

## TITLE XII.

### Agriculture; Foods And Drugs; Markets.

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#### CHAPTER 93

#### DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION

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**93.01 Definitions.** The following terms, wherever used in chapters 93 to 100 or in any order, regulation or standard made thereunder, have the meaning here indicated, unless the context otherwise requires:

(1) "Department" means the department of agriculture, trade and consumer protection.

(2) "Secretary" means the secretary of agriculture, trade and consumer protection.

(3) "Production" includes mining, manufacturing, agriculture, horticulture, dairying and live stock, poultry and bee raising.

(4) "Marketing", as applied to food products or farm products, includes packing, storing, loading, offering or shipping to a point within the state, if any of these acts is for a commercial purpose, or selling.

(5) "Marketing", as applied to receptacles, means using receptacles in marketing food products or farm products.

(6) "Possession", as applied to receptacles, means possessing them in the course of possessing food products or farm products for commercial purposes.

(7) "Possession", when used in sections 93.09 and 93.10, means possession after the product or receptacle is ready for marketing.

(8) "Products" include all articles and commodities in general use.

(9) "Food products" includes all articles and commodities used for food, drink, confectionery or condiment.

(10) "Farm products" includes all products of agriculture, horticulture, dairying, live stock, poultry and bee raising.

(11) "Grade" includes, in the case of food products or farm products, grade according to quality, quantity, type, variety, size, weight, dimensions or shape of the products, and, in the case of receptacles, grade according to quality, type, size, weight, content, dimensions, or shape of the receptacle.

(12) "Co-operative association" includes co-operatives and foreign co-operatives as defined in s. 185.01.

(13) "Business" includes any business, except that of banks, savings and loan associations, insurance companies and public utilities.

(14) "Documents" includes books, papers, accounts, records and correspondence.

(16) "Pests" include any living stage of insects, mites, nematodes, slugs, snails or other invertebrate animals injurious to plants, plant products, animals and humans; any bacteria, fungi, other parasitic plants or reproductive

parts thereof, viruses, mycoplasma, protozoans or infectious substances which cause disease in or damage to plants or plant products; any host upon which a plant pest is dependent for the completion of all or a portion of its life cycle; and any other living organism classified as a pest under s. 94.69 (1).

History: 1975 c. 94 s. 91 (10); 1975 c. 394, 422; 1977 c. 29 s. 1630m (2), (4).

**93.02 Staff.** The secretary shall appoint all staff necessary for the carrying out of the duties of the department, all of whom shall be under the classified service except the deputy secretary, the executive assistant and, subject to s. 230.08 (4) (a), the administrators of divisions. Each such deputy secretary, executive assistant or administrator shall be appointed by the secretary with the approval of the board.

History: 1977 c. 418.

**93.03 Offices of department, hearings, investigations.** The principal office of the department shall be in Madison, but, with the approval of the governor, other offices may be maintained elsewhere in the state as may be necessary for the efficient functioning of the department. Hearings, investigations and meetings necessary to the carrying out of any of the duties of the department may be conducted anywhere within or without the state, as the department determines to be for the best interests of the state and the parties immediately concerned.

**93.06 Department powers.** The department may:

(1) **INFORMATION.** Obtain and furnish:

(a) Information relating to prices, profits and costs involved in the production or distribution of products and to the supply, demand, sales, purchases, deliveries, receipts, offers, acceptances, storage and commercial movement of products and to any other factors affecting the market value of products or market conditions.

(b) Information regarding the sources of supply of products necessary for the people of the state and the location of markets for Wisconsin products.

(c) Information relating to economy and efficiency in the distribution of products.

(d) Information relating to the selection of proper shipping routes, adoption of advisable shipping methods, avoidance of delays incident to transportation and to other distribution problems connected with transportation.

(e) Lists of persons engaged in the production or distribution of products.

(f) Information regarding products and situations which are the subject of laws under its

supervision which may involve imminent danger to health or gross deception of the consumer.

(1m) **REQUESTED INSPECTIONS OF FARM PRODUCTS.** Inspect or examine upon request animals or plants and their products, including food, and facilities used in the production, processing or distribution thereof, and certify their grade or condition. Such inspection and certification may be performed in cooperation with any federal agency, and may include the weighing and certification of the weights of grain received in or shipped from grain warehouses. To enable any such inspection and certification service, the department may charge uniform fees and may bring an action to recover the fees, including reasonable costs of collection.

(2) **STATEMENTS.** Prescribe a form of statement to be used at each regular payment date by every cheese factory, butter factory, condensary or milk receiving plant to any person from whom milk is purchased or received on a butterfat or cheese basis.

(3) **FOOD OR FUEL SCARCITY.** With the consent of the governor, after public hearing, issue general or special orders to avert, relieve or terminate a scarcity of food products or fuel in this state.

(4) **LAW ENFORCEMENT.** At the request of the attorney general or of any district attorney, assist in the enforcement of any of the following statutes relating to trade: ss. 133.01 to 133.05, 133.17 to 133.24, 134.01, 185.94, 286.32, 286.36, 294.04 and 939.31.

(5) **PUBLIC MARKETS; CO-OPERATIVE ASSOCIATIONS.** (a) Give assistance in the organization, operation or reorganization of such public markets as are authorized by law, and of co-operative associations.

(b) By general order, prescribe uniform systems of accounting for public markets or co-operative associations, and may, by general or special order, require any such market or co-operative association to render report, in form indicated by the department, to show the nature and volume of business, resources, liabilities, profits, losses and any other facts bearing upon the financial condition of the market or co-operative association.

(6) **CO-OPERATIVES.** (a) By general or special order, require any co-operative association doing business in this state to file with the department a verified copy of its bylaws and of any exclusive contract of sale or agency between the association and its members or patrons.

(b) Investigate the management of any such co-operative association, and may make the facts, relating to said management, available to the members of the association, when a request

for such investigation has been filed with the department, signed by all the directors or by at least twenty per cent of the members (in the case of associations of less than five hundred members) and by at least one hundred members (in the case of associations of five hundred or more members). The department shall fix and collect a fee for such investigations, to be the actual cost thereof.

(c) By general or special order, require any co-operative association doing business in this state or in the process of organization to file with the department a report of its promotion expenses.

(d) Set aside a portion of its funds as a co-operative educational fund. The money so set aside shall be used to acquaint producers and consumers with the advantages to the general public of co-operative handling of farm and dairy products and for instruction and research to increase the efficiency of co-operative marketing associations.

**(7) DENY, SUSPEND OR REVOKE LICENSES.** Deny, suspend or revoke any permit, certificate, registration or license if the applicant therefor or holder thereof is not fit, qualified or equipped or has violated or failed to obey any applicable law, order or regulation, or has misrepresented or intentionally failed to disclose a material fact in making the application. In determining whether any person is fit, qualified or equipped, the department shall consider, among other things, character and conduct, including past compliance or noncompliance with law. The department may follow the procedure provided for special orders in s. 93.18, or the applicant or permit holder, certificate holder, registrant or licensee may, within 10 days after notice of denial, suspension or revocation, demand such procedure. Rehearing and judicial review shall be as provided in ch. 227.

**(8) PRESCRIBE CONDITIONS OF LICENSES.** Any permit, certificate, registration or license may be conditioned upon pertinent circumstance or act.

**(9) INVESTIGATIONS.** Collect, report and illustrate the results of investigations.

**(10) WARNING NOTICES.** Dispose of minor violations of the laws under its supervision without prosecution by issuing written notice or warning whenever it appears that the public interest will be adequately protected.

