v. Andrews, 171 Wis. 2d 217,491 N.W.2d 504 (Ct. App. 1992).

Anyone who passes within a zone listed in sub. (1) while in possession of a controlled substance with an intent to deliver it somewhere is subject to the penalty enhancer provided by this section whether **or** not the arrest is made within the zone and whether or not there is an intent to deliver the controlled substance within the zone. State v. Rasmussen, 195 Wis. 2d 109,536 N.W.2d 106 (Ct. App. 1995).

School "premises" begin at the school pmperty line. State v. Hall, 196 Wis. 2d 850, 540 N.W.2d 219 (Ct. App. 1995).

The penalty enhancer for sales close to parks does not violate due process and is not unconstitutionally vague. The ordinary meaning of "parks" includes undeveloped parks. Proximity to a park is rationally related to protecting public health and safety from drug sale activities. State v. Lopez, 207 Wis. 2d 415,559 N.W.2d 264 **(Ct.** App. 1996).

Day care centers are a subset of "youth centers" as defined in s. 961.01(22) and come within the definition of places listed in s. 961.49 (2). State v. Van Riper. 222 Wis. 2d 197, 586 N.W.2d 198 (Ct. App. 1998).

This section contains two elemental facts—a distance requirement and a particularized protected place—both of which must be submitted to the jury and pmven beyond a reasonable doubt. State v. Harvey, 2002 WI 93,254 Wis. 2d 442. 647 N.W.2d 189.

961.495 Possession or attempted possession of a controlled substance on or near certain places. If any person violates s. 961.41 (3g) by possessing or attempting to possess a controlled substance included in schedule I or 11, a controlled substance analog of a controlled substance included in schedule I or II or ketamine or flunitrazepam while in or on the premises of a scattered-site public housing project, while in or on or otherwise within 1,000 feet of a state, county, city, village or town park, a jail or correctional facility, a multiunit public housing project, a swimming pool open to members of the public, a youth center or a community center, while in or on or otherwise within 1,000 feet of any private or public school premises or while in or on or otherwise within 1,000 feet of a school bus, as defined in s. 340.01 (56), the court shall, in addition to any other penalties that may apply to the crime, impose 100 hours of community service work for a public agency or a nonprofit charitable organization. The court shall ensure that the defendant is provided a written statement of the terms of the community service order and that the community service order is monitored. Any organization or agency acting in good faith to which a defendant is assigned pursuant to an order under this section has immunity from any civil liability in excess of $25,000 for acts or omissions by or impacting on the defendant.

History: 1989 a. 31, 121; 1991 a.39; 1993 a. 87, 118, 281, 490; 1995 a. 448 s. 290; Stats. 1995 s. 961.495; 1999 a. 57.

961.50 Suspension or revocation of operating privilege. (1) If a person is convicted of any violation of this chapter, the court shall, in addition to any other penalties that may apply to the crime, suspend the person's operating privilege, as defined in s. 340.01 (40), for not less than 6 months nor more than 5 years. The court shall immediately take possession of any suspended license and forward it to the department of transportation together with the record of conviction and notice of the suspension. The person is eligible for an occupational license under s. 343.10 as follows:

(a) For the first such conviction, at any time.

(b) For a 2nd conviction within **a** 5-year period, after the first 60 days of the suspension or revocation period.

(e) For a 3rd or subsequent conviction within a 5-year period, after the first 90 days of the suspension or revocation period.

(2) For purposes of counting the number of convictions under sub. (1), convictions under the law of a federally recognized American Indian tribe or band in this state, federal law or the law of another jurisdiction, as defined in s. 343.32 (Im) (a), for any offense therein which, if the person had committed the offense in this state and been convicted of the offense under the laws of this state, would have required suspension or revocation of such person's operating privilege under this section, shall be counted and given the effect specified under sub. (1). The 5-year period under this section shall be measured from the dates of the violations which resulted in the convictions.

(3) If the person's license or operating privilege is currently suspended or revoked or the person docs not currently possess a valid operator's license issued under ch. 343, the suspension or revocation under this section is effective on the date on which the person is first eligible and applies for issuance, renewal or reinstatement of an operator's license under ch. 343.

History: 1991 a 39; 1993 a. 16,480; 1995 a 448 s 291: Stats. 1995 s. 961.50; 1997 a. 84.

A suspension imposed pursuant to this section is not a 'presumptive minimum sentence" under s. 961.438. A minimum 6–month suspension is mandatory. State v. Herman. 2002 WI App 28, 250 Wis. 2d 166,640 N.W.2d 539.

SUBCHAPTER V

ENFORCEMENT AND ADMINISTRATIVE PROVISIONS

961.51 Powers of enforcement personnel. (1) Any officer or employee of the pharmacy examining board designated by the examining board may:

(a) Execute and serve search warrants, arrest warrants, administrative inspection warrants, subpoenas and summonses issued under the authority of this state;

(b) Make arrests without warrant for any offense under this chapter committed in the officer's or employee's presence, or if the officer or employee has reasonable grounds to believe that the person to be arrested has committed or is committing a violation of this chapter which may constitute a felony; and

(c) Make seizures of property pursuant to this chapter.

(2) This section does not affect the responsibility of law enforcement officers and agencies to enforce this chapter, nor the authority granted the department of justice under s. 165.70.

History: 1971 c. 219; 1985 a. 29; 1993 8.482: 1995 a 448 s. 293; Stats. 1995 s. 961.51.

961.52 Administrative inspections and warrants. (1) Issuance and execution of administrative inspection warrants shalt be as follows:

(a) A judge of a court of record, upon proper oath or affirmation showing probable cause, may issue warrants for the purpose of conducting administrative inspections authorized by this chapter or rules hereunder, and seizures of property appropriate to the inspections. For purposes of the issuance of administrative inspection warrants, probable cause exists upon showing a valid public interest in the effective enforcement of this chapter or rules hereunder, sufficient to justify administrative inspection of the area, premises, building or conveyance in the circumstances specified in the application for the warrant.

(b) A warrant shall issue only upon an affidavit of a designated officer or employee of the pharmacy examining board or the department of justice having knowledge of the facts alleged, sworn to before the judge and establishing the grounds for issuing the warrant. If the judge is satisfied that grounds for the application exist or that there is probable cause to believe they exist, the judge shall issue a warrant identifying the area, premises, building or conveyance to be inspected, the purpose of the inspection, and, if appropriate, the type of property to be inspected, if any. The warrant shall:

1. State the grounds for its issuance and the name of each person whose affidavit has been taken in support thereof;

2. Be directed to a person authorized by law to execute it;

3. Command the person to whom it is directed to inspect the area, premises, building or conveyance identified for the purpose specified and, if appropriate, direct the seizure of the property specified;

4. Identify the item or types of property to be seized, if any;

5. Direct that it be served during normal business hours and designate the judge to whom it shall be returned.

(c) A warrant issued pursuant to this section must be executed and returned within 10 days of its date unless, upon a showing of a need for additional time, the court orders otherwise. If property is seized pursuant to a warrant, a copy shall be given to the person from whom or from whose premises the property is taken, together with a receipt for the property taken. The return of the warrant shall be made promptly, accompanied by a written inventory of any property taken. The inventory shall be made in the presence of the person executing the warrant and of the person from whose possession or premises the property was taken, if present, or in the presence of at least one credible person other than the person executing the warrant. A copy of the inventory shall be delivered to the person from whom or from whose premises the property was taken and to the applicant for the warrant.

(d) The judge who has issued a warrant shall attach thereto a copy of the return and all papers returnable in connection therewith and file them with the clerk of court for the county in which the inspection was made.

(2) The pharmacy examining board and the department of justice may make administrative inspections of controlled premises in accordance with the following provisions:

[a) For purposes of this section only, "controlled premises" means:

1. Places where persons authorized under s. 961.32 to possess controlled substances in this state are required by federal law to keep records; and

2. Places including factories, warehouses, establishments and conveyances in which persons authorized under s. 961.32 to possess controlled substances in this state are permitted by federal law to hold, manufacture, compound, process, sell, deliver or otherwise dispose of any controlled substance.

(b) When authorized by an administrative inspection warrant issued pursuant to sub. (1), an officer or employee designated by the pharmacy examining board or the department of justice, upon presenting the warrant and appropriate credentials to the owner, operator or agent in charge, may enter controlled premises for the purpose of conducting an administrative inspection.

(c) When authorized by an administrative inspection warrant, an officer or employee designated by the pharmacy examining board or the department of justice may:

1. Inspect and copy records relating to controlled substances;

2. Inspect, within reasonable limits and in a reasonable manner, controlled premises and all pertinent equipment, finished and unfinished material, containers and labeling found therein, and, except as provided in par. **(e),** all other things therein, including records, files, papers, processes, controls and facilities bearing on violation of this chapter; and

3. Inventory any stock of any controlled substance therein and obtain samples thereof.

(d) This section does not prevent entries and administrative inspections, including seizures of property, without a warrant:

1. If the owner, operator or agent in charge of the controlled premises consents;

2. In situations presenting imminent danger to health or safety;

3. In situations involving inspection of conveyances if there is reasonable cause to believe that the mobility of the conveyance makes it impracticable to obtain a warrant;

4. In any other exceptional or emergency circumstance where time or opportunity to apply for a warrant is lacking; or

5. In all other situations in which a warrant is not constitutionally required.

(e) An inspection authorized by this section shall not extend to financial data, sales data, other than shipment data, or pricing data unless the owner, operator or agent in charge of the controlled premises consents in writing.

History: 1971 c. 219; 1983 a. 538; 1985 a. 29; 1993 a. 482; 1995 a. 448 s. 294; Stats. 1995 s. 961.52.

961.53 Violations constituting public nuisance. Violations of this chapter constitute public nuisances under ch. 823, irrespective of any criminal prosecutions which may be or are commenced based on the same acts.

History: 1971 c. **219;** Sup. Ct. Order, 67 Wis. 2d 585,775 (1975); 1995 a. 448 s. 295; Stats. 1995 s. 961.53.

961.54 Cooperative arrangements and confidentiality. The department of justice shall cooperate with federal, state and local agencies in discharging its responsibilities concerning traffic

in controlled substances and in suppressing the abuse of controlled substances. To this end, it may:

(1) Arrange for the exchange of information among governmental officials concerning the use and abuse of controlled substances;

(2) Coordinate and coopcratc in training programs concerning controlled substance law enforcement at local and state levels;

(3) Cooperate with the bureau by establishing a ccntralizcd unit to accept, catalog, file and collect statistics, including records of drug dependent persons and other controlled substance law offenders within the state, and make the information available for federal, state and local law enforcement purposes. It shall not furnish the name or identity of a patient or research subject whose identity could not be obtained under s. 961.335 **(7);** and

(4) Conduct programs of eradication aimed at destroying wild or illicit growth of plant species from which controlled substances may be extracted.

History: 1971 c. 219,336; 1975 c. 110, 1995 a. 448 s. 296, Stats. 1995 s. 961.54.

961.55 Forfeitures. (1) The following are subject to forfeiture:

(a) All controlled substances or controlled substance analogs which have been manufactured, delivered, distributed, dispensed or acquired in violation of this chapter.

(b) All raw materials, products and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, distributing, importing or exporting any controlled substance or controlled substance analog in violation of this chapter.

(c) All property which is used, or intended for use, as a container for property described in pars. (a) and (b).

(d) All vehicles which are used, or intended for use, to transport, or in any manner to facilitate the transportation, for the purpose of sale or receipt of property described in pars. (a) and (b) or for the purpose of transporting any property or weapon used or to be used or received in the commission of any felony under this chapter, but:

1. No vehicle used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless it appears that the owner or other person in charge of the vehicle is a consenting party or privy to a violation of this chapter;

2. No vehicle is subject to forfeiture under this section by reason of any act or omission established by the owner thereof to have been committed or omitted without the owner's knowledge or consent. This subdivision does not apply to any vehicle owned by a person who is under 16 years of age on the date that the vehicle is used, or is intended for use, in the manner described under par. (d) (intro.), unless the court determines that the owner is an innocent bona fide owner;

3. **A** vehicle is not subject to forfeiture for a violation of s. 961.41 (3g) (b), (c), (d), (e) or (f); and

4. If forfeiture of a vehicle encumbered by a bona fide perfected security interest occurs, the holder of the security interest shall be paid from the proceeds of the forfeiture if the security interest was perfected prior to the date of the commission of the felony which forms the basis for the forfeiture and he or she neither had knowledge of nor consented to the act or omission.

(e) All books, records, and research products and materials, including formulas, microfilm, tapes and data, which are used, or intended for use, in violation of this chapter.

(f) All property, real or personal, including money, directly or indirectly derived from or realized through the commission of any crime under this chapter.

(g) Any drug paraphernalia, as defined in s. 961.571, used in violation of this chapter.

(2) Property subject to forfeiture under this chapter may be seized by any officer or employee designated in s. 961.51 (1) or (2) or a law enforcement officer upon process issued by any court of record having jurisdiction over the property. Seizure without process may be made if:

(a) The seizure is incident to an surest or a search under a search warrant or an inspection under an administrative inspection warrant;

(b) The property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding based upon this chapter;

(c) The officer or employee or a law enforcement officer has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(d) The officer or employee or a law enforcement officer has probable cause to believe that the property was used or is intended to be used in violation of this chapter, that the property was derived from or realized through a crime under this chapter or that the property is a vehicle which was used as described in sub. (1) (d).

(3) In the event of seizure under sub. (2), proceedings under sub. (4) shall be instituted promptly. All dispositions and forfeitures under this section and ss. 961.555 and 961.56 shall be made with due provision for the rights of innocent persons under sub. (1) (d) 1., 2. and 4. Any property seized but not forfeited shall be returned to its rightful owner. Any person claiming the right to possession of property seized may apply for its return to the circuit court for the county in which the property was seized. The court shall order such notice as it deems adequate to be given the district attorney and all persons who have or may have an interest in the property and shall hold a hearing to hear all claims to its true ownership. If the right to possession is proved to the court's satisfaction, it shall order the property returned if:

(a) The property is not needed as evidence or, if needed, satisfactory arrangements can be made for its return for subsequent use as evidence; or

(b) All proceedings in which it might bc required have been completed.

(4) Property taken or detained under this section shall not be subject to replevin, but is deemed to be in the custody of the sheriff of the county in which the seizure was made subject only to the orders and decrees of the court having jurisdiction over the forfeiture proceedings. When property is seized under this chapter, the person seizing the property may:

(a) Place the property under seal;

(b) Remove the property to a place designated by it; or

(c) Require the sheriff of the county in which the seizure was made to take custody of the property and remove it to an appropriate location for disposition in accordance with law.

(5) When property is forfeited under this chapter, the agency whose officer or employee seized the property may:

(a) Retain it for official use;

(b) Sell that which is not required to be destroyed by law and which is not harmful to the public. The agency may use 50% of the amount received for payment of all proper expenses of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising and court costs and the costs of investigation and prosecution reasonably incurred. The remainder shall be deposited in the school fund as proceeds of *the* forfeiture. If the property forfeited is money, all the money shall be deposited in the school fund;

(c) Require the sheriff of the county in which the property was seized to take custody of the property and remove it for disposition in accordance with law; or

(d) Forward it to the bureau for disposition.

(6) Controlled substances included in schedule I and controlled substance analogs of controlled substances included in schedule I that are possessed, transferred, sold, offered for sale or attempted to be possessed in violation of this chapter are contraband and shall be seized and summarily forfeited to the state. Con-

trolled substances included in schedule I and controlled substance analogs of controlled substances included in schedule 1 that are seized or come into the possession of the state, the owners of which are unknown, are contraband and shall be summarily forfeited to the state.

(6m) Flunitrazcpam or ketamine that is possessed, transferred, sold, offered for sale or attempted to be possessed in violation of this chapter is contraband and shall be seized and summarily forfeited to the state. Flunitrazepam or ketamine that is seized or comes into the possession of the state, the owner of which is unknown, is contraband and shall be summarily forfeited to the state.

(7) Species of plants from which controlled substances in schedules I and II may be derived which have been planted or cultivated in violation of this chapter, or of which the owners or cultivators are unknown, or which are wild growths, may be seized and summarily forfeited to the state.

(8) The failure, upon demand by any officer or employee designated in s. 961.51 (1) or (2), of the person in occupancy or in control of land or premises upon which the species of plants are growing or being stored, to produce an appropriate federal registration, or proof that the person is the holder thereof, constitutes authority for the seizure and forfeiture of the plants.

History: 1971 c. 219,307; 1981 c. 267; 1985 a. 245,328; 1987 a. 339; 1989 a. 121; 1993 a. 118, 482; 1995 a. 448 ss. 297 to 305; Stats. 1995 s. 961.55; 1997 a. 220; 1999 a. 48, 57, 110; 2001 a. 109.

A vehicle obtained out of state and used to transport a controlled substance is subject to forfeiture under sub. (1) (d). State v. S & S Meats, Inc. 92 Wis. 2d 64,284 N.W.2d 712 (Ct. App. 1979).

A vehicle subject to sub. (1) (d) 4 is not subject to forfeiture unless the secured party consents. State v. Fouse, 120 Wis. 2d 471,355 N.W.2d 366 (Ct. App. 1984).

Under sub. (1) (f), the state may seize property from an owner not charged with a crime. State v. Hooper, 122 Wis. 2d 748,364 N.W.2d 175 (Ct. App. 1985).

The "seized but not forfeited" language of s. 961.55 (3) means that the portion of that subsection related to return of property is only triggered by an unsuccessful forfeiture action brought by the state; in the event that the district attorney elects not to bring a forfeiture action, a person seeking the return of seized property may do so under s. 968.20. Jones v. State, 226 Wis. 2d 565,594 N.W.2d 738 (1999).

961.555 Forfeiture proceedings. (1) TYPE OF ACTION; WHERE BROUGHT. In an action brought to cause the forfeiture of any property seized under s. 961.55, the court may render a judgment in rem or against a party personally, or both. The circuit court for the county in which the property was seized shall have jurisdiction over any proceedings regarding the property when the action is commenced in state court. Any property seized may be the subject of a federal forfeiture action.

(2) COMMENCEMENT. (a) The district attorney of the county within which the property was seized shall commence the forfeiture action within 30 days after the seizure of the property, except that the defendant may request that the forfeiture proceedings be adjourned until after adjudication of any charge concerning a crime which was the basis for the seizure of the property. The request shall be granted. The forfeiture action shall be commenced by filing a summons, complaint and affidavit of the person who seized the property with the clerk of circuit court, provided service of authenticated copies of those papers is made in accordance with ch. 801 within 90 days after filing upon the person from whom the property was seized and upon any person known to have a bona fide perfected security interest in the property.

(b) Upon service of an answer, the action shall be set for hearing within 60 days of the service of the answer but may be continued for cause or upon stipulation of the parties.

(c) In counties having a population of 500,000 or more, the district attorney or corporation counsel may proceed under par. (a).

(d) If no answer is served or no issue of law or fact has been joined and the time for that service or joining issue has expired, or if any defendant fails to appear at trial after answering or joining issue, the court may render a default judgment as provided in s. 806.02.

(3) BURDEN OF PROOF. The state shall have the burden of satisfying or convincing to a reasonable certainty by the greater weight of the credible evidence that the property is subject to forfeiture under s. 961.55.

(4) ACTION AGAINST OTHER PROPERTY OF **THE PERSON.** The court may order the forfeiture of any other property of a defendant up to the value of property found by the court to be subject to forfeiture under s. 961.55 if the property subject to forfeiture meets any of the following conditions:

(a) Cannot be located.

(b) Has been transferred or conveyed to, sold to or deposited with a 3rd party.

(c) Is beyond the jurisdiction of the court.

(d) Has been substantially diminished in value while not in the actual physical custody of the law enforcement agency.

(e) Has been commingled with other property that cannot be divided without difficulty.

History: 1971 c. 219; Sup. Ct. Order, 67 Wis. 2d 585, 752 (1975); 1981 c. 113, 267; Sup. Ct. Order, 120 Wis. 2d xiii; 1985 a. 245; 1989 a. 121; 1993 a. 321; 1995 a. 448 s. 306; Stats. 1995 s. 961.555; 1997 a. 187.

Judicial Council Committee Note, 1974: The district attorney would be required to file within the 15 [now 30] day period. The answer need not be verified. [Re Order effective Jan. 1, 1976]

Judicial Council Note, 1984: Sub. (2) (a) has been amended by allowing 60 days after the action is commenced for service of the summons. complaint and affidavit on the defendants. The prior statute, requiring service within 30 days after seizure of the property, was an exception to the general rule of s. 801.02(2), stats. [Re Order effective Jan. 1, 1985]

The time provisions of sub. (2) are mandatory and jurisdictional. State v. Rosen, 72 Wis. 2d 200, 240 N.W.2d 168 (1976).

Persons served under sub. (2) (a) must be named as defendants. An action cannot be brought against an inanimate object as a sole "defendant." State v. One 1973 Cadillac, 95 Wis. 2d 641,291 N.W.2d 626 (Ct. App. 1980).

An affidavit under sub. (2) (a) must be executed by a person who was present at the seizure or who ordered the seizure and received reports from those present at the seizure. State v. Hooper, 122 Wis. 2d 748,364 N.W.2d 175 (Ct. App. 1985).

Sub. (2) (b) requires a hearing be held, not set, within 60 days of the service of the answer and allows a continuance only when it is applied for within the 60 day period. State v. Baye, 191 Wis. 2d 334,528 N.W.2d 81 (Ct. App. 1995).

961.56 Burden of proof; liabilities. (1) It is not necessary for the state to negate any exemption or exception in this chapter in any complaint, information, indictment or other pleading or in any trial, hearing or other proceeding under this chapter. The burden of proof of any exemption or exception is upon the person claiming it.

(2) In the absence of proof that a person is the duly authorized holder of an appropriate federal registration or order form, the person is presumed not to be the holder of the registration or form. The burden of proof is upon the person to rebut the presumption.

(3) No liability is imposed by this chapter upon any authorized state, county or municipal officer or employee engaged in the lawful performance of the officer's or employee's duties.

History: 1971 c. 219,307; 1993 a. 482; 1995 a 448 s. 307; Stats. 1995 s. 961.56.

961.565 Enforcement reports. On or before November 15 annually, the governor and the attorney general shall submit a joint report to the chief clerk of each house of the legislature for distribution to the legislature under s. 13.172 (2) describing the activities in this state during the previous year to enforce the laws regulating controlled substances. The report shall contain recommendations for improving the effectiveness of enforcement activities and other efforts to combat the abuse of controlled substances.

History: 1989 a. 122; 1995 a. 448 s. 308; Stats. 1995 s. 961.565.

SUBCHAPTER VI

DRUG PARAPHERNALIA

961.571 Definitions. In this subchapter:

(1) (a) "Drug paraphernalia" means all equipment, products and materials of any kind that are used, designed for use or primarily intended for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackag-

ing, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a controlled substance or controlled substance analog in violation of this chapter. "Drug paraphernalia" includes, but is not limited to, any of the following:

1. Kits used, designed for use or primarily intended for use in planting, propagating, cultivating, growing or harvesting of any species of plant that is a controlled substance or from which a controlled substance or controlled substance analog can be derived.

2. Kits used, designed for use or primarily intended for use in manufacturing, compounding, converting, producing, processing or preparing controlled substances or controlled substance analogs.

3. Isomerization devices used, designed for use or primarily intended for use in increasing the potency of any species of plant that is a controlled substance.

4. Testing equipment used, designed for use or primarily intended for use in identifying, or in analyzing the strength, effectiveness or purity of, controlled substances or controlled substance analogs.

5. Scales and balances used, designed for use or primarily intended for use in weighing or measuring controlled substances or controlled substance analogs.

6. Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose and lactose, used, designed for use or primarily intended for use in cutting Controlled substances or controlled substance analogs.

7. Separation gins and sifters used, designed for use or primarily intended for use in removing twigs and seeds from, or in otherwise cleaning or refining, marijuana.

8. Blenders, bowls, containers, spoons and mixing devices used, designed for use or primarily intended for use in compounding controlled substances or controlled substance analogs.

9. Capsules, balloons, envelopes and other containers used, designed for use or primarily intended for use in packaging small quantities of controlled substances or controlled substance analogs.

10. Containers and other objects used, designed for use or primarily intended for use in storing or concealing controlled substances or controlled substance analogs.

11. Objects used, designed for use or primarily intended for use in ingesting, inhaling or otherwise introducing marijuana, cocaine, hashish or hashish oil into the human body, such as:

a. Metal, wooden, acrylic, glass, stone, plastic or ceramic pipes with or without screens, permanent screens, hashish heads or punctured metal bowls.

b. Water pipes.

c. Carburetion tubes and devices.

d. Smoking and carburetion masks.

e. Roach clips: meaning objects used to hold burning material, such as a marijuana cigarette, that has become too small or too short to be held in the hand.

f. Miniature cocaine spoons and cocaine vials.

g. Chamber pipes.

h. Carburetor pipes.

i. Electric pipes.

j. Air–driven pipes.

k. Chilams.

L. Bongs.

m. Ice pipes or chillers.

(b) "Drug paraphernalia" excludes:

1. Hypodermic syringes, needles and other objects used or intended for use in parenterally injecting substances into the human body.

2. Any items, including pipes, papers and accessories, that are designed for use or primarily intended for use with tobacco products.

(2) "Primarily" means chiefly or mainly.

History: 1989 a. 121; 1991 a. 140; 1995 a. 448 s. 310; Stats. 1995 s. 961.571.

A tobacco pipe is excluded from the definition of drug paraphernalia under sub. (1) (b) 2. The presence of residue of a controlled substance in the pipe does not change that result. State v. Martinez, 210 Wis. 2d 397, 563 N.W.2d 922 (Ct. App. 1997).

961.572 Determination. (1) In determining whether an object is drug paraphernalia, a court or other authority shall consider, in addition to all other legally relevant factors, the following:

(a) Statements by an owner or by anyone in control of the object concerning its use.

(b) The proximity of the object, in time and space, to a direct violation of this chapter.

(c) The proximity of the object to controlled substances or controlled substance analogs.

(d) The existence of any residue of controlled substances or controlled substance analogs on the object.

(e) Direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver it to persons whom he or she knows intend to use the object to facilitate a violation of this chapter; the innocence of an owner, or of anyone in control of the object, as to a direct violation of this chapter shall not prevent a finding that the object is designed for use or primarily intended for use as drug paraphernalia.

(f) Instructions, oral or written, provided with the object concerning its use.

(g) Descriptive materials accompanying the object that explain or depict its use.

(h) Local advertising concerning its use.

(i) The manner in which the object is displayed for sale.

(j) Whether the owner, or anyone in control of the object, is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products.

(k) The existence and scope of legitimate uses for the object in the community.

(L) Expert testimony concerning its use.

(2) In determining under this subchapter whether an item is designed for a particular use, a court or other authority shall consider the objective physical characteristics and design features of the item.

(3) In determining under this subchapter whether an item is primarily intended for a particular use, a court or other authority shall consider the subjective intent of the defendant.

History: 1989 a. 121; 1991 a. 140; 1995 a. 448 s. 311; Stats. 1995 s. 961.572.

961.573 Possession of drug paraphernalia. (1) No person may use, or possess with the primary intent to use, drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack. store. contain, conceal, inject. ingest, inhale or otherwise introduce into the human body a controlled substance or controlled substance analog in violation of this chapter. Any person who violates this subsection may be tined not more than $500 or imprisoned for not more than 30 days or both.

(2) Any person who violates sub. (1) who is under 17 years of age is subject to a disposition under s. 938.344 (2e).

(3) No person may use. or possess with the primary intent to use, drug paraphernalia to manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack or store methamphetamine or a controlled substance analog of methamphet-

amine in violation of this chapter. Any person who violates this subsection is guilty of a Class H felony.

History: 1989 a. **121;** 1991 a. 39, 140; 1995 a. 27, 77; 1995 a. 448 ss. 312 to 314, 492; Stats. 1995 s. 961.573; 1999 a. 129; 2001 a. 109.

961.574 Manufacture or delivery of drug paraphernalia. (1) No person may deliver, possess with intent to deliver, or manufacture with intent to deliver, drug paraphernalia, knowing that it will be primarily used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled substance or controlled substance analog in violation of this chapter. Any person who violates this subsection may be fined not more than $1,000 or imprisoned for not more than 90 days or both.

(2) Any person who violates sub. (1) who is under 17 years of age is subject to a disposition under s. 938.344 (2e).

(3) No person may deliver, possess with intent to deliver, or manufacture with intent to deliver, drug paraphernalia, knowing that it will be primarily used to manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack or store methamphetamine or a controlled substance analog of methamphetamine in violation of this chapter. Any person who violates this subsection is guilty of a Class **H** felony.

History: 1989 a. **121;** 1991 a. 39, 140; 1995 a. 27, 77; 1995 a. 448 ss. 315 to 317, 493; Stats. 1995 s. 961.574; 1999 a. 129; 2001 a. 109.

961.575 Delivery of drug paraphernalia to a minor. (1) Any person 17 years of age or over who violates s. 961.574 (1) by delivering drug paraphernalia to a person 17 years of age or under who is at least 3 years younger than the violator may be fined not more than $10,000 or imprisoned for not more than 9 months or both.

(2) Any person who violates this section who is under 17 years of age is subject to a disposition under s. 938.344 (2e).

(3) Any person 17 years of age or over who violates s. 961.574 (3) by delivering drug paraphernalia to a person 17 years of age or under is guilty of a Class G felony.

History: 1989 a. **121;** 1991 a. 39; 1995 a. 27, 77; 1995 a. 448 ss. 318, 494; Stats. 1995 s. 961.575; 1999 a. 129; 2001 a. 109.

961.576 Advertisement of drug paraphernalia. No person may place in any newspaper, magazine, handbill or other publication any advertisement, knowing that the purpose of the advertisement, in whole or in part, is to promote the sale of objects designed for use or primarily intended for use as drug paraphernalia in violation of this chapter. Any person who violates this section may be fined not more than $500 or imprisoned for not more than 30 days or both.

History: 1989 a. 121; 1991 a. 140; 1995 a. 448 s. 319; Stats. 1995 s. 961.576.

961.577 Municipal ordinances. Nothing in this subchapter precludes a city, village or town from prohibiting conduct that is the same as that prohibited by s. 961.573 (2), 961.574 (2) or 961.575 (2).

History: 1989 a. 121; 1995 a. 448 s. 320; Stats. 1995 s. 961.577.

SUBCHAPTER VII

MISCELLANEOUS

961.61 Uniformity of interpretation. This chapter shall be so applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among those states which enact it.

History: 1971 c. 219; 1995 a. 448 s. 322; Stats. 1995 s. 961.61.

961.62 Short title. This chapter may be cited as the "Uniform Controlled Substances Act".

History: 1971 c. 219; 1995 a. 448 s. 323; Stats. 1995 s. 961.62.

Chapter VE 1

AUTHORITY AND DEFINITIONS

VE 1.01 Authority. VE 1.02 Definitions.

VE 1.01 Authority. Rules in chs. VE 1 to 9 are adopted under authority of ss. 15.08 (5) (b), 227.11 (2) (a), and 453.03, Stats.

History: Cr. Register, September, **1989,** No. **405,** eff. **10–1–89.**

VE 1.02 Definitions. As used in chs. VE 1 to 9:

(1) "Approved veterinary college" means a veterinary college which is AVMA accredited or approved and which is approved by the board at its annual review of veterinary colleges.

(1m) "AVMA" means the American veterinary medical association.

(2) "Board" means the veterinary examining board.

Note: The **board** office is located at **1400** East Washington Avenue, P.O. Box **8935,** Madison, Wisconsin **53708.**

(3) "Client" means the owner or other person responsible for caretaking of the animal which the veterinarian is treating.

(4) "Department" means the department of regulation and licensing.

(5) "Direct supervision" means immediate availability to continually coordinate, direct and inspect personally the practice of another.

(6) "License" means a document issued to a person by the board, after the person has met the requirements of ss. 453.06 (1), 453.06 **(2m)** (a) or 453.072, Stats., signifying that the person has met the statutory requirements *to* practice veterinary medicine in this state.

(7) "Patient" means the animal being treated.

(8) "Prescription legend animal drugs" means those drugs which the United States federal drug administration restricts to use only by or on the order of a licensed veterinarian.

(9) "Recent photograph" means an unmounted photograph of the applicant taken within the year previous to the application, with full face size being at least one inch in size. The overall sizc of the photograph shall not exceed **2** 1/2 x 2 1/2.

(10) "Surgery" means any procedure in which the skin or tissue of the patient is penetrated, pierced or severed for therapeutic purposes, other than giving injections.

(10m) "Unlicensed assistant" means a person not holding a license, permit or certificate issued by the board.

(11) "Veterinarian–client–patient relationship" has the meaning set forth at s. 453.02 (8), Stats.

(11m) "Veterinary prescription drug" has the meaning set forth at s. 453.02 (11), Stats.

(12) "Veterinary student" means a person enrolled in an approved veterinary college in a curriculum leading to a doctor of veterinary medicine degree.

History: Cr. Register, September, **1989. No. 405,** eff. **10–1–89;** am. **(6), cr.** (10m), Register, May, **1994,** No. **461,** eff. **6–1–94; cr.** (1m) and (11m), am. **(2), r.** and recr (11), Register, December, **1998, No. 516,** eff. **1–1–99.**

Chapter VE 2

EXAMINATIONS

VE 2.01 Administration.
VE 2.02 Competency tested.
VE 2.03 Passing scores.
VE 2.04 Examination review.
VE 2.05 Claim of examination error.

Note: Chapter VE 2 as it existed on September 30, 1989 was repealed and a new chapter VE 2 was created effective October 1, 1989.

VE 2.01 Administration. (1) The board or its designee shall administer the examinations required of applicants for licensure as a veterinarian by s. VE 3.02 and of applicants for certification as a veterinary technician by s. VE **8.02** at least once each year.

(1m) Prior to November 1, 2000, the board shall accept as its licensure examinations the national board examination and the clinical competency test. On and after November 1, 2000, the board shall accept as its licensure examination the north American veterinary licensing examination.

(2) To be qualified to sit for the north American veterinary licensing examination, an applicant must either have graduated from or be a last year student who is scheduled to graduate in not more than 6 months at a school of veterinary medicine approved by the board or a foreign school of veterinary medicine listed by the **AVMA.** To be qualified to sit for the examination on state laws and rules, an applicant must meet the requirements of **s.** VE 3.03.

(3) The department shall mail an admission card to the applicant at the address on file with the board. The applicant shall present the card at the door of the examination room with the identification specified on the admission card.

(4) The board or its designee shall provide rules of conduct at the beginning of the examination. Time limits may be placed on each portion of the examination.

(5) The board may deny release of grades or issuance of a license or certificate if the board determines that the applicant violated rules of conduct or otherwise acted dishonestly.

Note: Qualified applicants with disabilities shall be provided with reasonable accommodations.

History: Cr. Register, September, 1989, No. 405, eff. 10–1–89; am. (1) and (2), Register, September, 1990, No. 417, eff. 10–1–90; am. (1) and (2), Register, December, 1998, No. 516, eff. 1–1–99; am. (2), Register, March, 2000, No. **531,** eff. **4–1–00; cr. (1m),** Register, **May, 2001,** No. **545, eff. 6–1–01.**

VE 2.02 Competency tested. (1) Examinations administered under this chapter test entry level competency and seek to determine that an applicant's knowledge of animals and their treatment is sufficient to protect public health and safety.

(2) The board shall furnish to individuals, upon request, general information describing the competencies upon which the examination is based.

History: Cr. Register, September, 1989, No. 405, eff. 10–1–89.

VE 2.03 Passing scores. (1) Passing scores for veterinary applicants for the national board examination and the clinical competency test, and for the north American veterinary licensing examination, shall be based on the board's determination of the level of examination performance required for minimum acceptable competence in the profession. The board shall make the determination after consultation with subject matter experts who have reviewed a representative sample of the examination questions and available candidate performance statistics, and shall set the passing score for the examination at that point that represents minimum acceptable competence in the profession. The board may accept the recommendation of the national examination provider.

(2) The passing score for veterinary technician applicants on the written national examination shall be based on the board's determination of the level of examination performance required for minimum acceptable competence in the profession. The board shall make the determination after consultation with subject matter experts who have reviewed a representative sample of the examination questions and available candidate performance statistics, and shall set the passing score for the examination at that point that represents minimum acceptable competence in the profession. The board may accept the recommendation of the national examination provider.

(3) The passing score for an examination on state laws and rules related to the practice of veterinary medicine or veterinary technology shall be based on the board's determination of the level of examination performance required for minimum acceptable competence in the profession. The board shall make the determination after consultation with subject matter experts who have reviewed a representative sample of the examination questions and available candidate performance statistics, and shall set the passing score for the examination at that point that represents minimum acceptable competence in the profession.

History: Cr. Register, September, 1989, No. 405, eff. 10–1–89; am. Register, December, 1998, No. 516, eff. 1–1–99, am. **(1),** Register, **May, 2001, No. 545,** eff. **6–1-01.**

VE 2.04 Examination review. (1) An applicant who fails the examination on state laws and rules may request a review of that examination by filing a written request with the board within 30 days of the date on which examination results were mailed.

(2) Examination reviews are by appointment only.

(3) The time for review shall be limited to one hour.

(4) The applicant may not be accompanied during the review by any person other than the proctor.

(5) The applicant shall be provided with a copy of the questions, a copy of the applicant's answer sheet and a copy of the master answer sheet.

(6) The applicant may review the examination in the presence of a proctor. The applicant shall be provided with a form on which to write comments, questions or claims of error regarding any items in the examination. Bound reference books shall be permitted. Applicants shall not remove any notes from the area. Notes shall be retained by the proctor and made available to the applicant for use at a hearing, if desired. The proctor shall not defend the examination nor attempt to refute claims of error during the review.

(7) An applicant may not review the examination more than once.

History: Cr Register. September, 1989, No. 405. eff. 10–1–89; **am. (1)** and **(3),** Register, December, 1998, No 516, eff. 1–1–99

VE 2.05 Claim of examination error. (1) An applicant wishing to claim examination error shall file a written request for board review in the board office within 30 days of the date the examination was reviewed. The request shall include all of the following:

(a) The applicant's name and address.

(b) The type of license for which the applicant applied.

(c) A description of the mistakes the applicant believes were made in the examination content, procedures, or scoring, including the specific questions or procedures claimed to be in error.

(d) The facts which the applicant intends to prove, including reference text citations or other supporting evidence for the applicant's claim.

(2) The board shall review the claim. make a determination of the validity of the objections and notify the applicant in writing of the board's decision and any resulting grade changes.

(3) If the board confirms the failing status following its review, the application shall be deemed incomplete, and the applicant may be reexamined under s. VE 2.01.

History: **Cr.** Register, September, 1989, No 405, eff. 10–1–89; **am.** (1) (intro.), (a), (b), (c) and (3), Register, December, 1998, No. 516, eff. 1–1–99.

Chapter VE 3

LICENSURE BY EXAMINATION FOR VETERINARIANS

VE 3.01 Definitions.
VE 3.02 Qualifications for licensure.
VE 3.03 Application procedures for veterinary applicants to take board examinations.
VE 3.05 Temporary permits.

Note: Chapter VE 3 as it existed on September 30, 1989 was repealed and a new Chapter VE 3 was created effective October 1, 1989.

VE 3.01 Definitions. As used in this chapter:

(1) "Preceptor" means a veterinarian who agrees to supervise a holder of a temporary permit.

(2) "Temporary permit" means a document issued to a person who has qualified to take the state board examination, is enrolled to take the next examination and who shall be employed to practice veterinary medicine under the supervision of a preceptor.

History: Cr. Register, September, 1989, No. 405, eff. 10-1-89.

VE 3.02 Qualifications for licensure. The board may issue a license to practice veterinary medicine to an applicant who satisfies all of the following:

(1) Has met the requirements of s. **453.06** (1), Stats.

(2) Prior to November 1,2000, has passed the national board examination and clinical competency test. On or after November 1, 2000, has passed the north American veterinary licensing examination.

(4) Has successfully completed an examination on state laws and rules related to the practice of veterinary medicine.

(5) Does not have a conviction record or pending criminal charge relating to an offense the circumstances of which substantially relate to the practice of Veterinary medicine. An applicant who has a conviction record or pending criminal charge shall request appropriate authorities to provide information about the record or charge directly to the board in sufficient specificity to enable the board to make a determination whether the record or charge substantially relates to the practice of veterinary medicine.

History: Cr. Register, September, 1989, No. 405. eff. 10-1-89; am. (3), Register, September, 1990, No. 417, eff. 10-1-90; am. (intro.), (1), (2) and (4), r. (3), Register, December, 1998, No. 516, eff. 1-1-99; am. (2), Register, May, 2001, No. 545, eff. 6-1-01.

VE 3.03 Application procedures for veterinary applicants to take board examinations. An applicant shall file a completed application with the board at least **60** days prior to the date of the scheduled examination. All supporting documents shall be provided in English. An application is not complete until the board receives all of the following:

(1) An application form provided by the board and completed by the applicant which includes the applicant's notarized signature.

Note: Applications are available upon request to the board office located at 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708.

(3) The fees required under s. **440.05** (1), Stats.

Note: A list of all current examination fees may be obtained at no charge from the Office of Examinations, Department of Regulation and Licensing, 1400 East Washington Avenue, P.O. Box 8935, Madison, WI 53708.

(4) Verification of licensure records and status which has been sent directly to the board by every state or country in which the applicant has ever held a license or certificate to practice veterinary medicine.

(5) A certificate of graduation from a board approved veterinary college which shall be signed and sealed by the dean of the school and submitted directly to the board by the school. Applicants who graduated from a veterinary college which is not a board approved veterinary college shall provide a certificate of graduation which is signed and sealed by the dean of the school and submitted directly to the board by the school, and evidence of successful completion of the educational commission for foreign veterinary graduates certification program which shall be submitted directly to the board by the AMVA.

History: Cr. Register, September, 1989. No. 405, eff. 10-1-89; am. Register, June. 1994, No. 462, eff. 7-1-94; am. (intro.).(1), (3), (4) and (5), r. (2), Register, December, 1998, No. 516, eff. 1-1-99; am. (intro.), Register, March, 2000, No. 531, eff. 4-1-00; am. (intro.), Register, May, 2001, No. 545, eff. 6-1-01.

VE 3.05 Temporary permits. (1) (a) Prior to November 1, 2000, an applicant may be granted a temporary permit before the board receives notice of successful completion of the national board examination and clinical competency test, if the applicant provides evidence that the applicant is either scheduled to take the national board examination and the clinical competency test for the first time, or is awaiting results of the national board examination and clinical competency test.

(b) On or after November 1,2000, an applicant may be granted a temporary permit before the board receives notice of successful completion of the north American veterinary licensing examination, if the applicant provides evidence that the applicant is either scheduled to take the north American veterinary licensing examination for the first time, or is awaiting results of the north American veterinary licensing examination.

(2) An applicant shall complete an application for temporary permit and submit the fee required under s. **440.05 (6)**, Stats.

(3) The board shall receive written verification of employment signed and sent directly to the board by the preceptor.

(4) The application and verification required by subs. (2) and (3) shall be received by the board office at least 2 **weeks** prior to the date the applicant intends to begin work.

(5) In order to provide supervision for a holder of a temporary permit, a preceptor shall do all of the following:

(a) Delegate only those tasks commensurate with demonstrated abilities of the temporary permit holder.

(b) Be available for direct communication with the temporary permit holder when the temporary permit holder is providing veterinary services. Direct communication shall be either verbal. by telephone or by 2-way radio communication.

(6) A temporary permit shall expire upon any of the following:

(a) Notification of failure of any examination.

(b) Failure to take the next scheduled examination.

(c) Issuance of a license.

(7) An applicant may be granted a temporary permit only once.

(8) Any change or addition of preceptor shall be reported to the board by filing a new verification as specified in sub. (3).

(9) Two board members shall review board records to determine eligibility of an applicant. If the designated members disagree, eligibility shall be determined by the entire board. Within 30 business days of determining an applicant is eligible for a tem-

porary permit: the board shall issue a permit to the applicant. Notification of issuance shall also be sent to the preceptor.

History: Cr. Register, September, 1989, No. **405,** eff. 10–1–89; r. (intro.), renum. (1) (a), (b) (c), (d), (2) to (6) to be (1) to (9) and am. (1) to (6) and (8), Register, December, 1998, No. 516, eff. 1–1–99; renum. (1) to be (1) (a) and am., cr. (1) (b), Register, May, 2001, No. 545, eff. 6–1–01.

Chapter VE 4

LICENSURE BY ENDORSEMENT FOR VETERINARIANS

VE 4.01	Qualification for veterinary license by endorsement.	VE 4.03	Examination on state laws.
VE 4.02	Application procedure.	VE 4.04	Licensure.

Note: Chapter VE 4 as it existed on September 30, 1989 was repealed and a new Chapter VE 4 was created effective October 1, 1989.

VE 4.01 Qualification for veterinary license by endorsement. (1) Any applicant who has previously failed and has not subsequently passed the examinations required under s. VE 3.02 *(2)* shall not be issued a license by endorsement.

(2) A person holding a current license to practice veterinary medicine in another state or U.S. territory or province of Canada may become licensed in Wisconsin without examination, except an examination on state laws and rules related to the practice of veterinary medicine, if the applicant meets all of the following:

(a) Has actively practiced for 4000 hours during the 5 years preceding application.

(b) Has never been disciplined by the veterinary licensing authority in any other state, territory or country.

(c) Does not have a conviction record or pending criminal charge relating to an offense the circumstances of which substantially relate to the practice of veterinary medicine. An applicant who has a conviction record or pending criminal charge shall request appropriate authorities to provide information about the record or charge directly to the board in sufficient specificity to enable the board to make a determination whether the record or charge substantially relates to the practice of veterinary medicine.

(d) Is not a party in pending litigation in which it is alleged that the applicant is liable for acts committed in the course of practice which evidence a lack of ability or fitness to practice, as determined by the board.

(e) Is not currently under investigation by another veterinary licensing authority related to the license to practice veterinary medicine for acts which would provide a basis for disciplinary action in this state, as determined by the board.

(f) Has never been found liable for damages for acts committed in the course of practice of veterinary medicine which evidenced a lack of ability or fitness to practice, as determined by the board.

(g) Has never had United States drug enforcement administration privileges restricted or revoked.

(h) Has no physical or mental impairment, including impairment related to drugs or alcohol, which is reasonably related to the applicant's ability to adequately undertake the practice of veterinary medicine in a manner consistent with the safety of a patient or the public.

(3) A person holding a current unrestricted license to practice veterinary medicine in a country other than the United States or Canada, who is not a graduate of an approved veterinary college, in addition to the requirements of sub. (2), shall submit evidence that the applicant has successfully completed the certification program of the educational commission for foreign veterinary graduates of the AVMA.

(4) A person holding a current unrestricted license to practice veterinary medicine in a country other than the United States or Canada, who is a graduate of a school of veterinary medicine approved by the board, in addition to the requirements of sub. (2), shall submit the following:

(a) Evidence satisfactory to the board that the requirements for initial licensure in the country where the applicant was originally licensed, including examination requirements, are substantially equivalent to the requirements for graduates of schools of veterinary medicine approved by the board who are seeking initial licensure in this state; or

(b) Before November 1, 2000, evidence that the applicant has successfully completed the national board examination and the clinical competency test. On or after November 1, 2000, evidence that the applicant has successfully completed the north American veterinary licensing examination.

History: Cr. Register, September, 1989, No. 405, eff. 10–1–89; r. and recr. (3), Register, June, 1997, No. 498, eff. 7–1–97; am. (1), (2) (intro.), (a) to (g) and (3), r. (5), Register, December, 1998, No. 516, eff. 1–1–99; am. (4) (b), Register, May, 2001, No. 545, eff. 6–1–01.

VE 4.02 Application procedure. An applicant for licensure by endorsement shall file a completed application with the board. All supporting documents shall be submitted in English. An application is not complete until the board receives:

(1) An application form provided by the board and completed by the applicant which includes the applicant's notarized signature.

(3) The fee required under s. 440.05 (2), Stats.

(4) Verification of licensure records and status which has been sent directly to the board by every state or country in which the applicant has ever held a license or certificate to practice veterinary medicine.

(5) A certificate of graduation from veterinary college which shall be signed and sealed by the dean of the school and submitted directly to the board by the school.

History: Cr. Register, September, 1989, No. 405, eff. 10–1–89; r. (2), am. (3), Register, December, 1998, No. 516, eff. 1–1–99.

VE 4.03 Examination on state laws. An applicant for licensure by endorsement shall successfully complete an examination on state laws and rules related to the practice of veterinary medicine before a license can be issued.

History: Cr. Register, September. 1989, No. 405, eff. 10–1–89.

VE 4.04 Licensure. The board shall review its records to determine eligibility of the applicant for licensure. Within 30 business days of determining an applicant is eligible for licensure, the board shall issue a license to the applicant.

History: Cr. Register, September, 1989, No. 405, eff. 10–1–89.

Chapter VE 5

PRACTICE RELATED TO VETERINARY SCHOOLS

VE 5.01 Definitions.
VE 5.02 Application procedure faculty license.
VE 5.03 Post graduate training permit.
VE 5.04 Veterinary students.

VE 5.01 Definitions. As used in this chapter:

(1) "Faculty license" means a document issued to a person by the board after the person has met the requirements of s. 453.06 (2m) (a), Stats., signifying that the person may practice veterinary medicine on privately owned animals only within the scope of the person's employment at a school of veterinary medicine in this state.

(2) "Post graduate training permit" means a document issued to a person by the board which allows the permit holder to practice veterinary medicine on privately owned animals only within the scope of the permittee's internship or residency program at a school of veterinary medicine in this state.

History: Cr. Register, September, 1989, No. 405, eff. 10–1–89.

VE 5.02 Application procedure faculty license. (1) APPLICATION. An applicant for a faculty license shall file a completed application with the board. All supporting documents shall be submitted in English. An application is not complete until the board receives all of the following:

(a) An application form provided by the board and completed by the applicant, which includes the applicant's notarized signature.

Note: Applications are available upon request to the board office located at 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708.

(c) The fee required under s. 440.05 (6), Stats.

(d) Verification of employment by a school of veterinary medicine in this state which has been submitted directly to the board by the dean of the school.

(e) A certificate of graduation from an approved veterinary college signed and sealed by the dean of the school submitted directly to the board by the school, or evidence of substantially equivalent qualifications.

(f) Successful completion of an examination on state laws and rules related to the practice of veterinary medicine.

(2) DISCIPLINARY ACTION. A faculty license may be denied, suspended, limited or revoked, or the licensee may be reprimanded, for the following reasons:

(a) Violation of any law or regulation substantially related to the practice of veterinary medicine; or

(b) Engaging in the practice of veterinary medicine in this state outside the scope of employment unless licensed to do so.

(3) EXPIRATION. The faculty license expires upon termination of the faculty employe's employment with the school of veterinary medicine, as reported by the dean of the school of veterinary medicine.

History: Cr. Register, September, 1989, No. 405, eff. 10–1–89; am. (1) (intro.), (a), (c), (d) and (e), r. (1) (b), Register, December, 1998, No. 516, eff. 1–1–99.

VE 5.03 Post graduate training permit. (1) An applicant for a post graduate training permit under s. 453.06 (2m) (b), Stats., shall file a completed application with the board. All supporting documents shall be provided in English. An application shall not be considered complete until the board receives all of the following:

(a) An application form provided by the board and completed by the applicant, including the applicant's notarized signature.

Note: Applications are available upon request to the board office located at 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708.

(c) The fee required under s. 440.05 (6), Stats.

(d) Before November 1, 2000, evidence that the applicant has successfully completed the national board examination and the clinical competency test, or is scheduled to take the national board examination and clinical competency test for the first time, or is awaiting results of the national board examination and clinical competency test. On or after November 1, 2000, evidence that the applicant has successfully completed the north American veterinary licensing examination for the first time, or is scheduled to take the north American veterinary licensing examination for the first time, or is awaiting the results of the north American veterinary licensing examination.

(e) Verification that the applicant is undertaking intern or resident training at a school of veterinary medicine in this state. Verification shall consist of certification signed and sealed by the dean of the school and submitted directly to the board by the school.

(2) An applicant for a post graduate training permit shall successfully complete an examination on state laws and rules related to the practice of veterinary medicine before a permit may be issued.

(3) A post graduate training permit may be denied, suspended, limited or revoked, or the licensee may be reprimanded, for the following reasons:

(a) Violation of any law or regulation substantially related to the practice of veterinary medicine; or

(b) Engaging in the practice of veterinary medicine in the State of Wisconsin outside the scope of the training program unless licensed to do so.

(4) The post graduate training permit expires upon termination of the permittee's internship or residency program, as reported by the dean of the school of veterinary medicine.

History: Cr. Register. September, 1989, No. 405, eff. 10–1–89; am. (1) (intro.), (a), (c) and (d), r. (1) (b), Register, December, 1998, No. 516, eff. 1–1–99; **am. (1) (d), Register, May, 2001, No. 545, eff. 6–1–01.**

VE 5.04 Veterinary students. (1) A veterinary student may practice veterinary medicine within the school of veterinary medicine pursuant to standards and supervisory protocols established by the school.

(2) A veterinary student may perform delegated veterinary acts outside of the school setting as set forth under s. VE 7.02 (2), (7) and (8).

History: Cr. Register, September, 1989, No. 405, eff. 10–1–89; am. (1) and (2), Register, May, 1994, No. 461, eff. 6–1–94.

Chapter VE 6

TEMPORARY CONSULTING PERMITS

VE 6.01 Definitions.
VE 6.02 Eligibility for a temporary consulting permit.
VE 6.03 Application procedure.
VE 6.04 Expiration and disciplinary action.

Note: Chapter VE 6 as it existed on September 30, 1989 was repealed and a new Chapter VE 6 was created effective October 1, 1989.

VE 6.01 Definitions. As used in this chapter:

(1) "Attending veterinarian" means the veterinarian who has undertaken and is responsible for the medical care and treatment of the animal.

(2) "Temporary consulting permit" means a document issued by the board to a person licensed to practice veterinary medicine in another jurisdiction which allows the person to practice veterinary medicine in a consulting capacity in Wisconsin for up to 60 days in a calendar year.

History: Cr. Register, September, 1989, No. 405, eff. 10–1–89.

VE 6.02 Eligibility for a temporary consulting permit. (1) The board may issue a temporary consulting permit to practice veterinary medicine in this state to a person holding a license to practice veterinary medicine in another state or territory of the U.S. or in another country, provided the license is in good standing in the other jurisdiction, and a veterinarian has requested a consultation.

(2) A temporary consulting permit may be used up to 60 total days per calendar year.

(3) The temporary consulting permit shall expire on December 31 of each year or on the 60th day of use in a calendar year. The holder of a consulting permit may apply for a new permit for a subsequent year by completing the application procedure specified in s. VE 6.03.

(4) Two board members shall review board records to determine eligibility of the applicant. If the designated members disagree, eligibility shall be determined by the entire board.

History: Cr. Register, September, 1989, No. 405, eff. 10–1–89; am. (2), Register, December, 1998, No. 516, eff. 1–1–99.

VE 6.03 Application procedure. (1) An applicant for a temporary consulting permit shall file a completed application with the board. All supporting documents shall be provided in English. An application is not complete until the board receives all of the following:

(a) An application form provided by the board and completed by the applicant which includes the applicant's notarized signature.

Note: Applications are available upon request to the board office located at 1400 East Washington Avenue, P.O. Box 8935, Madison, WI 53708.

(c) The fee required under s. 440.05 (6), Stats.

(d) Verification of licensure records and status which has been sent directly to the board by every state or country in which the applicant has ever held a license or certificate to practice veterinary medicine.

(e) Written verification from a veterinarian that a consultation is being sought.

History: Cr. Register, September, 1989, No. 405, eff. 10–1–89; am. (1) (intro.), (a), (c) and (d), r. (1) (b), Register, December, 1998, No. 516, eff. 1–1–99.

VE 6.04 Expiration and disciplinary action. (1) A temporary consulting permit shall automatically expire upon notice to the board that the consultation has been completed.

(2) After hearing, a temporary consulting permit may be denied, suspended, limited or revoked, or the permittee may be reprimanded, for any of the following reasons:

(a) Revisiting the patient or client or communicating directly with the client without the knowledge of the attending veterinarian.

(b) Taking charge of a case or problem without the consent of the attending veterinarian and the client.

(c) Violating any law or rule related to the practice of veterinary medicine.

History: Cr. Register, September, 1989, No. 405, eff. 10–1–89; r. and recr., Register, December, 1998, No. 516, eff. 1–1–99.

Chapter VE 7

STANDARDS OF PRACTICE AND UNPROFESSIONAL CONDUCT FOR VETERINARIANS

VE 7.01	Definitions.	VE 7.05	Display of license.
VE 7.02	Delegation of veterinary medical acts.	VE 7.055	Reinstatement of a lapsed license.
VE 7.03	Records.	VE 7.06	Unprofessional conduct.
VE 7.04	Change of name and address.	VE 7.07	Board action.

Note: Chapter VE 7 as it existed on September 30, **1989. was** repealed and a new chapter VE 7 **was** created effective October 1, **1989.**

VE 7.01 Definitions. As used in this chapter:

(1) "Advertising" means to give notice by any means, including but not limited to any circular, card, notice, telephone book listing, magazine, newspaper or other printed material or any communication by radio or television.

(2) "Deception" means:

(a) Claiming to have performed an act or given a treatment which has not in fact been performed or given.

(b) Giving needless treatment.

(c) Using a different treatment than stated.

(3) "Fraud" means:

(a) The making of false claims regarding knowledge, ability, skills or facilities for use in treatment or diagnosis of a disease.

(b) The making of false claims regarding testing, inspecting, reporting or issuing of inter–state, intra–state or export health certificates.

(4) "Gross negligence" means a gross, serious or grave degree of negligence as compared to less serious or more ordinary acts of negligence.

History: Cr. Register, September, **1989,** No. 405, eff. **10–1–89.**

VE 7.02 Delegation of veterinary medical acts. **(1)** The following acts are limited to those holding a license under s. 453.06 (1), 453.06 (2m) (a), or 453.072, Stats.; a permit under s. VE 3.05, 5.03 or 6.02; or active status as a student at a college of Veterinary medicine approved by the board, and may not be delegated to or performed by veterinary technicians or other persons not holding such license or permit:

(a) Diagnosis and prognosis of animal diseases and conditions.

(b) Prescribing of drugs, medicines, treatments and appliances.

(c) Performing surgery.

(2) Except as provided under s. 95.21 (2), Stats., veterinarians may delegate to veterinary students the provision of veterinary medical services under the direct supervision of the veterinarian when the veterinarian is personally present on the premises where the services are provided.

(3) Except as provided under s. 95.21 (2), Stats., veterinarians may delegate to certified veterinary technicians the provision of the following veterinary medical services under the direct supervision of the veterinarian:

(a) Nonsurgical veterinary treatment of animal diseases and conditions, including administration of vaccines.

(b) Observations and findings related to animal diseases and conditions to be utilized by a veterinarian in establishing a diagnosis or prognosis, including routine radiographs, nonsurgical specimen collection, drawing of blood for diagnostic purposes, and laboratory testing procedures.

(c) Administration of sedatives and presurgical medications.

(d) Obstetrical treatment.

(e) Nutritional evaluation and counseling.

(4) Veterinarians may delegate to certified veterinary technicians the provision of the following veterinary medical services under the direct supervision of the veterinarian when the veterinarian is personally present on the premises where the services are provided:

(a) Administration of local or general anesthesia, including induction and monitoring.

(b) Performing diagnostic radiographic contrast studies.

(c) Dental prophylaxis and extractions.

(5) Veterinarians may delegate to unlicensed assistants the provision of the following veterinary medical services under the direct supervision of the veterinarian:

(a) Basic diagnostic studies, including routine radiographs, nonsurgical specimen collection, and laboratory testing procedures.

(b) Monitoring and reporting to the veterinarian changes in the condition of a hospitalized animal patient.

(c) Dispensing prescription drugs pursuant to the written order of the veterinarian.

(6) Except as provided under s. 95.21, Stats., veterinarians may delegate to unlicensed assistants the provision of the following veterinary medical services under the direct supervision of the veterinarian when the veterinarian is personally present on the premises where the services are provided

(a) Nonsurgical veterinary treatment of animal diseases and conditions, including administration of vaccines, and administration of sedatives and presurgical medications.

(b) Observations and findings related to animal diseases and conditions to be utilized by a veterinarian in establishing a diagnosis or prognosis, including the drawing of blood for diagnostic purposes.

(c) Dental prophylaxis.

(d) Nutritional evaluation and counseling.

(7) Notwithstanding subs. (1) to (6), a veterinary student, certified veterinary technician or unlicensed assistant employed by a veterinarian may, under the direct supervision of the veterinarian and pursuant to mutually acceptable written protocols, perform evaluative and treatment procedures necessary to provide an appropriate response to life–threatening emergency situations for the purpose of stabilizing the patient pending further treatment.

(8) In delegating the provision of veterinary medical acts to veterinary students, certified veterinary technicians and others, the veterinarian shall do all of the following:

(a) Delegate only those tasks commensurate with the education, training, experience and demonstrated abilities of the person supervised.

(b) Provide the supervision required under subs. (2) to (7).

(c) Where the veterinarian is not required to be personally present on the premises where the delegated services are provided, be available at all times for consultation either in person or within 15 minutes of contact by telephone or by two–way radio or television communication.

(d) Observe and monitor the activities of those supervised on a daily basis.

(e) Evaluate the effectiveness of delegated acts performed under supervision on a daily basis.

(f) Establish and maintain a daily log of each delegated patient service which has been provided off the premises of the supervising veterinarian.

(g) Notify the client that some services may be provided by a veterinary student, certified veterinary technician or an unlicensed assistant.

History: Cr. Register, September, 1989, No. 405, eff. 10-1-89; r. and recr., Register, May, 1994, No. 461, eff. 6-1-94; am. (1) (intro.), (3) (intro.), (a) to (c), (4) (intro.), (a) and (b), (5) (a) and (b), (6)(a) to (c), (7) and (8), Register, December, 1998, No. 516, eff. 1-1-99.

VE 7.03 Records. (1) A veterinarian shall maintain individual patient records on every patient administered to by the veterinarian other than food and fiber patients for a period of not less than 3 years after the date of the last entry. The veterinarian shall keep individual client records for food and fiber patients for 3 years after the date of the last entry.

(2) The individual patient record shall contain clinical information pertaining to patients other than food and fiber patients with sufficient information to justify the diagnosis and warrant treatment, including information regarding each of the following matters which apply:

(a) Patient identification.
(b) Complaint.
(c) Present illness.
(d) Vaccination record.
(e) History.
(f) Physical examination findings.
(g) Provisional diagnosis.
(h) Clinical laboratory reports.
(i) Radiographic reports.
(j) Consultation , if any.
(k) Treatment — medical, surgical,
(L) Drugs prescribed or dispensed.
(m) Tissue examination report.
(n) Final diagnosis.
(o) Necropsy findings.
(p) Identification of the veterinarian providing the care.

(3) The client record for food and fiber patients shall contain at least the following information which apply:

(a) Client name.
(b) Date.
(c) Type of call.
(d) Number of patients examined.
(e) Individual diagnosis.
(f) Treatment and drugs used.
(g) Drugs dispensed.
(h) Lab work and tests.
(i) Meat or milk withholdings.
(j) Identification of the veterinarian.

History: Cr. Register, September, 1989, No. 405, eff. 10-1-89; am. (1), (2) (intro.), Register, September, 1994, No. 465, eff. 10-1-94; am. (2) (a) to (o) and (3) (a) to (i); Register, December, 1998, No. 516, eff. 1-1-99.

VE 7.04 Change of name and address. Every veterinarian shall notify the board of a change of name or address within 30 days. Failure of notification may result in the loss of license and may result in a forfeiture under s. 440.11 (3), Stats.

History: Cr. Register, September, 1989, No. 405, eff. 10-1-89.

VE 7.05 Display of license. Each veterinarian shall display a current license in a manner conspicuous to the public view, and shall at all times have evidence of licensure available for inspection when practicing at a remote location.

History: Cr. Register, September, 1989. No. 405, eff. 10-1-89.

VE 7.055 Reinstatement of a lapsed license. A license expires if not renewed by January 1 of even--numbered years. A licensee who allows the license to expire may apply to the board for reinstatement of the credential as follows:

(1) If the licensee applies for renewal of the license less than 5 years after its expiration, the license shall be renewed upon payment of the renewal fee and fulfillment of the continuing education requirements under s. VE 10.04.

(2) If the licensee applies for renewal of the credential 5 or more years after its expiration, the board shall inquire as to whether the applicant is competent to practice as a veterinarian in this state and shall impose any reasonable conditions on reinstatement of the license, including reexamination, as the board deems appropriate. An applicant under this subsection is presumed to be competent to practice as a veterinarian in this state if at the time of application for reinstatement the applicant holds a full unexpired license issued by a similar licensing board of another state or territory of the United States or of a foreign country or province whose standards, in the opinion of the board, are equivalent to or higher than the requirements for licensure in this state. Notwithstanding any presumption of competency under this subsection, the board shall require each applicant under this subsection to pass the examination specified under s. VE 3.02 (4).

History: Cr. Register, January, 1994, No. 457, eff. 2-1-94.

VE 7.06 Unprofessional conduct. Unprofessional conduct by a veterinarian is prohibited. Unprofessional conduct includes:

(1) Conduct in the practice of veterinary medicine which evidences a lack of knowledge or ability to apply professional principles or skills.

(2) Fraud, gross negligence or deception in the practice of veterinary medicine.

(3) Being convicted of a crime the circumstances of which substantially relate to the practice of veterinary medicine.

(4) Violating or aiding and abetting the violation of any law or administrative rule or regulation substantially related to the practice of veterinary medicine.

(5) Advertising in a manner which is false, fraudulent, misleading or deceptive, or knowingly maintaining a professional association with another veterinarian or veterinary firm that advertises in a manner which is false, fraudulent, misleading or deceptive.

(6) Having a veterinary license or federal veterinary accreditation limited, suspended or revoked, or having been subject to any other discipline or restriction.

(7) Practicing or attempting *to* practice, while the veterinarian has a physical or mental impairment, including impairment related to drugs or alcohol which is reasonably related to the applicant's ability to adequately undertake the practice of veterinary medicine in a manner consistent with the safety of a patient or the public.

(8) The personal use, misuse, or sale, other than for medical treatment of patients, of the drugs listed in the U.S. Controlled Substances Act of 1979, as amended, or ch. 961, Stats., except personal use of drugs prescribed by a physician for individual use by the veterinarian.

(9) Prescribing, ordering, dispensing, administering, supplying, selling or giving of any amphetamine, its salts, isomers and salts of its isomers or related sympathomimetic amine drug designated as a Schedule II drug in ch. 961, Stats., except for the treatment of narcolepsy or hyperkinesis in animals who do not respond to other methods of treatment, or for clinical research of these compounds as approved by the board. A written description of the intended research project proposed shall be filed with the board prior to conducting the research.

(10) Selling veterinary prescription drugs without establishing and maintaining a veterinary–patient–client relationship.

(11) Failure to include on the label of a prescription drug the generic or brand name of the drug dispensed, the name and address of the clinic or veterinarian dispensing the drug, the directions for use and caution statements required by law. In case of companion animals, the prescription shall bear the name or identification of the patient,

(12) Prescribing, ordering, dispensing, administering, supplying, selling or giving any controlled substance solely for training or racing purposes and not for a medically sound reason.

(13) Allowing a veterinary student to treat a patient without the veterinarian giving direct supervision.

(14) Failure of the veterinarian to advise the client that the person assisting is a veterinary student or unlicensed assistant.

(15) Failure to maintain records as required by s. VE 7.03.

(16) Refusal, upon request, to cooperate in a timely manner with the board's investigation of complaints lodged against the veterinarian. Persons taking longer than 30 days to provide requested information shall have the burden of demonstrating that they have acted in a "timely manner."

(17) Failure to keep the veterinary facility and all equipment, including mobile units, in a clean and sanitary condition while practicing as a veterinarian.

(18) Failure of a veterinarian to permit the board or its agents to enter and inspect the veterinarian's practice facilities, vehicle, equipment and records during office hours and other reasonable hours.

(19) Engaging in unsolicited communications to members of the board regarding a matter under investigation by the board other than to the investigative member of the board.

(20) Practicing under an expired, license.

(21) Exceeding the scope of veterinary practice, as defined in s. 453.02 (6), Stats., by providing medical treatment to humans or distributing, prescribing or dispensing for human use prescription drugs, as defined in s. 450.01 (20), Stats., or any drug labelled for veterinary or animal use only.

(22) Falsely certifying to the board that the veterinarian is exempt from the requirements of ss. VE 10.03 and 10.04 or falsely certifying that the veterinarian has met certification or continuing veterinary education requirements relating to the use, handling, distribution and disposal of pesticides.

History: Cr. **Register, September, 1989,** No. **405, eff.** 10–1–89; cr. (21), **Register, September, 1990,** No. **417, eff.** 10–1–90; cr. (22), **Register,** February, **1992,** No. **434, eff.** 3–1–92; **am.** (6), **Register, October, 1993,** No. **454, eff. 11–1–93; am.** (10), **Register, December, 1998,** No. **516, eff. 1–1–99; correction in (8) and (9) made under s.** 13.93**(2m)** (b) **7., Stats., Register, December, 1998,** No. **516; CR 01–061: am. (14), Register November 2001 No. 551, eff. 12–1–01.**

VE 7.07 Board action. The board may reprimand the licensee or deny, suspend, limit or revoke the veterinary license of any person to practice veterinary medicine who engages in any of the acts prohibited by s. VE 7.06.

History: Cr. **Register, September, 1989,** No. **405, eff.** 10–1–89.

Chapter VE 8

CERTIFICATION FOR VETERINARY TECHNICIANS

VE 8.01 Definitions.
VE 8.02 Qualification for certification
VE 8.03 Application procedures for veterinary technician applicants.
VE 8.04 Certification.

VE 8.01 Definitions. As used in this chapter:

(1) "Board approved technical school or college" means a technical school or college which the board approves at its annual review of technical schools or colleges.

Note: The board shall consider for approval all schools which are accredited or approved by the American veterinary medical association.

(2) "Certificate" means a document issued to a person by the board, after the person has met the requirements of s. 453.06 (3), Stats., signifying that the person has met the statutory requirements to practice veterinary technology in Wisconsin.

History: Cr. Register, September, 1989, No. 405, eff. 10-1-89; am. (2), Register, December, 1998, No. 516, eff. 1-1-99.

VE 8.02 Qualification for certification. The board may issue a certificate to practice as a veterinary technician to an applicant who does all of the following:

(1) Meets the age and training requirements of s. 453.06 (3), Stats..

(2) Has passed an examination consisting of a national written examination and an examination on state laws and rules under ch. VE 2. Proof that an applicant has passed the national written examination and the examination on state laws and rules shall be submitted directly to the board by the department's office of examinations or the interstate reporting service.

(3) Has successfully completed an examination on state laws and rules related to the practice of veterinary technology.

(4) Does not have a conviction record or pending criminal charge relating to an offense the circumstances of which substantially relate to the practice of veterinary technology. An applicant who has a conviction record or pending criminal charge shall request appropriate authorities to provide information directly to the board to enable the board to make its determination.

History: Cr. Register. September, 1989, No. 405, eff. 10-1-89; am. Register, December, 1998, No. 516, eff. 1-1-99.

VE 8.03 Application procedures for veterinary technician applicants. (1) An applicant for a veterinary technician certificate shall file a completed application with the board at least 30 days prior to the date of the scheduled examination. All supporting documents shall be in English. An application is not complete until the board receives all of the following:

(a) An application form provided by the board and completed by the applicant which includes the applicant's notarized signature.

Note: Applications are available upon request to the board office located at 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708

(c) The fees required under s. 440.05 (1), Stats.

Note: A list of all current examination fees may be obtained at no charge from the Office of Examinations, Department of Regulation and Licensing, 1400 East Washington Avenue, P.O. Box 8935, Madison, WI 53708.

(d) Verification of licensure records and status which has been sent directly to the board by every state or country in which the applicant has ever held a license or certificate to practice veterinary technology.

(e) A certificate of completion of the 4 semester program in veterinary technology at a board approved technical school or college shall be provided by presentation of certification signed and sealed by the dean of the school submitted directly to the board by the school, or the applicant shall provide evidence of meeting the employment requirement under s. 453.06 (3) (b), Stats.

History: Cr. Register, September, 1989, No. 405, eff. 10-1-89; am. (1) (c), Register. June, 1994, No. 462, eff. 7-1-94; am. (1) (intro.), (a), (c), (d) and (e), r. (1) (b), Register, December, 1998, No. 516, eff. 1-1-99.

VE 8.04 Certification. The board shall review its records to determine eligibility of the applicant. Within 30 business days of determining an applicant is eligible for certification, the board shall issue a certificate to the applicant.

History: Cr. Register, September, 1989, No. 405, eff. 10-1-89.

Chapter VE 9

STANDARDS OF PRACTICE AND UNPROFESSIONAL CONDUCT FOR VETERINARY TECHNICIANS

VE 9.01 Prohibited acts.
VE 9.02 Standards of practice.
VE 9.03 Change of name and address.
VE 9.035 Reinstatement of a lapsed certificate.
VE 9.04 Display of certificate.
VE 9.05 Unprofessional conduct.
VE 9.06 Board action.

VE 9.01 Prohibited acts. The following acts are limited to veterinarians and therefore prohibited for veterinary technicians:

(1) Diagnosis and prognosis of animal diseases and conditions.

(2) Prescribing of drugs. medicines, treatments and appliances.

(3) Performing surgery.

History: Cr. Register, September, 1989, No. 405, eff. 10-1-89; am. (intro.), Register, December, 1998, No. 516, eff. 1-1-99.

VE 9.02 Standards of practice. (1) Veterinary technicians may perform delegated veterinary acts as set forth under s. VE 7.02 (3), (4) and (7).

(2) In the performance of delegated veterinary acts a veterinary technician shall:

(a) Accept only those delegated veterinary acts for which there are mutually approved protocols, written standing orders or verbal directions.

(b) Accept only those delegated veterinary acts for which the veterinary technician is competent to perform based on education, training or experience.

(c) Consult with a veterinarian in cases where the veterinary technician knows or should know a delegated veterinary act may harm a patient.

History: Cr. Register, September. 1989, No. 405, eff. 10-1-89; r. and recr. (1), r. (2)(d), Register, May, 1994, No. 461, eff. 6-1-94; am. (1), Register, December, 1998, No. 516, eff. 1-1-99.

VE 9.03 Change of name and address. Every veterinary technician shall notify the board of a change of name or address within 30 days. Failure of notification may result in the loss of certificate and may result in a fine under s. 440.11 (3), Stats.

History: Cr. Register, September, 1989, No. 405, eff. 10-1-89; am. Register, December, 1998, No. 516, eff. 1-1-99.

