

CHAPTER 94

PLANT INDUSTRY

94 01	Horticultural society; corporate powers; duties.	94 37	Blueberries. not to use rake, etc.
94 02	Executive committee; secretary's report	94 38	Agricultural and vegetable seeds; definitions.
94 03	County agricultural societies; organization; officers; powers	94 39	Seed labeling requirements
94 04	Certificates of stock	94 40	Seed certification
94 05	Assessments, how made and collected.	94 41	Prohibitions
94 06	Members; officers, election of	94 42	Exemptions
94 07	Filing list of officers	94 43	Seed labeler's license.
94 13	World dairy expo	94 44	Records
94 14	Livestock breeders association	94 45	Powers and authority of the department
94 15	Policy of co-operative marketing adopted.	94 46	Stop sale; penalties; enforcement
94 16	Farm stabilization funds	94 544	Permits for shipment of plant pests
94 17	Contracts for promotional fund	94 56	Removal and inspection of infected materials
94 18	State contribution to promotional fund	94 57	Abatement of plant pest infestations.
94 19	Extension of stabilization	94 60	Nursery stock; inspection; licensing nurserymen and dealers
94 20	Noxious weeds	94 61	Special inspections; fees
94 21	Weed commissioner; appointment, oath, term; exception	94 64	Fertilizer.
94 22	Duties; powers; collection of tax	94 65	Cultures of micro-organisms
94 23	County weed commissioner; deputies	94 66	Sale of agricultural lime; license; penalty.
94 24	Weed seed on highways	94 67	Pesticides; definitions.
94 25	Vehicles and machinery on highways	94 675	Pesticides; adulteration
94 26	Cranberry culture; maintenance of dams, etc.	94 676	Pesticides; misbranding
94 27	Liability for damages	94 68	Pesticides; registration
94 28	Arbitrators to fix damages	94 69	Pesticides; rules
94 29	Appeal	94 70	Pesticides; prohibited acts.
94 30	Rights on payment	94 71	Pesticides; penalties; enforcement
94 31	Service of notice	94 72	Commercial feed.
94 32	Pay of arbitrators.	94 755	Mink research funds.
94 33	Trespass on cranberry lands	94 76	Inspection of apiaries
94 35	Cranberry growers association.	94 761	Beekeepers, etc.; agricultural pursuit
94 36	Ginseng protected	94 77	Penalties
		94 80	Annual reports to department.

Cross reference: See definitions in 93 01

94.01 Horticultural society; corporate powers; duties. The Wisconsin state horticultural society is a body corporate by that name, with the general powers and privileges of a corporation so far as applicable. It shall be the duty of the society to aid in the formation and maintenance of county and local horticultural societies, to promote the horticultural interests of the state by holding meetings for discussion thereof, by the collection and dissemination of information in regard to the cultivation of fruits, flowers, and trees adapted to the soil and climate of this state, the harvesting, packing, storing and marketing of fruits and vegetables, and in other proper ways to advance the fruit and tree growing interests thereof; and for such purposes only it may take, hold and convey real and personal property, the former not exceeding five thousand dollars in value.

94.02 Executive committee; secretary's report. The executive committee of said society shall consist of the president, secretary and treasurer thereof, and one member from each congressional district in the state, these to be

chosen annually at such time and in such manner as the society may prescribe. The executive committee may fix the time and place for holding the annual meeting of the state society, if the last meeting thereof failed to do so, and may call such meeting by giving at least thirty days' notice to each member; said committee may also fill all vacancies in the offices of the society. The secretary of the society shall on and after July first of each year make a report to the department of agriculture setting forth in detail the receipts and disbursements of the society for the preceding fiscal year in such form and with such other information and detail as the department may require.

94.03 County agricultural societies; organization; officers; powers. Citizens of any county in which no such society exists, or of two such counties jointly, may meet and organize a county agricultural society, adopt a constitution and elect such officers as shall be prescribed in the constitution; and upon filing a certificate of such organization, signed by the president and secretary, with a copy of the constitution, in the office of the register of deeds of such county, such society shall become a corporation with all

the powers necessary to promote the objects thereof, and may purchase or take by gift and hold any real or personal property necessary for its purposes, and which shall be used exclusively therefor, sell and convey and mortgage the same. All conveyances and mortgages of such real estate shall be executed by the president and secretary. All amendments to the constitution or articles of such society shall be filed in the office of the register of deeds for such county. All county agricultural societies now in existence are continued with all the powers and privileges enjoyed by societies organized under this section.

94.04 Certificates of stock. Every such society shall have power to fix a valuation to the aggregate of its property and divide such valuation into equal shares, and issue to its members certificates of stock signed by the president and secretary, specifying the number of shares of its property owned by the respective members to whom issued. Such shares shall be deemed personal property and may be transferred according to such regulations as shall be prescribed by such society; and any person becoming a shareholder shall be a member and have all the rights and be subject to all the liabilities appertaining to his membership; and every person ceasing to be a shareholder of any society which shall have issued certificates of stock in accordance with this section shall cease to be a member thereof.

94.05 Assessments, how made and collected. Every county agricultural society which shall have fixed the aggregate value of its property, divided such valuation into shares and issued certificates to its members under section 94.04 may, whenever its cash funds are insufficient to pay its obligations, make an assessment upon all its members sufficient to pay such obligations in the manner herein provided. Such assessment shall be proportionately levied upon each share of stock as the unit. Such society shall, at its annual meeting, by resolution to be entered of record, determine and assess the sum to be paid by all the members thereof and the time when and the officers to whom the same shall be paid; and the secretary shall immediately notify every member by letter sent to his usual post-office address of the amount of such assessment and the sum due from him, and the time when and the officer to whom payment thereof is to be made, which time shall be not less than sixty nor more than ninety days. If any member shall neglect or refuse payment of any such assessment for thirty days after the same shall have become due and payable and after he shall have been so notified thereof the stock of such member may be sold by the executive

committee of such society at public auction, after at least thirty days' notice of such sale by posting notices thereof, stating the place and the day and hour of such sale, in three conspicuous places in the county where such society is situated. The proceeds of such sale shall be first applied in payment of the assessment and the expense of the sale, the residue, if any, shall be refunded to the owner; but if such proceeds shall not be sufficient to pay such assessment and expense such member shall remain liable to the society for the deficiency. The purchaser at such sale shall be entitled to all the rights of a member to the extent of the shares so bought. Every assessment when collected shall be paid to the treasurer of such society and applied to the payment of the obligations on account of which it was made.

94.06 Members; officers, election of. Such societies shall be open and free alike to all the citizens of the county where organized who may wish to become members thereof and shall comply with their regulations; and other citizens of this state or any other state may become members thereof upon such terms and conditions as shall be provided by their bylaws and pay the prescribed fees. They shall hold an annual election of their officers, and the time and place of holding the same shall be published as a class 1 notice, under ch. 985. The term of office of all officers of such society shall be one year and until their successors are elected.

94.07 Filing list of officers. The secretary of each county agricultural society and of each industrial society claiming any money from the state shall, immediately after the annual election of its officers, file in the office of the department a list of the officers of such society, giving the post-office address of the president, secretary and treasurer thereof.

94.13 World dairy expo. (1) The secretary shall approve any plans for the expenditure of appropriations under s. 20.115 (4) (e) to the world dairy expo, inc. for the payment of premiums for dairy products or livestock or upon articles relating to the production or manufacture of such products or the raising of such livestock.

(2) Any moneys received by world dairy expo, inc. under this section shall be used only for premiums described in sub. (1).

(3) Not later than 30 days after the close of the exposition each year world dairy expo, inc. shall file with the department, on forms provided by it, an itemized account verified on oath, showing net premiums actually paid or to be paid at the preceding exposition. The verified account shall correspond with the plans approved by the

secretary under sub. (1). On or before December 31 of the year in which the exposition is held, world dairy expo, inc. shall furnish the department with a statement of receipts and disbursements, attendance and such other information relating to the exposition as the department may require. Upon receipt of such statement the department shall pay world dairy expo, inc. the aid due for the preceding year.

History: 1973 c. 333

94.14 Livestock breeders association. (1)

The chief of the animal husbandry department of the university of Wisconsin-Madison, the department of agriculture and the president of the Wisconsin livestock breeders association shall approve all plans for the expenditure of appropriations to the Wisconsin livestock breeders association for the following objects:

(a) To encourage and develop the general livestock industry of the state by the collection and dissemination of information emphasizing the peculiar advantages of Wisconsin as a livestock producing state and its unsurpassed studs, herds and flocks.

(b) To promote a systematic and efficient educational campaign for the purpose of improving the character and increasing the production of the domestic animals of this state.

(c) To safeguard purchasers from fraud upon the part of dealers and breeders and generally to protect, perpetuate and improve the livestock industry of Wisconsin.

(d) To consider and recommend such legislation as may be needed for the proper development and advancement of Wisconsin's livestock industry.

(e) To facilitate the marketing of livestock.

(2) The secretary of said livestock breeders association shall, under date of June 30 of each year, make to the governor of the state a report of the transactions thereof, including an itemized sworn statement, showing all the receipts and expenditures under the provisions of this section during the year ending on said date.

(3) Said association may occupy such rooms in the capitol as may be assigned for that purpose by the department of administration.

History: 1973 c. 335 s. 12

94.15 Policy of co-operative marketing adopted.

The history of the farm marketing problem in the state and nation, as well as throughout the world, points to a solution chiefly through co-operative marketing efforts of producers. It is, hence, declared to be the policy of this state, in advancing the general good and public welfare, to assist in the organization and development of co-operative associations for

production and marketing purposes along lines of dairy and other farm products

94.16 Farm stabilization funds. There are established one or more "farm stabilization funds" to be administered by the department of agriculture. Payments therefrom shall be made by the state treasurer under rules and regulations to be adopted by the department. The said funds shall be used exclusively for the development of a centralized system of the cooperative marketing of dairy and other farm products, as outlined in ss. 93.06 (6) and 93.07 (17), and for the payment of the expenses of the department incurred in connection with the particular product for which such stabilization fund was created.

94.17 Contracts for promotional fund.

Commodity contracts approved by the department of agriculture for use by cooperative marketing associations with their producer members may provide for the setting aside of a promotional fund by such associations, to be used according to rules and regulations approved by the department. In dairy marketing contracts the producer members shall pay into such promotional fund on the basis of the equivalent quantity of the fluid milk having a 3.5% butter fat content in such dairy products. The rate of such levy shall be fixed annually by the association with the approval of the department, at a figure which is estimated to yield a revenue sufficient to give financial stability to the centralized system of the cooperative marketing of dairy products through the respective cooperative marketing associations.

94.18 State contribution to promotional fund.

An amount equal to one-half of the amounts paid by the members of co-operative marketing associations into the promotional funds of such associations pursuant to section 94.17, but not exceeding in the case of dairy marketing contracts one cent for the equivalent of each one hundred pounds of milk having a three and five-tenths per cent butter fat content upon which such payments into the promotional funds are made, shall be paid from the general fund into the farm stabilization fund.

94.19 Extension of stabilization. (1)

When the department of agriculture, with the approval of the governor, shall have determined that it is advisable to centralize the marketing of any farm product, other than dairy products, that it is equipped to do so efficiently, it may proceed under a similar plan as provided in ss. 94.16 to 94.18 for dairy marketing. The payments from the general fund into the farm stabilization fund

for such other farm products shall not exceed one per cent of the average market value of the products upon which payments are made into the promotional funds of the cooperative marketing associations, as determined by the department from year to year.

(2) If payments are made from the general fund into the farm stabilization fund for more than one product, the amounts so paid on account of each product shall be kept distinct and shall constitute a farm stabilization fund separate from other farm stabilization funds. Each such fund shall be chargeable only with such part of the expenses of the department of agriculture as are incurred in connection with the particular product in question, plus a proportionate part of the moneys set aside as a cooperative educational fund.

94.20 Noxious weeds. (1) The term "noxious weeds" as used in this chapter includes the following: Canada thistle, leafy spurge and field bindweed (creeping Jenny) and any other such weeds as the governing body of any municipality or the county board of any county by ordinance or resolution declares to be noxious within its respective boundaries.

(2) Every person shall destroy all noxious weeds on all lands which he shall own, occupy or control. The person having immediate charge of any public lands shall destroy all noxious weeds on such lands. The highway patrolman on all federal, state or county trunk highways shall destroy all noxious weeds on that portion of the highway which he patrols. The town board shall cause to be destroyed all noxious weeds on the town highways.

(3) The term "destroy" means the complete killing of weeds or the killing of weed plants above the surface of the ground by the use of chemicals, cutting, tillage, cropping system, pasturing live stock, or any or all of these in effective combination, at such time and in such manner as will effectually prevent such plants from maturing to the bloom or flower stage.

(4) The chairman of each town, the president of each village and the mayor or manager of each city shall annually on or before May 15 publish a class 2 notice, under ch. 985, that every person is required by law to destroy all noxious weeds, as defined in this section, on lands in the municipality which he owns, occupies or controls.

94.21 Weed commissioner; appointment, oath, term; exception. The chairman of each town, the president of each village, and the mayor of each city, shall appoint one or more commissioners of noxious weeds therein on or before May 15 in each year; such weed

commissioner shall take the official oath, which oath shall be filed in the office of the town, village or city clerk, and shall hold his office for one year and until his successor has qualified. If more than one commissioner is appointed, the town, city or village shall be divided into districts by the officer making the appointment, and each commissioner shall be assigned to a different district. At his discretion the town chairman, village president or city mayor may appoint a resident of any district to serve as weed commissioner in any other district of the same town, village or city. This section shall not apply to cities of the 1st class, but in such cities the aldermanic district superintendent shall perform the duties of commissioners of weeds.