**(11) INTERAGENCY COOPERATION.** (a) Cooperate with, and enter into agreements with, political subdivisions of this state or any department or agency of this state, other states, or of the United States for the purpose of carrying out its functions, and securing uniformity of regulations. Agreements may authorize the agents

and employes of such agencies to enforce the laws and regulations administered by this department. When so engaged, agents and employes of cooperating agencies shall have the same powers as employes of the department and shall act under the direction and control of the department.

(b) Enter into cooperative agreements with other governmental departments and agencies of this state and the United States which authorize employes of the department to enforce the laws and regulations administered by such agencies which are directly related to the laws and regulations of this state administered by the department. Every such agreement may provide for reimbursement to this state for the cost of such enforcement activity.

**History:** 1973 c. 206; 1975 c. 39; 1975 c. 94 s. 3; 1975 c. 414 s. 28; 1977 c. 181.

**93.07 Department duties.** It shall be the duty of the department:

**(1) REGULATIONS.** To make and enforce such regulations, not inconsistent with law, as it may deem necessary for the exercise and discharge of all the powers and duties of the department, and to adopt such measures and make such regulations as are necessary and proper for the enforcement by the state of the provisions of chapters 93 to 100, which regulations shall have the force of law.

**(2) FORMS.** To prescribe forms for all applications, notices and reports required to be made to the department or which are necessary in its work.

**(3) PROMOTION OF AGRICULTURE.** To promote the interests of agriculture, dairying, horticulture, manufacturing, commercial fishing and the domestic arts and to advertise Wisconsin and its dairy, food and agricultural products by conducting campaigns of education throughout the United States and in foreign markets. Such campaigns shall include the distribution of educational and advertising material concerning Wisconsin and its plant, animal, food and dairy products.

**(4) STATE AID TO LIVESTOCK BREEDERS ASSOCIATION.** To receive and examine, prior to its transmission to the department of administration, the biennial request for state aid of the Wisconsin livestock breeders association; to transmit and make recommendations upon this request to the department of administration and the governor; and to advise as to the manner of expending and accounting for state moneys appropriated to that organization.

**(5) ADVICE TO UNIVERSITY OF WISCONSIN SYSTEM.** To give advice to the state superintendent of public instruction as to the courses in

agricultural economics to be given in the university of Wisconsin system.

(6) EXHIBITS. Upon authorization by the governor, to make such public exhibits as will tend to inform the public of the work of the department, and to give such aid in farmers' institutes, dairy and food and farmers' conventions and the agricultural department of the state university as may be deemed advisable.

(7) INFORMATION. (a) To collect from the several counties information concerning the extent, condition and prices of farm crops; the number, conditions of health and value of farm animals; prevailing conditions of weather, and such other information as the department may deem of value to the agricultural interests of the state, and to publish monthly statements of such reports, for free distribution among the farmers and other interested persons of the state.

(b) To collect and publish, in the form best calculated to attract to the state desirable immigrants and capital, information relating to the advantages and opportunities offered by this state to the farmer, the merchant, the manufacturer, the home seeker, and the summer visitor. The publication shall be subject to the provisions of section 35.29 and shall be in form of circulars, folders and pamphlets, and may be translated and printed in foreign languages; to cause to be inserted in newspapers, magazines and farm papers appropriate notices, and to maintain permanent exhibits in populous centers, if the department shall determine that the best interests of the state will be advanced thereby.

(c) To furnish free, in its discretion, copies of the publications printed under its direction to advancement associations, and societies organized to promote immigration and the development and enrichment of the state, when application is made therefor; to furnish other persons such copies as may be requested at the actual cost of printing; and the money received for such copies shall be paid into the state treasury and credited to the appropriation from which said cost of printing was paid.

(d) To obtain from the heads of the several departments of the state government, the faculty of the state university and the several state institutions, and they are hereby directed to furnish to the department upon request, such information as may be at their command relating to the resources of this state.

(8) AGRICULTURAL SEEDS. To fix standards of germination for agricultural seeds.

(10) ANIMAL HEALTH; QUARANTINE. To protect the health of domestic animals of the state; to determine and employ the most efficient and practical means for the prevention, suppression,

control and eradication of communicable diseases among domestic animals, and for these purposes it may establish, maintain, enforce and regulate such quarantine and such other measures relating to the importation, movement and care of animals and their products, the disinfection of suspected localities and articles, and the disposition of animals, as the department may deem necessary.

(11) HUMANE ACTIVITIES. To cooperate with humane societies and assist duly appointed humane officers in the enforcement of the laws relating to humane education and the prevention of cruelty to animals and for this purpose the department and its authorized agents when engaged in this work shall have the powers of police officers and constables.

(12) PLANT PESTS. To conduct surveys and inspections for the detection and control of injurious pests, make, modify and enforce reasonable rules needed to prevent the dissemination of pests, and suggest methods of control.

(13) INSPECTION OF APIARIES. To inspect apiaries, furnish information to owners and caretakers with respect to the eradication and prevention of diseases injurious to honeybees.

(14) POULTRY SLAUGHTERHOUSES. To prescribe regulations for the slaughtering of poultry for market.

(15) CO-OPERATION. To co-operate with and provide technical assistance to the several counties, towns, villages and cities in the expenditure of funds raised by the said counties, towns, villages and cities for the control of plant pests or animal diseases.

(17) PROMOTION OF MARKETING. (a) To promote the efficient marketing of the dairy and farm products of Wisconsin, through co-operative marketing associations now in operation or which may be organized hereafter.

(b) To study the possibilities for increasing the markets for Wisconsin dairy and farm products, and through publications, advertising and other appropriate methods to endeavor to extend and improve these markets.

(c) To center the efforts of the department in the performance of its duties under this subsection upon the development of a centralized system of the co-operative marketing of dairy products of Wisconsin. The department may at any time, however, with the approval of the governor, extend its operations to other farm products, for the purpose of developing similar centralized systems for the co-operative marketing of such Wisconsin farm products.

(d) To encourage the consumption of Wisconsin cheese by designing an official logotype to serve as a recognizable identification mark appropriate for affixation to and display in

connection with cheese produced in this state as provided in s. 100.057.

**(19) PEST CONTROL COMPACT.** To cooperate with the insurance fund established by the pest control compact ratified and enacted by chapter 583, laws of 1965. The secretary shall be the compact administrator for this state.

**(20) COUNCIL ON FOOD STANDARDS.** After public hearings held pursuant to the rule-making authority under s. 97.09 and before the rules become effective the department shall call a meeting of the council on food standards to secure its opinion and recommendations regarding such rules.

**(21) STATISTICS.** To compile at least once in 2 years statistics relating to the dairy industry in this state, and for such purpose may forward to the owner or manager of any creamery, cheese factory, condensary, or to any other person dealing in or manufacturing dairy products, blanks calling for specific information relating to such industry, and in case of cheese factories, the information shall show the number of pounds each of American, Swiss, limburger and brick cheese made in each factory. These blanks shall, within 60 days from receipt thereof, be filled out and returned to the department and all questions thereon propounded and all information required by such blanks, so far as it is within the power of such person to answer or furnish the same, shall be answered and furnished. The department may take other necessary steps to secure full and complete information and statistics relating to the dairy industry, and to promote the welfare of that industry.