VE 9.035 Reinstatement of a lapsed certificate. A license expires if not renewed by January 1 of even-numbered years. A certificate holder who allows the certificate to expire may apply to the board for reinstatement of the credential as follows:

(1) If the certificate holder applies for renewal of the certificate less than 5 years after its expiration, the certificate shall be renewed upon payment of the renewal fee and fulfillment of the continuing education requirements under s. VE 10.04.

(2) If the certificate holder applies for renewal of the credential 5 or more years after its expiration, the board shall inquire as to whether the applicant is competent to practice as a veterinary technician in this state and shall impose any reasonable conditions on reinstatement of the certificate including reexamination, as the board deems appropriate. An applicant under this subsection is presumed to be competent to practice as a veterinary technician in this state if at the time of application for reinstatement the applicant holds a full unexpired certificate issued by a similar licensing board of another state or territory of the United States or of a foreign country or province whose standards, in the opinion of the board, are equivalent to or higher than the requirements for certification in this state. Notwithstanding any presumption of competency under this subsection, the board shall require each applicant under this subsection to pass the examination specified under s. VE 8.02 (2) and (3).

History: Cr. Register, January, 1994, No. 457, eff. 2-1-94; am. (2), Register, December, 1998, No. 516, eff. 1-1-99.

VE 9.04 Display of certificate. Each veterinary technician shall display a current certificate in a manner conspicuous to the public view.

History: Cr. Register, September, 1989, No. 405. eff. 10-1-89; am., Register, December, 1998, No. 516, eff. 1-1-99.

VE 9.05 Unprofessional conduct. The following acts constitute unprofessional conduct by a veterinary technician and are prohibited:

(1) Performing as a veterinary technician unless supervised as specified under s. VE 7.02 (3), (4) and (7).

(2) Misrepresentation in obtaining a veterinary technician certificate or in performing as a veterinary technician.

(3) Conduct in the practice of veterinary technology which evidences a lack of knowledge or ability to apply professional principles or skills.

(4) Gross negligence while performing as a veterinary technician. Gross negligence shall have the meaning specified in s. VE 7.01 (4).

(5) The personal use, misuse or sale other than for medical treatment of patients, of drugs listed in the U.S. controlled substances act of 1970, as amended, or ch. 961, Stats., other than drugs prescribed by a physician for use by the veterinary technician.

(6) Practicing or attempting to practice while the veterinary technician has a physical or mental impairment, including impairment related to drugs or alcohol, which is reasonably related to the applicant's ability to adequately undertake the practice of veterinary technology in a manner consistent with the safety of a patient or the public.

(7) Being convicted of a crime the circumstances of which substantially relate to the practice of veterinary technology.

(8) Violating or aiding and abetting the violation of any law or administrative rule substantially related to the practice of veterinary technology.

(9) Having a veterinary technician certificate limited, suspended or revoked or subject to any other disciplinary action in another state or U.S. jurisdiction.

(10) Accepting fees for animal health care services from a client.

(11) Practicing under an expired certificate.

(12) Falsely certifying to the board that the veterinary technician is exempt from the requirements of ss. VE 10.03 and 10.04 or falsely certifying that the veterinary technician has met certification or continuing veterinary education requirements

relating to the use, handling, distribution and disposal of pesticides.

History: Cr. Register, September, 1989, No. 405. eff. 10–1–89: cr. (12), Register, February, 1992, No. 434, eff. 3–1–92; am. (1), Register, May, 1994. No. 461, eff. **6–1–94; am.** (intro), (1) to (9) and (12), Register, December. 1998, No. 516, eff. 1–1–99; **correction in (5) made under s. 13.93 (2m) (b) 7., Stats., Register, May, 2001, No. 545.**

VE 9.06 Board action. The board may reprimand the certificate holder or deny, suspend, limit or revoke the ccrtificatc of any person to practice veterinary technology who engages in any of the acts prohibited by this chapter.

History: Cr. Register, September, 1989, No **405,** eff. 10–1–89: am., Register, **December,** 1998, **No. 516,** eff. 1–1–99.

Chapter VE 10

CONTINUING VETERINARY EDUCATION FOR VETERINARIANS AND VETERINARY TECHNICIANS

VE 10.01 Authority and purpose.
VE 10.02 Exemptions.
VE 10.03 Training and certification in the use, handling, distribution, and disposal of pesticides required.
VE 10.04 Continuing education in the use, handling, distribution and disposal of pesticides required.
VE 10.05 Acceptable training and continuing veterinary educational programs.
VE 10.06 Evidence of compliance; audit.

VE 10.01 Authority and purpose. The rules in this chapter are adopted by the veterinary examining board pursuant to the authority delegated by ss. 15.08(5), 227.11 (2), 453.03 (1), 453.03 (2) and 453.07 (1) (fm), Stats., and govern the certification and biennial training requirements for veterinarians and veterinary technicians relating to the use, handling, distribution and disposal of pesticides.

History: Cr. Register, February, 1912, No. 434, eff. 3–1–92; am. Register, December, 1998, No. 516, eff. 1–1–99.

VE 10.02 Exemptions. (1) A veterinarian or a veterinary technician who does not personally use or direct the use of pesticides and who does not repackage pesticides for use by others shall be exempt from the requirements of ss. VE 10.03 and 10.04.

(2) Each veterinarian and each veterinary technician claiming exemption From the requirements of ss. VE 10.03 and 10.04 shall at the end of the first registration period following March 1, 1992 or at the end of the first registration period following initial registration, and shall at the end of each following registration period, include a statement on his or her application for a certificate of registration certifying that the veterinarian or veterinary technician does not personally use or direct the use of pesticides and does not repackage pesticides for use by others. Each veterinarian and each veterinary technician so certifying who is associated with or employed by a clinic holding a veterinary clinic permit issued under s. 94.702, Stats., shall include the permit number with the certification.

History: Cr. Register, February, 1992, No. 434, eff. 3–1–92.; am. Register, December, 1998, No. 516, eff. 1–1–99.

VE 10.03 Training and certification in the use, handling, distribution, and disposal of pesticides required. Each veterinarian and each veterinary technician not exempt under s. VE 10.02 shall at the end of the first registration period following March 1, 1992 or at the end of the first registration period following initial registration, include a statement on his or her application for a certificate of registration certifying that the veterinarian or veterinary technician has satisfactorily completed a certification program or other training program acceptable to the board in the use, handling, distribution and disposal of pesticides.

History: Cr. Register, February, 1912, No. 434, eff. 3–1-92; am. Register, December, 1998, No 516, eff. 1–1–99.

VE 10.04 Continuing education in the use, handling, distribution and disposal of pesticides required. Each veterinarian and each veterinary technician not exempt under s. VE 10.02 shall at the end of the second registration period following March 1, 1992 or at the end of the second registration period following initial registration, and shall at the end of each following registration period, include a statement on his or her application for a certificate of registration as follows:

(1) That the veterinarian or veterinary technician has satisfactorily completed 4 credits of acceptable continuing veterinary education in the use, handling, distribution and disposal of pesticides within the 2 year period immediately preceding the application for a certificate of registration; or,

(2) That the veterinarian or veterinary technician is currently certified by a certification program acceptable to the board in the use, handling, distribution and disposal of pesticides, and that the veterinarian or veterinary technician intends to maintain his or her certification in lieu of the biennial continuing veterinary education requirement.

History: Cr. Register, February, 1992, No. 434, eff. 3–1–92; am. Register, December, 1998, No. 516, eff. 1–1–99.

VE 10.05 Acceptable training and continuing veterinary educational programs. Only courses and programs approved in advance by the board may be used to fulfill the requirements of ss. VE 10.03 and 10.04. The board shall assign credits to approved courses and programs.

History: Cr. Register, February, 1992, No. 434, eff. 3–1–92.

VE 10.06 Evidence of compliance; audit. (1) Evidence of compliance with the requirements of ss. VE 10.03 and 10.04 shall be retained by each veterinarian or Veterinary technician through the biennium following the biennium in which the credit or certification was acquired.

(2) The board may audit compliance by requiring a veterinarian or veterinary technician to submit his or her evidence of compliance to the board for the biennium immediately preceding the biennium in which the audit is performed.

History: Cr. Register, February, 1992, No. 434, eff. 3–1–92; am. Register, December, 1998, No. 516, eff. 1–1–99.

Chapter RL 1

PROCEDURES TO REVIEW DENIAL OF AN APPLICATION

RL 1.01	Authority and scope.	RL 1.08	Procedure.
RL 1.03	Definitions.	RL 1.09	Conduct of hearing.
RL 1.04	Examination failure: retake and hearing.	RL 1.10	Service.
RL 1.05	Notice of intent to deny and notice of denial.	RL 1.11	Failure to appear.
RL 1.06	Parties to a denial review proceeding.	RL 1.12	Withdrawal of request.
RL 1.07	Request for hearing.	RL 1.13	Transcription fees.

RL 1.01 Authority and scope. Rules in this chapter are adopted under authority in s. 440.03 (1), Stats., for the purpose of governing review of a decision to deny an application. Rules in this chapter do not apply to denial of an application for renewal of a credential. Rules in this chapter shall apply to applications received on or after July 1, 1996.

Note: Procedures used for denial of an application for renewal of a credential are found in Ch. RL 2, Wis. Admin. Code and s. 227.01 (3) (b), Stats.

History: Cr. Register, October. 1985, No. 358, eff. 11–1-85; am., Register, July, 1996, No. 487, eff. 8–1–96.

RL 1.02 Scope. **History: Cr. Register, October. 1985, No. 358, eff. 11–1–85; r., Register, July, 1996, No. 487, eff. 8–1–96.**

RL 1.03 Definitions. In this chapter:

(1) "Applicant" means any person who applies for a credential from the applicable credentialing authority. "Person" in this subsection includes a business entity.

(2) "Credential" means a license, permit, or certificate of certification or registration that is issued under chs. 440 to 480, Stats.

(3) "Credentialing authority" means the department or an attached examining board, affiliated credentialing board or board having authority to issue or deny a credential.

(4) "Denial review proceeding" means a class 1 proceeding as defined in s. 227.01 (3) (a), Stats., in which a credentialing authority reviews a decision to deny a completed application for a credential.

(5) "Department" means the department of regulation and licensing.

(6) "Division" means the division of enforcement in the department.

History: Cr. Register, October, 1985, No. 358, eff. 11–1–85; correction in (4) made under s. 13.93 (2m) (b) 7., Stats., Register. May, 1988, No. 389: am. (1), (4), r. (2), renum. (3) to be (5), cr. (2), (3), (6), Register, July. 1996, No. 487, eff. 8–1–96.

RL 1.04 Examination failure: retake and hearing. (1) An applicant may request a hearing to challenge the validity, scoring or administration of an examination if the applicant has exhausted other available administrative remedies, including, but not limited to, internal examination review and regrading, and if either:

(a) The applicant is no longer eligible to retake a qualifying examination.

(b) Reexamination is not available within 6 months from the date of the applicant's last examination.

(2) A failing score on an examination does not give rise to the right to a hearing if the applicant is eligible to retake the examination and reexamination is available within 6 months from the date of the applicant's last examination.

Note: An applicant is not eligible for a license until his or her application is complete. An application is not complete until an applicant has submitted proof of having successfully passed any required qualifying examination. If an applicant fails the qualifying examination, but has the right to retake it within 6 months, the applicant is not entitled to a hearing under this chapter.

History: Cr., Register, duly, 1996, No. 487, eff. 8–1–96.

RL 1.05 Request for hearing. **History: Cr. Register, October, 1985, No. 358, eff. 11–1–85; corrections in (2) (a) and (b) made under s. 13.93 (2m) (b) 7., Stats., Register, May. 1988, No. 389; r. Register, July, 1996, No. 487, eff. 8–1–96.**

RL 1.05 Notice of intent to deny and notice of denial. (1) NOTICE OF INTENT TO DENY. (a) A notice of intent to dcny may be issued upon an initial determination that the applicant does not meet the eligibility requirements for a credential. A notice of intent to dcny shall contain a short statement in plain language of the basis for the anticipated denial, specify the statute, rule or other standard upon which the denial will be based and state that the application shall be denied unless, within 45 calendar days from the date of the mailing of the notice, the credentialing authority receives additional information which shows that the applicant meets the requirements for a credential. The notice shall be substantially in the form shown in Appendix I.

(b) If the credentialing authority does not receive additional information within the 45 day period, the notice of intent to deny shall operate as a notice of denial and the **45** day period for requesting a hearing described in s. RL 1.07 shall commence on the date of mailing of the notice of intent to deny.

(c) If the credentialing authority receives additional information within the 45 day period which fails to show that the applicant meets the requirements for a credential, a notice of denial shall be issued under sub. (2).

(2) NOTICE OF DENIAL. If the credentialing authority determines that an applicant does not meet the requirements for a credential, the credentialing authority shall issue a notice of denial in the form shown in Appendix II. The notice shall contain a short statement in plain language of the basis for denial, specify the statute, rule or other standard upon which the denial is based, and be substantially in the form shown in Appendix II.

History: Cr., Register, July, 1996, eff. 8–1–96.

RL 1.06 Parties to a denial review proceeding. Parties to a denial review proceeding are the applicant, the credentialing authority and any person admitted to appear under s. 227.44 (2m), Stats.

History: Cr. Register, October, 1985, No. 358, eff. 11–1–85: renum. from RL 1.04 and am., Register, July, 1996, No. 487, eff. 8–1–96.

RL 1.07 Request for hearing. An applicant may request a hearing within 45 calendar days after the mailing of a notice of denial by the credentialing authority. The request shall be in writing and set forth all of the following:

(1) The applicant's name and address.

(2) The type of credential for which the applicant has applied.

(3) A specific description of the mistake in fact or law which constitutes reasonable grounds for reversing the decision to deny the application for a credential. If the applicant asserts that a mistake in fact was made, the request shall include a concise statement of the essential facts which the applicant intends to prove at the hearing. If the applicant asserts a mistake in law was made, the request shall include a statement of the law upon which the applicant relies.

***History:* Cr., Register, July, 1996, No. 487, eff. 8–1–96.**

RL 1.08 Procedure. The procedures for a denial review proceeding are:

(1) REVIEW OF REQUEST FOR HEARING. Within 45 calendar days of receipt of a request for hearing, the credentialing authority or its designee shall grant or deny the request for a hearing on a denial of a credential. A request shall be granted if requirements in s. RL 1.07 are met, and the credcntialing authority or its designee shall

notify the applicant of the time, place and nature of the hearing. If the requirements in s. RL 1.07 are not met, a hearing shall be denied, and the credentialing authority or its designee shall inform the applicant in writing of the reason for denial. For purposes of a petition for review under s. 227.52, Stats., a request is denied if a response to a request for hearing is not issued within 45 calendar days of its receipt by the credentialing authority.

(2) DESIGNATION OF PRESIDING OFFICER. An administrative law judge employed by the department shall preside over denial hearings, unless the credentialing authority designates otherwise. The administrative law judge shall be an attorney in the department designated by the department general counsel, an employe borrowed from another agency pursuant to s. 20.901, Stats., or a person employed as a special project or limited term employe by the department, except that the administrative law judge may not be an employe in the division.

(3) DISCOVERY. Unless the parties otherwise agree, no discovery is permitted, except for the taking and preservation of evidence as provided in ch. 804, Stats., with respect to witnesses described in s. 227.45 (7) (a) to (d), Stats. An applicant may inspect records under s. 19.35, Stats., the public records law.

(4) BURDEN OF PROOF. The applicant has the burden of proof to show by evidence satisfactory to the credentialing authority that the applicant meets the eligibility requirements set by law for the credential.

History: Cr., Register, July, 1996, No. 487, eff. 8-1-96.

RL **1.09 Conduct of hearing. (1)** RECORD. A stenographic, electronic or other record shall be made of all hearings in which the testimony of witnesses is offered as evidence, and of other oral proceedings when requested by a party.

(2) ADJOURNMENTS. The presiding officer may, for good cause, grant continuances, adjournments and extensions of time.

(3) SUBPOENAS. (a) Subpoenas for the attendance of any witness at a hearing in the proceeding may be issued in accordance with s. 227.45 (6m), Stats.

(b) A presiding officer may issue protective orders according to the provisions of s. 805.07, Stats.

(4) MOTIONS. All motions, except those made at hearing, shall be in writing, filed with the presiding officer and a copy served upon the opposing party not later than 5 days before the time specified for hearing the motion.

(5) EVIDENCE. The credentialing authority and the applicant shall have the right to appear in person or by counsel, to call, examine and cross-examine witnesses and to introduce evidence into the record. If the applicant submits evidence of eligibility for a credential which was not submitted to the credentialing authority prior to denial of the application, the presiding officer may request the credentialing authority to reconsider the application and the evidence of eligibility not previously considered.

(6) BRIEFS. The presiding officer may require the filing of briefs.

(7) LOCATION OF HEARING All hearings shall be held at the offices of the department in Madison unless the presiding officer determines that the health or safety of a witness or of a party or an emergency requires that a hearing be held elsewhere.

History: Cr., Register, July, 1996, No. 487, eff. 8-1-96

RL 1.10 Service. Service of any document on an applicant may be made by mail addressed to the applicant at the last address filed in writing by the applicant with the credentialing authority. Service by mail is complete on the date of mailing.

History: Cr. **Register, October.** *1985, No.* 358, **eff. 11-1-85; renum.** ***from*** **RL 1.06 and am., Register, July, 1996, No. 487, eff. 8-1-96.**

RL **1.11 Failure to appear.** In the event that neither the applicant nor his or her representative appears at the time and place designated for the hearing, the credentialing authority may take action based upon the record as submitted. By failing to appear, an applicant waives any right to appeal before the credentialing authority which denied the license.

History: Cr. Register, October, 1985, No. 358, **eff.** 11-1-85; **renum. from RL 1.07 and am., Register, July, 1996, No. 487, eff. 8-1-96.**

RL **1.12 Withdrawal of request. A** request for hearing may be withdrawn at any time. Upon receipt of a request for withdrawal, the credentialing authority shall issue an order affirming the withdrawal of a request for hearing on the denial.

History: Cr., Register, July, 1996, No. 487, eff. 8-1-96.

RL **1.13 Transcription fees. (1)** The fee charged for a transcript of a proceeding under this chapter shall be computed by the person or reporting service preparing the transcript on the following basis:

(a) If the transcript is prepared by a reporting service, the fee charged for an original transcription and for copies shall be the amount identified in the state operational purchasing bulletin which identifies the reporting service and its fees.

(b) If a transcript is prepared by the department, the department shall charge a transcription fee of $1.75 per page and a copying charge of $.25 per page. If 2 or more persons request a transcript, the department shall charge each requester a copying fee of $.25 per page, but may divide the transcript fee equitably among the requesters. If the department has prepared a written transcript for its own use prior to the time a request is made, the department shall assume the transcription fee, but shall charge a copying fee of $.25 per page.

(2) A person who is without means and who requires a transcript for appeal or other reasonable purposes shall be furnished with a transcript without charge upon the filing of a petition of indigency signed under oath. For purposes of this section, a determination of indigency shall be based on the standards used for making a determination of indigency under s. 977.07, Stats.

History: Cr., Register, July, 1996, No. 487, eff. 8-1-96.

Chapter RL 1

APPENDIX I

NOTICE OF INTENT TO DENY

[DATE]
[NAME and
ADDRESS OF APPLICANT]

Re: Application for [TYPE OF CREDENTIAL]; Notice of Intent to Deny

Dear [APPLICANT]:

PLEASE TAKE NOTICE that the state of Wisconsin [CREDENTIALING AUTHORITY] has reviewed your application for a [TYPE OF CREDENTIAL]. On the basis of the application submitted, the [CREDENTIALING AUTHORITY] intends to deny your application for reasons identified below unless, within 45 calendar days from the date of the mailing of this notice, the [CREDENTIALING AUTHORITY] receives additional information which shows that you meet the requirements for a credential.

[STATEMENT OF REASONS FOR DENIAL]

The legal basis for this decision is:

[SPECIFY THE STATUTE, RULE OR OTHER STANDARD UPON
WHICH THE DENIAL WILL BE BASED]

If the [CREDENTIALING AUTHORITY] does not receive additional information within the 45 day period, this notice of intent to deny shall operate as a notice of denial and the 45 day period you have for requesting a hearing shall commence on the date of mailing of this notice of intent to deny.

_____
[Designated Representative of Credentialing Authority]

PLEASE NOTE that you have a right to a hearing on the denial of your application if you file a request for hearing in accordance with the provisions of Ch. RL 1 of the Wisconsin Administrative Code. If you do not submit additional information in support of your application, you may request a hearing within 45 calendar days after the mailing of this notice. Your request must be submitted in writing to the [CREDENTIALING AUTHORITY] at:

Department of Regulation and Licensing
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708–8935

The request must contain your name and address, the type of credential for which you have applied, a specific description of the mistake in fact or law that you assert was made in the denial of your credential, and a concise statement of the essential facts which you intend to prove at the hearing. You will be notified in writing of the [CREDENTIALING AUTHORITY'S'] decision. Under s. RL 1.08 of the Wisconsin Administrative Code, a request for a hearing is denied if a response to a request for a hearing is not issued with 45 days of its receipt by the [CREDENTIALING AUTHORITY]. Time periods for a petition for review begin to run 45 days after the [CREDENTIALING AUTHORITY] has received a request for a hearing and has not responded.

Chapter RL 1

APPENDIX II

NOTICE OF DENIAL

[DATE]
[NAME and
ADDRESS OF APPLICANT]

Re: Application for [TYPE OF CREDENTIAL]; Notice of Denial

Dear [APPLICANT]:

PLEASE TAKE NOTICE that the state of Wisconsin [CREDENTIALING AUTHORITY] has reviewed your application for a [TYPE OF CREDENTIAL] and denies the application for the following reasons:

[STATEMENT OF REASONS FOR DENIAL]

The legal basis for this decision is:

[SPECIFY THE STATUTE?RULE OR OTHER STANDARD UPON
WHICH THE DENIAL WILL BE BASED]

_____
[Designated Representative of Credentialing Authority]

PLEASE NOTE that you have a right to a hearing on the denial of your application if you file a request for hearing in accordance with the provisions of Ch. RL 1 of the Wisconsin Administrative Code. You may request a hearing within 45 calendar days after the mailing of this notice of denial. Your request must be submitted in writing to the [CREDENTIALING AUTHORITY] at:

Department of Regulation and Licensing
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708–8935

The request must contain your name and address, the type of credential for which you have applied, a specific description of the mistake in fact or law that you assert was made in the denial of your credential?and a concise statement of the essential facts which you intend to prove at the hearing. You will be notified in writing of **the** [CREDENTIALING AUTHORITY'S] decision. Under s. RL 1.08 of the Wisconsin Administrative Code, a request for a hearing is denied if a response to a request for a hearing is not issued within 45 days of its receipt by the [CREDENTIALING AUTHORITY]. Time periods for **a** petition for review begin to run 45 days after the [CREDENTIALING AUTHORITY] has received a request for a hearing and has not responded.

Chapter RL 2

PROCEDURES FOR PLEADING AND HEARINGS

RL 2.01	Authority.
RL 2.02	Scope; kinds of proceedings.
RL 2.03	Definitions.
RL 2.035	Receiving informal complaints.
RL 2.036	Procedure for settlement conferences.
RL 2.037	Parties to a disciplinary proceeding.
RL 2.04	Commencement of disciplinary proceedings.
RL 2.05	Pleadings to be captioned.
RL 2.06	Complaint.
RL 2.07	Notice of hearing.
RL 2.08	Service and filing of complaint, notice of hearing and other papers.
RL 2.09	Answer.
RL 2.10	Administrative law judge.
RL 2.11	Prehearing conference.
RL 2.12	Settlements.
RL 2.13	Discovery.
RL 2.14	Default.
RL 2.15	Conduct of hearing.
RL 2.16	Witness fees and costs.
RL 2.17	Transcription fees.
RL 2.18	Assessment of costs.

RL 2.01 Authority. The rules in ch. RL 2 are adopted pursuant to authority in s. 440.03 (1), Stats., and procedures in ch. 227, Stats.

History: Cr. Register, October, 1978, No. 274, eff. 11–1–78; am. Register, May, 1982, No. 317, eff. 6–1–82.

RL 2.02 Scope; kinds of proceedings. The rules in this chapter govern procedures in class 2 proceedings, as defined in s. 227.01 (3) (b), Stats., against licensees before the department and all disciplinary authorities attached to the department, except that s. RL 2.17 applies also to class 1 proceedings, as defined in s. 227.01 (3) (a), Stats.

History: Cr. Register, October, 1978, No. 274, eff. 11–1–78; am. Register, May, 1982, No. 317, eff. 6–1–82; corrections made under s. 13.93 (2m) (b) 7., Stats., Register, May, 1988, No. 389; am. Register, June, 1992, No. 438, eff. 7–1–92.

RL 2.03 Definitions. In this chapter:

(1) "Complainant" means the person who signs a complaint.

(2) "Complaint" means a document which meets the requirements of ss. RL 2.05 and 2.06.

(3) "Department" means the department of regulation and licensing.

(4) "Disciplinary authority" means the department or the attached examining board or board having authority to revoke the license of the holder whose conduct is under investigation.

(5) "Disciplinary proceeding" means a proceeding against one or more licensees in which a disciplinary authority may determine to revoke or suspend a license, to reprimand a licensee, to limit a license, to impose a forfeiture, or to refuse to renew a license because of a violation of law.

(6) "Division" means the division of enforcement in the department.

(7) "Informal complaint" means any written information submitted to the division or any disciplinary authority by any person which requests that a disciplinary proceeding be commenced against a licensee or which alleges facts, which if true, warrant discipline.

(8) "Licensee" means a person, partnership, corporation or association holding any license, permit, certificate or registration granted by a disciplinary authority or having any right to renew a license, permit, certificate or registration granted by a disciplinary authority.

(9) "Respondent" means the person against whom a disciplinary proceeding has been commenced and who is named as respondent in a complaint.

(10) "Settlement conference" means a proceeding before a disciplinary authority or its designee conducted according to s. RL 2.036, in which a conference with one or more licensee is held to attempt to reach a fair disposition of an informal complaint prior to the commencement of a disciplinary proceeding.

History: Cr. Register, October, 1978, No. 274, eff. 11–1–78; am. (1) and (6), renum. (7) and (8) to be (8) and (9), cr. (7), Register, May, 1982, No. 317, eff. 6–1–82; r. (1), renum. (2) to (4) to be (1) to (3), cr. (4) and (10), am. (5), (7) and (8), Register, June, 1992, No. 438, eff. 7–1–92.

RL 2.035 Receiving informal complaints. All informal complaints received shall be referred to the division for filing, screening and, if necessary, investigation. Screening shall be done by the disciplinary authority, or, if the disciplinary authority directs, by a disciplinary authority member or the division. In this section, screening is a preliminary review of complaints to determine whether an investigation is necessary. Considerations in screening include, but are not limited to:

(1) Whether the person complained against is licensed;

(2) Whether the violation alleged is a fee dispute;

(3) Whether the matter alleged, if taken as a whole, is trivial; and

(4) Whether the matter alleged is a violation of any statute, rule or standard of practice.

History: Cr. Register, May, 1982, No. 317, eff. 6–1–82; am. (intro.) and (3), Register, June, 1992, No. 438. eff. 7–1–92.

RL 2.036 Procedure for settlement conferences. At the discretion of the disciplinary authority, a settlement conference may be held prior to the commencement of a disciplinary proceeding, pursuant to the following procedures:

(1) SELECTION OF INFORMAL COMPLAINTS. The disciplinary authority or its designee may determine that a settlement conference is appropriate during an investigation of an informal complaint if the information gathered during the investigation presents reasonable grounds to believe that a violation of the laws enforced by the disciplinary authority has occurred. Considerations in making the determination may include, but are not limited to:

(a) Whether the issues arising out of the investigation of the informal complaint are clear, discrete and sufficiently limited to allow for resolution in the informal setting of a settlement conference; and

(b) Whether the facts of the informal complaint are undisputed or clearly ascertainable from the documents received during investigation by the division.

(2) PROCEDURES When the disciplinary authority or its designee has selected an informal complaint for a possible settlement conference, the licensee shall be contacted by the division to determine whether the licensee desires to participate in a settlement conference. A notice of settlement conference and a description of settlement conference procedures, prepared on forms prescribed by the department, shall be sent to all participants in ad-

vance of any settlement conference. A settlement conference shall not be held without the consent of the licensee. No agreement reached between the licensee and the disciplinary authority or its designee at a settlement conference which imposes discipline upon the licensee shall be binding until the agreement is reduced to writing, signed by the licensee, and accepted by the disciplinary authority.

(3) ORAL STATEMENTS AT SETTLEMENT CONFERENCE. Oral statements made during a settlement conference shall not be introduced into or made part of the record in a disciplinary proceeding.

History: Cr. Register, June, 1992, No. 438. eff. 7–1–92.

RL 2.037 Parties to a disciplinary proceeding. Parties to a disciplinary proceeding are the respondent, the division and the disciplinary authority before which the disciplinary proceeding is heard.

History: Cr. Register, May, 1982, No. 317, eff. 6–1–82; renum. from RL 2.036 and am., Register, June, 1992, No. 438, eff. 7–1–92.

RL 2.04 Commencement of disciplinary proceedings. Disciplinary proceedings are commenced when a notice of hearing is filed in the disciplinary authority office or with a designated administrative law judge.

History: Cr. Register, February, 1979, No. 278, eff. 3–1–79; am. Register, June, 1992, No. 438, eff. 7–1–92.

RL 2.05 Pleadings to be captioned. All pleadings, notices, orders, and other papers filed in disciplinary proceedings shall be captioned: "BEFORE THE _____" and shall be entitled: "IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST _____, RESPONDENT."

History: Cr. Register, October, 1978, No. 274, eff. 11–1–78.

RL 2.06 Complaint. A complaint may be made on information and belief and shall contain:

(1) The name and address of the licensee complained against and the name and address of the complainant;

(2) A short statement in plain language of the cause for disciplinary action identifying with reasonable particularity the transaction, occurrence or event out of which the cause arises and specifying the statute, rule or other standard alleged to have been violated;

(3) A request in essentially the following form: "Wherefore, the complainant demands that the disciplinary authority hear evidence relevant to matters alleged in this complaint, determine and impose the discipline warranted, and assess the costs of the proceeding against the respondent;" and,

(4) The signature of the complainant.

History: Cr. Register, October, 1978, No. 274, eff. 11–1–78; am. (intro.), (3) and (4), Register, June, 1992, No. 438, eff. 7–1–92.

RL 2.07 Notice of hearing. (1) A notice of hearing shall be sent to the respondent at least 10 days prior to the hearing, unless for good cause such notice is impossible or impractical, in which case shorter notice may be given, but in no case may the notice be provided less than 48 hours in advance of the hearing.

(2) A notice of hearing to the respondent shall be substantially in the form shown in Appendix I and signed by a disciplinary authority member or an attorney in the division.

History: Cr. Register, October, 1978, No. 274, eff. 11–1–78; am. (2) (intro.), Register, February, 1979, No. 278, eff. 3–1–79; r. and recr. Register, June, 1992, No. 438, eff. 7–1–92.

RL 2.08 Service and filing of complaint, notice of hearing and other papers. (1) The complaint, notice of hearing, all orders and other papers required to be served on a respondent may be served by mailing a copy of the paper to the respondent at the last known address of the respondent or by any procedure described in s. 801.14(2), Stats. Service by mail is complete upon mailing.

(2) Any paper required to be filed with a disciplinary authority may be mailed to the disciplinary authority office or, if an administrative law judge has been designated to preside in the matter, to the administrative law judge and shall be deemed filed on receipt at the disciplinary authority office or by the administrative law judge. An answer under s. RL 2.09, and motions under s. RL 2.15 may be filed and served by facsimile transmission. A document filed by facsimile transmission under this section shall also be mailed to the disciplinary authority. An answer or motion filed by facsimile transmission shall be deemed filed on the first business day after receipt by the disciplinary authority.

History: Cr. Register, October, 1978, No. 274, eff. 11–1–78; am. (2), Register, June, 1992, No. 438, eff. 7–1–92.

RL 2.09 Answer. (1) An answer to a complaint shall state in short and plain terms the defenses to each cause asserted and shall admit or deny the allegations upon which the complainant relies. If the respondent is without knowledge or information sufficient to form a belief as to the truth of the allegation, the respondent shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the allegations denied. The respondent shall make denials as specific denials of designated allegations or paragraphs but if the respondent intends in good faith to deny only a part or a qualification of an allegation, the respondent shall specify so much of it as true and material and shall deny only the remainder.

(2) The respondent shall set forth affirmatively in the answer any matter constituting an affirmative defense.

(3) Allegations in a complaint are admitted when not denied in the answer.

(4) An answer to a complaint shall be filed within 20 days from the date of service of the complaint.

History: Cr. Register, October, 1978, No. 274, eff. 11–1–78; am. (4), Register, February, 1979, No. 278, eff. 3–1–79; am. (1), (3) and (4), Register, June, 1992, No. 438, eff. 7–1–92.

RL 2.10 Administrative law judge. (1) DESIGNATION. Disciplinary hearings shall be presided over by an administrative law judge employed by the department unless the disciplinary authority designates otherwise. The administrative law judge shall be an attorney in the department designated by the department general counsel, an employe borrowed from another agency pursuant to s. 20.901, Stats., or a person employed as a special project or limited term employe by the department, except that the administrative law judge may not be an employe in the division.

(2) AUTHORITY. An administrative law judge designated under this section to preside over any disciplinary proceeding has the authority described in s. 227.46 (1), Stats. Unless otherwise directed by a disciplinary authority pursuant to s. 227.46 (3), Stats., an administrative law judge presiding over a disciplinary proceeding shall prepare a proposed decision, including findings of fact, conclusions of law, order and opinion, in a form that may be adopted as the final decision in the case.

(3) SERVICE OF PROPOSED DECISION. Unless otherwise directed by a disciplinary authority, the proposed decision shall be served by the administrative law judge on all parties with a notice providing each party adversely affected by the proposed decision with an opportunity to file with the disciplinary authority objections and written argument with respect to the objections. A party adversely affected by a proposed decision shall have at least 10 days from the date of service of the proposed decision to file objections and argument.

History: Cr. Register, October, 1978, No. 274. eff. 11–1–78; r. and recr. (1), Register, November, 1986, No. 371, eff. 12–1–86; correction in (2) made under s. 13.93 (2m) (b) 7., Stats., Register, May, 1988, No. 389; am. Register, June, 1992, No. 438, eff. 7–1–92.

RL 2.11 Prehearing conference. In any matter pending before the disciplinary authority the complainant and the respondent, or their attorneys, may be directed by the disciplinary authority or administrative law judge to appear at a conference or to participate in a telephone conference to consider the simplifica-

tion of issues, the necessity or desirability of amendments to the pleadings, the admission of facts or documents which will avoid unnecessary proof and such other matters as may aid in the disposition of the matter.

History: Cr. Register. October. 1978, No. 274, eff. 11–1–78; **am.** Register, June, 1992, No. 438. eff. 1992.

RL 2.12 Settlements. No stipulation or settlement agreement disposing of a complaint or informal complaint shall be effective or binding in any respect until reduced to writing, signed by the respondent and approved by the disciplinary authority.

History: Cr. Register, October. 1978, No. 274, eff. 11–1–78; **am.** Register, June, 1992, No. 438, eff. 7–1–92.

RL 2.13 Discovery. The person prosecuting the complaint and the respondent may, prior to the date set for hearing, obtain discovery by use of the methods described in ch. 804, Stats., for the purposes set forth therein. Protective orders, including orders to terminate or limit examinations, orders compelling discovery, sanctions provided in s. 804.12, Stats. or other remedies as are appropriate for failure to comply with such orders may be made by the presiding officer.

History: Cr. Register, October, 1978, No. 274, eff. 11–1–78.

RL 2.14 Default. If the respondent fails to answer as required by s. RL 2.09 or fails to appear at the hearing at the time fixed therefor, the respondent is in default and the disciplinary authority may make findings and enter an order on the basis of the complaint and other evidence. The disciplinary authority may, for good cause, relieve the respondent from the effect of such findings and permit the respondent to answer and defend at any time before the disciplinary authority enters an order or within a reasonable time thereafter.

History: Cr. Register, October, 1978, **No.** 274, eff. 11–1–78; **am.** Register, June, 1992, No. 438, eff. 7–1–92.

RL 2.15 Conduct of hearing. (1) PRESIDING OFFICER. The hearing shall be presided over by a member of the disciplinary authority or an administrative law judge designated pursuant to s. RL 2.10.

(2) RECORD. A stenographic, electronic or other record shall be made of all hearings in which the testimony of witnesses is offered as evidence.

(3) EVIDENCE. The complainant and the respondent shall have the right to appear in person or by counsel, to call, examine, and cross-examine witnesses and to introduce evidence into the record.

(4) BRIEFS. The presiding officer may require the filing of briefs.

(5) MOTIONS. **All** motions, except those made at hearing, shall be in writing, filed with the presiding officer and a copy served upon the opposing party not later than 5 days before the time specified for hearing the motion.

(6) ADJOURNMENTS The presiding officer may, for good cause, grant continuances, adjournments and extensions of time.

(7) SUBPOENAS. (a) Subpoenas for the attendance of any witness at a hearing in the proceeding may be issued in accordance with s. 885.01, Stats. Service shall be made in the manner provided in s. 805.07 (5), Stats. **A** subpoena may command the person to whom it is directed to produce the books, papers, documents, or tangible things designated therein.

(b) **A** presiding officer may issue protective orders according to the provision the provisions of s. 805.07, Stats.

(8) LOCATION OF HEARING **All** hearings shall be held at the offices of the department of regulation and licensing in Madison unless the presiding officer determines that the health or safety of a witness or of a party or an emergency requires that a hearing be held elsewhere.

History: Cr Register. October, 1978, No 274, eff. 11–1–78; **am.** (1), **(5) and (6),** cr. (8), Register, June, 1992, No 438, eff. 7–1–92.

RL 2.16 Witness fees and costs. Witnesses subpoenaed at the request of the division or the disciplinary authority shall be entitled to compensation from the state for attendance and travel as provided in ch. 885, Stats.

History: Cr. Register, **October,** 1978, No. 274. eff 11–1–78: **am.** Register, June, 1992, No. 438, eff. 7–1–92.

RL 2.17 Transcription fees. (1) The fee charged for a transcript of a proceeding under this chapter shall be computed by the person or reporting service preparing the transcript on the following basis:

(a) If the transcript is prepared by a reporting service, the fee charged for an original transcription and for copies shall be the amount identified in the state operational purchasing bulletin which identifies the reporting service and its fees.

(b) If a transcript is prepared by the department, the department shall charge a transcription fee of $1.75 per page and a copying charge of S.25 per page. If 2 or more persons request a transcript, the department shall charge each requester a copying fee of $.25 per page, but may divide the transcript fee equitably among the requesters. If the department has prepared a written transcript for its own use prior to the time a request is made, the department shall assume the transcription fee, but shall charge a copying fee of $.25 per page.

(2) A person who is without means and who requires a transcript for appeal or other reasonable purposes shall be furnished with a transcript without charge upon the filing of a petition of indigency signed under oath.

History: Cr. Register, **October,** 1978, No. 274, eff. 11–1–78; am. (1) Register, May, 1982, No. 317, eff 61–82; **r. and recr.** Register, June. 1992. No. 438, eff. 7–1–92, **am.** (1) (b), Register. **August,** 1993, No. 452, eff. 9–1–93.

RL 2.18 Assessment of costs. (1) The proposed decision of an administrative law judge following hearing shall include a recommendation whether **all** or part of the costs of the proceeding shall be assessed against the respondent.

(2) If a respondent objects to the recommendation of an administrative law judge that costs be assessed, objections to the assessment of costs shall be filed, along with any other objections to the proposed decision, within the time established for filing of objections.

(3) The disciplinary authority's final decision and order imposing discipline in a disciplinary proceeding shall include a determination whether all or part of the costs of the proceeding shall be assessed against the respondent.

(4) When costs are imposed, the division and the administrative law judge shall file supporting affidavits showing costs incurred within 15 days of the date of the final decision and order. The respondent shall file any objection to the affidavits within 30 days of the date of the final decision and order. The disciplinary authority shall review any objections, along with the affidavits, and affirm or modify its order without a hearing.

History: **Cr.** Register, June, 1992, No 438, eff. 7–1–92.

Chapter RL 2
APPENDIX I
NOTICE OF HEARING

THE STATE OF WISCONSIN

To each person named above *as* a respondent:

You are hereby notified that disciplinary proceedings have been commenced against you before the (#1). The Complaint, which is attached to this Notice, states the nature and basis of the proceeding. This proceeding may result in disciplinary action taken against you by the (#2). This proceeding is a class 2 proceeding as defined in **s. 227.01 (3)** (b), Wis. **Stats.**

Within **20** days from the date of service of the complaint, you must respond with a written Answer to the allegations of the Complaint. You may have an attorney help or represent you. The Answer shall follow the general rules of pleading contained in **s.** RL 2.09. If you do not provide a proper Answer within **20** days, you will be found to be in default, and a default judgment may be entered against you on the bais of the complaint and other evidence and the (**#3**) may take disciplinary action against you and impose the costs of the investigation, prosecution and decision of this matter upon you without further notice or hearing.

The original of your Answer should be filed with the Administrative Law Judge who has been designated to preside over this matter pursuant to **s.** RL 2.10, who is:

Department of Regulation and Licensing
Office of Board Legal Services
P. **O. Box 8935**
Madison. Wisconsin **53708**

You should also file a copy of your Answer with the complainant's attorney, who is:

(**#5**)
Department of Regulation and Licensing
Division of Enforcement
P. **O.** Box **8935**
Madison, Wisconsin **53708**

A hearing on the matters contained in the Complaint will be held at the time and location indicated below:

Hearing Date, Time and Location

Date: (#6)
Time: (**#7**)
Location: Room(**#8**)
1400 East Washington Ave
Madison, Wisconsin

or as soon thereafter as the matter may be heard. The questions to be determined at this hearing are whether the license previously issued to you should be revoked or suspended, whether such license should be limited, whether you should be reprimanded, whether, if authorized by law, a forfeiture should be imposed, or whether any other discipline should be imposed on you. You may be represented by an attorney at the hearing. The legal authority and procedures under which the hearing is to be held is set forth in **s. 227.44,** Stats., **s.** (#9), Stats., ch. RL 2, and s. (#10).

If you do not appear for hearing at the time and location set forth above, you will be found to be in default, and a default judgment may be entered against you on the basis of the complaint and other evidence and the (#11) may take disciplinary action against you and impose the costs of the investigation, prosecution and decision of this matter upon you without further notice or hearing.

If you choose to be represented by an attorney in this proceeding, the attorney is requested to **file** a Notice of Appearance with the disciplinary authority and the Administrative Law Judge within 20 days of your receiving this Notice.

Dated at Madison, Wisconsin this _____day *of,* _____20___ .

_____
Signature of Licensing Authority Member or Attorney
(#12)

INSERTIONS

1. Disciplinary authority
2. Disciplinary authority
3. Disciplinary authority
4. Administrative Law Judge
5. Complainant's attorney
6. Date of hearing
7. Time of hearing
8. Location of hearing
9. Legal authority (statute)
10. Legal authority (administrative code)
11. Disciplinary authority
12. Address and telephone number of person signing the complaint

Chapter RL 3

ADMINISTRATIVE INJUNCTIONS

RL 3.01	Authority.	RL 3.09	Administrative law judge.
RL 3.02	Scope; kinds of proceedings.	RL 3.10	Prehearing conference.
RL 3.03	Definitions.	RL3.11	Settlements.
RL 3.04	Pleadings to he captioned.	RL 3.12	Discovery.
RL 3.05	Petition for administrative injunction.	RL 3.13	Default.
RL 3.06	Notice of hearing.	RL 3.14	Conduct of hearing.
RL 3.07	Service and filing of petition, notice of hearing and other papers	RL 3.15	Witness fees and costs.
RL 3.08	Answer.	RL3.16	Transcription fees.

RL 3.01 Authority. The rules inch. RL 3 are adopted pursuant to authority in ss. 440.03 (1) and 440.21, Stats.

History: Cr. Register, July. 1993, No 451, eff 8-1–93

RL 3.02 Scope; kinds of proceedings. The rules in this chapter govern procedures in public hearings before the department to determine and make findings as to whether a person has engaged in a practice or used a title without a credential required under chs. 440 to 459, Stats., and for issuance of an administrative injunction.

History: Cr. Register, July, 1993, No 451, eff. 8-1–93.

RL 3.03 Definitions. In this chapter:

(1) "Administrative injunction" means a special order enjoining a person from the continuation of a practice or use of a title without a credential required under chs. 440 to 459, Stats.

(2) "Credential" means a license, permit, or certificate of certification or registration that is issued under chs. 440 to 459, Stats.

(3) "Department" means the department of regulation and licensing.

(4) "Division" means the division of enforcement in the department.

(5) "Petition" means a document which meets the requirements of s. RL 3.05.

(6) "Respondent" means the person against whom an administrative injunction proceeding has been commenced and who is named as respondent in a petition.

History: Cr. Register, July, 1993, No. 451, eff. 8–1–93.

RL 3.04 Pleadings to be captioned. All pleadings, notices, orders, and other papers filed in an administrative injunction proceeding shall be captioned: "BEFORE THE DEPARTMENT OF REGULATION AND LICENSING" and shall be entitled: "IN THE MATTER OF A PETITION FOR AN ADMINISTRATIVE INJUNCTION INVOLVING _____, RESPONDENT."

History: Cr. Register, July. 1993, No. 451, eff. 8–1–93.

RL 3.05 Petition for administrative injunction. A petition for an administrative injunction shall allege that a person has engaged in a practice or used a title without a credential required under chs. 440 to 459, Stats. A petition may be made on information and belief and shall contain:

(1) The name and address of the respondent and the name and address of the attorney in the division who is prosecuting the petition for the division;

(2) A short statement in plain language of the basis for the division's belief that the respondent has engaged in a practice or used a title without a credential required under chs. 440 to 459, Stats., and specifying the statute or rule alleged to have been violated;

(3) A request in essentially the following form: "Wherefore, the division demands that a public hearing be held and that the department issue a special order enjoining the person from the continuation of the practice or use of the title;" and,

(4) The signature of an attorney authorized by the division to sign the petition.

History: Cr. Register, July, 1993, No. 451, eff. 8–1–93.

RL 3.06 Notice of hearing. (1) A notice of hearing shall be sent to the respondent by the division at least 10 days prior to the hearing, except in the case of an emergency in which shorter notice may be given, but in no case may the notice be provided less than 48 hours in advance of the hearing.

(2) A notice of hearing to the respondent shall be essentially in the form shown in Appendix I and signed by an attorney in the division.

History: Cr. Register, July, 1993, No. 451, eff. 8–1–93.

RL 3.07 Service and filing of petition, notice of hearing and other papers. (1) The petition, notice of hearing, all orders and other papers required to be served on a respondent may be served by mailing a copy of the paper to the respondent at the last known address of the respondent or by any procedure described in s. 801.14 (2), Stats. Service by mail is complete upon mailing.

(2) Any paper required to be filed with the department may be mailed to the administrative law judge designated to preside in the matter and shall be deemed filed on receipt by the administrative law judge. An answer under s. RL 3.08, and motions under s. RL 3.14 may be filed and served by facsimile transmission. A document filed by facsimile transmission under this section shall also be mailed to the department. An answer or motion filed by facsimile transmission shall be deemed filed on the first business day after receipt by the department.

History: Cr. Register, July, 1993, No. 451, eff. 8–1–93.

RL 3.08 Answer. (1) An answer to a petition shall state in short and plain terms the defenses to each allegation asserted and shall admit or deny the allegations upon which the division relies. If the respondent is without knowledge or information sufficient to form a belief as to the truth of the allegation, the respondent shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the allegations denied. The respondent shall make denials as specific denials of designated allegations or paragraphs but if the respondent intends in good faith to deny only a part or to provide a qualification of an allegation, the respondent shall specify so much of it as true and material and shall deny only the remainder.

(2) The respondent shall set forth affirmatively in the answer any matter constituting an affirmative defense.

(3) Allegations in a petition are admitted when not denied in the answer.

(4) An answer to a petition shall be filed within 20 days from the date of service of the petition.

History: Cr. Register, July, 1993, No. 451. eff. 8–1–93.

RL 3.09 Administrative law judge. (1) DESIGNATION. Administrative injunction proceedings shall be presided over by an administrative law judge. The administrative law judge shall be an attorney in the department designated by the department general counsel, an employe borrowed from another agency pursuant to s. **20.901,** Stats., or a person employed as a special project or limited term employe by the department. The administrative law judge may not be an employe in the division.

(2) AUTHORITY. An administrative law judge designated under this section has the authority described in s. **227.46** (1), Stats. Unless otherwise directed under s. **227.46** (3), Stats., an administrative law judge shall prepare a proposed decision, including findings of fact, conclusions of law, order and opinion, in a form that may be adopted by the department as the final decision in the case.

(3) SERVICE OF PROPOSED DECISION. The proposed decision shall be served by the administrative law judge on all parties with a notice providing each party adversely affected by the proposed decision with an opportunity to file with the department objections and written argument with respect to the objections. A party adversely affected by a proposed decision shall have at least 10 days from the date of service of the proposed decision to file objections and argument.

History: Cr. Register, **July, 1993,** No. **451,** eff. **8–1–93.**

RL 3.10 Prehearing conference. In any matter pending before the department, the division and the respondent may be directed by the administrative law judge to appear at a conference or to participate in a telephone conference to consider the simplification of issues, the necessity or desirability of amendments to the pleading, the admission of facts or documents which will avoid unnecessary proof and such other matters as may aid in the disposition of the matter.

History: Cr. Register, **July, 1993,** No. **451,** eff. **8–1–93.**

RL 3.11 Settlements. No stipulation or settlement agreement disposing of a petition or informal petition shall be effective or binding in any respect until reduced to writing, signed by the respondent and approved by the department.

History: Cr. Register, **July, 1993,** No. **451.** eff. **8–1–93.**

RL 3.12 Discovery. The division and the respondent may, prior to the date set for hearing, obtain discovery by use of the methods described in ch. 804, Stats., for the purposes set forth therein. Protective orders, including orders to terminate or limit examinations, orders compelling discovery, sanctions provided in s. 804.12, Stats., or other remedies as are appropriate for failure to comply with such orders may be made by the administrative law judge.

History: Cr. Register, **July, 1993,** No. **451,** eff. **8–1–93.**

RL 3.13 Default. If the respondent fails to answer as required by s. RL 3.08 or fails to appear at the hearing at the time fixed therefor, the respondent is in default and the department may make findings and enter an order on the basis of the petition and other evidence. The department may, for good cause, relieve the respondent from the effect of the findings and permit the respondent to answer and defend at any time before the department enters an order or within a reasonable time thereafter.

History: Cr. Register, **July, 1993,** No. **451.** eff. 8–1–93.

RL 3.14 Conduct of hearing. (1) ADMINISTRATIVE LAW JUDGE. The hearing shall be presided over by an administrative law judge designated pursuant to s. RL **3.09.**

(2) RECORD. **A** stenographic, electronic or other record shall be made of all hearings in which the testimony of witnesses is offered as evidence.

(3) EVIDENCE. The division and the respondent shall have the right to appear in person or by counsel, to call, examine, and cross–examine witnesses and to introduce evidence into the record.

(4) BRIEFS. The administrative law judge may require the filing of briefs.

(5) MOTIONS. (a) ***How*** *made.* An application to the administrative law judge for an order shall be by motion which, unless made during a hearing or prehearing conference, shall be in writing, state with particularity the grounds for the order, and set forth the relief or order sought.

(b) *Filing.* A motion shall be filed with the administrative law judge and a copy served upon the opposing party not later than 5 days before the time specified for hearing the motion.

(c) *Supporting papers.* Any briefs or other papers in support of a motion, including affidavits and documentary evidence, shall be filed with the motion.

(6) ADJOURNMENTS. The administrative law judge may, for good cause, grant continuances, adjournments and extensions of time.

(7) SUBPOENAS. (a) Subpoenas for the attendance of any witness at a hearing in the proceeding may be issued in accordance with s. **885.01,** Stats. Service shall be made in the manner provided in s. **805.07 (5),** Stats. A subpoena may command the person to whom it is directed to produce the books, papers, documents, or tangible things designated therein.

(b) An administrative law judge may issue protective orders according to the provisions of s. **805.07,** Stats.

(8) LOCATION OF HEARING. All hearings shall be held at the offices of the department in Madison unless the administrative law judge determines that the health or safety of a witness or of a party or an emergency requires that a hearing be held elsewhere.

History: Cr. Register, **July,** 1993, No. **451,** eff. **8–1–93.**

RL 3.15 Witness fees and costs. Witnesses subpoenaed at the request of the division shall be entitled to compensation from the state for attendance and travel as provided in ch. **885,** Stats.

History: Cr. Register, **July, 1993,** No. **451,** eff. **8–1–93.**

RL 3.16 Transcription fees. (1) The fee charged for a transcript of a proceeding under this chapter shall be computed by the person or reporting service preparing the transcript on the following basis:

(a) If the transcript is prepared by a reporting service, the fee charged for an original transcription and for copies shall be the amount identified in the state operational purchasing bulletin which identifies the reporting service and its fees.

Note: The State Operational Purchasing Bulletin **may** be obtained from the Department of Administration, State Bureau of Procurement, **10**1 E. Wilson Street, **6th Floor, P.O.** Box **7867.** Madison, Wisconsin 53707–7867.

(b) If a transcript is prepared by the department, the department shall charge a transcription fee of **$1.75** per page and a copying charge of **$.25** per page. **If 2** or more persons request a transcript, the department shall charge each requester a copying fee of **5.25** per page, but may divide the transcript fee equitably among the requesters. If the department has prepared a written transcript for its own use prior to the time a request is made, the department shall assume the transcription fee, but shall charge a copying fee **of $.25** per page.

(2) A person who is without means and who requires a transcript for appeal or other reasonable purposes shall be furnished with a transcript without charge upon the filing of an affidavit showing that the person is indigent according to the standards adopted in rules of the state public defender under ch. **977,** Stats.

History: Cr. Register, **July, 1993,** *No.* **451,** eff. **8–1–93.**

Chapter RL 3

APPENDIX I

STATE OF WISCONSIN
BEFORE THE DEPARTMENT OF REGULAITON AND LICENSING

IN THE MATTER OF A PETITION : FOR AN ADMINISTRATIVE; NOTICE OF INJUNCTION INVOLVING : HEARING

(#1),
Respondent.

NOTICE OF HEARING

TO: (#2)

You are hereby notified that a proceeding for an administrative injunction has been commenced against you by the Department of Regulation and Licensing. The petition attached to this Notice states the nature and basis of the proceeding. This proceeding may result in a special order against you under s. 440.21, Stats., enjoining you from the continuation of a practice or use of a title.

A HEARING ON THE MATTERS CONTAINED IN THE PETITION WILL BE HELD AT:

Date: (#3) Time: (#4)
Location: Room (#5),
1400 East Washington Avenue
Madison, Wisconsin

or as soon thereafter as the matter may be heard.
The questions to be determined at this hearing are whether (#6).

Within 20 days from the date of service of the Notice, you must respond with a written Answer to the allegations of the Petition. You may have an attorney help or represent you. Your Answer must follow the rules of pleading in s. RL 3.08 of the Wisconsin Administrative Code. File your Answer with the Administrative Law Judge for this matter who is:

(#7), Department of Regulation and Licensing, Office of Board Legal Services,
P.O. Box 8935,
Madison, Wisconsin 53708

Please file a copy of your answer with the division's attorney, who is:

(#8), Division of Enforcement,
Department of Regulation and Licensing,
P.O. Box 8935,
Madison, Wisconsin 53708

If you do not provide a proper Answer within 20 days or do not appear for the hearing, you will be found to be in default and a special order may be entered against you enjoining you from the continuation of a practice or use of a title. If a special order is issued as a result of this proceeding and thereafter you violate the special order, you may be required to forfeit not more than $10.000 for each offense.

You may be represented by an attorney at the hearing. This proceeding is a class 2 proceeding as defined in s. 227.01 (3) (b), Stats. If you choose to be represented by an attorney in this proceeding, the attorney is requested to file a Notice of Appearance with the Administrative Law Judge and the division within 20 days after you receive this Notice.

The legal authority and procedures under which the hearing is to be held are set forth in ss. 227.21, 440.44, (#9), Stats., and ch. RL 3, Wis. Admin. Code.

Dated at Madison, Wisconsin this _____ day of ____ 20__.

_____
(...#10...), Attorney

INSERTIONS
1. Respondent
2. Respondent with address
3. Date of hearing
4. Time of hearing
5. Place of hearing
6. Issues for hearing
7. Administrative Law Judge
8. Division of Enforcement attorney
9. Legal authority (statute)
10. Division of Enforcement attorney

Chapter RL 4

DEPARTMENT APPLICATION PROCEDURES AND APPLICATION FEE POLICIES

RL 4.01 Authorization.
RL 4.02 Definitions.
RL 4.03 Time for review and determination of credential applications.
RL 4.04 Fees for examinations, reexaminations and proctoring examinations.
RL 4.05 Fee for test review.
RL 4.06 Refunds.

RL 4.01 Authorization. The following rules are adopted by the department of regulation and licensing pursuant to ss. 440.05, 440.06 and 440.07, Stats.

History: Cr. Register, October, 1978, No. 274. eff. 11–1–78, am. Register, July, 1996, No. 487, eff. 8–1–96.

RL 4.02 Definitions. (1) "Applicant" means a person who applies for a license, permit, certificate or registration granted by the department or a board.

(2) "Authority" means the department or the attached examining board or board having authority to grant the credential for which an application has been filed.

(3) "Board" means the board of nursing and any examining board attached to the department.

(4) "Department" means the department of regulation and licensing.

(5) "Examination" means the written and practical tests required of an applicant by the authority.

(6) "Service provider" means a party other than the department or board who provides examination services such as application processing, examination products or administration of examinations.

History: Cr. Register, October, 1978, No. 274, eff. 11–1–78. renum. (1) to (4) to be (4), (3), (1), (5) and am. (5), cr. (2) and (6), Register, July, 1996, No. 487, eff. 8–1–96.

RL 4.03 Time for review and determination of credential applications. (1) TIME LIMITS. An authority shall review and make a determination on an original application for a credential within 60 business days after a completed application is received by the authority unless a different period for review and determination is specified by law.

(2) COMPLETED APPLICATIONS. An application is completed when all materials necessary to make a determination on the application and all materials requested by the authority have been received by the authority.

(3) EFFECT OF DELAY A delay by an authority in making a determination on an application within the time period specified in this section shall be reported to the permit information center under s. 227.116, Stats. Delay by an authority in making a determination on an application within the time period specified in this section does not relieve any person from the obligation to secure approval from the authority nor affect in any way the authority's responsibility to interpret requirements for approval and to grant or deny approval.

History: Cr Register, August, 1992, No 440, eff. 9-1–92, renum. from RL 4.06 and am., Register, July, 1996. No. 487, eff. 8–1–96

RL 4.04 Fees for examinations, reexaminations and proctoring examinations. (1) EXAMINATION FEE SCHEDULE A list of all current examination fees may be obtained at no charge from the Office of Examinations, Dcpartmcnt of Regulation and Licensing, 1400 East Washington Avenue, P.O. Box 8935, Madison, WI 53708.

(3) EXPLANATION OF PROCEDURES FOR SETTING EXAMINATION FEES (a) Fees for examinations shall be established under s. 440.05 (1) (b), Stats., at the department's best estimate of the actual cost of preparing, administering and grading the examination or obtaining and administering an approved examination from a service provider.

(b) Examinations shall be obtained from a service provider through competitive procurement procedures described in ch. Adm 7.

(c) Fees for examination services provided by the department shall be established based on an estimate of the actual cost of the examination services. Computation of fees for examination services provided by the department shall include standard component amounts for contract administration services, test development services and written and practical test administration services.

(d) Examination fees shall be changed as needed to reflect changes in the actual costs to the department. Changes to fees shall be implemented according to par. (e).

(e) Examination fees shall be effective for examinations held 45 days or more after the date of publication of a notice in application forms. Applicants who have submitted fees in an amount less than that in the most current application form shall pay the correct amount prior to administration of the examination. Overpayments shall be refunded by the department. Initial credential fees shall become effective on the date specified by law.

(4) REEXAMINATION OF PREVIOUSLY LICENSED INDIVIDUALS. Fees for examinations ordered as part of a disciplinary proceeding or late renewal under s. 440.08 (3)(b), Stats., are equal to the fee set for reexamination in the most recent examination application form, plus $10 application processing.

(5) PROCTORING EXAMINATIONS FOR OTHER STATES. (a) Examinations administered by an authority of the state may be proctored for persons applying for credentials in another state if the person has been determined eligible in the other state and meets this state's application deadlines. Examinations not administered by an authority of the state may only be proctored for Wisconsin residents or licensees applying for credentials in another state.

(b) Department fees for proctoring examinations of persons who are applying for a credential in another state are equal to the cost of administering the examination to those persons, plus any additional cost charged to the department by the service provider.

History: Cr. Register, October, 1978, No. 274, eff. 11–1–78; r. and recr. Register, May, 1986, No. 365. eff. 61–86; am. Register, December, 1986, No. 372, eff. 1–1–87; am. Register, September, 1987, No. 381, eff. 10-1–87; am. (3), Register, September, 1988, No. 393, eff. 10–1–88; am. (3), Register, September, 1990, No. 417, eff. 10–1–90; r. and recr. (1) to (3), cr. (4), renum. Figure and am. Register, April, 1992, No. 436, eff. 5–1–92; am. (4) Figure, cr. (5), Register, July, 1993, No. 451, eff. 8–1–93; r. and recr. Register, November, 1993, No. 455, eff. 12–1–93; r. (2), am. (3) (a), (b), (e), (e), (4), (5), Register, July, 1996, No. 487, eff. 8–1–96.

RL 4.05 Fee for test review. (1) The fee for supervised review of examination results by a failing applicant which is conducted by the department is $28.

(2) The fee for review of examination results by a service provider is the fee established by the service provider.

History: Cr. Register, April, 1992, No. 436. eff. 5–1–92; am. Register, July, 1996, No. 487, eff. 8–1–96.

RL 4.06 Refunds. (1) A refund of all but $10 ofthc applicant's examination fee and initial credential fee submitted to the department shall be granted if any of the following occurs:

(a) An applicant is found to be unqualified for an examination administered by the authority.

(b) An applicant is found to be unqualified for a credential for which no examination is required.

(c) An applicant withdraws an application by written notice to the authority at least 10 days in advance of any scheduled examination.

(d) An applicant who fails to take an examination administered by the authority either provides written notice at least 10 days in advance of the examination date that the applicant is unable to take the examination, or if written notice was not provided, submits a written explanation satisfactory to the authority that the applicant's failure to take the examination resulted from extreme personal hardship.

(2) An applicant eligible for a refund may forfeit the refund and choose instead to take an examination administered by the authority within 18 months of the originally scheduled examination at no added fee.

(3) An applicant who misses an examination as a result of being called to active military duty shall receive a full refund. The applicant requesting the refund shall supply a copy of the call up orders or a letter from the commanding officer attesting to the call up.

(4) Applicants who pay fees to service providers other than the department are subject to the refund policy established by the service provider.

History: Cr. Register, October, 1978. No. **274, eff.** 11–1–78; **am. (2)** (intro.), **Register, May, 1986,** No. **365, eff.** 6–1–86; **am.** (1) **and (2) (intro.). renum. (2)** *(c)* **and (3) to be (3) and** (4), cr. **(5). Register, September, 1987,** No. **381, eff.** 10–1–87; r. **and** recr. (1) **and** (4), **Register, April, 1992,** No. **436, eff. 5–1–92;** r. (2), **renum. (3) to** (5) to **be (2) to** (4), **Register, July. 1993,** No. **451,** eff. **&I–93; renum. from RL 4.03 and am., Register, July, 1996, No. 487, eff. 8–1–96.**

Chapter RL 6

SUMMARY SUSPENSIONS

RL 6.01 Authority and intent.
RL 6.02 Scope.
RL 6.03 Definitions.
RL 6.04 Petition for summary suspension.
RL 6.05 Notice of petition to respondent.
RL 6.06 Issuance of summary suspension order.
RL 6.07 Contents of summary suspension order.
RL 6.08 Service of summary suspension order.
RL 6.09 Hearing to show cause.
RL 6.10 Commencement of disciplinary proceeding.
RL 6.11 Delegation.

RL 6.01 Authority and intent. (1) This chapter is adopted pursuant to authority in ss. 227.11 (2) (a) and 440.03 (1), Stats., and interprets s. 227.51 (3), Stats.

(2) The intent of the department in creating this chapter is to specify uniform procedures for summary suspension of licenses, permits, certificates or registrations issued by the department or any board attached to the department in circumstances where the public health, safety or welfare imperatively requires emergency action.

History: Cr. Register, May, 1988, No. 389, eff. 6-1-88.

RL 6.02 Scope. This chapter governs procedures in all summary suspension proceedings against licensees before the department or any board attached to the department. To the extent that this chapter is not in conflict with s. 448.02 (4), Stats., the chapter shall also apply in proceedings brought under that section.

History: Cr. Register, May. 1988, No. 389, **eff. 6-1-88.**

RL 6.03 Definitions. In this chapter:

(1) "Board" means the bingo control board, real estate board or any examining board attached to the department.

(2) "Department" means the department of regulation and licensing.

(3) "Disciplinary proceeding" means a proceeding against one or more licensees in which a licensing authority may determine to revoke or suspend a license, to reprimand a licensee, or to limit a license.

(4) "License" means any license, permit, certificate, or registration granted by a board or the department or a right to renew a license, permit, certificate or registration granted by a board or the department.

(5) "Licensee" means a person, partnership, corporation or association holding any license.

(6) "Licensing authority" means the bingo control board, real estate board or any examining board attached to the department, the department for licenses granted by the department, or one acting under a board's or the department's delegation under s. **RL** 6.11.

(7) "Petitioner" means the division of enforcement in the department.

(8) "Respondent" means a licensee who is named as respondent in a petition for summary suspension.

History: Cr. Register, May, 1988, No. 389, eff. 6-1-88.

RL 6.04 Petition for summary suspension. (1) A petition for a summary suspension shall state the name and position of the person representing the petitioner, the address of the petitioner, the name and licensure status of the respondent, and an assertion of the facts establishing that the respondent has engaged in or is likely to engage in conduct such that the public health, safety or welfare imperatively requires emergency suspension of the respondent's license.

(2) A petition for a summary suspension order shall be signed upon oath by the person representing the petitioner and may be made on information and belief.

(3) The petition shall be presented to the appropriate licensing authority.

History: Cr. Register, May, **1988, No. 389, eff. 6-1-88.**

RL 6.05 Notice of petition to respondent. Prior to the presenting of the petition, the petitioner shall give notice to the respondent or respondent's attorney of the time and place when the petition will be presented to the licensing authority. Notice may be given by mailing a copy of the petition and notice to the last-known address of the respondent as indicated in the records of the licensing authority as provided in s. 440.11 (2), Stats. **as** created by 1987 Wis. Act 27. Notice by mail is complete upon mailing. Notice may also be given by any procedure described in s. 801.11, Stats.

History: Cr. Register, May, 1988, No. 389, eff. 6-1-88.

RL 6.06 Issuance of summary suspension order. (1) If the licensing authority finds that notice has been given under s. **RL** *6.05* and finds probable cause to believe that the respondent has engaged in or is likely to engage in conduct such that the public health, safety or welfare imperatively requires emergency suspension of the respondent's license, the licensing authority may issue an order for summary suspension. The order may be issued at any time prior to or subsequent to the commencement of a disciplinary proceeding under s. RL 2.04.

(2) The petitioner may establish probable cause under sub. (1) by affidavit or other evidence.

(3) The summary suspension order shall be effective upon service under s. RL 6.08, or upon actual notice of the summary suspension order to the respondent or respondent's attorney, whichever is sooner, and continue through the effective date of the final decision and order made in the disciplinary proceeding against the respondent, unless the license is restored under s. **RL** 6.09 prior to a formal disciplinary hearing.

History: Cr. **Register, May, 1988,** No. 389, **eff. 6-1-88.**

RL 6.07 Contents of summary suspension order. The summary suspension order shall include the following:

(1) A statement that the suspension order is in effect and continues until the effective date of a final order and decision in the disciplinary proceeding against the respondent, unless otherwise ordered by the licensing authority;

(2) Notification of the respondent's right to request a hearing to show cause why the summary suspension order should not be continued;

(3) The name and address of the licensing authority with whom a request for hearing should be filed;

(4) Notification that the hearing to show cause shall be scheduled for hearing on a date within 20 days of receipt by the licensing authority of respondent's request for hearing, unless a later time is requested by or agreed to by the respondent;

(5) The identification of all witnesses providing evidence at the time the petition for summary suspension was presented and identification of the evidence used as a basis for the decision to issue the summary suspension order;

(6) The manner in which the respondent or the respondent's attorney was notified of the petition for summary suspension: and

(7) A finding that the public health, safety or welfare imperatively requires emergency suspension of the respondent's license.

History: Cr. Register, May, **1988,** No. **389, eff. 6–1–88.**

RL 6.08 Service of summary suspension order. An order of summary suspension shall be served upon the respondent in the manner provided in s. 801.11, Stats., for service of summons.

History: Cr. Register, May, **1988.** No. **389,** eff. **6-1–88.**

RL 6.09 Hearing to show cause. (1) The respondent shall have the right to request a hearing to show cause why the summary suspension order should not be continued until the effective date of the final decision and order in the disciplinary action against the respondent.

(2) The request for hearing to show cause shalt be filed with the licensing authority which issued the summary suspension order. The hearing shall be scheduled and heard promptly by the licensing authority but no later than 20 days after the filing of the request for hearing with the licensing authority, unless a later time is requested by or agreed to by the licensee.

(3) At the hearing to show cause the petitioner and the respondent may testify, call, examine and cross-examine witnesses, and offer other evidence.

(4) At the hearing to show cause the petitioner has the burden to show by a preponderance of the evidence why the summary suspension order should be continued.

(5) At the conclusion of the hearing to show cause the licensing authority shall make findings and an order. If it is determined that the summary suspension order should not be continued, the suspended license shall be immediately restored.

History: Cr. Register, May, **1988,** No. **389,** eff. **6-1–88.**

RL 6.10 Commencement of disciplinary proceeding. (1) A notice of hearing commencing a disciplinary proceeding under s. RL 2.06 against the respondent shall be issued no later than 10 days following the issuance of the summary suspension order or the suspension shall lapse on the tenth day following issuance of the summary suspension order. The formal disciplinary proceeding shall be determined promptly.

(2) If at any time the disciplinary proceeding is not advancing with reasonable promptness, the respondent may make a motion to the hearing officer or may directly petition the appropriate board, or the department, for an order granting relief.

(3) If it is found that the disciplinary proceeding is not advancing with reasonable promptness, and the delay is not as a result of the conduct of respondent or respondent's counsel, a remedy, as would be just, shall be granted including:

(a) An order immediately terminating the summary suspension; or

(b) An order compelling that the disciplinary proceeding be held and determined by a specific date.

History: Cr. Register, May. **1988,** No. **389,** eff. **6–1–88.**

RL 6.11 Delegation. (I) A board may by a two–thirds vote:

(a) Designate under s. 227.46 (1), Stats., a member of thc board or an employe of the department to rule on a petition for summary suspension, to issue a summary suspension order, and to preside over and rule in a hearing provided for in s. RL 6.09; or

(b) Appoint a panel of no less than two–thirds of the membership of the board to rule on a petition for summary suspension, to issue a summary suspension order, and to preside over and rule in a hearing provided for in s. RL 6.09.

(2) In matters in which the department is the licensing authority, the department secretary or the secretary's designee shall rule on a petition for summary suspension, issue a summary suspension order, and preside over and rule in a hearing provided for in s. RL 6.09.

(3) Except as provided in s. 227.46 (3), Stats., a delegation of authority under subs. (1) and (2) may be continuing.

History: Cr. Register, May. **1988,** No. **389,** eff. **6–1–88.**

Chapter RL 7

IMPAIRED PROFESSIONALS PROCEDURE

RL 7.01	Authority and intent.
RL 7.02	Definitions.
RL 7.03	Referral to and eligibility for the procedure.
RL 7.04	Requirements for participation.
RL 7.05	Agreement for participation.
RL 7.06	Standards for approval of treatment facilities or individual therapists.
RL 7.07	Intradepartmental referral.
RL 7.08	Records.
RL 7.09	Report.
RL 7.10	Applicability of procedures to direct licensing by the department.
RL 7.11	Approval of drug testing programs.

RL 7.01 Authority and intent. (1) The rules in this chapter are adopted pursuant to authority in ss. 15.08 (5) (b), 51.30, 146.82, 227.11 and 440.03, Stats.

(2) The intent of the department in adopting rules in this chapter is to protect the public from credential holders who are impaired by reason of their abuse of alcohol or other drugs. This goal will be advanced by providing an option to the formal disciplinary process for qualified credential holders committed to their own recovery. This procedure is intended to apply when allegations are made that a credential holder has practiced a profession while impaired by alcohol or other drugs or when a credential holder contacts the department and requests to participate in the procedure. It is not intended to apply in situations where allegations exist that a credential holder has committed violations of law, other than practice while impaired by alcohol or other drugs, which are substantial. The procedure may then be utilized in selected cases to promote early identification of chemically dependent professionals and encourage their rehabilitation. Finally, the department's procedure does not seek to diminish the prosecution of serious violations but rather it attempts to address the problem of alcohol and other drug abuse within the enforcement jurisdiction of the department.

(3) In administering this program, the department intends to encourage board members to share professional expertise so that all boards in the department have access to a range of professional expertise to handle problems involving impaired professionals.

History: Cr. Register, January, 1991, No. 421, eff. 2–1–91; am. (2), Register, July, 1996, No. 487, eff. 8–1–96.

RL 7.02 Definitions. In this chapter:

(1) "Board" means any examining board or affiliated credentialing board attached to the department and the real estate board.

(2) "Board liaison" means the board member designated by the board as responsible for approving credential holders for the impaired professionals procedure under s. RL 7.03, for monitoring compliance with the requirements for participation under s. RL 7.04, and for performing other responsibilities delegated to the board liaison under these rules.

(2a) "Coordinator" means a department employee who coordinates the impaired professionals procedure.

(2b) "Credential holder" means a person holding any license, permit, certificate or registration granted by the department or any board.

(3) "Department" means the department of regulation and licensing.

(4) "Division" means the division of enforcement in the department.

(5) "Informal complaint" means any written information submitted by any person to the division, department or any board which requests that a disciplinary proceeding be commenced against a credential holder or which alleges facts, which if true, warrant discipline. "Informal complaint" includes requests for disciplinary proceedings under s. 440.20, Stats.