History: 1971 c. 304 s. 29 (1)

94.22 Duties; powers; collection of tax.

(1) Every weed commissioner shall carefully investigate concerning the existence of noxious weeds in his district; and if any person therein neglects to destroy any weeds as required by s. 94.20, he shall, after first giving 5 days' written notice by mail to the owner or occupant and in cities and villages without giving such written notice, destroy or cause all such weeds to be destroyed, in the manner deemed to be the most economical method, and for each day devoted to doing so he shall receive such compensation as is determined by the town board, village board or city council upon presenting to the proper treasurer his account therefor, verified by his oath and approved by the appointing officer. Such account shall specify by separate items the amount chargeable to each piece of land, describing the same, and shall, after being paid by the treasurer, be filed with town, city or village clerk, who shall enter the amount chargeable to each tract of land in the next tax roll in a column headed "For the Destruction of Weeds," as a tax on the lands upon which such weeds were destroyed, which tax shall be collected as other taxes are, or as taxes are collected on personal property pursuant to s. 74.11, except in case of lands which are exempt from taxation in the usual way. In case of railroad or other lands not taxed in the usual way the amount chargeable against the same shall be certified by the town, city or village clerk to the state treasurer who shall add the amount designated therein to the sum due from the company owning, occupying or controlling the lands specified, and he shall collect the same therefrom as prescribed in ch. 76, and return the amount collected to the town, city or village from which such certificate was received. Any such commissioner may after written notice given as herein provided and in cities and villages without giving such written notice, enter upon any lands

upon which any of the weeds mentioned in s. 94.20 are growing, and cut or otherwise destroy them, without being liable to an action for trespass or any other action for damages resulting from such entry and destruction, if reasonable care is exercised in the performance of the duty hereby imposed.

(2) For each day consumed by the commissioners in carrying out their duties other than the destruction of weeds, they shall receive such compensation as may be determined by the village board, town board or city council to be paid out of the city, village or town treasury.

94.23 County weed commissioner; deputies. Any county may by resolution adopted by its county board provide for the appointment of a county weed commissioner, define his duties and fix his term of office and compensation. When any such weed commissioner has been appointed and has qualified, he shall have all the powers and duties of the weed commissioners provided for in ss. 94.20 to 94.22. Each town chairman, village president or city mayor may appoint one or more deputy weed commissioners, who shall work in co-operation with the county weed commissioner in the district assigned by the appointing officer.

94.24 Weed seed on highways. No person shall transport upon the public highways any grain screenings containing weed seed, except the same be securely sacked or confined in sufficiently closed receptacles, to prevent the scattering of such screenings or weed seed.

94.25 Vehicles and machinery on highways. No operator of a vehicle or farm machinery shall move any such equipment on a highway unless it is in a reasonably clean condition and free from all seeds of noxious weeds.

94.26 Cranberry culture; maintenance of dams, etc. Any person owning lands adapted to the culture of cranberries may build and maintain on any land owned by him such dams upon any watercourse or ditch as shall be necessary for the purpose of flowing such lands, and construct and keep open upon, across and through any lands such drains and ditches as shall be necessary for the purpose of bringing and flooding or draining and carrying off the water from such cranberry growing lands, or for the purpose of irrigation, fertilization and drainage of any other lands owned by such person; provided, that no such dams or ditches shall injure any other dams or ditches theretofore lawfully constructed and maintained for a like purpose by any other person.

94.27 Liability for damages. The person so building or maintaining any such dam or constructing or keeping open any such ditch or drain shall be liable to the persons whose lands are overflowed or otherwise injured by such dam, ditch or drain for the full sum of damages so sustained, which shall be ascertained and recovered in the manner following and not otherwise. If the person claiming any such damages cannot agree with the person liable to pay the same he shall select one disinterested arbitrator and give notice thereof to the person from whom such damages are claimed, who shall, within ten days after the receipt of such notice, select another disinterested arbitrator, not of kin to any of the parties interested in maintaining such dams, ditches or drains, and give notice thereof to the claimant and to each of the persons so selected as arbitrators.

94.28 Arbitrators to fix damages. The persons so selected as arbitrators shall, within twenty days after such notice, appoint some disinterested third person to act as arbitrator with them and fix a time and place at which they shall meet to determine the damages which the claimant ought to have, and give notice thereof to the parties interested. At the time and place so fixed they shall view the premises and hear the proofs and allegations of the parties, and within ten days thereafter they, or any two of them, shall make duplicate statements of the proceedings had by them and of the amount by them ordered to be paid to the claimant for his damages and the amount to be paid by the respective parties for their fees and the costs of such proceedings, and deliver to each party a copy thereof. Within twenty days thereafter the amount so ordered shall be paid by the party of whom required unless an appeal be taken as hereinafter provided.

94.29 Appeal. If either party shall not be satisfied with the award he may, within 10 days after the delivery of the copy thereof to him, serve upon either of said arbitrators notice that he appeals from their award to the circuit court of the county in which the lands or any part thereof are situated and pay to such arbitrators the whole amount of their fees, \$5 for state tax and \$8 clerk's fees; and if the party required to pay such damages shall give notice of an appeal therefrom he shall file with his notice of appeal an undertaking, signed by 2 or more sureties, to be approved by at least 2 of said arbitrators, in double the amount of such award, conditioned to pay any judgment that may be rendered against him upon such appeal. Upon filing such notice of appeal and undertaking, when required, the arbitrators, or 2 of them, shall, within 10 days,

make and sign a full statement of the proceedings had by them and of their award and file the same with the clerk of said court and pay \$5 state tax and \$8 clerk's fees; and thereupon the said clerk shall enter an action in which the claimant shall be plaintiff, which shall be deemed then at issue, and proceedings shall be had thereon in like manner as in other civil actions in such court. Unless the appellant shall obtain a more favorable judgment upon such appeal he shall pay costs; otherwise, the respondent.

94.30 Rights on payment. If neither party appeals from such award and the party required to pay the damages shall pay the full amount thereof within the time above prescribed or if, upon an appeal, a final judgment shall be rendered in favor of the claimant and the defendant shall pay such judgment and all costs awarded to the claimant within sixty days after such final judgment, then the person so erecting or maintaining such dam or dams or constructing or maintaining such ditches or drains shall have the perpetual right to maintain and keep the same in good condition and repair; and neither he nor his assigns shall be liable to the payment of any further damages on account thereof; and upon failure to make such payment within the times above prescribed he shall forfeit all right to maintain such dams, ditches or drains under the foregoing provisions.

94.31 Service of notice. In all cases arising under ss. 94.26 to 94.30 when it shall be necessary to serve any notice upon any person who may be out of the state or whose whereabouts shall not be known to the person desiring to serve the same, such notice may be served upon any agent or employe of such person who may be found within this state, and such service shall have the same effect as if it was made upon the party interested.

94.32 Pay of arbitrators. The arbitrators shall receive for their services three dollars per day each, to be paid in whole or in part by either party as they shall determine.

94.33 Trespass on cranberry lands. No person shall enter upon any cranberry marsh and pick, injure, destroy or remove therefrom any cranberry vines or any fruit thereof without the consent of the owner, and every person violating the provisions of this section shall be deemed guilty of a malicious trespass and forfeit to the owner of such marsh not less than ten dollars as damages in addition to the value of the cranberries taken.

94.35 Cranberry growers association. The Wisconsin cranberry growers association shall obtain and publish information relative to the cultivation and production of cranberries. Said society shall hold semiannual meetings in August and January at such place as it shall determine. The secretary thereof shall report to the governor immediately after each January meeting an itemized and verified account of all disbursements made during the previous year and shall then publish an account in pamphlet form, not to exceed 250 copies of 50 pages each, of the transactions of the association and a summary of the information collected during the previous year relating to the cultivation and production of cranberries, which pamphlets he shall cause to be distributed gratuitously to cranberry growers in this state.

94.36 Ginseng protected. (1) **CUTTING.** No person shall between the first day of January and the first day of August cut, root up, gather or destroy ginseng growing in a wild or uncultivated state, except it be on his land.

(2) **EVIDENCE.** The purchase or sale of green ginseng between the first day of January and the first day of August shall be prima facie evidence of a violation of this section.

(3) **PURCHASE WITH KNOWLEDGE.** No person shall purchase ginseng, knowing the same to have been cut, rooted up, or gathered between the first day of January and the first day of August.

(4) **EVIDENCE.** In any prosecution under this section proof that ginseng purchased had been illegally obtained by the vendor shall be prima facie evidence of a violation of this section by the purchaser.

94.37 Blueberries, not to use rake, etc. No person, without the consent of the owner, shall pick any blueberries with a rake or other mechanical device.

94.38 Agricultural and vegetable seeds; definitions. When used in ss. 94.38 to 94.46 unless the context requires otherwise:

(1) "Person" includes any individual, firm, partnership, corporation, company, society or association.

(2) "Agricultural seed" includes the seeds of grass, forage, cereal, fiber crops and lawn seeds and any other kinds of seeds commonly recognized and sold within this state for sowing purposes as agricultural seeds or mixtures thereof, and may include noxious weed seeds if used as agricultural seed.

(3) "Lawn seed" means the seed of grasses, clovers or other agricultural seeds or mixtures

thereof commonly used or sold for seeding lawns, parks or turf areas in this state.

(4) "Vegetable seed" includes the seeds of crops which are grown commercially and in home gardens as vegetables for human consumption and are commonly known and sold in this state as vegetable seeds.

(5) "Weed seeds" includes the seeds of all plants generally recognized as weeds within this state, and includes noxious weed seeds.

(6) "Noxious weed seeds" are divided into 2 classes, "prohibited noxious weed seeds" and "restricted noxious weed seeds" and are defined as follows:

(a) "Prohibited noxious weed seeds" include the seeds of field bindweed (*Convolvulus arvensis*), leafy spurge (*Euphorbia esula*), Canada thistle (*Cirsium arvense*) and quack grass (*Agropyron repens*).

(b) "Restricted noxious weed seeds" include the seeds of dodder (*Cuscuta* sp.), wild mustard (*Brassica kaber*), Indian mustard (*Brassica juncea*), buckhorn (*Plantago lanceolata*), ox-eye daisy (*Chrysanthemum leucanthemum*), perennial sow thistle (*Sonchus arvensis*), wild radish (*Raphanus raphanistrum*), yellow rocket (*Barbarea vulgaris*), wild oats (*Avena fatua*), giant foxtail (*Setaria faberii*), hoary alyssum (*Berteroa incana*), downy brome (*Bromus tectorum*) and white cockle (*Lychnis alba*).

(7) "Label" means the display of written, printed or graphic matter upon or attached to the container of seed or accompanying seed sold in bulk quantities.

(8) "Labeling" includes all labels and other written, printed or graphic representations, in any form whatsoever, accompanying or pertaining to any seed whether in bulk or in containers and includes representations on invoices.

(9) "Labeler" means any person who as grower, processor, jobber, distributor or seller labels seed or accepts responsibility for labeling information pertaining to any container or lot of agricultural or vegetable seed and whose name and address is required to appear on the label under s. 94.39.

(10) "Advertisement" means all representations, other than those on the label, disseminated in any manner or by any means relating to seed within the scope of ss. 94.38 to 94.46.

(11) "Record" means all information relating to lot, identification, source, origin, variety, amount, processing, blending, testing, labeling, sale and distribution of seed and includes a file sample of each lot.

(12) "Stop sale" means a department order restraining the sale, use, disposition or movement of seed.

(13) "Seizure" means the taking of legal custody over seed by court order.

(14) "Kind" means one or more related species or subspecies which singly or collectively is known by one common name, such as corn, oats, alfalfa or timothy.

(15) "Variety" means a subdivision of a kind based on growth, yield, plant, fruit, seed, disease resistance or other characteristics by which it can be differentiated from other plants of the same kind.

(16) "Type" means a group of varieties so nearly similar that the individual varieties cannot be clearly differentiated except under special conditions.

(17) "Hybrid" means the first generation seed of a cross produced by controlling the pollination and by combining (a) 2 or more inbred lines; (b) one inbred or a single cross with an open-pollinated variety; or (c) 2 varieties or species, except open-pollinated varieties of corn (*Zea mays*). The second generation and subsequent generations from such crosses shall not be regarded as hybrids. Hybrid designations shall be treated as variety names.

(18) "Lot" means a definite quantity of seed identified by a lot number or other mark, every portion or bag of which is uniform within recognized tolerances for the factors which appear in the labeling.

(19) "Pure seed", "germination", "hard seed" and other terms commonly used in labeling and testing seeds shall be as defined in the rules of the department.

(20) "Treated seed" means seed which has received an application of a substance, or has been subjected to a process in such a way as to reduce, control or repel certain disease organisms, insects or other pests attacking seeds or seedlings growing therefrom.

(21) "Preinoculated seed" means legume seed which has received an application, prior to sale, of a culture of bacteria which will effectively inoculate the legume as shown by nodulation of the roots, growth of the plants and accumulation of nitrogen in the plants.

(22) "Certifying agency" means an agency designated by any state, territory, possession or foreign country to certify seed.

