

CHAPTER 94

PLANT INDUSTRY

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Cross Reference: See definitions in 93.01

94.01 Plant inspection and pest control authority. (1) In the conduct of survey and inspectional programs for the detection, prevention and control of pests, the department may impose quarantines or such other restrictions on the importation into or movement of plants or other material within this state as necessary to prevent or control the dissemination or spread of injurious pests.

(2) In accordance with sub. (1), the department, by summary order, may prohibit the removal of any plant, host plant, or other pest-harboring material from any private or public property, or any area of the state which in its judgment contains or is exposed to injurious pests, except under such conditions as in its judgment are necessary to prevent the dissemination or spread of pests, giving written notice thereof to the owner or person in charge of the property. While such order is in effect no person with knowledge thereof shall cause or permit the removal of any such plant, host plant or other pest-harboring material from such property or area, unless it is in compliance with the conditions of such order. Orders issued under this subsection shall be in writing, have the force and effect of an order issued under s. 93.18, and are subject to right of hearing before the department, if requested within 10 days after date of service. Any party affected by the order may request a preliminary or informal hearing pending the scheduling and conduct of a full hearing.

(3) No person may obstruct or interfere with the examination or testing, by authorized inspectors and agents of the department, of any plants or other material suspected of being infested or infected with any injurious pests; nor may any person move any plants, plant parts, pests or pest-harboring materials contrary to the terms of any quarantine, rule, notice or order under this section.

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

History: 1975 c. 394 s. 18.

94.02 Abatement of pests. (1) If the department finds any premises, or any plants, plant parts, or pest-harboring materials located thereon are so infested or infected with injurious pests as to constitute a hazard to plant or animal life in the state, or any area thereof, it may notify the owner or person having charge of such premises to that effect, and the owner or person in charge shall, within 10 days after such notice, cause the treatment of the premises or the treatment or removal and destruction of infested or infected plants, host plants or other pest-

harboring material as directed in the notice. No person may violate the terms of any notice received under this subsection, nor may any damages be awarded to the owner for such treatment, removal or destruction. Any person affected by a notice or order may appeal to the department and request a hearing under s. 94.01 (2).

(2) If the owner or person in charge fails to comply with the terms of the notice, within 10 days after receiving it, the department or any cooperating local unit of government may proceed to treat the premises or to treat or destroy the infested or infected plants or other material. The expense of such abatement shall be certified to the town, city or village clerk and assessed, collected and enforced against the premises upon which such expense was incurred as taxes are assessed, collected, and enforced, and shall be paid to the cooperating unit of government incurring the expense, or into the general fund if the control work was conducted by the department.

(3) If a serious pest outbreak constituting a significant threat to agricultural production or plant life occurs, and cannot be adequately controlled by individual property owners or local units of government in any area of this state, the department, with the approval of the governor, may petition the joint committee on finance acting under s. 13.101 for emergency funds with which to conduct needed control work independently or on a cooperative basis with the federal or local units of government.

(4) This section pertains to the abatement of pests on agricultural lands and on agricultural business premises. This section does not affect the authority of the department of natural resources under ch. 26.

History: 1975 c. 394 ss. 5, 19; 1975 c. 421; 1977 c. 418.

94.03 Shipment of pests and biological control agents; permits. (1)

No person may sell or offer for sale, or move, transport, deliver, ship or offer for shipment, any pest, as defined in s. 93.01 (16) or any biological control agent as defined in sub. (2), without a permit as prescribed by rules of the department. Such rules may provide for reasonable exemptions from permit requirements. Permits may be issued only after the department determines that the proposed shipment or use will not create sufficient hazard to warrant refusal of a permit. Permits shall be affixed to the outside of every shipping container or accompany the shipment as the department directs.

(2) The department may by rule regulate and control the sale and use of biological control agents to assure their safety and effectiveness in the control of injurious pests and to prevent the

introduction or use of biological control agents which may be injurious to persons or property or useful plant or animal life. The term "biological control agent" as used in this section means any living organism which because of its parasitic, predatory or other biological characteristics may be effective for use in the suppression or control of pests by biological rather than chemical means.

History: 1975 c. 394 ss. 6, 17.

94.10 Nursery stock; inspection; licensing. (1) DEFINITIONS.

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

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

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

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

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

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

(2) (a) All nurseries, heeling-in grounds and all other premises on which nursery stock is kept for sale in the state shall be inspected at such intervals as the department considers necessary, except that the premises and nursery stock of a nurseryman shall be inspected at least once each year. Every nurseryman and dealer shall maintain facilities which are adequate for the care and keeping of nursery stock in a healthy and viable condition pending sale. It is the duty of every nurseryman or dealer to remove from sale any nursery stock incapable of reasonable growth and to remove from sale and treat or destroy stock infested or infected with injurious pests to prevent the spread of further infection or

infestation. No nurseryman or dealer may buy, sell or distribute nursery stock except from officially inspected sources, or sell or distribute nursery stock infested or infected with injurious plant pests or in such damaged or desiccated condition as to be incapable of reasonable growth.

(b) By notice in writing the department may require a nurseryman or dealer to hold any variety of nursery stock for inspection or reinspection whenever such action is necessary to determine that it is free from pests. The department may further order the removal from sale and the treatment or destruction of any nursery stock infested or infected with injurious pests or stock which is not viable or is in such damaged or desiccated condition as to be incapable of reasonable growth. No compensation shall be paid for any stock ordered destroyed. Any notice or order hereunder shall have the effect of a special order under s. 93.18 and may be appealed to the department as provided under s. 94.01 (2).

(3) No person may engage as a nurseryman in this state without a license from the department. Such license expires on March 31 of each year. Applications for license shall be submitted on a form prescribed by the department, and shall be accompanied by payment of the required fee. The fee for nurserymen whose gross annual sales of nursery stock do not exceed \$500 is \$10. The fee for nurserymen whose gross annual sales exceed \$500 shall be based on total acreage and is as follows: \$35 for less than 10 acres; and \$35 for 10 acres or more with an additional acreage fee of \$25 for each 25 acres or fraction thereof for all acreage in excess of 10. Nurserymen selling nursery stock from a supply on hand at other than a nursery location shall pay an additional fee of \$25 for each such place of business. Each nurseryman shall buy, sell and distribute only nursery stock from officially inspected sources. Upon request of the department, the nurseryman shall furnish a list of all sources from which the nursery stock is secured and all locations where such stock is sold. No license is transferable.