(6) "Medical review officer" means a medical doctor or doctor of osteopathy who is a licensed physician and who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an individual's confirmed positive test result together with an individual's medical history and any other relevant biomedical information.

(7) "Procedure" means the impaired professionals procedure.

(8) "Program" means any entity approved by the department to provide the full scope of drug testing services for the department.

History: Cr. Register, January, 1991, No. 421, eff. 2–1–91; am. (1), (2), (5), cr. (2a), (2b), r. (6), Register, July, 1996, No. 487, eff. 8–1–96; cr. (6) and (8), Register, January, 2001, No. 541, eff. 2–1–01.

RL 7.03 Referral to and eligibility for the procedure. (1) All informal complaints involving allegations of impairment due to alcohol or chemical dependency shall be screened and investigated pursuant to s. RL 2.035. After investigation, informal complaints involving impairment may be referred to the procedure and considered for eligibility as an alternative to formal disciplinary proceedings under ch. RL 2.

(2) A credential holder who has been referred to the procedure and considered for eligibility shall be provided with an application for participation, a summary of the investigative results in the form of a draft statement of conduct to be used as a basis for the statement of conduct under s. RL 7.05 (1) (a), and a written explanation of the credential holder's options for resolution of the matter through participation in the procedure or through the formal disciplinary process pursuant to ch. RL 2.

(3) Eligibility for the procedure shall be determined by the board liaison and coordinator who shall review all relevant materials including investigative results and the credential holder's application for participation. Eligibility shall be determined upon criteria developed by each credentialing authority which shall include at a minimum the credential holder's past or pending criminal, disciplinary or malpractice record, the circumstances of the credential holder's referral to the department, the seriousness of other alleged violations and the credential holder's prognosis for recovery. The decision on eligibility shall be consistent with the purposes of these procedures as described in s. RL 7.01 (2). The board liaison shall have responsibility to make the determination of eligibility for the procedure.

(4) Prior to the signing of an agreement for participation the credential holder shall obtain a comprehensive assessment for chemical dependency from a treatment facility or individual therapist approved under s. RL 7.06. The credential holder shall arrange for the treatment facility or individual therapist to file a copy of its assessment with the board liaison or coordinator. The assessment shall include a statement describing the credential holder's prognosis for recovery. The board liaison and the credential holder may agree to waive this requirement.

(5) If a credential holder is determined to be ineligible for the procedure, the credential holder shall be referred to the division for prosecution.

(6) A credential holder determined to bc ineligible for the procedure by the board liaison or the department may, within 10 days of notice of the determination, request the credentialing authority to review the adverse determination.

History: Cr. Register, **January,** 1991, No. **421,** eff. **2–1–91; am. (2)** to **(6), Register,** July, **1996,** No. **487,** eff. **8–1–96.**

RL 7.04 Requirements for participation. (1) A credential holder who participates in the procedure shall:

(a) Sign an agreement for participation under s. RL 7.05.

(b) Remain Free of alcohol, controlled substances, and prescription drugs, unless prescribed for a valid medical purpose.

(c) Timely enroll and participate in a program for the treatment of chemical dependency conducted by a facility or individual therapist approved pursuant to s. RL 7.06.

(d) Comply with any treatment recommendations and work restrictions or conditions deemed necessary by the board liaison or department.

(e) Submit random monitored blood or urine samples for the purpose of screening for alcohol or controlled substances provided by a drug testing program approved by the department under s. RL 7.11, as required.

(f) Execute releases valid under state and federal law in the form shown in Appendix I to allow access to the credential holder's counseling, treatment and monitoring records.

(g) Have the credential holder's supervising therapist and work supervisors file quarterly reports with the coordinator.

(h) Notify the coordinator of any changes in the credential holder's employer within 5 days.

(i) File quarterly reports documenting the credential holder's attendance at meetings of self–help groups such as alcoholics anonymous or narcotics anonymous.

(2) If the board liaison or department determines, based on consultation with the person authorized to provide treatment to the credential holder or monitor the credential holder's enrollment or participation in the procedure, or monitor any drug screening requirements or restrictions on employment under sub. (1), that a credential holder participating in the procedure has failed to meet any of the requirements set under sub. (1), the board liaison may request that the board dismiss the credential holder from the procedure. The board shall review the complete record in making this determination. If the credential holder is dismissed the matter shall be referred to the division.

(3) If a credential holder violates the agreement and the board does not dismiss and refer the credential holder to the division, then a new admission under s. RL 7.05 (1) (a) shall be obtained for violations which are substantiated.

History: Cr. Register, **January, 1991,** No. **421,** eff. **2–1–91; am.** Register, **July, 1996,** No. **467,** eff. **8-1–96; am.** (1) **(e), Register, January, 2001, No. 541, eff. 2–1–01.**

RL 7.05 Agreement for participation. (1) The agreement for participation in the procedure shall at a minimum include:

(a) A statement describing conduct the credential holder agrees occurred relating to participation in the procedure and an agreement that the statement may be used as evidence in any disciplinary proceeding under ch. RL **2.**

(b) An acknowledgement by the credential holder of the need for treatment for chemical dependency;

(c) An agreement to participate at the credential holder's expense in an approved treatment regimen.

(d) An agreement to submit to random monitored drug screens provided by a drug testing program approved by the department under s. RL 7.11 at the credential holder's expense, if deemed necessary by the board liaison.

(e) An agreement to submit to practice restrictions at any time during the treatment regimen as deemed necessary by the board liaison.

(f) An agreement to furnish the coordinator with signed consents for release of information from treatment providers and employers authorizing the release of information to the coordinator and board liaison for the purpose of monitoring the credential holder's participation in the procedure.

(g) An agreement to authorize the board liaison or coordinator to release information described in pars. (a), (c) and (e), the fact that a crcdcntial holder has been dismissed under s. RL 7.07 (3) (a} or violated terms of the agreement in s. RL **7.04** (1) (b) to (e) and (h) concerning the credential holder's participation in the procedure to the employer. therapist or treatment facility identified by the credential holder and an agreement to authorize the coordinator to release the results of random monitored drug screens under par. (d) to the therapist identified by the credential holder.

(h) An agreement to participate in the procedure for a period of time as established by the board.

(2) The board liaison may include additional requirements for an individual credential holder, if the circumstances of the informal complaint or the credential holder's condition warrant additional safeguards.

(3) The board or board liaison may include a promise of confidentiality that all or certain records shall remain closed and not available for public inspection and copying.

History: Cr. Register, **January, 1991,** No. **421,** eff. **2–1–91; am. (1) (a) to** (g) **and (2).** Register, July, **1996,** No. **467,** eff. **8-1–96; am. (1) (d), Register, January, 2001, No. 541, eff. 2–1–01.**

RL 7.06 Standards for approval of treatment facilities or individual therapists. (1) The board or board liaison shall approve a treatment facility designated by a credential holder for the purpose of participation in the procedure if:

(a) The facility is certified by appropriate national or state certification agencies.

(b) The treatment program focus at the facility is on the individual with drug and alcohol abuse problems.

(c) Facility treatment plans and protocols are available to the board liaison and coordinator.

(d) The facility, through the credential holder's supervising therapist, agrees to file reports as required, including quarterly progress reports and immediate reports if a credential holder withdraws from therapy, relapses, or is believed to be in an unsafe condition to practice.

(2) As an alternative to participation by means of a treatment facility, a credential holder may designate an individual therapist for the purpose of participation in the procedure. The board liaison shall approve an individual therapist who:

(a) Has credentials and experience determined by the board liaison to be in the credential holder's area of need.

(b) Agrees to perform an appropriate assessment of the credential holder's therapeutic needs and to establish and implement a comprehensive treatment regimen for the Credential holder.

(c) Forwards copies of the therapist's treatment regimen and office protocols to the coordinator.

(d) Agrees to file reports as required to the coordinator, including quarterly progress reports and immediate reports if a credential holder withdraws from therapy, relapses, or is believed to be in an unsafe condition to practice.

(3) If a board liaison does not approve a treatment facility or therapist as requested by the credential holder, the credential holder may, within 10 days of notice of the determination, request the board to review the board liaison's adverse determination.

History: Cr Register, **January, 1991,** No. **421,** eff. **2–1–91; am.** Register, **July, 1996.** No **467,** eff **8–1–96; r. (1) (d) and (2) (d), renum.** (1) **(e) and (2) (e) to be (1) (d) and (2) (d) and am., Register, January, 2001, No. 541, eff. 2–1–01.**

RL 7.07 Intradepartmental referral. (1) A credential holder who contacts the department and requests to participate in the procedure shall be referred to the board liaison and the coordinator for determination of acceptance into the procedure.

(2) The division may refer individuals named in informal complaints to the board liaison for acceptance into the procedure.

(3) The board liaison may refer cases involving the following to the division for investigation or prosecution:

(a) Credential holders participating in the procedure who are dismissed for failure to meet the requirements of their rehabilitation program or who otherwise engage in behavior which should be referred to prevent harm to the public.

(b) Credential holders who apply and who are determined to bc ineligible for the procedure where the board liaison is in possession of information indicating a violation of law.

(c) Credential holders who do not complete an agreement for participation where the board liaison is in possession of information indicating a violation of law.

(d) Credential holders initially referred by the division to the board liaison who fail to complete an agreement for participation.

History: Cr Register, January, **1991,** No. **421,** eff. **2–1–91; am.** (1), **(3)** (a) **to (d),** Register, July, **1996,** No. **487.** eff. **8–1–96.**

RL 7.08 Records. (1) CUSTODIAN. All records relating to the procedure including applications for participation, agreements for participation and reports of participation shall be maintained in the custody of the department secretary or the secretary's designee.

(2) AVAILABILITY OF PROCEDURE RECORDS FOR PUBLIC INSPECTION. Any requests to inspect procedure records shall be made to the custodian. The custodian shall evaluate each request on a ease by case basis using the applicable law relating to open records and giving appropriate weight to relevant factors in order to determine whether public interest in nondisclosure outweighs the public interest in access to the records, including the reputational interests of the credential holder, the importance of confidentiality to the functional integrity of the procedure, the existence of any pledge of confidentiality, statutory or common law rules which accord a status of confidentiality to the records and the likelihood that release of the records will impede an investigation.

(3) TREATMENT RECORDS. Treatment records concerning individuals who are receiving or who at any time have received services for mental illness, developmental disabilities, alcoholism, or drug dependence which are maintained by the department, by county departments under s. 51.42 or 51.437, Stats., and their staffs and by treatment facilities are confidential under s. 51.30, Stats., and shall not be made available for public inspection.

(4) PATIENT HEALTH CARE RECORDS. Patient health care records are confidential under s. 146.82, Stats., and shall not be made available to the public without the informed consent of the patient or of a person authorized by the patient or as provided under s. 146.82 (2), Stats.

History: Cr Register, January, **1991,** No. **421,** eff. **2–1-91; am. (2),** Register, July, **1996,** No. **487.** eff. **8-1–96.**

RL 7.09 Report. The board liaison or coordinator shall report on the procedure to the board at least twice a year and if requested to do so by a board.

History: Cr. Register, **January. 1991,** No. **421,** eff. **2–1–91; am.** Register, **July, 1996,** No. **487,** eff. **8–1–96.**

RL 7.10 Applicability of procedures to direct licensing by the department. This procedure may be used by the department in resolving complaints against persons licensed directly by the department if the department has authority to discipline the credential holder. In such cases, the department secretary shall have the authority and responsibility of the "board" as the term is used in the procedure and shall designate an employee to perform the responsibilities of the "board liaison."

History: Cr. Register, **January, 1991,** No. **421,** eff. **2–1–91; am.** Register, **July,** 1996, No. **487,** eff. **8–1–96.**

RL 7.11 Approval of drug testing programs. The department shall approve drug testing programs for use by credential holders who participate in drug and alcohol monitoring programs pursuant to agreements between the department or boards and credential holders, or pursuant to disciplinary orders. To be approved as a drug testing program for the department, programs shall satisfactorily meet all of the following standards in the areas of program administration, collection site administration, laboratory requirements and reporting requirements:

(1) Program administration requirements are:

(a) The program shall enroll participants by setting up an account, establishing a method of payment and supplying preprinted chain–of–custody forms.

(b) The program shall provide the participant with the address and phone number of the nearest collection sites and shall assist in locating a qualified collection site when traveling outside the local area.

(c) Random selection of days when participants shall provide specimens shall begin upon enrollment and the program shall notify designated department staff that selection has begun.

(d) The program shall maintain a nationwide 800 number or an internet website that is operational 24 hours per day, 7 days per week to inform participants of when to provide specimens.

(e) The program shall maintain and make available to the department through an internet website data that are updated on a daily basis verifying the date and time each participant was notified after random selection to provide a specimen, the date, time and location each specimen was collected, the results of drug screen and whether or not the participant complied as directed.

(f) The program shall maintain internal and external quality of test results and other services.

(g) The program shall maintain the confidentiality of participants in accordance with s. 146.82, Stats.

(h) The program shall inform participants of the total cost for each drug screen including the cost for program administration, collection, transportation, analysis, reporting and confirmation. Total cost shall not include the services of a medical review officer.

(i) The program shall immediately report to the department if the program, laboratory or any collection site fails to comply with this section. The department may remove a program from the approved list if the program fails to comply with this section.

(j) The program shall make available to the department experts to support a test result for 5 years after the test results are released to the department.

(k) The program shall not sell or otherwise transfer or transmit names and other personal identification information of the participants to other persons or entities without permission from the department. The program shall not solicit from participants presently or formerly in the monitoring program or otherwise contact participants except for purposes consistent with administering the program and only with permission from the department.

(L) The program and laboratory shall not disclose to the participant or the public the specific drugs tested.

(2) Collection site administration requirements are:

(a) The program shall locate, train and monitor collection sites for compliance with the **U.S.** department of transportation collection protocol under 49 CFR 40.

(b) The program shall require delivery of specimens to the laboratory within 24 hours of collection.

(3) Laboratory requirements are:

(a) The program shall utilize a laboratory that is certified by the U.S. department of health and human services, substance abuse and mental health services administration under 49 CFR 40. If the laboratory has had adverse or corrective action, the department shall evaluate the laboratory's compliance on a case by case basis.

(b) The program shall utilize a laboratory capable of analyzing specimens for drugs specified by the department.

(c) Testing of specimens shall be initiated within 48 hours of pickup by courier.

(d) All positive drug screens shall be confirmed utilizing gas chromatography in combination with mass spectrometry, mass spectrometry, or another approved method.

(c) The laboratory shall allow department personnel to tour facilities where participant specimens are tested.

(4) The requirements for reporting of results are:

(a) The program shall provide results of each specimen to designated department personnel within 24 hours of processing.

(b) The program shall inform designated department personnel of confirmed positive test results on the same day the test results are confirmed or by the next business day if the results are confirmed after hours, on the weekend or on a state or federal holiday.

(c) The program shall fax, e–mail or electronically transmit laboratory copies of drug test results at the request of the department.

(d) The program shall provide a medical review officer upon request and at the expense of the participant, to review disputed positive test results.

(e) The program shall provide chain–of–custody transfer of disputed specimens to an approved independent laboratory for retesting at the request of the participant or the department.

History: Cr. Register, January, 2001, No. 541, eff. 2–1–01.

Chapter RL 7

APPENDIX I

CONSENT FOR RELEASE OF INFORMATION

I, (#1), hereby authorize (#2) to provide the board liaison for the Department of Regulation and Licensing Impaired Professionals Procedure, P.O. Box 8935, Madison, Wisconsin 53708, or persons designated by the board liaison who are directly involved in administration of the procedure. with (#3). 1 further authorize (#4) to discuss with the board liaison or the board liaison's designee any matter relating to the records provided and to allow the board liaison or the board liaison's designee to examine and copy any records or information relating to me.

I hereby also authorize the board liaison or the board liaison's designee to provide (#5) with copies of any information provided to the board liaison pursuant to this consent for release of information authorizing the release of information to the board liaison from those persons and institutions.

In the event of my dismissal from the Impaired Professionals Procedure, I hereby also authorize the board liaison or the board liaison's designee to provide the Division of Enforcement with the results of any investigation conducted in connection with my application to participate in the Impaired Professionals Procedure and with any documentation, including patient health care records, evidencing my failure to meet participation requirements.

This consent for release of information is being made for the purposes of monitoring my participation in the Impaired Professionals Procedure, and any subsequent procedures before the Wisconsin (#6); and for the further purpose of permitting exchange of information between the board liaison or the board liaison's designee and persons or institutions involved in my participation in the Impaired Professionals Procedure where such exchange is necessary in the furtherance of my treatment or to provide information to the Division of Enforcement in the event of my dismissal from the Impaired Professionals Procedure.

Unless revoked earlier, this consent is effective until (#7). I understand that I may revoke this consent at any time and that information obtained as a result of this consent may be used after the above expiration date or revocation. A reproduced copy of this consent form shall be as valid as the original.

I understand that should I fail to execute this consent for release of information, I shall be ineligible to participate in the Impaired Professionals Procedure. I also understand that should I revoke this consent prior to completion of my participation in the Impaired Professionals Procedure, 1 will be subject to dismissal from the procedure.

I understand that the recipient of information provided pursuant to this Consent for Release of Information is not authorized to make any further disclosure of the information without my specific written consent, or except as otherwise permitted or required by law.

Dated this _____ day of _____, 19___.

_____

Signature of IPP Participant Participant's Date of Birth

INSERTIONS

1. Participant

2. Persons and institutions provided with releases for provision of information to the department

3. Examples: Drug and alcohol treatment records
Mental health/psychiatric treatment records
Personnel records; work records
Results of blood or urine screens

4. Persons or institutions given authorization

5. Persons or institutions given authorization in the first paragraph

6. Name of board

7. Date to which consent is effective

Chapter RL 8

ADMINISTRATIVE WARNINGS

RL 8.01	Authority and scope.	RL 8.05	Request for a review of an administrative warning.
RL 8.02	Definitions.	RL 8.06	Procedures.
RL 8.03	Findings before issuance of an administrative warning.	RL 8.07	Transcription fees.
RL 8.04	Issuance of an administrative warning.		

RL 8.01 Authority and scope. Rules in this chapter are adopted under the authority of s. 440.205, Stats., to establish uniform procedures for the issuance and use of administrative warnings.

History: Cr. Register, January, 1999, No. 517, eff. 2–1–99.

RL 8.02 Definitions. As used in s. 440.205, Stats., and in this chapter:

(1) "Credential" means a license, permit, or certificate of certification or registration that is issued under chs. 440 to 480, Stats.

(2) "Department" means the department of regulation and licensing.

(3) "Disciplinary authority" means the department or an attached examining board, affiliated credentialing board or board having authority to reprimand a credential holder.

(4) "Division" means the division of enforcement in the department.

(5) "First occurrence" means any of the following:

(a) The credential holder has never been charged as a respondent in a formal complaint filed under ch. RL 2.

(b) Other than the matter pending before the disciplinary authority, no informal complaint alleging the same or similar misconduct has been filed with the department against the credential holder.

(c) The credential holder has not been disciplined by a disciplinary authority in Wisconsin or another jurisdiction.

(6) "Minor violation" means all of the following:

(a) No significant harm was caused by misconduct of the credential holder.

(b) Continued practice by the credential holder presents no immediate danger to the public.

(c) If prosecuted, the likely result of prosecution would be a reprimand or a limitation requiring the credential holder to obtain additional education.

(d) The complaint does not warrant use of prosecutorial resources.

(e) The credential holder has not previously received an administrative warning.

(7) "Misconduct" means a violation of a statute or rule related to the profession or other conduct for which discipline may be imposed under chs. 440 to 480, Stats.

History: Cr. Register, January, 1999, No. 517, eff. 2–1–99.

RL 8.03 Findings before issuance of an administrative warning. Before issuance of an administrative warning, a disciplinary authority shall make all of the following findings:

(1) That there is specific evidence of misconduct by the credential holder.

(2) That the misconduct is a first occurrence for the credential holder.

(3) That the misconduct is a minor violation of a statute or rule related to the profession or other conduct for discipline may be imposed.

(4) That issuance of an administrative warning will adequately protect the public.

History: Cr. Register, January, 1999, No. 517, eff. 2–1–99.

RL 8.04 Issuance of an administrative warning. (1) An administrative warning shall be substantially in the form shown in Appendix I.

(2) An administrative warning may be issued to a credential holder by mailing the administrative warning to the last address provided by the credential holder to the department. Service by mail is complete on the date of mailing.

History: Cr. Register, January, 1999, No. 517, eff. 2–1–99.

RL 8.05 Request for a review of an administrative warning. A credential holder who has been issued an administrative warning may request the disciplinary authority to review the issuance of the administrative warning by filing a written request with the disciplinary authority within 20 days after the mailing of the administrative warning. The request shall be in writing and set forth:

(1) The credential holder's name and address.

(2) The reason for requesting a review.

History: Cr. Register, January, 1999, No. 517, eff. 2–1–99.

RL 8.06 Procedures. The procedures for an administrative warning review are:

(1) Within 45 calendar days of receipt of a request for review, the disciplinary authority shall notify the credential holder of the time and place of the review.

(2) No discovery is permitted. A credential holder may inspect records under s. 19.35, Stats., the public records law.

(3) The disciplinary authority or its designee shall preside over the review. The review shall be recorded by audio tape unless otherwise specified by the disciplinary authority.

(4) The disciplinary authority shall provide the credential holder with an opportunity to make a personal appearance before the disciplinary authority and present a statement. The disciplinary authority may request the division to appear and present a statement on issues raised by the credential holder. The disciplinary authority may establish a time limit for making apresentation. Unless otherwise determined by the disciplinary authority, the time for making a personal appearance shall be 20 minutes.

(5) If the credential holder fails to appear for a review, or withdraws the request for a review, the disciplinary authority may note the failure to appear in the minutes and leave the administrative warning in effect without further action.

History: Cr. Register, January, 1999, No. 517, eff. 2–1–99.

RL 8.07 Transcription fees. (1) The fee charged for a transcript of a review under this chapter shall be computed by the person or reporting service preparing the transcript on the following basis:

(a) If the transcript is prepared by a reporting service, the fee charged for an original transcription and for copies shall be the amount identified in the state operational purchasing bulletin which identifies the reporting service and its fees.

(b) If a transcript is prepared by the department, the department shall charge a transcription fee of $1.75 per page and a copying charge of $.25 per page. If 2 or more persons request a transcript, the department shall charge each requester a copying fee of $.25 per page, but may divide the transcript fee equitably among the requesters. If the department has prepared a written transcript for its own use prior to the time a request is made, the department shall assume the transcription fee, but shall charge a copying fee of $.25 per page.

(2) A person who is without means and who requires a transcript for appeal or other reasonable purposes shall bc furnished with a transcript without charge upon the filing of a petition of indigence signed under oath.

History: Cr. Register, January, 1999, No. 517, eff. 2–1–99.

Chapter RL 8

APPENDIX I

DEPARTMENT OF REGULATION AND LICENSING

[DISCIPLINARY AUTHORITY]

ADMINISTRATIVE WARNING

This administrative warning is issued by the {disciplinary authority) to {credential holder} pursuant to s. 440.205, Stats. The {disciplinary authority} makes the following findings:

1) That there is evidence of professional misconduct by {credential holder}, to wit:

2) That this misconduct is a first occurrence for {credential holder)

3) That this misconduct is a minor violation of {statute or rule).

4) That issuance of this administrative warning will adequately protect the public and no further action is warranted.

Therefore, the (disciplinary authority) issues this administrative warning and hereby puts the {credential holder} on notice that any subsequent violation may result in disciplinary action. The investigation of this matter is hereby closed.

Date:_____ _____

Signature of authorized representative
For {Disciplinary Authority)

Right to Review

You may obtain a review of this administrative warning by filing a written request with the {disciplinary authority} within 20 days of mailing of this warning. The review will offer the credential holder an opportunity to make a personal appearance before the (disciplinary authority).

The record that this administrative warning was issued is a public record.

The content of this warning is private and confidential.

Chapter RL 9

DENIAL OF RENEWAL APPLICATION BECAUSE APPLICANT IS LIABLE FOR DELINQUENT TAXES

RL 9.01 Authority.
RL 9.02 Scope; nature of proceedings.
RL 9.03 Definitions.
RL 9.04 Procedures for requesting the department of revenue to certify whether an applicant for renewal is liable for delinquent taxes.
RL 9.05 Denial of renewal.

RL 9.01 Authority. The rules in ch. RL 9 are adopted under the authority in s. 440.03, Stats.

History: Emerg. cr. eff. 11–14–96; Cr. Register, August, 1996, No. 488, eff. 9–1–96.

RL 9.02 Scope; nature of proceedings. The rules in this chapter govern the procedures for requesting the Wisconsin department of revenue to certify whether an applicant is liable for delinquent taxes owed to this state under s. 440.08 (4) (b), Stats., as created by 1995 Wis. Act 27 and amended by 1995 Wis. Act 233, to review denial of an application for renewal because the applicant is liable for delinquent taxes.

History: Emerg. cr. eff. 11–14-96; Cr. Register, August, 1996, No. 488, eff. 9–1–96.

RL 9.03 Definitions. In this chapter:

(1) "Applicant" means a person who applies for renewal of a credential. "Person" in this subsection includes a business entity.

(2) "Credential" has the meaning in s. 440.01 (2) (a), Stats.

(3) "Department" means the department of regulation and licensing.

(4) "Liable for any delinquent taxes owed to this state" has the meaning set forth in s. 73.0301 (1) (c), Stats.

History: Emerg. cr. eff. 11–14-96; Cr. Register, August, 1996, No. 488, eff. 9–1–96; correction in (4) made under s. 13.93 (2m) (b) 7., Stats.

RL 9.04 Procedures for requesting the department of revenue to certify whether an applicant for renewal is liable for delinquent taxes. (1) RENEWAL APPLICATION FORM. If the department receives a renewal application that does not include the information required by s. 440.08 (2g) (b), Stats., the application shall be denied unless the applicant provides the missing information within 20 days after the department first received the application.

Note: 1997 Wis. Act 191 repealed s. 440.08 (2g) (b), Stats.

(2) SCREENING FOR LIABILITY FOR DELINQUENT TAXES. The name and social security number or federal employer identification number of an applicant shall be compared with information at the Wisconsin department of revenue that identifies individuals and organizations who are liable for delinquent taxes owed to this state.

(3) NOTICE OF INTENT TO DENY BECAUSE OF TAX DELINQUENCY If an applicant is identified as being liable for any delinquent taxes owed to this state in the screening process under sub. (2), the Wisconsin department of revenue shall mail a notice to the applicant at the last known address of the applicant according to s. 440.11, Stats., or to the address identified in the applicant's renewal application, if different from the address on file in the department. The notice shall state that the application for renewal submitted by the applicant shall be denied unless, within 10 days from the date of the mailing of the notice, the department of regulation and licensing receives a copy of a certificate of tax clearance issued by the Wisconsin department of revenue which shows that the applicant is not liable for delinquent state taxes or unless the Wisconsin department of revenue provides documentation to the department showing that the applicant is not liable for delinquent state taxes.

(4) OTHER REASONS FOR DENIAL. If the department determines that grounds for denial of an application for renewal may exist other than the fact that the applicant is liable for any delinquent taxes owed to this state, the department shall make a determination on the issue of tax delinquency before investigating other issues of renewal eligibility.

History: Emerg. cr. eff. 11–14-96; Cr. Register, August, 1996, No. 488, eff. 9–1–96.

RL 9.05 Denial of renewal. The department shall deny an application for credential renewal if the applicant fails to complete the information on the application form under s. RL 9.04 or if the Wisconsin department of revenue certifies or affirms its certification under s. 440.08 (4) (b) 3., Stats., that the applicant is liable for delinquent taxes and the department does not receive a current certificate of tax clearance or the Wisconsin department of revenue does not provide documentation showing that the applicant is not liable for delinquent taxes within the time required under s. RL 9.04 (2) and (3). The department shall mail a notice of denial to the applicant that includes a statement of the facts that warrant the denial under s. 440.08 (4) (b), Stats., and a notice that the applicant may file a written request with the department to have the denial reviewed at a hearing before the Wisconsin department of revenue.

Note: Section 440.08 (4) (b) 3., Stats., referred to here was repealed by 1997 Wis. Act 237 and a new, unrelated s. 440.08 (4) (b) recreated.

History: Emerg. cr. eff. 11–14–96; Cr. Register, August, 1996, No. 488, eff. 9–1–96.

Chapter ATCP 10

ANIMAL DISEASES

Subchapter I — Definitions
ATCP 10.01 Definitions.

Subchapter II — General Provisions
ATCP 10.02 Reportable diseases; general.
ATCP 10.025 Reportable diseases; fish.
ATCP 10.03 Disease testing; reports.
ATCP 10.04 State not a warrantor.
ATCP 10.05 Wisconsin certified veterinarians.
ATCP 10.06 Disease testing; owner to assist department.

Subchapter III — Bovine Disease
ATCP 10.10 Brucellosis; official vaccinates.
ATCP 10.11 Brucellosis testing.
ATCP 10.12 Brucellosis reactors.
ATCP 10.13 Brucellosis indemnity.
ATCP 10.14 Brucellosis-free herd; certification.
ATCP 10.15 Tuberculosis testing.
ATCP 10.16 Tuberculosis reactors.
ATCP 10.17 Tuberculosis indemnity.
ATCP 10.18 Tuberculosis-free herd; certification,
ATCP 10.21 Johne's disease herd classification; disclosure.

Subchapter IV — Swine Diseases
ATCP 10.30 Pseudorabies; vaccination and vaccine control
ATCP 10.31 Pseudorabies testing and control.
ATCP 10.32 Qualified pseudorabies negative herd; certification.
ATCP 10.33 Qualified pseudorabies negative grow-out herd; certification.
ATCP 10.34 Feeder swine pseudorabies monitored herd; certification.
ATCP 10.35 Brucellosis testing.
ATCP 10.36 Brucellosis reactors.
ATCP 10.37 Brucellosis indemnity.
ATCP 10.38 Brucellosis-free herd; certification.

Subchapter V — Equine Diseases
ATCP 10.40 Equine infectious anemia; testing.
ATCP 10.41 Equine infectious anemia; quarantine.

Subchapter VI — Poultry Diseases
ATCP 10.50 Poultry; disease control

Subchapter VII — Other Animal Diseases
ATCP 10.61 Brucellosis-free herd; goats.
ATCP 10.62 Tuberculosis-free herd; goats.
ATCP 10.63 Johne's disease in goats; herd classification; disclosure.
ATCP 10.64 Brucella ovis-free flock; sheep.
ATCP 10.65 Cervids; herd identification.
ATCP 10.651 Cervids; disease testing.
ATCP 10.652 Farm-raised deer; keepers registered.
ATCP 10.66 Tuberculosis in cervids.
ATCP 10.67 Cervids; tuberculosis herd certification,
ATCP 10.673 Brucellosis in cervids.
ATCP 10.675 Cervids; brucellosis herd certification.
ATCP 10.68 Fish farms.

Subchapter VIII — Enforcement
ATCP 10.70 Quarantines.
ATCP 10.705 Temporary animal hold order.
ATCP 10.71 Destruction or removal of animals illegally imported.
ATCP 10.72 Prohibited conduct.

Note: Chapter Ag 10 as it existed on December 31, 1990 was repealed and a new ch. Ag 10 was created effective January 1, 1991; Chapter Ag 10 was renumbered ch. ATCP 10 under s. 13.93 (2m) (b) 1., Stats., Register, April, 1993, No. 448.

Subchapter I — Definitions

ATCP 10.01 Definitions. As used in this chapter:

(1) "Accredited tuberculosis-free herd" means a herd of bovine animals, cervids or goats which is certified as tuberculosis-free by one of the following:

(a) The department under s. ATCP 10.17, 10.62 or 10.67 (1).

(b) The authorized animal health agency in the state where the herd is located, under standards comparable to s. ATCP 10.17, 10.62 or 10.67 (1).

(2) "Accredited veterinarian" means a veterinarian who is both of the following:

(a) Licensed to practice veterinary medicine.

(b) Specifically autborized by the federal bureau and responsible state agency, pursuant to 9 CFR 160 to 162, to perform animal disease eradication and control functions under state and federal animal health laws.

Note: Under s ATCP 10 05, a vetennanan who seeks to perform disease control and eradication functions in Wisconsin must be accredited by the federal bureau and certified by the department

(6) "Bison" means American bison of any age or sex, commonly known as buffalo.

(7) "Boar" means an uncastrated male swine that is sexually mature.

(8) "Bovine animal" means cattle and American bison of any age or sex.

(9) "Brucellosis" means the contagious, infectious and communicable disease caused by bacteria of the genus Brucella.

Note: Brucellosis is also known as Bang's disease, undulant fever, and contagious abortion

(9m) "Brucellosis monitored herd" means a herd of cervids that is certified as a brucellosis monitored herd by one of the following:

(a) The department under s. ATCP 10.675.

(b) The authorized animal health agency in the state where the herd is located, under standards comparable to s. ATCP 10.675.

(10) "Brucellosis test" means a test, approved by the federal bureau and the department, that is used to determine whether an animal is infected with brucellosis.

(11) "Bull" means an uncastrated sexually mature male bovine animal.

(12) "Calf' means a sexually immature bovine animal of either sex.

(13) "Cattle" means any of the various animals of the domesticated genus *Bos*.

(14) "Certificate of veterinary inspection" means a written certificate prepared in compliance with s. ATCP 11.02.

(14m) "Certified brucella-ovis free flock" means a flock of sheep that is certified as brucella-ovis free by one of the following:

(a) The department under s. ATCP **10.64.**

(b) The authorized animal health agency in the state where the flock is located, under standards comparable to s. ATCP 10.64.

(15) "Certified brucellosis-free herd" means a herd of cattle, cervids or goats that is certified as brucellosis-free by one of the following:

(a) The department under s. ATCP 10.14, 10.61 or 10.675.

(b) The authorized animal health agency in the state where the herd is located, under standards comparable to s. ATCP 10.14, 10.61 or 10.675.

(15m) "Cervid" means a member of the family of animals that includes deer, elk, moose, caribou, reindeer and the subfamily musk deer. "Cervid" includes all farm-raised deer.

(16) "Commingled" means kept or brought in contact with other animals in any environment which permits direct physical contact between the animals.

(17) "Communicable" means transmissible either directly or indirectly.

(18) "Contagious" means spread by contact, body secretions or fomites.

(19) "Cow" means a female bovine animal after first calving.

(20) "Department" means the state of Wisconsin department of agriculture, trade and consumer protection.

(20m) "Equine animal" has the meaning given in s. 95.68 (1) (a), Stats.

(20p) "Equine infectious anemia," otherwise known as EIA or swamp fever, means the contagious and infectious disease of equine animals caused by a non-oncogenic retrovirus.

(20q) "Equine infectious anemia test" means a test approved by the department, and conducted at a department laboratory or a laboratory approved by the federal bureau, to determine whether an animal is infected with equine infectious anemia.

(21) "Exotic disease" means any communicable, contagious or infectious disease of livestock or poultry not known to exist in Wisconsin.

(22) "Exposed" means subjected to a causative agent which may cause the exposed animal to contract a contagious, infectious or communicable disease.

(22m) "Farm–raised deer" has the meaning given in s. 95.001 (1) (a), Stats., but does not include cervids kept by an institution accredited by the American association of zoological parks and aquariums.

(23) "Federal bureau" means the animal and plant health inspection service of the United States department of agriculture, or any other unit of that department which may be vested with authority to administer federal laws and regulations relating to animal disease control.

(24) "Feeder cattle" means bovine animals, kept for the sole purpose of feeding prior to slaughter, which are not more than 18 months old as evidenced by the absence of permanent teeth, and whose sexual status is one of the following:

(a) Non–spayed female that is not parturient or post–parturient.

(b) Spayed heifer.

(c) Steer.

(25) "Feeder swine" means swine that weigh 80 pounds or less and are kept for the sole purpose of feeding for slaughter.

(25m) "Feeder swine pseudorabies monitored herd" means a herd of swine that is certified as a feeder swine pseudorabies monitored herd by one of the following:

(a) The department under s. ATCP 10.34.

(b) The authorized animal health agency in the state where the herd is located, under standards comparable to s. ATCP 10.34.

(26) "Flock" as applied to poultry means all poultry on a farm, except that the department may designate as a separate "flock" any group of poultry that has not been allowed to commingle with other poultry on a farm for at least **21** days.

(26m) "Flock" as applied to sheep means one of the following:

(a) A commonly owned or controlled group of sheep that are maintained on common ground.

(b) Two or more commonly owned or controlled groups of sheep that are maintained at geographically separate locations, if animals or people move between the locations without exercising appropriate bio–security measures.

(27) "Fomite" means an inanimate object or substance which serves to transfer infectious organisms from one animal to another.

(28) "Foreign disease" means any communicable, contagious or infectious disease of livestock and poultry not known to exist in the United States.

(29) "Hatchery" means premises used to hatch poultry or ratites. "Hatchery" includes buildings, incubators, hatchers and auxiliary equipment.

(30) "Heifer" means a female bovine animal up to first calving.

(31) "Herd" means one of the following:

(a) A commonly owned or controlled group of animals of the same species that are maintained on common ground.

(b) Two or more commonly owner or controlled groups of animals of the same species that are maintained at geographically separate locations, if animals or people move between the locations without exercising appropriate bio–security measures.

(32) "Individual herd plan" means a written herd management and testing plan that is designed by the department to control and eradicate an infectious, contagious or communicable disease from an affected herd.

(33) "Infectious" means caused by a pathogenic agent.

(36) "Keep farm–raised deer" means to own, rent, lease or serve as the custodian of farm–raised deer.

(37) "Keeper of farm–raised deer" means a person who keeps farm–raised deer.

(38) "Livestock" means farm animals including bovine animals, sheep, goats, swine, farm–raised deer and equine animals.

(40) "Mycoplasmosis" means a disease of poultry caused by bacteria of the genus *Mycoplasma*.

(41) "National poultry improvement plan" means the national poultry improvement plan established by the federal bureau under 9 CFR 145.

(42) "Negative" means an official diagnostic test result which discloses no evidence of disease.

(43) "Official back tag" means an identification back tag, approved by the federal bureau or the department, that conforms to the national uniform backtagging system.

Note: Examples of official back tags include the official Wisconsin bovine back tag and the official Wisconsin swine back tag.

(44) "Official eartag" means an identification eartag, approved by the federal bureau or the department, that conforms to the national uniform eartagging system.

Note: An official eartag uniquely identifies each individual animal with no duplication of the alpha–numeric identification, regardless of the materials or colors used. Examples of official eartags include the official Wisconsin identification tag, the official U.S.D.A. Wisconsin vaccination tag, and the official Wisconsin swine eartag.

(45) "Official individual identification" means a set of identifying characters which is uniquely associated with an individual animal, and which consists of one of the following:

(a) The animal's official eartag number.

(b) .The animal's breed association tattoo.

(c) The animal's breed association registration number.

(d) A registration freeze brand number which uniquely identifies the animal.

(e) The official breed registration lip tattoo number of an equine animal which uniquely identifies that equine animal.

(f) A written or graphic description of an equine animal, prepared by a licensed and accredited veterinarian, which uniquely identifies that equine animal and includes all of the following:

1. A complete and accurate description of the equine animal's breed, coloration and distinguishing markings.

2. The equine animal's sexual status.

(g) The microchip number of a ratite which uniquely identifies that ratite.

(h) The leg band number of a ratite which uniquely identifies that ratite.

(i) For a swine weighing 80 pounds or less, the premises identification of the premises of origin.

(j) Other identification approved by the department.

(46) "Official spayed heifer" means a female bovine animal which has had its ovaries removed and is identified by an open spade brand or spay certificate.

(47) "Official vaccinate" means a female bovine animal which is vaccinated against brucellosis, and identified and reported as a vaccinate, in compliance with s. ATCP **10.10** or comparable laws of another state.

(48) "Originates from a herd" or "originating from a herd" means coming from a herd, other than a group of animals temporarily assembled for sale or shipment, in which the animal was born or kept since birth, or in which the animal was kept for at least **120** days.

(48m) "Originates from a state" or "originating from a state" means coming directly from one of the following:

(a) A state in which the animal was born and kept since birth.

(b) A state to which the animal was moved from a state holding an equal or better federal classification for the disease in question.

(c) A state in which the animal has been kept for at least 120 days.

(49) "Paratuberculosis" means the infectious and communicable disease of domestic ruminants, commonly known as Johne's disease, which is caused by *Mycobacterium paratuberculosis*.

(55) "Person" means an individual, corporation, partnership, association, limited liability company, trust, governmental entity, or other organization or entity.

(56) ''Poultry" means domesticated fowl, including chickens, turkeys, waterfowl, and game birds, except doves and pigeons, which are bred for the primary purpose of producing eggs or meat. ''Poultry" does not include ratites.

(57) "Pseudorabies" means the contagious, infectious, and communicable disease of livestock and other animals which is caused by the pseudorabies herpes virus, and which is also known as Aujeszky's disease, mad itch, or infectious bulbo–paralysis.

(58) "Pseudorabies test" means the negative serum neutralization (SN) test or another pseudorabies diagnostic test which is approved by the department and conducted at a laboratory approved by the department or the federal bureau.

(59) "Pullorum" means a disease of poultry caused by ***Salmonella pullorum***.

(59m) "Qualified pseudorabies negative grow–out herd" means a grow–out herd of swine that is certified by one of the following:

(a) The department under s. ATCP 10.33.

(b) The authorized animal health agency in the state where the herd is located, under standards comparable to s. ATCP 10.33.

(60) "Qualified pseudorabies negative herd" means a herd of swine that is certified by one of the following:

(a) The department under s. ATCP 10.32.

(b) The authorized animal health agency in the state where the herd is located, under standards comparable to s. ATCP 10.32.

(60r) "Ratite" means a member of the group of flightless birds that includes the ostrich, emu, cassowary, kiwi and rhea.

(61) "Reactor" means an animal which has reacted positively in a conclusive diagnostic test for an infectious, contagious or communicable disease.

(62) "Slaughtering establishment" means a slaughtering establishment which is licensed by the department, or subject to inspection by the United States department of agriculture. "Slaughtering establishment" includes all premises used in connection with a slaughter operation.

(63) "Sow" means a sexually mature female swine.

(64) "State veterinarian'' means the administrator of the animal health division of the department, or a veterinarian who is authorized by the administrator to act on his or her behalf.

(65) "Steer" means a castrated male bovine animal.

(67) "Suspect" means an animal which is suspected of having a disease, based on test results or other reliable information, but which is not yet confirmed to have the disease.

(68) "Swine" means a domestic hog or any variety of wild hog.

(69) "Tuberculosis" means the contagious, infectious and communicable disease caused by ***Mycobacterium bovis.***

(69m) "Tuberculosis monitored herd" means a herd of cervids that is certified as a tuberculosis monitored herd by one of the following:

(a) The department under s. ATCP 10.67.

(b) The authorized animal health agency of the state in which the herd is located, using standards comparable to s. ATCP 10.67.

(69r) "Tuberculosis qualified herd" means a herd of cervids that is certified as a tuberculosis qualified herd by one of the following:

(a) The department under s. ATCP 10.67.

(b) The authorized animal health agency of the state in which the herd is located, under standards comparable to s. ATCP 10.67.

(70) "Tuberculosis test" means a test, approved by the department, which is used to detect tuberculosis in animals. "Tuberculosis test" includes any of the following tests when authorized or required under this chapter:

(a) A caudal fold tuberculin test or a comparative cervical tuberculin test for bovine animals.

(b) A single cervical tuberculin test or a comparative cervical tuberculin test for cervids.

(71) "Typhoid" or "fowl typhoid" means a disease of poultry caused by *Salmonella gallinarum*.

(71m) "USDA" means the United States department of agriculture.

(72) "Validated brucellosis–free herd" means a herd of swine that is certified as brucellosis–free by one of the following:

(a) The department under s. ATCP 10.36.

(b) The authorized animal health agency of the state where the herd is located, under standards comparable to s. ATCP 10.36.

(73) "Veal calf' means a bovine animal of either sex, not more than 120 days old, which is kept for the sole purpose of feeding prior to slaughter for veal.

(74) "Wisconsin certified veterinarian" means a veterinarian certified under s. ATCP 10.05.

History: Cr. Register, December, 1990, No. 420, eff. 1–1–91; emerg. cr. (15j), (15m), (17m) and (61m), eff. 3–18–91; am. (54), Register, June, 1991, No. 426. eff. 7–1–91; cr. (15j), (15m), (17m) and (61m), Register, November, 1991, No. 431, eff. 12–1–91; r. and recr. (48), cr. (48m), (60m) and (72m), Register, September, 1993, No. 453, eff. 10–1–93; cr. (20m), (20p) and (20q), Register, January, 1994, No. 457, eff. 2–1–94; renum. (45) (d) to be (45) (i), cr. (45) (d) to (h), (60r), am. (56), Register, March, 1995, No. 471, eff. 4–1–95; am. (1), (38), cr. (6m), (13m), (69m), (69r), r. and recr. (10), (17m), (61m), (70), r. (15j), (35) to (37), Register, February, 1996, No. 482, eff. 3–1–9; emerg. cr. (36), eff. 6–3–96; am. (15m), (38), cr. (22m), (36), (37), Register, December, 1996, No. 492, eff. 1–1–97; r. (50) to (54), Register, September, 1999, No. 525, eff. 7–1–00; am. (1) (intro.), (b), (14) to (16), (20m), (22m), (25), (29), (40). (43), (44), (45) (f) 2., (55), (60), (69m), (69r) and (72), r. (3) to (5), (6m), (13m), (17m), (34), (39), (60m), (61m), (66), (70) (c) and (72m), renum. (45) (i) to be (45) (j), cr. (14m), (25m), (26m), (45) (i), (59m), (71m) and (74), r. and recr. (26), (31) and (70) (b), Register. November, 2000, No. 539, eff. 12–1–00.

Subchapter II – General Provisions

ATCP 10.02 Reportable diseases; general. (1) DISEASES REPORTED WITHIN ONE DAY. A veterinarian or diagnostic laboratory that diagnoses or finds evidence of any disease identified in ***Appendix A*** shall report that diagnosis or finding to the department, in the manner provided under sub. (3), within one day after making the diagnosis or finding.

(2) DISEASES REPORTED *WITHIN 10* DAYS. A veterinarian or diagnostic laboratory that diagnoses or finds evidence of any disease identified in ***Appendix B*** shall report that diagnosis or finding to the department, in the manner provided under sub. (3), within 10 days after making the diagnosis or finding.

(3) FORM OF REPORT. A veterinarian or diagnostic laboratory may report under subs. (1) or (2) by telephone or any other effective means of communication. If a veterinarian reports other than in writing, the veterinarian shall confirm the report in writing within 10 days. A fax report is a written report under this section.

(4) EXEMPTION. This section does not require a veterinarian to report a diagnosis or finding made by the department or the Wisconsin department of health and family services.

History: Cr. Register. December. 1990, No. 420, eff. 1–1–91; r. and recr., Register, February, 1996, No. 482, eff. 3–1–96; emerg. cr. (2) (bm), (cm), (dm), (dr), and (ei), eff. 6–3–96; cr. (2) (bm), (cm), (dm), (dr), (i), Register, December, 1996, No. 492, eff. 1–1–97; am. (4). Register, May, 1999, No. 521, eff. 6–1–99; r. and recr. Register, November, 2000. No. 539, eff. 12–1-00.

ATCP 10.025 Reportable diseases; fish. (1) REPORT REQUIRED. A person who diagnoses or finds evidence of any of the

following diseases in this state shall report that diagnosis or finding to the department, in writing or by telefax, within 10 days after making the diagnosis or finding:

(a) Any aquatic animal disease that is foreign or exotic to Wisconsin.

(b) Channel catfish virus (CCV).

(c) Enteric septicemia of catfish (ESC).

(d) Infectious hematopoietic necrosis virus (IHN).

(e) White sturgeon iridovirus (WSI).

(f) Mycobacteriosis infection.

(g) Proliferative kidney disease (PKD).

(h) Streptococcus iniae.

(i) Viral hemorrhagic septicemia (VHS).

(j) Whirling disease (*Myxobolus cerebralis*, or WD).

(2) EXEMPTION. Subsection (1j does not require a person to report a diagnosis or finding made by the department or the Wisconsin department of health and family services.

History: Cr. Register. May, 1999, No. 521, eff. 6–1–99.

ATCP 10.03 Disease testing; reports. (1) VETERINARIAN TO FILE REPORT. Whenever a veterinarian tests an animal for any of the following diseases, the veterinarian shall report the test results to the department within 10 days unless the test sample is analyzed at a department laboratory:

(a) Anaplasmosis.

(b) Brucellosis.

(d) Paratuberculosis (Johne's disease).

(e) Pseudorabies.

(f) Tuberculosis.

(2) SAMPLES AND REPORTS TO INCLUDE OFFICIAL INDIVIDUAL IDENTIFICATION. Every test sample and every test report submitted to the department under sub. (1) shall be identified with the official individual identification of the animal to which the sample or test report pertains. If the animal has no official individual identification, the veterinarian shall identify the animal.

History: Cr. Register, December, 1990, No. 420, eff. 1–1–91; r. (1) (c), Register, February, 1996, No. 482, eff. 3–1–96.

ATCP 10.04 State not a warrantor. Nothing in this chapter constitutes a warranty by the state of Wisconsin or the department that any animal is free of disease.

History: Cr. Register, December, 1990, No. 420. eff. 1–1–91.

ATCP 10.05 Wisconsin certified veterinarians. (1) AUTOMATIC CERTIFICATION. A veterinarian is automatically certified as a Wisconsin certified veterinarian, without any action by the department, if all the following apply:

(a) The veterinarian is currently licensed under ch. 453, Stats., to practice veterinary medicine in this state.

(b) The veterinarian is currently accredited by the federal bureau under 9 CFR 160 to 162.

(2) DECERTIFICATION. A veterinarian is no longer certified under sub. (1) if any of the following occurs:

(a) The veterinarian is no longer licensed under ch. 453, Stats., to practice veterinary medicine. If the veterinarian's license is temporarily suspended, the certification under sub. (1) is suspended for the period of the license suspension.

(b) The veterinarian is no longer accredited by the federal bureau under 9 CFR 160 to 162. If the veterinarian's federal accreditation **is** temporarily suspended, the certification under sub. (1) is suspended for the period of the accreditation suspension.

(c) The department suspends or revokes the certification for cause. The state veterinarian may, on behalf of the department, summarily suspend or revoke the certification of a veterinarian who violates applicable requirements under this chapter, ch. ATCP 11 or 12. The state veterinarian shall specify, in the order, the period of suspension or the requirements for reinstatement after revocation. A veterinarian may request a hearing before the department, pursuant to ch. **227,** Stats. A request for hearing does not stay the summary suspension or revocation.

History: Cr. Register, November, 2000. No. 539, eff. 12-1-00.

ATCP 10.06 Disease testing; owner to assist department. An owner or custodian of animals shall make those animals available to the department, at the department's request, for any disease testing that the department is authorized to perform on those animals. The owner or custodian shall restrain the animals, as necessary, to facilitate testing and protect the safety of the animal and the persons performing the testing.

History: Cr. Register, November, 2000, No. $39, eff. 12–1–00.

Subchapter III – Bovine Disease

ATCP 10.10 Brucellosis; official vaccinates. A bovine animal does not qualify as an official brucellosis vaccinate unless all the following apply:

(1) An accredited veterinarian vaccinates the animal in compliance with USDA brucellosis eradication uniform methods and rules dated February 1, 1998. If the animal is vaccinated in Wisconsin, the accredited veterinarian shall also be a Wisconsin certified veterinarian.

(2) The veterinarian identifies the animal in compliance with the **USDA** brucellosis eradication uniform methods and rules dated February 1, 1998.

(3) The veterinarian files a vaccination report with the department within 30 days after the veterinarian performs the vaccination. The veterinarian shall file the vaccination report on a form approved by the department, and shall include in the report the official individual identification of the vaccinated animal. The veterinarian shall provide a copy of the vaccination report to the owner of the vaccinated animal, and shall retain another copy.

Note: Copies of the USDA brucellosis eradication uniform methods and rules dated February 1,1998 (APHIS publication 91–45–011) are on file with the department, the secretary of state and the revisor of statutes. Copies may be obtained from:

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

History: Cr. Register, December, 1990, No. 420, eff. 1–1–91; am. (2) (b) 2., (3), Register, February, 1996, No. 482, eff. 3–1–96; r. and recr. Register, November, 2000. No. 539. eff. **12–1–00.**

ATCP 10.11 Brucellosis testing. (1) WHO MAY TEST. A person collecting a brucellosis test sample under this chapter, ch. ATCP 11 or ch. ATCP 12 shall be one of the following:

(a) An accredited veterinarian. If the veterinarian collects the sample in this state, the veterinarian shall also be a Wisconsin certified veterinarian.

(b) An authorized employee or agent of the department or the federal bureau.

(cj A person who collects samples at a slaughtering establishment under the supervision of the department or the federal bureau.

(2) TEST PROCEDURE. A brucellosis test shall comply with the USDA brucellosis eradication uniform methods and rules dated February 1,1998.

(3) VETERINARIAN TO FILE REPORT. A veterinarian who collects a brucellosis test sample from a bovine animal in this state shall report the test result to the department within 10 days after the veterinarian obtains the test result, unless the department's laboratory analyzes the test sample. The veterinarian shall immediately report any positive reaction by telephone or other rapid means, and shall confirm the report in writing within 10 days. The veterinarian shall provide a copy of the test report to the owner of the animal.

(4) REPORT FORM. A veterinarian shall submit a brucellosis test report under sub. (3) in writing, on a form approved by the department. The report shall include the official individual identification of the animal tested, and any other information required

by the department. The veterinarian shall sign the report form. A report form may be used only for its intended purpose.

(5) IDENTIFYING TESTED ANIMALS. If a veterinarian collects a brucellosis test sample from a bovine animal that does not yet have an official individual identification, the veterinarian shall identify the animal with an official individual identification.

Note: See s. ATCP 11.10 regarding identification of bovine animals.

(6) CLASSIFICATION. Upon receiving a brucellosis test result, the department shall classify the tested animal as negative, suspect or reactor. The department may, in its discretion, use supplemental brucellosis tests to confirm test results, and to evaluate whether animals may be infected with brucellosis.

History: Cr. Register, December, 1990, No. 420, eff. 1–1–91; am. (2) (b), Register, March, 1995, No. 471. eff. 4–1–95; r. and recr. (1), (2), Register, February, 1996, No. 482, eff. 3–1–96; r. and recr. Register, November, 2000, No. 539, eff. 12–1–00.

ATCP 10.12 Brucellosis reactors. (1) ACTION REQUIRED. Within 15 days after the department classifies a bovine animal as a brucellosis reactor under s. ATCP 10.11 (6), the animal owner shall do all the following:

(a) Have the animal identified as a reactor and shipped to slaughter in compliance with USDA brucellosis eradication uniform methods and rules dated February 1, 1998.

(b) Clean and disinfect the premises where the animal was kept.

(2) DEADLINE EXTENSION. The department may, for good cause, extend a deadline under sub. (1). The department may not extend a deadline under **sub.** (1) (a) for more than 15 days.

Note: Copies of the USDA brucellosis eradication uniform methods and rules dated February 1, 1998 (APHIS publication 91–45–011) are on file with the department, the secretary of state and the revisor of statutes. Copies may be obtained from:

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

History: Cr. Register. December, 1990, No. 420, eff. 1–1–91; r. and recr. Register, November, 2000, No. 539, eff. 12–1–00.

ATCP 10.13 Brucellosis indemnity. An animal owner may request an indemnity under s. 95.26 (7), Stats., for a brucellosis reactor slaughtered under s. ATCP 10.12. The animal owner shall file the request with the department, on a form provided by the department. The owner shall include, with the request, a slaughter confirmation signed by an authorized employee of the department or the federal bureau. An animal owner does not qualify for an indemnity if the owner fails to comply with s. ATCP 10.12.

History: Cr. Register, December, 1990, No. 420, eff. 1–1–91; r. and recr. Register, November, 2000, No. 539, eff. 12–1–00.

ATCP 10.14 Brucellosis–free herd; certification. (1) OBTAINING INITIAL CERTIFICATION. The department may certify a herd of cattle as a brucellosis–free herd if the herd qualifies under the USDA brucellosis eradication uniform methods and rules dated February 1, 1998.

(2) MAINTAINING CERTIFICATION. To maintain a brucellosis–free herd certification, a herd owner shall comply with applicable requirements under the USDA brucellosis eradication uniform methods and rules dated February 1, 1998.

(3) SUSPENDING OR REVOKING CERTIFICATION. (a) The department may summarily suspend or revoke a brucellosis–free herd certification if any of the following occurs:

1. A brucellosis test shows that any animal in the herd is a brucellosis suspect or reactor.

2. The herd owner does not comply with sub. (2).

(b) The state veterinarian may issue a summary suspension or revocation notice under par. (a). The notice shall state the reason for the suspension or revocation. A herd owner affected by a suspension or revocation may request a hearing before the department under ch. 227, Stats. A request for a hearing does not automatically stay the summary suspension or revocation.

Note: Copies of the USDA brucellosis eradication uniform methods and rules dated February 1, 1998 (APHIS publication 91–45–011) are on file with the department, the secretary of state and the revisor of statutes. Copies may be obtained from:

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

History: Cr. Register, December, 1990. No. 420, eff. 1–1–91; am. (1) (b), (5) (b), Register, Februaty, 1996, No. 482, eff. 3–1–96; r. and recr. Register, November. 2000, No. 539, eff. 12–1–00.

ATCP 10.15 Tuberculosis testing. (1) WHO MAY TEST. A person performing a tuberculosis test under this chapter, ch. ATCP 11 or ch. ATCP 12 shall be one of the following:

(a) ***An*** accredited veterinarian. If the veterinarian performs the test in this state, the veterinarian shall also be a Wisconsin certified veterinarian.

(b) A veterinarian employed by the department or the federal bureau.

(c) A technician employed by the department or the federal bureau if the technician performs only routine screening tests under the direct supervision of a veterinarian employed by the department or the federal bureau.

(2) TEST PROCEDURES. A person who performs a tuberculosis test on a bovine animal in Wisconsin shall comply with applicable procedures in the USDA bovine tuberculosis eradication uniform methods and rules dated January 22, 1999.

(3) VETERINARIAN TO REPORT. A veterinarian who performs or supervises a tuberculosis test on a bovine animal in Wisconsin shall report the test result to the department within 10 days after the veterinarian observes the result. A veterinarian shall immediately report a positive reaction by telephone or other rapid means, and shall confirm the report in writing within 10 days. **A** veterinarian shall provide a copy of every test report to the animal owner.

Note: See also ss. ATCP 10.02 and 10.03.

(4) REPORT FORM. A veterinarian shall report a tuberculosis test result under sub. (3) in writing, on a form approved by the department. The report shall include the official individual identification of the animal tested, and any other information required by the USDA bovine tuberculosis eradication uniform methods and rules dated January 22, 1999. The veterinarian shall sign the report form. A report form may be used only for its intended purpose.

(5) IDENTIFYING TESTED ANIMALS. If a veterinarian performs or supervises a tuberculosis test on a bovine animal that does not yet have an official individual identification, the veterinarian shall identify the animal with an official individual identification.

Note: See s. ATCP 11.10 regarding identification of bovine animals.

(6) TEST POSITIVE ANIMAL MOVEMENT RESTRICTED. No person may **sell** or move a bovine animal that tests positive on any tuberculosis test until one of the following occurs:

(a) The department determines that the animal is not a tuberculosis suspect or reactor.

(b) The animal is classified as a tuberculosis reactor and shipped to slaughter according to s. ATCP 10.16.

(7) TEST POSITIVE ANIMAL; FURTHER TESTING AND CLASSIFICATION. Whenever the department receives a positive tuberculosis test report under sub. (3), the department shall conduct follow–up testing to detemiine whether the animal is a tuberculosis suspect or reactor. The department shall test and classify animals according to the USDA bovine tuberculosis eradication uniform methods and rules dated January 22, 1999.

History: Cr. Register, December, 1990, No. 420, eff. 1–1–91; r. and recr. (1), (2), r. (4), Register, Februaty, 1996, No. 482, eff. 3–1–96; cr. (4), Register, December. 1996, No. 492, eff. 1–1–97; r. and recr. Register, November, 2000, No. 539, eff. 12–1–00.

ATCP 10.151 Handling tuberculosis suspects and reactors. History: Cr. Register, February, 1995, No. 482, eff. 3–1–96; emerg. cr. (3), renum. (41 and cr. (4) (a) eff. Q–96; r. and recr. (3), renum. (4) (intro.), (a) to (c) to be (4) (b) (intro.) and 1 to 3.. Register, December, 1996, No. 492, eff. 1–1–97; r. Register, November, 2000. No. 539, eff. 12–1–00.

ATCP 10.16 Tuberculosis reactors. (1) ACTION REQUIRED. Within 15 days after the department classifies a bovine animal as a tuberculosis reactor, the animal owner shall do all the following:

(a) Have the animal identified and shipped to slaughter in compliance with the USDA bovine tuberculosis eradication uniform methods and rules dated January 22, 1999.

(b) Clean and disinfect the premises where the animal was kept.

(2) DEADLINE EXTENSION. The department may, for good cause, extend a deadline under sub. (1). The department may not extend a deadline under sub. (1) (a) for more than 15 days.

(3) SLAUGHTERED ANIMALS. (a) A tuberculosis reactor shall be slaughtered and inspected according to the USDA bovine tuberculosis eradication uniform methods and rules dated January 22, 1999.

(b) If a tuberculosis suspect is slaughtered. it shall be slaughtered and inspected according to the USDA bovine tuberculosis eradication uniform methods and rules dated January 22, 1999.

Note: Copies of the USDA bovine tuberculosis eradication uniform methods and rules dated January **22, 1999** (APHIS publication **91–45–011**) are on file with the department, the secretary of state and the revisor of statutes. Copies may be obtained from:

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

History: Cr. Register, December, **1990,** No. 420, eff. 1–1–91; am. (1), Register, February, 1996, No. **482,** eff. **3–1–96; r.** and recr. Register, November, 2000, No. **539,** eff. **12–1-00.**

ATCP 10.17 Tuberculosis indemnity. *An* animal owner may request an indemnity under s. 95.25 (5), Stats., for a slaughtered tuberculosis reactor. The animal owner shall file the request with the department, on a form provided by the department. The owner shall include, with the request, a slaughter confirmation signed by an authorized employee of the department or the federal bureau. An animal owner does not qualify for an indemnity if the owner fails to comply with s. ATCP 10.16.

History: Cr. Register, December, *1990*, No. **420,** eff. 1–1–91; am. (1), (2), *(5)* (c), (d) (intro.), **r.** and recr. **(3),** Register, February, **1996,** No. **482,** eff. **3–1–96; r.** and recr. Register, November, **2000,** No. **539,** eff. **12–1-00.**

ATCP 10.18 Tuberculosis–free herd; certification. (1) INITIAL CERTIFICATION. The department may certify a herd of bovine animals as an accredited tuberculosis–free herd if the herd qualifies under the USDA bovine tuberculosis eradication uniform methods and rules dated January 22, 1999.

(2) MAINTAINING CERTIFICATION. To maintain a tuberculosis–free herd certification, a herd owner shall comply with applicable requirements under the USDA bovine tuberculosis eradication uniform methods and rules dated January 22, 1999.

(3) SUSPENDING OR REVOKING CERTIFICATION. (a) The department may summarily suspend or revoke a tuberculosis–free herd certification if any of the following occurs:

1. An animal in the herd tests positive for tuberculosis.

2. The herd owner does not comply with sub. (2).

(b) The state veterinarian may issue a summary suspension or revocation notice under par. (a). The notice shall state the reason for the suspension or revocation. A herd owner affected by a suspension or revocation may request a hearing before the department under ch. 227, Stats. A request for a hearing does not automatically stay the summary suspension or revocation.

Note: Copies of the USDA bovine tuberculosis eradication uniform methods and rules dated January **22, 1999** (APHIS publication **91–45–011**) are on file with the department, the secretary of state and the revisor of statutes. Copies may he obtained from:

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

History: Cr. Register, December. *1990*, No. **420.** eff. **1–1–91; r.** and recr. Register, November, 2000, No. **539,** eff. **12–1-00.**

ATCP 10.19 Anaplasmosis control. History: Cr. Register, December, **1990,** No. **420,** eff. 1–1–91; am. (1), Register, September, **1993,** No. **453,** eff. 10–1–93; **r.** Register, November, **2000,** No. **539.** eff. **12–1-00.**

ATCP 10.20 Mastitis detection and control. History: Cr. Register, December, 1990, No. **420,** eff. 1–1–91; **r.** and recr. Register, June, **1991,** No. **426,** eff. **7–1–91; r.** Register, November. **2000,** No. **539,** eff. 12–1-00.

ATCP 10.21 Johne's disease herd classification; disclosure. (1) DEFINITIONS. In this section:

(a) "Anniversary date" means, for any herd of cattle, one of the following:

1. The month and day on which samples are collected for the first annual herd test conducted after July 1, 2000, if no annual herd test was conducted within one year prior to that date. If the first annual herd test conducted after July 1, 2000, is a split herd test, the "anniversary date" is the month and day on which samples are collected from the last group of animals in the split herd test.

2. The month and day between July 1, 1999, and June 30, 2000, on which samples were collected for an annual herd test, if an annual herd test was conducted within that period.

(b) "Annual herd test" means an annual paratuberculosis test conducted on a herd of cattle under this section. An annual herd test includes a random herd test, a split herd test or a whole herd test.

(br) "Certified veterinarian" means a Wisconsin certified veterinarian except that, for actions taken under this section outside this state, "certified veterinarian" means an accredited veterinarian.

(c) "Herd" means a herd of cattle.

(d) "Paratuberculosis" means the infectious and communicable disease of domestic ruminants, commonly known as Johne's disease, which is caused by *Mycobacterium paratuberculosis.*

(e) "Random herd test" means a paratuberculosis test performed under sub. *(5)* (b).

(f) "Split herd test" means a paratuberculosis test performed under sub. *(5)* (c).

(g) "Test eligible animals" means all the following:

1. All cattle, other than bulls, that are *36* months of age or older.

2. All bulls that are 24 months of age or older.

(h) "Whole herd test" means a paratuberculosis test performed under sub. *(5)* (a).

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

(2) EXEMPTION FROM IMPLIED WARRANTY. (a) The implied warranty under s. 95.195, Stats., does not apply to a sale of cattle if the seller discloses all the following to the buyer in writing, prior to sale:

1. The current herd classification, under sub. (3), of the herd from which the cattle are being sold.

2. That the cattle are paratuberculosis reactors under sub. (9), if that is the case.

(b) The implied warranty under s. 95.195, Stats., does not apply to cattle sold directly to slaughter or as feeder cattle.

(3) HERD CLASSIFICATION. (a) *Johne's preventive management level A.* The department shall classify a herd as "Johne's preventive management level A" if an annual herd test reveals no paratuberculosis reactors.

Note: Animals from a herd classified "Johne's preventive management level A" normally have the lowest risk of transmitting Johne's disease (paratuberculosis). The **risk** is normally reduced with each additional year that the herd maintains the level **A** classification. However. no herd classification ensures that an animal is free of Johne's disease.

The department may certify a herd as a voluntary participant in the national Johne's disease program if the herd is classified under par. (a) **as** "Johne's preventive management level A." To participate in the national program, a herd owner must enter into a certification contract with the department. In establishing the terms of the contract, the department will be guided by the **"U.S.** Voluntary Johne's Disease Herd Status Program for Cattle." For more information, contact the department at the following address:

Wisconsin Department of Agriculture, Trade and Consumer Protection
Animal Health Division
P.O. Box 8911
Madison, WI 53708–8911
Phone: (608) 224–4872

(b) ***Johne's preventive management level B.*** The department shall classify a herd as "Johne's preventive management level B if fewer than 5% of the animals tested in an annual whole herd test or split herd test, or in a follow–up whole herd test under par. (d) 1., are paratuberculosis reactors.

(c) ***Johne's preventive management level C.*** The department shall classify a herd as "Johne's preventive management level C" if at least 5% but not more than 15% of the animals tested in an annual whole herd test or split herd test, or in a follow–up whole herd test under par. (d) 1., are paratuberculosis reactors.

(d) ***Johne's preventive management level D.*** The department shall classify a herd as "Johne's preventive management level D if any of the following apply:

1. A random herd test reveals one or more paratuberculosis reactors, unless the department reclassifies the herd under par. (b) or (c) based on a follow–up whole herd test.

2. More than 15% of the animals tested in a whole herd test or a split herd test are paratuberculosis reactors.

(e) ***Maximum risk for Johne's disease.*** Every herd in this state, and every herd from which cattle are sold in this state, is automatically classified "maximum risk for Johne's disease" unless one of the following applies:

1. The department classifies that herd under pars. (a) to (d). If the owner of the classified herd fails to complete an annual herd test within the time required under sub. (5), that classification expires and the herd is automatically classified "maximum risk for Johne's disease" until the department reclassifies the herd under pars. (a) to (d).

2. The department has classified that herd within one year prior to July 1, 2000. If the owner of the classified herd fails to complete an annual herd test within the time required under Sub. (5), the classification expires and the herd is automatically classified "maximum risk for Johne's disease" until the department reclassifies the herd under pars. (a) to (d).

Note: The herd classifications under pars. (a) to (e) are arranged from most desirable (a) to least desirahle (e). "Maximum risk for Johne's disease" is the least desirable herd classification, because it signifies that the herd owner does not have an annual paratuberculosis testing program. A person buying cattle from such a herd faces an unknown, hut substantial, risk that the cattle are infected with Johne's disease.

(f) ***Classification to include year.*** A herd classification under pars. (a) to (d) shall indicate the first year from which the herd has continuously held that classification.

(4) COMMINGLED CATTLE; CLASSIFICATION. (a) Except as provided in par. (c) cattle added to a herd from a herd with a less desirable classification under sub. (3) retain that less desirable herd classification for 120 days after being added but do not affect the classification of the herd to which they are added.

(b) Cattle added to a herd from a herd with a more desirable classification are immediately reclassified to the less desirable classification of the herd to which they are added.

(c) If cattle from herds with different classifications under sub. (3) are temporarily assembled for sale or shipment, the least desirable classification assigned to any of those source herds automatically applies to the temporarily assembled herd.

(d) Cattle from herds classified as "Johne's preventive management level **A,**" "Johne's preventive management level **B,**" "Johne's preventive management level C," or "Johne's preventive management level D that are sent by their owners to a consignment sale do not constitute a temporarily assembled herd under par. (c), except that animals which are allowed to have direct contact with each other for more than 24 hours constitute a temporarily assembled herd.

(5) ANNUAL HERD TEST. An annual herd test may be any of the following:

(a) ***Whole herd test.*** **A** whole herd test is performed on all test eligible animals in the herd. All samples for a whole herd test shall be collected on the same day or on consecutive days. Samples shall be collected on the anniversary date under sub. (I) (a], or within 2 months before or after that date.

(b) ***Random herd test.*** A random herd test is performed on a group of test eligible animals randomly selected from the test herd by the person who collects the test samples under sub. ***(6).*** The randomly selected group shall include at least **30** test eligible animals, or at least 10% of the test eligible animals in the herd, whichever group is larger. All samples for a random herd test shall be collected on the same day. Samples shall be collected on the anniversary date under sub. (1) (a), or within 2 months before or after that date.

Note: A herd with less than 30 test eligible animals is not eligible for a random herd test. The department may not classify a herd **as** "Johne's preventive management level B or "Johne's preventive management level C" based on a random herd test. If a random herd test reveals one or more reactor animals, the herd is classified as "Johne's preventive management level D" until the herd owner completes a follow–up whole herd test. See sub. (3) (d) I.

(c) ***Split herd test.*** **A** split herd test is performed, over the course of not more than 12 months, on all test eligible animals in a herd. A split herd test shall comply with all the following requirements:

1. The department shall approve a herd testing plan before any animals are tested. The department shall grant or deny approval, in writing, within 30 days after the herd owner submits a proposed testing plan to the department.

2. All testing shall be completed according to the plan approved by the department.

3. All test eligible animals in the herd shall be tested at least once during the **12** month period ending on the herd's anniversary date.

(6) COLLECTING TEST SAMPLES. Annual herd test samples shall be collected by a certified veterinarian, or by an employee of the department or the federal bureau. The person who collects an annual herd test sample shall do all the following:

(a) Determine the animals to be tested under sub. (5).

(b) Determine the type of test to be performed under sub. (7).

(c) Collect an appropriate sample from each test animal, based on the type of test to be performed under sub. (7).

(d) Identify each sample with the official individual identification of the animal from which it was collected, and the date on which it was collected.

(e) Transmit the test samples **to** the laboratory testing those samples under sub. (7).

Note: A herd owner may have cattle tested for Johne's disease at any time. The department will not use the test results to classify the tested herd under this section unless the test complies with this section and the herd **owner** asks the department to classify the herd.

This rule does not prohibit a person from collecting test samples from animals that are too young to be "test eligible" under ATCP 10.21 (I) (g), but the department will not consider test results from those animals when determining the appropriate herd classification. To facilitate review of results, the person collecting test samples should separate "test eligible" from "non–test eligible" samples, and should prepare separate test submission forms for each category.

(7) LABORATORY TESTING. Annual herd test samples shall be tested by the department, the federal bureau, or a laboratory approved by the department or the federal bureau. The laboratory shall use one of the following tests:

(a) The enzyme linked immunosorbent assay (ELISA).

(b) The fecal culture test.

(c) Another test approved by the department.

(8) TEST RESULTS. A laboratory performing tests under sub. (7) shall report the test results to the department within 10 days, If the herd owner asks the department to classify a herd based on the results of an annual herd test, the department shall classify the herd under sub. (3) within 30 days after it receives both the test results and the herd owner's request. The department shall issue a classification notice under sub. (10) to the herd owner.

Note: Under s ATCP 10.02 and 10.03, a vetennanan or laboratory **that** diagnoses or finds evidence of Johne's disease must report that diagnosis or finding to the departincnt within 10 days, in writing or by telefax

(9) PARATUBERCULOSIS REACTORS An animal is a paratuberculosis reactor if any of the following apply:

(a) The animal tests positive on the enzyme linked immunosorbent assay (ELISA), unless it subsequently tests negative on the fecal culture test.

(b) The animal tests positive on the fecal culture test.

(c) The animal tests positive on any other test which the department approves and deems conclusive.

(10) NOTICE TO HERD OWNER. Whenever the department classifies a herd under sub. (3) based on an annual herd test, or based on a follow–up whole herd test under sub. (3) (d) 1., the department shall promptly provide the herd owner with all the following information in writing:

(a) ***Individual animal test results.*** Individual test results for each animal included in the herd test. Test results shall be identified with each animal's official individual identification.

(b) ***Herd classification.*** The herd classification under sub. (3). The classification notice shall include the effective date and expiration date of the classification. **A** classification takes effect on the effective date specified in the notice, and supersedes any prior classification.