(23) "Certified seed" means seed produced in compliance with the standards and procedures of a certifying agency and that bears an official label issued for such seed by a seed certifying agency stating that the seed is certified. The 4 classes of certified seed are: breeders, foundation, registered and certified.

(24) "Relative maturity", as applied to field corn, means the relative time required from emergence of the seedling from the soil to the production of mature ears of corn as determined by rules of the department.

94.39 Seed labeling requirements. Each container or bulk lot of agricultural or vegetable seed which is sold, or offered, exposed or distributed for sale within this state for seeding purposes shall bear thereon or have attached thereto in a conspicuous place, or in the case of bulk sales be accompanied by, a plainly written or printed label in the English language, giving the following information:

(1) For agricultural seeds, excluding lawn seed mixtures under sub. (2):

(a) The commonly accepted name of the kind or kind and variety of each agricultural seed component in excess of 5 per cent of the whole and the percentage by weight of each in order of its predominance. When more than one component is required to be named, the word "mixture" or "mixed" shall be shown conspicuously on the label. Seed components of 5 per cent or less may be named, if desired.

(b) Lot number or other identification.

(c) Origin by state or foreign country of alfalfa, red clover, white clover or field corn, except hybrid field corn. If the origin of these crop seeds is unknown, that fact shall be stated.

(d) Percentage by weight of all weed seeds.

(e) The name and rate of occurrence per pound, printed in boldface capital type of each kind of restricted noxious weed seed present singly or collectively in excess of:

1. One seed in 25 grams of redtop, Canada bluegrass, Kentucky bluegrass and seeds of similar or smaller size and weight and mixtures of such seeds.

2. One seed in 35 grams of timothy, alsike clover, orchard grass, reed canary grass, white clover and seeds of similar size and weight and mixtures of such seeds.

3. One seed in 50 grams of smooth brome grass, red clover, rape, alfalfa, sweet clover, rye grass, millet, flax and seeds of similar size and weight and mixtures of such seeds.

4. One seed in 150 grams of Sudan grass, proso and seeds of similar size and weight and mixtures of such seeds.

5. One seed in 300 grams of sorghums, buckwheat and seeds of similar size and weight and mixtures of such seeds.

6. One seed in 500 grams of vetches, cereals, field corn, beans, field and canning peas, soybeans and seeds of similar size and weight and mixtures of such seeds.

(f) Percentage by weight of all other crop seeds.

(g) Percentage by weight of inert matter.

(h) For each agricultural seed named under par. (a):

1. Percentage of germination, exclusive of hard seed.

2. Percentage of hard seeds, if present.

3. The calendar month and year the test was completed to determine such percentages.

(i) Name and address of the person who labeled the seed, or who sells, offers, exposes or distributes it for sale within this state.

(2) For lawn seed mixtures in containers of 50 pounds or less:

(a) The word "mixed" or "mixture".

(b) In tabular form under separate headings for "Fine-Textured Grasses" and "Coarse Kinds":

1. The commonly accepted name, in order of its predominance, of the kind or kind and variety of each agricultural seed present in excess of 5% of the whole and determined to be a "fine-textured grass" or a "coarse kind" in accordance with the rules of the department.

2. Percentage by weight of pure seed for each agricultural seed named.

3. For each agricultural seed named: a) percentage of germination, exclusive of hard seed; b) percentage of hard seeds, if present; c) the calendar month and year the test was completed to determine such percentages.

(c) Under the heading "Other Ingredients":

1. Percentage by weight of all weed seeds.

2. Percentage by weight of all crop seeds other than those stated under par. (b) 1.

3. Percentage by weight of inert matter.

(d) Lot number or other identification.

(e) Name and rate of occurrence per pound of each kind of restricted noxious weed seed present singly or collectively in excess of the limits prescribed by sub. (1) (e).

(f) Name and address of the person who labeled the seed, or who sells, offers, exposes or distributes it for sale within this state.

(3) For vegetable seeds in containers of one pound or less:

(a) Name of kind and variety.

(b) For seeds which germinate less than the standard established by department rule:

1. Percentage of germination, exclusive of hard seed.

2. Percentage of hard seeds, if present.

3. The calendar month and year the test was completed to determine such percentages.

4. The words "Below Standard" in not less than 8-point type.

(c) Name and address of the person who labeled the seed, or who sells, offers, exposes or distributes it for sale within this state.

(4) For vegetable seeds in containers of more than one pound:

(a) The name of each kind and variety present in excess of 5% of the whole and the percentage by weight of each, in order of its predominance.

(b) Lot number or other identification.

(c) For each vegetable seed named:

1. Percentage of germination, exclusive of hard seed.

2. Percentage of hard seeds, if present.

3. The calendar month and year the test was completed to determine such percentages.

(d) Name and address of the person who labeled the seed, or who sells, offers, exposes or distributes it for sale within this state.

(5) For all treated seeds, in addition to other labeling requirements under this section (for which a separate label may be used):

(a) A word or statement indicating that the seed has been treated.

(b) The commonly accepted coined, chemical (generic) or abbreviated chemical name of the substance applied or a description of the process used.

(c) If the substance in the amount present with the seed is harmful to human or other vertebrate animals, a caution statement such as "Do not use for food or feed or oil purposes". The caution for mercurials and similar toxic substances shall be a poison statement and a skull and crossbones symbol.

(6) For all preinoculated seeds, in addition to other labeling requirements under this section (for which a separate label may be used):

(a) A word or statement indicating that the seed has been preinoculated.

(b) The date beyond which the inoculant is not to be considered effective.

(7) For field corn seed, in addition to other labeling requirements under this section:

(a) Variety or descriptive name.

(b) The relative maturity according to the schedule of relative maturities established by rules of the department.

94.40 Seed certification. (1) No alfalfa seed shall be sold, or offered, exposed or distributed for sale within this state if it is labeled, advertised or represented as the ranger or vernal variety unless such seed has been certified by a seed certifying agency.

(2) The Wisconsin crop improvement association, a nonprofit organization incorporated under the laws of this state, in cooperation with the university of Wisconsin-Madison college of agriculture and the department of agriculture, shall be the seed certifying agency for the certification of agricultural and vegetable seed in the state.

(3) The Wisconsin crop improvement association, in co-operation with the university of Wisconsin college of agriculture, shall establish standards and procedures for the certification of seed, subject to approval of the department, not lower than those prescribed by the international crop improvement association.

History: 1973 c. 335 s. 12

94.41 Prohibitions. (1) It is unlawful for any person to sell, or offer, expose or distribute for sale any agricultural or vegetable seed:

(a) Unless the test to determine the percentage of germination required under s. 94.39 is completed within a 12-month period immediately prior to the date it is sold, offered, exposed or distributed for sale, as shown by records, exclusive of the calendar month in which the test is completed, except that seeds packaged in hermetically sealed containers may be sold, offered, exposed or distributed for sale under such conditions as the department may prescribe, for a period of 36 months following the month in which the seeds are tested. No seeds in hermetically sealed containers shall be sold, offered, exposed or distributed for sale beyond such 36-month period unless retested within the preceding 9-month period, exclusive of the calendar month in which the retest is completed. Seed, for which the germination test date has expired, shall be relabeled by a licensed labeler prior to its being sold, offered, exposed or distributed for sale.

(b) Not labeled in accordance with s. 94.39, or containing any labeling statements which modify or deny label information required under s. 94.39, or having any other false or misleading labeling.

(c) Pertaining to which there has been a false or misleading advertisement, claim or representation.

(d) Containing prohibited noxious weed seeds in excess of tolerances established by rules of the department.

(e) Containing restricted noxious weed seeds singly or collectively in excess of:

1. One seed in 5 grams of the agricultural seeds named in s. 94.39 (1) (e) 1.

2. One seed in 10 grams of the agricultural seeds named in s. 94.39 (1) (e) 2 and 3.

3. One seed in 25 grams of the agricultural seeds named in s. 94.39 (1) (e) 4.

4. One seed in 50 grams of the agricultural seeds named in s. 94.39 (1) (e) 5.

5. One seed in 100 grams of the agricultural seeds named in s. 94.39 (1) (e) 6.

(f) Containing weed seeds in excess of one per cent by weight.

(g) Consisting in part or in whole of prohibited or restricted noxious weed seeds in excess of quantities prescribed herein.

(h) Represented to be certified seed by means of any labeling, advertisement or other representations unless it is certified and bears an official certification label.

(i) Having attached thereto a blue label, unless such label is an official certification label authorized for use on such seed by a seed certifying agency.

(j) When the inoculum applied to preinoculated seed is ineffective as determined by standards established by rules of the department.

(k) Not certified by an official seed certifying agency, if labeled under the variety name of a variety of seed which is protected by and can only be sold as a class of certified seed under a certificate of plant variety protection issued under the federal plant variety protection act (7 U.S.C. 2321 et. seq.), provided that seed from a certified lot may be labeled as to variety name when used in a mixture by, or with the approval of, the owner of the variety.

(2) It is unlawful for any person:

(a) To detach, alter, deface or destroy any label attached to or accompanying seed, or to alter or substitute seed in a manner which would defeat the purposes of s. 94.39 or result in the sale or distribution of seed in violation of ss. 94.38 to 94.46 or rules thereunder.

(b) To disseminate any false or misleading advertisements, or make any false or misleading claims concerning agricultural or vegetable seeds in any manner or by any means.

(c) To hinder or obstruct in any way, any authorized person in the performance of his duties under ss. 94.38 to 94.46.

(d) To fail to comply with a "stop sale" order or to make any other disposition of any lot of seed contrary to the provisions of such order.

(e) To use the word "trace" as a substitute for any labeling required under s. 94.39 relating to the composition of seeds or seed mixtures.

(f) To use the word "type" in any labeling in connection with the name of any agricultural seed variety.

(g) To make a false declaration of gross annual sales on any application for a seed labeler's license or to fail to keep available for inspection by the department accurate records of gross annual sales of seeds sold in this state as a labeler.

History: 1973 c. 194, 195

94.42 Exemptions. The provisions of ss. 94.38 to 94.46 do not apply to:

(1) Seed or grain not intended for sowing purposes, except where it is made to appear by labeling, advertising or other representations that it is available for purchase or is being offered or distributed for sale as seed; or where it is represented as being suitable for use as seed by such terms as cleaned, processed, treated, tested, certified or terms of similar import.

(2) To seed in storage in, or being transported or consigned to, a cleaning or processing establishment for cleaning or processing; but any labeling or other representation which may be

made with respect to the uncleaned or unprocessed seed shall be subject to ss. 94.38 to 94.46.

(3) Any carrier in respect to any seed delivered or consigned to it by others for transportation in the ordinary course of its business as a carrier.

(4) Any person in respect to any seed sold, or offered, exposed or distributed for sale which was incorrectly labeled or represented as to kind, variety or origin, provided that the seeds cannot be identified by examination thereof, unless he has failed to obtain an invoice, genuine grower's declaration or other labeling information reasonably necessary to insure the seed is as represented.

94.43 Seed labeler's license. (1) Every person whose name and address are required to appear on the label of any seed as the labeler or person responsible for the labeling thereof under s. 94.39, or every person who opens any bag or container of seed and sells any part of the seed contained therein, shall obtain a seed labeler's license from the department before selling, or offering, exposing or distributing such seed for sale in this state.

(2) No person shall sell, or offer, expose or distribute for sale in the state, any seed not labeled by the holder of a seed labeler's license whose name and address are on the label, except that no license shall be required to sell seed of one's own production if it is delivered to the purchaser only on the farm premises where grown or to sell seed only in bags or other closed containers labeled by the holder of a seed labeler's license. Labels shall not be required for seed packaged at time of sale at retail by the holder of a seed labeler's license if the bin or other container from which the seed is sold bears a label and the seed with its labeling may be readily examined by the purchaser prior to sale. Seed sold by a licensed labeler under this exception shall be considered as having been sold under his own label for purposes of computing license fees under sub. (3).

(3) Application for a seed labeler's license shall be submitted on a form prescribed by the department and shall be accompanied by a fee based on the gross sales of seed within the state by the applicant under his own label during the previous 12 months prior to filing the application. Fees for a labeler's license shall be computed on gross sales according to the following schedule: Less than \$10,000, \$10; \$10,000 or more but less than \$25,000, \$25; \$25,000 or more but less than \$75,000, \$50; \$75,000 or more but less than \$200,000, \$75; and \$200,000 or more, \$100.

94.43 PLANT INDUSTRY

1976

(4) The license fee for a new applicant or for a person who did not sell seed under his own label during the previous 12 months shall be the minimum fee of \$10 for the first year or any part thereof.

(5) The licenses shall expire on December 31 of each year. Licenses shall not be transferable and no fee or any portion thereof shall be refunded after the license has been issued.

94.44 Records. Each person whose name is required to appear on the label as the labeler of agricultural or vegetable seeds pursuant to s. 94.39 shall maintain complete records of each lot of seed sold or labeled for a period of 2 years after final sale or disposition thereof, except that a file sample of such seed need be kept for only one year. This section shall not be construed as requiring a record of the sale or disposal of each portion of a lot sold at retail in quantities of less than 40 pounds. All records and samples pertaining to any lot of seed shall be accessible for inspection by the department during customary business hours.

94.45 Powers and authority of the department. The department is authorized:

(1) To enter during regular business hours all places of business, warehouses, freight depots, cars, trucks and all other places where seed is stored, transported, sold or exposed for sale. The department is empowered to sample any container of seed, analyze and test the samples and inspect all records relating to any lot of seed in order to secure evidence of violation of ss. 94.38 to 94.46.