(4) (a) Every dealer before offering nursery stock for sale or distributing or soliciting orders for nursery stock shall secure a dealer's license from the department. Each applicant for license shall certify that the applicant will buy and distribute only nursery stock from officially inspected sources. Each dealer shall maintain with the department a list of all sources from which nursery stock is secured and all locations where such stock is sold. License applications shall be submitted on a form prescribed by the department and shall be accompanied by a fee for each place of business where nursery stock

will be sold by the applicant. The amount of such fee is \$25 for each place of business. A dealer's license expires on March 31 of each year. No license is transferable.

(b) No dealer may sell, offer for sale or have in possession any nursery stock which has not been officially inspected as provided in this section.

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

(6) LABELING NURSERY STOCK; RETAIL SALES. (a) Every nurseryman or dealer shall attach to the outside of each package, box, bale or lot of nursery stock shipped or otherwise delivered, a tag or label bearing the name and address of such licensee and a certification by the nurseryman or dealer that such nursery stock is from officially inspected sources. The requirements of this paragraph shall not apply to nursery stock sold and delivered at the place of business of a nurseryman or dealer who has there conspicuously posted the license certificate.

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

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

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

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

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

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

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

History: 1975 c. 394 ss. 20, 22; 1975 c. 421.

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

History: 1975 c. 394 s. 23.

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

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

give notice thereof to the claimant and to each of the persons so selected as arbitrators.

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

94.29 Appeal. If either party shall not be satisfied with the award he may, within 10 days after the delivery of the copy thereof to him, serve upon either of said arbitrators notice that he appeals from their award to the circuit court of the county in which the lands or any part thereof are situated and pay to such arbitrators the whole amount of their fees, \$5 for state tax and \$8 clerk's fees; and if the party required to pay such damages shall give notice of an appeal therefrom he shall file with his notice of appeal an undertaking, signed by 2 or more sureties, to be approved by at least 2 of said arbitrators, in double the amount of such award, conditioned to pay any judgment that may be rendered against him upon such appeal. Upon filing such notice of appeal and undertaking, when required, the arbitrators, or 2 of them, shall, within 10 days, make and sign a full statement of the proceedings had by them and of their award and file the same with the clerk of said court and pay \$5 state tax and \$8 clerk's fees; and thereupon the said clerk shall enter an action in which the claimant shall be plaintiff, which shall be deemed then at issue, and proceedings shall be had thereon in like manner as in other civil actions in such court. Unless the appellant shall obtain a more favorable judgment upon such appeal he shall pay costs; otherwise, the respondent.

94.30 Rights on payment. If neither party appeals from such award and the party required to pay the damages shall pay the full amount

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

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

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

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

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

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

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

(3) "Lawn seed" means the seed of grasses, clovers or other agricultural seeds or mixtures thereof commonly used or sold for seeding lawns, parks or turf areas in this state.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

History: 1975 c. 39, 308.

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

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

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

(b) Lot number or other identification.

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

(d) Percentage by weight of all weed seeds.

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

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

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

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

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

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

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

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

(g) Percentage by weight of inert matter.

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

1. Percentage of germination, exclusive of hard seed.

2. Percentage of hard seeds, if present.

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

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

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

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

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

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

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

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

(c) Under the heading "Other Ingredients":

1. Percentage by weight of all weed seeds.

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

3. Percentage by weight of inert matter.

(d) Lot number or other identification.

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

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

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

(a) Name of kind and variety.

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

1. Percentage of germination, exclusive of hard seed.

2. Percentage of hard seeds, if present.

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

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

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

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

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

(b) Lot number or other identification.

(c) For each vegetable seed named:

1. Percentage of germination, exclusive of hard seed.

2. Percentage of hard seeds, if present.

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

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

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

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

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

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

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

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

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

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

(a) Variety or descriptive name.

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

History: 1975 c. 39, 308.

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

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

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

History: 1973 c. 335 s. 12; 1977 c. 29 s. 1650m (4).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) It is unlawful for any person:

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

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

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

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

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

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

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

History: 1973 c. 194, 195.

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

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

(2) To seed in storage in, or being transported or consigned to, a cleaning or processing establishment for cleaning or processing; but any labeling or other representation which may be made with respect to the uncleaned or unprocessed seed shall be subject to ss. 94.38 to 94.46.

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

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

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

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

under his own label for purposes of computing license fees under sub. (3).

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

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

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

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

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

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

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

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

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

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

(6) To establish rules, after public hearing:

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

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

(c) Governing the distribution and labeling of seed.

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

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

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

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

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

History: 1975 c. 39, 308

94.46 Stop sale; penalties; enforcement.

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

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

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

(4) Any person violating ss. 94.38 to 94.46 or rules thereunder, may be fined not less than \$50 nor more than \$200 or imprisoned not more than 90 days or both, for the first offense. For any subsequent offense, the fine shall be not less than \$200 nor more than \$500 or imprisonment in the county jail not to exceed 6 months or both.

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

(a) "Fertilizer" means any substance, containing one or more recognized plant nutrients, which is used for its plant nutrient content and which is designed for use or claimed to have value in promoting plant growth, except unmanipulated animal and vegetable manures, marl, liming material, sewage sludge and wood ashes. The term includes fertilizer materials, mixed fertilizers, custom mixed fertilizers, specialty fertilizers and all other fertilizers or mixtures thereof, regardless of type or form.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5. Net weight.

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

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

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

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

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

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

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

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

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

1. Fertilizer materials to manufacturers for further manufacturing;
2. Packaged fertilizer in the original container of a licensed manufacturer or distributor as packaged and labeled by him; and
3. Bulk fertilizer obtained for resale purposes from a licensee and labeled, as required under sub. (2) (b) 1, 4, 5 and 6, with label information furnished by him.

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

(4) FEES. (a) An inspection fee of 10 cents per ton shall be paid to the department for all fertilizers sold or distributed in this state with a minimum fee of \$1 for 10 tons or less. This fee shall not be applicable to fertilizer materials or products sold to manufacturers or exchanged between them for manufacturing purposes or further processing.

