

TITLE XII.

Agriculture; Foods and Drugs; Markets.

CHAPTER 93.

DEPARTMENT OF AGRICULTURE AND MARKETS.

93.01	Definitions.	93.13	Records; report; evidence.
93.02	Department of agriculture; commis- sioners; director.	93.14	Power to conduct hearings; secure evi- dence; witness fees.
93.03	Offices of department, hearings, inves- tigations.	93.15	Reports to department; inspections.
93.04	Bureaus in department.	93.16	Preliminary investigation.
93.05	Attorney.	93.17	Immunity; perjury.
93.06	Department powers.	93.18	Hearings; orders; service; procedure; revocation.
93.07	Department duties.	93.19	Rehearing.
93.08	Access for law enforcement.	93.20	Judicial review.
93.09	Standards and regulations.	93.21	Penalties.
93.10	Inspector's certificate.	93.22	Enforcement provisions.
93.11	Licensing of inspectors.	93.23	Provisions not interdependent.
93.12	Collection of license fees under chap- ter 129.		

93.01 Definitions. The following terms, wherever used in chapters 93 to 100 and chapter 129, 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 and markets.
- (2) "Commissioners" means the commissioners of the department of agriculture and markets.
- (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 any corporation which adopts or uses the principles of a co-operative basis as defined in section 185.01 except banks, building and loan associations, insurance companies and public utilities.
- (13) "Business" includes any business, except that of banks, building and loan associations, insurance companies and public utilities.
- (14) "Documents" includes books, papers, accounts, records and correspondence.
- (15) "Publish" means the same as in section 35.65. [1935 c. 550 s. 2]

93.02 Department of agriculture; commissioners; director. (1) There is created a state department of agriculture which shall consist of a state board of agriculture, a director of agriculture, and such officers and employes as may be herein authorized.

(2) There is created a board of seven members which shall be known as the "State Board of Agriculture" hereinafter referred to as the "board". The governor by and with the advice and consent of the senate shall appoint two members who shall serve two years, two others who shall serve four years, and three others who shall serve six years. Thereafter each member shall be appointed and confirmed for a term of six years. All members

of the board shall be persons experienced in farming. All appointments shall be made without regard to party affiliation, residence or because of interest in any special organized group. A majority of the board shall constitute a quorum for the exercise of the power or authority conferred upon it, and each member of the board shall take and file the official oath.

(3) Each member of the board shall receive as compensation for his services a per diem not to exceed ten dollars as fixed by the board with the approval of the governor for time actually spent in performance of his official duties, not exceeding in the aggregate, however, the sum of six hundred dollars per annum, together with the amount of his travel and other expenses actually incurred in the performance of his official duties.

(4) The powers and duties of the state board of agriculture shall be regulatory, advisory and policy-forming, and not administrative or executive.

(5) The board shall appoint the director of the state department of agriculture who shall not be subject to the provisions of chapter 16.

(6) Any person aggrieved by any order or determination of the director may secure a review of such order or determination in accordance with rules and regulations adopted by the board.

(7) The director with the approval of the board may appoint committees of citizens to make studies in the field of agriculture and marketing, but no member of any such committee shall receive any compensation or other emolument except reimbursement for actual travel expense.

(8) (a) All of the administrative and executive powers and duties of the department shall be vested in the director of agriculture to be administered by him under the rules and regulations of said department, and subject further to the policies and in accordance with the principles established by the board.

(b) The salary of the director shall be fixed by the board, and shall not exceed six thousand dollars per annum.

(c) The director in consultation with the board shall establish such rules and regulations as may be necessary in the administering of the said department, and in the performance of the duties assigned to this department.

(d) The details of the departmental organization within the field assigned to the state board of agriculture shall be within the administrative discretion of the director to determine with the approval of the board.

(e) The director shall appoint all staff necessary for the carrying out of the duties of this department, all of whom shall be subject to the civil service law except heads of divisions created under subsection (9). Each division shall have a single head appointed by the director with the approval of the board. In the appointment of the staff the director may examine any employe of the department of agriculture and markets as it existed prior to the taking effect of this section, as to the qualifications, experience, efficiency, fitness and performance of such employe and may dismiss or demote any such employe if he believes it to be for the best interest of the state service.