**(24) ENFORCEMENT OF LAWS.** To enforce the provisions of chapters 93 to 100 and all other laws entrusted to its administration, and especially:

(a) To enforce the laws regarding the production, manufacture and sale, offering or exposing for sale or having in possession with intent to sell, of any dairy, food or drug product, the adulteration or misbranding of any articles of food or drink, or condiment or drug and to inspect any milk, butter, cheese, lard, syrup, coffee, tea or other article of food, drink or condiment or drug made or offered for sale within this state which it may suspect or have reason to believe to be impure, unhealthful, misbranded, adulterated or counterfeit, or in any way unlawful, and to prosecute or cause to be prosecuted any person engaged in the manufacture or sale, offering or exposing for sale or having in possession with intent to sell, of any adulterated dairy product or of any adulterated, misbranded, counterfeit, or otherwise unlawful article or articles of food, drink, condiment or drug.

(b) To enforce the provisions of sections 95.64 to 95.66, by inspections, chemical analysis or other appropriate methods.

History: 1971 c. 125; 1975 c. 189, 323, 394

**93.075 Policy of cooperative 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 cooperative 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 cooperative associations for production and marketing purposes along lines of dairy and other farm products.

History: 1975 c. 394 s. 10

**93.08 Access for law enforcement.** The department and its authorized agents have power to enter, within reasonable hours, any field, orchard, garden, packing ground, building, freight or express office, warehouse, car, vessel, vehicle, room, cellar, storehouse, cold storage plant, packing house, stockyard, railroad yard or any other place of business, which it may be necessary or desirable for them to enter in performing their duties or in enforcing the laws intrusted to their administration. They have power, for such purposes, to open any box, carton, parcel, package or other receptacle, inspect the contents thereof, and, upon payment or tender of the market value, to take samples of any product contained therein.

**93.09 Standards and regulations. (1)** The department, after public hearing, may establish standards for the grade of food products and farm products and for receptacles therefor and may prescribe regulations governing the marks or tags which may be required upon food products or farm products or upon receptacles therefor, for the purpose of showing the name, address or serial number of the person producing or marketing the product or receptacle, the grade of the product or receptacle, the quality, quantity, type, variety, size, weight, dimensions or shape of the product or the quality, type, size, weight, content, dimensions or shape of the receptacle.

**(2)** No standard or regulation under this section, which is repugnant to any requirement made mandatory under federal law, shall apply to products or receptacles which are being shipped from the state in interstate commerce.

**(3)** No standard shall apply to products or receptacles coming from outside the state but such products or receptacles may be required to be marked or tagged to indicate that they came from outside the state and to show any other fact

regarding which marking or tagging may be required under this section; provided, that such products or receptacles, at the time when marking or tagging is required, have ceased to be in interstate commerce.

(4) No standard established under this section for the grade of any food product or farm product shall affect the right of any person to dispose of such product without conforming to the standard, but such person may be required to mark or tag such product, in such a manner as the department may direct, to indicate that it is not intended to be marketed as of a grade contained in the standard and to show any other fact regarding which marking or tagging may be required under this section.

(5) No standard or regulation shall be established or prescribed under this section which is in conflict with any standard or regulation contained in or heretofore promulgated under authority of any other statute of the state.

(6) No standard or regulation shall be established or prescribed by the department of agriculture, trade and consumer protection under this section in any case where any other state department, commission or official has authority to establish such a standard or prescribe such a regulation, unless the department of agriculture, trade and consumer protection establishes the standard or prescribes the regulation jointly with such other department, commission or official. No standard or regulation shall be established or prescribed by any other state department, commission or official in any case where the department of agriculture, trade and consumer protection has authority to establish such a standard or prescribe such a regulation under this section, unless such other department, commission or official establishes the standard or prescribes the regulation jointly with the department of agriculture, trade and consumer protection. The governor shall act as arbiter in case of disagreement or conflict of authority between the department of agriculture, trade and consumer protection and any other state department, commission or official under this section.

(8) Whenever any standard or regulation under this section has become effective, no person marketing or having in his possession for commercial purposes any product or receptacle to which the standard is applicable shall represent such product or receptacle, unless in a manner authorized by the department, as being of any grade other than a grade contained in such standard, except as to products or receptacles included in subsections (2) and (3) of this section; and no person marketing or having in his possession for commercial purposes any product or receptacle to which the standard is

applicable shall represent such product or receptacle as being of a grade contained in the standard, when as a matter of fact such product or receptacle is below the requirements of such grade and no person shall market or have in his possession for commercial purposes any product or receptacle unless the marking or tagging thereon conforms to the regulation prescribed under this section; and no person shall market or have in his possession for commercial purposes any product or receptacle, to which any such marking or tagging regulation is applicable, if such marking or tagging thereon is false or misleading; provided, that representing a product or receptacle as being of a grade contained in the standard, when as a matter of fact such product or receptacle is below the requirements of such grade, shall not be a violation of this section, if the product or receptacle bears the official certificate of an inspector licensed under section 93.11; provided, further, that possession, under this section, shall not include possession by a carrier or other bailee.

(9) Whenever the department finds that any person marketing or having in his possession any product or receptacle to which the standard is applicable has intentionally violated any provision of subsection (8) of this section, the department, after opportunity for hearing has been given such person, may, by special order, revoke the right of such person to represent any product or receptacle to which the standard is applicable as being of any grade contained in the standard and may, in said order, require such person to mark or tag such product or receptacle as provided in subsection (4) of this section. The department may, without hearing, suspend such right for a period not exceeding ten days, pending investigation. The department may restore such right to any person from whom it has been revoked, where the person gives satisfactory evidence warranting such restoration.

(10) Whenever any standard is established under this section the department, by regulation, may require any person marketing products or receptacles to which such standard is applicable to secure a permit and pay uniform fees to the department sufficient to cover the cost of the supervision of the grading and inspection provided for in the standard.

History: 1977 c. 29 s. 1650m (4)

**93.10 Inspector's certificate. (1)** The department, as a means of enforcing the standard for the grade of any food product or farm product or for any receptacle therefor, may, by general order, after public hearing, require any such product or receptacle to bear the official certificate of an inspector licensed under section 93.11.

(2) Whenever the department has required any product or receptacle to bear the official certificate of an inspector licensed under section 93.11, no person marketing or having in his possession for commercial purposes any such product or receptacle shall remove, mutilate or alter the official certificate thereon or represent such product or receptacle, unless in a manner authorized by the department, as being of any grade other than the grade designated by the official certificate thereon, except as to products or receptacles included in subsections (2) and (3) of section 93.09; and no person shall market or have in his possession for commercial purposes any such product or receptacle unless such product or receptacle bears the official certificate of an inspector licensed under section 93.11, except as to products or receptacles included in subsections (2), (3) and (4) of section 93.09; provided, that such a product or receptacle may be marketed or had in possession without an official certificate issued at the point of shipment if such product or receptacle is destined for shipment to a point within the state, where the shipper has arranged for the issuance of an official certificate; provided, further, that possession under this section, shall not include possession by a carrier or other bailee.

**93.11 Licensing of Inspectors.** (1) The department, upon presentation of satisfactory evidence that the applicant is competent, may issue a license to any person to certify the grade of food products or farm products or of receptacles therefor, for which standards have become effective under section 93.09. The purpose of such certification may be either to enforce the standard or merely to furnish to an interested party an official statement of the grade. A certificate issued under this section, unless superseded by a finding as provided in subsection (4) of this section, shall be accepted in any court of this state as prima facie evidence of the facts to which the certificate relates.