(2) To establish and maintain a seed laboratory for the testing and analysis of seed.

(3) To make purity and germination tests of seed for persons on request and for this purpose may prescribe rules governing such testing and fix and collect charges for tests made.

(4) To co-operate with the U.S. department of agriculture and other agencies in seed law enforcement.

(5) To publish at least once a year, in such form as the department deems proper, information concerning the inspection and sales of seed and the results of the analysis of official samples of agricultural and vegetable seeds distributed within the state.

(6) To establish rules, after public hearing:

(a) Governing the methods of sampling, inspecting, analyzing, testing and examining agricultural and vegetable seed, and to prescribe tolerances for purity and germination tests and rates of occurrence of noxious weed seeds.

(b) To add to or remove from the list of prohibited and restricted noxious weed seeds as specified in s. 94.38 (6).

(c) Governing the distribution and labeling of seed.

(d) Providing standards for relative maturities, certification of seed and the effectiveness of inoculum applied to preinoculated seed.

(e) Providing reasonable standards of germination for vegetable seeds.

(f) Providing a list of "fine-textured grasses" and "coarse kinds".

(g) Governing the issuance of seed labeler's licenses.

(h) For the administration and enforcement of ss. 94.38 to 94.46.

94.46 Stop sale; penalties; enforcement.

(1) The department may issue a written or printed "stop sale" order to the owner or custodian of any lot of agricultural or vegetable seed not conforming with ss. 94.38 to 94.46, or rules thereunder. The order shall specify the sections of the law or rules violated and shall prohibit the sale or other disposition of the seed except as the department authorizes or directs. Unless the seed is brought into compliance with the law or rules and is released from the "stop sale" order, or other disposition is agreed upon in writing within 30 days after service of the order, the seed shall be disposed of as the department by notice in writing may direct. This shall not preclude the voluntary signing of a disposal agreement without the issuance of a "stop sale" order. Any notice or order hereunder may be served personally or by mail and shall have the effect of a special order under s. 93.18 subject to review under ch. 227 if within 10 days after service of any notice or order, the owner or custodian files with the department a written request for a hearing. Final disposition of the seed shall be stayed during pendency of the hearing but the "stop sale" order shall remain in effect.

(2) Any lot of agricultural or vegetable seed not in compliance with ss. 94.38 to 94.46, or rules thereunder, or not disposed of in accordance with any disposal agreement or order under sub. (1), shall be subject to seizure on complaint of the department to a court of competent jurisdiction. If the court finds the seed to be in violation of law and orders the condemnation of said seed, it shall be denatured, processed, destroyed, relabeled or otherwise disposed of as the court directs.

(3) In addition to or in lieu of other remedies provided for enforcement of ss. 94.38 to 94.46, the department may apply to the circuit court for a temporary or permanent injunction to prevent, restrain, or enjoin any person from violating ss. 94.38 to 94.46 or any rules or orders issued thereunder.

(4) Any person violating ss. 94.38 to 94.46 or rules thereunder, may be fined not less than \$50

nor more than \$200 or imprisoned not more than 90 days or both, for the first offense. For any subsequent offense, the fine shall be not less than \$200 nor more than \$500 or imprisonment in the county jail not to exceed 6 months or both.

94.544 Permits for shipment of plant pests. No person shall sell or offer for sale, or move, transport, deliver, ship or offer for shipment, any plant pest, as defined in s. 93.01 (16), without a permit issued under rules prescribed by the department, except bees under s. 94.76. The department may by rule provide reasonable exemptions from permit requirements. Permits may be issued only after the department determines that the plant pests are not injurious to plants, animals or other materials, or if injurious, the proposed use will not create sufficient hazard to warrant refusal of a permit. Such permit shall be affixed to the outside of every container or shipment thereof.

94.56 Removal and inspection of infested materials. (1) Except as authorized by the department, no person shall remove any plant or other material from any premises.

(2) The department, by summary order, may prohibit the removal of any plant or other material from any private or public property, or any area of the state which in its judgment contains or is exposed to dangerous plant pests, except under such conditions as in its judgment seem necessary to prevent the spread of plant pests, giving written notice thereof to the owner or custodian. While such order is in force no person with knowledge thereof shall cause or permit the removal of any such plant or other material from such property or area, unless it is in compliance with the conditions of such order.

(3) No person shall obstruct or interfere with the examination or testing, by authorized inspectors and agents of the department, of any plants or material suspected of being infested with any plant pests.

(4) The department, through its authorized agents or inspectors, may enter at all reasonable times any privately-owned property for purposes of inspection, investigation and control of suspected plant pest infestations and may intercept, stop and detain for official inspection any person, truck, vessel, aircraft or any other vehicle believed to be carrying plants or other materials infested with plant pests, and may seize and destroy any such plants or other materials moved, shipped or transported in violation of any law, rule or order.

94.57 Abatement of plant pest infestations. (1) If the department finds any private premises so infested with injurious plant pests as

to constitute a hazard to plant or animal life in the state, it shall notify the owner or person having charge of such premises to that effect, and the owner or person in charge shall, within 10 days after such notice, cause the treatment of the premises and the treatment or removal and destruction of infested or infected plants or other material as directed in the notice. No person shall violate the terms of any notice received by him under this subsection, nor shall any damages be awarded to the owner for such treatment or destruction.

(2) In case the owner or person in charge fails to comply with the terms of the notice, within 10 days after receiving it, the department may proceed to treat the premises or to treat or destroy the infested or infected plants or other material. The expense of such eradication shall be certified to the town, city or village clerk and assessed, collected and enforced against the premises upon which such expense was incurred as taxes are assessed, collected, and enforced, and shall be paid into the general fund.

94.60 Nursery stock; inspection; licensing nurserymen and dealers. (1) DEFINITIONS. As used in this section:

(a) "Nursery stock" means all plants and plant parts capable of propagation or growth, except field, vegetable and flower seeds, sod, cranberry cuttings, annuals and bulbs.

(b) "Nursery" includes any grounds or premises in this state on or in which nursery stock is propagated or grown for sale purposes. The term "nursery" shall not be construed to mean a dealer's premises or heeling-in grounds on or in which nursery stock is held for purposes other than propagation or growth.

(c) "Nurseryman" includes the person who owns, leases, manages, or is in charge of a nursery. All persons engaged in operating a nursery are farmers and are engaged in farming for all statutory purposes.

(d) "Dealer" applies to any person other than a nurseryman who sells, offers to sell, solicits orders for or otherwise deals or traffics in nursery stock, but does not include a person who as agent or employe does business only in the name of a licensed nurseryman or dealer.

(e) "Agent" means any person selling or soliciting orders for nursery stock not from a supply on hand, for a nurseryman or dealer at a place other than the nurseryman's or dealer's place of business.

(f) "Place of business" means each separate store, stand, sales ground, lot, truck, railway car or other vehicle or any other place at or from which nursery stock is being sold or offered for sale.

(2) INSPECTION OF NURSERY STOCK; REMOVAL FROM SALE. (a) All nurseries, heeling-in grounds and all other premises on which nursery stock is kept for sale in the state shall be inspected at least once each year. It is unlawful for any nurseryman or dealer to buy, sell or distribute nursery stock except from officially inspected sources, or to sell or distribute nursery stock infested with injurious plant pests or in such damaged or desiccated condition as to be incapable of reasonable growth. It is the duty of every nurseryman or dealer to remove from sale any nursery stock incapable of reasonable growth and to remove from sale and treat or destroy stock infested with injurious plant pests to prevent the spread of further infection or infestation.

(b) By notice in writing the department may require a nurseryman or dealer to hold any variety of nursery stock for inspection or reinspection whenever such action is necessary to determine that it is free from plant pests. The department may further order the removal from sale and the treatment or destruction of any nursery stock infested with injurious plant pests or stock which is not viable or is in such damaged or desiccated condition as to be incapable of reasonable growth. No compensation shall be paid for any stock ordered destroyed. Any notice or order hereunder shall have the effect of a special order under s. 93.18 and may be appealed under ch. 227 if within 5 days after service of such notice or order, the nurseryman or dealer affected thereby files with the department a written request for a hearing.

(3) NURSERYMAN'S LICENSE. No person shall engage as a nurseryman in this state without a license from the department. Such license expires on December 31 of each year. Applications for license shall be submitted on a form prescribed by the department, and shall be accompanied by the proper fee. The fee for nurserymen whose gross annual sales do not exceed \$500 is \$10. The fee for nurserymen whose gross annual sales exceed \$500 shall be based on total acreage and is as follows: \$35 for less than 10 acres; and \$35 for 10 acres or more with an additional acreage fee of \$25 for each 25 acres or fraction thereof for all acreage in excess of 10. Nurserymen selling nursery stock from a supply on hand at other than a nursery location shall pay an additional fee of \$25 for each such place of business. Every nurseryman shall have proper facilities and shall keep nursery stock in a viable condition pending its sale. Each nurseryman shall buy, sell and distribute only nursery stock from officially inspected sources. Upon request of the department, he shall furnish a list of all sources from which he secures nursery stock and all locations where he sells such stock.

No license is transferable. License may be denied, suspended or revoked if the applicant or holder thereof is not fit or qualified to engage as a nurseryman or violates any of the laws or rules relating to the conduct of his business.

(4) DEALER'S LICENSE. (a) Every dealer before offering nursery stock for sale or distributing or soliciting orders for nursery stock shall secure a dealer's license from the department. Each applicant for license shall certify that he will buy and distribute only nursery stock from officially inspected sources. He shall maintain with the department a list of all sources from which he secures nursery stock and all locations where he sells such stock. License applications shall be submitted on a form prescribed by the department and shall be accompanied by a fee for each place of business where nursery stock will be sold by the applicant. The amount of such fee is \$25 for each place of business. A dealer's license expires on December 31 of each year. No license is transferable. License may be denied, suspended or revoked if the applicant is not fit or qualified to act as a dealer or violates any of the laws or rules relating to the conduct of his business.

(b) Every dealer selling nursery stock from a supply kept on hand shall have proper facilities for keeping all nursery stock in a viable condition and shall keep stock in such a condition pending its sale. It shall be unlawful for any dealer to sell, offer for sale or have in his possession any nursery stock which has not been officially inspected as provided in this section.

(5) RECIPROCAL AGREEMENTS. The department may enter into reciprocal agreements with the responsible officers of other states for the recognition of official license and inspection certificates. Nursery stock owned by persons from such states may be sold and delivered in this state without license or fee, if like privileges are accorded to persons from this state in such other states, and the department finds that such states require inspection equal to that required in this state, except that any nonresident nurseryman or dealer having a place of business in this state shall obtain a license and pay the fees required by this section. Each nonresident nurseryman or dealer shall file with the department an official copy of his out-of-state inspection or license certificate.

(6) AGENTS. All agents selling or soliciting orders for nursery stock in Wisconsin must be registered with the department by their principal. Names and addresses of such agents shall not be divulged by the department.

(7) LABELING NURSERY STOCK; RETAIL SALES. (a) Every nurseryman or dealer shall attach to the outside of each package, box, bale or lot of nursery stock shipped or otherwise

delivered, a tag or label bearing the name and address of such licensee and a certification by him that such nursery stock is from officially inspected sources. The requirements of this paragraph shall not apply to nursery stock sold and delivered at the place of business of a nurseryman or dealer who has there conspicuously posted his license certificate.

(b) It is unlawful to accept for shipment any nursery stock unless it bears a certificate as provided in par. (a). In case any nursery stock is shipped in or into this state without the certificate plainly affixed, the fact must be promptly reported to the department by the carrier, stating the consignor and the consignee and the nature of the shipment. Every common carrier when directed by the department shall notify it of any or all shipments of nursery stock, giving the name of the consignor, the consignee, and the nature of the shipment and shall hold such shipment subject to the order of the department.

(c) Nursery stock sold at retail shall bear a tag or label giving the common or botanical name of such plants.

(8) MISREPRESENTATION. It is unlawful for any person:

(a) To misrepresent the name, origin, grade, variety, quality or hardiness of any nursery stock offered for sale, or to make any other false or misleading representation of any kind, in connection with the advertising or sale of nursery stock.

(b) To represent, by name or otherwise, that he is a nurseryman or conducts a nursery business when such is not the case.

(c) To make a false declaration of nursery stock acreage or gross annual sales to the department, or to conceal nursery stock to avoid inspection. Every person selling nursery stock, upon the request of the department, must furnish copies of his order forms, contracts and other records or documents relating to his acreage or gross sales.

(d) To sell or ship any nursery stock bearing an outdated, altered or otherwise invalid certificate.

94.61 Special Inspections; fees. Persons applying for any special inspection and certification of nursery stock or other plants or material as to freedom from infestation or infection shall pay a reasonable fee to cover travel and other expenses of the department.

94.64 Fertilizer. (1) DEFINITIONS. As used in this section:

(a) "Fertilizer" means any substance, containing one or more recognized plant nutrients, which is used for its plant nutrient content and

which is designed for use or claimed to have value in promoting plant growth, except unmanipulated animal and vegetable manures, marl, liming material, sewage sludge and wood ashes. The term includes fertilizer materials, mixed fertilizers, custom mixed fertilizers, specialty fertilizers and all other fertilizers or mixtures thereof, regardless of type or form.

(b) "Fertilizer material" means any substance containing nitrogen, phosphorus or potassium or any recognized plant nutrient, which is used as a fertilizer or for compounding mixed fertilizers.