(f) The director shall take an oath of office and shall file a bond in such amount and with such surety as the board may direct. The director, subject to the approval of the board, shall annually and at such other times as the board may direct, prepare and submit budgets and reports relative to the administration of the department.

(9) There shall be created within the department of agriculture such divisions as may be found necessary by the board for the effective administration of the department. Subject to the approval of the board, the director shall have the power to allocate and reallocate functions among the divisions within the department.

(10) The department of agriculture is charged with the execution of all powers, duties and functions vested in the department of agriculture and markets as it existed immediately prior to the creation of this section, and all of said powers, functions and duties so vested in said department of agriculture and markets are assigned and transferred to and vested in the state board of agriculture created by this section.

(11) The department of agriculture hereby created shall succeed to all the appropriation, records, equipment, supplies and materials of the department of agriculture and markets hereby abolished.

(12) All employes of the department of agriculture and markets who are subject to the provisions of chapter 16 and who are affected by the taking effect of this section are continued as employes of the new department of agriculture at the salaries received by them in the month of January, 1939, subject to the right of said department to make such changes in the manner provided by law in personnel, salaries, titles and duties as it may deem advisable, and subject to the provisions of paragraph (e) of subsection (8) of this section. [1931 c. 67 s. 167; 1935 c. 550 s. 3; Spl. S. 1937 c. 9; 1939 c. 85, 124, 413 s. 2, 4]

93.03 Offices of department, hearings, investigations. The principal office of the department of agriculture and markets shall be maintained in the state capitol at 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 commissioners may determine to be for the best interests of the state and the parties immediately concerned. [1935 c. 550 s. 4]

93.04 Bureaus in department. The commissioners with the approval of the governor, may establish such bureaus and divisions within the department as they may deem necessary for the efficient and economical work of the department. [1935 c. 550 s. 5]

93.05 Attorney. (1) The present attorney for the department shall be an assistant attorney-general but he shall devote his entire time to the work of the department, except where the department consents to a departure from this requirement. His successor shall be appointed by the commissioners, subject to the approval of the attorney-general.

(2) The provisions of section 14.71 shall apply to this appointment in respect to compensation and reimbursement. [1935 c. 550 s. 6]

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.

(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 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: sections 133.01 to 133.05, 133.17 to 133.24, 185.22, 286.32, 286.36, 294.04, 343.681 and 348.40.

(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 by-laws 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. [1935 c. 550 s. 7]

Note: The question of whether the duty of the commissioners required them to circulate oleomargarine dealers' lists within the jurisdiction of the circuit court to determine in a proceeding for punishment as a civil contempt the violation of the temporary injunction. *John F. Jelke Co. v. Beck*, 203 W 650, 242 NW 576.

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 and chapter 129, 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, manufactures and the domestic arts.

(4) **STATE AID TO AGRICULTURAL SOCIETIES.** To receive and examine, prior to their transmission to the director of the budget, the biennial request for state aid of county agricultural societies, intercounty fair associations, and other agricultural associations holding fairs, the Wisconsin Horticultural Society, the Wisconsin Agricultural Experiment Association, the Wisconsin Cranberry Growers Association, the Wisconsin Live Stock Breeders Association, poultry associations receiving state aid, the Wisconsin State Dairymen's Association, the Southern Wisconsin Dairymen and Cheesemakers Association, the Wisconsin Potato Growers Association, and other similar societies and associations receiving state aid; to transmit and make recommendations upon these requests to the director of the budget and the governor; and to advise as to the manner of expending and accounting for state moneys appropriated to all such societies and organizations.

(5) **ADVICE TO NORMAL SCHOOLS.** To give advice to the state superintendent of public instruction as to the courses in agricultural economics to be given in the several normal schools and county normal schools.

(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.