(c) ***Eligibility for reimbursement.*** Notice that the herd owner may apply for reimbursement of testing costs, according to sub. (15).

(11) REACTOR IDENTIFICATION. (a) No person may move a paratuberculosis reactor under sub. (9) unless a certified veterinarian first identifies that reactor with a permanent paratuberculosis reactor identification approved by the department.

(b) No person may sell a paratuberculosis reactor under sub. (9) unless both of the following apply:

1. **A** certified veterinarian first identifies that reactor with a permanent paratuberculosis reactor identification approved by the department.

2. The seller first discloses to the prospective buyer, in writing, that the animal is a paratuberculosis reactor unless the reactor is sold directly to slaughter or as a feeder animal.

(c) Within 30 days after an animal is determined to be a reactor under sub. **(9)** (a) or (c), a certified veterinarian shall do one of the following:

1. Identify the reactor with a permanent paratuberculosis reactor identification approved by the department.

2. Collect a sample from that animal for a fecal culture test.

(d) Within 30 days after an animal tests positive for paratuberculosis on a fecal culture test, a certified veterinarian shall identify the reactor with a paratuberculosis reactor identification approved by the department.

(12) HERD VACCINATION No person may vaccinate cattle for paratuberculosis except under a herd agreement with the department. The department may not authorize vaccination in any herd in which the percentage of reactors in the last whole herd test or split herd test was less than 7%, unless special circumstances warrant vaccination in that herd.

(13) MISREPRESENTING HERD CLASSIFICATION No seller may misrepresent the classification, under sub. (3), of the herd from which cattle are being sold. A seller who misrepresents a herd classification is not exempt from the implied warranty under s. 95.195, Stats., and is subject to possible penalties under s. 95.99, Stats.

(14) DEPARTMENT DISCLOSURE OF HERD CLASSIFICATION The department may disclose a herd classification under sub. **(3)** with the written authorization of the herd owner.

Note: See s 95.232, Stats

(15) REIMBURSEMENT OF ANNUAL HERD TEST COSTS (a) ***Eligibility.*** **A** hcrd owner who asks the department to classify a herd under sub. (3) based on an annual herd test performed under sub. *(5)* may apply for reimbursement of laboratory testing costs under sub. (7).

(b) *Reimbursement claim.* To apply for reimbursement of annual herd test costs under par. (a), a herd owner shall file a claim with the department by February 1 of the year following the year in which the herd is tested and classified. The herd owner shall apply on a form provided by the department. The herd owner shall submit copies of bills from the veterinarian or laboratory that establish the amount of laboratory test costs that the herd owner incurred.

Note: **A** copy of the form may be obtained by contacting
Wisconsin Department of Agriculture, Trade and Consumer Protection
Division of Health
P.O. **Box** 8911
Madison, WI 53708–8911
Phone: (608) 224-4872

(c) ***Claims disallowed.*** The department may disallow all or part of a claim under par. (b) if the department finds that the herd owner has misrepresented or falsified any part of a claim.

(d) ***Reimbursement payments.*** The department shall reimburse a herd owner's allowed claim by June ***30*** of the year following the year which the owner's herd was tested and classified. If allowed claims exceed available funding, the department shall pay each herd owner a pro rata share based on the amount of each herd owner's allowed claim. A herd owner may not resubmit the unpaid portion of a claim in a subsequent year.

History: Cr. Register, December, 1990, No. 420, eff. 1–1–91; r. and recr. Register, June, 1991, No. 426, eff. 7–1–91; r. and recr. Register, September, 1999, No. 525, eff. 7–1–00; emerg. cr. (1m), eff. 7–1–00; cr. (1) (br) and (1m), **am.** (6) (intro.), (11) **(a)**, (b) 1., *(c)* (intro.) and (d), Register, November. 2000, No. 539, eff. 12–1–00; **cr. (10) (c) and (15), Register, May, 2001, No. 545, eff. 6–1–01.**

Subchapter IV — Swine Diseases

ATCP 10.30 Pseudorabies negative herd; certification. History: Cr. Register, December, 1990, No. 420. eff. 1–1–91; **am.** (7) **(a)** and (b) (intro.), Register, September, 1993, No. 453, eff. 10–1–93; emerg. r. and recr. (2) and (7), am. (4) (a) 2., and **(5)**, eff. 2–1–95; r. and recr. (2) and (7), **am.** (4) (a) 2. and **(5)**, r. (6), Register, July, 1995, No. 475, eff. 8–1–95; r. Register, November, 2000, No. 539, eff. 12–1–00.

ATCP 10.30 Pseudorabies; vaccination and vaccine control. (1) PERMIT. No person may vaccinate swine for pseudorabies unless the owner of those swine holds a vaccination permit from the department. To obtain a permit, an owner of swine shall submit a written application to the department. The department may issue a vaccination permit for swine which have been infected with or exposed to pseudorabies, or which the department identifies as being at risk for pseudorabies. The department shall grant or deny an application for a vaccination permit within 5 business days after the department receives a complete application. The department may, in its discretion, require that a vaccination performed under department permit be performed by a veterinarian licensed in this state.

(2) VACCINE LABEL. No person may sell, distribute or possess any pseudorabies vaccine in this state unless the vaccine container is labeled with the name and address of the vaccine manufacturer.

(3) REPORT OF SALES. Every person who sells or furnishes pseudorabies vaccine to a veterinarian in this state shall file a report with the department within 15 days after the vaccine is delivered to the veterinarian. The report shall specify the name and address of each recipient, the date of delivery and the amount of vaccine delivered.

(4) SALES RESTRICTED. (a) Except as provided under par. (b) or (c), no person may sell or furnish pseudorabies vaccine to a retail purchaser or user in this state, other than a veterinarian licensed in this state who is authorized to vaccinate swine on behalf of an owner who holds a vaccination permit under **sub.** (1). The number of doses of vaccine sold or furnished may not exceed the number of doses specified in the permit.

(b) The department may issue a permit authorizing a veterinarian licensed in this state to purchase pseudorabies vaccine for use in swine outside the state. The department shall grant or deny a permit application within 5 business days after the department receives a written application from a veterinarian licensed in this state. The veterinarian shall record, and file with the department

on a monthly basis, the number of doses of vaccine purchased for use outside the state. the location of each herd on which the vaccine was used, and the name and address of the herd owner.

(c) Paragraph (a) does not prohibit a veterinarian from furnishing vaccine to a herd owner who holds a permit under sub. (1), provided that the veterinarian acquired the vaccine in compliance with par. (a).

History: Cr. Register, December, 1990, No. 420, eff. 1–1–91; **am.** (1), r. and recr. (2), cr. (3) and (4), Register, September, 1993, No. 453, eff. 10–1–93; renum. from s. ATCP 10.32, Register, November, 2000, No. 539, eff. 12–1–00.

ATCP **10.305** Qualified pseudorabies negative grow–out herd; certification. **History:** Cr. Register, September, 1993. No. 453, eff. 10–1–93; r. Register, November, 2000, No. 539, eff. 12–1–00.

ATCP 10.31 Pseudorabies testing and control. (1) WHO MAY TEST. No person may collect a pseudorabies test sample from swine in this state unless that person is one of the following:

(a) **A** Wisconsin certified veterinarian.

(b) An authorized employee or agent of the department or the federal bureau.

(2) TEST PROCEDURE. A pseudorabies test shall comply with the USDA pseudorabies eradication state–federal–industry program standards dated January 1, 1999, and shall be submitted to a laboratory operated by or approved by the department or the federal bureau.

(3) VETERINARIAN TO REPORT. A veterinarian who collects a pseudorabies test sample from swine in this state shall report the test result to the department within 10 days after the veterinarian obtains the test result, unless a department laboratory analyzes the test sample. A veterinarian shall immediately report a positive reaction by telephone or other rapid means, and shall confirm the report in writing within 10 days. A veterinarian shall provide a copy of every test report to the animal owner.

Note: See also ss. ATCP **10.02** and 10.03.

(4) REPORT FORM. A veterinarian shall report a pseudorabies test result under sub. (3) in writing, on a form approved by the department. The report shall include the official individual identification of the animal tested, and any other information required by the department. The veterinarian shall sign the test report. A report form may be used only for its intended purpose.

(5) IDENTIFYING TESTED ANIMALS. If a veterinarian collects a pseudorabies test sample from an animal that does not yet have an official individual identification, the veterinarian shall identify the animal with an official individual identification.

(6) SURVEILLANCE SAMPLES; TESTING. The department shall conduct a surveillance sampling program for pseudorabies. The department shall obtain blood or tissue samples from Wisconsin swine on a systematic basis, and shall test the samples for pseudorabies. Samples may include blood samples routinely collected from slaughtered swine.

(7) INVESTIGATION; HERD TESTING. Whenever the department detects pseudorabies in any surveillance sample under sub. (6), the department shall investigate to determine whether swine herds in Wisconsin have been exposed to pseudorabies. The investigation may include additional testing of potentially exposed herds.

(8) QUARANTINE. (a) The department may quarantine swine whenever the department reasonably suspects that the swine may be infected with or exposed to pseudorabies. The department may quarantine all swine located on the premises. The quarantine shall comply with s. ATCP 10.70. A herd owner adversely affected by a quarantine order may request a hearing on the order, as provided in s. ATCP 10.70 (6).

(b) The department may release a herd quarantine under par. (a) if at least one of the following occurs:

1. All of the breeding animals and a statistically significant number of the finishing animals in the quarantined herd test negative on **2** consecutive pseudorabies tests approved by the department and administered at least 30 days apart.

2. All swine on the premises are slaughtered, and the premises are cleaned, disinfected and kept free of swine for at least 30 days.

3. The department determines that the herd is not infected based upon survey testing and epidemiological information.

(9) CONDEMNATION. (a) The department may summarily condemn and order the destruction of swine whenever the department finds that condemnation is necessary to prevent or reduce the spread of pseudorabies.

Note: See s. 95.27. Stats.

(b) The state veterinarian or designee may issue a condemnation order under par. (a) on behalf of the department. The order shall state the reason for the condemnation. A herd owner may request a hearing on a condemnation order, pursuant to ch. 227, Stats. A request for hearing does not automatically stay the condemnation order.

(10) HERD PLAN. (a) A herd plan is an agreement, between the department and an owner of swine, for the eradication of pseudorabies. A herd plan shall comply with the **USDA** pseudorabies eradication state–federal–industry program standards dated January 1, 1999, based on the state's current program stage for control of pseudorabies.

(b) An owner of swine may enter into a herd plan within 60 days after the department quarantines those swine. The department may extend the deadline date for good cause. If a herd owner fails to enter into a herd plan by the deadline date, the herd owner is no longer eligible for indemnities if the department condemns the swine under sub. (9).

(c) A herd plan shall be designed to eradicate pseudorabies within 24 months after the herd plan is signed, or within 24 months after the department quarantines the herd, whichever occurs first. The department may extend the eradication deadline for good cause.

(d) The department shall periodically review and document a herd owner's performance under a herd plan. If a herd owner fails or refuses to comply with a herd plan, the department may issue a notice revoking the herd owner's eligibility for indemnities on swine condemned under sub. (9). The state veterinarian may issue the notice on behalf of the department. **A** herd owner may request a hearing on the notice, pursuant to ch. 227, Stats.

(11) MOVEMENT OF DISEASED SWINE. Whenever the department orders or authorizes the movement of swine quarantined for pseudorabies, the department shall take reasonable steps to notify other herd owners who may be adversely affected by the movement. The department shall, if practicable, issue a written notice to the other herd owners at least 10 days before the swine are moved.

Note: Copies of the USDA pseudorabies eradication state–federal–industry program standards dated January 1, 1999 (APHIS publication 91–55–047) are on file with the department, the secretary of state and the revisor of statutes. Copies may be obtained from:

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

History: Cr. Register, December, 1990, No. 420, eff. 1–1–91; renum. (3) to be (3) (a), cr. (3) (b), Register, September, 1993, No. 453, eff. 10–1–93; r. and recr. Register, November, 2000, No. 539, eff. 12–1–00.

ATCP 10.32 Qualified pseudorabies negative herd; certification. (1) INITIAL CERTIFICATION. The department may certify a herd of swine as a qualified pseudorabies negative herd if the herd qualifies under the **USDA** pseudorabies eradication state–federal–industry program standards dated January 1, 1999.

(2) MAINTAINING CERTIFICATION. To maintain a qualified pseudorabies negative herd Certification, a herd owner shall comply with applicable requirements under the USDA pseudorabies eradication state–federal–industry program standards dated January 1, 1999.

(3) SUSPENDING OR REVOKING CERTIFICATION. (a) The department may summarily suspend or revoke the qualified pseudorabies negative herd certification if any of the following occurs:

1. An animal in the herd tests positive for pseudorabies.
2. The herd owner fails to comply with sub. (2).

(b) The state veterinarian may issue a summary suspension or revocation notice under par. (a). The notice shall state the reason for the suspension or revocation. A herd owner affected by a suspension or revocation may request a hearing before the department under ch. 227, Stats. A request for a hearing does not automatically stay the summary suspension or revocation.

Note: Copies of the USDA pseudorabies eradication state–federal–industry program standards dated January 1, 1999 (APHIS publication 91–55–047) are on file with the department, the secretary of state and the revisor of statutes. Copies may be obtained from:

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

History: Cr. Register, November, 2000, No. 539, eff. 12–1–00.

ATCP 10.33 Qualified pseudorabies negative grow–out herd; certification. (1) INITIAL CERTIFICATION. The department may certify a herd of swine as a qualified pseudorabies negative grow-out herd if the herd qualifies under the USDA pseudorabies eradication state–federal–industry program standards dated January 1, 1999.

(2) MAINTAINING CERTIFICATION. To maintain a qualified pseudorabies negative grow–out herd certification, a herd owner shall comply with applicable requirements under the USDA pseudorabies eradication state–federal–industry program standards dated January 1, 1999.

(3) SUSPENDING OR REVOKING CERTIFICATION. (a) The department may summarily suspend or revoke the pseudorabies negative grow-out herd certification if any of the following occurs:

1. An animal in the herd tests positive for pseudorabies.
2. The herd owner fails to comply with sub. (2).

(b) The state veterinarian may issue a summary suspension or revocation notice under par. (a). The notice shall state the reason for the suspension or revocation. A herd owner affected by a suspension or revocation may request a hearing before the department under ch. 227, Stats. A request for a hearing does not automatically stay the summary suspension or revocation.

Note: Copies of the USDA pseudorabies eradication state—federal—industry program standards dated January 1, 1999 (APHIS publication 91–55–047) are on file with the department, the secretary of state and the revisor of statutes. Copies may be obtained from:

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

History: Cr. Register, December, 1990, No. 420, eff. 1–1–91; am. (4) (a), Register, September, 1993, No. 453, eff. 10–1–93; r. and recr. Register, November, 2000, No. 539, eff. 12–1–00.

ATCP 10.335 Validated brucellosis–free grow-out herd. History: Cr. Register, September, 1993, No. 453, eff. 10–1–93; r. Register, November, 2000, No. 539, eff. 12–1–00.

ATCP 10.34 Feeder swine pseudorabies monitored herd; certification. (1) INITIAL CERTIFICATION. The department may certify a herd of swine as a feeder swine pseudorabies monitored herd if the herd qualifies under USDA pseudorabies eradication state–federal–industry program standards dated January 1, 1999.

(2) MAINTAINING CERTIFICATION. To maintain a feeder swine pseudorabies monitored herd certification, the herd owner shall comply with applicable requirements under the USDA pseudorabies eradication state–federal–industry program standards dated January 1, 1999.

(3) SUSPENDING OR REVOKING CERTIFICATION. (a) The department may summarily suspend or revoke the feeder swine pseudorabies monitored herd certification if any of the following occurs:

1. An animal in the herd tests positive for pseudorabies.
2. The herd owner fails to comply with sub. (2).

(b) The state veterinarian may issue a summary suspension or revocation notice under par. (a). The notice shall state the reason for the suspension or revocation. A herd owner affected by a suspension or revocation may request a hearing before the department under ch. 227, Stats. A request for a hearing does not automatically stay the summary suspension or revocation.

Note: Copies of the USDA pseudorabies eradication state–federal–industry program standards dated January 1, 1999 (APHIS publication 91–55–047) are on file with the department, the secretary of stale and the revisor of statutes. Copies may be obtained from:

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

History: Cr. Register, December. 1990, No. 420, eff. 1–1–91; r. and recr. Register, November, 2000, No. 539, eff. 12–1–00.

ATCP 10.35 Brucellosis testing. (1) WHO MAY TEST. The person who collects a swine brucellosis test sample under this chapter, ch. ATCP 11 or ch. ATCP 12 shall be one of the following:

(a) An accredited veterinarian. If the veterinarian collects the test sample in this state, the veterinarian shall also be a Wisconsin certified veterinarian.

(b) An authorized employee or agent of the department or the federal bureau.

(2) TEST PROCEDURES. A person who collects a brucellosis test sample shall comply with all procedural requirements of the USDA swine brucellosis control/eradication state–federal–industry uniform methods and rules dated April, 1998. The person shall submit the sample to a state or federal laboratory that the department or the federal bureau has approved to conduct swine brucellosis serology tests.

(3) VETERINARIAN TO FILE REPORT. A veterinarian who collects a brucellosis test sample from a swine in this state shall report the test result to the department within 10 days after the veterinarian obtains the test result, unless the department's laboratory analyzes the test sample. A veterinarian shall immediately report a positive reaction by telephone or other rapid means, and shall confirm the report in writing within 10 days. The veterinarian shall provide a copy of every test report to the animal owner.

Note: See also ss. ATCP 10.02 and 10.03.

(4) REPORT FORM. A veterinarian shall report a brucellosis test result under sub. **(3)** in writing, on a form approved by the department. The report shall include the official individual identification of the animal tested, and any other information required by the USDA swine brucellosis control/eradication state–federal–industry uniform methods and rules dated April, 1998. The veterinarian shall sign the report form. A report form may only be used for the purpose intended.

(5) IDENTIFYING TESTED ANIMALS. If a veterinarian collects a brucellosis test sample from a swine that does not yet have an official individual identification, the veterinarian shall identify the animal with an official individual identification.

History: Cr. Register, November, 2000, No. 539, eff. 12–1–00.

ATCP 10.36 Brucellosis reactors. (1) CLASSIFICATION. The department shall classify, as a brucellosis reactor, any swine that qualifies as a reactor under the USDA swine brucellosis control/eradication state–federal–industry uniform methods and rules dated April, 1998.

(2) ACTION REQUIRED. Within 15 days after the department classifies a swine as a brucellosis reactor, the herd owner shall do all the following:

(a) Have the swine identified as a reactor and shipped to slaughter in compliance with the USDA swine brucellosis control/eradication state–federal–industry uniform methods and rules dated April, 1998.

(b) Clean and disinfect the premises where the swine was kept.

(3) DEADLINE EXTENSION. The department may, for good cause, extend a deadline under sub. (2). The department may not extend a deadline under sub. (2) (a) for more than 15 days.

Note: Copies of the USDA swine brucellosis control/eradication state–federal–industry uniform methods and rules dated April, 1998 (APHIS publication 91–55–042) are on file with the department, the secretary of state and the revisor of statutes. Copies may be obtained from:

Wisconsin Department of Agriculture, Trade and Consumer Protection
Division of Animal Health

P.O. Box 8911
Madison, WI 53708–8911
History: Cr. Register, November, 2000, No. 539. eff. 12–1–00.

ATCP 10.37 Brucellosis indemnity. A swine owner may request an indemnity under s. 95.26 (7), Stats., for a brucellosis reactor slaughtered under s. ATCP 10.36. The animal owner shall file the request with the department, on a form provided by the department. The owner shall include, with the request, a slaughter confirmation signed by an authorized employee of the department or the federal bureau. A swine owner does not qualify for an indemnity if the owner fails to comply with s. ATCP 10.36.
History: Cr. Register, November, 2000, No. 539, eff. 12–1–00.

ATCP 10.38 Brucellosis–free herd; certification. **(1)** INITIAL CERTIFICATION. The department may certify a herd of swine as a validated brucellosis–free herd if the herd qualifies under the USDA swine brucellosis control/eradication state–federal–industry uniform methods and rules dated April, 1998.

(2) MAINTAINING CERTIFICATION. To maintain a validated brucellosis–free herd certification, the herd owner shall comply with applicable requirements under the USDA swine brucellosis control/eradication state–federal–industry uniform methods and rules dated April, 1998.

(3) SUSPENDING OR REVOKING CERTIFICATION. (a) The department may summarily suspend or revoke the brucellosis–free herd certification if any of the following occurs:

1. An animal in the herd tests positive for brucellosis.
2. The herd owner fails to comply with sub. (2).

(b) The state veterinarian may issue a summary suspension or revocation notice under par. (a). The notice shall state the reason for the suspension or revocation. A herd owner affected by a suspension or revocation may request a hearing before the department under ch. 227, **Stats.** A request for a hearing does not automatically stay the summary suspension or revocation.

Note: Copies of the USDA swine brucellosis control/eradication state–federal–industry uniform methods and rules *dated* April, 1998 (APHIS publication 91–55–042) are on file with the department, the secretary of state and the revisor of statutes. Copies may be obtained from:

Wisconsin Department of Agriculture, Trade and Consumer Protection
Division of Animal Health
P.O. Box 8911
Madison, WI 53708–8911
History: Cr. Register, November, 2000, No. 539, eff. 12–1–00.

Subchapter V — Equine Diseases

ATCP 10.40 Equine infectious anemia; testing. **(1)** WHO MAY TEST. A person performing an equine infectious anemia test under this chapter, ch. ATCP 11 or 12 shall be one of the following:

(a) *An* accredited veterinarian. If the veterinarian performs the test in this state, the veterinarian shall also be a Wisconsin certified veterinarian.

(b) A veterinarian employed by the department or the federal bureau.

(2) SAMPLE IDENTIFICATION. The veterinarian who draws the blood sample for an equine infectious anemia test shall identify the sample with the official individual identification of the equine animal from which the sample was collected. The identification shall accompany the blood sample submitted for testing.

History: Cr. Register, January, 1994. No. 457, eff. 2–1–94; renum. (2) (intro.) to be (2), r. (2) (a) to (d), Register, March, 1995, No. 471, eff. 4–1–95: r. and recr. (1), Register. November, 2000, No. 539, eff. 12–1–00.

ATCP 10.41 Equine infectious anemia; quarantine. **(1)** TEST POSITIVE ANIMAL. (a) *Quarantine.* The department shall summarily quarantine every animal that tests positive on an infectious anemia test. The quarantine notice shall comply with s. ATCP 10.70 and shall also include all of the following:

1. Notice of the positive equine infectious anemia test.
2. Notice that the owner or custodian may request a retest under sub. **(4).**
3. Notice that the state veterinarian may order the animal to be branded under sub. (7).

(b) *Notification; participation or show event coordinators.* If the department determines that an infected animal participated in performance or show events, the department shall notify the event sponsor that an infected animal was present at the event. The event sponsor shall notify other participants that their animals may have been exposed.

(2) EXPOSED ANIMALS; QUARANTINE If an equine animal tests positive for equine infectious anemia, the department shall summarily quarantine all of the equine animals kept at the premises where that animal is normally housed. The quarantine shall comply with s. ATCP 10.70.

(3) HEARING REQUEST. A person adversely affected by a quarantine under sub. (1) or (2) may, within 30 days after the quarantine is served, request a hearing on the quarantine as provided under s. ATCP 10.70 *(6)*. A request for hearing does not automatically stay a quarantine notice.

(4) RETESTING UPON REQUEST. The department shall retest an animal quarantined under sub. (1) if, within 10 days after the quarantine notice is served, the department receives a written request for a retest from the owner or custodian of the quarantined animal. A request for a retest does not stay a quarantine notice under sub. (1). A retest fee of $25.00 shall be charged to the owner or custodian who requested the retest.

(5) RETEST PROCEDURE. If an equine animal is retested under sub. (4), a state or federal veterinarian shall positively identify the retested animal as being the same animal originally tested. The state or federal veterinarian who identifies the retested animal shall draw the blood sample for the retest. The blood sample for the retest shall be drawn not less than 14 days after the department receives the written request nor more than 45 days after the blood sample for the initial test was drawn.

(6) QUARANTINE RELEASE BASED ON RETEST. If a retest under sub. **(4)** indicates that the original test result may have been a false positive, the department may release the quarantine issued under sub. (1). The release of a quarantine under sub. (1) does not prevent the department from issuing a quarantine under sub. (2) for the same animal if the 45 day time period under sub. **(2)** has not yet expired.

(7) ORDER TO BRAND TEST POSITIVE ANIMAL. The state veterinarian shall, by written notice, order that a test positive animal quarantined under sub. (1) be branded under sub. (8). The order shall be served on the owner and on **the** custodian of the animal to be branded. The state veterinarian shall not issue a branding order under this subsection if any of the following apply:

(a) The time for requesting a hearing or retest under sub. **(3)** or **(4)** has not yet elapsed.

(b) A hearing has been requested under sub. (3) and the contested case proceeding is not yet completed.

(c) **A** retest has been requested under sub. **(4)** and has not yet been completed.

(d) A retest has failed to confirm the initial test result that prompted the quarantine.

(e) The state veterinarian is restrained by a judicial order, or by order of the department's secretary or hearing examiner under ch. ATCP 1.

(f) The department has released its quarantine under sub. (1).

(g) The state veterinarian determines that branding is not appropriate or necessary.

(8) BRANDING TEST POSITIVE ANIMALS. (a) A state or federal veterinarian shall execute a branding order under sub. (7) by applying a "35a" freeze brand to the **left** side of the animal's neck. A branding order may not be executed under this paragraph sooner than 14 days after the order is served on the owner and custodian of the animal, unless the owner and custodian consent in writing to have the animal branded at an earlier date.

(b) *An* equine animal branded under this section is quarantined to the extent provided under sub. (9) (a), but is no longer quarantined under sub. (1).

(c) No person may, except by judicial or administrative process, prevent a state or federal veterinarian from executing a branding order in compliance with this subsection.

(9) QUARANTINE TERMS AND CONDITIONS (a) An equine animal quarantined under sub. (1), (2) or (8) (b) shall be kept in a tightly screened stall that is secure against the movement of flies, or shall be kept a minimum of 300 yards from other equine animals not known to be infected with equine infectious anemia.

(b) No person may move, sell or transfer custody of an equine animal quarantined under sub. (1), (2) or (8) (b), without a permit from the department. The department shall grant or deny the permit within **5** days after the permit is requested.

History: Cr. Register, January, **1994.** No. **457,** eff. **2–1–94;** r. and recr (1) and (2), Register, November, **2000.** No. **539,** eff. 12–1–00; correction in (6) made under s **13.93(2m)** (b) **7.,** Stats., Register, November, **2000,** No. **539**

Subchapter VI — Poultry Diseases

ATCP 10.50 Poultry; disease control. (1) PROHIBITIONS. (a) No poultry may be used for breeding purposes and no poultry eggs may be used for hatching unless they originate from a flock which is tested annually and classified "U.S. pullorum–typhoid clean" as provided in the national poultry improvement plan. No turkeys or turkey eggs may be used for breeding purposes or hatching unless they originate from a flock which is tested annually and classified "Mycoplasma gallisepticum clean" as provided in the national poultry improvement plan.

(b) No person may use, sell or otherwise transfer any poultry or poultry eggs for breeding or hatching purposes unless the poultry or poultry eggs comply with the requirements of this section and s. **ATCP** 11.40.

(2) GENERAL PROVISIONS. (a) All blood samples for testing under this section shall be drawn by an authorized agent of the department.

(b) Whenever the department's agent draws a blood sample from a turkey under this section, the agent shall identify the turkey with an official individual identification. Every blood sample shall be identified with the official individual identification of the turkey from which the sample was collected.

(c) **A** laboratory approved by the department shall test blood samples drawn from turkeys under this section. The department's agent may field test blood samples drawn from poultry other than turkeys, using a method approved by the department.

(d) Breeder flock and hatchery inspections shall be conducted by the department.

(e) All breeder flock and hatchery owners shall follow sanitation procedures prescribed by the department.

(f) If a flock or hatchery owner, or any person providing poultry disease diagnostic services, obtains test results or evidence indicating the presence of pullorum, fowl typhoid or other serotypes of Salmonella in poultry, or Mycoplasma gallisepticum in turkeys, that person shall report the test results or evidence to the department within 10 days.

(g) Upon receipt of a report of pullorum or fowl typhoid in any poultry, or of Mycoplasma gallisepticum in turkeys, the department shall conduct an immediate investigation to determine the origin and mode of transmission of the infection.

(h) **All** poultry flocks classified as reactor, infected or suspect under standards of the national poultry improvement plan shall be quarantined to the premises and may be removed only directly to slaughter. The flock owner shall furnish proof of slaughter upon request by the department. The quarantine may be released following 2 negative tests of the entire flock conducted at least 21 days apart.

(3) PREMISES. No turkey breeding flocks may be commingled with other species of domestic fowl or reared within 100 yards of any other poultry.

(4) HATCHERIES. (a) No operator of a hatchery may hatch any poultry eggs or permit poultry eggs to be on the hatchery premises unless the eggs originate from a flock which complies with this section.

(b) No eggs of any other species of fowl may be hatched in a turkey hatchery.

History: Cr. Register, December, **1990,** No. **420, eff. 1–1–91;** r. and recr. (2) (b) and (c), r. **(4) (c),** Register, November, 2000, No. **539,** eff. **12–1-00.**

Subchapter VII — Other Animal Diseases

ATCP 10.60 Aleutian disease–free herd; mink. History: Cr. Register, December, **1990,** No. **420,** eff. 1–1–91; r. Register, November, **2000,** No. **539,** eff. **12–1-00.**

ATCP 10.61 Brucellosis–free herd; goats. (1) INITIAL CERTIFICATION. The department may certify a herd of goats as a "certified brucellosis–free herd" if the herd owner provides proof that all animals over ***6*** months of age in the herd have been found negative for brucellosis in 2 consecutive brucellosis tests. The tests shall be conducted at a state or federally approved laboratory not less than 10 nor more than 14 months apart.

(2) REVOCATION OF CERTIFICATE. The department shall, by written notice, summarily revoke a certified brucellosis–free herd certification if any goat in the herd is found positive for brucellosis in any test approved by the department. **A** revocation notice shall be issued by the state veterinarian, and shall be served on the herd owner or agent. **A** person adversely affected by a revocation notice may request a hearing before the department, but a request for hearing does not stay the revocation notice.

(3) ANNUAL RECERTIFICATION. The department may annually recertify a herd of goats as a certified brucellosis–free herd if the herd owner provides proof that all animals in the herd over 6 months of age have been found negative for brucellosis in an approved test performed on a herd sample taken not later than 14 months after the last annual certification date. If testing for recertification is not completed within **14** months after the last annual certification date, certification expires. If certification expires, the herd may not be recertified except under sub. (1).

History: Cr. Register, December, **1990,** No. **420, eff. 1–1–91;** r. **(4)** and **(5),** Register, November, **2000,** No. **539,** eff. **12–1–00.**

ATCP 10.62 Tuberculosis–free herd; goats. (1) INITIAL CERTIFICATION. The department may certify a herd of goats as an accredited tuberculosis–free herd if the herd qualifies under the USDA bovine tuberculosis eradication uniform methods and rules dated January 22, 1999.

(2) MAINTAINING CERTIFICATION. To maintain an accredited tuberculosis–free herd certification, a herd owner shall comply with applicable requirements under the USDA bovine tuberculosis eradication uniform methods and rules dated January 22, 1999.

(3) SUSPENDING OR REVOKING CERTIFICATION. (a) The department may summarily suspend or revoke an accredited tuberculosis–free herd certification if any of the following occurs:

1. **A** goat in the herd tests positive for tuberculosis.
2. The herd owner fails to comply with sub. (2).

(b) The state veterinarian may issue a summary suspension or revocation notice under par. (a). The notice shall state the reason for the suspension or revocation. **A** herd owner affected by **a** suspension or revocation may request a hearing before the department under ch. 227, Stats. **A** request for a hearing does not automatically stay the summary suspension or revocation.

Note: Copies of the USVA bovine tuberculosis eradication uniform methods and rules dated January **22, 1999** (APHIS publication **91–45–011)** are on file with the department, the secretary of state and the revisor of statutes. Copies may be obtained from:

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

History: Cr. Register, December, 1990, No. 420, eff. 14–91; am. (5) (b), (c), Register, February, 1996, No. 482, eff. 3–1–96; r. and recr. Register, November, 2000, No. 539, eff. 12–1-00.

ATCP 10.63 Johne's disease in goats; herd classification; disclosure. (1) DEFINITIONS. In this section:

(a) "Anniversary date" means, for any herd of goats, one of the following:

1. The month and day on which samples are collected for the first annual herd test conducted after July 1, 2000, if no annual herd test was conducted within one year prior to that date. If the first annual herd test conducted after July 1,2000, is a split herd test, the "anniversary date" is the month and day on which samples are collected from the last group of animals included in the split herd test.

2. The month and day between July 1, 1999, and June 30, 2000, on which samples were collected for an annual herd test, if an annual herd test was conducted within that period.

3. The month and day on which samples were taken to complete the first split herd test under a plan approved by the department under sub. (5) (b).

(b) "Annual herd test" means an annual paratuberculosis test conducted on a herd of goats under this section. An annual herd test includes a random herd test, a split herd test or a whole herd test.

(br) "Certified veterinarian" means a Wisconsin certified veterinarian except that, for actions taken under this section outside this state, "certified veterinarian" means an accredited veterinarian.

(c) "Herd" means a herd of goats.

(d) "Paratuberculosis" means the infectious and communicable disease of domestic ruminants, commonly known as Johne's disease, which is caused by *Mycobacterium* **paratuberculosis.**

(e) "Random herd test" means a paratuberculosis test performed under sub. (5) (b).

(f) "Split herd test" means a herd test conducted under sub. (5) (c).

(g) "Test eligible animals" means all goats 18 months of age or more.

(h) "Whole herd test" means a paratuberculosis test performed under sub. (5) (a).

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

(2) EXEMPTION FROM IMPLIED WARRANTY. (a) The implied warranty under s. 95.195, Stats., does not apply to a sale of goats if the seller discloses all the following to the buyer in writing, prior to sale:

1. The current herd classification, under sub. (3), of the herd from which the goats are being sold.

2. That the goats are paratuberculosis reactors under sub. (9), if that is the case.

(b) The implied warranty under s. 95.195, Stats., does not apply to goats sold directly to slaughter.

(3) HERD CLASSIFICATION. (a) ***Johne's preventive management level A.*** The department shall classify a herd as "Johne's preventive management level A" if an annual herd test reveals no paratuberculosis reactors.

Note: Animals From a herd classified "Johne's preventive management level A" normally have the lowest risk of transmitting Johne's disease (paratuberculosis). The risk is normally reduced with each additional year that the herd maintains the level A classification. However, no herd classification ensures that an animal is free of Johne's disease.

(b) ***Johne's preventive management level B.*** The department shall classify a herd as "Johne's preventive management level B if fewer than 5% of the animals tested in an annual whole herd test or split herd test, or in a follow–up whole herd test under par. (d) 1., are paratuberculosis reactors.

(c) ***Johne'spreventive management level C.*** The department shall classify a herd as "Johne's preventive management level C" if at least 5% but not more than 15% of the animals tested in an annual whole herd test or split herd test, or in a follow–up whole herd test under par. (d) 1., are paratuberculosis reactors.

(d) ***Johne's preventive management level D.*** The department shall classify a herd as "Johne's preventive management level D if any of the following apply:

1. A random herd test reveals one or more paratuberculosis reactors, unless the department reclassifies the herd under par. (b) or (c) based on a follow–up whole herd test.

2. More than 15% of the animals tested in a whole herd test or a split herd test are paratuberculosis reactors.

(e) ***Maximum riskfor Johne's disease.*** Every herd in this state, and every herd from which goats are sold in this state, is automatically classified "maximum risk for Johne's disease" unless one of the following applies:

1. The department classifies that herd under pars. (a) to (d). If the owner of the classified herd fails to complete an annual herd test within the time required under sub. (5), that classification expires and the herd is automatically classified "maximum risk for Johne's disease" until the department reclassifies the herd under pars. (a) to (d).

2. The department has classified that herd within one year prior to July 1, 2000. If the owner of the classified herd fails to complete an annual herd test within the time required under sub. (5), the classification expires and the herd is automatically classified "maximum risk for Johne's disease" until the department reclassifies the herd under pars. (a) to (d).

Note: The herd classifications under pars. (a) to (e) are arranged from most desirable (a) to least desirable (e). "Maximum risk for Johne's disease" is the least desirable herd classification, because it signifies that the herd owner does not have an annual paratuberculosis testing program. A person buying goats from such a herd faces an unknown, but substantial, risk that the goats are infected with Johne's disease.

(f) ***Classification to includeyear*** A herd classification under pars. (a) to (d) shall indicate the first year from which the herd has continuously held that classification.

(4) COMMINGLED GOATS; CLASSIFICATION. (a) Except as provided in par. (c), goats added to a herd from a herd with a less desirable classification under sub. **(3)** retain that less desirable herd classification for 120 days after being added but do not affect the classification of the herd to which they are added.

(b) Goats added to a herd from a herd with a more desirable classification are immediately reclassified *to* the less desirable classification of the herd to which they are added.

(c) If goats from herds with different classifications under sub. (3) are temporarily assembled for sale or shipment, the least desirable classification assigned to any of those source herds automatically applies to the temporarily assembled herd.

(d) Goats from herds classified as "Johne's preventive management level A," "Johne's preventive management level **B,"** "Johne's preventive management level C," or "Johne's preventive management level D" that are sent by their owners to a consignment sale do not constitute a temporarily assembled herd under par. (c), except that animals which are allowed to have direct contact with each other for more than 24 hours constitute a temporarily assembled herd.

(5) ANNUAL HERD TEST. ***An*** annual herd test may be any of the following:

(a) ***Whole herd test.*** A whole herd test is performed on all test eligible animals in the herd. All samples for the whole herd test shall be collected on the same day or on consecutive days. Samples shall be collected on the anniversary date under sub. (1) (a), or within 2 months before or after that date.

(b) ***Random herd test.*** **A** random herd test is performed on a group of test eligible animals randomly selected from the test herd by the person who collects the test samples under sub. ***(6).*** The randomly selected group shall include at least 30 test eligible animals, or at least 10% of the test eligible animals in the herd, which-

ever group is larger. All samples for a random herd test shall be collected on the same day. Samples shall be collected on the anniversary date under sub. (1) (a), or within 2 months before or after that date.

Note: A herd with less than 30 test eligible animals is not eligible for a random herd test. The department may not classify a herd as "Johne's preventive management level B or "Johne's preventive management level C" based on a random herd test. If a random herd test reveals one or more reactor animals, the herd is classified as "Johne's preventive management level D until the herd owner completes a follow-up whole herd test. See sub. (3) (d) 1.

(c) ***Split** herd test.* **A** split herd test is performed, over the course of not more than 12 months, on all test eligible animals in a herd. **A** split herd test shall comply with all the following requirements:

1. The department shall approve a herd testing plan before any animals are tested. The department shall grant or deny approval, in writing, within 30 days after the herd owner submits a proposed testing plan to the department.

2. All testing shall be completed according to the plan approved by the department.

3. All test eligible animals in the herd shall be tested at least once during the 12 month period ending on the herd's anniversary date.

(6) COLLECTING TEST SAMPLES. Annual herd test samples shall be collected by a certified veterinarian, or by an employee of the department or the federal bureau. The person who collects an annual herd test sample shall do all the following:

(a) Determine the animals to be tested under sub. ***(5).***

(b) Determine the type of test to be performed under sub. (7).

(c) Collect an appropriate sample from each test animal, based on the type of test to be performed under sub. **(7).**

(d) Identify each sample with the official individual identification of the animal from which it was collected, and the date on which it was collected.

(e) Transmit the test samples to the laboratory testing those samples under sub. **(7).**

Note: A herd owner may have animals tested for Johne's disease **at** any time. The department will not use the test results to classify the tested herd under this section unless the test complies with this section and the herd owner asks the department to classify the herd.

This rule does not prohibit a person from collecting test samples from animals that are too young to be "test eligible" under ATCP 10.63 (1) (g), but the department will not consider test results from those animals when determining the appropriate herd classification. To facilitate review of results, the person collecting test samples should separate "test eligible" from "non-test eligible" samples, and should prepare separate test submission forms for each category.

(7) LABORATORY TESTING. Annual herd test samples shall be tested by the department, the federal bureau, or a laboratory approved by the department or the federal bureau. The laboratory shall use one of the following tests:

(a) The fecal culture test.

(b) Another test approved by the department.

(8) TEST RESULTS. A laboratory performing tests under sub. **(7)** shall report the test results to the department within 10 days. If the herd owner asks the department to classify a herd based on the results of an annual herd test, the department shall classify the herd under sub. (3) within 30 days after it receives both the test results and the herd owner's request. The department shall issue a classification notice under sub. (10) to the herd owner.

Note: Under s. ATCP 10.02 and 10.03, a veterinarian or laboratory that diagnoses or finds evidence of Johne's disease must report that diagnosis or finding to the department within 10 days, in writing or by telefax.

(9) PARATUBERCULOSIS REACTORS. An animal is a paratuberculosis reactor if any of the following apply:

(a) The animal tests positive on the fecal culture test.

(b) The animal tests positive on any other test which the department approves and deems conclusive.

(10) NOTICE TO HERD OWNER. Whenever the department classifies a herd under sub. (3) based on an annual herd test, or based on a follow-up whole herd test under sub. (3) (d) 1., the department shall promptly provide the herd owner with all the following information in writing:

(a) *Individual animal test results.* Individual test results for each animal included in the herd test. Test results shall be identified with each animal's official individual identification.

(b) ***Herd** classification.* The herd classification under sub. (3). The classification notice shall include the effective date and expiration date of the classification. A classification takes effect on the effective date specified in the notice, and supersedes any prior classification.

(11) REACTOR IDENTIFICATION (a) No person may move a paratuberculosis reactor under sub. (9) unless a certified veterinarian first identifies that reactor with a permanent paratuberculosis reactor identification approved by the department.

(b) No person may sell a paratuberculosis reactor under sub. (9) unless both of the following apply:

1. **A** certified veterinarian first identifies that reactor with a permanent paratuberculosis reactor identification approved by the department.

2. The seller first discloses to the prospective buyer, in writing, that the animal is a paratuberculosis reactor unless the reactor is sold directly to slaughter.

(c) Within 30 days after an animal tests positive for paratuberculosis, a certified veterinarian shall identify the reactor with a paratuberculosis reactor identification approved by the department.

(12) HERD VACCINATION. No person may vaccinate goats for paratuberculosis except under a herd agreement with the department. The department may not authorize vaccination in any herd in which the percentage of reactors in the last whole herd test or split herd test was less than 7%, unless special circumstances warrant vaccination in that herd.

(13) MISREPRESENTING HERD CLASSIFICATION. No seller may misrepresent the classification, under sub. (3), of the herd from which goats are being sold. A seller who misrepresents a herd classification is not exempt from the implied warranty under s. 95.195, Stats., and is subject to possible penalties under s. 95.99, Stats.

(14) DEPARTMENT DISCLOSURE OF HERD CLASSIFICATION. The department may disclose a herd classification under sub. (3) with the written authorization of the herd owner.

Note: See s. 95.232. Stats.

History: Cr. Register, December, 1990, No. 420, eff. 1-1-91; r. and recr. Register. September, 1999, No. 525, eff. **7-1-00;** emerg. cr. (1m), eff. **7-1-00,** cr. (1) **(br)** and (Im), am. (6) (intro.), (11) (a), (b) 1 and (c), Register, November, 2000, No. 539, eff. 12-1-00.

ATCP 10.64 Brucella ovis-free flock; sheep. (1) INITIAL CERTIFICATION. The department may certify a flock of sheep as "brucella ovis-free" if the flock owner provides proof that all rams in the flock over 6 months of age have been found negative for brucella ovis in 2 successive enzyme linked immune serum assay (ELISA) tests, or other tests approved by the department. The tests shall be conducted not less than 45 days nor more than 60 days apart.

(2) REVOCATION OF CERTIFICATE. When any test of a brucella ovis-free flock discloses that any ram in the flock is positive for brucella ovis, the certificate shall be summarily revoked by written notice to the herd owner or agent. The revocation notice shall be signed by the state veterinarian. A person adversely affected by a revocation noticc may request a hearing before the department, but a request for hearing docs not stay the revocation notice. If certification is revoked, the herd may not be recertified except under sub. (1).

(3) HANDLING REACTORS. If any brucella-ovis reactors are disclosed in a flock, all reactors shall be segregated, quarantined and castrated under supervision of the department, or sent to slaughter under a permit issued by the department or an accredited veterinarian.

(4) ANNUAL RECERTIFICATION. The department may annually recertify a flock of sheep as a brucella ovis-free flock if all rams

in the flock test negative for brucella ovis not more than 14 months after the last annual certification date. If testing for recertification is not completed within 14 months after the last annual certification date, certification expires. If certification expires, the herd may not be recertified except under sub. (1).

(5) STATUS OF INDIVIDUAL ANIMALS. No ram qualifies as a member of a brucella ovis–free flock unless one or more of the following apply:

(a) The ram was included in the initial certification under sub. (1).

(b) The ram originates from another brucella ovis–free flock.

(c) The ram has been in the flock for at least 60 days, and was in the flock at the time of the last flock test for brucella–ovis.

(d) The ram was born to a flock member.

(6) FLOCK ADDITIONS. No ram may be added to a brucella ovis–free flock unless one or both of the following apply:

(a) The ram originates from another brucella ovis–free flock, and was included in the last flock test of that flock.

(b) The ram tests negative for brucella ovis within 30 days before entering the brucella ovis–free flock, and again within 45 to 60 days after entering the flock.

History: Cr. Register, December. 1990, No. 420, eff. 1–1–91.

ATCP 10.65 Cervids; herd identification. (1) Except as provided under sub. (2), no person may keep a herd of captive cervids in this state unless that person first reports the following information to the department in writing:

(a) The location of the herd.

(b) The number and types of animals in the herd.

(c) The name and address of the herd owner.

(d) The name and address of the local herd custodian if other than the herd owner.

Note: The information under sub. (1) may be reported to the following address:
Administrator, Division of Animal Health
Wisconsin Department of Agriculture, Trade and Consumer Protection
P.O. Box 8911
Madison, WI 53708-8911

(2) A person who is registered as a keeper of farm–raised deer under s. ATCP 10.652 is not required to file a report under sub. (1).

Note: Since the definition of "cervidae" includes farm–raised deer, all provisions of ATCP 10 and 11 which relate to cervidae apply to farm–raised deer unless farm–raised deer are specifically exempted.

History: Cr. Register, February, 1996, No. 482, eff. 3–1–96; r. and recr. Register, December, 1996, No. 492, eff. 1–1–97; am. (1) (intro.), Register, November, 2000, No. 539, eff. 12–1–00.

ATCP 10.651 Cervids; disease testing. (1) ANIMALS AVAILABLE FOR TESTING. The owner or custodian of a herd of captive cervids shall make the herd available to the department for disease testing upon request.

(2) ANIMALS RESTRAINED FOR TESTING. The owner or custodian of a herd of captive cervids shall restrain the cervids for disease testing in a manner which insures the safety of the cervid and of the person performing the test. The owner or custodian shall restrain the cervids by one of the following methods:

(a) By providing animal handling facilities that comply with sub. **(3).**

(b) By tranquilizing the cervids so they can be safely tested. No department staff may tranquilize the cervids. If the department determines that a cervid is not adequately tranquilized, so that the safety of the cervid and the persons performing the test cannot be reasonably ensured, the department may require the owner or custodian to provide additional tranquilization before the department proceeds with testing. The department assumes no liability for any injury or death of a cervid which may be caused by tranquilization.

(c) By moving the cervids, pursuant to a permit issued under s. ATCP 11.60 (4), to an isolation and testing facility approved under s. ATCP 11.56 (4) where the cervids can be safely tested.

(3) ANIMAL HANDLING FACILITIES. (a) Animal handling facilities under sub. **(2)** (a) shall include all of the following:

1. **A** holding pen in which cervids can be safely directed into an alleyway and then to a chute or individual restraining pen for testing.

2. An alleyway through which cervids can be safely guided into a chute or restraining pen for testing.

3. A chute or restraining pen which can safely hold cervids for testing.

4. Adequate fencing. Fences used to confine cervids in animal handling facilities shall be at least **7** feet 10 inches high, except that fences used to confine cervids of the genus rangifer shall be at least 5 feet high.

(b) If the department determines that animal handling facilities do not comply with par. (a), the department may order the owner or custodian to modify the facilities, to provide acceptable alternative facilities, or to provide an acceptable alternative method of restraining cervids under sub. (2). The owner or custodian shall comply with the department's order within **30** days, unless for good cause the department specifies a different time period.

History: Emerg. cr. **eff. 6–3–96; cr. Register, December, 1996, No. 492, eff. 1–1–97; am. Register. November. 2000, No. 539, eff. 12–1–00.**

ATCP 10.652 Farm–raised deer; keepers registered. (1) REGISTRATION CERTIFICATE REQUIRED. (a) Except as provided under par. (b), no person may keep farm–raised deer unless that person holds a current registration certificate issued by the department under this section. **A** registration certificate is not transferable.

(b) Paragraph (a) does not apply to an establishment licensed under s. 97.42, Stats., which keeps live farm–raised deer for not more than 72 hours before slaughtering those deer.

Note: A registration certificate under this section does not entitle the holder of that certificate to operate as a livestock dealer unless that person is also licensed under s. ATCP 12.03. A livestock dealer license under s. ATCP 12.03 does not entitle the holder of that license to keep farm–raised deer unless that person also holds a registration certificate under this section.

(2) REGISTRATION CERTIFICATE EXPIRES. A registration certificate under sub. (1) expires on December **31** of each year. The holder of a registration certificate may renew that certificate by submitting an annual renewal application under sub. (4).

(3) REGISTERING MULTIPLE LOCATIONS. A person keeping farm–raised deer at more than one location may do either of the following:

(a) Obtain a separate registration certificate for each location. No person may move farm–raised deer between separately registered locations without a certificate of veterinary inspection, unless the deer are exempt under s. ATCP 11.56 (2).

(b) Register multiple locations under a single registration certificate. If a registration certificate covers multiple locations, the holder of that certificate may freely move farm–raised deer between those locations without a certificate of veterinary inspection.

(4) APPLYING FOR REGISTRATION CERTIFICATE. To obtain or renew a registration certificate, a person keeping farm–raised deer shall file a registration application on a form provided by the department. The application shall be accompanied by the fee that is required under sub. (5). The application form shall include all of the following information:

(a) The name, address and telephone number of the herd owner.

(b) If the farm–raised deer are under the care of **a** custodian other than the herd owner, the name, address and telephone number of the custodian.

(c) The location or locations at which the farm–raised deer will be kept, including the county, township, section and fire number assigned to the location.

(d) The number of farm–raised deer being kept at each location.

(e) The species, age and sex of the farm–raised deer being kept at each location.

Note: A registration form may be obtained by writing to the following address:

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

(5) FEES. A person applying for a registration certificate shall pay the following annual registration fee:

(a) $50 if the person keeps no more than 15 farm–raised deer at the locations covered by the certificate.

(b) $100 if the person keeps more than 15 farm–raised deer at the locations covered by the certificate.

Note: Under s. 93.21 (5) (b), Stats., a person who files an application for the renewal or reissuance of a registration Certificate after the registration certificate has expired must **pay,** in addition ***to*** the fee prescribed under sub. (5), an additional fee equal to 20% of that registration fee.

(c) An applicant for a registration certificate under sub. (4) shall pay a registration fee surcharge of $100 if the department determines that, within 365 days prior to submitting the registration application, the applicant kept farm–raised deer without a farm–raised deer registration. In addition to the surcharge, the applicant shall pay the fee due for the year in which the applicant did not obtain registration.

(6) ACTION ON REGISTRATION APPLICATION. The department shall grant or deny a registration application under sub. (4) within 30 days after the department receives a complete application.

(7) DENYING, SUSPENDING OR REVOKING A REGISTRATION CERTIFICATE. The department may deny, suspend or revoke a farm–raised deer registration for cause, including any of the following:

(a) Filing an incomplete or fraudulent application, or misrepresenting any information on an application.

(b) Violating applicable provisions of ch. 95, Stats., this chapter or ch. ATCP 11.

(c) Violating the terms of the registration certificate.

(d) Preventing a department employee from performing his or her official duties, or interfering with the lawful performance of his or her duties.

(e) Physically assaulting a department employee while the employee is performing his or her official duties.

(f) Refusing or failing, without just cause, to produce records under sub. (8) or to respond to a department subpoena.

(g) Paying a registration fee with a worthless check.

(8) RECORDKEEPING. (a) A person who keeps farm–raised deer shall keep all of the following records for each farm–raised deer which that keeper of farm–raised deer receives from another person, or which that keeper of farm–raised deer delivers to another person:

1. The official individual identification of the farm–raised deer.

2. The name and address of the person from whom the keeper of farm–raised deer received, or to whom the keeper of farm–raised deer delivered the farm–raised deer.

3. The date on which the keeper of farm–raised deer received or delivered the farm–raised deer.

4. The location at which the keeper of farm–raised deer received or delivered the farm–raised deer.

(b) A person required to keep records under par. (a) shall retain those records for at least 5 years, and shall make them available to the department for inspection and copying upon request.

History: Cr. Register, December, 1996, No. 492, eff. 1–1–97; renum. and am. (2) (a) to be (2), and r. (2) (b) and (4) (f), am. (4) (intro.) and r. and recr. (5), Register, May, 1999, No. 521, eff. 6–1–99; r. and recr. (7) and (8) (b), Register, November, 2000. No. 539, eff. 12–1–00; correction in (7) (f) made under s. 13.93 (2m) (b) 7.. Stats., Register, November, 2000, No. 539.

ATCP 10.66 Tuberculosis in cervids. (1) WHO MAY TEST. A person who performs a tuberculosis test on a cervid shall be one of the following:

(a) An accredited veterinarian. If the veterinarian performs the test in this state, the veterinarian shall also be a Wisconsin certified veterinarian whom the department has trained to perform tuberculosis tests on cervids. A veterinarian may not perform a tuberculosis test on a cervid from a quarantined herd or known infected herd, except with the department's approval.

(b) A veterinarian employed by the federal bureau or the department.

(2) TEST PROCEDURES. (a) A veterinarian who perfomls a tuberculosis test on a cervid in Wisconsin shall comply with applicable procedures in the USDA bovine tuberculosis eradication uniform methods and rules dated January 22, 1999.

(b) **A** blood tuberculosis test (BTB test) may not be used as an official tuberculosis test for any purpose in this state.

(3) VETERINARIAN TO REPORT. A veterinarian who performs a tuberculosis test on a cervid in Wisconsin shall report the test result to the department within 10 days after the veterinarian observes the result. A veterinarian shall immediately report a positive reaction by telephone or other rapid means, and shall confirm the report in writing within 10 days, A veterinarian shall provide a copy of every test report to the animal owner.

Note: See **ss.** ATCP 10.02 and 10.03

(4) REPORT FORM. A veterinarian shall report a tuberculosis test result under sub. (3) in writing, on a form approved by the department. The report shall include the official individual identification of the animal tested, and any other information required by the **USDA** bovine tuberculosis eradication uniform methods and rules dated January 22, 1999. The veterinarian shall sign the report. A report form may be used only for its intended purpose.

(5) IDENTIFYING TESTED ANIMALS. If a veterinarian performs a tuberculosis test on a cervid that does not yet have an official individual identification, the veterinarian shall identify the cervid with an official individual identification.

Note: See s. ATCP 11.545 regarding identification of cervids.

(6) TEST POSITIVE CERVIDS. Whenever the department receives a positive tuberculosis test report under sub. (3), the department shall classify the tested cervid as a tuberculosis suspect and shall conduct additional testing to determine whether the cervid is a tuberculosis reactor.

(7) TUBERCULOSIS REACTORS. (a) The department shall classify a cervid as a tuberculosis reactor if the cervid qualifies as a reactor under the USDA bovine tuberculosis eradication uniform methods and rules dated January 22, 1999.

(b) Within 15 days after the department classifies a cervid as a tuberculosis reactor, the animal owner shall do all the following:

1. Have the cervid identified as a reactor and shipped to slaughter in compliance with the USDA bovine tuberculosis eradication uniform methods and rules dated January 22, 1999.

2. Clean and disinfect the premises where the cervid was kept.

(c) The department may, for good cause, extend a deadline under par. (b). The department may not extend a deadline under par. (b) 1. for more than 15 days.

(8) SLAUGHTERED ANIMALS. (a) A tuberculosis reactor shall be slaughtered and inspected according to the USDA bovine tuberculosis eradication uniform methods and rules dated January 22, 1999.

(b) If a tuberculosis suspect is slaughtered, it shall be slaughtered and inspected according to the USDA bovine tuberculosis eradication uniform methods and rules dated January 22, 1999.

(9) TUBERCULOSIS INDEMNITY. **An** animal owner may request an indemnity under s. 95.25 (5), Stats., for a slaughtered tuberculosis reactor. The animal owner shall file the request with the department, on a form provided by the department. The owner shall include, with the request, a slaughter confirmation signed by an authorized employee of the department or the federal bureau. An animal owner does not qualify for an indemnity if the owner fails to comply with sub. **(7).**

Note: Copies of the USDA bovine tuberculosis eradication uniform methods and rules dated January 22, 1999 (APHIS publication 91–45–005) are on file with the department, the secretary of state and the revisor of statutes. Copies may be obtained From:

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

History: Emerg. cr. eff. 3–18–91; cr. Register, November, 1991, No. 431, eff. 12–1–91; am. (8) (b) 1., Register, September, 1993, No. 453, eff. 10–1–93; r. and recr. Register, February, 1996, No. 482, eff. 3–1–96; emerg. r. and recr. (10) (a), cr. (10),

(am) and am. (11), eff. 6–3–96; r. and recr. (10) (a), cr. (10) (am), (11) (am), Register, December, 1996, No. 492, eff. 1–1–97; r. and recr. Register, November. 2000, No. 539. eff. 12–1–00.

ATCP 10.67 Cervids; tuberculosis herd certification. (1) INITIAL CERTIFICATION. The department may certify a herd of cervids as one of the following if the herd qualifies under the USDA bovine tuberculosis eradication uniform methods and rules dated January **22,** 1999:

(a) An accredited tuberculosis–free herd.

(b) A tuberculosis monitored herd.

(c) A tuberculosis qualified herd.

(2) MAINTAINING CERTIFICATION. To maintain a herd certification under sub. (1), a herd owner shall comply with applicable requirements in the USDA bovine tuberculosis eradication uniform methods and rules dated January **22,** 1999.

(3) SUSPENDING OR REVOKING CERTIFICATION. (a) The department may summarily suspend or revoke a herd certification under sub. (1) if any of the following occurs:

1. Any cervid in the herd tests positive for tuberculosis.

2. The herd owner fails to comply with sub. **(2).**

(b) The state veterinarian may issue a summary suspension or revocation notice under par. (a). The notice shall state the reason for the suspension or revocation. The herd owner may request a hearing before the department under ch. **227,** Stats. **A** request for a hearing does not automatically stay the summary suspension or revocation.

Note: Copies of the USDA bovine tuberculosis eradication uniform methods and rules dated **January 22,** 1999 **(APHIS** publication 91–45–005) are on file at the department, the USDA, the **secretary** of state and the revisor of statutes. Copies may be obtained from:

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

History: Cr. Register, February, 1996. No. 482, eff. 3–1–96; r. and recr. Register, November, 2000, No. 539, eff. 12–1–00.

ATCP 10.673 Brucellosis in cervids. (1) WHO MAY TEST. A person who collects a brucellosis test sample from a cervid shall be one of the following:

(a) An accredited veterinarian. If the veterinarian collects the sample in this state, the veterinarian shall also be a Wisconsin certified veterinarian.

(b) An authorized employee or agent of the department or the federal bureau.

(2) TEST PROCEDURES. A person who collects a brucellosis test sample shall comply with applicable requirements in the USDA brucellosis in cervidae uniform methods and rules dated September, 1998. The person shall submit the sample to a state or federal laboratory that the department or the federal bureau has approved to conduct brucellosis tests.

(3) VETERINARIAN TO REPORT. A veterinarian who collects a brucellosis test sample from a cervid in Wisconsin shall report the test result to the department within 10 days after the veterinarian obtains the test result, unless the department's laboratory analyzes the test sample. **A** veterinarian shall immediately report a positive reaction by telephone or other rapid means, and shall confirm the report in writing within 10 days. A veterinarian shall provide a copy of every test report to the animal owner.

Note: See ss. ATCP 10.02 and 10.03

(4) REPORT FORM. **A** veterinarian shall report a brucellosis test result under sub. (3) in writing, on a form approved by the department. The report shall include the official individual identification of the animal tested, and any other information required by the USDA brucellosis in cervidae uniform methods and rules dated September, 1998. The veterinarian shall sign the report form. A report form may only be used for its intended purpose.

(5) IDENTIFYING TESTED ANIMALS. If a veterinarian collects a brucellosis test sample from a cervid that does not yet have an official individual identification, the veterinarian shall identify the cervid with an official individual identification.

(6) BRUCELLOSIS REACTORS. (a) The department shall classify a cervid as a brucellosis reactor if the cervid qualifies as a reactor under the USDA brucellosis in cervidae uniform methods and rules dated September, 1998.

(b) Within 15 days after the department classifies a cervid as a brucellosis reactor, the animal owner shall do all the following:

1. Have the cervid identified as a reactor and shipped to slaughter in compliance with the USDA brucellosis in cervidae uniform methods and rules dated September, 1998.

2. Clean and disinfect the premises where the cervid was kept.

(c) The department may, for good cause, extend a deadline under par. (b). The department may not extend a deadline under subd. (b) 1. for more than 15 days.

(7) BRUCELLOSIS INDEMNITY. An animal owner may request an indemnity under s. 95.26 **(7),** Stats., for a slaughtered brucellosis reactor. The animal owner shall file the request with the department, on a form provided by the department. The owner shall include, with the request, a slaughter confirmation signed by an authorized employee of the department or the federal bureau. ***An*** animal owner does not qualify for an indemnity if the owner fails to comply with sub. (6).

Note: Copies of the USDA brucellosis in cervidae uniform methods and rules dated September, 1998 (APHIS publication 91-45–12) are on file with the department, the secretary of state and **the** revisor of statutes. Copies may be obtained from:

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

History: Cr. Register, November, **2000,** No. 539, eff. 12–1–00.

ATCP 10.675 Cervids; brucellosis herd certification. (1) INITIAL CERTIFICATION. The department may certify a herd of cervids as one of the following if the herd qualifies under the USDA brucellosis in cervidae uniform methods and rules dated September, 1998.

(a) A brucellosis–free cervid herd.

(b) A brucellosis monitored cervid herd.

(2) MAINTAINING CERTIFICATION. To maintain a herd certification under sub. (1), a herd owner shall comply with applicable requirements under the USDA brucellosis in cervidae. uniform methods and rules dated September, 1998.

(3) SUSPENDING OR REVOKING CERTIFICATION. (a) The department may summarily suspend or revoke a herd certification under sub. (1) if any of the following occurs:

1. A cervid in the herd tests positive for brucellosis.

2. The herd owner fails to comply with sub. **(2).**

(b) The state veterinarian may issue a summary suspension or revocation notice under par. (a). The notice shall state the reason for the suspension or revocation. The herd owner may request a hearing before the department under ch. **227,** Stats. **A** request for a hearing does not automatically stay the summary suspension or revocation.

Note: Copies **of** the USDA brucellosis in cervidae uniform methods and rules dated September, 1998 **(APHIS** publication 91–45–12) are on file with the department. the secretary of state and the **revisor** of statutes. Copies may be obtained from:

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

History: Cr. Register, November, 2000, No. 539, eff. 12–1-00.

ATCP 10.68 Fish farms. (1) DEFINITIONS. In this section:

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

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

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

(am) "Certified veterinarian" means a Wisconsin certified veterinarian whom the department has trained to perform fish disease control and eradication functions except that, for actions taken

under this section outside this state, "certified veterinarian" means an accredited veterinarian.

(b) "Commingled" means kept or brought in contact with other fish or fish eggs in any environment which permits direct contact between fish or use of the same water system.

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

(d) "Food processing plant" means a facility licensed under s. 97.29, Stats.

(e) "Individual" means a natural person.

(f) "Operator" means a person who owns or controls a fish farm. "Operator" includes the operator's employees and agents.

(g) "Ornamental fish" means goldfish, koi, tropical freshwater fish that cannot survive in temperatures below 38°F, saltwater fish and other fish which the department designates in writing.

Note: Sou may obtain a current list of fish designated as "ornamental fish" **hy contacting the department at the following address:**

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

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

(i) "Retail food establishment" means a facility licensed under s. 97.30, Stats.

(j) "Restaurant" means a facility licensed under s. 254.64, Stats.

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

(L) "Self–contained fish rearing facility" has the meaning given in **s.** 29.001 (76), Stats.

(m) "Untreated water" means water that has not been rendered free of pathogens by a method approved by the department.

(n) "Waters of the state" has the meaning given in s. 281.01 (18), Stats.

(2) REGISTRATION CERTIFICATE REQUIRED. Except as provided in sub. (3), a person operating a fish farm for any of the following purposes shall obtain a registration certificate for that fish farm:

(a) Hatching fish eggs or holding live fish for any of the following purposes:

1. Sale or distribution.
2. Introduction into the waters of the state.
3. Fishing.
4. Use as bait or fertilizer.
5. Use as human food or animal feed.
6. Education, demonstration or research.

(b) Holding live fish or fish eggs owned by another person.

Note: A Wisconsin Department of Natural **Resources (DNR) fish stocking** permit **is not needed** to **stock fish into a fish** farm **registered under sub. (2). However, a DNR stocking permit is needed** to **stock fish into the** waters **of the state. (See s. 29.736, Stats.)**

A DNR sport fishing license is not required to **fish within a registered fish farm. Persons fishing at a registered fish farm do not need to comply with** season, **size** or **hag limits. (See** s. **29.001** (27), **Stats.)**

Toxicants required for **fish farming operations may be used in self-contained fish rearing facilities if there is** no **discharge from the facility,** or **if the discharge of the chemical is allowed under a Wisconsin Pollutant Discharge Elimination System (WPDES) permit. Otherwise, a DNR aquatic pesticide use permit is required. (See ss. 29.088 (2) (g), 29.601** (5) (b) **and** 283.31, Stats.) **.Pesticide applications must comply with ch. ATCP 29, Wis. Adm. Code, administered by the department** of **agriculture, trdde and consumer protection. There may he other federal, state,** or **local regulations pertaining to the use of these toxicants.**

(3) EXEMPTIONS. A person may do any of the following without a registration certificate under sub. (2):

(a) Hold, rear, sell or distribute live ornamental fish, or hatch the eggs of ornamental fish, unless the ornamental fish or fish eggs are commingled with non–ornamental fish or fish eggs or are reared for bait, human food or animal feed.

(b) Hold live bait fish under a bait dealer license issued by the state of Wisconsin department of natural resources under s. 29.509, Stats.

(c) Hold or rear live fish, or hatch fish eggs, in a fully enclosed building solely for purposes of display or research within that building, provided that no untreated water used to hold those fish or fish eggs is discharged to waters of the state.

(d) Exhibit live fish in a public forum for not more than 15 days in a calendar year, or for a longer period of time which the department authorizes in writing for a specific exhibit.

(e) Hold live fish or fish eggs for not more than 30 days at a food processing plant, retail food establishment or restaurant pending slaughter or sale to consumers at that facility, provided that the facility does not discharge to waters of the state any untreated water used to hold or process those fish or fish eggs.

(f) Transport live fish or fish eggs to or from a fish farm.

(4) TYPE 1 OR TYPE 2 REGISTRATION CERTIFICATE. (a) Except as provided in par. (b), a person required to hold a fish farm registration certificate under sub. **(2)** may hold either a type 1 or type **2** registration certificate.

(b) **A** person may not sell or distribute live fish or fish eggs from a fish farm without a type 2 registration certificate, except that a person holding a type 1 registration certificate may do any of the following:

1. Allow fishing at the fish farm, including public fishing for a fee.

2. Sell or distribute live fish or fish eggs **to** a food processing plant, retail food establishment or restaurant at which the fish or fish eggs are held for not more than 30 days pending slaughter or sale to consumers at that facility, provided that the facility does not discharge to waters of the state any untreated water used to hold or process those fish or fish eggs.

3. Move live fish between type 1 fish farms which that person operates in this state.

Note: A person holding a type 1 **registration certificate may, at any time during the registration year,** *convert* **that certificate** lo **a** type **2 certificate hy paying the additional fee under sub. (8) and complying with health certification requirements under sub. (14).**

(5) ANNUAL **EXPIRATION DATE. A** fish farm registration certificate under sub. ***(2)*** expires on December **3**1 of the calendar year for which it is issued.

(6) PERSONS OPERATING 2 OR MORE FISH FARMS. A person who operates 2 or more fish farms shall obtain a separate registration certificate under sub. (2) for each fish farm. A person may obtain annual registration certificates for **2** or more fish farms by filing a single annual application under sub. (7) and paying a single annual fee under sub. (8). There is no additional charge for additional fish farms. A registration certificate is not transferable between persons or locations.

Note: A person registering 2 or more fish farms may choose to register those fish farms as type 1 or **type 2 fish fanns. The applicant submits only one annual application and pays only one annual fish farm registration fee. There is** no **additional charge** to **register additional fish farms. If any of the fish *f m s* is registered as a type 2 fish farm, the applicant must pay the type 2 registration fee.**

(7) APPLYING FOR A REGISTRATION CERTIFICATE. To obtain or renew a fish farm registration certificate under sub. (2), a fish farm operator shall file an application with the department. The operator shall file an application on a form provided by the department. An operator may, by filing a single application form, obtain registration certificates for 2 or more fish farms. The application shall include all of the following:

(a) The name, address and telephone number of the fish farm operator.

(b) The location of each fish farm for which the operator seeks a registration certificate. The location shall include the county, township, section number and fire number of the fish farm.

(c) For each fish farm under par. **(b),** a statement indicating whether the operator seeks a type 1 or type **2** registration certificate.

(d) The fee required under sub. (8).

(e) The name, address and telephone number of the individual responsible for administering each of the fish farms under par. (b) on behalf of the operator, if the individual administering that fish farm is not the operator.

(f) The species of fish hatched or kept at each fish farm under par. (b).

(g) A description of each fish farm under par. (b), including fish farm facilities and activities.

(h) A copy of each health certificate required under sub. (13) for a type 1 fish farm or under sub. (14) for a type 2 fish farm. If an operator is registering a fish farm for the first time, the department may issue a registration certificate before the operator files a health certificate, provided that the operator obtains and files the required health certificate within 30 days after the department issues the registration certificate or within 30 days after the operator stocks fish at the fish farm.

(i) Other relevant information required by the department.

Note: You may obtain a registration form by contacting the department at the following address:

Wisconsin Department of Agriculture, Trade and Consumer Protection
Division of Animal Health
P.O. Box 8911
Madison, WI 53708–8911
Phone: (608) 226–1872

A fish farm operator may also need certain permits from the Wisconsin department of natural resources (DNR). Contact DNR to find out about DNR permit requirements.

(8) REGISTRATION FEES. (a) Except as provided in par. (b), an operator shall pay the following annual fee to obtain registration certificates for one or more fish farms:

1. A total fee of $25 if the fish farms are all type 1 fish farms.

2. A total fee of $50 if any of the fish farms is a type 2 fish farm.

(b) The following persons are exempt from registration fees under this subsection:

1. A bona fide scientific research organization that is operating a fish farm solely for the purpose of scientific research.

2. A primary or secondary school.

3. The state of Wisconsin and its agencies.

(c) A fish farm operator shall pay the full annual registration fee for a fish farm registered for less than a full calendar year.

(d) An applicant for an annual fish farm registration certificate under sub. (2) shall pay, in addition to the annual registration fee prescribed by this subsection, a surcharge equal to the amount of that fee if the department determines that, within 365 days prior to submitting an application, the applicant operated a fish farm without a registration certificate in violation of sub. (2) or (4) (b). Payment of the surcharge does not relieve the applicant of any other civil or criminal penalty or liability that may result from the violation, nor does it constitute evidence of a violation.

Note: Under s. 93.21 (5) (b), Stats., a person who files a late application for renewal of a registration certificate must pay, in addition to the fee prescribed under sub. (8), an additional fee equal to 20 percent of that registration fee.

(9) ACTION ON REGISTRATION APPLICATION. The department shall grant or deny a registration application within 30 days after the applicant files a complete application under sub. (7).

(10) DENYING, SUSPENDING OR REVOKING A REGISTRATION CERTIFICATE. The department may deny, suspend or revoke a fish farm registration certificate for cause, including any of the following:

(a) Filing an incomplete or fraudulent application, or misrepresenting any information on an application.

(b) Violating applicable provisions of ch. 95, Stats., this chapter, or ch. ATCP 11.

(c) Violating the terms of the registration certificate.

(d) Preventing a department employee from performing his or her official duties, or interfering with the lawful performance of his or her duties.

(e) Physically assaulting a department employee while the employee is performing his or her official duties.

(f) Refusing or failing, without just cause, to produce records under sub. (11) or respond to a department subpoena.

(g) Paying a registration fee with a worthless check.

Note: The denial, suspension or revocation of a registration certificate is subject to a right of hearing under ch. 227, Stats., and ch. ATCP 1, Wis. Adm. Code. The department will not deny registration to a new owner of a fish farm merely because ownership has changed.

(11) RECORDKEEPING (a) A fish farm operator shall keep all of the following records related to fish or fish eggs which the operator ships from or receives at the fish farm:

1. The name, address, and fish farm registration number, if any. of the person from whom the operator received, or to whom the operator delivered fish or fish eggs.

2. The date on which the operator received or delivered the fish or fish eggs.

3. The location at which the operator received or delivered the fish or fish eggs.

4. The size or class, quantity and species of fish or fish eggs received or delivered.

(b) An operator required to keep records under par. (a) shall retain those records for at least 5 years and shall make them available to the department, upon request, for inspection and copying.

(12) FISH SOURCE (a) No person selling or distributing fish or fish eggs may misrepresent, directly or by implication, the source or disposition of those fish or fish eggs.

(b) A person transporting fish or fish eggs from a fish farm shall have documentary evidence showing that the person obtained those fish from that fish farm. Evidence may include a bill of sale, bill of lading, import permit, health certificate, certificate of veterinary inspection or other document which identifies the fish farm.

(13) TYPE 1 FISH FARM; ANNUAL HEALTH CERTIFICATE (a) No person may obtain a type 1 fish farm registration certificate for any calendar year beginning after December 31, 2001 unless one of the following applies:

1. A certified veterinarian or certified fish inspector has issued a health certificate for that fish farm not earlier than January 1 of the preceding calendar year.