(c) "Mixed fertilizer" means a fertilizer containing any combination or mixture of fertilizer materials designed for use or claimed to have value in promoting plant growth, including fertilizer-pesticide mixtures.

(d) "Custom mixed fertilizer" means a mixed fertilizer formulated according to individual specifications furnished by the consumer prior to mixing.

(e) "Specialty fertilizer" means any fertilizer distributed primarily for nonfarm use, such as home gardens, lawns, shrubbery, flowers, golf courses, parks, cemeteries, greenhouses, nurseries, and may include fertilizers used for research or experimental purposes.

(f) "Bulk fertilizer" means fertilizer distributed in a nonpackaged form.

(g) "Packaged fertilizer" means any type of fertilizer sold in closed containers.

(h) "Manufacture" means to process, granulate, compound, produce, mix, blend or alter the composition of fertilizer or fertilizer materials.

(i) "Distribute" means to import, consign, sell, offer for sale, solicit orders for sale, or otherwise supply fertilizer for sale or use in this state.

(j) "Guaranteed analysis" means the percentage of each plant nutrient guaranteed or claimed to be present.

(k) "Grade" means the percentage guarantee of total nitrogen, available phosphorus or available phosphoric acid, and soluble potassium or soluble potash stated in the same order as listed in this subparagraph.

(l) "Brand or product name" means a name term, design or trademark used in connection with one or more grades of fertilizer and which identifies the product as fertilizer.

(m) "Official sample" means a sample of fertilizer taken by a representative of the department in accordance with methods prescribed by department rules.

(n) "Ton" means a net ton of 2,000 pounds avoirdupois.

(o) "Per cent" and "percentage" mean the percentage by weight.

(p) "Label" means any written, printed or graphic matter on or attached to packaged fertilizer or which is used to identify fertilizer distributed in bulk or held in bulk storage.

(q) "Labeling" means all labels and other written, printed or graphic matter upon or accompanying fertilizer at any time, and includes advertising or sales literature.

(r) "Soil conditioner" means any substance or mixture, other than fertilizer as defined in par. (a), which is used or intended for use solely for the improvement of the physical nature of the soil and for which no claims are made for plant nutrient content. "Soil conditioner" does not include guaranteed plant nutrients, hormones, bacterial inoculants, and products used in directly influencing or controlling plant growth.

(2) LABELING. (a) Any packaged fertilizer, including packaged custom mixed fertilizer, distributed in this state shall have placed on or affixed to the package a label setting forth in clearly legible and conspicuous form the following information:

1. Name and address of the licensed manufacturer or distributor.
2. Brand or product name.
3. Grade.
4. Guaranteed analysis.
5. Net weight.

(b) Any fertilizer distributed in this state in bulk shall be accompanied by a written or printed invoice or statement to be furnished to purchaser at time of delivery containing in clearly legible and conspicuous form the following information:

1. Name and address of the licensed manufacturer or distributor.
2. Name and address of the purchaser.
3. Date of sale.
4. Brand or product name.
5. Grade.
6. Guaranteed analysis.
7. Net weight.

(c) In lieu of grade and guaranteed analysis, custom mixed fertilizer sold in bulk may be labeled to show the weight and grade of each material in the mixture and total weight of the mixture. Grade shall be indicated if a grade is specified by the purchaser.

(d) All fertilizer in bulk storage shall be identified with a label attached to the storage bin or container giving the name or grade of the product.

(e) 1. Guaranteed analysis for the primary nutrients of nitrogen, phosphorus and potassium shall be expressed on the label in the following order and form:

Total Nitrogen (N)	%
Available Phosphoric Acid (P ₂ O ₅)	%
Soluble Potash (K ₂ O)	%

2. If elemental guarantees are required by department rule under sub. (9) (a), the guaranteed analysis shall be expressed in terms of percentage of available phosphorus and potassium.

3. Additional plant nutrients, besides nitrogen, phosphorus and potassium, claimed to be present in any form or manner shall be guaranteed on the elemental basis. Other beneficial substances or compounds, determinable by laboratory methods, may be guaranteed if approved by the department.

(3) FERTILIZER LICENSE. (a) No person shall manufacture or distribute fertilizer in this state without an annual license from the department, but no license shall be required of persons distributing only:

1. Fertilizer materials to manufacturers for further manufacturing;

2. Packaged fertilizer in the original container of a licensed manufacturer or distributor as packaged and labeled by him; and

3. Bulk fertilizer obtained for resale purposes from a licensee and labeled, as required under sub. (2) (b) 1, 4, 5 and 6, with label information furnished by him.

(b) Application for a fertilizer license shall be made on forms prescribed by the department and shall include a listing of business locations and mobile units used in the manufacture and distribution of fertilizer in this state and other information as the department requires. The application of a manufacturer shall be accompanied by a license fee of \$10 for each established business location where any manufacturing is done and for each mobile unit used for manufacturing or the mixing or blending of fertilizer in this state. The application of distributors not engaged in the manufacture or mixing or blending of fertilizer in this state and not otherwise exempt from a license under par. (a) shall be accompanied by a single license fee of \$10. Distributors engaged in the mixing or blending of fertilizer shall pay a license fee of \$10 for each business location where any mixing or blending is done and for each mobile unit used for the mixing or blending of fertilizer in this state. All licenses shall expire on June 30 of each year. No license shall be transferable and no credit or refund shall be granted for licenses issued or held for less than a full license year. No manufacturing plant or mobile unit shall be put into operation during the license year without payment of an additional fee of \$10 for each plant location or mobile unit.

(4) INSPECTION FEES. (a) An inspection fee of 10 cents per ton shall be paid to the department for all fertilizers sold or distributed in this state with a minimum fee of \$1 for 10 tons or less. This fee shall not be applicable to

fertilizer materials or products sold to manufacturers or exchanged between them for manufacturing purposes or further processing.

(b) Payment of the inspection fee under par. (a) shall be made on the basis of semiannual tonnage reports setting forth the number of tons of fertilizer sold or distributed in this state. The reports shall cover the semiannual periods ending June 30 and December 31 of each year and shall be filed with the department not later than 45 days after the close of each period. The time may be extended for cause an additional 30 days only on written request to the department. Remittance to cover the inspection fee at the rate prescribed in par. (a) shall accompany each tonnage report. Records upon which the statement of tonnage is based shall be subject to department audit.

(c) If more than one distributor is involved in the chain of distribution of fertilizer, the one who sells directly to the consumer or to a distributor exempted from a license under sub. (3) (a) is responsible for submitting the report and paying the inspection fee. Distributors exempt from a license shall not be responsible for the filing of tonnage reports or the payment of inspection fees for products purchased from a licensee.

(d) The license of any manufacturer or distributor who has failed to file reports or pay fees when due shall be subject to immediate suspension or revocation. Unpaid fees shall constitute a debt until paid. No license may be granted or renewed until the required reports are filed and the fees are paid. A penalty of 10% of the amount due, with a minimum penalty of \$10, shall be assessed against the licensee for all amounts not paid when due.

(e) Each licensee shall maintain, for a period of 2 years, a record of quantities and grades of fertilizer sold or distributed by him and shall make the records available for inspection and audit on request of the department.

(f) Tonnage equivalents shall be used for liquid fertilizer for payment of inspection fees and in statistical reports.

(5) STATISTICAL REPORTS. In addition to the filing of tonnage reports for inspection fees, each licensee shall furnish to the department a report of the tonnage of each grade of fertilizer sold in this state during the same reporting period, or from July 1 to December 31 and from January 1 to June 30 of each year. The statements shall be filed with the department within 45 days after the close of each period. Failure to file the reports when due shall be cause for immediate license revocation or denial of license renewal. The time may be extended for an additional 30 days for cause on written request to the department. No tonnage payments, tonnage reports or information furnished under this section shall be

disclosed in such a way as to divulge the operations of any person.

(6) EXEMPTIONS. (a) Nothing in this section shall be construed as requiring the payment of inspection fees for sales or exchanges of fertilizers between manufacturers who mix fertilizer materials for sale or as preventing the free and unrestricted shipment of fertilizers for further processing to manufacturers licensed under this section.

(b) Soil conditioners are exempt from labeling, licensing, and inspection fee and tonnage report requirements under this section, but any labeling claims or representations made for such products shall be subject to regulation by department rule.

(c) This section does not apply to any carrier in respect to any fertilizer delivered or consigned to it by others for transportation in the ordinary course of its business as a carrier.

(7) PROHIBITIONS. It is unlawful for any person:

(a) To sell or distribute any fertilizer or soil conditioner in violation of the requirements of this section or rules issued thereunder.

(b) To make any guarantees, claims or representations in connection with the sale of fertilizer or soil conditioners or in their labeling which are false, deceptive or misleading.

(c) To manufacture or distribute any fertilizer without a license required by sub. (3).

(d) To make any false or misleading statement in an application for a license or in any inspection fee or statistical report, or in any other statement or report filed with the department.

(e) To sell any mixed fertilizer in which the sum of the guarantees for the nitrogen, available phosphoric acid and soluble potash totals less than 24%, except specialty fertilizers permitted to be sold by written order of the department.

(8) INSPECTION, SAMPLING AND ANALYSIS.

(a) The department shall inspect, sample and analyze fertilizers and soil conditioners distributed within the state at such time and place and to such extent as is necessary to determine compliance with this section.

(b) Department representatives and inspectors have authority to enter, at all reasonable times, any building, conveyance or premises used in the manufacture and distribution of fertilizers and soil conditioners in this state to determine compliance with this section and to stop any conveyance transporting fertilizer or soil conditioners for the purpose of inspecting and sampling the products and examining their labeling.

(c) Manufacturers or distributors of fertilizers and soil conditioners shall submit to the department on request, product samples, copies of labeling or any other data or information

which the department requests concerning composition and claims and representations made for fertilizers and soil conditioners manufactured or distributed by them in this state.

(9) RULES The department may, after public hearing, adopt reasonable rules:

(a) Requiring that the guaranteed analysis of phosphorus and potassium be expressed in the elemental form. If adopted, such rule shall not take effect prior to July 1, 1972, and shall provide for an additional period of at least 5 years during which both the oxide and the elemental guarantees for phosphorus and potassium may be given on the same label.

(b) Regulating the sale and labeling of fertilizer and soil conditioners, including warning or caution statements or directions for use in connection with the labeling of such products.

(c) Governing methods of sampling, testing, examining and analyzing fertilizer or soil conditioners.

(d) Prescribing tolerances for deficiencies found in percentages of plant nutrient guaranteed to be present.

(e) Prescribing the manner in which grade and guaranteed analysis shall be declared on the label.

(10) PUBLICATION. The department shall publish, at least annually, and in such form as it deems proper, information concerning the sales of fertilizers, together with other data on their production and use as it considers advisable, and a report of the results of the analyses based on official samples of fertilizers sold within the state compared with the analyses guaranteed on the product label. Information concerning the production and use of fertilizers shall be shown separately for the periods July 1 to December 31 and January 1 to June 30 of each year. No disclosure shall be made of the operations of any person.

(11) ENFORCEMENT. (a) *Stop sale orders.* The department may issue and enforce a written or printed stop sale order to the owner or custodian of any lot or container of fertilizer or soil conditioner distributed in violation of this section of rules issued thereunder. The order shall prohibit the sale or removal of the fertilizer or soil conditioner, except as authorized by the department, until it has been brought into compliance with the law or until a plan for disposition is agreed upon with the department in writing. The stop sale order shall have the effect of a special order under s. 93.18 and shall be subject to judicial review if, within 10 days after service of the order a request for a hearing is made to the department.

(b) *Temporary holding orders.* A temporary holding order may be issued whenever the

department has reason to believe any lot or container of fertilizer or soil conditioner may not be in compliance with the law pending further evaluation or laboratory examination and analysis. A temporary holding order shall be effective for no more than 15 days but may be extended for an additional 15-day period as may reasonably be necessary to complete sampling, analysis and evaluation of the fertilizer or soil conditioner and its labeling. The fertilizer or soil conditioner shall be released prior to the expiration of such temporary period if found to be in compliance with the law. If found to be in violation of the law, the temporary holding order shall be extended by notice, in writing, to the owner or custodian and a stop sale order issued prohibiting the further movement or disposition of the fertilizer or soil conditioner without consent of the department, subject to the right of hearing before the department if requested within 10 days after service of such notice and stop sale order.

(c) *Seizure, condemnation and sale.* Fertilizer or soil conditioner not in compliance with this section shall be subject to seizure on complaint of the department to a court having jurisdiction. If the court finds that the product is in violation of this section and orders the seizure thereof, it shall be disposed of as the court directs. Disposition shall not be ordered by the court without first granting the owner or custodian, at his request, reasonable opportunity to reprocess or relabel the product under supervision of the department to bring it into compliance with this section.

(d) *Injunction.* Upon petition of the department any court having equity jurisdiction may grant a temporary or permanent injunction restraining any person from violating or continuing to violate this section or any rules thereunder notwithstanding the existence of other remedies at law.

(12) PENALTIES. (a) Any person who violates this section or any rule issued thereunder shall forfeit \$50 for the first violation and not less than \$200 nor more than \$500 for any subsequent violation. Any wilful violation shall constitute a misdemeanor and any person convicted thereof shall be fined not less than \$250 nor more than \$5,000 or imprisoned in the county jail not more than one year or both.