(2) Applications for a license, or any renewal thereof, shall be submitted on forms prescribed by the department and be accompanied by a fee of \$25. All licenses, unless sooner rescinded or revoked, shall expire 2 years after date of issuance and may be renewed for like periods upon qualification therefor and payment of the required licensing fee. As a condition to the issuance or renewal of a license, applicants shall demonstrate to the satisfaction of the department their competency to act as an inspector by education, training, experience or examination as the department requires.

(3) The department may (by general order, after public hearing) fix and cause to be collected a reasonable, uniform fee for certification where necessary for the adequate enforcement of an order issued under section 93.10. The department shall fix and cause to be collected a reasonable, uniform fee for certification where the purpose of such certification is merely to furnish to an interested party an official statement of the grade.

(4) Any person affected by a certification made under this section may appeal to the department from such certification within a reasonable time to be prescribed in regulations issued by the department. The department shall thereupon make an investigation to determine the true grade of the product or receptacle and shall issue a finding thereof. Such a finding shall be accepted in any court of this state as prima facie evidence of the facts to which the finding relates.

(5) The department shall charge and collect a reasonable fee for any appeal taken under this section but shall refund such fee if the appeal is sustained.

(6) The department, after opportunity for hearing has been given the licensee, may, by special order, revoke any license issued under this section, whenever the department finds that such licensee is incompetent or has made material false statements in order to obtain a license or has knowingly or carelessly issued any false or improper certificate of grade or has accepted money or other consideration, directly or indirectly, as compensation for any neglect or improper performance of duty or has violated any provision of chapters 93 to 100, inclusive, or any regulation made thereunder. The department may, without hearing, suspend such right for a period not exceeding ten days, pending investigation. The department may restore the license of any person whose license has been revoked, where the person gives satisfactory evidence warranting such restoration.

(7) No person shall certify or attempt to certify that the grade of any food product or farm product or of any receptacle therefor conforms or does not conform to the standard established under section 93.09, unless such person holds an unrevoked and unsuspended license issued under this section. No person shall influence or attempt to influence any licensee to neglect or improperly perform his duty. No licensee shall knowingly issue any false or improper certificate of grade or accept money or other consideration, directly or indirectly, as compensation for any neglect or improper performance of his duty.

(8) The provisions of chapter 230 of the statutes shall not apply to inspectors licensed under this section who receive no salary or are handled merely upon a fee basis.

History: 1975 c. 39; 1977 c. 196 s. 131

**93.14 Power to conduct hearings; secure evidence; witness fees.** (1) The department or any of its authorized agents may, in relation to any matter within the department's power, conduct hearings, administer oaths, issue subpoenas and take testimony.

(2) The witnesses and officers who subpoena them shall be entitled to the fees allowed in courts of record. Such fees shall be audited and paid by the state in the same manner as other expenses of the department are audited and paid. No witness subpoenaed at the instance of any party other than the department shall be entitled to payment of fees by the state, unless the department certifies that the testimony of such witness was material.

(3) Any person who shall unlawfully fail to attend as a witness or refuse to testify may be coerced as provided in s. 885.12.

(4) A record of all hearings shall be kept in the office of the department. All hearings shall be public.

**93.15 Reports to department; inspections.** (1) The department may, by general or special order, require persons engaged in business to file with the department, at such time and in such manner as the department may direct, sworn or unsworn reports or sworn or unsworn answers in writing to specific questions, as to any matter which the department may investigate.

(2) The department or any of its authorized agents may have access to and may copy any document, or any part thereof, which is in the possession or under the control of any person engaged in business, if such document, or such part thereof, is relevant to any matter which the department may investigate.

(3) No person shall refuse or fail to render any report or answer required under this section at such time and in such manner as the department may prescribe. No person shall refuse, neglect or fail to submit, for the purpose of inspection or copying, any document demanded under this section. No person shall wilfully make any false entry or statement in any report or answer required or document demanded under this section. No person shall wilfully fail to make full and true entries and statements in any report or answer required or document demanded under this section. No person shall, for the purpose of embarrassing the department

in the conduct of any investigation, hearing or proceeding, remove out of the state or mutilate or alter any document. No person shall, except through judicial process, resist or obstruct any official or subordinate of the department in the exercise of his lawful authority.

**93.16 Preliminary investigation.** (1) The department may, at any time, conduct such preliminary investigation as is necessary and proper to determine whether a hearing or proceeding ought to be begun under the provisions of this chapter.

(2) The authority contained in sections 93.14 and 93.15 may be used in the conduct of such preliminary investigation.

**93.17 Immunity; perjury.** Except as to a hearing or proceeding under subsection (3) of section 93.06 or as to an investigation preliminary thereto, no person shall be excused from testifying or rendering a report or answer or producing or submitting a document, in response to a demand made under section 93.14 or section 93.15, upon the ground or for the reason that the testimony or report or answer or document required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no natural person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he shall have testified or rendered a report or answer or produced or submitted a document, in response to a demand made under section 93.14 or section 93.15, and no testimony so given or report or answer so rendered or document so produced or submitted shall be received against him in any criminal action, investigation or proceeding; provided, that no natural person so testifying shall be exempt from prosecution and punishment for perjury committed by him in so testifying or for misrepresentation or concealment committed by him in so rendering a report or answer or so producing or submitting a document.

**93.18 Hearings; orders; service; procedure; revocation.** (1) General orders, standards and regulations shall be adopted, amended and repealed as prescribed in ch. 227.

(2) The department, in any matter relating to issuing, revoking or amending a special order relating to named persons, except as provided in sub. (3), shall serve upon the person complained against a complaint in the name of the department and a notice of a public hearing thereon to be held not sooner than 10 days after such service. The person complained against shall be entitled to be heard in person, or by agent or



attorney and shall be entitled to process to compel the attendance of witnesses.

(3) The department, after acting pursuant to s. 100.37 or 100.41 to 100.43 to order the sale or distribution of any substance, article, furnishing, fabric, product or related material ceased, shall give written notice of its finding to the manufacturer, seller or other person responsible for placing the item in the channels of trade in this state. After such notice no person may sell, remove or otherwise dispose of such item except as directed by the department. Any person affected by such notice may demand a prompt hearing to determine the validity of the department's findings. The hearing, if requested, shall be held as expeditiously as possible but not later than 30 days after notice. A request for hearing does not operate to stay enforcement of the order during the pendency of the hearing. The person petitioning for a hearing shall be entitled to the same rights specified under sub. (2).

(4) The department shall serve a copy of any special order upon the person against whom the order is issued.

(5) Complaint, notice, order or other process of the department may be served as may be a summons, and a subpoena as provided by s. 885.03, and either may be served by registered mail to an address furnished by the person or concern to either the department or the secretary of state. Service may be proved by affidavit. Service in any event may be also by registered mail addressed to the person or concern and proved by the post office return receipt, in which case the time of service is the date borne by the receipt.

(6) The testimony presented and the proceedings at hearings shall be taken by a stenographic reporter or otherwise recorded and when necessary shall be transcribed. The secretary shall make his findings and determination thereon. The department shall make rules of procedure and practice not inconsistent with any law governing such procedure or practice.

History: 1975 c. 117.