(am) In addition to the inspection fee under par. (a), a research fee of 10 cents per ton shall be paid to the department for all fertilizer sold or distributed in this state with a minimum fee of \$1 for 10 tons or less, except that specialty fertilizers as defined in s. 94.64 (1) (e) shall be exempted from payment of a research fee.

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

statement of tonnage is based shall be subject to department audit.

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

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

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

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

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

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

(b) Soil conditioners are exempt from labeling, licensing, and inspection fee and tonnage report requirements under this section, but any labeling claims or representations made for such

products shall be subject to regulation by department rule.

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

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

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

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

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

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

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

(8) INSPECTION, SAMPLING AND ANALYSIS.

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

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

(c) Manufacturers or distributors of fertilizers and soil conditioners shall submit to the department on request, product samples, copies of labeling or any other data or information which the department requests concerning composition and claims and representations made for fertilizers and soil conditioners manufactured or distributed by them in this state.

(8m) FERTILIZER RESEARCH FUNDS. (a) *Use of funds.* At the end of each fiscal year, the moneys collected under sub. (4) (am) shall be forwarded to the university of Wisconsin system under the custody of the college of agricultural and life sciences of the university of Wisconsin-Madison to be used for research on soil management, soil fertility and plant nutrition problems;

for dissemination of the results of the research; and for other designated activities tending to promote the correct usage of fertilizer materials.

(b) *Fertilizer research council.* The fertilizer research council shall recommend projects to be financed by fertilizer research funds. Members of the council shall meet at least annually to select projects to recommend for funding. The recommendations shall be made by majority vote of the council. If the university of Wisconsin system is unable to carry on the projected research, the council may recommend other appropriate nonprofit research institutions or agencies for receipt of funds.

NOTE: Chapter 418, laws of 1977, section 930 (3) provides that par. (b) is repealed effective "on the July 1 three years after the effective date of this act" [May 19, 1978].

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

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

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

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

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

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

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

(11) ENFORCEMENT. (a) *Stop sale orders.* The department may issue and enforce a written or printed stop sale order to the owner or custodian of any lot or container of fertilizer or soil conditioner distributed in violation of this section of rules issued thereunder. The order shall

prohibit the sale or removal of the fertilizer or soil conditioner, except as authorized by the department, until it has been brought into compliance with the law or until a plan for disposition is agreed upon with the department in writing. The stop sale order shall have the effect of a special order under s. 93.18 and shall be subject to judicial review if, within 10 days after service of the order a request for a hearing is made to the department.

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

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

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

(12) **PENALTIES.** (a) Any person who violates this section or any rule issued thereunder shall forfeit \$50 for the first violation and not less than \$200 nor more than \$500 for any subsequent violation. Any wilful violation shall

constitute a misdemeanor and any person convicted thereof shall be fined not less than \$250 nor more than \$5,000 or imprisoned in the county jail not more than one year or both.

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

History: 1977 c. 418

94.65 Cultures of micro-organisms.

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

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

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

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

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

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

require. An application may be amended upon written notice from the applicant.

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

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

(6) (a) Every person engaged in the business of selling or distributing liming material shall furnish each purchaser on final delivery of a lot or order of liming material a written statement showing total amount delivered in tons and the grade thereof as defined in par. (b). A written statement setting forth the grade of the liming material being transported shall accompany each vehicle when making delivery. All liming material shall be distributed on a scale weight basis, except that where no weighing facilities are readily available and on prior approval of the department, liming materials may be distributed by volume if each vehicle transporting liming materials is accurately and conspicuously marked to show cubic yard capacity from which the seller must guarantee a ton weight equivalent based on rules established by the department. This paragraph does not apply to marl or paper mill refuse lime as these materials are distributed on an equivalent cubic yard basis as prescribed by department rule.

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

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

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

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

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

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

(c) All weights as called for under par. (a) shall be expressed on the basis of not more than 8% of moisture. For the purposes of the specifications in par. (b), "calcium carbonate equivalent" means the acid neutralizing capacity of oven-dried material expressed as the percentage by weight of calcium carbonate. In

addition to the grade designation, the actual screen analysis and neutralizing value may be given. Any misleading representation on the written statement of guarantee is unlawful.

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

(8) The department may revoke a license, after reasonable notice, only for wilful failure to comply with any of the provisions of this section and in the event the license is revoked the licensee may have the order of revocation reviewed by the circuit court of the county wherein the producing plant is located and the review by the court shall be of all questions therein whether of fact or law; any such appeal must be taken within 20 days of the date of the service of the order of revocation upon the licensee.

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

History: 1973 c. 335 s. 12; 1977 c. 29.

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

(1) "Active ingredient" means any ingredient which will:

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

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

(c) Cause the leaves or foliage to drop from a plant; or

(d) Artificially accelerate the drying of plant tissue.

(2) "Agriculture commodity" means any plant or part of a plant, animal or animal product produced by a person primarily for sale,

consumption, propagation or other use by humans or animals.

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

(4) "Certified applicator" means a person certified by the department to use or supervise the use of restricted-use pesticides as a private or commercial applicator.

(5) "Certified commercial applicator" means a person, whether or not a certified private applicator with respect to some uses, certified to use or supervise the use of restricted-use pesticides for any purpose or on any property other than as a certified private applicator.

(6) "Certified private applicator" means a person certified to use or supervise the use of restricted-use pesticides for purposes of producing any agricultural commodity on property owned or rented by the person or the person's employer, or on property of another person if used without compensation other than the trading of goods or services between producers of agricultural commodities on an exchange basis.

(7) "Commercial business location" means any place where a certified commercial applicator operates from on a regular basis.

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

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

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

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

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

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

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

(15) "General-use pesticide" means a pesticide, for which certain or all of its uses are classified as being for general use under the

federal act or rules of the department and available for general use or application by persons who are not required to be certified private or commercial applicators. If certain uses of a pesticide are classified for general use and other uses are classified for restricted use "general-use pesticide" refers only to those uses classified for general use.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(32) "Under the direct supervision of a certified applicator" means the use or application of a restricted-use pesticide by a competent person acting under the instructions and control of a certified applicator. A certified applicator shall be available if and when needed, but need not be physically present at the time and place the restricted-use pesticide is being applied, except as otherwise prescribed in pesticide labeling or rules of the department.