(b) It is the duty of each district attorney to whom any violation is reported to cause appropriate actions or proceedings to be instituted for the collection of forfeitures or enforcement of other remedies. In any enforcement action the court may, in addition to other penalties provided herein, order restitution to any party injured by the purchase of fertilizer sold in violation of the law.

94.65 Cultures of micro-organisms. Before any person shall sell or offer for sale any pure or mixed culture of micro-organisms or other material to be used for promoting directly or indirectly the growth of higher plants, he shall file with the department a statement under oath specifying the composition of the substance and the kinds of micro-organisms contained therein which promote the growth of higher plants, and shall secure a permit from the department. Permits may be denied, suspended or revoked on such products which are considered to be of questionable value. Application for permits shall be made on a form supplied by the department and shall be accompanied by a fee of \$25 for each material carrying a distinguishing brand or trade name. All permits shall expire on December 31 next following the date of issuance.

94.66 Sale of agricultural lime; license; penalty. (1) Unless the context requires otherwise:

(am) "Liming material" includes all or any form of limestone, quicklime, hydrated lime, marl, paper mill refuse lime, blast furnace slag, mine tailings, barn lime or other material manufactured, prepared, sold or distributed for soil amendment purposes or use in barns.

(b) "Person" means an individual, firm, association, corporation or county.

(2) No person shall engage in the business of selling or distributing liming material in this state without first obtaining a license therefor from the department of agriculture unless he is engaged in the business of selling or distributing such product produced by another already licensed to do business under this section.

(3) Application for license shall be made upon blanks furnished upon request by the department and shall state the applicant's name and business address, the exact location of places of manufacture of his products, a description of the products which are to be sold, and such other information as the department may require. An application may be amended upon written notice from the applicant.

(4) Each application shall be accompanied by a fee of \$10.

(5) Licenses to engage in the selling or distribution of liming material shall expire on December 31 next following date of issue.

(6) (a) Every person engaged in the business of selling or distributing liming material shall furnish each purchaser on final delivery of a lot or order of liming material a written statement showing total amount delivered in tons and the grade thereof as defined in par. (b). A written statement setting forth the grade of the liming material being transported shall accompany each vehicle when making delivery. All liming

material shall be distributed on a scale weight basis, except that where no weighing facilities are readily available and on prior approval of the department, liming materials may be distributed by volume if each vehicle transporting liming materials is accurately and conspicuously marked to show cubic yard capacity from which the seller must guarantee a ton weight equivalent based on rules established by the department. This paragraph does not apply to marl or paper mill refuse lime as these materials are distributed on an equivalent cubic yard basis as prescribed by department rule.

(b) 1. "Neutralizing index" means the effectiveness of liming material to change soil acidity expressed as a whole number calculated by the following method. The summation of the following 3 quantities is obtained:

a. The percentage of material passing a U.S. standard 8 mesh sieve, but retained by a U.S. standard 20 mesh sieve is multiplied by 0.2;

b. The percentage of material passing a U.S. standard 20 mesh sieve, but retained by a U.S. standard 60 mesh sieve is multiplied by 0.6; and

c. The percentage of material passing a U.S. standard 60 mesh sieve is multiplied by 1.0.

2. This summation is multiplied by the calcium carbonate equivalent of the liming material under consideration to obtain the neutralizing index. The formula is: Neutralizing index = $[(\% \text{ 8-20 mesh} \times 0.2) + (\% \text{ 20-60 mesh} \times 0.6) + (\% \text{ finer than 60 mesh} \times 1.0)] \times \% \text{ calcium carbonate equivalent}$.

3. "Index zones" means the classification of liming material into numerical ranges of neutralizing indices.

(c) All weights as called for under par. (a) shall be expressed on the basis of not more than 8% of moisture. For the purposes of the specifications in par. (b), "calcium carbonate equivalent" means the acid neutralizing capacity of oven-dried material expressed as the percentage by weight of calcium carbonate. In addition to the grade designation, the actual screen analysis and neutralizing value may be given. Any misleading representation on the written statement of guarantee is unlawful.

(7) The department shall enforce this section by inspectors, chemical analyses and other appropriate methods and for such purposes employes and agents of the department shall have free access during business hours to all places of business, buildings and vehicles used in the manufacture, transportation, sale or storage of liming material.

(8) The department may revoke a license, after reasonable notice, only for wilful failure to comply with any of the provisions of this section and in the event the license is revoked the licensee may have the order of revocation reviewed by the

circuit court of the county wherein the producing plant is located and the review by the court shall be of all questions therein whether of fact or law; any such appeal must be taken within 20 days of the date of the service of the order of revocation upon the licensee.

(9) A fee of three-quarters of a cent per ton on all liming materials (or the equivalent amount on marl and paper mill refuse lime) sold within the state, with a minimum fee of \$1 shall be paid annually, for the preceding calendar year, on or before February 1 each year to the department by the licensee. These fees shall be used for research on liming materials or crop response thereto by the university of Wisconsin-Madison college of agricultural and life sciences, for the dissemination of the results of such research, and for other activities which will tend to promote the correct usage of liming materials. In case the university of Wisconsin-Madison college of agricultural and life sciences is unable to carry on the recommended program the department may contract with another appropriate institution or agency.

History: 1973 c 335 s 12.

94.67 Pesticides; definitions. In ss. 94.67 to 94.71:

(1) "Pesticide" means:

(a) Any substance or mixture of substances labeled, designed or intended for use in preventing, destroying, repelling or mitigating any insects, rodents, predatory animals, fungi, nematodes, weeds, and other forms of plant or animal life or viruses which the department declares a pest, and

(b) Any substance or mixture of substances labeled, designed or intended to change the structure, function or maturity of any plants.

(2) "Insecticide" means any substance or mixture of substances labeled, designed or intended for use in preventing, destroying, repelling or mitigating insects in any state of development.

(3) "Fungicide" means any substance or mixture of substances labeled, designed or intended for use in preventing, destroying, repelling or mitigating any fungi.

(4) "Rodenticide" means any substance or mixture of substances labeled, designed or intended for use in preventing, destroying, repelling or mitigating rodents or any other vertebrate animal which the department declares a pest.

(5) "Herbicide" means any substance or mixture of substances labeled, designed or intended for use in preventing, destroying, repelling or mitigating any weed.

(6) "Nematocide" means any substance or mixture of substances labeled, designed or

intended for use in preventing, destroying, repelling or mitigating any worms belonging to the class Nematoda, including roundworms, pinworms, trichinae and Guinea worms.

(7) "Insect" means a small invertebrate animal generally having the body more or less obviously segmented, for the most part belonging to the class Insecta, comprising 6-legged, usually winged forms, and includes beetles, bugs, bees, flies, moths and other allied classes of arthropods whose members are wingless and usually have more than 6 legs, including spiders, mites, ticks, centipedes and wood lice.

(8) "Fungi" means any nonchlorophyll-bearing thallophytes (any nonchlorophyll-bearing plants of a lower order than mosses and liverworts) and includes rusts, smuts, mildews, molds, yeasts and bacteria, except those on or in living man or other animals.

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

(10) The term "ingredient statement" means either:

(a) A statement of the name and percentage of each active ingredient, together with the total percentage of the inert ingredients, in the pesticide; or

(b) A statement of the name of each active ingredient, together with the name of each and total percentage of the inert ingredients, if any there be, in the pesticide (except option (a) shall apply to all agricultural poisons and to all pesticides which are highly toxic to man, determined as provided in s. 94.69 (2)); and, in addition to (a) or (b) in case the pesticide contains arsenic in any form, a statement of the percentages of total and water soluble arsenic, each calculated as elemental arsenic.

(11) "Active ingredient" means any ingredient which will prevent, destroy, repel or mitigate insects, fungi, nematodes, rodents, predatory animals, weeds or other pests, or which will change the structure, function or maturity of plants.

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

(13) "Registrant" means the person registering any pesticide pursuant to the provisions of s. 94.68.

(14) "Label" means the written, printed or graphic matter on, or attached to, the pesticide or the immediate container thereof, or the outside container or wrapper of the retail package.

(15) "Labeling" includes all labels as defined in sub. (14) and written, printed or graphic matter accompanying the pesticide at any time, or such matter to which reference is made on the label or in literature accompanying the pesticide, except current official publications of any public

agency authorized by law to conduct research in the field of pesticides, and accurate, nonmisleading references thereto.

94.675 Pesticides; adulteration. A pesticide is adulterated:

(1) If its strength, quality, purity or effectiveness falls below the standards expressed on the label;

(2) If any substance has been substituted wholly or in part for the articles;

(3) If any valuable constituent of the article has been wholly or in part abstracted.

(4) If it does not bear an identifying label or it does not conform to the name or description of ingredients given on the label.

94.676 Pesticides; misbranding. A pesticide is misbranded:

(1) If its labeling bears any statement, design or graphic representation relative thereto, or to its ingredients, which is false or misleading in any particular;

(2) If it is an imitation of, or is sold or offered or exposed for sale under the name of, another pesticide;

(3) If the labeling bears any reference to registration under ss. 94.67 to 94.71;

(4) If the labeling does not contain instructions for use which are necessary for effective results and which, if complied with, are adequate for the protection of the user and public;

(5) If the label does not contain a warning or caution statement which, if complied with, is adequate to prevent injury to man and other vertebrates, vegetation other than weeds, and useful invertebrate animals;

(6) If the label does not bear an ingredient statement on the immediate container, and also on the outside container or wrapper (if there is one through which the ingredient statement on the immediate container cannot be clearly read);

(7) If any word, statement or other information required by or under the authority of ss. 94.67 to 94.71 to appear on the labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs or graphic matter in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

(8) If its labeling contains statements, claims or directions for use which, if complied with, would be a violation of any laws of this state or the rules of any state agency relating to the sale or use of pesticides.

94.68 Pesticides; registration. (1) Every pesticide which is distributed, sold, offered or exposed for sale within this state or delivered for transportation or transported in intrastate commerce or between points within this state through any point outside this state shall be registered annually with the department.

(2) The applicant for registration shall file with the department, for each product to be registered, a statement including:

(a) The name and address of the applicant for registration and his designation as manufacturer, packer, distributor or dealer.

(b) The name and address of the manufacturer or packer, if other than the applicant.

(c) The name and address of the person whose name will appear on the label, if other than the applicant, as manufacturer, packer, distributor or dealer.

(d) The name, brand or trade-mark of the pesticide.

(e) A complete copy of the labeling accompanying the pesticide and a statement of all claims made and to be made for it, including directions for use.

(f) When determined necessary by the department, upon request, the complete formula and a full description of the tests made and the results thereof upon which the claims are based.

(3) Any manufacturer, packer, distributor or dealer may register pesticides manufactured, packed, sold or distributed by him. Products which have the same formula, are manufactured or packed by the same person, the labeling of which contains the same claims and directions for use, and which are labeled with the same name, brand or trade-mark, identifying the product as the same pesticide, may be registered as a single pesticide. Each pesticide shall be considered a separate and distinct product subject to registration and the payment of fees hereunder, if it was manufactured or packed by a different manufacturer or packer and if it differs from any other product with respect to its formula, the name, brand or trade-mark appearing on the label, or by labeling claims and directions for use. A registrant who is also the manufacturer or packer may register additional labels for products manufactured or packed and registered by him bearing the name and address of a distributor or dealer. Such labels may be registered without the payment of additional fees, provided the product label differs from the manufacturer's or packer's label only with respect to the name and address of the person appearing on the label.

(4) Applications for initial registration of a product and for annual renewal thereof shall be submitted on forms prescribed by the department and shall be accompanied by a fee of \$10

94.68 PLANT INDUSTRY

1986

for each product registered. Registration shall expire on December 31 of each year. Changes in the labeling, other than changes in the formula or the name, brand or trade-mark of a pesticide, may be made within the current license year by filing an amended application without the payment of additional registration fees. After any registrant has paid fees aggregating \$100 in any calendar year, no fee shall be required for the registration of additional products.

(5) If it appears to the department that the composition of the product is such as to warrant the claims made for it, and if the product and its labeling and other material required to be submitted comply with the requirements of ss. 94.67 to 94.71 and rules thereunder, the department shall register the product.

(6) If insufficient data has been submitted or it does not appear to the department that the composition of the product is such as to warrant claims made for it, or if the product and its labeling and other material required to be submitted do not comply with ss. 94.67 to 94.71 and rules thereunder, or if registration has been denied or canceled under the federal insecticide, fungicide and rodenticide act (7 U.S.C. 135-135k), the department may refuse to register the product. The department shall notify the applicant of the reasons for refusal so as to afford the applicant an opportunity to make necessary corrections. If the applicant does not withdraw the application or make the required corrections within 30 days after date of notification, the department shall deny the application, subject to a hearing upon request pursuant to s. 93.18.

(7) The department may at any time cancel the registration of any product effective within 10 days after service of written notice thereof on the registrant. Registration may be canceled for the following reasons:

(a) If it does not conform to ss. 94.67 to 94.71 or rules thereunder, or if it is sold, offered or exposed for sale, or distributed in violation of any state law or rule of any state agency.

(b) If registration has been canceled under authority of the federal insecticide, fungicide and rodenticide act (7 U.S.C. 135-135k).

(c) If it should be determined that an excessive hazard exists in the continued sale or use of the product under current labeling as the result of new developments in scientific research on pesticides, or changes in pesticide residue tolerances established for foods or feeds.