**93.21 Penalties. (1) FAILING TO FURNISH INFORMATION.** Any owner or manager of any creamery, cheese factory, butter factory, condensary or milk receiving plant, and any person dealing in or manufacturing dairy products, who fails to furnish the statement prescribed under section 93.06 (2) to every person from whom milk is purchased or received, or who fails to comply with the provisions of section 93.07 (21), shall be fined not to exceed \$200 or imprisoned in the county jail not to exceed 6 months or both.

(2) **OBSTRUCTING OFFICERS.** Any person who obstructs an officer or employe of the

department in the performance of his duty by refusing him entry to any place he is authorized to enter or by refusing to deliver to him a sample of any article of food, drink or drug made, sold, offered or exposed for sale by the person to whom request therefor is made, if the value thereof is tendered, shall be punished as in sub. (1).

(3) **VIOLATION OF ORDER OR REGULATION.** Any person who violates any provision of section 93.09 (8), 93.10 (2), or 93.11 (7), or who wilfully violates or refuses, neglects or fails to obey any order or regulation of the department, shall be punished as in subsection (1).

(4) **FAILURE TO OBEY ORDERS.** Any person who wilfully violates any provisions of subsection (3) of section 93.14 or subsection (3) of section 93.15, or who wilfully violates or refuses, neglects or fails to obey any order or regulation made under subsection (3) of section 93.06 shall, for each offense, be punished by a fine of not more than five thousand dollars or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment.

(5) **LATE FILING OF LICENSE APPLICATIONS.** Any person who shall file an application for renewal of a license or permit, issued under the provisions of chs. 93 to 100, subsequent to the expiration of such license or permit shall pay an additional fee equal to 20 per cent of the fee prescribed for such license or permit, but such additional fee shall be not less than \$1 nor more than \$50. As used herein "renewal of a license or permit" means the issuance of a license or permit to a person who has held at any time during the preceding 12 months a like license or permit for the conduct of the particular business or occupation.

**93.22 Enforcement provisions. (1)** In cases arising under chs. 93 to 100, the department may be represented by its attorney.

(2) The department may, with the approval of the governor, appoint special counsel to prosecute or assist in the prosecution of any case arising under the provisions of chapters 93 to 100. The cost of such special counsel shall be charged to the appropriation for the department of agriculture, trade and consumer protection.

(3) In any criminal or civil action under chapters 93 to 100, any exception, exemption, proviso, excuse or qualification contained in any of said chapters, or in any order, standard or regulation thereunder, may be proved by the defendant, but need not be specified or negated in the information or complaint, and, if so specified or negated, no proof in relation to the matters so specified or negated, shall be required of the plaintiff.

History: 1977 c. 29 s. 1650m (4).

**93.23 Local fairs. (1) STATE AID TO COUNTY FAIRS AND AGRICULTURAL SOCIETIES.** State aid appropriated by s. 20.115 (4) (b) to counties and agricultural societies, associations or boards shall be paid subject to the following conditions:

(a) 1. To each county, and any such organized agricultural society, association, or board in the state, 80% of the first \$5,000 actually paid in net premiums and 50% of all net premiums paid in excess of \$5,000 at its annual fair upon livestock, articles of production, educational exhibits, agricultural implements and tools, domestic manufactures, mechanical implements and productions; but no one premium so paid shall exceed the sum of \$35 to a single person, or \$75 for any township or other group premium. No fair, association, or board shall receive state aid unless its premium list, entry fees, and charges conform to uniform premium lists and other rules established under subd. 2, both as to premiums offered, amounts to be paid, entry fees to be charged, and all other charges for exhibiting.

2. In order to have a more equitable distribution of state aid among fairs and to effect wider participation and interest by the public in exhibits, the department may prescribe uniform premium lists setting forth classes of exhibits which will be approved for the purposes of state aid, premium awards in such classes and entry qualifications, fees and charges for exhibitors.

(b) Except as provided in par. (c), state aid shall be paid on the premiums awarded at only one fair in each county. If the county conducts a fair such state aid shall be paid to the county. If the county does not conduct a fair such state aid shall be paid to the one society, board or association which conducts a fair and is designated by the county board.

(c) All societies, boards and associations which received state aid in 1950 shall continue to remain eligible therefor so long as they continue to operate a fair each year in conformity with the applicable law and the regulations.

(d) The proper officers of each county agricultural society, association or board entitled to state aid under this subsection shall submit to the department a complete accounting system for such society, association or board and no state aid shall be paid to such society, association or board until a satisfactory system of accounts has been approved by the department, and installed according to its instructions. Such officers shall, within 120 days after any fair held by their organization, cause to be made and published as a class 1 notice, under ch. 985, in the county in which the fair is held, a financial statement showing the financial condition of the organization before and after the fair unless such fair is owned and operated by a county, in

which case the financial statement shall be published as part of the county board proceedings after the approval thereof by the county board. Such financial statement shall include all receipts, disbursements, accounts receivable and accounts payable in connection with the operation of the fair as the department requires.

(e) Not later than 30 days after the close of the fair each year the county clerk, or the person appointed therefor by the county board, agricultural society, association or board claiming state aid, shall file with the department, on blanks provided by it, an itemized statement verified on oath, showing net premiums actually paid or to be paid at the preceding fair, which premiums must correspond with uniform premium lists and other requirements under par. (a). This report shall also include a statement that at such fair all gambling devices whatsoever, the sale of intoxicating liquors excepting fermented malt beverages, and exhibitions of immoral character were prohibited and excluded from the fairgrounds and all adjacent grounds under their authority or control; and on or before December 31 of the year in which the fair is held, the person filing shall furnish the department a statement of receipts and disbursements, attendance and such other information as the department requires. Upon receipt of the required report, each fair shall be paid 100%, or the prorated percentage, of the aid due the preceding year.

(f) If it appears from such report, and the department shall be satisfied that such county agricultural fairs have been maintained pursuant to the rules and regulations prescribed by it, and that the premiums are the net amount actually paid or to be paid in cash to bona fide exhibitors, it shall certify to the department of administration in favor of each such county agricultural society, association or board the amounts due under the provisions of par. (a) and the department of administration shall then audit such report. If it appears from any such report that any premiums have been paid to other than bona fide exhibitors, or that premiums have been paid or used in any way contrary to the intent of this subsection, then the department may withhold payment of such state aid until suitable adjustment is made.

(g) The department may visit and inspect, when necessary, the records, grounds, buildings, or other property of any society, association, or board receiving state aid under this subsection, and it shall have access to the grounds, buildings, and records at all times.

(h) The department shall annually submit to the governor a detailed statement showing receipts and disbursements of each fair receiving state aid, together with a classified statement of

premiums paid, and the amount of state aid claimed and allowed.

(i) Incorporated dairy or livestock associations, upon substantial compliance with pars. (a) to (h), shall be entitled to the state aid therein provided for upon premiums paid for dairy products or livestock or upon articles pertaining to the production or manufacture of such products or the raising of such livestock, in any county in which no annual fair is held by any organized agricultural society, association or board. State aid shall be paid to but one such dairy or livestock association in any one county. All moneys received by any such association shall be paid out by it for the premiums provided for in this subsection substantially as provided in sub. (2).