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

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

History: 1975 c. 94 s. 91 (10); 1977 c. 106, 273.

94.675 Pesticides; adulteration. A pesticide is adulterated:

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

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

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

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

94.676 Pesticides; misbranding. A pesticide is misbranded if:

(1) Its labeling bears any statement, design or graphic representation relative to the pesticide, or to its ingredients, which is false or misleading in any particular.

(2) It is an imitation of, or is offered for sale under, the name of another pesticide.

(3) It is contained in a package or other container or wrapping which does not conform to the standards established under the federal act or rules of the department.

(4) Its label does not bear the registration number assigned to each establishment in which it was produced as required under the federal act or rules of the department.

(5) Any word, statement or other information required under the authority of the federal act or ss. 94.67 to 94.71 to appear on the label or labeling is not prominently placed on the label or labeling with conspicuousness, compared with other words, statements, designs or graphic matter in the labeling, and in terms so as to render it likely to be read and understood by the ordinary person under customary conditions of purchase and use.

(6) The labeling does not contain directions or instructions for use which are necessary for effecting the purpose for which the product is intended and which, if complied with, are adequate to protect health and the environment.

(7) The label does not contain a warning or caution statement which may be necessary and which, if complied with, is adequate to protect health and the environment.

(8) The label does not bear an ingredient statement on that part of the immediate

container which is presented or displayed under customary conditions of purchase and on the outside container or wrapper of the retail package, if there is one, through which the ingredient statement on the immediate container cannot be clearly read, except that a pesticide is not misbranded under this subsection if:

(a) The size or form of the immediate container, or the outside container or wrapper of the retail package, makes it impracticable to place the ingredient statement on the part which is presented or displayed under customary conditions of purchase; and

(b) The ingredient statement appears prominently on another part of the immediate container, or outside container or wrapper, when authorized under the federal act.

(9) The labeling does not contain a statement of the use classification under which the pesticide is registered under the federal act or rules of the department.

(10) There is not affixed to its container and to the outside container or wrapper of the retail package, if any, through which the required information on the container can be read clearly, a label bearing:

(a) The name and address of the producer, registrant or person for whom produced;

(b) The name, brand or trademark under which the pesticide is sold;

(c) The net weight or measure of the contents subject to variations as authorized under state or federal law; and

(d) The registration number and use classification assigned to the pesticide when required under the federal act.

(11) The pesticide contains any substance or substances in quantities highly toxic to persons, unless the label bears, in addition to other required labeling:

(a) The sign of the "skull and crossbones";

(b) The word "POISON" prominently in red on a background of distinctly contrasting color; and

(c) An antidote statement of a practical treatment, first aid or otherwise, in case of pesticide poisoning.

(12) Its labeling contains statements, claims or directions for use which, if complied with, would violate any laws of this state or the federal act relating to the sale or use of pesticides.

History: 1975 c. 94 s. 91 (10); 1977 c. 106.

94.68 Pesticides; licensing of manufacturers and labelers.

(1) No person may manufacture, formulate, package, label or otherwise produce pesticides for sale or distribution in this state, or sell or offer to sell pesticides to purchasers in this state, whether or not the sales are made wholly or partially in this state or

another state, without a license from the department. No license may be required of persons engaged only in:

(a) The sale or distribution of pesticides at wholesale or retail in the immediate, unbroken container of licensed manufacturers as manufactured, produced, packaged or labeled by them.

(b) The sale of pesticides or active ingredients to licensed manufacturers for use as a basic ingredient in the manufacture or formulation of another pesticide or for further processing, packaging or labeling

(c) The blending of fertilizer-pesticide mixtures in accordance with the registered pesticide label at the customer's request for use on property owned, rented or controlled by the customer, or blending mixtures according to registered pesticide label uses for custom application by the blender. The mixtures may not be resold or redistributed.

(d) The sale or application, as certified commercial applicators of pesticides or pesticide-fertilizer mixtures, mixed or blended by them for their own use in the commercial application of pesticides if the pesticides used for mixing and blending were obtained from a licensee under this section.

(2) Applications for a license shall be made on forms prescribed by the department and shall be accompanied by an annual license fee of \$100. Licenses expire on December 31 of each year and are not transferable.

(3) Manufacturers or labelers of pesticides shall submit to the department on request, product samples, copies of labeling or any other data or information which the department requests concerning composition and claims and representations made for pesticides manufactured or labeled by them in this state.

History: 1977 c. 106.

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

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

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

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

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

sale in violation of the law or rules of the department.

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

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

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

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

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

(10) The department shall adopt rules when it determines that it is necessary for the protection of persons or property from serious pesticide hazards and that its enforcement is feasible and will substantially eliminate or reduce such hazards. In making such determination the department shall consider the toxicity, hazard, effectiveness and public need for the pesticides, and the availability of less toxic or less hazardous pesticides or other means of pest control. It shall obtain the recommendations of the pesticide review board and such rules are not effective until approved by the pesticide review board. Such rules shall not affect the application of any other statutes or rule adopted thereunder.

(11) To register pesticides formulated for distribution and use within this state to meet special local needs as authorized under the federal act and impose fees reasonably calculated to cover the cost of registration.

(12) To exempt any pesticides from the application of ss. 94.67 to 94.71 which are adequately regulated under other state or federal laws or which are of such a character that the regulation of their use is unnecessary for the protection of health and the environment.

History: 1975 c. 94 s. 91 (10); 1977 c. 106.

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

See note to 29.65, citing 62 Atty. Gen. 130.

94.70 Pesticides; prohibited acts. (1) No person may distribute, sell, offer for sale, hold for sale, ship, deliver for shipment or receive for distribution, delivery or sale to any person in this

state whether or not the acts or transactions take place in intrastate commerce or between points within this state through any point outside this state, any pesticide:

(a) Which has not been registered as required under the federal act or rules of the department.

(b) About which claims are made, or directions for use are given, which differ in substance from representations made in connection with its registration under the federal act or rules of the department.