(8) Other provisions of this section notwithstanding, the department may, when such action is necessary to prevent an imminent hazard to the public, cancel the registration of any pesticide by summary order, effective on date of service of the order on the registrant. Whenever registration of a product is denied or canceled,

the registrant may within 10 days after notice thereof, request a hearing under s. 93.18, but enforcement shall not be stayed during the pendency of the hearing, except as the department otherwise determines.

(9) Registration is not required for a pesticide shipped from one plant to another plant operated by the same person and used solely at such plant as a constituent part in the manufacture of pesticides registered hereunder.

94.69 Pesticides; rules. The department may adopt rules, after public hearing:

(1) To declare as a pest any form of plant or animal life or virus which is injurious to plants, man, animals or substances.

(2) To determine which pesticides and substances contained therein are highly toxic to man.

(3) To determine standards of coloring or discoloring for pesticides.

(4) To carry out the provisions of ss. 94.67 to 94.71, including the sale, distribution or storage of pesticides, the collection and examination of pesticide samples, and the removal of pesticides from sale after registration has been canceled or if otherwise being sold, offered or exposed for sale in violation of the law or rules of the department.

(5) To govern the labeling of pesticides, including the use of precautionary or warning statements, the declaration of ingredients, and the giving of adequate instructions or directions for use.

(6) To establish reasonable standards for the packaging of those pesticides which the department finds require special care in packaging and to the extent found necessary to prevent injury to the public.

(7) To require permits or notice to the department prior to the shipment or use of pesticides for experimental or research purposes, including conditions under which such permits may be granted or notice required.

(8) To govern the conditions under which containers of pesticides may be transported, stored or disposed of.

(9) To govern the use of pesticides, including their formulations, and to determine the times and methods of application and other conditions of use.

(10) The department shall adopt rules when it determines that it is necessary for the protection of persons or property from serious pesticide hazards and that its enforcement is feasible and will substantially eliminate or reduce such hazards. In making such determination the department shall consider the toxicity, hazard, effectiveness and public need for the pesticides, and the availability of less toxic or less

hazardous pesticides or other means of pest control. It shall obtain the recommendations of the pesticide review board and such rules are not effective until approved by the pesticide review board. Such rules shall not affect the application of any other statutes or rule adopted thereunder.

Cross reference: See 134.67 for prohibition of use of DDT and exceptions to the prohibition.

94.70 Pesticides; prohibited acts. (1) No person shall distribute, sell, offer for sale or deliver for transportation or transport in intrastate commerce or between points within this state through any point outside this state any pesticide:

(a) Which has not been registered pursuant to the provisions of section 94.68;

(b) About which claims are made, or directions for use are given, which differ in substance from the representations made in connection with its registration;

(c) Which differs in composition from the composition represented in connection with its registration;

(d) Unless it is in the registrant's, manufacturer's or packer's unbroken immediate container, and there is affixed to such container and to the outside container or wrapper of the retail package (if there is one through which the required information on the immediate container cannot be clearly read) a label stating: the name and address of the manufacturer, packer, registrant, or person for whom manufactured or packed, and his designation as manufacturer, packer, distributor or dealer; the name, brand or trademark of the pesticide; the minimum net weight or measure of the contents.

(e) Which contains any substance in quantities highly toxic to man, determined under s. 94.69, unless the label bears in addition to any other required matter: the skull and crossbones; the word "poison" prominently, in red, on a background of distinct contrasting color; and a statement of an antidote for the poison prescribing the most practical immediate treatment in case of poisoning.

(f) Which the department by regulation requires to be distinctly colored, unless it has been so colored; but the department may exempt any pesticide to the extent that such coloring for specific uses is not necessary for the protection of the public health or safety.

(g) Which is adulterated or misbranded, or violates any other provision of ss. 94.67 to 94.71 and rules thereunder.

(2) The prohibitions of sub. (1) shall not apply to:

(a) Any carrier while engaged in transporting a pesticide within this state, if such carrier permits the department on request to copy all

records showing the transactions in and movement of the products.

(b) Public officials of this state and the federal government engaged in the performance of their official duties.

(c) The manufacturer or shipper of a pesticide which is to be used experimentally:

1. By or under the supervision of an agency of this state or of the federal government authorized by law to conduct research in the field of pesticides; or

2. By others, subject to a permit or notice when required by department rules, if the pesticide is not sold and the container thereof bears the name and address of the manufacturer and is plainly and conspicuously marked "For experimental use only—Not to be sold". Pesticides may be sold for experimental purposes only under a permit from the department, subject to such restrictions and conditions as are set forth in the permit.

(d) Articles consigned for shipment to another state or for export to a foreign country, if prepared or packed according to the specifications or directions of the purchaser.

(3) No person shall:

(a) Detach, alter, deface or destroy, in whole or in part, any label or labeling provided for in ss. 94.67 to 94.71, or by regulations promulgated thereunder, or add any substance to, or take any substance from, a pesticide in a manner that may defeat the purpose of those sections.

(b) Use for his own advantage or reveal, other than to the department or proper officials or employes of the state or to the courts of this state in response to a subpoena, or to physicians, or in emergencies to pharmacists and other qualified persons, for use in the preparation of antidotes, any information relative to formulas of products acquired by authority of s. 94.68 (2) (f).

94.71 Pesticides; penalties; enforcement.

(1) PENALTIES. Whoever violates ss. 94.67 to 94.71 or regulations made pursuant thereto shall be fined not less than \$100 nor more than \$200 or imprisoned not more than 30 days, or both. For any subsequent offense the fine shall be not less than \$200 nor more than \$500, and the imprisonment not less than 30 days nor more than 90 days, or both. Any offense committed more than 5 years after a previous conviction shall be considered a first offense.

(2) SEIZURES. If the department has reasonable cause to believe that any pesticide is in violation of the provisions of ss. 94.67 to 94.71, it may deliver to the owner or custodian thereof an order prohibiting the sale or movement of such pesticide until an analysis or examination has been completed. Such holding order shall not be effective for more than 14 days from the time

of delivery thereof. The pesticide described in any such holding order shall not be sold or moved for any purpose without the approval of the department. If the department, after analysis or examination, determines that the pesticide described in such order is not in violation of any of the provisions of ss. 94.67 to 94.71, it shall promptly notify by registered mail the owner or custodian thereof and such notice shall terminate the holding order. If the analysis or examination shows that the pesticide is in violation of the provisions of ss. 94.67 to 94.71, the owner or custodian thereof shall be so notified by registered mail within the effective time of the holding order; upon receipt of such notice the owner or custodian may dispose of the pesticide only in a manner authorized by the department; the owner or custodian may within 10 days of receipt of such notice petition for a hearing as provided in s. 93.18.

(3) ENFORCEMENT. (a) Examination of pesticides shall be made under the direction of the department for the purpose of determining whether they comply with the requirements of ss. 94.67 to 94.71. The department or any person may refer the facts to the district attorney for the county in which the violation occurred. In addition to or in lieu of any other remedies provided herein, the department may apply to a circuit court for a temporary or permanent injunction to prevent, restrain or enjoin violations of ss. 94.67 to 94.71 and any rules or special or summary orders issued thereunder.

(b) Every registrant or other person whose name and address appears on the label of any pesticide as the manufacturer, packer, distributor or dealer, shall, to the extent that he is able to furnish to the department, on request, when found by the department to be necessary to prevent or control an imminent hazard to the public, a listing of all sales locations or warehouse locations maintained by him in this state for the sale or distribution of products registered by him or bearing his name and address as such manufacturer, packer, distributor or dealer; the name and address of all distributors or dealers selling or distributing such products in this state; and the name and address of all outside sales representatives employed by him in this state for the sale or distribution of such products.

94.72 Commercial feed. (1) **DEFINITION.** The term "commercial feed" shall be held to include all materials used for feeding animals or birds, except the following:

(a) Unmixed whole seeds or grains; as defined by United States grain standards.

(b) The unmixed meals made directly from and consisting of the entire grains of corn, wheat,

rye, barley, oats, buckwheat, flaxseed, kafir, milo and other seeds or grains. Such unmixed meals shall not be sold in violation of subsection (3).

(c) Whole hays, straws, cottonseed hulls, stover and silage, when unmixed with other materials.

(d) Meat and other portions of animal carcasses in their raw or natural state without further processing except freezing or denaturing.

(2) LABELING. All manufacturers, importers, jobbers, firms, associations, corporations or persons shall before selling, offering or exposing for sale or distributing in this state any brand of commercial feed have printed on, or attached to each bag, package, carton or delivered with each bulk lot a plainly printed statement, hereafter referred to as the label, in a conspicuous place on the outside, containing a legible and clearly printed statement in the English language clearly and truly stating:

(a) The net weight of the contents of the package, bag, carton or bulk lot;

(b) The brand or trade name of the feed;

(c) The name and principal address of the manufacturer or person responsible for placing the commodity on the market;

(d) The minimum percentage of crude protein;

(e) The minimum percentage of crude fat;

(f) The maximum percentage of crude fiber;

(g) The name of each ingredient used in its manufacture except as may be exempt by department rule. The official names of all materials which have been so defined by the association of American feed control officials shall be used in the declaration of the names of ingredients, but no ingredient statement shall be required for single ingredient feeds officially defined by the association of American feed control officials. The department may by rule permit the use of a collective term for a group of ingredients which perform a similar function;

(h) In the case of mixed feeds containing more than a total of five per cent of one or more mineral ingredients, or other unmixed materials used as mineral supplements, and in the case of mineral feeds, mixed or unmixed, which are manufactured, represented and sold for the primary purposes of supplying mineral elements in rations for animals or birds, and containing mineral elements generally regarded as dietary factors essential for normal nutrition, the minimum percentage of calcium (Ca), phosphorus (P), of iodine (I) and the maximum percentage of salt (NaCl), if the same be present. Provided, that if no nutritional properties other than those of a mineral nature be claimed for a mineral feed product, the per

centums of crude protein, crude fat and crude fiber may be omitted;

(i) In the case of feeds containing for their principal claim dietary factors in forms not expressible by the foregoing chemical components or are thereby inadequately described, a statement of guarantee as shall be specified by ruling of the department.

(j) "Department" means department of agriculture.

(3) WEED SEEDS. No commercial feed or unmixed meal shall be sold, offered or exposed for sale or distributed which contains germinative noxious weed seeds or other germinative weed seed excepting wild buckwheat seeds, in excess of such quantities as are unavoidably present with the most improved commercial practice of manufacture of such commercial feed or unmixed meal, provided that such germinative noxious weed seeds shall not be greater than one one-hundredths of one per cent, or other germinative weed seeds excepting wild buckwheat seed shall not be greater than one-fourth of one per cent, unless such presence is clearly and permanently indicated on the label. The term "noxious weed seeds" as used in this section shall mean the seeds of Canadian thistle, wild mustard and quack grass, either single or combined.

(4) MATERIALS PROHIBITED. No compounded commercial feed shall be sold, offered or exposed for sale or distributed which contains humus, peat, sphagnum moss, sawdust or other material of an organic nature having little or no feeding value.

(5) ANNUAL REGISTRATION. (a) Before any manufacturer, importer, jobber, firm, association, corporation or person shall sell, offer or expose for sale or distribute in this state any brand of commercial feed, he or they shall make application for registration and file with the department a certified copy of the statement as specified in subsection (2) with the exception of paragraph (a), for each brand of commercial feed; said application shall be accompanied, when the department shall so request, by a certified copy of the label or a sealed package containing at least one pound of the commercial feed to be registered in this state, and the company or person furnishing said sample shall thereupon make an affidavit that the said sample is representative of the commercial feed offered for registration. If such application for registration appears to meet the requirements of this section, the department shall issue a certificate of registration for such brand of commercial feed, which registration shall expire December thirty-first following its date of issuance. Each and every importer, jobber, firm, association, corporation or person selling, offering or

exposing for sale or distributing in this state any commercial feeds to be used for mixing purposes only, shall be exempted from the payment of any registration fee, inspection tax, or both, provided the said feed is labeled or tagged with the information as provided in subsection (2) and in addition:

1. A declaration that such feed is to be used for mixing purposes in registered brands only;

2. That the registration fee or inspection tax is not to be paid thereon.

(b) For the purpose of this section, commercial feeds shall be considered as distinct and separate brands when differing in:

1. Guaranteed analysis, ingredients, name, brand or trade-mark;

2. Identifying information of any kind regarding composition or purpose, but not physical condition;

3. Name of manufacturer or person responsible for placing the commodity on the market;

4. Or when made by different manufacturers under similar labels;

5. Or when the manufacturer or agent, whose name appears on the label, as responsible for placing the commodity on the market is at no time in full possession of the commodity.

(c) For the purpose of this section all commercial feed stored on the premises of retail establishments shall be considered as being offered or exposed for sale unless plainly labeled or placarded that such feed is not being offered for retail sale.

(6) ANNUAL REGISTRATION OR INSPECTION. For the purpose of defraying the expenses connected with the registration, sampling and analysis of commercial feeds sold or offered for sale within the state and for other items incident to carrying out the provisions of this section each and every manufacturer, importer, jobber, firm, association, corporation or person selling, offering or exposing for sale or distributing any commercial feeds as defined in subsection (1) shall pay annually to the department before the first day of February a registration or inspection fee or both in accordance with paragraph (a) or (b) hereof providing that the provisions of one paragraph only shall be followed in any one year.