(j) To each county, and any such organized agricultural society, association or board in the state, for the purpose of encouraging and fostering the breeding, development and improvement of standard bred horses in this state, 50% of each purse of \$400 and 50% of each purse of \$500 paid by it to the owners of the successful contestants in a 2-year-old trot, 2-year-old pace, 3-year-old trot and 3-year-old pace. Any such organization may stage any or all of said events but shall not receive state aid for more than one each of said events in any calendar year. No colt shall be eligible to enter or start therein unless owned by one or more duly qualified electors of this state or trained continuously within the state for not less than 60 days prior to June 15 of the year in which the event is contested. No 2-year-old or 3-year-old colt shall be eligible to enter or start therein, unless owned, raised and trained by one or more duly qualified electors of this state, and unless it is the foal of a mare owned at the time of foaling by one or more qualified electors of this state. Required number of entries and starters shall be 6 to enter and 4 to start. An owner may enter any number of colts but shall not be allowed to start more than 2 colts in the same event. Entry fees for each colt shall not exceed 2% of the purse and shall be payable on or before a closing date to be fixed by the organization. The organization may, at its option, increase any such purse and may also add the entrance money to the purse and divide such added sums among the starters as it sees fit. Money divisions and conditions other than those herein prescribed shall be uniform throughout the state and shall be fixed annually for the next succeeding year by a joint resolution adopted by the boards of directors of the Wisconsin breeders and harness horse association and Wisconsin association of fairs, and certified to the department on or before December 31 in each year. If the boards of directors of said associations fail in any year to adopt and certify said resolution as

above, then such money divisions and conditions for the next succeeding year shall be fixed by the department. On or before December 31 in each year, the county clerk, or the person therefor appointed by the society, association or board claiming state aid, shall file with the department, on blanks provided by it, a statement, verified on oath, showing a true and correct summary of the results of each colt event, the name and address of, and the amount paid to, the owner of each colt, and that the event was in all things conducted as herein provided. Thereupon, state aid shall be certified and paid as provided by par. (f).

(2) USE OF FUNDS. Subject to sub. (1), all moneys received by any such society, association or board, either from the state or any other source, after paying the necessary incidental expenses thereof, shall be paid out annually, by bank check or draft, in each individual case, for premiums awarded, in such sums as its bylaws, rules and regulations shall direct, on such live animals, articles of production, educational exhibits, agricultural implements and tools, domestic manufactures, mechanical implements and productions as are the growth and manufacture of the district which such society, association or board represents, but livestock, the growth of any other county, state or country, may receive the same premiums as those which are the growth of the district where fair is located, should the society, association or board governing so decide. Provided, that moneys received by any such society, association or board from a source other than from the state, may be paid out for trials or exhibitions of speed, or other contests, for which published premiums have been offered.

(3) ENTRY FEE TO EXHIBIT MAY BE CHARGED. Any board, fair association, society or other agency conducting an agricultural fair or exhibition may charge an entry fee for each exhibit which shall not exceed 10% of the total amount of the value of the premiums offered for the class of which such proposed exhibit will be a part if entered.

(4) POLICE POWER. The department and the principal officers of the Northern Wisconsin state fair and of any county agricultural or industrial society have full jurisdiction and control of the grounds on which said department or society may exhibit, and all the streets and alleys and other grounds adjacent to the same during all such exhibitions, so far as may be necessary to exclude therefrom all other exhibitions, booths, stands or other temporary places for the retail or sale of any kind of spirituous or fermented liquors or other articles that they deem objectionable. The department, the president of

any such society, or, in his absence, any vice president, acting in his stead, may appoint necessary policemen to assist in preserving the peace and enforcing the regulations upon the ground and adjacent streets, who, for such purpose, shall have all the powers of a constable and be entitled to similar fees.

**(5) ACTION TO RECOVER ENTRANCE FEE.** Any person entering any horse for any race under the auspices of any agricultural society shall be liable to such society for the entrance fee which shall be due and payable at the time the race shall be called for which such horse is entered; and upon failure to pay such fee when due such society may maintain an action therefor against the person so entering such horse. No horse entered in any race shall be exempt from execution or attachment issued in an action brought for the recovery of the whole or any part of such entrance fee.

**(6) FRAUD AS TO RECORD OR NAME OF HORSE.** (a) No person shall knowingly enter or cause to be entered, drive or ride in competition for any purse or prize offered by any agricultural, trotting, racing, industrial or other corporation or association, or by any person any horse under an assumed name or out of its proper class where such purse or prize is to be decided by a contest of speed nor shall any person knowingly misrepresent or fraudulently conceal the public performance, in any former contest or trial of speed, of any horse which he enters or proposes to enter for competition in any such contest.

(b) The name of any horse for the purpose of entering the same in competition within the meaning of this section shall be that by which such animal has once contested for a purse or prize except as provided by the code or printed rules of the corporation or association under which the contest for which any subsequent entry of such animal is advertised to be conducted; and the class to which any such animal belongs for the purpose of being entered in a contest of speed within the meaning of this section shall be determined by its public performance in any previous contest or trial of speed as provided by the printed rules under which the contest was conducted. The penalty provided for knowingly misrepresenting or fraudulently concealing the public performance in any former contest of any such animal shall be imposed whether the person guilty thereof succeeds or fails in an attempt to make an entry thereof.

**(7) FALSE PREMIUM LIST OR STATEMENT.** No officer of any organized agricultural society, association or board in this state, in pretended compliance with sub. (1), shall wilfully make or file any false or fraudulent list or statement.

**(8) PENALTIES.** Any person violating this section may be fined not more than \$200 or imprisoned not more than 6 months or both.

History: 1971 c. 125 s. 215; 1971 c. 211 s. 126; 1975 c. 308, 421.

**93.24 State fair park board. (1)** (a) The state fair park board shall manage the state fair park and supervise or conduct thereat fairs, exhibits or promotional events for agricultural, industrial, educational and recreational purposes; lease or license the use of any property thereon for other purposes when not needed for the above public purposes; and charge reasonable rents and fees for use of or attendance at the premises.

(b) The board shall exercise police supervision over state fair park, and its duly appointed agents or representatives may arrest, with or without warrant, any person within such park area, committing an offense against the laws of the state or the rules of the board, and except as provided in par. (c) deliver such person to a proper court in the county and execute a complaint charging such person with the offense committed.

(c) 1. The board shall promulgate rules governing the use of state fair park and establish a bond deposit schedule for purposes of subd. 2. The board may not establish any bond deposit in an amount exceeding \$200. Any person violating such rules shall forfeit not more than \$200 which may be recovered by civil action as provided by ch. 288 and when collected shall be paid directly into the state treasury. The action shall be commenced by the attorney general or by the district attorney in the circuit court for Milwaukee county.

1m. The board may not promulgate rules regarding the distribution of noncommercial handbills, but may adopt rules regarding registration of noncommercial handbills if the board gives reasonable notice to the public of the registration requirement. The board may request the attorney general to commence legal action for an injunction restraining the distribution or confining it in such manner as the court deems proper, if it appears to the fair park management that the manner of distribution or the content of noncommercial handbills will cause harm or provoke violence.

2. When any person is arrested for violation of a rule promulgated under this paragraph, the duly appointed agent or representative of the board shall accept from such person a bond, in the amount established by rule of the board for such violation, with sufficient sureties, or his own personal bond upon depositing the amount thereof in money, for his appearance in the court

having jurisdiction of such offense. A receipt shall be issued therefor.

3. If the person so arrested and released fails to appear, personally or by an authorized attorney or agent, before the court at the time fixed for hearing of the case, then the bond and money deposited, or such portion thereof as the court determines to be an adequate penalty, plus the costs, may be declared forfeited by the court or may be ordered applied upon the payment of any penalty which may be imposed after an ex parte hearing together with the costs. In either event, the surplus, if any, shall be refunded to the person who made such deposit.