(c) Which differs in composition from the composition represented in connection with its registration under the federal act or rules of the department.

(d) Unless it is in the registrant's, manufacturer's or packer's unbroken immediate container and labeled as required under the federal act or rules of the department.

(e) Which has not been colored or discolored as required under the federal act or rules of the department.

(f) Which is adulterated or misbranded, or violates any other provision of the federal act or ss. 94.67 to 94.71 or rules of the department.

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

(a) Any carrier while engaged in transporting a pesticide within this state, if such carrier permits the department on request to copy all records showing the transactions in and movement of the products.

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

(c) Persons using or possessing a pesticide in accordance with the terms and conditions of an experimental use permit issued under the federal act or rules of the department.

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

(e) Any person shipping a substance or mixture of substances only in the conduct of screening tests to determine its usefulness or value as a pesticide or its toxicity or other properties and from which the person does not expect to receive any pest control benefit from its use.

(3) No person may:

(a) Detach, alter, deface or destroy, in whole or in part, any label or labeling required under the federal act or under ss. 94.67 to 94.71 or rules under ss. 94.67 to 94.71, or add any substance to or take any substance from any pesticide in a manner that may defeat the purposes of the laws.

(b) Use for personal advantage or reveal, other than to federal or state agencies, the

courts, physicians, pharmacists or other persons requiring the information for the performance of their duties, any information relative to formulas acquired in the administration of ss. 94.67 to 94.71 which may be confidential under the federal act or otherwise constitute a trade secret.

(c) Advertise pesticides registered for restricted-use as a registrant, manufacturer, wholesaler, dealer, retailer or other distributor without disclosing that the pesticides are classified as restricted-use pesticides.

(d) Use or make available for use any restricted-use pesticide contrary to its labeling or other restrictions or exemptions imposed on its use under the federal act or the laws of this state.

(e) Claim falsely to be a certified private or commercial applicator in one or more uses of restricted-use pesticides.

(f) Use or supervise the use of restricted-use pesticides as a certified applicator in categories of pesticide use and application for which no certification has been obtained.

(g) Use any pesticide in a manner inconsistent with its labeling except as authorized by the department.

(h) Use any pesticide under an experimental use permit contrary to the provisions of the permit.

(i) Fail to maintain records or file reports as required under ss. 94.67 to 94.71 or rules under ss. 94.67 to 94.71 or falsify records or reports or any application filed with the department.

(j) Violate any other provisions of ss. 94.67 to 94.71 or orders or rules issued under ss. 94.67 to 94.71.

History: 1975 c. 94 s. 91 (10); 1977 c. 106.

Sub. (1) (b), forbidding the distribution of any pesticides about which claims are made which differ in substance from representations made in connection with its registration with the department was, as a matter of law, violated by defendant, since the federal label, which represented the minimum information that could have been submitted to the department, provided that application of the herbicide after 50% emergence might reduce yields, whereas a representative of defendant told plaintiff that the potatoes would only be singed a little by applying the herbicide after 50% emergence. *Perzinski v. Chevron Chemical Co* 503 F. (2d) 654.

94.705 Pesticides; certification requirements and standards. (1) CERTIFICATION REQUIREMENTS; FEES. (a) No person may use or supervise the use of a restricted-use pesticide unless certified to use or supervise the use of the pesticide as a certified private or commercial applicator as provided in this section. No certification may be required of competent persons using or applying restricted-use pesticides only under the direct supervision of a certified applicator.

(b) Applications for certification shall be submitted on forms prescribed by the department and shall specify the category of pesticide use and application for which application for

certification is made. Certifications shall be valid for a period of 5 years from date of issuance or renewal, unless terminated or suspended by the department for failure to comply with the terms and conditions of its issuance or for violation of ss. 94.67 to 94.71 or rules or orders issued under ss. 94.67 to 94.71. Certifications may be changed or amended during the 5-year period for which issued by the addition of other categories of pesticide use and application for which the applicator was not certified at the beginning of the certification period, but all the changes or amendments shall expire concurrently with the end of the 5-year base certification period.

(c) All certified applicators may be granted an additional 5 years of certification upon the expiration date of their original certification. If significant changes have occurred in the development of new pesticides, uses or labeling during this time period the department may require that a certified private applicator obtain certification under one of the certification options under s. 94.706 as a condition of recertification. If significant changes have occurred in the development of new pesticides, uses or labeling during this time period, certified commercial applicators may be subject to a written examination approved by the department as a condition of recertification.

(d) Certified commercial applicators shall be subject to a \$10 annual licensing fee payable at the time of application and an additional fee of \$10 for each application for any pesticide category addition to the certification during the 5-year period for which it is issued. Each commercial business location that employs or from which a commercial applicator operates shall be subject to a \$25 per year licensing fee. Each location shall be required to have at least one certified commercial applicator employed. All licenses, unless otherwise designated by the department, expire on December 31 of each year. No licensing fees shall be charged to certified private applicators.

(2) CERTIFICATION STANDARDS. Notwithstanding s. 140.77, the department shall, by rule, adopt standards for the training and certification of certified private and certified commercial applicators, at least equal to but not to exceed federal standards adopted under the federal act. In the adoption of the standards, separate categories of pesticide use and application may be established for certification purposes depending on the specific types of pesticides used, the purposes for which they are used, types of equipment required in their application, the degree of knowledge and skill required and other factors which may warrant the creation of different categories. The standards shall provide

that individuals to be certified must be competent with respect to the use and application of pesticides in the various categories of pesticide use and application for which certification is desired. For commercial applicators competence in the use and handling of pesticides is to be determined on the basis of written examinations.

(3) **RECORDS; REPORTS.** Certified commercial applicators, including nonresident commercial applicators, shall maintain records of amounts, dates, types, places and uses of all restricted-use pesticides as prescribed by the department. Records shall be kept for 2 years and shall be open to and available for inspection at all reasonable times by the department or cooperating governmental enforcement agencies.

(4) **LICENSING AND CERTIFICATION; EXEMPTIONS.** (a) Persons engaged only in the use or application of restricted-use pesticides in the performance of their duties as public employes and employes of public or private educational or research agencies authorized by law to conduct educational programs, research or studies in the field of pesticides shall be subject to all certification requirements but are exempt from the payment of licensing fees.