2. A certified veterinarian or certified fish inspector has issued a health certificate, not earlier than January 1 of the preceding calendar year, for each fish farm from which the fish farm operator received fish or fish eggs in the preceding calendar year.

(b) Health certificates issued under par. (a) shall comply with the same requirements that apply to health certificates issued for type 2 fish farms under sub. (14).

(c) A fish farm operator shall include copies of all health certificates required under par. (a) with the operator's application for an annual fish farm registration certificate under sub. (7).

(14) TYPE 2 FISH FARM; ANNUAL HEALTH CERTIFICATE. (a) No person may obtain a type 2 fish farm registration certificate for any calendar year beginning after December 31, 2001 unless a certified veterinarian or certified fish inspector issues a health certificate for that fish farm not earlier than January 1 of the preceding calendar year. The certified veterinarian or certified fish inspector shall issue the health certificate on a form provided by the department, based on a personal inspection of the fish farm. The certified veterinarian or certified fish inspector shall use inspection, sampling and diagnostic methods specified by the department on the certification form.

Note: To obtain a health certification form. contact the department at the following address:

Wisconsin Department of Agriculture, Trade and Consumer Protection
Division of Animal Health
P.O Box 8911
Madison, WI 53708–8911
Phone (608) 224-4872

(b) A health certificate under par. (a) shall certify all of the following:

1. That fish at the fish farm are free of visible signs of infectious or contagious disease.

2. That salmonids at the fish farm are free of whirling disease (*Myxobolus cerebralis*, or WD), if any salmonids are hatched or kept at the fish farm.

3. That fish at the fish farm are free of other diseases, if any, which the department specifies on the certification form.

(c) A certified veterinarian or certified fish inspector who issues a health certificate under this subsection shall file the original certificate with the department, and shall provide at least 2 copies to the fish farm operator. A fish farm operator shall include a copy of the certificate with the operator's application for an annual fish farm registration certificate under sub. (7).

Note: A certification form which specifies disease inspection, sampling and diagnostic procedures under sub. (14) (a), or additional disease certification requirements under sub. (14) (b) 3., constitutes an order under s. 93.07 (10), Stats., which is reviewable under ch. 227, Stats., and ch. ATCP 1 unless the department has adopted those requirements by rule. If a health certification does not comply with instructions on the certification form, the Certification is invalid.

History: Emerg. cr. eff. 12–28–98; cr. Register, May, 1999, No. 521, eff. 6–1–99; cr. (1) (am), am. (1) (k), (13) (a) 1., 2., (14) (a) and (c), Register, November, 2000, No. 539. eff. 12–1-00.

Subchapter VIII — Enforcement

ATCP 10.70 Quarantines. (1) SUMMARY ACTION. The department may summarily issue quarantine orders to prevent, suppress, control or eradicate contagious, infectious or communicable diseases which may affect domestic or exotic animals in this state, or to prevent animals from being moved or commingled pending further testing, diagnosis or traceback related to suspected disease. No person may move any animal in violation of a quarantine order, or fail to comply with the terms and conditions of a quarantine order.

(2) SERVICE OF NOTICE. A quarantine order under this section shall be served upon a person having custody or control of the quarantined animals, or shall be posted on the premises affected by the quarantine order. A quarantine order may be served by any of the following methods:

(a) Personal service.

(b) Certified mail.

(c) Posting a copy of the order at 2 conspicuous places on the premises affected by the quarantine.

(3) PROOF OF SERVICE. Service of a quarantine order may be proved by affidavit or by certified mail return receipt.

(4) CONTENTS OF ORDER. A quarantine order shall contain the following information:

(a) The name and address of a person having custody or control of the quarantined animals, if known.

(h) A description of the animals affected hy the quarantine.

(c) A description of the premises affected by the quarantine.

(d) The reason or justification for the quarantine.

(e) All terms and conditions applicable to the quarantine.

(f) Notice that persons adversely affected by the quarantine may request a hearing to review the quarantine order.

(5) DURATION OF QUARANTINE. A quarantine remains in effect until a written notice of release is issued by the department, unless the quarantine is set aside after review under sub. (6).

(6) REVIEW OF QUARANTINE. A person adversely affected by a quarantine may, within 30 days after the quarantine order is issued, request a hearing before the department to review the quarantine. The department shall conduct an informal hearing as soon as reasonably possible, and not later than 10 days after receiving a request for hearing. If the matter is not resolved after informal hearing, the person requesting the hearing may seek a formal hearing under ch. 227, Stats. A request for hearing does not stay a quarantine order.

History: Cr. Register, December. 1990, No. 420, eff. 1–1–91; am. (1), Register, January, 1994, No. 457, eff. 2–1–94; am. (1), Register, December, 1996, No. 492, eff. 1–1–97.

ATCP 10.705 Temporary animal hold order. (1) DEPARTMENT MAY ISSUE. The department may issue a temporary animal hold order whenever the department has reason to believe that animals may have been illegally imported, or may have been exposed to an infectious, contagious or communicable disease. A temporary animal hold order may prohibit the movement of animals for up to 90 days while the department investigates the suspected illegal import or disease exposure. The department may, for good cause, extend the animal hold order for up to 90 days.

(2) CONTENTS. A temporary animal hold order shall contain the following information:

(a) The name and address of the person having custody or control of the animals covered by the order, if known.

(b) A description of the animals covered by the order.

(c) A description of the premises where the animals are to be held.

(d) The reason or justification for the order.

(e) The duration of the order, and all terms and conditions applicable to the order.

(f) Notice that a person adversely affected by the order may request a hearing under sub. (6).

(3) SERVICE. The department shall serve a temporary animal hold order in one of the following ways:

(a) Delivering the order, in person or by certified mail, to a person having custody or control of the animals covered by the order.

(b) Posting the order at 2 conspicuous places on the premises where the animals are kept.

(4) PROOF OF SERVICE. The department may prove service of a temporary animal hold order by means of an affidavit or certified mail return receipt.

(6) REVIEW OF ANIMAL HOLD ORDER. A person adversely affected by a temporary animal hold order may request a hearing before the department to review the order. The department shall conduct an informal hearing as soon as reasonably possible, and not later than 10 days after receiving a request for hearing. If the matter is not resolved after informal hearing, the person requesting the hearing may seek a formal hearing under ch. 227, Stats. A request for hearing does not automatically stay a temporary animal hold order.

History: Cr. Register, November, 2000, No. 539, eff. 12–1-00.

ATCP 10.71 Destruction or removal of animals illegally imported. (1) SUMMARY ACTION. The department may summarily order the destruction or removal from this state of any animal imported into this state if either of the following applies:

(a) The owner or custodian of the animal fails to produce a valid certificate of veterinary inspection, if a certificate is required.

(b) The animal is imported in violation of ch. ATCP 11, or in violation of any permit condition under ch. ATCP 11.

(2) SERVICE OF NOTICE. An order under sub. (1) shall be served upon a person having custody or control of the animal affected by the order. The order may be served in person or by certified mail. Service may be proved by affidavit or by certified mail return receipt.

(3) CONTENTS OF ORDER. An order under sub. (1) shall contain all of the following information:

(a) The name and address of the person having custody or control of the animals, if known.

(b) A description of the animals affected by the order.

(c) The reason or justification for the order.

(d) A reasonable deadline for compliance with the order.

(e) Notice that persons adversely affected by the order may request a hearing to review the order.

(4) REVIEW OF ORDER. A person adversely affected by an order under sub. (1) may, within 30 days after receiving the order, request a hearing before the department to review the order. If a hearing is requested, the department shall conduct an informal hearing as soon as reasonably possible, and not later than 10 days after receiving the request for hearing. If the matter is not resolved after informal hearing, the person requesting the hearing may seek a formal hearing before the department under ch. 227, Stats. A request for hearing under this subsection does not postpone the deadline for compliance with the order unless the deadline is postponed by further order of the department.

History: Cr. Register, December, 1990, No. 420, eff. 1–1–91; am. (1) (a), Register, November, 2000, No. 539, eff. 12–1–00.

ATCP 10.72 Prohibited conduct. (1) No person may:

(a) Fail to present an animal for any required disease test.

(b) Allow the sale, movement, or disposition of an animal before any required official test result for that animal is known.

(c) Misrepresent the disease status of any animal, or of the herd from which an animal originates.

(d) Sell or move any animal in violation of this chapter, or an order issued under this chapter.

(e) Remove, alter, or tamper with any form of official identification or official back tag.

(f) Import manure from slaughter plants or stock yards without first obtaining a permit from the department. The department shall grant or deny a permit request within 5 days after the department receives a complete permit application.

(g) Physically assault a department employee while that employee is performing his or her duties.

(h) Knowingly make any false statements to the department concerning any of the following:

1. The ownership, identification, age, vaccination status, test status, or health status of livestock.

2. The purchase, sale or movement of livestock.

(2) No veterinarian may fail to report any reportable disease to the department, as required by s. ATCP 10.02.

History: Cr. **Register, December,** *1990,* **No. 420,** ***eff.*** **1–1–91;** r. and recr. (1) (d), cr. (1) (g) and (h), **Register. November. 2000, No. 539, eff. 12–1-00.**

Chapter ATCP 10

APPENDIX A

Diseases Reported Within One Day

Foot and mouth disease
Vesicular conditions including vesicular stomatitis
Swine vesicular disease
Rinderpest
Peste des petits ruminants
Contagious bovine pleuropneumonia
Lumpy skin disease
Rift Valley fever
Pseudorabies (Aujesky's disease)
Rabies
Bluetongue
Equine encephalomyelitis (Eastern and Western)
African horse sickness
African swine fever
Classical swine fever
Avian influenza
Viscerotropic velogenic Newcastle disease
Sheep pox and goat pox
Brucellosis
Tuberculosis
Any disease that is foreign or exotic to Wisconsin

Chapter ATCP 10

APPENDIX B

Diseases Reported Within 10 Days

Multiple species diseases

Anthrax
Echinococcosis/hydatidosis
Heartwater
Leptospirosis
New world screwworm (Cochliomyia hominivorax)
Old world screwworm (Chrysomya bezziana)
Paratuberculosis also known as Johne's Disease
Q Fever

Fish diseases

Epizootic haematopoietic necrosis
Infectious haematopoietic necrosis
Oncorhynchus masou virus disease
Spring viraemia of carp
Viral haemorrhagic septicaemia

Sheep and goat diseases

Caprine and ovine brucellosis (excluding B. ovis)
Caprine arthritis/encephalitis
Contagious agalactia
Contagious caprine pleuropneumonia
Enzootic abortion of ewes (ovine chlamydiosis)
Maedi–visna
Nairobi sheep disease
Ovine epididymitis (Brucella ovis)
Ovine pulmonary adenomatosis
Salmonellosis (S. abortusovis)
Scrapie

Cattle diseases

Bovine anaplasmosis
Bovine babesiosis
Bovine spongiform encephalopathy
Bovine cysticercosis
Bovine genital campylobacteriosis
Infectious bovine rhinotracheitis / infectious pustular vulvovaginitis
Dermatophilosis
Enzootic bovine leukosis
Haemorrhagic septicaemia
Malignant catarrhal fever
Theileriosis
Trichomonosis
Trypanosomosis (tsetse–borne)

Equine diseases

Contagious equine metritis
Dourine
Epizootic lymphangitis
Equine infectious anemia
Equine influenza
Equine piroplasmosis
Equine rhinopneumonitis
Equine viral arteritis
Glanders
Horse mange
Horse pox
Japanese encephalitis
Surra (Trypanosoma evansi)
Venezuelan equine encephalomyelitis

Swine diseases

Atrophic rhinitis of swine
Enterovirus encephalomyelitis
Porcine cysticercosis
Porcine reproductive and respiratory syndrome
Transmissible gastroenteritis
Trichinellosis

Bee diseases

Acariosis of bees
American foulbrood
European foulbrood
Nosemosis of bees
Varroosis

Lagomorph diseases

Myxomatosis
Rabbit haemorrhagic disease

Mollusc diseases

Haplosporidiosis (H. nelsoni or H. costale)
Bonamiosis
Marteiliosis
Mikrocytosis (Mikrocytos mackini)
Perkinsosis

Avian diseases

Avian chlamydiosis
Avian infectious bronchitis
Avian infectious laryngotracheitis
Avian mycoplasmosis (M. gallisepticum)
Avian tuberculosis
Duck virus enteritis

Avian diseases (Cont'd)
Duck vims hepatitis
Fowl cholera
Fowl pox
Fowl typhoid
Infectious bursal disease (Gumboro disease)
Marek's disease
Pullorum disease
Avian infectious encephalomyelitis
Orinthosis (psittacosis)
Mycoplasma gallisepticum infection
Paramylovims infections of poultry other than Newcastle disease
Salmonellosis
Infectious laryngotracheitis

Diseases of other animal species
Leishmaniosis

Chapter ATCP 11

ANIMAL MOVEMENT

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ATCP 11.01 Definitions.

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Subchapter III — Bovine Animals
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ATCP 11.40 Poultry imports.

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ATCP 11.50 Sheep imports.
ATCP 11.51 Goat imports.
ATCP 11.52 Dogs and domestic cats; imports.
ATCP 11.53 Circus, rodeo, racing and menagerie animals; importation.
ATCP 11.54 Exotic ruminants; import.
ATCP 11.545 Farm–raised deer and other cervids; identification requirements.
ATCP 11.55 Cervids import requirements.
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Subchapter VIII — Movement and Exhibition
ATCP 11.60 Sale or movement of diseased animals.
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ATCP 11.70 Quarantines.
ATCP 11.705 Temporary animal hold order.
ATCP 11.71 Destruction or removal of animals illegally imported.
ATCP 11.72 Prohibited conduct.
ATCP 11.73 Animals imported without required tests: department testing.

Note: Chapter Ag 11 as it existed in December 31, 1990 was repealed and a new ch. Ag 11 was created effective January 1, 1991; Chapter Ag 11 was renumbered ch. ATCP 11 under s. 13.93 (2m) (b) 1., Stats., Register, April, 1993. No. 478.

Subchapter I — Definitions

ATCP 11.01 Definitions. As used in this chapter:

(1) "Accredited tuberculosis–free herd" means a herd of bovine animals, cervids or goats which is certified as tuberculosis–free by one of the following:

(a) The department under s. ATCP 10.17, 10.62 or 10.67 (1).

(b) The authorized animal health agency of the state in which the herd is located, under standards comparable to s. ATCP 10.17, 10.62 or 10.67 (1).

(2) "Accredited veterinarian" means a veterinarian who is both of the following:

(a) Licensed to practice veterinary medicine.

(b) Specifically authorized by the federal bureau and responsible state agency, pursuant to 9 CFR 160 to 162, to perform animal disease eradication and control functions under state and federal animal health laws.

Note: Sees. ATCP 10.05.

(6) "Approved equine quarantine station" means a facility approved by the department under s. ATCP 11.32 to receive equine animals imported from foreign countries in which contagious equine metritis has been reported.

(7) "Approved feedlot" means a feedlot which holds an approved feedlot permit under s. ATCP 11.14.

(8m) "Axillary tuberculosis test" means a test under s. ATCP 11.54 (3) (c) that is used to detect tuberculosis in south american camelidae.

(9) "Bison" means American bison of any age or sex, commonly known as buffalo.

(10) "Boar" means an uncastrated male swine that is sexually mature.

(11) "Bovine animal" means cattle or American bison of any age or sex.

(11m) "Breeder swine" means all the following:

(a} Sexually intact swine 4 months of age or older.

(b) Swine intended for breeding, regardless of the age of the swine.

(12) "Brucellosis" means the contagious, infectious and communicable disease caused by bacteria of the genus Brucella.

Note: Brucellosis is also known as Bang's disease, undulant fever and contagious abortion.

(12m) "Brucellosis monitored herd" means a herd of cervids that is certified as a brucellosis monitored herd by one of the following:

(a) The department under s. ATCP 10.675.

(b) The authorized animal health agency in the state where the herd is located, under standards comparable to s. ATCP 10.675.

(13) "Brucellosis test" means a test, approved by the federal bureau and the department, that is used to determine whether an animal is infected with brucellosis.

(13m) "Brucellosis test eligible animals" means cattle and bison that are at least 18 months old as evidenced by the loss of the first pair of temporary incisor teeth, and official calfhood vaccinates that are parturient or post–parturient. "Brucellosis test eligible animals" does not include any of the following:

(a) Steers.

(b) Spayed heifers.

(c) Official calfhood vaccinates of the dairy cattle breeds under 20 months old.

(d) Official calfhood vaccinates of bison or beef cattle breeds under 24 months old. For purposes of this paragraph, animals that have their first pair of fully erupted permanent incisor teeth are considered to be at least 24 months old.

(14) "Bull" means an uncastrated sexually mature male bovine animal.

(15) "Calf' means a sexually immature bovine animal of either sex.

(16) "Cattle" means any of the various animals of the domesticated genus *Bos*.

(16m) "Caudal fold tuberculin test" means a test under s. ATCP 10.15 (1) that is used to detect tuberculosis in bovine animals.

(17) "Certificate of veterinary inspection" means a written certificate that complies with **s.** ATCP 11.02 (2).

(17m) "Certified brucellosis–free flock" means a flock *of* sheep that is certified as brucellosis–free by one of the following:

(a) The department under s. ATCP 10.64.

(b) The authorized animal health agency in the state where the flock is located, under standards comparable to s. ATCP 10.64.

(18) "Certified brucellosis–free herd" means a herd of cattle, cervids, or goats that is certified as brucellosis–free by one of the following:

(a) The department under s. ATCP 10.14, 10.61 or 10.675.

(b) The authorized animal health agency in the state where the herd is located, under standards comparable to **s.** ATCP 10.14 or 10.61.

(18m) "Cervid" means a member of the family of animals that includes deer, elk, moose, caribou, reindeer and the subfamily musk deer. "Cervid" includes all "farm–raised deer".

(19) "Commingled" means kept or brought together with other animals in any environment which permits direct physical contact between the animals.

(20) "Communicable" means transmissible either directly or indirectly.

(21) "Contagious" means spread by contact, body secretions or fomites.

(22) "Cow" means a female bovine animal after first calving.

(23) "Department" means the state of Wisconsin department of agriculture, trade and consumer protection.

(24) "Equine animal" has the meaning given in s. 95.68 (1) (a), Stats.

(24p) "Equine infectious anemia," otherwise known as EIA or swamp fever, means the contagious and infectious disease of equine animals caused by a non-oncogenic retrovirus.

(24q) "Equine infectious anemia test" means a test approved by the department, and conducted at a department laboratory or a laboratory approved by the federal bureau, to determine whether an animal is infected with equine infectious anemia.

(25) "Equine market" has the meaning specified under s. 95.68 (1) (b), Stats.

(26) "Exotic disease" means any communicable, contagious or infectious disease of livestock or poultry not known to exist in Wisconsin.

(27) "Exotic ruminant" means a ruminant not indigenous to Wisconsin. "Exotic ruminant" includes llamas and other camelids, but does not include bovine animals or cervids.

(28) "Exposed means subjected to a causative agent which may cause the exposed animal to contract a contagious, infectious or communicable disease.

(29) "Fair" means a state fair, county or district fair, exhibition, show, exposition, rodeo or trail ride.

(29m) "Farm–raised deer" has the meaning given in s. 95.001 (1) (a), Stats., but does not include cervids kept by an institution accredited by the american association of zoological parks and aquariums.

(30) "Federal bureau" means the animal and plant health inspection service of the United States department of agriculture, or any other unit of that department which may be vested with authority to administer federal laws and regulations relating to animal disease control.

(30m) "Federally approved livestock import market" means a livestock market that complies with s. ATCP 11.04.

(31) "Feeder cattle" means bovine animals, kept for the sole purpose of feeding prior to slaughter, which are not more than 18 months old as evidenced by the absence of permanent teeth, and whose sexual status is one of the following:

(a) Non–spayed female that is not parturient or post–parturient.

(b) Spayed heifer.

(c) Steer.

(32) "Feeder swine" means swine that weighs 80 pounds or less and are kept for the sole purpose of feeding for slaughter.

(32m) "Feeder swine pseudorabies monitored herd" means a herd of swine which is certified as being a feeder swine pseudorabies monitored herd by one of the following:

(a) The department under **s.** ATCP 10.34.

(b) The authorized animal health agency in the state where the herd is located, under standards comparable to s. ATCP 10.34.

(33) "Flock" as applied to poultry means all poultry on a farm, except that the department may designate as a separate "flock" any group of poultry that has not been allowed to commingle with other poultry on a farm for at least **21** days.

(33m) "Flock" as applied to sheep means a commonly owned or controlled group of sheep that have at some time been commingled or allowed to commingle with other sheep in the group.

(34) "Foreign disease" means any communicable, contagious or infectious disease of livestock and poultry not known to exist in the United States.

(35) "Hatchery" means premises used to hatch poultry or ratites. "Hatchery" includes buildings, incubators, hatchers and auxiliary equipment.

(36) "Heifer" means a female bovine animal up to first calving.

(37) "Herd" means a commonly owned or controlled group of animals, of the same species, that have at some time been commingled or allowed to commingle with other animals in the group.

(38) "Infectious" means caused by a pathogenic agent.

(40) "Keep farm–raised deer" means to own, rent, lease or serve as the custodian of farm–raised deer.

(40e) "Keeper of farm–raised deer" means a person who keeps farn–raised deer.

(41) "Livestock" means farm animals including bovine animals, sheep, goats, swine, farm–raised deer and equine animals.

(42) "Livestock dealer" has the meaning specified under s. 95.69 (1) (c), Stats., and includes any person who leases livestock to others.

(43) "Livestock dealer premises" means any location where a livestock dealer keeps, receives or sells livestock, or conducts livestock transactions, and which is owned, leased, or controlled by the livestock dealer.

(44) "Livestock market" has the meaning specified under s. 95.68 (1) (e), Stats.

(45) "Livestock trucker" has the meaning specified under s. 95.71 (1) (e), Stats.

(46) "Mare" means a female equine animal over 731 days of age.

(48) "Managerie animal" means a domestic or non–domestic animal kept individually or as part of a collection primarily for purposes of exhibition or competition,

(49) "Mycoplasmosis" means a disease of poultry caused by bacteria of the genus *Mycoplasma.*

(50) "National poultry improvement plan" means the plan established by the federal bureau under 9 CFR 145.

(51) "Negative" means an official diagnostic test result which discloses no evidence of disease.

(52) "Official backtag" means an identification backtag, approved by the federal bureau or the department, that conforms to the national uniform backtagging system.

Note: Examples of official back tags include the official Wisconsin bovine back tag and the official Wisconsin swine back tag

(53) "Official eartag" means an identification eartag, approved by the federal bureau or the department, that conforms to the national uniform eartagging system.

Note: The official eartag **uniquely identifies each individual** animal **with** no **duplication of** the **alpha-numericidentification, regardless of the** *materials* or colors **used. Examples** of official eartags **include the official Wisconsin identification** tag, **the** official **U.S.D.A. Wisconsin vaccination** tag, **and the official Wisconsin swine eartag.**

(54) "Official individual identification" means a set of identifying characters which is uniquely associated with an individual animal, and which consists of one of the following:

(a) The animal's official eartag number.

(b) The animal's breed association tattoo.

(c) The animal's breed association registration number.

(d) A registration freeze brand number which uniquely identifies the animal.

(e) The official breed registration lip tattoo number of an equine animal which uniquely identifies that equine animal.

(f) A written or graphic description of an equine animal, prepared by a licensed and accredited veterinarian, which uniquely identifies that equine animal and includes all of the following:

1. A complete and accurate description of the equine animal's breed, coloration and distinguishing markings.

2. The equine animal's sexual status.

(g) The microchip number of a ratite which uniquely identifies that ratite.

(h) The leg band number of ratite which uniquely identifies that ratite.

(i) For a swine weighing 80 pounds or less, the premises identification of the premises of origin.

(j) Other identification approved by the department.

(55) "Official spayed heifer" means a female bovine animal which has had its ovaries removed and is identified by an open spade brand or spay certificate.

(56) "Official vaccinate" means a female bovine animal which is vaccinated against brucellosis, and identified and reported as a vaccinate, in compliancewith s. ATCP 10.10 or comparable laws of another state.

(57) "Open spade brand" means a branding mark consisting of the outline of an inverted heart with a short stalk at the bottom, used for the identification of spayed heifers.

(58) "Originates from a herd" or "originating from a herd" means coming from a herd, other than a group of animals temporarily assembled for sale or shipment, in which the animal was born or kept since birth, or in which the animal was kept for at least 120 days.

(58m) "Originates From a state" or "originating from a state" means coming directly from one of the following:

(a) A state in which the animal was born and kept since birth.

(b) **A** state to which the animal was moved from a state holding an equal or better federal classification for the disease in question.

(c) **A** state in which the animal has been kept for at least 120 days.

(59) "Paratuberculosis" means the infectious and communicable disease of domestic ruminants, commonly known as Johne's disease, which is caused by *Mycobacterium paratuberculosis.*

(63) "Person" includes any individual, corporation, partnership association, limited liability company, trust, governmental entity, or other organization or entity.

(64) "Poultry" means domesticated fowl, including chickens, turkeys, waterfowl, and game birds, except doves and pigeons, which are bred for the primary purpose of producing eggs or meat. "Poultry" does not include ratites.

(65) "Pseudorabies" means the contagious, infectious and communicable disease of livestock and other animals which is caused by the pseudorabies herpes virus, and which is also known as Aujeszky's disease, mad itch, or infectious bulbo-paralysis.

(66) "Pseudorabies test" means the negative serum neutralization (SN) test or another pseudorabies diagnostic test which is approved by the department and conducted at a laboratory approved by the departmcnt or the federal bureau.

(67) "Pullorum" means a disease of poultry caused by *Salmonella pullorum.*

(67m) "Qualified pseudorabies negative grow-out herd" means a grow-out herd of swine that is certified by one of the following:

(a) The department under s. ATCP **10.33.**

(b) The authorized animal health agency in the state where the herd is located, under standards comparable to s. ATCP **10.33.**

(68) "Qualified pscudorabies negative herd" means a herd of swine that is certified by one of the following:

(a) The department under s. ATCP **10.32.**

(b) The authorized animal health agency in the state where the herd is located, under standards comparable to s. ATCP **10.32.**

(69) "Racing animal" means a greyhound or other racing canine, and equine animals which participate in organized races such as county, district, or state fairs, or other organized racing events where cash, points, or awards are given as prizes.

(69m) "Ratite" means a member of the group of flightless birds that includes the ostrich, emu, cassowary, kiwi and rhea.

(70) "Reactor" means an animal which has reacted positively in a conclusive diagnostic test for an infectious, contagious or communicable disease.

(70g) "Shipped directly to a slaughtering establishment" means delivered to a slaughtering establishment within 10 days without leaving slaughter channels, except that if an animal is a brucellosis, tuberculosis, pseudorabies, chronic wasting disease or scrapie reactor, "shipped directly to a slaughtering establishment" means delivered to a slaughtering establishment without being off-loaded at any other location in this state.

(70m) "Single cervical tuberculin test" means a test under s. ATCP 10.66 **(4)** that **is** used to detect tuberculosis in cervidae.

(71) "Slaughtering establishment" means a slaughtering establishment that is licensed by the department, or subject to inspection by the United States departmcnt of agriculture. "Slaughtering establishment" includes all premises used in connection with a slaughter operation.

(71m) "South american camelid" means a llama, alpaca, vicuna or guanaco.

(72) "Sow" means a sexually mature female swine.

(73) "Stallion" means a male equine animal over 731 days of age but does not include a gelding.

(74) "State veterinarian" means the administrator of the animal health division of the department, or a veterinarian who is authorized by the administrator to act on his or her behalf.

(75) "Steer" means a castrated male bovine animal.

(76) "Suspect" means an animal which is suspected of having a disease, based on test results or other reliable information, but which is not yet confirmed to have the disease.

(77) "Swine" means a domestic hog or any variety of wild hog.

(78) "Swine growth performance test station" or "swine test station" means a premises where swine are assembled for purposes of determining feeding efficiency.

(79) "Test mare" means a mare which is used in determining the disease status of stallions with respect to contagious equine metritis.

(80) "Tuberculosis" means the contagious, infectious and communicable disease caused by *Mycobacterium* ***bovis.***

(80m) "Tuberculosis monitored herd" means a herd of cervids that is certified as a tuberculosis monitored herd by one of the following:

(a) The department under s. ATCP 10.67.

(b) The authorized animal health agency of the state where the herd is located, using standards comparable to those under s. ATCP 10.67.

(80p) "Tuberculosis non–modified accredited state" means a state or area that the federal bureau has classified as a bovine tuberculosis non–modified accredited state or a state or area in which bovine tuberculosis is present in at least 0.01 percent but not more than 0.1 percent of the total number of herds or cattle and bison in the state.

(80r) "Tuberculosis qualified herd" means a herd of cervids that is certified as a tuberculosis qualified herd by one of the following:

(a) The department under s. ATCP 10.67.

(b) The authorized animal health agency of the state where the herd is located, using standards comparable to those under s. ATCP 10.67.

(81) "Tuberculosis test" means a test, approved by the department, which is used to detect tuberculosis in animals. "Tuberculosis test" includes any of the following tests when authorized or required under this chapter:

(a) A caudal fold tuberculin test or a comparative cervical tuberculin test for bovine animals.

(b) A single cervical tuberculin test or a comparative cervical tuberculin test for cervids.

(c) An axillary tuberculosis test for exotic ruminants or south american camelidae.

(82) "Typhoid" or "fowl typhoid" means a disease of poultry caused by *Salmonella gallinarum.*

(82m) "USDA" means the United States department of agriculture.

(83) "Validated brucellosis–free herd" means a herd of swine which is certified as brucellosis–free by one of the following:

(a) The department under s. ATCP 10.36.

(b) The authorized animal health agency of the state where the herd is located, under standards comparable to s. ATCP 10.36.

(84) "Veal calf' means a bovine animal of either sex, not more than 120 days old, which is kept for the sole purpose of feeding prior to slaughter for veal.

(84m) "Wisconsin certified veterinarian" means a veterinarian certified under s. ATCP 10.05.

(85) "Zoo" or "zoological park" means any park, building, cage, enclosure, or other structure or premises in which a live animal or animals are kept for public exhibition or viewing, regardless of whether admission or other consideration is paid by the viewer.

History: Cr. Register, December, 1990, No. 420, eff. 1–1–91; emerg. cr. (18j), (18m), (20m) and (70m), eff. 3–18–91; cr. (18j), (18m), (20m), (70m) and (85), am. (27). Register, November, 1991, No. 431, eff. 12–1–91; am. (27), r. and recr. (58), cr. (58m), Register, September, 1993, No. 453, eff. 10–1–93; cr. (24p) and (24q), Register, January, 1994, No. 457, eff. 2–1–94; am. (25), (42), (44), (45), (64), renum. (54) (d) to he (54) (i), cr. (54) (d) to (h), (69m), Register, March, 1995, No. 471, eff. 4–1–95; am. (1), (41), cr. (8m), (16m), (71m), (80m), (80r), r. and recr. (13), (20m), (70m), (81), r. (18j), (40), Register, February, 1996, No. 482, eff. 3–1–96; emerg. cr. (40), eff. 6–3–96; am. (18m), (41), cr. (29m), (40), (40e), Register, December, 1996, No. 492, eff. 1–1–97; r. (60), Register, September, 1999, No. 525, eff. 7–1–00; emerg. cr. (11m), eff. 5–25–00; am. (1) (intro.), (7), (17), (18), (18m), (24), (27), (29m), (32), (35), (49), (50), (52), (53), (54) (e), (f) 2., (65), (68), (71), (80m), (80r), (83) and (85), r. (3) to (5), (8), (20m), (39). (47), (61) and (62), r. and recr. (33), (37) and (81) (b), renum. (54) (i) to be (54) (j), cr. (11m), (12m), (13m), (17m), (30m), (32m), (33m), (54) (i), (67m), (70g), (82m) and (84m), Register, November, 2000, No. 539, eff. 12–1–00; cr. (80p), Register, April, 2001, No. 544, eff. 5–1–01.

Subchapter II — General Provisions

ATCP 11.02 Certificate of veterinary inspection. (1) CERTIFICATE REQUIRED FOR IMPORT. No person may import any of the following animals into this state unless the animal is accompanied by a valid certificate of veterinary inspection:

(a) Bovine animals, except as provided under s. ATCP 11.11 (1) (b).

(b) Swine, except as provided under s. ATCP 11.20 (1) (b).

(c) Equine animals, except as provided under s. ATCP 11.30 (1).

(d) Poultry.

(e) Sheep.

(f) Goats.

(g) Dogs or domestic cats.

(h) Circus, rodeo, racing or menagerie animals.

(i) Exotic ruminants and South American camelids

(j) Cervids.

(k) Ratites, except ratites imported directly from a federal quarantine facility.

(2) WHO MAY ISSUE. An accredited veterinarian shall prepare and sign a certificate of veterinary inspection, except that a Wisconsin certified veterinarian shall prepare and sign a certificate issued in Wisconsin.

(3) FORM. (a) A certificate of veterinary inspection shall be issued on a form provided by the department, the federal bureau or the state in which the certificate is issued. A certificate issued in this state shall be issued on a form provided by the department.

Note: A certificate of veterinary inspection issued in another state for fish imported to this state must also be issued on a form pmvided by the department. See ATCP 11.58 (15).

(b) A veterinarian may obtain a certificate of veterinary inspection form from the department. The department shall charge a fee of $3 for each form provided.

Note: Veterinarians may obtain certificate forms and pay fees by contacting the department at the following address:

Wisconsin Department of Agriculture, Trade and Consumer Protection
Division of Animal Health
P.O. Box 8911
Madison, WI 53708–8911
Phone: (608) 224-4872
Fax: (608) 224–1871

(4) CONTENTS. A certificate of veterinary inspection shall include all the following:

(a) Identification of each animal covered by the certificate. Official individual identification is required for bovine animals, swine, equine animals, sheep 6 months of age or older, goats, ratites and cervids. Except as provided under s. ATCP 11.03, official individual identification is not required for any of the following if the certificate clearly identifies the shipment destination and the number of animals included in the shipment:

1. Poultry.

2. Veal calves or steers originating from a brucellosis–free state or nation, or a brucellosis class A state, unless official individual identification is required under s. ATCP 11.11 **(5) (a)** 1. d.

(b) The species, breed, sex and age of the animal.

(c) The name and address of the person shipping the animal, and the location from which the animal is shipped.

(d) The name and address of the person receiving the animal, and the location at which the animal will be received.

(e) Any information required under this chapter for the import or movement of the animal.

Note: This chapter requires additional information for the import or movement of certain animals. Required information may include, for example, information related to herd or flock of origin, animal vaccination status or diagnostic test results. The department may also require additional information under s. ATCP 11.03.

(f) If the certificate pertains to a shipment of farm–raised deer shipped from any location in this state, the registration number of the person registered under s. ATCP 10.652 who kept those farm–raised deer at that location.

(g) The following statement, or one substantially similar:

"I certify, as a veterinarian, that I have inspected the animals identified on this certificate and that the animals are not

showing signs of contagious or infectious disease, except where noted. Vaccinations and test results are as indicated on the certificate. **To** the best of my knowledge, the animals identified on this certificate meet applicable federal and state **of** destination requirements.''

(h) The veterinarian's signature and date of signature.

(5) CERTIFICATE VALID FOR 30 DAYS. (a) Except as provided under par. (b) or s. ATCP 11.03, a certificate of veterinary inspection is valid for 30 days.

(b) Except as provided in s. ATCP 11.03, a certificate of veterinary inspection is valid for 90 days if all the following apply:

1. A veterinarian issues the certificate for the interstate movement of an animal solely for exhibition at a livestock fair, exhibition or show.

2. The animal returns to its herd of origin after being exhibited.

(6) FILING COPIES OF CERTIFICATE. (a) If this chapter requires a certificate of veterinary inspection to accompany animals imported to this state, the veterinarian who signs the certificate shall also file copies with the department and the chief livestock health official in the state of origin. The veterinarian shall file the copies within 7 days after the import shipment date.

(b) Whenever a Wisconsin certified veterinarian issues a certificate of veterinary inspection for export or intrastate movement of Wisconsin animals, the veterinarian shall file a copy of the certificate with the department within **7** days after the export or intrastate movement. If the animals are being exported, the veterinarian shall also file a copy of the certificate with the chief livestock health official of the state of destination.

(7) ANIMAL IMPORTED TO CONSIGNMENT SALE; CERTIFICATE TO ACCOMPANY ANIMAL WHEN SOLD. (a) If an animal is imported on consignment to a livestock dealer or market operator, for sale on behalf of an out-of–state seller, any required certificate of veterinary inspection that accompanies the imported animal shall continue to accompany that animal until the purchaser receives it.

(b) Whenever a Wisconsin certified veterinarian issues a certificate of veterinary inspection for an imported animal sold on consignment in this state, the certificate may incorporate pertinent health information from the certificate that accompanied the imported animal. The veterinarian may issue the certificate on the same certification form if the form is specifically designed for that purpose, or the veterinarian may issue a separate certificate that includes the following statement or one substantially similar:

"The vaccination record, test results, and source herd information on this certificate have been copied from the incoming certificate of veterinary inspection that was issued **by** ***(accredited veterinarian),*** who certified the information at ***(address and state of origin)*** on ***(date).*** **A** copy of **the** incoming certificate **is** attached."

(c) Within 7 days after a Wisconsin certified veterinarian issues a certificate of veterinary inspection under par. (b), that veterinarian shall file with the department copies of that certificate and the certificate that accompanied the imported animal under par. (a).

History: Cr. Register. December, 1990, No. 420, eff. 1–1–91: emerg. am. (1) (a) (intro.) and (3) (i), eff. 3–18–91; am. (1) (a) (intro.), cr. (3) (j), Register, November, 1991, No. 431, eff. 12–1–91; am. (3) (g), Register, September, 1993, No. 453, eff. 10–1–93; am. (1) (a) (intro.), (e), (4) (a), (5) (b), cr. (3) (k), Register. March, 1995. No. 471, eff. 4-1–95; am. (1) (a) 2., (3) (i), (4) (b), cr. (6), Register, February, 1996, No. 482, eff. 3–1–96; emerg. cr. (1) (em), eff. 6–3–96; cr. (1) (em), am. (5) (b), Register. December, 1996, No. 492, eff. 1–1–97; cr. (2m), Register, May, 1999, No. 521, eff. 6–1–99; r. and recr. Register, November, 2000, No. 539, eff. 12–1-00; am. (4) (a) 2., Register, April, 2001, No. 544, eff. 5–1–01.

ATCP 11.03 Import *restrictions.* (1) GENERAL. (a) Persons importing animals to this state shall comply with applicable import requirements under this chapter and chs. ATCP 10 and 12.

(b) The state veterinarian may by written notice or by oral notice confirmed in writing, direct a person to comply with additional import requirements if the state veterinarian determines, based on an epidemiological evaluation of current disease risks in the herd, state or nation of origin, that those additional requirements are needed to prevent the spread of disease to this state.

Note: Whenever the state veterinarian imposes additional import requirements under par. (b), the department will determine whether those import requirements have general application. If the requirements have general application, the department will adopt an emergency rule and promulgate a permanent rule adopting the requirements. If the import requirements do not have general application, the requirements constitute an order under s. 93.07 (10), Stats., and are reviewable in a contested case proceeding under ch. 227, Stats., and ch. ATCP 1. Whenever an additional import requirement affects an entire state or a substantial portion of a state, the department will notify the chief animal health officer in the affected state.

(c) No person who receives a notice of an additional import requirement under par. (b) may import an animal in violation of the additional import requirement.

(2) IMPORT PERMIT. (a) No person may import an animal to this state without first obtaining a written import permit from the department if a written permit is required by this chapter or chs. ATCP 10 or 12.

(b) The department may issue a written permit in paper or electronic form. The department shall include a permit number on each written permit.

(c) The department shall grant or deny the permit within **30** days after the department received a complete permit application.

(d) ***An*** importer, or an accredited veterinarian acting on behalf of an importer, may apply for a permit in any of the following ways:

1. By telephone at (608) 224-4879.

2. By writing to the department at the following address:

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

(e) A permit application under par. (d) shall include all the following information:

1. The name, address and telephone number of the importer. If an accredited veterinarian applies on behalf of an importer, the veterinarian shall also disclose his or her name, address and telephone number.

2. The name and address of the import recipient.

3. The type of animal being imported.

4. The number of animals being imported.

5. The state or nation from which the animals are being imported.

6. Any other information required by the department.

(f) The department may accept the information under par. (e) by telephone or other oral communications, or may require the applicant to submit the information in writing. The department may accept written information in hard copy or electronic form.

(g) An import permit expires 30 days after it is issued, unless the department specifies a different expiration date on the import permit.

(3) WRITTEN PERMIT WAIVING IMPORT REQUIREMENTS. (a) The state veterinarian may issue a written import permit that waives import requirements for a single import shipment if the state veterinarian determines that special conditions justify the waiver.

(b) A permit under par. (a) shall identify the import shipment, the import requirements waived, and the special conditions that justify the waiver. The permit may specify alternative import requirements that the state veterinarian deems necessary.

(c) A person applying for an import permit under par. (a) shall apply in writing. The application shall include all the information

required under sub. (2) (e), and shall explain the special conditions that justify the permit.

(4) PERMIT RECORDS. The department shall keep, for at least 5 years, a record of every permit issued under this section.

History: Cr. Register, December, 1990, No 420, eff. 1–1–91; r. and recr Register, November, 2000, No. 539, eff. 12–1-00.

ATCP 11.04 Federally approved livestock import markets. (1) APPROVAL REQUIRED A livestock market is a federally approved livcstock import market, for purposes of this chapter, if all the following apply:

(a) The livestock market is licensed under s. ATCP 12.02.

(b) The livestock market operator has a current agrecmcnt with the federal bureau under 9 CFR 71.20.

(c) The department has authorized the livestock market to receive animal import shipments as a federally approved livestock import market under this chapter.

(d) The livestock market operates in compliance with this section.

(2) RECEIVING ANIMALS AT A FEDERALLY APPROVED LIVESTOCK IMPORT MARKET. Animals of a type identified in a federal livestock market agreement under sub. (1) (b) may be imported to that market without meeting import requirements under this chapter, provided that the animals are imported in compliance with 9 CFR 71, 78 and 85 and the agreement under sub. (1) (b).

(3) REMOVING ANIMALS FROM A FEDERALLY APPROVED LIVESTOCK IMPORT MARKET. The operator of a federally approved livestock import market may not release any animal from that market to a Wisconsin destination unless the animal meets all applicable import requirements under this chapter.

(4) RECORDS. The operator of a federally approved livestock import market shall keep all records required by this chapter, ch. ATCP 12 and 9 CFR 71.20. The operator shall keep the records for at least 5 years, and shall make them available to the department for inspection and copying upon request.

History: Cr. Register, November, 2000, No. 539, eff. 12–1–00.

Subchapter III — Bovine Animals

ATCP 11.10 Identification of bovine animals. (1) OFFICIAL INDIVIDUAL IDENTIFICATION. (a) *Official eartag.* Except as provided under par. (b), a veterinarian who does any of the following to any bovine animal shall insert, in the right ear of the animal, an official eartag conforming to the national uniform eartagging system unless the animal is already identified with an official eartag:

1. Vaccinates, identifies or tests a bovine animal in order to complete a certificate of veterinary inspection or any other official document or certification related to that animal.

2. Tests a bovine animal for any disease listed under s. ATCP 10.03.

(b) ***Purebred identification.*** **If** a bovine animal is a purebred animal registered with a breed association, either of the following may serve in place of an official eartag to identify the animal:

1. A breed association registration number which uniquely identifies the animal, and which corresponds to the breed association registration papers for that animal. A purebred calf, if not yet registered, may be identified by its dam's registration number and the date of birth of the calf.

2. A breed association tattoo which uniquely identifies the animal, and which corresponds to breed association registration papers for that animal.

(c) ***Right ear reserved for identification tag.*** No person may insert any eartag, other than an official eartag or breed association eartag, in the nght ear of any bovine animal. This paragraph does not prohibit the use of parasite control tags.

(2) IDENTIFYING OFFICIAL BRUCELLOSIS VACCINATES. A veterinarian who vaccinates a bovine animal for brucellosis shall identify the animal in compliance with the USDA brucellosis eradication uniform methods and rules dated February 1, 1998.

Note: Copies **of** the USDA brucellosis eradication uniform methods and rules dated February 1, 1998 (APHIS publication 91–45–011) are on file with the department, the secretary of state and the revisor of the statutes. Copies may be obtained from:

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

(3) REACTOR IDENTIFICATION. (a) Tuberculosis reactors shall be identified according to s. ATCP 10.16.

(b) Brucellosis reactors shall be identified according to s. ATCP 10.36.

(c) Paratuberculosis reactors shall be identified according to s. ATCP 10.21.

(4) SLAUGHTER IDENTIFICATION. (a) *Backtag* ***required.*** If a livestock trucker, livestock dealer, livestock market operator, stockyard operator or slaughtering establishment operator receives any bovine animal over 2 years old for slaughter, or for sale or shipment to slaughter, that person shall identify the bovine animal with an official backtag at the time of receipt and make a corresponding record of the identification under par. (b). The backtag shall be affixed to the animal at a point 4 inches behind the shoulder and 4 inches below the topline. If a bovine animal under this paragraph is already backtagged at the time of receipt, the person receiving the bovine animal shall record the backtag number and other information required under par. (b). This paragraph does not apply to steers or official spayed heifers.

(b) ***Recordkeeping; general.*** Every person who is required to backtag a bovine animal or keep a record under par. (a) shall record the following information:

1. The number of each official backtag applied to a bovine animal. If a bovine animal is already backtagged at the time of receipt, the person receiving the animal shall record that official backtag number.

2. The date on which each bovine animal was received and identified under this subsection.

3. The name and address of the person from whom the bovine animal was received.

4. Whether the animal was of a beef or dairy breed. If the animal is a beef and dairy crossbreed, it shall be classified as a beef breed.

(c) ***Livestock dealers and markets; slaughter animals not shipped directly to slaughter.*** **If** any slaughter animal required to be backtagged under par. (a) is removed from the premises of a livestock dealer or livestock market, but not shipped directly to slaughter, the livestock dealer or market operator shall keep a record correlating the animal's backtag number with its official individual identification. If the animal has no official individual identification, the dealer or market operator shall insert an official eartag in the animal's right ear before the animal leaves the premises, except that eartagging is not required for feeder cattle shipped directly to an approved feed lot.

(d) ***Records kept and made available.*** Records under pars. (b) and (c) shall be kept for a period of 5 years, and shall be made available to the department for inspection and copying upon request.

History: Cr. Register, December, 1990, No. 420, eff. 1–1–91; am. (1) (b) 1., (4) (b) 4 and (c), Register, September, 1, 1993, No. 453, eff. 10–1–93; r. and recr. (1) (a), Register, February, 1996, No. 482, eff. 3–1–96; emerg. am. (3) (a), eff. 6–3–96; am. (3) (a), Register, December, 1996. No. 492, eff. 1–1–97; cr. (3) (c), Register, September, 1999, No. 525, eff. 7–1–00; am. (1) (a) 1. and (4) (d), r. and recr. (2) and (3), Register, November, 2000, No. 539, eff. 12–1–00.

ATCP 11.11 Bovine animals; import. (1) CERTIFICATE OF VETERINARY INSPECTION. (a) ***Requirement.*** Except as provided in par. (b), no person may import a bovine animal into this state unless the animal is accompanied by a valid certificate of veterinary inspection. The certificate shall comply with s. ATCP 11.02 and shall include the following information:

1. The official individual identification of the bovine animal. Official individual identification is not required for veal calves or steers imported from a brucellosis free state or nation, or from a brucellosis class **A** state, provided that the certificate clearly identifies the shipment destination and the number of animals included in the shipment.

2. **A** report of a negative brucellosis test conducted not more than 30 days before the animal enters this state, unless the animal is exempt from the brucellosis testing requirement under sub. (2).

3. The written import permit number, if a written import permit is required under sub. (3) or (5).

4. A report of a negative tuberculosis test conducted not more than 60 days before the animal enters this state, unless the animal is exempt from the tuberculosis testing requirement under sub. (4) (b).

5. If the animal is imported to an approved feed lot, the permit number assigned to that feed lot under s. ATCP 11.14.

6. Any other infomiation required under this section.

(b) *Exemptions*. A certificate of veterinary inspection is not required under par. (a) for any of the following:

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

2. An animal imported directly to a federally approved livestock import market under s. ATCP 11.04.

3. A calf under 30 days old originating from a brucellosis-free state or nation, or from a brucellosis class A state.

(2) BRUCELLOSIS TEST. (a) ***Requirement.*** Except as provided in par. (b), no person may import a bovine animal into this state unless the animal tests negative on a pre–import brucellosis test. Except as provided in par. (c), the pre–import brucellosis test shall be conducted not more than 30 days before the animal enters this state.

(b) ***Exemptions.*** Paragraph (a) does not require a pre–import brucellosis test for any of the following animals:

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

2. An animal originating from a brucellosis–free state or nation, unless testing is required under s. ATCP 11.03 (1) (b).

3. An animal originating from a certified brucellosis–free herd.

4. An animal imported directly to a federally approved livestock import market under s. ATCP 11.04.

5. A steer or official spayed heifer.

6. A calf under 6 months old originating from a brucellosis class **A** state.

7. ***An*** official vaccinate under 20 months old originating from a brucellosis class A state.

8. Feeder cattle originating from a brucellosis class A state that are imported directly to an approved feedlot.

(c) ***Exhibition animals; extended timeforpre–import test. An*** animal may be tested for brucellosis up to 90 days before the animal enters this state if all the following apply:

1. The animal originates from a brucellosis class A state.

2. The animal is imported solely for exhibition at a fair or livestock exhibition.

3. The animal returns to its herd of origin after being exhibited at the fair or livestock exhibition.

(d) ***Test method.*** A laboratory approved by the department or the federal bureau shall conduct a brucellosis test under par. (a). The laboratory shall conduct the test using the tube, plate, **or** buffered acidified plate antigen (BAPA) test method, or another test method approved by the department.

(3) IMPORT FROM BRUCELLOSIS CLASS B OR C STATES. (a) ***Written authorization required.*** Except as provided in par. @), no person may import a bovine animal originating from a brucellosis class **B** or C state unless the department first issues a written permit under s. ATCP 11.03 authorizing that import shipment.

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

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

2. An animal originating from a certified brucellosis–free herd.

3. **A** steer or official spayed heifer.

(4) TUBERCULOSIS TEST. (a) *Requirement.* Except as provided in par. (b), no person may import a bovine animal into this state unless the animal tests negative on a pre–import tuberculosis test. Except as provided under par. (c), the pre–import tuberculosis test shall be conducted not more than 60 days before the animal enters this state.

(b) ***Exemptions.*** Paragraph (a) does not require a pre–import tuberculosis test for any of the following:

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

2. An animal imported directly to a federally approved livestock import market under appropriate documents required by the federal bureau.

3. Feeder cattle imported directly to an approved feedlot.

4. A calf under 6 months old.

5. An animal originating from an accredited tuberculosis–free state or nation, provided that Wisconsin animals may be shipped to that state or nation without a prior tuberculosis test, unless testing is required under s. ATCP 11.03 (1) (b).

6. An animal originating from an accredited tuberculosis–free herd if the animal is accompanied by a certificate of veterinary inspection that includes the tuberculosis–free herd certification number of the herd of origin and the date on which the herd of origin was last tested for tuberculosis.

(e) ***Exhibition animals; extended timeforpre–import test.*** An animal may be tested for tuberculosis up to 90 days before the animal enters this state if all the following apply:

1. The animal originates from an accredited tuberculosis–free state or nation, **or** an accredited tuberculosis–freeherd.

2. The animal is imported solely for exhibition at a fair or livestock exhibition.

3. The animal returns to its herd of origin after being exhibited at the fair or livestock exhibition.

(5) IMPORTS FROM TUBERCULOSIS NON–MODIFIED ACCREDITED STATES. (a) ***Pre–import requirements.*** No person may import to this state any bovine animal that originates from a tuberculosis non–modified accredited state unless all the following apply:

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

a. The identification number of the import permit required under subd. 2.

b. The whole herd tuberculosis test result required under subd. 3.

c. The individual test result required under subd. 4.

d. The official individual identification number of the imported animal.

2. The department issues an import permit under s. ATCP 11.03(2).

3. The animal originates from a herd that has tested negative on a whole herd tuberculosis test, conducted within 12 months prior to the import date, that included every animal 12 months of age or older in the herd. An imported veal calf need not originate from a tested herd if all the following apply:

a. The veal calf is less than 30 days old on the import date.

b. The veal calf is imported solely for feeding prior to slaughter.

c. The veal calf is confined to the premises at which it is first received in this state, until it is shipped to slaughter. The veal calf, when shipped to slaughter, shall be accompanied by a completed United States department of agriculture form VS1–27.

Note: The United States department of agriculture form VS1–27 is a form which permits the movement of restricted animals and must be obtained from a certified veterinarian.

4. The animal has tested negative on a tuberculosis test conducted within 60 days prior to the import date.

Note: U.S. department of agriculture rules for interstate shipment of animals may specify a different time period for tuberculosis testing prior to interstate shipment. An importer must comply with USDA rules; however, compliance with USDA rules does not excuse a violation of subd. 4.

(b) ***Post–import testing.*** The owner of a bovine animal imported to this state from a non–modified accredited state shall have the animal tested for tuberculosis not less than 60 days nor more than 90 days after it is imported. This testing requirement does not apply to feeder cattle imported for feeding prior to slaughter if all the following apply:

1. The feeder cattle are confined to the premises at which they are first received in this state, until they are shipped to slaughter.

2. The feeder cattle, when shipped to slaughter, are accompanied by a completed United States department of agriculture form VS1–27.

Note: The United States department of agriculture form VS1–27 is a form which permits the movement of restricted animals and must be obtained from a certified veterinarian.

(c) ***Post–import confinement.*** Bovine animals imported from a non–modified accredited state may not be removed from the premises at which they are first received in this state unless one of the following applies:

1. The animals test negative for tuberculosis under par. (b).

2. The animals are shipped directly from the premises to a slaughtering establishment for slaughter.

3. The animals were imported directly to a show or exhibition in this state, and are returned directly from that show or exhibition to their state of origin.

(d) *Exemption.* This subsection does not apply to animals that are imported directly to a slaughtering establishment for slaughter.

History: Cr. Register, December. 1990, No. 420, eff. 1–1–91; am. (2) (b) 1., (3) (b) 2 and 6, (4) (d) 4. and 5. and (6) (d), cr. (2) (b) 7., (4) (d) 6., (6) (b) 7. and (e), Register, September, 1993, No. 453, eff. 10–1–93; am. (3) (b) 6., Register, March, 1995, No. 471, eff. 4–1–95; am. (1) (a) 1., (c) 2. and 3., (3) (b) 2. and 5. to 9., (c) 1., (5) (b) 5. to 7., (c) 1., r. (1) (a) 2., (2), (6) (b) 5., Register, February, 1996, No. 482, eff. 3–1–96 r. and recr. Register, November, 2000, No. 539, eff. 12–1-00; correction in (1) (a) 3. made under s. 13.93(2m) (b) 7., Stats., Register, November, 2000, No. 539; am. (1) (a) 3., cr. (5), Register, April, 2001, No. 544, eff. 5–1-01; **correction in (1) (a) 3. made under s. 13.93 (2m) (b) 7., Stats., Register, May, 2001, No. 545.**

ATCP 11.12 Reactor and suspect animals; import restricted. (1) BRUCELLOSIS REACTORS; IMPORT RESTRICTED. No person may import a brucellosis reactor into this state, except that a reactor originating from an adjacent state may be imported directly to a slaughtering establishment for slaughter if all the following apply:

(a) The department first issues a written import permit under s. ATCP 11.03 that identifies the animal as a brucellosis reactor imported for slaughter.

(b) Brucellosis reactors from this state may be imported to that adjacent state for slaughter under equivalent terms and conditions.

(2) TUBERCULOSIS SUSPECTS AND REACTORS; IMPORT RESTRICTED. (a) ***Tuberculosis reactors.*** No person may import a tuberculosis reactor into this state, except that a tuberculosis reactor may be imported directly to a slaughtering establishment for slaughter if the department first issues a written import permit under s. ATCP 11.03 that identifies the animal as a tuberculosis reactor imported for slaughter.

(c) ***Tuberculosis suspects.*** No person may import a tuberculosis suspect into this state until the suspect status is resolved, except that a tuberculosis suspect may be imported directly to a slaughtering establishment for slaughter if the department first issues a written import permit under s. ATCP 11.03 that identifies the animal as a tuberculosis suspect imported for slaughter.

(3) PARATUBERCULOSIS REACTORS; IMPORT. No person may import to this state a bovine animal determined to be a paratuberculosis reactor under s. ATCP 10.21 (9) unless an accredited veterinarian first identifies that reactor with a permanent paratuberculosis reactor identification approved by the department.

History: Cr. Register. December, 1990, No. 420, eff. 1–1–91; r. and recr. Register, November. 2000, No 539, eff. 12–1–00.

ATCP 11.13 Approved veal lot. History: Cr. Register. December, 1990, No. 420, eff. 1–1–91; am (1), Register, March, 1995, No. 471, eff. 4–1–95; r. Register, November, 2000, No. 539, eff. 12–1–00.

ATCP 11.14 Approved feedlot. (1) PERMIT. The department may issue an annual permit designating a feedlot as an "approved feedlot." A permit expires on June 30 annually. Under s. 93.06 (7), Stats., the department may deny, suspend or revoke a permit for cause, including violations of this chapter or other animal health laws.

Note: Not every feedlot is required to hold an approved feedlot permit under this section. However, feeder cattle imported directly to an approved feedlot are exempt from certain import restrictions and pre–import testing requirements, as provided in s. ATCP 11.11.

(2) PERMIT APPLICATION. To obtain an approved feedlot permit, a feedlot operator shall submit an application on a form provided by the department. The application shall identify the location of the feedlot by county, township and section, and shall include other relevant information required by the department The application shall be accompanied by a fee of $75. The department shall grant or deny a permit application within 30 days after a complete application is filed with the department.

(3) REQUIREMENTS. An approved feedlot shall meet all of the following requirements.

(a) Feeder cattle shall be enclosed so that they cannot commingle with any other cattle on the premises.

(b) Separate feeding and watering facilities shall be provided for feeder cattle.

(c) The feedlot shall be devoid of vegetation.

(d) Every animal in the feedlot, except a steer or official spayed heifer, shall have an official individual identification. If an animal is received without an official individual identification, the feedlot operator shall immediately identify the animal with official individual identification.

(4) REMOVAL OF FEEDER CATTLE. Except as specifically authorized by the department in writing, no feeder cattle or cattle commingled with feeder cattle may be removed from an approved feedlot except to a licensed slaughtering establishment for slaughter.

(5) RECORDS. The operator of an approved feedlot shall keep complete and accurate records of all feeder cattle entering and leaving the approved feedlot. Records shall be held for at least 5 years after the feeder cattle leave the approved feedlot, and shall be made available for inspection and copying by the department upon request. Records shall include:

(a) A record of each feeder cattle shipment received, including the date of receipt, the number of feeder cattle included in the shipment, the official individual identification of each animal included in the shipment, the name and address of the shipper, and the address from which the shipment originated. Official individual identification need not be recorded for steers and official spayed heifers.

(b) A record of each feeder cattle shipment leaving the approved feedlot, including the date of shipment, the number of feeder cattle included in the shipment, the official individual identification of each animal included in the shipment, and the name and address of the person receiving the shipment. Official individual identification need not be recorded for steers and official spayed heifers.

(c) A record of any feeder cattle which died at the approved feedlot.

History: Cr. Register, December, 1990, No. 420, eff. 1–1–91; cr. (3) (d), am. (5) (a) and (b), Register, September, 1993, No. 453, eff. 10–1–93; am. (1), (2), Register, March, 1995, No. 471, eff. 4–1–95; am. (2), Register, May, 1999, No. 521, eff. 6–1–99; am. (1). (3) (c), (d), (4). (5) (intro.) and (b), Register, November, 2000, No. 539. eff. 12–1–00.

ATCP 11.15 Calves to be moved from livestock market within 24 hours after sale. A person purchasing calves less than 12 weeks old at a livestock market shall remove the calves from the market within 24 hours after purchase. The market operator shall provide the calves with adequate food, water and shelter while the calves are held at the market.

History: Cr. Register. December, 1990, No. 420, eff. 1–1–91.

ATCP 11.16 Intrastate movement of bovine animals; brucellosis test.
History: Cr. Register, December. 1990, No. 420, eff. 1–1–91; am. (1), (2) (g), Register, March, 1995, No. 471. eff. 4–1–95; cr. (2) (L), Register, February, 1996, No. 482, eff. 3–1–96; r. Register, November. 2000, No. 539, eff. 12–1–00.

ATCP 11.17 Intrastate movement of bovine animals; paratuberculosis reactors. Intrastate movement of bovine animals; paratuberculosis reactors. No person may sell or move, from a location in this state, a bovine animal determined to be a paratuberculosis reactor under s. ATCP 10.21 (9) unless a Wisconsin certified veterinarian first identifies that reactor with a permanent paratuberculosis reactor identification approved by the department.

History: Cr. Register, September, 1999, No. 525, eff. 7–1-00; am. Register, November, 2000, No. 539, eff. 12–1–00.

Subchapter IV — Swine

ATCP 11.20 Swine; import. (1) CERTIFICATE OF VETERINARY INSPECTION. (a) ***Requirement.*** Except as provided in par. (b), no person may import a swine into this state unless the swine is accompanied by a valid certificate of veterinary inspection. The certificate shall comply with s. ATCP 11.02 and shall include all the following information:

1. The official individual identification of the swine.

Note: A person may use, as the "official individual identification" of feeder swine, the premises identification of the premises where the feeder swine originated. See s. ATCP 11.01 (54) (i).

2. The import permit number if an import permit is required under sub. (2).

3. If sub. (5) (a) applies, a statement certifying that no pseudorabies vaccine has been used on the swine.

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

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

6. Any other information required under this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) SWINE MUST ORIGINATE FROM A PSEUDORABIES QUALIFIED NEGATIVE HERD. (a) ***Requirement.*** Except as provided in par. (b), no person may import a swine into this state unless the swine originates from a pseudorabies qualified negative herd or, if the swine originates from an off-site facility, a pseudorabies qualified negative grow-out herd that qualifies on the basis of monthly testing.

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

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

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

3. Swine originating from a pseudorabies stage IV or V state.

4. Swine originating from a pseudorabies stage III state that are imported for feeding for slaughter.

5. Breeder swine or show pigs that originate from a pseudorabies stage III state and have tested negative for pseudorabies on a test conducted not more than 30 days before the swine enters this state.

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

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

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

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

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

3. Swine originating from a brucellosis stage III [free] state, unless testing is required under s. ATCP 11.03 (1) (b).

4. Swine originating from a validated brucellosis-free herd.

5. Feeder swine.

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

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

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

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

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

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

1. Isolate the imported swine from all other swine on the premises until the imported swine test negative for pseudorabies.

2. Have all the imported swine tested for pseudorabies not less than 30 days nor more than 45 days after the swine enter this state.

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

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

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

3. Swine originating from a pseudorabies stage IV or **V** state, unless testing is required under s. ATCP 11.03 (1) (b).

4. An import shipment of swine that includes no breeder swine or show pigs, if the person receiving that shipment tests a representative statistical sample of these swine for pseudorabies. The person shall test the statistical sample not less than 30 days nor more than 45 days after the swine enter this state. The person shall isolate all of the imported swine until the sample swine test negative for pseudorabies.

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

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

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

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

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

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

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

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

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

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

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

History: Cr. Register, December, 1990, No. 420, eff. 1–1–91; cr. (1) (b) (3), (2) (b) 6, (3) (b) 4. and 5., (4) (b) 3., (5) (b) 4. and (Y), Register, September, 1993, No. 453, eff. 10–1–93; am. (2) (b) 3. and 4., cr. (5) (b) 5., Register, July, 1995, No. 475, eff. 8–1–95; emerg. r. and recr. eff. 5–25–00; r. and recr. Register, November, 2000, No. 539, eff. 12–1–00.

ATCP 11.21 Part 76 market. History: Cr. Register, December, 1990, No. 420, eff. I–1–91; r. Register, November, 2000, No. 539, eff. 12–1–00.

ATCP 11.22 Slaughter swine identification. **(1)** IDENTIFICATION REQUIRED. Except as provided in sub. (3), a livestock trucker, livestock market operator or slaughtering establishment operator shall do all the following whenever that person receives a sow, boar or stag for slaughter, or for sale or shipment to slaughter:

(a) Identify the swine with an official swine backtag or other approved slaughter identification, unless the swine already bears an official slaughter identification.

(b) Make a record of the slaughter identification.

(2) RECORDKEEPING. (a) A record under sub. (1) (b) shall include all the following:

1. The swine's slaughter identification number.

2. The date on which the swine was received.

3. The date on which the slaughter identification was applied. If the swine already bore a slaughter identification when received, the record shall note that fact.

4. The name and address of the person from whom the swine was received.

5. The class of swine received.

(b) **A** person required to keep records under sub. (1) (b) shall keep those records for at least 5 years, and shall make them available to the department for inspection and copying upon request.

(3) LOW–VOLUME SLAUGHTER ESTABLISHMENTS; EXEMPTION. The department may, by written notice, exempt a slaughtering establishment from sub. (1) if all the following apply:

(a) The slaughtering establishment receives all of its swine directly from producers.

(b) The slaughtering establishment can identify the herd of origin of every swine slaughtered.

(c) The slaughtering establishment slaughters not more than 100 swine per day, and operates no more than 5 days per week.

History: Cr. Register, December, 1990, No. 420, eff. 1–1–91; am. (1), (2) (a) 1., Register, February, 1996, No. 482, eff. 3–1–96; r. and recr. Register, November, 2000. No. 539, eff. 12–1–00.

ATCP 11.23 Swine; intrastate movement. **(1)** PSEUDORABIES TEST REQUIRED. Except as provided in sub. (2), no person may move a swine within this state unless all the following apply:

(a) The swine first tests negative on a pseudorabies test conducted not more than 30 days prior to the intrastate movement.

(b) A copy of the negative test report under par. (a) accompanies the swine. The operator of a swine growth performance test station shall keep copies of pseudorabies test reports for all swine moved into or out of the test station. The test station operator shall retain the copies for a period of 5 years, and make them available to the department for inspection and copying upon request.

(2) EXEMPTIONS. Subsection **(1)** does not apply if any of the following applies:

(a) This state qualifies as a pseudorabies stage IV or V state.

(b) The animal originates from a qualified pseudorabies negative herd or a qualified pseudorabies negative grow–out herd.

(c) The animal is moved directly to a slaughtering establishment for slaughter.

(d) The animal is moved to the premises of a livestock dealer or livestock market if the dealer or market operator complies with the testing requirement under par. (a) before the animal is moved from those premises.

(e) The animal is moved between 2 premises, both of which are owned or operated by the owner of the animal.

History: Cr. Register, December, 1990, No. 420, eff. 1–1–91; am. (1) (a) and (2) (a) (intro.), Register, September, 1993, No. 453, eff. 10–1–93; emerg. r. (1). am. (2) (a) 1.. and (b) 1., eff. 2–1–95; r. (1), am. (2) (a) 1. and (b) 1.. Register, July, 1995, No. 475. eff. 8–1–95; r. and recr. Register, November. 2000, No. 539, eff. 12–1–00.

Subchapter V — Equine Animals

ATCP 11.30 Equine animals; import. (1) CERTIFICATE OF VETERINARY INSPECTION. (a) ***Requirement.*** Except as provided in pars. (b) to (e), no person may import an equine animal into this state unless the animal is accompanied by a valid certificate of veterinary inspection. The certificate shall comply with s. ATCP 11.02 and shall include all the following:

1. The official individual identification of the equine animal.

2. A report of a negative test for equine infectious anemia if required by sub. **(2).**

(b) ***Animal imported for slaughter.*** Paragraph (a) does not apply to an equine animal imported directly to a slaughtering establishment for slaughter.

(c) ***Animal imported to livestock market.*** Paragraph (a) does not apply to an equine animal imported directly to a livestock market licensed under s. ATCP **12.02** if any of the following apply:

1. The animal is shipped directly to a slaughtering establishment, for slaughter, within 10 days after it arrives at the livestock market and before it is commingled with any equine animal that is not shipped to slaughter.

2. A Wisconsin certified veterinarian issues a certificate of veterinary inspection for the equine animal before the animal leaves the livestock market or is commingled with any other equine animal at the market. The Certificate shall include a report of a negative test for equine infectious anemia if a test is required under sub. **(2).**

(d) ***Animal imported for, or returned from, veterinary treatment.*** Paragraph (a) does not apply to any of the following:

1. An equine animal that is imported directly to a veterinary facility for treatment, provided that the animal is returned to its place of origin immediately after treatment.

2. ***An*** equine animal returning to its place of origin in this state immediately after treatment in a veterinary facility outside this state.

(e) ***Animal imported for trail ride, horse show or exhibition.*** Paragraph (a) does not apply to an equine animal imported for a trail ride, horse show or exhibition if all the following apply:

1. Ownership does not change while the animal is in this state.

2. The animal remains in this state for no more than 7 days.

3. The animal is accompanied by a report of a negative equine infectious anemia test conducted in compliance with sub. (2).

4. The animal originates from a state that allows Wisconsin equine animals to attend trail rides, horse shows or exhibitions in that state under similar conditions.

(2) EQUINE INFECTIOUS ANEMIA; TEST. (a) ***Requirement.*** Except as provided in pars. (b) to (e), no person may import any equine animal into this state unless one of the following applies:

1. The animal tested negative on an equine infectious anemia test conducted during the calendar year in which the animal is imported into this state.

2. The animal is imported on or before January 31 of any calendar year and the animal tested negative for equine infectious anemia during the preceding calendar year.

(b) ***Nursing foal.*** Paragraph (a) does not apply to a nursing foal accompanying its dam.

(c) ***Animal imported to livestock market.*** Paragraph (a) does not apply to an equine animal imported directly to a livestock market licensed under **s.** ATCP 12.02, provided that one of the following applies:

1. The equine animal is shipped directly to a slaughtering establishment, for slaughter, within 10 days after it arrives at the livestock market and before it is commingled with any other animal that is not shipped to slaughter.

2. The livestock market operator has the animal tested for equine infectious anemia within 10 days after it arrives at the market, and obtains the test results before the animal leaves the livestock market and before it is commingled with any other equine animal at the livestock market.

(d) ***Animal imported for, or returned from, veterinary treatment.*** Paragraph (a) does not apply to any of the following:

1. An equine animal that is imported directly to a veterinary facility for treatment, provided that the animal is returned to its place of origin immediately after treatment.

2. An equine animal returning to its place of origin in this state immediately after treatment in a veterinary facility outside this state.

(e) ***Animal imported under written permit.*** The department may issue a written permit under **s.** ATCP 11.03, authorizing the permit holder to import an equine animal before that person obtains the results of an equine infectious anemia test under par. (a). The department shall include the following conditions in the import permit:

1. An equine infectious anemia test sample shall be collected before the animal is imported.

2. The animal shall be confined to the premises at which the animal is first received in this state until the test results are known. The animal may not be commingled with any other equine animals on the premises during that confinement period.

(3) EQUINE INFECTIOUS ANEMIA; TEST POSITIVE ANIMALS. (a) No person may import an equine animal that has tested positive for equine infectious anemia.

(b) If an equine animal tests positive for equine infectious anemia under sub. **(2)** (c) or (e) after it enters this state, the owner or custodian of the animal shall do one of the following:

1. Euthanize the animal on the premises where it is located.

2. Ship the animal directly to a slaughtering establishment for slaughter, with department approval under **s.** ATCP 10.41 **(9) (b).**

3. Return the animal to its state of origin, with department approval under s. ATCP 10.41 **(9) (b).**

History: Cr. Register, December, 1990, No. 420, eff. 1–1–91; **am.** (1) (a) (intro), 2. and (2) (a), Register, January, 1994, No. 457, eff. 2–1–94; am. (1) (a) 2., r. and recr. (2) (a), Register, July, 1995. No. 475, eff. 8–1–95; r. and recr. Register, November. 2000, No. 539, eff. 12–1–00.

ATCP 11.31 Equine markets. History: Cr. Register, December, 1990, No. 420, eff. 1–1–91; r. Register, November, 2000, No. 539, eff. 12–1–00.

ATCP 11.32 Equine quarantine station. (1) STALLIONS OR MARES IMPORTED FROM FOREIGN COUNTRIES; RECEIPT AT APPROVED EQUINE QUARANTINE STATION. (a) No person may receive in this state any stallion or mare which is imported from a foreign country in which contagious equine metritis has been reported unless both of the following requirements are met:

1. The stallion or mare **is** imported directly to an approved equine quarantine station in a sealed vehicle. The vehicle shall be

sealed at a federally approved quarantine station by a federally approved agent. The vehicle seal shall not be removed except by an authorized employee or agent of the department at the approved equine quarantine station.

2. The department authorizes the import shipment in advance, and the written authorization accompanies the import shipment.

(b) All equine animals, including test mares, which are received at an approved equine quarantine station shall be identified with a permanent individual identification of a type approved by the department.

(2) QUARANTINE; RELEASE An imported stallion or mare received at an approved equine quarantine station under sub. (1) is automatically quarantined until the quarantine is released by the department in writing. A quarantined equine animal may not be removed from the quarantine station premises, or allowed in contact with other equine animals on the premises. Contact between a quarantined equine animal and a test mare is permitted, but only pursuant to a written agreement with the department under sub. (5). A test mare which has been in contact with an imported quarantined stallion is also quarantined until the quarantine is released by the department in writing.

(3) APPROVED EQUINE QUARANTINE STATION; PERMIT. No person may operate an approved equine quarantine station without an annual permit from the department. A permit expires on June 30 of each year. Application for a permit shall be made on a form prescribed by the department. The department shall grant or deny a permit application within 90 days after it receives a complete application. Every application shall include:

(a) The name and mailing address of the applicant, and any trade or business name to be used by the applicant.

(b) A statement indicating whether the applicant is an individual, partnership, corporation, cooperative, or other business association or entity.

(c) The location of the equine quarantine station, specified by county, township, section and fire number.

(d) The name and address of the Wisconsin certified veterinarian who will perform all identification, handling, testing and treatment of equine animals at the approved equine quarantine station under procedures or protocols established under sub. (5).

(e) Other relevant information required by the department.

(4) CONSTRUCTION REQUIREMENTS; SANITARY OPERATION. Approved equine quarantine stations shall be constructed and maintained to prevent contact between quarantined equine animals and any other equine animals on the premises, including test mares. An approved equine quarantine station shall be maintained in a clean and sanitary manner.