(9) **WEED COMMISSIONERS.** To inspect the work of weed commissioners, and at such time and place as the department may determine, call meetings of the weed commissioners in any county for instruction and discussion of means and methods necessary for the proper performance of their duties; to prescribe the forms, blanks and instructions to be used in the execution of said work, and to cause the same to be printed and distributed to town, village and city officers.

(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 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 SOCIETIES.** To superintend and assist in the organization of humane societies in the several counties and to administer and enforce the laws relating to humane education and the prevention of cruelty to animals and for this purpose each commissioner and the duly authorized employes of the department when engaged in this work shall have the powers of a police officer and constable.

(12) **INSECT AND PLANT DISEASES; NURSERIES AND ORCHARDS.** (a) To make, modify and enforce reasonable regulations and orders needed to prevent the dissemination of insect pests and plant diseases in this state, and to suggest methods of insect control.

(b) To adopt and enforce quarantine regulations prohibiting or restricting the transportation into or through this state of nursery stock, plants, fruits, seeds or any other material or article capable of carrying plant disease or insect infestation from any other state, territory or district or portion thereof in which the department shall find that there exists a dangerous plant disease or insect infestation with reference to which the secretary of agriculture of the United States has not established a federal quarantine.

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

(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) **PUBLIC SLAUGHTERHOUSES.** To prescribe conditions and regulations for the construction and maintenance of public slaughterhouses.

(15) **LAND RECLAMATION.** (a) To co-operate with counties that avail themselves of the provisions of chapter 96, for the purpose of reclaiming wild and cutover lands therein for bona fide settlers, and to have supervision over loans from the county reclamation fund raised and deposited as provided in said chapter, and over the expenditure of funds loaned therefrom.

(b) To enter into contracts with manufacturers of or dealers in dynamite or other explosives for and in behalf of bona fide settlers of this state, for the purchase thereof and to arrange for the purchase of such explosives by and the delivery thereof to such settlers, and to make such regulations as may be necessary relative to the receiving of orders therefor and the distribution thereof, and may collect such fees and charges as will cover the necessary expenses incurred in the execution of this subsection. The state shall not in any way be liable under such contract.

(16) **DRAINAGE DISTRICTS.** To make such investigations and furnish such reports as are required by the provisions of sections 89.26 (2) and 89.75.

(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.

(18) **STATE FAIR GROUNDS.** (a) To exclude from the state fair grounds all exhibitors and all booths, stands and other temporary places for the sale of articles which the department may deem objectionable.

(b) To appoint necessary policemen to preserve the peace and enforce the regulations of the department upon said fair grounds, who, for such purposes, shall have all the powers of constables, and such policemen, other than those upon the police force of any city, shall be entitled to the fees of constables.

(c) 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 eight o'clock in the morning and seven o'clock in the evening) shall be equipped with a muffler which, at all times, shall be in good working condition sufficient to prevent excessive or unusual noise. It shall be unlawful to operate, or for the department 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 eight o'clock in the morning and seven o'clock in the evening) any such vehicle, so propelled by gasoline or other similar motive power, with the muffler off or cut-out open.

(19) **VETERINARY EXAMINERS.** To appoint three veterinary examiners who shall, subject to the control of the department, examine persons desirous of practicing veterinary medicine and surgery.

(20) **STATISTICS.** To compile at least once in two 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 sixty 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.

(21) **BONDS OF EMPLOYEES.** To require any of the appointees or employes of every branch of the department to give such bond as the department may order.

(22) **ACCOUNT OF MONEYS.** To keep an account of all moneys received and disbursed and shall make an annual report thereof to the state budget bureau.

(23) **ENFORCEMENT OF LAWS.** To enforce the provisions of chapters 93 to 100 and chapter 129, 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 95.67, by inspections, chemical analysis and other appropriate methods.

(c) To superintend and enforce the collection of all license fees required to be paid to the state under the provisions of sections 129.01 to 129.16, or of any acts relating to truckers, hawkers, peddlers or transient merchants. The agents specially charged with the enforcement of this paragraph shall not be designated by any title that contains the word "treasury". [1935 c. 550 s. 8; 1935 c. 551; 1939 c. 360]

Note: Milwaukee county dance hall ordinance does not apply to dance hall operated on state fairgrounds. 20 Atty. Gen. 506.