(b) Nonresident commercial applicators shall be exempt from certification requirements under this section if they possess current and valid certification under equivalent laws or programs of another state. This exemption applies only to categories of certification for which nonresident applicators are certified in another state.

(c) Nonresident applicators shall be licensed annually with the department if they are commercial applicators and registered annually with the department if they are private applicators before they begin any work in this state. Nonresident applicators shall be subject to all other laws of this state relating to pesticide use and application. Certified nonresident commercial applicators shall be subject to an annual licensing fee of \$10 payable at the time of application. All licenses and registrations expire at the end of each calendar year and may be suspended or revoked for a violation of the pesticide laws or rules of this state.

(d) Private applicators, certified as commercial applicators because of their incidental commercial work which they may perform on an occasional basis, shall be exempt from the commercial business location license requirements under sub. (1) (d).

History: 1977 c. 106.

94.706 Pesticides; private applicators; certification. (1) PRIVATE APPLICATORS.

Resident private applicators shall be certified to use restricted-use pesticides under one of the options specified under pars. (a) to (d).

(a) *Certification by training session.* A private applicator may attend a pesticide applicator training session approved by the department. The training shall cover all areas of competency necessary to comply with standards under the federal act. No person seeking certification under this paragraph may be required to take a written examination in order to obtain certification. Upon successful completion of the training session the applicator shall be granted certification for 5 years.

(b) *Certification by examination.* A private applicator may take a written examination approved by the department including all areas of competency necessary to comply with the federal act. Certification for 5 years shall be granted to the applicator upon successful completion of the examination. A private applicator may engage in a self-study program using training materials available in training sessions under par. (a). Written examinations shall be given at a designated department office, county extension office or at a site approved by the department.

(c) *Certification for emergency use.* A person may apply for an emergency use certification. Only one emergency use certification shall be granted to a person. Thereafter, certification under par. (a) or (b) is necessary. The department shall conduct a specific evaluation of the applicant's ability to use and apply the pesticide safely and correctly and make any other evaluations deemed necessary by the department. The department shall notify the dealer by telephone that the applicant has been granted an emergency use certification. Written notice of the applicant's responsibility and liability shall be sent by the department to the dealer and the applicant. This certification shall be valid for a one-time specific use only. The department's evaluation shall be conducted at a designated department office, any university of Wisconsin extension office or at any other site approved by the department.

(d) *Certification for persons of limited English language ability.* Persons of limited English language ability shall receive the training necessary to permit them to use and apply restricted-use pesticides. The department shall conduct an oral evaluation of each person to determine competency. Certification under this paragraph shall be required for use of each restricted-use pesticide. Each certificate shall state the specific restricted-use pesticide the person is certified to use or apply.

History: 1977 c. 106.

94.71 Pesticides; penalties; enforcement.

(1) PENALTIES. (a) 1. Any person who violates ss. 94.67 to 94.71 or any rules or orders issued under ss. 94.67 to 94.71 shall forfeit not less than \$100 nor more than \$500 for the first violation and not less than \$200 nor more than \$1,000 for any subsequent violation within 5 years.

2. Any commercial applicator, dealer or distributor who knowingly violates any provision of ss. 94.67 to 94.71 or any rules or orders issued under ss. 94.67 to 94.71 may be fined not more than \$5,000 or imprisoned not more than one year in the county jail or both. Other persons, including private applicators who knowingly violate ss. 94.67 to 94.71 or any rules or orders issued under ss. 94.67 to 94.71 may be fined not more than \$1,000 or imprisoned not more than 30 days or both.

(b) Certified applicators shall be responsible for the acts of persons who are their employes or acting under their supervision and engaged in the use or application of pesticides.

(2) SEIZURES. If the department has reasonable cause to believe that any pesticide is in violation of ss. 94.67 to 94.71, it may deliver to the owner or custodian of the pesticide an order prohibiting the sale or movement of the pesticide until an analysis or examination has been completed. Such holding order shall not be effective for more than 60 days from the time of delivery thereof. The pesticide described in any holding order shall not be sold or moved for any purpose without the approval of the department. If the department, after analysis or examination, determines that the pesticide described in the order is not in violation of ss. 94.67 to 94.71, it shall promptly notify the owner or custodian of the pesticide and the notice shall terminate the holding order. If the analysis or examination shows that the pesticide is in violation of ss. 94.67 to 94.71, the owner or custodian of the pesticide shall be so notified. Upon receipt of notice the owner or custodian shall dispose of the pesticide only in a manner authorized by the department. The owner or custodian may within 10 days of receipt of notice petition for a hearing as provided in s. 93.18.

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

rules or special or summary orders issued thereunder.

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

(c) In addition to other enforcement procedures, the department may, as deemed necessary to protect health and the environment, by summary order and without prior notice or hearing prohibit the use, application or sale of pesticides in violation of ss. 94.67 to 94.71 or rules issued under ss. 94.67 to 94.71. The order shall be in writing, have the force and effect of an order issued under s. 93.18, and is subject to right of hearing before the department, if requested within 10 days after date of service. Any party affected by the order may request a preliminary or informal hearing pending the scheduling and conduct of a full hearing. Hearings, if requested, shall be conducted as expeditiously as possible after receipt of a request for a hearing. Enforcement of the order shall not be stayed pending action on the hearing.

History: 1977 c. 106.

Legislature may constitutionally prescribe criminal penalty for violation of administrative rule. *State v. Courtney*, 74 W (2d) 705, 247 NW (2d) 714.

94.72 Commercial feed. (1) DEFINITIONS.

(a) "Commercial feed" means all products or materials used for feeding animals or birds, except the following:

1. Unmixed whole seeds or grains; as defined by United States grain standards.

2. The unmixed meals made directly from and consisting of the entire grains of corn, wheat, rye, barley, oats, buckwheat, flaxseed, kafir, milo and other seeds or grains. Such unmixed meals shall not be sold in violation of sub. (3).

3. Whole hays, straws, cottonseed hulls, stover and silage, when unmixed with other materials.

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

(b) "Brand name" means any word, name, symbol or device, or any combination thereof identifying the commercial feed of a manufacturer or distributor and distinguishing it from that of others.