(a) A registration fee of one dollar for each brand registered plus an inspection fee of five cents per net ton on all such commercial feeds sold or distributed in this state during the preceding calendar year providing that the minimum inspection fee shall be ten dollars. The applicant's statement which shall set forth the number of net tons sold or distributed during the preceding calendar year shall be made under oath, shall be filed with the department and shall include a permit granting to the department

permission to verify from applicant's records such applicant's statement of tonnage;

(b) A registration fee of five dollars for a retailer's license authorizing the sale of a brand of commercial feed at one location designated in the license to the ultimate user thereof for feeding purposes and not for resale or a fee of fifteen dollars for a wholesaler's license authorizing the sale of a brand of commercial feed anywhere within the state either for resale or otherwise providing further that a retailer's license may be converted into a wholesaler's license at any time within the calendar year by payment of an additional ten dollar fee.

(7) NO DUPLICATION OF REGISTRATION. Whenever a manufacturer, importer, jobber, firm, association, corporation or person selling, offering or exposing for sale or distributing a brand of commercial feed as defined in subsection (1) shall have filed the statement required by subsection (5) and paid the inspection fee as required by subsection (6) no other agent, importer, jobber, firm, association, corporation or person shall be required to file such statement or pay such fee upon such brand.

(8) REFUSAL OF REGISTRATION OR CHANGE. No commercial feed shall be accepted for registration under a brand or trade name which would be misleading or deceptive, or which would tend to mislead or deceive as to the materials of which it is composed. The department may refuse to allow any manufacturer, importer, jobber, firm, association, corporation or person to lower the guaranteed analysis or change the ingredients of any brand of his or their commercial feeds during the term for which registered, unless satisfactory reasons are presented to the department for making the change.

(9) INSPECTION. The department is authorized to have free access during regular business hours to all places of business, mills, buildings, carriages, cars, vessels and parcels of whatsoever kind used in this state in the manufacture, transportation, importation, sale or storage of any commercial feed, and shall have the power and authority to open any parcel containing or supposed to contain any commercial feeds and to take therefrom in the manner prescribed in subsection (10) samples for analysis, and said department may cause to be analyzed annually at least one sample so taken of every commercial feed found, sold, offered or exposed for sale or distributed in this state.

(10) SAMPLING, ANALYSIS. No action shall be maintained for a violation of the provisions of this section, based upon an analysis of a sample from less than ten separate original packages, unless there be less than ten separate original packages in the lot, in which case portions for the

official sample shall be taken from each original package; if the commercial feed is in bulk, portions shall be taken from not less than ten different places in the lot; provided that this does not exclude sampling in bulk when not exposed sufficiently to take portions from ten different places, in which case portions are to be taken from as many places as practicable. If the sample thus procured is larger than is required, it shall be thoroughly mixed and quartered until a sample of suitable size remains. Said sample, if requested, shall be divided into two parts, and shall be placed in suitable containers and sealed, one of said containers so sealed, if requested, shall be delivered to the person apparently in charge of such feeds. In sampling canned or small packaged goods, one entire can or small package shall be deemed sufficient for examination. In sampling liquids or semi-liquids a portion drawn from one container shall be deemed sufficient for examination. The department shall analyze, or cause to be analyzed, the sample so collected, and the result of such analysis, together with such additional information as the said department may deem advisable, shall be promptly transmitted to the manufacturer and to the dealer or person in whose possession the product was sampled, and shall be published annually. The manufacturer or person responsible for the placing of any commodity so sampled upon the market or the dealer or person in whose possession the feed was found shall, upon request to the department within ten days after report is mailed, be furnished with a portion of the official sample. The methods of analysis shall be those in effect at the time by the association of official agricultural chemists of North America.

(11) HEARING. If it shall appear from the examination of any sample of feed or other evidence that any of the provisions of this section relating to accuracy of label statements have been violated, the department shall cause notice of such violation to be given to the manufacturer and the dealer from whom said sample was taken; any party so notified shall be given an opportunity to be heard under such rules and regulations as may be prescribed by the department. After such hearing, if it appears that any of the provisions of this section relating to accuracy of label statements have been violated, the department may certify the facts to the proper prosecuting attorney and furnish that officer with a copy of the results of the analysis or other examination of such sample, duly authenticated by the analyst or other officer making the examination, under the oath of such officer.

(12) STATISTICS. For the purpose of obtaining information bearing directly on the agricultural situation in Wisconsin each

manufacturer, importer, jobber, firm, association, corporation or person shall submit on request of the department a confidential statement of total tonnage of their registered feed sold in the state during any calendar year, the tonnage to be classified as requested by the department. If accurate information is not obtainable estimates shall be made. The department may refuse registration of feeds to those failing to submit report.

(13) AUTHORITY. The department may:

(a) Enforce the provisions of this section and prescribe and enforce administrative rules and regulations which shall be in harmony with the provisions of this section and the official pronouncements of the association of American feed control officials;

(b) Temporarily order withdrawn from sale any lot of feed which is found to be sold, offered or exposed for sale or distributed in this state in violation of any of the provisions of this section.

(c) Cooperate with any agency of the United States government in the inspection of medicated feeds and establishments where such feed is manufactured.

(14) PENALTY. (a) Any manufacturer, importer, jobber, firm, association, corporation or person who shall sell, offer or expose for sale or distribute in this state, any commercial feeds, who shall impede, obstruct, hinder or otherwise prevent or attempt to prevent said department or its authorized agent in the performance of his duty in connection with the provisions of this section or who shall sell, offer or expose for sale or distribute in this state any commercial feeds as defined in subsection (1) without complying with the requirements of the provisions of this section or who shall sell, offer or expose for sale or distribute in this state any commercial feed which contains a smaller per cent of crude protein, crude fat, calcium, phosphorus or iodine, or a larger per cent of crude fiber or salt than is certified to be contained therein, or which contains excessive undeclared germinative weed seeds, or which does not comply with label requirements established under subsection (2) (i), or who shall fail to properly state the name of each and every ingredient used in its manufacture, or who shall sell any commercial feed which carries any false or misleading statements upon or attached to the package, or if false or misleading statements regarding its feeding value are made on the package by the corporation, firm or individual registering said commercial feed, or if the number of net pounds set forth upon the package is not correct, or who shall violate any other provision of this section shall be punished as in section 94.77 (2).

(b) Any manufacturer, importer, jobber, firm, association, corporation or person who

sells, offers or exposes for sale or distributes any feed which bears or contains any substance which renders it injurious to the health of animals or which is unsafe within the meaning of sec. 406, 408 or 409 of the federal food, drug and cosmetic act (21 USC 346, 346a and 348) shall be deemed guilty of a misdemeanor and in addition to the penalty provided in this section, the lot of feeds shall be subject to seizure by judicial court action, condemnation and disposition as the court directs, the proceeds from such sale to be paid into the state treasury. The court may release the feeds so seized when the requirements of this section have been complied with, and upon payment of all costs and expenses incurred by the state in any proceedings connected with such seizure. This paragraph shall apply to any commercial feed, including unmixed feeds otherwise excepted under sub. (1) from the other requirements of this section.

94.755 Mink research funds. The department shall use the funds appropriated under s. 20.115 (2) (i) for the purpose of promoting research in the breeding and raising of domestic mink. Such funds may be used for gifts, grants, compensation, awards or other payment to any person or institution in the manner which the secretary deems will best promote such research.

94.76 Inspection of apiaries. (1) The department is charged with the function of apiary inspection and regulation, under the immediate supervision and direction of the entomologist of the department as ex officio inspector of apiaries, who is authorized to execute the powers and duties of that office either in person or by a deputy or deputies appointed by the department for that purpose.

(2) The department shall prescribe and issue such reasonable regulations and orders as in its judgment may be necessary to prevent, eradicate, or control the introduction, spread, or dissemination of any and all communicable diseases of honeybees.

(3) The inspector of apiaries and his deputies shall have free access at all reasonable hours to all apiaries, appliances, structures or other premises, where he has reason to believe bees or their products are held or stored, but no dwelling house shall be entered without a search warrant; and may open any package or receptacle of any kind containing, or which he has reason to believe contains any bees, comb, bee products, used beekeeping appliances, or anything else which is capable of transmitting communicable diseases of bees. No person shall deny such access, or hinder, thwart or defeat said inspector or any of his deputies in the performance of official duties.

(4) The inspector of apiaries may order any owner or person in charge of bees dwelling in hives without movable frames and combs, or not permitting of ready examination, to transfer such bees within a specified time to hives with movable frames; failure to obey the order may be followed by destruction of the hive and contents.

(5) Any person who knows that any bees owned, possessed, or controlled by himself are infected with any communicable disease shall at once report such fact to the inspector of apiaries, and all other facts known to him with reference to said contagion or infection.

(6) The inspector of apiaries shall inspect and regulate every apiary, including all appliances, structures, buildings, and bees thereof, which is reported as being infected or which he has reason to believe may be infected with any disease injurious to honeybees in their egg, larval, pupal, or adult stage.

(7) If any apiary, appliances, structures, buildings, or bees are infected, the inspector shall give instructions to the owner or person in charge of such property for such treatment as in the judgment of the inspector seems best for the eradication or control of said infection; and said owner or person in charge shall carry out said instructions within ten days next after a date which shall be specified in said instructions.

(8) If said owner or person in charge refuses or neglects to carry out said instructions within said period of ten days, the inspector may apply said treatment or destroy the infected property. Any expense incurred therein shall become a lien against the property treated, and the inspector or his deputy may seize such property and sell the same in the manner provided by section 289.48. No damage shall be awarded to the owner for the loss of any infected apiary, bees, hive, apiary appliance, or bee product destroyed under the provisions of this section, or any regulation or order made in pursuance thereof.

(9) After inspecting or handling any infected apiary, bees, hive or other apiary appliance, structure or building, and before proceeding to any other apiary, the inspector or his deputy shall thoroughly disinfect every portion of his person and clothing and every tool and appliance used by him that may have been in contact with infected material, and shall cause every assistant with him to do likewise.

(10) (a) No person shall sell, barter, offer for sale or barter, move, transport, deliver, ship or offer for shipment, any apiary, bees, comb or used beekeeping appliances without a permit from the inspector of apiaries. Such permit, or a copy of such certificate, shall be affixed to the outside of every package, box, crate or bundle containing bees, comb or used beekeeping appliances. The inspector may refuse such

permit whenever such refusal is necessary, in his judgment, to prevent the dissemination of any communicable disease of bees, or until after he finds by inspection that the said apiary, bees, comb or appliances are not infected with any such disease.

(b) No person shall bring or cause to be brought into this state, or receive from without this state, any package, box, crate or bundle containing bees unless there shall be affixed to the outside of each such package, box, crate or bundle a certificate of an official inspector of the state of origin showing the same to be free of any communicable disease of bees. The person receiving such package, box, crate or bundle shall report the importation thereof to the department of agriculture, inspector of apiaries, Madison, Wisconsin, within 5 days of the receipt thereof.

(c) No person shall bring or cause to be brought into this state, or receive from without this state any package, box, crate or bundle containing drawn comb or used beekeeping appliances without first obtaining a permit from the inspector of apiaries; application for such permit shall be made on forms furnished by the department and shall state (1) the name of the consignor, (2) name of consignee, (3) date and manner of shipment and (4) such further information as the department may require.

(d) The department shall charge fees sufficient to cover the reasonable cost of any inspection performed at the request of the owner for the purpose of enabling the interstate movement of bees or beekeeping appliances, and may bring an action to recover the same.

(11) No person shall accept for shipment, ship or transport any bees, comb, or used beekeeping appliances unless such permit or certificate is affixed on the outside of the package, box, crate, or bundle containing the same; and the inspector or any of his deputies may forthwith seize and destroy any such shipment found at any time or place without such permit or certificate affixed as aforesaid.

(12) The use of an invalid or altered permit or certificate and the misuse of any valid permit or certificate are hereby prohibited.

(13) No person shall expose in any place to which bees have access, any bee product, hive, or other apiary appliance in such manner that communicable diseases of bees could be disseminated therefrom.

94.761 Beekeepers, etc.; agricultural pursuit. The moving, raising and producing of bees, beeswax, honey and honey products shall be deemed an agricultural pursuit. Any keeper of 50 or more hives of bees who is engaged in the

1993

PLANT INDUSTRY 94.80

foregoing activities is a farmer and engaged in farming for all statutory purposes.

94.77 Penalties. (2) Any person who violates any provision of this chapter for which a specific penalty is not prescribed shall be fined not to exceed \$200 or imprisoned in the county jail not to exceed 6 months or both.

94.80 Annual reports to department. The secretary of the Wisconsin livestock breeders association shall on and after July 1 of each year make a report to the department of agriculture, signed by the president, treasurer and secretary of the association setting forth in detail the receipts and disbursements of the association for the preceding fiscal year in such form and detail together with such other information as the department may require. On receipt of such reports, if the department is satisfied that the

business of the association has been efficiently conducted during the preceding fiscal year and in the interest of and for the promotion of the special agricultural interests of the state and for the purpose for which the association was organized and if the final statement shows that all the receipts together with the state aid have been accounted for and disbursed for the proper and necessary purposes of the association, and in accordance with the laws of the state, then the department shall file a certificate with the department of administration and it shall draw its warrant and the state treasurer shall pay to the treasurer of the association the amount of the appropriation made available for the association by s. 20.115 (4) (a). The association may upon application to the state purchasing agent, upon such terms as he may require, obtain printing for the association under the state contract.

History: 1971 c 125