There is no statute requiring separation of live stock transported in trucks. If non-separation constitutes cruel treatment prosecution may be had under 343.47. 24 Atty. Gen. 501.

For discussion of concessionaire licenses on state fair grounds and town board's powers, see 28 Atty. Gen. 325.

By ch. 17, Laws 1941 the functions of the planning board relating to the conduct of a land economic survey were transferred to the department of agriculture.

93.08 Access for law enforcement. The commissioners and duly authorized subordinates of the department 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, which it may be necessary or desirable for them to enter in performing their duties or in enforcing the laws entrusted 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. [1935 c. 550 s. 9]

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 markets 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 markets 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 markets 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 markets. The governor shall act as arbiter in case of disagreement or conflict of authority between the department of markets and any other state department, commission or official under this section.

(7) No standard established under this section shall become effective until at least thirty days after the text thereof is published.

(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. [1935 c. 550 s. 10]

Note: See note to 140.05, regarding cooperation with state board of health as to its regulations concerning sanitary production of milk, cream, etc., citing 27 Atty. Gen. 516.

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 re-

ceptacle, 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. [1935 c. 550 s. 11]

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) No fee shall be charged the licensee for any license issued under this section.

(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 16 of the statutes shall not apply to inspectors licensed under this section who receive no salary or are handled merely upon a fee basis. [1935 c. 550 s. 12]

93.12 Collection of license fees under chapter 129. (1) The department shall deputize subordinates of the department whose special duty it shall be to collect the license fees required by chapter 129.

(2) Such special deputies may, when there is reasonable ground to suppose that license fees or forfeitures which are imposed by chapter 129 will become otherwise uncollectible, seize and detain any vehicle or any animals attached thereto, or any handcart, or any of the merchandise conveyed thereby, or any trunk, box or pack, or other means of carrying goods or the contents thereof, carried by foot peddlers, until the summons or other process provided by law can be issued and served and the matter is disposed of in court. Such special deputies may serve any writ or process necessary to enforce the provisions of chapter 129, in the same manner and for the same compensation as constables and sheriffs.

(3) Every such special deputy before entering upon the duties of his office shall file his official oath, and, if required by the department, shall execute a bond, with sufficient

sureties, in such sum as it shall fix, conditioned for the faithful performance of his duty. [1935 c. 550 s. 13]

93.13 Records; report; evidence. (1) The department shall keep a record of all orders, regulations and standards made under this chapter and shall authorize copies thereof to be printed. Any such authorized copy, stamped with the official seal of the department, shall be competent evidence of the order, regulation or standard in any court of this state.

(2) The commissioners, on or before the first day of December in each even-numbered year, shall submit to the governor a report of the work of the department for the biennium which ended on the last day of June preceding, together with such recommendations as may be deemed of value to the people of the state. They shall also make such special reports upon any phase of the work of the department as may be called for by the governor, the legislature or either house thereof. [1935 c. 550 s. 14]

93.14 Power to conduct hearings; secure evidence; witness fees. (1) The department, a single commissioner, or any authorized official, employe or agent of the department, 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 section 325.12.

(4) A record of all hearings shall be kept in the office of the department. All hearings shall be public. [1935 c. 550 s. 15]

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) Any commissioner or any authorized subordinate of the department 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. [1935 c. 550 s. 16]

93.155 [Renumbered section 94.095 by 43.08 (2)]

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. [1935 c. 550 s. 17]

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. [1935 c. 550 s. 18]

93.18 Hearings; orders; service; procedure; revocation. (1) The department shall publish notice of any public hearing, except under subsection (3) of section 100.20 or under subsection (3) of section 100.19.

(2) The department, in any matter arising under subsection (3) of section 100.20 or under subsection (3) of section 100.19, shall serve a complaint, prepared in the name of the department, upon the person against whom the complaint is made and shall accompany such complaint by notice of public hearing to be held in the matter not sooner than ten days after such service. The person against whom the complaint is made shall be entitled to be heard in person, or by agent or attorney, and shall have subpoena process to compel the attendance of witnesses.