(c) "Custom-mixed feed" means commercial feed consisting of a mixture of ground grain and other feed ingredients, ground and mixed on a custom basis at the request of the final purchaser at retail, and containing only feed ingredients in quantities and proportions as specifically directed by the purchaser in requesting the custom-mixing of such feed.

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

(d) "Distribute" means to sell, offer to sell, exchange, barter or solicit orders for the sale of commercial feed or otherwise to supply or furnish commercial feed to purchasers in this state, whether or not such sales or transactions are made wholly or partially in this state or another state.

(e) "Feed ingredient" means each of the constituent materials making up a commercial feed.

(f) "Manufacture" means to mix, blend, process, package or label commercial feed.

(g) "Product name" means the name of the commercial feed which identifies it as to kind, class or specific use.

(2) LABELING. (a) All manufacturers and distributors shall before distributing any commercial feed, except as otherwise provided under par. (b), have printed on, or attached to each bag, package, carton or delivered with each bulk lot thereof a plainly printed label in the English language clearly and truly stating:

1. The net weight of the contents of the package, bag, carton or bulk lot;

2. The product name and the brand name, if any, of the commercial feed;

3. The name and principal address of the manufacturer or person responsible for placing the commodity on the market;

4. The minimum percentage of crude protein;

5. The minimum percentage of crude fat;

6. The maximum percentage of crude fiber;

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

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

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

10. Adequate directions for the safe and effective use of commercial feed containing drugs or antibiotics, or of any other feed as required under department rules;

11. Such precautionary or warning statements as the department may by rule require for the safe and effective use of specific kinds of commercial feed.

(b) Custom-mixed feed shall be accompanied by a label, invoice, delivery slip or other shipping document, bearing the following information:

1. Name and address of the manufacturer.

2. Name and address of the purchaser.

3. Date of delivery.

4. The name and net weight of each feed ingredient used in the mixture, including the product name and brand name, if any, of commercial feeds used as a feed ingredient in the custom-mixed feed.

5. Adequate directions for the safe and effective use of custom-mixed feed containing drugs or antibiotics, or of such other custom-mixed feed the department by rule requires.

6. Such precautionary or warning statements as the department may by rule require for the safe and effective use of custom-mixed feed.

(3) WEED SEEDS. No commercial feed or unmixed meal shall be sold, offered or exposed for sale or distributed which contains germinative noxious weed seeds or other germinative weed seed excepting wild buckwheat seeds, in excess of such quantities as are unavoidably present with the most improved commercial practice of manufacture of such commercial

feed or unmixed meal, provided that such germinative noxious weed seeds shall not be greater than one one-hundredths of one per cent, or other germinative weed seeds excepting wild buckwheat seed shall not be greater than one-fourth of one per cent, unless such presence is clearly and permanently indicated on the label. The term "noxious weed seeds" as used in this section shall mean the seeds of Canadian thistle, wild mustard and quack grass, either single or combined.

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

(5) COMMERCIAL FEED LICENSE. (a) No person may manufacture or distribute commercial feed in this state without a commercial feed license from the department, but no license shall be required of persons distributing only:

1. Commercial feeds to licensed manufacturers for further manufacturing;

2. Packaged commercial feed in the original packages or containers of a licensed manufacturer or distributor as packaged and labeled by the manufacturer;

3. Bulk commercial feed in the form received from a licensee and labeled as required under sub. (2) with label information furnished by such licensee, except for net weight statement; or

4. Feeds custom-mixed by them at retail, if commercial feeds used in such mixture were obtained from a licensee under this section.

(b) Applications for a license shall be made on forms prescribed by the department listing each business location used in the manufacture or distribution of commercial feed in this state and such other information the department requires. Applications shall be accompanied by a license fee of \$10 for each separate place of business used in the manufacture of commercial feed, other than custom-mixed feed, in this state and an inspection fee as required under sub. (6). Applications of manufacturers or distributors having no established place of business in this state, but otherwise subject to a license under this section, shall be accompanied by a license fee of \$10 in addition to the required inspection fees. All licenses shall expire on the last day of February of each year. Licenses are not transferable and no credit or refund may be granted for licenses held for less than a full license year. No new business locations may be put into operation during the license year without the payment of an additional fee of \$10 for each new location.

(6) INSPECTION FEES. (a) Annual inspection fees of 10 cents per ton shall be paid to the department on all commercial feeds distributed in this state by any person subject to a license under sub. (5), with a minimum fee of \$10. Inspection fees shall be computed on the basis of annual tonnage reports setting forth the number of net tons of commercial feed sold or distributed in this state during the preceding calendar year. Such reports shall be filed with the department not later than the last day of February of each year and be accompanied by the payment of inspection fees in the required amount. Records upon which the tonnage report is based shall be subject to department inspection and audit.

(b) If more than one distributor is involved in the chain of distribution, the one who sells directly to the ultimate consumer or to a distributor exempted from a license under sub. (5) (a) is responsible for submitting the tonnage report and payment of inspection fees. Distributors exempt from a license shall not be responsible for the filing of tonnage reports or the payment of inspection fees for products purchased from a licensee and sold in the form in which received. No inspection fees are required for commercial feeds sold or exchanged between licensed manufacturers for further manufacturing or processing, or for commercial feeds on which the inspection fee has been paid by a previous manufacturer or distributor in the chain of distribution.

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

(d) Each licensee shall maintain for a period of 2 years a record of all quantities and brands of commercial feed sold or distributed by them to purchasers in this state and make such records available for inspection, copying or audit on request of the department.

(9) INSPECTION. The department shall have free access during regular business hours to all places of business, mills, buildings, carriages, cars, vessels and parcels used in this state in the manufacture, transportation, importation, sale or storage of any commercial feed, and may open any parcel containing or supposed to contain any commercial feeds and take therefrom in

the manner prescribed in sub. (10) samples for analysis, and the department may cause to be analyzed annually at least one sample so taken of every commercial feed found, sold, offered or exposed for sale or distributed in this state. All commercial feed stored on the premises of a retail establishment shall be considered as being offered or exposed for sale unless plainly labeled or placarded as not being offered for retail sale.