(5) TESTING AND TREATMENT PROCEDURES; WRITTEN AGREEMENT Before the department issues any permit under sub. (3) for an approved equine quarantine station, the station operator and the Wisconsin certified veterinarian designated under sub. **(3)** (d) shall enter into a written agreement with the department. The agreement shall establish the procedures and protocols that will be used to identify, handle, test and treat equine animals quarantined at the station. The approved equine quarantine station shall be operated in compliance with the agreed procedures and protocols. The designated veterinarian shall perform the procedures and protocols, except as otherwise authorized by the department.

(6) RECORDKEEPING (a) The operator of an approved equine quarantine station shall keep complete and accurate records, including:

1. The identification, date of arrival, and date of removal of each imported equine animal received at the quarantine station.

2. The name and address of the owner of each equine animal received at the quarantine station, correlated with a specific identification of the equine animal.

3. A complete record of the procedures and protocols followed in conjunction with the identification, handling, testing and treatment of each imported equine animal.

(b) Records under par. (a) shall be retained for at least 5 years, and shall be made available for inspection and copying by the department upon request.

History: Cr. Register, December, **1990,** No. **420,** eff. **1–1–91; am.** (3)(c), (d), (5) and (6) (b). Register, November, **2000,** No. **539,** eff. **12–1–00.**

ATCP 11.33 Movement sale or transfer of animals infected with equine infectious anemia. No person may knowingly move or transfer custody of an animal that has tested positive for equine infectious anemia, or that is subject to a quarantine under s. ATCP 10.41, without first obtaining a permit from the department. The department shall grant or deny a permit application within 5 days after the department receives a complete application in writing.

History: Cr. Register, January, **1994,** No. **457,** eff. **2–1–94.**

ATCP 11.34 Selling equine animals. (1) TEST REQUIRED. Except as provided in sub. (2), no person may sell or transfer ownership of any equine animal in this state unless one of the following applies:

(a) The animal has tested negative for equine infectious anemia during the current calendar year and the official test report accompanies the animal.

(b) The sale or transfer of ownership occurs on or before January 31, the animal has tested negative for equine infectious anemia during the preceding calendar year and the official test report accompanies the animal.

(2) EXEMPTIONS. Subsection (1) does not apply to any of the following:

(a) A nursing foal accompanying its dam.

(b) An equine animal sold directly to a slaughtering establishment for slaughter.

(c) An equine animal consigned to a livestock market for sale directly to slaughter. If the animal is not sold to slaughter within 10 days after it is received at the market, it shall be tested immediately.

(d) An equine animal sold to a livestock market operator, provided that the livestock market operator shall either ship the animal to slaughter or have the animal tested within 10 days after purchase.

History: Cr. Register, January, 1994, No. **457, eff. 2–1–94;** r. and recr. (1), Register, July, **1995,** No. **475,** eff. **8–1–95; r. and recr.** Register, November, **2000,** No. **539,** eff. **12–1-00.**

Subchapter VI — Poultry

ATCP 11.40 Poultry imports. (1) IMPORT REQUIREMENTS. (a) No poultry or poultry eggs may be imported into this state unless they originate from flocks which are classified as "U.S. pullorum–typhoid clean" as provided in the national poultry improvement plan.

(b) Turkey poults less than *2* weeks of age may not be imported into this state unless they originate directly from hatcheries which hatch no eggs other than turkey eggs. Started poultry other than turkey poults may be imported if they originate from hatcheries which hatch no turkey eggs. Hatcheries shall comply with sanitation practices prescribed by the state of origin.

(c) All poultry, started poultry and poultry eggs for hatching imported into this state shall be accompanied by a certificate signed by the chief livestock official of the state of origin certifying that the poultry, started poultry or poultry eggs originate from flocks or hatcheries which comply with this section and s. ATCP 10.50, or an equivalent mandatory or voluntary program of the state of origin. Under a reciprocal agreement with a state having an equivalent voluntary or mandatory poultry disease control pro-

gram, the department may approve alternative methods of certifying poultry and poultry eggs imported into this state.

(d) This subsection does not apply to poultry imported into this state which are consigned directly to a slaughtering establishment for immediate slaughter.

(2) EXHIBITION. No poultry except waterfowl may be exhibited at a fair or public exhibition unless the poultry comply with requirements under s. ATCP 11.62 (4).

History: Cr. Register, December, 1990, No. 420, eff. 1–1–91.

Subchapter VII — Other Animals

ATCP 11.50 Sheep imports. No person may import a sheep into this state for any purpose except immediate slaughter unless the sheep is accompanied by a valid certificate of veterinary inspection. The certificate shall comply with s. ATCP 11.02.

History: Cr. Register, December, 1990, No. 420, eff. 1–1–91; am. Register, November, 2000, No. 539, eff. 12–1–00.

ATCP 11.51 Goat imports. (1) No person may import a goat into this state unless the goat is accompanied by a valid certificate of veterinary inspection that complies with s. ATCP 11.02.

(2) IMPORTS FROM TUBERCULOSIS NON–MODIFIED ACCREDITED STATES. (a) ***Pre–import requirements.*** No person may import to this state any goat that originates from a tuberculosis non–modified accredited state unless all the following apply:

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

a. The identification number of the import permit required under subd. 2.

b. The whole herd tuberculosis test result required under subd. 3.

c. The individual test result required under subd. 4.

2. The department issues an import permit under s. ATCP 11.03(2).

3. The goat originates from a herd that has tested negative on a whole herd tuberculosis test conducted within 12 months prior to the import date. The whole herd test shall include every animal 12 months of age or older in the herd.

4. The goat has tested negative on a tuberculosis test conducted within 60 days prior to the import date.

Note: U.S. department of agriculture rules for interstate shipment of animals may specify a different time period for tuberculosis testing prior to interstate shipment. *An* importer must comply with USDA rules; however, compliance with USDA rules does not excuse a violation of subd. 4.

(b) ***Post–import testing.*** The owner of a goat imported from a tuberculosis non–modified accredited state shall have the goat tested for tuberculosis not less than 60 days nor more than 90 days after it is imported.

(c) *Post–import* ***confinement.*** Goats imported from a non–modified accredited state may not be removed from the premises at which they are first received in this state unless one of the following applies:

1. The goats test negative for tuberculosis under par. (b).

2. The goats are shipped directly from the premises to a slaughtering establishment for slaughter.

3. The goats were imported directly to a show or exhibition in this state, and are returned directly from that show or exhibition to their state of origin.

(d) ***Exemption.*** This subsection does not apply to goats that are imported directly to a slaughtering establishment for slaughter.

History: Cr. Register, December, 1990, No. 420, eff. 1–1–91; **am.** Register, November, 2000, No. 539, eff. 12–1–00; renum. ATCP 11.51 to be ATCP **11.51** (1), cr. (2), Register, April, 2001, No. 544, eff. 5–1–01.

ATCP 11.52 Dogs and domestic cats; imports. No person may import any dog or domestic cat into this state unless it is accompanied by a valid certificate of veterinary inspection. The certificate shall comply with s. ATCP 11.02, and shall indicate whether the dog or cat has been vaccinated for rabies by a licensed veterinarian, the date of the last vaccination, and the date on which the dog or cat is due for revaccination. If the dog ***or*** cat has not been vaccinated by a licensed veterinarian, or if the dog or cat is due for revaccination when it enters this state, the owner shall have the dog or cat vaccinated by a licensed veterinarian within 30 days after the dog or cat enters this state, or within 30 days after the dog or cat reaches 4 months of age, whichever occurs later. Vaccinations shall comply with age and time standards and label instructions approved by the federal bureau for the type of vaccine used.

History: Cr. Register, December, 1990, No. 420, eff. 1–1–91; am. Register, September, 1993, No. 453, eff. 10–1–93; am. Register, November. 2000, No. 539, eff. 12–1–00.

ATCP 11.53 Circus, rodeo, racing and menagerie animals; importation. (1) PERMIT REQUIRED. Except as provided in sub. (3), no person may import any circus, rodeo, racing or menagerie animal into this state without a written permit from the department under s. ATCP 11.03.

(2) PERMIT CONDITIONS. A permit under sub. (1) is subject to the following conditions:

(a) Every animal shall be accompanied by a valid certificate of veterinary inspection. The certificate shall comply with s. ATCP 11.02, and shall contain the number of the written import permit issued by the department under sub. (1).

(b) Every brucellosis test eligible bovine animal shall have a negative brucellosis test conducted within 30 days prior to entry.

(c) Every equine animal shall be tested and found negative for equine infectious anemia within the current calendar year, except if the equine animal is imported before January 31, the equine animal shall have tested negative for equine infectious anemia within the preceding calendar year.

(cm) Every cervid shall test negative on a tuberculosis test conducted not more than 90 days before a permit application is filed with the department.

(d) All animals shall be isolated from noncircus, nonrodeo, and nonmenagerie animals, and from native wildlife in the state. Facilities and vehicles used for the animals shall be cleaned and disinfected before being used for other animals.

(3) Notwithstanding sub. (1), no import permit is required for greyhounds imported into this state for racing purposes, provided that the importer complies with s. ATCP 11.52.

History: Cr. Register, December, 1990, No. 420, eff. 1–1–91; emerg. cr. (2) (cm), eff. 3–18–91; cr. (2) (cm), Register, November, 1991, No. 431, eff. 12–1–91; **am.** (1), cr. (3), Register, September, 1993, No. 453, eff. 10–1–93; **am.** (2) (cm), Register. February, 1996, No. 482, eff. 3–1–96; r. and recc (1), am. (2) (a) to (c), r. (2) (e), Register, November, 2000, No. 539, eff. 12–1–00.

ATCP 11.54 Exotic ruminants; import. (1) CERTIFICATE OF VETERINARY INSPECTION. No person may import an exotic ruminant into this state unless the animal is accompanied by a valid certificate of veterinary inspection. The certificate shall comply with s. ATCP 11.02, and shall include the following information:

(a) The permit number of the permit obtained under sub. (2).

(b) A report of a negative tuberculosis test under sub. (3).

(c) A report of a negative brucellosis test under sub. **(4).**

(2) IMPORT PERMIT. No person may import an exotic ruminant into this state without a written import permit under s. ATCP 11.03.

(3) TUBERCULOSIS TEST REQUIRED. (a) Except as provided under par. (b), no person may import an exotic ruminant into this state unless the animal tests negative on a tuberculosis test that is approved by the department, and is conducted not more than 60 days prior to the import date. The person who imports an exotic ruminant shall contact the department and obtain a list of specific tests approved for the species to be imported.

Note: A person may obtain a list of approved tests for a specific species by contacting the department at the following address:
Wisconsin Department of Agriculture, Trade and Consumer Protection
Division of Animal Health
P.O. Box 8911
Madison, WI 53708-8911
Phone: (608)224-1872

(b) Paragraph (a) does not apply to an exotic ruminant imported directly to an institution accredited by the American association of zoological parks and aquariums. An animal imported to an accredited institution under this paragraph may not be moved to any place which is not an accredited institution unless the animal tests negative on a tuberculosis test that is approved by the department, and conducted not more than 60 days before the animal is moved.

(c) The veterinarian performing a tuberculosis test under par. (a) or (b) shall be one of the following:

1. An accredited veterinarian, except that a test performed in this state shall be performed by a Wisconsin certified veterinarian.

2. An employee of the department or the federal bureau.

(4) BRUCELLOSIS TEST REQUIRED. (a) Except as provided under par. (b) no person may import an exotic ruminant into this state unless the animal first tests negative on a brucellosis test conducted not more than 30 days prior to the import date.

(b) Paragraph (a) does not apply to an exotic ruminant imported directly to an institution accredited by the american association of zoological parks and aquariums. An animal imported to an accredited institution under this paragraph may not be moved to any place which is not an accredited institution unless the animal tests negative on a brucellosis test conducted not more than 30 days before the animal is moved.

History: Cr. Register, December, 1990, No. 420, eff. 1-1-91; am. (1), Register, March, 1995, No. 471, eff. 4-1-95; renum. (1) to be (1) (intro.) and am., cr. (1) (a) to (c), (3), (4), am. (2), Register, February, 1996, No. 482, eff. 3-1-96; am. (1) (intro.), (2) and (4), r. and recr. (3), Register, November, 2000, No. 539, eff. 12-1-00.

ATCP 11.545 Farm-raised deer and other cervids; identification requirements. (1) OFFICIAL INDIVIDUAL IDENTIFICATION. (a) ***Form of identification.*** Official individual identification of a cervid shall consist of one of the following:

1. An official eartag, conforming to the national uniform eartagging system, which is inserted in the cervid's right ear.

2. Another form of official individual identification which the department approves in writing.

Note: See definition of "official individual identification" under s. ATCP 11.01 (54).

(b) ***Veterinarian required to identify cervids.*** A veterinarian who does any of the following to any cervid shall identify that cervid with an official eartag or other official individual identification unless the cervid already bears an official individual identification:

1. Vaccinates, identifies or tests a cervid in order to complete an interstate health certificate, certificate of veterinary inspection, or other official document or certification related to that cervid.

2. Tests a cervid for any disease listed under s. ATCP 10.03.

(c) ***Keeper of farm-raised deer required to identify farm-raised deer.*** A person who keeps farm-raised deer in this state shall identify, with an official eartag or other official individual identification, each of the following farm-raised deer unless that farm-raised deer already bears an official individual identification:

1. Each farm-raised deer which that keeper of farm-raised deer receives from another person.

2. Each farm-raised deer which that keeper of farm-raised deer ships or delivers to another person.

(d) ***Livestock dealer or livestock market operator required to identify farm-raised deer.*** 1. Whenever a livestock dealer or livestock market operator receives any farm-raised deer, the livestock dealer or livestock market operator shall immediately identify that farm-raised deer with an official eartag or other official individual identification unless the deer already bears an official individual identification or is backtagged for slaughter under sub. (2).

2. No livestock dealer or livestock market operator may deliver a farm-raised deer to the custody of any other person unless that deer bears an official individual identification, or unless that deer is backtaggcd under sub. (2) and shipped directly to slaughter.

(2) FARM-RAISED DEER; SLAUGHTER IDENTIFICATION. (a) ***Identification required.*** Whenever a livestock trucker, livestock dealer, livestock market operator or slaughtering establishment operator receives any farm-raised deer for slaughter, or for sale or shipment to slaughter, that recipient shall immediately identify that farm-raised deer with an official backtag or other approved slaughter identification unless the farm-raised deer already bears an official slaughter identification.

(b) ***Record of receipt.*** Whenever any person under par. (a) receives a farm-raised deer for slaughter, or for sale or shipment to slaughter, that recipient shall immediately record the following information related to that deer:

1. The number of the official slaughter identification under par. (a) which that recipient applied to that deer at the time of receipt, or which that deer bore at the time of receipt.

2. The date on which that recipient received that deer.

3. The name and address of the person from whom that recipient received that deer.

(c) ***Records retained for at least 5 years; inspection and copying.*** A person required to keep records under par. (b) shall do all of the following:

1. Retain those records for at least 5 years after the records are made.

2. Make those records available to the department, upon request, for inspection and copying.

(3) TUBERCULOSIS REACTOR. Whenever the department classifies a cervid as a tuberculosis reactor, the owner of the cervid shall take the actions required under s. ATCP 10.66 (7).

History: Emerg. cr., 11.545, eff. 6-3-96; cr. Register, December, 1996, No. 492, eff. 1-1-57; am (2) (a), (b) 1. and (c), r. and recr. (3), Register, November, 2000, No. 539, eff. 12-1-00.

ATCP 11.55 Cervids import requirements. (1) CERTIFICATE OF VETERINARY INSPECTION REQUIRED. No person may import a cervid into this state unless the cervid is accompanied by a valid certificate of veterinary inspection. The certificate shall comply with s. ATCP 11.02 and shall include the following information:

(a) A report of negative tuberculosis tests under sub. (2).

(b) The permit number of the import permit under sub. (4).

(c) A report of a negative pre-import brucellosis test conducted not more than 30 days before the cervid enters this state.

(2) TUBERCULOSIS TESTS (a) ***Requirement.*** Except as provided under par. (b), no person may import a cervid into this state unless all of the following conditions arc met:

1. The cervid tests negative on 2 pre-import tuberculosis tests conducted not less than 90 days apart. The second test shall be conducted not more than 90 days prior to the import date. The cervid shall be tested using the single cervical tuberculin test unless the department authorizes the use of a different tuberculosis test.

2. The cervid is isolated from all other animals beginning no later than the date of the first tuberculosis test under subd. 1. The isolated cervid shall be separated from all other animals by at least 10 feet. The isolated cervid may not share common feeders, water utensils or handling facilities with other animals during the isolation period.

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

1. A cervid imported directly to a licensed slaughter establishment for slaughter.

2. **A** cervid imported as a circus, rodeo, racing or menagerie animal in compliance with s. **ATCP** 11.53.

3. **A** ccrvid imported directly from an accredited tuberculosis–free herd, provided that the cervid is accompanied by a certificate of veterinary inspection that includes the source herd number and the date on which the source herd was last tested for tuberculosis.

4. **A** cervid originating from a tuberculosis qualified herd, provided that the cervid is accompanied by a certificate of veterinary inspection that includes the source herd number, the date on which the source herd was last tested for tuberculosis, and a certification that the imported cervid tested negative on a tuberculosis test under par. (a) 1. not more than 90 days before the cervid was imported into this state.

5. **A** cervid originating from a tuberculosis monitored herd, provided that the cervid is accompanied by a certificate of veterinary inspection that includes the source herd number, the date on which the source herd was first certified as a tuberculosis monitored herd, the most recent date on which the source herd was recertified as a tuberculosis monitored herd, and certification that the imported cervid tested negative on a tuberculosis test under par. (a) 1. not more than 90 days before the cervid was imported into this state.

***(c) Blood tuberculosis test does** not qualify.* **A** blood tuberculosis test (BTB test) does not qualify as a pre–import tuberculosis test under this subsection.

(3) ANIMAL FROM SUSPECT HERD MAY NOT BE IMPORTED. No cervid may be imported to this state from a herd of origin in which any animal is classified as a tuberculosis suspect until the suspect status has been resolved. This paragraph does not apply to a cervid imported directly to a slaughtering establishment for slaughter.

(4) IMPORT PERMIT REQUIRED. No person may import a cervid into this state without a written import permit under s. ATCP I 1.03.

(5) IMPORTS FROM TUBERCULOSIS NON–MODIFIED ACCREDITED STATES. (a) ***Pre–import requirements.*** No person may import to this state any cervid that originates from a tuberculosis non–modified accredited state unless all the following apply:

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

a. The identification number of the import permit required under sub. (4).

b. The whole herd tuberculosis test result required under subd. **2.**

c. The individual test result required under subd. 3.

2. The cervid originates from a herd that has tested negative on a whole herd tuberculosis test conducted within 12 months prior to the import date. The whole herd test shall include every animal 12 months of age or older in the herd.

3. The cervid has tested negative on a tuberculosis test conducted within 90 days prior to the import date.

Note: U.S. **department of agriculture rules** for **interstate shipment** of **animals may specify a different time period for tuberculosis testing prior to interstate shipment. *An* importer must comply with USDA rules; however, compliance with USDA rules does** not **excuse a violation** of ***subd.* 3.**

(b) ***Post–import** testing.* The owner of a cervid imported from a tuberculosis non–modified accredited state shall have the cervid tested for tuberculosis not less than 90 days nor more than 120 days after it is imported.

(c) ***Post–import confinement.*** Cervids imported from a non–modified accredited state may not be removed from the premises at which they are first received in this state unless one of the following applies:

1. The cervids test negative for tuberculosis under par. (b).

2. The cervids are shipped directly from the premises to a slaughtering establishment for slaughter.

3. The cervids were imported directly to a show or exhibition in this state, and are returned directly from that show or exhibition to their state of origin.

(d) ***Exemption.*** This subsection docs not apply to cervids that are imported directly to a slaughtering establishment for slaughter.

History: Emerg. cr. eff. 3–18–91; cr. Register. November, 1991, No. 431, eff. 12–1–91; cr. (1) (c), Register. September, 1993. No. **453, eff. 10–1–93; r. and recr. (2), register, February, 1996, No. 482, eff. 3–1–96; r. and recr. (1), (3) and (4), am. (2) (b) 3. to 5., cr. (2) (c), Register, November, 2000, No. 539, eff. 12–1–00; cr. (5), Register, April, 2001, No. 544, eff. 5–1–01.**

ATCP 11.56 Keeping and moving cervids within Wisconsin. **(1) CERTIFICATE OF VETERINARY INSPECTION REQUIRED FOR INTRASTATE MOVEMENT.** Except as provided under sub. (2), no person may move any cervid between locations in this state unless the cervid is accompanied by a certificate of veterinary inspection signed by a Wisconsin certified veterinarian. The certificate shall state that the cervid tested negative on a single cervical tuberculin test, or another tuberculosis test approved by the department, not more than 90 days prior to the intrastate movement.

(2) EXEMPTIONS. Subsection (1) does not apply if any of the following conditions are met:

(a) The cervid is shipped directly to a licensed slaughter establishment for slaughter.

(b) The cervid is moved directly between 2 premises, both of which are owned or operated by the cervid owner, and the cervid is not a farm–raised deer.

(bm) The cervid is a farm–raised deer and is moved directly between **2** premises, both of which are covered by the same registration under s. **ATCP** 10.652.

(c) The cervid is only moved between institutions that are accredited by the american association of zoological **parks** and aquariums.

(d) The cervid is less than 6 months old.

(e) The cervid is moved to an approved tuberculosis isolation and testing facility under sub. (4), pursuant to a permit issued by the department under **s. ATCP** 11.60 **(4).**

(f) The cervid is a member of the species ***odocoileus virginianus (white–tailed deer),*** provided that the cervid has not commingled with cervids of any other species during the 12 months preceding the intrastate movement.

(3) COMMINGLING WITH BOVINE ANIMALS PROHIBITED. No person may cause or allow captive cervids to commingle with bovine animals on the same premises or in the same building, enclosure or vehicle.

(4) TUBERCULOSIS ISOLATION AND TESTING FACILITY. (a) The department may approve tuberculosis isolation and testing facilities for cervids. The department may approve a facility for a period of up to 2 years, and may renew its approval for periods of up to 2 years each. The department may, for cause, suspend or revoke its approval.

(b) To obtain approval for a tuberculosis isolation and testing facility, the facility operator shall file a written application with the department. The department may inspect the facility to determine whether it provides secure isolation and is adequate to serve as a tuberculosis isolation and testing facility. The department shall grant or deny an application for approval within 30 days after the department receives a complete application.

(c) No cervid may be moved from a tuberculosis isolation and testing facility unless one of the following applies:

1. The department issues a permit under **s. ATCP** 11.60 (4) authorizing that movement.

2. The cervid tests negative for tuberculosis and is accompanied by a certificate of veterinary inspection or interstate health certificate issued in connection with that movement.

History: Emerg. **cr. eff. 3-1 8–91 ; cr. Register, November,** 1991, No. 431, **eff. 12–1–91; cr. (2) (e) and (f), am. (3), Register. September,** 1993, **No. 453, eff.**

10-1-93; am. (1), (2) (c), (e) 1., cr. (2) (g), Register, February, 1996, No. 482, eff. 3-1-96; emerg. am. (2) (b), cr. (2) (bm) and (4), r. and recr. (2) (e), eff. 6-3-96; am. (2) (b), cr. (2) (bm), r. and recr. (2) (e), cr. (4), Register, December, 1997, No. 492, eff. 1-1-97; am. (1), (2) (f), (3) and (4) (a), r. (2) (g), Register, November, 2000, No. 539, eff. 12-1-00; cr. (5), Register, April, 2001, No. 544, eff. 5-1-01.

ATCP 11.57 Ratites; imports. No person may import a ratite into this state unless both the following apply:

(1) The person holds an import permit under s. ATCP 11.03.

(2) The ratite is accompanied by a valid certificate of veterinary inspection that complies with s. ATCP 11.02. A certificate of veterinary inspection is not required if the ratite is imported directly from a federal quarantine facility.

Note: The department recommends, but does not require, that every ratite imported into Wisconsin be isolated on the recipient's premises for at least 14 days, and that the bird be tested for avian influenza before being allowed to commingle with other ratites or poultry.

History: Cr. Register, March, 1995, No. 471, eff. 4-1-95; r. and recr. Register, November, 2000, No. 539, eff. 12-1-00.

ATCP 11.58 Fish imports. (1) DEFINITIONS. In this section:

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

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

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

(b) "Commingled" means kept or brought in contact with other fish or fish eggs in any environment which permits direct contact between fish or use of the same water system.

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

(d) "Food processing plant" means a facility licensed under s. 97.29, Stats.

(e) "Individual" means a natural person.

(f) "Operator" means a person who owns or controls a fish farm. "Operator" includes the operator's employees and agents.

(g) "Ornamental fish" means goldfish, koi, tropical freshwater fish that cannot survive in temperatures below 38°F, saltwater fish and other fish which the department designates in writing.

Note: You may obtain a current list of fish designated as "ornamental fish" by contacting the department at the following address:

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

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

(i) "Retail food establishment" means a facility licensed under s. 97.30, Stats.

(j) "Restaurant" means a facility licensed under s. 254.64, Stats.

(k) "Salmonid" means fish or fish eggs of the family that includes trout, salmon, grayling, char, Dolly Vardon, whitefish, ciseo and inconnu.

(L) "Untreated water" means water that has not been rendered free of pathogens by a method approved by the department.

(m) "Waters of the state" has the meaning given in s. 281.01 (18), Stats.

(n) "Wild source" means waters in this state that are not registered as fish farms, or waters outside this state that are not fish farms.

(2) ANNUAL IMPORT PERMIT REQUIRED. Except as provided in sub. (3), no person may import live fish or fish eggs into this state for any of the following purposes except under an annual written import permit from the department:

(a) Introducing the live fish or fish eggs into waters of the state.

(b) Using the live fish or fish eggs as bait.

(c) Holding the live fish or hatching the fish eggs at a fish farm for which a registration certificate is required under s. ATCP 10.68 (2).

(d) Selling or distributing the live fish or fish eggs for any of the purposes under pars. (a) to (c).

Note: A person importing any of the following must also obtain an importation permit from the state of Wisconsin department of natural resources (DNR):

Live fish or fish eggs of species that are not native to Wisconsin. (See s. 29.735 (1), Stats.)

Live rough fish or rough fish eggs except goldfish, dace and suckers. (See s. 29.407 (4), Stats.)

An application for an import permit under this section also serves as an application for a DNR import permit. The department will forward the permit application to DNR if DNR permit requirements apply.

Under s. 29.736, Stats., no person may use imported fish or fish eggs to stock waters of the state without a stocking permit from DNR (unless the stocking is subject to an exemption under s. 29.736, Stats.). An import permit application under this section does not serve as an application for a DNR stocking permit.

(3) EXEMPTIONS. No permit is required under sub. (2) to import any of the following:

(a) Live ornamental fish or the eggs of ornamental fish, unless the ornamental fish or fish eggs are commingled with non-ornamental fish or fish eggs, or are reared for bait, human food or animal feed.

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

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

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

(e) Live fish or fish eggs that are directly imported by the Wisconsin department of natural resources.

(4) ISSUING AN ANNUAL IMPORT PERMIT. The department may issue an import permit under sub. (2) for all or part of a calendar year, based on an application under sub. (9). A permit holder may, at any time, apply under sub. (9) for an amendment to an existing permit.

(5) COPY MUST ACCOMPANY IMPORT SHIPMENT. Every import shipment under sub. (2) shall be accompanied by a copy of the import permit which authorizes that shipment.

(6) IMPORT RECIPIENTS. A person holding an import permit under sub. (2) may import live fish or fish eggs to the following persons, and no others:

(a) A person holding a current fish farm registration Certificate, under s. ATCP 10.68, which authorizes that person to hold live fish or fish eggs of the type imported.

(b) The state of Wisconsin department of natural resources.

(c) A person holding a current fish stocking permit, under s. 29.736, Stats., which authorizes that person to stock live fish or fish eggs of the type imported.

(d) A person holding a current bait dealer license under s. 29.509, Stats., which authorizes that person to hold live fish or fish eggs of the type imported.

(e) Other persons identified by the department in the permit.

(7) UNAUTHORIZED IMPORTS. No person holding an import permit under sub. (2) may violate the terms of the permit or exceed the authorization granted in the permit. A permit is not transferable between importers.

(8) IMPORT PERMIT: CONTENTS. An import permit under sub. (2) shall include all of the following:

(a) The expiration date of the import permit. An import permit expires on December 31 of the year for which it is issued, unless the department specifies an earlier expiration date.

(b) The name, address and telephone number of the permit holder.

(c) Each species of fish or fish eggs that the permit holder may import under the permit.

(d) The size or class of fish of each species, and the quantity of fish or fish eggs of each species, that the permit holder may import under the permit.

(e) The sources from which the importer may import live fish or fish eggs under the permit. The permit may incorporate, by reference, sources identified in the permit application under sub. (9).

(f) The type of import recipient under sub. (6) to which the importer may import live fish or fish eggs under the permit.

(9) APPLYING FOR A PERMIT. A person seeking an import permit under sub. (2) shall apply on a form provided by the department. There is no fee. A permit application shall include all of the following:

(a) The applicant's name, address and telephone number.

(b) Each species of fish or fish eggs that the applicant proposes to import.

(c) The size or class of fish of each species, and quantity of fish or fish eggs of each species, that the applicant proposes to import.

(d) Every wild source from which the applicant proposes to capture and import fish or fish eggs.

(e) The name, address and telephone number of every fish farm from which the applicant proposes to import fish or fish eggs, and a copy of any health certificate issued for that fish farm under sub. (16).

(f) The type of import recipient under sub. (6) that the applicant proposes to import fish or fish eggs to.

Note: You may obtain an application form by contacting the department at the following address:
Wisconsin Department of Agriculture, Trade and Consumer Protection
Division of Animal Health
P.O. Box 8911
Madison, WI 53708-8911
Phone: (608) 224-4872

(10) ACTION ON PERMIT APPLICATION. The department shall grant or deny a permit application under sub. (9) within 30 days after the department receives a complete application.

Note: The department may impose conditions on an import permit, pursuant to s. 93.06 (8), Stats.

(11) DENYING, SUSPENDING OR REVOKING AN IMPORT PERMIT. The department may deny, suspend or revoke an import permit under sub. (2) for cause, including any of the following:

(a) Filing an incomplete or fraudulent permit application, or misrepresenting any information on a permit application.

(b) Violating applicable provisions of ch. 95, Stats., this chapter or ch. ATCP 10.

(c) Violating the terms of the import permit, or exceeding the import authorization granted by the permit.

(d) Preventing a department employee from performing his or her official duties, or interfering with the lawful performance of his or her duties.

(e) Physically assaulting a department employee while the employee is performing his or her official duties.

(f) Refusing or failing, without just cause, to produce records under sub. (12) or respond to a department subpoena.

Note: The denial, suspension or revocation of an import permit is subject to a right of hearing under ch. 227, Stats., and ch. ATCP 1, Wis. Adm. Code.

(12) IMPORT RECORDS. (a) A person, including the Wisconsin department of natural resources, that imports fish or fish eggs under sub. (2) shall keep all of the following records related to each import shipment:

1. The date of the import shipment.

2. The wild source, if any, from which the importer obtained the imported fish or fish eggs.

3. The name, address and telephone number of the fish farm from which the importer obtained the imported fish or fish eggs, if the importer obtained them from a fish farm.

4. The name, address and telephone number of the person receiving the import shipment if that person is not the importer. The importer shall also record the recipient's fish farm registration number under s. ATCP 10.68, stocking permit number under s. 29.736, Stats., or bait dealer license number under s. 29.509, Stats., if any.

Note: See sub. (6).

5. The location at which the import shipment was received in this state.

6. The size or class, quantity and species of fish or fish eggs included in the import shipment.

(b) A person required to keep records under par. (a) shall retain those records for at least 5 years and shall make them available to the department, upon request, for inspection and copying.

Note: An import permit holder must keep and provide records under sub. (12), regardless of whether the importer is located in this state or another state. The department may deny, suspend or revoke an import permit under sub. (11) if the importer fails to keep records, or fails to provide them to the department upon request.

(13) IMPORTING DISEASED FISH. No person may import any live fish or fish eggs into this state if that person knows, or has reason to know, that those fish or fish eggs are infected or show clinical signs of any reportable disease under s. ATCP 10.025.

(14) HEALTH CERTIFICATE REQUIRED. No person may import any shipment of live fish or fish eggs into this state unless one of the following applies:

(a) The import shipment is accompanied by a health certificate issued for that shipment under sub. (15).

(b) The import shipment originates from a fish farm and all of the following apply:

1. The import shipment is labeled with the name and address of that fish farm.

2. No fish or fish eggs in the import shipment were ever collected from a wild source.

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

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

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

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

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

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

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

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

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

Note: To obtain a health certification fonn, contact the department at the following address:
Wisconsin Department of Agriculture, Trade and Consumer Protection
Division of Animal Health
P.O. **Box 8911**
Madison, WI **53708–8911**
Phone: **(608) 224-4872**

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

1. Visible signs of infectious or contagious disease.

2. Infectious hematopoietic necrosis (IHN), viral hemorrhagic septicemia (VHS) and whirling disease (*Myxobolus cerebralis*, or WD), if the import shipment includes salmonids.

3. White sturgeon indovirus (WSI) if the import shipment includes sturgeon.

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

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

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

(16) FISH IMPORTED **FROM** FISH FARM; ANNUAL HEALTH CERTIFICATE. The following requirements apply to an annual fish farm health certificate under sub. (14) (b) **3.:**

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

Note: To obtain a health certification form, contact the department at the following address:
Wisconsin Department of Agriculture, Trade and Consumer Protection
Division of Animal Health
P.O. **Box 8911**
Madison, WI 53708–8911
Phone: **(608) 224-4872**

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

1. Visible signs of infectious or contagious disease.

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

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

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

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

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

History: Emerg. cr. eff. **12–28–98;** cr. Register, May, 1999, No. **521,** eff. **6–1–99; am.** (1) (k) and *(2)* (intro.), Register, November, **2000,** No. **539,** eff. **12–1–00.**

ATCP 11.59 Health standards for fish introduced into waters of the state. (1) DEFINITIONS. In this section:

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

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

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

(am) "Certified veterinarian" means one of the following:

1. For actions taken in this state, a Wisconsin certified veterinarian whom the department has trained to perform disease eradication and control functions related to fish.

2. For actions taken outside this state, an accredited veterinarian.

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

(c) "Individual" means a natural person.

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

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

(f) "Waters of the state" has the meaning given in s. **29.736** (1) (c), Stats.

(2) HEALTH CERTIFICATE REQUIRED. (a) No person may introduce live salmonids into waters of the state after June 1, 1999, and no person may introduce other live fish or fish eggs into waters of the state after December **31,2001,** unless a certified veterinarian or certified fish inspector does one of the following:

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

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

Note: See fish stocking regulations under **s. 29.736,** Stats. In addition to fish stocked from private fish farms, this subsection also pertains to fish stocked by the Wisconsin department of natural resources.

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

1. Visible signs of infectious or contagious disease.

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

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

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

Note: To obtain a health certification form, contact the department at the following address:
Wisconsin Department of Agriculture, Trade and Consumer Protection
Division of Animal Health
P.O. **Box 8911**
Madison. WI 53708–8911
Phone: **(608) 224-4872**

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

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

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

History: Cr. Register, May, IYYY, No. **521.** eff. 6-1-99; cr. (1) (am), am. (1) (e), (2) (a) (intro.), (3) (a) and (b), Register, November. 2000, No. 539, eff. 12-1-00.

Subchapter VIII — Movement and Exhibition

ATCP 11.60 Sale or movement of diseased animals. (1) GENERAL. No person may, in connection with the import, sale, movement or exhibition of any animal, do any of the following:

(a) Knowingly conceal that the animal has been infected with or exposed to any contagious or infectious disease.

(b) Knowingly misrepresent that the animal has not been exposed to or infected with any contagious or infectious disease.

(c) Knowingly permit an animal that has been exposed to or infected with a contagious or infectious disease to commingle with other animals under conditions which may cause the disease to spread to an animal owned by another person.

(2) PARATUBERCULOSIS REACTORS; SALE OR MOVEMENT. No person may sell or move, from a location in this state, an animal determined to be a paratuberculosis reactor under s. ATCP 10.21 (9) or 10.63 **(9)** unless a Wisconsin certified veterinarian first identifies that animal under s. ATCP 10.21 (11) or s. ATCP 10.63 (11).

Note: ATCP 10.21 (11) and ATCP 10.63 (11) also require the seller of a paratuberculosis reactor to disclose to the buyer, in writing, that the animal is a paratuberculosis reactor unless the animal is sold directly to slaughter or as a feeder animal.

(3) OTHER DISEASES; SALE OR MOVEMENT OF INFECTED OR EXPOSED ANIMALS PROHIBITED. Except as provided under sub. (4), no person may sell or move any animal which is infected with or exposed to any of the following contagious or infectious diseases, or which the department has classified as a suspect or reactor for any of the following contagious or infectious diseases:

(a) Anaplasmosis.
(b) Anthrax.
(c) Brucellosis.
(d) Equine encephalomyelitis.
(dm) Equine infectious anemia.
(e) Foot and mouth disease.
(f) Hog cholera.
(g) Infectious stomatitis.
(h) Mycoplasma gallisepticum.
(i) Pseudorabies.
(j) Psoroptic mange.
(k) Pullorum.
(L) Rabies.
(m) Salmonellosis in poultry.
(mm) Scrapie.
(n) Sheep foot rot.
(o) Swine dysentery.
(p) Tuberculosis.
(q) Vesicular exanthema.

Note: Animals infected with or exposed to other contagious or infectious diseases, not listed under this subsection, may be quarantined at the discretion of the department under s. ATCP 11.70. Animals infected with or exposed to equine infectious anemia are subject to quarantine under s. ATCP 10.41.

(4) PERMIT TO MOVE. The department may issue a permit allowing the movement of animals under sub. (3) for slaughter or other purposes prescribed by the department in the permit. Movement of animals is subject to all terms and conditions prescribed by the department in the permit. The department shall grant or deny a permit under this subsection within 5 business days after the department receives a complete permit application containing all information required by the department.

(5) BRUCELLOSIS EXPOSED ANIMALS. (a) Except as provided under par. (c), a bovine animal shall be branded with the letter "S" on the left jaw prior to movement if any of the following applies:

1. The animal is part of a herd quarantined for brucellosis.

2. The animal has been in contact for 24 hours or longer with a brucellosis reactor.

3. The animal has had any contact with a brucellosis reactor if the reactor has aborted or calved within the past **30** days and has had a vaginal or uterine discharge.

(c) This subsection does not apply to a brucellosis reactor identified in compliance with s. ATCP 10.36.

(6) TUBERCULOSIS REACTORS. Tuberculosis reactors shall be shipped directly to slaughter, pursuant to a permit under sub. (4). The permit shall specify the place of slaughter.

(7) REPORT OF SLAUGHTER. An operator of a slaughtering establishment which receives an animal for slaughter under sub. (4) shall report to the department the description and results of any post-mortem examination of the animal. The report shall be filed within 7 days after the animal is received at the slaughtering establishment.

(8) PSEUDORABIES EXPOSED ANIMALS. (a) Swine that are infected with pseudorabies, or that are part of a herd under quarantine for pseudorabies, shall be held separate and apart from all other swine until slaughtered. A swine which comes in contact with infected swine or with swine from a quarantine herd shall be classified as "exposed" and may move only for slaughter, unless otherwise determined in writing by the department.

(b) Pseudorabies quarantined or exposed swine may not be moved except under a department permit which specifies the herd of origin and the place of destination. A separate permit shall accompany each movement until the animals are slaughtered. The department shall notify persons affected by the movement, as provided under s. ATCP 10.31 (6).

History: Cr. Register, December, 1990, No. 420, eff. 1-1-91; **am.** (3) (intro.), Register, September, 1993, No. 453, eff. 10-1-93; r. (3) (e). renum. (3) (f) to (r) to be (3) (e) to (q), Register, January, 1994, No. 457, eff. 2-1-94; am. (4), Register, March, 1995, No. 471, eff. 4-1-95; r. and recr. (2), **am.** (4), Register, September, 1999, No. **525,** eff. 7-1-00, **am.** (2) and **(5)** (c), cr. (3) (dm) and (mm), r. ***(5)*** (b), Register, November, 2000, No. 539, eff. 12-1-00.

ATCP 11.61 Removal of livestock from slaughtering establishments. No person may remove any livestock from a slaughtering establishment after the animal has been weighed and purchased by the slaughtering establishment unless the animal is removed under a special permit issued by the state veterinarian. The state veterinarian shall grant or deny a permit within 5 business days after he or she receives a complete application.

History: Cr. Register, December, 1990, No. **420,** eff. **1-1-91.**

ATCP 11.62 Exhibitions and fairs. (1) VETERINARIAN TO INSPECT LIVESTOCK. If a fair or livestock exhibition in this state lasts for more than 24 hours, the sponsors of the fair or exhibition shall appoint a licensed veterinarian to conduct a daily inspection of all livestock at the fair or exhibition. The veterinarian shall also review all records and test results required by this section. If a fair or livestock exhibition lasts less than 24 hours, all records and test results required by this section shall be reviewed by a licensed veterinarian or by the show chairperson.

(2) SWINE. (a) No person may exhibit any swine at a fair or livestock exhibition unless the swine are accompanied by a certificate of veterinary inspection signed by a Wisconsin certified veterinarian or by an accredited veterinarian in the swine's state of origin. The certificate shall state that the veterinarian has inspected the herd of origin and that no apparent disease has been present in the herd for the past 30 days.

(b) No person may exhibit any breeding swine at a fair or livestock exhibition unless the swine tests negative for pseudorabies in a pseudorabies test performed not more than **30** days before the person exhibits that swine, or the swine originates from a qualified pseudorabies negative herd, a qualified pseudorabies negative

grow-out herd in this state, or a stage IV or V state or area designated by the national pseudorabies control board.

(c) No person may exhibit any non–breeding swine at a fair or livestock exhibition unless at least one of the following applies:

1. All breeding swine have been removed from the premises of the fair or exhibition before the non–breeding swine arrives, and the non–breeding swine is shipped directly from the fair or exhibition to a slaughtering establishment for slaughter.

2. The non–breeding swine tests negative for pseudorabies in a test pcrformcd within 30 days before the swine is exhibited.

3. The non–breeding swine originate from a qualified pseudorabies negative herd, a qualified negative pseudorabies grow-out herd in this state, or a stage IV or V state or area designated by the national pseudorabies control board.

(3) BOVINE ANIMALS Bovine animals infected with mange, scab, ringworm or warts may not be exhibited at any fair or livestock exhibition. Animals found to be infected, or showing evidence of infection with mange, scabies, ringworm or warts after arrival at a fair or livestock exhibition shall be isolated from other animals susceptible to the disease, and shall be removed from the premises. This paragraph does not apply to animals showing evidence of ringworm or wart infection if, in the opinion of the veterinarian in charge of the fair or exhibition, the lesion or wart is inactive and not capable of transmitting the disease.

(4) POULTRY. No poultry, except waterfowl, may be exhibited at a fair or public exhibition unless one of the following applies:

(a) The poultry originate from a flock or state designated as "U.S. Pullorum -Typhoid Clean" under the national poultry improvement plan, or from a flock meeting equivalent standards.

(b) The poultry test negative for pullorum–typhoid on a test approved by the department within 90 days before the poultry arrive at the fair or exhibition. Testing is required only for sexually mature birds over **4** months of age.

(5) HEALTH RECORDS. (a) Every person who exhibits livestock or poultry at a fair, exhibition or show in this state shall do all the following:

1. Provide, to the show chairman or show veterinarian, copies of all certificates of veterinary inspection and test reports required by this chapter.

2. Keep original copies of all certificates of veterinary inspection and test reports required by this chapter, The exhibitor shall make these records available to the department for inspection and copying upon request.

(b) The sponsor of the fair, exhibition or show shall maintain the copies provided under par. (a) 1. for at least 5 years, and shall make them available to the department for inspection and copying upon request.

(6) EQUINE ANIMALS (a) Except as provided under par. (am), no person may exhibit any equine animal at a fair, exhibition or show unless the animal has tested negative for equine infectious anemia during the previous 12 months.

(am} Paragraph (a) does not apply to a nursing foal accompanying its dam if the dam has tested negative for equine infectious anemia according to par. (a).

(b) The sponsor of a fair, exhibition or show shall do one of the following:

1. Record the name and address of every person who owns an equine animal exhibited at the fair, exhibition or show: the animal's name and identification; and the accession or laboratory number of the test required under par. (a). The sponsor shall keep the record for at least 5 years, and shall make it available to the department for inspection and copying upon request.

2. Keep a copy of the test report for each equine infectious anemia test required under par. (a). The sponsor shall keep the copy for at least 5 years, and shall make it available to the department for inspection and copying upon request.

History: Cr. Register. December, 1990, No. 420, eff. 1–1–91; am. (2) (b), *(c)* (intro.), (3) (a) 2. and (4) (b). cr. (2) (c) 3., Register, September, 1993, No. 453, eff. 10–1–93; cr. **(6),** Register, January, 1994, No. **457,** eff. 2–1–94; emerg. **am.** (2) (b) and (c) 3.. eff. 2–1–95, **am.** (2) (b) and (c) 3., **r.** and **recr.** *(6)* (a), cr. (6) (am), Register, July. 1995, No. 475, eff. 8–1–95; r. (3) (a), renum. (3) (b) to be (3), Register, February, 1996. No. 482., eff. 3–1–96; am. (2) (a). **(b),** (c) 3. and (4) **(b), r.** and recr. (5) and (6), Register, November, 2000, No. 539. eff. 12–1–00; **cr.** *(6)* (am), **Register, May, 2001, No.** 545, eff. 6–1-01.

Subchapter IX — Enforcement

ATCP 11.70 Quarantines. (1) SUMMARY ACTION. The department may summarily issue quarantine orders to prevent, suppress, control or eradicate contagious, infectious or communicable diseases which may affect domestic or exotic animals in this state, or to prevent animals from being moved or commingled pending further testing, diagnosis or traceback related to suspected disease. No person may move any animal in violation of a quarantine order, or fail to comply with the terms and conditions of a quarantine order.

(2) SERVICE OF NOTICE. **A** quarantine order under this section shall be served upon a person having custody or control **of** the quarantined animals, or shall be posted on the premises affected by the quarantine order. A quarantine order may be served by any of the following methods:

(a) Personal service.

(b) Certified mail.

(c) Posting a copy of the order at 2 conspicuous places on the premises affected by the quarantine.

(3) PROOF OF SERVICE. Service of a quarantine order may be proved by affidavit or by certified mail return receipt.

(4) CONTENTS OF ORDER A quarantine order shall contain the following information:

(a) The name and address of a person having custody or control of the quarantined animals, if known.

(b) A description of the animals affected by the quarantine.

(c) **A** description of the premises affected by the quarantine.

(d) The reason or justification for the quarantine.

(e) All terms and conditions applicable to the quarantine.

(f) Notice that persons adversely affected by the quarantine may request a hearing to review the quarantine order.

(5) DURATION OF QUARANTINE. A quarantine remains in effect until a written notice of release is issued by the department, unless the quarantine is set aside after review under sub. ***(6).***

(6) REVIEW OF QUARANTINE. A person adversely affected by a quarantine may, within 30 days after the quarantine order is issued, request a hearing before the department to review the quarantine. The department shall conduct an informal hearing **as** soon as reasonably possible, and not later than 10 days after receiving a request for hearing. If the matter is not resolved after informal hearing, the person requesting the hearing may seek a formal hearing before the department under ch. 227, Stats. **A** request for hearing does not stay a quarantine order.

History: Cr. Register, December. 1990, No. 420, eff. 1–1–91; am. **(1),** Register, December, 1996, No. 492, eff. 1–1–97

ATCP 11.705 Temporary animal hold order. (1) DEPARTMENT MAY ISSUE The department may issue a temporary animal hold order whenever the department has reason to believe that animals may have been illegally imported, or may have been exposed to an infectious, contagious or communicable disease. A temporary animal hold order may prohibit the movement of animals for up to 90 days while the department investigates the suspected illegal import or disease exposure. The department may, for good cause, extend the animal hold order for up to 90 days.

(2) CONTENTS A temporary animal hold order shall contain the following information:

(a) The name and address of the person having custody or control of the animals covered by the order, if known.

(b) A description of the animals covered by the order.

(c) A description of the premises where the animals are to be held.

(d) The reason or justification for the order.

(e) The duration of the order, and all terms and conditions applicable to the order.

(f) Notice that a person adversely affected by the order may request a hearing under sub. (6).

(3) SERVICE The department shall serve a temporary animal hold order in one of the following ways:

(a) Delivering the order, in person or by certified mail, to a person having custody or control of the animals covered by the order.

(b) Posting the order at 2 conspicuous places on the premises where the animals are kept.

(4) PROOF OF SERVICE. The department may prove service of a temporary animal hold order by means of an affidavit or certified mail return receipt.

(6) REVIEW OF ANIMAL HOLD ORDER. A person adversely affected by a temporary animal hold order may request a hearing before the department to review the order. The department shall conduct an informal hearing as soon as reasonably possible, and not later than 10 days after receiving a request for hearing. If the matter is not resolved after informal hearing, the person requesting the hearing may seek a formal hearing under ch. 227, Stats. A request for hearing does not automatically stay a temporary animal hold order.

History: Cr. Register, November, 2000, No. 539, eff. 12–1-00.

ATCP 11.71 Destruction or removal of animals illegally imported. (1) SUMMARY ACTION. The department may summarily order the destruction or removal from this state of any animal imported into this state if either of the following applies:

(a) The owner or custodian of the animal fails to produce a valid certificate of veterinary inspection, if a certificate is required under this chapter.

(b) The animal is imported in violation of this chapter, or in violation of any permit condition under this chapter.

(2) SERVICE OF NOTICE *An* order under sub. (1) shall be served upon a person having custody or control of the animal affected by the order. The order may be served in person or by certified mail. Service may be proved by affidavit or by certified mail return receipt.

(3) CONTENTS OF ORDER. An order under sub. (1) shall contain all of the following information:

(a) The name and address of the person having custody or control of the animals, if known.

(b) A description of the animals affected by the order.

(c) The reason or justification for the order.

(d) A reasonable deadline for compliance with the order.

(e) Notice that persons adversely affected by the order may request a hearing to review the order.

(4) REVIEW OF ORDER. A person adversely affected by an order under sub. (1) may, within 30 days after receiving the order, request a hearing before the department to review the order. If a hearing is requested, the department shall conduct an informal hearing as soon as reasonably possible, and not later than 10 days after receiving the request for hearing. If the matter is not resolved after informal hearing, the person requesting the hearing may seek a formal hearing before the department under ch. 227, Stats. A request for hearing under this subsection does not postpone the deadline for compliance with the order unless the deadline is postponed by further order of the department.

History: Cr. Register. December, 1990, No. 420, eff. 1–1–91; am. (2), Register, February, 1996, No. 482, eff. 3–1–96, am. (1) (a), Register, November, 2000, No. 539, eff. 12–1–00.

ATCP 11.72 Prohibited conduct. No persons may:

(1) Knowingly make any false report or statement to the department concerning:

(a) The ownership, identification, age, vaccination status, test status, or health status of livestock or

(b) The purchase, sale or movement of livestock.

(2) Sell or move an animal in violation of this chapter, or an order issued under this chapter.

(3) Buy, sell, lease or exchange livestock in the name of any person other than a licensed livestock dealer, a licensed livestock market operator, or the person holding or acquiring an ownership or leasehold interest in the livestock.

(4) Transport any livestock without certificates of veterinary inspection, permits, or other documents required by ch. ATCP 10 or this chapter.

(5) Fail or refuse, upon reasonable demand by an authorized agent of the department, to permit the examination of:

(a) Animals in transit; or

(b) Health or shipping documents or accompanying animals in transit.

(6) Fail to provide, within 10 days following the receipt of a written request from the department, any relevant report or document relating to the transportation of animals. The department may extend the compliance deadline under this subsection for good cause shown.

(7) Cause or permit a susceptible healthy animal to commingle with a diseased animal while in transit, unless the entire load of animals is shipped directly to slaughter or the commingling is authorized by the department.

(8) Cause or permit the commingling of different livestock species during transit.

(9) Advertise or claim to be licensed by the department, unless the advertisement or claim is true.

(10) Use or possess any unauthorized brand or tattoo device, or use or possess an official brand or official tattoo device without express authorization from the department.

(11) Park or store a vehicle containing animal remains or animal waste in any place where it creates a health hazard or a public nuisance.

(12) Deposit animal remains or animal waste in any place where the deposit creates a health hazard or a public nuisance.

(13) Physically assault a department employee while the employee is performing his or her official duties.

(14) Fail to identify the state of origin of animals consigned to a livestock market in this state.

History: Cr. Register, December, 1990, No. 420, eff. 1–1–91; r. and recr. (2), am. (4), cr. (13) and (14), Register, November, 2000, No. 539, eff. 12–1–00.

ATCP 11.73 Animals imported without required tests; department testing. If an animal is moved or imported without being tested according to this chapter, the department may perform the required test at the owner's expense. Department testing does not relieve any person from other penalties or remedies that may apply because of the illegal import or movement.

History: Emerg. cr. eff. 5–21–00; cr. Register, November, 2000, No. 539, eff. 12–1–00.

Chapter ATCP 29

PESTICIDE USE AND CONTROL

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Note: Chapter Ag 29 was renumbered ch. ATCP 29 under s. 13.93 (2m) (b) 1., Stats., Register, April, 1993, No. 448. Chapter ATCP 29 as it existed on May 31, 1998 was repealed and a new chapter ATCP 29 was created effective 6–1–98.

Note: See chapters NR 80 and 107, Wis. Adm. Code for pesticide rules of the department of natural resources. See also chapters NR 600 to 690, Wis. Adm. Code, pertaining to disposal of hazardous wastes.

Subchapter I — Definitions and General Provisions

ATCP 29.01 Definitions. In this chapter:

(1) "Agricultural commodity" has the meaning given in s. 94.67 (2), Stats.

(2) "Agricultural employer" has the meaning given in s. ATCP 29.60 (1).

(3) "Agricultural establishment" has the meaning given in s. ATCP 29.60 (3).

(4) "Agricultural pesticide" has the meaning given in s. ATCP 29.60 (4).

(5) "Agricultural plant" has the meaning given in s. ATCP 29.60 (5).

(6) "Agricultural producer" means a person who produces agricultural commodities on land which that person owns or controls.

(7) "Air gap" means the unobstructed vertical distance through the free atmosphere between the following points:

(a) The lowest opening from any outlet supplying water to a tank, vat, reservoir or other pesticide container.

(b) The overflow rim of the tank, vat, reservoir or pesticide container.

(8) "Apply a pesticide" means to bring, or attempt to bring, a pesticide into contact with a target organism or site.

(9) "Catch basin" means all structures or containers used to provide the containment capacity required to contain or hold liquids at a site where pesticides are transferred from one container to another. "Catch basin" may include spill containment surfaces, sumps and above-ground storage containers.

(10) "Certified applicator" means a pesticide applicator who is certified under s. ATCP 29.26 or 29.27.

(11) "Chemigation" has the meaning given in s. ATCP 29.54 (1) (d).

(12) "Chemigation system" has the meaning given in s. ATCP 29.54 (1) (e).

(13) "Department" means the state of Wisconsin department of agriculture, trade and consumer protection.

(14) "Direct the use of a pesticide" means to select or control the use of a pesticide, where the selecting or controlling individual has supervisory authority over the person using the pesticide.

(15) "Display pesticides" means to expose, to public view and access, containers of pesticides that are offered for sale to the public.

(16) "Distribute a pesticide" means to distribute a pesticide for sale or use in this state.

(17) "Dual notice agricultural pesticide" has the meaning given in s. ATCP 29.60 (9).

(18) "Environment" has the meaning given in s. 94.67 (12), Stats.

(19) "Federal act" means the federal insecticide, fungicide and rodenticide act, as amended (7 USC 136 et seq.) and regulations issued under that act.

(20) "Household pesticide" has the meaning given in s. ATCP 29.11 (1) (a).

(21) "Individual" means a natural person.

(22) "Irrigation" means the application of water to land, crops or plants in order to supply the water needs of plants or to promote plant growth.

(23) "Mix or load" a pesticide means to do any of the following:

(a) Mix a pesticide with water, other pesticides, fertilizer or other substances, in preparation for a pesticide application.

(b) Transfer a pesticide into pesticide application equipment, or into a mix or nurse tank.

(c) Engage in any of the following activities which is incidental to an activity under par. (a) or (b):

1. Activities which the pesticide label requires of the mixer or loader.

2. Handling an open pesticide container, other than an empty container that has been triple–rinsed or cleaned according to the pesticide label.

3. Cleaning or rinsing an open pesticide container.

4. Disposing of a pesticide or pesticide rinsate.

(24) "Mix or nurse tank" means a tank or container used for any of the following purposes:

(a) Mixing pesticides with other pesticides, or with water, fertilizer or other substances.

(b) Temporarily holding a mixture under par. (a) before transferring that mixture to pesticide application equipment.

(25) "Ornamental" means a tree, shrub or other planting grown for its decorative effect in or around a home, building, park, street or roadway.

(26) "Person" means an individual, corporation, partnership, cooperative association, limited liability company, trust or other organization or entity. "Person" includes a county or local government entity, but does not include a state or federal government entity.

(27) "Pest" means anything declared to be a pest under s. ATCP 29.02 or the federal act.

(28) "Pesticide" has the meaning given in s. 94.67 (25), Stats., and includes a pesticide–fertilizer mixture.

(29) "Pesticide drift" means pesticide deposited outside a target application site as a result of pesticide movement caused by air currents or diffusion.

Note: See s. ATCP 29.50 (2), which prohibits any person from using a pesticide in a manner that results in significant pesticide drift.

(30) "Pesticide overspray" means pesticide deposited outside a target application site as a result of an applicator's failure to control the direct flow or application of pesticide from the application equipment so as to confine it to the target application site.

Note: See s. ATCP 29.50 (2). which prohibits any person from using a pesticide in a manner that results in pesticide overspray.

(31) "Pesticide product" means a pesticide, all of the containers of which in commerce are labeled with a unique combination of all of the following:

(a) The brand name of the pesticide.

(b) The pesticide registration number or, if the pesticide product is exempt from registration under 40 CFR 152.25, the labeling required under 40 CFR 152.25.

(c) The name of the pesticide labeler.

(32) "Protective equipment" means clothing and other materials or devices that protect individuals against unintended exposure to pesticides.

(33) "Record" means information in either of the following forms:

(a) Paper or other hard-copy form.

(b) Electronic form if the information can also be readily produced in hard–copy form.

(34) "Registrant" means a person in whose name a pesticide is registered with the federal environmental protection agency under the federal act, or with the department under s. ATCP 29.72.

(35) "Restricted entry interval" means the time after the end of a pesticide application during which entry into the treated area is restricted.

(36) "Restricted–use pesticide" means a pesticide which, for some or all uses, is classified under the federal act or s. ATCP 29.72 for use only by certified applicators.

(37) "Rinsate" means a dilute mixture, consisting of one or more pesticides diluted with water or other substances such as solvents, surfactants, rinsing agents or detergents, that results from cleaning pesticide application equipment, mix or nurse tanks, pesticide containers, catch basins or spill containment surfaces.

(38) "Sell'' means to sell, offer for sale, display for sale or hold for sale in this state.

(39) "Supplemental registrant" means a person in whose name a pesticide is supplementally registered with the federal environmental protection agency under the federal act.

(40) "Toxicity" means the tendency or capacity of a pesticide to cause adverse physiological effects.

(41) "Use" a pesticide means to mix or load a pesticide, apply a pesticide, or engage in any of the following activities which is related to the mixing, loading or application of a pesticide:

(a) Activities which the pesticide label requires of the mixer, loader or applicator.

(b) Handling an open pesticide container, other than an empty container that has been triple–rinsed or cleaned according to the pesticide label.

(c) Cleaning or rinsing an open pesticide container, pesticide application equipment, or a mix or nurse tank.

(d) Disposing of a pesticide or pesticide rinsate.

(e) Aerating or ventilating spaces treated with a pesticide.

(42) "Water supply tank" means a tank or container that holds or supplies water for a pesticide use, but does not contain any pesticide or pesticide residue.

(43) "Waters of the state" means those portions of Lake Michigan and Lake Superior, and all lakes, bays, rivers, streams, springs, ponds, wells, impounding reservoirs, marshes, water courses, drainage systems and other surface or ground water, whether public or private, within the state or its jurisdiction.

Note: See additional definitions in s. 94.67, Stats., and ss. ATCP 29.11 (l), 29.54 (1), 29.55 (1), 29.56 (1) and 29.60.

History: Cr. Register, May, 1998, No. 509, eff. 6–1–98.

ATCP 29.02 Declaration of pests. The following organisms and viruses are declared to be pests when present under circumstances where they may be injurious to persons, property or the environment:

(1) Animals other than humans.

(2) Plants, fungi or their parts growing where not wanted.

(3) Microscopic organisms or viruses other than those on or in living animals or humans.

Note: See s. 94.69 (1), Stats. A pesticide may be used against a "pest" only if it is registered and labeled for that purpose and used according to label directions. Pesticide use against certain "pests" may be limited by applicable law.

History: Cr. Register, May, 1998, No. 509, eff. 6–1–98.

Subchapter II — Pesticide Registration and Labeling

ATCP 29.05 Pesticide registration. No person may sell or distribute any pesticide unless that pesticide is one of the following:

(1) Registered or permitted by the federal environmental protection agency under the federal act.

(2) Specifically exempted from registration under the federal act.

(3) Registered by the department under s. ATCP 29.72 to meet a special local need in this state.

History: Cr. Register, May, 1998, No. 509, eff. 6–1–98.

ATCP 29.06 Pesticide labeling. No person may sell or distribute any pesticide unless that pesticide is labeled in com-

pliance with s. 94.676, Stats., and the federal act. The pesticide label shall include all of the following:

(1) The federal pesticide registration number if the federal environmental protection agency has registered the pesticide under the federal act. Pesticides exempted from federal registration by 40 CFR 152.25 shall be labeled in compliance with applicable requirements under 40 CFR 152.25.

(2) The state pesticide registration number if the department has registered the pesticide under s. ATCP 29.72 to meet a special local need in this state.

(3) The name and address of a person licensed under s. ATCP 29.10 who is responsible as the manufacturer, registrant or supplemental registrant of the pesticide product.

History: Cr. Register, May, **1998,** No. **509,** eff **6–1–98.**

Subchapter III — Pesticide Manufacturers and Labelers

ATCP 29.10 Pesticide manufacturers and labelers; license. (1) LICENSE REQUIRED Except as provided under sub. (2), no person may manufacture, formulate, package, label or produce any pesticide for sale or distribution in this state, or sell or distribute any pesticide in this state, without an annual license from the department. A license expires on December 31 of each year and is not transferable.

Note: Sees. **94.68. Stats.**

(2) EXEMPTIONS. The following persons are not required to obtain a license under sub. (1):

(a) An individual, employed by a license holder under sub. (1), who engages in activities under sub. (1) solely on behalf of the license holder and not on the individual's own behalf.

(b) A person engaged in the following activities:

1. Selling or distributing a pesticide product in a sealed and unopened container which a person licensed under sub. (1) has packaged and labeled according to s. ATCP 29.06.

2. Selling a pesticide or active ingredient to a pesticide manufacturer licensed under sub. (1), for use as a basic ingredient in the manufacture or formulation of another pesticide, or for further processing, packaging or labeling.

3. Blending a pesticide mixture or pesticide–fertilizer mixture at a customer's request, according to the pesticide label, for use on property which the customer owns or controls. This exemption does not apply if the mixture is resold or redistributed to any other person, or for use on any other property.

4. Blending a pesticide mixture or pesticide–fertilizer mixture according to the pesticide label, for application by the blender, provided that the blender is licensed under s. ATCP 29.20 or exempted under s. ATCP 29.20 (2).

5. Applying a pesticide mixture or pesticide–fertilizer mixhue that the person has blended according to the pesticide label, provided that the person is licensed under s. ATCP 29.20 or exempted under **s.** ATCP 29.20 (2).

(c) **A** supplemental registrant identified on a pesticide product label if both of the following apply:

1. The product label also bears the name and address of a manufacturer or registrant licensed under sub. (1).

2. The name of the supplemental registrant is qualified by appropriate wording such as "Packed for...," "Distributed by...", or "Sold by..." to show that the name of the supplemental registrant is not that of a licensed manufacturer or registrant.

(3) LICENSE APPLICATION. A person applying for a license under sub. (1) shall apply on a form provided by the department. An application shall include all of the following:

(a) The applicant's name and address as they appear on pesticide labels. If the applicant has more than one name or address appearing on pesticide labels, the applicant shall include all of those names and addresses in the license application.

(b) All fees and surcharges required under s. ATCP 29.11.

(c) **A** report that does both of the following:

1. Identifies each pesticide product that the applicant sells or distributes.

2. States the gross revenue which the applicant derived from the sale or distribution of each pesticide product, for use in this state, during the preceding year as defined under s. ATCP 29.11 (1) (d). The department may not disclose sales revenue information obtained under this subdivision.

(4) SUPPLEMENTARY INFORMATION. At least 15 days before a license holder under sub. (1) begins selling or distributing any additional pesticide product that was not identified in the license holder's most recent annual license application, the license holder shall file a supplementary report and pay fees and surcharges for that pesticide product according to sub. (3). The department may not disclose sales revenue information obtained under this subsection.

(5) ACTION ON LICENSE APPLICATION; TIME LIMIT The department shall grant or deny a license application under sub. (3) within 20 business days after the applicant files a complete application with the department.

History: Cr. Register, May, **1998,** No. **509,** eff. **6–1–98.**

ATCP 29.11 Pesticide manufacturers and labelers; fees. (1) DEFINITIONS. In this section:

(a) "Household pesticide" means a pesticide that is any of the following:

1. A sanitizer.

2. A disinfectant.

3. A germicide.

4. An insect repellant that is applied to the human body or to clothing.

5. A pesticide that is used exclusively for the treatment of household pets.

6. A pesticide product that is labeled exclusively for household, lawn or garden use if the product either is sold in ready–to–use form or is sold exclusively in container sizes of less than one gallon.

7. **A** solid or liquid pesticide product that is used exclusively for the treatment of swimming pools, spas or hot tubs.

(b) "Industrial pesticide" means a pesticide that is not a household pesticide and that is one of the following:

1. Solely labeled for use on wood and contains pentachlorophenol, coal tar creosote or inorganic arsenical wood preservatives.

2. Labeled for use in controlling algae, **fungi,** bacteria, microscopic organisms or mollusks in or on one or more of the following, and for no other use except a use described in par. (a) ***6.*** or ***7.:***

a. Textiles, paper, leather, plastic, vinyl or other synthetic materials, metal or rubber.

b. Paints, varnishes, other coating products, lubricants or fuels.

c. Commercial, Construction, manufacturing or industrial fluids, including adhesives, additives or pigments.

d. Commercial, construction, manufacturing or industrial processes, equipment, devices or containers, other than those used in the production or storage of human food or animal feed.

e. Air washing, cooling or heat transfer systems.

f. Medical equipment.

g. Drinking water or waste water systems.

(c) "Nonhousehold pesticide" means a pesticide that is not a household pesticide or an industrial pesticide.

(d) "Preceding year" means the 12 months ending on September 30 of the year immediately preceding the year for which the applicant seeks a license under s. ATCP 29.10.

(e) "Primary producer" means a person who manufactures an active ingredient that is used to manufacture or produce a pesticide.

(2) ANNUAL LICENSE WE. An applicant for a license under s. ATCP 29.10 shall pay an annual license fee for each pesticide product that the applicant sells or distributes. Except as provided in subs. (5) to (7), the fee for each pesticide product is as follows:

(a) *Household pesticides.* For each household pesticide product:

1. If the applicant sold less than $25,000 of the product during the preceding year for use in this state, $265, except that the fee is $215 for each of the license years beginning January 1, 1999 and January 1,2000.

2. If the applicant sold at least $25,000 but less than $75,000 of the product during the preceding year for use in this state, $750, except that the fee is $650 for each of the license years beginning January 1, 1999 and January I, 2000.

3. If the applicant sold at least $75.000 of the product during the preceding year for use in this state, $1,500, except that the fee is $1,200 for each of the license years beginning January 1, 1999 and January 1,2000.

(b) *Industrial pesticide.* For each industrial pesticide product:

1. If the applicant sold less than $25,000 of the product during the preceding year for use in this state, $315, except that the fee is $265 for each of the license years beginning January 1, 1999 and January 1,2000.

2. If the applicant sold at least $25,000 but less than $75,000 of the product during the preceding year for use in this state, $860, except that the fee is $760 for each of the license years beginning January 1, 1999 and January 1,2000.

3. If the applicant sold at least $75,000 of the product during the preceding year for use in this state, $3,060, except that the fee is $2,760 for each of the license years beginning January 1, 1999 and January 1,2000.

(c) *Nonhousehold pesticide.* For each nonhousehold pesticide product:

1. If the applicant sold less than $25,000 of the product during the preceding year for use in this state, $320, except that the fee is $270 for each of the license years beginning January 1, 1999 and January 1,2000.

2. If the applicant sold at least $25,000 but less than $75,000 of the product during the preceding year for use in this state, $890, except that the fee is $790 for each of the license years beginning January 1, 1999 and January 1,2000.

3. If the applicant sold at least $75,000 of the product during the preceding year for use in this state, $3,060 plus 0.2% of gross revenues from product sales during the preceding year for use in this state, except that for each of the license years beginning January 1, 1999 and January 1, 2000 the fee is $2,760 plus 0.2% of gross revenues from product sales made during the preceding year for use in this state.

Note: See sections 1940 to 1942, 1999 Wis Act 9, which added January 1,2001 and January 1, 2002 to the dates listed in sub. (2) (a) 1. through (2) (c) 3.

(3) NONHOUSEHOLD PESTICIDES: CLEANUP SURCHARGE. Beginning with the license year that begins on January 1,2002, an applicant for a license under s. ATCP 29.10 shall pay an agricultural chemical cleanup surcharge for each nonhousehold pesticide product that the applicant sells or distributes. Except as provided in sub. (6) or (7), the amount of the surcharge is as follows:

(a) If the applicant sold less than $25,000 of the product during the preceding year for use in this state, *$5.*

(b) If the applicant sold at least $25,000 but less than $75,000 of the product during the preceding year for use in this state, $170.

(c) If the applicant sold at least $75,000 of the product during the preceding year for use in this state, an amount equal to 1.1% of gross revenues from product sales during the preceding year for use in this state, except that for the license year beginning January 1,2002, the surcharge amount is 0.75% of the gross revenues from product sales during the preceding year.

(3m) WOOD PRESERVATIVES; CLEANUP SURCHARGE. An applicant for a license under s. ATCP 29.10 shall pay an environmental cleanup surcharge for each pesticide product, sold or distributed by the applicant in this state, that is not a household pesticide and is solely labeled for use on wood and contains pentachlorophenol or coal tar creosote. Except as provided in sub. (6), the amount of the surcharge is as follows:

(a) If the applicant sold less than $25,000 of that product during the preceding year for use in this state, $5.

(b) If the applicant sold at least $25,000 but less than $75,000 of that product during the preceding year for use in this state, $170.

(c) If the applicant sold at least $75,000 of that product during the preceding year for use in this state, an amount equal to 1.1% of gross revenues from sales of the product during the preceding year for use in this state.

(4) PRIMARY PRODUCERS; WELL COMPENSATION FEE. Except as provided under sub. (7), a primary producer applying for a license under s. ATCP 29.10 shall pay a well compensation fee of $150.

(5) UNREPORTED PESTICIDE; INCREASED LICENSE FEE. If a person sells or distributes a pesticide product without having filed a report for that product under s. ATCP 29.10 (3) (c) or (4), the license fee for that product is twice the amount determined under sub. (2).

(6) DISCONTINUED PESTICIDE; FINAL LICENSE FEE AND CLEANUP SURCHARGE. A person who stops selling or distributing a pesticide product for use in this state shall do all of the following:

(a) Notify the department by December 31 of the year in which the person stops selling or distributing the pesticide product.

(b) By March 31 of the year following the year in which the person stopped selling or distributing the pesticide product, file a report with the department showing the gross revenue that the person derived from the sale of the pesticide product, for use in this state, from October 1 of the preceding year to December 31 of the year in which the person stopped selling or distributing that pesticide product. The department may not disclose sales revenue information obtained under this paragraph.

(c) By March 31 of the year following the year in which the person stopped selling the pesticide product for use in this state, pay a final license fee for the pesticide product, calculated under sub. (2) based on sales of that product during the period specified in par. (b).

(d) If the product is a nonhousehold pesticide, pay a final agricultural chemical cleanup surcharge calculated under sub. **(3)** based on sales of that product during the period specified in par. (b).

(7) EXEMPT PESTICIDE PRODUCTS. Subsections (2) to **(4)** do not apply to pesticides that are exempt from federal registration under 40 CFR 152.25.

(8) FEES AND SURCHARGES NONREFUNDABLE. The department may not refund a fee or surcharge under this section after the department issues a license under s. ATCP 29.10 to the person who paid it unless the fee or surcharge was not properly collected or charged.

History: Cr. Register, May, 1998. No. 509, eff. 6-1-98; **am.** (3) (intro.), Register, May, 2000, No. 533, eff. 6-1-00; CR 01-021: **am.** (3) (intro.) **and** (cj, Register October 2001 No. **550, eff. 11-1-01.**

ATCP 29.12 Pesticide manufacturers and labelers; records and reports. (1) RECORDS. **A** person required to be licensed under s. ATCP 29.10 shall legibly record all of the following information and keep each record for at least 2 years:

(a) The names and addresses of persons from whom that person receives pesticides, and the amounts and kinds of pesticides received.

(b) The names and addresses of persons to whom that person sells or distributes pesticides, and the amounts and kinds of pesticides sold or distributed to each of them.

(c) Gross revenue information required under s. ATCP 29.10 (3) (c) and (4).

(2) REPORTS. A person required to be licensed under s. ATCP 29.10 shall provide to the department, upon request, information which is relevant to the regulation of pesticides in this state, including:

(a) Relevant information under sub. (1).

(b) Pesticide labeling.

(c) Relevant information related to pesticide products, formulation materials and breakdown products, including:

1. Their chemical identity and properties.

2. Analytical methods which may be used to detect and quantify their presence in groundwater or other media.

3. Information related to their toxicology and environmental fate.

4. Summaries of all pertinent data, in that person's possession, related to their interactive toxicological effects.

History: Cr. Register, May, 1998, No. 509, eff. 6–1–98.