(2) The board shall appoint a state fair park director, outside the classified service, to serve at the pleasure of the board.

(3) For personnel purposes, state fair park state employes shall comprise a single employment unit within the department.

(4) Nothing in this section shall prevent the operation and leasing of any facilities by private entrepreneurs, except that the state shall reserve the use of state fair park facilities for a sufficient period of time every year for purposes of conducting an annual state fair.

(5) **AUTO RACES.** Every vehicle propelled by gasoline or other similar motive power, used on the state fairgrounds in racing competition or practice therefor (except during the annual state fair and except at other times between 8 a.m. and 10 p.m.) shall be equipped with a muffler which, at all times, shall be in good working condition sufficient to prevent excessive or unusual noise. It is unlawful to operate, or for the board to permit to be operated, on the state fairgrounds in racing competition or practice therefor (except during the annual state fair and except at other times between 8 a.m. and 10 p.m.) any such vehicle, so propelled by gasoline or other similar motive power, with the muffler or cutout open. Any person violating this subsection may be fined not more than \$200 or imprisoned not more than 6 months or both.

(6) **STATE FAIR RECEIPTS, PROMPT AUDIT.** The state treasurer and the secretary of administration or their duly authorized representatives shall be in attendance at the state fair each year to receive all moneys collected on account of state operation of the state fair and to audit and pay expenditures duly certified by the state fair park board as having been necessarily incurred in the operation of the state fair.

(8) **FUND FOR SPECIAL EVENTS AND CHANGE PURPOSES.** Of the receipts from the operation of the state fair park, not to exceed \$60,000 during the period one month preceding and one week after the annual state fair and \$25,000 at all other times may be deposited as an imprest cash

fund in a Milwaukee or West Allis bank approved by the state treasurer as a fund upon which to draw or obtain sufficient change for operation of the state fair and state fair park.

(9) **TICKET SCALPING; PENALTY.** (a) Every ticket or other evidence of the right of entry to any amusement, game, contest, exhibition or performance given by or under the auspices of the state fair park shall be considered a revocable license to the person to whom such ticket is issued and shall be transferable only on such terms and conditions as the state fair park board prescribes.

(b) No such ticket or other evidence of the right of entry may be sold for more than the price printed upon the face of the ticket. Any person reselling any such ticket for more than said price shall be fined not less than \$10 nor more than \$100 or imprisoned not more than 60 days.

(10) **INSURANCE.** The board may procure worker's compensation insurance to cover its employes.

**History:** 1971 c. 125 ss. 216, 428; 1971 c. 215; 1973 c. 90, 104, 243, 333; 1975 c. 39, 224; 1977 c. 26, 358; 1977 c. 449 s. 497.

**93.25 State fair park facilities.** (1) The legislature hereby determines that new facilities shall be developed at state fair park in West Allis to provide a permanent location to continue the tradition of an annual Wisconsin state fair and to accommodate major sports events, agricultural and industrial expositions, and other programs of civic interest. Development and operation of the new state fair facilities shall be accomplished through the procedures set forth, in a manner which will allow the facilities to be financially self-supporting and which will allow maximum private enterprise involvement consistent with protection of state interests.

(2) The secretary shall advise and coordinate the activities of the state fair park board with the other functions of the department.

(3) The state fair park board and the department of agriculture, trade and consumer protection shall cooperate with the building commission in all matters relating to the development of new facilities pursuant to s. 13.488 (7). The board shall solicit proposals from private entrepreneurs interested in leasing any facilities at state fair park. The terms of such leases may be negotiated at the discretion of the board, subject to the lease provisions of s. 13.488 (7).

**History:** 1971 c. 125; 1977 c. 29 ss. 985d, 1650 (2), (4).

**93.30 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; 1975 c. 394 s. 8.

### 93.31 Livestock breeders association.

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, trade and consumer protection, 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) for the conduct of junior livestock shows and other livestock educational programs. The association may upon application to the state purchasing agent, upon such

terms as he or she may require, obtain printing for the association under the state contract.

History: 1971 c. 125; 1975 c. 394 s. 25; 1977 c. 29 s. 1650m (4); 1977 c. 273.

### 93.35 Weather modification. (1) DEFINITIONS. In this section:

(a) "Council" means the council on weather modification established under s. 15.137 (4).

(b) "Operation" means the performance of any weather modification activity undertaken for the purpose of producing or attempting to produce any form of modifying effect upon the weather within a specified geographical area over a specified time interval.

(c) "Weather modification" means any activity performed with the intention of producing artificial changes in the composition, motions and resulting behavior of the atmosphere.

(2) WEATHER MODIFICATION LICENSE AND PERMIT REQUIRED. No person may engage in weather modification activities without obtaining a professional weather modification license under sub. (4) and a weather modification operational permit under sub. (6).

(3) EXEMPTIONS. (a) A person may engage in the following activities without obtaining a license and permit under this section:

1. Activities for protection against fire, frost or fog.

2. Activities normally conducted for purposes other than inducing, increasing, decreasing or preventing hail, precipitation or tornadoes.

(b) The department may, by rule, exempt any other activities under this subsection deemed necessary.

(c) Activities exempted under this subsection shall be conducted so as not to interfere with authorized weather modification operations.

(4) PROFESSIONAL WEATHER MODIFICATION LICENSE; FEES. (a) The department, with the advice of the council, shall prescribe by rule, the procedure and criteria for issuance of professional weather modification licenses under this section. The criteria shall be consistent with qualifications recognized by national or international professional and scientific associations concerned with weather modification and meteorology and shall carry out the purposes of this section.

(b) A person may obtain a license under this subsection by demonstrating to the satisfaction of the department, competence necessary to engage in weather modification operations and payment of \$100 for an annual license which expires on October 31 of each year. Renewal licenses are \$20 annually. A renewal license shall be issued in the same manner as an initial license.

(5) LICENSE SUSPENSION; REVOCATION; NONRENEWAL. The department may suspend, revoke or refuse to renew a license for any of the following reasons:

- (a) Incompetency.
- (b) Dishonest practice.
- (c) False or fraudulent representation in obtaining a permit.
- (d) Failure to comply with any of the provisions of this section or any rules promulgated under this section.

(e) Aiding other persons to fail to comply with any of the provisions of this section or any rules promulgated under this section.

(6) WEATHER MODIFICATION PERMIT; FEES; SCOPE. (a) The department, with the advice of the council, shall prescribe, by rule, the procedure and criteria for issuance of weather modification permits under this section. The criteria shall be designed to carry out the purposes of this section.

(b) An applicant for a permit shall file with the department an application containing the following information:

- 1. Applicant's name and address.
- 2. Name and address of the person on whose behalf the operation is to be conducted.
- 3. Indication that the applicant holds, or if the applicant is an organization rather than an individual, demonstration that the individual in control of the project holds a valid license issued under sub. (4).
- 4. Proof of financial responsibility under sub. (7).
- 5. A complete operational plan for the project including a specific statement of the nature and object of the plan, a map of the proposed operating area which specifies the primary target area and the area reasonably expected to be affected, a statement of the approximate time of the operation, a list of materials and methods to be used in conducting the operation, an emergency shutdown procedure which states conditions under which operations must be suspended because of possible danger to the public health, safety and welfare or to the environment.