(10) SAMPLING, ANALYSIS. No action shall be maintained for a violation of the provisions of this section, based upon an analysis of a sample from less than ten separate original packages, unless there be less than ten separate original packages in the lot, in which case portions for the official sample shall be taken from each original package; if the commercial feed is in bulk, portions shall be taken from not less than ten different places in the lot; provided that this does not exclude sampling in bulk when not exposed sufficiently to take portions from ten different places, in which case portions are to be taken from as many places as practicable. If the sample thus procured is larger than is required, it shall be thoroughly mixed and quartered until a sample of suitable size remains. Said sample, if requested, shall be divided into two parts, and shall be placed in suitable containers and sealed, one of said containers so sealed, if requested, shall be delivered to the person apparently in charge of such feeds. In sampling canned or small packaged goods, one entire can or small package shall be deemed sufficient for examination. In sampling liquids or semi-liquids a portion drawn from one container shall be deemed sufficient for examination. The department shall analyze, or cause to be analyzed, the sample so collected, and the result of such analysis, together with such additional information as the said department may deem advisable, shall be promptly transmitted to the manufacturer and to the dealer or person in whose possession the product was sampled, and shall be published annually. The manufacturer or person responsible for the placing of any commodity so sampled upon the market or the dealer or person in whose possession the feed was found shall, upon request to the department within ten days after report is mailed, be furnished with a portion of the official sample. The methods of analysis shall be those in effect at the time by the association of official agricultural chemists of North America.

(11) HEARING. If it shall appear from the examination of any sample of feed or other evidence that any of the provisions of this section relating to accuracy of label statements have been violated, the department shall cause notice of such violation to be given to the manufacturer and the dealer from whom said sample was

taken; any party so notified shall be given an opportunity to be heard under such rules and regulations as may be prescribed by the department. After such hearing, if it appears that any of the provisions of this section relating to accuracy of label statements have been violated, the department may certify the facts to the proper prosecuting attorney and furnish that officer with a copy of the results of the analysis or other examination of such sample, duly authenticated by the analyst or other officer making the examination, under the oath of such officer.

(12) STATISTICS. For the purpose of obtaining information bearing directly on the agricultural situation in this state each manufacturer or distributor selling commercial feeds to purchasers in this state shall submit on request of the department a confidential statement of total tonnage of differing brands or types of feed sold during any calendar year, the tonnage to be classified as requested by the department. If accurate information is not obtainable estimates shall be made.

(13) AUTHORITY. The department may:

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

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

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

(d) Require persons manufacturing or distributing commercial feed in this state to furnish the department with a label or facsimile thereof for any commercial feed sold or distributed by them.

(14) PENALTY. (a) Any manufacturer, distributor or person who shall sell, offer or expose for sale or distribute in this state, any commercial feeds, who shall impede, obstruct, hinder or otherwise prevent or attempt to prevent the department or its authorized agent in the performance of duties in connection with this section or who shall sell, offer or expose for sale or distribute in this state any commercial feeds as defined in sub. (1) without complying with this section or who shall sell, offer or expose for sale or distribute in this state any commercial feed which contains a smaller percent of crude protein, crude fat, calcium, phosphorus or iodine, or a larger percent of crude fiber or salt than is

certified to be contained therein, or which contains excessive undeclared germinative weed seeds, or which does not comply with label requirements established under sub. (2) (a) 9, or who shall fail to properly state the name of each and every ingredient used in its manufacture, or who shall manufacture, distribute or sell any commercial feed without a license or the payment of inspection fees as required under subs. (5) and (6), or who shall file a false tonnage or other statistical report with the department, or who shall sell, offer or expose for sale or distribute any commercial feed under a product or brand name which is misleading or deceptive, or which carries any false or misleading labeling statement upon or attached to the package or accompanying the feed when sold in bulk, including false or misleading statements regarding its feeding value or net quantity, or who shall violate any other provision of this section or rules thereunder shall be punished as in s. 94.77 (2).

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

History: 1975 c. 39, 198, 199; 1977 c. 29 s. 1650m (4).

94.76 Honeybee disease control. (1) The department shall maintain surveillance of the beekeeping industry for the detection and prevention of honeybee diseases, and may promulgate or issue such rules or orders or adopt such control measures which in its judgment may be necessary to prevent, suppress or control the introduction, spread or dissemination of honeybee diseases in this state.

(2) In the execution of its functions under this section, the department and its authorized agents shall have free access at all reasonable times to all apiaries, buildings, structures,

rooms, vehicles or places where honeybees, beehives, beekeeping equipment or appliances, or honeybee products may be kept or stored, or in which they may be transported, and may open any package or container believed to contain honeybees, honeycombs, honeybee products, beekeeping equipment or appliances or any other materials capable of transmitting honeybee diseases, and obtain inspectional samples from such products or materials for further testing, examination or analysis.

(3) Honeybees shall be kept in movable frame hives. No person shall knowingly store, hold or expose honeybee products, beehives or any other beekeeping equipment or appliances in a manner which may contribute to the spread or dissemination of honeybee diseases.

(4) No person shall bring or cause to be brought into this state any beehive, drawn comb or used beekeeping equipment or appliances without a permit from the department. Applications for a permit shall be made on forms furnished by the department which shall include the name and address of the consignor, name and address of the consignee, date and manner of shipment, and such further information as the department requires. All applications shall be accompanied by a certificate from an official inspector of the state of origin certifying that such materials have been inspected within 30 days prior to shipment and are free from any evidence of honeybee diseases. The permit, or a copy thereof, shall be attached to or accompany each shipment.

(5) The department shall charge fees sufficient to cover the reasonable cost of inspections made at the request of any beekeeper to enable the interstate movement of beekeeping equipment or appliances, or honeybees or their products, and may bring an action for the payment thereof including reasonable costs of collection.

History: 1975 c. 39.

94.761 Beekeepers, etc.; agricultural pursuit. The moving, raising and producing of bees, beeswax, honey and honey products shall be deemed an agricultural pursuit. Any keeper of 50 or more hives of bees who is engaged in the foregoing activities is a farmer and engaged in farming for all statutory purposes.

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