Subchapter IV — Pesticide Dealers and Distributors

ATCP 29.15 Dealers and distributors of restricted use pesticides. (1) LICENSE REQUIRED. Except as provided under sub. (2), no person may sell or distribute any restricted–use pesticide unless that person holds an annual license issued by the department under this section. A license expires on December 31 of each year and is not transferable to another person.

Note: See s. 94.685, Stats.

(2) EXEMPTIONS. Subsection (1) does not apply to any of the following:

(a) An individual, employed by a license holder under sub. (I), who sells or distributes restricted–use pesticides solely on behalf of the license holder and not on the individual's own behalf.

(b) A person licensed under s. ATCP 29.10 whose name appears on the pesticide label.

(c) A pesticide supplemental registrant who is identified on the pesticide label according to s. ATCP 29.10 (2) (c).

(d) A person who applies all of the restricted–use pesticide which that person sells or distributes.

Note: See s. ATCP 29.20.

(3) LICENSE APPLICATION. A person applying for a license under sub. (1) shall apply on a form provided by the department. The application shall include all of the following:

(a) The applicant's correct name, mailing address and street address. The application shall specify whether the applicant is an individual, corporation or other business entity.

(b) Every other name under which the applicant does business.

(c) The mailing address and street address of each location from which the applicant sells or intends to sell any restricted–use pesticide. This includes any location at which the applicant regularly takes pesticide orders, but does not include a motorized vehicle from which the applicant takes orders by mobile telephone.

(d) The license fees and surcharges required under sub. (4).

(e) Other information reasonably required by the department for the administration of this section.

(4) LICENSE AND SURCHARGES. A person applying for a license under sub. (1) shall pay the following annual license fee and surcharge for each business location under sub. (3) (c), including any new location opened during the license year:

(a) A license fee of $60.

(b) Beginning with the license year that begins on January 1, 2002, an agricultural chemical cleanup surcharge of $40.

(5) ADDITIONAL LOCATIONS. Before a person licensed under sub. (1) sells a restricted–use pesticide from any additional location not identified in that person's most recent annual license application under sub. (3) (c), that person shall do both of the following:

(a) Provide the department with the mailing address and street address of that additional location.

(b) Pay the fee and surcharge required under sub. (4) for that additional location.

(6) ACTION ON LICENSE APPLICATION. The department shall grant or deny a license application under sub. (3) within 30 business days after the applicant files a complete application with the department.

(7) SALES OF RESTRICTED-USE PESTICIDES. A person required to be licensed under sub. (1) may sell or distribute a restricted--use pesticide only to one of the following:

(a) A pesticide dealer or distributor licensed under sub. (I), or equivalent laws of another state, to sell or distribute restricted–use pesticides.

(b) A commercial application business licensed under s. ATCP 29.20, or equivalent laws of another state, to use or direct the use of restricted–use pesticides.

(c) An individual commercial applicator licensed and certified under ss. ATCP 29.25 and 29.26, or certified under equivalent laws of another state, to use or direct the use of that pesticide.

(d) A private applicator certified under s. ATCP 29.27, or equivalent laws of another state, to use or direct the use of that pesticide.

(8) RESTRICTED-USE PESTICIDES; SALES RECORDS. A person required to be licensed under sub. (1) shall keep legible records of all restricted–use pesticides which that person sells or distributes in this state. The person shall retain the records for at least 2 years, and shall make them available to the department for inspection and copying upon request. The person shall keep all of the following records related to each sale or distribution of a restricted–use pesticide:

(a) The pesticide brand name.

(b) The identity of the pesticide manufacturer or labeler.

(c) The pesticide registration number assigned by the federal environmental protection agency.

(d) The amount of the pesticide sold or distributed.

(e) The date of the sale or distribution.

(f) The identity of the purchaser or intended recipient, including name, address, seller or applicator license number if any, and applicator certification number if any.

(g) The name and address of the person to whom the seller delivered custody of the pesticide, if other than the purchaser or intended recipient.

(9) ANNUAL REPORT. Not later than October 30 of each year, a person required to be licensed under sub. (1) shall report each of the following to the department on a report form provided by the department:

(a) The name and address of each person from whom that person received any pesticide during the preceding 12–month period ending September 30.

(b) The amount of each pesticide which that person sold to end users for use in Wisconsin during the preceding 12–month period ending September 30.

Note: Reports under sub. (9) must include all pesticides, not just restricted–use pesticides. Report forms may be obtained from the department at the following address: Department of Agriculture, Trade and Consumer Protection: Division of Agricultural Resource Management; P.O. Box 8911, Madison, WI 53708–8911.

History: Cr. Register, May, 1998, No. 509, eff. 6–1–98; am. (4)(b), Register, May, 2000, No. 533, eff. 6–1–00; CR 01–021: am. (4)(b), Register October 2W1 No. 550. eff. 11–1–01.

ATCP 29.16 Pesticide sales records. A person who sells or distributes pesticides shall record the amounts and brand names of pesticides which that person sells or distributes. The

person shall retain the records for at least 2 years, and shall make them available to the department for inspection and copying upon request. Individual employees who sell or distribute pesticides only on behalf of their employer, and not on their own behalf, need not keep personal copies of records which their employer keeps under this section.

Note: Section ATCP 29.16 applies to persons who sell or distribute pesticides of any kind, not just those who sell or distribute restricted-use pesticides. Records must show the amounts and bland names of all pesticides sold. not just restricted-use pesticides sold.

History: Cr. Register, May, 1998, No. 509, eff. 6–1–98.

Subchapter V — Commercial Application Businesses

ATCP 29.20 Commercial application business; license. (1) LICENSE REQUIRED. Except as provided under sub. (2), no person may do any of the following, either directly or through an employee, without an annual license from the department:

(a) Use or direct the use of any pesticide as an independent contractor for hire.

(b) Use or direct the use of a restricted–use pesticide.

Note: See s. 94.703, Stats. A sole proprietor licensed under this section may also he required to obtain a license as an individual commercial applicator under s. ATCP 29.25.

(2) EXEMPTIONS. The following persons are not required to obtain a license under sub. (1):

(a) A government entity.

(b) An individual, employed by a person licensed under sub. (1), who uses or directs the use of pesticides solely on behalf of that employer and not on the individual's own behalf.

(c) A person applying pesticides as part of a medical treatment provided by a licensed medical practitioner, or as part of a veterinary treatment provided by a licensed veterinary practitioner.

(d) A person applying pesticides in the laboratory in the course of bona fide laboratory research.

(e) A person applying germicides, sanitizers or disinfectants.

(f) An agricultural producer, except that an agricultural producer who does any of the following is not exempt:

1. Uses or directs the use of pesticides for a person who is not an agricultural producer.

2. Uses or directs the use of pesticides for another agricultural producer for a purpose other than the production of agricultural commodities, or for the purpose of producing pesticide–treated commercial seed or pesticide–treated commercial wood products.

3. For compensation other than the exchange of goods or services, uses or directs the use of pesticides for more than 3 other agricultural producers in any calendar year.

4. For compensation other than the exchange of goods or services, uses or directs the use of pesticides applied in any calendar year to a total of more than 500 acres of land which the agricultural producer does not own or control.

(3) LICENSE EXPIRATION. A license under sub. (1) expires on December 31 annually and is not transferable to another person.

(4) LICENSE APPLICATION. An applicant for an annual license under sub. (1) shall apply on a form provided by the department. The application shall include all of the following information, together with the fees required under sub. (6):

(a) The applicant's correct name, mailing address and street address. The application shall specify whether the applicant is an individual, corporation or other business entity.

(b) Every other name under which the applicant does business.

(c) The mailing address and street address of each business location under sub. *(5)*. If 2 or more license applicants engage in activities under sub. *(5)* at the same business location, all of those applicants shall identify that business location in their own applications.

(d) The complete name and license number of each of the applicant's employees who are required to be licensed under s. ATCP 29.25.

(e) Other information reasonably required by the department for the administration of this section.

(5) BUSINESS LOCATIONS. A business location under this section means any of the following:

(a) A site from which the person operates on a regular basis as a pesticide applicator for hire, including any site at which the person regularly takes orders for pesticide applications. A motorized vehicle, from which a person takes orders by mobile telephone, is not a site under this paragraph.

(b) A site, or a group of sites located within 1/2 mile of each other, at which a person mixes or loads a total of at least 1,500 pounds of pesticide active ingredient, excluding active ingredient applied at or immediately adjacent to the mixing or loading site.

(6) FEES. A person required to be licensed under sub. (1) shall pay the following annual license fee and surcharge for each business location under sub. *(5)* from which that person operates during the license year:

(a) A basic annual license fee of $70.

(b) Beginning with the license year that begins on January 1, 2002, an agricultural chemical cleanup surcharge of $55.

(7) ACTION ON LICENSE APPLICATION. The department shall grant or deny a license application under sub. **(4)** within 30 business days after the department receives a complete application.

(8) UPDATED INFORMATION. A person submitting an annual license application under sub. (4) shall promptly notify the department if any of the following occurs after that person submits that application:

(a) The person adds a business location under sub. (5). The person shall pay a license fee and surcharge for that additional location, as provided under sub. ***(6)***.

(b) There is any other significant change in information provided under sub. (4).

History: Cr. Register, May, 1998, No. 509, eff. 6–1–98; am. (6) (b), Register, May, 2000, No. 533, eff. 6–1–00, CR 00–121: am. (6) (b), Register October 2001 No. 550, eff. 11–1–01.

ATCP 29.21 Commercial application business; records. (1) RECORD OF PESTICIDE APPLICATIONS A person required to be licensed under s. ATCP 29.20 shall keep a legible record of each pesticide application which that person makes directly or through an employee. The person shall keep the record for at least 2 years, and shall make it available to the department for inspection and copying upon request. The individual making the pesticide application shall complete the required record on the day of the application.

Note: Under s. ATCP 30.31 (5). a commercial application business must keep a record of atrazine applications for at least 3 years.

(2) RECORD CONTENTS A pesticide application record under sub. (1) shall include all of the following:

(a) The first and last name of each individual making the pesticide application.

(b) The name and address of the customer, if any, for whom the pesticide was applied.

(c) The crop, commodity or site to which the pesticide was applied.

(d) The specific location of the pesticide application site.

(e) The month, day, year and approximate starting and ending time of the pesticide application.

(f) The brand name or product name or common chemical name, and the federal environmental protection agency registration number, of each pesticide applied.

(g) At least one of the following:

1. The concentration and total quantity of each pesticide applied.

2. The amount of each pesticide applied per unit area and the total area treated,

(h) Each location, other than a business location licensed under s. ATCP **29.20,** at which the pesticide was mixed or loaded. Mixing and loading sites need not be identified if the pesticide is applied directly from a prepackaged retail container, or is applied with application equipment having a total capacity of not more than 5 gallons of liquid pesticide or 50 pounds *dry* pesticide.

History: Cr. **Register, May, 1998,** No. **509, eff. 6–1–98.**

ATCP 29.22 Commercial application business; information to customers. Within **30** days after making a pesticide application for a customer, either directly or through an employee, a person required to be licensed under s. ATCP **29.20** shall provide that customer with all of the following information in writing:

(1) A telephone number at which the customer may contact the person.

(2) The first name, last name and license number of each individual who made or directly supervised the pesticide application.

(3) The crop, commodity or site to which the pesticide was applied.

(4) The specific location of the pesticide application site.

(5) The month, day, year and approximate starting and ending time of the pesticide application.

(6) The brand name or product name or common chemical name, and the federal environmental protection agency registration number of each pesticide applied.

Note: Under federal worker protection rules, a commercial application business making a pesticide application for an "agricultural establishment" as defined under s. ATCP 29.60 (3) must also provide that customer with the names of the pesticide active ingredients applied.

(7) At least one of the following:

(a) The concentration and total quantity of each pesticide applied.

(b) The amount of each pesticide applied per unit area and the total area treated.

(8) Post–application precautions which the pesticide label requires of the customer. This information shall be provided in time for the customer to take the required precautions.

Note: For example, pesticide labels might require customers to observe post–application precautions such as restricted entry intervals, preharvest intervals, grazing intervals and subsequent planting restrictions.

(9) A free copy of the pesticide label, or notice that the customer may request a free copy. The person shall provide a free copy to each customer who requests it.

Note: Applicators making certain types of pesticide applications must comply with additional notification requirements under subchs. IX **and** X. **This section does not limit the applicator's responsibility under** those **subchapters. Under s.** ATCP **29.55, businesses applying pesticides** to **residential structures must provide information to residents at the time of application. Under s. ATCP 29.56, a commercial application business making a landscape application for a customer must provide that customer with information at the time of application.**

History: Cr. Register, May, 1998, No. **509, eff. 6–1–98.**

ATCP 29.23 Veterinary clinic applying pesticides. (1) PERMIT REQUIRED. **No** person may operate a Veterinary clinic at which pesticides are used, repackaged for use, or prescribed for use unless that person holds an annual permit from the department. A permit expires on December **3**1 of each odd–numbered year and may not be transferred between persons. A single permit covers all clinic locations operated by the permit holder.

Note: See s. 94.702, Stats.

(2) APPLYING **FOR A** PERMIT. An applicant for a permit under sub. (1) shall apply on a form provided by the department. The application shall include all of the following:

(a) The applicant's correct name and address. The application shall indicate whether the applicant is an individual, corporation, partnership, limited liability company or other entity.

(b) The name, complete mailing address and complete street address of the veterinary clinic. If the clinic operates from more than one location, the application shall include the addresses of all of those locations.

(c) The name, and license number under s. ATCP **29.25** if any, of every individual affiliated with the veterinary clinic who prescribes, repackages, uses or directs the use of pesticides.

(d) A fee of **$25.**

History: Cr. Register, May, 1998, No. 509, eff. 6–1–98.

Subchapter VI — Individuals Handling Or Applying Pesticides

ATCP 29.25 Individual commercial applicator; license. (1) LICENSE **REQUIRED.** Except as provided under sub. **(2),** no individual may do any of the following without an annual license from the department:

(a) Use or direct the use of any pesticide as an independent contractor for hire, or as an employee of an independent contractor for hire.

(b) Use or direct the use of a restricted–use pesticide.

Note: See s. 94.704, Stats. **A license under this section entitles the license holder to engage only in those activities for which the license holder is also certified for competency under s.** ATCP **29.26. An individual who is the sole proprietor of a pesticide application business must be licensed under s.** ATCP **29.20 and this section.**

(2) EXEMPTIONS. No license is required under sub. (1) for any of the following:

(a) A health practitioner who uses or directs the use of a pesticide as part of a medical treatment which that practitioner is licensed to provide in this state.

(b) A veterinarian, affiliated with a veterinary clinic whose operator holds a permit under s. ATCP **29.23,** who uses or directs the use of a pesticide as part of a veterinary treatment which that veterinarian is licensed to provide in this state.

(c) An animal technician, affiliated with a veterinary clinic whose operator holds a permit under s. ATCP **29.23,** who uses a pesticide as part of a veterinary treatment which that technician is certified to provide under ch. **453,** Stats.

(d) A laboratory researcher who uses or directs the use of pesticides only in the laboratory as part of a bona fide laboratory research project.

(e) An individual who only uses or directs the use of germicides, sanitizers or disinfectants.

(f) An employee of a pesticide application business licensed under s. ATCP **29.20** who applies pesticides only ***to*** property owned or controlled by that pesticide application business, and who applies no restricted–use pesticides.

(g) An individual who is currently registered as a trainee under s. ATCP **29.32.**

Note: A trainee registration under s. ATCP 29.32 expires 30 days after the trainee's employer tiles the registration with the department.

(h) An agricultural producer, except that an agricultural producer who does any of the following is not exempt:

1. Uses or directs the use of pesticides for a person who is not an agricultural producer.

2. Uses or directs the use of pesticides for another agricultural producer for a purpose other than the production of agricultural commodities, or for the purpose of producing pesticide–treated commercial seed or pesticide–treated commercial wood products.

3. For compensation other than the exchange of goods or services, uses or directs the use of pesticides for more than **3** other agricultural producers in any calendar year.

4. For compensation other than the exchange of goods or services, uses or directs the use of pesticides applied in any calendar year to a total of more than 500 acres of land which the agricultural producer does not own or control.

(3) LICENSE CONDITIONS. (a) A license under sub. (1) expires on December **31** annually and is not transferable between persons.

(b) An individual licensed under sub. (1) shall carry the license when engaged in any activity for which the license is required.

(c) The department may not issue a license under sub. (1) to an individual who is less than 16 years old.

(4) LICENSE APPLICATION. An applicant for a license under sub. (1) shall apply on a form provided by the department. An application shall include all of the following information, together with the fees required under sub. **(5):**

(a) The applicant's complete name, mailing address and street address.

(b) The applicant's business name and address if the individual is engaged in business as a sole proprietor.

(c) The name and address of the person, if any, who employs the applicant to use or direct the use of pesticides.

(d) Any other information which the department reasonably requires to administer this section.

(5) FEES. (a) Except as provided under par. (b), an applicant for an annual license under sub. (1) shall pay the following annual license fee and surcharge:

1. A license fee of **$40,** except that the license fee is $30 for each of the license years beginning January 1, **1999** and January **1,2000.**

Note: Section **1943,1999** Wis. Act **9,** added January **1, 2001** and January **1,2002** to this requirement.

2. Beginning with the license year that begins on January 1, **2002,** an agricultural chemical cleanup surcharge of **$20.**

(b) No fee or surcharge is required under par. (a) for an applicant who uses or directs the use of pesticides under sub. (1) only as a government employee or as an employee of a public or private educational institution.

(6) ACTION ON LICENSE APPLICATION.. The department shall grant or deny an application under sub. **(4)** within 30 business days after the department receives a complete application.

History: Cr. Register, May, **1998,** No. **509,** eff. 6–1–98; am. (5) (a) **1.** and **2.,** Register, May, **2000,** No. **533,** eff. 6–1–00; CR 01–021: am. (5) (a) **2.,** Register October **2001** No. 550, eff. 11–1–01.

ATCP 29.26 Individual commercial applicator; certification. (1) CERTIFICATION REQUIRED. No individual may engage in any activity for which a license is required under s. ATCP **29.25** unless one of the following applies:

(a) The individual is certified under this section to engage in that activity as a commercial applicator.

(b) The individual is certified as a pesticide mixer and loader under s. ATCP **29.28,** and is solely engaged in mixing and loading pesticides for application by others.

(2) SCOPE OF CERTIFICATION. The department may certify an individual commercial applicator in one or more categories under s. ATCP **29.31.** An individual certified in any category may do any of the following:

(a) Use or direct the use of pesticides in that category.

(b) Mix or load pesticides, for application by others, in all of the categories under s. ATCP **29.31.**

(3) LENGTH OF CERTIFICATION. (a) An individual commercial applicator certification is valid for **5** years unless the department suspends or revokes the certification.

(b) The department may certify an individual commercial applicator in additional categories under s. ATCP **29.31** during that individual's 5–year certification period. The additional certifications are valid for the remainder of the 5–year period, and expire simultaneously at the end of that period.

(c) The department may renew an individual commercial applicator certification for another **5** years if the individual again satisfies the requirements for certification.

(4) SPECIAL APPLICATION METHODS; SUPPLEMENTARY CERTIFICATION. No individual commercial applicator may use aircraft, chemigation or soil fumigation to apply pesticides in any category under s. ATCP **29.31** for which that individual is certified unless that individual is also certified under s. ATCP **29.29** to apply pesticides by that method.

Note: See certification requirements under s. ATCP 30.22 **(2)** for applicators using metam sodium.

(5) CERTIFICATION CARD. (a) Within 30 business days after an individual commercial applicator satisfies the requirements for certification under this section, the department shall issue a commercial applicator certification card to that individual. The card shall include all of the following:

1. The individual's name and certification number.

2. A statement indicating the categories under s. ATCP **29.31** in which the individual is certified as a commercial applicator.

3. A statement indicating that the individual is certified under s. ATCP **29.29** to apply pesticides by means of aerial application, chemigation or soil fumigation, if that is the case.

4. The expiration date of the certification.

(b) ***An*** individual commercial applicator shall carry a current certification card when engaged in any activity for which certification is required under this section.

(c) The department may, upon request, replace a certification card that is lost, stolen, damaged or destroyed. The card holder shall pay the replacement cost.

(6) CERTIFICATION STANDARDS. To be certified in any category under s. ATCP **29.31,** an individual shall demonstrate practical knowledge and competency related to all of the following:

(a) The general areas identified under s. ATCP **29.30.**

(b) Each category under s. ATCP **29.31** in which the individual seeks certification.

(7) CERTIFICATION TEST. Except as provided under sub. (10), an individual shall demonstrate practical knowledge and competency in each category under sub. ***(6)*** by scoring at least 70 percent on a written, closed–book examination which the department administers for that category. The department may arrange with an equivalent agency in another state to administer the department's examination to individuals in that state, for purposes of certification in this state.

(8) RETESTING APPLICANTS WHO FAIL TO PASS. An individual who fails an initial examination under sub. (7) may retake the examination not sooner than **24** hours later, on a regularly scheduled examination date. An individual who fails a second or subsequent examination may retake the examination not sooner than **30** days later, on a regularly scheduled examination date. An individual who fails **4** examinations in any category in any 6–month period may not retake the examination for at least 6 months following the date of the last failed examination.

(9) APPLYING FOR CERTIFICATION. To apply for certification as a commercial applicator, an individual shall do all of the following:

(a) Obtain certification training from the university of Wisconsin-extension.

Note: Training consists of a self–study manual and, for some certification categories, supplementary training sessions. Training may be obtained by contacting the University of Wisconsin.–Extension at the following address: University of **Wisconsin–Extension;** Pesticide Applicator Training, Department of Agronomy; **1575** Linden Drive; Madison, WI **53706–1597,** phone: **(608) 265–2950.**

(b) Schedule a certification examination date with the department.

Note: Examination dates may be scheduled by contacting the department at the following address: Wisconsin Department of Agriculture, Trade and Consumer Protection; Division of Agricultural Resource Management, Pesticide Certification and Licensing; **P. O. Box 8911;** Madison; **WI 53708–8911;** Phone **(608) 224-4560.**

(c) Bring both of the following to the certification examination:

1. The certification training materials received under par. (a).

2. A driver's license or other valid photo identification.

(10) APPLICATORS CERTIFIED IN OTHER STATES. (a) The department may certify an individual commercial applicator without examination if the individual is currently certified as a commercial applicator in another state and if all of the following apply:

1. The department determines that the other state has equivalent certification standards.

2. The other state has certified the individual, in the same or equivalent pesticide use categories, based on a written closed-book examination passed within the last 5 years.

3. The other state has never suspended or revoked its certification of that individual.

4. The individual provides proof of certification by the other state and pays a certification fee of $75.

(b) Certification under par. (a) expires on December 31 of the year in which it is issued.

History: Cr. Register, May, 1998, No. 509, eff. 6-1-98.

ATCP 29.27 Private applicator certification. (1) CERTIFICATION REQUIRED. No individual may use or direct the use of a restricted-use pesticide as an agricultural producer unless one of the following applies:

(a) The individual is certified as a private applicator under this section.

(b) The individual is certified as a commercial applicator under s. ATCP 29.26 in the appropriate certification category or categories, and is not engaged in any activity for which a commercial applicator license is required under s. ATCP 29.25.

(c) The individual is licensed as a commercial applicator under s. ATCP 29.25 and certified under s. ATCP 29.26 in the appropriate certification category or categories.

(d) The individual is all of the following:

1. Certified as a pesticide mixer and loader under s. ATCP 29.28.

2. Engaged only in mixing and loading pesticides for application by others.

3. Licensed under s. ATCP 29.25 if engaged in any activity for which a license is required.

(2) SCOPE OF PRIVATE APPLICATOR CERTIFICATION. The department may certify an individual agricultural producer to use or direct the use of restricted-use pesticides as a private applicator. Private applicator certification does not authorize an agricultural producer to engage in activities for which a commercial applicator license is required under s. ATCP 29.25.

(3) LENGTH OF CERTIFICATION. A private applicator certification is valid for 5 years unless the department suspends or revokes the certification. The department may renew a private applicator certification for another 5 years if the private applicator again satisfies the requirements for certification.

(4) SPECIAL APPLICATION METHODS; SUPPLEMENTARY CERTIFICATION. No private applicator may use aircraft, chemigation or fiimigation to apply restricted-use pesticides unless that private applicator is also certified under s. ATCP 29.29 to apply pesticides by that method.

Note: *See* certification requirements under s. ATCP 30.22 (2) for applicators using metam sodium.

(5) CERTIFICATION CARD. (a) Within 30 business days after an individual agricultural producer satisfies the requirements for certification as a private applicator, the department shall issue a private applicator certification card to that individual. The card shall include all of the following:

1. The individual's name and certification number.

2. A statement that the individual is certified as a private applicator.

3. A statement indicating that the individual is certified under s. ATCP 29.29 to apply restricted-use pesticides as a private applicator by means of aerial application, chemigation or fumigation, if that is the case.

4. The expiration date of the certification.

(b) A private applicator shall carry a current certification card when engaged in any activity for which certification is required under this section.

(c) The department may, upon request. replace a certification card that is lost, stolen, damaged or destroyed. The card holder shall pay the replacement cost.

(6) CERTIFICATION STANDARDS. To be certified as a private applicator, an individual agricultural producer shall demonstrate practical knowledge and competency related to the general areas identified under s. ATCP 29.30.

(7) CERTIFICATION PROCEDURE To be certified as a private applicator, an individual agricultural producer shall do one of the following:

(a) Attend a training program provided by the university of Wisconsin-extension, and score at least 50 percent on an open-book examination administered by the training provider. An individual who fails the open-book examination may be retested.

(b) Complete self-study training using materials provided by the university of Wisconsin-extension, and score at least 70 percent on an open-book examination administered by the department or its designee. An individual who fails the open-book examination may be retested.

(8) APPLYING FOR CERTIFICATION An individual agricultural producer may contact the university of Wisconsin-extension agent, in the county where the producer resides, to arrange for training and evaluation under sub. (7).

Note: The university of Wisconsin-extension may charge a fee to cover the cost of training.

(9) PRIVATE APPLICATORS CERTIFIED IN OTHER STATES An individual agricultural producer who is currently certified as a private applicator in another state is automatically deemed to be certified as a private applicator in this state. The certification card issued by the other state serves as a certification card under sub. (5), so that the producer need not obtain a certification card from the department.

History: Cr. Register, May, 1998, No. 509, eff 6-1-98.

ATCP 29.28 Pesticide mixers and loaders; certification. (1) SCOPE OF CERTIFICATION The department may certify an individual to mix or load pesticides for application by others. An individual certified under this section may mix and load pesticides for application by others in all of the categories under s. ATCP 29.31, but may not do any of the following:

(a) Apply pesticides in any category under s. ATCP 29.31.

(b) Engage in any activity for which a license is required under s. ATCP 29.25 unless that individual holds a license under s. ATCP 29.25.

(2) LENGTH OF CERTIFICATION. A pesticide mixer and loader certification is valid for 5 years unless the department suspends or revokes the certification. The department may renew an individual's certification for another 5 years if, before the individual's certification expires, the individual again satisfies the requirements for certification.

(3) CERTIFICATION CARD (a) Within 30 business days after an individual satisfies the requirements for certification under this section, the department shall issue a certification card to that individual. The card shall include all of the following:

1. The individual's name and certification number.

2. A statement indicating that the individual is certified as a pesticide mixer and loader.

3. The expiration date of the certification.

(b) A pesticide mixer and loader shall carry a current certification card when engaged in any activity for which certification is required.

(e) The department may. upon request, replace a certification card that is lost, stolen, damaged or destroyed. The card holder shall pay the replacement cost.

(4) CERTIFICATION STANDARDS To be certified as a pesticide mixer and loader, an individual shalt demonstrate practical

knowledge and competency related to the general areas identified under s. ATCP 29.30.

(5) CERTIFICATION TEST. An individual shall demonstrate practical knowledge and competency under sub. (4) by scoring at least 70 percent on a written, closed–book examination administered by the department. An individual who fails an examination may be retested according to the procedure described in s. ATCP 29.26 (8).

(6) APPLYING FOR CERTIFICATION To apply for certification under this section, an individual shall follow the procedure described in s. ATCP 29.26 (9).

History: **Cr.** Register, May, 1998, No. 509, eff 6–1–98.

ATCP 29.29 Special application methods; supplementary Certification. (1) AERIAL APPLICATOR. SUPPLEMENTARY CERTIFICATION. The department may certify an individual to use aircraft to make pesticide applications for which that individual is certified as a commercial or private applicator under s. ATCP 29.26 or 29.27. To be certified as an aerial applicator, an individual shall do all of the following:

(a) Provide proof that he or she is licensed and fully trained to operate and apply pesticides with each type of aircraft used for that purpose.

(b) Demonstrate practical knowledge and competency related to aerial applications, including the principles and practices of aerial pest control, potential health and environmental hazards related to aerial applications, prevention of pesticide overspray and drift, and requirements under s. ATCP 29.53.

(2) CHEMIGATION APPLICATOR, SUPPLEMENTARY CERTIFICATION. (a) The department may certify an individual to make pesticide applications, for which that applicator is certified as a commercial or private applicator under s. ATCP 29.26 or 29.27, by means of chemigation.

(b) To be certified as a chemigation applicator, an individual shall demonstrate practical knowledge and competency related to all of the following:

1. Proper chemigation procedures.

2. Chemigation equipment, including calibration and operation.

3. Potential health and environmental hazards related to chemigation.

4. Requirements under s. ATCP 29.54.

(3) SOIL FUMIGATION BY COMMERCIAL APPLICATOR; SUPPLEMENTARY CERTIFICATION. The department may certify an individual commercial applicator to make pesticide applications, for which that individual is certified under s. ATCP 29.26, by means of soil fumigation. To be certified as a soil fumigator, an individual commercial applicator shall demonstrate practical knowledge and competency related to all of the following:

(a) Pests that may be treated by soil fumigation.

(b) Factors that may affect the need for and appropriate use of soil fumigation.

(c) Pesticides used as soil fumigants.

(d) Health and environmental hazards related to soil fumigation.

(e) Proper soil fumigation methods, including restricted entry intervals, proper use of safety apparatus, and other safeguards to protect human health and the environment.

(f) Worker safety.

(g) State and federal regulations related to soil fumigant pesticides and their use.

(4) FUMIGATION BY PRIVATE APPLICATOR; SUPPLEMENIARY CERTIFICATION. The department may certify a private applicator to make fumigation applications to soil, spaces or commodities if all of the following apply:

(a) The private applicator is certified under s. ATCP 29.27.

(b) The private applicator demonstrates practical knowledge and competency related to all of the following:

1. Pests that may be treated by fumigation.

2. Factors that may affect the need for and appropriate use of fumigation.

3. Pesticides applied by means of fumigation.

4. Health and environmental hazards related to fumigation.

5. Proper fumigation methods, including restricted entry intervals, proper use of safety apparatus, and other safeguards to protect human health and the environment.

6. Worker safety.

7. State and federal regulations related to fumigant pesticides and their use.

(5) CERTIFICATION PROCEDURE, COMMERCIAL APPLICATORS A commercial applicator ccrtified under s. ATCP 29.26 may apply for supplementary certification under this section according to the procedure specified under s. ATCP 29.26 (9). To be certified under sub. (1), (2) or (3), the applicant shall score at least 70 percent on a written, closed–book examination administered by the department. An individual who fails an examination may be retested according to the procedure described in s. ATCP 29.26 (8). If necessary, the department may require the individual to pass a field or operational examination in addition to a written examination.

(6) CERTIFICATION PROCEDURE; PRIVATE APPLICATORS. A private applicator ccrtified under s. ATCP 29.27 may apply for supplementary certification under this section by contacting the university of Wisconsin–extension agent, in the county where the private applicator resides. To be certified under sub. (1), (2) or (4), the private applicator shall do both of the following:

(a) Complete self–study training using materials provided by the university of Wisconsin–extension.

(b) Demonstrate practical knowledge and competency by scoring at least 70 percent on an open–book examination administered by the training provider. The examination may include a field or operational examination. An individual who fails an examination may be retested.

History: Cr. Register, **May,** 1998. **No.** 509, eff. 6–1–98.

ATCP 29.30 General certification standards. In order to be certified under s. ATCP 29.26, 29.27 or 29.28, an individual shall do all of the following:

(1) PESTICIDE LABELS. Demonstrate all of the following:

(a) Knowledge related to the general format and terminology used on pesticide labels.

(b) Ability to understand instructions, warnings, terms, symbols and other information commonly appearing on pesticide labels.

(c) Knowledge of pesticide use classifications.

(d) Knowledge that pesticide use inconsistent with labeling is prohibited.

(2) PESTICIDE HAZARDS, GENERAL. Demonstrate practical knowledge and competency related to all of the following:

(a) Pesticide toxicity

(b) Common hazards to persons, property and the environment.

(3) HUMAN HEALTH HAZARDS AND RESPONSES. Demonstrate practical knowledge and competency related to all of the following:

(a) Pesticide exposure and health risks related to different types of pesticides and pesticide applications.

(b) Common exposure routes by which pesticides may reach or enter an organism.

(c) Common types and causes of pesticide accidents.

(d) Safety measures to prevent or minimize human exposure.

(e) Worker protection, including the use of protective equipment.

(f) Symptoms of pesticide poisoning.

(g) First aid and other procedures to be followed in case of pesticide exposure.

(4) ENVIRONMENT Demonstrate practical knowledge related to all of the following:

(a) Potential environmental hazards related to pesticide use or misuse, including hazards to surface water, groundwater, nontarget organisms and endangered species.

(b) How environmental hazards may be affected by factors such as weather, terrain, drainage patterns, soil types, hydrogeologic conditions, and the nature of surrounding biological communities.

(5) PESTS Demonstrate practical knowledge and competency related to all of the following unless the individual is certified only as a pesticide mixer and loader under **s.** ATCP 29.28:

(a) Identification of relevant pests.

(b) Common features of pest organisms.

(c) Characteristic damage caused by pest organisms.

(d) Pest development and biology as it may be relevant to problem identification and control.

(c) Factors affecting the need for and appropriate use of pesticides to control pests.

(6) PESTICIDES Demonstrate practical knowledge and competency related to all the following:

(a) Pesticide types and formulations.

(b) The compatibility, synergism, persistence and toxicity of different pesticide formulations.

(c) Potential hazards associated with the use of different pesticides.

(d) Factors influencing pesticide effectiveness and pest resistance to pesticides.

(e) The mixing and dilution of pesticides.

(7) EQUIPMENT, Demonstrate practical knowledge and competency related to the types of equipment used to apply pesticides, including the advantages and limitations of each type of equipment, the use and maintenance of equipment, and the calibration of equipment.

(8) PESTICIDE MIXING AND LOADING. Demonstrate practical knowledge and competency related to all of the following:

(a) Mixing and loading instructions.

(b) Proper mixing and loading procedures.

(c) Mixing and loading equipment and facilities.

(d) Spill prevention and spill response procedures.

(e) Worker safety, including use of protective safety equipment.

(9) PESTICIDE APPLICATION. Demonstrate practical knowledge and competency related to all the following unless the individual is certified only as a pesticide mixer and loader under s. ATCP 29.28:

(a) The methods or procedures used to apply different pesticides and pesticide formulations.

(b) Factors affecting the choice of application method or application rate.

(c) The relationship between pesticide discharge, pesticide placement and proper use of pesticidcs.

(d) Unnecessary use and misuse of pesticides.

(e) Prevention of overspray and drift.

(10) PESTICIDE HANDLING, STORAGE, TRANSPORTATION AND DISPOSAL Demonstrate practical knowledge and competency related to all of the following:

(a) Proper equipment, facilities and procedures for handling, storing, transporting and disposing of pesticides.

(b) Proper procedures for rinsing and disposing of pesticide containers.

(c) Proper spill prevention and spill response procedures.

(d) Safeguards to prevent or minimize hazards to persons, property and the environment.

(e) Worker protection, including use of protective equipment.

(11) PESTICIDE REGULATIONS Demonstrate knowledge of relevant state and federal pesticide regulations including:

(a) The federal act.

(b) Sections 94.67 to 94.71, Stats.

(c) This chapter, chs. ATCP 30, 31 and 33, and ch. NR 80.

History: Cr Regster, **May,** 1998. No. 509, eff. 6-1-98.

ATCP 29.31 Commercial applicators; certification categories. The department may certify an individual as a commercial applicator, under s. ATCP 29.26, in any of the following categories:

(1) FIELD AND VEGETABLE CROP PEST CONTROL. (a) ***Category description.*** This category includes individuals who use or direct the use of pesticides to control pests affecting agricultural field and vegetable crops, or to control pests on noncrop agricultural lands.

(b) ***Certification requirements.*** To be certified in this category, an individual shall demonstrate practical knowledge and competency related to all of the following:

1. Agricultural crops and noncrop agricultural land uses, and key pests that may affect them.

2. Pesticides that may be used to control relevant pests, and factors that may affect the need for and appropriate use of those pesticides.

3. Potential health and environmental hazards related to the use of pesticides in this category, including hazards related to surface water and groundwater.

4. Appropriate procedures for mixing, loading, applying and disposing of pesticidcs, to prevent or minimize pesticide--related hazards.

5. The safe use of pesticide–treated crops for food or feed, including required pre–harvest intervals.

6. Worker safety, notice, posting and restricted entry interval requirements.

7. Hazards to treated plants and nontarget organisms, including phytotoxicity.

8. Pesticide overspray and drift, and how to avoid them.

9. Public and community relations issues related to pesticide applications.

(2) FRUIT CROP PEST CONTROL (a) *Category* ***description.*** **This** category includes individuals who use or direct the **use** of pesticides to control pests affecting the production of agricultural fruit crops, including small fruits, tree fruits and nuts.

(b) *Certification* ***requirements.*** To be certified in this category, an individual shall demonstrate practical knowledge and competency related to all of the following:

1. Common agricultural fruit crops grown in this state, and the pests that affect them.

2. Pesticides that may be used to control relevant pests, and factors that may affect the need for and appropriate use of those pesticides.

3. Potential health and environmental hazards related to pesticide use in this category, including hazards related to surface water and groundwater.

4. Appropriate procedures for mixing, loading, applying and disposing of pesticides, to prevent or minimize pesticide–related hazards.

5. The safe use of pesticide–treated fruit crops for food or feed, including required pre–harvest intervals.

6. Worker safety, notice, posting and restricted entry interval requirements.

7. Hazards to treated plants and nontarget organisms, including phytotoxicity.

8. Pesticide ovcrspray and drift, and how to avoid them.

9. Public and community relations issues related to pesticide applications.

(3) LIVESTOCK AND POULTRY PEST CONTROL. (a) ***Category description.*** This category includes individuals who use or direct the use of pesticides to do either of the following:

1. Control pests on agricultural animals such as livestock, poultry or horses.

2. Control pests other than birds and rodents in places, other than human habitations, where agricultural animals are confined.

(b) ***Certification requirements.*** To be certified in this category, an individual shall demonstrate practical knowledge and competency related to all of the following:

1. Common agricultural animals, and the pests that affect them.

2. Pesticides that may be used to control relevant pests, and factors that may affect the need for and appropriate use of those pesticides.

3. Potential adverse health effects on animals and humans.

4. Potential adverse effects on food and other uses of animals or their products.

5. Appropriate procedures for preparing, applying and disposing of pesticides, to prevent or minimize pesticide–related hazards.

(4) FOREST PEST CONTROL. (a) *Category* ***description.*** This category includes individuals who use or direct the use of pesticides to control pests in forests, forest nurseries, Christmas tree plantations and tree seed producing areas.

(b) ***Certification requirements.*** To be certified in this category, an individual shall demonstrate practical knowledge and competency related to all of the following:

1. Forests, forest nurseries, Christmas tree plantations and tree seed production in this state, and pests that may affect them.

2. Pesticides that may be used to control relevant pests.

3. Factors, including pest population dynamics and cycles, that may affect the need for and appropriate use of pesticides.

4. Appropriate procedures for mixing, loading, applying and disposing of pesticides, to prevent or minimize pesticide–related hazards.

5. Potential adverse effects on treated plants and plant products.

6. Potential adverse effects on nontargct organisms.

7. Potential health and environmental hazards, including hazards to aquatic habitats and wildlife.

8. Pesticide overspray and drift, and how to avoid them.

9. Applicable laws, including **s.** 26.30, Stats., and ch. NR 35, pertaining to forest pest control.

10. Public and community relations issues related to pesticide applications.

(5) TURF AND LANDSCAPE PEST CONTROL. (a) *Category* ***description.*** This category includes individuals who use or direct the use of pesticides to control pests affecting turf or landscape.

(b) ***Certification requirements.*** To be certified in this category, an individual shall demonstrate practical knowledge and competency related to all of the following:

1. Production and maintenance of turf and landscape in this state.

2. Common pests affecting turf and landscape.

3. Pesticides that may be used to control relevant pests, and factors that may affect the need for and appropriate use of those pesticides.

4. Appropriate procedures for mixing, loading, applying and disposing of pesticides, to prevent or minimize pesticide–related hazards.

5. Worker safety, notice, posting and restricted entry interval requirements.

6. Potential health and environmental hazards, including hazards related to surface water and groundwater.

7. Hazards to treated plants and nontarget organisms, including phytotoxicity.

8. Pesticide overspray and drift, and how to avoid them.

9. Public and community relations issues related to pesticide applications.

(6) GREENHOUSE AND NURSERY PEST CONTROL. (a) *Category* ***description.*** This category includes individuals who use or direct the use of pesticides to control pests affecting greenhouse or nursery plants.

(b) ***Certification requirements.*** To be certified in this category, an individual shall demonstrate practical knowledge and competency related to all of the following:

1. Production of greenhouse and nursery plants.

2. Common pests affecting greenhouse and nursery plants.

3. Pesticides that may be used to control relevant pests, and factors that may affect the need for and appropriate use of those pesticides.

4. Appropriate procedures for mixing, loading, applying and disposing of pesticides, to prevent or minimize pesticide–related hazards.

5. Worker safety, notice, posting and restricted entry interval requirements.

6. Potential health and environmental hazards.

7. Hazards to treated plants and nontarget organisms, including phytotoxicity.

(7) SEED TREATMENT PEST CONTROL. (a) ***Category description.*** This category includes individuals who use or direct the use of pesticides, other than in planter box treatments, to control pests on seeds used for planting or propagation.

(b) *Certification* ***requirements.*** To be certified in this category, an individual shall demonstrate practical knowledge and competency related to all of the following:

1. Seeds and the pests that may affect them.

2. Pesticides that may be used to control relevant seed pests, and factors that may affect the need for and appropriate use of those pesticides.

3. Potential health and environmental hazards related to pesticide applications, including hazards related to handling, sorting, mixing, using and disposing of pesticide–treated seed.

4. Appropriate procedures for preparing, applying and disposing of pesticides, including procedures for handling, sorting, mixing, using and disposing of pesticide–treated seed, to prevent or minimize pesticide–related hazards.

5. Factors, such as seed coloration carriers and surface active agents, that may affect pesticide efficacy or seed germination.

6. Worker safety, notice, posting and restricted entry interval requirements.

(8) AQUATIC AND MOSQUITO PEST CONTROL. (a) ***Category description.*** This category includes individuals who do either of the following:

1. Use or direct the use of any pesticide in standing or running surface water, or below the high water mark, to control pests.

2. Use or direct the use of any pesticide to control mosquitoes in water or on land.

(bj ***Certification requirements.*** To be certified in this category, an individual shall demonstrate practical knowledge and competency related to all of the following:

1. Pests in aquatic environments.

2. Pesticides that may be used to control relevant aquatic pests, and factors that may affect the need for and appropriate use of those pesticides.

3. Potential health and environmental effects of pesticide applications, including potential downstream effects, secondary effects and effects on nontarget organisms.

4. Proper procedures for mixing, loading, applying and disposing of pesticides, to prevent or minimize pesticide–related hazards. This includes limited area application principles.

5. Applicable regulations including s. ATCP **29.62** and ch. **281,** Stats., and ch. NR 107.

6. Public and community relations issues related to aquatic pesticide applications.

(9) ANTIFOULING PAINT APPLICATIONS (a) *Category* ***description.*** This category includes individuals who use or direct the use of anti–fouling paint pesticides to preserve and protect boat hulls, buoys, and other materials against damage from marine plants and animals such as barnacles, algae and tube worms.

(b) *Certification* ***requirements.*** To be certified in this category, an individual shall demonstrate practical knowledge and competency related to all of the following:

1. The pests against which antifouling paints are commonly used.

2. Antifouling paints, and factors that may affect the need for and appropriate use of antifouling paints.

3. Potential health and environmental hazards related to antifouling paints.

4. Proper procedures for mixing, loading, applying and disposing of antifouling paints, to prevent or minimize hazards related to those paints.

(10) RIGHT-OF-WAY PEST CONTROL. (a) ***Category description.*** This category includes individuals who use or direct the use of pesticides to maintain lands used for electric power lines, pipelines, railways, public roads or similar purposes.

(b) *Certification* ***requirements.*** To be certified in this category, an individual shall demonstrate practical knowledge and competency related to all of the following:

1. The variety of environments that may be affected by right–of–way pesticide applications.

2. Recognition of common pests controlled by right-of–way pesticide applications.

3. Pesticides that may be used to control relevant pests, and factors that may affect the need for and appropriate use of those pesticides.

4. Potential health and environmental hazards, including hazards related to surface water and groundwater.

5. Hazards to treated plants and nontarget organisms, including phytotoxicity.

6. Appropriate procedures for mixing, loading, applying and disposing of pesticides, to prevent or minimize pesticide–related hazards.

7. Notice, posting and restricted entry interval requirements.

8. Pesticide overspray and drift, and how to avoid them.

9. Public and community relations issues related to pesticide applications.

(11) INDUSTRIAL, INSTITUTIONAL, STRUCTURAL, AND HEALTH–RELATED PEST CONTROL; GENERAL. (a) ***Category description.*** This category includes individuals, other than those included in categories subs. **(12)** to (15), who use or direct the use of pesticides for any of the following purposes:

1. To protect stored, processed or manufactured products.

2. To control pests in or around food handling establishments, human dwellings, schools, institutions, industrial establishments, warehouses, grain elevators or like facilities, or the areas immediately adjacent to those facilities. It includes individuals making perimeter barrier treatments, within 10 feet of a building or structure, to prevent or discourage pests from entering that building or structure. It also includes individuals making spot or directed applications to landscapes to control structural, household or nuisance pests such as ants, fleas, wasps, bees and hornets. It does not include individuals making applications under sub. (5) to control pests of turf or ornamentals; nor does it include individuals making applications under sub. (8) to control mosquitoes.

Note: Landscape applications, other than perimeter barrier treatments within 10 feet of a building or structure, must comply with s. ATCP 29.56.

3. To control, as part of a public health program, pests other than mosquitoes that have public health or medical importance.

(b) ***Certification requirements.*** To be certified in this category, an individual shall demonstrate practical knowledge and competency related to all of the following:

1. Pests that have public health or medical importance.

2. Pesticides that may be used to control relevant pests, and factors that may affect the need for and appropriate use of those pesticides.

3. Potential health and environmental hazards related to the use of pesticides in this category.

4. Appropriate procedures for mixing, loading, applying and disposing of pesticides, to prevent or minimize pesticide–related hazards.

(12) FUMIGATION; SPACES AND COMMODITIES. (a) ***Category description.*** This category includes individuals who use or direct the use of fumigant pesticides to control pests in industrial, institutional or structural settings, or for health–related purposes. It includes individuals who apply fumigants by means of general, spot, tarpaulin, chamber, vehicle or in–transit fumigation, or who aerate or ventilate fumigated spaces. It does not include individuals who use or direct the use of soil fumigants.

(b) ***Certification requirements.*** To be certified in this category, an individual shall demonstrate practical knowledge and competency related to all of the following:

1. Pests that are subject to control by fumigation, including pest biology.

2. Fumigants that may be used to control relevant pests.

3. Factors that may determine the need for, or appropriate use of, a fumigant.

4. Potential health and environmental hazards related to fumigants.

5. Appropriate procedures for mixing, loading, applying and disposing of fumigants, to prevent or minimize fumigant–related hazards.

6. Fumigation equipment.

7. Worker safety, notice, posting and restricted entry interval requirements.

(13) SEWER ROOT CONTROL (a) ***Category description.*** This category includes individuals who use or direct the use of metam sodium or other fumigants to control root growth in sewers.

(b) *Certification requirements.* To be certified in this category, an individual shall demonstrate practical knowledge and competency related to all of the following:

1. The use of metam sodium and other fumigants to control root growth in sewers.

2. Factors that may determine the need for, or appropriate use of, a sewer fumigant.

3. Potential health and environmental hazards related to sewer fumigants.

4. Appropriate procedures for mixing, loading, applying and disposing of sewer fumigants, to prevent or minimize fumigant–related hazards.

5. Fumigation equipment.

6. Worker safety, notice, posting and restricted entry interval requirements.

(14) TERMITE CONTROL (a) *Category description.* This category includes individuals who use or direct the use of pesticides to prevent or control termites.

(b) *Certification* ***requirements.*** To be certified in this category, an individual shall demonstrate practical knowledge and competency related to all of the following:

1. Termites, including termite biology.

2. Pesticides that may be used to control termites, and factors that may affect the need for and appropriate use of those pesticides.

3. Potential health and environmental hazards related to termite control.

4. Key factors affecting the nature and severity of health and environmental hazards related to termite control.

5. Appropriate procedures for mixing, loading, applying and disposing of pesticides, to prevent or minimize pesticide–related hazards.

(15) WOOD PRESERVATION (a) *Category* ***description.*** This category includes individuals, other than those identified under sub. (9), who use or direct the use of pesticides for wood treatment to preserve and protect wood or wood–based materials against damage from insects, fungi, surface molds and mildew, marine crustaceans, shipworms and other pests.

(b) ***Certification*** *requirements.* To be certified in this category, an individual shall demonstrate practical knowledge and competency related to all of the following:

1. Wood species and wood structure.

2. Wood destroying pests and their biology.

3. Wood preservatives that may be used to prevent or control damage caused by wood destroying pests.

4. Factors that may affect the need for and appropriate use of wood preservatives.

5. Potential health and environmental hazards related to the use of wood preservatives.

6. Appropriate procedures for mixing, loading, applying and disposing of wood preservatives, to prevent or minimize related hazards.

(16) COMPANION ANIMAL PEST CONTROL. (a) *Category* ***description.*** This category includes individuals who use or direct the use of pesticides to do either of the following:

1. Control pests on companion animals, such as dogs or cats.

2. Control pests in places, other than human habitations, where companion animals are confined.

(b) *Certification* ***requirements.*** To be certified in this category, an individual shall demonstrate practical knowledge and competency related to all of the following:

1. Common companion animals and household pets, and the pests that affect them.

2. Pesticides that may be used to control relevant pests, and factors that may affect the need for and appropriate use of those pesticides.

3. Potential toxic or adverse health effects on animals or humans.

4. Appropriate procedures for preparing, applying and disposing of pesticides, to prevent or minimize pesticide–related hazards.

History: Cr Register, **May,** 1998, No. 509, eff. 6–1–98.

ATCP 29.32 Trainee registration. (1) GENERAL. An employer licensed under s. ATCP 29.20 may register an employee as a trainee if that employer is training that employee for licensing under s. ATCP 29.25 and certification under s. ATCP 29.26 or 29.28. A registered trainee may, without being licensed or certified, temporarily engage in activities for which a license and certification are normally required if those activities are reasonably necessary for the training. A trainee registration takes effect when properly filed with the department, and expires 30 days after it is filed.

(2) RESTRICTIONS ON TRAINEE USE OF PESTICIDES A trainee registration under sub. (1) does not authorize the trainee to do any of the following:

(a) Use any pesticide except under the direct on–site supervision of an individual who is licensed under s. ATCP 29.25 and certified under s. ATCP 29.26 or 29.28 to perform the functions for which the trainee is being trained.

(b) Direct the use of pesticides.

(c) Engage in any category of pesticide use which is not identified in the trainee registration.

(d) Use any restricted–use pesticide.

(e) Engage in aquatic pest control under s. ATCP 29.31 **(8).**

(f) Use any soil fumigant, or apply any pesticide by aircraft or chemigation.

(3) ELIGIBILITY LIMITS (a) No employer may register a trainee more than once in the same category.

(b) No trainee may be registered under sub. (1) to do any of the following:

1. Use any pesticide in any certification category under s. ATCP 29.31 in which that trainee has failed to renew a prior certification.

2. Mix or load pesticides if the trainee has failed to renew any prior certification under s. ATCP 29.26 or 29.28.

(4) REGISTRATION PROCEDURE. An employer shall file a trainee registration under sub. (1) on a form provided by the department. The completed registration form shall include all of the following:

(a) The trainee's name, home address and telephone number.

(b) The employer's name, business address and telephone number.

(c) The name, license number and certification number of each individual who will supervise the trainee under sub. (2) (a).

(d) The brand name and federal environmental protection agency registration number of each pesticide that the trainee may use during the training period.

(e) The categories under s. ATCP 29.31 in which the trainee will use pesticides during the training period.

(f) A declaration stating all the following:

1. That the employer is preparing the trainee for licensing under s. ATCP 29.25 and certification under s. ATCP 29.26 or 29.28.

2. That the employer assumes complete responsibility for the trainee's use of pesticides during the training period.

3. That the training will comply with the restrictions under sub. (2).

4. That the trainee is at least 16 years old.

5. That the trainee can understand and follow oral instructions.

6. That the trainee can read and comprehend written instructions, including pesticide labels and labeling.

7. That the trainee can carry out assignments and instructions in a responsible manner.

8. That the trainee is capable of using pesticides as a trainee, under direct on–site supervision.

(g) The dated signatures of all the following persons:

1. The trainee.

2. Each individual identified under par. (c).

3. The employer or a responsible officer of the employer.

(h) Other relevant information reasonably required by the department.

(5) COPY TO TRAINEE. An employer filing a trainee registration form under sub. (4) shall provide a true copy of that registration form to the trainee. The trainee shall carry the registration form when engaged in any activity for which licensing or certification

would be required under s. ATCP 29.25, 29.26 or 29.28 if the individual were not registered as a trainee.

(6) SUMMARY SUSPENSION OR REVOCATION. The department may by written notice, without prior notice or hearing, summarily suspend or revoke a trainee registration if the department finds a violation of this section, or determines that any information in the registration is false.

History: Cr. Register, May, 1998, No. 509, eff. 6–1–98.

ATCP 29.33 Applicator records. (1) INDIVIDUAL COMMERCIAL APPLICATORS. An individual who is required to be licensed as a commercial applicator under s. ATCP 29.25 shall make a record of each pesticide application for which that license is required. The individual shall make the record on the day of the application. The individual shall keep the record for at least 2 years unless the individual is employed by a commercial application business that keeps the record under s. ATCP 29.21.

Note: Under s. ATCP 30.31 (5), an individual must keep a record of atrazine applications for at least 3 years.

(2) PRIVATE APPLICATORS. An individual agricultural producer who applies a restricted–use pesticide as a private applicator shall make a record of that application. The individual shall keep the record for at least 2 years.

(3) RECORD CONTENTS. A pesticide application record under this section shall include all of the following:

(a) The first and last name of the individual making the pesticide application.

(b) The name and address of the customer, if any, for whom the pesticide was applied.

(c) The crop, commodity or site to which the pesticide was applied.

(d) The specific location of the pesticide application site.

(e) The month, day, year and approximate starting and ending time of the pesticide application.

(f) The brand name or product name or common chemical name, and the federal environmental protection agency registration number, of each pesticide applied.

(g) At least one of the following:

1. The concentration and total quantity of each pesticide applied.

2. The amount of pesticide product applied per unit area and the total area treated.

(h) Each location, other than a business location licensed under s. ATCP 29.20, at which the pesticide was mixed or loaded. Mixing and loading sites need not be identified if the pesticide is applied directly from a prepackaged retail container, or is applied with application equipment having a total capacity of not more than 5 gallons of liquid pesticide or 50 pounds dry pesticide.

(4) RECORDS AVAILABLE FOR INSPECTION AND COPYING. Records kept under this section shall be made available to the department for inspection and copying upon request.

History: Cr. Register, May. 1998, No. 509, eff. 6–1–98.

Subchapter VII — Storing, Transporting And Selling Pesticides

ATCP 29.40 Storing and transporting pesticides. **(1)** REQUIREMENTS. Persons storing or transporting pesticides shall do all of the following:

(a) Store and transport pesticides according to label directions, in a manner that avoids reasonably foreseeable and reasonably preventable hazards to persons, property and the environment.

(b) Store bulk pesticides according to ch. ATCP 33.

(c) Secure pesticides and pesticide containers against access by children, the general public, domestic animals and wild animals.

(d) Keep pesticides adequately separated from food, feed and other products so that pesticides will not contaminate or be mistaken for those products.

(e) Thoroughly clean pesticide residues from storage areas and transport vehicles before reusing those storage areas or transport vehicles for other purposes.

(f) Protect pesticide containers and labels from reasonably foreseeable damage or destruction.

(g) Inspect pesticide containers when those containers are removed from their outer shipping containers, to ensure that the pesticide containers are intact and properly sealed. and that pesticide labels are intact and fully legible.

(2) PROHIBITIONS. No person may do any of the following:

(a) Store or transport a pesticide in a manner inconsistent with the pesticide label.

(b) Store or transport a pesticide in a visibly broken, defective or improperly scaled container unless that container is enclosed in another suitable container which effectively prevents foreseeable spillage.

History: Cr. Register, May, 1998, No. 509, eff. 6–1–98

ATCP 29.41 Selling pesticides. (1) GENERAL No person may do any of the following:

(a) Sell any pesticide that is not properly registered and labeled according to subch. II.

(b) Sell a pesticide if any part of the pesticide label is absent or illegible.

(c) Sell a pesticide in a manner inconsistent with the pesticide label.

(d) Sell a pesticide in a visibly broken, defective or improperly sealed container.

(e) Sell a pesticide for a use which is not specifically identified on the pesticide label or, in the case of an additional registered use, on supplemental labeling which the seller receives from the pesticide manufacturer or registrant and provides to the purchaser at the time of sale.

(f) Make any false, deceptive or misleading representation in connection with the sale or offer of a pesticide.

(g) Continue to sell any pesticide after its registration expires or is canceled, or after the department orders the pesticide removed from sale for any reason.

(2) RETAIL SALES. (a) No person may sell, at retail, any substance with instructions for using that substance to formulate a pesticide unless that substance is registered as a pesticide under s. ATCP 29.05.

(b) Pesticides bearing the precautionary signal words "POISON', "DANGER' or "WARNING", when displayed at retail, shall be protected from access by children. A retail display complies with this paragraph if any of the following applies:

1. The pesticides are kept at least 42 inches above the floor.

2. The pesticides are packaged in nonbreakable tamper–resistant containers.

(c) Pesticides displayed at retail shall be adequately separated from food, feed and other products so they will not contaminate or be mistaken for those products.

(3) RETAIL SALES OF LANDSCAPE PESTICIDES. No person may sell at retail. to any person other than a certified commercial applicator, any landscape pesticide as defined in s. ATCP 29.56 (1) (f) unless that person displays all of the following items at the point of sale and offers them to the buyer at no additional charge at the time of sale:

(a) Warning signs containing the information shown in Appendix F. Each warning sign shall be all of the following:

1. At least 4 inches by 5 inches in size.

2. Professionally printed in red lettering, on a white background, according to the format shown in Appendix F. A warning

sign may contain supplementary information beyond that shown in Appendix F if the information is consistent with and does not detract from that shown in Appendix F.

3. Constructed so that it remains clearly legible for at least 72 hours after it is posted, despite reasonably foreseeable adverse weather conditions.

(b) Pesticide information sheets which are identical to that shown in Appendix G.

Note: See also subch. IV related to pesticide dealers and distributors.

History: Cr. Register, May, 1998, No. 509, eff. 6–1–98.

Subchapter VIII — Pesticide Handling, Disposal And Spills

ATCP 29.45 Pesticide mixing and loading; spill containment. (1) SPILL CONTAINMENT REQUIRED. Except as provided under sub. **(2),** no person may mix or load a pesticide at any of the following sites unless the mixing or loading operation is conducted over a spill containment surface that complies with this section:

(a) A site located within 100 feet of any well or surface water.

(b) A site, or a group of jointly owned or operated sites located within 1/2 mile of each other, at which a total of more than **1,500** pounds of dry or liquid pesticide active ingredients are mixed or loaded in any calendar year. Pesticide active ingredients under this paragraph include those contained in pesticide–fertilizer mixtures.

(2) EXEMPTIONS. Subsection **(1)** does not apply to any of the following:

(a) Applying a pesticide to the waters of the state, according to ch. NR 107, in order to manage or control aquatic organisms.

(b) Mixing or loading a pesticide into application equipment having a total capacity of 5 gallons or less of liquid pesticide, or **50** pounds or less of nonliquid pesticide.

(c) Mixing or loading a pesticide at a site that is at or immediately adjacent to the pesticide application site and at least 100 feet from any well or surface water.

(3) SPILL CONTAINMENT SURFACE; GENERAL. A spill containment surface under sub. (1) shall comply with all of the following:

(a) It shall be designed to catch and contain all reasonably foreseeable spills of pesticides mixed or loaded over that spill containment surface.

(b) It shall be made of asphalt, concrete or other nonabsorbent materials approved by the department, and shall be strong enough to withstand all foreseeable loading conditions.

Note: The department will maintain a list of approved paving and lining materials for various pesticide compounds, and will provide the current list to interested persons upon request. Additional materials may be approved and added to this list if the person requesting approval provides the department with information demonstrating the adequacy of the materials under intended conditions of use. Persons seeking approval should provide information related to chemical compatibility, permeability, physical characteristics and durability. A tarpaulin may be used as a spill containment surface for nonliquid pesticides if it complies with this subsection.

(c) It shall extend beneath the pesticide load–out conveyor, if any, unless the load–out conveyor is fully enclosed within a housing that is adequate to contain all spillage from the conveyor.

(4) SPILL CONTAINMENT SURFACE; LIQUID PESTICIDES. (a) The spill containment surface under sub. (1) shall meet all of the following requirements if any liquid pesticide is mixed or loaded over that surface:

1. It shall be curbed or sloped to contain spillage, and to prevent liquids from adjacent surfaces from flowing onto it.

2. It shall form or drain into a liquid–tight catch basin that meets the capacity requirements under sub. (5).

(b) A tarpaulin may not be used as a spill containment surface for liquid pesticides.

(c) A pesticide mixed with a liquid carrier is considered a liquid pesticide under this subsection. The impregnation of a nonliquid fertilizer with a liquid pesticide does not constitute the mixing or loading of a liquid pesticide under this subsection.

(5) CATCH BASIN (a) Except as provided under par. (b), the catch basin under sub. (4) (a) **2.** shall have an available capacity of at least 1,500 gallons. To attain this required capacity, the catch basin may include a sump equipped with an automatically activated pump that transfers liquids to an above–ground container.

(b) If no pesticide is transferred to or from a container larger than 1,000 gallons, the available capacity of the catch basin under sub. **(4)** (a) **2.** shall be at least **125%** of the capacity of the largest container loaded or unloaded at the site. A container under this paragraph includes a container carried on pesticide application equipment.

(6) RECOVERY OF DISCHARGES Pesticides spilled or intentionally released onto a spill containment surface under sub. **(1)** shall be promptly recovered from the spill containment surface or from the catch basin to which it drains.

History: Cr. Register, May, 1998, No. 509, eff. 6–1–98.

ATCP 29.46 Mixing or loading near surface waters. (1) PROHIBITIONS Except as provided under sub. **(2),** no person may do any of the following:

(a) Immerse any pesticide application equipment, mix tank or nurse tank in the waters of the state.

(b) Fill any pesticide application equipment, mix tank or nurse tank from the waters of the state.

(c) Clean or fill any pesticide application equipment, mix tank or nurse tank near the surface waters of the state, or near any well site, if pesticide spillage or overflow may contaminate waters of the state.

(2) EXEMPTIONS Subsection (1) does not prohibit any of the following:

(a) Filling pesticide application equipment, or a mix or nurse tank, from a well or discharge outlet that is fully protected against backflow and backsiphonage under s. Comm **82.41.** The air gap from the supply outlet to the equipment being filled shall be at least twice the effective opening of the supply outlet, but not less than one inch.

(b) Filling or cleaning pesticide application equipment, or a mix or nurse tank, over a spill containment surface that complies with s. ATCP **29.45.**

(c) Applying a pesticide by means of chemigation that complies with s. ATCP **29.54.**

(d) Filling a water supply tank from surface waters if the water supply tank is used only to carry water. If the vehicle carrying the water supply tank also carries a pesticide container, the pesticide container must remain at least **8** feet from the surface water while the water supply tank is being filled.

(e) Making an aquatic pesticide application according to ch. NR **107,** or filling a water supply tank from surface waters for that application.

History: Cr. Register, May, 1998, No. 509, eff. 6–1–98.

ATCP 29.47 Disposal of pesticides and pesticide containers. (1) GENERAL. **No** person may dispose of any pesticide or pesticide container, or hold any pesticide or pesticide container for disposal, in a manner that is inconsistent with label directions, that risks contaminating the waters of the state, or that creates a hazard to persons, property or the environment.

(2) REUSE PROHIBITED **No** person may reuse a pesticide container for any purpose. This subsection does not prohibit any of the following:

(a) Recycling a container for scrap in compliance with applicable law.

(b) Reusing, in compliance with label directions, a pesticide container that is designed to be reused.

(c) Returning a pesticide container to a pesticide manufacturer or seller who has agreed to receive that container.

(d) Temporarily reusing a pesticide container to hold the same pesticide recovered from a leaking or damaged pesticide container.

History: Cr. Register, May, 1998, No. 509, eff. 6–1–98.

ATCP 29.48 Pesticide spills. (1) CLEANUP. In order to minimize hazards to persons, property and the environment, a person who spills a pesticide shall immediately take appropriate measures to contain the spill, recover the spilled pesticide, and clean surfaces exposed to the spilled pesticide.

(2) REPORTING. ***A*** person who spills a pesticide shall immediately notify the department of natural resources as required by s. 292.11, Stats.

Note: The spill hotline for the department of natural resources is 1–800–943–0003. Ch. NR 706 specifies reportable spill amounts for all agricultural chemicals including pesticides. The department of agriculture, trade and consumer protection administers an agricultural chemical cleanup program under s. 94.73, Stats.. and ch. ATCP 35, and can reimburse certain cleanup costs. You may contact the department's spill response coordinator by calling 608–224–4500.

(3) STORING SPILLED PESTICIDE AND RINSATE. No spilled pesticides or spilled materials containing pesticides may be stored below ground level. Pesticide spills or rinsate stored in containers having a capacity of more than **55** gallons of liquid or 100 pounds of dry material shall be stored in compliance with ch. ATCP 33.

History: Cr. Register, **May,** 1998, No. 509, eff. 6–1–98.

Subchapter IX — Pesticide Use

ATCP 29.50 Pesticide use; general. (1) NEGLIGENT USE. No person may do any of the following:

(a) Use or direct the use of a pesticide in a negligent manner, or in a manner inconsistent with the pesticide label.

(b) Use or direct the use of a pesticide for a purpose for which the pesticide is not registered or labeled under subch. 11.

(2) OVERSPRAY AND DRIFT. (a) No person may use or direct the use of a pesticide in a manner that results in pesticide overspray or significant pesticide drift. This paragraph does not apply to mosquito control applications, made by or under the direction of a governmental entity for public health purposes, that use proper mosquito control application methods.

Note: See definitions of "pesticide drift" and "pesticide overspray" under ss. ATCP 29.01 (29) and **(30).**

(b) The application of pesticide outside the target application site is presumed to be the result of pesticide drift unless there is evidence of pesticide overspray.

(c) Pesticide drift is significant, under par. (a), if there is credible evidence that it has moved outside the target application site in any of the following amounts:

1. Amounts that cause actual harm to persons, property or the environment.

2. Amounts that could potentially harm persons, property or the environment under any reasonably foreseeable circumstances, regardless of whether an actual exposure or harm has occurred.

3. Amounts that are readily visible.

(3) PREHARVEST INTERVAL. (a) No person may harvest an agricultural commodity from a pesticide application site during the preharvest interval specified for that commodity on the pesticide label.

(b) No person controlling a pesticide application site may direct or permit an agricultural commodity to be harvested from that site in violation of par. (a).

(4) CONTAMINATING WATERS OF THE STATE. (a) Except as provided under par. (b), no person may do either of the following:

1. Cause a pesticide to enter the waters of the state, either directly or through a sewer system.

2. Use a pesticide in any manner which the user knows or should know will result in contamination of the waters of the state.

(b) Paragraph (a) does not apply to any of the following:

1. The use of germicides, sanitizers, disinfectants, algaecides or slimicides according to label directions.

2. Fish management, mosquito abatement or other water applications made under the supervision or rules of the department of natural resources.

Note: See ch. NR 107.

3. The application of pesticides according to label directions to control roots, insects or rodents in sewers.

4. The incidental application of pesticides to temporary rain puddles on target application sites.

5. Unforeseeable leaching or runoff of a pesticide applied according to label directions.

(5) DEFECTIVE APPLICATION EQUIPMENT. (a) Except as provided under par. (b), no person may use, furnish, lease or sell pesticide application equipment that is clogged, unclean, leaking or in disrepair, or that cannot be properly calibrated to apply pesticides at the rate specified on the pesticide label.

(b) Paragraph (a) does not prohibit the sale of pesticide application equipment that is clogged, unclean, leaking or in disrepair, or that cannot be properly calibrated, if the seller discloses those defective conditions to the buyer in writing prior to sale.

(6) EMPLOYER OR CONTRACTOR. No person may direct, compel or coerce that person's employee or contract agent to do either of the following:

(a) Violate ss. 94.67 to 94.71, Stats., or this chapter.

(b) Use any pesticide in a manner which that person has reason to believe is likely to result in a violation of ss. 94.67 to 94.71, Stats., or this chapter.

Note: Nothing in this chapter limits the civil or criminal liability of an employer or contractor **for** the acts or omissions **of** an employee or contract agent if the employer or contractor may be held jointly liable **with** the employee or agent under this chapter or other applicable law.

History: Cr. Register, May, 1998, No. ***509,*** eff. 6–1–98.

ATCP 29.51 Advance notice of pesticide applications. (1) PESTICIDES HIGHLY TOXIC TO BEES. (a) At least 24 hours before a pesticide labeled "Highly Toxic to Bees" or containing the active ingredient methomyl is applied to any site, the person who owns or controls that application site shall notify each beekeeper who has made a request under par. (b) during the same calendar year.

(b) A beekeeper who owns a honeybee colony located within 1 1/2 miles of a pesticide application site under par. (a) may request notice of pesticide applications under par. (a). The beekeeper shall make the request in writing to a person who owns or controls the application site. The request shall include the beekeeper's name, address and telephone number, if any, and the specific location of each of the beekeeper's bee yards.

(c) A notice under par. (a) may be written or oral. The notice shall include the intended date and time of application, the brand or common name of the pesticide to be applied, and the location of the application site. If the application date changes after the notice is issued, the person who owns or controls the application site shall issue a corrected notice as soon **as** reasonably possible before the application occurs.

(d) Paragraph (a) does not apply to an emergency application needed to control a sudden pest outbreak if, because of the emergency circumstances, there is not enough time for notice under par. [a). The person who owns or controls the application site shall give notice under par. (a) as soon as reasonably possible before or after the emergency application. The notice shall include a brief explanation of the circumstances constituting the emergency.

(e) Any person may give a notice under par. (a) on behalf of the person who owns or controls the application site.

(2) AERIAL APPLICATIONS. An individual may request advance notice of aerial pesticide applications to land immediately adjacent to that individual's residence, as provided under s. ATCP 29.53 (2).

(3) RESIDENTIAL APPLICATIONS. A person hired by a customer to make a residential pesticide application shall offer that customer pre–application information as provided under s. ATCP 29.55 (2).

(4) LANDSCAPE APPLICATIONS. (a) A person hired by a customer to make a landscape application shall offer that customer pre–application information as provided under s. ATCP 29.56 (2).

(b) An individual may register, under s. ATCP 29.56 (7), to receive advance notice of commercial landscape applications to land immediately adjacent to that individual's residence.

(5) APPLICATIONS AFFECTING AGRICULTURAL WORKERS. Persons employing agricultural workers, or applying pesticides to places where agricultural workers are employed, shall give prior notice of pesticide applications as required by s. ATCP 29.61.

Note: See also s. ATCP **29.22.**

History: Cr. **Register, May, 1998,** No. **509, eff. 6–1–98.**

ATCP 29.52 Warning signs at application sites. (1) AGRICULTURAL PESTICIDE APPLICATIONS; WARNING TO PUBLIC. (a) A responsible person under par. (b) shall post warning signs at a site where a dual notice agricultural pesticide is applied for agricultural purposes if that site is located within 300 feet of a residence, migrant labor camp, school, playground, day care facility, health care facility, commercial or industrial facility, public recreation area, or other nonagricultural area except a public road, where individuals are likely to be present during the restricted entry interval specified on the pesticide label. The warning signs shall comply with sub. (8).

Note: See definition of "dual notice agricultural **pesticide" in** ss. ATCP **29.01 (17) and 29.6019). This subsection applies** to **all persons applying "dual notice" agricultural pesticides for agricultural purposes —** not **just agricultural employers. The warning notices are intended** to **protect both the general public and agricultural workers.**

(b) The following persons are individually and jointly responsible for posting warning signs under par. (a):

1. The person who operates or controls the premises at which the pesticide is applied.

2. The pesticide applicator.

3. The pesticide applicator's employer, if any.

Note: The persons identified under par. (b) may contract between themselves to **post warning signs under par. (a), but any or all of them may be held liable if the warning signs are not properly posted.**

(2) AGRICULTURAL PESTICIDE APPLICATIONS; WARNING TO WORKERS. An agricultural employer shall post worker protection warning signs as required under s. ATCP 29.62.

(3) NONAGRICULTURAL PESTICIDE APPLICATIONS; RESTRICTED ENTRY INTERVALS. (a) A responsible person under par. (b) shall post warning signs at a pesticide application site, other than a site under sub. (I), if the pesticide label prescribes a restricted entry interval for that pesticide application. The warning signs shall comply with sub. (8).

Note: A label which merely directs individuals to **stay** off **the treated** area **until the pesticide dries does not prescribe a "restricted entry** interval" **for purposes** of sub. **(3).**

(b) The following persons are individually and jointly responsible for posting warning signs under par. (a):

1. The person who operates or controls the premises at which the pesticide is applied.

2. The pesticide applicator.

3. The pesticide applicator's employer, if any.

Note: The persons identified under par. (b) may contract between themselves to post **warning signs under** par. **(a), but any** or all of them **may be held liable if the warning signs are not properly posted.**

(4) CHEMIGATION APPLICATIONS. A person operating a chemigation system shall post warning signs at the chemigation application site as required under s. ATCP 29.54 (17).

(5) RESIDENTIAL APPLICATIONS. A person making a residential application shall give notice to residents as required under s. ATCP 29.55 (3) and (4).