6. Any other detailed information required by the department.

(c) The department shall give public notice by newspaper, radio or television announcement in the area of the state reasonably expected to be affected by operations conducted under a permit that it is considering an application for a permit, and hold a public hearing for the purpose of obtaining information from the public concerning the effects of issuing or refusing to issue the permit.

(d) The department may issue the operational permit if it determines that:

1. The applicant holds, or if the applicant is an organization rather than an individual, demonstrates that the individual in control of the project holds a valid professional weather modification license issued under sub. (4);

2. The applicant has furnished proof of financial responsibility in accordance with sub. (7);

3. The project is reasonably conceived to improve water quality or quantity, reduce losses from weather hazards, provide economic benefits to the people of this state, advance or enhance scientific knowledge or otherwise carry out the objectives and purposes of this section;

4. The project is designed to include adequate safeguards to minimize possible damage to the public health, safety or welfare or to the environment;

5. The project will not adversely affect another operation for which a permit has been issued;

6. The applicant has complied with the permit fee requirement under par. (g); and

7. The applicant has complied with and the project conforms to such other criteria for issuance of permits as have been established by rules and regulations of the department under this section.

(e) In order to carry out the objectives and purposes of this section, the department may, with the advice of the council, condition and limit permits as to primary target area, time of the operation, materials and methods to be used in conducting the operation, emergency shutdown procedure and any other operational requirements as may be established by the department with the advice of the council.

(f) The department shall issue only one permit at a time for operations in any geographic area if 2 or more operations conducted within the conditions and limits of the permits might adversely interfere with each other.

(g) The fee for each permit or renewal of a permit is \$100, payable to the department prior to permit issuance or renewal. If the cost of the operation is more than \$10,000 and the operation will be conducted under contract, the permit fee shall be equivalent to one percent of the value of the contract. If the operation will not be conducted under contract and is estimated, by the department, to cost more than \$10,000, the permit fee shall be equivalent to one percent of the estimated costs.

(h) A separate permit is required for each operation. When an operation is conducted under contract, a permit is required for each separate contract. Each permit or renewal permit shall expire one year from the date of its issuance. The department may conditionally approve a project for a continuous time period in excess of one year's duration. Permits for the

operations must be renewed annually. In approving the renewal of a permit for a continuous program, the department shall review and approve the permittee's operational record, and then may issue a renewal of the permit for the operation to continue.

(i) The permittee shall confine his or her activities within the limits specified in the permit, except to the extent that the limits are modified by the department. The permittee shall comply with any conditions of the permit as originally issued or as subsequently modified by the department.

**(7) PROOF OF FINANCIAL RESPONSIBILITY.** Proof of financial responsibility is made by showing to the satisfaction of the department that the permittee has the ability to respond in damages to liability which might reasonably result from the operation for which the permit is sought. Proof of financial responsibility may, but shall not be required to, be shown by:

(a) Presentation to the department of proof of a prepaid noncancellable insurance policy against liabilities in an amount set by the department; or

(b) Filing with the department a corporate surety bond, cash or negotiable securities in an amount approved by the department.

**(8) MODIFICATION OF PERMIT.** (a) The department may revise the conditions and limits of a permit if:

1. The permittee is given notice and a reasonable opportunity for a hearing on the need for a revision; and

2. It appears to the department that a modification of the conditions and limits of a permit is necessary to protect the public health, safety and welfare or the environment.

(b) If it appears to the department that an emergency situation exists or is impending which could endanger the public health, safety or welfare or the environment, the department may, without prior notice or a hearing, immediately modify the conditions and limits of a permit, or order temporary suspension of the permit. The issuance of such an order shall include notice of a hearing to be held within 10 days thereafter on the question of permanently modifying the conditions and limits or continuing the suspension of the permit. Failure to comply with an order temporarily suspending an operation or modifying the conditions and limits of a permit shall be grounds for immediate revocation of the permit and of the license of the person controlling the operation.

(c) It shall be the responsibility of the permittee to notify the department of any emergency which can reasonably be foreseen, or of any existing emergency situations which might be caused or affected by the operation. Failure

by the permittee to so notify the department of any existing emergency, or any impending emergency which should have been foreseen, may be grounds, at the discretion of the department, for revocation of the permit and of the license of the person controlling the operation.

**(9) SUSPENSION, REVOCATION, REFUSAL TO RENEW PERMIT.** (a) The department may suspend or revoke a permit if it appears that the permittee no longer has the qualifications necessary for the issuance of an original permit or has violated any provision of this section or of any of the rules and regulations issued under this section.

(b) The department may refuse to renew a permit if it appears from the operational records and reports of the permittee that an original permit would not be issuable for the operation, or if the permittee has violated any provision of this section or of any of the rules issued under this section.

**(10) RESTORATION OF LICENSE OR PERMIT.** (a) At any time after the suspension or revocation of a license or permit the department may restore it to the licensee or permittee upon a finding that the requirements for issuance of an original license or permit have been met by the licensee or permittee.

(b) At any time after the refusal to renew a license or permit the department may renew it upon a finding that the requirements for issuance of an original license or permit have been met by the licensee or permittee.

**(11) DECISION REVIEW.** Any decision made by the department under this section is reviewable under ch. 227.

**(12) RECORDS AND REPORTS.** (a) In order to aid in research and development of weather modification and to aid in the protection of the public health, safety and welfare and the environment, any person conducting any weather modification in this state or elsewhere by undertaking operations within this state shall keep records and file reports at times and in the manner and form as may be required by rules issued under this section.

(b) Record and report forms may be developed by the department showing the method of weather modification employed in the operation, the type of equipment used, the kind and amount of each material used, the times and places the equipment was operated, the times when there was modifiable weather but the permittee did not operate and the reasons for not operating, the name and address of each individual, other than the licensee, who participates or assists in the operation, the manner in which operations do not conform to the conditions and limits of the permit as established under sub.



(6) or as modified under sub. (8), weather observations and records specified by the department and any other necessary data the department may, by rule, require.

(c) The records and reports which are in the custody of the department and which have been filed with it under this section or under the rules made under this section shall be kept open for public examination as public documents.

**(13) STATE IMMUNITY.** Nothing in this section shall be construed to impose or accept any liability or responsibility by the state, its agencies and the officers and employes of the state or its agencies for any injury caused by any persons who conduct weather modification operations.

**(14) LIABILITY.** (a) An operation conducted under the license and permit requirements of this section is not an ultrahazardous or an abnormally dangerous activity which makes the licensee or permittee subject to liability without fault.

(b) Dissemination of materials and substances into the atmosphere by a permittee acting within the conditions and limits of his or her permit shall not give rise to the contention that the use of the atmosphere constitutes trespass.

(c) Except as provided in pars. (a) and (b) and in sub. (13) nothing in this section shall

prevent any person adversely affected by a weather modification operation from recovering damages resulting from intentional harmful actions or negligent conduct by a permittee.

(d) Failure to obtain a license and permit before conducting an operation, or operational activities which knowingly constitute a violation of the conditions or limits of a permit, shall constitute negligence.

(e) The fact that a person holds a license or was issued a permit under this section, or that the person has complied with the rules made by the department under this section, is not admissible as a defense in any legal action which may be brought against the person.

**(15) ENFORCEMENT; PENALTY.** (a) Any person who violates this section or any rules promulgated under this section shall be fined not more than \$1,000 or imprisoned for not more than 6 months or both.

(b) The department may apply to a court of competent jurisdiction for an injunction, either temporary or permanent, to restrain violations of this section or rules promulgated under this section.

**History:** 1977 c. 87.