(3) The department shall publish all general orders.

(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 section 325.03, 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 department shall make its own rules of procedure and practice not inconsistent with any provision of this chapter or with any other provision of law governing such procedure or practice.

(7) The department may revoke or amend any standard, order or regulation made under this chapter; provided, that public hearing has been held and notice thereof given in the same manner as is prescribed for the making of such standard, order or regulation. The revocation or amendment of any standard, order or regulation shall not affect any civil or criminal liability for offenses committed, penalties or forfeitures incurred, or rights of action accrued under such standard, order or regulation before the revocation or amendment thereof, whether or not in the course of prosecution or action at the time of such revocation or amendment; and any prosecution or action founded upon any such standard, order or regulation as it existed prior to the time of revocation or amendment, whether such prosecution or action was instituted before that time or not, shall proceed to judgment in the same manner and to the like purpose and effect as if the standard, order or regulation had not been revoked or amended. [1935 c. 550 s. 19; 1939 c. 213]

Note: For services by registered mail, the ten days allowed to answer is reckoned from the date of the return receipt. *Dairy Dis-tributors v. Department of Agriculture and Markets*, 228 W 418, 280 NW 400.

93.19 Rehearing. (1) Any person affected by a standard, order or regulation made under this chapter may file with the department an application for rehearing upon such standard, order or regulation; provided, that such application shall be filed not later than thirty days after such standard, order or regulation becomes effective. The department shall, within thirty days after such application, take action thereon, allowing or denying the rehearing.

(2) The pendency of any application for rehearing shall not stay or suspend the operation of the standard, order or regulation. [1935 c. 550 s. 20]

93.20 Judicial review. (1) The provisions for judicial review of any order, standard or regulation made under this chapter shall be as prescribed in sections 196.41 to 196.47, so far as those sections are applicable. The department's findings of fact, if supported by evidence before it, shall be presumptive, in the absence of fraud.

(2) Proceedings for review shall not stay the operation of the order, standard or regulation. [1935 c. 550 s. 21]

Note: See note to 100.20, citing: *State ex rel. Waldorf v. Hill*, 217 W 59, 258 NW 361.

93.21 Penalties. (1) **FAILING TO FURNISH INFORMATION.** Any owner or manager of any creamery, cheese factory, butter factory, condensery or milk receiving plant, and any person dealing in or manufacturing dairy products, who fails to furnish the statement prescribed under subsection (2) of section 93.06 to every person from whom milk is purchased or received, or who fails to comply with the provisions of subsection (20) of section 93.07, shall be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars.

(2) **OBSTRUCTING OFFICERS.** Any person who obstructs the department or any of its subordinates in the performance of their 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 by a fine of not less than twenty-

five dollars nor more than one hundred dollars or by imprisonment in the county jail not less than ten days nor more than sixty days.

(3) **VIOLATION OF ORDER OR REGULATION.** Any person who violates any provision of subsection (8) of section 93.09, subsection (2) of section 93.10, or subsection (7) of section 93.11, or who wilfully violates or refuses, neglects or fails to obey any order or regulation made under the provisions of this chapter, shall forfeit for each such offense not to exceed two hundred dollars.

(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. [1935 c. 550 s. 22]

93.22 Enforcement provisions. (1) In cases arising under the provisions of chapters 93 to 100 and chapter 129, the department may be represented by its attorney. It shall be the duty of county agricultural agents, upon request of the department, to assist in carrying out the provisions of chapters 94 and 95.

(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 and chapter 129. The cost of such special counsel shall be charged to the appropriation for the department of agriculture and markets.

(3) In any criminal or civil action under chapters 93 to 100 and chapter 129, 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 negatived in the information or complaint, and, if so specified or negatived, no proof in relation to the matter so specified or negatived, shall be required of the plaintiff. [1935 c. 550 s. 23]

93.23 Provisions not interdependent. The legislature intends that the provisions contained in sections 93.01 to 93.22 shall be independent of each other and that the invalidity, for any reason, of any provision shall not affect the validity of any other provision. [1935 c. 550 s. 24]