Note: A person making a residential application must also **post warning signs under sub. (3) if the pesticide label prescribes a restricted entry interval.**

(6) LANDSCAPE APPLICATIONS. A person making a landscape application shall post warning signs at the application site as required under s. ATCP 29.56 (3).

(7) STORED SEED TKEATED WITH PESTICIDE. A person who stores pesticide–treated seed in bulk shall post warning signs at the seed storage facility as required under s. ATCP 29.57 (4). In this subsection, "pesticide–treated seed" means seed intended for planting or propagation that is treated with a pesticide for the purpose of providing post–planting protection to the seed or seedling.

(8) WARNING SIGNS. Except as provided under sub. (9), warning signs under subs. (1) and (3) shall comply with all of the following:

(a) Each warning sign shall be at least 8 1/2 inches by 11 inches.

(b) The form and content of each warning sign shall be identical to that shown in Appendix D. A warning sign may contain supplementary information, beyond that shown in Appendix D, if the information is consistent with and does not detract from that shown in Appendix D.

(c) Each warning sign shall be constructed to resist deterioration and remain legible throughout the required posting period.

(d) Warning signs shall be posted before the pesticide application begins, and shall remain posted for the duration of any restricted entry interval specified on the pesticide label. Warning signs may remain posted indefinitely.

(e) Warning signs shall be posted at the following locations:

1. At normal points of access to the application site.

2. At 1/4 mile intervals along those borders of an outdoor application site that lie within 300 feet of a residence, migrant labor camp, school, playground, day care facility, health care facility, commercial or industrial facility, public recreation area, or other nonagricultural area except a public road, where individuals are likely to be present during the restricted entry interval specified on the pesticide label. An application site bordering an area identified under this subdivision for less than 1/2 mile shall be posted with at least one sign.

(9) ALTERNATIVE WARNING SIGNS. (a) A worker protection warning sign under s. ATCP 29.62 may be used in place of a standard warning sign under sub. (8). A worker protection warning sign shall be removed or covered not more than 3 days after the restricted entry interval expires unless the sign continues to be required for another pesticide application at the same site.

(b) If a pesticide application site, such as a potted plant or greenhouse bench top, is too small to accommodate standard warning signs under sub. (8), it may be posted with smaller warning signs that are at least 4 inches by 5 inches. The warning signs shall be clearly posted on each side of the application site at intervals of not more than 25 feet. An individual treated plant may be posted with a single sign. The content and format of the smaller signs shall correspond to the content and format of the standard signs under sub. (8).

(c) If the pesticide label requires a warning sign which is different from the warning sign under sub. @), the warning sign specified on the pesticide label shall be used in place of the warning sign under sub. (8).

History: Cr. **Register, May, 1998, No. 509, eff. 6–1–98.**

ATCP 29.53 Aerial applications. (1) AIRCRAFT. Aircraft used to apply pesticides shall comply with, and be operated according to, applicable regulations of the federal aviation administration and the Wisconsin department of transportation.

Note: See **certification requirements** for **aerial applicators under** ss. ATCP **29.26, 29.27 and 29.29.**

(2) PRIOR NOTICE OF APPLICATION. (a) At least 24 hours before an aerial pesticide application occurs, the person who owns or controls the application site shall notify each adjacent resident from whom that person has received a written request under par. (b) during the same calendar year. Notice is not required if the

application site is more than 1/4 mile from the adjacent parcel on which the requester resides.

(b) An individual residing on a parcel of land may request advance notice of aerial pesticide applications to any immediately adjacent parcel. Parcels are immediately adjacent if they are directly contiguous, are separated only by a road, railway, or utility right-of-way, or are separated only by a government-owned land corridor or waterway having a width of not more than 66 feet.

(c) A request under par. (b) shall be made in writing to the person who owns or controls the application site. The request shall include the requcstcr's name, mailing address, property location, and telephone number if any. If residents of a migrant labor camp as defined under s. 103.90(3), Stats., are entitled to request notice under par. (b), the camp operator shall annually request notice on their behalf and shall promptly communicate to them any notice received.

(d) A notice under par. (a) may be written or oral. The notice shall include the intended date and time of application, the brand or common name of the pesticide to be applied, and the location of the application site. If the application date changes after the notice is issued, the person who owns or controls the application site shall issue a corrected notice as soon as reasonably possible before the application occurs.

(e) Paragraph (a) does not apply to an emergency aerial application needed to control a sudden pest outbreak if, because of the emergency circumstances, there is inadequate time for notice under par. (a). The person who owns or controls the application site shall give notice under par. (a) as soon as reasonably possible before or after the emergency application. The notice shall include a brief explanation of the Circumstances constituting the emergency.

(f) Any person may give a notice under par. (a) on behalf of the person who owns or controls the application site.

History: Cr. **Regrster.** May, **1998,** No. **509, eff. 6-1-98.**

ATCP 29.54 Chemigation. (1) DEFINITIONS In this section:

(a) "Automatic low pressure drain valve" means a self-activating device which is designed and constructed to drain the water supply pipeline in a chemigation system if water pressure falls or the water supply pump ceases operation.

(b) "Calibrate" means to measure and adjust the dispersal or output of equipment to control the rate of pesticide dispersal, and the droplet or particle size of pesticides dispersed by that equipment.

(c) "Check valve" means a device designed and constructed to close a water supply pipeline, pesticide injection line, or other conduit in a chemigation system and to prevent reverse flow in that line.

(d) "Chemigation" means the application of pesticides using a chemigation system.

(e) "Chemigation system" means a device or system which mixes pesticides with irrigation water drawn from any source, and which applies the pesticides with the irrigation water. "Chemigation system" includes all of the components of the system. "Chemigation system" does not include any of the following:

1. A hand-held or hose-end sprayer.

2. A device or system used only to apply residential lawn and garden pesticides.

3. A device or system used only to inject pesticides directly into plants.

4. A device or system used only to apply pesticides directly to the rots of ornamental trees and shrubs.

(f) "Flush time" means the time needed under normal operating conditions to completely fill an imgation system with water so that all outlets are discharging water.

(g) "Injection unit" means a chemical metering pump or device that withdraws pesticide from a supply tank and injects the pesticide into imgation water during chemigation.

(h) "Pesticide supply tank" means a container used to hold pesticides for injection into a chemigation system.

(j) "Potable water supply" means a well or other source of water which is used for human consumption, hygiene or preparation of food products.

(k) "Reduced pressure principle backflow preventcr" means a backflow prevention device consisting of 2 independently acting check valves, spring-loaded to a closed position and separated by an intermediate chamber in which there is an automatic relief that is vented to the atmosphere and spring-loadcd to the open position.

(L) "Vacuum relief valve" means an atmospheric device designed, constructed and installed to protect against back-siphonage by allowing the entry of air to relieve vacuums in a chemigation system.

(2) GENERAL REQUIREMENTS. (a) A person operating a chemigation system shall comply with this section.

(b) Except as provided under sub. (18), a chemigation system shall be designed and constructed according to this section.

(c) A chemigation system shall be designed, constructed, operated and maintained to do all of the following:

1. Comply with the manufacturer's specifications.

2. Prevent pesticides used in the system from contaminating the waters of the state.

3. Prevent unreasonable hazards to persons, property and the environment.

Note: See also ss NR 812.38 and Comm 82.41.

(3) CHEMIGATION WATER SUPPLY. No chemigation system may draw water directly from a potable water supply. **A** chemigation system may draw water from a pond or reservoir to which water has been pumped from a potable water supply, provided that there is an unobstructed vertical air gap between the potable water supply outlet and the flood level of the pond or reservoir. The air gap shall be at least 2 feet, or at least twice the diameter of the effective opening of the water supply outlet, whichever is greater.

(4) CHEMIGATION SYSTEM; CONSTRUCTION MATERIALS (a) A chemigation system shall be resistant to corrosion, puncture and cracking.

(b) Every chemigation system component that may come into contact with pesticides shall be chemically compatible with every pesticide used in the system. Before using any pesticide in a chemigation system, the user shall obtain a written confirmation of chemical compatibility from the system manufacturer or the pesticide manufacturer. The user shall keep the written confirmation on file, and shall make it available to the department for inspection and copying upon request.

(5) PESTICIDE INJECTED INTO CHEMIGATION SYSTEM. (a) No pesticide may be injected into a chemigation system unless the pesticide is labeled for application by chemigation.

(b) No pesticide may be injected into a chemigation system contrary to or inconsistent with label directions.

(c) Every chemigation system shall be properly calibrated to apply the pesticide at the application rate specified on the pesticide label.

(d) The point at which pesticides are injected into a chemigation system shall be located downstream from all devices required under subs. **(7)** to (10).

(6) PESTICIDE SUPPLY TANK. No container used to hold pesticides for injection into a chemigation system may be located less than 8 feet horizontally from any water supply, including any well head or surface water source. The pesticide container, pesticide injection unit and all connections between the pesticide container

and injection unit shall be located within secondary containment that complies with s. ATCP 33.04.

(7) PREVENTING BACKFLOW. A chemigation system shall comply with the following requirements unless the system draws nonpotable water from a privately-owned watertight container or impoundment that is protected by an air gap under sub. (3):

(a) A reduced pressure principle backflow preventer shall be installed in every chemigation system, except as provided under pars. (b) to (d). The reduced pressure principle backflow preventer shall be all of the following:

1. In compliance with ASSE Standard 1013–80.

2. Installed according to the manufacturer's specifications in the water supply pipeline between the supply pump discharge and the point at which pesticides are injected.

3. Maintained in fully operational condition.

4. Tested annually by a tester who is currently listed with the department of commerce as a backflow tester.

5. Protected so that it does not freeze.

Note: ASSE Standard 1013–80. published by the American society of sanitary engineers, is on file with the secretary of state, the revisor of statutes and the department. The department can provide a list, by manufacturer and model, of reduced pressure principle backflow preventers which comply with ASSE Standard 1013–80. The department of commerce can provide a list of persons qualified to test reduced pressure principle backflow preventers.

(b) A barometric loop may be installed in a chemigation system, in place of a reduced pressure principle backflow preventer under par. (a), if the chemigation system is not subject to back pressure. The barometric loop shall extend to an elevation at least 35 feet above the highest outlet in the chemigation system. The loop shall be installed in the water supply pipeline between the supply pump discharge and the point at which pesticides are injected.

(c) Two check valves may be installed in a chemigation system, in place of a reduced pressure principle backflow preventer under par. (a), if the chemigation system draws from surface waters. The check valves shall be connected in series, and shall be installed in the water supply pipeline between the supply pump discharge and the point at which pesticides are injected. Each check valve shall comply with par. (e), and shall be preceded by a vacuum relief valve under par. (g) and an automatic low pressure drain valve under par. (h).

(d) A check valve followed by a gooseneck loop may be installed in a chemigation system, in place of a reduced pressure principle backflow preventer under par. (a), if all of the following conditions are met:

1. The chemigation system draws water from surface waters that are higher in elevation than the surface being chemigated.

2. The check valve complies with par. (e), and is preceded by an automatic low pressure drain valve under par. (h).

3. The gooseneck loop complies with par. **(f).**

(e) A check valve under par. (c) or (d) shall be all of the following:

1. Quick–closing by spring action.

2. Certified for compliance with underwriters' laboratory (UL) standard 312.

Note: To obtain a current list of approved check valves, by manufacturer and model, contact the department of agriculture, trade and consumer protection, agricultural resource management division; at P.O. box 8911, Madison, WI 53708–8911. UL Standard 312, published by underwriters' laboratory, is on file with the secretary of state, the revisor of statutes and the department.

(f) A gooseneck loop under par. (d) shall be constructed and installed so that all of the following conditions are met:

1. The imgation pump is located at a higher elevation than the water source.

2. The bottom of the pipe at the apex of the gooseneck loop is at least 24 inches higher in elevation than the highest outlet in the chemigation system.

3. The pesticide injection port is located downstream from the gooseneck loop at a point at least 6 inches lower in elevation than the bottom of the pipe at the apex of the loop.

4. A vacuum relief valve under par. (g) is installed in the top of the pipe at the apex of the gooseneck loop.

(g) Each vacuum relief valve under par. (c) or (f) 4. shall be installed on top of the horizontal water supply pipeline on the supply side of the check valve. The diameter of the vacuum relief valve orifice shall be at least 3/4 inch if the water supply pipe has a nominal inside diameter of 4 inches or less; at least one inch if the pipe diameter is 5 to 8 inches; and at least 2 inches if the pipe diameter is 10 to 12 inches.

(h) Each automatic low pressure drain valve under par. (c) or (d) 2. shall be installed on the bottom of the horizontal water supply pipeline on the supply side of the check valve. The automatic low pressure drain valve shall have a minimum orifice diameter of 3/4 inch. The valve shall not extend upward beyond the inside surface of the bottom of the water supply pipeline. The drain outlet shall be located above grade at a distance of at least 2 inches or twice the diameter of the drain outlet, whichever is greater. The drain outlet shall be installed and located so that, when draining occurs, the drained liquid will flow away from any nearby wellhead or surface water.

(8) FLOW INTERRUPTER; PESTICIDE SUPPLY LINE. In every chemigation system, a flow interrupter shall be installed in the pesticide supply line between the pesticide injection unit and the pesticide supply tank. The flow interrupter shall be designed to stop the flow through the pesticide supply line if the pesticide injection unit stops operating. The flow interrupter may consist of a normally closed, solenoid–operated valve or similar device which forms part of the interlock system under sub. (11).

(9) FLOW SENSOR INJECTION LINE. In every chemigation system, a flow sensor or pressure switch shall be installed at or near the outlet of the injection pump on the injection line. The flow sensor or pressure switch shall be installed so that, if the injection line fails for any reason, the flow sensor or pressure switch will shut off the injection pump.

(10) CHECK VALVE; PESTICIDE INJECTION LINE. In every chemigation system, a check valve shall be installed in the pesticide injection line between the pesticide injection unit and the point at which pesticides are injected into the irrigation water. The check valve shall be spring loaded and have a minimum opening or cracking pressure of 10 pounds per square inch.

(11) INTERLOCK BETWEEN WATER PUMP AND PESTICIDE INJECTION UNIT. In every chemigation system, there shall be a mechanical or electrical interlock between the water supply pump and the pesticide injection unit. If the flow of water is interrupted, the interlock shall immediately shut off the pesticide injection unit.

(12) WATER PRESSURE FAILURE; AUTOMATIC SHUT-OFF. In every chemigation system, a low pressure switch shall be installed in the water supply pipeline. The switch shall be effectively designed and installed to shut off power to the irrigation system if water pressure decreases to the point that the pesticide application no longer complies with the pesticide label directions.

(13) PURGING A CHEMIGATION SYSTEM. After pesticide injection is completed, water shall be pumped through a chemigation system for at least the flush time of the irrigation system.

(14) CHEMIGATION OPERATING PLAN; CONTENTS. A chemigation system shall be operated according to a written operating plan that describes all of the following:

(a) Sensitive nontarget areas that may be subject to overspray or drift from the chemigation system. Sensitive nontarget areas include all of the following:

1. Surface water.

2. Wetlands.

3. Public roads within 100 feet of the application site.

4. Residences, migrant labor camps, schools. playgrounds, day care facilities, health care facilities, commercial or industrial facilities, public recreation areas or other areas, located within 300 feet of the application site, at which individuals are likely to be present during the chemigation application.

(b) Effective methods for preventing overspray and drift. including all of the following:

1. Effective methods for monitoring wind speed and direction.

2. Effective methods for disabling sprinkler heads or end guns, when necessary.

(c) Effective methods to prevent backflow From the chemigation system.

(d) Effective methods to ensure that the chemigation system is properly calibrated at all times.

(e) Effective methods to monitor chemigation operations and ensure that the chemigation system is functioning properly. Monitoring shall include personal observation under sub. (16).

(f) The flush time for the chemigation system.

(g) Safety procedures and required safety equipment for persons who operate, repair or monitor the chemigation system.

(15) CHEMIGATION OPERATING PLAN; LOCATION AND AVAILABILITY. When a chemigation system is operating, the chemigation operating plan under sub. **(14)** shall be kept at the chemigation site or in the custody of the individual who is operating the chemigation system. A person who owns or operates a chemigation system shall also keep a copy of the plan at that person's business office or residence. **A** person having custody of a plan shall make it available to the department for inspection and copying upon request.

(16) OBSERVING CHEMIGATION OPERATIONS. An individual operating a chemigation system shall be present at the chemigation site at all times when chemigation overspray or drift may affect sensitive nontarget areas under sub. **(14)** (a). For other chemigation operations, the individual shall be present at least hourly. An individual is not present unless the individual can effectively monitor whether the chemigation system is properly functioning, whether it is properly calibrated, whether it is causing pesticide overspray or drift, and whether it is creating an unreasonable hazard to persons, property or the environment. If a pesticide label imposes additional observation requirements, the operator of the chemigation system shall comply with those requirements.

(17) WARNING SIGNS (a) A person operating a chemigation system shall post warning signs at the chemigation application site if any of the following apply:

1. Any portion of the application site is located within 100 feet of a public road.

2. Any portion of the application site is located within 300 feet of a residence, migrant tabor camp, school, playground, day care facility, health care facility, commercial or industrial facility, public recreation area, or other area where individuals are likely to be present during the operation of the chemigation system.

Note: A chemigation application site must also be posted in compliance with s. ATCP **29.52.**

(b) Warning signs under par. (a) shall comply with all of the following:

1. Warning signs shall be posted before chemigation begins, and shall remain posted until chemigation is completed and treated surfaces have dried. All warning signs shall be intact and fully legible throughout the required posting period. Warning signs may remain posted indefinitely if they are intact and fully legible during all required posting periods.

2. Warning signs shall be posted at regular intervals along the border between the application site and any road or area identified under par. (a), and at normal points of access to the application site. At least one warning sign shall be posted for each 1/4 mile of border. At least one warning sign shall be posted at each application site identified under par. (a).

3. The form and content of each warning sign shall be identical to that shown in Appendix **E.** A warning sign may contain supplementary information, beyond that shown in Appendix **E,** if the information is consistent with and does not detract from that shown in Appendix E.

(18) ALTERNATIVE CHEMIGATION SYSTEM. (a) The department may issue a permit authorizing an alternative chemigation system that does not comply with this section if the alternative chemigation system provides equal or greater protection to the waters of the state, and complies with other applicable state and federal laws.

(b) A person applying for a permit under par. (a) shall apply in writing, and shall include all relevant information and design specifications required by the department. The department shall grant or deny a permit within **45** days after receiving a complete application.

History: **Cr. Register, May, 1998, No. 509, eff.** 6–1–98.

ATCP 29.55 Commercial applications to residential structures. (1) DEFINITIONS In this section:

(a) "Common area" means an area in a residential structure that is accessible to residents but is not part of any individual dwelling unit.

(b) "Dwelling unit" means that portion of a residential structure that is used, or designed for use, as a residence by a household.

(c) "Resident" means any person residing in a residential structure.

(d) "Residential application" means the application of a pesticide, other than a germicide, sanitizer or disinfectant, to a residential structure. "Residential application" does not include an individual's application of a pesticide to a dwelling unit in which that individual resides, provided that the individual does not apply the pesticide **to** other dwelling units or common areas in the residential structure.

(e) "Residential structure" means a structure used wholly or in part as a human residence, and includes all facilities and furnishings pertaining to that structure. Residential structure includes a residential structure occupied on a rental basis, and also includes a mobile home. Residential structure does not include any of the following:

1. A hotel, motel or similar premises occupied on a transient basis.

2. A hospital, nursing home or similar facility occupied by persons receiving medical care or related services.

3. **A** prison, jail or other place of detention.

(f) "Restricted entry interval" has the meaning given in **s.** ATCP **29.01** (35).

(2) INFORMATION TO CUSTOMER **A** person hired by **a** customer to make a residential application shall provide that customer with all of the following:

(a) A written notice offering to provide pre–application information under par. (b). The person shall make the offer before making the first residential application for the customer, and shall repeat the offer at least annually if there is a continuing contract for more than one year.

Note: **See Appendir A for an example of a written offer of information under par (a) Nothing in this section authorizes a commercial applicator to make a residential application which the customer has not affirmatively authorized**

(b) The following prc–application information, in writing, if requested by the customer:

1. The brand name, product name or common chemical name of each pesticide that may be applied.

2. A copy of the pesticide label for each pesticide that may be applied.

3. The date on which the pesticide application will be made. The date may be communicated orally, rather than in writing, if the requester agrees to oral notification.

4. The name, business address and telephone number of a person who can provide further information about the pesticide application.

(c) The information required under s. ATCP 29.22. This information shall be provided within the time period specified under s. ATCP 29.22.

(3) NOTICE TO RESIDENTS. (a) A person making a residential application shall provide the following information in writing to residents at the time of the application:

1. The name and address of the person making the application, and a telephone number at which residents can obtain further information about the application.

Note: The name and address under subd. 1. may be the name and address of the business entity making the residential application.

2. The first and last name of each individual making the application and, if the application is one for which the individual must be licensed under s. ATCP 29.25, the individual's license number.

3. The brand name, product name or common chemical name of the pesticide applied.

4. The concentration and total quantity of each pesticide applied, or the amount of pesticide product applied per unit area and the total area treated.

5. Any pertinent post–application precautions stated on the pesticide label. If the pesticide label prescribes a restricted entry interval, the person making the residential application shall also post a warning sign under s. ATCP 29.52 at each entrance to each treated area.

6. The month, day, year and approximate starting and ending time of the pesticide application.

7. Notice that a copy of the pesticide label is available upon request. The person making the residential application shall provide a copy of the pesticide label to each resident who requests a copy, but may first require the requester to pay reasonable copying and postage costs if the requester is not the customer who contracted for the application.

(b) A person making a residential application in any dwelling unit shall leave the information under par. (a) with an adult resident of that dwelling unit, or shall prominently post the information at the entrance to that dwelling unit.

(c) A person making a residential application to any common area within a residential structure shall provide the information under par. (a) by posting clearly legible notices in common entryways or other conspicuous locations so that all residents are likely to see the notices.

Note: A person making a residential application must comply with sub. (3) regardless of whether the application is a contract application. For example, a landlord making a residential application to the landlord's own rental units must provide information to tenants residing in those units.

(4) RESTRICTED ENTRY INTERVAL; WARNING SIGNS. If a person makes a residential application of a pesticide whose label prescribes a restricted entry interval, that person shall post a warning sign at each entrance to the treated area. Each warning sign shall be at least 8 1/2 inches by 11 inches. The form and content of each warning sign shall be identical to that shown in Appendix **D.** The person making the residential application shall post the warning sign before the application begins, and shall not remove it until the restricted entry interval expires.

Note: A person making a residential application must comply with sub. (4) regardless of whether the application is a contract application. For example, a landlord making a residential application to the landlord's own rental units must post warning signs under sub. (4) if the pesticide label prescribes a restricted entry interval. See also s. ATCP 29.52 (3) which provides that landlords and contract applicators are individually and jointly responsible for posting warning signs.

History: Cr. Register, May, 1998, No. 509, eff. 6-1-98; correction in (1) (f) made under s. 13.93 (2m)(b) 7., Stats., Register, March, 1999, No. 519.

ATCP 29.56 Landscape applications. **(1) DEFINITIONS.** In this section:

(a) "Division" means the agricultural resource management division of the department.

(b) "Cemetery grounds manager" means the person responsible for on–site management of cemetery grounds.

(c) "Golf course superintendent" means the person responsible for on–site management of a golf course.

(d) "Landscape" means turf, ornamental and mulched areas, and areas being prepared for those purposes, that are located in or around residential premises, public or commercial facilities, parks, workplaces, care facilities, recreational areas and public lands. "Landscape" does not include utility or transportation right.-of-way areas, greenhouses, nurseries, or areas used for agricultural production, forest production or commercial turf production.

(e) "Landscape application" means the application of a pesticide to a landscape. "Landscape application" does not include any of the following:

1. Pesticide applications for any of the purposes identified in s. ATCP 29.3 1 (4) or (14).

2. A perimeter barrier application made on or within 10 feet of a building or structure to prevent or discourage pests from entering that building or structure.

3. Mosquito control applications made by a government entity for public health purposes.

4. Pesticide applications made by the department or its agent pursuant to s. 94.01 or 94.02, Stats., or ch. ATCP 21.

(f) "Landscape pesticide" means a pesticide that is labeled for use on a landscape.

(g) "Ornamental" has the meaning given in s. ATCP 29.01 (25).

(h) "Restricted entry interval" has the meaning given in s. ATCP 29.01 (35).

(i) "Treated landscape" means that portion of a landscape to which a pesticide is applied.

(2) INFORMATION TO CUSTOMER. A person hired by a customer to make a landscape application shall provide that customer with all of the following in writing:

(a) An offer to provide pre–application information under par. (b). The person shall make the offer before making the first landscape application for the customer, and shall repeat the offer at least annually if there is a continuing contract for more than one year.

Note: See Appendix A for an example of a written notice under par. (a). Nothing in this section authorizes a commercial applicator to make a landscape application which the customer has not affirmatively authorized.

(b) The following pre–application information, if requested:

1. The brand name, product name or common chemical name of each pesticide that may be applied.

2. A copy of the pesticide label for each pesticide that may be applied.

3. The date on which the landscape application will be made. The person making the application may communicate the application date orally, rather than in writing, if the requester agrees to oral notification.

4. The name, business address and telephone number of a person who can provide further information about the pesticide application.

(c) The information required under s. ATCP 29.22. The person making the application shall provide this information to the customer when the application is completed.

(3) WARNING SIGNS POSTED. (a) Except as provided under par. (c), a person shall post warning signs at a landscape application site before making a landscape application to that site. Warning signs shall comply with subs. (4) and (5).

(b) No person may remove a warning sign posted under par. (a) until sunset of the day following the landscape application, or until sunset of the day on which the restricted entry interval on the pesticide label expires, whichever is later. This paragraph does not require a person to remove warning signs.

(c) Paragraph (a) does not apply to any of the following:

1. **An** individual making a landscape application to residential premises occupied only by that individual's household.

2. Golf course applications that are exempt under sub. (9).

3. Cemetery applications that are exempt under sub. (10).

(4) WARNING SIGNS; FORM AND CONTENTS. Each warning sign under sub. (3) shall comply with all of the following:

(a) It shall be at least 4 inches by **5** inches, and shall be attached to a stable supporting device.

(b) It shall contain the infonnation shown in Appendix B. The information shall be professionally printed with red lettering on a white background, according to the format shown in Appendix B, except that sign removal dates may be entered by hand. **A** warning sign may contain supplementary information beyond that shown in Appendix B if the information is consistent with and does not detract from that shown in Appendix B.

(c) It shall be constructed and posted so that it remains clearly legible for at least 72 hours after it is posted, despite reasonably foreseeable adverse weather conditions.

(5) WARNING SIGNS; WHERE POSTED. At least one of the warning signs required under sub. (3) shall be clearly visible from each point at which there is significant potential for human access to the treated area.

Note: For example, warning signs should be posted so as to be clearly visible from potential access points including roads, sidewalks, driveways, doorways, alleys and adjacent yards unless a fence, wall, hedge or similar feature effectively prevents human access to the treated area from that direction.

(6) INFORMATION PROVIDED UPON REQUEST. (a) A person making a landscape application shall offer the following information to any person who requests information about that landscape application:

1. The complete name and address of the person making the landscape application.

Note: This may be the name and address of the business entity that makes the application.

2. The brand name, product name or common chemical name of each pesticide applied, and the EPA registration number of that pesticide.

3. The concentration and total quantity of each pesticide applied, or the amount of each pesticide product applied per unit area and the total area treated.

4. The date and approximate time of application.

5. All post–application precautions stated on the pesticide label.

6. A copy of the pesticide label for each pesticide applied.

(b) If a requester asks for any of the information under par. (a), the person making the landscape application shall promptly provide that information to the requester. The information may be provided orally or in writing except that a copy of the pesticide label, if requested, shall be provided in writing. The person making the landscape application may require the requester to pay reasonable copying and postage costs before providing a copy of a pesticide label if the requester is not the customer who contracted for the application.

(7) REGISTRY OF INDIVIDUALS REQUESTING ADVANCE NOTICE OF LANDSCAPE APPLICATIONS. (a) The department shall compile an annual registry of individuals requesting advance notice of landscape applications to parcels of land identified in the registry. An annual registry takes effect on March 15 of each year, and expires on March 14 of the following year.

Note: The department will distribute registries by March 1.

(b) An individual who registers under par. (c) may request advance notice of landscape applications, other than applications for which that individual has contracted, to any parcels on the block where that individual resides or on any blocks immediately adjacent to that block.

Note: if a landlord contracts for landscape applications to a rental property, tenants on that property may register to receive advance notice of those applications.

(c) An individual shall register with the department by February 1 of each year to be included in the registry that takes effect on March 15 of that year. An individual shall register on a form provided by the department. The registration form shall include all of the following information which shall be included in the registry under par. (a):

1. The individual's complete name, street address, and mailing address if different from street address.

2. **A** telephone number where the individual may be contacted.

3. The street address of each parcel under par. (b) for which the individual requests advance notice of landscape applications.

4. Other information which the department reasonably requires to administer this section.

Note: Individuals may obtain registration forms and submit registrations to the following address: Department of Agriculture, Trade and Consumer Protection; Division of Agricultural Resource Management; Landscape Application Registry P.O. Box **8911**; Madison, Wisconsin **53708-8911**. Individuals may also obtain registration forms by calling the department at **608-224-5296. A** registration complies with the filing deadline under par. (c) if the registration form is postmarked or delivered to the department by February 1. The department may accept registrations filed after February 1 for inclusion in the March **15** registry, but is not required to do so.

(d) The department shall provide a free copy of the annual registry under par. (a) *to* all of the following:

1. Each license holder under s. ATCP 29.20 that employs individuals licensed and certified under ss. ATCP 29.25 and 29.26 to make landscape applications. If a person is licensed under s. ATCP 29.20 by March 1, the department shall provide that person with a free copy of the registry by March 1.

2. Each individual, licensed and certified under ss. ATCP 29.25 and 29.26 to make landscape applications, who requests a copy of the registry.

Note: The department may compile supplementary registries for distribution after March 1.

(8) ADVANCE NOTICE TO REGISTERED INDIVIDUALS. (a) Before making any landscape application, a person required to be licensed under s. ATCP 29.20 shall give at least 12 hours advance notice to every individual who is currently registered to receive notice of that application under sub. (7).

Note: An applicator may voluntarily give notice to an individual who is included in a supplementary registry, but is not required to do so unless the individual has registered the same parcel in the primary registry under sub. (7).

(b) **A** person may give advance notice under par. (a) by telephone, or may mail or deliver notice to the requester's address as listed in the registry. Notice, if given by mail, shall be postmarked at least 2 business days before the person makes the landscape application. A notice shall include all of the following:

1. The complete name, business address, and telephone number of the person making the application.

Note: The name, address and telephone number may be those of the business entity making the application.

2. The address of the landscape to be treated.

3. The scheduled date of application.

4. The brand name, product name or common chemical name of each pesticide that may be applied.

(c) If a landscape application date is changed after the person making the application gives notice under par. (a), that person shall give a revised notice to each individual previously notified. The revised notice shall comply with par. (b).

(9) LANDSCAPE APPLICATIONS TO GOLF COURSES. (a) Subsection (3) does not apply to a golf course application of a pesticide whose label prescribes no restricted entry interval, provided that a permanent warning sign is conspicuously posted at each of the following locations:

1. At or near the place where golfers register to play the course.

2. At or near the first tee of every 9 holes.

3. At every point on the golf course boundary at which the non–golfing public is permitted to enter the golf course by means of a road, sidewalk, path or other established thoroughfare.

(bj A permanent warning sign under par. (a) shall comply with all of the following requirements:

1. It shall be clearly legible at all times.

2. It shall be at least 12 inches by 12 inches.

3. It shall contain the following statement, in red letters not less than 1/2 inch high on a white background:

"PESTICIDES ARE PERIODICALLY APPLIED TO THIS GOLF COURSE. YOU MAY CONTACT THE GOLF COURSE SUPERINTENDENT FOR FURTHER INFORMATION."

(c) If any person asks a golf course superintendent for information about pesticide applications to a golf course, the superintendent shall notify that person that the following information is available, and shall provide the information in writing upon request:

1. A general description of the types and amounts of pesticides commonly applied to the golf course.

2. An identification of pesticide applications made to the golf course within the last week prior to the request, including the common chemical or brand names of the pesticides applied and the areas to which those pesticides were applied.

3. A copy of the pesticide label related to each pesticide application under subd. 2., if any. The superintendent may require the requester to pay reasonable copying and postage costs before providing the label.

(0) LANDSCAPE APPLICATIONS TO CEMETERIES. (a) Subsection (3) does not apply to a cemetery application of a pesticide whose label prescribes no restricted entry interval, provided that a permanent warning sign is conspicuously posted at each established entrance to the cemetery.

(b) A permanent warning sign under par. (a) shall comply with all of the following requirements:

1. It shall be clearly legible at all times.

2. It shall be at least 12 inches by 12 inches.

3. It shall contain the following statement, in red letters not less than 112 inch high on a white background:

"PESTICIDES ARE PERIODICALLY APPLIED TO THIS CEMETERY. YOU MAY CONTACT THE CEMETERY GROUNDS MANAGER FOR FURTHER INFORMATION."

(c) If any person asks a cemetery grounds manager for information about pesticide applications to a cemetery, the grounds manager shall notify that person that the following information is available, and shall provide the information in writing upon request:

1. A general description of the types and amounts of pesticides commonly applied to the cemetery.

2. *An* identification of pesticide applications made to the cemetery within the last week prior to the request, including the common chemical or brand names of the pesticides applied and the areas to which those pesticides were applied.

3. **A** copy of the pesticide label related to any pesticide application under subd. 2. The grounds manager may require the requester to pay reasonable copying and postage costs before providing the label.

History: Cr. Register. May, 1998, No. 509, eff. 6–1–98; CR 01–028: am. (1) (e) **4.,** Register October 2001 No. 550, eff. 11–1–01; **CR 01–076: am. (1) (e) 4., Register October 2002 No. 562, eff. 11–1–02.**

ATCP 29.57 Seed applications. (1) DEFINITION. In this section, "pesticide–treated seed" means seed, intended for planting or propagation, that is treated with a pesticide for the purpose of providing post–planting protection to the seed or seedling.

(2) PLANTING PESTICIDE–TREATED SEED. Pesticide–treated seeds shall be incorporated into the soil when planted to prevent access by birds and other animals. This requirement does not apply to seed that is normally planted on the soil surface and poses no significant risk to birds or other animals.

(3) PESTICIDE–TREATED SEED; PROHIBITED USES. No person may do any of the following:

(a) Use pesticide–treated seed for food, feed or oil, or mix it with food, feed or oil.

(b) Expose pesticide–treated seed to access by birds or other animals.

(4) WARNING SIGNS POSTED ON SEED STORAGE BINS. (a) A person who stores pesticide–treated seed in bulk shall post a warning sign on every bin or storage area where that seed is stored. This paragraph does not apply to seed, stored on the property of an agricultural producer, that is not intended for sale.

(b) A warning sign under par. (a) shall remain posted as long as the pesticide–treated seed remains in storage. The warning sign shall be at least 8 1/2 inches by 11 inches, and shall conspicuously disclose the following statement or its equivalent:

"DANGER. THE SEED IN THIS STORAGE AREA HAS BEEN TREATED WITH THE PESTICIDE [name of pesticide] ON [date]."

(5) SEED DISPOSAL. Pesticide–treated seed shall be disposed of in a manner that does not pose a risk to persons, property or the environment.

History: Cr. Register, May. 1998, No. 509, eff. 61 – 98.

Subchapter X — Agricultural Worker Protection

ATCP 29.60 Definitions. In this subchapter:

(1) "Agricultural employer" means a person who hires or contracts for the services of *one* or more agricultural workers, or operates an agricultural establishment that uses one or more agricultural workers.

(2) "Agricultural emergency" means a sudden onset of conditions, such as flood, fire, frost, hail, high winds or loss of power, which will result in a substantial economic loss that can only be prevented or mitigated by the early entry of agricultural workers into an area treated with an agricultural pesticide. "Agricultural emergency" does not include conditions which an agricultural employer could have anticipated and controlled, or which **are** precipitated by an agricultural employer's mismanagement or negligence.

(3) "Agricultural establishment" means any farm, forest, nursery or greenhouse where agricultural plants are produced.

(4) "Agricultural pesticide" means any pesticide used or labeled for use in the production of agricultural plants at **an** agricultural establishment.

(5) "Agricultural plant" means any plant grown or maintained for commercial or research purposes.

(6) "Agricultural worker" means an individual who performs activities related to the production of agricultural plants at an agricultural establishment.

(7) "Crop advisor" means any individual who assesses pest numbers or damage, pesticide distribution, or the status or requirements of agricultural plants.

(8) "Direct the use of a pesticide" has the meaning given in s. ATCP 29.01 (14).

(9) "Dual notice agricultural pesticide" means an agricultural pesticide whose label requires agricultural employers to do both of the following:

(a) Post application sites with worker protection warning signs.

(b) Give workers oral notice of applications.

(10) "Early entry" means the entry of agricultural workers into an area treated with an agricultural pesticide, for the purpose of performing hand labor, before the restricted entry interval has expired.

(11) "Hand labor" means any agricultural activity, performed by hand or with hand tools, that causes a worker to have substantial contact with surfaces such as plants, plant parts, or soil that may contain pesticide residues. "Hand labor" includes activities such as harvesting, detasseling, thinning, weeding, topping, planting, removing suckers, pruning, debudding, roguing, and packing produce into containers in the field. "Hand labor" does not include operating, moving or repairing irrigation, watering or frost protection equipment; acting as a crop advisor; or performing similar activities which do not entail substantial contact with surfaces that may contain pesticide residues.

(12) "Handler" means an individual who docs any of the following:

(a) Mixes or loads an agricultural pesticide.

(b) Uses an agricultural pesticide.

(c) Acts as a flagger to mark the pesticide application pathway during an agricultural pesticide application.

(d) Cleans, adjusts, handles or repairs those parts of pesticide mixing, loading or application equipment that may contain agricultural pesticide residues.

(e) Assists with the application of agricultural pesticides in any manner which could expose that person to pesticides.

(f) Enters a greenhouse or other enclosed area during or after an agricultural pesticide application, and before the inhalation exposure level specified on the pesticide label and the ventilation criteria specified by 40 CFR 170.110(c) (3) or the pesticide label have been met, in order to operate ventilation equipment, adjust or remove covers used in fumigation, or monitor air quality.

(g) Enters an outdoor area treated with a soil fumigant in order to adjust or remove soil coverings such as tarpaulins.

(h) Performs tasks as a crop advisor at an agricultural pesticide application site during or after a pesticide application, and before any of the following have occurred:

1. The inhalation exposure level specified on the pesticide label is met.

2. The ventilation criteria specified by 40 CFR 170.110(c)(3) or the pesticide label are met.

3. The restricted entry interval specified on the pesticide label has expired.

(13) "Mix or load" a pesticide has the meaning given in s. ATCP 29.01 (23).

(14) "Restricted entry interval" has the meaning given in s. ATCP 29.01 (35).

(15) "Substantial economic loss" means a loss in profitability which is greater than that which could occur as a result of normal annual fluctuations in crop yield or quality.

(16) "Use" a pesticide has the meaning given in s. ATCP 29.01 (41).

History: Cr. Register, May, 1998, No. 509, eff. 6–1–98; corrections in (14) and (16) made under s. 13.93 (2m) (b) 7., Stats., Register, March, 1999, No. 519.

ATCP 29.61 Worker protection; general. The following persons shall comply with federal worker protection standards under **40** CFR 170:

(1) An agricultural employer.

(2) A person who employs one or more handlers.

(3) A person who uses or directs the use of an agricultural pesticide as an independent contractor for hire.

Note: Some federal requirements under 40 CFR 170 are stated in full on the pesticide label, while others are merely referenced. The department will provide a free summary of the federal rules upon request, and will also provide in–depth compliance manuals at cost. To obtain summary materials or in–depth manuals, contact the department at the following address or call the department at (608) 224–4539: Department of Agriculture, Trade and Consumer Protection Division of Agricultural Resource Management; Worker Protection Program; P.O. Box 8911 Madison, WI 53708–8911

U[illegible] federal [illegible], [illegible] employing agricultural workers and [illegible] must do all of the following (there are some exceptions):

- Post pesticide safety information at a central location accessible to [illegible] and [illegible] Posting must include [illegible]
  - An EPA pesticide safety poster.
  - The name, address and telephone number of the nearest emergency medical [illegible]
  - Information [illegible] to [illegible] of [illegible] employer's [illegible] the pesticide [illegible], and [illegible] and location of the application.
- Assure that workers and handlers receive approved pesticide safety training before they begin work and at least once every 5 years.
- Establish a decontamination site at every pesticide mixing and loading site, at [illegible] site where pesticide handlers remove [illegible] equipment, and within 1/4 mile of all agricultural workers and handlers.
- When a worker or handler is poisoned or injured by a pesticide, provide prompt transportation to an emergency medical facility. The employer must provide the [illegible] tim and emergency medical personnel with pesticide label information and informa- [illegible] about the pesticide exposure.

Under the federal rules, a commercial applicator hired to apply pesticides at an ag[illegible] when agricultural workers are employed must [illegible] the ag[illegible] employer before making the application. N[illegible] all of the following:

- [illegible] to be treated.
- The intended date and time of application.
- The pesticide to be applied.
- The restricted entry interval following application.
- [illegible] oral warnings and treated area posting.
- Other worker protection requirements identified on the pesticide label.

Under the federal rules, an operator of an [illegible] who hires a [illegible] icide application must notify the applicator of other pesticide applications that may affect the applicator's employees while they are on the p[illegible]

Under the federal rules, agricultural employers must do all of the following (there are [illegible] exceptions):

- Restrict worker [illegible] entry intervals have expired.
- Prior to each pesticide application, orally warn [illegible] at entrances to the application site. Labels [illegible] require [illegible] both oral warnings and posting.
- Under the federal rules, persons who employ agricultural pesticide handlers must do all [illegible]
- Make sure that no pesticide is applied so as to contact, either directly or through drift, any person other than a trained and protected [illegible]
- Make sure that persons handling pesticides labeled with a skull and [illegible] are monitored [illegible] or by voice contact at least once every 2 hours.
- Make [illegible] that any handler working in a fumigated greenhouse is in continuous visual or voice contact with another handler.
- Make sure that each handler has [illegible] or has been informed of the information on the label of each pesticide handled.
- Make sure that product labeling is accessible to handlers while they are engaged in handling activities.
- Make sure that each handler is instructed in the safe [illegible] of han[illegible] men[illegible]
- Make sure that all handling equipment is inspected and in good operating condition prior to each use.
- [illegible] of the following when a p[illegible] requires [illegible] for handlers:
  - Provide the equipment to each handler.
  - Make sure that h[illegible] and repaired prior to each use.
  - Properly clean, maintain and store the equipment. The handler employer must make sure that respirator filters, [illegible] canisters are [illegible] as often as [illegible]ired.
  - Make sure that each handler wears the equipment and uses it correctly.
  - Provide each handler with a clean place to put on and remove personal protective [illegible] and store it when not in use.
  - [illegible], if necessary, to prevent heat–related illness which may occur while [illegible] worn.
  - Provide soap, towels and [illegible] to each handler removing equipment at the end of a [illegible] activity.
  - Prohibit handlers from wearing home or taking home equipment worn for handling activities.
  - Properly [illegible] or maintained.
  - Inform persons who clean or launder equipment that the equipment may be [illegible] harmful pesticides, and instruct th[illegible] on [illegible] to avoid [illegible] tion [illegible] clean [illegible] tly.

History: Cr. Register, May, 1998, No. 509, eff. [illegible]

ATCP 29.62 Worker protection [illegible] signs. **(1)** WARNING SIGNS REQUIRED. An [illegible] shall post worker protection warning signs at pesticide application sites as required under 40 CFR 170. [illegible] as [illegible] under sub. [illegible] or by the federal environmental protection agency, each warning sign shall comply with all of the following requirements:

(a) It shall be at least 14 inches by 16 inches.

(b) Its form and content shall be identical to that shown in Appendix C.

(c) It shall be constructed to resist deterioration, and shall remain legible throughout the required posting period.

(d) It shall bc posted not more than 24 hours before the pesticide application is scheduled to begin.

(e) It shall remain posted for the duration of any restricted entry interval specified on the pesticide label.

(f) It shall be removed or covered not more than 3 days after the restricted entry interval expires unless it is required for another pesticide application.

(2) SMALL APPLICATION SITES If a pesticide application site, such as a potted plant or greenhouse bench top, is too small to accommodate standard warning signs under sub. (1), it may be posted with smaller warning signs that are at least 4 inches by **5** inches. The warning signs shall be clearly posted on each side of the application site at intervals of not more than 25 feet. An individual treated plant may be posted with a single sign. A sign under this subsection shall comply with sub. (1) (b) to **(f).**

History: Cr. Register, May, ***1998,*** No. ***509,*** eff. ***6–1–98.***

ATCP 29.63 Agricultural emergencies; early entry by workers. (1) EMERGENCY CONDITIONS An agricultural employer may have agricultural workers enter an area treated with an agricultural pesticide before the restricted entry interval has expired if all of the following apply:

(a) The early entry is necessary to prevent or mitigate the effects of an agricultural emergency.

(b) The early entry complies with applicable worker protection standards under 40 CFR 170.112.

(c) The agricultural workers entering the treated area have been trained in compliance with 40 CFR 170.130.

(d) The agricultural employer files **a** written report with the department under sub. (2) within 72 hours after the early entry occurs. The department may require an agricultural employer to file additional information with the department, as necessary.

Note: ATCP ***29.61*** incorporates federal rules that prohibit agricultural workers **from** reentering a treated area during a restricted entry interval except in **an** "agricultural emergency." Subsection **(1)** serves **as** a "declaration of emergency" for purposes of **40** CFR **170.112** (d)(2)(i). If all of the conditions under **sub.** (1) are met, no further "declaration" by the department is needed in order to permit the early entry of agricultural workers into a treated area.

(2) REPORT FILED BY AGRICULTURAL EMPLOYER. An agricultural employer shall file a report under **sub.** (1) (d) in writing, and shall include all of the following:

(a) The complete name, mailing address and telephone number of the agricultural employer.

Note: The name under par. (a) may be that **of** a business entity.

(b) The date and location of the early entry.

(c) A description of the agricultural emergency which necessitated the early entry.

(d) The brand name, EPA registration number and restricted entry interval for each pesticide applied to the treated area.

(e) The number of agricultural workers involved in the early entry.

Note: **An** agricultural employer filing a report under **sub.** ***(2)*** should file that report at the following address: Department of Agriculture. Trade and Consumer Protection Agricultural Resource Management Division Worker Protection Program P.O. Box ***8911*** Madison. Wisconsin ***53708–8911***

History: Cr. Register, May, ***1998,*** No. ***509,*** eff. ***6–1–98.***

ATCP 29.64 Training handlers. (1) TRAINING REQUIRED. Every person who employs a handler shall ensure that the handler is trained as required by 40 **CFR** 170.230 before the handler engages in any handler activity.

(2) TRAINER QUALIFICATIONS. An individual who trains handlers under sub. (1j shall be at least one of the following:

(a) Currently certified as a pesticide applicator by the department.

(b) Currently certified as a pesticide applicator in another state, pursuant to an applicator certification program approved by the federal environmental protection agency.

(c) Employed by the university of Wisconsin extension to train pesticide applicators.

(d) A graduate of a worker protection train–the–handler program approved by the department or the fcdcral environmental protection agency.

History: Cr. Register, May, ***1998,*** No. ***509,*** eff. ***6–1–98.***

ATCP 29.65 Training agricultural workers. (1) TRAINING REQUIRED. An agricultural employer may not require or permit any agricultural worker, other than a worker trained as required under 40 CFR 170.130, to enter any area that has been subject to a restricted entry interval during the previous 30 days.

(2) TRAINER QUALIFICATIONS. An individual who trains agricultural workers under par. (a) shall be at least one of the following:

(a) Currently certified by the department as a pesticide applicator under s. ATCP 29.26 or 29.27.

(b) Currently certified by another state as a pesticide applicator, pursuant to an applicator certification program approved by the federal environmental protection agency.

(c) Employed by the university of Wisconsin–extension to train pesticide applicators.

(dj A graduate of a worker protection train–the–handler or train–the–worker program approved by the department or the federal environmental protection agency.

(e) Trained as a pesticide handler under 40 CFR 170.230.

History: Cr. Register, May, **1998,** No. ***509,*** eff. ***6-1-98.***

ATCP 29.66 Training records. (1) EMPLOYER RECORDS. **A** person who employs agricultural workers or handlers shall keep current pesticide training records for each agricultural worker or handler employed. The employer shall keep each employee's records for at least one year after that individual's employment ends. The records shall include all of the following:

(a) The first name, last name and permanent home address of the agricultural worker or handler.

(b) The date or dates on which the agricultural worker or handler received training required under s. ATCP 29.64 or 29.65.

(c) A signed statement by the agricultural worker or handler confirming that the worker or handler received the training required under s. ATCP 29.64 or 29.65 on the dates indicated.

(2) TRAINER RECORDS. A person who trains agricultural workers or handlers under s. ATCP 29.64 or 29.65 shall keep a training record for each individual trained. The training record shall include all of the information required under sub. (1). The trainer shall keep the training record for at least 5 years after the training is given.

History: Cr. Register, May, **1998,** No. ***509,*** eff. ***6–1–98,***

Subchapter XI — Special Registrations And Use Authorizations

ATCP 29.70 Emergency use permits. (1) AUTHORITY AND SCOPE. The department may issue an emergency use permit authorizing the purchase, sale, distribution and use of a pesticide for a purpose not otherwise permitted under this chapter or ch. ATCP 30, if that use is necessary in an emergency to control a serious disease or pest infestation. The department may not issue an emergency use permit for any of the following:

(a) A pesticide use that is not authorized under the federal act.

(b) The use of DDT or its isomers or metabolites.

Note: The department may issue permits, under s. 94.709, Stats., for the use of DDT, **its isomers** or **metabolites.** Sees. ATCP **30.19 related** to **emergency use** permits for **bat** control.

(2) PERMIT APPLICATION. An application for an emergency use permit under sub. (1) shall be in writing, and shall include all of the following:

(a) The complete name and address of the applicant, including the complete name and address of the pesticide applicator if different from the applicant.

(b) A detailed description of the nature and scope of the emergency warranting the pesticide use, including information on the target pest.

(c) A description of the purpose for which the pesticide will be used.

(d) A detailed description of the potential benefits, adverse effects and hazards which may result from the use of the pesticide.

(e) A description and analysis of feasible alternative pesticides and control measures that could be utilized to control the pest.

(f) The composition and formulation of the pesticide.

(g) The source from which the pesticide is to be purchased or shipped.

(h) The amount of pesticide to be used.

(i) The site of the pesticide application.

(j) The method of pesticide application and any special precautions that will be taken in the use and disposal of the pesticide.

(k) Any additional information required by the department.

(3) ACTIOŃ ON PERMIT APPLICATION. The department shall grant or deny a permit application under sub. (2) within 20 business days after the department receives a complete application.

(4) ISSUING A PERMIT. The department may issue an emergency use permit under sub. (1), based on a complete application under sub. (2), if the department finds all of the following:

(a) The emergency use is necessary to prevent a serious risk to persons, property or the environment.

(b) The benefits from the proposed emergency use outweigh the potential risks which that use may pose to persons, property and the environment.

(c) There are no effective alternative control measures.

Note: The department must prepare an environmental assessment on each permit issued under this subsection. ***See*** **ch.** ATCP **3.**

(6) PERMIT CONDITIONS. (a) The department may impose conditions on an emergency use permit to protect persons, property and the environment. These may include any of the following:

1. Time limits.

2. Conditions related to the amount of pesticide used, the location and size of the application site, the method of application, and the disposal of pesticide containers and unused pesticides.

3. Conditions related to the training and qualifications of persons applying the pesticide.

4. Other conditions which the department considers appropriate.

(7) SUSPENDING OR REVOKING A **PERMIT. .** The department may summarily suspend or revoke an emergency use permit if the department finds any of the following:

(a) Information contained in the permit application is false or misleading.

(b) Permit conditions or limitations have been violated.

(c) The pesticide use poses an unreasonable risk to persons, property or the environment.

History: Cr Register, May, 1998. No. 509, **eff. 6-1-98.**

ATCP 29.71 Experimental use permits. (1) AUTHORIZATION. The department may issue an experimental use permit authorizing the sale, purchase, shipment and use of a pesticide, other than DDT and its isomers and metabolites, for experimental purposes not otherwise permitted under **ss.** 94.67 through 94.71, Stats., or this chapter. The department may not issue a permit for any purpose that is prohibited under the federal act. The department may issue a permit to any of the following persons:

(a) **A** person who needs the permit to acquire experimental data in this state in order to register a pesticide or pesticide use under the federal act or **s.** ATCP 29.72.

(b) **A** person, other than a pesticide seller or a seller's promotional agent, who needs the permit to perform bona fide scientific research in this state.

(2) PERMIT APPLICATION. A person seeking an experimental use permit under sub. (1) shall apply to the department in writing. The application shall include all of the following:

(a) The applicant's complete name and address.

(b) The complete name and address of each person who will be shipping the pesticide, and the address from which each shipment will originate.

(c) The complete name and address of each person who will receive a pesticide shipment in this state.

(d) The complete name and address of each individual who will use or direct the use of the pesticide.

(e) The complete name and address of each person on whose property the pesticide will be used.

(f) A detailed description of the proposed experimental use, including all of the following:

1. The purpose of the experimental use.

2. The amount of pesticide ***to*** be used.

3. The target organisms against which the experimental use will be directed.

4. The type of plants, animals or site to be treated.

5. The location, nature and size of the site to be treated, and the nature of the surrounding environment.

6. The dates or time periods on or within which the pesticide will be used.

7. The methods by which the pesticide will be applied or used.

(g) The proposed schedule of pesticide shipments, including individual shipment dates and amounts.

(h) A detailed description of the pesticide, including all of the following:

1. The pesticide's chemical composition and formulation type, including the chemical name and percentage by weight of each active and inert ingredient.

2. Relevant chemical and physical properties of the pesticide.

3. Methods used to analyze the pesticide formulation and identify pesticide residues.

4. Available information on pesticide toxicity, including oral, dermal and inhalation toxicity, lethal concentrations in the aquatic environment, chronic toxicity hazards, and symptoms of toxicity in persons, plants and animals.

5. Available information on the rate of decline of pesticide residues in target and nontarget organisms, raw agricultural commodities, food, feed and the environment.

6. Potential hazards to persons using the pesticide, and suggested precautions for use.

(i) A description of precautions that will be taken in connection with the experimental use to prevent hazards to persons, property and the environment.

(j) Either of the following if the experimental use may cause pesticide residues to occur in raw agricultural commodities, food or feed:

1. Proof that the proposed experimental use will not result in pesticide residues in excess of tolerances established under the federal act or the federal food, drug and cosmetic act, as amended (21 USC 301 et seq.), or that the pesticide's active and inert ingre-

dients are exempted from the requirement of a residue tolerance in raw agricultural commodities, food and feed.

2. Certification that no raw agricultural commodities, food or feed involved in the experimental use will be consumed by humans or other animals, except laboratory or experimental animals not used for food or feed.

(k) **A** copy of any permit which the federal environmental protection agency has issued for the experimental use under the federal act.

(L) Proposed labeling for the experimental use pesticide.

(m) Other relevant information required by the department.

(3) ACTION ON PERMIT APPLICATION. The department shall grant or deny a permit application under sub. *(2)* within *60* business days after the department receives a complete application.

(4) ISSUING A PERMIT. The department may issue a permit under sub. (1), based on a complete application under sub. (2), if the department finds all of the following:

(a) The experimental use is one for which a permit may be issued under sub. (1).

(b) The permit applicant qualifies under sub. (1).

(c) The persons conducting the experimental use are qualified by training or experience to do so.

(d) The experimental use presents no significant hazard to persons, property or the environment, and includes adequate controls and safeguards.

Note: The department must prepare an environmental assessment on each pcrmit issued under this subsection See ch ATCP **3,** Wis Adm Code

(5) PERMIT CONDITIONS The department may impose conditions on permits issued under sub. (1). Permit conditions may include limits on the amount of pesticide used, the method of use, the size and location of application sites, and the disposal of unused pesticides and pesticide containers.

(6) PERMIT EXPIRATION. A permit under sub. (1) expires on a date set by the department. The expiration date shall correspond to the expiration date set by the federal environmental protection agency on any corresponding federal permit. If no federal permit is required, the department shall set an expiration date which is no more than **2** years from the date on which the department issues the pcrmit.

(7) PERMIT RENEWAL **OR** AMENDMENT. A person holding a permit under sub. (1) may apply to have that permit renewed or amended. The application shall comply with sub. **(2).** The department shall act on the application as if it were an application for a new permit.

(8) PERMIT SUSPENSION **OR** REVOCATION. The department may summarily suspend or revoke an experimental use permit if the department finds any of the following:

(a) Information contained in the permit application is false or misleading.

(b) Permit conditions or limitations have been violated.

(c) The pesticide use poses an unreasonable risk to persons, property or the environment.

(9) PESTICIDE LABELING No person may ship or use a pesticide under an experimental use permit unless the pesticide is labeled with all of the following:

(a) The prominent statements **"FOR EXPERIMENTAL USE ONLY"** and **"NOT FOR RESALE."**

(b) The name, brand or trademark of the pesticide.

(c) The name and address of the experimental use permit holder.

(d) The net contents of the pesticide container.

(e) A complete ingredient statement.

(f) Appropnate warning or cautionary statements.

(g) A restricted entry interval, if appropriate.

(h) Directions and conditions for use of the pesticide.

(i) Other labeling required by the department.

(10) REPORTS (a) The department may require the holder of an experimental use permit under sub. (1) to file periodic reports related to the shipment or use of pesticides under that permit. These may include reports related to any of the following:

1. The amounts of pesticide shipped and used.
2. Shipment and delivery dates and locations.
3. Dates and locations of pesticide use.
4. Experimental findings.
5. Disposal of unused pesticide and pesticide containers.
6. Disposal of treated agricultural commodities, food or feed.
7. Other information related to the experimental use.

(b) A permit holder shall immediately report to the department any observed adverse effects of the experimental use on persons, property or the environment.

(11) EXEMPTIONS. (a) The following entities may conduct preliminary screening tests under par. (b) without an experimental use permit under sub. (1):

1. **A** state or federal agency.
2. An accredited college ***or*** university.
3. **A** pesticide registrant.

(b) The following tests are considered preliminary screening tests under par. (a) if they are solely designed to determine whether a substance has value as a pesticide for specific purposes:

1. Laboratory or greenhouse tests.

2. Field tests, other than field tests of microorganisms produced or modified by recombinant **DNA** techniques, conducted on test plots owned by the testing entity. No individual test plot may exceed 1/2 acre, nor may the combined area of all the test plots exceed **5** acres.

3. Tests for which the federal environmental protection agency issues an experimental use permit. The testing entity shall provide the department with a copy of the federal permit and shall notify the department of the test locations before conducting the tests.

(c) No raw agricultural commodities, food or feed involved in a screening test under par. (b) may be consumed by humans or other animals, except laboratory or experimental animals which are used in the test and are not used for food or feed. The agricultural commodities, food and feed shall be disposed of in a manner that minimizes exposure to human beings and the environment.

(d) The exemption under par. (a) does not apply **to** a pesticide or pesticide use which is specifically prohibited under this chapter, or for which a federal registration has been denied, suspended or canceled.

History: Cr. Register, **May,** 1998, **No.** 509, eff. 6-1-98.

ATCP 29.72 Special local needs registrations. **(1)** AUTHORITY The department may register either of the following if the registration is nccessary to meet a special local need in the state:

(a) A pesticide product which is not registered under the federal act. The registration shall specify the uses for which the pesticide product is registered.

(b) A new use for a pesticide product that is currently registered under par. (a).

(2) EFFECT OF REGISTRATION Registration under **sub.** (1) has the same effect in this state as registration under the federal act unless the federal environmental protection agency disapproves the registration.

(3) REGISTRATION STANDARDS The department may register a pesticide product or use under sub. (1) if the department finds all of the following:

(a) Registration is nccessary to meet a special local need in this state. A special local need is a current or imminent pest problem in this state that cannot be adequately controlled by the use of any

available federally–registered pesticide product. The department may find that a pest problem existing on a nationwide or multi–state regional basis is not a special local need.

(b) There are insufficient alternative pesticides or pest control methods to meet the special local need.

(c) The pesticide product is effective, for the uses registered under sub. (1), when used according to label directions. The department's finding under this paragraph does not constitute a warranty by the department.

(d) The pesticide label complies with this chapter and the federal act, and warrants that the product is effective for the uses registered under sub. (1).

(e) The pesticide product will not be distributed for further manufacturing, reformulation or repackaging.

(f) The pesticide product, if registered for use on raw agricultural commodities, food or feed, is covered by necessary residue tolerances, exemptions and clearances under the federal act and the federal food, drug and cosmetic act as amended (21 USC 301 et seq.).

(g) The pesticide product, when used according to label directions for the purposes registered under sub. (1), will not have unreasonable adverse effects on persons, property or the environment.

(h) The federal environmental protection agency has not denied, disapproved, canceled or suspended any registration of the pesticide product under the federal act. If the federal environmental protection agency has denied, disapproved, canceled or suspended the registration of the product for any use, the department may not register any other use of that product without approval from the federal environmental protection agency.

(i) The pesticide product complies with all applicable packaging, coloration and labeling provisions under this chapter, ss. 94.67 to 94.71, Stats., and the federal act.

(j) The benefits derived from pesticide product uses registered under **sub.** (1) will exceed the adverse effects on persons, property and the environment.

(k) The pesticide product is currently registered under the federal act, or is formulated from ingredients which are all found in other federally registered pesticide products.

Note: The department must prepare an environmental assessment on each permit issued under this subsection. See **ch. ATCP 3.**

(4) APPLYING FOR REGISTRATION. A person licensed under s. ATCP 29.10 may apply for a special local needs registration under sub. (1). The application shall be made in writing and shall include all of the following:

(a) The applicant's name, address and license number under s. ATCP 29.10. If the applicant is not yet licensed under s. ATCP 29.10, the applicant shall also submit a license application under that section.

(b) A fee of $250.

(c) A complete description of the special local need justifying the registration.

(d) The name of the pesticide product.

(e) The registration number of the pesticide product or, if the product is not currently registered under the federal act, the complete product formula.

(f) A copy of the proposed pesticide product label.

(g) Valid scientific evidence demonstrating that the product is effective for the proposed use.

(h) Evidence showing that alternative pesticides and pest control methods are not adequate to meet the special local need.

(i) **A** description and analysis of the benefits to be derived from the proposed pesticide use.

(j) A description and analysis of potential adverse effects to persons, property and the environment which may result from the proposed pesticide use.

(k) Evidence demonstrating that the pesticide product will not have unreasonable adverse effects on persons, property or the environment when used according to label directions.

(L) An analysis demonstrating that the benefits to be derived from the proposed pesticide use exceed the potential adverse effects.

(m) Other relevant information required by the department.

(5) ACTION ON APPLICATION. The department shall grant or deny an application under sub. (4) within 180 business days after the department receives a complete application.

(6) REGISTRATION EXPIRES. **A** special local needs registration under sub. (1) expires on a date specified by the department in the registration. The expiration date shall be not more than 5 years after the date on which the department issues the registration.

(7) REGISTRATION RENEWAL OR AMENDMENT. A registrant under sub. (1) may apply to have that registration renewed or amended. The application shall comply with sub. (4). The department shall act on the application as if it were an application for a new registration. If a registration is amended during a registration period, the amendment expires at the end of that registration period. A registration may be renewed for a period of up to 5 years.

(8) LABELING. A pesticide product registered for one or more uses under sub. (1) shall be labeled in compliance with s. ATCP 29.06. The product label shall also include all of the following:

(a) A statement indicating that the registration under sub. (1) applies only in Wisconsin.

(b) The registration number assigned by the department.

(c) The expiration date of state registration.

(d) Other labeling required by the department.

(9) REGISTRATION CONDITIONS. The department may restrict a registered use under sub. (1) to certified applicators, and may attach other conditions to the registration of a pesticide product or use under sub. (1). The department shall restrict a use to certified applicators if any of the following apply:

(a) The pesticide product is similar in composition to a federally registered product for which similar uses are restricted to certified applicators. Pesticide products are similar in composition if they have the same active ingredients and are in the same toxicity category. Pesticide uses are similar if they have substantially equivalent purposes and the same precautionary labeling.

(b) The use would be restricted to certified applicators under the federal act.

(c) The restriction is justified in order to prevent unreasonable hazards to persons, property or the environment.

(10) SUSPENSION OR REVOCATION. The department may summarily suspend or revoke a registration under sub. (1) if the department finds any of the following:

(a) Information contained in the registration application is false or misleading.

(b) Registration conditions have been violated.

(c) **A** registered use poses an unreasonable risk to persons, property or the environment.

(d) The special local need no longer exists.

(e) The registration is suspended or disapproved by the federal environmental protection agency.

History Cr. Register, May, 1998, No. 509, **eff. ti-1–98.**

APPENDIX A

This is an example of a notice that complies with ss. ATCP 29.55 (2) and 29.56 **(2):**

NOTICE TO CUSTOMER

Before we apply any pesticides to your property, we will provide you with any of the following information that you request:

- The common chemical or brand name of each pesticide that may be applied.
- A copy of the pesticide label for each pesticide that may be applied. The label will tell you the pesticide active ingredient, use directions and safety precautions.
- Each date on which pesticides will be applied.
- A contact name, address and telephone number where you can obtain further information about the pesticide application.

If you want this information in writing, we will provide it free of charge before we make the application. Whether or not you ask for this pre—application information, we will provide you with the following information when we complete the application:

- The name, license number and certification number of the individual who made or directly supervised the application.
- The name and location of the pesticide application.
- The chemical name, brand name and EPA registration number of each pesticide applied.
- The amount of pesticide applied.
- The date and time of the pesticide application.
- Any post—application precautions which you should observe.
- A free copy of the pesticide label (if requested).

We will notify residents of pesticide applications to living areas, and will post warning signs for lawncare applications, as required by law.

Chapter ATCP 29

APPENDIX B

A warning sign under s. ATCP 29.56(4) shall contain the following information, printed in the following format:

PRINT SIZE:

- **"Pesticide Application/Please Keep Off' — 36 pt. minimum**
- **Symbol Diameter — 2 in. minimum**
- **Other statements — 9 pt. minimum**

Chapter ATCP 29

APPENDIX C

A worker protection warning sign under s. ATCP 29.62 shall contain the following information in the following format:

- All letters shall be at least 1 inch high.
- Red circle placed near center of sign shall contain:
  - Upraised hand on left. Hand height shall be twice that of the smallest letter.
  - Stern face on right. Face shall be slightly smaller than hand.
- Background color shall contrast with red.
- Letter printing shall contrast with the background color.
- Printing within the circle shall contrast with red.

APPENDIX D

A warning sign under s. ATCP 29.52(8) shall contain the following information in the following format:

WARNING

AREA TREATED WITH PESTICIDES

DO NOT ENTER

- All letters shall be at least 1 inch high.
- Letter printing shall contrast with the background color.
- The words "DO NOT ENTER" may be replaced with "NO TRESPASSING" or "KEEP OUT."
- Other words may be added to the sign if they do not detract from or contradict the required words.

APPENDIX E

A chemigation warning sign under s. ATCP **29.54(17)** shall contain the following information in the following format:

- All letters shall be at least 2 **1/2** inches high.

- Letter printing shall contrast with the background color.
- The octagonal stop sign symbol shall be at least 8 inches in diameter.
- Other words may be added to the sign if they do not detract from or contradict the required words.

Chapter ATCP 29

APPENDIX F

Warning signs provided by a retail seller of landscape pesticides under s. ATCP 29.41(3)(a) shall contain the following information in the following format:

- **All lettering: 20 pt. minimum type size**
- **Symbol: 2 inches minimum diameter**

Chapter ATCP 29

APPENDIX G

A pesticide information sheet provided by a retail seller of landscape pesticides under s. ATCP 29.41(3)(b) shall contain the following information, printed verbatim:

PESTICIDE INFORMATION SHEET

BEFORE YOU USE A PESTICIDE:

- Read the pesticide label. It is a violation of state and federal law to use a pesticide contrary to label directions.

- Is the pesticide labeled for the use you intend? If not, don't use it.

- What type of protective clothing or equipment is required?

- What type of application equipment is needed?

- Are weather conditions right for the pesticide application?

- Buy only the amount of pesticide you need. Pesticides stored for a long time may be less effective, and may pose an environmental or safety hazard.

- Mix only as much pesticide solution as you need. It is better to underestimate than overestimate.

WHEN USING A PESTICIDE:

- Wear all protective clothing and equipment required by the label.

  - At a minimum, wear a long sleeve shirt, long pants, socks and shoes.

  - Do not wear clothing made of cotton or leather. It may absorb pesticides and be difficult to clean.

- Do not apply on windy or rainy days when pesticides may drift or be washed from the application site. Stand up wind when miring and applying pesticides.

- Keep children and pets away from the treated area. Keep them away for the time shown on the pesticide label.

- Do not apply pesticides at more than the label rate.

AFTER USING A PESTICIDE:

- Wash your hands with soap and water immediately. Shower as soon as possible.

- Wash all clothing. Wash it separately from other household laundry. Use a heavy duty detergent and hot water.

- If you apply pesticides to a food crop, wait for the time required on the pesticide label before harvesting the crop.

- Keep pesticide measuring tools separate from household and kitchen tools.

- Store pesticides in their original containers. Do not store dilute pesticide solutions in unmarked containers.

- Keep pesticides away from food, feed, seed and fertilizer, and out of the reach of children and pets.

- Dispose of empty pesticide containers according to label directions.

WARNING SIGNS AT APPLICATION SITES:

- Commercial pesticide applicators must post warning signs at landscape application sites.

- Homeowners who make their own landscape applications are not required to post warning signs, but are encouraged to do so.

  - You may obtain warning signs from the pesticide retailer.

  - It is a good idea to post at least one sign on each side of the application site, and at common entry points (near sidewalks, driveways, etc.).

FOR MORE INFORMATION:

- You can get more pesticide information from your county extension agent.

- You can get information about pesticide laws by calling the Wisconsin Department of Agriculture, Trade and Consumer Protection at (608) 224–LAWN.

FILING A COMPLAINT

COMPLAINTS AND THE DISCIPLINARY PROCESSED

Board Authority for Professional Discipline

Each of the licensing boards in the department has statutory authority to take disciplinary action against licensees who engage in unprofessional conduct or violate other rules/statutes of the board. Unprofessional conduct typically includes: practicing fraudulently, negligently, or incompetently, practicing while being impaired by alcohol, drugs or mental disability, conviction for a crime related to the licensed practice and similar serious matters.

In taking disciplinary action, boards have the authority to reprimand a licensee, to suspend, revoke, or limit a license. The purposes of professional discipline, as defined by the Wisconsin Supreme court, are: 1) to protect the public, 2) to promote the rehabilitation of the licensee, 3) to deter other licensees from engaging in similar conduct and 4) to publicly express disapproval of certain conduct.

How to File A Comulaint

Anyone who wishes to file a complaint against a licensee of a board or a complaint involving activity with the jurisdiction of that board should do so in writing. Preferably a complaint form should be completed. Complaint forms are available either through the department or the Examining Board offices at 1400 East Washington Avenue, Madison, Wisconsin, mailing address, P.O. Box 8935, Madison, Wisconsin, 53708. The complaint forms should be completed in detail, including the who, what, when, and where of a situation. The information should be set forth in chronological order as best as it can be recalled. If written documents are involved, copies should be included.

How the Comolaint Is Processed

After a complaint is received, it is logged in the department's Division of Enforcement and then screened to determine whether or not the matter is something over which the board has jurisdiction; and, if so, to identify the statute or rule that may have been violated. If the board does have jurisdiction, the complaint is assigned to an attorney and investigator for investigation.

The attorney and the investigator confer during the course of the investigation. In addition, a member of the board may be assigned as an advisor in the case. Investigative contacts can be made by telephone, letter, personal interview or any combination of those procedures. The investigation involves gathering relevant facts of the case. Persons with knowledge of the case are contacted. This usually includes the person who made the complaint and the person about whom the complaint was made. If treatment records are involved, they will be obtained. Confidentially of the records will be maintained as required by law.

Once the investigation is complete, the investigator, attorney and board advisor review the results of the investigation and come to a preliminary decision on whether the case should be closed with no action taken, or whether formal disciplinary action should be commenced.

If the preliminary determination is for case closure, that recommendation, along with relevant findings, is presented by the investigator to the members of the board in closed session at a scheduled board meeting. If the board concurs, the file is closed by board motion. Letters are then sent to the person who filed the complaint and to the licensee, explaining that the case was closed and the reasons for closure.

If the determination by the investigative team is to commence disciplinary action, the Division of Enforcement attorney repares all necessary documents, including a formal complaint against the licensee, and the matter is scheduled for a gearing.

How The Formal Complaint is Resolved

Disciplinary hearings are conducted by hearing examiners, who are attorneys. While the statutes give the board the authority to preside over hearings without the use of a hearing examiner, most boards request that a hearing examiner be used. Furthermore, if the board members made the decision to issue a complaint, an examiner must be used. This ensures that the prosecutorial and adjudicative functions are separate, and that a fair and impartial decision is made.

The hearing examiner will generally schedule a pre-hearing conference between the parties. The major purposes of the pre-hearing conference are to set forth the issues in the case, determine what matters can be resolved without the need for formal testimony, and to establish a schedule for bringing the matter to hearing. Some of the cases, that may lead to the issuance of a formal complaint, are resolved by stipulation between the parties. Of course, such stipulations are subject to the approval of the board involved.

If a formal hearing is necessary, in most cases the hearing examiner presides over it. All testimony is under oath and transcribed. The parties are expected to call whatever witnesses are necessary. The process is very much like a trial. The length of the hearings can range from a few hours to several days. Once the hearing is complete, the hearing examiner prepares proposed findings of fact, proposed conclusions of law and a proposed decision. This is filed with the board, which reviews the decision and determines whether to affirm, reverse or amend it. If a member of the board participated in the investigation, that person is not involved in the board's decision on the case.

The board's options in disciplinary matters are: dismissing the complaint, reprimanding the licensee, limiting, suspending or revoking the licensee's license, or, in some instances, assessing a forfeiture against the licensee. Boards do not have the authority to award monetary damages or to get money back that a party may believe is due. If a party is dissatisfied with a board decision, the decision can be appealed to circuit court. A circuit court decision can in turn be appealed to higher courts.

The above steps set forth very generally the process that takes place if a complaint is filed against a licensee of one of the boards attached to the department. Each case is different, and some variations may occur among the boards.

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